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April 5, 2011

Honorable Ann T. Pfau
Chief Administrative Judge
Office of Court Administration
25 Beaver Street
New York, New York 10004

Re: *Proposed Amendment to 22 NYCRR § 118.2(b)(1)*

Dear Judge Pfau:

On behalf of the Committee on Professional Discipline of the Association of the Bar of the City of New York (the "Committee"), we submit this letter to respectfully recommend that Section 118.2(b)(1) of the Rules of the Chief Administrative Judge be amended to allow members of the New York Bar who have certified that they are "retired" (as that term is defined in Section 118.1(g)) to provide the Chief Administrator with either (i) a Post Office Box address or (ii) an active email address, as an alternative to public disclosure of their home addresses.

In its current form, Section 118.2(b)(1) provides that an attorney's home address "shall be made available to the public only in the following circumstances: (i) "where no office is listed, the home address will be made public," and (ii) "where an office is listed, but a request for information alleges that the attorney cannot be located at that address, the home address will be made public only if the Chief Administrator determines, by independent inquiry, that the attorney cannot be located at the listed office address." In short, Section 118.2(b)(1) provides that the registered attorney's home address will be provided to the public, upon inquiry, when the attorney has no registered office address or when the attorney cannot be located at the registered office address. These disclosure requirements presently apply to all members of the Bar, including those attorneys who have certified that they are retired -- a term defined to include

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those who “do[] not practice law in any respect and do[] not intend ever to engage in acts that constitute the practice of law.” Section 118.1(g).


During the past few years, the Committee has received inquiries from members of the Bar expressing concern that Rule 118.2(b)(1)’s dictate inadvertently implicates reasonable privacy and safety concerns for certain attorneys and their families. To illustrate, under the current Rule, a retired attorney who formerly practiced criminal defense law must publish her home address, which could facilitate an in-person visit from a former client who may have been incarcerated and feel aggrieved by the attorney’s past representation. The Committee is, of course, cognizant of the need for reasonable public access to all members of the Bar, including those who have retired from the practice of law, since a former client of a retired attorney may have a legitimate need to contact the attorney regarding a past matter. Nevertheless, the Committee believes that options exist aside from the public identification of home addresses to satisfy the continuing need for reasonable access to retired attorneys.

As a means of balancing these interests, the Committee proposes an amendment to Section 118.2(b)(1) that would permit a member of the Bar, who has certified that he/she is retired under Section 118.1(g), to provide the Chief Administrator, at the attorney’s option, with a Post Office Box address or an active email address as an alternative to public identification of the retired attorney’s home address. If a request for information alleges that the retired attorney cannot be located through the P.O. Box or e-mail address, the home address would then be made public only if the Chief Administrator, upon independent inquiry, determines that the retired attorney cannot be located through the P.O. Box or e-mail address. In this way, the retired attorney’s concerns about privacy and safety would be mitigated, while, at the same time, the legitimate needs of the public to contact the retired attorney would be satisfied.

We believe that this proposed, limited amendment would eliminate the concerns raised to the Committee. We thank you for your consideration of this proposal.

Very truly yours,

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
PROFESSIONAL DISCIPLINE COMMITTEE

By: 
Richard Supple, Chair