The Barrister

Published by the Camden County Bar Association

VOL. 58, NO. 6 | February 2010 | www.camdencountybar.org

Adopt-A-Family volunteers take a minute to warm up from the cold December weather after unloading cars, trucks, and SUV's laden with the donations from Bar members, firms and friends to ensure a Merry Christmas for 98 Camden families. See inside for a complete listing of those who participated in this year's very successful program.

WINTER TRIFECTA

The hottest ticket in town!

Winter Trifecta! is the odds-on favorite to be the can't miss event of the season. We've combined three of the Bar's favorite events into one fabulous and exciting evening of Casino Gaming, Fine Wines, Terrific Auction Items, Raffle Prizes, an array of Hot & Cold Fare, a Carving Station, Desserts and more!

Beat the winter blues and join us for a great evening not soon forgotten. If you don't find the Trifecta to be your winning ticket, you can play an Exacta and combine two of these three fun events. This is an open event to support the Association and Foundation, so invite your friends, family and neighbors to make it a real party. Whatever you decide, we guarantee a great time — Bet on it!

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ABA Scholarship Funds Available

Application packets for the ABA 2010 Legal Opportunity Scholarship Fund are available for download on the Association's website (www.camdencountybar.org) or by calling Bar Headquarters, 856.482.0620. This Scholarship Fund is intended to encourage racial and ethnic minority students to apply to law school and to provide financial assistance to scholarship recipients.

The Fund will award $5,000 of financial assistance annually to each scholarship recipient attending an ABA-accredited law school. An award made to an entering first year student (2010 enrollment) may be renewable for two additional years, resulting in financial assistance totaling $15,000 during his or her time in law school.

Recipients will be selected based on their qualifications for the scholarship, not on the law school

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Foundation Seeks Silent Auction & Prize Items

Get into the winning spirit of the Winter Trifecta and support your Bar Foundation by making a tax-deductible donation of an item or service for the Foundation's Silent Auction and Casino Night on Friday, February 26, at the Mansion in Voorhees. Auction proceeds will allow the Foundation to continue its community service programs, and support from Bar members and businesses is key to our success.

Weekend/Vacation getaways . . . sporting event tickets . . .sports or political memorabilia, are great items. If you can't offer an item, maybe the folks you do business with can! Jewelry . . . fine apparel . . . upscale restaurants . . . and other specialty items or services donated by local merchants can make a huge difference in our success!

Please support your Bar Foundation by calling Bar Headquarters at 856.482.0620 to arrange your donation, and by spreading the word to your favorite merchants.

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The Docket
February 2010

Tuesday, February 2nd
Young Lawyer Committee Meeting
Noon - Bar Headquarters

Tuesday, February 9th
Board of Trustees Executive Committee Meeting
5:30 pm - Bar Headquarters

Wednesday, February 10th
Elder Law Committee Meeting
Everything You Need to Know About Fiduciary Accountings Workshop, Session #2
Noon - Bar Headquarters

Post Judgment Motions in Family Law Seminar
4:00 – 6:15 pm - The Mansion, Voorhees

Wednesday, February 17th
Immigration/Naturalization Final Hearing
9:00 am - USPS & US Courthouse, 3rd Floor, Camden

Association Board of Trustees Meeting
4:00 pm - Bar Headquarters

Thursday, February 18th
Substance Abuse Seminar
4:00 – 6:15 pm - The Mansion, Voorhees

Tuesday, February 23rd
Debtor/Creditor Committee Luncheon
Noon - Ponzio's, Cherry Hill

Wednesday, February 24th
Immigration/Naturalization Final Hearing
9:00 am - USPS & US Courthouse, 3rd Floor, Camden

Thursday, February 25th
Real Estate Tax Appeal Seminar
4:00 – 6:15 pm - The Mansion, Voorhees

Friday, February 26th
Winter Trifecta - Casino Night/Wine Tasting/ Silent Auction
6:00 – 11:00 pm
The Mansion, Voorhees

Tuesday, March 2nd
Young Lawyer Committee Meeting
Noon – Bar Headquarters

Tentative agenda
for February 17 Trustees Meeting

A tentative agenda for this month's regular Board of Trustees meeting follows. The meeting will begin at 4 p.m., at Bar Headquarters in Cherry Hill. All meetings are open to the membership. Anyone interested in attending should notify and confirm their attendance by calling Bar Headquarters at 856.482.0620.

I.	Call to Order
II.	Minutes from Board Meeting of 1.20.10
III.	Treasurer's Report
IV.	President's Report
V.	Executive Director's Report
VI.	Membership Committee Report
VII.	Young Lawyer Committee Report
VIII.	Standing Committee Reports
IX.	Foundation Update
X.	NJSBA Update
XI.	New Business (if any)
XII.	Old Business
XIII.	Adjourn

The Barrister
Published monthly, except July and August, by the Camden County Bar Association

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Periodicals postage paid at Cherry Hill, NJ and additional offices (USPS 712 - 480).

Annual Subscription Rate $40

Views and opinions in editorials and articles are not to be taken as official expressions of the Association's policy unless so stated, and publication of contributed articles does not necessarily imply endorsement in any way of the views.

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Going the Extra Mile to Help Those in Need

Adopt-A-Family Sponsors Shared the Spirit of the Season—AGAIN!

The holiday spirit was alive and well in Camden County if the basement of St. Joseph's Pro-Cathedral School in Camden was any indication. On Wednesday, December 23, members of the Bar, their family members, and student volunteers descended upon the school to bring the joy and happiness of the season to needy Camden families for the 19th Annual Adopt-a-Family project.

This was the sixth year of the Bar's partnership with St. Joseph's, and it appears to be a good match. St. Joseph's identified the families needing assistance, irregardless of creed, and forwarded the family information to the Bar. From there, it was a matter of finding Bar members and firms to adopt those families. Though the recipient families will never know the donors responsible for brightening their holidays with gifts and food baskets, we do, and are proud to offer our thanks and appreciation to those listed below who generously participated in this tremendous act of charity.

Thanks also to those volunteers who delivered gifts and food directly to the homes of those families who did not have transportation available.

Special Kudos and thanks to project co-chairs Marci Hill Jordan and Michael Ward for their tireless efforts to ensure another success!

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Hagner & Zohlman, LLC is pleased to announce that **Ila Bhatnagar** has joined the firm as an associate in its Cherry Hill office. Ila is the former law clerk to the Honorable Paul Innes, P.J., Civil Division, Mercer County. Most recently, she was a Deputy Attorney General. She will be concentrating in the areas of complex commercial litigation, employment law and general civil matters.

