

Lawyers Poaching Clients Could Face Suit in NJ

by Donald Scarinci

In a tough economy, businesses often go to great lengths to generate new business. However, for New Jersey lawyers, client poaching could land you in hot water

The New Jersey Supreme Court recently ruled that [New Jersey lawyers](#) could pursue tortious interference claims against their peers in some rare situations. The case, *Nostrame v. Santiago*, A-40-11, clarifies that plaintiffs in these cases must allege specific wrongful conduct, including misrepresentations, fraud or ethical violations, in order to sustain a suit.

In *Nostrame v. Santiago*, Frank J. Nostrame, Esq. was retained to pursue a medical malpractice claim. After filing the complaint, Nostrame received a letter from the client discharging him as her counsel and instructing him to turn over her file to Mazie Slater Katz & Freeman, LLC (Mazie Slater). After the case was ultimately settled for \$1.2 million, Nostrame filed a lawsuit for a part of the legal fee claiming that Mazie Slater had tortiously interfered with his contract with the client by inducing her to discharge him.

The court did not agree. They found that Nostrame failed to meet the required standard, finding his claim was "based on nothing more than his unsupported suspicion that his client would not have discharged him absent some wrongful or improper means." However, what is important about this case is the clarity of the New Jersey Supreme Court's proof of facts required for winning a tortious interference claim against a [New Jersey lawyer](#).

Competition among attorneys for clients is a part of the practice of law. After acknowledging that the attorney client relationship is terminable at will by the client for any reason at any time, the high court outlined the conduct that could be considered wrongful or improper by a successive lawyer for the purposes of asserting a tortious interference claim.

In addition to the traditional means of fraud, intimidation, defamation, and misrepresentation, the court held that there are other acts that could also be considered to be wrongful means in the context of lawyers. In pointing to the Rules of Professional Conduct, the Court noted that they "create[] a further series of limitations that bear upon whether an attorney who approaches a client already represented might be found to have utilized improper or wrongful means." The opinion specifically cites rules against making misrepresentations, disparaging other attorneys, and offering promises about results.

The Court explained, "Competition among attorneys for clients is a part of the practice of law. Striking the balance between competition that abides within the bounds set forth by the ethical strictures of the RPCs and that which does not requires careful consideration. In the end, a lawyer who improperly or wrongfully interferes with the attorney-client relationship of another

will have more to fear than a lawsuit by his predecessor; he or she will likely be in violation of our ethical rules as well."

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