



Nominating Committee Announces Officer and Trustee Slate

The Camden County Bar Association Nominating Committee has nominated the following candidates for terms beginning June 1, 2014:

| | |
|---|-----------------------|
| President | President-elect |
| Casey Price | Jenifer G. Fowler |
| First Vice President | Second Vice President |
| Louis R. Moffa, Jr. | Eric G. Fikry |
| Treasurer | |
| Ronald G. Lieberman | |
| Secretary | |
| Michael J. Dennin | |
| Member, Board of Trustees (Ending 2016 to complete term of Michael J. Dennin) | |
| Dawnn E. Briddell | |
| Board of Trustees (Ending 2017) | |
| Rachael B. Brekke | |
| Gregory P. DeMichele | |
| Louis G. Guzzo | |
| T. Alex Kushner | |
| Michael V. Madden | |
| Young Lawyer Trustee | |
| Matthew T. Rooney | |

Questions about the nominating process should be directed to Bar headquarters at 856.482.0620.

Casey Price to be Installed as 88th Bar President



Friends and colleagues from the bench and bar will gather to party at the Collingswood Grand Ballroom of the Scottish Rite Temple on Friday, June 13th for the Foundation's annual gala Installation of Association and Foundation Officers & Trustees Dinner Dance to witness Casey Price become the 88th President of the Camden County Bar Association. Price and the other officers and trustees will receive their oaths of office from Justice Faustino Fernandez-Vina.

Price, a partner with the law firm of Price & Price LLC, in Haddonfield, succeeds Gary W. Boguski of Taylor & Boguski LLC in Mt. Laruel, and will serve a one year term. Current Bar Foundation President, Louis R.

Lessig, a partner at Brown & Connery, LLP in Westmont, will turn over the reins of the Camden County Bar Foundation, the Association's charity partner, to past CCBA President Brenda Lee Eutsler, partner at Asbell & Eutsler, P.A. in Cherry Hill.

"I am truly honored and excited to be serving as president of New Jersey's finest Bar Association, and look forward to carrying on our rich tradition of service to our members, the legal community and the public" said Price. "I also thank and congratulate President Gary Boguski for his leadership over the past year" he added.

(Continued on Page 19)

2014 Camden County Professional Lawyer of the Year Nominations

Nominations for Camden County's 2014 Professional Lawyer of the Year Award are now being accepted.

The Professional Lawyer of the Year Awards are given jointly by New Jersey County and Specialty Bar Associations and the New Jersey Commission on Professionalism in the Law to recognize deserving individuals and focus positive attention on the good works done by members of the legal profession.

The criteria for determining a Professional Lawyer of the Year are:

- A lawyer/judge who is committed to the ideals of professionalism
 - Who is well recognized in the legal community for character and competence
 - Who is respected by all and looked upon as a model of professional behavior
- The awards will be presented at the annual awards luncheon in October.

Selection of the recipient is NOT based on the number of nominations a person receives. Each nominee is reviewed by the CCBA selection committee with the recipient determined by who best exemplifies the criteria set forth.

To nominate a colleague for this prestigious award, use the nomination form included in this month's inserts.

NOMINATIONS ARE DUE TO BAR HEADQUARTERS BY 5 PM, FRIDAY JUNE 6.

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Dont Delay, Renew Today
Pay dues by June 1! • See page 2

Children's Picnic June 7
Volunteers Needed! • See page 7

THE DOCKET

Thursday, May 1st

*South Jersey CLE Roundtable with
U.S. Attorney Paul J. Fishman*
5 – 7:15 pm

Rutgers School of Law, Room 106 West
217 North 5th Street, Camden

Tuesday, May 13th

Debtor/Creditor Committee Meeting
8 am

Bar Headquarters, Cherry Hill

Tuesday, May 13th

Young Lawyer Committee Happy Hour
5:30 – 7:30 pm

The Pour House, 124 Haddon Ave., Westmont

Tuesday, May 20th

*Residential Real Estate
Conditions Issues from Inspector
& Attorney Perspectives*
4 – 6:15 pm

Tavistock Country Club, Haddonfield

Wednesday, May 21st

How Do I _____?

A Practical "How-to" for Litigators
4 – 6:15 pm

Tavistock Country Club, Haddonfield

Tentative agenda for May 22 Trustees Meeting

A tentative agenda for this month's regular Board of Trustees meeting follows. The meeting will begin at 4:30 pm, at Café Aldo Lamberti in Cherry Hill, immediately preceding the *Cocktails & Conversation Bench Bar Cocktail Party*. 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

Thursday, May 22nd

CCBA Board of Trustees Meeting
4:30 pm

Café Aldo Lamberti
2011 Route 70, Cherry Hill

Bench-Bar Cocktails & Conversation
6 – 8 pm

Café Aldo Lamberti
2011 Route 70, Cherry Hill

Thursday, May 29th

CLE on Tap! NJ Municipal Court Practice
3 – 6:15 pm

McCormick & Schmick's
941 Haddonfield Road, Cherry Hill

Don't Delay, Renew Today!

Dues notices for the 2014-15 membership year have been mailed and are **payable by June 1**. Paying promptly ensures that your Association continues to serve you and the community with its many important programs and services.

As a CCBA member you receive numerous benefits, which more than justify the cost of dues:

- A wide array of affordable, convenient and informative CLE seminars, all offering New Jersey and Pennsylvania CLE credits.
- Discounted tuition and special offers on the many CLE programs available online through the *Camden County Online CLE Learning Center*.
- Our monthly publication, *The Barrister*.
- Committees that offer opportunities to network with peers while shaping the future of your Association.
- Professional and social activities designed to enhance your law practice.
- Discounted rates for conference room rental
- An online Member-to-Member Referral service.
- Discounts on many legal products and services, and much more.

Now, more than ever, your membership in the CCBA provides the value-added benefits you need in today's economic climate.

Renew your membership, or join today, and support our mission to ensure that the Camden County legal community remains the finest in New Jersey.

THE BARRISTER

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

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MEMBER ON THE SPOT



NAME: Richard J. Ramones
PRACTICE AFFILIATION: Petroleum Industry Practices and Environmental Law Groups. Archer & Greiner, P.C.
YEAR ADMITTED TO BAR: 2011
OTHER BAR ADMITTANCES: Pennsylvania

PRIOR OCCUPATION: Teacher for students with learning disabilities.

RESIDENCE: Collingswood, New Jersey

HIGH SCHOOL: Parsippany Hills High School, Parsippany, New Jersey

COLLEGE: Rutgers College, Rutgers University, New Brunswick, NJ

LAW SCHOOL: Rutgers School of Law | Camden

WHAT LED YOU TO A LEGAL CAREER: The intellectual and social complexities of the law were very attractive to me. In addition, before high school, my family lived in various urban / low-income neighborhoods in North Jersey. Based on those experiences, the ability to use my legal skills to assist with making a change in my local communities was something very important to me.

BEST PERSONAL/PROFESSIONAL ATTRIBUTE: I consider myself a genuine person and I try to be 101% respectful and courteous to everyone I interact with.

GREATEST FAULT: Sometimes being "too" nice is seen as a weakness.

WHAT I DO TO RELAX: Exercise and really any outdoor activity, including taking my dog (Raf) to the dog park.

HOBBIES: Snowboarding, Football, Basketball and Hockey (both watching and playing). Trap shooting.

FAVORITE RESTAURANT: Tequilas (16th and Locust).

FAVORITE TELEVISION SHOW: *The Simpsons*.

FAVORITE MOVIE: *Training Day*.

FAVORITE AUTHOR/BOOK: George R.R. Martin. *Storm of Swords* (3rd book in Game of Thrones Series)

FAVORITE VACATION PLACES: Anywhere cold. Alternatively, anywhere that would make my fiancée happy.

