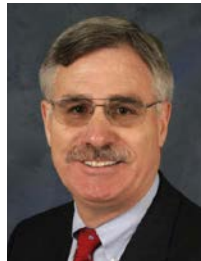


## Past President Joseph A. McCormick To Receive The Hon. Peter J. Devine Award

**Award to be presented at February 23<sup>rd</sup> Cocktail Party**

Joseph A. McCormick, Jr., Law Offices of Joseph A. McCormick, Jr., P.A. in Haddonfield, has been named recipient of the 2016 Honorable Peter J. Devine, Jr. Award to be presented during a Cocktail Party in his honor on Thursday, February 23, at Il Villaggio Cherry Hill. Joe served as Association President in 2008-2009, and Foundation President in 2010-2011, and has been an active member of the Debtor Creditor Committee for many years.



(Continued on Page 6)

**CORRECTION:** Please note that the Parker McCay display ad in the December featuring Judge Vogelsson was printed in error. The correct ad featuring Judge Meloni is in this issue.

## And the tradition continues!



More than 200 deserving children from Camden enjoyed the Public Benefits Committee's annual Holiday Breakfast & Party with Santa.

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## Nominations Open for Association Officers and Trustees

The Association Nominating Committee is seeking nominations for the offices of president, president-elect, first vice president, and treasurer, and for five Board of Trustees openings. The Trustee seats are for a term of three years beginning on June 1, 2017 and ending in May 2020.



With 135 years of history, tradition and success, the Committee is looking to keep the Association vibrant and in the forefront of services to the legal community and the community-at-large in the ever-changing fast-paced world of the 21st Century. If you enjoy participating in Association networking programs and seminars, have served or wish to serve in a committee leadership role and are interested in being a part of the decision-making process, the Committee is looking for you.

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

If you have the desire to help shape the future of your Association, and can meet the responsibilities outlined above, please send a letter of interest along with a resume to Jennifer Fowler, Esq., Chairperson, Nominating Committee, c/o Camden County Bar Association, 1040 N. Kings Highway, Suite 201, Cherry Hill, NJ 08034.

(Continued on Page 6)



The Association was saddened by the passing of long time member

**HON. FRANK M. LARIO, JR.,  
J.S.C. (RET.)**

on October 27<sup>th</sup> at the age of 79

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

He will truly be missed.

## THE DOCKET

**Wednesday, January 18th 2017**

*CCBA Board of Trustees Meeting*

4 – 5 pm

Bar Headquarters, Cherry Hill

**Friday, January 27th 2017**

*Young Lawyer Committee Meeting*

12:30 pm – 1:30 pm

Bar Headquarters, Cherry Hill

## NOTICES TO THE BAR

### Notice 1

The Supreme Court approved mandatory e-filing in Criminal matters with certain limited exceptions effective December 15th.

The process for curing noncompliant filings (resubmitting electronically within 10 days) will be simple.

There will be four limited exceptions where paper filing will be permitted:

- (1) cases not tracked in PROMIS/Gavel, e.g., expungements, gun permit filings, municipal appeals;
- (2) filings that are not part of the court's official case file, e.g., prosecutor discovery pursuant to Rule 3:13-3(b)(1);
- (3) filings where a fee is specifically required, e.g., municipal appeals, expungements; and
- (4) Megan's Law filings.

### 4:86 Guardianship Revision

As part of the new amendments to R. 4:86 ("Action for Guardianship of an Incapacitated Adult or for the Appointment of a Conservator") adopted by the Supreme Court, this is a friendly reminder to please include a Case Information Statement as part of your guardianship pleadings and the following provision **must** be included in your proposed Order for a Hearing to satisfy the guardianship training requirement . . .

Any proposed guardian shall complete guardianship training as promulgated by the Administrative Director of the Courts, by viewing or otherwise reviewing the Court Appointed Guardian Tutorial posted on the Judiciary's website at [www.njcourts.gov/guardianship](http://www.njcourts.gov/guardianship) and receiving copies of the relevant guardianship training guide(s).

Sample forms can be found at <http://www.judiciary.state.nj.us/reports2016/index.html>. All proposed guardians must complete their guardianship training prior to qualifying before the Camden County Surrogate.

Questions regarding this may be directed to the Camden County Surrogate's Court, by telephone at (856) 225-7282. Thank you for your anticipated cooperation.

## KEEP YOUR BELTS ON... ...with a brand new CCBA Attorney ID Card!

Starting in 2017, the CCBA, in conjunction with the Camden County Sheriff's Office, will begin issuing Attorney ID Cards which will enable the holders to keep their belts on and use the employee-designated security lines at the Camden County Courthouse.

The cost for the cards will be \$25 for CCBA Members and \$50 for Non-Members, and they will be good for 5 years.

The cards must be visible upon entry, and the CCBA will provide lanyards for the cards.

Forms will be available soon from the CCBA, and the cards will be issued in the Sheriff's Office on the 1st Floor of the Courthouse.

Watch your email and future Barristers for further details, including the start date.

The CCBA is grateful to Hon. Deborah Silverman Katz and the Camden County Sheriff's Office for implementing this program.

Louis R. Moffa, Jr.  
President

## CCBA... Your TRUSTED Source for MCLE.

## Tentative agenda for January 18th 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. 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

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

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## MEMBER ON THE SPOT



**NAME:**

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**YEAR ADMITTED TO BAR:**

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**Julius R. Hughes, Jr.**

**Law Office of Julius R. Hughes, Jr.**

**2015**

**None**

**PRIOR OCCUPATION:** Construction and Addictions Counseling

**RESIDENCE:** Camden County

**HIGH SCHOOL:** Washington Township High School, NJ

**COLLEGE:** Rutgers-Camden

**LAW SCHOOL:** Rutgers Law School-Camden

**WHAT LED YOU TO A LEGAL CAREER:** A graduate school mock trial program for diversity students

**BEST PERSONAL/PROFESSIONAL ATTRIBUTE:** Use of humor as a tool.

**GREATEST FAULT:** I love to win, so I am very competitive.

**WHAT I DO TO RELAX:** Yoga

**HOBBIES:** Sci-Fi Movies

**FAVORITE RESTAURANT:** Chima (Brazilian Steakhouse in Philadelphia)

**FAVORITE TELEVISION SHOW:** Family Guy

**FAVORITE MOVIE:** Interstellar

**FAVORITE AUTHOR/BOOK:** Richest Man in Babylon

**FAVORITE VACATION PLACES:** Hawaii and California

**FAVORITE WEBSITE:** juliusrhugheslaw.com

**FAVORITE MUSEUM:** Please Touch Museum

**FAVORITE WEEKEND GETAWAY:** Frog Town Inn, Pennsylvania

**ENJOY MOST ABOUT PRACTICING LAW:** Trial

**MOST ADMIRER PERSON AND WHY:** Malcolm X. He spoke truth to power and admitted mistakes.

**WHEN AND WHERE HAPPIEST?** Now.

**CHERISHED MEMORIES:** Standing at the edge of a rainstorm.

**GREATEST FEAR:** Not accomplishing my goals.

**ALTERNATE CAREER CHOICE:** Construction

**GREATEST LESSON LEARNED FROM PRACTICE OF LAW:** Opportunity and victory favors the prepared.

**PERSON YOU'D MOST LIKE TO DINE WITH:** President Barack Obama.

**PET PEEVE(S):** Rudeness/Condescension without cause.

**LIFE'S HIGHLIGHTS:** Lived in Hawaii for two years

**GREATEST ACCOMPLISHMENTS:** Becoming a lawyer

**#1 PROFESSIONAL GOAL:** Satisfying my clients

**#1 PERSONAL GOAL:** Being a good parent

**LIFE EXPERIENCE(S) WITH GREATEST IMPACT:** Witnessing a child with a disability take his first steps to his grandmother. The doctors said that he would never walk. Watching her hold him and cry made it feel like time stood still.

