| Posted Date | Name of Case (Docket Number) | Type |
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| Aug. 28, 2024 | M.M. AND R.M. VS. DEPARTMENT OF CHILDREN AND FAMILIES, ET AL. (NEW JERSEY DEPARTMENT OF CHILDREN AND FAMILIES AND FG-11-0035-20, MERCER COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (CONSOLIDATED) (A-0259-22/A-0695-22)<br><br>In these consolidated appeals, the court addressed former foster caregivers' administrative and Family Part appeals involving the Kinship Legal Guardianship placement of a minor child. Appellants claim the final agency decision affirming the removal of the minor child from their home was arbitrary, capricious and unreasonable and also argue they should have been granted intervention within the Family Part action.<br><br>The court concluded that the Division of Child Protection and Permanency's removal of the minor child was supported by the regulatory officer's consideration of the experts' bonding evaluations which properly interpreted the law, court orders, and Division records. In addition, the court concluded that appellants, as foster caregivers, have no right to intervene under Rule 4:33-1, without other statutory support. The placement of the minor child was supported by the 2021 statutory amendments to both the Termination of Parental Rights Statute, N.J.S.A. 30:4C-15.1, and the Kinship Legal Guardianship statute, N.J.S.A. 3B:12A-1 to -7. The trial court did not misapply the updated law. Regarding permissive intervention under Rule 4:33-2, the trial court did not abuse its discretion. | Appellate |
| Aug. 21, 2024 | STATE OF NEW JERSEY VS. JUSTIN MORGAN (22-05-1241, CAMDEN COUNTY AND STATEWIDE) (RESUBMITTED) (A-0499-23)<br><br>This appeal presents a question of first impression regarding when the State may be compelled to provide field and health reports of narcotics detection canines in accordance with the Supreme Court's holding in Florida v. Harris, 568 U.S. 237 (2013). Defendant was indicted with second-degree unlawful possession of a weapon, fourth-degree possession of hollow nose bullets, third-degree possession of a controlled dangerous substance, and second-degree certain persons not to have a weapon. The Law Division denied defendant's motion to compel the State to provide discovery of records related to a narcotics detection canine used to conduct a sniff of the vehicle and whose positive alert gave the basis for probable cause to conduct a full search.<br><br>Upon granting leave to appeal, the court concludes that under Harris, the canine's field and health records are not per se irrelevant to reliability and probable cause determinations and, therefore, the trial court should have first heard the State's motion challenging the expert before denying the defendant's motion for discovery.<br><br>The court reverses and remands for consideration of the State's motion to bar defendant's expert. | Appellate |
| Aug. 20, 2024 | STATE OF NEW JERSEY VS. CHRISTOPHER W. BARCLAY (17-06-0969, OCEAN COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-3690-22)<br><br>This appeal from the denial of a petition for post-conviction relief (PCR) presents a novel statutory construction question under the current version of the New Jersey Wiretapping and Electronic Surveillance Control Act (Wiretap Act). Pursuant to N.J.S.A. 2A:156A-4(c), law enforcement officers may intercept and record a telephonic communication when a party to the conversation allows them to listen in on the phone call. Recordings made under this provision are known as "consensual interceptions." While a consensual interception does not require prior judicial approval in the form of a wiretap order, N.J.S.A. 2A:156A-4(c) requires police to obtain the prior approval of the Attorney General or designee, or a county prosecutor or designee. In this appeal, the court addresses whether prior prosecutorial approval must be in writing.<br><br>The court concludes that nothing in the plain text, legislative history, or case law interpretation of the Wiretap Act requires prior approval of consensual interceptions be made in writing. The court deems it especially noteworthy that the plain text of N.J.S.A. 2A:156A-4(c) stands in stark contrast to the plain text of the Wiretap Act section governing the internal law enforcement procedure for getting approval to apply to a wiretap judge for an interception order. N.J.S.A. 2A:156A-8 explicitly provides that the Attorney General, county prosecutor, or a person designated to act for such an official . . . may authorize, in writing, an ex parte application to a judge." (Emphasis added). The court reasons that provision confirms the Legislature knows how to specify when Attorney General/county prosecutor/designee prior approval must be in writing but chose not to include that requirement with respect to approving a request to conduct a consensual interception.<br><br>The court concludes the Legislature did not intend to impose procedural requirements regarding prosecutorial approval of consensual interceptions other than the two conditions expressly articulated in the statutory text: (1) the approval be made by a person designated by the Attorney General or county prosecutor, and (2) such approval be given prior to initiating the consensually-intercepted telephonic communication. Because the record shows the prosecutor complied with both requirements, the court affirms the denial of defendant's PCR petition. | Appellate |
