

# The Clarion

Somerset County Bar Association

## Somerset County Bar Association President's Message



Happy New Year and best wishes for good health, happiness and prosperity in 2014!

I recently attended two separate CLE events, both of which focused on how technology has affected the practice of law. One was a presentation on Technology in the Courtroom. The other was about The Future of ADR. There is no question that technology, most notably the internet, has transformed and will continue to transform our practices. This encompasses client referrals, marketing, legal research, communication with clients and counsel, and continuing legal education.

For some of us, this is good news. For others, like me, who learned to type on manual Royals and spent hours in libraries looking through rows of statutes and case law reports, it is a bit daunting. Still, it is important to understand and appreciate how this technology affects not only us, but our prospective clients as well.

The variety and volume of information sources today is staggering. Case law, statutes,

administrative regulations and even legal analysis are no longer readily available only to attorneys trained in legal research. These aids are available to our clients as well, and some of them are well-researched, accurate and concisely written. In a way, we are now competing with these sources when providing legal advice and services to clients.

If litigants can so easily find the information they need on the internet, what do we offer that adds value to the information our clients can access with just a few well-placed keystrokes? The answer is that we have a great deal to offer, including the following aspects of legal practice.

**1) Accuracy.** A client recently reported to me that he understood New Jersey case law provides a formula for determining both the amount and the duration of alimony. That is not accurate, and so I questioned the source of this misinformation. It was from the New Jersey Family Lawyer, a highly regarded State Bar publication. The article he was relying on, however, did not report that this was the law; rather, it was a discourse on the pros and cons of alimony guidelines, which we do not have in our State.

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Volume 5, Issue 3  
January 2014

### Special Points of Interest:

- Spring Marathon CLE Day
- Updated Judges & Staff Directory

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## SPRING MARATHON CLE Tuesday, March 18th 4:00 - 8:00 PM Raritan Valley Country Club

The Somerset County Bar Association is once again holding a Spring Marathon CLE day on Tuesday, March 18, 2014 from 4:00 - 7:45 pm at the Raritan Valley Country Club. Earn up to 4 CLE credits. Seminar topics include:

- "Psychological Evaluations in Personal Injury Cases"
- "Implementation of the New PTI Program in Municipal Court"
- "Real Estate Closings 101"
- "Nuts and Bolts of the Special Civil Part"

Check our website calendar for details and registration

## Note from the Editor

Thanks to those individuals who contributed articles for past issues of *The Clarion* and to those featured in this issue.

Our next issue will be mailed in March, 2014 and we are actively looking for contributions. Please let us hear from you!!

The submission deadline for articles for the March, 2014 *Clarion* is February 25th. Please send them to [cawinder@somersetbar.com](mailto:cawinder@somersetbar.com).

Victoria D. Britton, Esq.  
Editor

## Save the Date!

Annual Somerset County  
Bar Foundation  
Scholarship & Community  
Awards Dinner  
And  
Basket Raffle

Monday, March 24, 2014  
Neshanic Valley Golf Club  
6 - 8:30pm

## A Message from the Somerset County Bar Foundation Chair

### Annual Scholarship & Community Awards Dinner & Basket Raffle - Mar.24th



The Somerset County Bar Foundation will hold its annual Scholarship and Community Awards Dinner and Basket Raffle on Monday, March 24, 2014 at Neshanic Valley Golf Course. This event, which is sometimes held as a stand-alone dinner, and sometimes held with the Somerset County Bar Foundation and Somerset County Bar Association Installation, will once again this year be a fun and exciting night for all!

As in the past we will be seeking donations of baskets created by you, or monetary donations which will then be used to purchase items to create baskets, to be used at the auction. If, like me, you enjoy Tricky Trays, you will love our annual Basket Raffle where dozens of baskets, and other items, will be raffled off. In the past we have had a basket with \$100 worth of lottery tickets, hotel stays and Patriot tickets. I once won a stay in Cape May at a lovely Bed & Breakfast. I hope we get that one again this year!

This event is for more than just fun and for raising funds for the Somerset County Bar Foundation, this is the time where we get to give our scholarship to a lucky local law student from one of the State law schools who has excelled in his/her class and a community award to a worthy organization.

