



CCBA President Lou Moffa displays his newly minted Lawyer ID Card, which allows cardholders to use the Hall of Justice employee-designated security line when it is open without the need to remove their belts. Cards are \$25 for members, \$50 for non-members. They are valid for five years, and can be renewed.

## Nominations sought for Judge John F. Gerry Award

The Judge John F. Gerry Award was established by the Camden County Bar Foundation 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 Judge Gerry.

(Continued on Page 2)



The Association was saddened to learn of the passing of  
**Neal E. Rosenberg** on February 1st

We extend our deepest sympathy  
to Neal's family, friends and colleagues.

He will be missed.

## Save the Date!

*Wine Tasting & Silent Auction*

*April 21st*

*Barry D. Brown  
Health Education Center  
Voorhees*



## extremeCLE '17

March 24th • 8 am – 6 pm • Holiday Inn Cherry Hill

1 Day!

9.8 NJ Credits • 7.5 PA Credits  
(Including Ethics)

1 Place!

Mark your calendar for March 24th & CLE day in  
Camden County! Get the credits you need at the  
CCBA's one stop shop @ the Holiday Inn Cherry Hill  
and save \$\$\$\$.

Use the insert in this month's Barrister to register.

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## THE DOCKET

### Tuesday, March 7

IEP's CLE Seminar  
4 – 7:15 pm  
Tavistock Country Club  
Haddonfield

### Thursday, March 9

Ethics, The Law & Women Lawyers –  
CLE Seminar  
4 – 6 pm  
Alice Paul Institute  
128 Hooten Road,  
Mt. Laurel

### Tuesday, March 21

Young Lawyer Committee Meeting  
12:30 pm  
Bar Headquarters

### Wednesday, March 22

CCBA Board of Trustees Meeting  
4 pm  
Bar Headquarters

### Thursday, March 23

NJ Basic Estate Planning –  
CLE for newly admitted lawyers  
3 – 6:15 pm  
Tavistock Country Club  
Haddonfield

### Thursday, March 23

Debtor-Creditor Committee Meeting  
12 – 1:30 pm  
Bar Headquarters

### Friday, March 24

Extreme CLE '17  
8:00 am – 6:00 pm  
Holiday Inn  
Cherry Hill

### Thursday, March 30

Guardianship Update from the Surrogate's Office  
– CLE Lunch & Learn  
12 – 1:30 pm  
Tavistock Country Club  
Haddonfield

## Nominations sought for Judge John F. Gerry Award

(Continued from front)

The Foundation invites members of the bar and the public to nominate individuals to receive the 2017 Gerry Award, which will be presented at the Annual Gerry Awards Presentation in October. 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, no later than April 28, 2017. Nominations may also be emailed to Mr. Pelletier at: [lbpc@camdencountybar.org](mailto:lbpc@camdencountybar.org).

## Tentative agenda for March 22, 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

## THE BARRISTER

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## Erratum

In last month's Adopt-A-Family thank you ad, the Hon. Louise Donaldson's name did not appear as a participant. We apologize for this oversight and thank Judge Donaldson for her support.

**CCBA... Your  
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for MCLE.**

**Be an active participant  
in YOUR professional  
organization.**

**ATTEND MEETINGS  
AND FUNCTIONS!**

## CRIMINAL LAW

# Textual Tension and the Retraction Trap

## *The NJ Supreme Court should clarify State v. Slater & the standard for guilty plea retraction*

By William R. McLaughlin, Esq.

It's an all too common scenario for defense counsel: after a series of discussions with your client and negotiations with the prosecutor, you reach a plea agreement. You reduce the agreement to writing using the standard five-page form, review each question on the form with your client, and place the plea on the record in open court. Then, sometime before sentencing—or maybe on the date of sentencing—your client has a change of heart. Your client now wants to go to trial, or maybe wants a better deal. What's the standard for withdrawing a guilty plea? Must the client simply show a good faith reason for wanting to withdraw, or must he or she show something much more?

Plea withdrawals in New Jersey are controlled by the state Supreme Court's opinion in *State v. Slater*, 198 N.J. 145 (2009). In *Slater*, two police officers wanted to question a man named Hass in connection with a string of burglaries. An informant told them that Hass, along with another man, Neider, might be found in a certain room at the Millville Motor Inn. The informant provided a description of the men and said that they likely had a small amount of cocaine with them in the room.

The officers went to the motel room, knocked on the door, and Slater answered. Slater did not fit the informant's description, and he appeared to be alone in the room. The officers asked if they could come in, and Slater agreed to let them enter. Again with Slater's permission, the officers checked the room for other people, found no one, but did see marijuana in a partially open drawer. The officers then arrested Slater, opened the drawer further, and found 15 grams of crack cocaine and a digital scale.

Slater was indicted and charged with three drug offenses. He moved to suppress the evidence, and after suppression was denied, he reached a plea agreement with the state. During his plea colloquy, Slater acknowledged on the record that he understood the terms of the plea; waived his right to a trial; had not been forced or threatened to enter the plea; had not been promised anything else regarding the agreement; and was not under the influence of drugs or alcohol. He then provided a factual basis for the plea in which he admitted that at the time of his arrest, he was in possession of a certain quantity of cocaine and was "going to sell or share some or a portion of that cocaine." *Id.* at 152.

Twelve days later, Slater filed a pro se motion to withdraw his guilty plea. He attached a handwritten certification in which he stated that he "had no control over the drugs that was found in motel room [, and] therefore I should not be punished." *Id.* Slater's presentence report, dated two weeks after his pro se motion, said that Slater repeatedly told police that the motel room was rented by his brother-in-law, named Fowler, and that Slater was just visiting the room. The PSR further stated that Slater denied culpability for the offense, and that his sister's boyfriend had brought him to the motel room "to chill." Slater said that neither the cocaine nor marijuana belonged to him and that he wanted to retract his plea.

At sentencing, Slater told the trial court that he was only visiting the motel room and that the drugs were not his. He said he accepted the plea only because he had served so much time in jail that he thought he would be released soon after his plea. "And that's the only reason I did it. 'Cause I'm not guilty," Slater said. *Id.* at 153. The trial court found that Slater had simply changed his mind about the plea and lacked a sufficient basis for withdrawal. The Appellate Division affirmed, agreeing that a "change of mind" provided no basis to withdraw a guilty plea.

The Supreme Court reversed, holding that Slater had asserted sufficient reasons to withdraw his plea. The Court first noted that guilty plea withdrawals are governed by the New Jersey Court Rules. Before sentencing, plea withdrawal applications are controlled by Rule 3:9-3(e), which provides that a trial court may grant a motion to withdraw "in the interests of justice." Post-sentencing motions to withdraw face a higher standard under Rule 3:21-1, which states that motions may be granted to correct a "manifest injustice."

The Court stated that trial courts should exercise their discretion liberally to allow pre-sentencing plea withdrawals. The burden rests on the defendant "to present some plausible basis for his request, and his good faith in asserting a defense on the merits." *Id.* at 156, quoting *State v. Smullen*, 118 N.J. 408, 416 (1990). The Court noted that while defendants must show more than a change of mind, the inquiry cannot end there, since all withdrawal motions by definition entail some change of mind.

At this point, we can see that Slater presented a plausible basis for his request, as well as a good faith defense on the merits: he would argue at trial that he was simply visiting the room, which was not registered to him, and he had no knowledge of what was in the room. Whether or not this is the strongest case for the defense, it certainly meets the plausible basis/good faith standard set out by the Court.

However, the Court did not stop with the plausible basis/good faith standard, but rather went on to establish four factors that trial courts should use to evaluate plea withdrawal motions: (1) Has the defendant

### Daniel I. Ward & Associates, PC

would like to welcome

### Patrick A. Russo, Esq.

as an associate attorney working with  
Eric Wetzel, Esq. in our New Jersey Office  
on tax, transactional, estate and trust matters.



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## PERSONAL INJURY LAW

# Depletion Management

By Thomas D. Begley, Jr., CELA

When a personal injury victim settles a case and the plaintiff is receiving certain public benefits such as SSI, Medicaid, Medicaid Waiver programs, SNAP (Food Stamps), Section 8 Housing, or any other means-tested program, a Special Needs Trust is required. To qualify for a Special Needs Trust, the plaintiff must be disabled.

