

WLIB NEWSLETTER

WOMEN LAWYERS IN BERGEN

Volume 11

Summer 2022

SPEECH GIVEN AT WLIB ANNUAL DINNER BY VICTORIA PEKERMANN, ESQ.



Good evening and thank you all for joining us tonight. It is so wonderful to see everyone in person! I'm so

delighted to see so many members of our judiciary, the WLIB executive board, BCBA President, Jason Foy, BCBA Executive Director, Jackie Guenego, all our WLIB members, colleagues, friends and family in attendance. A special thank you to our Assignment Judge, Bonnie J. Mizdol, who has been a constant supporter of WLIB and admirably led the Bergen County judiciary throughout the height of the Covid-19 pandemic. Judge Mizdol epitomizes everything we admire and respect about Women Lawyers in Bergen and we are very grateful that she has agreed to be our guest speaker tonight.

As I pass the torch to new leadership, I want to say a few words. It has been my distinct honor and privilege to serve as President of WLIB for the past two years. Admittedly, they have not been without challenges and adversity. Individually and as a group we all faced obstacles personally and professionally. But I am proud of our perseverance and resilience as we not only survived but thrived notwithstanding the pandemic and I can say without hesitation that we are stronger than ever!

I am particularly proud of the way we handled the challenging times by adapting to virtual programming so that we could continue providing our members



and legal community with CLE's, annual programs and new programs. Although I like to think all our programming was exceptional, I want to reflect on a few events that stuck out as some of our greatest accomplishments. We continued our tradition of hosting a Law Clerk reception in the fall which we held via Zoom. The events were extremely well attended by all the Bergen County Judges and their law clerks. I especially thank Judge Mizdol for her leadership and support of this program. I have always believed that mentoring the new generation of lawyers and encouraging them to take on leadership positions was important. I'm glad we were able to do that and I feel it is among the most rewarding aspects of being a member of WLIB.

We also continued to host our annual Meet and Mingle event with female elected public officials. This year we honored retired Senator Loretta Weinberg and Senator Holly Schepisi. Thank you to our incoming President Diane Lucianna and our officers for organizing and hosting this wonderful

event. It was so great to connect with our female local officials.

Lastly, but certainly not least, I want to applaud our efforts in continuing to provide Bergen County attorneys with CLE programs on relevant topics and our SWAG events. For those who don't know, SWAG stands for "Seasoned Women Attorneys Group". Be on the lookout for our future events organized by our long time member and editor of our Newsletter, Linda Spiegel. We thank Linda for her many contributions and all of her time to this organization. I also want to thank Kathy Hart, Eileen Mulroy and Cathe McCauliffe for all the work they continue to do for WLIB.

Because we were unable to meet for our Annual Dinner two years ago, I would like to take this opportunity now to thank my predecessor and friend, Helayne Weiss, for her dedication and unwavering support in guiding me and for being a champion of WLIB. Your strength is inspiring! Thank you, Helayne.

I would also like to thank the Executive Board who helped me tremendously over the past two years. Tamra Katcher, our

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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 McCauliffe, Esq., Membership Chair at 201-488-2030 or cathemcaul@aol.com.

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When you have to adopt your own child...

By: *Debra E. Guston, Esq.*

The New Jersey Parentage Act¹ includes what has come to be known as “the marital presumption.” This rebuttable presumption states that a man is presumed to be the father of a child when the child is born while the mother and presumed father are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment or divorce. In the years since the enactment of the New Jersey Civil Union Act² this provision in the parentage act has been read, generally, in a gender-neutral fashion, thus enabling the female spouse or civil union partner of a woman who is giving birth to be named on the child’s birth certificate as a second parent.³

Lesbian couples have often asked, then, “why should the non-gestational mother have to adopt her own child?” Similarly, men whose wives have needed donor sperm to conceive may have similar concerns. The reason for the necessity of adoption becomes clear after an evaluation of two significant issues.⁴

First, in New Jersey, the Supreme Court has held that a birth certificate is not proof of parentage.⁵ The reasoning is that a birth certificate is a self-reported record, not based on genetic information, but based on the acknowledgement of the mother and the second parent. While the non-gestational mother acknowledges parentage when signing consent for the issuance of a birth certificate with her name listed as a parent, that does not irrevocably rebut potential claims of a genetic father. This makes birth certificates reliable only for proof of the date, time and place of birth of the child, the woman’s name who delivered the baby and the name given to the child at birth.

Second, and perhaps most compelling, is the lack of uniformity of parentage laws across the country and around the world. Some states have no parentage laws, such as our neighbor Pennsylvania, which relies on common law for most parentage determinations. Some states have adopted the modern, inclusive Uniform Parentage Act of 2017, which deals fully with both same-sex parents and assisted reproduction in all of its modern practice. And some states, remain hostile to same-sex parents and to different-sex parents using donor gametes or surrogacy to have a child and require post-birth adoptions to confirm parentage. This patchwork of law in our mobile society makes it imperative for there to be a process to secure the parentage rights of a non-gestational or non-genetic parent in a marriage or civil union.

The concept of a “second-parent” adoption has been prominent in New Jersey adoption law since the 1990’s. Anecdotal evidence from the 1980’s exists that Family Court judges, sympathetic to lesbian couples wishing to have legal standing for the non-gestational mother would have the gestational mother judicially surrender her parental rights and then grant a joint adoption to the couple. Hardly

a satisfying experience for the couple, but at the time, a means to an end. By the late 1980’s, some judges were growing more comfortable with granting second-parent adoptions, although there was no case to support their determinations. Couples would be required to have a home study, required background checks for the adopting parent and a hearing would be held. Lawyers advised clients not to begin this process until the child was old enough to have formed a parent-child bond with the adopting parent, often delaying these adoptions until a child was two or three years old.

Then came a break and a fundamental change. A Bergen County couple was denied a second-parent adoption. On appeal⁶, Judge Pressler writing for the majority, found that same-sex couples could be analogized to different-sex couples where one was a stepparent seeking to adopt their spouse’s child. The stepparent adoption statute permits the adoption of a child by one adult, while terminating ONLY the rights of one of the parents. Thus, for example, a divorced woman whose former husband is not providing support for a child of the marriage can have her new husband adopt without disturbing her rights. Recognizing that same-sex couples could not yet enter into a legal relationship that would grant them access to the stepparent adoption statute procedures, the Appellate Division found that, as a court of equity and in the child’s best interests, such adoptions could be granted. It was not wasted on the court that the opinion from the trial court was overtly hostile to the lesbian couple before it. This case had been preceded by a carefully managed trial court matter in which the trial court judge wrote an opinion outlining many of the same underpinnings of the H.N.R. decision.⁷

So, since 1995, same-sex couples, both male and female have been boxed into a framework that bears some, but not all relationship to the facts of their families. Under the stepparent regime, the adopting parent must undergo background checks. The court, may, but is not required to waive a home study.⁸ The parties are required to appear before a judge and if the child is older than 10, the child must testify.⁹ This applies equally to non-genetic fathers whose wife has conceived with the use of donor sperm.

