The Clarion

Somerset County Bar Association

Volume 6, Issue 3

March, 2015

Somerset County Bar Association President's Message

As this is the first Clarion issue of 2015, I wanted to point out to all members that the Somerset County Bar Association has moved into the 21st century with its new and improved Bar Association Management System (AMS) powered by IntelLinx, Inc. The software is called "*In Touch On Demand*". It provides increased automation and efficiencies for our members and staff. Importantly it combines into a single system the association bar management data and our Lawyer Referral Service.

From our SCBA website (www.somersetbar. com) you can now log in and update your contact information and personal profile, register and pay for upcoming events and CLE seminars, make/renew membership and LRS dues payments, and keep track of what you've signed up for - all on line. CLE attendees will be able to print their own attendance certificates for those seminars the SCBA provides directly from their profile page.

Important improvements have been made to the Lawyer Referral Service without increasing fees. Some noteworthy changes include:

- Each caller will be provided a single attorney referral (vs. 3 previously) which will increase the likelihood of a client contact for the attorney members.
- Attorney members will receive details of a potential client's case and contact information so that they may directly contact the client (previously, attorneys were not permitted to contact potential clients and had no information regarding the case matter).
- LRS members will be able to track the status of their cases on line.
- LRS attorneys will also be able to set an "Out of Office" mode when they are unable to take cases for a period of time (e.g. vacation, trial) without losing their spot in the attorney rotation. An attorney will automatically be returned to the rotation after the return date so there is no need to notify the staff you are available to receive referrals.

Each current SCBA member should have received an email sent out on February 18 with instructions on how to access your account. Please let Association Director Carol Ann Winder know if you did not receive the email with these instructions and she will assist you in joining the other members who are already taking advantage on the new site. Attorneys wishing to (re-) join the SCBA and LRS may do so also by contacting Carol Ann.

Members who have begun utilizing the new AMS for a few weeks now have found it "simple," "intuitive," and "easy to use," The Board is confident that you will be as delighted as we are with the new functionality provided by the new system and, of course, we welcome any feedback you may have.

Francesco Taddeo, Esq.
2014-15 President, SCBA

Note from the Editors

Thank you to those individuals who contributed articles to the December issue of ***The Clarion*** and to those featured in this issue.

Our next issue will be mailed in May, 2015 and we are actively looking for contributions. Please let us hear from you!!

The submission deadline for articles for the May ***Clarion*** is April 28th. Please send them to cawinder@somersetbar.com.

Co - Editor Victoria D. Britton, Esq.
Co - Editor Stacey L. Pilato, Esq.
Co - Editor Amy Wechsler, Esq.

Special Points of Interest:

- *"Roast" of Miles S. Winder, III - President-Elect NJSBA - Apr. 28th (pg. 10)*
- *Somerset Chapter of ACLU needs volunteer attorneys (pg.5)*
- *Annual Golf & Tennis Outing (pg. 6)*

Inside this issue:

In My Opinion: In Addressing the Heroin and Opiate Problem in New Jersey, the Attorney General has Missed a Valuable Opportunity

By Michael B. Roberts, Esq.

On October 28, 2014, Acting Attorney General John J. Hoffman released Directive 2014-2 entitled "Concerning Heroin and Opiate Investigations/Prosecutions." The Directive is available at http://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2014-2.pdf

According to the introduction, the State is responding to the heroin epidemic by ensuring that the various counties throughout the State are following a uniformed approach regarding the enforcement of criminal law and administration of criminal justice. What follows is a cacophony of creative criminal law policy initiatives purportedly designed to address the problem. According to this author, while some steps have been made to reduce the number of people in the criminal justice system as a result of drug use, the overall effect of Directive 2014-2 will result in more prosecutions and longer sentences, thereby raising the costs already incurred by the drug epidemic in New Jersey.

In the Directive, the Office of the Attorney General describes the uniform policy to be implemented at six different stages of a drug case. Part 1 encourages overdose prevention by requiring officers to investigate whether the medical aid exception applies to persons who have called for medical aid following a possible drug overdose. This mandate is the result of legislation passed in 2013 that prohibits the prosecution of a charge of possession to those people who contact emergency services to request aid for a possible drug overdose. Its purpose is to encourage people who need medical assistance due to a possible drug overdose to call the police without fear of arrest. Through Directive 2014-2, Statewide training for police will take place within 120 days, and responding officers are directed to investigate the possibility of the immunity prior to arrest and report the circumstances to the local prosecutor to make a determination if the immunity applies. This is certainly a step that may lead to a small decrease in arrests for drug possession and possibly save lives.

Part 2 encourages police officer training for Narcan deployment. This is a nasally-injected opioid antidote designed to save a life in the event of a heroin or prescription opioid

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Editors' Note:
This article is reprinted in its entirety from the December, 2015 issue of ***The Clarion*** due to some editing oversights. We regret any misunderstanding they may have caused.

Catching Up To Technology: Maintaining Text Messages and Social Media Posts Under the Open Public Records Act

By Victoria D. Britton, Esq.

An important public policy in New Jersey is to encourage access to government records. The Open Public Records Act (*N.J.S.A.* 47:1A-1, *et seq.*), commonly known as "OPRA", provides citizens with ready access to government records. OPRA differs from the Federal Freedom of Information Act ("FOIA") because it is primarily a records request statute not an information request act.

OPRA encourages a broad interpretation of records requests, and provides that any limitation on the right to access must be constructed in favor of the public (*N.J.S.A.* 47:1A-1). The statute sets forth 24 limited exemptions to the right to public access. Absent a clear showing that one of these exemptions bars disclosure of a government record, broad public access must be provided by the government (*N.J.S.A.* 47:1A-1; *Bart v. City of Patterson Housing Authority*, 403 *N.J. Super.* 609 (App. Div. 2008)).

Under OPRA, a government record is defined, in part, as any paper or document including, but not limited to, information stored or maintained electronically, that has been made, maintained or kept on file in the course of a public officer's or a public agency's official business, or that has been received in the course of a public officer's or a public agency's official business (*N.J.S.A.* 47:1A-1.1). Emails have long been understood to fall within the scope of OPRA's definition of a government record (*McGee v. Twp. of East Amwell*, 416 *N.J. Super.* 602 (App. Div. 2010)). What remains unclear in this technology-centered world is how text messages and social media messaging should be handled under OPRA.

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Would Greater Access to Custody and Parenting Time Evaluations Benefit the Court System, Litigants and Children?

By Mark T. Gabriel, Esq.

In high conflict custody disputes, individuals with limited income, and even middle class litigants, may not have access to affordable custody/ parenting time evaluations and bonding evaluations. These evaluations become necessary where custody and parenting time cannot be resolved through mediation.

Before I began practicing family law in Somerset County, I was employed by the Bergen County Vicinage as a law clerk for the Honorable James J. Guida, J.S.C. Thereafter I practiced family law in Bergen County. When I was a law clerk and during my time as a family law attorney in Bergen County, litigants who could not afford to hire or otherwise chose not to engage a private expert to perform a custody evaluation were referred to a non-profit organization known as the Bergen Family Center. The Bergen Family Center provides reduced-cost custody and parenting time evaluations for litigant's referred by the family court on a sliding scale according to the parties' total income. Each party is ordered by the court to pay a percentage of the cost based on the percentage share each contributes to total parental income.

The Bergen Family Center is a non-profit organization largely funded by government grants, and a small percentage by private donations. In the year 2013, Federal grants provided $200,000, state grants provided $1,645,000, county grants provided $675,000, and private donations provided $415,000 to the program. The total contributed by program participants in 2013 was $740,000.[1] Although the Bergen Family Center does provide custody and parenting time evaluations as appointed by the family court, the organization also provides children's services, adolescent services, eldercare services, and other counseling services for victims of domestic violence and other crimes, and for persons suffering with HIV and AIDS. The Center also provides several other programs in the community.[2]

In counties outside of Bergen County, this type of program is not available. In other counties, if parties cannot afford to retain a private custody evaluation or cannot afford to jointly obtain a custody and parenting time evaluation, they are simply left to either litigate or settle without the benefit of such an evaluation.

This article addresses whether greater access to custody and parenting time evaluations and other expert resources in connection to custody litigation would be beneficial for the Judges, litigants, and most important, for the children. The benefits of greater access to custody and parenting time evaluations and other expert resources in connection to custody litigation are addressed below. Funding for such a program is clearly a primary concern, but is not discussed as it is beyond the scope of this article.

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What's Yours is Mine - NLRB Reverses Itself on Employee Rights to Use Employer Email

By Ryan S. Carey, Esq.

On December 11, 2014, the National Labor Relations Board ("NLRB" or the "Board") issued its long-awaited decision in *Purple Communications, Inc. and Communications Workers of America, AFL-CIO*, holding that employee use of employer email systems on non-working time for Section 7-protected communications is presumptively permitted where employers have given employees access to their email systems. In so holding, the Board overruled its decision in *Register Guard*, which set forth an opposite rule and had been relied upon by employers in setting policy since 2007.

