J. Certification of Questions of Law

The Supreme Court asked the Committee to consider whether New Jersey should adopt a rule that would establish, for litigation pending elsewhere that involves an important but unsettled question of New Jersey law, a procedure for the out-of-state court to "certify" that question of law to the New Jersey Supreme Court for resolution. Professor Robert Carter chaired the subcommittee that was appointed to study the issue. The subcommittee was unable to come to agreement on the matter, and issued both a majority and minority report.

The majority report of the subcommittee recommended the adoption of a rule that would allow the Court, in its own discretion, to resolve unsettled and important questions of New Jersey law that may be certified to it by Federal circuit courts and by the highest appellate courts of other states. Such a rule is in place in 43 other states; these states were surveyed and reported that the certification mechanism is used sparingly but that its existence is beneficial.

The minority report of the subcommittee expressed the view that the constitutional problems raised by the proposed certification mechanism are too serious and the benefits of the procedure too insignificant to warrant the Committee's recommendation of such a rule.

The full Committee voted in favor of making no recommendation as to the constitutionality of a certification procedure. It strongly opposed a rule establishing a procedure for certifying questions of law from state appellate courts. The full Committee was evenly divided, however, on the

issue of establishing a procedure for certifying questions of law from Federal circuit courts.

The majority and minority reports of the Subcommittee on Certification of Questions of Law are included as an appendix to this report.

Committee on Civil Practice
Meeting of April 7, 1997

Report of the Subcommittee on Certification
of Questions of Law to the Supreme Court

Majority Report of the Subcommittee on Certification

The Subcommittee was asked to consider whether New Jersey should adopt a Court rule that would establish, for litigation pending elsewhere that involves an important unsettled question of New Jersey law, a process for the referring court to "certify" such a legal question to our State Supreme Court for its disposition.

As of 1995 forty-three states[1] had adopted some form of a certification process. Last year the Executive Committee of the State Bar Association met with members of the Court and advocated that the Court institute such a procedure. The Bar Association currently is lobbying for legislation that would purport to require the Supreme Court to do so. In addition, some of the federal judges in the Third Circuit have written opinions encouraging the New Jersey Supreme Court to establish such a process. A formal recommendation to that effect was set forth in the 1996 Annual Assessment Report of the United States District Court for New Jersey. Evidently Chief District Judge Thompson also has raised the idea informally with Chief Justice Poritz.

The Supreme Court accordingly has requested the Civil Practice Committee to provide it with recommendations on the subject.

Summary. A majority (four out of six) of the Subcommittee members recommends that the Court adopt a Rule that would enable the Court, *in its own discretion*, to resolve unsettled important questions of New Jersey law that may be certified to it by federal *circuit* courts and the *highest appellate* courts of *other states*. The majority members believe that such a Rule would be useful to have available in diversity cases and other matters where federal and other state courts could make erroneous guesses about New Jersey law. Opinions based on such mistaken speculation can produce unjust outcomes for the parties. They also can mislead legal researchers that would look to such cases as persuasive authority in the absence of a New Jersey decision on point. The dissenting Subcommittee members believe that a certification process would create undue litigation delay and expense, would needlessly burden the Court, and would place the Court in an essentially advisory role inconsistent with its ordinary appellate functions. The majority shares the dissenters' concerns, but believes that the institutional advantages of having such a process outweigh the disadvantages, particularly since our Supreme Court would retain the discretion, under the Subcommittee's recommended Rule, to refuse to accept certification in any given case.

All of the Subcommittee members, albeit to various degrees, have concerns about the constitutionality of such a Rule under the Judicial Article of the 1947 State Constitution. Article VI literally confines the Supreme Court's appellate jurisdiction to specified categories of "causes" that come before it, *see* Art. VI, §II, ¶2 and §V, ¶1. It also grants the Court original jurisdiction, but only "as may be necessary to the complete determination of any cause on review." Art. VI, §V, ¶3. In a typical certification process, the referring courts would retain jurisdiction to render judgment in the actual cases involved; the New Jersey Supreme Court

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[1] The other states without a certification process appear to be Arkansas, California, Missouri, North Carolina, Pennsylvania and Vermont.

would be simply answering specific legal questions posed to it. Further, the Court has historically indicated that it is constitutionally forbidden from issuing advisory opinions. Although the certification scenario differs from the classic instance of an "advisory opinion," in that there is a live, litigated controversy between adversarial parties, there may be enough similarities to conclude that certification is likewise beyond the Court's constitutional role. On the other hand, it has been suggested that the Court could justify a certification rule under its plenary authority to regulate "practice and procedure" in Article VI, §II, ¶3.

