

## IN MEMORIAM

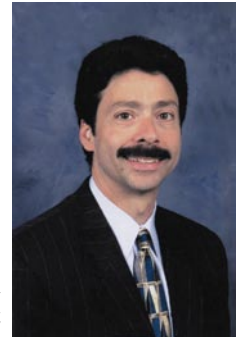
The Association was saddened to learn of the passing of **Michael J. Izzo, Jr., Esq.** on December 9th, at the age of 68.

Mike had been a senior partner at Cozen O'Connor, following service as a judicial clerk to the Hon. E. Mac Troutman, U.S. District Court for the Eastern District of Pennsylvania. At Cozen O'Connor he was part of the subrogation litigation division where he argued some of the firm's largest jury verdicts.

The Association extends its sincere condolences and sympathies to the family, friends and colleagues of Michael Izzo. He will be missed.

## Mark Oddo to Receive Devine Award

### Past CCBA President to be honored at February 7<sup>th</sup> Luncheon



Past Association President Mark V. Oddo has been named recipient of the Association's 2012 Honorable Peter J. Devine, Jr. Award. The award will be presented at a luncheon in his honor on Thursday, February 7, at the Crowne Plaza Hotel's Riverside Pavilion in Cherry Hill.

Established in 1981 in honor of the popular Judge Devine, bar president in 1967-68, the Devine Award is the Bar Association's most prestigious award. It is presented annually by the Association in recognition of distinguished service to the Association and its members.

The festivities get underway at Noon with a cash bar networking reception followed by lunch and the award presentation beginning at 12:30 pm.

Luncheon Reservations are \$55 per person and can be made by calling Bar Headquarters at 856.482.0620 or by mailing the reservation reply from the flyer inserted in this month's issue of *The Barrister*. Tables of 8 or 10 are available. Spouses and friends are welcome and encouraged to attend.

Don't miss this opportunity to congratulate and thank our colleague and friend for his commitment to the Camden County legal community and the community at large.



The newest elf, Raymond, was the hit of the Children's Christmas Breakfast & Party in December.

## We're Looking for YOU!

### Association Officer and Trustee Nominations Open

What is leadership? A simple **definition of leadership** is the art of motivating a group of people to act towards achieving a common goal and the ability to make things happen.

This definition captures the leadership essentials of inspiration and preparation. Effective leadership is based upon ideas, but won't happen unless those ideas can be communicated to others in a way that engages them.

Put even more simply, the leader is the inspiration for action. He/she is the person who possesses the combination of personality and leadership skills that makes others want to follow.

The Association's Nominating Committee is looking for Association members who possess the leadership skills and desire to help the Association build on its past achievements while meeting the challenges of the future for the benefit of its members.

To that end, we are seeking nominations for the offices of president-elect, first vice president, second vice president, treasurer, and secretary, and for five Board of Trustees openings. The Trustee seats are for a term of three years beginning on June 1, 2013 and ending in May 2016.

"With 130 years of history, tradition and success, we're looking to keep the association vibrant and in the forefront of services to the legal community and the community-at-large in the ever-changing fast-paced world of the 21st Century" commented Louis Lessig, chair of the Nominating Committee. "I know there are many talented, energetic and creative members in our Association with strong leadership skills. These are the folks who will help us keep our Association strong and vital" he continued. "If you enjoy participating in Association networking programs and seminars, have served or wish to serve in a committee leadership role and are interested in being a part of the decision-making process, we're looking for you."

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## THE DOCKET

### Tuesday, January 8th

*Young Lawyer Committee Meeting*  
12:30 – 2 pm  
Bar Headquarters, Cherry Hill

### Wednesday, January 9th

*Civil Practice Blast Seminar*  
4:00 - 6:15 pm  
The Mansion, Voorhees

### Thursday, January 10th

*Debtor/Creditor Committee Meeting*  
8 am  
Bar Headquarters, Cherry Hill

### Monday, January 14th

*Brown Bag Lunch Series – Websites That Produce New Clients*  
Noon – 1:30 pm  
Bar Headquarters, Cherry Hill

### Wednesday, January 16th

*Association Board of Trustees Meeting*  
4 pm  
Bar Headquarters, Cherry Hill

### Thursday, January 24th

*2013 Black Letter Criminal Law Blast*  
4 – 7:15 pm  
Tavistock County Club, Haddonfield

### Friday, January 25th

*Hon. Peter J. Devine Award Luncheon*  
Noon  
Crowne Plaza Hotel, Cherry Hill

## Tentative Agenda for January 16, Trustees Meeting

A tentative agenda for this month's regular Board of Trustees meeting follows. The meeting will begin at 4 pm, 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 Previous Meeting
- 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



*Ethics Issues in Employment Law* was the topic of the day at the Labor & Employment Law Committee's fall CLE Luncheon at Tavistock. The program was moderated by **Janice G. Dubler**, Montgomery, McCracken, et. al. LLP, Cherry Hill. Presenters included **Richard M. Schall**, Schall & Baruch, LLP, Moorestown; **Carmon M. Harvey**, Montgomery, McCracken, et. al. LLP, Philadelphia; and **Jennifer E. Canfield**, Montgomery, McCracken, et. al. LLP, Philadelphia.



The November CLE on Tap! seminar for newly admitted Lawyers, *NJ Family Law*, was held at the TapRoom in Haddonfield. This was the final CLE on Tap! program until February, when the program moves to Brio in Cherry Hill. Program presenters included **Theodore J. Baker**, Afonso & Baker, PC, Cinnaminson; **Maryann J. Rabkin**, Rabkin Law Offices, P.C., Cherry Hill; **Kimberly A. Packman**, Adinolfi & Lieberman, Haddonfield; and **Ronald G. Lieberman**, Adinolfi & Lieberman, Haddonfield.

## THE BARRISTER

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

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Brenda Lee Eutsler  
1702 Haddonfield-Berlin Rd.  
Cherry Hill, NJ 08033

### Second Vice President

Jenifer G. Fowler  
76 E. Euclid Avenue, Ste. 101  
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1040 N. Kings Highway,  
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856.482.0620  
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## MEMBER ON THE SPOT



**NAME:** Victoria A. Schall  
**PRACTICE AFFILIATION:** Nursing Home Abuse and Neglect Litigation Attorney for The Gruber Firm, LLC  
**YEAR ADMITTED TO BAR:** 2010  
**OTHER BAR ADMITTANCES:** Virginia (2008), District of Columbia (2009), Pennsylvania (2010)

**PRIOR OCCUPATION:** Elder Law Staff Attorney at Legal Services of Northern Virginia

**RESIDENCE:** Maple Shade

**HIGH SCHOOL:** James W. Robinson Secondary in Fairfax, VA

**COLLEGE:** Loyola College in Maryland

**LAW SCHOOL:** Appalachian School of Law

**WHAT LED YOU TO A LEGAL CAREER:** After years devoted to working in and learning the long-term care industry, I went to law school to effect change in quality of care for residents.

**BEST PERSONAL/PROFESSIONAL ATTRIBUTE:** Finding my passion has given meaning to my work and pushes me every day to learn more and work harder for those who are unable to speak for themselves.

**WHAT I DO TO RELAX:** I enjoy exploring Philly and the surrounding Pennsylvania and South Jersey towns, going to various events, restaurants, and discovering local small businesses.

**HOBBIES:** I play adult co-ed soccer, mountain bike, and volunteer with the Delaware Valley Alzheimer's Association.

**FAVORITE RESTAURANT:** Gnocchi in Philadelphia

**FAVORITE TELEVISION SHOW:** Scandal and Seinfeld Reruns

**FAVORITE MOVIE:** *Caddy Shack*, *A Civil Action*, *Office Space* and *Hot Coffee*

**FAVORITE AUTHOR/BOOK:** *Elegy For Iris* by John Bayley

**FAVORITE VACATION PLACES:** Family house in Longport, NJ

**FAVORITE MUSEUM:** Being originally from the DC area there are too many to mention, but my favorite monument is the Korean War Memorial in DC at night. It's hauntingly amazing.

**FAVORITE WEEKEND GETAWAY:** To see my fiancé who is finishing school in North East Pennsylvania.

**ENJOY MOST ABOUT PRACTICING LAW:** Being able to ask the questions long-term care residents and their families have about the care they received, seek accountability, and bring resolve to victims of abuse and neglect.

**MOST ADMIRER PERSON AND WHY:** Anyone who exudes the courage to pursue in the face of adversity.

**CHERISHED MEMORIES:** Every year growing up on New Year's Eve on my grandparents' porch outside of Philly; a large family banging pots and pans to ring in the new year.

**ALTERNATE CAREER CHOICE:** None.

**GREATEST LESSON LEARNED FROM PRACTICE OF LAW:** I have learned that you can prepare as much as you can, but you must also be ready to handle the unexpected.

**LIFE'S HIGHLIGHTS:** Backpacking the Appalachian Mountains, traveling overseas to play soccer, working for the RAM clinic in S.W. Virginia, publishing a Law Review article on the effect of Tort Reform on nursing home residents, multiple bar exams in 2 and a half years, and being able to do the work I am most passionate about.