| Aug. 19, 2024 | STATE OF NEW JERSEY VS. ARTHUR F. WILDGOOSE (16-03-0148, SOMERSET COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1497-22)<br><br>The court in this post-conviction relief (PCR) appeal addresses a question of first impression under the Jessica Lunsford Act (JLA), which prescribes a mandatory twenty-five-year sentence for aggravated sexual assault of a child under the age of thirteen. The mandatory minimum sentence can be reduced by up to ten years, but only by the | Appellate |

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| | prosecutor through a plea agreement. A judge, moreover, may not impose a prison term less than the one agreed to by the prosecutor.<br><br>To ensure statewide uniformity, the JLA required the Attorney General to issue guidelines channeling the exercise of prosecutorial discretion in making plea offers. Under the Attorney General Guidelines, prosecutors are expressly prohibited from tendering the most lenient plea offer allowed under the JLA once a defendant is indicted. In this case, the prosecutor's initial plea offer was tendered after indictment. Defendant contends the Guidelines' graduated plea provision imposes an impermissible "indictment penalty," violating due process, the right to the effective assistance of counsel, and the right under the doctrine of fundamental fairness to a plea offer that is not arbitrary or capricious.<br><br>In State v. A.T.C., the Supreme Court upheld the JLA and Attorney General Guidelines against a facial constitutional challenge, subject to an important condition. 239 N.J. 450, 475 (2019). The Court held prosecutors must provide a statement of reasons explaining their decision to offer a defendant a reduced term of imprisonment. That requirement is designed to ensure statewide uniformity and facilitate judicial review to guard against the arbitrary or capricious exercise of prosecutorial discretion.<br><br>The A.T.C. Court had no occasion, however, to address the constitutionality of the Guidelines' graduated plea provision at issue in this appeal since the defendant in A.T.C. waived his right to indictment. Following the analytical template and remedy devised in A.T.C., the court upholds the constitutionality of the challenged Guidelines' graduated plea feature subject to a condition: when a prosecutor elects to tender the initial plea offer after indictment, the statement of reasons required by A.T.C. should include an explanation for the timing of the plea offer or else an explanation that the graduated plea provision had no impact on the plea offer. Applying that rule, the court remands the case for the prosecutor to explain the reason for not tendering a pre-indictment plea offer, and for the PCR judge to review that explanation to determine if the prosecutor's decision constitutes an arbitrary or capricious exercise of prosecutorial discretion resulting in prejudice to defendant. In all other respects, the court rejects defendant's constitutional arguments. | |
| Aug. 16, 2024 | IN THE MATTER OF REGISTRANT M.L. (ML-22-03-0038, BURLINGTON COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1008-22)<br><br>In this appeal, as a matter of first impression, the court considered whether the State may move to expand the scope of notification under Megan's Law, N.J.S.A. 2C:7-1 to -23, based on an increased risk of harm to the community not otherwise accounted for in the Registrant Risk Assessment Scale (Scale).<br><br>Having reviewed precedent concerning heartland applications, the court was satisfied the State may, in limited circumstances, request notification more expansive than indicated by a registrant's confirmed Scale score. As with a registrant's heartland application, the State may only request an expansion of notification in the "unusual case where relevant, material, and reliable facts exist for which the Scale does not account, or does not adequately account . . . . Those facts must be sufficiently unusual to establish that a particular registrant's case falls outside the 'heartland' of cases." In re Registrant G.B., 147 N.J. 62, 82 (1996).<br><br>The court agreed that this case, which resulted in the "ultimate harm" of death to the victim, presented facts not taken into account by the Scale, and that the judge's decision did not constitute an abuse of discretion. | Appellate |