The Subcommittee majority believes that there is a sufficiently colorable argument of constitutionality to warrant presenting a proposed certification Rule to the Supreme Court, recognizing that the Court itself would be the final arbiter of any constitutional challenge to such a Rule. If a constitutional amendment is indeed required to establish a certification process, the Subcommittee *unanimously* disfavors the pursuit of such an amendment. This issue is not of such importance to warrant such a major undertaking.

Assuming, arguendo, that the Court wanted to establish a certification procedure, all of the Subcommittee members believe that such a procedure should be highly restrictive. We believe that a certification Rule should be designed in a manner that gives the Supreme Court the maximum flexibility to decline or to reformulate any certified question, and to determine the manner in which it chooses to address it. In that vein, the Subcommittee drafted a proposed Rule that attempts to enumerate those principles.

Discussion. The Subcommittee reviewed a sizeable amount of the literature on certification. Among other sources, it considered various materials helpfully assembled by Magistrate Hedges of the District Court, including a 1995 American Judicature Society study of certification; a staff paper from the Federal Judicial Center; a segment from the 1995 "long-range plan" prepared by the United States Administrative Office of the Courts; and a staff memorandum from the National Center for State Courts. The Subcommittee also reviewed memoranda on the subject prepared by Magistrate Hedges, which included the results of several interviews that he had conducted with federal judicial officers from around the country concerning their experiences with certification. The Subcommittee further examined a number of judicial opinions and orders involving certified questions of law, as well as the 1967 and 1995 versions of a model certification rule contained in the Uniform Laws Annotated.

It appears that the number of states with a certification process has grown in recent decades. The first state to adopt such a procedure was Florida in 1945. More states did the same, particularly after the United States Supreme Court held in 1974 in *Lehman Bros. v. Schein*, 416 U.S. 386, that federal courts in diversity cases could refer state-law questions to state courts with a certification process. Between 1983 and 1995 the states having a certification process increased from 25 to the present 43.

Despite the widespread availability of certification in most states, it does not appear that the process is frequently utilized in practice. A 1983 study by the Federal Judicial Center (FJC) reported that the median number of cases that were certified, over a three year period, by each federal judge within the FJC survey was only 2.18. Likewise, one of the memoranda from

Magistrate Hedges indicated that the Third Circuit Court of Appeals only rarely has certified questions of law to the courts of Delaware (the only state in the Circuit that presently has a certification process), perhaps two or three times before. It appears from the materials that federal judicial officers are generally cautious in certifying questions to state tribunals (although it should be noted that the 1983 FJC study did indicate that one of the judges it surveyed had used certification eleven times in a three year period).

The state supreme court justices with certification experience who responded to the American Judicature Society's 1995 survey "indicated a high level of satisfaction" with the certification process. About 87% of the state court justices told the ALS that they were either "very satisfied" or "somewhat satisfied" with their most recent certification experience. According to the AJS, "[a]lmost all of the justices" who responded to its survey felt that the federal judges certifying questions to them had correctly concluded that there were no controlling decisions on the state-law point in question. The ALS also reported that most of the responding state justices thought that the certified questions which had been referred to them had been framed with sufficient clarity.

Perhaps the most pointed endorsement of a certification process for New Jersey was articulated by Circuit Judge Becker in his 1995 dissent in *Hakimoglu v. Trump Taj Mahal Associates*, 70 F.3d 291 (3d Cir. 1995):

> The lack of a certification procedure disadvantages both New Jersey and the federal judiciary. Especially in cases such as this where little authority governs the result, the litigants are left to watch the federal court spin the wheel. Meanwhile, federal judges, by no means a high-rolling bunch, are put in the uncomfortable position of making a choice. In effect, we are forced to make important state policy, in contravention of basic federalism principles. See Dolores K. Sloviter, A Federal Judge Views Diversity Jurisdiction Through the Lens of Federalism, 78 Va.. L. Rev. 1671 (1992). The possibility that federal courts may make interpretive assumptions that differ from those of the state court further complicates this process. States like New Jersey lacking certification procedures face the threat that federal courts will misanalyze the state's law, already open to varied interpretations, by inadvertently viewing it through the lens of their own federal jurisprudential assumptions.
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> Certification is not a panacea, and can inflict delay on litigants. See Geri Yonover, A Kinder, Gentler Erie: Reining in the Use of Certification, 47 Ark. L. Rev. 305 (1994). But this is an argument for exercising the authority wisely--not for denying it altogether.

