Dictum

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EDITOR'S COLUMN

# New Beginnings

*by Jaime Ackerman*

As the summer comes to a close, judges and adversaries have returned from vacation, motions are being filed at a furious pace and the number of unread emails in your in-box is rivaled only by the stacks of unread mail piled on the corner of your desk. By now, the new law clerks have survived their first motion days. It seems like just yesterday that I was one of those clerks, checking attorneys in for their motions, looking like a deer caught in the headlights.

In reality though, it's been a long time since that day—eight years, in fact. Now I have to apologize to my judge for admitting exactly how long it's been since I clerked for her. Neither of us likes to admit we're old enough for that much time to have gone by since our year together.

For almost seven years since leaving that clerkship, I remained in Monmouth County, doing commercial litigation with the same firm. If anyone had told me that this September I wouldn't still be there, I would have laughed at them. If they had told me that I would have been leaving my job to go work for my father's firm, and move back to North Jersey, I would have told them they were crazy. But that's exactly what happened.

I can do an oppressed minority shareholder dispute case from start to finish in my sleep. I know the permutations, the arguments, where to look for the skeletons. But how to handle a contested foreclosure? Well, that isn't as natural as breathing. At least not yet.

It's hard to leave the comfortable and familiar for something new and different, to go from being someone other attorneys seek out for advice on cases to being trained by attorneys not that far off their own clerkships. As I write this article, I'm reminded of something my old boss used to say: "Do you know what all great trial attorneys have in common, Jaime?" he would ask. "They are all completely comfortable in their own skin."

I had other answers in mind to that question, some serious and a few more sarcastic, but perhaps he was right. Though I'm still finding my footing with this new area and firm, I feel completely at home and ready to tackle my first trial with the firm…next week. ■

***Jaime Ackerman*** *is the editor of* Dictum *and an associate at Zucker, Goldberg & Ackerman, LLC in Mountainside.*

# Inside this issue

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TRUSTEE'S COLUMN

# What's Happening with the Big Bar

*by Christina Vassiliou Harvey*

Last year I enjoyed serving the Young Lawyers Division as its chair. In May, I was inducted as the Young Lawyers Division trustee so that I may now continue to serve the division by representing its interests before the state bar's Board of Trustees. Jonathan Wolfe is the other Young Lawyers Division trustee, and is now in his second year on the board. This column is written so that members of the Young Lawyers Division can keep up with the actions of the Board of Trustees that are of interest to young lawyers.

At their July meeting, the trustees supported two resolutions calling for the repeal of New Jersey's recently adopted pension and benefits reform legislation as it relates to sitting judges and full-time public attorneys in state and municipal positions. The resolution relating to judges was passed because the recent pension reduction "would have a severe impact on our Judiciary's ability to accomplish its mission to provide New Jersey citizens with timely consideration of their cases by encouraging many tenured judges to retire, which will remove our most experienced judicial personnel from the bench." Regarding government attorneys, who include prosecutors, public defenders, deputy attorneys general and many others, the trustees stated the legislation would "have a severe impact on the ability of full-time government attorneys to continue to work for the State or municipalities… such a result will have a negative impact on the government's ability to fulfill its duties to the public."

The trustees also approved several changes to the NJSBA bylaws, which will now go to the membership for approval. They include:

- A county trustee must either live in the county, work in the county, or primarily practice and belong to the county bar association in the county they represent.
- Clarification that a vacancy in a Nominating Committee position elected by the general membership should be filled in the same manner as a vacancy in any other elected position.
- Clarification that section elections be held before the Annual Meeting, and the results should be announced at the event.
- Establishment of a Continuing Legal Education Advisory Committee as a standing committee.
- Clarification that the president has the ability to fill any non-elected vacancy on any committee, regardless of the reason for the vacancy.
- Clarification that the makeup of JPAC is governed by the manual, approved periodically by the Board of Trustees.

The Board of Trustees discussed updates to its lobbying efforts. The NJSBA, as a member of the New Jersey Coalition for Privacy in Adoption, had previously taken a position to oppose adoption of S-799/S-1399 (Vitale), a bill that would have provided open access to adoption records in New Jersey. The other members of the coalition included the ACLU-NJ, Lutheran Office of Governmental Ministry in New Jersey, National Coalition on Adoption, New Jersey Catholic Conference, and New Jersey Right to Life.

The NJSBA opposed the legislation because it made no provision for protecting the privacy of birth parents who gave up their children with an expectation of privacy. Governor Chris Christie conditionally vetoed the legislation and recommended substitute legislation, endorsed earlier this year by the NJSBA Board of Trustees, which provided for the use of a confidential intermediary. The proponents of the legislation are unlikely to recommend that the Legislature endorse the governor's recommendations, but the coalition is working to try and achieve just that. The enactment of the governor's changes would put the issue to rest.

The trustees also discussed A-4197 (Barnes), which provides for new and increased court application fees to fund Legal Services of New Jersey and the Judiciary's computerized court information systems. Final consideration was deferred until more information can be gathered from the Administrative Office of the Courts, county bar associations and state bar association sections and committees.

The trustees voted to add the New Jersey Muslim Lawyers Association to the list of specialty bar associations enumerated in the bylaws, entitling it to have members serve as delegates to the state bar association's General Council.

The trustees voted for six of the eight at-large trustee spots to be reserved for members who are African-American; Hispanic; Asian-Pacific; over 70; gay, lesbian, bisexual or transgendered; or women.

The trustees voted to increase the voluntary contribution to the New Jersey State Bar Foundation from $15 to $25. The change was made as part of an effort to boost the foundation's operating revenue stream as the funds generated from the voluntary contributions have dropped in recent years. State bar members may opt to contribute more, less or nothing; however, the dues form will show $25 as the suggested amount.

Please note, my column only addresses the issues I believe will be of interest to young lawyers, and is not a complete summary of every action of the Board of Trustees. In addition, through this forum members may contact me regarding issues they believe the Board of Trustees should address. ■

***Christina Vassiliou Harvey*** *is an associate at Lomurro, Davison, Eastman & Munoz, P.A., where she handles plaintiff's personal injury cases and criminal defense. She currently serves the YLD as a member of the New Jersey State Bar Association's Board of Trustees.*

# An Interview with Jonathan Lomurro, Vice-chair

*by Carmen Diaz-Duncan*

Vice-chair Jonathan Lomurro is a perfect example of all the benefits the Young Lawyers Division (YLD) has to offer. An avid and involved member of the YLD since 2004, Jon has used the relationships and connections gained through the organization to make a name for himself within the legal community.

Jon lectures regularly, both to young lawyers and members of the state bar as a whole, on various issues such as trial advocacy and technology. He has published a trial treatise, *Try It With Friends,* for the New Jersey Institute for Continuing Legal Education (ICLE) and has been named a Rising Star by New Jersey Super Lawyers for the last four years running. Jon's various accomplishments led to him being named the 2011 Young Lawyer of the Year by the YLD. In accepting the award, Jon credited the "encouragement, support and opportunities" made available to him through the YLD as being critical to his success and achievements as an attorney.

Jon spoke to *Dictum* about both his involvement with YLD and plans for this coming year.