| Aug. 12, 2024 | IN RE ADOPTION OF N.J.A.C. 5:105-1.6(A)(1) (GOVERNMENT RECORDS COUNCIL) (A-0963-22)<br><br>In 2022, the Government Records Council (GRC) adopted N.J.A.C. 5:105-1.6(a)(1). The regulation provides that all submissions made to the GRC during its adjudication of a denial-of-access complaint under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, "shall not be considered government records subject to public access pursuant to" OPRA "during the pendency of [the] adjudication." This direct appeal challenges the regulation's validity.<br><br>The court holds the regulation is invalid because it violates OPRA's plainly stated requirements, finds no support in OPRA, and is inconsistent with the legislative mandate embodied in OPRA that the citizens of this state are entitled to prompt and full public access to government records. The court further finds that in its adoption of the regulation, the GRC, which is charged with enforcing OPRA's broad policy of construing its terms "in favor of the public's right of access," N.J.S.A. 47:1A-1, invalidly shields itself from public scrutiny during its performance of one of its core responsibilities—the adjudication of denial-of-access complaints. | Appellate |
| Aug. 9, 2024 | NARENDRA LAKHANI, ET AL. VS. ANIL PATEL, ET AL. (L-0386-11 AND L-0758-11, SOMERSET COUNTY AND STATEWIDE) (A-3562-22)<br><br>The issue presented, one of first impression, is whether a court-appointed Special Adjudicator's fees to resolve discovery disputes can be charged to an individual or entity who were not parties to the underlying litigation but petitioned the court to quash a subpoena. Because we conclude Rule 4:41-2 limits the imposition of the Special Adjudicator's fees to the parties in the underlying litigation, we reverse the trial court's order imposing fees on the nonparty appellants, who moved to quash the subpoena, as they are nonparties to the underlying litigation. | Appellate |
| Aug. 5, 2024 | T.B. VS. I.W. (FV-04-3713-23, CAMDEN COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-3899-22)<br><br>Defendant appealed from a final restraining order (FRO) entered against him pursuant to the Prevention of | Appellate |

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| | Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, based upon predicate acts of sexual assault, N.J.S.A. 2C:14-2, lewdness, N.J.S.A. 2C:14-4, and harassment, N.J.S.A. 2C:33-4. He contended the trial court failed to make factual or credibility findings, and abused its discretion in entering an FRO after drawing an adverse inference when he chose not to testify. The court concluded the trial court failed to make sufficient findings of fact and conclusions of law, vacated the FRO, reinstated the amended temporary restraining order (TRO), and remanded for a new FRO hearing before a different judge.<br><br>Additionally, the court concluded, as a matter of law, it is not appropriate for a trial court to draw an adverse inference solely from defendant's invocation of his Fifth Amendment right to not testify in an FRO hearing. Despite the remedial nature of the PDVA, and the statute's language insulating a defendant's testimony from use in a criminal proceeding relating to the same act, a defendant's election to not testify cannot give rise to an adverse inference in an FRO hearing. | |
| July 31, 2024 | NEW JERSEY REALTORS VS. TOWNSHIP OF BERKELEY (L-0991-22, OCEAN COUNTY AND STATEWIDE) (A-1384-22)<br><br>This appeal requires the court to determine whether an ordinance limiting property ownership in certain senior housing communities to persons aged fifty-five or older is valid. Both the Fair Housing Act (FHA), 42 U.S.C. § 3604(a), and the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-12(h), prohibit housing discrimination based on familial status, but provide an exemption for qualified housing for older persons, see 42 USC § 3607(b)(1); N.J.S.A. 10:5-5(n). However, the exemption in both statutes permit restrictions on occupancy, not ownership, to persons aged fifty-five and older. Relying on the text and the underlying purpose of the statutes, the court determined that because the exemptions do not expressly permit the restriction on ownership, and the ordinance's restriction discriminates on the basis of familial status, the ordinance violates the FHA and the NJLAD. As a result, the court affirmed the trial judge's decision invalidating the ordinance.<br><br>Alternatively, the court invalidated the ordinance on the ground that its enactment exceeded the scope of the Township's authority because the ordinance unreasonably infringed upon the well-established and constitutionally protected right to own and sell property, and the restriction unreasonably and irrationally exceeded the public need. The court therefore concluded the ordinance was arbitrary and unreasonable, and required the Legislature's approval as a precondition to such a radical regulatory development. | Appellate |