Id., 70 F.3d at 302, 303 (footnotes deleted). Judge Becker was "enthusiastically joined" in this

part of his dissent by Judges Alito and Nygaard. As a recent illustration, Federal District Judge Orlovsky noted last year in a diversity case involving an unsettled question of New Jersey's entire controversy doctrine, that he would have certified the question to the New Jersey Supreme Court if our State had a certification procedure. *Hulmes v. Honda Motor Co.*, 924 F. Supp. 673, 677 (D.N.J. 1996).

One of the key practical concerns of the Subcommittee was whether the record of a case would be sufficiently developed before a question of law raised in that case would be certified to the Supreme Court of New Jersey. The Supreme Court should not be burdened with abstract or insignificant legal questions, or questions that should not be answered without the benefit of a substantial factual context. The Subcommittee majority felt that such dangers would be minimized by limiting certification to cases referred to the Supreme Court by *appellate* courts. By the appellate stage of litigation, it is more likely that the issues are sharpened and the case record sufficiently developed to provide a proper context for the Supreme Court's consideration. In addition, there ordinarily already would be a judicial opinion in the case (e.g., by the federal district court) analyzing the novel issue of New Jersey law involved. Such a prior decision would function as the equivalent of an "opinion below" to help provoke the Supreme Court's own analysis. For these reasons, all of the Subcommittee members were opposed to allowing trial-level courts (e.g., federal *district* courts) to certify questions to the Supreme Court, despite the practice of many other states to permit such referrals.

The Subcommittee was divided on whether the certification process, if one is adopted in New Jersey, should enable referrals from *state* appellate courts in addition to the federal *circuit* courts. Four of the Subcommittee members favored the inclusion of the highest state appeals courts in a proposed certification Rule, finding no principled difference between the highest state courts and the federal circuit courts for these purposes. Two of the Subcommittee members (including one of the general supporters of a certification Rule) would prefer to limit the process to the federal circuit courts, noting that the quality of state appellate systems varies widely across the country. One of the dissenters on this point also felt that certification is a poor way to deal with inter-state conflict problems that are best left to principles of choice of law. The other dissenter indicated that he would support certification from other state courts if those states reciprocally would allow New Jersey courts to certify questions of law to such states.

The entire Subcommittee had reservations about the length of time that certification might consume for the litigants. Some of the data in the materials indicated that certification in other states often takes over two years to run its full course. There were also concerns about whether the availability of a certification procedure might lead to dilatory tactics by attorneys with cases in other jurisdictions. For example, counsel might conjure up an "unsettled" New Jersey law question for certification as a means of running up legal expenses, harassing adversaries, or staving off an adverse judgment. Certification also presents opportunities for forum-shopping. Nevertheless, the majority of the Subcommittee believed that these legitimate concerns of timing and expense could be addressed on a case-by-case basis, and that both the referring courts and our own Supreme Court would be apt to recognize (and deal with) dilatory tactics when they are manifest. While no one on the Subcommittee felt it appropriate to have a

Rule "mandate" a time-line for our Supreme Court's disposition of a certified question, the Subcommittee expected that the Court would, as a practical matter, be sensitive to the need to avoid protracting the process unnecessarily.

All of the Subcommittee members thought that any certification Rule should make clear that the Supreme Court would retain the discretionary authority to decline to answer a certified question, to reformulate it, or to answer it only in part if the Court deemed it appropriate. The members also envisioned that the Court ordinarily would render its disposition of the question in the form of a written opinion, and that such an opinion of the Court would have the same precedential value as any other of its opinions. Precedential treatment would make the certification process advantageous to the public at large (in authoritatively resolving open questions of New Jersey law) rather than just the litigants involved.

