

# The Clarion

Somerset County Bar Association

## Somerset County Bar Association President's Message



I am excited to begin my term as the President of the Bar Association this year. Among my objectives for this year, I am going to start with an effort to minimize driving people to boredom. As this is my first article, my

quest begins.

Initially, I wish to extend a warm welcome to our newest Judges here in Somerset County: Judge Peter Tober and Judge Kevin Shanahan. In a time when any new Judge is a welcome sight to the Bar and litigants everywhere, these additions will undoubtedly further enrich our already highly competent bench in Somerset County and add to our future Bar events with their insight. I am sure that all members of the Bar are looking forward to working with them in the upcoming years.

I also want to congratulate the new additions to the Associations Board of Trustees, Ed Rebenack and Ryan Carey. They join the current members of the Board in ensuring that the Bar continues on its course to foster relationships with our colleagues and take positions in defending or voicing the concerns of our members.

Another objective for this year, is for the Bar to focus on assisting younger attorneys (including the young at heart) and the Vicinage Law Clerks. Of course, this effort will result in these attorneys becoming more involved in bar initiatives. This includes offering assistance to them by way of mentorship and networking so these attorneys will have opportunities to practice in Somerset County.

Our publication, *The Clarion*, will issue quarterly with the assistance of Co-Editors Vicky Britton and Stacey Pilato and continue to apprise the members of the Bar with relevant practice tips, information on upcoming bar events and continuing legal education opportunities. Please make sure to take the time to review when it's published and take advantage of what it has to offer.

Lastly, I would like to thank the outgoing President Amy Wechsler for her accomplishments obtained in the last court year. I hope to build upon what she started last year and continue those efforts in the upcoming year. So, as my first address comes to an end, I just want to offer my best to all of our members for a successful upcoming year.

*Francesco Taddeo, Esq.*  
2014-15 President, SCBA

Volume 6, Issue 1  
September, 2014

### Special Points of Interest:

- *Jeralyn Lawrence - 2014 SCBA Professional Lawyer of the Year.*
- *Annual Golf & Tennis Outing Recap*

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### Note from the Editors

Thank you to those individuals who contributed articles to last year's issues of *The Clarion* and to those featured in this issue.

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

The submission deadline for articles for the December *Clarion* is November 28th. Please send them to [cawinder@somersetbar.com](mailto:cawinder@somersetbar.com).

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

**Register Now!**

**2014 Installation Dinner**

**September 30th**

**Raritan Valley  
Country Club**

See website Calendar for details  
[www.somersetbar.com](http://www.somersetbar.com)

## Somerset County Bar Association Elects New Officers and Trustees

On June 3, 2014, the following were elected as Officers of the Somerset County Bar Association for 2014-2015:



**Francesco Taddeo, Esq.**  
**President**

Somerville



**Jeralyn L. Lawrence, Esq.**  
**President– Elect**

Norris McLaughlin & Marcus, PA  
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**Jodi Lee Alper, Esq.**  
**1st Vice President**

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Roseland



**Michele E. D’Onofrio, Esq.**  
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Shimalla, Wechsler, Lepp & D’Onofrio, LLP  
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**Secretary**

Singer & Fedun, LLC  
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**Joel G. Cohen, Esq.**  
**Treasurer**

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Other members of the Board of Trustees are:



**Victoria D. Britton, Esq.**



**Ryan S. Carey, Esq.**



**Heidi Ann Lepp, Esq.**



**Edward J. Rebenack, Esq.**



**Carl A. Taylor, III, Esq.**



**Steven K. Warner, Esq.**



**Amy Wechsler, Esq.**  
**Immediate Past President**



**Michael McLaughlin, Esq.**  
**SCBA Liaison to NJSBA**

## It's "Criminal" - How Hard It Can Be to Hire Someone These Days: New Jersey Follows Trend and "Bans the Box"

By Ryan S. Carey, Esq.



As many already know, pre-employment processes are rife with legal risks if not handled in the appropriate manner. Now, New Jersey employers can add one more concern to the risks attendant to hiring a new employee. On August 11, 2014, Governor Christie signed the New Jersey "Opportunity to Compete Act." The Act prevents most employers from asking candidates up front (i.e., on job applications) whether they have criminal records. The

New Jersey law follows the recent trend of states and local jurisdictions taking measures to "ban the box" to ensure better employment opportunities for persons with criminal records.

