



Coat Giveaway

Thanks to the generosity of many Association members and Forman Mills, the holidays came early for more than 100 Camden Elementary School students who received warm winter coats just in time for the cold weather ahead.

The first round of the coat distribution took place in early December at five Camden Elementary schools with additional schools to be visited.

(Back row, l-r) H.B. Wilson Vice Principal Janna Johnson, Association President Gary Boguski, Wilson Principal Andrew Bell, Rev. Floyd White and Foundation President Lou Lessig posed with students who proudly showed off their new coats.

Coats were also distributed to students at Whittier, Davis, Sumner and Hatch Elementary Schools.

Retired Superior Court Judges to Receive the Hon. Peter J. Devine Award



Judge Eynon



Judge Hyland



Judge Mariano

Recipients to be honored at January 22nd Cocktail Party

Retired Superior Court Judges David G. Eynon, Richard S. Hyland and John B. Mariano have been named recipients of the Association's 2013 Honorable Peter J. Devine, Jr. Award. The award will be presented at an upscale Cocktail Party in their honor on Wednesday, January 24th at Tavistock Country Club in Haddonfield.

Established in 1981 to remember and honor 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.

This year's award presentation features a three-hour upscale cocktail party with food stations and a cash bar. The awards will be presented during a brief formal program.

Reception reservations are \$65 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*. Spouses and friends are welcome and encouraged to attend.

Don't miss this opportunity to congratulate and thank these three distinguished colleagues and friends for their commitment to the Camden County legal community and the community at large.

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Association Officer and Trustee Nominations Open

We're Looking for YOU!

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 and the legal community.

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.

To that end, the Association Nominating Committee is seeking nominations for the offices of president-elect, first vice president,

(Continued on Page 8)

THE DOCKET

Wednesday, January 8th

Debtor Creditor Committee Lunch

Noon – 2 pm

Tavistock Country Club, Haddonfield

Thursday, January 9th

2014 Black Letter Blast on Criminal Law

4 – 7:15 pm

Tavistock Country Club, Haddonfield

Tuesday, January 14th

Class Action Committee CLE Luncheon

Noon – 2 pm

Bar Headquarters, Cherry Hill

Wednesday, January 15th

CCBA Board of Trustees Meeting

4 pm

Bar Headquarters, Cherry Hill

Wednesday, January 22nd

Hon. Peter J. Divine Award Presentation

6 – 9 pm

Tavistock Country Club, Haddonfield

Tentative agenda for January 15, 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

Save the Date & Let the Games Begin!

The Tasting Games!

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BANKRUPTCY CORNER

A Cautionary Tale: The Trustee's Sale of Property with No Equity

By Ellen McDowell

It has long been understood by bankruptcy lawyers in New Jersey that if there is no non-exempt equity in real estate owned by the Debtor there is no risk that a Chapter 7 trustee will attempt to sell that real estate. After all, what would be gained if the trustee were to do so?

A recent opinion by the United States Court of Appeals for the Fourth Circuit must cause debtors' attorneys to rethink this longstanding concept and reconsider the advice we give our clients who wish to discharge their debt in a bankruptcy proceeding.

Let's begin with the basics: John and Joan Debtor walk into your office and report owning a home worth \$250,000. The mortgage balance is \$160,000. The mortgage is current, but the Debtors have \$50,000 in credit card debt and they are being sued to collect one of their credit card bills. There is also a federal tax lien against the property for \$25,000. The Debtors are working on entering into an agreement with the IRS to repay the tax obligation but would very much like to keep their home so that their two teenage children can continue to attend high school in their home town.

The analysis we would generally employ in advising Mr. and Mrs. Debtor is as follows:

| | |
|---|-----------|
| Fair Market Value of Home | \$250,000 |
| Costs of Sale to the Trustee (assume 10%) | 25,000 |
| Balance | \$225,000 |
| Mortgage balance | 160,000 |
| Federal tax lien balance | 25,000 |
| Balance | \$ 40,000 |
| Exemptions under 11 U.S.C. §522(d)(1) | 43,250 |
| Balance available for distribution to creditors | \$ 0 |

Under this fact pattern, we would typically advise the Debtors that upon filing a Chapter 7 petition the trustee would not have any interest in their home because there is no non-exempt equity available to pay creditors if he/she sells the property. Accordingly, the trustee would be expected to "abandon" the property, which simply means that he/she would notify the Court and creditors that he/she is declining to administer this asset, leaving intact the interest all parties had in the property outside of bankruptcy. This would result in the Debtors' retention of their home, provided that they continue to honor their contractual obligations to the mortgage holder.

While the analysis described above has been reliable and consistent for many years, as a result of the recent decision in *Reeves v. Calloway*, 2013 U.S. App. LEXIS 23358 (4th Cir. Nov. 20, 2013), Debtors' counsel must now be more cautious concerning the likely outcome of their clients' bankruptcy cases as it relates to the retention of their property.

In *Reeves*, the fact pattern was similar to the one described above, except that the Debtors resided in North Carolina and utilized the North Carolina exemptions for the interest in their home instead of the federal exemptions. The actual numbers as reported in the opinion were as follows:

| | |
|---|-----------|
| Fair Market Value of Home | \$325,000 |
| Costs of Sale to the Trustee (assume 10%) | 32,500 |
| Balance | \$292,500 |
| Mortgage balance | 195,500 |
| Federal tax lien balance | 382,300 |
| Balance | \$ 0 |
| Exemptions under N. Carolina law | 60,000 |
| Balance available for distribution to creditors | \$ 0 |

Just as in the example above, there seemed to be no reason for the trustee to attempt to sell the Debtors' residence as there would be no proceeds of sale available for unsecured creditors if the property were sold. However, the Chapter 7 trustee found a way to generate cash from the property to pay creditors and sought to sell the home as a result.

Specifically, the Chapter 7 trustee in the *Reeves* case negotiated an agreement with the IRS which provided that if the home were sold, the government would permit a portion of the proceeds of sale otherwise collectible by the Agency to be distributed to the trustee as a "carve out" so the general unsecured creditors (and the trustee) could be paid a dividend. Based on this agreement, the trustee petitioned the Bankruptcy Court to sell the property.

Understandably, the Debtors objected. They argued that because they had claimed their \$60,000 exemption under North Carolina law, the entire property was exempt and the property was no longer available to the trustee as an asset of the estate. The Debtors lost that argument in the Bankruptcy Court and again in the District Court. They did not fare any better at the Fourth Circuit.

The Court of Appeals affirmed, holding that the Debtors' home was property of the estate under Section 541 of the Bankruptcy Code and that under Section 522, only that portion of the property specified in the particular subsection exempting property was exempt, not the entire asset. Since the North Carolina statute clearly limited the Debtors' exemption to a fixed dollar amount of \$30,000 apiece, only that portion of the equity in the home was exempt, not the entire asset. Accordingly, the Court agreed with the Bankruptcy Court and District Court that the trustee's request to sell the property to generate funds to pay the Debtors' unsecured creditors should be granted.

Why is *Reeves* a big deal for debtors' lawyers in New Jersey? Because this decision could fundamentally change our practice.¹ For years debtors have been able to exercise their rights to obtain a discharge from their debts under the Bankruptcy Code without the frightening prospect of losing their homes. Now there can be no such certainty. Indeed, bankruptcy lawyers must now advise their clients that there is no guarantee that the trustee will not attempt a sale.

While it may seem that the facts of *Reeves* are unusual and the holding not applicable to many cases, it can be posited that any case in which a debtor owns property is now subject to a trustee's heightened scrutiny. Why? Because while it was the IRS who approved a carve-out for unsecured creditors in *Reeves*, trustees may now attempt to negotiate with other secured creditors to achieve similar results. For instance, what if the trustee negotiates a short sale with a mortgage company and obtains a \$10,000 carve-out from the mortgage lien upon sale? Will this become standard practice in Chapter 7 cases?

Debtors who are advised that there is no guarantee that the trustee will not attempt to sell their homes are arguably less likely to take their chances in a Chapter 7. Perhaps the upshot of *Reeves* is that more debtors will opt to file Chapter 13 cases or, tragically, to live with the stress of coping with overwhelming unsecured debt rather than risk uprooting their families. Only time will tell what the true effect of this decision will be.

¹ While *Reeves* is not precedential in New Jersey its holding is based on Supreme Court and Third Circuit precedent and would very likely be adopted here.



PERSONAL INJURY LAW

Limitations on Litigation Special Needs Trusts

By Thomas D. Begley, Jr., CELA

Many clients who receive personal injury settlements are receiving important public benefits, such as SSI and Medicaid. SSI is an income stream that pays an individual monies intended to be used for food and shelter. For 2013, the maximum federal benefit rate is \$710. In New Jersey, there is a state supplement of \$31.25.