**GREATEST ACCOMPLISHMENT:** Having faith in myself to follow what started out as a connection with seniors and making it into a career that I love and that challenges me every day.

**#1 PROFESSIONAL GOAL:** Grow as a leader in the New Jersey State and Local bar associations and continue to challenge myself as a lawyer in nursing home and long-term care litigation in NJ.

**#1 PERSONAL GOAL:** To lead a happy and healthy life with my fiancé continuing on our journey starting our family.

**LIFE EXPERIENCE WITH GREATEST IMPACT:** As second chair, working alongside the dedicated and passionate Saul Gruber of the Gruber Firm in 5 nursing home jury trials in Camden and multiple other jurisdictions within my first 2 years of moving to New Jersey. The experiences have been invaluable as the learning continues.

**ADVICE TO YOUNG LAWYERS:** Find your passion, but never lose your compassion.

**HOPE TO BE DOING IN 10 YEARS:** See Professional and Personal Goals.

**FAVORITE QUOTATION:** "I believe that the most important single thing, beyond discipline and creativity is daring to dare."

– Maya Angelou

### Judge M. Allan Vogelson (Ret.)

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## MUNICIPAL COURT

# Throw the Book at Him

By Arnold Fishman  
www.fishmanandfishmanlaw.com

I have a niche practice. I limit it to Municipal Court defense with an emphasis on DWI. It's a dirty job, but someone has to do it. When I started, I did everything, from Chancery (both General and Family), to Law (both Civil and Criminal) at the trial and appellate levels. I ran the gamut, from night sessions in the Municipal Court of Chesilhurst - where once a month they would roll out the fire engines and set up a battered rickety card table for the judge who would struggle to maintain decorum and his dignity—to oral argument before the Supreme Court of the United States—where the marble and velvet subsumed decorum and dignity. But that is another story—remind me!

A typical Municipal Court file was a ticket, two or three pages of your notes, and four pages of discovery (one of which was the photocopied cover letter from the prosecutor), in those rare instances that discovery was actually provided. An extensive file contained a copy of the case upon which you intended to rely and the statute under which your client was charged. Today my Municipal Court files

are the size of my old Superior Court files; the size of Superior Court files today is scary.

*Pro se* defendants plead guilty to whatever it was they were charged with. Those represented, whose lawyers couldn't wiggle their way out of it, went to trial. Trials on complaints as mundane as speeding and careless driving were not uncommon. That all ended with the invention of the Post-It-Note. Just kidding. But the culture changed. Now, all cases, save the dreaded DWI—the “murder” of the Municipal Courts, except a real murder can be plea-bargained—get compromised. The practice is so institutionalized that the AOC has developed a form in order to standardize the myriad of sizes and colors of the “stickies”—some of which were pre-printed. The complexity of DWI defense, the prohibition of plea-bargaining, coupled with minimum mandatory sentences makes the disposition of DWI cases a logistical nightmare for the Municipal Courts across the State.

On one hand, the AOC decrees that those cases are to be over within 60 days of the

issuance of the summons, and on the other, the relevant information concerning the person before the Court embedded within the Alcotest is downloaded at six-month intervals. (It was done annually before the Supreme Court doubled the State's obligation to recalibrate the machine, in *State v. Chun*.) The admissibility of the results of a breath test over an objection is dependant upon providing the defense attorney, and to a lesser extent the Court, with a substantial number of foundational documents. Not only that, but *Chun* and cases that follow it, instruct us that the clear and convincing burden of proving that all the conditions precedent to the reading's admission—such as the 20 minutes observation, the changing of the mouthpiece, and the elimination of portable radios and cell phones—are upon the State. If properly defended, the State has to work hard for a conviction.

But, when the hammer falls, it falls hard. Holding aside the jail, interlock device, Intoxicated Driver Resource Center, and

*Continued on Page 19*

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## NOTICES TO THE BAR – United States District Court for the District of New Jersey

# Announcement of Vacancies on Criminal Justice Act Panel for the District of New Jersey

Since 1971, the United States District Court for the District of New Jersey has maintained a list of attorneys to be appointed as counsel for eligible defendants pursuant to the Criminal Justice Act (“CJA”), 18 U.S.C. §3006A. The Court has adopted a CJA Plan, revised as of December 10, 1997 and effective September 11, 1998, which “particularize(s) the requirements of the CJA, the Anti-Drug Abuse Act of 1988... and the CJA Guidelines in a way that meets the needs of this district.” In summary, the CJA Plan has established a Panel Selection and Management Committee which meets annually to consider applications for the District’s CJA Panel.

The District’s CJA Panel consists of 100 attorneys, divided by Vicinage who are members in good standing of the Bar of this District, and have trial experience and knowledge of the Federal Rules of Criminal and Appellate Procedure, the Federal Rules of Evidence, the Federal Sentencing Guidelines and the Local Rules of both the District and Circuit Courts. The CJA Committee selects the 100 attorneys for the CJA Panel based upon merit and experience.

Membership on the CJA Panel is ordinarily for a term of three years. On March 11, 2013, the term of one-third of the members of the CJA Panel will expire. The Court invites all attorneys interested in becoming members of the CJA Panel to submit an application to William T. Walsh, Clerk, United States District Court, Clarkson S. Fisher Courthouse, 402 East State Street, Room 2020, Trenton, NJ 08608, on or before January 18, 2013. Applications will also be accepted via e-mail at [njcja@nj.uscourts.gov](mailto:njcja@nj.uscourts.gov) however, the document must be in PDF format. Application

forms and copies of the CJA Plan may be obtained from the Clerk of Court in Newark, Trenton and Camden, or may be downloaded from the Court’s website at: [www.njd.uscourts.gov](http://www.njd.uscourts.gov) located under “CJA”. No application will be considered unless it is received no later than January 18, 2013.

The Court, in conjunction with the Office of the Federal Public Defender, the Association of the Federal Bar of the State of New Jersey and the Association of Criminal Defense Attorneys of New Jersey, has arranged annual training programs for new and experienced panel members.

It is anticipated that the application and selection process to fill the vacancies for one-third of the CJA Panel will be completed on or before March 8, 2013. Any member of the CJA Panel whose term will expire on March 11, 2013, may apply for reappointment.

All qualified attorneys are encouraged to apply for membership on the CJA Panel. The Panel Selection Committee shall determine membership on the CJA Panel on the basis of merit and experience, without regard to race, color, religion, gender, age, national origin, or disability.

Any inquiries regarding the CJA Plan or the application process should be directed to **William T. Walsh, Clerk, United States District Court, Martin Luther King, Jr. Federal Building, 50 Walnut Street, Room 4015, Newark, NJ 07102-3595, telephone number 973-645-6697, or William Holland, Director of Court Services, 402 E. State Street, Room 2020, Trenton, NJ 08608, telephone number 609-989-2328.**

## New IRS Requirements

New IRS requirements regarding the reporting of credit card transactions have the potential to negatively impact IOLTA accounts and lead to ethical violations by lawyers. Below are the key points that are important to know by those lawyers who accept credit card payments:

- Pursuant to the Housing Assistance Tax Act of 2008, credit card processing companies are required to verify and match each merchant’s federal tax identification number and her legal name with those found on file with the IRS. An EXACT match is required.
- For the purposes of this requirement, lawyers who accept credit card payments are considered “merchants.”
- If there is NOT an exact match between the information provided to the credit card processing company and the information on file with the IRS, there are serious consequences:
  - Beginning January 2013, the IRS will impose a 28% withholding penalty on all credit card

transactions, including those that the lawyer directs to her IOLTA account.

- If client funds that should be in the IOLTA account are withheld due to the lawyer’s failure to act and thus are not available to the client on demand, ethical issues are raised.
- The credit card processing company should have received information from the IRS if a mismatch occurred and already notified the lawyer of the problem. However, it is not known if all processing companies have provided such notice.
- Steps lawyers can take now to avoid an ethical violation in 2013:
  - Contact the credit card processor to determine that a match occurred
  - Correct mismatches if informed of one

For more information on this issue, see <https://www.lawpay.com/news/irs60502.pdf>



## YOUNG LAWYER CORNER

# New Year, New Duties

By Michael J. Dennin



## YOUNG LAWYER CORNER

2013 is here. With the New Year comes a resolution. May I suggest we all resolve to look back to when we were admitted to practice law. Do you remember pledging your Oath? I do. After graduating Widener Law, Harrisburg Campus, we graduates were fortunate enough to be sworn in by Pennsylvania Supreme Court Justice Thomas G. Saylor. When being sworn in, I had a giddy feeling. Having passed the bar exam and thankfully obtained employment, I still had no idea what it meant to be an attorney. I heard the Oath, knew it was special and important, but it did not sink in. On December 11, 2012, the Honorable Fernandez-Vina swore in new admits to the practice of law in the State of New Jersey. Brenda Eutsler provided me an opportunity to speak with the admits after the Oath.