Section 7 of the National Labor Relations Act

Section 7 of the National Labor Relations Act ("NLRA") grants employees "the right to self-organization…and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." The Board and courts have thus recognized that employees' exercise of their Section 7 rights encompasses the right to communicate with one another regarding self-organization and their terms and conditions of employment. Of course, Section 7 applies to all employers, not just those that are unionized. As a result, NLRB decisions regarding

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Somerset Chapter of the State ACLU NEEDS YOU!

This chapter's free legal clinic is in desperate need of new volunteer attorneys to keep it alive! This is an advice-only clinic and deals with all types of legal issues. No attorney follow-up is needed and if the question is outside of an attorney's expertise, you may refer them our LRS.

The clinic meets on the 2nd Wednesday of each month from 7 - 9pm at the United Reformed Church in Somerville. Normally between 5 - 8 people show up each month. ***Time commitment: 1-2 evenings/year***.

For more information, contact Steven Lieberman, Esq. - Tel: 908-725-1776; email: steven1713@aol.com

A Resource for Somerset County Bar Association Members

By Maria DeFilippis, Esq.

Are you aware that there's a resource in our county which could be both beneficial and indispensable to the members of SCBA? It is the Raritan Valley Community College Paralegal Program, which has been training and graduating paralegals for employment in area firms and corporations since its inception in September 1991.

The RVCC program is approved by the American Bar Association and offers students the choice of a two-year Associate Degree or a Certificate in the field. Students take classes in basic courtroom procedure, litigation, torts, family law, wills and trusts, intellectual property and more. Students become computer literate, utilizing the Internet to research legal topics, learning various types of legal specialty software and mastering computer-based legal research using Lexis and Westlaw. Students learn to conduct legal research, write case briefs and legal memorandums, draft legal documents such as wills, deeds, pleadings and contracts, interview and assist clients in case preparation, do investigations, gather and protect evidence and attend and assist attorneys at trial. All courses include practical assignments such as drafting motions, digesting depositions, briefing cases or completing HUD-1, Case Information Statements, subpoenas and other necessary documents.

The college also provides a complete and updated law library for research work, with both federal and New Jersey statutes and cases. Students who like to combine experience with learning have the opportunity to do a cooperative internship, working in area law offices, local corporations and government agencies. Some students combine community service with their coursework and train to be mediators in municipal court disputes in Somerset, Hunterdon and Warren counties. All this, and much more, is available to those exploring a career as a paralegal – and it's available at a reasonable cost right here in Somerset County.

What then can this program do for SCBA attorneys? First, it can help you train and maintain staff and attorney competence – any staff member or attorney/partner of the firm can easily take a course or two in Real Estate practice or Family Law to update their knowledge and abilities. Next, it offers you the opportunity to take on student interns, who work 12-15 hours per week in your office in exchange for 3 credits of course work. Finally, it is a resource for every attorney who wants to hire trained paraprofessionals to assist them in their practice, people with legal knowledge and ability, who can hit the ground running and understand what's required to be part of the legal team.

For more information on the program, visit the RVCC website:

For the AAS Degree: http://raritanval.catalog.acalog.com/preview_program.php?catoid=5&poid=528

For the Certificate:

http://raritanval.catalog.acalog.com/preview_program.php?catoid=5&poid=529

Or contact the Program Coordinator, Maria M. DeFilippis, Esq., at mdefilip@raritanval.edu .

Ms. DeFilippis is a member of the SCBA and the Coordinator of the Paralegal Studies Program at Raritan Valley Community College

ADR: Beyond Mediation and Arbitration...Parenting Coordination and Collaborative Divorce

By Amy Zylman Shimalla, Esq.

We are all very familiar with mediation. It has become a part of the fabric of how we practice family law throughout New Jersey. This is especially true in Somerset County where the practitioners are very accepting of Alternate Dispute Resolution ("ADR") processes. Arbitration is likewise a well-known alternative to taking a case to trial. Two other ADR processes that have been gaining in popularity are Parenting Coordination and Collaborative Divorce. Both of these options help families who are going through divorce by helping the parties come to a resolution that suits their families with minimal involvement from our courts.

Parenting Coordination

Parenting coordination is a child focused ADR process. It allows parents, who are in ongoing conflict regarding scheduling and parenting issues, to avoid returning to court repeatedly after the entry of a Final Agreement or Order Fixing Custody. A Parenting Coordinator can be a lawyer, or a mental health expert.

The Parenting Coordinator works with the parties to reach a consensus on child related issues, and when necessary, the Parenting Coordinator makes recommendations on the issues. If the parties cannot agree to abide the recommendations of the Parenting Coordinator, either party is free to make an application to the Court by motion to enforce them.

A Parenting Coordinator can deal with a myriad of issues including: dates, times, places and conditions for transitions between households; temporary variation from the schedule for a special event or particular circumstance; children's participation in recreation, enrichment, and extra-curricular activities, programs, and travel; childcare arrangements; clothing, equipment, toys and children's personal possessions; discipline and behavior management of children; information exchange (school, health, social, etc.) and communication about the children; arrangements for health care reimbursements; clarification of provisions in the court-ordered parenting plan, including but not limited to, holiday and vacation plans, and attendance at special events; and communication with the children when they are in the care of the other parent.

This is a process that allows the parties to work toward a better co-parenting relationship with the help of a professional post-divorce. It helps the parties avoid returning to court on a continuous basis post-judgment. Most importantly, it helps the children by attempting to keep them out of the middle of their parents' ongoing conflicts.

When choosing a Parenting Coordinator, contact that person and ask for their preferred form of Consent Order, which defines their role together with their retainer agreement. If these documents are utilized at the time of appointment, you can avoid the delay that occurs when a bare bones court order is entered or mention is made in a Marital Settlement Agreement without the necessary detail.

Collaborative Divorce

The Uniform New Jersey Collaborative Family Law Act (N.J. Stat. § 2A:23D) was signed into law September 2014 and took effect on December 10, 2014.

Collaborative divorce is a process in which the parties and counsel agree not to litigate, but rather to work jointly until they reach a resolution that works for both parties. Neutral experts are added to the process as agreed. In addition to retainer agreements, a participation agreement is signed by the parties and counsel. The agreement provides, in part, that if the process ends, neither lawyer can represent their client in litigation.

Collaborative divorce is a natural choice for those of us who have always looked at our cases in a resolution-oriented way. We have sought to resolve issues before seeking court intervention, and have utilized neutral experts when possible. We

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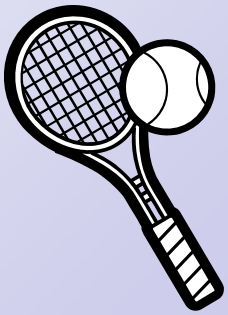
Save the Date!!!

Annual Golf & Tennis Outing

Tuesday, June 16, 2015



Raritan Valley Country Club

Check website calendar for registration & details

Controlling Expenses for New Law Firms

By Carl A. Taylor, III, Esq.

When asked about the key to a successful business, Warren Buffett once stated: "Rule Number one: never lose money. Rule Number two, never forget rule number one." Or to paraphrase what a mentor of mine once advised when I started my own firm: "Remember that it's not all about gross revenue. The most important thing is the difference between your gross revenue and your expenses."

For those with smaller practices, those just starting their firms or those considering such an endeavor, there is great power in controlling expenses. Costs may be the only thing solely under your control for the first year or so of your practice, particularly if you start with few or no clients. Controlling firm expenses is not a topic that is discussed often between attorneys, but it's an important factor for every firm to consider, large or small. I serve as a Trustee of the Bar Association and Co-Chair of the Somerset County Young Lawyer's Division. Additionally, I started my own firm on my 28th birthday, and for three years learned through trial and error what expenses were absolutely necessary. Accordingly, this article is particularly addressed to newer attorneys considering solo practice. Even if you're an associate, however, it's important to be mindful of the firm's bottom line and to not be wasteful in your personal practices. Perhaps the views I express herein are not a fit for every attorney, but they were hard-earned lessons that allowed me to start a firm with no clients and to cover my startup costs within a quarter and to thereafter produce a net profit in almost every month.

Although I am no longer a solo attorney—having joined Cooper & Rodgers this past June as an associate where I currently serve as Somerset County Deputy County Counsel and continue to serve private clients—it is currently tax season and I've been in the process of finalizing my books on the third and final year of my practice. This process has been a great reminder of what I did right and wrong on the financial end of running my law practice. While no two businesses are the same, I hope that this "case study" of my practice will be useful as a comparison for those just starting out or considering creating a solo or small firm practice. The expenses should, of course, be consistent with the goals of the enterprise.