The phrase "ban the box" relates to the criminal history inquiries (check boxes) that have historically appeared on employment applications, the responses to which may have been used by some employers to automatically exclude candidates from further consideration. The National Employment Law Project reports that twelve (12) other states and over sixty (60) cities and counties have enacted some form of "ban the box" provision. In this regard, Connecticut, Delaware, Massachusetts and Rhode Island are among nearby states that have enacted such laws in recent years. In some cases, these laws have been

spawned by the enforcement guidance issued by the U.S. Equal Employment Opportunity Commission in April of 2012. The EEOC guidance stopped short of prohibiting all criminal history inquiries on job applications, but recommended that such inquiries be reserved for a later phase of the pre-employment process to better avoid the potential for disparate treatment and/or disparate impact discrimination.

The New Jersey law applies to both public and private employers that employ 15 or more employees. In applying to private employers, the New Jersey law is among the broader "ban the box" laws that have been enacted. The Act provides that, during the "initial employment application process," an employer cannot (1) require an applicant to complete an application that inquires into the applicant's criminal history, or (2) make oral or written inquiries concerning an applicant's criminal record. The "initial employment application process" is defined as beginning when the applicant first communicates with an employer about a job, and ending when the employer has conducted a first interview of the applicant (whether in-person or otherwise). Of note, the employer may make "early" inquiries regarding an applicant's criminal history if the applicant voluntarily discloses same (orally or in writing) during the initial employment application process.

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## Somerset County Bar Foundation Elects New Officers

On June 3, 2014, the following were elected as Officers of the Somerset County Bar Foundation for 2014-2015

Chair - Ken DeGraw, CPA, CFG, CRFA, CFE (WithumSmith+Brown)

Vice Chair - Stacey Cozewith, Esq.

Secretary/Treasurer - Marcia Polgar Zalewski, Esq.



Other members of the Board are:

Charisse Allington (Unity Bank)

Jodi Lee Alper, Esq.

Christopher "Kip" Bateman, Esq.

Ryan S. Carey, Esq.

Jerry S. D'Aniello, Esq.

Daniel R. Esposito, Esq.

Francine A. Gargano, Esq.\*

Eamon Gibbons (Emerald Financial Resources)

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## To Represent LGBT Clients, A Lawyer Needs to Be Culturally Competent

By William S. Singer, Esq.



It's one thing to know the law; it's a different thing to understand the client. Without both, a lawyer cannot give accurate advice to a member of the lesbian, gay, bisexual and transgender (LGBT) community.

Last June, the U.S. Supreme Court decision in *U.S. v. Windsor*, 133 S. Ct. 2675 (2013) struck down section 3 of the Defense of Marriage act leading to federal recognition of same-sex marriages. That decision triggered the federal government to reappraise hundreds of U.S. statutes controlling many aspects of life. The resulting rapid velocity of change challenges lawyers trying to keep pace.

Lawyers are also taking a look at marketing legal services to the LGBT community, possibly a source of business previously overlooked.

If an attorney seeks to represent members of the LGBT community, she needs to educate herself to understand how laws affect this different population. Counselling members of the LGBT community is not a simple variation on representing a heterosexual couple with the only difference the gender of the members couple.

The law governing the LGBT community is complicated. It varies significantly from state to state. In addition, the law is on a fast track of change rippling out to all segments of law and society.

Equally, if not more important, a lawyer aspiring to counsel LGBT clients needs to be culturally competent. Given the history of discrimination and social isolation suffered by members of this community, it is not enough to just be sympathetic. One has to work to put these clients at ease. Without reaching a certain level of comfort, a client may withhold crucial information.

Is your law office ready to advise LGBT clients? Has your office adopted policies and staff training which will put a member of the LGBT community at ease and respected? Does your office reflect your firm's commitment to diversity? Are your intake forms open-ended enough to accommodate variations within the LGBT community?

One doesn't need to have a rainbow flag in the waiting room. But consider displaying a non-political poster stressing equality or putting a magazine of interest to this community or an annual report from a LGBT rights organization in the waiting room. These simple acts can make a potential client feels like she is in the right place to get the advice she needs.