In now my 8th year of practice, I have come to appreciate what the Oath means. This appreciation is the tip of the iceberg, however. Some attorneys are somehow able to “get it” right away. For the majority, it is not possible to fully appreciate the Oath until you are able to practice. The Oath, the admittance to practice, brings with it incredible power and responsibility. You are now an officer of the Court. What does that mean? Well, first

and foremost it is a lifetime commitment. It is a lifetime opportunity to effect change in people’s lives as well as your own. The first duty is to further the administration of justice. The duty to one’s client is subordinate to the duty to the Oath and to the Court. We all make a solemn promise of ethical conduct.

The responsibility and trust given to attorneys cannot be overstated. As officers of the Court, our word is taken as true. We bind our clients day in and day out by what we say. Our clients are bound by our actions. Because our word is taken as truth, we must tread carefully. Our first words as attorneys are the Oath. Our words are our bond, and our first words are the most important ones we say. It is not a mere “recitation.” When we take the Oath, we truly cannot understand the significance. While we are not Judges, our duties to the Court and practice of law are just as important as the duty of the Judge that sets forth the Oath. We promise service. Service to the client, the Court, and to others in general. We are held to a higher standard. While we may be joked about by others in certain contexts, only we can look past this and make sure people know that when they need someone to listen to them and give counsel, they can call us. We can take the joke

as what it is, and be there for the person who is the jokester. Law is a dignified profession, and we must practice with dignity.

The Oath is recited at first, but is practiced throughout our lives. We uphold the Oath inside and outside of the courtroom. Even when we get upset, depressed, frustrated, we still must know that we need to overcome adversity and be there for our client. Even when we get knocked down, we must serve and get back up. We must use our words and put our words into action. We must take ourselves to a higher level, while being the same as we have always been. When starting out, we cannot lose ourselves in title. We cannot brag, but rather must be humble. When people congratulate us on “passing the bar” or being an attorney, a simple thank you will suffice and then act to see what you can do to help the person who has given you thanks. Service starts when we pledge the Oath, and it never ends. We hope that when we pass people will remember us for our service and what we have done, and not for our triumphs as an “attorney.” When we are old, retired, and tell stories to our grandchildren, we still uphold the Oath, because the Oath remains and we remain after we are gone.

## We’re Looking for YOU!

### Association Officer and Trustee Nominations Open

Continued from Page 1

Members wishing to be considered for any of the available positions are expected to have the time and means to attend and participate in the monthly Board of Trustee meetings (10), attend and participate in Association & Foundation events and programs throughout the year, and perform other duties that may be assigned by the president.

If you have the desire to help shape the future of your Association, and can meet the responsibilities outlined above, please send a letter of interest along with a resume to Louis Lessig, Esq., Chairperson, Nominating Committee, c/o Camden County Bar Association, 1040 N. Kings Highway, Suite 201, Cherry Hill, NJ 08034. **Current members of the Board of Trustees whose terms expire at the end of this bar year must also send a letter of interest to be considered for reappointment.**

Members who have practiced five years or less at the Bar of New Jersey or are 35 years or younger are eligible for the position of Young Lawyer Trustee or Vice Chairperson of the Young Lawyer Committee. Again, a commitment to attend and

chair monthly Young Lawyer Committee meetings, submit a monthly article to the Barrister, and attend monthly Board of Trustee meetings and Young Lawyer and Association events and programs must be made. To be considered for either position, please send a letter of interest along with a resume to Michael Dennin, Chairperson, Young Lawyer Nominating Committee, c/o Camden County Bar Association, 1040 N. Kings Highway, Suite 201, Cherry Hill, NJ 08034. Both young lawyer posts are for a one-year term beginning June 1, 2013.

New officers and Trustees will be sworn in at the Annual Installation of Officers & Trustees Dinner Dance on Friday, May 31st at Trump National Golf Club at Pine Hill.

For more information regarding the nominating process, please feel free to contact Executive Director Larry Pelletier at 856.482.0620 or via e-mail at [lbp@camdencountybar.org](mailto:lbp@camdencountybar.org).

**The deadline for consideration of nominations is 5 pm, Friday, February 15, 2013.**

## Stay Involved... Attend Events!

## LAW PRACTICE MARKETING



By Kimberly Alford Rice

# What is the Cost of Marketing Complacency in 2013?

How many of us remember the great tagline “Be All That You Can Be?” Where was this first spoken? Yep, it was a popular slogan of the US Army from 1980-2001. An oldie but a goodie.

I was reading an article in *The Times* recently in which a study reported that once complacency sets into a workplace it functions much like an organizational cancer, slowly eating away at the core values of the firms. This prompted my thoughts on lawyers and their marketing behavior.

Regardless of the present economic conditions, your practice (and by extension, your law firm) will grow and contract in relation to predictable economic cycles. What goes up has to come down, and so forth. Point being, while your workload may be overwhelming today, if not properly attended to, you could find the client list growing shorter and shorter. And then, non-existent.

Don't think it could happen to you? Hope not for your sake, but experience tells me very differently.

I liken this process to growing a garden. As a girl, I worked in my grandparents' vegetable garden for many summers. What a life-changing experience that was.

In the Springtime, my grandfather would prepare the soil for planting. My grandmother and I would come behind him and hoe out the lines for sowing the seeds and young plantings—green beans, cantaloupe, tomatoes; carrots, potatoes, watermelons, onions, and so on. After this laborious task, we would lay down straw to discourage weeds from growing in between the seeds and plantings. Then, through the next 3-4 months, my grandmother, cousins and I would monitor the rain gauge to ensure all the seeds were being properly watered to grow their produce.

There were years where we did not receive enough rain (and, in fact, experienced a drought) and resorted to turning on the garden sprinklers to keep the plantings alive. We even had to “hoe between the rows” so that some weeds wouldn't strangle the plantings. As a girl of 8 or so, these were boring, arduous tasks but necessary nonetheless.

In the end, however, the plants produced, we picked the “fruits of our labor” and enthusiastically enjoyed the harvest of

fresh melons, hearty beans and robust tomatoes. The experience taught me that to reap what you want; you must first sow the “right” things in the appropriate way. There is no room for complacency if your goal is to produce.

To relate this anecdote to marketing, the most important thing you can do is avoid complacency. Never allow yourself to settle and accept your results as predestined.

Building a prosperous client base is similar to the uphill climb of the roller coaster. It is hard work and can be a slow and sometimes bumpy ride. Client relationships are usually built the hard way, one client and one matter at a time. Many marketing tactics, like educational programming, building a healthy referral network, have a cumulative effect that may take time to produce measurable results. Eventually, though, your consistent and persistent efforts will begin to bear consistent results. As the roller coaster clears the peak it builds speed with minimal effort as it descends. So, too, with marketing efforts. Momentum builds and eventually the growth takes on a life of its own with less and less effort on your part.

Here is where the potential problem arises: you are lulled into a false sense of security that clients are now retaining you with little or no “sowing” effort on your part. It is at this precise point that without you even realizing it, your practice is headed to decline (refer to the aforementioned predictable economic cycles).

Your practice moves along swimmingly, you are performing at peak levels, clients love you which provides further affirmation to continue doing what you are (and are not) doing. Then, it happens. One of your largest clients makes a game-changing decision which may take the form of buying another company, selling its company, declaring bankruptcy, or some other major change which immediately places your relationship in jeopardy. We have all seen these scenarios play out, often with a less than favorable outcome.

As a result of one of these moves, your client base is looking a little shaky and you are scratching your head on how to replace the work you may have lost or, at minimum, seen reduced.

Though your practice may be somewhat different than that described above, with changing a few of the specifics, this could

be you.

The main point, here, is regardless of how healthy your practice may seem today, there is absolutely no guarantee. In other words, if you do not attend to expanding your existing relationships, growing your network, and courting your solid referral sources, the stream of your pipeline will not keep flowing.

By the time you get around to doing something about it, you may find yourself once again in the position of the roller coaster chugging up the hill. It will take a lot of effort to regain the momentum. Only now that you have been away from the activity for a while, it appears even more difficult which is even more problematic.

As we head into the new year, do not allow yourself to float into complacency and be lulled by a false sense of security. Take notice of the state of your client base, of the number of referrals you are receiving, and giving, and how much effort is being earnestly invested in building and building upon the momentum of developing and growing a prosperous client base. Do not accept complacency to seep into all that you are and have been working for. If you need ideas or guidance on how to jumpstart your marketing efforts, let us know how we can help.

Otherwise, continued success in 2013. And remember, you can still “be all that you are meant to be!”



Personal Injury Committee Co-chairs **Mark G. Esposito**, Amy F. Loperfido & Associates, Mt. Laurel and **Tommie Ann Gibney**, Andres & Berger, Haddonfield, moderated the PI CLE Luncheon *Better To Be Prepared Than Sorry*. Presenters included **John W. Palm**, Secretary, District IV Ethics Committee, Gibbsboro; **HoeChin Kim**, NJ Office of Attorney Ethics, Trenton; **Jose W. Hernandez**, The Ferrara Law Firm, Cherry Hill; and **Carl D. Poplar**, Carl D. Poplar, P.A., Cherry Hill.





