STATEMENT OF POLICY ON CONFLICTING ENGAGEMENTS ADOPTED BY STATE-FEDERAL JUDICIAL COUNCIL

Adopted September 12, 1995

One of the most difficult tasks facing trial lawyers, both civil and criminal, is the resolution of conflicting engagements when the attorney is required to be present in two or sometimes more than two courts at the same day and hour. These problems are among the most often encountered obstacles to the serenity of the practitioner and often lead to early aging and many other health problems that beset trial attorneys. Our trial and appellate bar is small and frequently overworked, but its members are highly valued and respected by the state and federal judiciary.

It is the unanimous opinion of the members of the State-Federal Judicial Council of Rhode Island that these problems should be minimized to the greatest extent possible by cooperation and communication among members of the bar and the bench in accordance with some guidelines that will be of general application. These guidelines may be stated as follows:

1. If an attorney is on trial in a particular tribunal that attorney should be allowed to stay in that tribunal until the trial is completed.

2. If during the trial of a case an attorney is required to go before the Circuit Court of Appeals in Boston or the Supreme Court of Rhode Island in Providence, arrangements should be made by the trial judge to release the attorney for the appellate argument. The appellate court will then agree to take the attorney first on the calendar or during the noon hour when practicable in order to minimize the time lost for trial. It must also be noted that if an attorney is required to appear before the Court of Appeals in Boston, he or she should be excused for at least one-half day in order to accommodate travel time.

3. An attorney will not be regarded as having been reached for trial merely because a jury has been impaneled when it is anticipated that the actual trial will not begin for one or more weeks in the future. An attorney who is on trial in a state court should be excused for the brief period of time necessary to impanel a jury in federal court.

4. Generally the selection of a tentative date certain to begin trial should not preclude an attorney from beginning a trial in another tribunal prior to that date. However, it is recognized that scheduling some trials to a date certain may require other tribunals to defer particularly in circumstances when attorneys will be coming great distances from other parts of the country to begin trial, or when the trial may necessitate the presence of experts whose schedules will not permit any significant continuance. In situations when a date certain is a critical element, it may be desirable if the judge who is to preside over the trial would communicate with the judge before whom a conflicting engagement has been scheduled in order to explain the particular circumstances involved.

5. Attorneys should advise judges before whom they are scheduled to appear of probable conflicts of engagements that may be foreseen. Court schedules may be varied far more easily if information is given promptly so that another case may be substituted to avoid the conflicting engagement. Last minute communications are the least likely to be effective and will generally be unsatisfactory to both tribunals.

6. The judges of the state and federal courts will exercise every effort to be cooperative with counsel and with each other so that trials and appellate arguments may proceed with the least possible disruption and the least possible adverse side effects. Not all circumstances may be foreseen but a spirit of cooperation and effective communication among the courts and counsel will go a long way toward resolving even the unanticipated conflict.