

WLIB NEWSLETTER

WOMEN LAWYERS IN BERGEN

Volume 11

Winter 2022

*A*s this tumultuous and challenging year comes to an end and we are in the midst of the holiday season, I am once again appealing to all our members and asking for your help and continued support of our organization. While, under normal circumstances, we would have celebrated the installation of our new officers at our Annual Dinner in June, 2021 and renewed membership dues at that time, because of the continuing pandemic this event has been postponed until the late Spring/Summer of 2022.

The renewal of membership dues is essential to the continued survival and operation of our unique and long-standing organization and we are requesting your assistance by renewing your membership dues at this time. If you have not already done so, please renew your membership by visiting our website at <https://www.womenlawyersinbergen.org>. Should you have any questions regarding membership renewal, please contact our Treasurer, Tamra Katcher, Esq. at tkatcher@remlawgroup.com. We thank you for your continued support and contributions.

WLIB is excited to welcome a new Secretary, Sheila O'Shea-Criscione, Esq., to our executive board. Sheila is a seasoned employment lawyer, litigator, educator and a partner at Carcich O'Shea, LLC in Hackensack, New Jersey. Sheila provides counsel to employees and employers pursuing or defending claims involving sexual harassment and discrimination. She is an Adjunct Professor in the Department of Legal Studies and Political Science at Montclair University and has served on numerous county boards. She has lived and practiced law in Bergen County for many



years and has been a long-time member of and contributor to WLIB. She has also served as a Trustee of the Bergen County Bar Association. Sheila was sworn in by The Honorable Nina C. Remson on October 18, 2021 and we are all very excited that Sheila agreed to join our executive board. We thank Nancy Lucianna, Esq., our outgoing Secretary, for all of her tremendous efforts during the most difficult of times in our organization's history and wish her every success in her professional career. WLIB has been enriched by Nancy Lucianna's talents and contributions.

Notwithstanding the limitation imposed upon us by Covid-19, our organization continued to host robust and interesting programs in the fall. Notably, our Vice President, Diane Lucianna, Esq., organized a Whale Watching Cruise at the Jersey Shore on October 1, 2021, which was well attended and greatly enjoyed. See pictures from the Whale Watching event on our website. We thank Diane for all of her hard work in planning and hosting this new, interactive and fun event, which we hope will become an annual event.

On November 16, 2021, WLIB hosted its annual Law Clerk Reception welcoming all of the incoming law clerks to the Superior Court of New Jersey, Bergen County. Our Judges introduced their law clerks, and the law clerks shared their backgrounds and their experiences in their new positions. WLIB was honored to host this annual program and thanks our Assignment Judge, The Hon. Bonnie J. Mizdol, A.J.S.C. for her leadership and tremendous support. WLIB also thanks our Vice President Diane Lucianna, Esq., our Treasurer Tamra Katcher, Esq., and our members Sara Gloates-Horta, Esq., and Kathleen Hart, Esq., for their hard work. This event has been a long-standing tradition of WLIB and I am immensely proud that we are able to continue it via Zoom until we can all safely be in-person again.

Speaking of in-person events, WLIB was very excited to have its Annual Holiday party on Monday, December 13, 2021 at Fresh & Fancy Farms in New Milford, New Jersey. Many thanks to Sheila O'Shea Criscione, Esq. and Diane Lucianna, Esq., for spearheading and organizing this event which was in-person. The event consisted of a farm to table gourmet dinner and drinks with indoor/outdoor fire pit seating

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WLIB Membership

To renew or begin your membership with WLIB please go to www.womenlawyersinbergen.org.

If you have any questions regarding membership, please contact Cathe McAuliffe, Esq., Membership Chair at 201-488-2030 or cathemcaul@aol.com.

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Elucidating the Lessons of Lucid

By: Kim D. Ringler, Esq.

On October 13, 2021, the New Jersey Supreme Court heard argument on *In the Matter of Lucid*, an attorney disciplinary case in which the Office of Attorney Ethics sought the respondent's disbarment for alleged intentional misappropriation. The Court had before it the decision of a slim majority of the Disciplinary Review Board ("DRB") determining that disbarment was the proper result, as well as a sensible and well-written dissenting opinion from the DRB. The next day, the Court issued a short order censuring the respondent attorney rather than imposing a harsher sanction of a period of suspension or the ultimate professional death penalty of disbarment.

Three organizations successfully sought leave to file briefs as amici recognizing that this case presented sympathetic facts and that disbarment was a disproportionately harsh result. The Bergen County Bar Association, the New Jersey State Bar Association and the Association of Professional Responsibility Lawyers argued that the Court should depart from the longstanding automatic disbarment rule required by the controlling case, *In the Matter of Wilson*. The draconian impact of an automatic permanent disbarment per se rule was arguably unnecessary to protect the public when the respondent attorney on the hot seat lacked any venal intent. The DRB opinions and the concerns advanced by the amicus briefs make clear that members of the bar are uncertain about whether a simple, isolated careless error, a momentary lapse in appreciating the risk created, without the actual specific intent to knowingly or wrongfully invade funds held in trust, could encompass within Wilson's automatic disbarment net a larger swath of lawyers beyond those who commit the types of dishonest conduct described in *Wilson* and its progeny. And, in the process the larger number of those caught in the net would likely disproportionately impact small firm and solo practice lawyers less adept at trust account management and more likely exposed to outside scrutiny.

In the past, the Court had repeatedly demonstrated its ability to discern when an attorney makes a mistake that constitutes *negligent misappropriation* of funds entrusted to him or her and to differentiate when an attorney acts with the requisite specific intent to knowingly deprive another of funds to which the attorney knows he or she is not entitled. Only in the latter case is the Wilson Rule and permanent mandatory disbarment appropriate. The authorities and precedents are robust that a mere mistake, creating a risk of a technical misappropriation, would be insufficient to impose the harsh unforgiving per se disbarment rule. Those cases resulting in censures or short terms of suspension are most similar to the facts in *Lucid* notwithstanding the position taken by the Office of Attorney Ethics that disbarment was the appropriate and required result.

The DRB Decision below found an "absence of dishonesty, venality or immorality" on the respondent's part despite its conclusion that disbarment was mandated by *Wilson*; and

the DRB dissenters noted a lack of "bad character or wanton indifference" describing instead an "isolated lapse unlikely to result in actual harm." Argument on Lucid's behalf urged the Court to find that its precedents allowed a finding that the respondent lacked the necessary knowing intent to deprive others of funds entrusted to her – unlike the respondents in several prior matters involving much more egregious conduct that merited disbarment under *Wilson*.