By Martin H. Abo, CPA/ABV/CVA/CFF

# Beneficiary Designations

Most of my attorney, insurance and other financial planning professionals likely see the use of faulty beneficiary designations in retirement plans, insurance policies, and other documents much more often than we practicing CPAs do. Still, it's then obvious that such faulty beneficiary designations can often lead to the unintentional disinheritance of family members. For example, is it really that uncommon, when filing a beneficiary election form, to see proceeds from a retirement plan left to "...my children in equal shares?" In that scenario, I saw it properly counseled that, if one of the children predeceases the parent who makes this designation, that child will not be able to share in the proceeds that go to the living children. Furthermore, the grandchildren from the deceased child will, in effect, have been disinherited unintentionally. I suspect a better way is to have the beneficiary designation indicate that equal distributions are to be made to the children or "their issue." The take-away I got from that experience is that everyone involved in retirement and estate planning, even we accountants, can and should look over beneficiary designations and their intent to make sure that this type of situation does not arise.

Months back I spoke with a colleague and nationally known IRA expert, Ed Slott (another CPA from Lon Giland) who brought to my attention last year's Court decision which further illustrated how careful we must be regarding beneficiary designations. His article title said it all—*401(k) Beneficiary Form is Trumped by Remarriage; Disinheriting Children*. If you don't get or have never seen his acclaimed newsletter, you should (go to [www.irahelp.com](http://www.irahelp.com)).

Regardless, I have Ed's permission to share his commentary with you so feel free to email me for a copy of his newsletter article at [marty@aboandcompany.com](mailto:marty@aboandcompany.com).

In *Cajun Industries LLC v. Robert Kidder, et al.* the Court ruled that despite having previously named his three children as beneficiaries of his 401(k) plan, a deceased plan participant's 401(k) balance will pass to his new wife. The Court determined that, under the terms of the participant's plan, a spouse's right to plan assets is immediately vested upon marriage, and since no spousal waiver was obtained, the default beneficiary is the spouse, even though she was not the named beneficiary. The spouse got the 401(k), and the children, who were the intended beneficiaries, were disinherited. Ouch!

The actual case specifics? Well, apparently Leonard Kidder was a former employee of Cajun Industries LLC and was a participant in the company's 401(k) plan. Mr. Kidder originally named his wife, Betty Kidder, as the sole beneficiary of his plan, but after her death, Mr. Kidder updated his form, naming his three children as the new beneficiaries of his plan. In late 2008, Mr. Kidder married Beth Bennet Kidder. Just six weeks after the marriage, Mr. Kidder died. During those six weeks, no waiver of spousal rights was made for Mr. Kidder's 401(k) assets. Following his death, a dispute arose between Beth Bennet Kidder and Mr. Kidder's three children, with each side claiming that they were the rightful beneficiaries of Mr. Kidder's 401(k) plan. The children claimed that they, as the named beneficiaries on the most up-to-date form, were entitled to the funds. On the other hand, Beth Bennet Kidder claimed that as Mr. Kidder's wife, she was entitled to the funds, regardless of what the beneficiary form said.

*Continued on Page 10*

## OUT AND ABOUT

### Fall Frolic



Matt Dopkin & Deb Myerson



Jackie Shed & Rita Milano



Trevor Cooney & Greg DeMichele



Lou Guzzo, Donald Browne & Pete Tomasco

### Children's Christmas Party

*Santa and his friends . . .*



Elf Axelrad



Elf Hanni



Elf Wade



YLC Chair Mike Dennin & Lil' Mike

# Beneficiary Designations

Continued from Page 9

The court had little difficulty in determining that Beth Bennet Kidder was the rightful plan beneficiary. First, the court noted the plan's language was "clear and unambiguous" that unless a spousal waiver was executed, a deceased participant's vested interest would belong to his or her spouse. Next, the court addressed the Employee Retirement Income Security Act of 1974 issue raised by Mr. Kidder's children. In the court's view, it was clear that although ERISA allows plans to waive spousal consent requirements when a participant has been married less than a year, it does not require that they do so.

I'm told that, when it comes to retirement accounts, the beneficiary form is the most important document there is. It takes precedence over prenuptial agreements, postnuptial agreements and even contrary instructions on who should inherit plan assets contained in a client's will. But the decision in the Kidder case makes it clear that when it comes to ERISA plans, the beneficiary form can be trumped by spousal rights.

All of us, as advisers, should make sure that clients with assets in ERISA plans are aware of the special rule requiring spousal consent in order to name their children (or any other non-spouse) as a beneficiary of that plan. Again, feel free to contact me if you'd like a copy of Ed Slott's article and newsletter info.

## WELCOME NEW MEMBERS

November 2012

### Active (9)

**Dennis P. Blake, Esq.**  
Madden & Madden, P.A.  
108 Kings Highway East,  
Suite 200  
Haddonfield, NJ 08033  
P: 856-428-9520

**Daniel Del Collo, IV, Esq.**  
Law Offices of Nancy M. Rice, Esq.  
1236 Brace Road, Suite F  
Cherry Hill, NJ 08034  
P: 856-673-0048

**David W. Edelman, Esq.**  
Spadea & Associates, LLC  
216 Haddon Avenue  
P.O. Box 535  
Westmont, NJ 08108  
P: 856-677-8740

**William F. Gill, IV, Esq.**  
Archer & Greiner, P.C.  
One Centennial Square  
Haddonfield, NJ 08033  
P: 856-354-2309

**James V. Milano, Esq.**  
900 N. Kings Highway,  
Suite 100  
Cherry Hill, NJ 08034  
P: 609-560-0031

**Jeremy Brett Rubin, Esq.**  
90 Snowflake Road  
Huntingdon Valley, PA 19006  
P: 267-294-4720

**Lawrence A. Sannicandro, Jr., Esq.**  
Goldman & Kramer  
103 Eisenhower Parkway  
Roseland, NJ 07068  
P: 914-907-0642

**Brian P. Stouffer, Esq.**  
Walter T. Wolf, LLC  
600 S. White Horse Pike  
Audubon, NJ 08106  
P: 856-310-9700

**Eric Wetzel, Esq.**  
Law Offices of Daniel I. Ward  
118 White Horse Road, West  
Voorhees, NJ 08043  
P: 856-566-6614

**Robert A. Wiygul, Esq.**  
Hangley, Aronchick, Segla,  
Pudlin, & Schiller  
20 Brace Road, Suite 201  
Cherry Hill, NJ 08034  
P: 215-496-7042

### Public Sector (1)

**Hon. Donald Stein**  
Office of Administrative Law  
9 Quakerbridge Plaza  
Trenton, NJ 08619  
P: 609-689-4054

### Law Students (1)

**Lisa Cunningham**  
107 West Central Avenue  
Moorestown, NJ 08057

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# A Frolicking Good Time at the Coastline

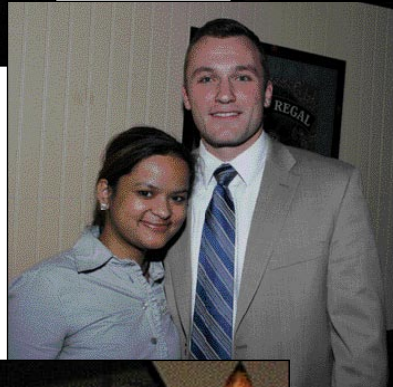
Bar members, their office personnel, family and friends gathered for another memorable evening of networking, camaraderie, and just plain fun at the Bar Foundation's popular "Fall Frolic" hosted by Dawn Mourtos and the Coastline in Cherry Hill. The Foundation thanks all who supported the event and the good that it will do for the underprivileged kids of Camden, with a special thanks to the Coastline for generously donating the bar and buffet. Enjoying the evening were:



Bob & Tina Tate, Allen Etish



Melanie Levan,  
Ellen & Gary McDowell,  
Erin Reddy,  
Karl Fredericks



Arupa Barua &  
Brian Stouffer



Linda Eynon &  
Joe McCormick



Michael Gaier, Partner in Progress  
Paul Dilks (Genworth), Paul Pflumm



Sharon McCarthy, Lou Moffa & Partner in Progress Rosie Tizzano  
(Susquehanna Bank)



Bruce Wallace,  
Karen Savage,  
Michelle Corea &  
Kevin Bothwell



Arnold Fishman & Judge Lario

# The Spirit of Giving Alive & Well in Camden County

## Annual Kid's Christmas Party another Success!

Saturday December 1, was a bright sunny December day as 225 disadvantaged kids from Camden arrived at The Coastline Restaurant in Cherry Hill for the Public Benefits Committee's annual Christmas breakfast and party with Santa.

Greeted by elves and volunteers of all descriptions, the kids were treated to a hearty breakfast, compliments of Dawn Mourtos and the Coastline staff who generously donated their time, food and facility for this annual holiday tradition.