Are you and your staff properly trained how to address these potential clients? Lawyers and staff need to show respect to same-sex couples. Will they know how to address a same-sex couple? Terms like "significant other" and "partner" are outdated and display a firm's lack of understanding of the significant changes that have taken place. Married same-sex couples should be called spouses and husbands and wives.

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## Bar Foundation Reaps Benefits of Member Support in Unity Bank's UCare Program

By Francine A. Gargano, Esq.



During the past year, the Somerset County Bar Foundation received more than \$3,000 in donations from Unity Bank's UCare program. When Bar Association members enroll in a checking or savings account in the UCare program as a supporter of the Somerset County Bar Foundation, the bank makes a donation to the Foundation—at no cost to the supporter. By simply signing up as a supporter, anyone with a checking or savings account at Unity Bank can help raise money for the Somerset County Bar

Foundation. The Foundation receives quarterly donations based upon the balances of supporter accounts. Again donations to the Bar Foundation are from the bank's own funds, at no cost to Foundation supporters. Those wishing to join the UCare program in support the Foundation and it's mission to help the law related non-profit organizations in our community, please contact me (908-753-2079) or Unity Bank Vice President, Charisse Allington (908-769-0303).

*Francine A. Gargano, Esq.  
Immediate past Chair of the  
Somerset County Bar Foundation*

## Annual Golf & Tennis Outing - June 10, 2014

By Mark T. Mayrides, Esq.

What a day it was!! We had a recent record of eighty three golfers, twelve tennis players and eighteen sponsors to help make this year's Somerset County Bar Association annual Golf and Tennis Outing at Raritan Valley Country Club a huge success. Seventy five golfers played in the outing using a four person scramble format. For the first time, we offered an "Intro to Golf" package where eight would-be golfers took a lesson from the club pros, practiced their techniques on the



Lunch on the patio

range and then sat out in the warm sun downing a few beers and "Busted Barrel Rum" from one of our sponsors while they waited for the outing players to return. The format for tennis was a round-robin doubles tournament. As in past years, the event was capably photographed

by Anna DiNardo-Smith. Some photos are included here but I encourage you to view all of the photographs from this event at the website: <http://www.electricphotohouse.com/somersetbargolf2014/>.

The winning golf outing group with an impressive score of 61 was posted by a foursome comprised of two father-son duos (this may be a "first" in the history of our outing): Bob Ballard and his son, Rob, (law clerk to the Hon. Julie Marino, P.J.Cr.) and Steve Davis and his son, Brian, (law clerk to the Chancery Division judiciary). Coming in second with a respectable score of 65 was the group of Len Friedman, Brian Paul, David Beaver and myself. Once again like last year where my team



Low score (61) golf winners:  
Steve Davis, Rob Ballard, Bob Ballard & Brian Davis



2nd Place golf winners (65)  
Len Friedman, Brian Paul,  
David Beaver and Mark Mayrides

took home first place, baseless rumors abounded that the "fix" was in – truly it was not.

Alcohol tastings furnished by Jersey Artisan Distillery and cigars kindly provided by another sponsor, Emerald Financial Resources, went a long way to salving the feelings of those making errant strokes.

The Most Honest Group of golfers was comprised of Ryan Corcoran, Chris Bono (both of Unity Bank), Charles Rifici (law clerk to the Hon. Anthony Picheca, Jr.) and Stacey Pilato with a score



"Most Honest Golf Group (80)  
Stacey Pilato, Charles Rifici, Chris Bono, Ryan Corcoran

of 80, which beat last year's score of 81. For their efforts, they received bottles of rum courtesy of Krista Haley, Esq. and Jersey Artisan Distillery. Unlike last year we haven't heard of any "whiffs" but I am sure there were a lot of laughs.

This year we had a significant female contingent of golfers, including the Hon. Julie Marino, P.J.Cr. and the Hon. Ann Bartlett, J.S.C. Accordingly we were able to award prizes to both the men and the women for closest-to-the pin and long drive. The closest-to-the-pin awards went to Jeralyn Lawrence (25'6") and Jack Frost (15'4") on Hole #10. Judge Marino claimed the longest drive on Hole #18 and Brian Davis, with a monster shot, took the longest drive for the men.