Respondent Lucid, by all accounts including testimony and character evidence presented to the Hearing Panel, was an upright, honest, dedicated attorney with a reputation for personal and professional integrity. She had an unblemished record. The entirety of the professional misconduct charge against her was that she erred by writing a single check in payment of a client's matter and sending it off to his creditor in California just after a blizzard before she had received her client's funds to cover the check. She expected to receive her client's check mailed in New Jersey before the check sent to California would clear her account. She miscalculated, unfortunately, triggering a multi-year professional and personal nightmare.

The creditor in California received and immediately electronically deposited her trust check on a Friday afternoon, about five days before her client's check mailed in New Jersey reached her for deposit. As a result, when the creditor's check cleared no funds were yet on hand from the client, and therefore, other funds in the trust account belonging to others were invaded causing at least a temporary technical conversion. The respondent was intent on preserving her client's settlement; she never intended or expected to create a temporary shortfall in her trust account; she never even focused on the risk of that occurring; indeed, until she undertook a self-audit of her trust transactions a year and a half later, she did not know that the conversion had occurred. She had acted intentionally, with respect to sending off the check before receiving her client's check, but without appreciating the risk of invading other clients' funds resulting from the timing of her actions. The risk became a reality putting her entire legal career in jeopardy and prompting years of disciplinary proceedings including a fully litigated hearing.

The purpose of attorney discipline is not punishment but protection of the public and preserving public confidence in the legal profession. In its wisdom, the Court recognized that the misconduct in Lucid warranted a public censure, not disbarment or a term of suspension. Implicit in its censure of Lucid is a recognition that her actions lacked the necessary intentionality and scienter to constitute a knowing misappropriation and instead constituted negligent misappropriation. However, the case reminds lawyers, especially the vast majority of New Jersey lawyers who are solo practitioners or in small firms, to abide carefully by the relevant requirements for handling client and fiduciary funds.

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BCBA Annual Dinner

October 28, 2021

Congratulations to Eileen P. Mulroy, Esq., President of the Bergen County Bar Association.





Book Review

By: Tamra Katcher, Esq.

The Midnight Library

By Matt Haig

Nora Seed is a young woman who lives alone with her cat. She works as a clerk at a local music store in the dead-end town where she grew up and she teaches music lessons on the side.

She has no real social life and

is severely depressed. One evening, there is a knock at her door and the good-looking doctor who frequents the music shop and who had asked her out to coffee (which invitation she declined) is standing there in the rain. He advises Nora that he found her beloved cat, Voltaire, lying very still in the street. For Nora, this was the last straw in her seemingly miserable and unhappy life. After retrieving Voltaire and thanking the cute doctor, Nora decides to overdose on her medication to commit suicide... something she had been thinking about for quite some time. However, somewhere between life and death, Nora is introduced to the midnight library – a point between life

and death. Her guide through the library is her favorite librarian from grade school, Mrs. Elm. With Mrs. Elm's guidance and wisdom, Nora navigates the library which is filled with books containing the varied possible stories of her life. She gets to try each story on for size while she is suspended in time between life and death.

I was initially introduced to this book by a book club and borrowed the book from my friend – who did not enjoy it. She found it predictable. Although I agree with my friend to some extent, I also very much appreciated how this book poignantly illustrated how the daily decisions we make in life have the ability to set our life's paths in different directions. We have all had those moments where we say to ourselves – “I should (or should not) have done that (fill in the blank – left the relationship, gone to grad school, chosen a different career, said something to a particular person).” I know that I have had that conversation with myself very often over the years. This book delves into those “what ifs” or “should have (or have not) dones”.

I encourage you to read this book with your heart and your mind wide open. Whether you find it predictable or not, I believe you will get completely wrapped up in the life and lives of Nora Seed. As a result, I think you will learn to appreciate that where you are in life is exactly where you are supposed to be. Live mindfully and thankful of the blessings that you have now. 🌟

Restaurant Review

By: Kathleen A. Hart, Esq.

Blackjack Mulligan's Public House

237 Diamond Bridge Avenue
Hawthorne, NJ 075606
(973) 423-4000



In this new normal, we, sadly, have not dined out as much as in the past. While it saves some money, my creativity in the kitchen is beginning to wane. Luckily, we finally tried Blackjack Mulligan's in Hawthorne. Blackjack Mulligan's has two other locations, one in Garfield and one in Secaucus. The owner of the Hawthorne location is partners with the owners of the Secaucus and Garfield locations

Blackjack Mulligan's is located just past the railroad tracks, in the location of the former Kirker's Inn. The outside is brick with a neon sign in the front and black awnings over the windows, giving an old time feel to the place. There is a tent with outside dining on the side of the property. The one thing to remember, parking



is limited. On Saturdays and Sundays you can park in the post office lot across the street, otherwise, I suggest parking by the train tracks, which is a two-minute walk away.

Upon entering there is a small foyer with a dining room to the right. The dining room has approximately ten dark wood tables and the walls are a dark wood as well. In front there is a long bar on the right wall. The bar was crowded with what I assume were “regulars” when we arrived. We were seated in the back, where there are about eight high top tables. The back area is not as dark as the front with a yellow wall and wood tables.

After being given menus, the server took our drink order. The menu is filled with the typical pub fare but there are also nightly specials. We started with the pretzel bites (\$8.50). I was concerned it

was going to be too much for us as the plate was filled with warm, golden brown pretzels. However, we quickly devoured it all. The pretzels were cooked perfectly and were served with

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The Law Offices of Barbara B. Comerford

45 Eisenhower Drive, Suite 280

Paramus, NJ 07652

Phone: (201) 444-4493

Fax: (201) 485-7014

bcomerford@barbaracomerfordlaw.com

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The Law Offices of Barbara B. Comerford concentrates its practice in the area of disability law including ERISA Long Term Disability Insurance claims, disability income insurance claims, Social Security Disability claims, and government pension claims. We provide free initial consultations.

Barbara B. Comerford is a Lawline Faculty member who presents national seminars on ERISA LTD and Disability insurance claims. She has also conducted seminars throughout the country on Social Security Disability law.

WINTER 2022 LEGISLATIVE REPORT

By: Carmela L. Novi, Esq.

For your information, helpful websites:

www.njleg.state.nj.us/ the New Jersey Legislature's site; enables you to find bills by subject and track where any proposed bill is in the process.

www.judiciary.state.nj.us/ the New Jersey judiciary site; includes a legislative news site that lists new laws by subject (e.g., family, criminal), bills on the Governor's desk and legislative updates. There is also a report opinions site where recent New Jersey Supreme Court and Appellate division opinions are posted.

www.ca3.uscourts.gov. The United States Court of Appeals (Third Circuit) discontinued issuing printed Slip Opinions. They are now available free of charge through the Court's website as noted.