**ADVICE TO YOUNG LAWYER:** Go to court every chance you get.

**HOPE TO BE DOING IN 10 YEARS:** at least 4 big trials per month or running for President.

**FAVORITE QUOTATION:** "The two enemies of the people are criminals and government, so let us tie the second down with the chains of the Constitution so the second will not become the legalized version of the first." Attributed to Thomas Jefferson and Ayn Rand



## LEGAL BRIEFS

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

—**Patrick A. Russo** has recently joined Daniel I Ward & Associates, PC in the Voorhees office, as an associate attorney. He will advise clients on tax, estate and special needs planning issues.

—Capehart Scatchard Shareholder, **Lora V. Northen**, recently spoke on "Hot Issues in Workers' Compensation Across the Country" at the 25th Annual National Workers' Compensation and Disability Conference & Expo in New Orleans.

Currently serving a two-year term as President of the National Workers' Compensation Defense Network, Lori participated in a discussion on the hot topics throughout the country in workers' compensation, including recent case law.

In addition to her responsibilities as Co-Chair of the Workers' Compensation Department, she focuses her practice in the representation of employers, self-insured companies, and insurance carriers. Certified as a trial attorney by the Supreme Court of New Jersey in Workers' Compensation Law, Lori is a member of the New Jersey, Pennsylvania, Burlington County and Camden County Bar Associations and is also a Fellow of the College of Workers' Compensation Attorneys for the American Bar Association.

## WELCOME NEW MEMBERS

2016

### DECEMBER

#### Active (3)

##### Shaina E. Hicks

Ballard Spahr, LLP  
1735 Market Street  
51st Floor  
Philadelphia, PA 19103  
215-864-8613

##### Julius R. Hughes, Jr.

Law Office of Julius Hughes, Jr.  
1405 Chews Landing Road  
Suite 48  
Laurel Springs, NJ 08021  
856-535-3015

##### Rhasheda S. Douglas

Rutgers Law School  
217 North Fifth St.  
Camden, NJ 08103  
856-225-6659





## PERSONAL INJURY LAW

# Retirement Account Trusts

By Thomas D. Begley, Jr., CELA

### INTRODUCTION

The United States Supreme Court in a 9-0 unanimous ruling held that an inherited IRA is not protected in bankruptcy under federal law.<sup>1</sup> Heidi Heffron-Clark inherited an IRA from her mother in 2001 and filed for bankruptcy nine years later. The court held that the IRA was not shielded from her creditors, because the funds were not earmarked exclusively for retirement. The Supreme Court indicated that creditor protection does not apply to inherited IRAs for a number of reasons:

- Beneficiaries cannot add money to an inherited IRA like IRA owners can to their accounts;
- Beneficiaries of inherited IRAs must generally begin to make Required Minimum Distributions (RMDs) in the year after they inherit the accounts regardless of how far away they are from retirement;
- Beneficiaries can take total distributions of their inherited accounts at any time and use the funds for any purpose without a penalty. IRA owners must generally wait until age 59-1/2 before they can take penalty-free distributions.

The court held that inherited IRAs do not contain funds dedicated exclusively for use by individuals during retirement. As a result, the favorable bankruptcy protection afforded to retirement funds under the Federal Bankruptcy Code does not apply.

The court did not rule on whether a Spousal Rollover IRA is protected from creditors. Like other IRA owners, if the money is rolled into their own IRA, they may have to pay a 10% early-withdrawal penalty if money is taken before age 59-1/2. If the money is not rolled over into the Spousal Rollover account, then it would appear that the assets will not be protected in bankruptcy.

A way to safeguard IRA and other retirement account assets from creditors is to name a trust as beneficiary of the retirement account.

### TRUST AS BENEFICIARY

The best practice is to name a standalone retirement trust as beneficiary for IRAs and other tax-deferred retirement accounts. Naming a beneficiary outright has several disadvantages:

- The money could be available to the beneficiary's creditors, spouse, or ex-spouse.
- A young adult or even older beneficiary may be tempted to take out larger distributions or even cash out the entire account.
- If the beneficiary is a spouse, the spouse would be able to name new beneficiaries.
- If the beneficiary has special needs, the IRA could cause a loss of government benefits. If the beneficiary becomes incapacitated, a guardian would have to be appointed for the beneficiary.
- If the beneficiary is a minor, distributions will need to be paid to a guardian; if no guardian has been appointed, one will have to be appointed by a court.

### IRA Trust Advantages

- *Creditors.* Naming a trust as beneficiary provides more control. A trust can be drafted to protect the assets from a beneficiary's creditors.
- *Squandering.* If retirement account monies are left directly to heirs, the funds may be squandered by the heirs defeating any benefit of the long-term tax deferral.
- *Divorce.* If the heir is divorced, the retirement account funds may be subject to claims of the non-heir spouse.
- *Benefit of Beneficiary.* If a parent names a child as beneficiary of the parent's retirement account and subsequently the child dies, that child may name the child's spouse as beneficiary and the child's spouse may remarry naming the new spouse as beneficiary. The retirement account would no longer remain in the bloodline.
- *Special Needs.* If the beneficiary has special needs, the trust can be drafted to protect the beneficiary's entitlement to government programs such as SSI, Medicaid or any other means-tested public benefits.
- *Incapacity.* Finally, no guardianship proceeding is needed upon the beneficiary's incapacity.

### Separate Trust

A separate trust designed specifically to control the retirement account is recommended. It is best that the trust not be part of a revocable living trust or any other trust. A "standalone retirement trust" is preferred.

### Professional Trustee

When an IRA is paid to a standalone retirement trust or any other trust, it is important to consider a professional trustee. The rules regarding inherited retirement accounts are complex and family member trustees are often unfamiliar with them. This could cause a loss of important tax

(Continued on Page 15)

**Parker McCay is pleased to announce that Judge Louis R. Meloni (Ret.) has joined the firm and will focus his practice on Alternative Dispute Resolution**

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## FINANCIAL FORENSICS

# Year End Planning Should be Year-Round Planning

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

It's criminal to take business-tax deductions to which your practice is not entitled, but it's a darn shame to miss those that are lawful. Following, in no particular order of priority, are some guidelines to help you record the proper tax deductions for such items as auto, travel, entertainment and business meals. These would be useful in the case of unreimbursed employee business expenses or if you're self-employed. I'm not here to discuss what our new President will promote but the endless tampering by Congress with tax deductions, credits, capital gains taxes and income tax rates makes it more essential than ever to have tax planning reviewed by your professional tax advisor to determine whether such deductions are permitted or entirely new strategies need to be employed.

The virtually endless numbers of items that can be "business expenses" make it difficult to list each one well as separate expenses that serve a bona fide business purpose from those that do not. Still, the following is a memo we generated which may even look familiar since many of our colleagues similarly suggest how to make sound income tax planning decisions and to implement such tax minimizing strategies. Enjoy!

## MEMO

Not to worry. I didn't just assume you would digest all of the planning tips I tried to impart at last week's meeting. Thus, the following

comments, although in no particular order of priority, should give you some guidance in establishing proper expense reimbursements to you by your professional corporation. So as not to re-invent the wheel, I've outlined some thoughts for your consideration. You may wish to set up yet another meeting so I can review these in detail with you.