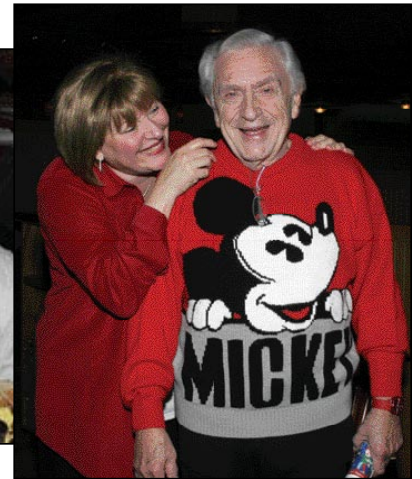
Special thanks to all of the volunteers who helped at the wrapping party and the party itself.



Elf Boguski



A little Christmas Goose to start the day!



Judicial Elves Colalillo & Vogelson



What's Christmas without a little magic?



The man of the hour spreads Christmas joy!



Elf Schwalbe



# PRESIDENT'S PERSPECTIVE

by Brenda Lee Eutsler

## Happy New Year!

Welcome to 2013! I hope our members and their families enjoyed the holiday season.

I also hope our fellow New Jerseyans who were displaced from their homes by Hurricane Sandy were able to celebrate their holidays in the warmth of the homes of their family members and friends.

In December, our members gathered to share some laughs, good food and holiday cheer at the Holiday Cocktail Party at Tavistock—a good time was had by all. Our members also showed the true spirit of the holidays in several ways. They assisted at the gift wrapping party and at the Children's Breakfast with Santa on December 1st at the Coastline where 225 children had breakfast, watched a magic show, saw Santa and received a gift. Foundation President, Linda Eynon, and I extend our sincere appreciation and gratitude to the Mourtos family and the Coastline staff for hosting the breakfast for over 25 years. Our members also adopted over 100 families from St. Joseph's Pro Cathedral Church in Camden so each family would have food for their holiday meal and gifts for every family member. Several members helped kick off our mentoring program by applying to be mentors with the Mentoring Institute and will soon be receiving their training through The Center for Family Services. CCBA is extremely blessed to have members who generously give of their time, talents and dollars to those less fortunate.

Please visit our website at [www.camdencountybar.org](http://www.camdencountybar.org) for upcoming events for the Association and our Foundation and for CLE seminars. A "CAN'T MISS" seminar is the 2013 Black Letter Criminal Law Blast moderated by Mike Pinsky on January 24th from 4 to 7:15 p.m. at Tavistock. The flyer for this seminar is enclosed with this month's Barrister. You should sign up early to be assured a seat.

I would be remiss if I did not briefly mention current affairs beyond CCBA. For the past several weeks, discussion of the "Fiscal Cliff" has been everywhere. The "Fiscal Cliff" describes the dilemma confronting the federal government at the end of 2012 when the terms of the Budget Control Act of 2011 were to go into effect unless government took action.

I do not know who penned the term "Fiscal Cliff" but every time I hear or read the term, I envision Lemmings jumping off a cliff into an abyss. As I write this article, it is unknown whether the President and Congress will jump off the cliff or find a way to "play nice together in the sand box." The situation is certainly a cliffhanger, but is the suspense popcorn worthy?!? We'll just have to wait and see.

I look forward to working with you in 2013 as CCBA continues to provide quality services and programs to our members and community services and fun-filled activities for the children of our county. See you soon—if I haven't been pushed off the cliff!



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# WINE & FOOD

By Jim Hamilton

Whether due to metabolic aging processes, an ever accelerating pace of life or global warming (a popular scapegoat), it seems the pages of our calendar flip at a rate fast enough to fan the flames of the fires we build and then struggle to contain. Where too recently we counted down the end of a century, we now face a year that will seem unduly long to your favorite triskaidekaphobic – 2013.

As we try to maintain our freshly minted resolutions, in Janus-like fashion we tend to look ahead to what the year may bring. To help put this into the context of wine, I once again reached out to a few knowledgeable wine buyers in our area to gain the benefit of their insight into what wine trends they expect to see and accommodate in the coming year.

Charlie Beatty of Wineworks envisions a continuation of the global production and distribution of wine. Thanks in part to the influence of wine critics now covering them more fully, good wines from countries like Greece, Portugal and Macedonia are available, often at reasonable prices. Emerging areas, in turn, are putting pressure on the established wine regions like Bordeaux, Italy and northern California. Speaking of Bordeaux, according to Charlie, the prices the top wines now command in an uncertain global economy have caused perhaps 95% of former buyers to search out other wine options. Charlie advises purchasers to find a wine retailer possessing a passion for wine to lead them to new values, and then to have an open mind to try something different as a complement to their dining experience.

Jeff Carroll of Joe Canal's in West Deptford believes that while value wines will continue to be sought after, there likely will be a further return of luxury wine buyers. Jeff also sees an expansion of wines from less well-known regions and grape varieties. He observes that while some customers are aware of wines made with the Mencia grape or that come from the Basque country, they are hardly mainstream. However, distributors continue to offer interesting wines for retailers to consider selling. Besides Greece and Macedonia, Argentinean wines from

beyond the established Mendoza region, e.g. Salta and Patagonia, are making their presence felt. The fact that national brands have popularized blends of different grapes has not been lost on smaller distributors, and Jeff anticipates this wine category will expand during the coming year.

Joe Huber runs the fine wine department at the Canal's on Rt. 38 in Hainesport. This store long has been a favorite destination for German wine fans, although the inventory is far more diverse. Joe tells us that a trend already underway that he expects will gain further momentum this year is looking outside the familiar wine regions such as Napa Valley, Bordeaux and Italy's Piedmont to regions where grapes can be grown and the wines sold at the sub-\$20 prices with which most consumers have become comfortable. In this category, Joe sees buying opportunities in California's central coast, north coast and Lodi regions. In France, he sees good value wines from the Languedoc and Roussillon regions of southern France. Having spent nearly three weeks in those regions last May, and being a fan of both the area and the wines produced, it is easy to predict this will be a popular wine region at a variety of price points. Joe sees importers of Italian wines looking to bring to market wines made from Piedmont's most famous grape, Nebbiolo, but from regions outside the more famous, and pricey, Barolo and Barbaresco communities. Joe believes we will be seeing more Nebbiolo wine from areas northeast of Piedmont, such as Carema and Ghemme.

Chris Zanzarella of Canal's Bottlestop on Rt. 70 in Marlton thinks wine retailers need to continue to capture the cross-over wine drinker who is just beginning to consider wine, rather than beer or liquor, as the beverage of choice. Chris feels many newer wine drinkers should be exposed to "gateway wines" which typically will be low in tannin and acidity and may have some residual sugar, all of which makes them very easy to drink. Some of the



wines Chris feels will capture these new fans include German Riesling, fruit-based wines from local wineries, off-dry California blends and Australian value entries. If presented with inexpensive versions of such accessible wines, Chris projects the continued trend in our country of gaining new wine drinkers will continue. Chris then envisions these newly minted wine customers will be eager to expand their horizons to other wine varieties and wine regions. Essentially, Chris believes that consumers who achieve a customer wine comfort level and then transition to wines that are more artisanal is a trend that will expand in the year ahead.

Chris observes how the recession has changed the way people buy wine. They are not spending less on wine, but rather less on each bottle of wine. As an example, Chris says that the person who may have bought six bottles of Silver Oak's Napa Valley bottling at \$90 per bottle now is buying twelve bottles of Frank Family Cabernet at \$40 per bottle. Thus, in Chris' view, wine drinkers are not necessarily limiting themselves to buying only inexpensive wine, but are looking to stretch their dollar further at all price levels. This trend is one Chris expects will continue even after the economy has fully recovered, since he believes the mindset of consumers desiring "great buys" has become engrained as they enjoy both the discovery and the exploration.

Chris thinks Portuguese table wines may be leveling in popularity, and that

## HOT OFF THE PRESS

# Appellate Division Limits GC's Duty of Care to Injured Employee of Subcontractor, Even in the Presence of an OSHA Violation

*Tarabokia v. Structure Tone, N.J. Super. Ct., Appellate Div. (Nov. 16, 2012)*



By William H. Tobolsky

## The Parties:

The defendant was the general contractor for an office building construction site. A standard AIA Owner - GC Agreement was used. Hatzel & Buehler

(H&B), one of the 20 largest electrical contractors, was hired as the electrical sub-contractor.

The plaintiff was an employee of H&B, hired out of the Union hall. He was directed, supervised and controlled solely by his employer, the sub-contractor.

## The Incident:

Plaintiff allegedly suffered permanent repetitive motion injuries<sup>1</sup> as a result of improper use of a power-actuated anchoring tool. This equipment was supplied to him by the sub-contractor. Though OSHA<sup>2</sup> regulations required protective anti-vibration gloves, none were supplied to the plaintiff either by his employer or by the defendant General Contractor. Plaintiff was trained and certified in the use of this equipment by a representative of the manufacturer of the equipment. This training was arranged by H&B. Employee received a card from the manufacturer signifying his completion of the training. In addition, weekly safety meetings were conducted by H&B throughout the duration of the work.