To cure these inequities, with the enactment of the civil union law and adoption of marriage equality in New Jersey, it was apparent there needed to be a new statute that would allow for the marital presumption to be made irrebuttable in a form that would be universally recognized, but less burdensome and granting more dignity to the family. Judgments of adoption are that universal currency. It often surprises people, given current events, that the United States Supreme Court, in its latest case dealing with the Full Faith and Credit Clause of the United States Constitution¹⁰ held that

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1. N.J.S.A. 9:17-43

2. N.J.S.A. 37:1-28, et seq.

3. This presumes that donor sperm was secured for conception from a donor who legally waived any parental rights at the time of the donation. N.J.S.A. 9:17-44

4. A third reason occurs frequently where a non-gestational/non-genetic parent holds dual citizenship and wishes to apply for citizenship in another country for their child. Adopted children will most likely be accepted, while child only presumed to be the child of the dual-national parent, almost never.

5. In re T.J.S., 419 N.J. Super. 46 (App. Div. 2011), aff’d, In re T.J.S., 212 N.J. 334 (2012)

6. Adoption of Two Children by H.N.R., 285 N.J. Super. 1 (App. Div. 1995)

7. Matter of Adoption of Child by J.M.G., 267 N.J. Super. 622, 632 A.2d 550 (Ch. Div. 1993).

8. N.J.S.A. 9:3-48(a)(4)

9. N.J.S.A. 9:3-49

10. Article IV, Section 1: Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

New Jersey Family Collaborative Law Act Privilege Upheld by Hon. James J. Ferelli, JSC

By: Marcia K. Werner, Esq. with credit to Amy Wechsler, Esq. and Cheryl Connors, Esq. who co-wrote the Amicus brief of the New Jersey Council of Collaborative Practice Groups

In a recent Burlington County personal injury case, the Privilege codified in the New Jersey Family Collaborative Law Act N.J.S.A. 2A:23D-1 et seq. was upheld by Hon. James J. Ferelli, J.S.C. The decision was not published and was delivered orally. The caption is Susan Opperman and Anthony Opperman h/w v. Macerich, Inc.; Freehold Raceway Mall; Viox Services, Inc.; Emcor Ins.; ABC Corporation(s) III-X (as entities that own or maintain Defendant, Freehold Raceway Mall); and Paul & Marc Construction t/a PCMI Paving, individually, jointly, severally, or in the alternative. Docket Number BUR-L-2042-18.

How the issue came to be presented to the Court is intriguing. Mr. and Ms. Opperman decided to divorce using the collaborative process. Collaborative family law is an alternative form of dispute resolution designed to foster the resolution of divorce and family issues respectfully and equitably without court intervention. Each family's unique concerns are addressed in a private and confidential process often involving mental health and financial professionals.

Confidentiality is an essential hallmark of the collaborative process, as it is necessary to facilitate a framework for effective and open communication in an environment of trust. A participation agreement is signed by the parties reinforcing the bases for working collaboratively. The confidentiality privilege is an essential part of the participation agreement and is codified in the Statute.

Unfortunately, during the collaborative process, Ms. Opperman sustained an injury which resulted in litigation. A per quod claim was filed on behalf of Mr. Opperman. Equally unfortunately, the collaborative process was unsuccessful. The parties hired litigation counsel since an attorney who has represented a client in the collaborative process cannot then represent them in litigation.

Counsel for the defendants in the personal injury litigation sought extensive discovery and to take the depositions of the professionals involved in the collaborative proceeding, claiming that it was necessary to determine the status of the parties' marriage at the time of Ms. Opperman's injury. The collaborative professionals invoked the privilege. A motion to enforce the discovery subpoenas was filed. The State Council of Collaborative Practice Groups sought leave to file and did file an amicus brief.

While the New Jersey Family Collaborative Law Act was passed in 2014, the Uniform Law Commission had drafted the Uniform Collaborative Law Rules and Act in 2010 pointing out that, at that time, roughly 22,000 lawyers worldwide were trained in collaborative law, that collaborative law has been used to resolve thousands of cases in the United States, Canada and elsewhere, that the IACP (International Association of Collaborative Professionals) had more than 3,600 lawyer members, and that collaborative law practice groups had been organized in virtually every state in the nation as well as in other countries. Over 20 states in the U.S. have enacted collaborative law statutes.

The Uniform Collaborative Law Act creates an evidentiary privilege for collaborative law communications which are sought to be introduced in evidence. Per the Commission, this is a key provision of the law viewed as a crucial prerequisite to a successful resolution of the

collaborative matter. Without assurances that communications made during the collaborative process will not be used to their detriment later, parties, collaborative lawyers and nonparty participants, such as mental health and financial professionals, will be reluctant to speak frankly, test out ideas and proposals, or freely exchange information impairing the full use of the collaborative process.

In enacting the New Jersey Act, the Legislature made express findings and declarations regarding the privilege necessary for the collaborative family law process, stating -- "In order to facilitate full and fair disclosure by the parties to the family collaborative law process, the parties must have an evidentiary privilege to protect them from disclosure of any collaborative communication. The nonparty participants in the family collaborative process, who serve as neutral experts, need a privilege from disclosure of communications made by them during the process similar to the privilege created for mediators in the 'Uniform Mediation Act.'"

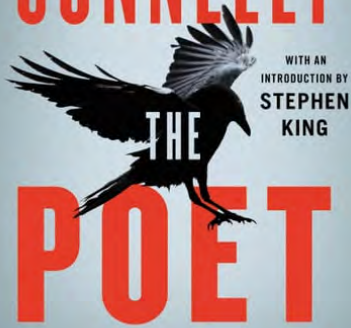
The Act provides for specific, narrow and limited exemptions from the privilege if a threat of bodily injury is made; a child is threatened; statements were made in a public setting; there is agreement of the parties; the evidence is not otherwise available in a court proceeding involving a crime or in a proceeding seeking rescission or reformation of a contract arising out of the family collaborative law process; or in a malpractice or professional misconduct case related to the family collaborative law process. The New Jersey Council of Collaborative Practice Group argued that none of the exemptions applied in the Opperman case.

The Court heard oral argument on November 30, 2021. The Council's motion for Amicus status was granted. Amy Wechsler, Esq. appeared for the Council and elucidated the importance of the statutory collaborative privilege and the strength and breadth of its reach. Judge Ferelli concluded, "But the one main issue that has generated the most argument, written argument, is the issue of the plaintiffs' [the Oppermans] placing their divorce directly at issue in this case by the husband plaintiff filing the loss of consortium claim and some of the testimony apparently of the wife plaintiff about the impact of the accident on her emotional situation. I think that with regard to the collaborative, the information with the attorneys involved in the collaborative process, there's a privilege there under the statute N.J.S.A. 2A:23D-13 is the section in the statute. The statute starts at D-1 but the privilege section is covered in D-13. D-14 does have a waiver of privilege. And I am cognizant of the fact that evidence that is otherwise admissible doesn't become cloaked with a privilege just because a party gives the information or the documents to the lawyer. I mean that's a pretty basic principal [sic] of discovery. Nevertheless, the discovery has got to be reasonable...the rule that with regard to the collaborative, the discovery for the collaborative process, I'm not going to force waivers, order waivers to be signed."