### How Long Should the Trust Last?

Once the trust is established, the next issue is, "How long should the trust last?" The answer to that question depends, in part, on how large the settlement is. If the settlement is small, the trust will not last very long. However, if the settlement is large consideration should be given to making an effort for the trust to last the lifetime of the plaintiff. By definition, the plaintiff funding the Special Needs Trust is disabled. That means it is unlikely that he or she will ever be able to work and produce income. Unless the plaintiff comes from a family with the means and an intention to fund a separate Third Party Special Needs Trust for the benefit of the disabled plaintiff, then the First Party Trust being established as a result of a personal injury settlement may be all the disabled plaintiff will have to live on for the rest of his or her life. Although I have never been able to verify the veracity of this statement, it is often held that a typical personal injury settlement only lasts three to five years. If it is important and realistic that the trust last the lifetime of the disabled plaintiff, there are steps that should be taken.

### Budget

The first step is to make a realistic determination as to the life expectancy of the plaintiff. In larger cases, it is common to have a life care plan, but these plans tend to be optimistic as to how long the plaintiff will actually live. It is better to have another life care planner or medical professional take a look after the settlement to determine a more realistic life expectancy. Second, a counseling session can be held with the disabled plaintiff and his or her family, if appropriate, to determine what funds will be needed immediately upon receipt of the settlement. Typically, these funds include monies for a home, a vehicle, repayment of debt, a vacation, furniture, handicap modifications to a home, etc. Those interested individuals must be made to understand that the more money they spend up front, the less will be available to be invested. The interested parties should then begin the process of preparing a monthly budget. How much will be necessary for shelter expense, including such items as rent, mortgage payments, real estate taxes, homeowner's insurance or renter's insurance, utilities, repairs and maintenance, telephone, cable TV, trash and garbage removal, condominium or co-op fees, equipment and furniture. Next the budget should contain an estimate of transportation expenses. These will include the following items: auto insurance, registration, license, auto maintenance, fuel and oil. Finally, personal expenses should be estimated. Personal expenses include the following: food at home, restaurants, household supplies, prescription drugs, non-prescription drugs, cosmetics, toiletries, sundries, clothing, dry cleaning, commercial laundry, hair care, unreimbursed medical, unreimbursed psychiatric/psychological counseling, unreimbursed dental, unreimbursed orthodontic, unreimbursed medical insurance, vacations, entertainment, alcohol, tobacco, newspapers, periodicals, life insurance, professional expenses, pet care, and estimated trustee's fee.

### Rate of Withdrawal

The professional trustee, who should attend the counseling session, can then make an analysis based on current investment performance. Generally, 4% to 5% of the trust can be withdrawn annually without fear of totally depleting the trust. Recently I was told by a respected professional trustee that in the current investment environment 3% to 3.5% is more appropriate. The three factors affecting this withdrawal rate are: (1) the life expectancy of the trust beneficiary, (2) the current investment environment, and (3) the rate at which the plaintiff is withdrawing funds from the trust.

### Depletion Analysis

The process of depletion analysis begins by examining the initial trust funding and then subtracting immediate expenditures such as a house, vehicle, vacation, debt, etc., and preparing a monthly budget for the balance of the funds. At that point, a Monte Carlo analysis should be prepared showing how long the trust assets will last given various rates of return and levels of expenditure.

Notice of the depletion analysis and expenditures from the trust must be given to interested parties. This can be as simple as monthly statements of the trust account. The statements should be sent to the beneficiary and/or interested family members. Statements may be sent by mail or online, depending on the preference of the recipients. At least once a year, a Letter of Depletion should be sent for depleting accounts. This letter essentially indicates the amount of funds disbursed from the trust over the last year. The letter also indicates the market value of the trust and makes a projection as to the date the trust will be exhausted based on projected principal distributions for the coming year.

Conversations should be had with the beneficiary or appropriate family members to determine if expenditures can be reduced. It may be possible to reduce some expenditures immediately while others may have to be reduced over time. A discussion should be held as to whether the trustee should employ a different investment allocation strategy. Should this strategy be more aggressive to grow assets or more conservative to protect the current assets? An inquiry can be made as to whether other assets may be added to the trust from either a structured settlement annuity or additions from family members to a Third-Party Special Needs Trust.

The conversation should include a discussion of any non-liquid assets such as real estate, closely-held securities, etc. At some point, real estate may need to be liquidated because the trust may not have enough liquid assets to pay real estate related expenses. The conversation should also include a discussion of what will happen when the trust depletes. Will the beneficiary rely solely on government benefits? Will family and friends contribute to care? Will family and friends fund a Third-Party Special Needs Trust? If the beneficiary is in a facility on a private pay basis, will that facility accept Medicaid when funds are exhausted.

It is important for the trustee to document monthly statements, annual depletion letters and other communications. When the trust is finally exhausted, a court accounting will be required.

Strategies to stretch out trust assets might include seeking additional public benefits, changing living arrangements, and selling off assets.

(Continued on Page 16)



## FINANCIAL FORENSICS

# Running Your Law Practice Like a Business

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

What was Abo thinking? During our “busiest season” and with valuation reports and tax returns flying about me, I agreed to deliver a 4 hour CLE for the Pennsylvania Bar Institute on March 2nd in Philadelphia, March 8th in Mechanicsburg and March 9th in Pittsburgh. Anyway, an easy enough topic for me to talk to (Abo Talk? Really?). That said, I thought I’d share some excerpts from my handouts.

Captain Obvious, you say? Well, attorneys are well prepared for the practice of law, but this seminar and the handouts tried to focus on the business of law. You really should strive to help one of your most important clients –YOU.

Soooo, let’s just look at some of the suggestions discussed on soul searching questions to review with your CPA before buying into a firm or taking over a practice

1. What are your qualifications for operating this practice?
2. Should you “go it alone” or go in with another new lawyer?

A seasoned lawyer?

- a. Consider a “trial” period
- b. Consider expense sharing or “of counsel”
- c. Consider your separate malpractice coverage
- d. Inform clients in written fee agreements that you and other lawyer may not be same firm

- e. Consider complementing skill sets, both technically and personally
  - f. Consider “who gets what” on breakup (i.e. phone #, website, office space, files, etc.)
  - g. Confirm other’s financial position/ability
  - h. Obtain Abo’s “122 Point Checklist on Buy-Sell Agreements” from [www.aboandcompany.com](http://www.aboandcompany.com)
3. Why go into this practice (increase wealth, purchase lifestyle, job vs. career)?
  4. How much money are you able to put into this practice?
  5. How much money do you need to borrow?
  6. Where will office be (i.e. present location, incubator, sublet, from home, etc.)?
  7. Who will your clients be and why will they come to this firm?
  8. Are you willing to work long hours without knowing how much you’ll make?
  9. Are you planning on providing legal services for “rent”?
    - a. Have you pegged a fair number of hours/billing rates to a fair rental?
    - b. Are the hours to be cumulative or non-cumulative?
    - c. Have you priced out other services/expenses available beyond just rent?

(Continued on Page 8)

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**It may cost you *dearly* by *not* calling us on that matter. We can help, so why not give us a call!**

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By Kimberly Rice

# Legal Marketing and How Lawyers Can Benefit

## Part 2

In the first installment of this article, I provided numerous 'best practices' for growing a prosperous business in legal services. Below you will find an outline of high impact marketing practices which, if productively implemented, will significantly increase your business in 2017.

**1. Accept building a prosperous book of business is a journey not a destination and a business is a total team effort.** I realize that this truism is not limited to lawyers, but this is the world I know intimately. I have rarely encountered a lawyer who understands fundamentally that business development and marketing initiatives must be an ongoing, consistent and an integral piece of their business model.

Conversely, many lawyers prefer for clients to be handed to them, in a box with a beautiful bow on top. This unfortunate situation escapes reason that lawyers view marketing as a 'catch as catch can' proposition. Or, what we typically refer to as 'random acts of marketing' which frequently results in zero clients/new business and 100% frustration.

**Lesson:** Lawyers would be very well served if they would allow themselves to be educated in the fundamentals of building a prosperous practice and, by extension, a successful law firm.

In my in-house law firm days, I was required to perform as a generalist: the marketing coach, the publicist, the event planner, the webmaster, the graphic design department, the data specialist, and so on. The fact is that in those days, firms of any size did not value or budget for professional marketing staff which brought in-depth discipline expertise. That would account for why there was/is so much dissatisfaction towards law firm marketing departments. Quite simply, there are too few resources available to even begin to adequately service the attorneys effectively and to demonstrate proven results.

**2. Effective time management imperative.** While many legal practices grow and die by the billable hour, I have often been dismayed at the lack of effective time management discipline lawyers have. Granted, time is money and one must prioritize the most pressing tasks at the top of the list, but engaging in any activity that resembles relationship building, reputation enhancing and meaningful contact management only when everything else is done, is a grave and often fatal misjudgment and waste of resources.