**How long have you been involved with the YLD?**

I joined the YLD halfway into my first year of practice. As a second-generation attorney, I wanted to meet people who didn't know me when I was 12. The best way to expand my network was to seek out the state bar. It coordinates attorneys from around the state into one location. As soon as I attended my first event, I was hooked. I met some fantastic friends and developed a strong referral base. Also, I was able to vent my frustrations with learning the profession without fear of adverse judgment. Since that time, I've gone from outside observer to vice-chair of the division. I've had the privilege of judging our annual YouTube Law Day contest since its formation. I've been able to plant trees in Newark, voice my opinions about legislation of interest to young lawyers and argue for the state at the national level.

**What do you believe is the greatest benefit you have gained by your involvement with YLD?**

There are actually two benefits that I would rank as tied for the greatest: friendship and opportunity. I've met some of my closest friends within the division. Also, I was given the opportunity to publish, speak, and lead; three things which are difficult to accomplish in our profession.

**Do you envision any changes or new events planned for this year?**

Brandon Minde is the current chair, and he has some amazing things planned. He wants to provide more opportunities for inclusion and networking. He is a man dedicated to community service. I will do my best to assist him in making this year another fantastic year in the YLD.

**Are there any goals you are particularly excited about undertaking this year?**

I am excited about outlining the next year during this year. It will be the 25th anniversary of the YLD in the state of New Jersey, and I want to celebrate the opportunities it provided and the individuals who fought for its creation and continued success.

**What is the best way for new young lawyers to get involved in YLD?**

The best way to get involved is to attend events. The Young Lawyers Division allows us opportunities to shine, to grow and to influence. As with all great things, if you don't go then you'll never know. All of our executive committee meetings are open to the general membership of the YLD. We try to encourage young lawyers to have a voice. ■

***Carmen Diaz-Duncan*** *is an associate with the firm of Donohue, Hagan, Klein, Newsome, O'Donnell and Weisberg, P.C. in Morristown. She dedicates her practice exclusively to the area of family law and is the YLD district representative for Morris County.*

# Upcoming Events

**Tuesday, October 18, 2011**

**5 p.m.—Networking Reception**

***Investors Savings Bank, Morristown***

Meet your colleagues for an evening of light refreshments and fun. This is a free event

**Saturday, October 22, 2011**

**8 a.m.—Tailgate Party at Far Hills Race Meeting**

***Moorland Farms, Far Hills***

Come out for a fun day of racing and tailgating. Gates open at 8 a.m., and the first race is at 12:30 p.m.

$85 per person, includes admission, tailgate picnic and beverages. General Parking passes can be purchased for $30. *Registration deadline is Wednesday, October 12 at 5 p.m.*

**Monday, October 24, 2011**

**6 p.m.—NJSBA Open House**

***New Jersey Law Center, New Brunswick***

If you are interested in expanding your practice and networking with fellow attorneys in other practice areas, then you won't want to miss the NJSBA's free open house. You will have an opportunity to meet NJSBA section and committee leaders. There will also be a presentation on using the NJSBA's new social media tools and navigating the association's new website.

**Tuesday, November 1, 2011**

**7 p.m.—Young Lawyers Executive Committee Meeting**

***New Jersey Law Center, New Brunswick***

All members of the YLD are invited to attend. ■

# ABA YLD Goes to Canada

*by Blake Laurence*

The ABA YLD Annual Meeting was held this year in Toronto, from August 4-6. State delegates from across the United States came together during the YLD Assembly Meeting sessions on August 5 and August 6 to debate and vote on many issues of importance to young lawyers. A notable event during the Annual Meeting was a contested election for secretary/treasurer between Mario Sullivan from Chicago and Alan Fowler from Key West, Florida. After a close vote, Mario Sullivan was chosen to be the ABA YLD's next secretary/treasurer.

On the second day of the assembly, New Jersey's own David Wolfe, from Skoloff and Wolfe, finished out his year as the ABA YLD chair and Michael Bergmann from Chicago was welcomed as the incoming chair. Under David Wolfe's leadership and guidance, the ABA YLD introduced a number of new initiatives that will have a lasting impact on the ABA YLD and its affiliates. These programs include Serving Our Seniors, a Law Day Video Contest and a New Partner and In-House Counsel Conference.

If you would like more information on the ABA YLD, please feel free to contact me at Blaurence@LomurroLaw.com. ■

***Blake Laurence*** *is an associate at the law firm of Lomurro, Davison, Eastman & Munoz, P.A., in Freehold, and the current New Jersey district representative to the ABA YLD.*

TECHNOLOGY CORNER

# Ten Trial Tech Rules

*by Jonathan Lomurro*

Technology in the courtroom is no longer a new concept. Judges have come to expect the use of technology during argument and, perhaps more importantly, jurors anticipate that technology will be a part of your trial. Whether you are an expert or a novice, these tips provide a general overview for utilizing technology in the courtroom.

1. **If you can say it, you can display it.** *Cross v. Lamb, Inc.*, 60 N.J. Super. 59 (App. Div. 1960). The most important thing to remember with technology is that you cannot display *anything* that is not admissible in court. Do not alter images. Do not put up hearsay statements. Do not misstate your arguments. Do not show evidence that is inadmissible. Although this seems like a simple thing to understand, there are hundreds of cases of attorneys who have violated this rule and suffered appeals and overturned results. Technology is a way to present that which could have been stated but assists in the presentation of those facts for the benefit of the jury. It is not a tool to manipulate and fool.
2. **Lay a foundation before presentation.** *Macaluso v. Pleskin*, 329 N.J. Super. 348 (App. Div. 2000). As a follow up to rule one, it is imperative that you build a foundation for the presentation of your evidence. It cannot be displayed unless it can be admitted.
3. **Hide and be denied.** *Suanez v. Egeland*, 330 N.J. Super. 190 (App. Div. 2000). If you are going to use a complex animation or recreation, turn over the evidence prior to trial. If you try and hide it from the other side and use it at trial, your money and time could be wasted due to the trial court foreclosing its use. Disclosure provides an opportunity for the adversary to create its own animation or look into the procedure utilized in its creation for cross examination.
4. **If your technology doesn't work, don't go berserk.** Everyone should have a backup plan. People expect technology to fail, so stay calm and think of an alternative way to present the same information. You can have another backup laptop. You can have a physical blow up of the exhibit. You can have another projector or bulb. You can have backup cords. A well-prepared attorney will be able to handle any problem that arises.
5. **Courtroom staff will always know the best place for your presentation.** You've been to the courtroom a few times. The staff is there every day. They have seen everything. If you want answers regarding what the best layout for your digital presentation should be, just ask the staff and they will be happy to tell you. They will also know what the judge likes and dislikes in digital presentations.
6. **Know the relevant cases or your preparation may be wasted.** Technology does not come easy to everyone. Sometimes it takes a little education from our evidence rules and case law to convince the court and your adversaries that the presentation is allowed.
7. **Always have a pre-trial run-through to uncover the problems you may run into.** Practice, practice, practice. The ability to be comfortable is the key to a successful presentation. And you cannot be comfortable with technology without practice and prior run-throughs. In order to protect yourself from rule four, you can practice and fix the bugs before court.
8. **Make a detailed trial hardware list.** You do not want to be standing in court without a power cord for your computer. Make a list organizing all hardware you need prior to the trial. After the trial, use the same list to verify that you are leaving with everything you brought.
9. **Organized online folders of files will save you time when you're in trial.** Ask any good trial attorney, organization is vital to a successful trial. An organized trial notebook is a powerful tool. If it is an electronic-organized notebook, it is even more powerful. Search everything in seconds and pull it up on the fly. However, you cannot do anything unless it is organized correctly.
10. **Technology should educate the jury not make your argument blurry.** Do not overdo the technology. It can become distracting and take away from your presentation. It is important to remember that technology is merely the tool to explain the facts and argument. Do not let it interfere with the presentation. ■

***Jonathan Lomurro*** *is a litigation attorney with Lomurro, Davison, Eastman & Munoz, P.A., in Freehold and chair-elect of the Young Lawyers Division.*

# My Wild Ride: A First Year in Family Law

*by Angie Gambone*

Last night, I missed a friend's birthday dinner because I had to work late on a *very important* project. The subject matter: an elderly cat. My mission: concoct a clever and complex legal argument as to why my kind, compassionate, animal-loving client should get the cat in her divorce instead of her no-good, mean, pet-loathing husband, who also wanted the cat.