This was an issue of first impression in New Jersey and based upon the research of the writers of the Amicus brief, also in the United States. Judge Ferelli's decision to uphold the Collaborative Privilege has given increased gravitas to the practice of collaborative divorce throughout the worldwide collaborative community. 🙌

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**MICHAEL
CONNELLY**



Book Review

By: Tamra Katcher, Esq.

The Poet *By Michael Connelly*

As a criminal defense attorney and former prosecutor, one would think that the books I choose would give me an escape from my everyday routine. That, however, is NOT the case. In law school I was addicted to

Law and Order on television and John Grisham books in my backpack during my commute into NYC on the Path. Things have not changed in the 20+ years I have been practicing and I still gravitate to the cop drama, investigative story books that litter the shelves of many bookstores – because apparently, I am not alone in my reading preferences! I am also a huge fan of second-hand stores and found this particular book at the Spring Rummage Sale for the Visiting Nurses in Far Hills – I highly recommend taking a drive –

they open again in the Fall (FYI)! ...but I digress.

I was drawn to Michael Connelly after getting hooked on the show “Bosch” on Prime Video. The show (and now the sequel “Bosch Legacy”) is based on Connelly’s character Detective Hieronymous Bosch, a Los Angeles Police Department Homicide Detective. So, when I saw this book (and others) by Connelly on the shelf (I got 5 books for \$2!) I had to bring them home.

The Poet is an adventure ridden investigation into a serial killer. Jack McEvoy, the main character, is a reporter whose beat is homicide investigations. Jack is woken up by two homicide detectives in the middle of the night after Jack’s brother, a homicide detective, is found dead with a single bullet wound to his head. There is a note of sorts and on the inside of the windshield a quote from an Edgar Allan Poe poem. The police easily call it a suicide since Jack’s brother had been despondent over an unsolved case. But Jack doesn’t believe it. He knows that his twin brother would never have committed suicide. Since the crime scene is on federal property, the FBI’s Behavioral Science Unit (BSU) gets called in to investigate. The feds are not happy that a newspaper reporter is poking around but Jack wins their

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Restaurant Review

By: Kathleen A. Hart, Esq.

Limoncello
Ristorante

32 Franklin Turnpike
Waldwick, NJ 07463
(201)652-5577



Tucked away in a corner of a strip mall in Waldwick is Limoncello. We had never gone, even though it has been in town for a good number of years. On a recent Saturday, my husband was craving his favorite pasta, so we decided to give it a try.

Limoncello is a BYOB and very unassuming. There is outside dining but it was a little chilly and we opted to head inside to the dining room. We arrived early and were surprised by how crowded the dining room was at the early hour. The host seated us at a table next to the window. The dining room is bright and swathed in a yellow tone. As most tables were occupied, the dining room, especially in the back, was quite noisy.

Once seated, the server opened our wine and brought

complimentary garlic bread and olives. It was a welcome treat. The garlic bread was warm and garlicky and a nice start to our meal. Limoncello does have an “early bird – price fix” on its menu from 4-6 pm. Since we were dining just before 6, I opted to order from that menu, and my husband ordered from the regular menu.

The price fix has choice of soup or salad, entree and dessert for \$22.95. I ordered the Caesar salad to start and


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WLIB Annual Dinner

June 13, 2022



 WOMEN LAWYERS IN BERGEN	
Annual Dinner & Installation of Officers June 13, 2022	
Welcome/Pledge of Allegiance	Tamra Katcher
Introduction & Acknowledgement Of Past Presidents	Diane M. Lucianna
Past President's Remarks	Victoria Pekerman
Remarks and Installation of Officers	Hon. Nina Remson
President Vice President Treasurer Secretary Immediate Past President	Diane M. Lucianna Tamra Katcher Sheila O'Shea-Criscione Helene Herbert Victoria Pekerman
New President's Remarks	Diane M. Lucianna
Presentation of The Jean Robertson Scholarship to Farida Shawkat	Hon. Ellen Koblitz
Presentation to Court Care Center	Diane M. Lucianna
Introduction of Guest Speaker	Victoria Pekerman
Guest Speaker	Hon. Bonnie Mizdol
Music and Vocals (Courtesy of Carcich & O'Shea, Esq.)	Tommy Walker, Ace In The Hole Production





Title IX 50 Years Later: Successful In Bringing About Change, But Is It Still Necessary?

By: Ellen Marie Walsh, Esq.

Those of us whose school experiences included playing a sport, can credit that experience to Title IX. For me, it was soccer. The girls' team I joined in fourth grade was the first girls' soccer team in my town. By the time I got to high school, girls sports were burgeoning and the girls' soccer team was a statewide powerhouse. I was aware, but perhaps did not appreciate, that my experience with sports was far different than my mother's. The landscape of sports for females had changed drastically, though that was not necessarily the original intent of the Title IX legislation.

Title IX is a statute which was enacted on June 23, 1972 to protect women with regard to equality in their education. It states,

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance. 20 U.S.C. 1681

In piecing together these 37 words, the drafters were thinking about the home economics and typing classes to which female students were relegated, the occupations for which female students were allowed to train, and the paths that female students took after high school. And these things have changed drastically since the passage of Title IX fifty years ago. Today, female students are encouraged to and, at an increasing rate, are taking STEM (Science Technology Engineering & Math) classes. Female students make up 60% of the students attending college, and more female students are obtaining master's degrees and doctorate degrees than men. In the work force, more and more women are becoming construction managers, civil engineers and veterinarians, whereas 50 years ago those women who had a college education tended to be teachers or nurses. These changes align with what the drafters intended.

Perhaps not anticipated, but also important is Title IX's impact on high school and collegiate sports. Most high schools and colleges receive financial assistance and, therefore, fall under the ambit of Title IX. As a result, it was not long after Title IX was enacted, that female students brought claims asserting that Title IX entitled them to equity in sports.

The question became, what does that equity look like? This has been debated and litigated over the past fifty years. In the early years, the argument was made that female students had less interest and ability regarding sports. This argument has largely been negated due to the explosive increase in participation in female sports. In fact, NCAA statistics reveal that female athletes at the collegiate level increased by twenty-five percent in the first twenty years after Title IX was passed. However, another argument has proved more troublesome. That argument is that male sports generate more fans and revenue. Certainly, with regard to football and basketball at the college level, this cannot be denied. But, what impact, if any, should

a sport's revenue producing ability have on how the words of Title IX are interpreted and enforced?

The Office of Civil Rights (OCR) within the United States Department of Education has set forth three tests by which an institution can demonstrate substantial compliance with the requirement of Title IX. Generally, schools do not need to demonstrate that the same exact sports teams are available for females as for males, nor that the same amount of money is spent on females as is spent on males. Instead, the inquiry is whether institutions are providing participation opportunities that are substantially proportionate to enrollment rates. Or, can the institution show a history of expansion of opportunities for the underrepresented sex. The third and most challenging test to meet is whether an institution has fully and effectively accommodated the interests and abilities of the under-represented sex.