| July 30, 2024 | IN THE MATTER OF KENNETH NICOSIA FLOOD HAZARD GENERAL PERMIT, ETC. (NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION) (A-2921-22)<br><br>This appeal arises from a denial by respondent New Jersey Department of Environmental Protection ("DEP") of a request by appellants to rescind what is known as a flood hazard area general permit-by-certification 5 ("GPC 5") granted to a neighboring residential property owner, Kenneth Nicosia.<br><br>Appellants own residential property that abuts Nicosia's parcel, both located within a block of the Atlantic Ocean shoreline. Nicosia, a developer, sought the permit to replace a single-family house on the site with a new house.<br><br>After receiving notice of Nicosia's application for a GPC 5, appellants and several other local residents submitted comments to the DEP contesting the application. The comments objected to the issuance of the GPC 5, and further alleged that Nicosia's ongoing construction of the new house was not adhering to the permit's conditions. A DEP Section Chief responded to appellants by email, rejecting their objections and declining to modify or rescind the permit. This appeal ensued.<br><br>Appellants principally argue that (1) the written notice they received of Nicosia's permit application was deficient because it failed to state the permit was effective during the comment period; and (2) the applicable DEP regulations should be construed to require a GPC 5 applicant to show that an existing structure is not in "usable condition" due to "decay" or "damage." See N.J.A.C. 7:13-1.2 (defining the terms "reconstruct" and "repair" under the regulations).<br><br>The court concludes the GPC 5 notice did not violate any statutory or regulatory provisions, nor was it constitutionally deficient. In addition, although the pertinent regulations are poorly worded and punctuated, the DEP has reasonably construed them to not require an applicant who, as here, seeks to replace a lawfully existing structure to demonstrate the structure is decayed, damaged, or otherwise not in usable condition. But nothing in this opinion precludes the pursuit of available enforcement remedies if the construction, as built, does not comply with the conditions of the GPC 5 or applicable statutes or regulations. | Appellate |
| July 25, 2024 | VERIZON NEW JERSEY, INC. VS. BOROUGH OF HOPEWELL (REDACTED) (A-2909-18)<br><br>In this long-running dispute between Verizon New Jersey, Inc., inheritor of New Jersey Bell Telephone Company's local exchange service telephone network, and the Borough of Hopewell, the court affirms Judge Menyuk's 2012 decision on summary judgment finding N.J.S.A. 54:4-1's 51% market-share calculation must be performed annually, and that an annual market-share calculation, as applied to Verizon, does not violate the State and federal equal protection guarantees, the State prohibition of special legislation or the Uniformity Clause, as well as Judge Brennan's 2019 decision following trial that Verizon is subject to the tax imposed for tax year 2009 because it provided dial tone and access to 51% of the Hopewell Local Telephone Exchange in 2008. The published version of this opinion omits discussion of whether the 51% test of N.J.S.A. 54:4-1 is to be applied annually as well as Verizon's constitutional challenges to the statute. | Appellate |

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| July 24, 2024 | STATE OF NEW JERSEY VS. KEVIN B. BOONE (20-12-0521, CUMBERLAND COUNTY AND STATEWIDE) (A-3503-21)<br><br>The court reverses the denial of a motion to suppress drug evidence discovered by a detective following a dog sniff after an admitted pretext stop. Although not questioning the detective's good faith or impugning the trial court's finding that he was a credible witness, the court finds neither is enough to justify this stop. "The suspicion necessary to justify a stop must not only be reasonable, but also particularized." State v. Scriven, 226 N.J. 20, 37 (2016). The detective failed to offer facts sufficient, as a matter of law, to allow the court to determine he possessed a reasonable articulable suspicion that Boone failed to maintain his lane "as nearly as practicable." N.J.S.A. 39:88(b). See State v. Woodruff, 403 N.J. Super. 620, 627-28 (Law Div. 2008). We do not reach defendant's argument that the automobile exception did not apply because the circumstances giving rise to probable cause were not spontaneous and unforeseeable as required under State v. Witt, 223 N.J. 409, 447-48 (2015). See State v. Smart, 253 N.J. 156, 171 (2023). | Appellate |