FAVORITE WEBSITE: reddit.com

FAVORITE MUSEUM: Smithsonian National Museum of Natural History

FAVORITE WEEKEND GETAWAY: Vermont or Montreal for Snowboarding.

ENJOY MOST ABOUT PRACTICING LAW: Two things: (1) the competitive/adversarial aspect of zealously representing your client's interests; and (2) the social aspect, including building relationships.

MOST ADMIRER PERSON AND WHY: My parents. Without their sacrifices and the values they instilled in me, I would not be the person I am today.

WHEN AND WHERE HAPPIEST? Somewhere outdoors with my fiancée (Kristen) and our dog (Raf).

CHERISHED MEMORIES: Simple moments of sharing time and food with my family and friends.

GREATEST FEAR: Failure.

ALTERNATE CAREER CHOICE: Farmer or Dog Rescuer.

GREATEST LESSON LEARNED FROM PRACTICE OF LAW: There is more value in listening to what others are saying versus trying to force them to listen to you.

PERSON YOU'D MOST LIKE TO DINE WITH: Beyoncé.

PET PEEVE(S): Insincere people.

LIFE'S HIGHLIGHTS: Getting married in August 2014!

GREATEST ACCOMPLISHMENT: To be determined (long way to go).

#1 PROFESSIONAL GOAL: Develop my own book of business based on my professional and interpersonal skills in order to earn my way into the shareholder ranks.

#1 PERSONAL GOAL: Become a good father/parent, like my own.

LIFE EXPERIENCE(S) WITH GREATEST IMPACT: Being the oldest of three boys, watching my parents work multiple jobs, day and night, to provide our family with the best opportunities to succeed and live life comfortably.

ADVICE TO YOUNG LAWYER: Work hard, but also make time to get out in your community to volunteer your time and skills for those less fortunate.

HOPE TO BE DOING IN 10 YEARS: Practicing law as a partner at Archer & Greiner and raising a son(s) to be a future NFL star(s)!

FAVORITE QUOTATION: "A man must have a code." – Omar Little (from *The Wire*)



The Association was saddened by the recent passing of the following members.

Past CCBA President
Hon. Diane B. Cohen, J.S.C. (ret)
 March 17th
 at the age of 76

Burchard V. Martin
 April 5th
 at the age of 80

We extend our deepest sympathies to the families, friends and colleagues of these members

They will be missed.



PERSONAL INJURY LAW

Is the Bipartisan Budget Act of 2013 the Death of Ahlborn?

by Thomas D. Begley, Jr., CELA

As a condition of Medicaid eligibility, a Medicaid applicant is required to assign to the state any rights to payment of medical care from any third party.¹ If the individual fails to pursue the claim, the state has the option of pursuing it. Federal law requires that each state Medicaid program have procedures for determining the legal liability of third parties to pay for medical assistance provided by the state's Medicaid plan, and for recovery from third parties of the cost of medical assistance provided, whenever recovery is feasible.² In New Jersey, the Attorney General is responsible to enforce any rights against third parties for recovery of liens.³ A Medicaid lien applies only to medical assistance related to the injury and the lien applies only to payments made from the date of the injury to the date of settlement. Where there are multiple parties involved in an action, the Medicaid lien applies only to assets recovered by the personal injury victim, if no medical expenses were paid as a result of the injury to other parties such as parents or spouses. Where the third party suffered no physical injury resulting in any payment by Medicaid, but who have only a derivative claim, no Medicaid lien attaches to their claim.

A Medicaid lien may be reduced by procurement costs. Procurement costs are counsel fees, costs or other expenses incurred by the recipient or the recipient's attorney.⁴ In 2006, the United States Supreme Court in the case of *Arkansas Department of Health and Human Services v Ahlborn*⁵ held that the State Medicaid Agency was only entitled to recover from that portion of the settlement earmarked for medical expenses. The court held that the agency could only recover a pro rata share of its claim, which is determined by the ratio that the settlement amount bears to the reasonable value of the total claim. By taking advantage of an Ahlborn reduction, the plaintiff was guaranteed some compensation for pain and suffering, economic damages, and other losses sustained as a result of the injury. If the settlement was less than the true value of the case because of limits on insurance, issues with liability or other mitigating factors, both the plaintiff and the State Medicaid Agency shared the loss proportionately.

The issue has always been how to determine the true value of the claim. The three principal ways of making this determination are through an Expert Witness Report citing similar cases and explaining why the case in question resolved for less than true value, utilizing Jury Verdict, which is the method used by the Division of Medical Assistance and Health Services in New Jersey, or by a Court Order. A Court Order may be obtained allocating the settlement on various categories of damages. The State Medicaid Agency should be notified of any such hearing.

In cases where a special needs trust was involved for purposes of preserving the plaintiff's future eligibility for Medicaid, an issue frequently arose as to whether the Medicaid lien had to be satisfied prior to funding the special needs trust, or whether it could be satisfied from the payback provision on the death of the plaintiff/trust beneficiary. In *Cricchio v. Pennisi*, a New York Court of Appeals ruled that Medicaid is entitled to repayment of the lien prior to funding the special needs trust.⁶ New Jersey has followed the same reasoning as *Cricchio*.⁷ The Health Care Financing Administration (HCFA), now CMS, takes the position that if a special needs trust is funded prior to satisfaction of the Medicaid lien, the individual will lose Medicaid eligibility.⁸

At the end of 2013, Congress passed the Bipartisan Budget Act of 2013 (BBA 2013). Beginning on October 1, 2014, states will be required to seek reimbursement from portions of personal injury recoveries beyond what is directly attributable to past medical expenses. Under the amended statute,⁹ the state is deemed to have acquired not only the right to payment by third parties for health care items or services, but also to "any payment by [a] third party" with respect to legal liability to make payments for assistance provided by the state. Also under the amended statute,¹⁰ applicants must assign to the state their rights for "any payment for a third party that has a legal liability to pay for care and services under the plan" as opposed to simply assigning their rights to payment for medical care by a third party. The BBA also carves out an express exception to

the Medicaid anti-lien provisions to allow for rights acquired by or assigned to the state under 42 U.S.C. §§1396a(a)(25)(H) and 1396k(a)(1)(A). Therefore, under the amended statute, the states' assigned rights extended to any payments from a third party with legal liability to pay for care or services available under the plan. CMS has adopted the broad policy that states are required to seek reimbursement from portions of tort recoveries not attributable to medical expenses.¹¹ These amendments supersede *Ahlborn*.

These amendments become effective on October 1, 2014. It is not clear from the legislation whether this date will apply to applications for reduction made as of that date, to cases settled as of that date, or to injuries sustained as of that date. If the amendments remain in effect, litigation is sure to follow. AAJ and other advocacy groups are working to repeal this amendment.

This provision in the Bipartisan Budget Act amounts to a tax on catastrophically disabled individuals who may be left with little or no recovery after payment of the Medicaid lien. In fact, the policy may be counterproductive in that it will lessen plaintiffs' incentive to pursue otherwise valid claims. The ironic result may be that with fewer plaintiffs pursuing claims, the supposedly revenue-raising amendments actually states' total reimbursements.¹²

¹ 42 U.S.C. §1396k(a)(1)(A); N.J.S.A. 30:4D-7.1(c).

² 42 U.S.C. §§1396a(a)(25)(A), (B).

³ N.J.S.A. 30:4D-7.1(a).

⁴ N.J.S.A. 30:4D-7.1(b).

⁵ *Arkansas Dept. of Health and Human Servs. v. Ahlborn*, 126 S. Ct. 1752 (2006).

⁶ *Cricchio v. Pennisi*, 660 NYS 2d 679, 673 N.E. 301 (N.Y. Ct. App., 1997).

⁷ *Waldon v. Candia*, 317 N.J. Super. 464 (1999).

⁸ Treating Disability Trusts under Transfers of Assets, Trusts, Estate Recovery, and Third Party Liability Rules, Health Care Financing Administration (Jun. 5, 1996).