As a result of Title IX and in an effort to demonstrate compliance with the tests enunciated by OCR, high schools and colleges increased female sports opportunities. Today, female students can wrestle, play ice hockey and even football. Nevertheless, not all educational institutions have been able to avoid litigation. For example, in 1991, students brought a class action suit against Brown University over its decision to reduce the women's gymnastics and volleyball teams from varsity to club status. The court determined that Brown University did not comply with any of the three OCR tests. It noted that, with the demotion of the two sports, the proportion of female students participating in varsity sports was less than the proportion of female students enrolled at Brown. Further, it noted that Brown could not demonstrate a history of expanding its varsity opportunities for female students. Finally, the court also found that given the nature of the lawsuit, Brown could not demonstrate it had accommodated the interests and abilities of female athletes. Thus, Brown was ordered to restore both women's teams.

This case is representative of many other Title IX cases seeking the restoration of, or creation of, women's teams at educational institutions. Other cases have examined inequities concerning facilities, equipment, budgets, schedules, etc. between men's sports and women's sports. Congress passed the Equity in Athletics Disclosure Act, 20 U.S.C. 1092(g) in response to these cases. This legislation requires institutions to report annually to the Department of Education detailing student participation numbers, recruiting expenses, scholarship amounts, staff salaries, program expenses and revenues, etc. These reports are publicly available and are used to evaluate the effectiveness of Title IX.

Some complain that due to this litigation, non-revenue producing men's teams are eliminated to create opportunities for female athletes. In essence, the revenue producing sports (generally men's teams) end up funding the female teams. Title IX litigation

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SUMMER 2022 LEGISLATIVE, US SUPREME COURT AND NEW JERSEY COURTS UPDATE

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 2022-2023 Session Bills Passed between March 21 and June 24, 2022

Police and Fire Chiefs/extension of mandatory retirement age
A2158/S1367 (P.L. 2022 c. 9) (April 12, 2022) Permitting police chief of chief of a fire department to continue to serve as police or fire chief beyond previously set mandatory retirement age of 65 if attainment of age 65 occurs within the 24 months after passage of the act.

College Financial Aid/Law Enforcement Officer Memorial Scholarships Program

S1885 (April 12, 2022) Revises State financial aid requirements to align with simplification of Free Application for Federal Student Aid under federal law.

Automobiles (but also Estate Planning)

S906/A2847 (May 9, 2022) Authorizes transfer on death (TOD) of title to motor vehicle.

Introduced/In Committee/Pending

NJ Child Tax Credit

S2523/A3852 (Introduced May 9, 2022; Transferred to Assembly Budget Committee June 27, 2022) Establishes New Jersey Child Tax Credit program.

Extradition relating to Reproductive Health

A3974/S2642 (Introduced May 12, 2022; Transferred to Assembly Budget Committee June 27, 2022) Prohibits extradition of individual to another state if conduct relates to reproductive health services and is legal in New Jersey.

Firearms

A509/S504 (January 11, 2022, Introduced; June 23, 2022

Reported out of Assembly Committee with Amendments, 2nd reading) Increases from 18 to 21 age at which person is eligible to receive firearms purchaser identification.

Commerce and Economic Development (January 11, 2022 Introduced; June 9, 2022 Reported and Referred to Assembly Commerce and Economic Development Committee) Allows corporation business tax and gross income tax credits to businesses employing certain persons with developmental disabilities.

Sampling of Reported Decisions United States Supreme Court

Fourteenth Amendment/Abortion

Dobbs, State Health Officer of the Mississippi Department of Health, et al. v. Jackson Women's Health Organization, et al. United State Supreme Court; June 24, 2022 (No. 19-1392)

Facts: Mississippi's Gestational Age Act prohibited the abortion of fetuses of more than 15 weeks of gestational age, except in medical emergency or case of severe fetal abnormality. Respondents Jackson Women's Health Organization, an abortion clinic, and one of its doctors challenged the Act in Federal Court, alleging violation the established right to abortion provided in the Court's opinions issued in Roe v. Wade 410 U.S. 113 (1973) and Planned Parenthood of Eastern Pennsylvania v. Casey, 505 U.S. 833 (1992). The District Court granted summary judgment in favor of respondents and permanently enjoined enforcement of the Act; Fifth Circuit Affirmed. The Appellants defended the Act on the grounds that Roe and Casey were wrongly decided and that the Act is constitutional because it satisfied rational-basis review.

Held: The United States Constitution does not confer a right to abortion; Roe v. Wade (holding that a woman's decision to terminate her pregnancy is a liberty protected against state interference by the substantive component of the Due Process Clause of the Fourteenth Amendment) and Planned Parenthood of Southeastern Pennsylvania v. Casey, holding that Roe v. Wade's central holding was valid and that a state may enact regulations to further the health or safety of a woman seeking an abortion, but may not impose unnecessary health regulations that present a substantial obstacle to a woman seeking an abortion) are overruled; the authority to regulate abortions is returned to the states.

Fourteenth and Second Amendment/Firearms

New York State Rifle & Pistol Association, Inc., et al. v. Bruen, Superintendent of New York State Police, et al. United State Supreme Court; June 23, 2022 (No. 20-843)

Facts: The State of New York makes it a crime to possess a firearm without a license, whether inside or outside the home.

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Looking for a day trip for the family this summer? Check out the new Legoland Resort in Goshen, New York. My husband and I took our kids – ages 14, 11 and 9 – to the new theme park during spring break. As a proud Dane, I am happy to inform that Lego bricks were created by Ole Kirk Christiansen in Denmark in 1949. The Lego brick design was patented by his son in 1958 and the first Legoland park opened in Billund, Denmark in 1968. In 2000, Lego bricks were named “Toy of the Century” by Fortune magazine. Legoland New York is the ninth Legoland in the world and the third in the U.S. (the other parks are located in California and Florida). No matter your age, you can expect to say “how’d they do that” at least a few times during your trip to Legoland New York. There are over 15,000 Lego models throughout the park!

Legoland New York officially opened in May 2021, however admission was significantly limited due to the pandemic. The park opened without restrictions for the 2022 season on April 8, 2022. (While the hotel is open year-round, the theme park is only open seasonally.) Goshen is a 45-minute road trip from Bergen County so it’s an easy ride. If you don’t feel like driving home, there is the 250-room Legoland Hotel located next to the theme park. The hotel features Lego-themed rooms and an outdoor pool.

Like other theme parks, Legoland is not cheap. Day passes run from \$67.99 per person on off-peak days up to \$84.99 during the summer and weekends. Seasonal passes start at \$149.99 and can cost up

to \$299.99 per person. There is also a required parking fee of \$25.00. The passes include all rides and shows throughout the park. The park is cashless and food orders at the various eating areas and snack stands are done via kiosks or an app for your cellphone so leave your cash at home.

Although the park is targeted to kids ages 2-12 and Lego enthusiasts of every age, there are plenty of rides and hourly shows to keep everyone busy. The park is set on 150 acres with plenty of room for expansion (more on this later). The park is built on a hill with seven “lands” connected to each other in a circle. A stroller is a must for little ones and those who have trouble walking should bring a wheelchair since there will be a lot of walking (strollers are available for rent in case you forget). As always, bring lots of sunscreen (it is available for purchase in the park in case you forget).