This year, the Raymond R. Scholarship, in the amount of \$1,500,

will be awarded to Jordan Hollander, a student at Rutgers Law School in Camden. A life-long Somerset County resident, Mr. Hollander has a GPA of 3.875. His list of accomplishments is astounding. While busy helping others, Mr. Hollander suffered from a viral infection which left him almost deaf in his left ear and now requires him to wear a hearing aid. He did not let this get him down, or cause him to give up, rather he continues to help others in need. You will want to come out and congratulate this young man and maybe even have your law firm scoop him up before someone else does!

This is not the end of our exciting night. We will be presenting the Community Award in the amount of \$500.00 to "Children's Hope Initiative," which seeks to help abused and neglected children and their parents. One aspect of the program is healing through artwork. Additionally, they hold abuse prevention workshops and work toward positive parenting to help prevent the abuse and neglect from happening in the first place. You will definitely want to learn more about this exciting new initiative.

This is the perfect event to see how Your Bar Foundation is working for you and the community. I look forward to seeing you all there!

*Francine A. Gargano*  
Chair, Somerset County Bar Foundation

## CONGRATULATIONS!!

*To the Hon. Amy O'Connor, J.A.D.*

*On her appointment to the  
Appellate Division  
of the Superior Court of NJ*

*She has served our Vicinage with integrity and dedication for the past 15 years and she will be missed.*

*We wish her the very best in her new assignment!*

## Welcome New Members!

(as of February 1, 2014)

The SCBA extends a warm welcome to our newest members. We look forward to your participation at our upcoming events.

**James C. Lankford, Esq.**  
Somerset County Prosecutor's Office

**Sophia E. Antonacci Esq.**  
The Mark Law Firm



## SCBA President's Message - cont'd

Cont'd from Page 1

He had taken a comment from the author and assumed it reflected the law. I was able to correct the error and have a meaningful discussion with him about how alimony is, in fact, determined under the law.

**2) Analysis.** Even case law is not always “the law.” Judicial opinion include dictum, which does not have the same precedential effect as the court’s conclusions. Our experience reading, analyzing and arguing cases, along with suffering through the Socratic method in law school classes, has taught us how to draw distinctions – an ability that is critical to good legal analysis. We can and should assess how our client’s circumstances differ from the facts reported in cases, so that, for example, what might appear to be a case unfavorable to our client’s cause may, in fact, be distinguishable and therefore not applicable.

**3) Understanding of Consequences.** We understand potential pitfalls implementing judicial decisions and negotiated settlements. Clients come to us for help when they encounter unanticipated consequences of court orders and agreements. Sometimes this is the result of inadequate drafting or simple failure to provide for reasonably predictable eventualities. We can talk through different scenarios with our clients and play out how varying settlements will affect them, on both short-term and

long-term bases. If they understand the future viability of current decisions, they will be better prepared to arrive at durable and satisfactory resolutions.

**4) Negotiation Skill.** Clients may know “the law” but many issues are not decided based on black letter, rigid legal rules. Lawyers understand the risks of taking a case to trial, and (should) appreciate the fact that the law will always look at both sides of a question. Hopefully, most of us have read or received training in how to negotiate effectively, and our years of experience negotiating cases is an invaluable asset to our clients.

**5) Realistic Expectations.** Years ago, I heard the word “upset” defined as “a thwarted expectation.” Clients are highly emotional about their own predicaments and often expect results out of fear, panic, and anger. They surf the internet and find “authority” that leads them to believe they can win at all costs. That can lead to hasty decisions in some instances, or to an inability to resolve issues in other instances. Lawyers bring reason to the table. We understand how the law applies to a set of facts, and we understand that there is a process for resolving disputes. Some clients want to “get even.” When a client many years ago angrily insisted that she expected me to teach her husband a

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### Reminder

2014

*Lawyer Referral  
Service  
Enrollment Forms  
Are  
DUE NOW*

*Congratulations go to Rob and Hilary  
Morris, on the birth of their daughter*

*Evelyn Claire Morris*



*January 19, 2014*

*8lbs 20 1/4 in.*

*She joins sisters Madeline & Catherine*

### “Wrapped in Love” - Young Lawyers Initiative by Sarah M. Mahony, Esq.

The SCBA Young Lawyers Committee would like to express its sincerest gratitude to all of those who participated in the 2013 winter coat and food drive. The generous coat donations were distributed through United Way of Northern New Jersey’s *Wrapped In Love* program to the many children and teens in our community who otherwise would not have the means to stay warm this winter. In addition, the substantial contributions so many of you made of non-perishable foods were donated to the Food Bank Network of Somerset County, a charitable organization that helps feed hundreds of underprivileged families in the Somerset County community throughout the year



The YLC would especially like to thank Carol Ann Winder at the Somerset County Bar Association, the law firm of Norris McLaughlin & Marcus, PA, and the law firm of Shimalla, Wechsler, Lepp & D’Onofrio, LLP, for hosting the coat and food collection bins, as well as the Honorable Yolanda Ciccone, A.J.S.C. for her support of United Way of Northern New Jersey. In light of the outpouring of participation and donations, we hope to make the winter coat and food drive an annual SCBA event!