### TRAVEL, ENTERTAINMENT AND BUSINESS MEALS

- The law requires you to maintain records supporting deductions for business travel, entertainment and gifts. Generally, estimation of these expenses is not permitted. A summary of the information that must be recorded is as follows:
  1. The amount of the expenditure for travel, meals, lodging, entertainment or gifts.
  2. The time and place of the travel and entertainment, or the date and description of the gift.
  3. The business purpose of the expense, or the business benefit derived or expected to be derived as a result of the expenditure.
  4. The business relationship with the person entertained or receiving the gift.
- As long as it is an ordinary and necessary business expense, the cost of entertainment may be deductible if it is "directly related" to business or if it directly precedes or follows bona fide business

(Continued on Page 8)

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**Remember! It doesn't cost you anything to call us on a matter.**

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

We strive to successfully meet the needs of a very diverse client base. We have carefully focused and developed our practice to specialize in the complexities of tax planning and compliance; financial consulting; accounting and review services; estate planning and compliance. We are here to assist our judiciary and legal colleagues in any and all accounting, tax, valuation, investigative or litigation support project where our team may be of benefit. We offer consultations in many areas, including the following:

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- Tax related valuations
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## VERDICTS OF THE COURT

*Superior Court of New Jersey*

VERDICT: No Cause (10/25/16)  
Case Type: Auto negligence  
Judge: Anthony M. Pugliese, J.S.C.  
Plaintiff's Atty: David Sinderbrand, Esq.  
Defendant's Atty: Melissa Bishop, Esq.  
L-2552-14 Jury

VERDICT: Damages Verdict: \$40,000 (11/1/16)  
Case Type: Auto negligence  
Judge: Francisco Dominquez, J.S.C.  
Plaintiff's Atty: John Klamo, Esq.  
Defendant's Atty: James Nolan, Esq.  
L-2781-14 Jury

VERDICT: No Cause (11/1/16)  
Case Type: Auto negligence  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: Cristie Nastasi, Esq.  
Defendant's Atty: Robert Kaplan, Esq.  
L-3369-14 Jury

VERDICT: Damages Verdict: \$26,190 defendant; \$26,190 plaintiff (11/7/16)  
Case Type: Contract  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: PF1 Paul Dougherty, Esq. – PF2 Joseph Silverstein, Esq.  
Defendant's Atty: Peter Boyer, Esq.  
L2574-14 Jury (7)

VERDICT: No Cause (11/9/16)  
Case Type: Auto negligence  
Judge: Kenneth Andres, Esq.  
Plaintiff's Atty: Anthony Ha, Esq.  
Defendant's Atty: Anthony Ha, Esq.  
L-3890-13 Jury

VERDICT: Liability Verdict: 100% Against Defendant (11/15/16)  
Case Type: Auto negligence  
Judge: Anthony M. Pugliese, J.S.C.  
Plaintiff's Atty: Daniel Zonies, Esq.  
Defendant's Atty: Rodd Dewitt, Esq.  
L-5037-13 Jury

VERDICT: Liability Verdict: 100% Defendant; Damages Verdict: \$20,000 (11/29/16)  
Case Type: Auto  
Judge: Michael J. Kassel  
Plaintiff's Atty: Pasquale Colniva, Esq.  
Defendant's Atty: Rodd DeWitt, Esq.  
L-3067-14 Jury

## McCormick To Receive The Hon. Peter J. Devine Award

*Continued from page 1*

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

The presentation event features a three hour upscale cocktail party, with the presentation taking place during a brief formal program.

Reception Reservations are \$65 per person and can be made by calling Bar Headquarters at 856.482.0620 or by mailing the reservation reply from the flyer inserted in this month's issue of *The Barrister*. Spouses and friends are welcome and encouraged to attend.

Don't miss this opportunity to congratulate and thank Joe for his years of commitment to the Camden County legal community and the community at large.

## Nominations Open

*Continued from page 1*

**Current members of the Board of Trustees whose terms expire at the end of this bar year must also send a letter of interest to be considered for reappointment.**

Members who have practiced five years or less at the Bar of New Jersey or are 35 years or younger are eligible for the position of **Young Lawyer Trustee**. Again, a commitment to attend and chair monthly Young Lawyer Committee meetings, submit a monthly article to the Barrister, and attend monthly Association Board of Trustee meetings and Young Lawyer and Association events and programs must be made. To be considered, please send a letter of interest along with a resume to Amir Goodarzi, Chairperson, Young Lawyer Nominating Committee, c/o Camden County Bar Association, 1040 N. Kings Highway, Suite 201, Cherry Hill, NJ 08034. The young lawyer post is for a one-year term beginning June 1, 2017, and includes a seat on the CCBA Board of Trustees.

New officers and Trustees will be sworn in at the Annual Installation of Officers & Trustees Dinner Dance on Saturday, June 9th at Lucien's Manor in Berlin.

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

**The deadline for consideration of nominations is 5 pm, Friday, March 17, 2017.**

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## EMPLOYMENT LAW

# Wrongful Termination & The False Claims Act

By Franklin J. Rooks Jr

Like many states, New Jersey adheres to the “employment at will” doctrine. It’s a well-settled principle that an employee can be fired for a “good reason, a bad reason, or no reason at all.”<sup>1</sup> “Wrongful termination” is a catch-phrase without a distinct legal meaning that has evolved to represent a termination which the employee believes is illegal. Sometimes the termination is illegal. Other times, the termination is simply unfair. And, “unfair” is not synonymous with “illegal.” Illegal terminations, such as a discriminatory termination under Title VII of the Civil Rights Act or the New Jersey Law Against Discrimination, leave an employee without a remedy. “Unfair” terminations which do not offend a protected trait or a protected activity, or violate a statute, do not provide any means of redress.

Employees who have been unfairly (but not illegally) terminated may seek relief where no relief is available. Or is there? Unfairly terminated employees, like those employees who have been illegally terminated are looking for a remedy, a way to get “payback” from their employer who seemingly axed them for no good reason. But, maybe there is a way for the unfairly fired employee to get back at their employer, and obtain some relief. “Does your former employer do any business with the Federal government?”

If you listen to the news, you probably have heard the term, “whistleblower.” Whistleblower cases have skyrocketed in the past few years. Much of the recently popularized whistleblowing comes in the context of reporting fraud committed against the Federal government. The predominant law relied upon by whistleblowers is the False Claims Act (“FCA”). The FCA allows a private individual to secretly report fraud, when there is a reasonable belief that fraud has been committed against the Federal government or any of its agencies. This is done under the Act’s “Qui Tam” provision.

Perhaps the terminated employee has some dirt on his/her former employer’s business activities which might involve defrauding the Federal government. Since there is no legal relief for an unfair termination, if the person’s former employer is defrauding the Federal government, why should the former employer be allowed to get away with it? The rewards for “blowing the whistle” can be staggering. Under the FCA, people who blow the whistle on fraud committed against the Federal government can be generously rewarded. The whistleblower can receive between 15% and 30% of the settlement amount negotiated between the Federal government and the person or entity that committed the fraud. The penalty of each violation of the FCA may be up to \$11,000, plus three times the amount of actual damages. The penalty is assessed regardless of the value of the false claim submitted to the government. The fraud could be as little as \$5. Nevertheless, the penalty may still be \$11,000 for each occurrence, plus triple the actual damages. As you might imagine, it adds up very quickly.