Medicaid pays for medical and pharmaceutical services for Medicaid recipients. It covers services that private insurance will not provide, including (and most importantly) home care. Both the SSI and Medicaid programs have an asset limit of \$2,000. This means that if the individual receiving SSI and Medicaid receives a personal injury settlement, he or she will be ineligible for both SSI and Medicaid unless the funds are deposited in a special needs trust.

How Do These Trusts Work?

Generally, the purpose of special needs trusts is to provide financial support to the personal injury victim for the rest of his or her life. *Monies must be expended solely for the benefit of the trust beneficiary in a judicious manner to ensure that ALL of the needs of the trust beneficiary are met over the beneficiary's lifetime.* Many families of personal injury victims feel that the entire family has been affected by the personal injury and look at the money being received as a family bank account. Courts, on the other hand, are very strict in their views that the money belongs only to the minor or incapacitated person and should last for the lifetime of that individual. Professional trustees, generally,

try to limit distributions from the trust to 4% to 5% of trust assets so that the funds will be available over the beneficiary's lifetime to meet all of the beneficiary's needs.

If distributions from a trust benefit persons other than the minor or incapacitated person, the other family members must pay their share. Courts are particularly concerned about families who act like lottery winners and want to immediately upgrade their standard of living well over and beyond what it had previously enjoyed and what is required for the benefit of the personal injury victim. Courts want to guarantee that the trust can afford these expenditures while still insuring that money will be left to meet all of the trust beneficiary's needs for the remainder of that trust beneficiary's lifetime.

Rules

"Sole Benefit Of" Rule

The most difficult concept for families of persons with disabilities to understand is the "sole benefit of" rule. When Congress authorized special needs trusts to hold personal injury settlements for SSI/Medicaid recipients, Congress stated that the funds in the trust could only be used for their sole benefit. In both New Jersey and Pennsylvania, State Medicaid Agencies require that if any other family member benefits from a distribution from the trust, the other family member or members must pay a pro rata share (their share of the benefit).

Payback

Upon the death of the Medicaid recipient, any funds remaining in the trust must be repaid to the State Medicaid Agency or Agencies that provided Medicaid benefits to the recipient during his or her lifetime. If there is insufficient money left in the trust to pay the lien, then any excess is forgiven. (It is noteworthy that, if there is a family-occupied home owned by the trust, the home is subject to being sold in order to pay off the financial obligation to the public welfare agency.) If there is excess money left in the trust over and above the Medicaid lien, then the Medicaid recipient can designate who shall receive the balance.

Distributions to Providers

Distributions must be made to the third party who provides goods and services to the SSI/Medicaid beneficiary. Distributions cannot be made to the SSI/Medicaid recipient. Any distribution of cash to the SSI/Medicaid recipient would reduce the SSI payment dollar-for-dollar, and if the distribution exceeds the federal SSI benefit, then SSI would be lost and in those cases where Medicaid is linked to SSI, Medicaid would be lost as well.

In-kind Support and Maintenance

SSI is intended to provide recipients with monies for food and shelter. If anyone else, including a special needs trust, pays for food and/or shelter for the trust beneficiary, then this is called "in-kind support and maintenance" or "ISM" and the SSI payment may be reduced by up to \$256.66.

Special Opportunities and Problems

Home

If the trust is to purchase the home, a rule of thumb is that courts and trustees generally will not approve more than 10% to 15% of trust

(Continued on Page 8)



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

Planning for Tax-deductible Alimony

The following was part of the handouts from Marty Abo's presentation to the Society of Financial Service Professional's seminar on divorce planning. The full handout is available by so requesting at www.aboandcompany.com.

Background

When divorce occurs, one ex-spouse is often obligated to make continuing payments to the other. Payments that meet the tax-law definition of *alimony* can be deducted by the payer for federal income tax purposes, and they must be reported as gross income by the recipient. More specifically, payments that qualify as deductible alimony can be written off above-the-line, and the resulting tax savings can provide at least some comfort to financially stressed-out payers.

Tax-law Requirements for Deductible Alimony

Whether payments qualify as tax-deductible alimony is determined strictly by the applicable language of the Internal Revenue Code and related regulations. It doesn't necessarily matter what the divorce decree might say or what the divorcing couple might have intended. [The one exception to this is when the divorcing individuals stipulate that amounts that otherwise qualify as deductible alimony won't be deducted by the payer or included in the payee's gross income.]

As mentioned earlier, payments to an ex-spouse that do not meet the tax-law definition of alimony will generally be considered child

support or part of the division of marital property. Of course, it's also possible (although unlikely) for payments that are not intended to be alimony to meet the tax-law definition, in which case they are deductible by the payer and taxable income to the recipient. In any case, for a particular payment to qualify as deductible alimony for federal income tax purposes, all the following requirements must be met for that payment.

1. *Written Instrument.* The payment must be made pursuant to a written divorce or separation instrument. This includes a divorce decree, separate maintenance decree, or separation instrument. Under a separate maintenance decree, the couple is considered legally separated, but the marriage is not yet legally dissolved. However, this status is equivalent to being divorced for tax-law purposes. Under a separation instrument, the couple's marital rights are settled in advance of a divorce decree or a separate maintenance decree. Other written court orders and decrees (such as temporary support orders that cover the time after a divorce petition is filed, but before divorce or legal separation occurs) also qualify as divorce or separation instruments. For example, "temporary alimony" payments pursuant to temporary support orders can qualify as deductible alimony if all the other requirements are met.

2. *To or on Behalf of Spouse or Ex-spouse.* The payment must be to or on behalf of a spouse or ex-spouse. Payments to third parties,

(Continued on Page 6)

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To learn more or to receive any of the above, please contact by phone, fax or e-mail:

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Planning for Tax-deductible Alimony

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such as attorneys and mortgage lenders, are okay if made on behalf of a spouse or ex-spouse and pursuant to a divorce or separation agreement or at the written request of the spouse or ex-spouse.

3. *Cannot Be Stated to Not Be Alimony.* The payment is not deductible alimony if the divorce or separation instrument effectively states that the payment is not alimony by stipulating that it is not deductible by the payer or that it is not includable in the payee's gross income. Strangely enough, this unsurprising requirement has spawned a fair amount of controversy.

4. *Ex-spouses Cannot Live in Same Household or File Jointly.* After divorce or legal separation has occurred (meaning the couple is considered divorced for federal income tax purposes), the ex-spouses cannot live in the same household or file a joint return.

5. *Cash or Cash Equivalent.* The payment must be made in cash or cash equivalent.

6. *Cannot Be Child Support.* The payment cannot be fixed or deemed child support.

7. *Payee's Social Security Number.* The payer's return is required to include the payee's Social Security number.

8. *No Payments after Recipient's Death.* The obligation to make payments (other than payment of delinquent amounts) must cease if the recipient party dies.

Meeting the No Payments after Payee's Death Requirement

As just indicated, a payment cannot be deductible alimony if it would still be due after the recipient's death (subject to an exception

for delinquent amounts). In other words, for the payment to qualify as deductible alimony, the payment obligation must terminate if the recipient dies. If the divorce papers are unclear about this, state law controls. If under state law, the payer must continue to make payments after the recipient's death, the payments are not alimony.

Avoiding Unintended Characterization as Child Support

Payments that are considered child support cannot be deductible alimony. Payments are for child support if they are: (1) *fixed child support* or (2) *deemed child support*... *Fixed child support* payments are amounts that are designated as child support in the divorce or separation instrument. As such, they are easy to identify as child support. Unfortunately, *deemed child support* payments are much harder to identify. Payments are considered to be *deemed child support* to the extent they are terminated or reduced by any so-called contingencies relating to a child. These contingencies include the child attaining age 18, 21, or the local age of majority; or the child's death, marriage, completion of schooling, leaving the household, attaining a specified income level, or becoming employed. Check with your attorney but Abo understands the New Jersey, Pennsylvania and New York age of Majority to be 18.

Also, payment reductions that occur within six months before or after a child reaches age 18, 21, or the local age of majority are considered *clearly associated* with and thus triggered by a contingency related to a child. Finally, when there are two or more children from

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GUEST EDITORIAL

This article appeared originally in the California Bar Journal, February 2013 issue.

It was forwarded to The Barrister by the Certified Court Reporters Association of NJ and is reprinted with permission from the California Bar Journal. - Editor

Kickbacks from Deposition Firms Could Trigger Liability for Lawyers, Firms

By Stephen J. Walwyn

Booking a deposition with a licensed court reporter should not expose lawyers or law firms to possible tax problems. However, the way some court reporting firms entice businesses may entangle lawyers and law firms with the Internal Revenue Service as well as the Franchise Tax Board.

Most lawyers don't realize that some court reporting providers vigorously market their services to the secretaries, legal assistants, and paralegals who frequently select which court reporting provider to use. Some court reporting providers regrettably go so far as to offer kickbacks to law firm employees in exchange for bookings. These kickbacks—often entirely unknown to lawyers or law firm managing partners—can be of significant value: cash and gift cards, spa treatments, tickets to major Broadway plays, bottles of expensive champagne, airline tickets, and free condominium stays and contests with valuable prizes.

