

**MIDDLESEX COUNTY BAR ASSOCIATION RESOLUTION
ON FILING FEES FOR DIVORCE LITIGANTS IN THE SUPERIOR COURT,
CHANCERY DIVISION FAMILY PART**

WHEREAS, the Middlesex County Bar Association is dedicated to the promotion of the public's access to justice; and

WHEREAS the Clerk of Superior Court of New Jersey has advised the New Jersey Bar that under Rule 1:43, as amended effective November 17, 2014, litigants involved in FM litigation in the Chancery Division, Family Part must pay a filing fee of \$175.00 to file an answer to a counterclaim and a Notice of Appearance fee of \$50.00 for post-divorce judgment motions where litigants choose to be represented by counsel; and

WHEREAS the Clerk of Superior Court of New Jersey has relied upon N.J.S.A. 22A:2-12 as the basis for this filing fee of \$175.00; and

WHEREAS, N.J.S.A. 22A:2-12 provides in pertinent part that upon filing of first paper in any action or proceeding in the Chancery Division of the Superior Court, there shall be paid to the clerk of the court, for the use of the State, the following fees, which, except as hereinafter provided, shall constitute the entire fees to be collected by the clerk for the use of the State, down to the final disposition of the cause, and whereas a plaintiff's complaint is the filing of a first paper and an answer to a counterclaim in a divorce action is not the filing of a first paper by the plaintiff; and

WHEREAS, if this \$175.00 filing fee is imposed, plaintiffs in FM litigation will have to pay filing fees of \$475.00 to \$500.00 in cases where the defendant, as often happens, files an answer with a counterclaim for divorce, which counterclaim sets forth the exact same cause of action for divorce as the plaintiff's complaint sets forth, whereas a defendant's filing fees are \$175.00; and

WHEREAS, a litigant filing a post-judgment of divorce motion or cross-motion through counsel already incurs a \$50.00 filing fee to file his or her motion or cross-motion and there is no logical basis for counsel to file a Notice of Appearance and pay a separate fee for same when pro se litigants filing post-judgment of divorce motions or cross-motions are not required to file a Notice of Appearance and a separate \$50.00 filing fee for same; and

WHEREAS, the Middlesex County Bar Association believes these fees to be improperly imposed and not authorized by N.J.S.A. 22A:2-12 and further that the answer to counterclaim filing fee is unfair to FM divorce litigants, especially plaintiffs in such actions, who are being charged \$475.00 to \$500.00 in filing fees when the counterclaim really does not set forth a "new" cause of action and defendants in FM dissolution cases frequently file counterclaims not because there is a dispute as to a cause of action but because they wish to preserve their right to request a divorce in the event that the plaintiff, for whatever reason, chooses to dismiss his or her case, or because they wish to assert claims for relief that were not requested by the plaintiff; and

WHEREAS, the \$50.00 filing fee and requirement to file a Notice of Appearance in post-divorce judgment motion practice is discriminatory and penal to a litigant who chooses to be represented by competent counsel with respect to post-divorce judgment motion practice; and

WHEREAS, the Middlesex County Bar Association believes that a fee to file an answer to a counterclaim or to file a Notice of Appearance is not a revision or supplementation of fees payable to the court but rather an entirely new fee that has never been charged at all prior to this rule change and thus violates N.J.S.A. 2B:1-7(a) which is the authority for the Court to revise or supplement a fee which N.J.S.A. 22A:2-12 authorizes: and

WHEREAS, the Middlesex County Bar Association believes that the intent of the N.J.S.A. 2B:1-7 and N.J.S.A. 22A:2-12 are to assess a fee to each litigant who files his or her first pleading and that concomitantly, the filing of a successive pleading should not result in the assessment of an additional fee as the litigant has already paid his or her "entrance" fee to the litigation;

NOW THEREFORE BE IT RESOLVED by the Middlesex County Bar Association, that the Clerk of the Superior Court immediately rescind any directives requiring the payment by plaintiffs in FM litigation of any fee to answer a counterclaim and of any fee for a Notice of Appearance in post-divorce judgment motion practice; and

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded forthwith to the Governor, the Chief Justice of the New Jersey Supreme Court, each county bar association, the New Jersey State Bar Association, the New Jersey Association for Justice and the Trial Attorneys of New Jersey.

Dated: March 4, 2016

Craig M. Aronow

Craig M. Aronow, President