Approximately 80% of fraud committed against the Federal government is related to healthcare. The Federal government pays for healthcare services under the Medicare, Medicaid and Tricare programs. Fraud related to Federal healthcare programs exists across the spectrum of healthcare-related industries, including, but not limited to, hospitals, home health agencies, rehabilitation providers, nursing homes, medical device manufacturers, ambulance companies, assisted living centers, medical device companies, pharmacies, pharmaceutical manufacturers, medical laboratories, and x-ray/imaging centers. The

reason why the whistleblower’s reward can be so substantial is because *each* fraudulent claim counts as a violation of the FCA. For example, if a long term care facility fraudulently submits 500 Medicare claims, the penalty is \$11,000 for each claim. That equals \$5.5M in penalties, plus triple damages. The whistleblower’s share, which ranges between 15% and 30% of the total damages amount, could be equal to \$825,000 and \$1.375M. A successful financial recovery for the whistleblower can range from several hundred thousand dollars to several hundred million dollars. Since 1987, the FCA has led to the recovery of over \$24 billion in taxpayer dollars from cases brought by whistleblowers.<sup>2</sup>

It has been estimated that as much as 10 percent of all Federal government spending is lost due to fraud. Fraud is not confined to Federal healthcare programs. Generally speaking, any business entity or individual that does business with the Federal government in any capacity has the potential to have a claim against it. Fraud may also be perpetrated by educational institutions that receive government funding, such as universities and institutions of higher education seeking federal funding for research, or for-profit secondary schools which receive Title IV funding for student loans. In the business sector, companies frequently enter into contracts with the government for defense contracts, affordable housing developments, highway construction, or for just about any other service that the Federal government requires. When these companies receive federal payments for work that was awarded based on false or misleading representations in government applications, bids, requests for proposals, this may also be a violation of the FCA. Many states have their own false claims act laws as well. New York, New Jersey, and Delaware, for example, all have false claims act laws that are modeled after the Federal statute.

There are a number of hurdles to bringing a successful FCA action. One such hurdle is being the “first to file.” Another hurdle is that the information must not be publicly available. The whistleblower must also have first-hand information. There are also procedural steps that must be taken in order to properly preserve the whistleblower’s right to a share of the FCA settlement proceeds. In order to be a whistleblower, the necessary steps under the FCA *must be followed exactly* in order to recover any money. Fraud against the government takes a toll on society and the government’s resources, which makes it harder for honest companies to compete.

So when an employee is unfairly terminated, ask if his/her employer does any business with the Federal government. There may be some avenues for redress after all.

*About the Author: Franklin J. Rooks Jr., is a principal of the Law Firm of Jacobson & Rooks, LLC. The firm focuses on plaintiff’s side employment and labor law, and False Claims Act actions. More information can be found at [www.jacobsonrooks.com](http://www.jacobsonrooks.com). Mr. Rooks can be contacted via email at [frjrooks@jacobsonrooks.com](mailto:frjrooks@jacobsonrooks.com)*

<sup>1</sup> *Witkowski v. Thomas J. Lipton, Inc.*, 643 A.2d 546 (N.J. 1994).

<sup>2</sup> *Fraud Statistics – Overview, Oct. 1, 1987–Sept. 30, 2012*, U.S. DEP’T OF JUSTICE (Oct. 24, 2012)

## FINANCIAL FORENSICS

# Year End Planning Should be Year-Round Planning

(Continued from Page 5)

discussion and was “associated with” the conduct of your trade or business. An exception is made for a taxpayer traveling away from home on business, in which case the cost of a meal alone or with persons who are not connected with his business will qualify as a business meal.

- Business gifts are deductible only to the extent of \$25 per year per donee and to claim that deduction you must have the substantiation listed previously. All travel and entertainment should be recorded in your diary or account book “at or near the time” when it occurs. Records and receipts should be retained for at least three years after the due date for filing the tax return on which you claimed the deduction (six years even preferred). Except for expenditures for lodging and transportation, receipts are not required, although suggested, for expenses up to \$75.
- Deductions are not allowed for lavish or extravagant meals. The cost of beverages served apart from meals is covered by the rules for business meals. Meals or beverages served in a taxpayer’s residence qualify as business meals on a clear showing that the expenditure was commercially, rather than socially, motivated.
- As I also mentioned previously, business meals and entertainment are only deductible to the extent of 50% of the cost.
- I should remind you to pay particular attention to properly identifying the type of expense when you submit it to the professional corporation for reimbursement. We have set up appropriate general ledger accounts but I would hate to see a fully deductible expense (i.e. hotel) be inadvertently lumped together as a 50% deductible item (i.e. entertainment).
- If you’d like, I can give you a copy of a “Petty Cash Reimbursement Sheet” which we developed some time ago for one of our clients. The sheets are useful in that they allow for the reimbursement through cash disbursements for all out-of-pocket expenditures of an officer/shareholder. They may also be used for other employees where applicable. This served a dual purpose in not only providing adequate substantiation for IRS purposes but also made sure legitimate deductions did not “slip through the cracks.” You may want to adapt something of this nature to your specific needs.
- I believe you should adopt a simple record keeping system which suits your purposes. I would strongly advise you to maintain a diary which details any expenses incurred as well as the information necessary to support the deductions. You probably already maintain some sort of appointment book anyway so that you may be able to merely re-indoctrinate yourself to jot down the information needed. Then, on a periodic basis (i.e. weekly or monthly), you would complete an expense report and, submit it for reimbursement by the corporation with the receipts and other documentary evidence attached to it. The corporation would then pay this bill as it would with any independent, third party.
- Even if not required, I would suggest your retaining documentary evidence which can serve to substantiate other (than the cost) elements of the expenditure or possibly elements of related expenditures. For example, a receipted restaurant bill is not required where the expenditure is less than \$75. Nevertheless, such a bill establishes the time and place elements of the meal, and supports the related parking and transportation costs.
- I would suggest minimizing the use of cash to pay for deductible expenses. A canceled check or a credit card slip can do something

that cash can’t—refresh one’s recollection of unrecorded elements of an expenditure.

- You may want to subscribe to at least two (2) credit cards limiting the use of a given card(s) to business expenditures and the other card(s) to personal expenditures. Thus, you would have to sift through only the “Business Credit Card” slips for reimbursement.

## AUTOMOBILE EXPENSES

- As I’ve mentioned previously, it would be best to have the total expense of operating your vehicles reduced by the personal use of the car and then reimbursed to you from the corporation. For example, if you are currently using your auto 80% for business purposes, you would submit for reimbursement 80% of your auto leases, auto insurance, etc. Tolls and parking would be reimbursed at 100% One possibility is that you could submit bills as incurred or take periodic draws against this reimbursement with an evening up by your year-end. As long as the reimbursement equals the deductible amount for personal income tax purposes, there should be no need to report this reimbursement on your personal returns. Alternatively, you could have the corporation pay 100% of the car leases while showing the personal portion as additional compensation to you. A partial listing of typical automobile expenses could be as follows:

Gasoline and oil

Repairs

Auto supplies (i.e. car radio, mats, cleaning supplies, tires, wipers, etc.)

Auto lease payments (subject to limitations)

Auto insurance (on business car only)

Registration and license fees

Car washes

If you are using a car for business purposes which is not leased, you should provide me with the original cost and date of purchase so that we can compute the appropriate depreciation deduction (as opposed to lease expenses). You should also provide us with copies of any car leases.

I must add that the continual auto regulations issued by the IRS are extremely complex and onerous. It is therefore imperative to keep good records as to the total business versus personal use. At a minimum, I would suggest your taking an odometer reading each January 1st.

- As I mentioned previously, way back when, the 1986 Tax Act made employees’ non-reimbursed business expenses deductible only to the extent they exceed 2% of adjusted gross income reflected on their personal income tax returns. Thus, an individual with adjusted gross income of \$100,000 and no other miscellaneous itemized deductions will lose the first \$2,000 of deductions attributable to his business use of the car. The employer (i.e. the professional corporation), however, is not subject to these limitations, and can claim the entire deduction for business use as long as the business use is properly documented.