While the court reporting providers style these valuables as “gifts,” both practically and as a matter of tax law they are not gifts but payments for services. As confirmed by a recent, thorough analysis by counsel at Hanson Bridgett, the law deems these valuables to be compensation paid to a lawyer's or law firm's employee in exchange for services provided: namely, giving the lawyer's or law firm's business, often exclusively, to one court reporting provider.

The valuables that raise tax issues are specifically offered as *quid pro quos*: valuable items offered and delivered in exchange for the scheduling of reporting business. Further, even if the kickback is characterized as a prize, award or points, the Internal Revenue Code specifically includes amounts received as prizes and awards in gross income, unless the prize or award is transferred directly to a charity.

These kickbacks are legally and logically distinct from the promotional materials that vendors, including court reporting providers, routinely use generally to “get their name out.”

Given that the kickbacks from court reporting providers in exchange for business are payments for services rather than gifts, the Internal Revenue Code requires the recipients of those payments to treat the value of the incentives as gross income. This means that recipients must report the value of the incentives they receive as income on their tax returns. Failure to do so could result in the assessment of additional taxes, interest and penalties by the Internal Revenue Service and the Franchise Tax Board.

So, these kickbacks are taxable income to somebody. The question is: What or who is the recipient? Could the taxing authorities view these kickbacks as taxable income to the lawyer or law firm as opposed to the employee?

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Association Officer and Trustee Nominations Open

We're Looking for YOU!

Continued from Page 1

second vice president, treasurer, and secretary, and for five Board of Trustees seats. The Trustee seats are for a term of three years beginning on June 1, 2014 and ending in May 2017.

With 132 years of history, tradition and success, the Committee is 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. 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, the Committee is looking for you.

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 Brenda Lee Eutsler, 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**. Again, a commitment to attend and chair monthly Young Lawyer Committee meetings, submit a monthly article to the Barrister, and attend monthly Association Board of Trustee meetings and Young Lawyer and Association events and programs must be made. To be considered, please send a letter of interest along with a resume to Rachael Brekke, Chairperson,

Young Lawyer Nominating Committee, c/o Camden County Bar Association, 1040 N. Kings Highway, Suite 201, Cherry Hill, NJ 08034. The young lawyer post is for a one-year term beginning June 1, 2014.

New officers and Trustees will be sworn in at the Annual Installation of Officers & Trustees Dinner Dance on Friday, June 13th at the Collingswood Grand Ballroom.

For more information regarding the nominating process, please contact Executive Director Larry Pelletier at 856.482.0620 or via e-mail at lbp@camdencountybar.org.

The deadline for consideration of nominations is 5 pm, Friday, February 21, 2014.



Cybersecurity Seminar

Cybersecurity & The Law: Are You and Your Clients Safe? was the topic of the day at a recent CLE seminar. Seminar participants were **Joseph A. Martin**, Archer & Greiner; **Beth Moskow-Schnoll**, Ballard Spahr (Wilmington/Philadelphia); Moderator **John B. Kearney**, Ballard Spahr Cherry Hill; and **Brian Wolfinger**, VP Digital Forensics & Electronic Discovery Services.

PERSONAL INJURY LAW

Limitations on Litigation Special Needs Trusts

Continued from Page 4

assets to be used for the purchase of the home. Operating expenses of the home must be considered as well as *other needs* of the personal injury victim for the rest of her lifetime. The trust should last the lifetime of the personal injury victim and cover ALL of the personal injury victim's needs. If the trust purchases a home to be occupied by other family members, the other family members must be able to pay the pro rata share of these operating expenses. Also, to the extent that the trust pays shelter expenses, the personal injury victim's SSI payment will be reduced.

Vehicle

Under SSI rules, the person with disabilities is only entitled to one vehicle. The special needs trust can purchase one vehicle. Approval can usually only be obtained for the purchase of an average-priced vehicle.

Parental Obligation of Support

Parents have an obligation to support their children. Distributions from the special needs trust or personal injury award cannot be used

to satisfy that obligation of support. Each state has guidelines used in divorce cases on how to calculate that legal obligation of support. As a rule of thumb, those guidelines might be followed. Both courts and State Medicaid Agencies recognize that where a child with disabilities is involved, the parent's actual obligation of support exceeds the normal obligation of support, and both courts and State Medicaid Agencies will approve trust distributions for these extra support obligations.

Budget

It is good practice to carefully prepare a budget of trust expenditures. Courts and state Medicaid agencies will want to look at this budget to be sure that distributions are realistic and that the money will last for the lifetime of the beneficiary. Budgets should not contain expenditures for ISM, as discussed above, or for a parent's normal legal obligation of support.

CRIMINAL LAW

New Jersey Supreme Court Holds that the Community-Caretaking Doctrine does not Permit Entry into or Search of a Home in the Absence of Some Form of Exigent Circumstances

By Assistant Deputy Public Defender Igor Levenberg

The community-caretaking and emergency-aid doctrines are among the more commonly cited justifications for the warrantless search of homes and automobiles. These two exceptions to the warrant requirement are often implicated in factually similar situations which have resulted in a lack of clarity as to whether exigent circumstances are necessary in the community-caretaking context. On May 1, 2013, the New Jersey Supreme Court clarified the distinction between these two exceptions to the warrant requirement. In *State v. Vargas*¹, the court held that the community-caretaking doctrine does not permit the warrantless entry into or search of a home in the absence of some form of exigent circumstances.

In *Vargas*, the police were summoned to the defendant's apartment because he had not been seen by his landlord and neighbors for approximately two weeks. The entry occurred in March of 2008, by which time the defendant had resided in his apartment for about a year. He was described by his landlord as a good tenant who kept his place clean and paid his rent on time. On March 2, the landlord placed a letter in the defendant's mail box informing him that in three days he and an appraiser would enter his apartment. When they entered the apartment the defendant was not home and nothing amiss was observed inside the residence. Shortly thereafter the defendant's rent became past due and the landlord attempted to contact him by knocking on his door and leaving several messages on his cell phone. Two tenants told the landlord that they had not seen the defendant for several days or weeks, and that a bag of trash on the front porch had not been moved.

On March 17, the landlord intended to do spring cleaning in the building. He observed that the defendant's car was parked beside the house, covered in pollen, its rear tires deflated. Additionally, the defendant's voicemail was full, the March 2 letter had not been removed, and calls to his cell phone continued to be unanswered. At this point the landlord became concerned about the

defendant's welfare and called the police. When the officers entered the apartment for a welfare check they did not find any signs of foul play, but they did find several jars of marijuana. The police then secured a warrant to search the apartment which resulted in the discovery of additional contraband.

Prior to *Vargas* the case law had been unclear whether some sort of exigency was necessary in order to enter a home pursuant to the community-care taking doctrine. In *State v. Bogan*², the court upheld the intrusion into a home for the purpose of ensuring the safety of a child potentially in harm's way. Likewise, in *State v. Edmonds*³, entry into a home was justified where police received a call that a woman was being abused by a man armed with a firearm. However, in *State v. Kaltner*⁴, the court affirmed an Appellate Division decision which stated that "the relevant question in community caretaking situations focuses not on the compelling need for immediate action...but instead on the objective reasonableness of the police action in executing their service function."⁵ The *Vargas* court expressly disapproved of this language and explicitly held that "without the presence of consent or some species of exigent circumstances, the community-caretaking doctrine is not a basis for the warrantless entry into and search of home."⁶

Applying this standard to the facts in *Vargas* the court found that a warrantless entry was not justified. The landlord was not able to provide any details about the defendant's routines, habits, or vulnerabilities, and the defendant's absence for a couple of weeks was consistent with a person vacationing, travelling for business, or tending to a personal family matter. This situation was unlike the case of a close family member whose housebound elderly relative is not responding to telephone calls and knocks on the door, or a diabetic or infirm neighbor who is not seen carrying out routine daily activities and who is not answering the door or the telephone. Accordingly, there was no

objectively reasonable basis to believe that an emergency required immediate action to protect life or prevent serious injury.

In his dissent, Justice Patterson argued that the *Vargas* decision has merged the community-caretaking doctrine into the emergency-aid exception to the warrant requirement. This seems to be an accurate description in the home entry context. The decisive factor in the post-*Vargas* home entry analysis is whether there is some immediate need for action, not whether the police are acting pursuant to some community service function. If this is now the analysis then it seems fair to say that the real holding of *Vargas* is that the community-caretaking exception no longer applies when police seek entry into a home.