How often have I heard, "I just don't have time to market; I have too much work to do." Do these lawyers ever pause to question what would happen if their top clients suddenly disappeared? If you have been practicing more than a decade, you have likely experienced this first hand. Bankruptcy, consolidations, mergers and acquisitions, and total dissolution and liquidation. No company, private or public is immune to extinction. All the more reason to craft a plan to grow, not contract, your business- building endeavors.

**Lesson:** It bears an in-depth assessment of how you allocate your time, on a daily basis. Do you really have all the business you can handle —today and a year or two from now or, more likely, should you re-allocate some time to cultivating new, targeted relationships with individuals who can directly purchase your legal services or connect you to those individuals who can.

Over two plus decades, I have witnessed too many lawyers put their proverbial eggs in too few baskets, and the entire apple cart was turned upside down, when that "one big client" went away. Do not be lulled into complacency, begin 2017 in a stronger, more empowered position for growth and prosperity.

**3. Trust thy partners: cross-selling still has not been institutionalized, in most firms.** In my view, it is a sad testament that law firm partners do not trust one another not to poach each other's clients and act for the greater good of expanding the services provided to existing clients. Do lawyers fundamentally understand that by refusing to introduce their clients to lawyer colleagues, they are cutting their nose to spite their collective face?

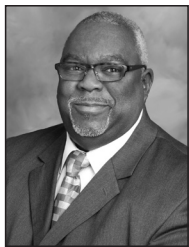
Can one only even imagine how much untapped firm growth there may be if only in-house lawyers would proactively service their clients by anticipating their legal needs and connect clients with colleagues who might help them solve or prevent a problem, or capitalize on an opportunity?

**Lesson:** While cross-selling still has not made its way into the accepted marketing mindsets of many lawyers, motivated and service-minded lawyers would find greater prosperity if they took the time to analyze additional service areas their top clients would benefit from, then make introductions. There are certain stopgap measures which can be put into place for the referring lawyer to be kept abreast of matters proceeding without their direct involvement. My mantra has always been "do what's right for the clients and it will be good for the firm and individual lawyers."

**4. Client teams can be an extraordinary selling tool and service solution.** If firms and lawyers would move beyond the 'go it alone' mentality, offering clients a team approach whereby lawyers of different disciplines focus effectively work together to deliver extraordinary service. To borrow the cliché 'it takes a village,' in some cases it truly does. What is required, however, is to check the egos at the door and a designated partner to demonstrate strong leadership, for the good of the team.

**Lesson:** Fortunately, we have seen firms have great success when they have organized as client teams, with one caveat. These arrangements absolutely require a constant and thorough communication process, to ensure all the 'pieces' are kept apprised of developments, successes and losses, regardless of whether a particular team member is directly involved. It is here that we have sadly witnessed considerable and needless client drama and loss of credibility (not to mention steep write offs) when the team is not unified in its communication strategy and keeping each other abreast. Too simply, what began as a top selling client benefit unraveled into a painful mess.





By Joseph A. Connell Sr., Esq., Ph.D.

# Employment Based Immigration

The Immigration and Nationality Act (INA) as well as other federal and state laws establish the basic eligibility requirements for U.S. employers to hire foreign workers, as employers are required by law to document that all employees are authorized to work in the United States. This article will provide a basic overview of the employment based visa system.

A United States employer may hire American citizens and permanent residents in any capacity. Other foreign nationals, however, must generally be “sponsored” for employment. Immigration law defines a limited selection of employment based visa categories, each with its own processes.

There are several government agencies that are charged with enforcing immigration laws pertaining to employment. They include the U.S. Citizenship and Immigration Service (USCIS) a division of the U.S. Department of Homeland Security (DHS), the U.S. Department of Labor, the U.S. State Department, as well as state work force agencies.

The applicants for these visas are extensively vetted to ensure that they are qualified for the positions they seek, U.S. employers are providing the appropriate compensation and they are not displacing American citizens or foreign nationals already in the U.S. who are legally authorized to work.

There are two categories of foreign workers seeking entry to the U.S.: **nonimmigrants**, those admitted to the U.S. for a defined period and must return to their home country at the end of their allotted stay and **immigrants**, those who come to the U.S. to live and work here permanently.

## Nonimmigrant Visas

There are several different types of nonimmigrant visa classifications. For the purposes of this article the most common non-immigrant employment based visa categories are:

**B-1 (business visitor):** This visa status allows foreign business visitors to enter the United States on a temporary basis to attend seminars and engage in other activities, such as preliminary work before setting up a U.S. office. Workers in this category cannot derive their income from a United States source.

**E-1 and E-2 (treaty traders and investors):** The E visa treaty trader visa is a nonimmigrant visa which allows foreign nationals of a recognized treaty nation to enter into the U.S. and engage in commerce.

**F-1 (academic student):** This status may allow certain authorized students to be employed on or off campus, or in “practical training” for a 12-month period before or after completion of their academic studies.

**H-1B (professionals or specialty occupation):** The H-1B is a temporary (nonimmigrant) visa category that allows employers to petition for highly educated foreign professionals to work in “specialty occupations” that require at least a bachelor’s degree or the equivalent. Jobs in fields such as mathematics,

engineering, and technology often qualify. Typically, the initial duration of an H-1B visa classification is three years, which may be extended for a maximum of six years.

**L-1 (multinational transferee):** L-1 visas enable the transfer to the United States of executives, managers and employees with specialized knowledge from a related company abroad. This visa category provides some advantages for foreign executives and managers in obtaining permanent residency.

**TN (NAFTA professional):** This visa category was created by the North America Free Trade Agreement and allows Canadian and Mexican nationals in certain occupations and professions to be employed for renewable year terms.

**J-1 exchange visitor:** The “J” exchange visitor program provides for the interchange of foreign nationals, e.g. students, teachers and/or medical residents, in the fields of education, arts, and sciences. J-1 visitors may include students, trainees obtaining on-the-job training; teachers and professors, research scholars, and international cultural visitors.

**O-1 (alien of extraordinary ability in the arts or sciences):** The O category is for individuals of extraordinary ability in the sciences, arts, education, business, or athletics. The category also includes an artist’s or athlete’s support staff, spouse and children. The alien must be coming to the United States to work in his or her area of extraordinary ability or achievement.

Each of these visa categories has specific procedures for obtaining approval from the USCIS and DOS. In some instances, it may be possible for the foreign national worker to extend their visa status, or change to another nonimmigrant or immigrant classification, if they are in the United States. Foreign nationals who enter the United States on a nonimmigrant basis are restricted to the activity or reason for which their non-immigrant visa was issued.

## Employment Based Permanent Residence

Permanent resident status allows foreign nationals and their immediate family members to live in the United States permanently while working for a U.S. employer. This process is commonly known as obtaining a “green card,” (although the cards have not been “green” for many years). Obtaining permanent residence through employment depends on the position offered and the qualifications of the foreign worker.

Permanent residence visa categories are broken down by the federal government into “preference categories,” of which there are five. The following information provides a brief summary of the 5 categories:

1. **Employment Based (EB-1)**—For aliens with extraordinary ability, outstanding researchers and professors. It also

(Continued on Page 16)

## FINANCIAL FORENSICS

## Running Your Law Practice Like a Business (Continued from Page 5)

- d. Have you delineated what type of work you pass on to include in such bartering? Can you say no?
- e. Who will determine if hours were well spent or perhaps excessive?
- f. Who sets priorities for when hours are to be performed?
- g. Are other non-legal hours considered in trade (i.e. general research, form template preparation, technology assistance, personal matters, etc.)?
10. What competition does the practice have at this location and in the area generally?
11. How does your fee structure compare to those of your competitors?
12. Have you worked in a similar type and size practice?
13. Have you considered strategic relationships with potential client referrers (i.e. banks, accountants, other lawyers, financial planners, insurance brokers, etc.)?
14. Have you considered internet presence?
15. Have you considered your staffing and other personnel needs?
16. Have you worked in this type of practice as a manager/supervisor before?
17. Do you know how much money you can afford to lend and tie up in this practice?
18. Do you know how much trade credit you can get?
19. Do you know where to get any remaining funds to purchase and run the practice?
20. Do you know the minimum dollars you need to personally live on?
21. Do you feel you're realistic on the revenue projections and will have enough cash (it's tough going back to the well)?
22. Have you compared this minimum to what you can expect to earn from the practice?
23. Are you aware of local, state and federal regulations that may affect your services?
24. Have you asked and confirmed why the current owner/partner is bringing you in?
25. Do you have available all services presently provided to the partner/seller at less-than-fair-value (i.e. cheap rent, related vendors, family members doing services, etc.)?
26. Have you visited the clients and then asked as many frank questions as you need to be sure about the legitimacy of the billings, profits, etc.?
27. Have you looked at experience rate of unemployment & workers' comp. insurance?
28. Have you reviewed and obtained disability as well as life insurance (especially best to put in place BEFORE you leave current employ)?
29. Do you know the partner's/seller's credit and collection policies (i.e. tightening terms may jeopardize service revenues)?
30. Do you feel comfortable with all of your advisors (i.e. CPA, banker, practice lawyer, insurance agent, other consultant, etc.) and feel comfortable with their negotiating skills, knowledge of the practice and familiarity with the profession?