## YELLOW SHEET

As discussed previously, I would consider a “yellow sheet” expense to be a legitimate and deductible expenditure incurred by one of the lawyer/owners which you all generally agree should not be borne by the other.

(Continued on Page 16)



# Frolicking The Night Away

Bar members, their office personnel, family and friends gathered for another memorable evening of networking, camaraderie and just plain fun at the Bar Foundation's popular "Fall Frolic" at The Pub in Pennsauken. The Foundation thanks all who supported the event and the good that it did for the underprivileged kids of Camden. Enjoying the evening were:



Judge Fox, Judge Snyder, Jim Hamilton,  
Ellen McDowell



Rocco DePersia, Judge Stein,  
Kate Reilly, Judge Polansky



Amir Goodarzi & Matt Rooney



Dawnn Briddell & President Lou Moffa



Eric Fikry & Linda Eynon



Charles Montgomery, Jen Warren, John  
Reisner, Justin Loughry



Wesley Tenza, Allan Zhang,  
Harry Chung



Shayna Slater &  
Michelle Badolato



Judge Schuck, Emily Bell, Earl Miller



Kate Eisenman & Alex Jacobs



Mike Dennin & Ira Deiches



Brad Cohen & Michael Hoviland



Brian Herman & Tom Hagner



Gianni Corleone &  
Cosmas Diamantis



Michele Michael, Chelsea  
Nixon, Elizabeth Chung



# WINE & FOOD

By Jim Hamilton

I hope you found the right bottle of bubbly during the holiday season, whether as a gift to someone or to enjoy yourself - perhaps one recommended by a wine retailer to whom we turned for our last column. And remember that sparkling wines really are versatile wines and should not be viewed solely as something to open only in celebration.

While last month we may have indulged on too many plates of goodies and too many bowls of football, there undoubtedly will be more to tackle in the month ahead, culminating, perhaps, in a college or professional championship party you may host or attend. If you were able to attend our Association's holiday party, perhaps you had a chance to try a few of the wines we offered. Since all were purchased locally, there is a good chance you still will be able to find many of them. So, in true Janus fashion, let's take a quick look back and talk about a few of the wines that were featured.

The **NV Domaine Collin Cremant de Limoux** has been discussed here previously, but is worth highlighting because it offers the sensibilities and talent of a Champagne producer in a sparkling wine that, because

the winery is located far from the Champagne region, sells for much less. While the **NV Broadbent Vinho Verde** is a wine fit for warm summer evening sipping, its delicate, prickly green apple fruit, refreshing salinity and core minerality delivered with only 9% alcohol and sub-\$10 price should find fans year round. Vinho Verde is a wine region in northwest Portugal that long was known for producing insipid, fizzy plonk, most often from either or both the Loureiro and Alvarinho grapes, which deserve better treatment. Well, in the words of a Nobel laureate, the times they are a changing. This wine is the result of the Broadbent Selections import/distribution company working with small wineries to produce a wine that retains some of the better features of the grapes and the region, including affordability, while joining the wave of producers who are elevating the status of these wines.

**2015 Paul Blanck Pinot Blanc** is an entry level wine from an Alsace producer known for producing a wide range of varieties sold at very fair prices. This wine is crafted from the Pinot Blanc grape (Alsace is one region where, like in the United States, the grape variety usually is identified on the label) from a vintage that was wildly successful here and in much of Europe. It shows plump, slightly off-dry fruit with nuances of brioche and subtle spices.

**2014 Raats Original Chenin Blanc** offers a medium body presenting apple and citrus fruit conveyed with deft precision due to its zesty acidity. It shows just a touch of the lactic quality the grape often features, with some herbal and flinty mineral qualities that balance the fruit impressions nicely. Raats is a family winery from the Coastal Region of South Africa.

The **Von Winning "Winnings" Riesling** we offered at the party was from the 2014 vintage, while it is the 2015 vintage that will be found on select retailers' shelves. As noted above, 2015 has been hailed as an exceptional year for many European wine regions, and German wine producers and critics alike feel it is their best since at least 2001, although some believe it approaches the quality levels achieved in the famed 1971 vintage. So, if you tried the 2014 and enjoyed it, you really should search out the 2015. I have tasted a bevy of 2015 German wines thus far and, if you seek value, this bottle is among the stars. As with the 2014

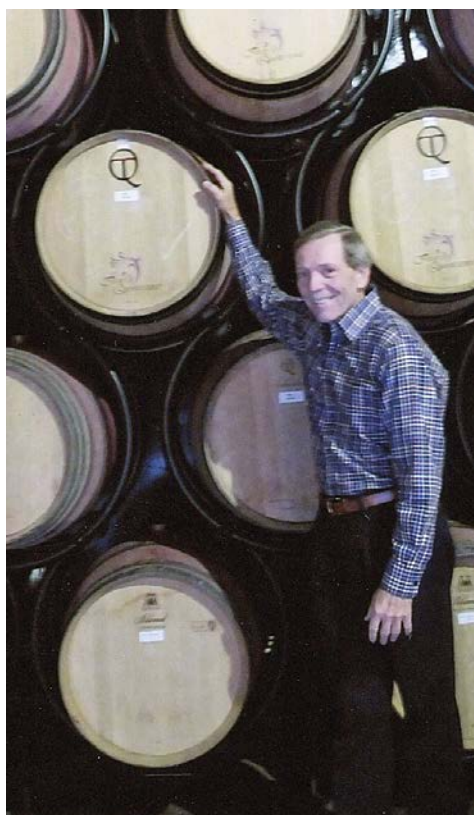


Winnings, it is a Goldilocks wine – not too sweet and not too dry—but rather a ripe wine lush with peach and apricot fruit sensations that are framed by acid driven slate.

Since I spent more time than usual discussing the **2013 Jeanne Marie California Cabernet Sauvignon** in the October column, I simply will say that if you had a chance to taste it, I hope you also found it to be an exceptional value. Speaking of which, I shall be curious to know how many of you were adventurous enough to sample the **2013 Tikveš Vranec Special Selection**. Some years ago, I reported on the 2010 vintage of this wine, marveling at the amount of fruit delivered so seamlessly at such a modest price. While the 2011 and 2012 vintages were nice enough, I think this effort rivals, or perhaps exceeds, the 2010. While one may be inclined to view a wine made by a highly regarded southern Rhone (France) winemaker employing an indigenous grape from old vines in the Republic of Macedonia as one suitable only for wine geeks, I have poured this wine at tastings attended by mostly casual wine drinkers and rarely has it failed to please. Some wine critics have likened the wine and its Vranec grape to Zinfandel, which certainly provides an easy frame of reference. It has an abundance of dark berry fruit and a degree of brier, bramble and spices common to our "all American grape." However, this wine seems to possess acidity that most Zinfandels do not, causing the bold, dark fruit to penetrate and persist a bit farther and longer, thereby enabling it to pair a bit easier with food.

Moving to the venerable Rioja in Spain, **2013 Viña Bujanda Crianza** represents the more modern style of wines from this very traditional region. As a "crianza," this wine enjoyed two years of aging before release with the required minimum one year in oak barrel. Time in bottle and the type and age of oak employed can prevent overt oak impressions, and this is true here. The wine is made from reasonably old vine Tempranillo and

(Continued on Page 9)





By Louis R. Moffa, Jr.