While the community-caretaking doctrine no longer seems to apply in the home entry context, the court did not do away with it all together. The *Vargas* court wrote approvingly of *State v. Hill*⁷, which recognized a community-caretaking exception to the warrant requirement in the "impounded automobile" context, also known as the inventory search exception. The court also offered *State v. Diloreto*⁷ as being illustrative of the type of situation where community-caretaking is applicable. In *Diloreto*, officers observed the defendant asleep in a parked car with the engine running and windows fogged in an area known for thefts and attempted suicides. Officers approached the vehicle for a welfare check and asked the defendant to produce identification. The defendant's name matched that of a missing "endangered person" on a National Crime Information Center alert list. A pat-down was performed and the defendant was secured in the back of a police car. The pat-down uncovered a loaded ammunition clip, which led to the discovery of a gun in the car, which in turn linked him to a murder. It should be noted that the search of the car was permitted as an exigency once police became aware of a missing gun, while the pat-down and initial inquiry fell within

(Continued on Page 19)

¹ 213 N.J. 301 (2013).

² 200 N.J. 61 (2009).

³ 211 N.J. 117 (2012).

⁴ 210 N.J. 114 (2012).

⁵ *State v. Kaltner*, 420 N.J. Super. 524, 541 (2011).

⁶ *Vargas*, 213 N.J. at 321.

⁷ 180 N.J. 264 (2004).



LAW PRACTICE MARKETING

Why Most Lawyers Need A Coach

Part 2 of 2

By Kimberly Alford Rice

In the first installment of our article in November's *Barrister*, we introduced the concept that lawyers who work with professional coaches are 53% more likely to build a prosperous practice compared to those who use the age-old "trial and error" and shotgun methods.

With lawyers endeavoring to differentiate themselves in the uber-competitive legal services arena and faltering when struggling to execute on required skill sets imperative to build a prosperous practice (which are not taught in law school nor in most law firms' professional development/mentoring programs), working with a coach can be a highly valuable investment in the long-term viability of a legal practice.

What Should You Expect?

For those who have engaged the services of a personal trainer, you understand the nature of the collaborative relationship and know there is a period of understanding the client's goals so the trainer may develop a program which will meet those goals. You understand there are new skills to learn and practice, and you always benefit from the personal attention and focus you receive from your coach. The coach and client become partners in achieving the client's success.

We all need some extra help from time to time, particularly in such a hard-charging, fiercely competitive environment. Working with a coach can help alleviate some of the uncertainty and stress of whether or not you are plowing forward in a smart and savvy way in your practice. After becoming more educated and sensitized to constructive business development behaviors and marketing tactics, you will reap the rewards of integrating these new behaviors into your daily practice and they will become second nature. You will become more confident in your efforts and grow to trust your instincts in existing and new client opportunities.

Applying this example, how exactly does coaching work for lawyers?

A professional coach is a strategist, the cheering section in a lawyer's practice, a sounding board, and, above all, a trusted advisor. Working together, the lawyer client and coach set the relationship pace and set the clients' goals and desired outcome together. The coach provides a focused and structured working relationship, expert guidance, and unyielding support.

Consider some of these coaching benefits:

- Demonstrate your capabilities more clearly and build a stronger reputation. Operating in a reputation-based business, it is imperative that you are viewed as a skilled and knowledgeable lawyer who solves problems.
- Set measurable goals/strategies and implement precise tactics to achieve them. We tend to do only that which is measured. In marketing, if it can't be measured, it should not be done.
- Strengthen relationships with existing clients to convert those relationships into your greatest "sales force" of supporters and more business.
- Understand on a deeper level the difference between business development and marketing strategies and tactics. Make wiser business development decisions which move the needle on growing your practice.
- Keep commitments on marketing plans which you and your coach develop together.
- Benefit from an experienced sounding board for your business and growth ideas. A professional coach works closely with lawyers, understands the business of law and how to create success plans to achieve the clients' goals.

A coach is a business partner who brings objectivity and a fresh perspective, and can be a smart investment in your future.

Are You a Good Coaching Candidate?

Lawyers who benefit most are those who regard their practice as their own business, solo practitioners or those in small law firms since they often have to do everything from running the firm to being the rainmaker—and practice law. Senior associates who have recognized that no one is going to hand them a partner, junior partners who feel the pressure to originate client matter and want to be promoted to equity partners and senior partners who want to move into the higher-tech aspect of business development. In short words, most lawyers can benefit from a professional coaching relationship.

Whether you are a sole practitioner or head of your firm, engaging the services of a business development coach can serve your purposes of developing and growing your client base. But, are you ready?

You may benefit from working with a business development coach when you:

- view your practice as your own business
- are willing and committed to do whatever it takes to succeed
- recognize your practice could be better if you had a focused plan and actually executed it
- have a plan but have not achieved your desired results
- are tired of wasting time on random acts of marketing with few or no results
- want to take your practice and/or your firm to a higher level

For those attorneys who recognize that despite the genuine efforts they are expending (and their marketing departments are making on their behalf), their expectations are not being met, a professional coach can be a useful investment.

What Makes a Successful Student?

All of our coaching clients are highly skilled lawyers, successful in their own right, and are overachievers. They recognize the things at which they excel and the areas which could benefit from outside expertise. In short, they are "teachable." These are the folks who most greatly benefit from a coach. They want to exploit every available tool to help them succeed.

Some of our clients have enjoyed a coaching relationship since they first began their legal career years ago. Over time, we have assessed their changing needs at various stages of their practice, and adapted an appropriate plan which continues to address their ongoing efforts and approach.

One client recently stated, "Practical skills are not taught in law school and rarely within a firm so we are left to our own devices to figure out how to develop new clients. I'm grateful I found a coach early on to enlighten me on the professional way to build client relationships and bring in new business."

Shouldn't you?

Frolicking the Night Away

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:



Ellen McDowell & Partner in Progress Marty Abo



Foundation President Lou Lessig & Linda Eynon



Greg DeMichele, Dave Epler, Rick DeMichele



Rita & Harry Schmoll



Jenifer Fowler, Rachael Brekke, Association President Gary Boguski, Brenda Eutsler



John Reisner & Jen Warren



Mike Dennin & Chris Bratton



Ame Leipfinger, Kathi McVeigh, Luke Griffith



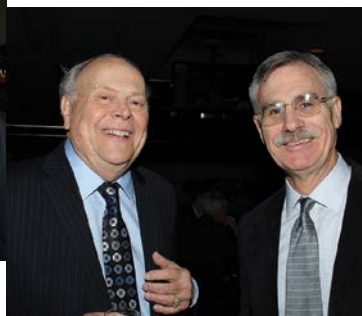
Victoria Stolyar, Jessica Kotansky, Andy & Jacquie Linenberg, Rachael Brekke, Jeanette Kwon



Ed Borden & Justin Loughry



Howard Kraft & Matt Rooney



Len Rossetti & Joe McCormick



Steve Eisner & Judy Charny

WINE & FOOD

By Jim Hamilton

A common wine topic many of you raise in our one-on-one wine conversations concerns the state of New Jersey wines. Questions often seek to elicit views about wine quality, particularly when compared to other wine regions in our country and abroad. Since we are embarking on a new year, perhaps a discussion about New Jersey wines should involve exploring what the future holds for the increasing number of wineries in the State most of us choose to call home.

Since we reside in the Garden State, and grapes are an agricultural crop, we should consider just how important the wine industry has become within the broader farming community. This factor cannot be understated given how many traditional farmers, who had hoped to keep their farming business in the family, discovered that either land developers had a greater interest in their property than their children, or found the lure of greater or more immediate profit was too enticing. With many former farms now growing neatly manicured lawns surrounding housing of all shapes and types, a wine industry growing in size and marketing savvy is poised to serve the needs of these new residents. But, if you build a winery and tasting room, will customers come?

There are many reasons why a winery, wherever located, may be successful. Ideally, there are a number of ingredients that go into producing a wine worth buying and drinking:

- grapes that are grown in a vineyard suitable for the varietal
- that are cropped at reasonable levels (often measured on a tons per acre basis)
- that have matured during a favorable growing season
- that then are picked properly and are handled by a talented winemaker
- whose winery prices them fairly.

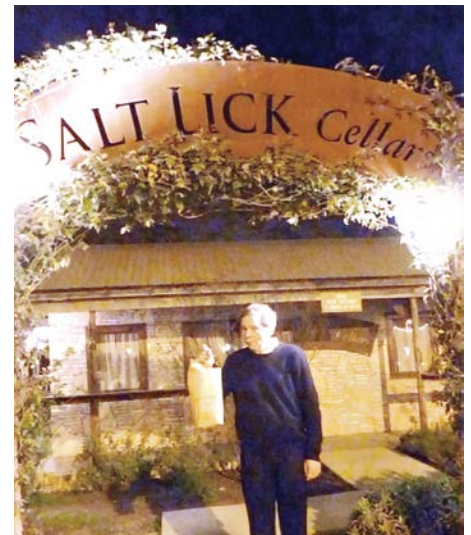
There is a developing consensus that many areas of New Jersey, particularly those in recognized American Viticultural Areas ("AVA"), have the potential to produce good quality wine. Local New Jersey wineries can point out that the Outer Coastal Plain AVA shares a geographic situation similar to France's

esteemed Bordeaux region, and some like Amalthea Cellars in Atco with its Europa series of wines, seek to duplicate the styles and blends of top Bordeaux wine estates.