⁹ 42 U.S.C. §1396a(a)(25)(H).

¹⁰ 42 U.S.C. §1396k(a)(1)(A).

¹¹ CMS Informational Bulletin (Dec. 27, 2013).

¹² Email from Linda Lipsen, CEO, American Association for Justice, to Members (Jan. 6, 2014).



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

Taxes and Personal Injury / Employment Awards

A year or so back I presented a seminar for the CCBA on the critical issues surrounding awards from personal injury and other litigation matters regarding taxes. I thought it a good time to revisit although anyone wanting the original rather exhaustive handout, need only so request from us.

So here goes...

For years, confusion and litigation abounded concerning the taxability of punitive damages and damages for nonphysical injuries such as gender and age discrimination or in harassment cases. Internal Revenue Code (IRC) section 61 states that all income from whatever source derived is taxable income, unless specifically excluded by another code section. The only provision which specifically addresses income exclusions for any type of lawsuit proceeds is IRC section 104(a)(2) which excludes from income amounts paid by suit or agreement for personal injuries or sickness. When the Small Business Job Protection Act was signed into law in 1996, years of litigation ended by stating that punitive damages—whether or not related to physical injury—are not excludable from gross income. Awards for nonphysical injuries are not excludable except to the extent of amounts paid for medical care attributable to emotional distress. The legislative history of the 1996 Act, as it related to IRC section 104(a)(2), provided some useful insight into what was or was not excluded from taxable income because of “physical injuries or

physical sickness.” Generally, if the primary injury is physical, then all resultant damages (once again, except for punitive damages or interest) are excludable. This is the case even if the damages are measured by lost wages. However, if the primary injury is not physical, then the resultant damages are not excludable even if the action caused emotional distress, which might result in headaches, ulcers, teeth grinding, insomnia, etc. It’s even interesting to note in the Conference Report that injuries resulting to other third parties are excluded if the underlying injury was physical (i.e. loss of consortium or recoveries for wrongful death).

As stated earlier, also excluded from taxable income are recoveries to pay for medical expenses resulting from the personal injury. Such would include medical care necessitated by a non-physical injury (i.e. psychiatry or therapy for emotional distress resulting from a wrongful discharge, medicines for resulting stress, dental bills resulting from teeth grinding, etc.).

Consider the following:

- Punitive damages will generally be included in gross income and taxed when received on account of personal injury or sickness whether or not related to a physical injury or physical sickness.
- Damage recoveries for other than physical injuries or sickness will be taxed. Emotional pain and suffering or emotional

(Continued on Page 6)

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- Would like any of the numerous articles and handouts of particular interest to lawyers and law firms at Abo and Company, including:
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- The National Business Institute (NBI) at their two days of seminars entitled “*Accounting 101 For Attorneys*”
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- Memo on C-Corporation vs. LLC or S-Corporation
- IRS Audit Technique Guide on Attorneys and Law Firms
- Checklist for those serving as Executors
- Sample Reconciliation of Income Tax Return with Actual Disposable Income

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

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Taxes and Personal Injury / Employment Awards

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distress are not considered physical injuries or illnesses excludable from taxation. Other than for the actual medical expenses incurred, damages received for “wrongful discharge” claim, race and age discrimination, injury to reputation accompanied by a claim of emotional distress, and similar non-physical claims will all be included in gross income.

- I indicated that damage awards (non-punitive) received because of physical injury or sickness will not be taxed. Similarly, awards for emotional distress or other non-physical injuries to the extent attributable to a physical injury will be excluded. The physical personal injuries are not required to occur to the recipient of the damages award to be excludable under 104(a)(2). Again, as long as the claim has its origin in a physical injury or physical sickness, then all damages (except interest thereon or punitive damages) that flow are excludable whether the recipient is the injured party or not.
- Non-punitive awards for non-physical injuries will not be taxable to the extent they are paid for medical care attributable to emotional distress.
- It is now pretty much well settled that interest included in a judgment that has become final will be treated as taxable interest, not to be excluded under IRC sec 104(a)(2). Concerns develop where an out of court settlement occurs with the settlement agreement silent as to interest. IRS typically argues that some portion of the lump sum payments represent interest income taxable to the Plaintiff while the taxpayer Plaintiff will take the position that the entire settlement should be excluded under 104(a)(2) as damages received “on account of personal injuries.” Even so, attorneys should consider stating in their settlements that the award is “without interest” although such a practice is certainly not decisive. While there may be an assumption there is no interest income component in a lump sum personal injury settlement reached before the actual trial, appreciate how easy it is for the IRS to glean from a jury verdict, which specifies compensatory damages along with stated interest computations. Structured settlements (i.e. damages awards paid in a series of periodic payments and not in a lump sum) received on account of a personal physical injury will enable the recipient to exclude the entire amount of the periodic payments, even though such payments clearly include an interest element.
- By the way, the water is still pretty murky on exactly what is a “physical injury.” Are ulcers? Are migraines or cluster headaches? Are strokes? Reading the legislative history in the Conference Committee Reports to the 1996 law changes revealed that mere symptoms of emotional distress such as stomachaches, headaches or insomnia do not constitute physical injuries although these three examples were not meant to be all-inclusive.
- A properly worded complaint or settlement agreement can certainly aid in the exclusion of the damages from gross income. In fact, not considering the tax consequences of a damages award can easily lead to a malpractice claim against the erring attorney. Although such drafting of the settlement agreement is not conclusive. As a CPA, I would imagine trying to substantiate the tax treatment in the complaint is further complicated since the plaintiff’s lawyer often considers several different theories/claims. Still, the IRS often relies on the initial

complaint as the most persuasive in allocating damage awards (usually in their favor and not the Plaintiff’s).

- Amounts received under workmen’s compensation acts as compensation for personal injuries or sickness are not taxable.

What’s it all mean? In some cases, it’s been noticed that plaintiffs are holding out for more money to make up for an increased tax liability. Also, some lawyers believe a greater number of claims have been made alleging physical injuries in some harassment or discrimination cases. Attorneys may wish to seek the help of CPAs to help them analyze and quantify claims for damages or settlement offers. By discussing with the accountant or tax attorney the tax or financial impact of filing a claim under several different scenarios, consideration can be given to maximizing the after-tax recovery. CPAs also might consult with defense counsel, preparing reports or counter-reports where necessary, and even advising them on settlements of legitimate claims that might minimize income taxes, which could result in lower payments by the attorney’s clients/payors.

Martin H. Abo, CPA/ABV/CVA/CFE 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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The **CLE on Tap!** program continues to provide the "Bridge the Gap" courses required of newly admitted lawyers in New Jersey. The most recent program in the series **New Jersey Basic Estate Planning** was held at McCormick & Schmick's in Cherry Hill. Seminar faculty were **Chris Bratton**, Rothamel Bratton; **Doug Madanick**, Kulzer & DiPadova; **Andy Kushner**, Andrew B. Kushner, LLC; and moderator **Ben Teris**, Brown & Connery.



18th Annual Judge John F. Gerry Award Nominations

The Camden County Bar Association established the Judge John F. Gerry Award to acknowledge the continuing outstanding contributions of a member of the Bar of the State of New Jersey, or a member of the State or Federal Judiciary in New Jersey, to the administration of justice in the State of New Jersey, who exemplifies the spirit and humanitarianism of the individual in whose honor this award has been named.

Members of the bar and the public are invited to nominate individuals to receive this award. Nominations should be made in writing and sent to:

Laurence B. Pelletier, Executive Director
Camden County Bar Association
1040 N. Kings Highway, Suite 201
Cherry Hill, NJ 08034

Nominations must be received by May 24, 2013 to be considered. Nominations may also be emailed to Mr. Pelletier at: lbp@camdencountybar.org.