As you enter the park on Brick Street, you are greeted by a giant Lego dinosaur made from over 180,000 Lego and Duplo bricks – the first “how’d they do that” moment of the day for us! There is a carousel for all ages as well as the Lego Store on Brick Street. Tip: Do not skip the store – it has a great selection of Lego products as well as exclusives that you won’t find anywhere else. For the Lego builders out there, you can get any color or shaped Legos you want at the store so don’t skip it! Beyond Brick Street is Bricktopia which has areas where you can build and race your own Lego racecar or build your own Minifigures with an endless supply of pieces – my kids especially liked creating their own personal Minifigures. The highlight of Bricktopia is the Lego Factory Adventure

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Covid Escapes

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Ride. The ride takes you on the journey through the making of a Lego brick and is the first of its kind – it can only be found at Legoland New York.

Other “lands” include Ninjago World, based on the Ninjago toy theme and Asian culture. My kids really liked the 3D Ninjago Ride that is interactive and allows riders to shoot at targets throughout the ride. Lego Castle land includes the Dragon roller coaster that was a big hit with my kids (there is a smaller Dragon Apprentice ride for younger kids). Lego City land includes the Coast Guard Academy which allows riders to drive their own boats on a closed course and Driving School in which kids ages 6-12 drive cars on a closed course that simulates a city environment. Pirates land has water based rides and games that my kids really enjoyed – especially on a hot day! The Anchors Away Splash battle got everyone wet but we had a ton of laughs!

At every “land,” there are rides for both younger and older kids as well as food stands and restaurants so there are plenty of opportunities to stop for burgers or funnel cakes as you make your way throughout the park. We visited the park during peak time of spring break so the park was crowded.

Lines for the popular rides were bearable, however there is option on the park app – for a fee – to skip the lines similar to Disney’s Lightning Lane/Fast-Pass. In addition to the rides, there are various shows throughout the park. My family loved the Lego City 4D: Office in Pursuit show – the 3D glasses along with the laser and water effects had us laughing & yelling throughout the 15 minute show.

My favorite part of the park was Miniland – 10 sections of models built using real Lego pieces that replicate real world cities and towns. There are iconic buildings from Las Vegas, Washington D.C. and of course, New York City. Some of the models are interactive – you can use buttons and levers for lights or to move cars, etc. I think we must have uttered “how’d they do that” at least a dozen times! You can spend an hour just looking at all of the buildings and models – it is truly amazing!

The last part of Legoland New York – Sea Life – is not yet built but will include an aquarium. While there was some construction on a small water play area for younger kids in Lego City, it did not detract from our park experience. Overall, Legoland New York is a great day trip for Bergen County families and Lego lovers of all ages and will only get better as the park is completed and expanded. 🐼





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Ketanji Brown Jackson New Supreme Court Justice

by Derek Wafer**

Ketanji Brown Jackson has a unique first name because her Aunt, who was in the Peace Corps in West Africa, sent her parents a list of African girl's names and they selected Ketanji because it meant "lovely one". She grew up in the Miami area with her parents and her brother, who was ten (10) years older. She became interested in the law because of her father who was in law school while she was a child and would eventually become chief attorney for the Miami-Dade school system.

Jackson went to Miami Palmetto high school, the same high school that Jeff Bezos and two-time U.S. Surgeon General Vivek Murthy attended and was elected Student Body President. She told her high school guidance counselor that she wanted to go to Harvard and was told "don't set your sights so high", although she was voted "most likely to succeed". She later attended Harvard College and graduated Magna Cum Laude. During her time at Harvard, she was a member of an improv troupe called "On Thin Ice" and was in a drama class where she was a scene partner to Matt Damon. She attended Harvard Law School where she was editor of the Harvard Law Review and graduated Cum Laude.

In 1996, she married Patrick Jackson, a white man, who she met while studying at Harvard. He is a surgeon at MedStar Georgetown University hospital, and she has labeled them an "unlikely pair". They have two daughters, Leila and Alia, who are now 21 and 17 years old respectively.

Justice Jackson clerked for the U.S. District Court for the District of Massachusetts and then entered private practice to "cover her bills", working at a small Washington, D.C. law firm. She left the firm to serve as a clerk for Supreme Court Justice Stephen Breyer from 1999 to 2000, working 14-to-16-hour days. After that she followed her husband to Boston for his surgical residency and became a law associate at a law firm while pregnant with her first child.

Justice Jackson was an Assistant Federal Public Defender in Washington, D.C. in from 2005 to 2007 and one of her more notorious cases was representing an alleged terrorist at Guantanamo Bay. In 2012 President Obama nominated her for a D.C. District Court judgeship and he later interviewed her as a potential candidate for nomination to the Supreme Court after Justice Antonin Scalia died in 2016. Jackson is also known for being the judge who, in 2017, sentenced the "Pizzagate" conspiracy theorist who fired a gun inside a Washington, D.C. restaurant to four (4) years in prison. In 2019 as D.C. Federal District Court Judge she blocked the Trump administration from expanding its powers to fast-track deportation of undocumented immigrants via an expedited removal process, but that injunction was later reversed. In 2019 she declared that former White House aide Don McGahan had no immunity from testifying regarding Russian election interference. She wrote in her 120-page decision "Presidents are not kings". She authored 578 opinions while on the D.C. District Court and ten were reversed. In



2021 she was confirmed to the U.S. Court of Appeals, and she was part of a 3-judge panel that rejected Trump's attempt to shield White House papers from investigation by the January 6th capital riot investigation.

Justice Jackson is related by marriage to former Republican Vice-Presidential candidate and House Speaker Paul Ryan. Her brother-in-law is married to Ryan's sister-in-law. She has an Uncle, Thomas Brown, who was sentenced in 1989 to life in prison in Florida for a nonviolent drug offense. Later President Barack Obama commuted his sentence. Her other Uncle, Calvin Ross, was

Miami's police chief from 2005 to 2007.

She continues to give back to her Alma Mater as a member of Harvard's Board of Overseers, their Executive Committee and has taught a handful of classes at Harvard Law on trial advocacy and federal sentencing.

The motto in her household is "do what you need to do before what you want to do". She credits three factors for her success: hard work, big breaks, and tough skin.

When she was introduced as President Biden's nominee for the U.S. Supreme court she exclaimed "I can only hope that my life and career, my love of this country and the Constitution, will inspire future generations of Americans." 🙌

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**Derek Wafer is the son of Diane Lucianna, Esq., currently a paralegal in her law firm and will be attending law school in August 2022. He is a student member of WLIB.

Jean Robertson Update

By: Kathleen A. Hart, Esq.

On June 13, 2022, Farida Shawkat was awarded the 2022 Jean Robertson Women Lawyers Scholarship at the WLIB Annual Dinner. Farida is a third-year law student at Seton Hall School of Law and obtained an undergraduate degree in biomechanical engineering from Rutgers University. Farida plans on pursuing a career which enables her to advocate for those who do not receive proper healthcare access and support the demographic of Americans who struggle to get the healthcare they deserve. We believe Farida has a bright future ahead of her and wish her much success.