Startup Costs

Regarding startup costs, they should by necessity be minimal for most new firms that have few if any initial clients. A computer, a copier/printer, a dedicated telephone line, perhaps a small office space, the internet, and sufficient insurance may be all that is required. I found the purchase of a nice dedicated scanner to be worth the investment. I would imagine that most young/newer attorneys can have their firm up and running for less than $10,000.00 to start with additional monthly expenses of approximately $1,500.00. This is particularly true if you're in the advantageous position of having a spouse that can provide family health insurance. However, the most important consideration is truly not start-up costs, but rather ongoing monthly expenses. When you're first starting out, you do not want to be tied down to too many revolving monthly expenses. Having too many expenses eats into what are likely in the beginning to be low revenue streams. If a new firm is overextended, an attorney may find himself or herself taking on the wrong kinds of clients or cases outside their knowledge base. Here are a few methods I used to cut down on monthly expenses when I was a solo attorney:

Fax number – I used an online fax number to avoid paying for another telephone line. Companies like E-Fax offer monthly unlimited online faxing for approximately $16.00 per month. Faxes come to your email account as PDF's. A young attorney can scan and use their email account to then respond to faxes. The company will provide a dedicated fax number and there's no need to purchase a fax machine, an additional phone line, or the expenses associated with operating a fax machine.

Office space – There are many "virtual" or office time-sharing arrangements that I cannot speak to, as I always had a dedicated office space. Procuring office space from an attorney with potential overflow work is helpful. It's important to be mindful of how much space is actually required. If a young attorney outgrow the space later on then that's merely a good problem to have.

Legal research/books – There are now free legal research options such as Fastcase through the State Bar Association. Even Google Scholar can be a useful legal research tool. The Somerset County Courthouse has a legal library and regular hours. I found it useful, in time, to negotiate the lowest price possible for LexisNexis (they offered a lower price to me than competitors but your mileage may vary). When just starting out, it's also helpful to be resourceful whenever possible. A larger firm once put out a notice that they were discarding their prior editions of the New Jersey Practice Series and the New Jersey Statutes. I was not too proud to reach out to them and take certain of those books off their hands. They were happy to have space for the newest additions and I was grateful to have almost brand-new books as a decent starting point for addressing legal issues.

Memberships – It may make sense to pay less for an inactive bar license in a state where an attorney is barred but does not

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Somerset Family Practice Updates

By Amy Wechsler, Esq.

As the SCBA Family Practice Committee continues to meet with our family law judges here in Somerset, this column will report on the content of those meetings, to inform our SCBA members about updates on filing requirements, communication with court staff, and court procedures.

At our most recent bi-monthly meeting on January 12, 2015, Judge Goodzeit, Judge Picheca and Judge Shanahan joined us, along with Family Division staff. Judge Goodzeit announced the assignments for all Family Part judges in Vicinage XIII (Somerset, Hunterdon and Warren Counties). Since that meeting, there are additional changes. Please note the current assignments for Vicinage XIII Family Part judges as follows:

- **Judge Ann R. Bartlett** – Warren
- **Judge Angela F. Borkowski** – Hunterdon (Children in Court docket only)
- **Judge Bradford M. Bury** – Hunterdon (as of mid-March)
- **Judge Margaret Goodzeit** – Somerset
- **Judge Michael F. O'Neill** - Somerset
- **Judge Anthony F. Picheca, Jr.** - Somerset
- **Judge Kevin M. Shanahan** – Somerset 4 days/week; Hunterdon on Fridays hearing Hunterdon, Somerset and Warren motions. **NOTE: read court notices carefully for the location for oral argument.**
- **Judge Peter J. Tober** – Somerset (FDs and FMs on Mondays and Fridays); Warren (FDs and Children in Court on Tuesdays, Wednesdays and Thursdays)

At the Family Practice Committee meeting, Ashley Monteiro, Esq., introduced the current Somerset County Family Part law clerks. The law clerks presented a program on their roles and what they need from attorneys and litigants. While we have heard much of this advice in the past, it bears repeating:

1. Clerks work only with motions, and they handle adjournments during the week of the motion. If you request an adjournment more than one week prior to the return date, your request should be made to the Family Division. When you make a request for an adjournment to the law clerk, remember that this is not his or her decision – it is up to the judge. Do not contact law clerks to discuss the merits of your motions, or to ask about other aspects of the case. They cannot assist you.
2. When you request an adjournment and the opposing party is *pro se*, you still need that party's consent.
3. Do not call to request adjournments. These requests must be in writing.
4. If parties are settling any of the issues on a motion, let the judge's chambers know as soon as possible. Judges and law clerks should not be spending time reviewing papers and rendering decisions on issues that you are able to resolve on your own.
5. When completing Family Part Case Information Statements, make sure to include as much detail as possible to help compare the marital life style with your client's current life style.
6. While it may seem obvious, *pendente lite* motions should be detailed. Whatever relief you seek, make sure you back it up not only with your client's sworn certification, but with detailed figures supported by documentation.
7. Include tabs for exhibits. This is mandatory not only on the court's copy, but also on the copy you provide to the opposing party.

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Welcome New & Returning Members!

(as of March 18, 2015)

The SCBA extends a warm welcome to our newest members:

Terrance W. Annese, Esq.- Law Offices of Mark S. Guralnick, PC
Jeffrey T. Blackwell, Esq.
Jennifer L. Casazza, Esq. - The Mark Law Firm
Robert J. Chalfin, Esq. - Robert J. Chalfin, PC
Nicholas J. Dimakos, Esq. - Norris McLaughlin & Marcus, PA
Dhaval G. Patel, Esq. - Law Offices of Mark S. Guralnick, PC
Ravi Patel, Esq.
Frank H. Rose, Esq. - Law Offices of Mark S. Guralnick, PC

and welcomes back after an absence:

Howard D. Cohen, Esq. - Of Counsel, Parker McCay, PC
Jane A. Herchenroder, Esq.
Gerard J. Legato, Esq. - The Legato Law Firm, LLC

Dismissal From College, Graduate or Professional School: A Lifetime of Earning Potential at Stake

By Charles Z. Schalk, Esq.

These days a college education is averaging $25,000 to $60,000 per year or more, totaling $100,000 to $240,000 to graduate a child in higher education. If your child is going to a professional school, say perhaps medical or dental school, double these numbers. Now imagine after spending that astronomical sum, investing half a million dollars or so on your child, he or she runs into a rogue administrator or instructor whose actions result in his or her arbitrary and wrongful dismissal. Now imagine that your child permanently has a black mark on his or her record that will prevent him or her from becoming a doctor or dentist or professional anywhere because no other school in this country will accept him or her into its programs. There is a lot at stake - a lifetime and a career. These are very important interests. And they must be, and can be, protected.

These are the type of cases I litigate. In 2011, I represented one such student and obtained a jury verdict of $2.025 million against the New Jersey Dental School, then part of UMDNJ. It was and remains the largest student verdict ever in this country.

The potential economic damages in this type of case is extremely large because damage to these students' future careers is significant. Instead of fulfilling a dream of becoming a doctor and recouping a financial investment in education, the wronged student may wind up working in a lab for the rest of his or her life. Instead of making $200,000+ per year, he may be making $60,000 per year. And since the damage is done at a relatively early age and will affect the student's earning potential for the duration of his or her career, it is reasonable to argue substantial damages to a jury, and for a jury to award a very large verdict for the wronged student.

These cases are different than their close cousin, employment cases, because generally other employers can hire employees even after a wrongful termination. In a student case, once a student in a professional school is terminated and has a black mark on his or her academic transcript, a school may occasionally look at, and may even (but rarely) interview the student. But the cold, harsh reality is that no other school in this country will accept these students into their programs.

There are a handful of attorneys handling these matters. Even thinner than the ranks of attorneys handling these matters is the body of law on the subject. Education at a public institution is a property interest which is protected by the Due Process Clause. Goss v. Lopez, 419 U.S. 565, 574 (1975). "A public university student has a protected interest in continuing his studies." Picozzi v. Sandalow, 623 F.Supp. 1571, 1576 (E.D.Mich. 1986). "The right to remain at the college in which the plaintiffs were students in good standing is an interest of extremely great value." Dixon v. Alabama State Bd. of Educ., 294 F.2d 150, 157 (5th Cir. 1961). "A graduate student has a 'property' interest in continuing his studies." Stoller v. College of Medicine, 562 F.Supp. 403, 412 (M.D.Pa. 1983).

Bearing in mind the small body of supporting law on the issue, several years ago, I knew in my heart that a wrong had been committed against a terminated student and justice needed to be served. I took on the matter of *Vladimer v. UMDNJ (cite needed).* The plaintiff was ranked #1 in his class in dental school, was honored by the school for his academic achievements, was intelligent beyond reproach and a star in every way. In a clinic in his third year, he accidentally "nicked" a patient during a procedure that resulted in a 10-second bleed (that was treated successfully?). Somehow, an instructor and administrator severely misconstrued and amplified what was ultimately ruled a benign and trivial matter into the student's dismissal from the school.