*(Continued on Page 14)*

## ATTENTION Camden County Bar Association

***BIRE Financial Services a Partner in Progress of the CCBA  
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# Women in the Profession Celebrate Women's History Month

March is Women's History month. In recognition of Women's History month, the CCBA's Women in the Profession Committee (WIP) is sponsoring a seminar at the Alice Paul House located in Mt. Laurel from 4 to 6 pm on March 9th. Alice Paul was an attorney who can be credited with single-handedly ending the 70 year fight for women's suffrage.

Alice Paul was born January 11, 1885 to Quaker parents in Mt. Laurel. She dedicated her life to securing equal rights for all women. She organized marches, White House protests and rallies, all in an effort to gain equal rights for women. She also established the Congressional Union for Woman Suffrage (CU) and was imprisoned on at least three occasions before the ratification of the Nineteenth Amendment in 1920.

On October 30, 1917, she began a hunger strike, believing it would force President Wilson to endorse women's suffrage by Constitutional amendment. Alice was compared to Joan of Arc, in that she was willing to do anything to achieve the passage of a national amendment legalizing women's suffrage, even if that meant death. On August 18, 1920, after a 72 year battle, the Nineteenth Amendment was enacted giving women the right to vote. Alice Paul's actions are directly attributed to the passage of the Nineteenth Amendment. As if her dedication to equal rights for women was not enough, following the passage of the Nineteenth Amendment, Alice Paul earned three law degrees, LL.B., LL.M. and D.C.L.

In 1938, Alice began the World Woman's Party (WWP), headquartered in Geneva, Switzerland. The WWP worked closely with the League of Nations for the inclusion of gender equality into the United Nations Charter and the establishment of the United Nations

Commission on the Status of Women. Throughout her life, Alice Paul continued her zealous advocacy on behalf of equal rights for women. She led a coalition which was successful in adding a sexual discrimination clause to Title VII of the 1964 Civil Rights Act.

In 1923, Alice drafted and introduced into Congress the first equal rights amendment to the Constitution. The Equal Rights Amendment (ERA) was introduced in every session of Congress from 1923 until it passed the Senate and the House of Representatives on March 22, 1972 and went to the states for ratification. Unfortunately, Alice Paul never saw the passage of her Equal Rights Amendment. She died on July 9, 1977. The amendment remains unratified to this day.

The Alice Paul House & Institute is located at 128 Hooten Road, Mt. Laurel. It is one of the few National Historic Landmarks in the US that honors the life and work of a woman. The Women in the Profession Committee is proud to hold a seminar at her home during the month of March, Women's History Month, to pay homage to a local female attorney who had the vision that women and men should be equal partners. Prior to the seminar, from 4 to 5pm, there will be a wine and appetizer reception. The program, entitled "Ethics, The Law & Women Lawyers," will immediately follow the reception (one ethics credit).

What better way to celebrate Women's History month then visiting the home of Alice Paul who dedicated her life to securing equal rights for all women! Please join us for a memorable evening. A registration flyer is in this *Barrister*. Seating is limited to 50 so you will want to register immediately.

## Cocktails & Conversation Bench / Bar Cocktail Party



Members Only

6-8 pm • Monday, May 15<sup>th</sup>  
Il Villaggio • Cherry Hill  
\$65 (\$75 @ the door)  
\$55\* (\$65 @ the door)

*\* Admitted to the bar 5 years or less.*

Use insert to register for this popular event!

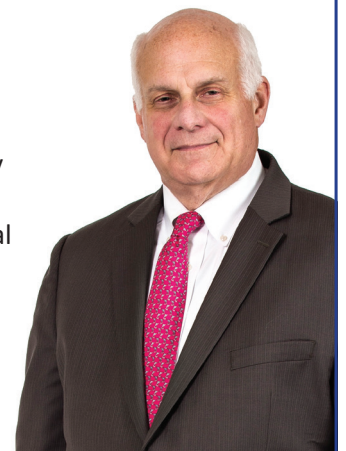
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# WINE & FOOD

By Jim Hamilton

During the decades writing this column, I came to understand and appreciate that most of you are not really interested in reading about experiences that involve wines that are difficult to find or are priced beyond what many consider necessary or, at least, sensible. I readily admit that I own far more special occasion wines than I can find occasions that by any definition are special, but as Imelda Marcos may have said - it's good to have choices. So, I won't talk about specific wines tasted during Linda's and my recent trip to Australia and New Zealand. However, I do think before we talk about some value-priced wines that should be available locally, a quick overview of three wine regions we explored might be worthwhile.

The above photograph is shared with, from left to right, Kate and Richard McIntyre, the daughter and father behind Moorooduc Estate, and Hugh Robinson, the estate's vineyardist and owner of one of the best vineyards from which they source grapes. Moorooduc is located on the Mornington Peninsula, south of Melbourne, a relatively cool climate ideal for growing a number of grape varieties but especially Chardonnay and Pinot Noir. We spent over two hours touring and tasting with Richard, the winemaker and do-it-all proprietor who has a bit more time to spend at the estate since his recent retirement as a surgeon, and with his daughter, Kate, a Master of Wine who handles the business side of the winery. If you have a chance to spend time with a talented winemaker who strives to produce the highest quality wines possible from the grapes available in a given year, there is always something to learn and, usually, admire. I won't bore you with further details about our visit, but simply suggest that based on our visits to Moorooduc and six or so other properties in this region, you may want to look for Mornington Peninsula wines and give one a try.

On another day, we headed north of Melbourne to the Yarra Valley, a region that reminded Linda of Tuscany. It really is lovely, with rolling hills and vineyards and some small towns and villages scattered among them. We were not on a tour, but our first stop was to the tour-popular Domaine Chandon, the Australian outpost of the famed French producer, Moët-et-Chandon, maker of Dom Perignon, which also has a popular Napa Valley winery. The advice we followed was to get there before the

buses arrive, and we just managed to get our tasting in before the crowds descended. Well, good bubbly is not a bad way to begin a day of tasting! Next up was a winery we had arranged to visit many months before our travels, Yarra Yering, a winery that by the region's standards is venerable, having been started in 1969. This is not to say the winemaking history of the region is not more established, having been important in the 19th and early 20th centuries, but like California, the industry all but disappeared in the 1920s and took some time to reemerge. In 1973, Yarra Yering began producing two wines, a Bordeaux blend and northern Rhone blend, but over the years the range of wines expanded considerably. New ownership in 2008 remained faithful to the founder, Bailey Carrodus, and made what obviously was a smart hire in winemaker Sarah Crowe, who received the coveted designation of 2017 Australian Winemaker of the Year by the pre-eminent Australian wine critic, James Halliday. We tasted all they had to offer and even coaxed a bottle of now unavailable wine to taste, and let's just say had a very nice time. So, again, if you find a wine from Yarra Valley available locally, you may want to give it a try.

We also managed to visit a winery or two in New Zealand, and the one visit I was pleased to be able to arrange in advance was at Te Mata Estate in the Hawke's Bay region outside Napier. Many American wine drinkers think New Zealand wines emerged fairly recently, perhaps with the acclaim Cloudy Bay Sauvignon Blanc received in the 1990s, but Te Mata was established in 1896 and has remained a well-regarded family operation ever since. As with Moorooduc and Yarra Yering, their wines are not easy to find in our area. Our visit was with the son of the owner, who works in various capacities at the winery, and once again we enjoyed a fun time touring and tasting. It is natural to associate New Zealand wines with Sauvignon Blanc, and Te Mata certainly fashions a nice one. However, New Zealand is a country with many different climates and soils, and Hawke's Bay is one where a variety of grape varieties can be grown. Indeed, Te Mata probably is best known for its Cabernet Sauvignon/Merlot based wines, including its highly regarded premium entry, Coleraine, which tends to sell out rather quickly. Once again, while you may not find, or want to pay for, Te Mata wines, you would do well to search out other Hawke's Bay wines to see what



you think.