As I sit here in my office writing this article at 7:55 p.m. on a Thursday evening, I am not alone. Although all of the other attorneys and staff have left for the evening, I am joined by two *pendente lite* motions, a late MESP memorandum, six incomplete case information statements, two marital settlement agreements begging for revisions, four complex tax returns in need of review, seven unplayed voicemails and 18 unread emails. No, I am not alone. It's another wild night in the life of a first-year family law associate!

In law school, I was one of those students who 'tracked' myself. I decided early on that I wanted to do family law, and I immersed myself in the field. Upon graduation, I was fortunate enough to land a job at a prominent family law firm and skipped the clerkship route that most family law associates follow. Although I was excited to jump right into practice, I was anxious about doing clinical work as a 'newbie' attorney, especially in a field such as family law, where the local attorneys travel in packs and speak their own secret language.

In one week, I will celebrate my one-year anniversary. I will no longer be a first-year associate. Instead, I will have moved half a centimeter up the legal ladder, and I'll simply be an associate. So I find it appropriate that I take this moment to reflect on the past year, on what I have learned, seen, heard and felt, and on how I have grown as an attorney and a person.

One of the first things I learned was not to be afraid to ask questions. Undoubtedly, there is rarely a situation that will arise in this field that has not been handled by someone, somewhere, at some time before. Some first-year associates worry that by asking questions they are exposing a weakness, as if we are all expected to waltz out of that conference room after taking the bar exam and charge right into the practicing world and know what we are doing. Well, anyone who has attended law school knows that there is a notorious lack of real-world preparation involved. Although asking a question can be daunting, I found myself even more concerned about *not* asking a question, and instead doing something wrong. I had to keep reminding myself that the client comes first, and that if I screwed up, I was screwing up someone's life.

This leads quite well into my next poignant observation about my first year in family law: the emotional attachments. Unlike corporate law or transactional work, family law is nitty-gritty emotional law. It's dealing with people at their worst. I find myself not only being a lawyer, but a therapist as well. (Helpful tip: Have several boxes of tissues handy at your desk at any moment.) Practicing in this field has certainly given more meaning to the title *counselor*. And while I appreciate the enormity of my clients' situations, I find that I have difficulty letting it go at the end of the day. On the drive home, my mind wanders to the stay-at-home mother and how I can help enable her to reeducate herself after being absent from the job market for many years. I often find it difficult to go to sleep; I lie there pondering what legal theory can possibly help the father avoid bankruptcy while still making his child support payments. And yes, I wake up in the middle of the night and send myself frantic emails with jumbled reminders to do this or send that, to finish that subpoena or to revise that brief. It's true—family law has completely consumed my life.

On its face, I don't actually mind this. In fact, I actually enjoy thinking about my clients and how I can help make their lives just a little bit more pleasant, how I can

ease even the smallest burden or provide the slightest glimmer of hope. However, what I find somewhat challenging is not adopting my clients' problems as my own. Throughout this process, I have learned that not all problems have a solution I can make happen. Unfortunately, the courts, and we as attorneys, can only do so much to remedy any given set of circumstances. I keep hearing the phrase, "there are no winners in family law." And although I try to explain this to my clients, and although my rational brain knows it is true, I still feel somewhat responsible for any 'loss' my clients experience.

In a sense, I want to be super lawyer (and not just a *super lawyer* so I can be in that fancy magazine). No, I want to help my clients through every divorce, every post-judgment custody issue, and every contested adoption or enforcement motion. I want to get the results my clients want, and the results I think they deserve. And to that end, I sometimes feel as though I've let myself down when something doesn't quite go my way. Even after a year, I still struggle with this. It is an uphill battle, and one I intend to keep fighting.

So there it is. Besides the lack of sleep and the vague memory of what my social or family life used to be, besides never quite feeling caught up, and frequently feeling emotionally overwhelmed, besides *all of that*, lies something wonderful. It's the joy of participating in a family's transformation, or the magic of teaching someone to stand on their own again. It's the delight at seeing a first smile after a year of tears, or the pleasure of a handshake given in relief. It's the marvel of watching seasoned professionals that I admire, and the curiosity in discovering my own budding talent. Yes, this is the wonder of family law. Looking back, I am relieved to have one year down, and I am eager and energized for many more to come. ■

***Angie Gambone*** *is an associate editor for* Dictum *and an associate at Trace and Jenkins, LLC, in Woodbury, where she practices family law.*

# The Role of the *Pro Se* Litigant

*by Jennifer Russoniello*

As a law clerk in the family division, I never felt more intimidated than when I received my first call from a *pro se* litigant. Here was someone on the other end of the phone, in a self-described crisis, asking me for help. As we all know, law clerks are prohibited from dispensing legal advice but can provide assistance in explaining court procedures. But the *pro se* litigant on the line is lost in a system that they are having difficulty navigating, and they are looking for a way out.

As the litigant would tell me about various problems, I would listen knowing that my only response could be, "I am sorry but I am not permitted to answer your questions. I advise you to get an attorney." My experience interacting with *pro se* litigants is a common issue faced by law clerks and attorneys alike. As Nourit Zimmerman and Tom R. Tyler state in their article analyzing *pro se* litigants and their interaction with the court system:

> *Pro se* litigants seem, in fact to experience all of the difficulties one would expect a layperson would have when going through a highly professionalized system. While there are no specific rules of procedure that discriminate against pro se litigants, the nature and design of court procedures are such that nonprofessionals would find them difficult to maneuver. Pro se litigants need to deal with language they do not always understand, evidentiary constraints and procedural protocols. Such rules are not always in sync with people's common sense and social instincts, which are based on their behavior and interactions outside the legal sphere.[1]

Although I found dealing with *pro se* litigants to be challenging, I realized that there is much to be gained from this interaction. As attorneys, all of our clients are essentially *pro se* litigants who have come to us for guidance on how to deal with the complexities of our system and, of course, for professional advice. In speaking to *pro se* litigants during my clerkship, I learned a great deal about how to advise my future clients.

First, you need to know the court procedures. Most *pro se* litigants need guidance regarding court procedures and an explanation of how the case will proceed. This also holds true for many persons who seek counsel. For example, in a divorce proceeding many *pro se* litigants would question me about why they would have to attend settlement conferences or early settlement panels, or why the judge could not just decide the case so that they could move on with their lives. It is imperative that litigants understand what a particular court date is for, what will be addressed by the judge and how long the proceedings will take from the filing of a complaint to a final judgment or rendering of a decision.