# PRESIDENT'S PERSPECTIVE

## Happy New Laws!

The holidays are over. Winter has settled in. The inauguration/coronation of Donald J. Trump is imminent and many of us are desperately looking for something positive in 2017. I do not have a foolproof solution. But, I have put together a smattering of new laws that take effect this coming year that should pique our attention, along with some old laws that deserve our attention. Some are good. Some are bad. Some are funny. Some are sad. And some are just plain ridiculous. Take your pick.

Don't worry, be happy. The recreational use and possession of cannabis is now legal in eight states plus the District of Columbia. The significant additions for 2017 are California, Maine, Massachusetts and Nevada. Now, what happens in Las Vegas will stay there because you will not be able to remember it. Of course, federal law still outlaws such use and possession of cannabis, but I believe the U.S. Marshal's Service, the DEA and the FBI will have much more to worry about and handle going forward.

Most of us enjoy the shore, strolls on the boardwalk and occasionally old school entertainment like using pinball machines. Unfortunately, such conduct cannot be

enjoyed by young people in Nashville, Tennessee. There, you must be 18 years old to play pinball. That law would have killed many Jersey Shore arcades!

For all you lovers of wildlife, a trip to Alaska is a must. Clearly Alaska used to throw some wild parties in the woods, because the state now has a law on the books that bars you from giving a moose a beer. Giving a mouse a cookie remains fair "game."

For all of you vegetarians and vegans, there are strict regulations for your food too. In Connecticut, for a pickle to legally be called a pickle, it must bounce, proving Connecticut residents are also devotees of the five-second rule.

Massachusetts is a liberal but very patriotic state. When you are in Massachusetts, either before or after you took advantage of the new law previously discussed, make sure you know all of the words and sing out loud the complete Star Spangled Banner or risk being fined. Whether at a school event or sporting event, the National Anthem must be sung in its entirety as intended. Do not think of deviating from the original words or melody, or even dancing as you sing, or you may get a fine of up to \$100. Pretty

good reason to keep the Super Bowl away because of the challenge presented to the opening performers.

On a more serious note, criminal justice reform is alive and well in New Jersey. Bail reform was a hot topic in 2016 around the country. Disproportionate effects on the poor, especially poor minorities, unreasonably long pretrial detention and seemingly arbitrary standards were some of the more significant issues discussed. Now, starting in 2017, New Jersey's bail system shifts the qualitative elements of bail from money to the flight and safety risk of the defendant.

Under the old system, too many times, the wealth of the defendant determined how long he/she would remain in jail before trial. Now, risk and safety have replaced money as the primary factors determining pretrial detention. Judges will determine jail time before trial based on numerous factors including the severity of the crime, the defendant's criminal record, if he or she poses a threat to the community if released and the likelihood that the defendant will somehow hinder the legal process if he/she is released. Low-risk defendants may be entitled to non-monetary bail such as remaining in the custody of a court-designated supervisor, maintaining employment, maintaining an educational program and regularly participating in one or more pretrial programs. Although the new law does not appropriate any additional funds to handle the new system, the bench and bar are committed to working together to implement the system and make it successful.

Finally, we are paying more gas taxes but we are promised better roads, bridges and infrastructure. I believe we were also promised a balanced budget and public pension benefits in the past. Not to worry, we have another election right around the corner in the Fall of 2017 that will determine the next occupant of the newly renovated Capitol building. But wait. Those renovations will not be ready for the new Governor. He or she will have to wait like the rest of us for more improvements.

## HAPPY NEW YEAR!

## WINE & FOOD

(Continued from Page 8)

possesses a medium body, with clean, assertive, mouthwatering fruit resembling spicy cherries and strawberries edged with nuances of leather.

We concluded our Bar Association party pours with one of my favorite Port values in recent years. **2009 Delaforce Late Bottled Vintage Port** is a fine example of an approachable Port wine. Late Bottled Vintage ("LBV") Ports, as the name reveals, are made from grapes grown in a specific year (vintage) but are bottled later than Vintage Ports. The longer aging (typically two to three times longer) facilitates earlier drinkability which, given that many Vintage Ports require extended cellar time, can be an attraction. While it may seem paradoxical that these wines are substantially less expensive than Vintage Ports, they rarely, if ever, achieve the same level of

quality and complexity to justify Vintage Port prices. However, since this is a Port that offers enough plummy fruit to stand up to its 20% alcohol when the wine is afforded some air time to gather itself and gain equilibrium, and since it can remain vital for a week or more after it is opened, it is hard not to like the modest (\$15 or so) price tag. While this wine may not be the easiest LBV to find, there are many available in our market from such well-regarded producers as Graham's, Taylor Fladgate, Fonseca, Dow's and Croft, to name a few. So, if this is a wine type you enjoy you should not have difficulty locating one.

Looking forward, as Janus also will have us do, please be sure to put April 21, 2017 on your calendar to attend our next Bar Foundation charity wine tasting at the Barry D. Brown Health Education Center in Voorhees. As with last year, we expect to feature over 100 wines from some of the top wine distributors for you to enjoy—good wines for a great cause! Happy New Year!



# YOUNG LAWYER HAPPENINGS



## YOUNG LAWYER CHAIR

# Thank You to the Unheralded

By Amir Goodarzi

"This is a new year. A new beginning. And things will change." –Taylor Swift

January 1st has come and gone. The New Year is a bright, shining moment for many and a time of new beginnings. It is the fresh start that many of us are looking for when we evaluate the characteristics of our own lives. The New Year's resolutions are taking hold and we hope to entrench the changes we want in ourselves. Maybe your goal is to go workout more often and hit the gym. Maybe you're trying to cut back on how many panzarottis you eat in one sitting (don't, they're amazingly delicious). Whatever your New Year's resolution might be (mine is to eat more panzarottis), the change that comes along with the start of the New Year is always a welcome time to reflect on why we start these changes during this time of year at all.

Have you ever wondered why the New Year begins in the middle of Winter? The word January itself comes from the Latin word for door, *ianua*, and January itself means door to the year. It is set as the second month of winter, which if you haven't noticed, doesn't have a whole lot of "newness" to it. There's a lot of snow and cold without much going in the category of new beginnings. In the Persian calendar, their New Year starts on the first day of Spring. Maybe this is just my own cultural upbringing, but starting your year with the start of nature coming back to life makes a little more sense to me.

Yet I still think it's important to have a day somewhere in the calendar which tells us things are starting anew. Who picked Thanksgiving as the day that we give thanks for the things in our lives? Well maybe whoever picked the name decided that for us but it's important we recognize, collectively, these human characteristics in starting fresh or giving thanks. One of my favorite holidays is the holy day of Yom Kippur in Judaism. As the Day of Atonement and repentance, it is a recognized time where Jews all over the world spend their day fasting and contemplating the wrongs they have committed, large and small. I wish Yom Kippur was a national holiday because I think it is one of the worthwhile traits we should all exhibit—genuine self-reflection on where we do right and where we falter. In each of our quests

for the good life, it is worth acknowledging what is not so good. Maybe the New Year is the secular version of Yom Kippur, just without the fasting.

We wake up each morning with the sunrise and fall asleep after the sunset which is its own feeling of starting things fresh. But we need a longer timeline than just each day to review our own efforts at genuine change in ourselves. This is where the New Year comes in.

But I don't think that we need to wait for the New Year before beginning earnest change. Sometimes we feel like we've taken too long to make ourselves better and we may feel down about it, which in turn makes it seem like the change is insurmountable. "Why didn't I start reading the Lord of the Rings trilogy earlier? If I started earlier I would've been done by now." Well first of all, the reason you didn't start reading the Lord of the Rings is because they're incredibly long and, second, the books can get slow when Tolkien spends hundreds of words describing the scenery. Still, you shouldn't let it get you down that it took you too long to start something. An old Chinese proverb says: the best time to plant a tree was 20 years ago. The second best time is now.