Dan Lane once again ably organized the tennis outing. With so many players, the round robin tournament went well into the afternoon. Congratulations to Kristyl Berckes who claimed first prize followed by Ed Landis and Steve Lane. All winners received two tickets to the US Open. We missed the Mitzner men this year and look forward to seeing them next year.



Tennis participants: Mark Gabriel, Ray Hawkins, Eliot Goldstein, Will Klein, Dan Lane, Steve Lane, George Mullen, Kristyl Berckes, William Lemega and Brian Cige

Following the competitions, an open bar was warmly welcomed by all with delicious hors d'oeuvres, the perennial hit "raw bar", a buffet and dessert, all ably served by the attentive Raritan Valley Country Club staff. Before the evening was out, Brian Levine, Esq. walked away with \$675 from the 50/50 raffle.

Thank you to all of the participants of the SCBA Golf and Tennis Outing and to those people who could not make the outing but still found time to come to lunch or the dinner reception. A sincere thank you

goes out to our eighteen sponsors, most notably, Office Evolution (Dinner Sponsor), Shimalla, Wechsler, Lepp & D'Onofrio, LLP (Lunch Sponsor), Lane & Lane, LLC (Beverage Cart) and Golf Prize Sponsors Altman, Legband & Mayrides and Mason Griffin & Pierson, PC.

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## **Pregnancy is Now a Protected Class Under the New Jersey Law Against Discrimination**

**By Lawrence N. Lavigne, Esq.**

In January 2014, Governor Christopher J. Christie signed into law a bill which specifically recognizes pregnancy as a “protected class” under the New Jersey Law Against Discrimination (“NJLAD”), N.J.S.A. 10:5-1et seq. New Jersey joins a growing number of states including Alaska, California, Connecticut, Hawaii, Illinois, Louisiana and Texas which have extended protection against discrimination to pregnant employees.

Under the NJLAD, it is illegal for an employer to discriminate against an employee or prospective employee on the basis of the employee’s inclusion in a protected class. Prior to the adoption of the legislation, those protected classes included: gender, age, race, creed, national origin, nationality, religion, sexual orientation/expression, marital status (including civil union and domestic partnerships), disability, atypical heredity and service in the armed services. The law also prohibits discrimination against an employee or prospective employee who refuses to submit to genetic testing or to divulge results of genetic testing.

Historically, there had been a debate on whether pregnancy was a protected class or whether the parameters of the the NJLAD afforded protection to pregnant employees. Plaintiff’s attorneys had relied on the anti-discrimination provisions of the NJLAD which address gender and disability discrimination, along with certain Federal statutes outlined below.

This approach, though, was not always successful.

The Federal government has addressed pregnancy discrimination in the Pregnancy Discrimination Act (“PDA”) and to some extent in the Americans With Disabilities Act (“ADA”). The protections afforded pregnant employees by these acts is, however, limited. First, both acts only apply to employers with more than fifteen employees. Additionally, the PDA does not require an employer to make “reasonable accommodation” to a pregnant employee. Under the ADA, whether pregnancy even qualifies as a “disability” is a fact-specific determination.

Even where reliance on the old NJLAD, the PDA and the ADA (or any combination thereof) was successful, the protection afforded to pregnant employees was limited. Those laws as applied only provided protection to the pregnant employee, similar to protection afforded other employees. Unlike the newly-enacted law, none of the prior laws require employers to make accommodations to pregnant workers.

In November 2013, Senator Loretta Weinberg (D-Bergen) introduced S-2995 which was intended to protect female employees affected by pregnancy, childbirth, including recovery from childbirth, or related medical conditions. That bill and a companion bill in the Assembly were ultimately adopted as the Pregnant Worker’s Fairness Act as the revisions to N.J.S.A. 10:5-12(a), which include pregnancy among the “protected classes,” and N.J.S.A. 10:5-12(s) which sets forth the parameters of the specific protection afforded pregnant employees.