Second, you need reliable evidence. I would receive many calls from *pro se* litigants following a motion cycle requesting an explanation regarding why the court did not find that they provided appropriate evidence. I have had many interactions with *pro se* litigants where I had to explain that due to the conflict between the accounts of the parties, actual evidence is necessary. Some litigants would become offended at the idea that the court did not take them at their word; however, I would explain that there are two parties with two different accounts of an event, and without evidence the court is at a loss. Although it may be difficult for a client to find all of their financial records or keep track of their business costs, it is necessary for them to do so, and to be willing to share that information.

Third, you can always settle. I found that sometimes when people get caught up in the throes of litigation they forget that they can agree instead of argue. For example, I would receive a motion and cross-motion and sometimes find that the parties agreed on more than half of the requests they were making to the court. I began telling *pro se* litigants the procedure to submit consent orders. Everything does not need to be litigated, and it is acceptable to work out a settlement if it is agreeable to both sides.

Fourth, check your emotions at the door of the courthouse. Although I could not say this to the *pro se* litigants who would call me, it is something that I will say to my own clients. Dealing with divorce cases as a law clerk, I received many phone calls and motions, replete with stories of the parade of horrors that one party has inflicted on another. Including all of this in papers to the court only shifts the focus away from the legal issues at hand. Further, telling all of this personal information on the record is even less desirable.

There are two sides to most legal battles for a litigant: the obvious legal issues and the emotional issues underlying the entire action regardless of the docket. The key is to keep those emotions to the side when in the legal arena.

Fifth and finally, you may view me as more than simply your legal advocate. I have learned that my relationship with my client will have many facets. While the court is not the appropriate place to have an emotional breakdown, my office may be that place. I have had many *pro se* litigants call or come to my office in the courthouse in tears because of their situations and their fear and perceived injustice of a system they do not fully understand. In my role as a law clerk, the most I could do is let them talk. However, now that I am a practicing attorney, it is my job to take in what

my client is saying and advise them in the best way possible so they can make the appropriate decisions regarding their case.

Although I frequently became frustrated when dealing with *pro se* litigants, I understand their frustration with their current situation was even greater. "Indeed frustration is a recurring theme in descriptions of the experiences of *pro se* litigants...."[2] I understand that any client who walks into my office will have this same level of frustration; however, as attorneys the role we take is to help our clients deal with this frustration by guiding them through the judicial system and educating them at the same time. ■

**Endnotes**

1. Nourit Zimmerman and Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective,* 37 Fordham Urb. L.J. 473, 497 (2010).
2. *Id.*

***Jennifer M. Russoniello*** *is a graduate of Rutgers Law School–Newark and is working as an associate at the law firm of Haber, Silber and Simpson.*

# The Modern-Day Mobile Lawyer's Manifesto, or How I Learned to Stop Worrying and Love Being Paperless (Part I)

*by Michael J. P. Schewe*

So, you've decided your practice wants to reduce its paper and 'live the dream' of working from anywhere. These are perfectly realistic, albeit imperfect goals (yes, many attorneys and judges still insist on printing, stamping and mailing *emails*, I know). This article is meant to give a basic overview of the way I converted my fledgling law practice into a paperless efficiency machine.

**Practice Management Software**

Our analysis begins and ends with practice management software. In the days of yore, attorneys debated about the necessity and overall effect of having practice management software, especially among small firms and solo practitioners. Those days are gone. There is no question that, in today's legal reality, practice management software is a must for all firms, large or small. Moreover, practice management software is no longer the untenable financial burden it was 20 years ago.

Why is it a necessity, you ask? Let me count the ways:

1. *Scheduling*. Scheduling errors are probably the number one basis for legal malpractice suits. I know, you have a system of yellow legal pads and sticky notes and administrative task managers that make sure you never miss a court date, but let's be honest, having practice management software that you can access from *any* Internet connection, and which is shared across your entire firm, is going to significantly reduce your chances of actually missing any calendar appointments.
2. *Conflicts checks*. If it weren't for scheduling mishaps (and, really, depending on your practice area—I'm looking at you corporate attorneys—maybe even taking them into consideration), the failure to check for potential conflicts of interest can be devastating to your case and your malpractice insurance premiums. Not only may you have spent countless (now non-billable) hours on a case, but a failure to make thorough conflict checks can open you up for massive malpractice liability. Having practice management software allows you to record the contact information of every person you come into contact with (and convert the Rolodex), giving you the ability to instantly search your database before you accept representation with a new client.
3. *Tasks and delegation*. You cannot do it all, and many times your ability to work effectively depends on your ability to delegate tasks efficiently. Even if you do not have an extensive staff, being able to log that task you remembered while you were showering or at the gym could be crucial to making sure every little thing gets done. And when that extra effort and attention to detail is noticed by your client, directly or indirectly, it can lead to a happy client and, hopefully, more referrals.
4. *Time tracking*. You remember that process server fee you paid for your client back in September of 2009, right? You do? Wow, you are awesome. For the rest of us, having a system to record your expenses and keep track of your time is essential. Don't know how long that call lasted? Just push a button when you start talking and push a button when you hang up. You can now memorialize everything you do quickly, easily and (for larger firms) consistently (as opposed to everyone having their own personal recording systems). Most practice management software pays for itself every month with the amount of time you remember to bill (assuming you are charging by the hour, but that is a separate discussion altogether).
5. *Document management*. We have all been there: The judge is searching his file for a particular document and, unfortunately, you either did not bring the full file or the document is lost in your 'paper purgatory' of a case folder, cue the paper-flipping-before-an-impatient-judge-seizure. A paperless office coordinated through practice management software means forgetting the file does not ruin your day; you have access to your entire client file from anywhere. Ask the judge for his clerk's email address, and you're back in business. (I think Air Photo will even allow you to print straight to the judge's computer, but I don't subscribe to the 'cult of Jobs,' so I am not positive.) Aside from having that crucial document to show the judge, simply imagine your huge paper files organized and accessed at your fingertips. A large part of my practice is employment civil litigation, so trust me, I am a victim of document overload. Allowing me to quickly scan the document database to find, for instance, all the court notices, has become an invaluable tool.

6. *Backup*. Your worst day is, and always will be, that your hard drive crashes (and you forgot to back up files or have no back system in place). Of course you can back up your own server(s), but why not have your trusty practice management software do it for you contemporaneously when you upload your documents? With most SaaS (software as a service providers, commonly referred to as the cloud), your information is backed up *as soon as you upload the information or documents*. There is no reason to pay extra for expensive backup hardware, software or other backup SaaS servers; have your practice management software do all of it.
7. *Web access*. This is a general article about practice management software, so I am trying not to dwell on specifics, but I include the web-based component (that not all practice management options support) because I think it is of paramount importance. I have used two different practice management software programs, and although I will not name names, I can tell you that the non-web-based software was annoying/maddening. The title of this article denotes that we are, as 'modern lawyers,' inherently mobile. If you can only access your case management from 'fully licensed' computers or devices, then you are at a disadvantage. Again, many of the non-web-based practice management systems are well-regarded and may work for some firms, but in my experience there is no substitute for your practice management software being web-accessible from anywhere with a web connection.
8. *Billing*. I know you have some way to bill clients, but does your billing module deliver a professional looking and (see item 4) *complete* invoice for each client? Did you have to establish separate accounts receivable software or systems in place to keep track of unrecovered monies? This is all wildly unnecessary and time-consuming, as software exists to do all these things in one place. Streamline your billing.
9. *Reports*. This is really related to billing, but it is important to track your employees, clients, and accounts receivable, especially if your firm includes more than one attorney. Most practice management software allows you to access these reports, and can help you understand which practice areas, associates, administrative assistants, and other functioning parts of your law firm are pulling their weight.
10. *Collaboration*. One of the main reasons clients often cite when they are dissatisfied with their attorneys is a lack of communication. We, as client-centric attorneys, love email/ Internet savvy clients because it makes communication more efficient (albeit less personal) and collaboration is a must-have across your office, especially multiple offices. Some practice management software allows you to share documents with clients or other members of your firm. You can work on documents together, bounce ideas off one another, and do it all without leaving your cubicle/corner office! In this way, practice management software is a helpful tool to make sharing documents a non-burden.