NJSBA Update E-Discovery

by Arnold N. Fishman

As a member of the Supreme Court Municipal Court Practice Committee, I opposed the proposed amendment to N.J. Court Rule 7:7-7 to permit the exchange of discovery by electronic means in the municipal courts. That rule now provides "Unless otherwise ordered by the judge, the parties may exchange discovery through the use of e-mail, internet or other electronic means." I emphasize the word "may." Now that that change has occurred my unwillingness seems prescient.

That license has been seized upon by the New Jersey State Police to issue a memorandum to all prosecutors that it will no longer supply paper discovery with respect to the numerous foundational documents necessary to support a breath test reading obtained by an Alcotest machine. Some municipal police departments have followed suit. What they have done is to put every conceivable document relating to a particular Alcotest machine on line and invited the prosecutor to view them, decide which of those are relevant to the State's case, print those out and send them to the defense. Not unexpectedly, and not unlike the rest of us always eager to reduce our workload, some prosecutors have tried to pass that task on to the defense bar.

When I say every conceivable document, I mean just that. It includes the entire history of the machine, certificates for every simulator ever used in conjunction with that machine, every temperature probe married to that simulator, every NIST traceable digital temperature probe used to test its temperature, every simulator solution that was ever used in that machine, the qualifications of every officer who ever calibrated, changed the solution in, or ran a test on that machine, etc. And every day those lists grow longer and longer. The State cannot remove even the oldest of documents because it has no idea of how old your case is. You may have vacated an ancient prior conviction, or your client may have been a fugitive for the last ten years. Just as an experiment - and because I do not know how to print selected pages - I printed out one entire file. I would estimate it consumed a half of a ream of paper. From that mass, I was expected to divine those documents the State would deem relevant to the prosecution of my client. Often times I believe something to be relevant and the State doesn't agree. The converse is equally true. In fact it can be said that that is what many trials are about.

Additionally, I can just see the transcript:
Prosecutor "I offer this."
ANF "Objection!"
Court "Foundation?"
ANF "Not provided in discovery."
Prosecutor "It was on line."
ANF "It was not."
Prosecutor "I saw it!"
ANF "I couldn't find it!"
Prosecutor "Where do you think I got it?"
ANF "I printed everything that was there, and it's not here."
Prosecutor "It's there now."
ANF "When was it posted?"
Prosecutor "When did you look?"
ANF "When you told me to."
Chorus "And so on, and so on, and so on, ad infinitum, etc, …."

The real harm is that it turns the defense attorney into an agent of the State. If you as a creative defense attorney are able to fashion a reason to require your adversary to prove something it is not prepared to prove, you should not be placed in the position of proving it for him. Besides, when you receive a package of discovery that includes some unexpected discovery, it alerts an experienced attorney to the way the other side intends to prove the elements of the offense. While I can understand why the prosecution in an abundance of caution will err on the side of inclusiveness, it should not be allowed to obfuscate its plans through the indiscriminate posting of documents. Would the court countenance the defense sending the phone book with a letter explaining that our witnesses are in there? You figure out which ones. Just as the State is entitled to know how the defense will carry its burden on an affirmative defense, the defense is entitled to be put on notice as to how the State will attempt to proceed in its case-in-chief. That is the raison d'être for discovery. It permits realistic attorneys to evaluate the strengths and weaknesses not only of their side but the other side as well. The hope is that the knowledge will facilitate the amicable resolution of the litigation. Without that information a defense lawyer cannot look his client in the face and advise him to plead guilty. His only alternative is to proceed to trial and see how it goes. Absent settlements, the courts come to a screeching halt.

I don't want to be misunderstood; I have no problem with eliminating work. If the defense does not object to getting case discovery electronically it should

Continued on page 5

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(Continued from page 4) be permitted to do so. If, however, there is an objection, the State should be required to select those documents upon which it intends to proceed and allow the defendant to asses its position. E-Discovery should not be foisted upon any attorney against his will.

Following is a summary of actions taken at the November 5, 2009 meeting of the New Jersey State Bar Association Board of Trustees at the St. Regis Hotel in San Francisco. This summary does not constitute official minutes.

MCLE

The Board of Trustees voted to add its voice to what is expected to be the final round of comments before the start of the mandatory continuing legal education program. In a letter to the Court from President Allen A. Etish, the New Jersey State Bar Association applauded the majority of the state Supreme Court's plan to impose requirements that all lawyers continue their education throughout their legal career. However, the State Bar encouraged the Court to look outside the box for non-traditional learning experiences.

Under the proposed plan, attorneys would get legal education credits for participating in Inns of Court or teaching a seminar, but not for teaching law school or graduate-level class, writing scholarly works, working on district ethics or fee arbitration committees or taking part in New Jersey State Bar Foundation educational events. Should the Court be unprepared to allow those kind of opportunities when the program begins Jan. 1, the Bar Association asked it to direct an advisory board to "explore these opportunities for credit and to grant the board the authority to develop criteria for allowing for some credits to be earned through these non-traditional activities."

The State Bar raised several other key issues in its letter to the Court:

- Since the education program will be a permanent fixture of New Jersey's legal landscape, the Association should have a seat as a permanent member on the Board on Attorney Certification to monitor and offer suggestions for improvements.
- Attorneys who teach should receive three credits for every hour of instruction, because of the preparation required.
- Some credit should be given for pro bono work on the cases attorneys handle outside of their normal expertise.
- Some non-legal classes should be eligible for credit, such as medical courses for personal injury lawyers or forensic science classes for criminal defense attorneys.
- New attorneys who have completed some portion of the skills and methods courses, which will be eliminated under the new plan, should receive credit for the completed class work.

Amicus matters

The Supreme Court granted permission to the State Bar to file a friend-of-the-court brief in Stengart v. Loving Care Agency, which questions whether an e-mail sent by an employee to her attorney using her employer's computer is privileged. The brief was filed. The Association also filed a motion seeking amicus status in Guido v. Duane Morris, a malpractice case filed two years after settlement in which a client claimed the settlement was not what had been expected.

Law Center construction

The $6 million project to upgrade the New Jersey Law Center is progressing smoothly and the work is meeting its time and cost targets. Already, two rooms, the Board Room and Strong Lounge, are complete and have been returned to active service. Work is now underway elsewhere on the first level and throughout the second level.

