



## NEW JERSEY DEFENSE ASSOCIATION

### **AGREEMENT FOR USE OF LIST SERVERS**

#### **I. RULES OF USE**

**A. Purpose and Scope of The List Servers.** The List Servers provide a forum for members of the New Jersey Defense Association (herein, "NJDA") to exchange ideas, offer practice tips and seek advice related to the list.

**B. Terms and Conditions.** Access to the List Servers is a privilege of membership with the NJDA that may be revoked, it is not a right of membership. By accessing the List Servers, I agree to the terms and conditions set forth below as an agreement between NJDA and myself regarding my participation in and the use of the information shared in NJDA's List Servers.

**C. Enforcement.** This agreement shall be enforced by the Board of Directors of the New Jersey Defense Association. The Board and any other representatives designated by the Board have the authority to suspend my access to the List Servers. I take full personal responsibility for any actions performed using the NJDA List Servers.

**D. Use of Information.** I have the right to make all information that I post to any List Server available to my NJDA colleagues and accept full responsibility for any copyright infringement or other legal actions, which may be brought against NJDA as a result of information that I post. Further, my NJDA colleagues may use the information subject to the conditions and restrictions placed on them by the provisions below. NJDA or their successors may load this information into searchable databases or otherwise provide this information for fees or other consideration to NJDA members. My name, address, and other contact information may be included in these searchable databases or other information collections.

**E. Regular Member.** Only a regular member of the NJDA is permitted to become a user of a List managed by NJDA (hereinafter referred to as "List or List Server"). A member will not allow non-members to have access to any messages or attachments downloaded from the List, except for support staff instructed to follow these List Server Terms of Use. If a user's NJDA membership lapses or expires, the user must discontinue use of a List.

**F. Prohibited Uses.** Information provided and exchanged on the List Server is intended solely for the use of Regular Members of the NJDA. Except for material that is otherwise publicly available, a user shall not share any e-mail, posted information or documents obtained from or through a List with any other law firm, attorney or staff working for any attorney who is engaged primarily in tort, employment law, or workers' compensation plaintiff's litigation. If any attorney in the user's own law firm is engaged primarily in the prosecution or plaintiffs' side of tort, employment law, or workers' compensation litigation, the user is required to take all



measures necessary to prevent that attorney and staff from being able to access any of user's e-mail, attachments, documents or information obtained from a List. All users understand that under no circumstances are any attachments, documents or information obtained from a List to be used in connection with the prosecution of any tort, employment, or workers' compensation cases.

I am aware that any use of materials obtained from any NJDA List Server to assist in the prosecution of a civil action or the prosecution of a criminal action is explicitly prohibited and any such use may expose the persons using these materials in such a manner to ethical sanctions by NJDA and/or the appropriate state or local bar association.

**G. Standards of Conduct.** A user is strictly prohibited from making racist, homophobic, sexist or otherwise bigoted or derogatory remarks or jokes that are likely to be offensive to other people.

**H. Political Solicitation.** A user is strictly prohibited from soliciting contributions for causes or political candidates regardless of the sponsor of the event unless approved by the President. Additionally, the NJDA List Servers should not be used for topics of a political nature unless expressly related to legislation affecting the civil defense bar. Discussion of political events, issues, candidates and office holders is not a subject permitted at this time.

**I. Do Not Forward Messages.** A user will not post or forward any message from a List to any other lists without the permission of the author.

**J. Competitor Promotion Prohibited.** A user is strictly prohibited from advertising CLE programs other than those of NJDA. However, promotion of NJDA CLE events is permitted on the NJDA List Servers provided approval from the President of NJDA has been given.

**K. Postings Concerning The Judiciary.** A posting inquiring about any local, state or federal judge shall avoid direct, vitriolic personal attacks. All responses critiquing any local, state or federal judge must be made privately and directly to the individual so inquiring and no response will go through any of the NJDA List Servers. No such critiques are to be made on any NJDA List Server.

**L. Commercial Purposes.** Under no circumstances will a user exploit information obtained from NJDA's List Servers for commercial purposes that are not connected with the practice of law on behalf of a client or the administration and management to user's law office. A user will not download information obtained from the List Servers into any other document, database, or information retrieval system except for those directly under user's control and used solely to support the litigation efforts in which user is engaged or the administration and management of user's law office. Other than NJDA sponsored events, a user will not market to List Server users for any profit-making venture. A user will not offer items for sale for profit through the List Servers except in connection with the administration and management of user's law office.