Annual Children's Picnic June 7

Volunteers needed for important community event

The Camden County Bar Foundation's annual Summer Picnic for disadvantaged children will again be held at Challenge Grove Park in Cherry Hill.

This annual rite of spring provides a day of games, pony rides, contests, barbeque fare and great fun in the sun for hundreds of disadvantaged kids in Camden County who are guaranteed a day of happy memories on Saturday, June 7th from 10 am – 1pm, RAIN or SHINE.

Members of the Public Benefits and Young Lawyer committees will be on hand to help run the event; however, additional volunteers are needed and always welcome. To participate or for more information, please call or email Bar headquarters – 856.482.0620, info@camdencountybar.org.

Financial support for the Picnic is provided in part by Bar members who include the Foundation check-off when paying their dues, and proceeds from events throughout the year.

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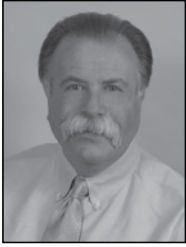
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SPINNING MY WHEELS

Who Says You Can't Go Home Again, Act II

By Andrew Kushner

When we left off last month I had regaled you about the choice of car that I made and the anticipated wait for its delivery from the snowy mountains of Idaho. Another month has passed and the red Alfa has been picked up and delivered to the mechanic for its refreshment of parts and maintenance. Of course, although the car was delivered almost a week ago, late March, I have yet to see it. You see, there are inevitable communication problems when the person driving the huge three sectioned transport rig doesn't answer his cell phone, doesn't return voice mails and, as I was later to find, is somewhat of a stranger to the English language. Perhaps if I had the option of "pressing 2 for Italian" I would have had better luck. Communication as to the whereabouts of the car required a call to the broker in Florida, who then called the transport company in Seattle, who, with some luck was able to contact Italian born and raised Vitalie on the road for updates. The first "confirmation" of delivery date and time indicated a drop off at the mechanic in Levittown, PA either late Monday night, March 24th or early the next morning between 7 am and noon.

Knowing full well that a late night drop off at a mechanic shop was not a choice, I went through the telephonic chain of command to confirm delivery the next morning and I would be afforded an hour's notice so that I could race to Levittown, cash in hand to pay the driver. By 11am that morning no phone call and no success reaching the driver placed me in a situation where I got in my car and drove to Levittown assuming that it would be just a matter of an hour or two. No such luck. I finally reached someone who gave me

a vaudevillian song and dance that the driver was "...supposed to pick up a car in NY at 9 am but was delayed until 11 am and wouldn't be there before 2 pm and maybe not until 5 pm." Realizing that I had a life beyond waiting for the driver to appear, I left the money with the mechanic who gracefully agreed to meet the monstrous transport at a point where the car could be unloaded and pay the freight.

As frustrating as this was, I am lucky that the car was picked up the same month as promised; delivered the same week as promised and not bounced around leaving dents and scratches to be denied being caused by the driver. My mechanic called to confirm that the car arrived mid afternoon, started well and drove well to his shop. He would report to me his findings the next day.

A word on my mechanic: Woody White of Alfa Performance Center was referred to me by several sources as the "go to" Alfa guy in the Delaware Valley. Woody and I spoke several times on the phone and he asked me several pertinent questions including what other Alfas I have owned and for how long a period of time. After establishing my Alfa *bona fides* we then moved onto the likely parts and fluid replacements needed to be sure that even a one owner, low mileage car was safe and reliable. When I arrived at Woody's to receive the car that didn't arrive, I traveled through an older residential neighborhood and got to his home which had no signage or other indication of a repair shop. The side driveway gave onto a back yard with a large three bay commercial garage and, wait for it, the rest of the yard covered in 10 to 12 Alfas in various states of disrepair. Woody allowed that most of them were "his" and only a

couple were customer's cars. Woody is an old school mechanic, about my age, perhaps a bit older, with an encyclopedic knowledge of Alfas garnered from 40 years of work as an Alfa mechanic, first for a dealership and then for himself after he was orphaned by the Milan firm in 1995 when Alfa Romeo left our shores.

I did get a call the next day and Woody reported a "couple of issues." First, the air bag light was on. Perhaps nothing, perhaps something but not to worry too much. Of greater concern was the leaking radiator-a part notoriously defective in 164 models due to the design which incorporated a plastic side tank prone to cracking. I could buy an OEM replacement, said Woody, but he's seen them crack as quickly as 6 months after installation. Far better, he opined, to buy a full aluminum one fabricated by an Alfa parts producer out of Arizona. At "only" \$150 more than the plastic fantastic version, it was an easy choice. Of course it needs to be fabricated and that takes 10 days plus shipping time. Next, a fluid leak that he thinks is brake fluid but not coming from the master cylinder or a hose. Further investigation is needed.

The good news is that the car runs drives and stops well and no untoward noises have been heard. All in all, a good result with not too much in the way of surprises found. I may take a ride up there this week to drop off the new NJ plates so that he can be completely legal when he test drives it. I will even be able to take a look at what I have wrought by my considered decision to buy this car. Act III coming soon.



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10 yrs. Superior Court Judge (ret.)

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How Time Flies!



"Ladies & Gentlemen . . .the President of the Camden County Bar Association!"

As hard as it is to believe, this month is the end of another busy Bar year. As we come to a close on the year, we congratulate and thank Association President Gary Boguski, Foundation President Lou Lessig and all of the trustees on another successful year. And we thank YOU our members for your continued support of your Bar Association and Foundation.

Over the past year we survived one of the coldest and snowiest winters on record and said goodbye to a number of members, but we also had a lot of good times to remember. We hope you enjoy this year in review, and we look forward to seeing you again in the coming year.



Carl Gregorio, CC Bar Foundation President Lou Lessig, Pat Holston, Joe Garremore (Autumn Scramble)



Newly installed Bar Foundation President Louis Lessig & outgoing Foundation President Linda Eynon.



Mark Natale, Judge Rodriguez & Assignment Judge Fernandez-Vina (Meet the Judges & Law Clerks)



Mike Bryen, Maury Cutler, Bob Harbeson (Autumn Scramble)



Outgoing President Brenda Lee Eutsler passes the gavel to newly installed President Boguski



Adopt-A-Family volunteers take a minute to warm up from the cold December weather after unloading cars, trucks, and SUVs laden with donations from Bar members, firms and friends to ensure a Merry Christmas for Camden families.



Allen & Barbara Etish, Judge Axelrad & Barry Rosenberg (The Tasting Games!)



Victoria Stolyar, Jessica Kotansky, Andy & Jacquie Linenberg, Rachael Brekke, Jeanette Kwon (Meet the Judges & Law Clerks)



Judge Vogelsson & Judge Mariano enjoying the Holiday Party at Tavistock.



U.S. Magistrate Judge for the District of New Jersey, John J. Hughes (ret.), was the man of the hour at the 18th Annual Judge John F. Gerry Award presentation at Tavistock. (L-R) Gerry Award Committee Chair Judge John B. Mariano, (ret.), Bar Foundation President Louis R. Lessig, Judge Hughes, Judge Gerry's grandson Jack Gerry LeGoff and Mrs. John F. Gerry.

WINE & FOOD

By Jim Hamilton

In the lull between the late winter and early spring trade portfolio wine tastings, I thought it might be timely to address a very basic, but important, topic—wine glasses. You will notice I did not use the traditional description, stemware, since the well-known company, Riedel, and its “O” series of stemless glasses spawned an industry offering bowl only options.

With the bounty of BYOB restaurants available to us in the South Jersey/Philadelphia area, we can enjoy fine dining accompanied by wines we want to drink purchased at retail prices. However, one of the ways such restaurants can maintain profitability is by offering wine glasses that are high on durability but are less than optimal for consuming fine wine. Also, a restaurant may not have a sufficient supply of glasses to accommodate dinners where more than one glass per person is employed. The way many of us deal with this shortcoming is by bringing our own glasses to use with our wines.