Minority judges' reception

New Jersey Administrative Office of the Courts Administrative Director Glenn Grant, who runs the day-to-day operation of the courts, was the featured speaker at this year's 8th Annual Minority Judges Reception. Grant reported the past decade has brought substantial changes to the face of the courts. Ten years ago, there were 39 minority judges. Today, there are 66. Yet, he said, more work remains.

Pro Bono Week celebration

In honor of National Pro Bono Week, the State Bar's Pro Bono Committee dedicated a plaque to honor its past and future award winners. It will hang in the Law Center when construction is complete.

Upcoming events

- State Bar Night in Cumberland County on Nov. 30.
- The semi-annual New Attorney Swearing-In will be held Dec. 2 at the Trenton War Memorial. The ceremony includes about 800 newly minted attorneys and their families. For the first time, the State Bar is joining together with the Rutgers University law schools to host a reception following the event.
- The State Bar is holding a second event to reach out to lawyers displaced due to the economic conditions. "Suddenly Successful: Making the Transition to Solo Practice" will be held on Dec. 5 in Livingston. The event is free.

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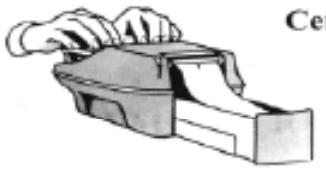
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Marketing Matters

Harness the Power of Active Listening

Part One of Two

By Kimberly Alford Rice

All too often we read studies which report clients' pet peeve with their counsel not listening to them. Or, cited another way, clients frequently do not feel heard.

Given the sometimes intimate nature of an attorney-client relationship, neither party wants to maintain a connection and/or continue doing business with someone if she does not feel heard and valued. That does not even address the negative messaging being relayed through constant interruptions in the speaking exchange or the inaccurate inferences being drawn from a distracted or neglectful listener.

Given that listening is such an integral part of the communication process, it is essential that we analyze the listening process and how to harness the power of active listening for the sake of developing stronger relationships.

Fact: an untrained listener is likely to retain about 50 percent of a conversation shortly after it is finished. The retention rate drops to 25 percent merely 48 hours later. An untrained listener's recall of a conversation more than a couple of days ago will almost always be incomplete and usually inaccurate. It is no wonder, then, that miscommunications and disagreements ensue so frequently.

These facts may beg the question - how do we manage to deliver extraordinary client service and superior work product if we remember so little?

Listening vs. Hearing

Listening is a learned behavior. Notice that I did not state, an autonomic habit.

From the time we are born, we hear many sounds and noises around us. As we begin to develop listening skills, we learn how to interpret what we hear and assign meaning to sounds. Listening is not an innate talent, but something we develop out of practice.

One of the basic problems we face is taking for granted the powers we have. We think because we have a brain, we can think. Because we have ears, we can listen. NOT so.

More often than not, we do not listen effectively. Because we live in a very noisy world, we can be overwhelmed by all the sounds. The good news is we also have the ability to interpret the noises, but what we actually do is a completely different question.

Let us learn how to move beyond merely hearing the words people utter to embracing and processing more completely the full message a speaker is attempting to communicate, verbally and nonverbally.

What is Active Listening?

Actively listening is a method of listening and responding to another person which improves mutual understanding. It is an essential aspect of effective communications between one or more people and involves a very human process. Moreover, active listening is a method by which to elicit information and emotions from a speaker, thereby gaining intimacy with him/her. As an active listener, you are an active participant in the communications process which is vital if you want to be productive in all pursuits.

Clearly, to be an effective communicator (and communicate is what we do often as service providers), we need to develop and nurture as sophisticated listening skills as possible. Understanding the components of active listening will advance that effort.

Four components of active listening:

- Clarifying involves asking for more information and requesting that the speaker elaborate upon a statement he made.
- Paraphrasing is best understood as repeating another's message in your own words to confirm that "message sent is message received." This act ensures everyone is on the same page.
- Reflecting includes restating or clarifying the underlying feelings that are attached to the speaker's communication. That is to say, to reflect would be to ask someone to clarify her anger over what you are speaking about. By doing so, is to encourage your speaking partner to greater awareness of the feelings she is expressing either verbally or nonverbally.
- Summarizing is the act of reviewing and re-capping major points of a discussion/ presentation.

Taking deliberate steps to incorporate the actions above into your daily communications with clients and colleagues will further your understanding and engagement in the communication process, and lead to greater awareness and sense of collaboration.

In the second installment of this article, we will explore impediments to active listening and steps to becoming an effective listener.

About the Author:
Kimberly Alford Rice is Principal of KLA Marketing Associates (www.klamarketing.net), a business development advisory firm focusing on legal services. As a veteran law marketer of twenty years, Kimberly helps lawyers and law firms develop practical business development and marketing strategies which lead directly to new clients and increased revenues. Additionally, Kimberly provides career management services to lawyers in transition.

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Wine & Food

January 2010
By Jim Hamilton

In the quest to report on wines offering real value, we have covered a lot of ground over the years. A country whose table wines only recently are gaining shelf space in neighborhood stores is Portugal. I have reported on a number of these wines after tasting them with a friend with whom I regularly dine, Mark Squires. Mark has become a preeminent authority on Portuguese table wines, covering them for Robert Parker's Wine Advocate. Mark's latest report covering 191 wines and his enthusiasm for the values among them prompted me to ask Mark to answer some questions I thought might provide a better understanding of these wines, and a resulting increased confidence to include them as wines worth trying.

Q. While many people are aware of and, perhaps, experienced with the fortified wines from Portugal commonly referred to as "Port," most people have little experience buying and drinking Portuguese table wines. In view of the broad acceptance of Spanish wines in our country, particularly those that offer excellent value, can the table wines of Portugal become the next wine hit?

A. They are already well on their way. Keep in mind that many famous Spanish wines only go back a decade or two. Things change quickly – and Portugal in fact has a rich tradition. I've had 1982 Barca Velha, 1980 Periquita Reserva, and other mature wines in the last couple years that have been excellent. Portugal has a sturdy foundation on which to build.

Q. Certainly the influence and history of Port wine provides a basis for recognizing the Douro wine region. Should we look to the Douro for table wine values? What other major Portuguese wine regions can we explore for good, value-priced wines?

A. The Douro is one of the regions that provides the least values in Portugal – which is not to say there are none, but a combination of viticulture problems (those terraced hills are difficult to plant and harvest) and cachet usually means the Douro is a little pricier. Places like Dao, Bairrada, Ribatejo, Alentejo, and Estremadura provide tons of values.

Q. You highlight in your recent report the white wine values found in the Vinho Verde region. Has the region outgrown its reputation for simple, uninteresting wines, or was that impression never really deserved? In any event, can you suggest a few of the better wine values from this region?