For more information about volunteering on behalf of United Way of Northern New Jersey, please email Lisa Galonardo at [lisa.galonardo@UnitedWayNNJ.org](mailto:lisa.galonardo@UnitedWayNNJ.org) or Sarah Mahony, Esq. at [smahony@swldfamilylaw.com](mailto:smahony@swldfamilylaw.com).

*Ms. Mahony is Co-Chair of the  
SCBA Young Lawyers Committee*

## Fighting Against Intra-State Removal: What If Anything, Can Be Done?

By Kathleen L. Wood, Esq.



As attorneys, sometimes we have the good fortune to come in contact with clients and cases that move us personally, and remind us why we decided to go to law school and answer this calling. Recently, I had such a case, which involved an intra-state removal. Throughout the case, I was disappointed with the state of the law as it pertains to the rights of non-custodial parents fighting against an intra-state removal. In many cases, these litigants are devoted parents who go through the excruciating process of realizing that there is most likely nothing that they can do to prevent their ex-spouse from moving their children away from them. Sometimes the move is a minor inconvenience, but other times the move can completely destroy the quality of, or the opportunity for, the precious little parenting time afforded to the non-custodial parent.

The basic facts of my case were as follows: the parent of primary residence sought to move, with the parties' three children, ranging in age from six (5) to (16), within the State of New Jersey to a location that was slightly over an hour away. The non-custodial parent was a devoted parent and an ideal litigant, in every sense of the word. The non-custodial parent was intimately involved in the children's extra-curricular activities, regularly and consistently exercised parenting time, held down a demanding job, paid support on-time and reliably, and had moved to be closer to the children. The parent of primary residence was not employed, had not found a job in the proposed town for removal and expressed that the reason for the move was to be closer to family. The children had lived their entire lives in the same town and were going to be uprooted from their friends and schools to an entirely new town with which they were unfamiliar. None of the children wanted to move.

Unfortunately, the law in the State of New Jersey appears to have tilted the scales in favor of the parent of primary residence. Simply as a result of that designation, a parent will likely be allowed to move with their children anywhere within the State of New Jersey without restriction, with some very limited exceptions. To make matters worse, cases such as Moreno v. Javan, 2012 WL 59959651 (N.J. Super. A.D.), (holding that additional time in the car for travel is an inconvenience, but not a substantial change of circumstances warranting a modification of custody and parenting time) and Vetri v. Vetri, 2005 WL 3148085 (N.J. Super. A.D.), (holding that a non-custodial parenting's close and significant relationship was not a basis to deny relocation) make it nearly impossible for non-custodial parents to defeat an intra-state move. It would appear that even if you represented the "perfect" non-custodial parent in an intra-state removal case, you would most likely lose or you would have what was graciously described to me as an "uphill battle".

My case was no exception.

However, the following are some fine points that I learned throughout this experience that I thought would be helpful to pass on to others attempting to fend off an intra-state move:

1) The cases dealing with intra-state removal are few and far between, which leaves room to argue that this area of the law is not fully developed and therefore, the Court must consider the facts of each particular case individually.

2) The Appellate Division in Pfeiffer v. Ilson, 318 N.J. Super. 13, 14 (App. Div. 1999), held that,

"[a] plenary hearing is not necessary in every case where a removal of children is the issue, but rather only where a *prima facie* showing has been made that a genuine issue of fact exists bearing upon a critical question such as the best interest of the children, interference with parental rights, or the existence of the good faith reason to move." Id.

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## President's Message - Cont'd

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lesson, I responded, "I don't do lessons." She had unrealistic expectations about my role and about what the eventual result would achieve. As lawyers, we can fight for the stars, but, when of likely results. Clients who persist in unrealistic expectations will never be satisfied.