I write this column the day after our regular Sunday visit to Bibou, the four bell BYOB in South Philadelphia. While chef/owner Pierre Calmels is spending much of his time building the reputation of his second spot off Rittenhouse Square, Le Cherie, he has a well-trained and talented staff keeping Bibou from missing a beat. The restaurant remains very popular and, like most BYOB restaurants worth frequenting, the narrow tables placed close together can offer a challenge when multiple wine glasses and bottles vie for space with plates, cutlery, water glasses, bread plates, butter/oil, etc. In this setting, stemless wine glasses can be a wise choice, for the bowl sitting flat on the table is less likely to be toppled by a hand gesture or reach. When one selects and, possibly has cellared, the wine opened and poured, the *gravity* of such an occurrence can be more meaningful.

There are many stemless wine glasses in the marketplace. The Riedel “O” series may be the best known because of the company’s marketing prowess and the reputation it has for designing bowls that best deliver specific wine types or, more precisely still, grape varieties. While some people are not

comfortable with such stemless glasses for a number of reasons—price, body temperature warming the wine, the feeling one is drinking out of a Mason jar—they have become popular. Undoubtedly, one of the reasons for the success of “O” and its imitators is because eliminating the stem takes away the common breakage point between its connection with the bowl. Also, transporting stemless glasses is easier because they take up less room in whatever carrier that is used (Riedel offers a nice one) and they can be safer to clean in a dishwasher.

Some more serious wine fans will bring so called “tasting glasses” to the table. The best known (yes a relative term) is Peugeot’s Impitoyable Le Taster. These are designed with indentations for finger tips and to reveal all that is good, or bad (i.e. flaws), about the wine being tasted. As a *caveat*, however, since they are stemless and have a very thin “lip,” they are vulnerable to breakage by objects from above (e.g. a bottle, water glass or plate unsuccessfully squeezed onto the limited available table space) or when transporting from/to home. I have found as a suitable restaurant alternative Govino glasses, which are 16 oz. tasting-styled stemless “glasses” made from a polymer. You literally can bounce these off the floor or wall, but one must be mindful about storing them since the rim can lose its round shape by being distorted for a prolonged time. As with most successful products, imitators have hit the market, so price may weigh into your purchasing decision. Nevertheless, I like my Govinos for their relative thin lip, versatile size and carefree transportability.

Naturally, since many of you enjoy dining at licensed restaurants where you will drink their wine in their glassware, you may be unconcerned with wine glasses when dining out. However, most people who enjoy wine when dining will at least occasionally consume it at home. This means you still will have a glassware need. I rarely use my Govinos at home. Rather, I have a healthy supply of stemware from which to choose, whether for a group of people or just two. Since table space is not an issue, I usually turn to stemware. While there are many glass manufacturers, the three I mostly have



relied on over the years are Riedel, Spiegelau (now owned by Riedel) and Schott Zwiesel. I have four region or grape-specific Riedels—Bordeaux, Burgundy, Chardonnay and Syrah. While Riedel offers glasses of various quality levels, including a series of Sommeliers hand blown stems, I am perfectly happy to use their manmade Vinum glasses. If you enjoy Cabernet Sauvignon or Chardonnay wines and want a specific glass but not a Riedel price, Wegman’s offers a decent alternative. While I have a number of different Spiegelau glasses, my favorite probably is the Pinot Noir for its solid handling of a finicky grape.

If there is one glass I find to be a good, multi-purpose choice it is a Schott Zwiesel from its Tritan line. Usually, when we are talking about fine glassware, we mean crystal, and most crystal is made using lead. Lead, of course, is not the most environmentally friendly component and furthermore is soft. Since thin wine glasses are preferred for, as Georg Riedel says with regard to glass shape, delivering the message, those containing lead crystal can be more vulnerable to breakage. Schott Zwiesel developed a crystal that uses titanium and zirconium instead of lead, which makes them less prone to being cracked or scratched.

If a wine is good enough to buy, it probably should be enjoyed in a glass that will convey the best the wine can offer. Among the factors to consider when choosing a wine glass are a decent capacity to enable the wine to develop, whether passively or by swirling; a bowl that is thin enough that its edge (“lip”) won’t get in the way of properly delivering the wine to one’s nose and palate; transportability if you want to take the glass to a restaurant or friend’s house (for wine group tastings); and durability so that you can spend more of your discretionary income on wine rather than glass replacements. Finally, keep in mind that sparkling wine is, bubbles notwithstanding, a wine. As such, narrow flutes or, worse, shallow, flat “Champagne glasses,” may not be the best choice for enjoying such a wine any more than it is for a glass of Chardonnay or rosé. So, consider using a wine glass with a bit of a bowl the next time you pop the cork. Cheers!



PRESIDENT'S PERSPECTIVE

by Gary W. Boguski

Breaking Stereotypes

Over the last few weeks I have experienced from a variety of sources the time-honored jokes and ridicule of lawyers and our profession. The sources included comments from a nationally syndicated radio commentator, a popular television show, and the reactions of the audience in a movie theater when the lawyer was killed, and a conversation overheard while in line at the supermarket check-out counter. All different people and all different situations, but the gist of the comments and reactions were that lawyers are uncaring, self-centered, win-at-all-cost stiff shirts who are the bane of society (a subset of that stereotype is the plaintiff's trial bar which is to some the ruination of our economy, the insurance industry and even the medical profession—but that discussion is for another forum and another day).

After nearly 38 years in practice, you might think that I would have become numb to such comments and jokes but I find myself instead increasingly irritated by them. My irritation comes in large part from the fact that I see on a daily basis the dedication of lawyers in Camden County, throughout the State and nationally who are committed to ethically and fairly representing their clients, ensuring equal justice for all, providing legal representation for those who are most vulnerable and least able to afford representation and, in small measure, to bringing joy to others in need.

As I mentioned in previous columns, the amount of time, energy and money donated by lawyers in Camden County and in this State are staggering. The Camden County Bar Association and Foundation have a proud tradition of pro-bono and public service efforts. Our breakfast and Christmas Party with Santa for hundreds of children, recently in its 25th year, our rain or shine Spring picnic with pony rides, music, games, food extraordinaire and grown men in face paint and colorful wigs, Wills for Heroes, high school, college and law school scholarships, donations to other charitable events and organizations, bingo nights for Sr. Citizens, Christmas Adopt-A-Family program generously supplying food and gifts for impoverished families in the County for more than 20 years, outreach programs for seniors and shut-ins, and the list goes on.

I also want to single out the work of the Young Lawyer Committee. Under strong leadership this Committee has expanded its events and efforts supporting young lawyers in the County and giving back to the community. Their events include the annual Lobster Bake for the Larc School raising tens of thousands of dollars through that fun and tasty event and the annual parties at the Anna Sample House and serving meals to the homeless at Camden's Cathedral Kitchen.

Camden County Bar Association Lawyers have also generously supported the Private Attorney Involvement (PAI) Program of South Jersey Legal Services, the organization providing legal services to indigent individuals and families throughout the seven southern counties of New Jersey. That organization has seen its funding cut by nearly 50% over the last five years while at the same time experiencing an increased need for legal representation. The PAI program seeks volunteers from private practice willing to take cases involving SSI claims for children, bankruptcy and divorce matters that could not otherwise be handled by South Jersey Legal Services due to the cuts in funding.

While all of the projects have a wait list back log, there are dozens of local lawyers who regularly volunteer to take cases spending hours of pro-bono time on behalf of their clients who all, by virtue of the regulations of South Jersey Legal Services, are eligible for the services of that program because of their income and asset levels. Special mention goes to the following lawyers who have been very active in the PAI program: David Epler, Richard DeMichele, Jr., Gary Borger, Ronald Block, John Hargrave, Tom Keeley-Cain, David Lipschutz and Berge Tumaian.