The student internally appealed his dismissal through an attorney. At the time, the school's general counsel represented to the student that if he accepted responsibility for the allegations against him, the hearing would not be lengthy and he would not be expelled. Based on these representations, at his hearing, the student did not submit an explanation of the events. The hearing body recommended that he be expelled. The student challenged the dismissal on appeal to the school Dean. The Dean then articulated new charges against him, which had never been raised by notice before, arguably to support a dismissal that lacked support in the first instance. The Dean's decision was upheld on final internal appeal, and thus the matter required the student to litigate. I took on the student as my client.

As a State university, UMDNJ is a "public" school. The argument that we made on the student's behalf, and with which the jury agreed, was that UMDNJ took away the plaintiff's constitutionally protected right to a higher education at a public university arbitrarily, and without due process. This was a specific jury charge which I prepared, the court accepted, and for which the jury voted "yes". I argued successfully that there are certain bedrock principles that guide our government so that citizens are protected and treated fairly. One such guiding principle is our Federal Constitution, and in particular, the 14th Amendment that applies to state institutions such as UMDNJ. These supremely important laws provide that no state shall deprive any person of his or her property without due process of law. This means that the government cannot suddenly swoop in and start taking away your belongings - your house, your car, your possessions. Due process prohibits this; it protects us, and it protects our property. The U.S. Supreme Court has recognized that a dental student at a public university has a significant property interest in his or her higher education, which is constitutionally protected. See Goss v. Lopez, 419 U.S. 565, 574 (1975).

I successfully argued to the jury that this property interest was not just any property interest, but one that is considered to be an interest of extremely great value. Of course, this makes sense. After all, a car has a certain value, a house has a certain value. But an advanced education is much more -- a thing of extremely great value, certainly more than a car or a house. An education shapes us, empowers us, makes us better citizens, and makes us better people. An education is also what critically determines how much money you have the potential to earn while working the rest of your life. The more education you have, the more tools you learn, the more money you can make throughout your entire working life. A car or a house has a fixed value. But a college or dental school or medical school education is something that enhances

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ADR: Beyond Mediation and Arbitration ...

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have gathered together at four-way conferences in an attempt to resolve issues. We have used mediation and arbitration as alternatives to the court process. We have collaborated with one another to reach a resolution.

The collaborative process always involves two clients and two collaboratively trained lawyers. Beyond that, team members are added to the process as deemed appropriate by the parties and their legal counsel. Frequently utilized team members are:

A. *The Divorce Coach* : The divorce coach is a mental health expert who will work with the parties individually and in the process itself (i.e., four-way conferences) as needed. The divorce coach aids the parties in working through the emotional issues and helps them to effectively communicate with one another.

B. *Child Specialist* : The child specialist is a mental health expert who meets individually with the children and adds their voices to the collaborative process.

C. *Financial Planner :* There can be joint or separate financial planners who will work with the parties to project their future need and assess how different support scenarios, and equitable distribution scenarios, will impact each party. A neutral financial expert can be very useful in showing how different offers on the table impact both parties.

D. *Forensic Accountant* : When a business is involved, a neutral forensic accountant trained in collaborative divorce will work with both parties and counsel to evaluate the business in the most efficient way possible. A final report is not prepared, but rather spreadsheets are shared with the parties and counsel. The findings are discussed at a four-way conference with an open dialogue among all team members.

Collaborative divorce benefits everyone involved. It is a benefit to the parties, as they preserve resources, both financial and emotional. It eases the burden on our judicial system, which is one in which our judges are overworked and understaffed. The collaborative process allows them to process a completely resolved divorce at a simple uncontested hearing or on the papers, without having to provide any other judicial resources to the family involved.

Lastly, and most importantly, the process benefits the children. Statistics show that how the parents conduct themselves during a divorce has a greater impact on the children then the actual fact that their parents get divorced.

Following a conventional divorce, the parents are left to pick up the pieces after the adversarial process has concluded. They must then find a way to move forward with the parenting and financial arrangements the court has imposed upon them. In a collaborative divorce, the parties can enlist the aid of their collaborative lawyers and other team members as needed post-divorce. The result can be a much smoother transition for the family into their post-divorce life. Ultimately, a collaborative divorce can be less stressful and less expensive, and the family members will suffer far less collateral damage than those who live through a conventional divorce.

Ms. Shimalla is a partner in the law firm of Shimalla, Wechsler, Lepp & D'Onofrio, LLP with a focus of practice in family law.

April 28th is THE Date!

A "ROAST" of

Miles S. Winder, III

In honor of his May 2015 Installation as President, NJSBA

(Roast is sponsored by and for the benefit of the SCBF)

6:00 - 9:00 pm

Bridgewater Manor

Contact the Executive Director if interested in participating in the "Roast"

Preceded by a

Family Practice Seminar

4:30 - 6:00 pm

Check website calendar for more details in coming days.

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Would Greater Access to Custody and Parenting Time Evaluations Benefit the Court System, Litigants and Children?

Continued from page 3

First, where a custody and parenting time dispute proceeds to trial, the Court would most likely be in a better position to make a determination regarding custody and parenting time if he or she has been provided with an expert opinion. Although family court judges can rely on their substantial experience when making determinations in regard to such disputes, in most circumstances the judge would benefit from an expert opinion. Even if the Court does not follow the custody and parenting time evaluator's recommendation, a written report may assist the Court in narrowing the issues that may be litigated at trial, and may potentially resolve such issues in order to avoid a trial that is both financially and emotionally costly for the parents and more important, for the children.

Second, an expert custody and parenting time evaluation report and reasoning supporting the evaluator's recommendation may in some cases help litigants realize that their position is not sustainable and lead parties to settle the matter. The report may also help the parties' respective attorneys encourage their clients toward settlement. As so often happens, a client may need to be advised from a disinterested third party that his or her position regarding custody and parenting time is not feasible, the third party being someone other than his or her own attorney. In fact, studies of the outcome of the child custody evaluation process indicate that about 70% to 90% of those cases settle after counsel, and the litigants are able to review the evaluator's recommendations. Although it appears that obtaining child custody evaluations may promote settlement in such cases, a study found that divorcing couples who had settled their custody matter after obtaining a child custody and parenting time evaluation were more than 2.5 times more likely to re-litigate the same custody issue subsequent to the divorce. Another study found that among families who had custody evaluations, 71% re-litigated compared with 41% of the divorcing population in general. Therefore, while it may appear that obtaining a child custody and parenting time evaluation may result in a greater percentage of settled cases, divorcing couples who obtain such evaluations and settle their cases by consent are much more likely to re-litigate custody than divorcing couples who did not obtain a custody and parenting time evaluation. What we do not know, however, in cases where a custody evaluation was obtained is whether an even higher percentage of cases would re-litigate after initially coming to an agreement. For example, in high conflict cases where a custody and parenting time evaluation was not obtained, such cases could be 4.5 times more likely to re-litigate after an initial custody proceeding. In addition, the percentage of cases that re-litigate after a custody and parenting time evaluation is obtained is likely skewed by the fact that all such cases are naturally "high conflict cases," and comparing this population to cases that are not "high conflict cases" is probably misleading.

Third, litigants' increased access to custody and parenting time evaluations may assist the Court with determining if a serious problem is occurring between both parents or either parent and the children. For example, a non-custodial parent with limited financial resources who cannot afford to retain an expert to perform a custody and parenting time evaluation may be unable to prove and therefore address the parental alienation carried out by the custodial parent. Although obvious symptoms of parental alienation such as the unjustifiable interference with the non-custodial parent's parenting time would clearly be identifiable by the Court, more subtle symptoms of this syndrome may be identified by a trained mental health professional during the evaluation where the evaluator can see the children interact with both parents. Even if a matter proceeds to trial, the judge presiding over the case will never have the luxury of observing the parents with the children as an evaluator would during the evaluation process.

Fourth, the parents could possibly benefit from the findings made by the custody and parenting time evaluator. Parents who are unaware that their behavior is harmful to their children may be insightful enough to heed the recommendations made by the evaluator, and may in some cases alter such behavior in the future.

Fifth, in cases of third party custody, to prove that a third party is a psychological parent of the child and is therefore entitled to custody rights, the third party must prove the following four prongs: (1) the legal parent must have consented to and fostered the relationship between the third party and the child; (2) the third party must have lived with the child; (3) the third party must have performed parental functions for the child to a significant degree; and (4) a parent-child bond must be forged. Furthermore, the New Jersey Supreme Court also set forth that the most important factor in considering whether a psychological parent-child relationship has been established is whether a parent-child bond exists. To determine the existence and strength of the parent-child bond, expert testimony will generally be required. A third party who has limited resources who seeks to prove that he or she is the psychological parent of a child will be left with little recourse if he or she is unable to obtain a bonding evaluation to meet his or her burden before the Court. This may be unfair to the third party, but the bigger concern is that depriving a child from having a relationship with a psychological parent would likely be even more harmful to the child and clearly not in the child's best interests.