The Great Recession notwithstanding, the New Jersey wine industry has grown substantially in size and importance during recent years. Indeed, there were roughly 22 wineries operating in our State in 2004; today, the number approaches 50, with perhaps 15 or 16 applications pending for new licenses. There undoubtedly are many reasons for this growth. A critical one was a change in the law that previously tied winery licenses to state population. More recently, legislation was passed after the 3rd Circuit "invited" action to address disparate treatment of out-of-state wineries. In fact, had our government not acted as it did, the impact on our wine industry could have been extremely adverse, since it could have affected the ability of wineries to sell to customers in the retail setting on which most rely.

Another reason for the increasing presence of home-grown wines is the support received on an institutional and organizational basis. The State Department of Agriculture has become more active in promoting wineries, a sensible approach when one considers that the wine industry is the fastest growing segment of New Jersey agriculture. Also, the Garden State Wine Growers Association ("GSGWA") has become a vital force in organizing what often are small, family run operations into a unified voice for defending and promoting the value of what the approximately 36 winery members offer. As you surely have seen, there are wine "trails," wine festivals, and a variety of local winery events that both bring attention, and often consumers, to winery tasting tables.

The real question is whether wine consumers should, based on the quality of the wine produced, be responding to the calls for New Jersey winery support. This question does not lend itself to a yes or no answer. One of the real challenges an emerging wine region faces is determining how and where particular grapes should be planted. Someone may



buy land and decide to transform it into a vineyard, planting a favorite grape variety irrespective of whether it is suited to the "terroir." With such New Jersey resources as the Department of Agriculture and the Rutgers Cooperative Extension, missteps can and should be easier to avoid. However, as with all relatively new wine regions, there is much hit and miss involved before the ideal matching of vineyard to terroir can be achieved.

Perhaps a bigger obstacle to maximizing the potential of a vineyard and/or winery (not all wineries own all vineyards they access for their grapes) is convincing winery owners that their focus should be on quality rather than economic success, not that the two concepts need be mutually exclusive. Very often, a vineyard that is farmed to produce lower yields will provide better quality grapes since, among other reasons, fewer grapes are vying for a fixed amount of nutrients. Stated simplistically, one vineyard can produce grapes of greater concentration, the other grapes that are more diluted. However, fewer grapes will produce fewer bottles of wine to sell, hence the difficulty of the decision. Ideally, perhaps, a bottle of wine produced from a low yielding vineyard that is higher in quality than a bottle of wine from a high yielding vineyard should command a correspondingly higher price. However, the consumer already skeptical about buying a New Jersey wine very well may balk. This can lead to a tension between wineries that want to achieve qualitative success at whatever cost, thereby helping not only its reputation but that of the State wine industry as a whole, and those which, confident of selling all wine produced, are willing to make qualitative sacrifices to

(Continued on Page 16)



PRESIDENT'S PERSPECTIVE

by Gary W. Boguski

'Tis Still the Season

Happy New Year to all, as we welcome 2014. I hope everyone has recovered from the end of the year reverie and has made their New Year's resolutions. Mine include enjoying the second half of my presidency, before passing the torch to Casey Price, and getting through the college graduations of my two oldest daughters (soon to be two down, three to go).

December was an eventful month for the World and the Camden County Bar Association. We marked the one year anniversary of the Sandy Hook shootings, whose survivors urged us to care about and to look out for others less fortunate than us. Even as we prepared for the anniversary of that tragedy we recoiled from another school shooting in Colorado, this latest one at a high school nine miles from Columbine. Yet these tragedies have occurred so frequently over the last ten years that we seem to have become numb to the horror. Sadly, too many times it is the young who are targeted. But every single death to violence is one too many.

In December the World lost one of the greatest leaders and role models of our lifetime, Nelson Mandela. Through the sheer strength of his will he changed a nation and demonstrated to all of us that courage and forgiveness are not mutually exclusive. What he taught us should never be forgotten.

Closer to home, the Camden County Bar Association and Foundation continued to influence and give back to our community. The 25th (or so) Christmas Breakfast with Santa was another smashing success. Over two hundred children from different agencies, churches and groups in the City of Camden enjoyed a delicious breakfast donated by the Coastline in Cherry Hill. Dozens of volunteer elves, large and small, helped serve, sang holiday songs (somewhat on key) and had as much fun as the children. After breakfast everyone was captivated by a magic show that continues to amaze even us older elves who have tried unsuccessfully to see how the tricks are performed for all these years. The morning was capped off, of course, with an appearance by Santa himself (aka Judge Rodriquez), whose sleigh brought gifts for all the children.

The kids all left with big smiles. The volunteers with tears in their eyes. Many thanks to those who attended and supported the Fall Frolic, also at the Coastline, the proceeds from which helped buy the toys and gifts to help Santa out.

Also in December the Association Coat Drive kicked off. Over \$3,000 was donated to purchase new coats for children who were chosen by the teachers and administrators in five inner city elementary schools. We partnered with ARI, Woodland Community Development Corporation and Forman Mills, who then donated 200 additional coats for the drive. It will be a little warmer this winter for over three hundred needy children in the City thanks to the kindness of our members and the extraordinary donation by Forman Mills.

On December 16th the Association Holiday Party was held at Tavistock Country Club. Good food, good spirits and a good time were had by all. It's always enjoyable to socialize with our local judges and colleagues in a non-adversarial setting.

Finally, the Adopt-A-Family program coordinated by Marci Hill Jordan and Michael Ward was once more a tremendous success. Over a 100 families from the county were "adopted." The generosity of our lawyers and firms every year has to be seen to be believed. And many thanks to the volunteers who donated their time to bring in, organize and then load the food and presents for the grateful families.

Two big events are coming up soon. On January 22, 2014 the Honorable Peter J. Devine Award Presentation Cocktail Reception will be held at Tavistock Country Club. The Devine award represents our highest honor for service to the Bar, and the 2013 award will be presented to three distinguished retired Camden County Judges: Hon. David G. Eynon, Hon. Richard S. Hyland and Hon. John B. Mariano. Come out to help celebrate this special event. Then on February 8th the first annual Chili Cook-Off will be held. Look for details and start planning your recipe. Prizes to be announced.

On a personal note, in November I attended the State Bar Mid-Year Conference in Rome with my wife and two youngest daughters. We were there a week before the torrential rains and flooding. We enjoyed the City and the events planned by the State Bar. I even learned some things at the seminars. We also learned that Rome wasn't built in a day. And all roads do lead to Rome. Most importantly, we subscribed to the proverb that when in Rome, do as the Romans do. Mostly that meant a lot of wine, great food, gelato and walking. A few random observations: 1. Italians, especially those living or working in Rome, are fearless and effective drivers. They have to be to maneuver around the city; 2. Italian men and women wear scarves when the temperature drops below 65F, and they wear them well; 3. Soccer and smoking are national pastimes; 4. There are 367 Catholic churches in Rome. One for every day of the year.

Ciao!



YOUNG LAWYER HAPPENINGS



YOUNG LAWYER CHAIR

The Chili Cook-Off is Coming Up!

By Rachael Brekke

Let me begin this New Year by introducing a new event hosted by the Young Lawyers—**The Chili Cook-Off on Saturday, February 8th at 6pm!!** Due to the overwhelming response by the many iron chefs in our bar association already, please let me know if you'd like to enter the Cook-Off by January 15th! We will also have cornbread and pie categories for this event. While the judges are deliberating, there will be a foosball and billiards competition downstairs. Please see the inserted flyer for more info and rsvp for the cook-off and/or tournaments as soon as possible. Trust me, this is a night you do not want to miss!

Our young lawyers were busier than ever during this holiday season! Many thanks to Brown & Connery for graciously hosting our December YLC Lunch. We had a great turnout with a few new faces and some great ideas for next year. Everyone quickly signed up to volunteer at the Children's Christmas Party at The Coastline, which was an incredible event, as always. Perhaps more inspiring was the excitement to volunteer, on a Tuesday afternoon just before Christmas, at the Cathedral Soup Kitchen in Camden. Our time was

much appreciated and we will definitely be back there soon!

Just before Thanksgiving, we had a great time with the Burlington County Young Lawyers at their networking happy hour at PJ Whelihan's in Maple Shade. This month we will be inviting them to join us at our local **PJ Whelihan's in Haddonfield on January 9th from 5:30-7:30pm**. We are also working on a young lawyer event for the greater South Jersey bar associations...more info to come next month!

In the meantime, we will be joining forces with the South Jersey Young Professionals Association (SJYPA) this year and bring new connections into our network. In mid-December, a few young lawyers attended the SJYPA Annual Angel Tree Happy Hour which is an event that donates unwrapped toys to the Salvation Army's Christmas Toy Shop. This was an awesome event and continues to remind me that we are always capable of more. An added bonus will be meeting young professionals who will likely need to know an attorney at some point in their careers.