| July 23, 2024 | STATE OF NEW JERSEY VS. JUSTIN MORGAN (22-05-1241, CAMDEN COUNTY AND STATEWIDE) (A-0499-23)<br><br>This appeal presents a question of first impression regarding when the State may be compelled to provide field and health reports of narcotics detection canines in accordance with the Supreme Court's holding in Florida v. Harris, 568 U.S. 237 (2013). Defendant was indicted with second-degree unlawful possession of a weapon, fourth-degree possession of hollow nose bullets, third-degree possession of a controlled dangerous substance, and second-degree certain persons not to have a weapon. The Law Division denied defendant's motion to compel the State to provide discovery of records related to a narcotics detection canine used to conduct a sniff of the vehicle and whose positive alert gave the basis for probable cause to conduct a full search.<br><br>Upon granting leave to appeal, the court concludes that under Harris, the canine's field and health records are not per se irrelevant to reliability and probable cause determinations and therefore, the trial court should have first heard the State's motion challenging the expert before denying the defendant's motion for discovery.<br><br>Because the records may be deemed relevant by the trial court, the court reverses and remands for consideration of the State's motion to bar defendant's expert using the Daubert[1] standard adopted by our Supreme Court for criminal cases in State v. Olenowski, 253 N.J. 133, 151 (2023).<br><br>[1] Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). | Appellate |
| July 19, 2024 | MARK CERKEZ, ET AL. VS. GLOUCESTER CITY, NEW JERSEY, ET AL. (L-1516-23 AND L-0733-23, CAMDEN COUNTY AND STATEWIDE) (CONSOLIDATED) (A-0661-23/A-0745-23)<br><br>The central issue in these back-to-back appeals, which have been consolidated for the purpose of issuing a single opinion, is whether municipalities have an implied contractual (seller-consumer) relationship with residents to whom they distribute metered potable water. The answer to that question determines whether plaintiffs may sue defendants under a breach-of-contract theory on the grounds that the water supplied to them contains a high level of contaminants.<br><br>Plaintiffs rely on older cases holding there was a contractual relationship between residents and their towns with respect to water service. Defendants rely on more recent cases recognizing a different type of relationship between municipal water distributors and residents—one that is not based on principles of contract law.<br><br>The court concludes that under the current governance framework for public water systems, potable water is a public resource owned by the people and held in trust for them. Under that paradigm, defendant municipalities distribute water to their residents for a governmental purpose. They are not tantamount to private companies that sell water for profit. The fact they charge residents for the costs incurred for providing this governmental service —which varies based on the amount of water a resident receives—does not automatically create a contractual relationship.<br><br>The court also concludes that for all practical purposes, the theory of liability in plaintiffs' complaints, while carefully drafted to employ the terminology of contract law, is indistinguishable from a warranty of fitness cause of action explicitly precluded under a provision of the Tort Claims Act, N.J.S.A. 59:9-2(b). Stated another way, using the label of a contract dispute to describe the cause of action does not change its essential character or transform the relationship between municipal water distributors and residents into a contractual one. The court thus concludes there is no foundation upon which contractual damages may be claimed against defendant municipalities. | Appellate |
| July 17, 2024 | ANDRIS ARIAS VS. COUNTY OF BERGEN (L-6633-22, BERGEN COUNTY AND STATEWIDE) (A-2574-22)<br><br>The court affirmed the trial court's dismissal of plaintiff's personal injury action under the Landowners Liability Act (LLA), N.J.S.A. 2A:42A-2 to -10. Plaintiff fell while rollerblading in a park owned and maintained by the County of Bergen. The County of Bergen argued entitlement to immunity under the LLA.<br><br>The court, focusing on "the dominant character of the land" where plaintiff fell rather than the land uses surrounding the park, agreed with the trial court's conclusion that the park constituted a "premises" under the LLA. | Appellate |