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



Congratulations to WLIB members **Laura Sutnick, Esq.** and **Cynthia Petrowsky, Esq.** on being sworn in as officers of the Bergen County Bar Association.

Congratulations to WLIB's long time member and contributor to our Newsletter, **Debra E. Guston, Esq.**, this year's recipient of the Saul Tischler Award, given to an exemplary attorney in the New Jersey State Bar Association's Family Law Section. Deb, who practices in Glen Rock, handles many aspects of family law, including adoption, assisted reproduction, surrogacy and guardianship. She is a visiting lecturer at Rutgers

Law School on these topics and LGBTQ issues. A community activist as well, Deb served as president of the Board of Trustees of the American Civil Liberties Union of New Jersey. She has been a member of the NJSBA Family Law Section's Executive Committee since 2007, and is a past chair of the LGBTQ Rights Section. 🙌



Photo courtesy New Jersey State Bar Association/Jim Beckner

Presidents Message

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Treasurer, Sheila Criscione, our Secretary, and Nancy Lucianna our past Secretary. Thank you all very much for your commitment to WLIB. We have made so much progress as women in the profession but there is always more to do and more progress to be made. I so appreciated and enjoyed the collaborative supportive nature of this organization and the friendships made. To the incoming officers, I wish you the best of luck in your new roles and am excited to see your contributions.

To our incoming President, Diane Lucianna, congratulations my friend and I wish you the best of luck in your new role. I and this organization couldn't ask for a better successor and leader, who is always thinking of fresh ideas, new events, striving to diversify and involve young lawyers and to make everyone feel welcome.

To close, I want to briefly share a few words about what this organization means to me personally. As a woman in the legal profession, I have experienced many challenges. It isn't easy being a mother, wife, daughter, and lawyer, all at the same time. But the professional relationships and

friendships this organization has allowed me to make gives me the strength and confidence to continue pushing forward and to keep growing. To everyone here tonight, I thank you so much for supporting me (throughout my career) and for making my experience as President truly memorable. I'm eager to see the next generation of lawyers leave their mark on WLIB and I have the utmost confidence in the future of our organization. Thank you. 🙌

With warm regards,
Victoria R. Pekerman, Esq.

Book Review

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trust (as far as that goes with the feds) and begins to set the investigation in a direction that the trained investigators could not see.

Jack's "investigation" leads to a half-dozen other states where police officers were deemed to have committed suicide – but strangely all in the same way Jack's brother died, including an accompanying quote from Poe. It is clear there is a serial killer on the loose making his way across the country – but tracking him down is not easy as the body count grows and the

local police in several jurisdictions are faced with realizing that their rush to judging a suicide has cost other lives. Jack, the reporter, continues to do his best to drive the investigation, even when the FBI is in doubt. Ultimately, the FBI (and Jack) get their man but, of course, with a twist – and a sequel!

There was no Detective Bosch in this story, but we see him in the sequel – The Narrows – which I will review next.

This was a great crime story. The cast of characters included various members of the BSU and Connelly really pulls out their different personalities. Those you want to hate, you end up liking, and those you thought you liked,

you end up hating. There is personal loss as the reader sees through Jack's eyes his relationship with his deceased brother, his parents, and his grieving sister-in-law; there is a love interest; there is the lack of trust between co-workers, as well as law enforcement and reporters. This book hits many points that a reader wants from a good book. If you are an enthusiast of criminal investigation novels, I would suggest running to the library (or local rummage sale) and checking out this book. It was a great read with a non-stop story. It will keep you up late at night just to finish the next chapter. I hope you enjoy it as much as I did! 🐦

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.

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Title IX

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which has advanced this reverse discrimination argument on behalf of male athletes, however, has so far not been successful. Courts have reasoned that school administrators have the discretion to determine how to make sports participation proportionate amongst male and female athletes. The administrators could devote more funding to non-revenue producing female sports teams, or it could cut non-revenue producing male teams. That the decision is generally to cut the non-revenue producing men's sports has been deemed an acceptable way to bring equity to the underrepresented sex.

One final Title IX issue regarding sports occurs when a female wants to play on a sport that is only available to men. The OCR has held that, in this situation, the female athlete must be allowed to try out for the team, unless it is a contact sport. The restriction for contact sports eliminates a lot of sports. However, colleges still have the discretion to allow the female athlete to try out for the team. Once a female athlete is allowed on to a team, she must be treated the same as a male athlete. For example, Duke University allowed a female athlete to be a placekicker on the football team. However, she was not allowed to attend a summer training camp or dress for the games. Eventually, she was cut from the team. She brought a lawsuit and successfully argued that she was treated differently than the male placekickers. The jury awarded her \$2 million in punitive damages.

Male athletes attempting to play on female teams have been less successful, as courts have reasoned that the purpose of Title IX was to assist the underrepresented sex. Less clear is how courts will handle Title IX cases on behalf of transgender students who want to play for a team that does not represent their assigned gender. There is a growing debate regarding whether allowing a transgender female (born a male but identifies as female) athlete to compete on a female team creates an unfair advantage for that athlete. Of course, it is hard to square this argument with the argument that females should be allowed to participate on male teams when the male team is the only one available.

The OCR currently holds that Title IX's prohibition of discrimination on the basis of sex applies to discrimination based on sexual orientation and gender identity. However, this interpretation has changed twice depending on the presidential administration. Also, many states have passed laws banning students from competing on teams for a gender that does not match the students' assigned gender.

There are cases right now involving trans athletes who want to play on a team that matches their gender identity rather than their assigned gender in West Virginia, Idaho and Connecticut. When they reach the Supreme Court, it is likely that the Court's stance will not align with that of the Biden administration. It would not be wrong for the Court to conclude that the Title IX drafters were not considering transgender individuals. On the other hand, Title IX does prohibit discrimination based on sex. Regardless of how the issue is resolved by the Court, Congress would still have the ability to amend Title IX to put the issue to rest. This issue will likely be

unsettled for some time to come.

And in perhaps another twist unanticipated by the drafters of Title IX, the legislation has also become a tool for students who have been sexually assaulted or harassed at educational institutions. Although Title IX says nothing about sexual harassment, federal courts in the 1980s concluded that sexual harassment was a form of sex discrimination. Thereafter, two Supreme Court decisions in the 1990s established the framework by which schools and universities could be held responsible for the sexual harassment of students under Title IX.

In the years since, there has been disagreement about the responsibility placed on educational institutions for rooting out and preventing harassment versus addressing it when it appears. In addition, the procedures to be used for the investigation and hearing for sexual harassment complaints have changed. For instance, under the Obama administration, the OCR issued a policy which stated that the standard for a disciplinary hearing for a sexual offender should be a preponderance of the evidence. In addition, the definition of sexual harassment was expanded. Also, live hearings and cross-examinations were discouraged. The Trump administration largely reversed this guidance, but left intact the expanded definition of sexual harassment and the expansive list of remedies that must be made available to victims of sexual harassment.