## **II. GENERAL USER GUIDELINES**

All postings to the List must comply with the following general guidelines:

- A.** A posting must not violate any other rule of the List Server, (e.g., nothing bigoted, sexist, homophobic, critical of religious belief, racist, etc.).
- B.** A posting must not personally denigrate a member or an attorney in any firm, directly or indirectly; this serves NO valid purpose of the List Server.
- C.** A posting should convey factual information or respectfully stated opinion about issues.
- D.** No post should contain anything that is threatening, abusive, harassing, defamatory, libelous, pornographic, obscene, invasive of another's privacy, otherwise tortuous or unlawful, hateful, or is racially, ethnically or otherwise objectionable.
- E.** No posting of political commentary from outside sources is permitted.
- F.** The user will keep paragraphs and messages short.
- G.** Each message will focus on only one subject and include a pertinent subject title. Off topic messages are only to be sent on the Off Topic List Server.
- H.** Members shall use their full name and contact information in communications through the Lister Servers. Aliases are not permitted.
- I.** The most confidential way to respond to messages is to reply to the sender only. If a user hits reply, the message will go to the entire list.
- J.** In a reply, a user will only include relevant portions of the original message. The user shall delete any header information and shall place the user's response before the original posting. Do not send messages such as "thanks for the information" "call me" or "me, too" to the entire list. A user can respond to an individual by using the user's e-mail application's forwarding option and typing in or cutting and pasting in the e-mail address of the individual. If a user has a question or needs clarification, do so privately. The goal is to limit the number of messages that are posted on the List Server. Users will post only questions and answers of a general interest.
- K.** A user will not send administrative messages or instructions, such as "remove me from the List", through the List Server. Users will use the Web interface at to change settings or to remove the user from a List. If you change e-mail addresses, a user only needs to change the user's settings.
- L.** A user will provide a clear and concise label of every posting in the subject line.



For example, if it is a Medical Malpractice question, “Med Mal”, should be the first words in the subject line.

**M.** All users agree that any depositions, motions, or other briefs that are exchanged shall also be sent to NJDA at [njda.expert.database@gmail.com](mailto:njda.expert.database@gmail.com) so that other members seeking this information can benefit as well.

**N.** No one shall post commentary or criticism of the List Server rules or their enforcement on the NJDA List Servers. No one shall post commentary or criticism of NJDA or its employees, officers and/or directors on the NJDA List Servers. All such commentary or criticism is to be forwarded directly to [listserv@njda.simplelists.com](mailto:listserv@njda.simplelists.com).

**O.** All members agree to use their discretion to make reasonable efforts to submit their posts to the proper List Server that is most relevant to their topic. All List Server posts, other than those sent out by NJDA, shall be posted to one List Server only. Identical posts sent to more than one List Server are not allowed.

**P.** No one shall post or re-post articles from outside sources on any NJDA List Servers

### **III. RESTRICTIONS ON TRANSMITTING MESSAGES AND MATERIALS**

**A.** Each user is responsible for all content that the user uploads, posts, e-mails or otherwise transmits. Although NJDA does not control transmissions, NJDA retains the right to bar any user who violates any of the List Server Terms of Use, including transmission of objectionable material. In addition, NJDA also reserves the right to bar individual posts from being disseminated to the list that violate the rules stated in this agreement. A user agrees to follow the General Guidelines on Use and **not** to transmit the following:

1. Content that is threatening, abusive, harassing, defamatory, libelous, pornographic, obscene, invasive of another’s privacy, homophobic, bigoted, otherwise tortious or unlawful, hateful, or is racially, ethnically or otherwise objectionable.
2. Material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, or which negatively affects other user’s ability to upload, download, communicate in real time, or utilize features as they have been designed to function.
3. Material that violates a copyright, license, right of privacy, right of publicity, trademark, privilege, right of confidentiality, fiduciary obligation, trade secret, employment obligation, agreement or other restriction on use.



4. Material whose use is authorized only when accompanied by a copyright notice, source credit or other required marking or language, unless accompanied by the required marking or language.
5. Content that encourages or provides instructions in committing a criminal offense, violation of another's rights, conduct which is likely to give rise to liability or violation of Court Rules or Rules of Professional Conduct, or violation of these List Server Terms of Use.
6. Material that contains known falsehoods (unless for the purpose of disclosing and pointing out such falsehoods), including use of inaccurate identification of content, author, source, your identity or affiliation.
7. Content outside the stated purpose and scope of the List.
8. Briefs, declarations, depositions or expert testimony subject to outstanding confidentiality agreements or Order, unless in compliance therewith. A user must delete material that reveals client confidences, secrets, trade secrets or privileged information, unless the client consents to posting or revelation of the information.