Along these same lines, others may feel they have to wait for the perfect conditions before starting something. Goodness knows that during law school I took this "ideal condition" approach to my legal writing papers. It's a common refrain to hear from others that certain things need to fall into place before they start working on a project, whether personal or professional. Sometimes it is the case that you need certain conditions met before you can move forward. But many times you can start working on your self-transformation whenever you recognize what you want

to become is better than what you are at the moment. As the author Alan Cohen put it, "Do not wait until the conditions are perfect to begin. Beginning makes the conditions perfect."

So in the future when you are looking to do something different, whether it is trying to exercise more or hold off on devouring that fourth panzarotti, think back to the Taylor Swift quote at the beginning of the article, but leave out the part about it being a new year. Because you can start your new beginning whenever. And it's true that things will change.

P.S. The Young Lawyer Committee will be hosting our annual Chili Cook-off for a Cause at the American Legion in Gibbsboro on Saturday, February 25th to support Veteran's Haven. Please mark it on your calendars and be on the lookout for more information in next month's edition of the Barrister for buying tickets to come out and show your support.



## SEMINARS



*Property Assessment Appeals* was the topic of a recent CLE seminar. Program participants included Moderator/Faculty **Eric Feldhake**, Kulzer & DiPadova; **Michael Kane**, Voorhees Tax Assessor; **Daniel Drelich**, NJ Certified Real Estate Appraiser; **Steve Eisner**, Eisner & Fowler.



*Taking & Defending Depositions* was the final seminar in the Association's *Career Development Series*. The seminar was presented by **John Kahn**, Duane Morris; **Ron Lieberman**, Cooper Levenson; **Carlos Bollar**, Archer & Greiner; **Roger Lai**, Cooper Levenson.



The CLE On Tap! program for newly admitted lawyers wrapped up the 2016 series with a program on *NJ Family Law Practice*. Seminar faculty were **Ron Lieberman**, Cooper Levenson; **Maryann Rabkin**, Rabkin Law Offices; **Ted Baker**, Afonso Baker & Archie; **Lou Guzzo**, Law Office of Louis G. Guzzo.



The 2016 *Civil Practice Update* was a near sell out. Presenters for this annual program included **Jack Slimm**, Marshall Dennehy; **Hon. Anthony Pugliese, P.J.S.C.**; moderator **Bill Cook**, Brown & Connery; **Lou DeVoto**, Rossetti & DeVoto; **George Coan**, Civil Division Manager, Superior Court; **Abe Tran**, Andres & Berger; **Frank Ryan**, Green, Lundgren & Ryan.

# ATTENTION

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# ADR – A Sensible Option

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

**“The courts of this country should not be places where resolutions of disputes begin. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.” Justice Sandra Day O’Connor**

Justice O’Connor foresaw the growing number of litigants and lawyers who are opting to resolve their disputes through mediation or arbitration rather than through the court system.

Increasingly more lawyers and retired judges are developing Alternative Dispute Resolution (ADR) practices to accommodate the increase in cases seeking resolution of their dispute outside the courts. There are literally mediators of every shape, manner or size available to settle these cases.

With the shortage of judges and the resultant backlog it makes sense for lawyers to pursue ADR. As a recently retired judge I can tell you that it made my day when I was informed that a backlogged case was removed from my list to mediation or arbitration.

Although there has been a great deal of information written about ADR in recent years, it is appropriate to remind the bar of the advantages and disadvantages of pursuing alternative dispute resolutions.

Timing can be important in deciding whether to go to mediation. When a dispute arises whether it is a commercial issue or personal injury claim there is usually a period of negotiations between the parties before litigation is instituted.

If there is not a statute of limitations problem it would make sense to submit to mediation at the outset rather than enter into an extended period of discovery, which is expensive and time consuming and allows the parties to become more entrenched in their positions. If you wait until a case is on the trial list the managing judge may be less likely to grant an adjournment and because most cases are settled rather than tried the lawyers end up trying to resolve a case under the pressure of an impending trial, which does not always end with a happy result.

The lawyer should explain the advantages, protocol and cost to his client, and the difference between mediation, arbitration and litigation to determine which fits best the client’s goal in reaching a resolution of the conflict.

The advantages of ADR are well defined:

## (1) Speed of Resolution

Every case placed into litigation enters a period of discovery which in track 2 is 300 days, and tracks 3 and 4 are 450 days. It is rare that any track 2, 3 or 4 case is ready within the allotted time. There is usually a minimum of two extensions before the case makes it to the trial list. Once on the trial list parties must await the availability of a judge, which is difficult to estimate given the shortage of judges state wide. The end result is that it may be years before the underlying problem is solved whereas many mediated or arbitrated cases can be resolved in one session.

## (2) Cost

Lawyers are not cheap, nor should they be. They bring their education and experience to the task, and use their

time and expertise to try to obtain a satisfactory result for their client. That being said, litigation involves depositions, interrogatories, and other discovery techniques, as well as pretrial motions. This will take time and most lawyers bill on a time bases; thus the cost of litigation can sometimes outweigh the amount in dispute.

## (3) Party has Input in the Decision

If a matter goes to trial, either a bench or jury trial, the litigant will not have input in the decision makers’ ultimate ruling. While a party many times can only see the facts of the case through his or her own eyes, the judge or jury may take a completely different view and render a decision which the party had never anticipated. Because mediation involves consensus and compromise facilitated through the mediator each party may be able to achieve a mutually acceptable result.

## (4) Non adversarial

Unlike litigation, mediation is not an attempt to find fault. Rather the goal is to resolve the dispute, not decide an issue of “right” and “wrong”:

This is especially important where the litigants do business together and do not want to interrupt their business relationship.

Mediation offers an opportunity to come up with creative solutions not available in litigation. The non-controversial nature of mediation lessens the stress on the parties and lawyers.

## (5) Flexibility and Control

The litigants or the lawyers control the process by selecting the mediator and picking a date. Litigated matters are assigned a trial date which may not be convenient and a judge who may not have an expertise in the type of matter being litigated.

## (6) Confidentiality

Rule 1:38 designates all court records under the custody and control of the judiciary are subject to public inspection. This means every filing made by any litigant can be reviewed or obtained by any member of the public. Although Rule 1:38 allows for certain matters to be placed under seal upon application to the court, the types of matters excluded from public view per 1:38-3 are very limited; and do not apply to most civil litigation. Information and submissions by the parties in a mediation are generally confidential as agreed to by the parties, and not subject to public disclosure.

## (7) Finality

In a lawsuit a verdict is not necessarily the end of the matter. Motions for new, appeal and retrial are always possible. This would continue the delay and cost of the resolution of the case. With a mediated settlement, there is none of that. When the case is completed it is done.

*(Continued on Page 16)*



## PERSONAL INJURY LAW

## Retirement Account Trusts

(Continued from Page 4)

benefits. Most family members do not understand the rules regarding required minimum distributions (RMDs), conduit trusts or accumulation trusts. This could cause loss of important tax benefits. If the retirement account is \$500,000 or more, it usually makes more sense to name a professional trustee. The professional trustee understands the tax rules and has investment expertise.

A family member could be named as trust protector. A trust protector has the right to monitor the performance of the professional trustee and to remove and replace the trustee with another professional trustee, if the trust protector is not satisfied with the performance of the trustee.