In general, schools must have in place policies which prohibit sexual harassment. The policies must provide a procedure for individuals to complain about sexual harassment and they must designate individuals who will be responsible for implementing the policy and investigating the complaints. Further, if the policy has been violated, appropriate action must be taken to punish the offender and support the victim.

Indeed, Title IX has had a significant impact on women's education within the four walls of educational institutions, as intended by the drafters. However, its impact has also been powerful with regard to high school and collegiate sports and in regard to sexual harassment complaints. The intention of Title IX was to even the playing field for a segment of the population that was underserved. It continues to have that impact fifty years later, although its framers might be surprised in how exactly this goal is being achieved.

Going forward, the need for Title IX may come into question since women make up the majority of college students. Also, with the rise of women playing on men's teams combined with the debate over transgender students in sports, some have raised doubts about the need to separate sports by gender. In a world where sports are not separated by gender, is there still a need for Title IX?

I would argue that, while Title IX has brought about improvements, its job is not over. Even though women make up the majority of college students, that does not mean they receive the same programs and benefits as their male counterparts. Currently, there are 36 pending Title IX cases in New Jersey alone. These cases deal primarily with sports and sexual harassment. Nevertheless, the number of cases in our state indicates that there is still work to be done in providing equality to females in educational institutions. 🐼



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Legislative Report

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An individual who wants to carry a firearm outside his home may obtain an unrestricted license to “have and carry” a concealed “pistol or revolver” if he can prove that “proper cause exists” for doing so. N. Y. Penal Law Ann. §400.00(2)(f). An applicant satisfies the “proper cause” requirement only if he can “demonstrate a special need for self-protection distinguishable from that of the general community.” E.g., In re Klenosky, 75 App. Div. 2d 793, 428 N.Y.S. 2d 256, 257. Petitioners Brandon Koch and Robert Nash are adult, law-abiding New York residents who both applied for unrestricted licenses to carry a handgun in public based on their generalized interest in self-defense. The State denied both of their applications for unrestricted licenses, allegedly because Koch and Nash failed to satisfy the “proper cause” requirement. Petitioners then sued respondents—state officials who oversee the processing of licensing applications—for declaratory and injunctive relief, alleging that respondents violated their Second and Fourteenth Amendment rights by denying their unrestricted-license applications for failure to demonstrate a unique need for self-defense. The District Court dismissed petitioners’ complaint and the Court of Appeals affirmed. Both courts relied on the Second Circuit’s prior decision in Kachalsky v. County of Westchester, 701 F.3d 81, which had sustained New York’s proper-cause standard, holding that the requirement was “substantially related to the achievement of an important governmental interest.” Id., at 96.

Held: New York’s proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense. Pp. 8–63.

New Jersey Courts

Attorneys – Legal Ethics and Attorney Discipline

In the Matter of Dionne Larrel Wade New Jersey Supreme Court; June 7, 2022; (D-132-20) (08931)

Facts: This matter involved revisiting the rule imposed in In re Wilson which calls for automatic disbarment of attorneys who knowingly misappropriate funds. 81 N.J. 451, 453, 461 (1979). Respondent Dionne Larrel Wade has been a solo practitioner since she was admitted to the New Jersey bar in 2002. She had extensive personal and professional accomplishments and throughout her legal career, she volunteered her time and skill and provided pro bono legal services to underserved clients. She also conducted free legal clinics at her church. She has no prior disciplinary history. In June 2017, the Office of Attorney Ethics (OAE) conducted a random audit of her financial records. The audit identified multiple problems, including commingling and extensive shortages in client trust funds. Ultimately, the allegations against Respondent involved three clients. She conceded she used client funds without permission to pay various expenses but

claimed she did not know it was wrong to borrow the money until the OAE investigator told her so. None of Respondent’s clients lost money.

Respondent’s defense entailed in part, the claim that she was aware of the danger in borrowing from clients, noting she had placed a self-imposed limit as to how much she would borrow from client funds. Respondent admitted that she considered client funds as a “line of credit” she could use, without permission, as long as she made the client whole. She further admitted to using funds from one client to pay for another client’s needs but claimed she did not know that was improper.

The OAE charged Respondent with multiple instances of knowingly misappropriating client and escrow funds, with violating several Rules of Professional Conduct (RPCs), and with various recordkeeping violations. After a hearing, a Special Ethics Master found that “sloppy bookkeeping did not cause [Respondent] to unknowingly borrow client funds. She knowingly did so, and she paid back what she borrowed.” Because he found clear and convincing evidence that Respondent knowingly misappropriated funds entrusted to her, the Special Master recommended that Respondent be disbarred under Wilson and RPC 1:15(a). After a de novo review of the record, the Disciplinary Review Board (DRB) unanimously upheld the Special Master’s findings and recommendation.

Held: The Court entered an order of disbarment given the record in the matter, which included Respondent’s admissions – which clearly and convincingly demonstrated that she knowingly misappropriated client funds.

The Court also noted that under New Jersey’s longstanding disciplinary rules, disbarment is permanent and marks the end of a person’s ability to practice law. In that respect, New Jersey’s approach differs from most jurisdictions. Although it declined to revisit the Wilson rule, the Court noted that the current approach to permanent disbarment on the basis of misappropriation of client funds should be reevaluated. The Court noted that it will establish a broad-based committee to analyze whether disbarment for knowing misappropriation should continue to be permanent, or whether New Jersey should join the majority of jurisdictions that allow for reinstatement.

Update: A committee of 28 members has been appointed by the Supreme Court to review disbarment reforms.

Family Law

Colon v. Colon Appellate Division; June 24, 2022; A-4172-18 (084867)

Facts: Defendant appealed from the denial of his motion to terminate his child support and suspend collection of arrears. Under the parties’ property settlement agreement incorporated into their judgment of divorce, defendant agreed to pay plaintiff child support until the parties’ child turned 18. In January of 2019, Defendant moved to terminate his child support obligation and terminate his arrears retroactive to June 1, 2018, the date that

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Legislative Report

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he was diagnosed with ALS. The trial court granted partial relief, finding that defendant was not entitled to vacation of arrears prior to filing date of the motion, as he provided no explanation for the delay in seeking the termination of his child support obligation following the ALS diagnosis and that any subsequent payments made by defendant after the child's eighteenth birthday were considered gift payments. The Court reduced the child support obligation based upon the submitted financials.

Held: Appellate Division affirmed, finding no abuse of discretion by the Family Part in confining the arrears to the date of the motion filing.

Criminal Law

State v. Bailey New Jersey Supreme Court; June 21, 2022; A-60-20 (085342)

Facts: Camden Police officer appealed from her conviction for second-degree official misconduct. In 2014, state police began investigating a drug distribution network involving the police officer's her husband and husband's family members. She used her status as a police officer to access reports of the investigation. After the access, electronic communications between her husband and other members of the family being investigated substantially decreased. Defendant was found guilty of official misconduct charges. Defendant appealed to the appellate division, which ruled that the amendment to the spousal privilege

was a procedural rule that did not violate ex post facto laws when applied to communications made before the amendment.