The new pregnancy provisions of the NJLAD provide protection against discrimination whether the pregnant employee is “disabled” or not. Critically, these provisions require employers to provide special treatment and accommodations to pregnant employees not available to other employees. These include: bathroom breaks, rest periods, modification of work duties,

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***Mark Your Calendars and Register Now!***

***Vicinage XIII***

*(Somerset, Hunterdon & Warren Counties)*

***Meet the Clerks  
&  
Judiciary Reception***

***Wednesday, Oct. 22, 2014***

***Ryland Inn  
6:00 - 8:30 pm***

***See website calendar for details and registration  
www.somersetbar.com***

## Annual G&T Outing

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*Joel Cohen, Joe Tauriello, and Frank Taddeo*

Sponsorships have afforded us the ability to hold the cost to our participants at the same level for seven years running and we thank them. Without the generous support by our sponsors and all participants, this event would not be so successful each year. We appreciate the turnout of nine Vicinage XIII clerks and look forward to working with you in the future. In addition to Judges Marino and Bartlett, I want to thank Judges Ashrafi, Ross, Coyle, O'Neill and Tober who played golf and Judges Dilts, Picheca and Kumpf who joined us for dinner. Your participation at Somerset County Bar Association functions, such as the Golf and Tennis Outing is greatly appreciated.

I hope to see you all at next year's outing and encourage you to bring a friend or a foursome.



*Cocktails on the Patio*

*Mark T. Mayrides, Esq.  
Co-Chair of the Golf & Tennis Outing*

## *Marathon CLE Day is Coming! Register Today!*

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- ◇ *Ethical Issues and the Implementation of the New PTI Program in Municipal Court*

*See website calendar for details and registration  
[www.somersetbar.com](http://www.somersetbar.com)*

## *Congratulations!*

### *Jeralyn L. Lawrence, Esq.*

*Somerset County Bar Association's  
2014 Professional Lawyer of the Year  
Award Recipient*

*To attend the awards luncheon ceremony on Oct.22nd at The Imperia in Somerset  
contact Fern Facher at the NJSBA at: [ffacher@njsba.com](mailto:ffacher@njsba.com)*



## Keeping Your Legal Skeletons in the Closet - An Overview To Expunging Your Criminal Record

By Matthew C. Dorsi, Esq.



What do a recent college graduate, a 55-year-old woman aspiring to be a nursing assistant, and a 40-something year old businessman all have in common? All three contacted me within the last several months when the applications they filed for a job, license or special privilege were denied because of their brush with the criminal justice system.

The college graduate was attempting to join the military when questions arose regarding an arrest from a few years earlier where in the charges were dismissed. The woman applied to the State to become a certified nursing assistant, but was denied due to a fine she paid for a shoplifting offense in a municipal

court in 1996. Finally, the businessman who travels often applied for a TSA PreCheck that allows for expedited screening at airports. He was denied this application because he pled guilty to a municipal court offense sometime in the mid 1980's.

Records of any involvement with the criminal justice system do not automatically go away with the passage of time. A criminal background check will reveal not only convictions, but also arrests even if the case was ultimately dismissed. In New Jersey, an expungement is not a pardon; however, under most circumstances, it does allow a person to legally say that they have never been arrested, charged or convicted of the expunged offense.

It is a common misconception that a person's criminal history only becomes an issue when applying for a job.

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## Pregnancy is Now a Protected Class Under the New Jersey Law Against Discrimination

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modified work schedules, assistance with manual labor, additional breaks for increased water intake and reduction of strenuous physical labor.

Additionally, the new law provides a private cause of action for an employer's violation of the statute even if the employer does not know that the employee is pregnant or "affected" by pregnancy. An employer, on the other hand, has the right to show that the requested accommodation(s) "would impose undue hardship of the operation of an employer's business." The provision provides factors to be considered where the employer contends that the accommodation(s) impose such undue hardship. These include: the type of operation of the business, the overall size of the business with respect to the number of employees, the number and type of facilities, the employer's budget, and the nature and cost of the accommodation(s) requested.

As with any new law, there are several ambiguities which undoubtedly will result in litigation. For example, it is unlawful to discriminate against a "woman that the employer knows or should know, is affected by pregnancy in a manner less favorable" than a similarly-situated non-pregnant employee. What the term "affected by pregnancy" actually means will be subject to debate.

Additionally, the requirement that the employer provide accommodation is couched in terms of "for needs related to the pregnancy when the employee, based on the advice of her physician, request the accommodation..." What "needs"

relate to a pregnancy is likely to be the subject of future litigation.