A. It ain't your father's Vinho Verde anymore. The best of them are pretty serious whites and they can even age a bit. All the top producers make wines that can hold for 5 or so years – which is shocking to say given the region's reputation for making fresh wines that should be drunk the summer they are released. Also, there is a big trend to 100% Alvarinho – and th

Food & Wine

Continued from page 8

wines are showing really well. There is still a lot of junk around, to be sure, as producers there did a pretty good job of ruining the region's reputation for many years.

Q. Reading wine labels, especially those on foreign wines, can be daunting. What are some of the more basic terms to look for to tell us what we are buying in a Portuguese wine?

A. Tinto (Red), Branco (White), Colheita (Vintage) are good starters. Vinhas Velhas – old vines.

Q. Since readers of this column are interested in value, can you identify ten Portuguese producers whose wine lineup includes exceptional buys?

A. Some go-to wineries for value include Casal Branco and Pinhal Da Torre in Ribatejo; Adega De Cartuxa and Esporao in Alentejo; Quinta Da Cartezia in Estremadura, Falorca in Dao, the Sparklers from Vertice in Douro, Vallado's basic Tinto in Douro; Meandro, the second wine of Vale Meao, in Douro, Caves Alianca makes a ton of nice values in several regions. A hot new venture, Duorum, debuted with very good prices. Pretty much everything in Vinho Verde – it's almost impossible to spend more than $25 even on the top bottlings from the best producers. Quinta Do Feital's Auratus bottling is a good start.

Q. In your most recent Wine Advocate report on Portuguese wines, you reiterate the caution required when buying wines from the 2006 vintage, particularly in the Douro region, while offering a very encouraging take on the 2007 wines and, particularly for the white wines, the 2008 vintage. While bad producers can make bad wines in good vintages, should people looking for Portuguese wines feel a degree of comfort because of the quality of the vintages that are, or soon will be, on retailers' shelves?

A. Yes the '07 and '08 whites in particular seem very consistent, which is usually a very good sign for the lower priced wines.

Q. Increasingly it seems, winemakers or consultants bring star power to the wines they create. Are there Portuguese table wine "stars?" Have any estates hired Michel Rolland, or other traveling wine consultants, to improve quality or otherwise help them stand out?

A. Michel consulted at Alianca, but really, the Portuguese have a 250 year old winemaking tradition. They really don't need a lot of help. Many Port producers began making table wine and have nearly instant success. Take Niepoort. It probably helped that he went out and bought a vineyard with very old vines (over 80 years old in places) and then began working with the types of grapes from which his family had made wine for a century and a half. It's easy to get up to speed that way. Portugal already has cult wines that are hot items there – Pintas from Wine & Soul; Barca Velha from Sogrape; Niepoort's Batuta, Redoma and Charme; Vale Meao's Tinto; Lemos a Van Zeller's "CV"; Crasto's Vinha Maria Teresa and Vinha Da Ponte (all in Douro), Mouchao and Zambujeiro in Alentejo and so on. They do have an upper level that can be pricey, especially in the Douro Valley.

With thanks to Mark for providing his expert insight, I hope this information will enable you to expand your wine horizons to include wines from the *other* Iberian country.

WINTER TRIFECTA

(continued from page 1)

There are also a number of marketing/sponsorship packages available for those who really want to get into the spirit, or for those who can't attend but want to be a part of a great event. For a complete description of the Winter Trifecta and the available Marketing/Sponsorship packages refer to this month's inserts or contact Bar Headquarters at 856.482.0620.

The festivities get underway at 6 p.m. when the wine, hand picked by the CCBA's own Jim Hamilton, begins to flow and the Silent Auction items go up for bid. The gaming floor opens at 7 p.m. Tumbling Dice, Casino & Poker Party Specialists, promises another night of fun and excitement as "gamblers" take their chances at authentic casino tables and wheels with professional dealers on hand to keep things moving. Even if you don't understand traditional casino gaming, you'll have a chance to learn in a friendly, relaxed atmosphere.

"It's a terrific opportunity to break out of the winter doldrums and get over the cabin fever while contributing to the good causes of the Foundation," said Winter Trifecta Co-chairperson Linda Eynon, "and, it's just plain fun!!," she added. "Our previous Casino Nights were a lot of fun, and such great successes for the Foundation that we had to do it again. You may not leave needing an armored car, but you will have the chance to win some great prizes!"

Tickets for Winter Trifecta are $90 for all three events (Wine Tasting, Silent Auction & Casino Gaming); $75 for the Casino Gaming and Silent Auction; and $60 for the Wine Tasting and Silent Auction. Each ticket for the Casino Gaming includes a starter supply of chips and two drinks!

Reserve your evening of winter fun by calling Bar headquarters at 856.482.0620 or by mailing the reservation reply from the flier in this month's inserts.

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Play Ball!

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President's Perspective

Be Sure to Join Us for February's Winter Trifecta

By Richard A. DeMichele, Jr.

Long before I was a young lawyer, I learned about Trifectas. Actually, I was in grade school when a family member of a friend had hit a Trifecta at the Garden State Race Track. As a young kid in grade school I had no idea how difficult it was to pick the first, second and third place horse in a race. Nor did I know how much money that bet paid.

I came to realize all of this when my friend told me that one of his family members had "hit the Trifecta" and the family was renting a place in Avalon for the week. I never was able to visit my friend down in Avalon but he shared with me that numerous family members were having a ball because of this "Trifecta." I really wasn't sure what a Trifecta was except that it made everybody around it very happy.

Some time later, I had discussed with my father my desires for him to hit a Trifecta. When I asked my father he was somewhat concerned about my interest in horse racing. I later learned that my father was probably not the best choice to go to the track to bet the ponies. As a result, I didn't get the chance to go to the Garden State Racetrack until it was reconstructed. Of course I am not admitting to being in a sports betting parlor under the age of eighteen, my comment was purely hypothetical.

Now the Garden State Racetrack is gone and we don't have the ability to bet a Trifecta locally. Instead, we get to go food shopping at Wegman's and have dinner at the Brio restaurant. Fortunately for members of the bar association, their family and friends, the Camden County Bar Association's "Winter Trifecta" is here. This year, we have combined three of the Bar's most popular events: the wine tasting, silent auction and casino night. This can't-miss event is scheduled for Friday, February 26th at The Mansion in Voorhees and is certain to be the "Party of the Year." As always, we are requesting silent auction and prize donations to add to the success and fun of the evening. If you have an item to donate, or know of someone who is willing to donate an item or service, please contact Larry Pelletier at bar headquarters. Jim Hamilton will be doing his part to make sure that the wine tasting is filled with tasty treats and our friends at Tumbling Dice will make sure that the gambling action is nonstop. If you miss this, you'll certainly regret it. For further details, please check out our website at **www.camdencountybar.org**.