**6) Support.** We should never underestimate the importance of caring about our clients and what happens to them not only in the legal process, but in the results we achieve for them. Clients going through stressful, sometimes traumatic, litigation benefit from being treated respectfully and with a little kindness, too. When we and are staff are professional, caring, responsive and respectful, our clients feel better served. They can't get that on the internet -- at least not yet.

*Amy Wechsler, Esq.  
2013-14 President, SCBA*

## 2013 - 2014 SCBA and SCBF Committee Chairs

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**SAVE THE DATE!**

**Spring Marathon CLE Day**

**Tuesday, March 18, 2014**  
**4:00 - 8:00 pm**

Check the website calendar for details  
[www.somersetbar.com](http://www.somersetbar.com)

## FIGHTING AGAINST INTRA-STATE REMOVAL: WHAT, IF ANYTHING, CAN BE DONE?

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This allows one to argue that if a genuine issue of fact exists that bears upon a critical question, then a plenary hearing is necessary. I find this point to be extremely important. I suspect that very few intra-state removal cases move forward to a plenary hearing because many non-custodial parents resign themselves to the move because of the expense of a plenary hearing and because ultimately, the case law is weighed heavily against them. However, I suggest to my fellow family law practitioners, that perhaps more cases need to go forward to a plenary hearing to create better law, law that is more considerate of the children's best interests, instead of focusing almost exclusively on the designation of parent of primary residence. Non-custodial parents who have legitimate facts in their favor to suggest that the intra-state move is inimical to their children's best interests, should focus on whether there are critical facts that are in dispute and, if so, demand hearings pursuant to Pfeiffer v. Ilson, 318 N.J. Super. 13, 14 (App. Div. 1999).

3) Remember that Schulze v. Morris, 361 N.J. Super. 419, 426 (App. Div. 2003), anticipates the intra-state removal action that *would* require a modification of the custodial and parenting time arrangement. Moreover, Schulze requires an examination of the factors set forth in Baures v. Lewis, 167 N.J. 91, 116-117 (2001) in determining whether modification of the custody and parenting time is necessary as a result of the proposed intra-state removal. Thus, if there is an allegation that the removal *does* have a significant impact on the relationship between the children and the non-custodial parent and that the move would be inimical to the children's best interests, the factors set forth in Baures should be examined in the context of a plenary hearing

4) Don't forget about "bad faith". In the unpublished Appellate Division decision of P.P. v. N.P., 2011 WL 6440536 (N.J. Super. A.D.), the Plaintiff/Wife sought to move the parties' children via an intrastate relocation from Monmouth County to Verona at the trial Court level and was denied after a hearing resulting from an Order to Show Cause. Id. at 1. In P.P. v. N.P., the trial Court found upon Plaintiff's reconsideration motion that the Plaintiff/Wife had failed to enunciate any legitimate reason for the move. Id. at 2. More importantly, the Judge made findings with regard to her real motivation for the move when she stated as follows:

[t]he real reason I got for her wanting to go to Verona was so that she could get [as] far away from [defendant] as she could without leaving

the state...I think that she's just trying to make it difficult for [defendant] to exercise his parenting time with his children. P.P. v. N.P., 2011 WL 6440536 (N.J. Super. A.D.) at 2.

Thereafter, the trial Judge denied the Plaintiff/Wife's motion and restrained her from relocating the children to Verona. Id. at 1. The Plaintiff/Wife appealed and the Appellate Division affirmed the trial Court's decision and held as follows:

Here, the parties agreed in the PSA not to 'do anything which may estrange their children from the other party.' The judge found that plaintiff desired to 'make it difficult for [defendant] to exercise his parenting time with his children,' and that she attempted to 'get [as] far away from [defendant] as she could without leaving the state.' Because the plain language of the PSA precludes any attempt by one party to alienate the children from the other party, the judge did not err by preventing the move. Id. at 3.

Thus, it would appear that custodial parents are not permitted to relocate the children, even intra-state, for a bad faith reason or to purposely interfere with a non-custodial parent's rights.

These issues were helpful to me in formulating an argument against this particular intra-state removal action, and I hope they are helpful to you in yours. I have written this article in the hope that it brings more awareness to the inequity of the current law as it pertains to intra-state removal cases and in order to help others make arguments against any move (whether intra-state or inter-state) that focuses on the designation of parent of primary residence instead of the best interests of the children.