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Somerset Family Practice Updates

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8. Judges and law clerks appreciate motion certifications that are to the point and address only the issues raised on the motion. Extraneous information, if not related to the relief sought, is distracting and likely not well-received.

9. When you receive a preliminary decision, make sure to confer with the other side and confirm whether or not either or both of you want oral argument.

10. File your papers on time! But, it's even better if you file them early. The clerks and judges review motions as soon as the entire motion package (motion, cross-motion and reply) is complete. In a busy week, getting your papers in at the last minute may result in not receiving a tentative decision.

11. Do not use e-mail to communicate with the law clerks, and do not ask (or expect) them to send you preliminary decisions or other information via e-mail.

12. When you write to opposing counsel, do not send a copy to the judge.

13. Sur-replies are not permitted without the court's express permission. Do not submit a sur-reply unless and until you have that permission.

14. Stick to the motion page limits! If your certifications are over the page limits, you run the risk that the court will not consider the excess pages. And remember: if you are submitting certifications from your client and from other parties, the total pages of all the certifications cannot exceed the page limits in R.5:5-4 (15 pages for motion certifications; 25 pages for cross-motions; 10 pages for replies).

Ms. Wechsler is a partner in the law firm Shimalla, Wechsler, Lepp & D'Onofrio, LLP and specializes in matrimonial and family law.

Catching Up on Technology: Maintaining Text Messages...

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Text messaging and social media posts have become commonly accepted forms of communication in recent years. The courts have yet to address text messaging and social media in the context of OPRA. Recently, however, the Government Records Council ("GRC"), the State administrative agency tasked with overseeing the Open Public Records Act, addressed this issue in the matter of *Alt v. City of Vineland* (GRC Complaint 2013-205, June 24, 2014).

In *Alt*, the GRC found that text messages and messages sent through Facebook are forms of correspondence similar to letters and emails. As such, text messages and Facebook messages are considered government records provided they are related to official government business (as opposed to personal communications made in these ways). Ultimately, however, the GRC found that the records request at issue in *Alt* was overbroad because the citizen's request for all text messages and Facebook messages pertaining to city business failed to identify a specific government record, which is required under OPRA.

While the GRC in *Alt* did not require disclosure, as a result of the *Alt* decision, public agencies and officers must maintain work-related text messages and social media messages in their files, even when they are sent from personal electronic devices, because the point of origin of the record is irrelevant under OPRA. This is consistent with past rulings from the GRC and the courts with regard to the use of personal email accounts to conduct government business; such emails are subject to public access under OPRA absent an applicable exemption.

Text messages are somewhat trickier to maintain than emails and social media posts because they are generally contained on cellular telephones and not computers, which are connected to networks, servers and printers. In order to maintain these records, public officers can forward their text messages to their government-issued email accounts, or take a screen shot of their text messages and place a print out of the screen shot in their files. In lieu of text messages, public officers can utilize their government-issued email accounts for work-related business as most public officers can readily access their government-issued email accounts from their smartphones. In any event, text messages and social media posts related to government business must be maintained under OPRA in the same way as other government records.

Ms. Britton is an Associate at Mason Griffin & Pierson, PC with a focus of her practice in municipal zoning and land use. She is also a Co-Editor of ***The Clarion.***

In My Opinion - In Addressing the Heroin and Opiate Problem in New Jersey, the Attorney General has Missed a Valuable Opportunity

Continued from Page 2

overdose. This policy is great in theory, but one questions whether law enforcement officers are the best persons available to be making determinations as to whether a person is suffering an opiate overdose and then go a step further by administering a prescription strength drug into the system of a person who is unlikely to be able to consent to the treatment. When administering prescription strength drugs many medically important factors need to be taken into consideration including the victim's past medical history, weight, tolerance, allergies, *etc*. Rather than training officers to administer Narcan, this author suggests that EMTs would be a more appropriate choice. They often respond to the scene as quickly as police, and they are better trained in the diagnosis of medical conditions and the administration of strong narcotics.

Part 3 requests "prompt and thorough investigation of possible prosecutions for strict liability drug-induced death". New Jersey's strict liability statute 2C:35-9 makes it a 1st degree crime to distribute drugs that result in a person's death. In 1987, the State created a strict liability statute carrying a sentencing range from 10 to 20 years for drug induced deaths from the distribution of any schedule I or II drug, including marijuana. Here, the Directive serves to encourage more prosecutions under this statute. As the Directive explains, recognizing that "historically, the drug-induced death statute has been used sparingly," this Directive encourages the State to "fully, fairly, and expeditiously investigate and prosecute" under this statute with a "view toward deterring drug dealers from distributing or dispensing those types of controlled dangerous substances." However, there is no research demonstrating that strict penalties for drug distribution in fact serve as a deterrent. It is unlikely that drug distributors engage in the cost benefit analysis required for deterrence to be successful; moreover, even if they did, the sale of drugs is so profitable in this country that the penalties if convicted, even the harsh ones under 2C:35-9, are likely viewed as the cost of doing business.

Part 4 seeks "enhanced and coordinated investigation/ prosecution of corrupt healthcare professionals and pill mills." The concept is that doctors and pharmacies are writing pain management prescriptions too often and contributing to the supply of opiates on the street. To combat this perceived problem, the Attorney General has created a Prescription Fraud Investigation Strike Team whose job is to investigate and prosecute healthcare officials. While the street level drug dealer is likely unswayed by harsh penalties designed for deterrent purposes, medical professionals are not. A very real consequence of this Directive is that Doctors will be deterred from prescribing necessary and appropriate opiate pain management medication for fear they will be on the receiving end of a Strike Team investigation.

Part 5 outlines "enhanced prosecution of drug traffickers who sell ultra-dangerous opiate mixtures or heroin along with other opiates." Here, to combat dangerous drug cocktails, the Directive seeks to strengthen the Brimage Guidelines. The Brimage Guidelines dictate the sentencing offers from the County Prosecutor based upon a number of aggravating and mitigating factors for certain types of serious drug charges. While the purpose of the Brimage Guidelines was to ensure uniformity in plea offers across the State, they have often been criticized as being overly harsh and reducing discretion with prosecutors and the courts.

Finally, Part 6 recognizes the futility of incarceration in the War Against Drugs and encourages rehabilitation through Court Ordered Special Drug Court Probation. This is a small concession to the enhanced penalties and greater prosecutions demanded under this Directive, particularly since Drug Court Probation has existed in some form since 1996. This Directive offers little to expand the Drug Court program, and in fact, under subsection d, directs prosecutors to identify and screen-out those individuals they believe are malingerers and to prosecute them through traditional means.

In whole, Directive 2014-2 is a well-intentioned effort at addressing the drug problems in the State, but will likely result in more incarcerations for drug crimes with longer sentences. Through the Directive, police officers will be trained and directed to administer strong prescription drugs to possibly non-consenting victims who require emergent medical care. Prosecutors will be required to charge the strict liability death by drugs statute and seek enhanced Brimage sentences for distributors of what they consider dangerous opiate cocktails. Doctors will be deterred from prescribing necessary and appropriate opiate pain management medication.

As a result of this new policy from the Attorney General, I predict no decrease in drug usage. However, I do expect to see increased arrests and harsher punishments, costing the tax payers even more. Yet again, New Jersey is combating the State's drug problem with arrest and incarceration and giving lip service to education and rehabilitation. If a fraction of the resources we spend on arrest, prosecution, and incarceration were spent on education and rehabilitation, the drug demand would be substantially reduced, and New Jersey would see savings economically, socially, and through the quality of people's lives which is what matters most.

Mr. Roberts is Co-Chair of the Young Lawyers Committee and a principal in Teeter & Roberts, LLC with a focus of his practice in criminal and municipal law.

Controlling Expenses for New Law Firms

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practice. At least every six months look to all memberships and see if their cost exceeds their utility. In fact, it's important to look to all expenses on a regular basis to see what is necessary or not. I have found that membership in the Somerset County Bar Association, for instance, has proven to have much more utility for me than membership in more national associations.

Incorporation – I'm not an accountant, but a solo practice may not find much benefit from incorporating as a LLC. I did so incorporate, but it's unlikely this will ultimately protect a solo from malpractice issues. In hindsight, I'd argue it's probably a better utility to register as a sole proprietorship and utilize additional funds to acquire better or more insurance. Even when you close your limited liability company the State charges a few hundred dollars, as I was recently reminded.

Office supplies – You may find that buying your supplies online at Amazon may be the least expensive method. You should shop around for supplies and only order when necessary. Like with anything, buying regularly used items in when there is a good sale is cost-effective. For instance, a firm is always going to need more printer ink. Specialty stores targeting our profession might be more expensive than Amazon or Staples Online. Saving money on everything from paper towels to coffee all adds to the bottom line.