Sampling of New Jersey State Legislature 2020-2021 Session bills (Passed)

Covid-19/Long Term Care Facilities

A4861 (P.L. 2021 c. 300) (November 8, 2021) Requires DOH to publish total number of COVID-19 deaths and cases in long-term care facilities.

Formation of LLCs/Real Estate Brokers

S3590 (P.L. 2021 c. 281) (November 8, 2021) Allows formation of limited liability companies by real estate salespersons and broker-salespersons to receive commission income and requires certain disclosures on promotions.

School Bus Companies

A5818 (P.L. 2021 c. 307) (November 8, 2021) Provides for debarment of school bus contractors for certain violations; requires certain information in pupil transportation contract bid.

Tax Returns/Special Olympics Contributions

S3318 (P.L. 2021 c. 280) (November 8, 2021) Provides voluntary contributions by taxpayers on gross income tax returns for Special Olympics New Jersey.

Vaccines/Dentists

A5212 (P.L. 2021 c. 303) (November 8, 2021) Permits dentists to administer vaccines under certain circumstances.

Teacher Certification

S3253 (P.L. 2021 c. 279) (November 8, 2021) Establishes alternate route to expedite certification of teachers at early college high school programs.

Municipalities/Alternative Energy

S1010 (P.L.2021, c.267) (November 8, 2021) Permits counties

and municipalities to bond for alternative fuel vehicles.

Public Utilities

S828 (P.L. 2021, c. 263) (November 8, 2021) Requires public utilities and local units to provide notice prior to initiating certain infrastructure projects.

Schools, Mental health

A970 (P.L. 2021, c. 237 (September 28, 2021) Establishes Mental Health Screening in Schools Grant Program in DOE; appropriates \$1 million.

Foreclosures

A5142 (P.L. 2021, c. 225) (September 24, 2021) Protects homeowner in foreclosure from excessively low intervening offer.

College/Financial Aid

S985 (P.L. 2021, c.223) (September 24, 2021) Provides that public institutions of higher education may only reduce student's institutional financial aid upon receipt of private scholarship under certain circumstances.

College/Disclosure of Costs

S1877 (P.L. 2021, c. 211) (September 16, 2021) Requires institutions of higher education and proprietary degree-granting institutions to provide transparency of tuition and fees to prospective and current students.

Detention/Immigration

A5207 (P.L. 2021, c. 199) (August 20, 2021) Prohibits State and local entities and private detention facilities from entering into agreement to detain noncitizens

Voting

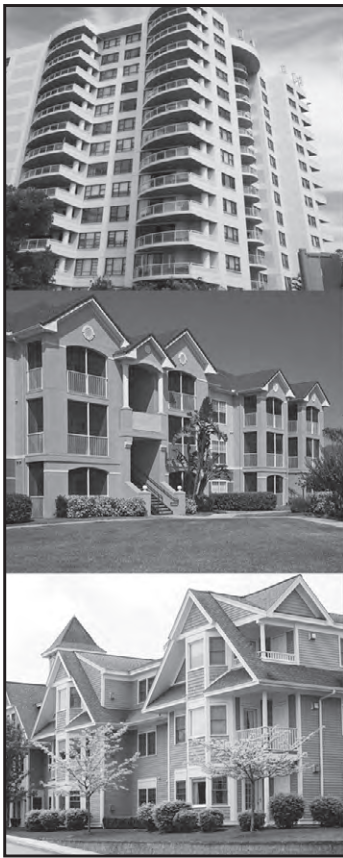
A698 (P.L. 2021, C198) (August 20, 2021) Requires incarcerated individual from State to be counted at residential address for municipal, county, and congressional redistricting purposes and for apportionment of regional school district board of education members.

Sampling of Reported Decisions - New Jersey Courts

Constitutional Law - Sentencing

State v. Mark Melvin (New Jersey Supreme Court; September 23, 2021; A-44-19 (083298) State v. Michelle Paden-Battle (New Jersey Supreme Court; September 23, 2021; A-13-20 (084603) Consolidated appeals. Issue presented: whether a trial judge can

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If you're looking for a daytrip or even a week-long stay at the Jersey Shore, make sure to check out Surf City on Long Beach Island. Although I have to admit I am biased since I spent all of the summers of my youth in Surf City, I think you will find that it is a special place. As most of you know, Long Beach Island (LBI) is just a 2-hour drive (without traffic) from Bergen County to Exit 63 on the Parkway. The bridge going onto the Island brings you to Ship Bottom – Surf City is the next town to the north, so it's centrally located on the Island.

Depending on the length of your stay, there are both house rentals and hotel rooms available in Surf City. The Surf City Hotel, just a few steps from the ocean in the heart of the town, is a historic landmark that has been serving visitors for over 100 years. The hotel also has a popular restaurant and bar if you crave a cocktail after a dip in the ocean. The hotel is open to visitors from April through October. Depending on your budget, beach bungalows to ocean front mansions are available to rent by the week. It is very common for families to rent the same house year after year. The most popular rental weeks are in July and August so make your reservations early!

Surf City is only about a quarter mile long, but it packs a big punch. The main attraction – you guessed it – is the pristine beaches. Surf City's beaches are some of the cleanest on the Island and are staffed by lifeguards daily during the summer (Tip: like all of the towns on LBI, Surf City requires a beach badge during the summer months - most rentals include badges, but you can purchase daily/weekly/seasonal

badges at town hall). The ocean water is usually very clean and every once in a while, you will spot some dolphins swimming by. Although the ocean beach gets crowded in the summer months, there is always a spot for reading a book, playing ball or just taking a walk at the water's edge. Depending on the tide, you can even find lots of seashells. Surf City is very family friendly as there is a fenced-in bay beach for the younger kids. The bay beach is located at 16th Street and includes a small playground and a nice pavilion to sit under if you need a break from the sun (Tip: bring some cash with you to the beach since the ice cream trucks make regular stops at all the beaches).

After a nice day at the beach, you will probably want to grab dinner. The good news is that you won't have to travel far to enjoy some top restaurants. Check out ScoJo's for great American food and Wally's for its popular breakfast and brunch menu. Surf City Pizza on 11th Street at the Boulevard is always busy. If you're looking for more upscale cuisine, try Little Bite of Italy or Yellowfin, which serves local seafood in an intimate setting. If you're looking to enjoy some local bands or just have a few cocktails, you can visit the North Side Grill or the Surf City Hotel. For dessert, there are plenty of family-owned ice cream shops (Tip: Big Dipper gives the biggest scoops of ice cream anywhere hands down). All the restaurants and ice cream shops are located along the Boulevard – this is the main street near the ocean that runs along the entire 18 miles of the Island.