To the lawyers on the Young Lawyer Committee, to the lawyers who volunteer under the PAI program of South Jersey Legal Services, and to the many other members of the Camden County Bar Association who have donated so generously over the years, I say thank you for breaking stereotypes.

Meanwhile, on the home front, last month saw us celebrate the contributions of Judges David G. Eynon, Richard S. Hyland and John B. Mariano, this year's recipients of the Honorable Peter J. Devine, Jr. Award for distinguished service to the Bar. It was truly an honor to participate in this event and recognize these gentlemen and retired jurists who have given so much to the profession and to the Bar in their many years of service.

This month we will be meeting from 6-8 pm at Aldo Lamberti's on May 22, for *Cocktails and Conversation*, our Bench Bar Cocktail Party. This is a member only event that is always well attended and enjoyable. This year we also have the added attraction of being able to recognize and congratulate our own Justice Faustino Fernandez-Vina.

Lastly, please mark your calendars to join us at the Installation Dinner Dance of the next President of the Association, Casey Price, on June 13, at the Collingwood Grand Ballroom. Details to follow.

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YOUNG LAWYER HAPPENINGS



YOUNG LAWYER CHAIR

Work Hard...Dream Big!

By Rachael Brekke

It is hard to believe that this past year as your Young Lawyer Trustee is nearly finished. There are so many memories we shared, moments to be thankful, and relationships that will define our careers in the community. Before this article turns too mushy (see last paragraph to continue the mush) let's take care of one last recap and look ahead for May!

April should be characterized as our "giveback" month. The kids at the Anna Sample House Easter Party had so much fun watching the very talented Lorenzo the Magician, treating their sweet tooth with candy, and choosing their favorite balloon animal. Thank you to our young lawyer volunteers: Jenny Kasen, Victoria Schall, Cosmas Diamantis, Harry Chung, Craig Becker, Jeanette Kwon, Lauren Hagovsky, and Dave Hasner for making this day such a success. As always, thank you to Mrs. Craig Becker for donating her delicious homemade cake as well!

Just a few days later, the young lawyers joined Cathedral Kitchen for an evening of serving dinner to the homeless community in Camden. This is always a powerful night for us, and it is inspiring to learn about what began as a simple ministry offering soup and sandwiches to a few people has grown into the largest emergency food provider in the area. On behalf of Cathedral Kitchen, thank you to our young lawyer volunteers: Jack McDermott, Dan Mellor, Lauren Hagovsky, Sarah Cranston, and Dave Hasner.

Lastly, we're already working on the **June 7th Kids' Picnic at Challenge Grove Park!** This event is organized by the CCBA Public Benefits Committee and always a really great outdoor event with our bar members and their families. If you can envision the Kids' Christmas Party, where we bus 200+ kids over to Cherry Hill from all over Camden, that's a good start. Now picture an outdoor picnic with BBQ food, carnival fun activities, and the very popular Mr. Softee visit! This is really a "can't miss" event, and one of the last events of the year before summer break. Stay tuned for more details and let me know if you want to volunteer!

May is shaping up to be our "networking" month of happy hours. Some of you may remember we kicked off my year as Young Lawyer Trustee with a happy hour at Pour House. The night could not have been more perfect, with gorgeous weather and a ton of young lawyers, if only I had known that it was just a glimpse of what our year together would entail. That being said, I'd like to bring it back to where it all began! Please join me for the **Young Lawyer Happy Hour on May 13th** from 5:30-7:30pm at **Pour House**, in their outdoor courtyard. We can also exchange numbers before many of us head down to Atlantic City the next day for the NJSBA Annual Convention for a fun three days together.

Rest up over the weekend because we have **Cocktails & Conversations at Aldo Lamberti on May 22nd** at 6pm. In addition to the great wine and food, many of our association's attorneys and judges make sure to never miss this event. Don't leave your business cards in the car! And last, but not least, please join the young lawyers at this year's **Installation Dinner Dance on June 13th at the**

Collingswood Grand Ballroom as we pass the Young Lawyer Trustee torch to Matt Rooney and welcome our new CCBA President Casey Price.

As I begin my next journey to campaign for elected office in Voorhees Township, thank you for inspiring me to believe that we are capable of anything... as long as we work hard and believe in each other! I am also honored to join the CCBA Board of Trustees and continue our great work with the entire bar association. It is often hard to say goodbye to something that is, and continues to be, such a great part of our lives. I find myself unwilling to lose touch with people and organizations that are dedicated to making a positive difference in our community. So, rather than saying goodbye, I will say thank you! Thank you for joining me for the past 12 months on this journey to build our next generation at the bar association and further define our commitment to Camden County. I am so proud of what we have accomplished together, and even more proud to call each of you my friend. This past year has shown me that we are truly capable of reaching those stars we call dreams, and the future we call tomorrow.

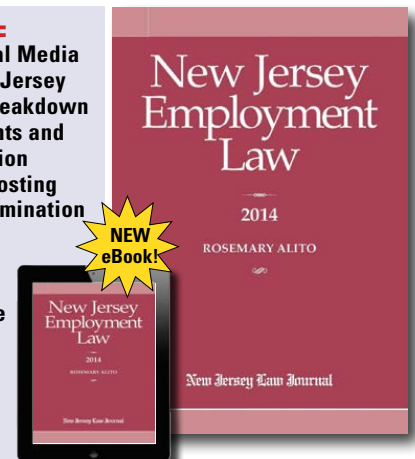
New Jersey Employment Law

by Rosemary Alito

New Jersey Employment Law has been completely rewritten, revised and updated. The new annual format gives readers current information in the easiest possible format. No more complicated stand-alone updates!

New for 2014:

- A new section on Social Media
- A new section on New Jersey Safe Act, including a breakdown of employer requirements and the enforcement provision
- A new section on the posting requirements for Discrimination in Wages
- The recent amendment to the New Jersey Constitution to increase the State's minimum wage
- The new posting requirements of the Equal Pay Act



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LAW PRACTICE MANAGEMENT

Have You Googled Yourself Recently? Your Reputation May Depend On It

By Greg Sutphin, On-Line Business Development Strategist and Consultant.

Definition of "Googled."

verb (used with object), Goo·gled, Goo·gling.

2. (often lowercase) to search the Internet for information about (a person, topic, etc.): *We googled the new applicant to check her background.*

Google yourself right now. That's right. Now. Go ahead. [the Jeopardy game show waiting theme playing in the background]. Did you find anything different from what you expected? Did you check the second search result page? Third?

When presenting Certified CLE Internet business development and ethics courses throughout New Jersey, an "Ah Hah!" moment for many attendees is when I hand them a print out of the Google Search results of their name. Most all I have met can certainly construct an on-line search of their name, but why had so many not done so recently or had not realized what the results contain about them? The "Ah Hah" moment comes as a result of them not truly knowing what is being said or represented about them and their practice in the digital world. Most every lawyer can say they get too busy, but take time to Google yourself and look at the results... but THEN what do you do if the results other than your Website are not what you expected?

So Many Different Directories

There are many on-line business directories and lawyer directories that use public domain data to replicate listings about you and your practice. Are you aware of their accuracy? Consistency of your biography, details of your business, and history of your litigation or law practice track record abound. Did you know that the consistency and accuracy of this information about you and your practice plays a role in your Website being found better in search results (an area called search engine optimization)?

Online Reviews

The Internet and Social Media have given a voice to millions, offering Web visitors the opportunity to provide reviews on any business (i.e. you or your law firm) and to post all types of potentially harmful information about you or your business. Studies indicate that

more and more consumers are turning to online sources for product and service reviews, as well as information about the people with whom they choose to do business. So, your reputation may be stellar among the Bar and several satisfied clients, **is it the same for your on-line reputation?** A business partner or prospective client may see unfavorable information about you.