Okay, enough wine travelog, let's talk about a few wines I tried at tastings I attended upon my return home that should be available in our marketplace, some of which you hopefully will be able to taste at the Camden County Bar Foundation tasting on April 21st (please consider attending if you want a great way to expand your wine horizons while supporting your professional charity). While I tasted the **2015 Almondo Arneis Bricco delle Ciliegie** at an Italian trade tasting in New York City, I was able to buy some locally and suggest that while the price will be around \$20, it is one of the finest examples of the Arneis grape I have tasted. The grape is sort of a white counterpart to Piedmont's Nebbiolo, the grape of Barolo and Barbaresco; it is a grape of high quality that can be tricky to grow ("Arneis" loosely translates as "rascal"). Many Arneis wines are floral and lean, and what sets this apart to me is just how lush it is, no doubt due to both the talent of the winemaker and the benefits of the 2015 vintage. The wine has a deft combination of deeply floral white fruit notes sharing an almost red berry quality, all supported by a strong sense of minerality.

Another white Italian wine I found noteworthy is the **2015 Manincor Eichhorn Pinot Bianco** from the Alto Adige region. The Pinot Bianco (a/k/a Pinot Blanc) grape can be a bit one dimensional, but this rendition from the region famous for its Pinot Grigio really is expressive, showing deeply extracted apple and pear fruit that is set in a structure that more than supports its heft. This balance is critical to pairing with food, and this wine certainly will be versatile, whether with richer seafood dishes or sauced chicken entrees. A wine tasted at a local charity event arranged by the Wineworks store that also is from the Alto Adige is **2015 Tramin Pinot Grigio**. This is an entry level wine that also may have benefited from the excellent growing season to produce a wine with more character than

(Continued on Page 11)





By Louis R. Moffa, Jr.

# PRESIDENT'S PERSPECTIVE

## FULL HOUSE!

Not the television show. Not the poker hand. Not even your residence. It's the Camden County Courthouse. For the first time in several years, the Superior Court of New Jersey, Camden Vicinage, has its full complement of judges on the bench. In addition, we are anxiously waiting to see if Camden County will get one or more of the 20 new judgeships recently authorized by the state legislature and Governor Christie. A full judicial house, plus an extra or two, will certainly help Camden implement and fulfill its new obligations under criminal justice reform in New Jersey.

many Pinot Grigios in the market at a comparable price. The fruit impressions include tart apple and underripe peach, with a sense of fleshy generosity that remains balanced by its clean lines.

Let's stay in Italy, but turn to a red wine from a well-regarded estate located on coastal Tuscany, **2015 Tua Rita Rosso di Notri**. This wine offers an alternative to Chiantis, with its Sangiovese fruit complemented nicely by Cabernet Sauvignon and Merlot. The fruit flavors resemble a melange of red cherry, lingonberry and red currant, with nuances of rare beef and subtle spices. This winery produces a 100% Merlot wine, Redigaffi, that will cost upwards of \$300 to acquire, so this entry level wine fashioned from young vines offers a view of the estate that is far more wallet friendly.

Departing Italy for Spain, I was pleased to be able to taste **2015 Quinta Milú "Milú"** from the well-regarded Ribero del Duero wine region. The Tempranillo grape reigns in northern Spain, not only here but in Rioja and Toro to name two other regions, and this modestly priced wine is a good example of the quality that is achieved. There are black fruit impressions, including currant and blackberry, with an intensity belying its price and a game-tinged finish that endures. This winery is a small and fairly new operation manned by a young winemaker who has managed to source older vines and allow them to express their terroir without much intervention.

While many of these names may be unfamiliar, a winemaker whose efforts have been discussed here a number of times before is Sean Minor. As previously noted, Sean was quick to capitalize on the impact the economic downturn in our country had on demand for more expensive wines and used his contacts to access vineyards that previously provided grapes for higher end producers. His 2007 Napa Cabernet Sauvignon was a tremendous value, but as the wine market rebounded, Sean has managed to find grapes that have allowed him to continue offering quality California wines at affordable prices. While the **2014 Sean Minor Cabernet Sauvignon** may not be the steal his 2007 wine was, it offers true varietal flavors, including cassis fruit notes, with an easy going ripeness that makes for a soft, approachable glass of wine. While the finish is a bit short and the tannic structure lacking, it provides a nice way to experience Cal Cab on a budget, and since the wines are widely distributed in our area, it is a bottle you should be able to find at many of our area's better wine stores.



(Continued from Page 10)

The Camden County Bar Association extends a warm and hearty welcome to Hon. Thomas T. Booth, Jr., Hon. Judith S. Charny, Hon. Linda W. Eynon, Hon. Christine S. Orlando and Hon. Yolanda C. Rodriguez. All have been hard at work in the courthouse since early February, and we hope to see all of them at our Cocktails and Conversation event in May.

Judge Booth is a Rutgers University-Camden School of Law graduate with a wide range of civil and criminal legal experience, including as an Army Judge Advocate. We thank him for his military service and look forward to his judicial service. Judge Booth's initial assignment is in the Civil Division.

Judge Charny is a graduate of the Benjamin N. Cardozo School of Law at Yeshiva University. For the past several years, she specialized in family and matrimonial matters. She was also distinguished as the first female Municipal Judge in Cherry Hill. Her wit, charm and wisdom will continue to be seen on the Superior Court. Judge Charny's initial assignment is in the Family Division.

The CCBA is especially proud to welcome to the bench our Past President Linda Eynon. First as a registered nurse and later as an attorney, Judge Eynon has spent most of her legal career in health care. In her less-than-ample spare time, Judge Eynon was a tireless CCBA volunteer, trustee and officer. Congratulations Linda! (Yes, she is the daughter of the other Judge Eynon). Judge Eynon's initial assignment is in the Family Division.

Judge Orlando is also carrying on a family tradition. She is the daughter-in-law of retired Assignment Judge Francis "Spike" Orlando, Jr. (and my cousin-in-law). Another Rutgers-Camden graduate, Judge Orlando specialized in representing insurance carriers, insurers and other businesses in health care and Employee Retirement Income Security Act litigation, as well as class action defense and commercial litigation. Her complex litigation experience certainly will be an asset in the Civil Division where she is currently assigned.

Judge Rodriguez comes to us from the New Jersey Attorney General's office, Division of Law. She is a graduate of the University of Pennsylvania School of Law. Judge Rodriguez has an extensive background in employment law and employee relations. Most recently she was on a mobility assignment with the Governor's office. Judge Rodriguez's initial assignment is in the Civil Division.

According to the American Bar Association, "judicial temperament" means having, "compassion, decisiveness, open-mindedness, sensitivity, courtesy, patience, freedom from bias and commitment to equal justice." Now more than ever we need a truly independent, qualified judiciary. Our system of justice depends on our continuing faith and trust that judges will decide disputes, especially disputes involving the other branches of our government, fairly and impartially, free from personal or political bias or prejudice. Our system demands that we give our judges utmost respect, and that they, in turn, demonstrate respect and courtesy to those who come before them.

We urge Judges Booth, Charny, Eynon, Orlando and Rodriguez to fulfill those ideals in their current roles on the bench as they have demonstrated them in their prior legal careers. We are confident that they will, and we wish them the best.



# YOUNG LAWYER HAPPENINGS



## YOUNG LAWYER CHAIR

# Playing A-Round for a Cause

By Brian K. Herman, Esq.

With the passing of every holiday season it is easy to lose our sense of giving and community. Such is the norm when we buckle down to focus on our own attempts at prosperity for the year. While our personal prerogatives certainly tend to sway our daily paths I kindly ask that you continue to look for the opportunities to give back to our community and beyond throughout this year. If you're not sure how, look no further than our very own Camden County Bar Foundation. The Camden County Bar Foundation provides our members with opportunities to give back to our community both physically, financially, and otherwise, through a variety of annual events. Which brings me to the point of this article.

**MAY 8th! SAVE THE DATE!!!** Along with my colleague in arms, Thomas A. Hagner (no, we are not getting married), we were able to establish an ongoing relationship between the Camden County Bar Foundation and the First Tee Program of Greater Philadelphia. For those of you who do not know about this wonderful organization the First Tee is a youth development organization that provides youth with educational programs that build character, instill life-enhancing values and promote healthy choices through the game of golf.