The Subcommittee deliberately refrained from endorsing any specific procedure to be followed in the Supreme Court upon its receipt of a certified question. The consensus was that the Court itself would know best (1) what sorts of papers, briefs, appendices, record materials and legal arguments that it would want in order to decide whether to accept the certified question and (2) if the question is accepted, on how to go about answering it. The Subcommittee believes that the Court itself should determine what, if any, role the litigants in the underlying case should be allowed to play in the Supreme Court's proceedings. Other than the actual certified question, a brief statement of the relevant facts, and a listing of counsel of record, the Subcommittee did not believe that a proposed certification Rule should require any other materials to go initially to the Supreme Court, unless and until the court directed otherwise. This would limit the burdens imposed by the certification process on the Court, at least at the initial phase in screening matters referred from other jurisdictions.

Attached to this memorandum is a modified version of the 1995 Uniform Certification of Questions of Law Rule, which reflects revisions made by the Subcommittee consistent with our views as expressed above.

Conclusion. As a final word, it should be mentioned that no one on the Subcommittee thought it imperative that New Jersey adopt a certification process, or that if one were adopted that the process would be employed with much frequency. The majority members of the Subcommittee did think that such a process would be useful--at least in the few instances where it *would* be invoked--as an avenue for clarifying unsettled questions of New Jersey law and reducing the instances of erroneous predictions about the status or meaning of our state law by other jurisdictions. Such a rule also would help promote comity between our own state courts and the other courts in our federal system. In any event, the Subcommittee hopes that this memorandum proves helpful to the full Committee in formulating a response to the Court's request for our input on this subject.

Respectfully submitted,

Professor Jack M. Sabatino
Marty M. Judge, Esq.
Michael S. Meisel, Esq.
Harold A. Sherman, Esq.

April 7, 1997

Minority Report of the Subcommittee on Certification

Summary. The minority of the subcommittee believes that constitutional problems raised by the proposed certification remedy are too serious and the benefits of the procedure too insignificant to justify the Committee in recommending any change.

Discussion. The Majority Report suggests that "there is a sufficiently colorable argument of constitutionality to warrant presenting a proposed certification Rule to the Supreme Court." We do not agree. We confine our dissent to the constitutional point.

1. The Appellate Jurisdiction.

The subject matter jurisdiction of the Supreme Court is set forth in N.J. Const., art. VI, sec. II, par. 2,[2] and art. VI, sec. V, par. 1[3] and par. 3.[4] The Court's legislative and administrative jurisdiction is set forth in art. VI, sec. II, par. 3[5]. Aside from the power to commence disciplinary proceedings against a sitting judge or justice by certifying his incapacity to the Governor pursuant to art. VI, sec. VI, par. 3, no other provision of the Constitution of 1947 grants power to the Court.

The New Jersey State Bar Association is lobbying for a statute adopting a certification procedure.[6] The association necessarily must take the position that certified questions may be characterized as "appeals" within art. VI, sec. II, par. 1, for the only way in which the

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[2] "2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all cases provided in this Constitution."

[3] "1. Appeals may be taken to the Supreme Court:

(a) In causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State;
(b) In causes where there is a dissent in the Appellate Division of the Superior Court;
© In capital causes;
(d) On certification by the Supreme Court to the Superior Court and, where provided by the rules of the Supreme Court, to the inferior courts; and
(e) In such causes as may be provided by law."

[4] "3. The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause or review."

[5] "3. The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted."

[6] *Hulmes v. Honda Motor Co.*, 924 F. Supp. 673, 678 n. 6.

Legislature may affect the Supreme Court's jurisdiction is by specifying "such causes as may be provided by law" under par. 1(e). Advocates of certification might find this characterization tempting, for "law" could be read to mean Rule of Court as well as statute. But, this reading would do violence to the ordinary meaning of the word "appeal." A question certified by a federal or other foreign court would not be heard for the purpose of revising errors of law or fact made in a judgment reached below, nor would it followed by a binding mandate on an inferior court. U.S. Magistrate-Judge Ronald J. Hedges, a supporter of certification, was unwilling to adopt the association's theory.[7] We believe the Supreme Court would share his dislike for it.

2. The Original Jurisdiction.

Philip J. LiVolsi, a member of the New Jersey bar, wishing to contest the constitutionality of mandatory fee arbitration, filed an action in the U.S. District Court for the District of New Jersey. While that action was pending, the Supreme Court, exercising original jurisdiction, invited him to file a direct petition "for determination of the constitutionality of R.1:20A and further, to determine the intended scope and meaning of the aforementioned Rule." The bar association was permitted to file amicus and the attorney general filed to defend the rule, which was held constitutional. *In re LiVolsi,* 85 N.J. 576 (1981). The Court made clear that *LiVolsi* did not fall within the general grant of original jurisdiction.