There are *plenty* of practice management software options, and you should consider all of them before investing. The American Bar Association (ABA) puts out a great resource to help practitioners decide which solution is right for their business at http://www.abanet.org/tech/ltrc/charts/casemanagementcomparison.html.

In the next issue of *Dictum* we will focus on other paper-saving tips to help your practice, big or small, save time and money while enhancing client satisfaction. ■

***Michael J. P. Schewe*** *is the COO and managing attorney of ScheweLaw, LLC, with a practice in New Jersey and New York focusing on employment, immigration, family, criminal and municipal court law. He is also currently serving as a fellow to the American Bar Association's Law Practice Management Committee for the 2011–2012 term.*

# Divorce and the Automatic Stay—What You Need to Know

*by Allynmarie Smedley*

Nowadays it is becoming more and more common to have the issue of bankruptcy arise within the context of divorce litigation. What is important to know is that upon the filing of a bankruptcy petition by one or both of the parties in a divorce action, some portions of the divorce case come to a halt due to the entry of the automatic stay by the bankruptcy court. This article provides an overview of the automatic stay, its impact on the matrimonial proceeding, and the components of a comprehensive order lifting the automatic stay to ensure your case can proceed to its conclusion without further disruption, at minimal additional expense to your client.

Upon the filing of a bankruptcy petition, an automatic stay is entered pursuant to Section 362(a) of the Bankruptcy Code. This stay prevents the commencement of continuation of lawsuits against the debtor, and creditors cannot institute or continue collection efforts against the debtor.

In a family law context, once a debtor files a Chapter 7, 11 or 13 bankruptcy petition, the automatic stay prevents a non-debtor spouse from filing a complaint for divorce as long as the complaint is seeking to distribute property that is considered to be property of the bankruptcy estate. Depending on the chapter filed, this can include the debtor's prospective income and his or her assets of the debtor. If a divorce matter is pending at the time the bankruptcy petition is filed, the automatic stay will prevent the family court from distributing any assets that are considered to be a part of the bankruptcy estate. The family court matter becomes inactive until the stay is lifted. However, the stay does not apply to all of the issues that can arise in a family law context.

There are exceptions to the automatic stay. The filing of a petition does not act as a stay of the "commencement or continuation of a civil action or proceeding":

- for the establishment of paternity; 11 U.S.C. §362(b)(2)(A)(i)
- for the establishment or modification of an order for domestic support obligations; 11 U.S.C. §362(b)(2)(A)(ii)
- concerning child custody of visitation; 11 U.S.C. §362(b)(2)(A)(iii)
- for the dissolution of a marriage (unless the proceeding seeks equitable distribution of property of the estate); 11 U.S.C. §362(b)(2)(A)(iv), and
- regarding domestic violence. 11 U.S.C. §362(b)(2)(A)(v).

Therefore, you can proceed against a debtor for an order relating to one of the items above. Just because a bankruptcy has been filed, that does not mean you cannot pursue an action for support against the other party, or enter orders relating to custody and parenting time. You just cannot enter into an agreement that settles the equitable distribution issues ancillary to the dissolution of the marriage because the stay prevents this.

If you have an action pending in the family part at the time a bankruptcy petition is filed, the judge needs to be made aware of the action. He or she will enter an order placing the matter on the inactive list, thereby taking your case off of its assigned track until the stay is lifted.

In the meantime, it is usually best to have your client (if you represent the non-debtor spouse) retain a bankruptcy attorney to represent his or her interests in the bankruptcy proceeding.

The first thing the bankruptcy attorney will need to do is file a motion to have the automatic stay lifted, or enter into a consent order with the debtor-spouse's bankruptcy attorney so the parties can proceed with their divorce without being in violation of the automatic stay. The consent order should contain a number of provisions designed to allow the case to proceed to its conclusion without requiring further involvement of the bankruptcy court.

The order should provide that:

- the automatic stay is lifted and terminated with regarding to the parties, the state court and the divorce action;
- the parties can pursue the divorce action to a conclusion, including the entry of a final judgment of divorce;
- the state court can conduct all hearings necessary, including motion hearings, the matrimonial early settlement panel and conferences to enter a judgment in the divorce;
- the state court can determine and issue final orders (such as a qualified domestic relations order) concerning all issues relative to the dissolution of the parties marriage. This includes equitable distribution of all property (even property listed on the debtor's bankruptcy petition), alimony and child support, custody and visitation, the payment of counsel fees, resolution of marital tort claims that are permitted under *Tevis v. Tevis*,[1] allocation of marital debts, indemnification as to marital debts, insurance issues, the cause of action for dissolution and all other issues necessary to enter a final judgment of divorce in the divorce action;
- any determination of any domestic support obligation or any other obligation not denied in Title 11
- that the parties may execute a binding

marital settlement agreement without further order of the bankruptcy court;

- that the parties may execute any and all documents necessary to carry out the terms of the final judgment without further order of the bankruptcy court;
- that if the case is converted to a case under any other chapter of Title 11 (from a Ch. 13 to a Ch. 7, for example) the relief granted under the order lifting the stay remains valid and effective, without need for any further order of the bankruptcy court, and it should be binding on and subsequently appointed trustees in the converted case; and
- that if the debtor's bankruptcy case is dismissed, the relief granted under the order lifting the stay will remain valid and effective without need for further order of the bankruptcy court in any subsequently filed bankruptcy case. The order should also provide that it will be binding on any future bankruptcy case. This, of course, assumes the family part action is pending at the time of refilling.

Once the order is filed you can notify the family part judge. The case will then be removed from the inactive list. It is extremely important that the order lifting the stay contain these provisions. This will save your client time and expense down the road if, for example, the debtor's case is converted from a Chapter 13 to a Chapter 7 proceeding. The stay you obtained in the Chapter 13 case does not automatically carry over to the Chapter 7 proceeding; you would have to obtain a new order lifting the stay or obtain the approval from the trustee regarding any marital settlement agreement you and your adversary enter into. Having a comprehensive order in the first place can avoid problems down the line for both parties, and ensure that the divorce action is resolved as smoothly as possible.

The benefit of hiring separate bankruptcy counsel in addition to drafting this order is that this attorney will intervene in the debtor-spouse's bankruptcy proceeding on your client's behalf by filing a proof of claim. This proof of claim will assert all of the monies the debtor-spouse may owe to your client as a result of the dissolution of the parties' marriage. This can include alimony and child support, *Tevis* claims, and the cash value of the client's share of marital assets.