Credit card – Look not only to rewards but also to what business credit card does not come with an annual fee. As for receipt of credit card payments, simple options such as "Square credit cards" carry no monthly minimums or fees and take a reasonable percentage of monies charged. They work through an "I-phone." Such options are becoming increasingly common. As with anything, "cloud" based security and providing appropriate language pertaining to same in retainer agreements is important.

Paper and letterhead – It is common sense, but paper and ink costs really add up over the course of a year. I therefore recommend young attorneys not use "good" paper to merely scan and email or to fax documents. Although some firms pay for letterhead from a professional printer, many others simply create their letterhead through Microsoft Word or similar programs. When possible, read off the screen rather than printing onto paper. Also, a young solo should probably craft retainer agreements so that certain expenses such as large printing jobs will be passed-through to your clients. This is, in fact, a common provision in most attorneys' retainer agreements.

Insurance – Just like with personal insurance, shopping around when the business is first created and then continuing to shop around every couple of years to make sure fees do not increase beyond fair market price can save hundreds or thousands of dollars.

CLE's – Try to teach CLE's when possible as you will receive double-credit. Local CLE programs may prove less expensive. Also, large symposium type events or the Somerset County Bar CLE Days may provide most of your credits at a lower per-credit price.

Website – New firms may purchase domain names (website address) for their firms for less than $10.00 from a company such as Godaddy.com. You may then pay another $100.00 or less per year for a dedicated email address and web hosting. Even with no prior programming knowledge, one should be able to create a website utilizing a free "app" such as WordPress. It may be a case of being "penny wise, pound foolish," but when I started my firm, I did not pay for a professional web design. That said, I never heard any negative feedback about my website and it was easy for me to post articles or to update the website as needed. In ful disclosure, however, I obtained few if any clients directly from my website.

Accounting – Learning how to become proficient with Quickbooks can save a great deal of money and let you know where your firm stands financially. Clearly one of the most important things for a solo to learn is proper trust accounting. Even if this work is delegated, every firm owner must ensure that proper trust and business account procedures are in place and are being followed. An informative book on this subject is NJICLE's Trust and Business Accounting for Attorneys, by David Johnson, Esq., Director of Attorney Ethics, New Jersey Supreme Court.

Vendors – A new solo may think that they need a professional logo when they first start out, but it's more important to be marketing yourself, as you essentially are your business. Attend events, make connections, and meet up with colleagues and potential referral resources for lunch. There are all types of vendors, including those who may assist with marketing and advertising. I personally emphasized word of mouth advertising as I had more time than money when I started my firm. I understand many firms, however, find great success in hiring vendors for marketing and/or utilizing a percentage of revenue for advertising purposes. Much like with accounting, it's important to remember that attorneys are ultimately responsible for complying with applicable codes of ethics and attorney advertising.

Attorney collateral account – I believe it's important to establish an attorney collateral account with the state judiciary as soon as a new firm possesses sufficient funds to open such an account. This saves time spent cutting individual checks and worrying about paying the exact amount due for specific filings.

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What's Yours Is Mine - NLRB Reverses Itself on Employee Rights ...

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Section 7 rights have implications far beyond unionized workplaces.

Prior Precedent Rejecting Employee Right to Use Employer Email Systems for Section 7 Purposes

In *Register Guard*, the Board held that employees have no statutory right to use an employer's email system for Section 7 purposes. As a result, the Board concluded that an employer policy prohibiting employee use of the employer's email for "nonjob-related solicitations" did not violate Section 8(a)(1) of the Act. In so finding, the Board analogized employer-provided email with those cases imposing limitations on employee use of employer-owned equipment. The Board rejected arguments that email had "changed the patterns of industrial life" such that an exception should be recognized to settled principles that employees are without statutory right to use employer equipment for Section 7 purposes (absent a discriminatory application of the employer's rules/limitations).

Purple Communications: the NLRB Shifts Course

In *Purple Communications*, the employer had an electronic communications policy providing that computers, internet access, email and other company equipment were to be used for business purposes only, and that employees were prohibited from using such equipment/systems for sending uninvited personal emails or engaging in activities on behalf of organizations or persons with no business affiliation with the company. Employees were assigned individual email accounts by the employer, which they were able to access via their workstations and on their personal computers and smartphones. In connection with an election contest, the union filed objections and an unfair practice charge challenging the employer's electronic communications policy.

In overruling its decision in *Register Guard*, the Board found that *Register Guard* undervalued employees' Section 7 rights to communicate about terms and conditions of employment, and overvalued employer property rights. The Board also noted that *Register Guard* failed to appreciate the importance of email as a primary means for employees to engage in protected communications. The Board noted that some personal use of employer email is commonplace and, in most cases, tolerated by employers. The Board also thought significant the fact of the increasing percentages of employees who telework and, as a result, interact primarily electronically. The Board recognized the speed and ease with which employees would be able to share Section 7-protected communications if permitted to use employer email systems, but found that the effectiveness of email was a factor that weighed in favor of employee rights to communicate.

The Board also found that *Register Guard* gave undue weight to Board precedent dealing with employer equipment. The Board distinguished such decisions by recognizing that email does not raise the same issue of competing demands on use that is presented by other types of employer "equipment" (e.g., copiers, bulletin boards, public address systems). Of significant note for purposes of future equipment cases that may come before the Board, the Board commented: "A reading of Board precedent that would allow total bans on employee use of an employer's personal property, even for Section 7 purposes, with no need to show harm to the owner, is impossible to reconcile with…common-law principles."

The Board concluded that the framework for evaluating employee use of employer email systems should be premised on that recognized by the U.S. Supreme Court in *Republic Aviation Corp. v. NLRB*. That framework calls for a presumption that employees with access to their employer's email system have a right to use it to engage in Section 7–protected communications on non-working time, and requires that an employer seeking to restrict such activity must demonstrate that "special circumstances" exist necessary to maintain production or discipline. The Board cautioned, however, that it would be "the rare case" where special circumstances would justify a total ban on non-work email use by employees.

NLRB's Expressed Limitations on New Rule

The Board clarified that its new rule did not require employers to grant email access to all employees; rather, the rule applied only to employees who have been granted access to the employer's email system. In addition, the Board specified that its decision applies only to employees and declined to address the issue of email access by nonemployees.

The Board also noted that its decision does not prevent employers from continuing to monitor their email systems for legitimate management reasons (e.g., to ensure productivity, prevent use for purposes of harassment). The Board discounted employer concerns that the new rule would make them vulnerable to allegations of unlawful surveillance of employee Section 7 activities. The Board noted that allegations of improper monitoring of email would be handled the same as in other surveillance cases, i.e., employer monitoring will be found lawful so long as it is not carried out in a discriminatory fashion (e.g., focusing on union activists). In this regard, if an employer were to change its monitoring practices in response to concerted activity, the employer would violate the Act.

Practical Implications and Issues Stemming from Decision

The NLRB's *Purple Communications* decision replaces

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that the decision is one step closer to the creation of a broad First

What's Yours Is Mine - NLRB Reverses Itself on Employee Rights ...

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a bright-line rule with one that will likely be further defined only through future challenge/litigation. Management pundits argue that the decision is one step closer to the creation of a broad First Amendment right in the context of private employment. The decision has far-reaching implications for employers, since so many employer email policies are based on the *Register Guard* principles that allowed employers to prohibit employee email use for non-business purposes. One thing is clear: the Board concluded that its new policy would have retroactive application and, as a result, most employers will be tasked with immediate steps necessary to come into compliance. Email, Technology Usage, Non-Solicitation and like policies will likely require prompt review and revision. Consistent with the limits of the Board's decision, employers should ensure that their policies make clear that personal/non-business use of email is limited to non-working time. Employers should also ensure that their policies provide plain and adequate notice to employees that both their business and non-business use of email is subject to the employer's monitoring protocols.

The following issues are less clear:

1. ***What About the Recipients****?* The Board's decision allows employees to use employer email systems during non-working time. The Board does not address when the recipients of such emails would be permitted to view them; however, presumably the same rule would apply (on non-working time). This is entirely impractical since human nature is to read emails as they are received, perhaps all the more so when the subject line relates to union organizing and/or terms and conditions of employment important to the recipient. Another problem is that it would be virtually impossible to police recipients so as to ensure that non-business emails are read only during non-working time. The practical effect - that recipients will read, consider and reflect on these communications as they are received - would seem to support employer concerns that the new rule will lead to employee disruption and lost productivity.

2. C***loser Scrutiny on Access?*** The Board's decision applies only to employees who have been granted access to employer email systems, and does not require that employers afford access to all employees. As a result, employers may respond by more closely scrutinizing those employees to whom they grant email access. While *Purple Communications* would seemingly allow employers to make such operational decisions in the future, one can envision that such steps could also lead to claims for violation of Sections 8(a)(1) and/or 8(a)(3) of the Act.