**B.** By transmitting material via the List Server a user does so at the user's own risk and expense with full knowledge of these List Server Terms of Use. NJDA will notify users of any breach of these Terms of Use when it learns and has reasonable evidence or confirmation of a breach. If another user violates a copyright or other restriction on use applicable to material a user has transmitted, NJDA will cooperate with the user's enforcement efforts by providing the user with non-privileged information easily available to NJDA from its records. NJDA does not undertake any enforcement efforts itself with respect to such violations but may bar violators from the Lists and from NJDA membership.

#### **IV. CONFIDENTIALITY**

Even though the NJDA list is private and intended only for the use of members, NJDA does not guarantee confidentiality. E-mail is easily forwarded and, in some offices, e-mail is accessible to a variety to people despite a user's commitment to these List Server Terms of Use. Some firms have a mixed practice, representing both plaintiffs and defendants. Be prepared for the possibility that plaintiff's counsel may have a copy of any e-mail. Consider comments made to be public. Therefore, be professional and careful about what is transmitted.

NJDA, its affiliates, partners and List Server host providers may use personally identifiable information from members at several different points on its website and its utilization of the NJDA List Server. Once a member uses the List Server or opens e-mail received from the List Server, the member and the client computers are no longer anonymous to NJDA, and usage patterns of the site, the List Server or list messages can be monitored on an individual basis both for security and other purposes deemed appropriate by NJDA.



## **V. INDEMNITY**

A user agrees to indemnify (including reasonable attorney's fees incurred), defend and hold NJDA, its officers, Board of Governors, member(s) of its List Server Committee, employees and agents harmless from all claims and demands made by any third party due or related to (i) any material a user transmits, (ii) a user's violation of these List Server Terms of Use, or (iii) a user's violation of any rules of specific Lists (such as restrictions on length or number of e-mail messages per transmission).

## **VI. DISCLAIMER**

**A.** Unless otherwise stated, NJDA has not approved any views and opinions expressed on the List Server and such views and opinions do not necessarily represent the policy of NJDA. NJDA makes no warranty or guarantee concerning the accuracy or reliability of any content. NJDA does not screen user-generated material, nor verify its source. NJDA suggests that a user does not rely on the stated identity, content or source of material without the user's independent confirmation.

**B.** NJDA is not liable in any way for any content, including any errors, omissions or contaminants in any content. NJDA does not warrant that the functions or materials of any List Server will be uninterrupted or error free, that defects will be corrected, or that the server that makes such materials available will be free of viruses or other harmful components. Each user is solely responsible for any damage to the user's computer system or loss of data that results from the receipt of List Server material.

**C.** The NJDA List Servers may experience downtime due to any number of reasons including: technical difficulties, server upgrades, a decision by NJDA to moderate the list, etc. NJDA will make every effort to bring the List Servers online as soon as possible.

## **VII. VIOLATIONS**

**A.** Any violations of the above rules will be taken seriously. The List Server Committee Chair (or Co-Chairs if applicable) along with the President, President-Elect and one member of the Board of Directors can temporarily suspend a user from the List Server and will give the user notice of the alleged violation(s) and the right to a hearing which may occur before a quorum of the Board of Directors within 10 days, which may result in expulsion from the List Server. Any hearing may be either by videoconference or in person as determined by the President and President-Elect. Any decision of the quorum of the NJDA Board of Directors is a final determination.

**B.** Mandatory penalties for List Server violations are as follows:



1. 1<sup>st</sup> violation = warning
2. 2<sup>nd</sup> violation = warning
3. 3<sup>rd</sup> violation= suspension for some period to be determined by the President and designated governing representatives.

C. Official warnings and suspensions issued to members that violate the rules of the List Server agreement shall be promulgated from the List Server chair (or co-chairs if applicable) on behalf of the List Server committee.

### **VIII. RESERVATION OF RIGHTS**

NJDA reserves the right to change the requirements for List Server participation at any time as a condition of continued participation on the List Server. Each user agrees to promptly notify NJDA in writing of any change of their employment and to confirm that their new employment status still complies with the terms of this List Server Agreement.

### **IX. CIVIL OR CRIMINAL LIABILITY**

Nothing in this document shall limit the civil or criminal liability of any person infringing upon the rights of other individuals or NJDA.