The bankruptcy attorney will also monitor the bankruptcy case to ensure that a major asset of the estate, such as a home, is not at risk of having the automatic stay lifted due to the debtor failing to make payments as required under the plan. At the conclusion of the divorce matter, this attorney can file an amended proof of claim regarding the final resolution of the case and ensuring that the payments made to the non-debtor spouse are non-dischargeable in that proceeding.

While it seems like a small matter, lifting the automatic stay in a bankruptcy proceeding is a crucial element in bringing the divorce matter to a resolution in the family part. Having a comprehensive order lifting the stay can eliminate a lot of future problems in the case of a conversion or dismissal of the matter. It will save your client time, money and unneeded stress in what is already a trying time for most people. ■

**Endnote**

1. 101 N.J. 287 (1985).

***AllynMarie Smedley*** *practices family law at Trace and Jenkins, LLC in Woodbury.* *The author would like to thank William Mackin, Esq. for the form of order used as the basis of discussion regarding the lifting of the automatic stay in this article.*

# Changes to the Residential Provisions of the New Jersey Construction Lien Law

*by Matthew Sontz*

On Jan. 5, 2011, the New Jersey Construction Lien Law[1] (CLL) was revised. The purpose of the revisions, according to the New Jersey Law Revision Commission report, was to simplify, clarify, and modernize the CLL. The residential provisions of the previous CLL were a particular focus of the commission because those provisions were ambiguous and led to many inconsistent rulings throughout New Jersey. This article seeks to emphasize some of those revisions.

The CLL permits contractors, subcontractors, and design professionals to file a lien against an owner's improvements to real property should the owner fail to pay amounts due and owing for those improvements. In the residential context, there are strict prerequisites that must be followed before a construction lien can be properly filed. Under the old CLL, the prerequisites were so onerous that completing them within the statutory time period was almost impossible. The revised CLL seeks to provide additional time and mechanisms to permit a reasonable opportunity for the construction lien to be perfected.

Several significant changes are as follows:

The time period for perfecting a residential construction lien has been extended from 90 to 120 days from the date of last work. This difference is significant because in many instances a potential lien claimant may not have been in position to even start a lien claim filing procedure until 60 days from the date of last work had passed. In such instances, potential lien claimants had less than 30 days to complete the required N.J.S.A. 2A:44A-21 arbitration. The additional 30 days should now permit potential lien claimants to have the full 30 days to complete the arbitration proceeding prescribed in N.J.S.A. 2A:44A-21(b)(6).

The CLL's requirement of "filing" a notice of unpaid balance and right to file lien (NUB) has been changed to requiring that the NUB be "lodged for record." This difference is significant because previously a potential lien claimant may have lost lien rights because the county clerk did not actually 'file' the NUB, although it was submitted to the county clerk timely.

The law was previously unsettled with respect to what lien rights, if any, a potential lien claimant had against a condominium association. Construction lien rights attach to an owner's real property. Condominium associations, however, often don't own real property. Although the condominium associations may be the exclusive agent for managing the association, the ownership rights of the condominium's common property is often vested in the individual condominium owners.

The new CLL makes clear that a construction lien filed against a condominium association does not attach to any real property. However, the lien claimant may enforce a properly filed and foreclosed lien claim against a condominium association by assessing the unit owners as they would be assessed for any other common expense. What was once an ambiguous and confusing lien situation for a potential lien claimant now appears to be a definite and reliable means of recovering against a condominium association.

Although many of the changes to the CLL seem to favor potential lien claimants over project owners, project owners still retain strong protections. The CLL still provides for damages to be paid to project owners, including attorneys' fees and costs, if a lien claim is filed without basis, is overstated, or is not lodged for record in the form, manner, or time prescribed by law. The CLL still causes potential lien claimants to forfeit their lien rights if they fail to meet statutory deadlines.

The new CLL provides potential lien claimants with more of an opportunity and greater guidance to completing the rigorous prerequisites to filing a residential construction lien claim. Overall, the commission appears to have met its goal in simplifying, clarifying, and modernizing the residential construction lien law. ■

**Endnote**

1. N.J.S.A. 2A:44A-1, *et. seq.*

***Matthew H. Sontz*** *is an associate editor of* Dictum *and an associate at Norris, McLaughlin & Marcus, P.A., in Bridgewater.*

# Is GPS Tracking an Invasion of Privacy?

*by Jordan Stern*

A matrimonial client calls you up and asks whether she can put a GPS tracking device in her husband's car. She thinks he's cheating but she wants proof, and can save a lot of money in investigator fees if she tracks him herself. She may have an investigator check out the suspicious locations later, once she's figured them out. She found a tracking device, about the size of a car's keyless remote, on Amazon for $85. "Will I get in trouble if I hide it in his trunk?" she wants to know.

Until the Appellate Division handed down the unreported decision in *Villanova v. Innovative Investigations, Inc.*[1] in July, you would have been grasping at straws to give her an authoritative answer. There's no statute expressly prohibiting such conduct, so assuming there is no history of stalking or harassment, you could reasonably assure her that she wouldn't go to jail.[2]

But what about exposure to damages? It's well established that the New Jersey Constitution guarantees an individual's right to privacy.[3] It's equally clear under New Jersey case law that there is a tort for the invasion of privacy.[4] *Villanova*, a Law Division case with roots in a family part divorce action, is the first case to explore whether GPS tracking of another's automobile constitutes an intrusion of the tracked individual's "solitude or seclusion…private affairs or concerns,"[5] which may give rise to invasion of privacy liability in the party doing the tracking.

Mr. and Mrs. Villanova's marriage was on the rocks in 2007. She suspected her husband of infidelity, and retained defendant Innovative Investigations to investigate. Innovative advised Mrs. Villanova to obtain a GPS tracking device and hide it in Mr. Villanova's SUV. Although Mr. Villanova primarily drove the SUV for personal transportation, it was co-owned by the couple, and the insurance premiums were paid for out of funds in their joint checking account.

In the divorce action, Mrs. Villanova acknowledged her placing the GPS device in the SUV for about 40 days. During that period, Mrs. Villanova received reports about the SUV's location from the manufacturer of the GPS device over the Internet. There was, however, no evidence that the SUV was tracked into a private or secluded location. Moreover, there was no evidence in the record that Mrs. Villanova provided the tracked locations of her husband's SUV to investigators or anyone other than her attorney.

Mr. Villanova, the plaintiff, asserted invasion of privacy claims against his wife and Innovative in the divorce action. As a result of the divorce, Mr. Villanova waived his invasion of privacy claim against his wife and reserved his right to bring his claim against Innovative in the Law Division. He filed his case, and the Law Division granted summary judgment in favor of Innovative, dismissing the complaint. The Appellate Division affirmed, holding that absent evidence that Mr. Villanova "drove the vehicle into a private or secluded location that was out of public view and in which he had a legitimate expectation of privacy" the tort of invasion of privacy was not established.[6]

Article 1, paragraph 1 of the New Jersey Constitution "guarantees individuals the right of privacy."[7] The tort of invasion of privacy "encompasses 'four distinct kinds of invasion of four different interests of the plaintiff.'"[8] These are: 1) intrusion, 2) public exposure of private facts, 3) placing the plaintiff in a false light in the public eye, and 4) appropriation of the plaintiff's name or likeness.[9] The defendant will be liable for *intrusion* in cases where: 1) she intentionally intrudes, 2) upon the solitude, seclusion, private affairs or concerns of the defendant, if 3) "the intrusion would be highly offensive to a reasonable person."[10]