Start practicing your best chili recipes!

WELCOME NEW MEMBERS

November 2013

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FOUNDATION UPDATE

Plowing Our Way Through Winter

By Louis R. Lessig

We are officially in the throws of winter. No matter where you live or what you do, according to the meteorologists around town (the only people who can be wrong as often and keep a job) this year we are expected to get what we did not last year, a bit of the white stuff. That of course means that each of us busts out that shovel we had put away in the back of a closet or garage waiting for the alleged inevitable event. Recall with me the Eagles game back in December, the snow bowl if you will. Somehow the minor event became six inches of fun on the 50 yard line.

Now if that was not fun enough to watch, looking out my window I realized that just like on TV, I was going to have to suit up and go outside to deal with what I thought would be a dusting that had now become a treasure trove of options to my oldest, who was looking outside and back at his boots with a huge grin on his face. Of course, being the good dad I told him that he could certainly join me and in fact, I had a shovel just for him right next to mine in the garage. With a level of anticipation that can only truly be held by a child not quite four, he is donning his snow gear in the blink of an eye.

Getting outside was as you know the easy part. Handing him the shovel he went tearing into the white stuff at top speed, or at least that is what he thought. My hope was just to get a little help clearing the driveway. I guess I should admit now that the snow he started to shovel, it was actually from the middle of the front lawn, was not exactly the idea. So I politely explained about snow, concrete and the driveway. Before I am even done my lesson he is off again and I return to the task at hand. I think it was less than 20 minutes later while clearing a line on the driveway that I saw him out of the corner of my eye dart over the small recently created snow bank along the driveway into the neighbor's lawn. Oh, but wait, there is more. Because I was amused by this frivolity, although I wanted to complete what I was doing, I kept going. Apparently someone else had other ideas because a few moments later I went to start another shovel line only to find some additional weight on my shovel, as I looked down I had to keep from laughing out loud. Somehow my helper had snuck around me and was now face first on the snow reaching out above him and

holding on to the shovel, adding about 30 pounds to my workout. Honestly, the picture I took is hilarious. However, in that moment I realized that true leadership is convincing your kids to help. Obviously I am still working on that one. But if you believe the forecasters, I will have more chances to lead by example this winter.

Assuming your driveway is clear you can of course assist your Foundation this winter. For example, I have to take a moment and thank everyone who saw a coat drive and donated towards our efforts to get winter coats for elementary students in Camden. I went with our larger than life Bar Association President to hand the first batch of coats out and I have to say that it was incredibly rewarding to see the smiles on the children's faces. It reminds me of why we have a Foundation and how important the work we collectively do is to the larger community in which we live.

To that end, while you may be staying warm at home by the fire, do not forget to mark your calendar for Friday March 7th at 6 pm for the Foundation's Tasting Games. Yes, that's right we have an ambitious new event in the works for all of our members, your neighbors, staff, clients and friends. All are welcome to join us as we gather for a great cause, your Bar Foundation and our philanthropic efforts. We will have table games, tastings from area restaurants and of course a bit of vino to enhance your senses. The Collingswood Grand Ballroom may never be the same again, but one thing I am quite sure of is that this event will be incredibly fun for everyone. So bring your friends and join us as we gather to taste, sip and play.

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WINE & FOOD



Continued from Page 12

produce as much wine as possible (often along with tee shirts, hats and trinkets). Perhaps elevating New Jersey wines to a standing enjoyed by regions in more well-known wine producing states will occur when more and more wineries put quality first and the wine tasting public both recognizes and appreciates the superiority of their wines.

Another issue with which New Jersey wineries usually must reckon is how to compete on a price basis with more established wine regions at home and, particularly, abroad. Many of the newer winery owners left corporate positions to buy land in a State where land is relatively scarce and the acquisition cost is high. In order to recoup the investment in land, and if it was not already a vineyard site the substantial cost to plant vines, the owner may have little choice but to charge a premium price, particularly since a new vineyard will take 3 or 4 years before grapes are wine worthy. With so many

value entries from Spain, Italy, France or Portugal, to name but a few countries, and with long established American wine value brands providing consumer comfort, the competition on a quality-for-price basis surely must be a hurdle New Jersey wines must overcome.

It will be fun to watch the path New Jersey wineries take in the coming years. Will more of them work to reach overseas markets (Tomasello Winery sells wine in China)? Will producing premium wines at what for New Jersey may seem to be lofty prices be sustainable? Will experience, greater financial security and, perhaps, pride cause more wineries to do what it takes to maximize quality? Certainly, the movement to buy locally produced products, be it corn, cranberries, blueberries or wine, is a laudable trend. Perhaps some day, New Jersey will be known as much for its wine as its tomatoes!

I have attended a number of New Jersey wine events over the years, have visited

wineries to taste on site, and have worked with a few wineries on wine-related projects. It is based primarily on these admittedly subjective experiences, as well as from speaking with winery owners directly, that I have gained my perspective on the future of New Jersey wines. I gladly concede that my view is simply one person's take on what can happen, but I look forward with cautious optimism. Rather than speak in general terms about particular wineries, and with no room for tasting notes, let me simply identify a few of the standout wines I tasted at the September Jersey Fresh Wine Festival held at the Burlington County Fairgrounds. They include: 2010 Heritage Winery BDX, 2012 Auburn Road Winery Chardonnay, 2012 Amalthea Alara, 2011 Cream Ridge Cabernet Franc, 2012 Bellview Winery Viognier, 2010 Tomasello Winery Palman's Cabernet Sauvignon, 2012 Sharrot Winery Pinot Grigio and NV Chestnut Run semi-sweet spicy pear.



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Appellate Division Tips

The CLE Seminar **Practice Tips for Succeeding in the Appellate Division** was recently presented at McCormick & Schmick's in Cherry Hill. Presenters were **Hon. Joseph F. Lisa (ret.)**, N.J.S.C. Appellate Division; moderator **Georgette Castner**, Montgomery McCracken; **Stacy A. Fols**, Montgomery McCracken; and **Hon. Jack M. Sabatino**, N.J.S.C. Appellate Division.

CLE Seminars

Family Law

New Jersey Family Law was the topic of the month in the CLE on Tap! series for newly admitted lawyers. Seminar presenters were **Ronald G. Lieberman**, Adinolfi & Lieberman; **Maryann J. Rabkin**, Rabkin Law Offices; and **Theodore J. Baker**, Alonso, Baker & Archie. Not pictured was Kimberly A. Packman, Adinolfi & Lieberman.



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Kickbacks from Deposition Firms Could Trigger Liability for Lawyers, Firms

Continued from Page 7

The answer is apparently uncertain. Although the IRS could view the kickbacks solely as income to the employee, it could also look at the fact that the income was earned within the scope of the employee's employment and impute the income to the law firm or lawyer employer.

Said another way, lawyers and law firms cannot with precision predict how the IRS will treat this income. Liability may turn on the specific facts of each case.

This is exactly why most big law firms—including mine—completely ban any such efforts to entice their employees to choose one vendor over another. We actively enforce this policy.

There are ethical issues raised by this practice as well. Lawyers and law firms should not lightly allow their employees to accept kickbacks in the selection of any vendors, but especially court reporters. Court reporters are licensed professionals providing mission-critical services to clients. As well, according to the California Supreme Court, licensed court reporters providing deposition services

are "ministerial officers of the court"—literally, extensions of the court—operating privately. Thus, kickbacks in the selection of officers of the court raise ethical issues.

Moreover, when kickbacks rather than the quality and integrity of the reporter drive business, market forces no longer work as well as they should to promote quality and price, the two things most important to clients in the selection of a reporter.

For all these reasons, law firms and lawyers averse to tax liabilities may want to seriously consider the potential ethical, legal and tax complications of allowing their employees to accept kickbacks.

However a lawyer or law firm confronts and resolves the question, it would be wise for the lawyer or law firm managing partner to make a decision with eyes open, realizing that the reporter scheduled to report their deposition, trial or court hearing may have been selected based solely on the kickbacks being offered rather than on bases important to the lawyer and the client.



Ethics Seminar

The CCBA partnered with Archer & Greiner to present the CLE seminar **Ethics Across the Board**, which provided ethics information for multiple practice areas. The seminar was followed by a networking cocktail hour sponsored by CCBA Partner in Progress **TDBank**. Seminar presenters included **Joseph A. Martin**, **John C. Connell**, moderator **Lee M. Hymerling**, all for Archer & Greiner; **Rachael Brekke**, Superior Court of New Jersey Law Division, Civil Part; **Debra Rosen & Darth Newman**, with Archer & Greiner; **Andrew B. Kushner**, Andrew B. Kushner, LLC; and **Ronald G. Lieberman**, Adinolfi & Lieberman.