3. ***Claims for Discriminatory Surveillance/Monitoring Likely to Increase?*** The Board states that its decision does not prevent employers from continuing to monitor employee email usage for appropriate reasons. Nevertheless, it seems unavoidable that the rights granted employees under the decision can only lead to an increase in charges that employers engaged in discriminatory surveillance/monitoring. Moreover, the decision would seem to heighten the burden placed on employers to overcome such charges.

4. ***How to Address Other Forms of Electronic Communications?*** The Board's decision dealt only with email. The Board nonetheless suggested that the same rationale would apply to other forms of electronic communications (e.g., employer-sponsored social media, instant messaging). As a result, the framework recognized in *Purple Communications* will likely need to be considered by employers with respect to other forms of employer-furnished communications.

The evolution of these and other issues will follow in the wake of *Purple Communications* and will need to be monitored by employers and employees alike.

Mr. Carey is a partner with Apruzzese, McDermott, Mastro And Murphy and concentrates in the areas of employment litigation and counseling on behalf of management.

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i. 361 NLRB No. 126.
ii. 29 U.S.C. §157.
iii. See, e.g., Beth Israel Hospital v. NLRB, 437 U.S. 483, 491-492 (1978).
iv. 351 NLRB 1110.
v. Id. at 1110, 1114.
vi. Id. at 1114-1116.
vii. 361 NLRB No. 126, slip op. at 2-3.
viii. Id. at 6-9.
ix. Id. at 8-9, 11.
x. 324 U.S. 793 (1945).
xi. Id. at 14.
xii. Id. at 1, 14.
xiii. Id. At 15-16, fn. 75.
xiv. Section 8(a)(1) of the NLRA makes it an unfair labor practice for an employer to "interfere with, restrain, or coerce employees" in the exercise of their Section 7 rights. Section 8(a)(3) makes it an unfair labor practice for employers to discriminate in terms and conditions of employment to encourage or discourage membership in a labor organization.

and counsel

Would Greater Access to Custody and Parenting Time Evaluations Benefit the Court System, Litigants and Children?

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In contrast, many arguments can be made against providing litigants with greater access to affordable custody and parenting time evaluations in custody and parenting time disputes. The following are some of the drawbacks that may occur if litigants are provided with greater access to custody and parenting time evaluations.

First, if litigants are provided greater access to affordable custody evaluations, this may not cause cases to settle. Instead, it may empower litigants to seek to bring their cases to trial in lieu of settlement. Although it appears that cases are more likely to settle upon the receipt of the recommendations made by the custody and parenting time evaluator, as stated above, divorcing couples who obtain a custody evaluation are 2.5 times more likely to re-litigate the custody issue at some point after the divorce.

Second, there is without a question a negative effect on the children as a result of undergoing a custody and parenting time evaluation. A custody and parenting time evaluation may also cause even more turmoil and acrimony between both parents, which without a doubt would have an even greater negative impact on the children.

Third, even though litigants may be able to afford a custody and parenting time evaluation on a sliding scale, the cost would still be a burden which would reduce the funds available to the parties and children to move on with their separate lives in the case of a divorce proceeding. Such funds could be utilized for the benefit of the parties' children in any number of different ways.

In conclusion, it appears that parents in highly contested custody cases where a custody and parenting time evaluation is obtained settle upon receipt of the evaluator's recommendations about 70% to 90% of the time. However, of that 70% to 90% of cases, such litigants are 2.5 times more likely to re-litigate the custody issue. Even if this subset of cases is 2.5 more likely to re-litigate custody matters in comparison to case that are not deemed "high conflict,", this percentage does not take into account the percentage of cases that may be re-litigated even if no custody and parenting time evaluation was obtained in the initial proceeding, which could be significantly greater. Based on the numbers provided, greater access to custody and parenting time evaluations would likely increase the percentage of child custody cases settled overall. However, greater access to child custody evaluations may not be more beneficial to the children involved, as an increased number of children would run the risk of becoming enmeshed in the proceeding by having to participate in the evaluation, which may cause children to have residual feelings of guilt for their input in the evaluation. On the other hand, with respect to third-party/psychological parent cases, it appears that greater access to bonding evaluations would likely serve the best interests of a child by ensuring that the child is not deprived of a bonded relationship with a third-party psychological parent.

In summary, it is likely that greater access to custody and other expert evaluations in connection to custody litigation would likely be beneficial for litigants and the Court based on the greater percentage of settled cases. However, whether greater access to custody and parenting time evaluations in most cases would be beneficial for children remains to be seen, as this would depend on the factual circumstances of each individual case.

Mr. Gabriel is a member of Lyons & Associates, PC in Somerville and focuses his practice on family law matters.

[1.] Bergen Family Center Annual Report 2013, page 2, http://www.bergenfamilycenter.org/pdf/BFC_Annual_Report_2013.pdf.

[2.] http://www.bergenfamilycenter.org/index.html.

[3.] Janet R. Johnston, Ph.D., High Conflict Divorce, The Future of Children, CHILDREN AND DIVORCE, VOL.4, No. 1-spring 1994, page 165 – 182, 177; citing Ash, P., and Guyer, M.J., Child psychiatry and the law: The functions of psychiatric evaluation in contested custody and visitation cases. *Journal of the American Academy of Child Psychiatry* (1986) 25:554–61. Ash, P., and Guyer, M.J.,Relitigation after contested custody and visitation evaluations., Bulletin of the American Academy of Psychiatry and the Law (1986) 14:323–30; Maccoby, E.E., and Mnookin, R.H., *Dividing the child: Social and legal dilemmas of custody.*, Cambridge, MA: Harvard University Press, 1992; Simons, V.A., Grossman, L.S., and Weiner, B.J., A study of families in high conflict custody disputes: Effects of psychiatric evaluation, *Bulletin of the American Academy of Psychiatry and the Law* (1990) 18:85–97.

[4.] Janet R. Johnston, Ph.D., High Conflict Divorce, The Future of Children, CHILDREN AND DIVORCE, VOL.4, No. 1-spring 1994, page 165 – 182, 177; citing Ash, P., and Guyer, M.J., Child psychiatry and the law: The functions of psychiatric evaluation in contested custody and visitation cases. *Journal of the American Academy of Child Psychiatry* (1986) 25:554–61. Ash, P., and Guyer, M.J. Relitigation after contested custody and visitation evaluations. *Bulletin of the American Academy of Psychiatry and the Law* (1986) 14:323–30.

[5.] Janet R. Johnston, Ph.D., High Conflict Divorce, The Future of Children, CHILDREN AND DIVORCE, VOL.4, No. 1-spring 1994, page 165 – 182, 177; citing Hauser, B.B., and Straus, R.B. Legal and psychological dimensions of joint and sole custody agreements. Paper presented at the 68th Annual Meeting of the American Orthopsychiatric Association. Toronto, March 1991.

[6.] V.C. v. M.J.B., 163 N.J. 200, 223 (2000).

[7.] Id at 227.

Dismissal From College, Graduate or Professional School ...

Continued from Page 9

the quality of life for you and your loved ones for the remainder of your lives. And as they say in the commercials, this right to higher education is "priceless".

Not surprisingly, a graduate student is considered to have a property interest in his education that is also protected. Stoller v. College of Medicine, 562 F.Supp. 403, 412 (M.D.Pa. 1983). And just like your house or your car, both the federal and New Jersey Constitutions provide that the state cannot take away property arbitrarily. Unfortunately for plaintiff, the state took away his property -- his dental school education at UMDNJ arbitrarily and without due process. Fortunately for the plaintiff, however, the court and jury recognized this injustice and awarded him $2.025 million.

Additionally, no state or state institution such as UMDNJ can deprive any person of property without due process of law. This is a fundamental right provided by both the federal and state Constitutions. Education provided by state institution is a property interest that is protected by the due process clause. The minimum requirements for any type of disciplinary matter include notice of the charges and evidence that the authorities have, and an opportunity for a student to present his or her side of the story. Where an expulsion is involved, more formal procedures are required, including confronting and cross-examining witnesses, calling witnesses in defense and having legal counsel. Goss, at 581, 584.

This all makes sense on a very basic level. The logic for this law is also good - it disserves both the interest of the student and the interest of the state if a student's punishment or expulsion is unwarranted. It does not help the State of New Jersey to expel very good students for unwarranted reasons -- that is one less qualified person to live and serve the citizens of New Jersey.

To quantify damages in these cases, I offer the following analogy. Have you ever worked all day on the computer on a project and then the computer crashes? You lose everything you worked on for the day, maybe seven hours of work. I do not know about you, but when something like that happens, I get really mad, frustrated, and upset. I just cannot believe that I worked the last seven hours and lost all my work. I have to do it all over again.

Now imagine the same thing happens, but instead of seven hours, you lose seven days of work. Can you imagine how much more upset you would be if you lost seven days of work? You would be inconsolable. You would be crazy. You may even break something in frustration. Now imagine if you lost seven months of work. How do you think you would think about that? You would be utterly and completely devastated losing seven months of hard work.