In this case, Innovative reported to Mrs. Villanova that it observed a female passenger in her husband's SUV, while he was driving in the area of the family home of the woman suspected of having an affair with Mr. Villanova. The surveillance started near the home, where Innovative had positioned itself in a private driveway, but "the location made it virtually impossible to conduct surveillance without being detected."[11] Innovative proceeded to follow the SUV on public roads, and, as the court noted: "Everything described in [Innovative's] report occurred on public roadways and in plain view of the public."[12]

The court conducted its analysis under the inference that Mrs. Villanova verbally informed Innovative of the location to conduct the surveillance.[13] The linchpin of Innovative's defense was that the plaintiff did not establish that he was tracked to a location where he had a reasonable expectation of privacy. Despite the fact that that observing the plaintiff with his purported mistress was literally an intrusion upon his private affair, the court ruled that estab-

lishing the tort of intrusion invasion of privacy "would require that he was in a location where he had a reasonable expectation of privacy."[14]

The *Villanova* opinion is certainly not the last we will hear on the privacy implications of an individual's surreptitious GPS tracking of another. The court leaves for another day, for example, whether this invasion of privacy claim could have survived summary judgment with respect to damages, which is an element of the intentional tort.[15] But the court seems to be nudging this issue down the road of established invasion of privacy jurisprudence.

So, in response to your client's query about tracking her husband, the answer is that old lawyer's standby: "It depends." The history of her case may trigger stalking or harassment charges. Under *Villanova*, it depends on whether she will intrude on the private affairs (no pun intended) of her husband, in a place where he had a reasonable expectation of privacy, in a way that would be highly offensive to a reasonable person, and caused him damages as a result.

Advise your client not to discuss the tracking with anyone but you. Finally, advise your client that once she puts the GPS device in her husband's car, there's no telling where he will go. He may unknowingly take it to a secluded area where he has a reasonable expectation of privacy, and she could end up with information that costs more than it was worth. ■

**Endnotes**

1. *Villanova v. Innovative Investigations, Inc.*, Docket No. A-0654-10T2, 3 (App. Div. 2011) [Judge Lisa, P.J.A.D.]
2. Be cautious in cases where the history of the parties could give rise to stalking or harassment charges against a person tracking another. Under a totality of the circumstances, GPS tracking may be found 1) to "cause a reasonable person to fear for his safety or…suffer other emotional distress" under N.J.S.A. 2C:12-10 (stalking)., or 2) to constitute a "course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person" under N.J.S.A. 2C:33-4 (harassment). *See HES v. JCS*, 175 N.J. 309 (N.J., 2003) (finding that a husband's video surveillance of his wife's bedroom constituted harassment and stalking under the circumstances of their separation). The New Jersey Wiretapping and Electronic Surveillance Control Act (N.J.S.A. § 2A:156A-1, *et seq.*) does not apply to GPS tracking of an individual.
3. *Villanova, supra.* at 8-9.
4. *Ibid.* at 10.
5. *Ibid.*
6. *Ibid.* at 3.
7. *Ibid.* at 9 (*citing Doe v. Poritz*, 142 N.J. 1, 89 (1995)).
8. *Ibid.* at 9 (*quoting Rumbauskas v. Cantor*, 138 N.J. 173, 179 (1994) (*quoting* William L. Prosser, *The Law of Torts* § 112 (3d ed. 1964))).
9. *Ibid.* at 9-10.
10. *Ibid.* at 10 (*citing Figured v. Paralegal Technical Servs., Inc.*, 231 N.J. Super. 251, 256 (App. Div. 1989) (*quoting* Restatement (Second) of Torts § 652B (1977)), *appeal dismissed*, 121 N.J. 666 (1990)).
11. *Ibid.* at 13.
12. *Ibid.* at 14.
13. *Ibid.* at 15.
14. *Ibid.*
15. *Ibid.* at 7.

***Jordan Stern*** *is a family law attorney with an office in Chatham.*

# YLD Executive Committee

**CHAIR**
Brandon Minde
Office of the Governor
125 West State Street
Trenton, New Jersey 08625
Brandon.Minde@gov.state.nj.us
609.777.2481
FAX: 609.777.1250

**CHAIR-ELECT**
Jonathan Lomurro
Lomurro, Davison, Eastman & Munoz, P.A.
100 Willow Brook Road, Bldg 1
Freehold, NJ 07728
jlomurro@lomurrolaw.com
732-462-7170
FAX: 732-409-0292

**TREASURER**
Jeffrey Neu
J. C. Neu and Associates
318 Newman Springs Road
Red Bank, New Jersey 07701
jneu@jeffreyneu.com
732-978-4053

**SECRETARY**
Shanna McCann
Chance & McCann, LLC
8 North Main Street, P.O. Box 10
Woodstown, NJ 08098
shannamccann@chancemccann.com
856-769-9001
FAX: 856-769-9007

**PARLIAMENTARIAN**
Matthew Streger
Kern Augustine Conroy & Schoppmann, P.C.
1120 Route 22 East
Bridgewater, NJ 08807
mstreger@drlaw.com
908-704-8585
FAX: 908-704-8899

**ABA DISTRICT REPRESENTATIVE**
Blake Laurence
Lomurro, Davison, Eastman & Munoz, P.A.
100 Willow Brook Road, Bldg 1
Freehold, NJ 07728
blaurence@lomurrolaw.com
732-462-7170
FAX: 32-409-0498

**CORPORATE**
Scott Malyk
Meyner & Landis, LLC
One Gateway Center, Ste. 2500
Newark, NJ 07102
smalyk@meyner.com
973-602-3455
FAX: 973-624-0356

**DIVERSITY**
Danielle Carmona
Lowenstein Sandler
65 Livingston Avenue
Roseland, NJ
dcarmona@lowenstein.com
973-422-6776
FAX: 973-422-6777

**DIVERSITY**
Mark Y. Moon
Trenk DiPasquale
347 Mt. Pleasant Ave., Suite 300
West Orange, NJ 07052
mmoon@trenklawfirm.com
973-243-8600
FAX: 973-243-8677

**BERGEN**
Jonas Seigel
Law Office of Jonas K. Seigel, & Associates, P.C.
505 Goffle Road
Ridgewood, NJ 07450
jseigel@seigelcapozzi.com
201-444-4000

**BURLINGTON**
Christina Shea
Capehart & Scatchard, P.A.
8000 Midlantic Drive, Suite 300 S
Mt. Laurel, NJ 08054
cshea@capehart.com
856-380-6706
FAX: 856-235-2786

**CAMDEN**
Rebecca Rakowski
Archer & Greiner, PC
One Centennial Square
Haddonfield NJ 08033
rrakoski@archerlaw.com
856-354-3139

**ESSEX**
Lawrence Bullard
lawrencebullard@gmail.com

**ESSEX**
Leslie A. DeTorres
Kozyra & Hartz, LLC
75 Eisenhower Parkway, Suite 160
Roseland, NJ 07068
lesliedetorres@kozyrahartz.com
973-403-8344
FAX: 973-403-9652

**GLOUCESTER/CUMBERLAND/SALEM**
Philip Davolos
Chance & McCann, LLC
201 West Commerce Street, PO Box 278
Bridgeton, NJ 08302-0212
philipdavolos@chancemccann.com
856-451-9100
FAX: 856-455-5227

**GLOUCESTER/CUMBERLAND/SALEM**
Rudolph Novak
Siciliano & Associates
16 Haddon Avenue, South
Haddonfield, NJ 08033
rudynovak@gmail.com
856-906-2980
FAX: 856-795-5515