## Safety Procedures in Place:

The defendant BC was obliged by its contract with the project owner to designate an accident-prevention representative to provide for "all safety precautions and programs in connection with the performance of the contract." The GC prepared a site specific safety management plan, available for review by all subcontractors. The GC's safety officer had the authority to stop all work due to a safety concern until it was addressed and corrected. Extensive safety precautions and procedures were instituted and observed throughout the course of the project. However, the subs maintained complete direct control

of their own employees. The sub-contractor H&B provided plaintiff with a company safety handbook, and provided him with a safety orientation course. There was no evidence, so says the Court, to permit an inference that any blatant misuse of this or other equipment by employees of the subs was observable to the GC during the course of construction.

## The Negligence Claim:

Plaintiff employee sued defendant GC in negligence for damages arising from his bodily injury alleged to have been incurred through improper use of the equipment. In *Tabokia v. Structure Tone* (Nov. 16, 2012)<sup>3</sup> the N.J. Appellate Division denied plaintiff's claim, holding that as a matter of law the GC had no duty of care toward the plaintiff under these circumstances.

## The Decision:

**1. OSHA Violation** Although the GC is charged with overall non-delegable responsibility for OSHA compliance on the job site,<sup>4</sup> the violation of an OSHA safety regulation does not in and of itself, without more evidence, justify a finding of negligence of tort liability. *Alloway v. Bradlees, Inc.*<sup>5</sup> Rather, general negligence principles are applied. The existence of an OSHA violation is to be considered with other fairness factors to determine whether a duty of care should be imposed on the GC. *Costa v. Gacione*, 408 N.J. Super. 362, 372-73 (App. Div. 2009).

**2. General Rule of Immunity** At common law a GC was generally immune from the negligence of its sub-contractors.<sup>6</sup> The GC may normally rely upon the expertise of the sub.<sup>7</sup>

### 3. Exceptions to General Rule:

- when the GC controls "the manner and means" of how the sub does its work;<sup>8</sup>
- when the subcontractor is incompetent;<sup>9</sup> and,
- when the work to be done is sufficiently inherently dangerous as to constitute a nuisance *per se*.<sup>10</sup>

None of these factors was present. However, there is another, more general exception.

## Overriding Principle

Even if there is no "traditional" common law liability, the GC is not yet off the hook. "The more modern approach" employs an additional screening mechanism to GC immunity. The court must now identify, weigh and balance other relevant factors,<sup>11</sup> including (a) whether the general contractor knew or should have known (constructive knowledge) of the specific risk involved, *i.e.*, whether the harm (both its nature and severity) was foreseeable,<sup>12</sup> (b) the GC's actual knowledge of dangerous conditions,<sup>13</sup>

(c) the GC's "opportunity and capacity to take corrective action" and (d) public policy considerations ("an abiding sense of basic fairness" in light of all the circumstances, including the relationship of the parties, the nature of the risk, the opportunity to exercise case, and the public interest).<sup>14</sup> The actual knowledge of the risk of harm may in itself be dispositive in finding a duty of care.

The general contractor escaped liability in this case because it fulfilled its contractual safety procedures obligations, it did not have a close business relationship with the sub-contractor, it specifically allocated the various safety duties and responsibilities in work orders, it had no control of the selection of this equipment and the specific procedures used by the sub-contractor, it had not created or attempted to fix the problem, and the danger was not immediately apparent. No "active involvement in the sub-contractor's business" occurred. The facts did not permit an inference that the GC had actual knowledge of the risk of harm.<sup>15</sup>

## Criticism:

The decision is extremely fact dense. It sounds more like a deliberation finding that there was no evidence that a duty of care was breached rather than a legal decision that no duty of care existed. The more fancy way to say this is that the Appellate Division "conflates" the two issues of duty and breach. Does a legal duty exist? Or was the legal duty breached? This may be inevitable given the broad brush that *Alloway* provides to the Court to make a general "public policy" decision which

*Continued on Page 21*

# WINE & FOOD

Continued from Page 14

white wines from Greece are developing more of a following, in some cases replacing New Zealand Sauvignon Blancs in his customer's carts. If there are sleeper regions to look for in 2013, Chris agrees with others that Macedonia will be one, and he also expects Hungarian red wines will become more popular.

From a wine consumer's standpoint, many of us will be looking for wines that

continue to moderate the influence of oak on one's taste impression, particularly in white wines. Further, due in part to very successful vintages now available, we may find more wine bargains available from a number of established French wine regions, particularly the southern Rhone and satellite regions of Bordeaux. If the country weathers its monetary plight, it may be reasonable to expect Spain will continue to offer us excellent values, particularly from regions beyond established ones such as

Rioja, Ribera del Duero and Priorat. Perhaps we will see more offerings from Rueda, Rias Baixas, Ribeiro, Alicante and the vast La Mancha region. The hunt for value likely will continue to play a big role in the coming year, and at all price levels. Meanwhile "trophy" wines once available only to mailing list customers seem increasingly to be finding their way to fine wine stores. Well, the crystal ball is filled with projections, but so, too, are the column inches I've already exceeded. Happy New Year!



## LEGAL BRIEFS

We rely on members to provide announcements for the Legal Briefs section. If you have a new member of the firm, you've moved or you or a member of your firm has received an award or recognition for a professional or community activity, we want to know and share it with fellow bar members. Please email your submissions to [lbp@camdencountybar.org](mailto:lbp@camdencountybar.org).

Archer & Greiner Chairman **James H. Carll** was honored last month at an event benefitting the Rutgers University Alfredo Santiago Endowed Scholarship, which provides financial assistance to graduates of the LEAP Academy University Charter School in Camden who enroll full-time at one of Rutgers University's three campuses.

Among his myriad activities in civic and community causes and organizations, Mr. Carll serves as Chairman of the Board of Trustees of PENJERDEL, a tri-state organization of business leaders, and Chairman of the Board of Trustees of the New Jersey Academy for Aquatic Sciences, an education, science and community

outreach organization. Mr. Carll specializes in the practice of corporate law, with a special emphasis on complex business transactions.

Archer & Greiner P.C. and the law firm's employees raised \$12,755 for the American Red Cross (ARC) Hurricane Sandy relief effort. In addition, employees donated supplies such as blankets, cleaning products and personal hygiene items. The proceeds were presented to ARC by Archer & Greiner Partner **Angela Titus McEwan**, Vice Chair of the local ARC chapter; firm Chairman **James H. Carll**; and Partner **John C. Connell**, past chapter Chair.

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# Back in the Day

By Hon. Richard S. Hyland (ret.)

While in law school I could have never imagined the variety of matters I would handle in my practice. For instance, in 1962 I was appointed as the receiver of rents for the Wilson Motel by Judge John Wick in a mortgage foreclosure proceeding in the Camden County Chancery Division. He was a fine Judge and was said to be “sometimes right, some times wrong, but never in doubt.”

The motel was located on the south side of Admiral Wilson Blvd. between the Baird Ave. overpass and the Pub which still survives with basically the same menu and ambience since about 1950. On the north side in a row were new car dealers such as Dave Cole Pontiac, Merlin Lincoln and Mercury, Berglund Ford and Rohrer Chevrolet, as well as some “used” (today’s euphemism, “pre-owned”) car dealers like Art Sharp. Our Wes Manuel and my law school classmate worked there and absorbed enough to become a top defense lawyer in auto products cases.

My job was to collect the daily rentals and see to it I got an “honest count” in what was basically a cash business for obvious reasons. A C.P.A. friend suggested I count the used sheets every morning against the room registrations as a test. This was unappetizing and not the way I wanted to start my day so I instituted other methods. The manager said on Saturday nights there was a 125 occupancy rate and it didn’t take me too long to figure out how the same room could

be used twice on the same night. The lowest rate was Sunday night which he cynically called “family” night.

Things ran smoothly except when New York football Giants fans trashed our rooms after they lost a playoff game that was “blacked out” on NYCTV, but carried on a Philly station and seen in our rooms. I didn’t like them then and still don’t now! The motel and adjacent



buildings are no longer there, courtesy of Gov. Christy Whitman’s beautification program to impress delegates to the Republican convention held in Philly some years ago. Louis Auchincloss was the finest writer about our profession and wrote about the monied society of NYC and their Wall St. lawyers. He was also a partner in the preeminent bond firm of Hawkins Delafield and Wood. Sometime in 1970 I was sitting in its reception area when a distinguished man approached the receptionist who said; “Mr. Auchincloss you have a call from your publisher,” a message I was

unlikely to hear in a Camden law office. I was there for a meeting that morning with bond counsel and consultants in my capacity as counsel for the South Jersey Port Corp. which was to issue bonds for the improvement of the Camden port. After the meeting we all went to a swanky private club with a beautiful view of New York harbor, and the others then lubricated themselves with their customary “3 martini Lunch.” In his 1976 campaign, Jimmy Carter demonized it as a special “tax break” that only the affluent enjoyed. In 2012, Pres. Obama used the same ploy, only this time about private corporate jets. On the returning train that day I reflected that I had been in a different legal world, far removed from having lunch at Shirley’s on Market St.