Surf City has great activities beyond the beach for both kids

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Surf City

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and adults. There are two mini-golf courses on the Boulevard along with arcade games at Endless Summer. There are also some great specialty gift shops in Surf City like The Good Life, Society Beach and the Cheese Shoppe. The Surf City 5&10 has been open since 1952 and is the best place in town for beach toys and beach wear. Make sure to get your Surf City t-shirt and car sticker at the 5&10! Farias is a family-owned store that has been serving both residents and visitors since 1969. Farias is the place to go for beach chairs, surfboards, and bike and surrey rentals. Surf City has a great collection of art galleries as well – Solace Studio and m.t. burton Gallery not only have fine pottery, paintings and photography for sale but also offer classes if the scenery awakens your artistic side. For the kids, Just Bead It is a great place to make necklaces and bracelets. All these establishments are family-owned and operated by multiple generations.

If you decide to stay in for dinner and want to barbeque, head to Okie's Butcher Shop for fresh meat (Tip: try the Okie Burgers which will impress even the most discerning burger lovers). To complete the meal, walk across the Boulevard to Anchor Produce for fresh Jersey corn



and tomatoes. If you want to add seafood to your meal, check out Boulevard Clams or Blue Claw for seafood fresh off the boats in Barnegat Bay.

You can also catch your own seafood in Surf City. There are bulkheads at the end of most streets that are perfect for fishing and crabbing (Tip: 13th Street at the bay is a great crabbing spot). After the lifeguards leave the ocean beach at 5pm there are always lots of people fishing. Surf City Bait & Tackle is a great spot for fishing and crabbing gear. There are always local fishermen willing to help and give you the most up-to-date info on the hot spots.

Surf City's small town, family atmosphere makes it the true hidden gem of LBI. While you won't find any fast-food chains, amusements or boardwalks in Surf City, I guarantee you will find beautiful beaches, family-owned shops and restaurants and great locals who will welcome you back year after year. Summer is only 7 months away! Surf's Up! 🐬





The Law Offices
of
Sarah N. Gloates Horta, Esq., L.L.C.
Divorce & Family Law Firm

The Centennial Building
58-60 Main Street, Suite 1A, Hackensack NJ 07601

(201) 540-9017
sarah@snglaw.com
Visit us online at snglaw.com

Lucianna & Lucianna, P.A.

Frank P. Lucianna, Esq., Diane M. Lucianna, Esq., Frank V. Carbonetti, Esq.
& Daniel M. Donohue, Esq.

**111 Main Street
Hackensack, NJ 07601**

(201) 342-9090

(201) 342-3105 – Facsimile

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Jean Robertson Update

By: Kathleen A. Hart, Esq.

The Jean Robertson Women Lawyers Scholarship Foundation provides an annual scholarship award of \$2500.00 to a woman attending law school in New Jersey who best exemplifies the goals and ideas of the late Jean Robertson

In Jean's memory, the Jean Robertson Women Lawyers

Scholarship was formed to raise money to assist female students attending New Jersey law schools. The scholarship is awarded to students who embody the ideals and values that Jean held and taught by example. The funds for the scholarship are made up entirely of voluntary contributions by members of the bar and others committed to honoring the work of Jean Robertson. 🙌

Announcements

Our condolences to the **Hon. Marilyn C. Clark, J.S.C. Ret'd**, a long time WLIB member, and to her entire family, on the passing of her sister-in-law, Sharon Eleanor Clark, wife of the Hon. Warren Clark, J.M.C. Most recently Sharon worked as an editorial assistant to her late mother-in-law, Mary Higgins Clark, also a staunch supporter of WLIB. The family asks that if you wish to make a donation in memory of Sharon to please consider donating to Catholic Charities of New York or ocular melanoma research at Memorial Sloane Kettering. The full obituary can be found at <https://northjersey.com/obituaries/ber099504>.

Our condolences to **Marcia Werner, Esq.** on the passing of her mother, Gloria Kuttner, on November 2, 2021.

Congratulations to **Susan C. Berger, Esq.**, who is of counsel to The Ringler Law Firm, on being presented with a Champion of Justice Award by Northeast Legal Services on November 4, 2021. **Adelina Herrarte, Esq.**, a WLIB member, presented the award to Susan at it's annual (this year via zoom) ceremony. Susan aided in a matter requiring knowledge and expertise in funeral and burial regulations and successfully resolved a client's matter.



Congratulations to our members **Janet B. Lurie, Esq.** and **Laura Sutnick, Esq.** on being named a Super Lawyer. 🙌

Restaurant Review

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a nice cheese sauce. There was just the right amount of salt on each. Other appetizers include buffalo wings (\$10.50), pierogis (\$8.75), Irish spring rolls stuffed with corned beef and cabbage (\$9.50) and mozzarella sticks (\$8.00).

For our main course, I had the pulled pork sliders (\$9.50), my sister had the Blackjack dip (\$13.50) and my husband had fish and chips (\$16.50). Blackjack Mulligan's has a large selection of burgers and sliders. My sliders were stuffed with tender pulled pork and barbecue sauce. The pork was delicious and not overly sauced. There was plenty for left overs.

The Blackjack dip is a take on a French dip. The bread was toasted with the right amount of garlic, stuffed with tender roast beef and melted mozzarella. The sandwich was served with homemade au jus and French fries. The sandwich was delicious.

The fish and chips entrée is a large meal. The beer battered cod fish was fried to a golden brown and fork tender. It came with a tangy tartar sauce and French fries. My husband did not have left overs and

said it was yummy.

The menu is extensive. The burger selections include a bleu cheese burger (\$13.50), a Jersey Burger topped with Taylor ham, egg and cheese (\$13.50), and a Guinness BBQ burger which is topped with pepper jack cheese and a Guinness barbecue sauce (\$13.50). Other sandwiches include a Reuben (\$13.00), a veggie wrap (\$12.50) and a ribeye steak sandwich topped with mozzarella, onions and peppers (\$14.50). The entrees include corned beef and cabbage (\$17.00), blackened ahi tuna tacos (\$14.00) and a shepherd's pie (\$14.00).

After dinner, we decided to split funnel fries (\$5.50). This was more of a fried dough than a funnel cake. The dessert consisted of many thin strips of fried dough covered in a powdered sugar. The fries were served with a chocolate dipping sauce. Blackjack Mulligan's also has a lava cake (\$6.25) and vanilla ice cream (\$4.25).