*Ms. Wood is with the firm  
Altman, Legband and Mayrides*

## 2014 New Jersey Attorney Registration Deadline - March 28, 2014

### A Message from the Hon. Glenn A. Grant, J.A.D.

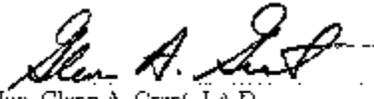
“The Attorney Online Registration and Payment Center is now available for licensed New Jersey attorneys for the 2014 registration/payment cycle through the Judiciary’s web-based application at <http://www.judiciary.state.nj.us/attyreg/index.htm>. Pursuant to Rules 1:20-1(b) and (c), 1:28-2(a), 1:28B-1(e), and 1:42-2(b), attorneys licensed to practice in New Jersey are required annually to file a registration statement in a form prescribed by the administrative Director of the Courts with approval of the Supreme Court and to pay an assessment in an amount determined by the Supreme Court.

“The 2014 deadline for registration and payment is **March 28, 2014**. Attorneys are encouraged to register online and pay any required fee electronically. To assist with the registration process, an electronic notice about the web-based application has been emailed to each attorney who previously registered online. For attorneys who are not currently enrolled in the electronic registration system, a User ID and temporary password will be mailed to each such attorney’s *billing* address to facilitate a transition to use of the online process. For concerns related to your user ID and password, registration and billing, please contact 855-533-FUND (3863) (select option 2) or [CFP.Mailbox@judiciary.state.nj.us](mailto:CFP.Mailbox@judiciary.state.nj.us).

“In addition to the annual registration requirement, attorneys maintaining a plenary or limited license to practice law in New Jersey must certify to the completion of their continuing legal education (CLE) requirements in accordance with Rule 1:42. A noncompliance fee of \$50 will be assessed against attorneys who report that they failed to complete the requisite CLE credits by the deadline for course completion. An additional \$50 (for a total of \$100) will be assessed against attorneys who fail to complete their required CLE credits within the grace period provided by BCLE Reg. 402:1 and against attorneys who fail to report regarding CLE compliance at all.

“Beginning in 2014, attorneys who are noncompliant with the mandatory CLE requirement are subject to being declared administratively ineligible to practice law in New Jersey. A declaration of administrative ineligibility will include non-compliant attorneys who are to report compliance in 2014 (Group 1) and also those from either Group 1 or Group 2 who remain noncompliant from any prior compliance period. To be removed from the CLE ineligible list and restored to active status, the noncompliant attorney must satisfy all outstanding CLE credit requirements and pay any required fees. The CLE credit requirement will stack; i.e., the attorney must make up CLE credits for all compliance periods that the attorney is non-compliant.

“Information on Continuing Legal Education requirements is available at <http://www.judiciary.state.nj.us/cle/index.htm>. For concerns related to CLE, please contact 609-633-9733 or [SCTCLE.Mailbox@judiciary.state.nj.us](mailto:SCTCLE.Mailbox@judiciary.state.nj.us).”



Hon. Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts

Dated: January 28, 2014



**James A. Swickle**  
Licensed Private Detective  
State Lic. # 5474  
NJ Certified Process Server

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Founded 1979

## In Memoriam



### **The Hon. David G. Lucas, J.S.C. (ret)**

Judge Lucas, 90, passed away at his Somerville residence on December 18, 2013 with his family at his side. He is survived by his wife, Jean, of 56 years, son David and his wife Tracy and three grandchildren.

He graduated from Seton Hall University and from Columbia Law School. Judge Lucas held various positions in government and the courts as well as private practice. During the early 1970s he served as the first deputy director in the newly-created Division of Criminal Justice, and as acting prosecutor in Bergen, Hunterdon and Ocean counties. He was appointed by Governor Cahill as a commissioner of the New Jersey State Commission of Investigation. He was appointed to the Vicinage XIII Superior Court bench by Governor Brendan Byrne from 1976 through his retirement in 1993 and sat in the same vicinage on recall.

Judge Lucas was a former President of the Somerset County Bar Association and a former Trustee of the New Jersey State Bar Association.



### **Richard F. Collier, Jr., Esq.**

It is with great sadness that we note the passing of Richard F. Collier, Jr., 63, on Christmas Day. A graduate of Harvard College and Boston University School of Law, Rich brought scholarly endeavor, practicality and the highest level of professionalism to his work in the nearly four decades that he practiced law. As a leader, he served with distinction as President of the SCBA, Chair of the District XIII Attorney Ethics Committee, Chair of the NJ State Bar Federal Practice Committee and President of the Legal Center for Defense of Life.