Later in my career I was retained as local counsel for a giant Japanese electronics firm in an intellectual property dispute in the Federal Court in Camden with another comparable Japanese company. My job was to introduce counsel pro hac vice and get them to lunch if necessary. When I got to the Courthouse, my group unexpectedly consisted of about a dozen, mostly executives so there was no way I could “shoe horn” them into Shirley’s or the corner taverns. I concluded the only place left was the Rutgers Law School cafeteria, so I led my entourage across Cooper St. and we looked like the lone goose leading a gaggle across a road.

When we got to the campus I saw rows and rows of chairs and people gathering, and realized I had stumbled onto the graduation ceremony. The people looked confused and were probably wondering what these Japanese guys led by a short white guy had to do with the graduation. Of course, the cafeteria was now closed because of graduation, but while in a state of near panic, I saw the snack stand being closed too and ran over hollering “No!”

It stayed open and my group cleaned out all of its sodas, candy bars and snacks that weren’t nailed down. The next day in my office I was mulling over how all of this went down, and I then got an e-mail from one of the guys thanking me profusely for taking him to the stand. It seems his daughter in Japan was crazy about a certain candy bar he couldn’t find in all his international travels until he got to Camden.

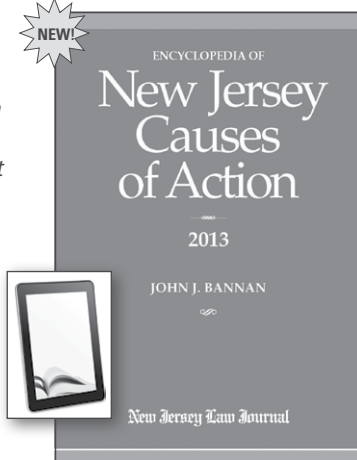
Have a Happy and Healthy New Year! I enjoy receiving any feedback, so please send your comments to me at rhylandatlaw@aol.com.

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## CRIMINAL

# Emergency-aid and Community-caretaking Exceptions to the Warrant Requirement

## *Firearm seized during domestic violence investigation found inadmissible*

By Assistant Deputy Public Defender Igor Levenberg

The investigation of domestic violence is one of the most common causes of warrantless police entry into a home. Such entry is usually justified by the emergency-aid and community-caretaking exceptions to the warrant requirement. On July 26, 2012, the New Jersey Supreme Court changed the analysis for the emergency-aid exception and appeared to narrow the circumstances where the community-caretaking doctrine will allow police to enter a home without a warrant. In *State v. Edmonds*<sup>1</sup>, the court held that it is no longer necessary to address an officer's subjective intent in an emergency-aid analysis. The court also sought to align its community-caretaking jurisprudence with that of the Third Circuit, which does not view the community-caretaking doctrine as justifying warrantless searches of a home in most instances.

In *Edmonds*, the police received a 911 call from a person who identified himself as "John Smith" and reported that his sister was being abused by her boyfriend, who also had a gun. The caller did not leave any contact information and was never heard from again. When police arrived at the scene they were met outside by the alleged victim, who was not injured and claimed that the only other person in the apartment was her eleven-year-old son. She refused to give consent for the police to enter her apartment. The police entered the apartment anyway. They found the eleven-year-old unharmed and no signs of a domestic disturbance. However, they also found the defendant sitting on a chair watching the television. They patted him down for weapons but none were found. While two officers secured the defendant, a third searched the area where the defendant had been sitting. A handgun was found under a pillow.

Before *Edmonds* the emergency-aid analysis consisted of the three-part test in *State v. Frankel*:<sup>2</sup> (1) an objectively reasonable basis to believe that immediate assistance is necessary to preserve life or prevent injury, (2) the primary motivation for entry must be to render assistance, not to find and seize evidence, and (3) there must be a reasonable nexus between the emergency and the area to be searched. The *Edmonds* court held that inquiry into the officer's subjective intent

is no longer necessary. The justification for this change was to align New Jersey law with federal jurisprudence in the wake of the United States Supreme Court's decision in *Brigham City v. Stewart*<sup>3</sup>, which held that an officer's subjective intent is irrelevant in the emergency-aid context. Interestingly, the court noted that "Frankel made no distinction between federal and state law in addressing the contours of the emergency-aid doctrine."<sup>4</sup> This tends to indicate that in the emergency-aid context the New Jersey Supreme Court does not view the New Jersey Constitution as providing any protections above and beyond those provided by federal law.

Despite the more permissive emergency-aid standard announced in *Edmonds*, the court still found that the firearm should be suppressed. The officers were justified in entering the apartment in order to verify that the child was safe and because "victims of domestic violence are not always forthcoming with police."<sup>5</sup> However, the *Edmonds* court endorsed the trial court's position that the police must exercise a "certain level of diligence" before searching a home without a warrant. There was no longer an emergency which would justify a warrantless search of the home once the police had verified the child was safe, there was no evidence of a domestic disturbance, and the defendant was unarmed.

The fact that the quasi-anonymous 911 caller alleged the presence of a gun was simply not enough to overcome the privacy interests of the home, which "are entitled to the highest degree of respect and protection in the framework of our constitutional system."<sup>6</sup> Even if the caller had not been functionally anonymous, or if he had told the police the specific location of the firearm in the apartment, the court would have probably suppressed the gun. A reliable source would have probably created probable cause to obtain a warrant, but not to enter or search the apartment under the emergency-aid exception. The rule appears to be quite simple; the police need a search warrant once the emergency is over.

The *Edmonds* court also sought to clarify its community-caretaking jurisprudence in light of the Third Circuit's decision in *Ray v. Township of Warren*,<sup>7</sup> which held that "[t]he community-caretaking doctrine cannot be used to justify warrantless searches of a

home."<sup>8</sup> This is seemingly inconsistent with the New Jersey Supreme Court's ruling in *State v. Bogan*<sup>9</sup>, where police entry into a home was permitted under the community-caretaking exception. In *Bogan*, police arrived at a home that was reported to have been the scene of a sexual assault earlier in the day. A child opened the door and there did not appear to be any adults present. Police were allowed to enter the apartment under the community-caretaking exception in order to verify that the child was safe and to locate his guardians.

The court explained that *Bogan* was consistent with *Ray* because the Third Circuit acknowledged that "circumstances involving the protection of a child's welfare ... may present an exigency permitting warrantless entry, but only if the officer reasonably believes that 'someone is in imminent danger.'"<sup>10</sup> This explanation dovetails nicely with *State v. Kaltner*<sup>11</sup>, where the court held that the community-caretaking exception requires courts to balance the nature of the intrusion, the seriousness of the underlying harm to be averted, and the relative importance of the community-caretaking concern.

The *Edmonds* court's interpretation of *Bogan* tends to indicate that the community-caretaking doctrine should be narrowly construed. Warrantless entry into a home is permitted where it is necessary to protect a child's welfare, and presumably in other similarly exigent circumstances. However, the court's discussion of *Kaltner* appears to allow entry in a wider set of circumstances. In *Kaltner*, the police entered a home in response to a noise complaint. Once inside they searched the house and found drugs on the third floor. The state tried to justify the search under the community-caretaking doctrine. The *Edmonds* court stated that in *Kaltner* "the officers' initial entry into the house to abate the noise was within their role as community-caretakers."<sup>12</sup> However, community-caretaking was never an issue with regards to the initial entry. The police in *Kaltner* gained entry by consent.<sup>13</sup> It is not clear what to make of this seeming contradiction.

*Edmonds* also leaves open the possibility that inquiry into a police officer's subjective motivation for entering a home might be appropriate in a community-caretaking analysis. Although the analysis in both

*Continued on next Page*

## VERDICTS OF THE COURT

Superior Court of New Jersey

VERDICT: Damage Verdict: \$20,000 Against Defendant under HI-LD agreement, Liability Verdict: Stipulated Against Defendant (11/9/12)  
 Case Type: Auto  
 Judge: George S. Leone, J.S.C.  
 Plaintiff's Atty: Christian Pemberton, Esq.  
 Defendant's Atty: Everett Simpson, Esq.  
 L-110-11 Jury

VERDICT: No Cause Damage Verdict Against Defendant SO (11/15/12)  
 Case Type: Personal Injury  
 Judge: Lee A. Solomon, J.S.C.  
 Plaintiff's Attys: Sal Daidone, Esq. and J.P. Reilly, Esq.  
 Defendant's Atty: Michael Dorsey, Esq.  
 L-455-10 Jury

VERDICT: No Cause (11/16/12)  
 Case Type: Auto Negligence  
 Judge: John A. Fratto, J.S.C.  
 Plaintiff's Atty: David K. Cuneo, Esq.  
 Defendant's Atty: Robert M. Kaplan, Esq.  
 L-6030-10 Jury

VERDICT: No Cause Damage Verdict: Molded to a Judgment for Plaintiff for \$1710.50 plus filing fees (11/16/12)  
 Case Type: Auto Negligence  
 Judge: George S. Leone, J.S.C.  
 Plaintiff's Atty: Mark Nathan, Esq.  
 Defendant's Atty: Jennifer Hinderman, Esq.  
 L-2909-10 Jury

VERDICT: No Cause (11/28/12)  
 Case Type: Auto  
 Judge: Deborah Silverman Katz, J.S.C.  
 Plaintiff's Atty: David S. Bergstrahl, Esq.  
 Defendant's Atty: Robert M. Kaplan, Esq.  
 L-4446-10 Jury (7)

## NJSBA UPDATE

### Throw the Book at Him

Continued from Page 5

the huge amount of fines, surcharges, and penalties involved, the suspension of a drivers license for anywhere from three months to 40 years\* is a crippling blow. Here in South Jersey where public transportation is meager and employment opportunities scarce, such a penalty forces people to violate the law and drive during their period of suspension. Many of these people are caught and their period of suspension substantially increased. These people will never again be able to lead a normal existence. Their employability and capacity to care for themselves and their families are destroyed.