Congratulations to past Camden County Bar President, Eric Spevak. In January Eric was appointed as Judge of the Workers' Compensation Court. Kudos Eric!

I am pleased to let you know that our bar association staff is hard at work. We have applied for New Jersey CLE provider status. If granted, our members will be able to receive credit for the CLE they take with the Camden County Bar without the need for the staff to file individual applications for each program. This will be a great time and cost savings for the Association and will allow us to continue to be a leading provider of Continuing Legal Education in South Jersey. Kudos to Larry and the team for all of their hard work.

At the time I had to submit this article we still did not have a confirmation date for Paul Fishman's welcoming ceremony at Rutgers Law School. As you may recall, the time honored tradition is to invite the newly sworn-in US attorney to South Jersey to meet and address the federal bar and local bar. I am hoping the ceremony will be in the month of February. Please stay tuned to your e-Barrister for further details.

Lastly, this is the month of love and Valentine's Day is quickly approaching. If you haven't already figured out what you're doing to acknowledge that someone in your life who is oh so special, you are quickly running out of time. And remember, nothing says "I love you" like a ticket to the Camden County Bar Association's Winter Trifecta.

Happy Valentine's Day!

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Ho, Ho, Ho! And a Jolly Good Time was had by all!

The Association's Holiday Cocktail Party on December 14th at the Mansion was another festive evening filled with good company, good food and good spirits as members of the bench and bar and their guests turned out for this annual holiday extravaganza!

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VERDICTS IN THE COURT
Superior Court of New Jersey

VERDICT:
No Cause (12/02/09)

Judge: Michele M. Fox, J.S.C.
Plaintiff's Atty: Michael Miller, Esq.
Defendant's Atty: Rae L. Voss, Esq.
L-1606-08 Jury

VERDICT:
No Cause (12/07/09)

Judge: Robert G. Millenky, J.S.C.
Plaintiff's Attys: Eugene & Karen Steinhauer, Pro Se
Defendant's Atty: Dino Mantzas, Esq.
L-3246-08 Bench

VERDICT:
75% Liability Plaintiff; 25% Liability Defendant (12/10/09)

Judge: Michael J. Kassel, J.S.C.
Plaintiff's Atty: Kenneth G. Andres, Jr., Esq.
Defendant's Atty: Martha Sierra Epperson, Esq.
L-835-07 Jury

VERDICT:
40% Liability Plaintiff; 60% Liability Defendant (12/10/09)

Damages Verdict: $25,000 molded to $15,000
Judge: Louis R. Meloni, J.S.C.
Plaintiff's Atty: Michael Novick, Esq.
Defendant's Attys: Joseph Connell, Esq. & Jennifer Hindermann, Esq.
L-1241-07 Jury

VERDICT:
No Cause (12/11/09)

Judge: Robert G. Millenky, J.S.C.
Plaintiff's Atty: Albert Talone, Esq.
Defendant's Atty: Lawrence Berger, Esq.
L-813-08 Jury

VERDICT:
100% Liability Defendant (12/17/09)

Damages Verdict: $200,000
Judge: Frederick J. Schuck, J.S.C.
Plaintiff's Atty: Michael Ferrara, Esq.
Defendant's Attys: Allan E. Richardson, Esq. & Francis Donnelly, Esq.
L-1076-08 Jury

VERDICT:
Damages Verdict: Against Defendant $10,797.50 (12/21/09)

Judge: Louis R. Meloni, J.S.C.
Plaintiff's Atty: Christopher Fritz, Esq.
Defendant's Atty: Albert Weiss, Esq.
L-2441-08 Bench

Welcome New Members
January 2010

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Legal Line to Criminal Court Law

By Evan M. Levow

DWI BREATH TESTING: TWENTY MINUTE OBSERVATION PERIOD

It has been established that "for the Breathalyzer to give readings that can be used with confidence, the operator must be sure that at least twenty minutes have expired since the last ingestion of alcohol to avoid the presence of "mouth" alcohol, which can give a falsely high reading." State v. Downie, 117 N.J. 450, 455 (1990). While the court in Downie uses the term ingestion, it is clear that the purpose of the twenty minute time period is to ensure that no alcohol is present in the mouth at the time of testing, giving an inaccurate measure of breath alcohol.

Although the Alcotest 7110 MKIII-C® is equipped with a "slope detector," which is supposed to be able to detect the presence of mouth alcohol that would affect a breath test result, the New Jersey Supreme Court in State v. Chun, 194 N.J. 54, cert. denied 129 S.Ct. 158, 172 L.Ed.2d 41 (2008) held:

> Operators must wait twenty minutes before collecting a sample to avoid overestimated readings due to residual effects of mouth alcohol. ... Moreover, the operator must observe the test subject for the required twenty-minute period of time to ensure that no alcohol has entered the person's mouth while he or she is awaiting the start of the testing sequence. In addition, if the arrestee swallows anything or regurgitates, or if the operator notices chewing gum or tobacco in the person's mouth, the operator is required to begin counting the twenty-minute period anew.

Id. at 79.

Once again, as stated clearly by the Supreme Court: "the operator must observe the test subject for the required twenty-minute period ..."

The Appellate Division, however, in State v. Ugrovics, 410 N.J.Super 482 (App Div. 2009), held that "any competent witness" can observe the subject. "The identity of the observer is not germane ..." The Court reached this determination, stating:

> Consistent with the underlying principles articulated by the Court in Chun, we hold that the State is only required to establish that the test subject did not ingest, regurgitate or place anything in his or her mouth that may compromise the reliability of the test results for a period of at least twenty minutes prior to the administration of the Alcotest. The essence of this requirement is to ensure that the test subject has been continuously observed during this critical twenty-minute window of time. The identity of the observer is not germane to this central point. The State can meet this burden by calling any competent witness who can so attest.

Id. at 484-85.

This is exactly opposite what the Supreme Court stated succinctly in Chun. **Continued on page 14**

The Ugrovics court admitted as much, stating "We acknowledge that defendant's position is, at first blush, supported by what appears to be the plain language used by the Court in Chun." Ugrovics, 410 N.J.Super. at 489.