Now try to imagine, and it's virtually impossible to do so, that you suddenly lost seven years of your work. Seven years of hard work, commitment and total dedication to one singular pursuit suddenly gone; seven years of your life lost.

Imagine that those seven years of your life were lost while in your 20's - that magical time when you are full of dreams, aspirations and a successful life to come. Try to imagine the total devastation. Compare the feelings you have losing seven hours of work with what it might feel like to seven years of your life's work. How do you quantify that? How do you measure that? How do you measure the lost friendships? How do you measure the shame, the humiliation, and the embarrassment? How do you measure the graduation party your parents will never be able to have? How do you measure everything that you have worked for being taken away from you, in fact your very identity being taken away? How do you start all over again?

The $2.025 million verdict unanimously rendered in this matter properly consisted of compensatory damage claims for lost wages and emotional distress damages as separately calculated by the jury. The plaintiff utilized an economic damage expert who testified before the jury as to the career damages of the plaintiff. The plaintiff testified as to the garden variety emotional distress damages without treatment or expert testimony. The verdict was intended to compensate the plaintiff for the loss of the plaintiff's life work and future earning potential.

Mr. Schalk is the Managing Partner at Mauro, Savo, Camerino, Grant and Schalk in Somerville where he is a Certified Civil Trial Attorney specializing in employment, education and minority law.

New Arrivals

Congratulations go to Chris and Christine (nee Socha) Czapek on the birth of their daughter

Lucy Anna Czapek

February 7, 2015

10 lbs. 10 oz., 22" long

Clarion Tidbits

Gone or going solo? Changed firms or positions? Received an award or made a professional presentation? Is so, share your news with your colleagues. Email your news to cawinder@somersetbar.com to get listed in ***The Clarion*** *"Tidbits" section. We also appreciate updates so we can keep our member files current.*

Kathleen ("Kate") L. Wood, Esq. has become a partner of **Altman, Legband & Mayrides.**

Jeralyn Lawrence, Esq. and **the Hon. William A. Dreier, PJAD (ret)** will be honored by the New Jersey Law Journal on May 27th at the Florham Park Brooklake Country Club from 6-9pm. Ju**dge Dreier** is one of twenty-three recipients of the Journal's first Lifetime Achievement Award recognizing how they have helped to shape the law of NJ. **Jeralyn** is one of three 2015 Attorney of the Year finalists and is being recognized for her work in representing the family bar in the contentious alimony reform process in New Jersey. The "winner" will be announced at the dinner.

In Memoriam

Daniel C. Soriano, Jr., Esq.

Daniel C. Soriano, Jr., Esq. died on December 23, 2014 surrounded by those he loved. He graduated from Somerville High School and was a member of its Athletic Hall of Fame for his football prowess. He went on to Brown University and subsequently graduated from the University of Pennsylvania Law School, and served as Editor of its Law Review.

He returned to his hometown of Raritan in 1963. After practicing law briefly on Wall Street with the firm of Cadwalader, Wickersham & Taft, he settled in Somerville and established a general law practice with his partner, Arthur Mott, Esq. in 1968. In 1990, Daniel's son, Geoffrey (currently Somerset County Prosecutor) joined the practice and shortly thereafter Soriano & Soriano, Esqs. was established.

Throughout his five-decade long legal career, Daniel served in a myriad of areas of the law such as borough attorney (Raritan), and education law/school district attorney. He also represented builders and developers throughout Somerset and Hunterdon Counties and served as lender's review counsel for many local banks. Daniel was a member of the SCBA, NJSBA and the ABA.

Excerpts courtesy of the Courier News

Controlling Expenses…

Continued from Page 16

Taxes – Be mindful of profits and ensure sufficient monies are placed aside to pay federal and state taxes. Once a business is established and generating a steady cash flow (with new cases and accounts receivable) the owner of that business will likely dread the payment of quarterly tax payments, but at that time will also enjoy a better understanding of how much to put aside each quarter. Underestimating one's taxes can make a modicum of solo success feel more like a curse than a step forward. One does not want to be surprised come April. Solo attorneys should also be aware of their options for opening a retirement account. Solos should be mindful of funding their retirement. Doing so also helps decrease taxes. Solos can look into a SEP-IRA or Solo 401k (or other such instruments) to see if their firm qualifies and if so, how much can be put aside. Solos will have no employer covering a portion of social security taxes, so they will likely find they are paying a higher percentage of taxes than ever imagined. If things start going even fairly well, taxes will be by far the number one expense a firm has, with the potential exception of staff.

Continued - See column to the right

Staff – If one is starting a new firm with no clients, they may decide (like I did) that it's not the right time to bring on regular staff. One can then scale-up as their firm grows. It will likely be unfair to both you and your staff if staff is hired but there is insufficient work. Hidden expenses such as worker's compensation insurance may further strain limited resources. Scaling up will come naturally with time as necessary. Premature expansion can be a great impeder of success. At the same time, careful balancing must be conducted to ensure an attorney is competently tending to all client files and performing appropriate due diligence for all matters.

Cell phone – Many attorneys now consider "smart phones" to be a necessity. The cost of such plans can easily reach $80.00-$120.00 per month. Utilizing alternate plans such as Republican Wireless or "paying as you go," can provide such services for less than $30.00 per month. This may not provide the trendiest new phone, but so long as one can obtain emails and voicemail messages, then that might be a worthwhile tradeoff to maximize firm profitability.

Case Management – In the beginning—particularly if a young attorney employs no staff—a new firm might run well on merely Outlook for emails and a basic calendaring system. In time, a practice management system (there are many to choose from, some are even "cloud based") might be essential for coordinating client files, maintaining contact lists, documents, and invoicing. This is an important decision as the wrong choice in a case management system can be a large financial setback.

Miscellaneous – It might prove more advantageous for young attorneys to create handbooks on their practice areas of law and place them in the reception room rather than to pay each month for subscriptions to magazines. This could even serve as an inexpensive form of marketing, as one can encourage clients to take the pamphlets home with them. In the beginning, there may be so few clients that clients and prospective clients will not be waiting in a reception area for very long, if at all. There might not even be a dedicated reception area. Be ruthless with expenses to allow one's firm sufficient time to grow.

This above list is by no means exhaustive, but hopefully is illustrative of what types of expenses are created when starting a new firm and what types of expenses can be cut or reduced without impacting client services. This baseline can then be scaled up as a young attorney's practice grows. Creating good spending habits early in a firm's life will help engender best practices for an attorney to utilize throughout their career.

Mr. Taylor is an Associate at Cooper & Rodgers and is currently serving as Somerset County Deputy County Counsel as well as represent his private clients.

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.

Working for our legal community

Somerset County Bar Foundation

In 1969, the SCBA Board of Trustees recognized a need to further reach out to the public and local community to offer programs, services and funding. Formed as a separate, charitable organization from the Bar Association, it currently offers and supports a number of programs and fundraisers such as the Raymond R. Trombadore Scholarship Fund for deserving local law school students, and fundraisers such as "The Legal Runaround" 5K races to benefit justice-related local non-profit organizations.

Working for our community

Check out our Websites!

The Bar Association and Bar Foundation each have their own websites:

SCBA: www.somersetbar.com

SCBF: www.somersetcountybar.org

Check the websites often for:

- Registration and payment for events, dues, LRS and more!
- Calendar of Events
- Membership and Lawyer Referral Service information & registration
- Schedules & Contacts for Matrimonial Early Settlement Panels
- Useful references (local, county, state)
- Information from our strategic partners & resources

Calendar of Upcoming Events

April	3		Courts Closed (Good Friday Holiday)
	28	4:30 - 6:00 pm	Family Practice Seminar (Bridgewater Manor)
		6:00 - 9:00 pm	"Roast" Celebrating Miles Winder's pending installation as NJBA President in May
	30	5:30 - 7:30 pm	Law Day/Night - "Hall - Mills Murder" (Somerset County Courthouse)
May	3-5	9:00 am - 4:00 pm	Matrimonial Early Settlement Panel "Blitz" (Somerset County Courthouse)
	13-15		Annual NJSBA Meeting (Borgata Hotel & Casino, Atlantic City)
	14	7:00 - 11:00 pm	NJSBA Dinner - Installation of Miles S. Winder, III, Esq. as President, NJSBA
	21	5:00 pm	10th Annual "Legal Runaround" (Veteran's Plaza, Somerville)
	27		Courts Closed (Memorial Day)
	30	11:00 am	Annual "Tour of Somerville" (Somerville)
June	16	11:00 am - 7:00 pm	Annual Golf & Tennis Outing (Raritan Valley Country Club)
Sept	25	tbd	Annual SCBA Installation Dinner

Registration for SCBA and SCBF events can be accessed through the calendar on our website: www.somersetbar.com

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