Rich was above all a family man, devoted to his wife Janet, their two children and six grandchildren. We extend our condolences to them.

Rich was a mentor to many of us, and a friend to all of us. We will miss him.

## Unity Bank's UCare Program Benefits SCBF

Community banks are the cornerstone of their communities — helping to drive economic growth and prosperity within their local communities. Unity Bank, which has 15 locations throughout New Jersey and Pennsylvania, is a local community bank which takes pride in serving their neighbors and supporting local businesses, both large and small. Unity Bank employees are lenders, financial counselors, local job creators and community builders, whom are more than happy to help with financial needs and questions. The bank proudly supports many neighborhood projects and believes that it is a vital part of their mission to give back to the community.

The Somerset County Bar Foundation is a member of Unity Bank's UCare program. This program offers a great opportunity for members of a group or organization to help a cause they believe in by directing Bank donations to that cause. By simply signing up as a supporter, anyone with a checking or savings account at Unity Bank can help to raise money for the Somerset County Bar Foundation. When a UCare partner reaches fifteen supporters, they receive quarterly donations based on balances of designated accounts. Donations are from bank funds, at no cost to their supporters. The more individuals that use Unity Bank for their finances, the more donations their organization will receive.

Unity Bank has created a special banking package for Somerset County Bar Association & Foundation members that includes a sign-up bonus and added discounts. From basic checking to interest bearing, Unity Bank offers convenient products and services to meet your banking needs. Unity Bank customers receive free mobile & online banking as well as access to fee-free transactions through the AllPoint network of ATMs. The Allpoint network is the largest ATM networks in the country and gives you the opportunity to access over 40,000 surcharge free ATMs, located near you at retailers such as CVS, Target, and 7-Eleven.

Stop in to your nearest Unity Bank to learn about all the wonderful products and services that they offer. You can find the location nearest you on their website at [www.unitybank.com](http://www.unitybank.com) or visit them on Facebook at [www.facebook.com/unitybanknj](http://www.facebook.com/unitybanknj).

## The Implementation of the Affordable Care Act and What This Means for Family Law Practitioners

By Mark T. Gabriel, Esq.



One of the most talked about changes that the Patient Care and Affordable Care Act (hereinafter referred to as the “Affordable Care Act” or the “Act”) has brought about is the provision that entitles parents to maintain health insurance coverage for their children as dependents until each child reaches the age of 26.

Before each child’s 26<sup>th</sup> birthday, he or she can join, remain, or return to a parent’s plan even if he or she is: married, not living with his or her parents; attending school; financially independent; or eligible to enroll in his or her employer’s plan (with one exception)<sup>1</sup>. Until 2014, grandfathered group plans that offer dependent coverage do not have to offer coverage up to age 26 if the child is eligible for job based coverage through his or her own employer<sup>2</sup>.

Since the implementation of the Affordable Care Act, parents have questioned whether the Affordable Care Act now requires them or their former spouses to provide health insurance coverage for children until the age of 26. The answer is no. The expansion of coverage that the Affordable Care Act provides does not mandate that parents keep their children on their health insurance plans until the children reach age 26, but provides only that health insurance carriers are required to provide dependent coverage for children up to the age of 26 if the parent so desires.

A parent’s obligation to provide health insurance coverage for a child will continue to be based on whether that child is emancipated according to New Jersey law. For example, if a child is emancipated at age 24, neither parent, unless they otherwise agree, is required to maintain the child’s health insurance coverage as a dependent under his or her health insurance policy.

The implementation of the Affordable Care Act will also have an effect on married couples contemplating divorce where a spouse with a pre-existing condition is covered only under the other spouse’s health insurance plan. Often, one spouse may decide not to proceed with divorce due to the fact that he or she will not be able to obtain health insurance coverage aside from remaining on the spouse’s employer-sponsored health insurance plan. The Affordable Care Act ensures that individuals will be able to obtain health insurance coverage at an affordable rate notwithstanding the existence of a pre-existing condition<sup>3</sup>. However, only individuals who are citizens of the United States, have not had creditable health insurance coverage during the six month period prior to the date he or she applies for coverage, and have

pre-existing conditions will be eligible to apply to the “high risk pool” for coverage<sup>4</sup>. The “high risk pool” is described as the collection of people who have pre-existing conditions that would have been unable to obtain affordable healthcare coverage prior to the implementation of the Act.