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By Arnold Fishman

Freedom is My Business

Billions and Billions

Now that the news of the discovery of the Higgs boson has faded, the latest scientific buzz is that the recently retired Kepler space telescope has confirmed that there are hundreds of billions of Earth-like planets just in our galaxy alone. And there are hundreds of billions of galaxies in the known universe. By Earth-like we mean small, rocky, and within the Goldilocks zone (i.e. not too hot and not too cold) so as to harbor liquid water considered a requirement for life, as we know it. This has, once again, fueled the discussion as to the existence of extraterrestrial life. Note that we are talking about life in general and not just intelligent life.

Intelligent life (read technologically advanced) would produce transmissions that escape the planet of their origin. Our television waves, propagating at the speed of light, have been traveling since TV became commercially available in the late 1920s. They would be almost a hundred light years away. I can't help visualizing a green scaly alien with a tail and

three heads. One head is watching Uncle Miltie and the other two are staring at each other in utter amazement. If there are such creatures, where are all of their transmissions?

Given that plethora of planets, some of that intelligence must be much older than ours. Their transmissions would have traveled longer, and should have reached us by now. The fact that they have not been detected should give us pause. Some time ago an astrophysicist named Frank Drake attempted to calculate the probability of extraterrestrial intelligent life. He was able to estimate with some known degree of precision the number of galaxies, stars within..., planets around..., planets close enough for liquid water, etc., until he came to an incalculable term. The probability of a technologically advanced civilization to self-destruct is unknowable. We have but one example, and, for it, my prognosis is guarded.

I used to think that unknowable term (the propensity of a technologically advanced civilization to self-destruct) referred to a nuclear holocaust. I envisioned a cataclysmic destruction. I now believe, if it happens, it is likely to be subtler than that. Our death

march will be to the beat of environmental degradation. We are engaged in making our insignificant but magnificent home in this vast universe dangerous to our health. We won't blow ourselves up; we will render the Earth unfit for human habitation. All other animals know not to foul their nests.

My wife and I grew up in Philadelphia hugging concrete. It has been almost 40 years since we moved to an old log cabin on a lake in the Pine Barrens. Since that time the character of the community has remained remarkably stable and unspoiled. The current climate gorilla in the Pines is threatening that pristine quality. There is an application pending before the Pinelands Commission to allow South Jersey Gas to run a 22 mile 24 inch diameter high-pressure pipeline transporting fracked liquefied natural gas from Pennsylvania's Marcellus Shale Formation through the Pinelands. It would carry 20 billion cubic feet of gas to repower the Beesley's Point Generating Station, creating well over 1 million tons of new greenhouse gas emissions at a time when we need to make deep emissions reductions to prevent catastrophic warming. Although the final outcome is far from certain, the choir of robust voices raised in opposition is gratifying. This would be just one more lesion in that death of a thousand cuts. As E. O. Wilson the Harvard entomologist said, "Despoiling a forest for economic gain is like burning a Renaissance painting to cook a meal."

Has anyone (besides me, that is) noticed that weather events like Super Storm Sandy and Typhoon Haiyan—tempests that we like to call 500-year storms—are occurring on an annual basis? If we continue down this path: rising oceans will obliterate island nations and inundate low-lying population-dense coastal areas creating hordes of refugees; pure life-sustaining air and water will become contaminated and poison the multitudes; and desertification will make even the wealthy nations food insecure.

You and I are composed of atoms that were spread throughout the universe in the supernovae explosions of second-generation stars. In a real sense, we are made of star stuff. According to latest calculations, this universe is 13.7 billion years old. It took that long for us to get here. It would be tragic for that timeline to end, and shameful if it were to come to pass on our watch. Accordingly, the uncertain component in the Drake Equation is of no small consequence. Extinction is not an option!

CRIMINAL LAW

New Jersey Supreme Court Holds that the Community-Caretaking Doctrine does not Permit Entry into or Search of a Home in the Absence of Some Form of Exigent Circumstances

Continued from Page 9

the rubric of community-caretaking. The basic rule seems to be that an exigency is needed to enter a home, but reasonableness rules in all other situations.

One question that the *Vargas* court left unanswered is whether a community-caretaking analysis requires inquiry into a police officer's motivation for his actions. The New Jersey Supreme Court's more recent jurisprudence seems to indicate that such an inquiry is not necessary. In *Edmonds*, the court held that inquiry into an officer's subjective intent was no longer necessary in an emergency-aid analysis. However, the *Vargas* court was clear that emergency-aid and community care-taking are two distinct exceptions. The community-caretaking function has repeatedly been described by

courts as one "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."⁸ Arguably, if police use community-caretaking as a pretext for criminal investigation then it is not "totally divorced" from such investigation. Additionally, in *Ray v. Township of Warren*,⁹ the Third Circuit held that under the community-caretaking exception warrantless entry into a home is permitted only if the officer reasonably believes that someone is in imminent danger.¹⁰ It remains to be seen how this question will be resolved, but what is clear is that police may not enter a home without a warrant unless there is some sort of exigent circumstance.

⁸ *Vargas*, 213 N.J. at 315 (quoting *Cady v. Dombrowski*, 413 U.S. 433 (1973)).

⁹ 626 F.3d 170 (3rd. Cir. 2010).

¹⁰ *Id.* at 177.

VERDICTS OF THE COURT

Superior Court of New Jersey

VERDICT: No Cause (11/1/13)
Case Type: Auto Negligence
Judge: Robert G. Millenky, P.J. Cv.
Plaintiff's Atty: Kenneth Andres, Esq.
Defendant's Atty: Andrew V. Ha, Esq.
L-855-12 Jury

VERDICT: No Cause (11/14/13)
Case Type: Auto Negligence
Judge: Louis R. Meloni, J.S.C.
Plaintiff's Atty: Mark Segal, Esq.
Defendant's Atty: Catherine Schmutz, Esq.
L-3891-11-11 Jury

VERDICT: Damage Verdict: \$645,735 Compensatory,
\$85,000 Punitive (11/8/13)
Case Type: Contract
Judge: John T. Kelley, J.S.C.
Plaintiff's Attys Alan L. Frank, Esq. and Samantha
Millrood, Esq.
Defendant's Attys Vincent E. Gentile, Esq. and Monica
Wahba, Esq.
L-472-12 Jury (7)

VERDICT: Damage Verdict: \$15,000 Against Defendant
(11/19/13)
Case Type: Auto
Judge: John T. Kelley, J.S.C.
Plaintiff's Atty: Bruce A. Wallace, Esq.
Defendant's Atty: Richard Astorina, Esq.
L-5867-11 Jury (6)

Planning for Tax-deductible Alimony

Continued from Page 6

the marriage, and payments are to be reduced on two or more occasions, and any of the reductions occur within one year before or after the date each child reaches any age between 18 and 24 inclusive (with the same age being used for each child), the reductions are considered clearly associated with and thus triggered by a contingency related to a child. However, the payer can rebut the presumption that the timing of payment reductions that occur in these situations are "clearly associated" with a contingency related to a child by showing that the timing of the payment reductions is due to some other factor.

Last But Not Least, Watch Out for "Alimony Recapture"

The alimony recapture rule is intended to prevent taxpayers from deducting disguised property settlement amounts as alimony. A mechanical test is used to measure whether

purported alimony payments are excessively front-loaded during the first three calendar years payments are made. When payments are excessively front-loaded, the presumption is that those payments are partly disguised property settlement payments. Therefore, some alimony deductions taken in the first two years must be recaptured in the third year. In that third year, the payer must add the recaptured amount back into gross income, and the payee can claim an offsetting above-the-line alimony deduction.

Alimony recapture also does not apply when excessive front-loading occurs as a result of the death of either spouse within the three-year period or the remarriage of the recipient spouse within the three-year period. Finally, alimony recapture doesn't apply to payments that are based on a fixed portion of the payer's income from a business, property, or compensation from employment or self-employment.



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Conclusion

Because payments to ex-spouses are often substantial, the issue of whether the payer can deduct them is often substantial too. While the tax rules for deductible alimony are longstanding and not terribly difficult (except for the deemed child support provisions), they continue to be the subject of frequent litigation. That fact alone demonstrates that your advice is probably needed to lock in the hoped-for tax results for clients. There are often a number of meaningful tax issues at stake, and this is an area where you can make a big difference.

Martin H. Abo, CPA/ABV/CVA/CFP is a principle of Abo and Company, LLC Certified Public Accountants – Litigation and Forensic Accountants. The firm is a Partner in Progress of the Camden County Bar Association. With offices in Mount Laurel, NJ and Morrisville, PA, Marty can be reached at marty@aboandcompany.com or by calling 856-222-4623.

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Jeffrey A. Kerstetter has been brought on as a partner in The Law Offices of Lynda L. Hinkle, LLC. Kerstetter, an associate at the firm since 2010, focuses his practice on family law, particularly divorce, military divorce and child custody and support out of the Marlton office of the firm. In addition to his work at the firm, Kerstetter is on the Board of Directors of Genesis Counseling Center, is active in animal causes and is an involved alumni of Rutgers School of Law – Camden.