How to Take Control

There are several measures that you can take to try to manage your online reputation, but they can be extremely time-consuming. Yahoo and Google offer alert functions to monitor on-line use of your name or law practice. Social media management tools can also allow you to manage multiple social media accounts and track comments.

There are also reputation management companies such as Bazaarify, located in Silicon Valley, that have developed comprehensive strategies to protect businesses and business owners. According to Bazaarify, the key components of an effective business reputation management service should include:

- Ongoing monitoring and collection of reviews from all major social media websites, including Google, Yahoo, Yelp, CitySearch, and Avvo.
- The generation of new positive reviews through automated requests to past and current clients
- The ability to collect client feedback on a mobile application, so that you can get immediate input on your reputation
- The aggregation of all your online reviews in a single place, as well as e-mail notice when any new reviews are posted
- The generation of digital referrals from satisfied customers
- The ability to contest, and even hold back fake, false or slanderous reviews, so that they do not appear on your website or on social media sites such as Facebook or Twitter
- The ability to automatically highlight positive client reviews in search engines, on social media, and on your firm's Website

*GetLegal, a trusted **Partner in Progress** of the Camden County Bar Association, has developed GL Catalyst in partnership with Bazaarify, and offers comprehensive online business reputation management services to law firms nationwide. To learn more about GL Catalyst call GetLegal.com directly at 610-757-8411.*

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Aubrey L. Weaver

School: Rutgers Camden
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Camden, NJ 08102

VERDICTS OF THE COURT

Superior Court of New Jersey

VERDICT: Liability Verdict: 100% Against Defendant; Damage Verdict: \$500,000 Against Defendant (1/29/14)
 Case Type: Auto Negligence
 Judge: John A. Fratto, J.S.C.
 Plaintiff's Atty: Richard J. Talbot, Esq.
 Defendant's Atty: Mary Brennan, Esq.
 L-280-12 Jury

VERDICT: No Cause (3/7/14)
 Case Type: Personal Injury
 Judge: Robert G. Millenky, P.J.Cv.
 Plaintiff's Atty: Feeda Musitiet, Esq.
 Defendant's Atty: Kim Hoehing, Esq.
 L-1505-12 Jury

VERDICT: Liability Verdict: 100% Against Defendant, No Cause Damage Verdict - Parties had a high/low (3/11/14)
 Case Type: Auto Negligence
 Judge: Louis R. Meloni, J.S.C.
 Plaintiff's Atty: Andrew A. Wenker, Esq.
 Defendant's Atty: Rachel V. Haninczak, Esq.
 L-1686-11 Jury

VERDICT: No Cause, but molded to \$10,000 per high/low agreement (3/11/14)
 Case Type: Auto Negligence
 Judge: Robert G. Millenky, P.J.Cv.
 Plaintiff's Atty: Michael Foster, Esq.
 Defendant's Atty: Jacqueline McDonald, Esq.
 L-2034-12 Jury

VERDICT: No Cause (3/12/14)
 Case Type: Auto
 Judge: Michael J. Kassel, J.S.C.
 Plaintiff's Atty: Jeremy M. Weitz, Esq.
 Defendant's Atty: Kimberly Hoehing, Esq.
 L-1075-12 Jury (7)

VERDICT: Liability Verdict: 5% Against Plaintiff, 95% Against Defendant; Damage Verdict: \$812,000 in Favor of Plaintiff Michael Cornely & \$70,000 in Favor of Plaintiff Donna Cornely (3/20/14)
 Case Type: Personal Injury
 Judge: Anthony M. Pugliese, J.S.C.
 Plaintiff's Atty: Stephen Tatonetti, Esq.
 Defendant's Atty: Andrew R. Bronsnick, Esq.
 L-2110-11 Bench

VERDICT: No Cause (3/20/14)
 Case Type: Personal Injury
 Judge: Robert G. Millenky, P.J.Cv.
 Plaintiff's Atty: Vincent Campo, Esq.
 Defendant's Atty: Patrick Reilly, Esq.
 L-1236-12 Jury

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Non-Megan's Law Sex Offenses

By Assistant Deputy Public Defender Louis J. Presenza, Jr.

A client comes into your office and says he has been charged with a sex offense and is deathly afraid that he will become one of THOSE people on the internet who everyone knows and fears. He knows that he has done wrong but does not want to be subject to Megan's Law. What do you do?

Megan's Law came into existence in 1994 after the release from state custody of Jesse Timmendequas and his subsequent rape and murder of Megan Kanka. At the time, there was no registry for prior sex offenders, and the public outcry of this case led the New Jersey legislature to pass Megan's Law, as codified under N.J.S.A. 2C:7-1 *et seq.* Today, any person convicted of an enumerated offense under N.J.S.A. 2C:7-2 is subject to the reporting and lifestyle restrictions mandated by Megan's Law. The strictures of Megan's Law can include verification of address under N.J.S.A. 2C:7-2c, notification of change of address under N.J.S.A. 2C:7-2d(1), and limitations upon internet use under N.J.S.A. 2C:43-6.4(f), *see also* 2C:7-2d(2), among other restrictions. Additionally, 2C:43-6.4 requires community supervision/parole supervision for life following conviction for

an enumerated offense, thus subjecting an offender to further restrictions and a parole officer. While some might feel that any person convicted of a sex offense should be subject to such restrictions, not every sex offense subjects an offender to these provisions.

If an actor commits an act of 4th degree Criminal Sexual Contact as defined by N.J.S.A. 2C:14-3(b), Megan's Law does not apply when the victim is an adult. N.J.S.A. 2C:7-2b(2). If the victim of an act of 4th degree criminal sexual contact is a minor, the registration and notification provisions of Megan's Law apply, but not Parole Supervision for Life (PSL). This dichotomy only holds for 4th degree criminal sexual contact. If the crime is a 3rd degree aggravated criminal sexual contact under N.J.S.A. 2C:14-2a, all of the provisions of Megan's Law apply regardless of the age of the victim.

The term "criminal sexual contact" is defined as the "intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor." N.J.S.A.

2C:14-1(d). Thus, the question to the client in your office is whether the victim is a minor, and if not, then do the facts of the case fit the statutory requirements of 4th degree criminal sexual contact? In order to find out, one must look to the circumstances set forth in the sexual assault statute found at N.J.S.A. 2C:14-2 because the criminal sexual contact statute incorporates by reference the sexual assault statute.

N.J.S.A. 2C:14-2 defines the crimes of Aggravated Sexual Assault and Sexual Assault. With the exception of N.J.S.A. 2C:14-2b, Aggravated Sexual Assault and Sexual Assault only apply to acts of sexual penetration. N.J.S.A. 2C:14-2b is the only portion of the statute that grades an act of sexual contact as a 2nd degree sexual assault. It applies where the victim is less than 13 years old, the actor is at least 4 years older than the victim, and the actor commits an act of sexual contact on the child. It triggers all of the provisions of Megan's Law.

In order for your client to entirely avoid the strictures of Megan's Law, the act of sexual contact must have occurred with an

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adult victim in one of the circumstances set forth at N.J.S.A. 2C:14-2c(1) or (2).¹ Those circumstances are where the actor uses force or coercion on the victim, or the actor holds supervisory or disciplinary power over a "victim who is on probation or parole, or is detained in a hospital, prison or other institution."

N.J.S.A. 2C:14-2a defines even more egregious circumstances. When an act of sexual penetration occurs under one of the circumstances set forth in N.J.S.A. 2C:14-2(a)(1) through (7), the crime is 1st degree Aggravated Sexual Assault and Megan's Law applies in its entirety. Where the circumstances set forth in N.J.S.A. 2C:14-a(2) through (7) apply, but the sex act is one of sexual contact rather than sexual penetration, the crime is a 3rd degree Aggravated Criminal Sexual Contact. Aggravated Criminal Sexual Contact also triggers the entirety of Megan's Law.