To satisfy any deficit resulting from the cost of paying claims against the high risk pool for individuals with pre-existing conditions that are in excess of the premiums collected, the sum of \$5,000,000,000 was appropriated by the Act<sup>5</sup>. Furthermore, the Secretary of the Treasury also has the power to adjust the amount appropriated for any deficit for claims against the high risk pool that exceed the premiums paid by the members and the sum of \$5,000,000,000<sup>6</sup>. Therefore, even if claims against the High Risk Pool are in excess of the premiums paid by members and the sum of \$5,000,000,000 total, the Secretary of the Treasury can appropriate more funds to satisfy the cost. There could be limitations and according to the Affordable Care Act, “[t]he Secretary has the authority to stop taking applications for participation in the program under this section to comply with the funding limitation provided in paragraph (1)<sup>7</sup>. However, it is unlikely that the Secretary will ever stop taking applications for participation in the high risk pool no matter the cost that exceeds the sums appropriated. As stated above, the Secretary is granted the authority to make whatever adjustments are necessary to satisfy this amount.

The Affordable Care Act has reduced the reliance individuals with preexisting conditions have on their spouses and will likely give them more independence to seek the dissolution of an unhappy marriage. In cases in which spouses with pre-existing conditions may otherwise have avoided divorce for fear of losing vital coverage, the Affordable Care Act may eliminate their reluctance to proceed with a divorce. Hopefully, the increased availability of health insurance coverage for married individuals with preexisting conditions will cause dependent spouses who need to leave abusive and unhealthy relationships to seek the dissolution of the marriage when it is in their best interests to do so.

1. <https://www.healthcare.gov/can-i-keep-my-child-on-my-insurance-until-age-26/>

2. <https://www.healthcare.gov/how-does-the-health-care-law-protect-me/#part=7>

3. 42 U.S.C. 18001 § 1101.

4. 42 U.S.C. 18001 § 1101(d).

5. 42 U.S.C. 18001 § 1102(1).

6. 42 U.S.C. 18001 § 1102(2).

7. 42 U.S.C. 18001 § 1102(4).

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## The Implementation of the Affordable Care Act and What This Means for Family Law Practitioners - cont'd

*Continued from page*

The Affordable Care Act has reduced the reliance individuals with preexisting conditions have on their spouses and will likely give them more independence to seek the dissolution of an unhappy marriage. In cases in which spouses with preexisting conditions may otherwise have avoided divorce for fear of losing vital coverage, the Affordable Care Act may eliminate their reluctance to proceed with a divorce. Hopefully, the increased availability of health insurance coverage for married individuals with preexisting conditions will cause dependent spouses who need to leave abusive and unhealthy relationships to seek the dissolution of the marriage when it is in their best interests to do so.

The Affordable Care Act may also have the effect of causing certain happily married couples to divorce and certain couples contemplating marriage not to tie the knot. This is due to the fact that it may be financially beneficial for a couple to live together as unmarried cohabitants rather than stay married or get married. The federal poverty guideline for a household of one member is \$11,490 (multiplied by four-hundred percent)<sup>8</sup> and for a married couple is \$15,510 (multiplied by four-hundred percent). To qualify for the premium subsidy an unmarried individual must earn at or below \$45,960 annually. In order to qualify for premium subsidies under the Affordable Care Act a married couple must altogether earn at or below \$62,040, just \$16,080 more than a single person<sup>9</sup>. Therefore, a couple who collectively earns \$70,000 annually will not receive premium subsidies whereas a single person earning \$40,000 annually will be eligible to receive premium subsidies. Utilizing the subsidy calculator provided online at the Kaiser Foundation<sup>10</sup>, the married couple described above will pay \$6,865 per year or \$3,432.50 per spouse per year for a Silver Plan<sup>11</sup>. An unmarried person earning \$50,000 annually will pay only \$3,433 per year for a Silver Plan and if another adult lives in the household and earns \$20,000 with no employer sponsored health insurance coverage, that person will pay \$1,021 per year for a Silver Plan<sup>12</sup>. Therefore an unmarried cohabiting couple will pay \$4,454 annually for a Silver Plan and a married couple will pay \$6,865 per year for Silver Plan coverage where the two couples earn the same total combined income annually<sup>13</sup>. Moreover, a married couple earning \$70,000 annually will pay \$2,411 more each year for healthcare coverage as opposed to an unmarried, cohabiting couple that earns the same income. Therefore, due to this incentive, it appears that the Affordable Care Act could conceivably contribute to a rise in the divorce rate. However, it is doubtful that family law attorneys will experience any

significant influx in business since couples looking to divorce to reduce their healthcare premiums will choose to pay attorneys the funds that they would otherwise be using to pay their respective healthcare premiums. Even if the divorce rate does not increase due to this financial incentive, whether this may deter couples from getting married or remarried remains to be seen. In fact, divorced spouses receiving alimony may be further incentivized not to remarry and may choose to cohabit with their significant others to avoid an increase in health care costs. This could possibly lead to an increase in the number of post-judgment motions for the termination of alimony based on a payee spouse's cohabitation.