The service at Blackjack Mulligan's was excellent. The staff was friendly and attended to all tables. Each server was quick to stop by asking if the food was good or you needed another drink. The meals were large and delicious. We have not been to the other locations but if the Hawthorne location is in any indication, I am sure they are just

Lessons of Lucid

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Among those requirements are reviewing the court rules and RPCs; making sure bank accounts are properly established at approved banks at New Jersey branches, are properly titled, and are protected with a cushion from fees generating a shortfall; creating trust receipts and trust disbursements journals; performing monthly 3-way reconciliations of the trust account; identifying who is a

signatory; and overseeing the process sufficiently to avoid the risk of allegations should any irregularities – or worse - occur.

The Lucid case ultimately resulted in a proportionate, fair sanction for a thoughtless but honest mistake. The mistake was isolated and in the context of robust mitigation. The Court demonstrated its allegiance to the precedents involving negligent misappropriation. Nonetheless, the case stands as a cautionary tale of the importance of strict adherence to the trust account and recordkeeping requirements. 🙌

President's Message

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in a festive farm setting in the heart of Bergen County. As part of the event WLIB raised funds and provided gifts for distribution to The Center for Food Action and for The Center for Hope and Safety.

Thanks to Linda F. Spiegel, Esq., who once gain organized and presented monthly educational and interesting SWAG (seasoned women attorneys' group) events this fall and will be presenting many more exciting programs this winter. Upcoming SWAG programs include December 20, 2021, when Marcia K. Werner, Esq., will be discussing Amici Briefs; January 10, 2022, when a panel discussion on "Of Counsel" positions at law firms will include panelists Jennifer Borg, Esq. from Pashman Stein Walder Hayden P.C., Janet B. Lurie, Esq. from Meyerson, Fox, Mancinelli and Conte, P.A., and Jeanne O. Marino, Esq., from Harwood Lloyd; February 14, 2022, when Beverly Williams, Esq. will be

hosting the meeting and her guest will be Dr. Lynn Steinberg who will be speaking on parental alienation and reunification therapy. We are looking forward to seeing our members and friends at these upcoming events.

Those WLIB members who have a personal or professional announcement for the Newsletter, or would like to write an article and see their name in print, please contact our editor, Linda F. Spiegel, Esq. As always, we encourage all our members to submit articles for our Newsletter, join a committee in which you have an interest, present a CLE on an interesting topic or simply come to a board meeting and get involved!

We thank you for your continued support and participation in our unique organization and wish you all a very happy, healthy, prosperous and safe Holiday Season and New Year! 🍷

With warm regards,

Victoria R. Pekerman

President, Women Lawyers in Bergen

Young Lawyers Corner

The Young Lawyers Committee of Women Lawyers in Bergen meets on the 1st Wednesday of every month. Each meeting is hosted by one of the members. If anyone would like additional information including the location of the next meeting or are interested in joining the Committee, please contact Sarah Gloates Horta, Esq. at sarah@snghlaw.com.

Notice to Readers

When you are considering changing a vendor or are seeking a specialist, please consider those who advertise in our newsletter.

Thank you.

MERYL CONTE CLAYTON

Attorney at Law

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Offices in New Jersey and Florida

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Welcome Sheila O'Shea-Criscione, Esq.

WLIB's New Secretary

By: Laura Van Tassel, Esq.

Sheila has been appointed by WLIB President Victoria Pekerman, Esq. as the new Secretary for WLIB upon the resignation of Nancy Lucianna, Esq. She looks forward to working with the Board as she sees being an active member of WLIB as a positive experience. Sheila was introduced to WLIB by Linda F. Spiegel's SWAG meetings and was so impressed by the comradery and friendship at these meetings that she joined the organization. It has been a genuinely positive experience wherein professional women can meet and encourage and be supportive. While she does not have any specific goals in mind, Sheila is looking forward to contributing to the organization to keep it growing and viable.

Sheila is a dynamic and interesting person. She has contributed her time and skills in many areas. She served on both the Paramus and Bergen County Special Services Board of Education. She teaches alternate dispute resolution at Montclair State University where she is an adjunct professor. Additionally, she lectures to small businesses and large corporations on discrimination and harassment issues. She works with businesses of all sizes to develop workplace manuals and to keep harassment and discrimination out of the workplace.

Sheila specializes in employment law which she cheerfully coined being akin to the criminal law in the civil division. She



finds this area of law exciting noting that the cases are all unique and similar at the same time, making each day and case different. She began her career as a law clerk to the Hon. Bruce A. Gatea, J.S.C. and was planning to work in the area of criminal law. Instead, she accepted a position for a firm that specialized in litigation of employment cases and her interests and career grew from there.

Sheila is a litigator and zealous advocate for her clients, but she is also trained in mediation and teaches mediation and alternate dispute resolution. She notes that listening is important in representing a client as well as in mediation.

Sheila has been featured on WABC, News 12 and other legal programs. She has been voted one of Bergen's Top Lawyers each year from 2013 to the present.

Sheila has been married for 27 years and has two children. Her daughter is in medical school and her son is working toward his Master's degree and is the head golf coach at Wagner University. She loves to travel and looks forward to a trip to Italy and Greece in 2022 – like many of us, a trip postponed due to the pandemic. She enjoys cruising as she appreciates being able to put down her bags and travel to many different places without having to pack and unpack.

We wish Sheila success in her new position with WLIB and thank her for stepping in when asked. 🐾

Legislative Update

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consider at sentencing a defendant's alleged conduct for crimes for which a jury returned a not guilty verdict.

In State v. Melvin, Melvin was indicted on nine counts in connection with a fatal shooting in a restaurant, including charges of murder, aggravated assault, and weapon possession and drug offenses. At the conclusion of the trial, the jury found Melvin guilty of unlawful possession of a handgun but none of the other charges. The trial court sentenced Melvin to the maximum, citing United States v. Watts, 519 U.S. 148 (1997) (Holding that a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been provided by a preponderance of

the evidence." 519 U.S. at 157) and considering evidence relating to the murder charges as to which the jury had found defendant not guilty. The Appellate Division affirmed Melvin's conviction but remanded the matter for resentencing, holding that the sentencing judge incorrectly applied Watts. The trial court resentenced Melvin to an extended term, which the Appellate Division affirmed on appeal. The Court granted Melvin's petition for certification, "limited to the issue of whether the sentencing judge could consider defendant's conduct even though the jury acquitted defendant of the underlying crimes." 240 N.J. 549 (2020).