**Trust as Designated Beneficiary**

A trust may qualify as a designated beneficiary. This is important in order to preserve the ability to stretch the required payments from the IRA out over the lifetime of the beneficiary. In order for a trust to qualify, there is a four-pronged test:

- The trust must be valid under state law or would be but for the fact that there is no corpus.<sup>2</sup>
- The trust is irrevocable or will, by its terms, become irrevocable upon death of the IRA owner.<sup>3</sup>
- The beneficiaries of the trust are also beneficiaries of the IRA and they are identifiable.<sup>4</sup>
- The trust documentation must be provided to the Plan Administrator.<sup>5</sup>

**Trust Protector**

Under an IRA trust a trust protector can be appointed. The trust protector must be unrelated by blood to the trust beneficiary but may have a personal relationship, such as financial advisor, attorney, CPA, or

friend. The trust protector can change a conduit trust to an accumulation trust. This gives the trustee the discretion to accumulate funds.

**CONCLUSION**

As Americans rely less on the availability of work-related pensions for their retirement, more of their wealth is found in the tax-deferred retirement accounts that they have funded over the years. As the estate tax exemption grows and becomes less of a concern for most Americans, it becomes increasingly important to understand and plan for minimization of the income taxes that are ultimately payable with respect to these tax-deferred accounts while at the same time maximizing family wealth transfer goals. The standalone IRA Trust is sufficiently flexible that it allows most people to balance their tax and family goals well, offering opportunities for creditor and other beneficiary protections, protection for special needs beneficiaries and spousal planning as well as the possibility of professional management to assist in investing and minimizing income taxes for the beneficiaries.

<sup>1</sup> *Clark v. Rameker*, 134 S. Ct. 2242 (2016).

<sup>2</sup> Treas. Reg. § 1.401(a)(9)-4, A-5(b)(2).

<sup>3</sup> Treas. Reg. § 1.401(a)(9)-4, A-5(b)(2).

<sup>4</sup> Treas. Reg. § 1.401(a)(9)-4, A-5(b)(3).

<sup>5</sup> Treas. Reg. § 1.401(a)(9)-4, A-5(b)(4).

<sup>6</sup> P.L.R. 200537044; Harvey B. Wallace, II, Retirement Benefits Planning Update, Probate and Property, American Bar Association (May-June 2006); Wealth Preservation Update, Morris Law Group (Mar. 2007), [www.law-morris.com](http://www.law-morris.com).

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## FINANCIAL FORENSICS

# Year End Planning Should be Year-Round Planning

(Continued from Page 8)

I don't believe there is nor should there be a definitive listing of what should or shouldn't be expensed through a business. Certainly, each practice is different. As I've indicated previously, I believe you should review among yourselves what you collectively consider to be costs which are fully borne by the practice as opposed to costs, although legitimate and bona fide business expenses, which may be more in the realm of employee benefits or prerequisites. Such "perks" can be used in determining your annual compensation. Nevertheless, I've summarized below the more obvious expenses in this category which quickly come to mind:

- 1) Travel expense
- 2) Entertainment expense
- 3) Automobile expense
- 4) Disability insurance - this cost could be totally or partially borne by the professional corporation. You might wish to consider a stated amount of coverage to be provided by the practice, regardless of the individual premiums incurred.
- 5) Conventions (i.e. travel, lodging, porters, taxis, laundry, telephone, seminars, etc.)
- 6) Financial publications or other publications received at home
- 7) Business use of home telephone
- 8) Business furniture and equipment used in an office at home (i.e. calculator, files, desk, lamp, attache, etc.). Note, I do know full well the limitation on home-office deductions under Section 280A (impressed that I know code sections?).

We can discuss separately how we've seen so many legitimate expenditures slip by unnoticed from personal checkbook or credit card use which we or tax counsel have instructed the professional how to properly document and support for a legitimate business deduction. We'll talk.

- 9) Computer at home (you should be sensitive to the fact that the deductions for home office computers must be substantiated by at least a 50% business use. Ideally, contemporaneous records are suggested in order to best support this deduction. By contemporaneous records, I suggest the use of a log indicating time, date, number of hours of business as opposed to personal use, etc.)

Please understand that this letter is meant to serve as a mere guideline in making sure you get every legitimate deduction you're entitled to. In other words, what is one person's pleasure may be another's business!

Quite obviously, if you have any questions regarding any of the items I've raised or enclosed, please just give me a call. Since it is our "tax season", you'll probably catch one of us at the office, but calling me at home is fine too, really.

*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.*

## ADR – A Sensible Option

(Continued from Page 14)

There are two potential disadvantages in pursuing mediations:

### (1) Lack of Discovery

There are some cases where the underlying facts of a party's position are unknown, and the opposing party is not in a position to evaluate the strength or weaknesses of their respective cases. However, in such a case the parties and the mediator can establish an expedited period of abbreviated discovery to allow the necessary information to be disclosed.

### (2) Failure of Mediation

In this event the parties have lost some time, effort and money. However, if the litigants enter into the process with the understanding that compromise and the building of consensus are necessary elements, the mediation is likely to be a success.

Mediation is not right for all cases, some cases must be tried. But considering that most cases settle before going to trial, one wonders why more lawyers do not avail themselves of mediation earlier in the process.

Getting a good result through mediation, before a party suffers extensive legal fees, with a minimal amount of stress makes for a happy client and repeat business.

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<sup>1</sup>TD Bank refers to the U.S. retail business segment of TD Bank Group. <sup>2</sup>Based on total deposits as of December 30, 2013. Source: SNL Financial Largest Banks and Thrifts in the U.S. by total deposits. <sup>3</sup>A "Business Day" is a non-federal holiday weekday. The end of a Business Day varies by Store, but it is no earlier than 8pm EST. Deposits may not be available next business day. Please refer to Business Deposit Account Agreement for complete details. Restrictions and fees may apply; check your account agreement for information. <sup>4</sup>Based on assets as of January 31, 2014 (for Canadian peers) and March 31, 2014 (for U.S. peer).

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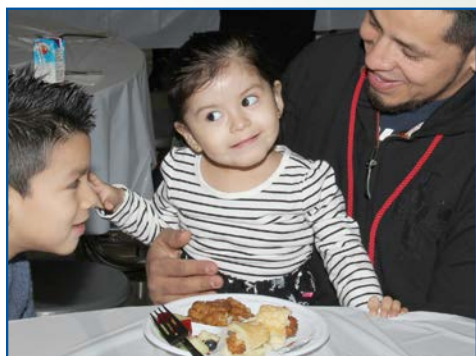
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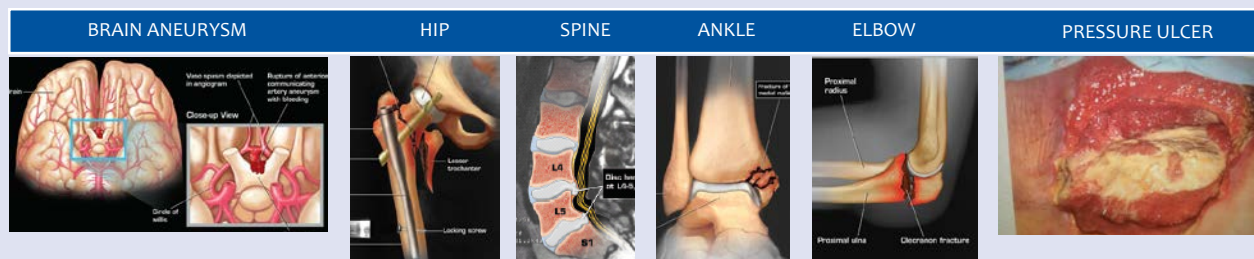
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