In summary, it is unlikely that the Affordable Care Act will either contribute to an increase or decrease in the overall number of divorces in the United States each year. As stated above, individuals with preexisting conditions may be more likely to divorce due to greater access to affordable healthcare coverage, but any increase would likely be offset by certain couples without employer sponsored healthcare coverage who have decided not to get married due to increased healthcare costs. The Affordable Care Act may however contribute to a slight increase in the divorce rate of married couples, as individuals with preexisting conditions may be more likely to leave unhappy or even abusive marriages due to greater access to healthcare coverage.

8. <http://obamacarefacts.com/federal-poverty-level.php>.

9. <http://obamacarefacts.com/federal-poverty-level.php>.

10. <http://kff.org/interactive/subsidy-calculator/>.

11. <http://kff.org/interactive/subsidy-calculator/>.

12. <http://kff.org/interactive/subsidy-calculator/>.

13. <http://kff.org/interactive/subsidy-calculator/>.

*Mr. Gabriel is an Associate at Lyons and Associates, PC*

**Updated Judges and Staff Directory  
(effective Feb. 1st)**

**is available on our website**

**[www.somersetbar.com](http://www.somersetbar.com)**

Under "Announcements" on the Welcome Page

### The Clarion

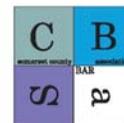
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### Somerset County Bar Association

*Founded in 1899, the Somerset County Bar Association has served its members, the public and the Somerset County Judiciary well, providing many services and benefits. It provides seminars touching on topics of membership interest, and many opportunities for social and business networking at various receptions, dinners and outings. The SCBA supports the public with its Lawyer Referral Service and pro bono mediation initiatives.*

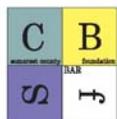


[www.somersetbar.com](http://www.somersetbar.com)

*Working for our legal community*

### Somerset County Bar Foundation

*The Foundation is the charitable arm of the SCBA providing support for those less fortunate in our community and promoting understanding of the law and our legal system by the public. Some key initiatives include the Raymond R. Trombadore Scholarship Fund for deserving local law school students, and fundraisers such as "The Legal Runaround" 5K races to benefit local non-profit organizations*



[www.somersetcountybar.org](http://www.somersetcountybar.org)

*Working for our community*

### Check out our NEW Websites!

The Bar Association and Bar Foundation now each have their own website.

**SCBA:** [www.somersetbar.com](http://www.somersetbar.com)

**SCBF:** [www.somersetcountybar.org](http://www.somersetcountybar.org)

Check the websites often for such information as:

- Calendar of Events (including registration information)
- Membership and Lawyer Referral Service information & forms
- Schedules for Matrimonial Early Settlement Panels
- Useful references (local, county, state)

### Calendar of Upcoming Events - 2014

February	17	Courts Closed - Presidents' Day
	26	6:00 - 8:30 pm Vicinage XIII Dinner - Fiddlers' Elbow Country Club
March	10	12:30 - 1:30 pm Family Practice Meeting - 1st Fl. Training Rm, 40 N. Bridge St.
	18	4:00 - 8:00 pm Spring Marathon CLE Evening
	24	6:00 - 8:30 pm SCBF Scholarship & Community Awards Dinner with Basket Raffle

*Registration forms for SCBA and SCBF events can be accessed through the calendar on our website:*

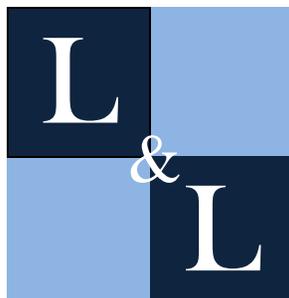
[www.somersetbar.com](http://www.somersetbar.com)

*Please contact the Executive Director if you have an event you would like calendared.*

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