In State v. Paden-Battle, Paden-Battle was indicted in connection with the murder of Regina Baker for offenses including kidnapping, murder, felony murder, gang criminality, and

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Legislative Update

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weapons offenses. After a trial -- before the same judge who presided over Melvin's trials and sentencings -- the jury convicted Paden-Battle on the charges of kidnapping, conspiracy to commit kidnapping, and felony murder, and acquitted Paden-Battle of first-degree murder, conspiracy to commit murder, and both weapons offenses. In sentencing Paden-Battle to sixty years' imprisonment, the judge noted that "Regina Baker would be alive today" if not for Paden-Battle, who, the court added, "was the mastermind" of Baker's kidnapping and execution. The Appellate Division affirmed Paden-Battle's convictions but vacated her sentence and remanded the matter for resentencing. 464 N.J. Super. 125, 131 (App. Div. 2020). The court concluded that there was "no doubt that the sentence was enhanced because the judge believed defendant ordered Baker's execution," "despite the jury verdict, [and] enhanced the sentence imposed." Id. at 151. Held: The Court reversed in Melvin and affirmed in Paden-Battle. Article I, Paragraph 1 of the New Jersey Constitution bestows upon all citizens certain natural and unalienable rights. From those rights flows the doctrine of fundamental fairness, which protects against arbitrary and unjust government action. Fundamental fairness prohibits courts from subjecting a defendant to enhanced sentencing for conduct as to which a jury found that defendant not guilty.

State of New Jersey v Joelle D. Caronna and State of New Jersey v. Freddy Collado (Appellate Division; November 2, 2021; A-0580-20 and A-0581-20, Consolidated Appeals). The issue presented, as a matter of first impression, is whether the exclusionary rule applies under the New Jersey Constitution to the violation of search warrant's knock-and announce requirement. The court held that the exclusionary rule applies, as the failure by police knock and announce violates Article I, Paragraph 7 of the New Jersey Constitution. The Court noted that the New Jersey Constitution provides more expansive protections against unreasonable searches and seizures than the Fourth Amendment of the United States Constitution and that they have an obligation to ensure those protections are not eroded through the abandonment of the deterrence provided by the exclusionary rule.

Confidentiality of Tax Returns

Charles J. Parkinson v Diamond Chemical Company, Inc., et al. (Appellate Division; October 27, 2021; A-2639-20) The court held that the tax filings of corporations and other businesses receive the same presumption of confidentiality as individual tax records. Hence, the heightened requirements for disclosure specified in Ullmann v. Hartford Fire Ins. Co., 87 N.J. Super. 409 (App. Div. 1965), apply to such business tax filings as well.

Homeowner's Insurance Claims/Accrual of Mortgage Interest/Implied Covenant of Fair Dealing

Wilmington Savings Fund Society, FSB v. Patricia E. Daw, et al. (Appellate Division, October 22, 2021; A-0829-19) Insurance funds were paid out on homeowner's policy to lender's assignee after Superstorm Sandy. Owner defaulted on mortgage. Mortgage lender claimed property owner also owed interest on the loan which was not paid during the period of time during which time the insurance funds were held in escrow and lender decided whether repairs to the house would be "economically feasible" or would lessen its security. Held: If the lender unreasonably delays making a decision about the proposed use of the insurance funds for repairs, the Chancery judge has the equitable power to abate the mortgage interest that accumulated in the meantime. Additionally, the lender must place the insurance funds in an interest-bearing, segregated account until the proper use of those funds is resolved. Remanded to Chancery Division to develop the record more fully and evaluate whether the mortgage company breached the implied covenant.

Administrative Law/Medicaid Eligibility

G.C. v. Division of Medical Assistance and Health Services (New Jersey Supreme Court; November 18, 2021; A-35/36/37-20 (084417) The Court affirmed the Appellate Division's invalidation of N.J.A.C. 10:72- 4.4(d)(1) as inconsistent with its state enabling legislation and contrary to legislative intent. The plain language of the regulation was in conflict with the portion of the statute [N.J.S.A. 30:4D-3(i)(11)] which makes medical assistance available to those who are disabled or over the age of 65 and "whose income does not exceed 100% of the poverty level, adjusted for family size". The challenge arose when two applicants, one who resided with his spouse and one who resided with her husband and two children, filed for benefits under the Medicaid program and were denied benefits due to their household income being slightly above the eligibility threshold without having accounted for household size.

Family Law

New Jersey Division of Child Protection and Permanency v. J.R.-R. (New Jersey Supreme Court; September 27, 2021; A56/57-19 (083807) The issue presented is whether, in a case where the Division of Child Protection and Permanency (DCPP) has established that a child has been abused or neglected while in the care of his parents, the family court can shift the burden of proof to the parents to prove their non-culpability. HELD: The Legislature placed on DCPP the burden of proving by a preponderance of the evidence that a parent abused or

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Holiday Party

December 13, 2021

Fresh and Fancy Farms, New Milford, NJ



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Legislative Update

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neglected a child, N.J.S.A. 9:6-8.46(b)(1), and the Judiciary has no commission to exercise equitable powers to alter the statutory burden of proof set forth by the Legislature. The Court disapproves of the Appellate Division cases that have imported the doctrine of conditional *res ipsa loquitur* from the common law into a comprehensive statutory scheme to relieve DCPP of its burden of proving that a particular parent abused or neglected a child. The Court remanded for a new hearing.

C.R. v. M.T. (New Jersey Supreme Court; September 28, 2021; (A-58-19; 08376). The issue presented: the appropriate standard to determine whether sexual activity was consensual under the Sexual Assault Survivor Protection Act ("SASPA"). The Court held that the standard is not the prostration of faculties standard, which focuses on the mental state of the defendant, but rather the standard articulated in State in Interest of M.T.S., 129 N.J. 422 (1992), which is applied from the perspective of the alleged victim. The M.T.S. standard requires a showing that sexual activity occurred without the alleged victim's freely and affirmatively given

permission to engage in that activity. The standard for consent for an alleged victim in a SASPA case should be no different than the standard for consent for an alleged victim in a criminal sexual assault case. The Court reverses and remands this matter to the trial court for assessment under the standard articulated in M.T.S.