Another question to pose to your client is whether or not he performed an act of sexual contact on himself in public when minors or adults were in the area. In State v. Lee, the Appellate Division held that an

act of gratifying oneself on an elevator in front of an adult is criminal sexual contact. State v. Lee, 417 N.J. Super. 219 (App.Div. 2010), certif. den. 206 N.J. 64 (2011). But if the same act occurred in front of a minor under 13 and the actor is at least 4 years older than the victim, a plea to sexual assault under N.J.S.A. 2C:14-2b is appropriate and Megan's Law applies. State v. Ridgeway, 256 N.J. Super. 202 (App.Div.), certif. den. 130 N.J. 18 (1992). Further, our Courts have held that the act of touching oneself in public in a place where children under the age of 13 observe it, even if they are a considerable distance away, constitutes Sexual Assault and not 4th degree Criminal Sexual Contact. State v. Zeidell, 154 N.J. 417 (1998). Indeed, the child need not actually witness the act if there is an unreasonable risk under the circumstances that the child could observe it. State v. Breitweiser, Chapter 14 of Title 2C provides few options to avoid, in whole or in part, the strictures of Megan's Law. It provides no option to completely avoid Megan's Law upon conviction of an offense involving a minor victim. However, an escape hatch exists under Title 9.

N.J.S.A. 9:6-3 defines a 4th degree crime of Cruelty and Neglect of Children. While the title of the statute mentions only cruelty and neglect, the statute defines a crime that includes abuse, abandonment, cruelty or neglect of a child. "Abuse" is defined in N.J.S.A. 9:6-1 and includes: "the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child." Acts of sexual contact and sexual penetration can satisfy this definition. Significantly, N.J.S.A. 9:6-3 does not trigger any of the various provisions of Megan's Law.

Sexual conduct with or in the presence of a child that constitutes a violation of N.J.S.A. 9:6-3 almost always constitutes a violation of Megan's Law triggering offenses under N.J.S.A. 2C:14-2 and/or N.J.S.A. 2C:14-3. Avoiding Megan's Law for your client will therefore depend on your ability to negotiate a plea agreement in which the N.J.S.A. Title 2C, Chapter 14 offenses are dismissed in exchange for a plea to the N.J.S.A. Title 9 offense.

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FOUNDATION UPDATE

Commit to Getting Involved

By Louis R. Lessig

Commitment is something that each of us has in many respects. To our profession, our firms, our families and of course to our Bar Foundation and Bar Association. As the warm weather approaches and I think of sitting on the deck of my family home, one that has been in the family for generations, it is easy to become reflective. I am candidly unsure whether it is salt air or the sun coming up over the horizon that puts me in this place. I am sure you have such a place as well, that one location where you sit back and take stock. A place where things are calm and serene, allowing you to clear your mind.

For me, this is my place—with the wind in my face and the sound of the ocean crashing into rocks mere feet from where I sit it is a peaceful place, away from the challenges of practice and the needs of others. Sitting in this weathered chair I begin to ponder the journey that has brought me to this place; from a winter discussion with Judge Vogelson about becoming his law clerk, to Young Lawyer meetings with Rick DeMichele as Chair, to finally being selected as Secretary of the Bar. Now, I will leave all the jokes about my installation next to the shark tank to others, but the thought does bring a smile to my face. While you are likely sitting at your desk and reading this article between billable events I would suggest that although I have decades left in our profession, my commitment to our Foundation and Association has been one of the most rewarding experiences of my professional life to date.

Following in the footsteps of some truly larger than life individuals I was humbled to even begin this journey and as I watch the waves and look back, I would encourage everyone to consider getting more involved in our Camden County Foundation and Association. This year as Foundation President has been very rewarding for so many reasons, not only to serve alongside our Association President Gary

Boguski, but also to work with a Foundation Board that is flush with dedicated bar members who frankly have made my job a pleasure.

You may recall earlier we had our first ever Tasting Games, combining a bit of table games with wine and food tasting. Oh and let's not forget the craft beers, that was a great addition as well. At the end of the day, this fun event brought almost 200 people together and raised some \$5,000 to support our Foundation activities. With any luck, if you missed it, you will see this event come around again. But wait, there is more, because the man who first coined the phrase, Camden County Bar Association *Your Home Court Advantage*, Casey Price, will be installed as our next Bar Association President on June 13th. The installation dinner dance is one of our largest fundraising endeavors all year, so I would encourage everyone to purchase an ad in the Adbook and come out and join us for a fun evening as Casey is installed, as will the next Foundation President, Brenda Eutsler. Your support is, as always, critical to your Foundation being able to continue all of the good work that we do throughout Camden County.

Whether I see you at the dinner dance, the Courthouse or on my deck, allow me to say a sincere thank you to each and every one of you for your support, your patience and your involvement. This journey has been phenomenal and I need to thank Larry and the staff for all of their hard work. Of course, my partners at Brown & Connery, LLP for their support and encouragement. Lastly, to my wife Megan, thank you for indulging me and being my partner at home with our two wonderful boys. While my time may be over here in the Bar and the Foundation, I am not going away. But, it's about time for dad to take two excited boys down to the beach, something I have looked forward to since I saw the first snow flake.

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To conclude, the imposition of Megan's Law is meant to protect the public, but is not meant for every sexual offense. One must carefully review the facts of a case to determine if the conduct is properly charged and if the assistant prosecutor is amenable to a guilty plea to one of the non-Megan's Law triggering forms of criminal sexual contact under N.J.S.A. 2C:14-3b or the Title 9:6-3 offense.

¹ N.J.S.A. 2C:14-2c contains subsections (3) and (4) as well, but those subsections, by their terms, only apply to minors. Upon conviction for 4th degree Criminal Sexual Contact under those circumstances, an actor is subject to some provisions of Megan's Law but not PSL.



The Taxation Committee co-sponsored the **2014 Tax Law Update** seminar at Tavistock. Presenting the seminar were **Dan Mellor**, Kulzer & DiPadova; Moderator **Jenifer Fowler**, Eisner & Fowler; and **Eric Feldhake**, Kulzer & DiPadova.



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Casey Price to be Installed as 88th Bar President

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Oaths of office will also be administered to the new officers and trustees of the Association and Foundation. Among those assuming new duties will be Jenifer G. Fowler, President-elect; Louis R. Moffa, Jr., First Vice President; Eric G. Fikry, Second Vice President; Ronald G. Lieberman, Treasurer; and Michael J. Dennin, Secretary.

New and reappointed Association trustees include: Rachael B. Brekke, Dawnn E. Briddell, Gregory P. DeMichele, Louis G. Guzzo, T. Alex Kushner, Michael V. Madden and Matthew T. Rooney, who will serve as Young Lawyer Trustee.

A 1999 graduate of Widener University School of Law, Price was admitted to practice law in New Jersey and Pennsylvania later that year. He earned a Master of Laws in Taxation from Temple University in 2002. Casey and his father Carl founded Price & Price, LLC in Haddonfield in January 2000. The firm focuses exclusively on elder law issues including asset protection planning, estate planning, probate and estate administration, Medicaid applications, guardianship issues and special needs planning.

Casey and his wife Val reside in Haddonfield with their three active children.

In his free time, he coaches three soccer teams (one for each child) and plays the guitar. He is an avid sports fan who passionately roots for every Philadelphia sports team and the Tottenham Hotspur in the English Premier Soccer League.

Congratulations Casey, officers and new trustees! We look forward to another great bar year.

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Social Security for the Non-Social Security Lawyer was the topic of a seminar held at Tavistock. Presenting the program were Moderator/Presenter **Robert Petruzzelli, Lauren Petruzzelli**, both with Jacobs Schwalbe & Petruzzelli and **Alan Polonsky** of Polonsky & Polonsky.



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