Based on this relationship and common values with our Foundation, we created an event that encompassed our shared principles of instilling lifelong values and giving back to the community. Last year, and in fantastic fashion, the Camden County Bar Foundation held the first public benefits golf outing in conjunction with the First Tee Golf of Greater Philadelphia. Some of you may have already heard about it or even participated in the event. I assure you the outing made quite the impact on all who were in attendance. Each participant was treated to lunch provided by Chick-Fil-A before they hit the course for nine holes of golf with the First Tee Participants. Each group of three was paired with one First Tee Participant for nine holes. At the conclusion of the nine holes a brief awards ceremony took place to present the First Tee Participants with their prizes and then the players headed back on the course for a fun and libation filled back nine. Golf was then followed by a skills challenge, cocktail hour, dinner and auction where golf experiences at Huntington Valley, Ace Club, Woodcrest Country Club, and others were raffled off with the proceeds going to the First Tee and the Camden County Bar Foundation. This past month, our Foundation was able to donate \$1,000 to the First Tee of Greater Philadelphia.

This year, in keeping tune with the First Tee's aspirations to have their participants grow in the game and as people we, too, seek to grow the event. That's where you, the members of the Camden County Bar Association, come into play...literally! This year's event will be taking place on **Monday, May 8, 2017**, at the Merchantville Country Club. We are looking for members of the bar, partners in progress, local businesspersons, and friends of our association to assist us in making this year's event even more spectacular than last. Please be on the lookout for the updates and event Flyer that will be circulated around in the Barrister and association emails within the coming months.

Doubt you can make it? No problem! There are plenty of ways to assist with the event through various sponsorship opportunities. Don't like to

golf? We have got you covered. Come for just the cocktail hour, dinner and auction. Maybe even test your luck in the skills competition.

On a personal note, I want to thank you for taking the time out of your busy day to read this article. Our event is truly another way to solidify the strong reputation the Camden County Bar Association/Foundation and its membership carries in our state and the surrounding areas. It's always been clear to me that the core of our Foundation is built around a strong membership base that is not afraid to devote their time and efforts for the benefit of others. The outing provides our membership with the opportunity to do just that. If you have any questions or if you would like additional information about the event or sponsorship opportunities please email us at [bkherman@ake-law.com](mailto:bkherman@ake-law.com) or [tahagner@hzlawpartners.com](mailto:tahagner@hzlawpartners.com). We wish you all the best in 2017 and look forward to growing this event for the benefit of our local community, our Foundation, and the First Tee program.

*Brian Herman is a member of the Young Lawyer Committee. He is an Associate with Brenda Lee Eutsler & Associates, P.A. and Of Counsel, Craig David Becker, Attorney at Law, LLC.*

## Save This Date!

## First Tee Golf Outing 2017

Monday • May 8th  
Merchantville Country Club

Use the First Tee flyer in this month's inserts  
and sign up today!



## VERDICTS OF THE COURT *Superior Court of New Jersey*

VERDICT:	Damage Verdict: \$40,756.47 against Defendant (1/30/17)
Case Type:	Book Account
Judge:	Anthony M. Pugliese, J.S.C.
Plaintiff's Atty:	Todd Pondish, Esq.
Defendant's Atty:	Daniel Strick, Esq.
L1876-14	Bench

VERDICT:	Damage Verdict: \$6,000 against Defendant (1/19/17)
Case Type:	Insurance
Judge:	
Plaintiff's Atty:	Scott McKinley, Esq.
Defendant's Atty:	G. Harrison Walters, Esq.
L931-16	Jury

VERDICT:	No Cause (1/26/17)
Case Type:	Auto Negligence
Judge:	
Plaintiff's Atty:	Robert Greenberg, Esq.
Defendant's Atty:	Danielle Smith, Esq.
L1796-14	Jury



*By Honorable Louis R. Meloni, J.S.C. (retired)*

# How To Initiate and Prepare For a Mediation

## Initiating a Mediation

So, you have a case that is ripe for mediation but you are afraid to ask. Many lawyers, both new and experienced are reluctant to suggest mediation to an adversary for fear that it will be perceived as a sign that their case is a weak one. It might, especially if the case is weak.

A key trait every trial lawyer should have is the ability to be persuasive. Sell your adversary on the idea that it is a pure business decision. Emphasize the areas where the parties are in agreement. For instance, if in a personal injury case there is no question of liability, and the only real question is the amount of damages, point out the logic of going to mediation.

Conversely, if liability is at issue but damages are not in question, it is an ideal time to have a neutral mediator evaluate the issue so that the parties would have a third party give a realistic view of the case value. Sometimes a party has a distorted view of the value of their case and a frank discussion with an independent mediator can help close the gap between the parties.

Point out the advantages of mediation. Even if the parties have already incurred the expense of discovery, substantial cost savings can be had if the matter is successfully mediated, by avoiding having to bring liability and/or medical experts to court.

In addition to avoiding the cost of further litigation the litigants would also be able to end the stress that goes along with attempting to resolve the dispute outside the courtroom door when a judge is pressuring the parties and threatening to have them pick a jury before lunch.

In essence the way to dissuade your adversary from believing that your suggestion that the matter be mediated is a sign of weakness, is to highlight the strong valid reasons why the case would benefit from mediation.

There are cases where the parties will assert that they are too far apart to benefit from mediation. But this is the type of case that may benefit the most from mediation. The litigator should be mindful that most cases are settled before trial. They are resolved in part because the parties do not want to risk the uncertainty of trial so they begin to talk in earnest to settle the case. With the fear of the jury making the decision the parties in most cases find common ground. The disadvantage to the litigants in waiting until they are literally on the courthouse steps, is that they are rushed to a settlement.

The only downside is that the mediation might not be successful, the parties would suffer loss of time and cost of mediation, which would usually pale in comparison with the time and cost of trial.

## Preparation for a Mediation

All areas of dispute resolution whether it be mediation, arbitration or litigation require thorough preparation. It is a lesson taught in law school that follows us throughout our

careers. An attorney must know his or her case, and to the extent possible their adversary's.

The first step is to prepare the client. Make your client aware of the options, that is, litigation, arbitration or mediation. You should discuss that in litigation or arbitration someone else, a judge, arbitrator, or jury will be making the decisions. In mediation it is the parties who will determine the final resolution.

Make sure your client understands the facts and legal authority for their position as well as the contentions of the other party. The client should be able to separate their "needs" from their "wants." He or she should be prepared to compromise, to be patient and keep an open mind.

If your client is going to speak they should be reminded not to exaggerate. Credibility is not only important to the mediator but in how the opposing party assesses your client.

Emotion plays a part in every dispute but antagonistic behavior will not help settle the matter. Clients should be counseled to maintain civility in their negotiations.

## The Mediation Process

It is important that the attorney prepare himself or herself for the mediation process and explain it to the client. After a mediator has been selected there is usually an organizational conference either in person or by telephone to discuss scheduling and any issues that may need to be resolved prior to the mediation session. The parties must understand that the mediator will not decide any issues in the case, he or she will not be making decisions as to who is "right" or "wrong."

It is extremely important that the person or persons who has settlement authority be present at the mediation. If that person is not available to be present they must be immediately available at the time of the session by telephone or other electronic communication device.

### • The Mediation Statement

A Mediation Statement is usually requested by the mediator prior to the session. The statement should provide the mediator with background on the dispute and what issues need to be resolved. The question of timing of the submissions and whether the parties should exchange the same with each other can be discussed at the organizational conference call.

### • The Joint Session

**The Introduction** – At the outset of the mediation session the mediator will generally have all the parties together. He or she may give a background about themselves and explain the purpose of mediation and their job as a neutral mediator. This is an effort to gain the trust and confidence of the parties and the attorneys.