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| | Therefore, the County of Bergen was entitled to immunity absent "willful or malicious failure to guard, or to warn against a dangerous condition."<br><br>Given the dwindling available open space in this State, the LLA reflects an important public policy of encouraging large land areas, consisting of natural outdoor expanses, where the general public may participate in sport and recreational activities free of charge. Premises under the LLA may consist of large tracts of rural or semi-rural lands or "lands having similar characteristics," such as the park owned by the County of Bergen. | |
| July 9, 2024 | MIST PHARMACEUTICALS, LLC VS. BERKLEY INSURANCE COMPANY (L-3329-17, UNION COUNTY AND STATEWIDE) (A-1286-22)<br><br>Defendant insurance company appeals from an order granting partial summary judgment to plaintiff policy holder finding a duty to defend and indemnify. The trial court found that defendant had unreasonably withheld consent to settle in the underlying actions and was precluded by the Supreme Court's holding in Fireman's Fund Insurance Co. v. Security Ins. Co. of Hartford, 72 N.J 63 (1976), from declining coverage pursuant to the policy's capacity exclusion.<br><br>The court first concluded that on the undisputed facts in the record, defendant's conduct was not unreasonable, and that the facts were distinguishable from Fireman's Fund. After engaging in de novo review of the record, including the policy, the court concluded the capacity exclusion applied to bar coverage. | Appellate |
| July 5, 2024 | STATE OF NEW JERSEY VS. MARY MELLODY (04-03-22, SUSSEX COUNTY AND STATEWIDE) (A-1087-22)<br><br>The court reverses defendant's driving while intoxicated (DWI) conviction because it was based on evidence obtained by a police officer following his unlawful entry into defendant's garage. The court remands for the Law Division judge to determine whether defendant's careless driving conviction can be sustained based on information learned before the officer unlawfully crossed the threshold of defendant's home.<br><br>The court addresses the circumstances in which a police officer may enter a suspect's residence in connection with a drunk or careless driving investigation. The court holds that while police have the authority to perform various "community caretaking" functions—such as determining whether a suspected drunk driver needs medical attention—they may not make a warrantless entry into a suspect's home to execute an investigative detention without consent or exigent circumstances. The court holds this rule applies to defendant's garage.<br><br>The court also holds this was not a fleeting or de minimus entry. The officer entered the garage to execute an investigative detention, that is, to seize defendant. The court stresses that even the brief entry of the home to effectuate the seizure of a resident is a significant constitutional intrusion. The court ultimately concludes the State failed to prove by a preponderance of the evidence the officer lawfully entered the garage to render emergency aid under the exigent circumstances exception. | Appellate |
| July 3, 2024 | STATE OF NEW JERSEY VS. JESSICA S. MATRONGOLO (23-08-0676, MIDDLESEX COUNTY AND STATEWIDE) (A-1098-23)<br><br>In this appeal, the court held individuals convicted of a disorderly persons or petty disorderly persons offense are not categorically excluded from Recovery Court under Track Two based on the classification of their conviction. The court first found the matter justiciable despite the defendant's death and then rejected the rationale that Recovery Court is available only to those convicted of a "crime," which disorderly persons and petty disorderly persons offenses are not under our Criminal Code. | Appellate |
| June 28, 2024 | ESTATE OF WILLIAM MASSI, ET AL. VS. BETTE BARR, ET AL. (L-5579-18, MIDDLESEX COUNTY AND STATEWIDE) (REDACTED) (A-2005-21)<br><br>This Tort Claims Act case arises from a now-deceased plaintiff's bicycle accident on a two-lane public road that straddled two municipalities. The accident occurred on a stretch of the road that was chronically pitted with potholes, apparently due to drainage and freezing problems. According to the deposition testimony of a local public safety director, potholes at that location had to be patched and re-patched "hundreds" of times in the five years before the accident. Several citizens periodically reported the road's poor condition before the accident. The road had no full-sized shoulders or designated bike lanes.