All of this has led to a growth industry: trying to get people their licenses back. It started with the common practice of sophisticated DWI practitioners examining the prior convictions of persons they are currently defending on similar charges, to see if they are vulnerable to being vacated.

Now, people who have no matters presently pending are seeking to advance their restoration-eligibility date. In spite of the shoddy way some of these convictions were imposed, Courts are loath to interfere with the finality of judgments, and will go to great lengths to sustain them from collateral attack in an application for Post Conviction Relief. Even so, because the consequences are so severe, a growing cadre of people are willing to make the investment on the outside chance they will get lucky and prevail.

Criminal sentences serve three purposes—rehabilitation, deterrence, and punishment. These people are by and large completely rehabilitated and, but for the punitive aspect of their sentence, deserving of the removal of this albatross they bear. As to deterrence, people addicted to a substance give little thought to the consequences of its use. I would propose to our legislature that the Motor Vehicle Commission

be vested with the power to provisionally, and with whatever restrictions it deems appropriate (i.e. random testing, interlock device, support group attendance, etc.), to restore the driving privilege of any person making the proper showing of rehabilitation before the period of suspension has been fully served. The parole system has been successful in incentivizing the perpetrators of the most heinous crimes to better behavior. The applicants should have to establish by clear and convincing proof that they do not pose a threat of recidivism. The knowledge that this is a possibility would be a great incentive to this army of struggling people to take control of their lives, which after all is what society is trying to accomplish. Isn't it?

Send comments to:  
[arnold@fishmanandfishmanlaw.com](mailto:arnold@fishmanandfishmanlaw.com)

\* A third DWI and Refusal in a school zone.

## Emergency-aid and Community-caretaking Exceptions to the Warrant Requirement

Continued from previous Page

*Bogan* and *Kaltner* was whether the police conduct was "objectively reasonable," the Third Circuit was clear that an officer must "reasonably believe" there is an imminent danger in order to enter a home.

Ultimately, the facts in *Edmonds* easily satisfied the community-

caretaking exception. The police were responding to a report of domestic violence. During the course of their investigation they learned that a child might be involved and in danger. This justified entry into the home under the community-caretaking exception. However, it did not justify a warrantless search of the apartment once

the police had fulfilled their community-caretaking function.

<sup>1</sup> 211 N.J. 117 (2012).

<sup>2</sup> 179 N.J. 586, cert. denied, 543 U.S. 876, 125 S. Ct. 108, 160 L. Ed. 2d 128 (2004).

<sup>3</sup> 547 U.S. 398, 404-05, 126 S. Ct. 1943, 1948, 164 L. Ed. 2d 650, 658 (2006).

<sup>4</sup> *Edmonds*, 211 N.J. at 133.

<sup>5</sup> *Id.* at 140, quoting *Wildoner v. Borough of Ramsey*, 162 N.J. 375, 392-93 (2000).

<sup>6</sup> *Id.* at 129, quoting *State v. Evers*, 175 N.J. 355, 384 (2003).

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Prior to joining the bench, Judge Uhrmacher served as the Chief of the Civil Division of the U.S. Attorney's Office for the District of New Jersey. Additionally, she was Attorney-in-Charge of the Trenton U.S. Attorney's Office, and appointed to a Senior Litigation Counsel position. She also served as an Assistant U.S. Attorney for the District of New Jersey.

Throughout her career, Judge Uhrmacher has been active in Teaching and Continuing Legal Education programs. Currently, she serves as Chair, Haydn Proctor Inn of Court, Monmouth County and will be teaching a Trial Advocacy course in the Fall.

Judge Uhrmacher has received consistently high ratings from attorneys appearing before her in each of the New Jersey Law Journal surveys of the Judiciary.

Judge Uhrmacher received a JD from the University of Texas at Austin and a BS from Simmons College, Boston, Massachusetts.

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**Appellate Division Limits GC’s Duty of Care to Injured Employee of Subcontractor, Even in the Presence of an OSHA Violation**

*Tarabokia v. Structure Tone, N.J. Super. Ct., Appellate Div. (Nov. 16, 2012)*

*Continued from Page 15*

overrides the traditional common law rule of immunity and its three recognizable and specific exceptions. The factors to be considered in the “more modern” approach are in some instances vague and ambiguous.

It is difficult to conclude that a jury could not find that the GC was aware of safety violations when the plaintiff’s failure to wear protective gloves was clearly observable by

anyone in the area, including the GC’s safety inspectors. Moreover, a jury could find from the mere existence of the OSHA violation that the GC breached a duty of care. A more predictable and principled method to resolve these issues is either to return to the general rule of immunity subject to the three relatively uncomplicated exceptions, or to find that a duty exists on the GC in all cases and let the jury decide.

<sup>1</sup> Multiple level polyneural compression syndrome.  
<sup>2</sup> 20 CFR § 1926.302(e).  
<sup>3</sup> A-3822-11T2, 2012 N.J. Super. LEXIS 180 (approved for publication).  
<sup>4</sup> 29 C.F.R. § 1926.16(a).  
<sup>5</sup> 157 N.J. 221, 236 (1999); *Costa v. Gaccione*, 408 N.J. Super. 362, 372-73 (App. Div. 2009).  
<sup>6</sup> *Muhammad v. N.J. Transit*, 176 N.J. 185, 198-99 (2003).  
<sup>7</sup> *Accardi v. Enviro-Pak Sys. Co.*, 317 N.J. Super. 457, 463 (App. Div.), certif. denied, 158 N.J. 685 (1999).  
<sup>8</sup> *Muhammad, supra*, 176 N.J. at 198.  
<sup>9</sup> *Majestic Realty Assocs., Inc. v. Toti Contracting Co.*, 30 N.J. 425, 431 (1959).  
<sup>10</sup> *Majestic Realty Assocs., Inc. v. Toti Contracting Co.*, 30 N.J. 425, 431 (1959).  
<sup>11</sup> *Alloway, supra*, 157 N.J. at 230.  
<sup>12</sup> *Carey v Lovett*, 132 N.J. 55, 57 (1993).  
<sup>13</sup> *Alloway, supra*, 157 N.J. 231-32.  
<sup>14</sup> *Hopkins v Fox & Lazo Realtors*, 132 N.J. 426, 439 (1993); *Alloway, supra*, 157 N.J. at 230.  
<sup>15</sup> Compare, *Carvalho v. Toll Brothers and Developers*, 143 N.J. 565, 571, 72 (1996)(imposing duty of care on the GC).



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The Probate & Trust Committee's CLE Luncheon presented its **11th Annual Forum: Hot Trends in Probate Litigation** at Tavistock. Program presenters **Steve Mignogna** (L) and **Tony LaRatta** (R), both with Archer & Greiner, with Probate & Trust Committee Co-Chair **Glenn Henkel** and Association President **Brenda Eutsler**.



Surrounded by students at Sacred Heart School in Camden and Bar Association President Brenda Eutsler, Bar Foundation President Linda Eynon presented a \$1,000 check to Sister Karen Dietrich. The Bar Foundation grant supports the Catholic Partnership Schools **iPad Project** to allow students to have access to the latest technology.

Catholic Partnership Schools serve the children of Camden by providing quality, student-centered academic programs defined by faith-based values, and a nurturing environment to inspire and prepare students for rigorous college-preparatory high schools and technical schools.

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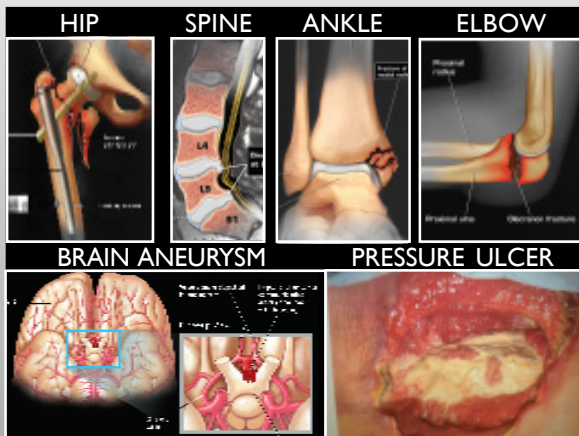
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