> It could be argued that we are exclusively an appellate body because the only explicit grant of original jurisdiction to this Court comes from N.J. Const. (1947), Art. VI, s. V, par. 3 . . . which permits original jurisdiction "as may be necessary to the complete determination of any cause on review." Plainly, this provision grants us original jurisdiction only over matters related to causes already before us. [Citations omitted.] We find, however, that N.J. Const. (1947) Art. VI, s. II, par. 3 provides this Court with an independent basis for exercising original jurisdiction in the case before us. This provision grants us "jurisdiction" over the "discipline of persons admitted" to the Bar.

LiVolsi, at 583.

As another example of "this Court's expansive authority" under art. VI, sec. II, par. 3, the Court cited *In re Gaulkin,* 69 N.J. 185 (1976) (Original jurisdiction exercised to hear challenge to Court determination that judges' spouses must refrain from political activity.) *Gaulkin,* the Court said, arose under the clause of sec. II, par. 3 giving power to make rules governing administration of all the courts, and so to "formulate court rules and policy." There is a third granting clause in par. 3, authorizing the Court to "make rules . . . subject to law, governing practice and procedure." Might that clause be the source of a third kind of original jurisdiction, in which certifications might be heard? We

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[7] "I assume that certification could never fall within the appellate jurisdiction of the Supreme Court." Hedges, *Memorandum to Cynthia Jacob, Esq.*, Sept. 10, 1996, p.4 , n.2.

believe not. The two kinds of original jurisdiction created by *LiVolsi* and *Gaulkin* arise under constitutional clauses granting quasi-legislative power over substantive matters. The practice and procedure power is explicitly subject to (substantive) law, and any original jurisdiction arising under it would be limited to adjective matters. Certifications, by definition, involve questions of substantive state law. Judge Hedges would agree.[8]

3. Extraconstitutional Sources of Power.

Finding no power in the constitution, Judge Hedges would go outside it. He cites the Ohio and Oklahoma supreme courts, which have held that they may answer certified questions despite the absence of provisions granting jurisdiction in their state constitutions. The Ohio court's argument has two branches. The first is that deciding a certified question requires no jurisdiction.

> "Jurisdiction" means "[t]he power to hear and determine a cause. . . ." *Sheldon's Lessee v. Newton*, (1854) 3 Ohio St. 494, 499. By answering a state-law question certified by a federal court, we may affect the outcome of the federal litigation, but the federal court still hears and decides the cause. Therefore, answering a certified question is not an exercise of jurisdiction.

Scott v. Bank One Trust Co., 62 Ohio St. 3d 39, 42; 577 N.E.2d 1077, 1079 (1991).

The Majority Report agrees with the Ohio court.

> In a typical certification process, the referring courts would retain jurisdiction to render judgment in the actual cases involved; the New Jersey Supreme Court would be simply answering specific legal questions posed to it.

It seems to us that two things are wrong with this position. The first is that "jurisdiction" is not just the issuance of a coercive final order. We believe "simply answering specific legal questions," should properly be considered as much an exercise of jurisdiction in connection with certifications as it is with declaratory judgments. See, e.g., *Bergen County v. Port of N.Y. Authority*, 32 N.J. 303 (1960). This is particularly true when certification answers are to be given the effect of binding precedent, as the Majority Report advocates, and as is the practice with states which allow certification. See, *In re Richards*, 223 A.2d 827, 832 (Me. 1966); Wright, Miller & Cooper, *Federal Practice and Procedure*, sec. 4248 at 179 (1988 and 1990 Supp.)

Our second objection is that, even if answering a certification is not jurisdiction, that does not mean the Court can carry out the task without some source for the power to

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[8] "Certification implicates neither the appellate jurisdiction nor the original jurisdiction of the Supreme Court. Accordingly, if considered in jurisdictional terms, it would appear that a constitutional amendment would be required to empower the Supreme Court to answer a question certified to it." Id. at p. 2.

do so. The Ohio court finds that source in *Erie v. Tompkins,* 304 U.S. 64 (1938).