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Legal Line to Criminal Court Law (Continued from page 13)

Unilaterally, the Appellate Division decided, however, that "a literal, unexamined application of such language here would create an unduly and, in our view, unintended restriction on the State's ability to prosecute DWI cases based on the results of an Alcotest." Id. There is no support in the Chun opinion or the voluminous record in the Chun litigation to support this change in the Supreme Court's pronouncement regarding who is responsible to observe the subject prior to breath testing.

Detective-Sergeant Kevin Flanagan is the New Jersey State Trooper responsible for the state's breath testing program. He was one of the state's chief witnesses during the Chun hearings before the Special Master, Judge King. Flanagan testified unequivocally that it was the testing officer's duty to watch the subject for the twenty minute period to make sure there is no mouth alcohol: "it's up to the operator to ensure the 20 minutes has elapsed, so if a defendant is brought into the station by a young trooper, a young officer, and he turns him over to the operator, it's the operator's responsibility to make sure 20 minutes has been observed." See 11/26/07 testimony of Det. Sgt. Flanagan, 52T 71:5-10.

Flanagan testified that if the operator is the driver of the vehicle transporting the subject to the station, the observation period starts when the officer and the subject are face to face in the station. Also, if the operator is called from the testing room prior to the actual breath testing, the twenty minute observation period must start anew. Id. at 52T 71:25 to 72:6; 55T 80:8-15. "It's ultimately the operator's responsibility that the 20 minutes has lapsed prior to collecting the breath sample." Id. at 52T 72.

New Jersey State Police protocol is clear: it is the operator's responsibility to ensure that the subject has not burped, belched, regurgitated or otherwise introduced alcohol into the oral cavity within twenty minutes prior to the breath testing.

Most importantly, the record in Chun is clear that it is the operator's responsibility to ensure compliance with the twenty minute observation period.

While Ugrovics claims that the holding is consistent with the underlying principles articulated by the Supreme Court in Chun, there is, in fact, no consistency, and the result is set forth to explicitly remove a defense that has been set forth in many DWI cases since the clear pronouncement in the Chun opinion.

It is difficult to imagine that the Supreme Court did not envision that this issue would result in a significant defense to breath testing results. On the contrary, the "defense" has been present ever since breath testing began, and was first addressed in case law in Downie. But, it was not until the clear pronouncement in Chun that there is actual direction that there is a twenty minute observation period where the operator must observe the subject to assure the integrity of the breath sample with reference to regurgitation issues.

Practically, removal of the requirement that only the operator attest to the twenty minute observation period, expedites convictions. It is a removal of a defense that the Supreme Court clearly articulated.

The Petition for Certification in State v. Ugrovics is pending before the New Jersey Supreme Court. Hopefully, intellectual honesty will remain, and the Supreme Court will summarily reverse this incorrect alteration of the fundamental purpose of the twenty minute rule.

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  - Special Report by Abo and Company on Valuation Issues
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THURSDAY, APRIL 22, 2010

8:00 am - 9:00 am	Continental Breakfast & Registration - Exhibit Hall
9:00 am - 9:30 am	President's Address & Welcome: *Jonathan Koles, Esq. – Jersey City, NJ* NJAJ Membership Meeting & Elections
9:30 am - 9:45 am	**Introduction** *Evan L. Goldman, Esq. – Hackensack, NJ*
9:45 am - 10:30 am	**Plaintiff Opening Statement** *Heidi Ruth Koppelson, Esq. – Cherry Hill, NJ* **Defendant Opening Statement** *Robert B. Haggerty, Esq. – Woodbridge, NJ*
10:30 am - 10:45 am	Coffee Break - Exhibit Hall
10:45 am - 11:30 am	**Direct & Cross Examination of Plaintiff** *Andrew M. Moskowitz, Esq. – Hackensack, NJ (for Plaintiff)* *Nicholas Stevens, Esq. – Roseland, NJ (for Defendant)*
11:30 am - 12:15 pm	**Direct & Cross Examination of Vice President of Children's Hospital** *Deborah L. Mains, Esq. – Cherry Hill, NJ (for Plaintiff)* *Lori E. Halber, Esq. – Cherry Hill, NJ (for Defendant)*
12:15 pm - 1:15 pm	Luncheon - Exhibit Hall
1:15 pm - 2:00 pm	**Direct & Cross Examination of Director of Nursing** *Bruce L. Atkins, Esq. – Hackensack, NJ (for Plaintiff)* *Lisa S. Grosskreutz, Esq. – Marlton, NJ (for Defendant)*
2:00 pm - 2:15 pm	Coffee Break - Exhibit Hall
2:15 pm - 3:00 pm	**Direct & Cross Examination of Head Nurse** *Claudia Reis, Esq. – Morristown, NJ (for Plaintiff)* *Nicholas Stevens, Esq. – Roseland, NJ (for Defendant)*
3:00 pm - 3:30 pm	**Motions & Jury Charge** *Evan L. Goldman, Esq. – Hackensack, NJ*
3:30 pm - 5:00 pm	**Summations/Deliberations/Discussion** *Bruce L. Atkins, Esq. – Hackensack, NJ (for Plaintiff)* *Jed L. Marcus, Esq. – Florham Park, NJ (for Defendant)*
5:00 pm - 6:30 pm	Wine and Cheese Reception - Exhibit Hall
TBD	2nd Annual Texas Hold'Em Tourament
TBD	New Lawyers Section Party