OPRA

Ernest Bozzi v. City of Jersey City (Supreme Court of New Jersey; September 20, 2021; A-12-20 (084392) The issue presented: whether owning a dog creates an objectively reasonable expectation of privacy such that the owner's personal information in the dog licensing record might be exempt from disclosure under the Open Public Records Act (OPRA). Plaintiff, licensed home improvement contractor with an invisible fence business, sought information under OPRA from the City of Jersey City identifying names and addresses of dog owners. Jersey City denied the request. The trial court found that the records were not exempt and ordered Jersey City to provide the information. HELD: Owning a dog is a substantially public endeavor in which people do not have a reasonable expectation of privacy that exempts their personal information from disclosure under the privacy clause of OPRA. 🐾

Holiday Party

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2021-2022 WLIB Committees

The following committees have been formed for the 2021-2022 term. Committees may be added or eliminated by the President as needed. Please select as many choices as you wish for committee assignment and rank them in order of preference and email your preferences to Victoria R. Pekerman, Esq. at

vpekerman@shapiro-croland.com. Multiple choices are recommended inasmuch as you may not be assigned to your first choice depending on the number of volunteers for each committee. Thank you in advance for your commitment and dedication to this great association!

Annual Dinner & Election

Diane Lucianna, Esq., Tel: 201-342-9090
Email: danieluci@aol.com

This Chair will coordinate with the incoming President to plan the dinner and confer with the Nominating Committee Chair to coordinate the election and installation of officers.

Annual Programs

Diane Lucianna, Esq., Tel: 201-342-9090
Email: danieluci@aol.com

These Chairs shall oversee the organization of the programs and events and do so in coordination with other committee chairs when appropriate. The President shall designate Subcommittee Chairs, in consultation with the Annual Programs Chairs, as may be needed for organizing and promoting the following programs (if applicable) and others as the Board may determine to have: Bring Your Children to Court Day, Holiday Party, Judicial Reception, Meet & Mingle With Elected Women Officials.

**Bar Association Liaison*

Victoria R. Pekerman, Esq., Tel: 201-488-3900
Email: vpekerman@shapiro-croland.com

The Bar Association Liaison will inform the Board and/or WLIB membership of relevant information concerning happenings at the New Jersey State Bar Association, Bergen County Bar Association, American Bar Association and at other women's bar associations and diversity bars as such information may become known and to convey the interests of WLIB to these respective associations as WLIB may deem appropriate.

Bylaws

Helayne Weiss, Esq., Tel: 201-440-6300
Email: hweiss@herbertandweiss.com

Helene Herbert, Esq., Tel: 201-440-6300
Email: hherbert@herbertandweiss.com

This Committee shall review, propose and

draft bylaws amendments as needed and shall coordinate any Special Meetings called for discussion and vote and/or publication of any bylaw amendments to the membership.

Continuing Legal Education (CLE)

Kathleen A. Hart, Esq., Tel: 1-732-399-9703
Email: khart@weiner.law

The Committee shall be responsible for keeping Continuing Legal Education certification updated and organizing and assisting other members in presenting Continuing Legal Education programs. If you wish to present a program, or have an idea for a program, please contact one of the Chairs. The CLE Committee will assist to ensure that programs comply with applicable regulations so attendees receive NJ CLE credits. The Committee's goal is to provide members with an opportunity to obtain MCLE credits at a reasonable cost.

**Diversity Committee*

Nancy Lucianna, Esq., Tel: 201-947-6784
Email: nlucianna@msn.com

The Diversity Committee, in coordination with the YLD Committee and with other diversity bars, shall actively recruit diverse members to WLIB and shall consider and propose ways to increase the diversity of our membership and be more inclusive of diversity members. The Committee shall organize events and programs to encourage diversity, including co-chairing the Diversity Dinner with the BCBA.

Jean Robertson Women Lawyers Scholarship Award

Kathleen A. Hart, Esq., Tel: 1-732-399-9703
Email: khart@weiner.law

Diane Lucianna, Esq., Tel: 201-342-9090
Email: danieluci@aol.com

Helayne Weiss, Esq., Tel: 201-440-6300
Email: hweiss@herbertandweiss.com

This committee is responsible for the annual Jean Robertson Women Lawyers Scholarship award. It will notify the law schools in New Jersey of the availability of the scholarship, read and evaluate all submissions for the scholarship and decide to whom to award the scholarship. The committee shall further be responsible for inviting the scholarship recipient and guest to the WLIB Annual Dinner for the presentation of the scholarship. The committee is also responsible for providing a written update in each issue of the WLIB Newsletter.

Judicial Appointments

Helene Herbert, Esq., Tel: 201-440-6300
Email: hherbert@herbertandweiss.com

Janet B. Lurie, Esq., Tel: 201-802-9202
Email: JBLurie@mfmclaw.com

Rose Marie Manger, Esq., Tel: 201-488-0080
Email: rmangerlaw@gmail.com

The Committee shall provide information and mentoring on procedures for becoming appointed to the Judiciary and coordinate with the CLE Committee to organize an educational program concerning Judicial Appointments.

Legislation & Litigation

Tamra Katcher, Esq., Tel: 201-488-1234
Email: tkatcher@remlawgroup.com

The Committee shall seek out information concerning pending legislation and/or litigation relevant to our mission statement and the goals of this bar association and shall inform the Board and/or the general membership. The Committee shall be responsible for coordinating any public positions taken by WLIB concerning any legislation and/or litigation, including but not limited to testimony before public bodies and/or drafting of amicus briefs. The Committee shall also provide a column entitled "Legislative Update" for each issue of the WLIB Newsletter.

Membership

Cathe McAuliffe, Esq., Tel: 201-488-2030
Email: Cathemcaul@aol.com

All women attorneys who live or work in New Jersey are eligible for membership. The Membership Chairs shall coordinate with Treasurer to maintain accurate and updated information concerning membership rolls and shall coordinate with Treasurer to provide membership renewal invoices to current members and add new member information to the membership rolls and supply that information to the Newsletter Chair and Publicity Committee Chair.

Members in Transition

Linda F. Spiegel, Esq., Tel: 201- 489-1001
Email: LFSESQ@aol.com

The Committee shall provide information, mentoring and programming concerning starting or dissolving a practice (to enter the judiciary, join another firm, leaving government or other reasons), dealing with illness or disability of the lawyer (or lawyers' family members), retirement from law practice and other topics of interest to members nearing retirement, changing firms or practice areas, suffering an injury, caring for a family member or becoming a parent. Subcommittee, Seasoned Women Attorneys Group (SWAG) meets regularly for lunch and a program the second Monday of each month at Cheers in Hackensack, from 12:30 pm to 2 pm.