Likewise, it is unclear if there is more than one possible accommodation which could be made, and if the employer may determine which accommodation shall be made to the pregnant employee based on an analysis of the relative burdens imposed by competing accommodations. This is the case in other statutory schemes such as the ADA.

While litigation to address these and other issues raised by the new law is probable, the new law goes a long way to address the particular needs of pregnant employees. Plaintiff's counsel need be aware of the wide ranging protections afforded to pregnant workers and carefully evaluate the accommodations sought and those granted. Employers and their counsel need to be cognizant of these new protections and take steps to implement the requirements of the new law. Employers should also consider implementing an interactive process, similar to the one used in ADA situations to address what accommodations can and will be made to their pregnant employees.

*Mr. Lavigne is Co-Chair of the Labor, Employment and Workers' Compensation Practice Committee*

1. The law also applies to landlords, lenders and others.
2. There are bills pending in Congress to increase the protections of pregnant employees beyond those currently available, but these have stalled.

## 2014-2015 SCBA and SCBF Committee Chairs

### SCBA Committees

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*For more information or to join one of these Committees,  
please contact the Chairs or the Executive Director*

#### Real Estate Practice

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#### The Clarion

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### SCBF Committees

#### "Legal Runaround"

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**Jason A. Storipan, Esq.** (908) 516-1065

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### SAVE THE DATE!

## Professionalism Day Seminar and Superior Court Law Clerk Reunion Reception

November 18, 2014

5:30 - 7:30 pm

Somerset County Superior Court

Jury Assembly Room

Earn up to

1 General CLE Including 1 Hour Ethics/  
Professionalism Credits!

*See website calendar for details and registration*

*www.somersetbar.com*

## Keeping Your Legal Skeletons in The Closet - An Overview

Continued from page 9

However, background checks are required more often. For example you wish to adopt a child, apply for a permit to purchase a firearm, coach a youth sports team, be licensed in the medical, legal or financial field, or pass a security clearance, a background check is required. Additionally, people have lost their jobs after their employers obtain information that reveals a past criminal record.

With limited exceptions, by law, most offenses can be expunged from your record. There are, however, waiting periods to apply for an expungement. For an indictable offense (felony) a person must wait ten years from the time they are discharged from probation/parole and all their fines were paid. A recent amendment to this statute permits a reduced wait time of five years for certain indictable offenses if it is in the public interest. A disorderly or petty disorderly person's offense (misdemeanor) that was handled in a municipal court has a five year waiting period, whereas a borough or municipal ordinance has a two year waiting period. One exception to this rule is for driving while intoxicated (DWI) convictions or any type of motor vehicle offense; these records cannot be expunged. For people that were admitted into the Pre-Trial Intervention Program (PTI) or received a conditional discharge in municipal court, there is a six month waiting period from the time the case was dismissed. There is no minimum waiting period to apply

for an expungement of arrest records, for charges that were ultimately dismissed. Finally, if a person was adjudicated delinquent as a juvenile, there is a 5 year waiting period from the date of the completion of their supervision.

To have your record expunged, you must make an application to the Superior Court of New Jersey in the county where the offense took place. Generally, the process takes approximately 2 months for the court to review your application and determine whether you meet the legal requirements to have your criminal history expunged. After a Judge signs the Order for Expungement, the Order is sent to various law enforcement agencies where the expunged record is actually "cleared" from the person's files. In the overwhelming majority of cases, the applicant does not have to appear in court during this process.

Expunging your criminal history at the earliest possible opportunity is the one way you can evict the unfortunate skeleton from your closet so it can no longer haunt you in the present.

*Matthew Dorsi is an attorney with the law firm of DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis, Lehrer & Flaum, P.C., He is certified by the Supreme Court of New Jersey as both a Civil and Criminal Trial Attorney. His practice focuses on criminal and/or motor vehicle offenses and personal injury matters.*



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## It's "Criminal" How Hard It Can Be to Hire Someone These Days: New Jersey Follows Trend and "Bans the Box"

Continued from page 3

New Jersey employers are still permitted to inquire about an applicant's criminal record after the first interview. In addition, employers are not barred by the law from refusing to hire someone based on the information uncovered unless the criminal record has been expunged or erased through executive pardon, and provided the refusal "is consistent with other applicable laws, rules and regulations." While discussion of this caution to employers concerning other laws is beyond the scope of this article, should an employer find itself in the position to reject an applicant based on his or her criminal history, the employer would be wise to consult varied authority, including, but not limited to, Federal and State discrimination laws, the Fair Credit Reporting Act and the aforementioned EEOC guidance.