EMPLOYMENT LAW

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FRIDAY, APRIL 23, 2010

7:30 am - 9:00 am	Continental Breakfast & Registration - Exhibit Hall
9:00 am - 9:45 am	**Top Ten in Employment Law** *Kevin M. Costello, Esq. – Cherry Hill, NJ*
9:45 am - 10:00 am	**E-Discovery: How to Get What You Want Without Spending a Fortune** *Kathryn K. McClure, Esq. – Hackensack, NJ*
10:00 am - 10:15 am	**Complaints: How to Draft Great Ones & Pitfalls to Avoid** *Andrew M. Moskowitz, Esq. – Hackensack, NJ*
10:15 am - 10:30 am	**Mediations & Other ADR: How to Succeed** *Nicholas Stevens, Esq. – Roseland, NJ*
10:30 am - 10:45 am	**Motions to Dismiss: How to Fight Them** *Deborah L. Mains, Esq. – Cherry Hill, NJ*
10:45 am - 11:00 am	Coffee Break - Exhibit Hall
11:00 am - 11:30 am	**Removal: How to Avoid & A Field Guide to Federal Court When You Can't** *Deborah L. Mains, Esq. – Cherry Hill, NJ*
11:30 am - 11:45 am	**Interrogatories & RPD's: How to Get the Good Stuff** *Evan L. Goldman, Esq. – Hackensack, NJ*
11:45 am - 12:00 pm	**Proving Emotional Distress at Trial Without Experts** *Benjamin Folkman, Esq. – Cherry Hill, NJ*
12:00 pm - 12:15 pm	**Depositions: Who to Depose, Neutralize & Attack** *Evan L. Goldman, Esq. – Hackensack, NJ*
12:15 pm - 1:15 pm	Luncheon – Exhibit Hall
1:15 pm - 1:30 pm	**Motions for SJ: How to Fight Them, How to Win Them** *Deborah L. Mains, Esq. – Cherry Hill, NJ*
1:30 pm - 1:45 pm	**Openings** Panel Discussion
1:45 pm - 2:00 pm	**Direct & Cross of the Plaintiff at Trial** *Nicholas Stevens, Esq. – Roseland, NJ*
2:00 pm - 2:15 pm	**Direct & Cross of Management Witnesses and Whether to Call Them on Direct** *Leo B. Dubler, III, Esq. – Moorestown, NJ*
2:15 pm - 2:30 pm	**Preparing the Plaintiff for Trial** *Andrew M. Moskowitz, Esq. – Hackensack, NJ*
2:30 pm - 2:45 pm	**Use of Experts: Medical, Economic & Liability** *Lisa M. Curry, Esq. – Hackensack, NJ*
2:45 pm - 3:00 pm	**Closings** *Kevin M. Costello, Esq. – Cherry Hill, NJ*

TECHNOLOGY

Program Co-Chairs:
Howard S. Richman, Esq. — Grant Richman PLLC — Union, NJ
Lawrence M. Simon, Esq. — Law Offices of Lawrence M. Simon — Ridgewood, NJ

THURSDAY, APRIL 22, 2010

8:00 am - 9:00 am	Continental Breakfast & Registration - Exhibit Hall
9:00 am - 9:30 am	President's Address & Welcome: *Jonathan Koles, Esq. – Jersey City, NJ* NJAJ Membership Meeting & Elections
9:30 am - 10:15 am	**How to, and How not to, Use PowerPoint at Trial (and Mediation)** *David Roth, Esq. • New York, NY*
10:15 am - 10:45 am	**Technology at Trial** *Howard L. Nations, Esq. – Houston, TX*
10:45 am - 11:00 am	Coffee Break - Exhibit Hall
11:00 am - 12:00 pm	**Lawyers Diary & Manual Online** *Dominick Esposito, e/Law – Newark, NJ*
12:00 pm - 1:00 pm	Luncheon - Exhibit Hall
1:00 pm - 2:15 pm	**Social Networking for Lawyers** *Carole A. Lohr, Esq. – Cleveland, OH*
2:15 pm - 2:30 pm	Coffee Break - Exhibit Hall
2:30 pm - 3:30 pm	**Tear-Jerking Video Settlement Brochures on a Budget** *Jay Urban, Esq. – Milwaukee, WI*
3:30 pm - 4:15 pm	**New Technology** *Steven M. Schorr, P.E., DJS Associates – Abington, PA*
4:15 pm - 5:00 pm	**Top Ten Tech Tips for the Non-Techy Lawyer** *Howard S. Richman, Esq. – Union, NJ*
5:00 pm - 6:30 pm	Wine and Cheese Reception - Exhibit Hall
TBD	2nd Annual Texas Hold'Em Tourament
TBD	New Lawyers Section Party

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Thursday – I will primarily attend: ☐ Personal Injury 2010 ☐ Nursing Home Litigation ☐ Criminal Law ☐ Ethics ☐ Matrimonial Law ☐ Technology ☐ Employment Law ☐ Support Staff Personal Injury Law ☐ Women Litigators' Luncheon ☐ Alien Jurors ☐ Debunking Junk Science

Friday – I will primarily attend: ☐ Personal Injury 2010 ☐ Medical Malpractice ☐ Criminal Law ☐ Ethics ☐ Matrimonial Law ☐ Workers' Compensation ☐ Employment Law ☐ Support Staff Matrimonial Law ☐ Litigation at Sunrise ☐ Alien Jurors ☐ Debunking Junk Science

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The Usual Suspects
by M.V. Pinsky

PRESUMPTION OF INNOCENCE?

"Reform! Reform! Aren't things bad enough already?"
- The Usual Suspect

"The problem with the Obama Administration is that the left hand doesn't know what the extreme left hand is doing."
- Anonymous

"Just a few more steps to the right and the Republican "base" will tumble off the edge of their flat earth."
- The Usual Suspect

"A pox on both their houses and damn their eyes."
- The Usual Suspect

"The Democrats were handed power on a plate.
They're fighting over the plate."
- Tom Stoppard (1937 – Squaring the Circle (1984)

SHAMELESS: Dateline: Trenton. Once heralded as a breath of fresh air, failed Governor Jon Corzine has turned out to be just another lungful of noxious New Jersey swamp gas. In his waning days in office, Corzine has found time to appoint well over 200 people to various public or quasi-public jobs both paying and nonpaying. This despite incoming Governor Christie's plea that he forego the political payola and let the new administration start fresh.

On the bright side, the odds are that Mr. Corzine will soon abandon the quicksand of New Jersey and return to the lush pastrami fields of the west 40s.

HYPOCRISY: Dateline: New York City. Billionaire Mayor of New York City Michael Bloomberg leaves a bigger carbon footprint than the entire township of Cherry Hill. Allegedly concerned about the environment, Bloomberg rushed to the environmental fiasco in Copenhagen in a private jet carrying only him and his staff. No longer the golden boy of New York politics, the Mayor took a beating from the New York press for that and his habit of frequently flying to one of his five palatial residences scattered across the known world. Additionally, the New York Times revealed that the Mayor's official vehicles frequently waited for His Honor with their motors running.

Apparently, Mayor Bloomberg salves his social conscience by taxing the struggling New York middleclass to pay for various social services for the poor. Let us not forget that Bloomberg also found time to ban trans fats from the menu of all local fast food restaurants.

Fortunately for Mayor Bloomberg, in the words of Judith Martin – Miss Manners – "Hypocrisy is not generally a social sin, but a virtue."

BLESSED EVENT: Dateline: Camden. Heartiest congratulations to Assistant Public Defender Leslie McNair-Jackson and hubby, Vincent, on the birth of their second son now and forever to be known as William Avery Jackson. Our sources tell us that young William is a happy, healthy and beautiful baby.