**HUDSON**
Ksenia Proskruchenko
kprosk@prosklawgroup.com

**HUNTERDON**
Marisa Trofimov
mtrofimov@denilaw.com

**MERCER**
William Harvey Jr.
Law Office of William T. Harvey Jr., LLC
2239 Whitehorse-Mercerville Road
Suite J
Hamilton, NJ 08619
wthlegal@gmail.com
609-843-0505
FAX: 609-482-3673

**MIDDLESEX**
Louis Greenfield
Wilentz, Goldman & Spitzer, P.A.
90 Woodbridge Center Dr.
Woodbridge, NJ 07095
lgreenfield@wilentz.com
732 855-6012
FAX: 732 726-6511

**GOVERNMENT REPRESENTATIVE, VOTING**
Christine H. Kim
Office of the Attorney General
25 Market Street P.O. Box 112
Trenton, NJ 08625
Christine.Kim@dol.lps.state.nj.us
609-943-5608
FAX: 609-777-3607

**OCEAN**
Christopher Campbell
Christopher Campbell, Esq., LLC
39 Court Street, 2nd Floor
Freehold, NJ 07728
ctc@ctc-lawfirm.com
732-637-4111
FAX: 732-637-4110

**MONMOUTH**
Jessica Strugibenetti
strugibj@aol.com

**MORRIS**
Carmen Diaz-Duncan
Donahue, Hagan, Klein, Newsome, O'Donnell, & Weisberg, P.C.
360 Mt. Kemble Ave.
Morristown, NJ 07960
cdiazduncan@dhkno.com
973-467-5556
973-467-0636

**PASSAIC**
Eric Santos
Meyner & Landis, LLC
One Gateway Center, Ste. 2500
Newark, NJ 07102
esantos@meyner.com
973-602-3455
FAX: 973-624-0356

**SOMERSET**
Andrew D. Linden
Norris McLaughlin & Marcus, P.A.
721 Rt. 202-206, P.O. Box 5933
Bridgewater, NJ 08807-5933
adlinden@nmmlaw.com
908-722-0700
FAX: 908-722-0755

**SUSSEX/WARREN**
Dana M. Van Leuven
Heymann & Fletcher
1201 Sussex Turnpike
Mt. Freehold, NJ 07970
dvanleuven@hflawfirm.com
973-895-4400
FAX: 973-895-3005

**UNION**
Christian Jensen
Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068-3702
cjensen@connellfoley.com
973-535-0500
FAX: 973-535-9217

**AT LARGE, VOTING**
StephanieLomurro
Rubenstein, Meyerson, Fox, Mancinelli & Conte, P.A.
One Paragon Drive, Suite 240
Montvale, NJ 07645
slomurro@rmfmclaw.com
201-802-9202
FAX: 201-802-9201

**AT LARGE, VOTING**
Leah Capece
Proskurchenko & Capece
570 North Broad Street, Suite 13
Elizabeth, NJ 07208
lcapece@prosklaw.com
908-762-4800
FAX: 908-372-2369

**AT LARGE, VOTING**
Diana Fredericks
Gebhardt & Kiefer
1318 Rt. 31
Clinton, NJ 08809-4001
dfredericks@GKLEGAL.COM
908-735-5161
FAX: 908-735-9351

**AT LARGE, VOTING**
Michael Austin
Rubenstein, Meyerson, Fox, Mancinelli & Conte, P.A.
One Paragon Drive, Suite 240
Montvale, NJ 07645
maustin@rmfmclaw.com
201-802-9202

**AT LARGE, VOTING**
JJ Uliano
Chamlin, Rosen, Uliano, & Witherington
268 Norwood Avenue
West Long Branch, NJ 07764
jjuliano@chamlin-rosen.com
732-229-3200

**LEGISLATIVE COORDINATOR**
Erin Dowgin
erin.dowgin@gmail.com

**AT LARGE, NON-VOTING**
Veronica Norgaard
Koufos & Norgaard, LLC
103 Brighton Avenue, 3rd Floor
Long Branch, NJ 07740
vrn@koufos.com

**AT LARGE, NON-VOTING**
Ernest Ryberg
Koufos & Norgaard, LLC
103 Brighton Avenue, 3rd Floor
Long Branch, NJ 07740
ear@koufos.com

**AT LARGE, NON-VOTING**
Rachit Choksi
69 Boyd Street
Jersey City, NJ 07304
rachit.choksi@gmail.com

**AT LARGE, NON-VOTING**
Kimber Gallo
Skoloff & Wolfe, P.C.
293 Eisenhower Parkway, Suite 390
Livingston, NJ 07039
kgallo@skoloffwolfe.com
973-232-2962

**LAW SCHOOL REPRESENTATIVE, NON-VOTING**
Nadia Sheikh-Bandukda
nadia.sheikh@gmail.com
201-669-0812

**DICTUM EDITOR IN CHIEF**
Jaime Ackerman
Zucker, Goldberg & Ackerman, LLC
200 Sheffield Street
Mountainside, NJ 07092
jrackerman@zuckergoldberg.com
908-233-8500 x377

**ASSOCIATE EDITOR OF DICTUM**
Matthew H. Sontz
Norris McLaughlin & Marcus, P.A.
721 Rt. 202-206, P.O. Box 5933
Bridgewater, NJ 08807-5933
mhsontz@nmmlaw.com
908-722-0700
FAX: 908-722-0755

**ASSOCIATE EDITOR OF DICTUM**
Angie Gambone
Trace and Jenkins, LLC
58 Euclid Street
Woodbury, NJ 08096
agambone@tracejenkins.com
856-251-0800
FAX: 856-251-0662

**ASSOCIATE EDITOR OF DICTUM**
Amy Miller
Haber Silver & Simpson
123 Columbia Turnpike, Ste. 103A
Florham Park, NJ 07932
amiller@lomurrolaw.com
973-966-6311
973-966-5331

**ASSOCIATE EDITOR OF DICTUM**
Michael J. P. Schewe
ScheweLaw, LLC
16 Green Street, 3rd Floor
Newark, New Jersey 07102-3616
mschewe@ScheweLawLLC.com
862-772-2800
FAX: 973-718-4621

**YLD TRUSTEE**
Jon Wolfe
Skoloff & Wolfe, P.C.
293 Livingston Avenue
Livingston, NJ
jwolfe@skoloffwolfe.com
973-232-2962

**YLD TRUSTEE/IMMEDIATE PAST CHAIR**
Christina Vassiliou Harvey
Lomurro, Davison, Eastman & Munoz, P.A.
100 Willow Brook Road, Bldg 1
Freehold, NJ 07728
charvey@lomurrolaw.com
732-462-7170
FAX: 732-409-0292

**CONTINUING LEGAL EDUCATION COMMITTEE**
Jonathan Koufos
Koufos & Norgaard, LLC
103 Brighton Avenue, 3rd Floor
Long Branch, NJ 07740
jgk@koufos.com
732-229-4646
FAX: 732-229-4644

**CONTINUING LEGAL EDUCATION COMMITTEE**
Richard Lomurro
Lomurro, Davison, Eastman & Munoz, P.A.
100 Willow Brook Road, Bldg 1
Freehold, NJ 07728
rlomurro@lomurrolaw.com
731-462-7170
FAX: 732-409-0292 ■