Diane Magram, shareholder at Marshall Dennehey Warner Coleman & Goggin, has been elected president of the Southern New Jersey Chapter of the American Board of Trial Advocates (ABOTA), and will serve a two year term. ABOTA is a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. Membership is by invitation-only, and is reserved for trial lawyers who meet certain qualifications and have significant experience in leading civil jury trials to verdict.

A member of the firm's Casualty Department, Ms. Magram serves as Chair of the firm's Automobile Liability Practice Group. She focuses her practice in the areas of automobile negligence defense, personal injury defense and consumer protection, and she has represented some of the nation's largest auto manufacturers in breach of warranty matters.

A graduate of Drexel University, she received her J.D. from Widener University School of Law.

Adinolfi & Lieberman, PA proudly congratulates their partner and shareholder, **Ronald G. Lieberman** on his recent admission into the prestigious American Academy of Matrimonial Lawyers. Fellows in

the Academy must pass a rigorous testing and interview process prior to selection. Since 1962, the AAML has been the premier organization that recognizes and provides continuing support and education to practitioners dedicated to the practice of Family Law.

Mr. Lieberman concentrates his practice on matrimonial and family law to include divorce, equitable distribution, tax matters, prenuptial agreements, child custody, alimony, and domestic violence. He is certified by the Supreme Court of New Jersey as a Matrimonial Law Attorney. He is a member of the New Jersey, Pennsylvania and New York Bars and is admitted to the District Court of New Jersey, the United States Third Circuit Court of Appeals, and the US Tax Court. He actively serves on the Family Law Executive Committee of the New Jersey State Bar Association, and is the Executive Editor of the New Jersey Family Lawyer. He is a member of the NJ Supreme Court Domestic Violence Working Group, and is also an active member of the Camden County Bar Association where he serves as the Secretary of the Board of Trustees.

Capehart Scatchard Shareholder, **Ralph R. Smith, 3rd** recently spoke at the "How the HR Department Can Save the Company Money" seminar sponsored by Lorman Education Services. He spoke on the related topics of (1) best practices in ensuring company compliance with HR laws (2) best practices in addressing employee issues to avoid exposure to legal claims and (3) best practices in responding to legal claims and workplace lawsuits.

Mr. Smith is Vice Chairman of the firm's Labor and Employment Department. He concentrates his practice in the areas of labor and employment law, and complex commercial litigation. He is a frequent lecturer on labor and employment-related topics.

John C. Connell, partner/shareholder with Archer & Greiner in Haddonfield, has been reappointed to a second two-year term on the New Jersey Supreme Court Committee on the Rules of Evidence. He will serve on a subcommittee studying Rule 702, which addresses admission of expert testimony. The Committee advises the Supreme Court on rules related to evidence law, counsels the Court on recent developments, and makes recommendations for rule revisions. The subcommittee is Chaired by the Hon. Jamie D. Happas, Civil Presiding Judge of the New Jersey Superior Court in Middlesex County, and will continue a review of Rule 702 that has been underway periodically for several years in response to input from various business and legal organizations.

Mr. Connell practices civil litigation, with concentrated experience in media and communications law, employment and civil rights law, intellectual property, health care law, and appellate advocacy.

Bruce P. Matez was a guest on the internet radio/video show, LUNCH WITH THE BOSS, hosted by Scott Tanker, where he discussed mediation and Collaborative Divorce in New Jersey; increasingly popular, non-combative ways for couples to end their marriage. A partner in the Cherry Hill firm of Borger Matez, he concentrates his practice in divorce, custody, parenting time, alimony, child support, equitable distribution of marital property and debt, post-divorce disputes, adoptions, domestic violence, cases involving the NJ Division of Child Protection and Permanency (formerly DYFS), and all types of family law issues.



Attorney Norman Shabel accepted an opportunity to serve as a mock judge for the 4th and final round of Yale University's National Mock Trial Conference in New Haven, Connecticut. This year's mock trial event was held on December 8, 2013 and hosted 40 teams from around the country.

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3rd Annual December "Murder Mystery" Ethics Seminar was the intriguing title of a recent interactive seminar presented by **Justin T. Loughry**, Loughry & Lindsay, and **Andrew B. Kushner**, Andrew B. Kushner, LLC.



Children's Christmas Breakfast

Santa Claus (aka **Judge Rodriguez**) still has that special something!



Elves **Gary Boguski** and **Alan Schwalbe** were a big hit with the almost 200 children from Camden who enjoyed the Public Benefits Committee's Annual **Children's Christmas Breakfast & Party** hosted by **Dawn Mourtos** and the Staff of the Coastline Restaurant in Cherry Hill.

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THE LAW JOURNAL'S 2014 ANNUAL REVIEW OF NEW JERSEY CIVIL CASE LAW CLE PROGRAM

PRESENTED BY PROFESSOR DENIS F. MCLAUGHLIN, SETON HALL LAW SCHOOL

Topics of Discussion:

Arbitration • Attorney's Fees • Civil Practice • Commercial Consumer • Employment Evidence • Government Records Insurance • Torts and Products Liability

LOCATIONS

January 22 • Brookdale Community College, Lincroft • 5- 8:30PM

February 5 • ALoft, Mt. Laurel • 5- 8:30PM

February 19 • Pines Manor, Edison • 5- 8:30PM

** Each site includes appropriate meal and materials.*

RATES

Regular rate: \$199 • Solo/government/non-profit/5+ rate: \$175 • Group rate 10+ \$155 each.

CLE CREDITS

NJ: 3.6 hrs. general and civil trial certification credit; PA 3.0 hrs substantive credit; NY: 3.5 hrs. area of professional practice credit.

WALK-IN REGISTRATIONS AND CANCELTION POLICY

Check-in will begin 30 minutes prior to the start of each

program. If you intend to register at the door, please call ahead to confirm location, schedule and space availability. If, after registering, you cannot attend, contact the Law Journal immediately (dabrown@alm.com) to send someone in your place, switch to another location (if available) or receive access to the program on www.clecenter.com. No other refunds will be given. Changes in registration can only be made in writing.

CORPORATE SPONSORSHIPS

For more details about sponsorship, contact Vivian DiStaso, vdistaso@alm.com or call 973-854-2910.



PROFESSOR DENIS F. MCLAUGHLIN, SETON HALL LAW SCHOOL

"This is a yearly seminar that cannot be missed."

"As always Professor McLaughlin was wonderful and engaging."

"A sensational lecture."

— Prior Attendees

To register visit www.njj.com and click on the CLE tab, or contact Douglas Brown at 973-854-2928 or dabrown@alm.com.

OUT AND ABOUT

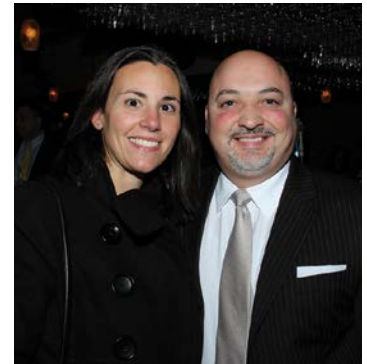
Fall Frolic



Jeff Brenner & Kevin Haverty



Adam Gersh & Ron Lieberman



Antonella & Nick Suglia



Erin Raddy, Carl Fredericks, Emily & Howard Mendelson



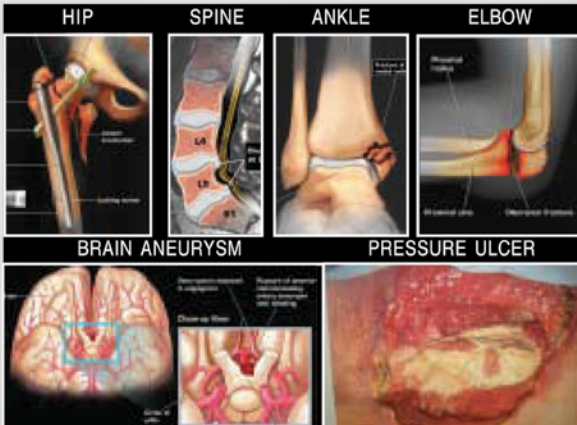
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Richard J. Talbot

Recent case results include:

- ☐ \$900K Slip & Fall - RSD
- ☐ \$260K Nursing Home Neglect-Fractured Prosthetic Hip/Hip Pressure Ulcer
- ☐ \$300K Slip & Fall During Storm-Fractured Prosthetic Knee
- ☐ \$415K Nursing Home Neglect-Pressure Ulcer
- ☐ \$490K Truck Accident - Lumbar Fusion - Partial Disability
- ☐ \$990K Nursing Home & Assisted Living Facility Neglect-Multiple Pressure Ulcers
- ☐ \$400K Recovery-Pain & Suffering for Fatal Fire (Verdict of \$375K plus \$25K Settlement)

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