<br><br>Plaintiff swerved his bicycle to avoid a passing truck, and lost control and fell when his tires hit the potholes. Plaintiff's engineering expert opines that incorrect methods had been used to patch the road. The expert further has opined that the persisting uneven surfaces were dangerous, not only for bicycles but also for motorcycles.<br><br>This opinion clarifies and extends the principles of Polzo v. County of Essex, 196 N.J. 569 (2008) ("Polzo I") and Polzo v. County of Essex, 209 N.J. 51 (2012) ("Polzo II"), concerning roadway surface conditions that endanger the safety of bicyclists on public roads. In a fact pattern involving a bicycle accident on a road's potholed shoulder, the Court held in Polzo II that the public entity defendant had no duty to maintain the shoulder to an extent safe for bicyclists. Id. at 70-75. The Court distinguished that no-duty-to-bicyclists situation from a roadway condition that also happens to be unsafe for motorized vehicles. Ibid.<br><br>This court applies the rationale of Polzo II here to this bicycle accident that occurred in a vehicular lane, and to a | Appellate |

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| | record with an unrebutted expert opinion that the road surface was unsafe for both motorcycles and bicycles. The court concludes a public entity that is palpably unreasonable in failing to correct such a known dangerous road condition may be liable to a bicyclist who is injured because of that danger. In doing so, the court recognizes that a plaintiff operating a two-wheeled vehicle must use due care when confronting a visibly hazardous potholed surface. These principles are consistent with New Jersey Department of Transportation regulations concerning the safety of roadway surfaces.<br><br>Viewing this record in a light most favorable to plaintiff, the court vacates summary judgment in favor of the two municipal defendants that maintained and patched the road. In the unpublished portion of this opinion, the court addresses other discrete matters. | |
| June 27, 2024 | ENGLEWOOD HOSPITAL & MEDICAL CENTER, ET AL. VS. THE STATE OF NEW JERSEY, ET AL. (L-1434-17 AND L-1397-18, MERCER COUNTY AND STATEWIDE) (A-2767-21)<br><br>Plaintiff hospitals brought action challenging the charity care program that requires them to provide care to all patients regardless of their ability to pay, while also prohibiting them from billing patients who qualify for charity care under the statute. The trial court dismissed certain hospitals' claims for failure to exhaust administrative remedies. As to the remaining claims, the trial court found that the regulations do not affect a constitutional taking under either a per se or Penn Central analysis.<br><br>On de novo review, the court first addressed the ripeness issue. It held that plaintiffs raised facial challenges to charity care and therefore had properly raised their claims in the first instance with the trial court. Therefore, the court considered all plaintiff hospitals' constitutional takings claims. Next, the court held that plaintiffs failed to show either a per se or regulatory taking violative of the Fifth and Fourteenth Amendments of the United States Constitution as well as Article I, Paragraph 20 of the New Jersey Constitution. As a result, the court affirmed the trial court's order granting summary judgment on the merits, but did so on different grounds, entering summary judgment against all plaintiffs, including those previously dismissed for failure to exhaust administrative remedies. | Appellate |
| June 26, 2024 | ESTATE OF DONVILLE CAMPBELL, ETC. VS. WOODCLIFF HEALTH & REHABILITATION CENTER, ET AL. (L-7744-21, BERGEN COUNTY AND STATEWIDE) (CONSOLIDATED) (A-3177-22/A-3178-22)<br><br>Plaintiff's decedent succumbed to the COVID-19 virus in May 2020. The Estate claims the decedent's death was a result of defendants' "negligent, grossly negligent, careless and reckless actions and omissions" in discharging his wife, from whom he allegedly contracted the disease, from defendant long-term care facility in April 2020, while the result of her PCR test was pending. Defendants notified the decedent's wife, their patient, and the decedent of the patient's positive test upon defendants' receipt of the result two days after her discharge. The decedent tested positive for the virus shortly thereafter. Defendants' patient survived her bout with the virus; the decedent tragically did not.<br><br>The court reverses the denial of defendant health providers' motions to dismiss plaintiff's medical negligence, wrongful death and survival claim, finding, contrary to plaintiff's assertion, that there is no well-established common law rule in New Jersey that a "physician has the duty to warn third persons against possible exposure to contagious or infectious diseases," and that plaintiff has not otherwise pled any recognizable derivative duty defendants owed to the decedent.