FELICITATIONS: Dateline: Camden. Congratulations and best wishes to per diem Public Defender Timmy Wright on finally snaring (marrying) the beautiful and gracious Leah. Apparently, Timmy is honeymooning before Judge Stephen Holden to whom he is assigned.

BON VOYAGE: Dateline: Camden. Public Defender Terry Lytle and beautiful wife, Teresa, recently embarked on a 16-day visit to Barcelona, Spain, to vacation and visit with Teresa's family. One can only hope that the Lytle's never cross the trail of Assistant P.D. George Montoya who also recently visited Spain leaving behind a trail of tears and broken hearts.

GOING GREEN: Dateline: Westmont. The iconic and recently retired Assistant Prosecutor John T. Wynne certainly didn't let any grass grow under his feet when he left the Camden County Prosecutor's Office. The great John T. is already attending a Rutgers-sponsored class on "Environmental Stewardship" which, when completed, will entitle John to a certificate attesting to his greenness and authorizing him to fully participate in protecting New Jersey's precious environment. Although this is akin to rearranging the deck chairs on the Titanic, John is to be commended on his usual zeal.

YOU CAN LEAD A HORSE: Dateline: Trenton. On December 18, 2009, the New Jersey Supreme Court adopted Court Rule 1:42 mandating Continuing Legal Education (MCLE) for New Jersey attorneys which new requirements are effective immediately. In conjunction with the new Court Rule, the Court amended its Administrative Determination regarding the Continuing Legal Education requirement. Both the Court Rule and the Administrative Determination **(Continued on page 17)**

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His law career began in the U.S. Air Force following his graduation from Georgetown University and Georgetown Law School. In the Air Force he was assigned to the 81st Fighter Interceptor Wing in England as a Legal Officer. Upon his return to the U.S., he engaged in general private practice of both civil and criminal law. During this time Gruccio also served as the Prosecutor and Associate Solicitor for the City of Vineland and was counsel to the Cumberland County College.

He began his judicial career as a Judge in the Cumberland County Court in New Jersey and then moved to the Superior Court where he was the Assignment Judge for Vicinage One. He served as Judge in the Appellate Division of the Superior Court of New Jersey from 1985 to his retirement from the bench. While on the Appellate Division he served a temporary assignment to the Supreme Court of New Jersey. While on the bench he had approximately one hundred (100) opinions published at the trial and appellate levels. Upon retirement from the court, he served as a Professor of Law and Associate Dean at Widener Law School. Among the many courses taught at Widener, he taught a course in Alternative Dispute Resolution.

Mr. Gruccio is also a fellow of the Institute of Court Management. He is also an elected member of the American Law Institute.

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The Usual Suspects (continued from page 16)

are the result of recommendations made by the Ad Hoc Committee on Continuing Legal Education.

Under the new Rule, all New Jersey attorneys are required to take 24 hours of Continuing Legal Education every two years including at least four hours on topics related to ethics or professionalism. MCLE is required for all New Jersey attorneys, including judges, law clerks, and in-house counsel. The new Court Rule also calls for the Supreme Court to create a Board on Continuing Legal Education to administer the Legal Education program in accordance with the new Rule. An Order signed by Chief Justice Stuart Rabner names Supreme Court Associate Justice Roberto Rivera-Soto as Board Chair and retired Superior Court Judge Arthur N. D'italia as Board Vice Chair. The Order also names Judge Glenn A. Grant as Acting Administrative Director or his designee as a non-voting Board Member.

Goody, goody, we are going to have a new bureaucracy with broad (almost limitless) discretionary powers to administer the CLE program. While space here does not permit, the Old Suspect urges everyone to read not only Rule 1:42-1 but Rule 1:42-2 which empowers the Board, inter alia, to determine the courses and activities that qualify for Continuing Legal Education credit and to designate approved Continuing Legal Education providers and approved courses and programs that shall qualify for Continuing Legal Education credit. The Board is also empowered to establish a schedule of fees to be charged for the Continuing Legal Education providers and to attorneys to fund the administration of the program. Those attorneys who are certified under Rule 1:39-2(d) should be aware of Rule 1:42-2(b)6 which, in a backdoor sort of way, provides that there will be special CLE requirements for certified attorneys.

As usual, "the devil is in the details." Rule 1:42(d) under the caption "Staffing and Funding" provides as follows:

> "The day to day operations of the Board on CLE shall be performed by a staff operating under the supervision of the Supreme Court Clerk's Office. Staff salaries, benefits, and operational costs shall be funded from fees imposed in accordance with this Rule and the Board's regulations."

So, the Rule provides for the creation of a "staff" (no limitation on size) who will receive salaries, the usual generous State benefits, and operational costs all of which will come from fees imposed on CLE providers and attorneys. All this will be controlled by the Board, who will be appointed by the Supreme Court, and in this writer's humble opinion guided by the Administrative Office of the Courts, a.k.a. Engulf and Devour.

CLE providers are not defined in the Rule but obviously include county bar associations and private for-profit groups. Naturally, the additional costs will be passed on to the consumer which, in this case, is none other than that captive audience known as New Jersey attorneys.

Although your CLE obligations have already commenced, as of this date, December 30, 2009, there are:

1. No Board,
2. No regulations,
3. No approved courses and activities,
4. No approved Continuing Legal Education providers,
5. No "staff," and;
6. No schedule of fees.

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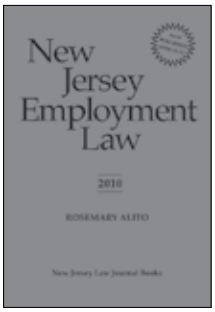

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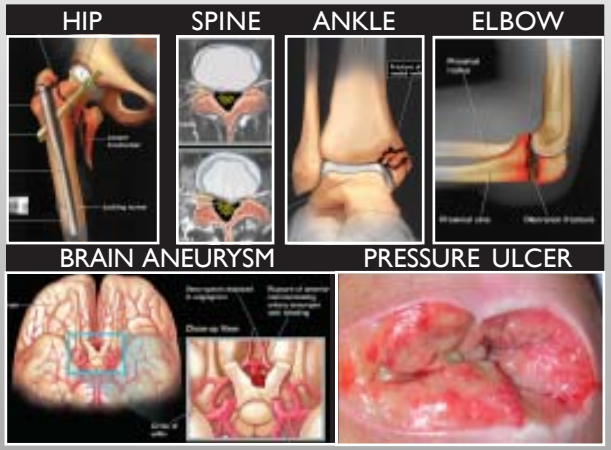

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