There are some exceptions to the requirements that the New Jersey law imposes on employers. For example, employers are not initially prohibited for inquiring into applicant criminal history (1) where a criminal history check is required for the position by law, (2) where an arrest or conviction would or may preclude the person from holding such employment pursuant to governing law, or (3) where a law, rule or regulation would restrict an employer's ability to engage in "specified business activities based on the criminal records of its employees." The law also makes clear that criminal history inquiries may be made during the initial employment application process where the position sought is in law enforcement, corrections, the judiciary, homeland security or emergency management.

The Act sets forth penalties of \$1,000 for a first violation, \$5,000 for a second violation, and \$10,000 for each violation thereafter. The new law does not create a private cause of action.

The effective date of the New Jersey law is March 1, 2015. Employers should utilize the 6 month notice period to take the following steps in preparation for compliance:

1. Employers should review and revise job application and related forms to remove impermissible requests made of candidates.
2. Job advertisements should also be reviewed to ensure compliance (the law generally states that advertisements may not provide that an employer will not consider applicants who have been arrested or convicted of one or more crimes or offenses).
3. Employers should train and instruct staff who conduct interviews so that they are aware of permissible inquiries and the timing for same (e.g., if an applicant voluntarily discloses criminal history information "early," employers may then inquire about such criminal history). The develop-

ment of a checklist of sorts to address this area would seem to be a valuable exercise.

4. Employers should consider undertaking an overall hiring process review for compliance with the new law and other laws relating to permissible and impermissible pre-employment inquiries. In this regard, multi-jurisdictional employers should assess how and when they will obtain criminal history information, and whether they should utilize a uniform practice throughout their states of operation. Given how the law seems to be developing in this area, it may soon be that "banning the box" is the rule rather than the exception. Thus, a uniform practice may be warranted and/or most practical. This would seem to be particularly the case where an employer plans to perform a post-offer background check on an applicant in any event.

*Ryan S. Carey, Esq. is a partner with Apruzzese, McDermott, Mastro & Murphy and concentrates in the areas of employment litigation and counseling on behalf of management.*

<sup>i</sup> *Statewide Ban the Box: Reducing Unfair Barriers to Employment of People with Criminal Records*, National Employment Law Project, July 2014

<sup>ii</sup> Conn. Gen. Stat. §46a-80; 19 Del. Code §711; Mass. Gen. Laws Ch. 6, §151B, 168-173; R.I. Gen. Laws §28-5-7(7).

<sup>iii</sup> *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, EEOC Enforcement Guidance, No. 915.002, April 25, 2012.

**Mark Your Calendar!**

**Family Practice Seminar**

**Wed., Oct 22nd 4:15-6:00**

*(preceding Meet the Clerks reception*

**"Hot Topics in Family Practice"**

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*See website calendar for details and registration  
www.somersetbar.com*

## To Represent LGBT Clients, A Lawyer Needs to Be Culturally Competent

*Continued from Page 5*

How will the lawyer and staff address a client who identifies as transgender? Do they know the difference between “transgender” and “transgendered” and why one of these terms is considered offensive? Will the staff know how to react if a person named Charles comes to the office for an appointment dressed in female attire? Staff and attorneys need to know that one uses personal pronouns which reflect how the person presents her or himself.

Are you aware that the term “opposite sex” couple is considered outdated and why? Consider checking out the GLADD Media Reference Guide, 8th edition for a proper glossary of terms, including terms to avoid and defamatory language. <http://www.glaad.org/reference>.

Much more pronounced than in the non-gay world, there are significant generational differences within the LGBT community. Clients who grew up before the watershed Stonewall riot in 1969 have different issues and face different problems than younger LGBT clients who matured in a more tolerant age. Older members of the community are more likely to be single, childless, live alone and be estranged from her family of origin. Instead she may rely on “chosen family”

Having grown up in a time of repression, an older LGBT client may be reticent about divulging the true extent of her life to an attorney. This generation still carries scars from a time when they were forced to hide their identity. Others carry wounds from living through the AIDS holocaust on the 1980’s and 1990’s. Unless an attorney makes them feel comfortable, they may withhold key information and not receive crucial advice.