Held: On appeal, the court affirmed but modified the appellate division's judgment. The court ruled that the crime-fraud exception should not have been applied as there was no indication the legislature intended for it to be retroactive. However, the court held that the admission of defendant's text messages was harmless error in light of other extensive evidence of her guilt.

Constitutional Law/Labor Law

McVey v. AtlantiCare Med. Sys. Inc., Appellate Division; May 20, 2022 (A-0737-20)

Facts: The question presented is whether the First Amendment of Article I, Paragraph 6 of the New Jersey Constitution prevents a private employer from terminating one of its at-will employees for posting racially insensitive comments about the Black Lives Matter movement on her personal Facebook account.

Held:

Trial court decision affirmed. Plaintiff could not maintain a wrongful termination claim against a private employer based on violation of her free speech rights where there had been no concurrent state action. The court found that no court had held that a private employer who encroached on an employee's constitutional right to free speech had violated a clear public policy. Finally, the court noted that the New Jersey Supreme Court had previously held that racist remarks were not protected under constitutional law.



Restaurant Review

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chicken marsala as my entrée. Other selections include a pasta fagioli, pistachio grouper, linguine in white clam sauce, chicken parmesan and veal piccata. My husband started with the eggplant rollatini (\$8.95). Other appetizers are available and include prosciutto and melon (\$8.95), stuffed mushrooms (\$8.95), balsamic calamari (\$11.95) and linguini putanesca (\$16.95).

The salad was good. It was not overly dressed and was the appropriate size to start a meal. The eggplant rollatini was large enough to share. It was cooked perfectly and melted in your mouth. Luckily, we had some bread to soak up the remaining red sauce.

For the main course, my husband ordered the linguini putanesca (\$16.95). Other entrees include rigatoni vodka (\$16.95), veal Milanese (\$21.95), and pollo Torino, which is chicken served with artichokes, sun dried tomatoes in a lemon sauce (\$16.95) and shrimp Fra diavolo (\$22.95). The chicken marsala was excellent and served with

mashed potatoes and vegetables. There was just the right amount of chicken, and the sauce was great with the potatoes, although these could have been a little smoother. The portion of putanesca was large and the linguini was cooked al dente. The sauce was loaded with anchovies, olives and sun-dried tomatoes and was quite tasty. Needless to say, the leftovers came home and tasted even better the next day.

For dessert, my husband had my dessert and opted for carrot cake. The cake was moist and had a not too sweet icing on top. He also ordered a cappuccino.

Overall, our experience at Limoncello was good. The server was attentive but not so overbearing that you couldn't enjoy the meal. The restaurant clearly has regulars, but we did not feel like outsiders. The outside tables do lend a "Lady and the Tramp" vibe and I believe we will try outside next time we come. Our food was good as was the service. The parking can be difficult as it is limited in front but there is plenty around back. This is a good find and I give it 3 forks. 🍴

When you have to adopt your own child

continued from page 3

a second-parent adoption judgment entered in the state of Georgia must be recognized by the state of Alabama.¹¹ The Supreme Court emphasized the requirement for full faith and credit recognition – the court entering the order or judgment must have subject matter jurisdiction over the case.

On April 1, 2020, N.J.S.A. 9:17-69 took effect. This statute is premised on the proposition that anyone who is a parent by virtue of their marriage to the person who has given birth has a right to rebut all presumptions and assume full, legal and unassailable parentage of the child. The statute requires the following:

1. The adopting parent must have been married or in a civil union to the person delivering the child at the time of the child's birth.
2. Both the person giving birth and the adopting parent must be named on the child's birth certificate.
3. There can be no other legal or presumed parent. For example, a known donor and an at-home

insemination would not extinguish the rights of the donor – he is a father, not a donor under current New Jersey law.

If the parties meet these qualifications, they may use this statute to confirm the parentage of the non-gestational parent.

The process is streamlined. No background checks or home studies are required. No court appearance is required, if the pleadings properly set out the case, these matters are heard on the papers. The timeline for the court's processing of these cases is expedited.¹²

While there have been some glitches in the implementation of this new process, the Surrogates' Courts and Family Part have adjusted. In trying to assist the courts in understanding this new statute and new process, Judge Mendez, A.J.S.C. (Atlantic County) wrote an opinion that was recently published which provides background and explanation of the applicability of this new process.¹³ The timetable established in the court rules remains elusive in most vicinages, but the courts and adoption clerks are honoring the filing without background checks and accepting copies of marriage/civil union certificates and birth certificates when certified to be true copies by an attorney.

While many parents are still left with the question of "why should I have to adopt my own child?" this new statute and process makes it easier, less expensive and more affirming to confirm their status as a legal parent to their child. 🐦

11. V.L. v. E.L. 136 S. Ct. 1017 (2016)

12. R. 5:10-17

13. In re A Child by G.A.S., No. FA-01-0020-21 (N.J. Super. Feb. 18, 2022)

Meet and Mingle with Elected Women Officials

May 2, 2022



2021-2022 WLIB Committees

The following committees were formed for the 2021-2022 term. Our newly elected President, Diane Lucianna, Esq. is putting together the committee assignments for the 2022-2023 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 Diane Lucianna, Esq. at dianeluci@aol.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: dianeluci@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: dianeluci@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: dianeluci@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

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

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

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 | www.womenlawyersinbergen.org

Calendar of Events

July 2022

Monday, July 11

12:30 pm SWAG Meeting. Marcia Werner and Cathe McAuliffe will be presenting on "Closing Your Law Practice."

Tuesday, July 19

5:30 pm WLIB Board Meeting via Zoom.

August 2022

Monday, August 8

12:30 pm SWAG Meeting via Zoom. We are considering meeting in person for outside dining. Please contact Linda F. Spiegel if you are interested in joining us at LFSESQ@aol.com

Tuesday, August 16

5:30 pm WLIB Board Meeting via Zoom.

September 2022

Monday, September 12

12:30 pm SWAG Meeting via Zoom. Diane Longo will be our guest. She will have a power point presentation and discussion on "Love, Sex, Music and the Arts: Our changing values 1940-1980."

Tuesday, September 20

5:30 pm WLIB Board Meeting via Zoom.

October 2022

Monday, October 10

12:30 pm SWAG Meeting.Topic TBD

Tuesday, October 18

5:30 pm WLIB Board Meeting via Zoom.

November 2022

Monday, November 14

12:30 pm SWAG Meeting. Angela Kim, Esq. is our host with topic TBD.

Tuesday, November 15

5:30 pm WLIB Board Meeting via Zoom

Board Meetings are currently being held via Zoom and are open to all members. If you wish to attend the board meeting go to <https://www.womenlawyersinbergen.org/login> as a member and you will find the Zoom link for the board meeting.

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

President

Diane Lucianna, Esq.

(201) 342-9090 dianeluci@aol.com

Vice President

Tamra Katcher, Esq.

(201) 488-1234 tkatcher@remlawgroup.com

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www.womenlawyersinbergen.org

To advertise in this
newsletter please contact
Nancy at (201) 947-6486 or
Linda at (201) 489-1001

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Join Today!**