**The Opening Statement** – Each attorney is asked to state their positions and sometimes the parties may

## FINANCIAL FORENSICS

# Running Your Law Practice Like a Business (Continued from Page 8)

31. Have you looked into similar practices which have failed and assessed their relevance to your contemplated operation?
32. Have you considered the morale of existing associates/employees you plan to retain?
33. Have you addressed how you plan to establish an effective chain of command?
34. Do you know the profitability of particular services (i.e. which ones will be money makers, which ones need volume, which ones are dogs)?
35. Are you able to work in the practice prior to committing (confidentiality agreements)?
36. Can part or all of the wages you earn be applied to the buy-in/purchase price?
37. Have you conferred with vendors to check their knowledge of the firm, the partner's/seller's payment practices, integrity and acumen, continuation of credit terms to you, etc.?
38. Have you analyzed the seller's perks (i.e. necessary vs. additional compensation)?
39. Have you conferred with clients to see if they will continue to patronize the practice and even lost clients, looking for "skeletons"?
40. Have you conferred with previous associates/partners?
41. Have you considered how you will manage any remaining college or law school loans (i.e. consider finding out about deferment by going to [www.salliemae.com](http://www.salliemae.com), by looking to Student Lawyer published by Law Student Division of the ABA or reaching out to specific lenders)?
42. HAVE YOU CONSIDERED WHAT WILL BE PLAN B IF THIS DOESN'T WORK OUT?
  - Cyber security
  - Disability insurance/life insurance (other panelist speaking to)
  - Long-term care coverage (other panelist speaking to)
  - Office overhead insurance (other panelist speaking to)
  - Premium financing
4. Appreciate the critical importance of Attorney Trust Accounts
  - Purchase for library and staff through ABA or state Bar "readable" publications on "Trust and Business Accounting for Attorneys"
  - See "Abo and Company's 72 Point Attorney Trust Accounting Checklist" or retrieve at [www.aboandcompany.com](http://www.aboandcompany.com)
5. Appreciate importance of accounting systems and financial reporting
  - See Abo attachment "Sample Law Firm Chart of Accounts"
  - Consider use of legal specific software

*Abo and Company, LLC and its affiliate, Abo Cipolla Financial Forensics, LLC, Certified Public Accountants – Litigation and Forensic Accountants are Partners in Progress of the Camden County Bar Association. The above article was retrieved from the "E-mail alerts" disseminated to clients and friends of the firm. With offices in Mount Laurel, Morrisville, PA and Franklin Lakes, NJ, tips like the above can also be accessed by going to the firm's website at [www.aboandcompany.com](http://www.aboandcompany.com) or by calling 856-222-4723.*

## Of Course, Even Before You Open the Doors

1. Go to the bank BEFORE you actually need the money
2. Consider formation of entity
  - Sole proprietorship
  - Corporation (regular)
  - Corporation (S corp.)
  - Limited Liability Company (of late, entity of choice and best of both worlds)
3. Consider various insurance coverage (not my particular expertise but best to do early on)
  - Malpractice
  - Auto coverage for cars owned by practice (also for non-owned cars or of employees)
  - Contents (office equipment, furniture, etc.—consider replacement value)
  - Special endorsement or policy for computers
  - Special endorsement or policy for computers/equipment provided by employees
  - Special endorsement or policy for valuable papers/lawyer file replacement
  - Umbrella policy
  - Workers' Compensation Policy (consider opting in even if not required)
  - Employment practices coverage
  - Special endorsements or policies for serving as fiduciary/arbitrator/mediator
  - Employee bonding

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## CRIMINAL LAW

## Textual Tension and the Retraction Trap

(Continued from Page 3)

asserted a colorable claim of innocence? (2) What are the nature and strength of the defendant's reasons for withdrawal? (3) Was the plea entered as part of a plea bargain? and (4) Would withdrawal of the plea result in unfair prejudice to the State or unfair advantage to the accused?

The Court applied these factors to Slater's case and held that he should be allowed to withdraw his plea. Despite the fact that Slater was the sole occupant of a motel room with drugs in plain view, the Court found that he had alleged facts sufficient to support an assertion of innocence. The Court further found that Slater's attorney did not well advise him of his possible defenses—for example, that police received a tip that they would find two males who did not fit Slater's description, and that the room apparently was not registered to Slater.

The problem lies with the phrase "colorable claim of innocence." Certainly, some defendants are innocent of the crimes charged. But by using the term "innocence," the Court created a nearly insurmountable barrier. While Slater was successful in his motion, in most cases it is almost impossible for a defendant to withdraw his or her guilty plea, so long as the plea was knowing and voluntary and supported by a factual basis on the record. In applying the Slater factors, trial courts often focus on "innocence"—a very high standard, higher than any other in our criminal justice system—rather than the "colorable claim" in the first Slater factor.

The Supreme Court should address the tension in the Slater language and clarify whether trial courts should evaluate plea retractions according to a plausible basis/good faith/colorable claim standard, which would make retractions more common, or the innocence standard, which makes retractions exceptionally rare. At present in our courts, the latter is the norm. Whichever the Court intends, it should clarify the standard for practitioners and judges alike.

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Bill McLaughlin is a sole practitioner in Philadelphia and South Jersey. He teaches the Community Reentry Practicum at Rutgers Law School in Camden.

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## Legal Marketing and How Lawyers Can Benefit

(Continued from Page 6)

**5. Commit to becoming and perfecting a strategist, not technician, role.** Many lawyers know the finder, minder, grinder analogy to describe various types of lawyers. There are those who some regard as natural rainmakers, some who do their best work as a client relationship manager while others prefer to stay behind the scenes and actually perform the legal work.

In these competitive times, it should be no surprise that if there is any security and upward mobility in a legal career, it is at the finder and trusted advisor level. No disrespect, but lawyers are a dime a dozen, in some practice areas, as we clearly saw during the Great Recession. Regardless of legal acumen, extraordinary trial, negotiation and ADR experience, as long as lawyers are being handed client matters and not generating their own cases, it is merely a matter of time until your professional life as you know it will cease to exist. If you don't believe me, simply google and research the latest stats on the ABA website, and other reliable websites and legal management firms such as Altman Weil.

**Lesson:** Learning from Day One how to develop and grow a book of business to ultimately be regarded as a legal strategist, a trusted advisor to your growing client base is the only path to prosperity, when lawyers are engaged in private practice. Resist the temptation to believe anyone who says "don't worry about developing business, we have plenty of institutional clients who are not going anywhere." Do not allow yourself to be lulled into complacency by this assurance. You do so at your own peril.

**6. BONUS: Evoke the Secret Sauce.** Since I began my legal marketing career in 1991, many many things have changed, some for the better, others, not so much. If I have learned anything in 25 years, this is it: to build and grow a prosperous business and law firm, lawyers and law firm management must evoke what we refer to as the Secret Sauce which is quite simple. The secret to prosperity is not some far-fetched random, scattershot approach to marketing as we know there are no magic bullets, no 'one and done' marketing exercises.

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## How To Initiate and Prepare For a Mediation (Continued from Page 13)

want to contribute. The opening statements are helpful in identifying any common ground as well as unresolved issues. Sometimes parties may ask to skip the opening statements and go directly into private caucus. This may be because they each know the other's position and feel that their Mediation Statement was sufficient to educate the mediator or that the parties have too much animosity.

**Private Caucus** – During these private meetings the parties are encouraged to be candid, shrouded by the protection of confidentiality. The mediator can discuss the range of possible outcomes and develop settlement options. This is the part of the process that involves the mediator engaging in shuttle diplomacy, where he or she meets with each party individually trying to narrow down the areas of dispute to a final resolution.

**Settlement Agreement** – After a successful conclusion to the mediation a written agreement should be entered into memorializing the terms of the settlement. All critical elements should be included in the document, so that there is no dispute as to what was agreed upon

### Conclusion

We all know most cases settle, so no one should be reluctant to suggest mediation. Make your case for mediation by outlining how your case can achieve all the benefits of mediation. Rational adversaries can see that as well and will recognize it as beneficial to all parties. It becomes then not a sign of weakness but a common sense way to proceed.

To have a successful mediation both the lawyer and client must be prepared. They must know their case, have reasonable expectations, have patience and be willing to compromise. The lawyer's prowess as a litigator must take a back seat to the "art of the deal."

*Honorable Louis R. Meloni, J.S.C. (retired)  
Chair ADR Department  
PARKER McCAY  
Mt. Laurel, NJ*

## PERSONAL INJURY LAW

### Depletion Management

(Continued from Page 4)

If a trust beneficiary wants to move to another state, it is important to first analyze what public benefits are available in that state and how that will affect the longevity of the trust.

### Conclusion

Depletion management is extremely important for the long-range welfare of the disabled plaintiff. It makes little sense to establish a high standard of living that cannot be sustained. Once the trust is out of money, the trust beneficiary must rely on public benefits, which are generally limited to Social Security Income and/or contributions from family members. Frequently, family members are not in a position to make significant contributions.

## Employment Based Immigration (Continued from Page 7)

includes executives and managers of multinational companies. This preference category does not require the lengthy and often costly process of obtaining a labor certification through the U.S. Department of Labor.

2. **Employment Based (EB-2)** – For professionals with advanced degrees or those with exceptional ability in the sciences, arts or business. The EB-2 Category also includes the National Interest Waiver (NIW). This petition asks that the labor certification requirement be waived in the "national interest" of the United States.
3. **Professionals** with basic degrees, skilled workers and "other workers" who have less than two years of relevant experience. Applicants in this category generally require a labor certification, where the employer and the job applicant complete a Department of Labor process to certify that the employer is not displacing qualified U.S. workers.
4. This category is reserved for **special immigrants** including: Religious workers, (Pastors, religious workers), special immigrant juveniles, broadcasters, international employees of the U.S. government abroad, armed forces members, Panama Canal Zone employees, certain physicians, Afghan and Iraqi translators and Afghan and Iraqi nationals who have provided service in support of U.S. operations.
5. **Employment Based (EB-5)** – or "investor visa." Congress created this program to stimulate the U.S. economy through job creation and capital investment by foreign investors. To qualify, a foreign national must invest a minimum of either \$500,000 or \$1,000,000, depending on the employment rate in the geographical area, in a commercial enterprise in the United States which creates at least 10 new full-time jobs for U.S. citizens, permanent resident aliens, or other lawful immigrants, not including the investor and his or her family.