Serving this community will put a lawyer in the forefront of a developing area of the law. It also offers the reward of personal satisfaction by giving clients proper advice in an area of unsettled law. Get a solid grounding in the culture of the LGBT community and educate yourself on the law so that you can make your LGBT client comfortable and provide the necessary legal advice.

*Mr. Singer is a partner in the Belle Mead law firm of Singer & Fedun, LLC*

This article was first published on the Law.com Network on May 23, 2014.

## Welcome New & Returning Members!

(as of September 15, 2014)

The SCBA extends a warm welcome to our newest members:

**Jean Baptiste, Esq.** - Jean Baptiste & Associates, LLC  
**Danielle H. Bohlen, Esq.** - Purcell, Mulcahy, Hawkins, Flanagan & Lawless, LLC  
**Douglas F. Herring, Esq.** - Law Office of Douglas F. Herring  
**Bilal Hill, Esq.** - The Hill Firm, LLC  
**Judith Margolies Knopf, Esq.** - Judith Knopf, PC  
**Lauren Limauro-Richton, Esq.** - Saiber, LLC  
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**Marc B. Shipon, Esq.** - Ruch & Shipon  
**Paul T. Swanicke, Esq.**  
**Matthew P. Tallia, Esq.**



and welcomes back after an absence:

**David E. Cassidy, Esq.** - Norris McLaughlin & Marcus, PA  
**Thomas J. Chaves, Esq.** - Thomas J. Chaves, Esq., LLC  
**Maria M. DeFilippis, Esq.**  
**Sheryl A. DeSantis, Esq.** - Sheryl A. DeSantis, LLC  
**Jill L. Gropper, Esq.** - Law Office of Jill L. Gropper, LLC  
**Drew M. Hurley, Esq.**  
**Peter U. Lanfrit, Esq.** - Law Office of Peter U. Lanfrit, LLC  
**Timothy P. McKeown, Esq.** - Norris McLaughlin & Marcus, PA  
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## The Clarion

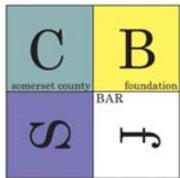
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## Somerset County Bar Foundation

*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,*

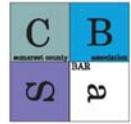


*charitable organization from the Bar Association, it currently offers and supports a number of programs and fundraisers such as the Raymond R. Trombadore Scholarship Fund for deserving local law school students, and fundraisers such as "The Legal Runaround" 5K races to benefit justice-related local non-profit organizations.*

**Working for our community**

## Somerset County Bar Association

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



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

**Working for our legal community**

## Check out our Websites!

The Bar Association and Bar Foundation each have its own website.

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

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

Check the websites often for such information as:

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

## Calendar of Upcoming Events - 2014

September	30		Installation Dinner (Raritan Valley Country Club)
October	13		Courts Closed (Columbus Day)
	13	8:00 am - 2:45 pm	Marathon CLE Day (Raritan Valley Country Club)
	22	12:00 pm	2014 Professionalism Awards Luncheon (The Imperia)
	22	4:15 - 6:00 pm	Family Practice Seminar (The Ryland Inn)
	22	6:00 - 8:30 pm	Vicinage-Wide Meet the Clerks/Judiciary Reception (The Ryland Inn)
	23	7:30 - 8:30 am	Breakfast with the Family Part Judiciary (40 N. Bridge St., 1st Floor Training Room)
November	1-8		NJSBA Mid-Year Meeting (Paris, France)
	17	12:30 pm	Family Practice Bench-Bar Meeting (40 N. Bridge St., 1st Floor Training Room)
	18	5:30 - 7:30 pm	Professionalism Day Seminar & Reception (Jury Assembly Room)
	27		Courts Closed (Thanksgiving)

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

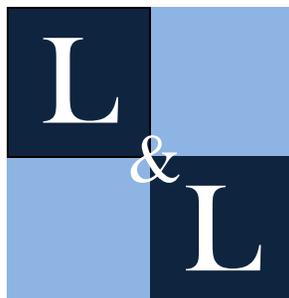
*[www.somersetbar.com](http://www.somersetbar.com)*

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

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