Newsletter

Linda F. Spiegel, Esq., Tel: 201- 489-1001
Email: LFSESQ@aol.com

Diane Lucianna, Esq., Tel: 201-342-9090
Email: danieluci@aol.com

The Newsletter is published quarterly, Fall, Winter, Spring and Summer. Anyone interested in advertising in the Newsletter should contact Victoria Pekerman, Esq. or Diane Lucianna, Esq. (co-advertising managers) at vpekerman@shapiro-croland.com or danieluci@aol.com. Members interested in writing for the Newsletter should contact Linda F. Spiegel, Esq. WLJB welcomes articles written by members, as well as book and restaurant reviews. The Newsletter also welcomes announcements from our members and encourages all members to share their news whether personal or professional in our Announcements column.

Nominating Committee

The Chair shall be the current Immediate Past President. The Nominating Committee shall make nominations of officers and trustees in accordance with the bylaws.

Publicity

Diane Lucianna, Esq., Tel: 201-342-9090
Email: danieluci@aol.com

Kathleen A. Hart, Esq., Tel: 1-732-399-9703
Email: khart@weiner.law

The Committee shall disseminate flyers and other information concerning events and news relevant to WLJB and its members and shall coordinate with the Website Committee to make sure the most current event and news information is provided to the Website Committee for posting. Notices of all WLJB events are sent out to the press/media. Please be sure to give Kathy and her committee as much lead time as possible for providing publicity for upcoming events.

Sponsorship & Advertising

Diane Lucianna, Esq., Tel: 201-342-9090
Email: danieluci@aol.com

The Committee shall solicit advertisements for the Newsletter and any Journals as appropriate. The Committee shall solicit sponsorships for membership recruitment events and other WLJB events. The Committee shall coordinate with other committees as needed to determine sponsorship and advertising needs. The Committee shall coordinate speaking engagements by members to provide community outreach and information to the public and attract advertising, sponsorship and potential clients for members. If you would like speak at an event, place an advertisement in the WLJB Newsletter, or sponsor a WLJB event, please contact the committee chairs.

WLJB Website

Victoria R. Pekerman, Esq., Tel: 201-488-3900
Email: vpekerman@shapiro-croland.com

Diane Lucianna, Esq., Tel: 201-342-9090
Email: danieluci@aol.com

Nancy Lucianna, Esq., Tel: 201-947-6468
Email: nlucianna@msn.com

Linda F. Spiegel, Esq., Tel: 201- 489-1001
Email: LFSESQ@aol.com

The Committee shall keep website updated and make adjustments as may be necessary from time to time and act as a liaison to the webmaster and any other outside vendors

providing web services. The Committee shall coordinate with the Membership Committee to provide website access to members and others as appropriate and make efforts to build and maintain an online directory. The Committee shall post event information and newsworthy information on the website. Any announcements for the website should be submitted to the Chairs via email. Any suggestions for additional features on the website are always welcome.

Women Rights Information Center

(WRIC)

Helene Herbert, Esq., Tel: 201-440-6300
Email: hherbert@herbertandweiss.com

Helayne Weiss, Esq., Tel: 201-440-6300
Email: hweiss@herbertandweiss.com

The Committee shall solicit and manage members to volunteer for the pro bono legal consultation sessions in the areas of family and immigration law hosted at the Women's Rights Information Center (WRIC) and schedule attorneys in advance to provide the consultations. The consultations are limited to 30 minutes. There is a great need for bilingual English/Spanish volunteer attorneys. Any interested members should contact the Chairs for more information.

Young Lawyers Division

Sarah Gloates Horta, Esq., Tel: 201-540-9017
Email: sarah@snglaw.com

Toni Ann Marabello, Esq., Tel: 201-802-9202
Email: tmarabello@mfmclaw.com

The Committee shall organize the Law Clerks Welcome and conduct membership outreach with the incoming law clerks and maintain follow-up contact information and outreach with outgoing law clerks. The Committee shall also conduct outreach with law students and recruit new women members of law firms in Bergen County, the Bergen County Bar Association and any other women attorneys either living or working in New Jersey to join WLJB.

Members of the Young Lawyers Division: Jacqueline Shulman, Esq., Jennifer Berardo, Esq., Adelina Herrarte, Esq., and Nicole Parelli, Esq.

* Denotes a special (non-standing) committee. Some special committees may become standing committees by way of bylaw amendment. Others have been formed for a specific event.

WLIB

WOMEN LAWYERS IN BERGEN

Women Lawyers in Bergen | 79 Main Street | Suite #1 | Hackensack, NJ 07601 |

Calendar of Events

January 2022

| | | |
|--------------------|----------|---|
| Monday, January 10 | 12:30 pm | SWAG Meeting via Zoom. Panel discussion, "Of Counsel, What does it mean and What opportunities are available?" Panelists, Jennifer Borg, Esq., Janet Lurie, Esq. and Jeanne O. Marino, Esq. |
| Monday, January 17 | 5:30 pm | WLIB Board Meeting via Zoom. |

February 2022

| | | |
|---------------------|----------|--|
| Monday, February 14 | 12:30 pm | SWAG Meeting via Zoom. Beverly Williams, Esq. will be our host and she has invited Dr. Lynn Steinberg to speak on parental alienation and reunification therapy. |
| Monday, February 17 | 5:30 pm | WLIB Board Meeting via Zoom. |

March 2022

| | | |
|---------------------|----------|----------------------------------|
| Monday, March 14 | 12:30 pm | SWAG Meeting via Zoom. Topic TBD |
| Monday, February 17 | 5:30 pm | WLIB Board Meeting via Zoom. |

April 2022

| | | |
|------------------|----------|----------------------------------|
| Monday, April 11 | 12:30 pm | SWAG Meeting via Zoom. Topic TBD |
| Monday, April 18 | 5:30 pm | WLIB Board Meeting via Zoom. |

Board Meetings are currently being held via Zoom and are open to all members. Contact Linda F. Spiegel, Esq. for Zoom invitation if you wish to attend the board meeting, LFSSESQ@aol.com.

Board Meetings are usually held the third Monday of every month.

President

Victoria R. Pekerman, Esq.
(201) 488-3900 vpekerman@shapiro-croland.com

Vice President

Diane Lucianna, Esq.
(201) 342-9090 danieluci@aol.com

Treasurer

Tamra Katcher, Esq.
(201) 488-1234 tkatcher@remlawgroup.com

Secretary

Sheila O'Shea-Criscione, Esq.
((201) 373-2219 oshea@carcichoshea.com

Editor-in-Chief

Linda F. Spiegel, Esq.
(201) 489-1001 lfsesq@aol.com

Advertising Manager

Diane Lucianna, Esq.
(201) 342-9090 danieluci@aol.com

Immediate Past President

Helayne Weiss, Esq.
(201) 440-6300 hweiss@herbertandweiss.com

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Diane at (201)342-9090

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