A foreign national's ability to receive an employment-based immigrant visa varies based on the preference category they are eligible for as well as other factors, such as the total number of applicants for that visa class at the time of application.

The field of employment based immigration law is complex, as there are many factors to consider when preparing a visa petition or application, and simple errors can result in a delay in or denial of a visa application. Please contact me if you have any questions. My office number is 856.778.0590 and my email address is jconnell@cilaw.net.

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By Glenn A. Henkel, Esq.  
Kulzer & DiPadova, Haddonfield, New Jersey

# New Jersey Estate Tax Repeal: What You Need to Know!

Last October, Governor Christie signed legislation raising the state's gas tax to help replenish the state's expired transportation trust fund. As a tradeoff to tax increases, the law took tax reduction steps to encourage residents to remain in the state after retirement. It phases out the estate tax, effective January 1, 2018, and provides an enhanced retirement income exclusion that is phased in between now and 2020. If the changes actually happen, it could have a profound impact on the manner that our New Jersey clients will plan for their estates.

The major highlight in this new legislation is the repeal of the estate tax after 2018. Since it is a "phase out," there is always the potential that the tax may not, in fact disappear. Recall that as part of the November 8, 2016, ballot "Public Question 2," a majority of New Jersey voters approved a constitutional amendment that dedicates all gas tax revenue to transportation projects (not the tax relief). Thus, whether the State will be financially able to forgo the estate tax revenues in 2018 and thereafter will be an issue for a future legislature and a future Governor. The lost revenue effects for the estate tax repeal alone are huge, almost \$500 million in fiscal 2020 and more than \$500 million in fiscal 2021 and fiscal 2022.

Under the legislation, the rules for 2017 decedents allow a \$2 million exemption per decedent, including a change in the manner that the tax is computed. The 2017 tax computation could be a precursor to future rules so they are worth study. The way the law is drafted allows an easy fix to retain the tax if the state later decides to keep the 2017 tax format. The pre-2017 tax law was a "cliff," meaning that the tax applied on all estates subject to tax, but the new law provides a "credit" providing a tax benefit even on larger estates.

What does this mean for those living in New Jersey? What changes to planning and documents might be advisable to consider for New Jersey domiciliaries? Will it bring back former New Jersey residents who "changed" their domicile to a no-tax state? For many, it has been the INCOME tax that has caused clients to leave New Jersey (maybe climate too). Because the pre-2017 law only allows a meager \$20,000 pension exclusion (married filing jointly), the new law adds an increased pension exclusion that is likewise phased in and makes New Jersey more competitive regionally. It increases the thresholds from \$20,000 in 2016 to \$40,000 in 2017, \$60,000 in 2018, \$80,000 in 2019 and to \$100,000 for 2020 and thereafter (all married filing jointly). For single taxpayers, the current \$15,000 exclusion goes to \$30,000 (2017), \$45,000 (2018), \$60,000 (2019) and \$75,000 (2020). However, this benefit is provided only to taxpayers who are below the gross income threshold. Under current law, the pension exclusion is denied if the person's New Jersey taxable income is more than \$100,000. Even a mere \$1 of gross income over the exemption, denies the taxpayer of the benefit. Thus, while the law is a step in the right direction, it is not that attractive to high net worth individual.

For the estate tax, New Jersey law provides that there are no estate tax changes for 2016 decedents (leaving in place the \$675,000 exemption threshold based upon the 2001 provisions in I.R.C. Section 2011) and there is no tax for 2018 decedents. For 2017 decedents, the tax is imposed based upon the prior I.R.C. Section 2011 "credit" rate chart as it existed in 2001 that is now incorporated into the statute, but the computed tax is reduced by a "credit" of \$99,600, the tax that would have been imposed on a \$2,000,000 estate.

The new New Jersey tax computation for 2017 decedents is keyed to the definition of "taxable estate" contained in Internal Revenue Code Section 2051. That reference has raised an interesting interpretive question. When the existing New Jersey tax was keyed to the 2001 tax code, there was no deduction for state estate tax. (I.R.C. Section 2058 that allows a state estate tax deduction is only effective for decedents passing after 2005). Now, because of the reference to the current tax code, the *state* tax to be paid is a *deduction* in arriving at the tax—thus, there is a circular computation to arrive at the tax. Maybe this will be fixed in a technical correction. However, as of now, the computation is "circular," meaning you deduct the tax against the tax and need a computer or algebraic formula to determine the amount owed. The allowance of a deduction could also raise questions about taxes paid to other jurisdictions where an estate could attempt to claim both a credit for tax paid and a deduction.

One major benefit is that this definition of the tax base in I.R.C. Section 2051 starts with the "gross estate" less deductions, which is *before* adding back prior gifts made. Thus, like it was for the pre-2017 rules, gifting still reduces the estate and thereby, using a gifting strategy reduces the estate tax.

Before gifting however, advisors should make sure that the assets being given away do not result in a higher income tax cost. When assets are gifted, the donee receives "carryover" income tax basis rather than the "step up" that can occur at death. It is usually not a good idea to save estate tax at a cost of an increased income tax, unless the tax is lower (analysis is needed before the gift) or the asset will not be sold (e.g., a vacation home or a family business). Another consideration with gifting is that under the old rules, the gifts escaped estate tax. However, there was still a tax on the assets remaining in the estate, so there would be some tax due. To avoid any tax at all, a donor had to gift all the way down to a retained asset base of just \$100,000. Now, because of the "credit" on the first \$2,000,000, a retained asset base of \$2,000,000 will escape the tax entirely. This is a great opportunity for deathbed planning however, while there is generally no "3-year" rule for estate tax, there remains a rule for *inheritance* tax that will impose an inheritance tax on all gifts within three years of passing.

The first caveat is that the New Jersey inheritance tax is retained (a significant trap for the unwary). The New Jersey inheritance tax does not generally apply to transfers to a spouse, child, or grandchild who are referred to as "Class A" beneficiaries. Unfortunately, the New Jersey Inheritance tax subjects transfers to siblings, and children in law at a rate of 11% (on an amount over \$25,000) known as Class "C" beneficiaries. This rate rises on transfer above \$1.1 million reaching a high of 16%. Other non relatives are taxed at a 15% rate (16% over \$700,000). While a "step child" is a preferred "Class A" beneficiary, the transfer to a "Step grandchild" causes a 15% tax. The New Jersey inheritance tax remains a costly trap for unsuspecting taxpayers. Unlike the rules for the New Jersey estate tax, an inheritance tax carries with it a three-year inclusion of gifts in the tax base.

The second caveat, the potential repeal of the FEDERAL estate tax by the Trump administration could create more confusion in the way that clients will plan their estates. In the end, the New Jersey estate tax change is welcome relief, but for clients with estates above the \$2 million exemption amount, prudence would suggest that they retain their existing plans. With the potential that the Trump administration will repeal or modify the federal estate tax, many clients will be eager for simplification to their planning however, let's not act too quickly for our New Jersey residents.

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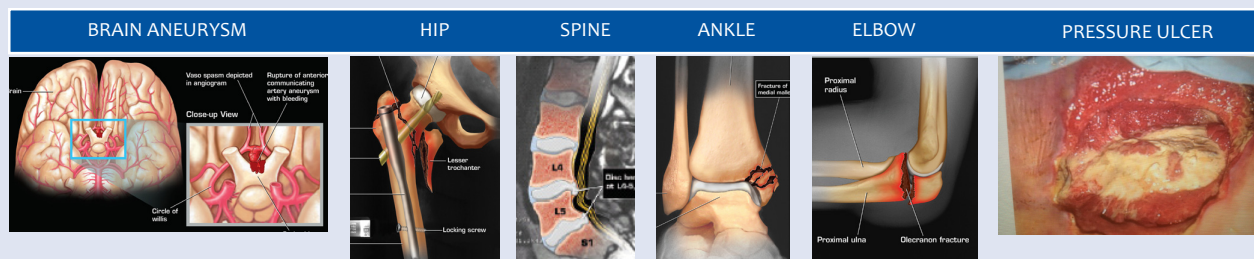
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