> [O]ur jurisdiction under Section 2, Article IV cannot be the source of our power to answer such questions. If we have such power, we must seek it elsewhere. In our view, such power exists by virtue of Ohio's very existence as a state in our federal system. . . . Since federal law recognizes Ohio sovereignty by making Ohio law applicable in federal courts, the state has power to exercise and the responsibility to protect that sovereignty. Therefore, if answering certified questions serves to further the state's interest and preserve the state's sovereignty, the appropriate branch of state government--this court--may constitutionally answer them. The state's sovereignty is unquestionably implicated when federal courts construe state law. If the federal court errs, it applies law other than Ohio law, in derogation of the state's right to prescribe a "rule of decision." By allocating rights and duties incorrectly, the federal court. . .frustrates the state's policy that would have allocated rights and duties differently.

Scott v. Bank One Trust Co., 62 Ohio St. 3d 39, 42; 577 N.E. 1077, 1079-80 (1991).[9]

We are not convinced that the New Jersey Supreme Court would regard *Erie* as an affirmative grant of power to it from the federal government.[10] Even if it were to do so, it is unclear where the Court would get the capacity to accept such a gift from a foreign sovereign.

There is one more possibility. The Florida supreme court, the first ever to accept certification, held that its Legislature had the ability to give it an extra-constitutional power to answer certified questions because

> [I]t has been many times held by this court that, while the Legislature cannot restrict or take away jurisdiction conferred by the constitution, constitutional jurisdiction "can be enlarged by the legislature in all cases where such enlargement does not result in a diminution of the constitutional jurisdiction of some other court, or where such enlargement is not forbidden by the constitution." [Citations omitted].

Sun Insurance Office v. Clay, 133 So. 2d 735, 742 (1961).

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[9] The Oklahoma court's theory is similar:

> This court needs no explicit grant of jurisdiction to answer certified questions from the federal court; such power comes from the United States Constitution's grant of state sovereignty.

Shebester Stallion Station v. Triple Crown Insurers, 826 P.2d 603, 606 n.4 (Okla. Sup. Ct. 1992).

[10] *Erie* famously lays down what purports to be a constitutional principle without ever citing a particular constitutional provision for it. The most convincing defense of *Erie* doctrine as constitutional, Harlan's concurrence in *Hanna v. Plumer,* 308 U.S. 460 (1965), argues that the rule flows from the structure of the constitution as a document of delegated powers; the reason that state law is the rule of decision in diversity is that the states never gave to the federal government the power to make it otherwise.

Under our constitution any legislative attempt to enlarge the original jurisdiction of the Supreme Court diminishes the constitutional jurisdiction of another court. *Brady v. N.J. Redistricting Commission,* 131 N.J. 594, 606 (1992) (Statute vesting original jurisdiction in Supreme Court unconstitutional as violative of art. VI, sec. III, par. 2, granting Superior Court "original jurisdiction throughout the state in all cases.")

For the above-stated reasons, we question whether any rule providing for certification to the Supreme Court of questions of law from foreign courts would be constitutional.

Respectfully submitted,
Hon. Howard Kestin, J.A.D.
R. Carter

April 7, 1997

Draft Certification Rule[1]

2:2-2A Answering Certified Questions of Law

(a) The Supreme Court may answer a question of law certified to it by any appellate court of the United States, *or by the highest court of another state*[2], if the answer would be determinative of a pending litigation in the certifying court and New Jersey law on the issue is unsettled.

(b) The Supreme Court may reformulate a question of law certified to it.

© A certification shall contain:

(I) The question or questions to be answered.

(ii) A statement of the facts relevant to the question.

(iii) The names and addresses of the counsel of record and of parties appearing without counsel.

(d) The Supreme Court may require the certifying court to supply it with the record of the matter certified, or a portion thereof.

(e) No papers, other than those described in subsections © and (d) of this rule, may be filed in connection with a certification, except by leave of court.

(f) [Reserved].[3]

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1. This draft was prepared by the Subcommittee on Certification on the basis of certain sections of the Uniform Certification of Questions of Law Act (1995).

2. The subcommittee voted 4-2 to include provision for certification from the highest court of another state; no subcommittee member favored the inclusion (provided for by the Uniform Act) of certification requests from "the highest court . . . of a tribe" or the highest court of "Canada, a Canadian province or territory, Mexico or a Mexican state."

3. This subsection is reserved for the technical requirements to be laid down for the filing of certification papers. It is suggested that it contain cross-references to appropriate portions of R.1:4 and R.2:6.