<br><br>Although orders granting Rule 4:6-2 motions are ordinarily entered without prejudice, the Legislature's decision in the New Jersey COVID-19 Immunity Statute, L. 2020, c. 18, to temporarily limit the scope of whatever duty we might recognize defendants owed their patient and, derivatively, the decedent, to one of simply avoiding gross negligence during the height of the COVID-19 pandemic leaves plaintiff unable to state a claim on the facts alleged. It is not possible for a reasonable jury to find defendants were not simply negligent, but grossly negligent or reckless in discharging the decedent's wife to his care in April 2020, before knowing the result of her pending PCR test. | Appellate |
| June 25, 2024 | TYREE DESHAWN MIMS VS. CITY OF GLOUCESTER, ET AL. (L-2054-23, CAMDEN COUNTY AND STATEWIDE) (A-0068-23)<br><br>This appeal concerned the threshold requirements for an applicant's waiver of court fees based on indigency. Rule 1:13-2(a), governing proceedings by indigents, was supplemented by the New Jersey Supreme Court's April 5, 2017 order, which established a standard fee waiver application process and criteria. The Court's order authorized the Administrative Office of the Courts to promulgate directives providing "uniform fee waiver request forms" and a standard protocol. See generally Admin. Off. of the Cts., Admin. Directive #03-17, Fee Waivers Based on Indigence (rev. Apr. 20, 2017).<br><br>Plaintiff Tyree Deshawn Mims appealed from a July 19, 2023 Law Division order, which denied without prejudice his motion to proceed as indigent. The trial court found that plaintiff failed to provide the required documentation. On appeal, plaintiff contended his submitted documentation satisfied the eligibility requirements of Rule 1:13-2(a), warranting a waiver of court fees in this action and in all future litigation. The court concluded the trial court properly denied plaintiff's motion because he failed to complete the uniform fee waiver forms and to submit the required supporting documentation establishing indigency. | Appellate |
| June 24, 2024 | ROSALYN MUSKER VS. SUUCHI, INC., ET AL. (L-5652-20, BERGEN COUNTY AND STATEWIDE) (A-0841-23) | Appellate |

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| | This interlocutory appeal concerns the interpretation of the Wage Payment Law, N.J.S.A. 34:11-4.1 to -4.14, and its application to a defendant employer's commission structure. The motion judge ruled the plaintiff employee's commissions in dispute stemming from the sale of Personal Protection Equipment ("PPE") during the onset of the COVID-19 pandemic were not "wages" covered by the statute and instead fell within the statute's exception for "supplementary incentives." Plaintiff had sought payment of more than $1.3 million in commissions claimed on over $32 million in PPE sales that she helped generate in the three-month period from March 2020 through June 2020.<br><br>The Supreme Court granted the employee's motion for leave to appeal, remanding the case to this court "for consideration on the merits, limited to whether the commission structure at issue falls within the Wage Payment Law."<br><br>Under the circumstances presented, the compensation the employee sought for the PPE sales are "supplementary incentives" excluded by N.J.S.A. 34:11-4.1(c), and not regular commissions within the ordinary scope of her sales compensation plan. The employer's commitment to pay commissions on PPE sales was outside of plaintiff's customary role in selling the company's services and were designed to stimulate the sales of PPE during a time of sudden pandemic-related demand.<br><br>The court therefore affirms the motion judge's ruling, but, as the judge recognized, subject to plaintiff's non-statutory contractual claims. | |
| June 18, 2024 | KARTIK PATEL, ET AL. VS. NEW JERSEY DEPARTMENT OF TREASURY, ETC. (L-1883-22, MERCER COUNTY AND STATEWIDE) (A-2370-22)<br><br>This case of first impression resolves the proper means to attempt to rescind a certificate of dissolution and termination of a New Jersey limited liability company (LLC), which allegedly has been filed in error or without authorization. The statutory scheme for LLCs, N.J.S.A. 42:2C-1 to -94, contains no provision authorizing the New Jersey Department of the Treasury to perform such a rescission.<br><br>The Department accordingly declined plaintiffs' request to rescind a certificate of dissolution and termination that plaintiffs allege had been improperly filed by a former LLC member, advising that such relief can only be obtained through a court proceeding. Plaintiffs then filed a civil action in the Law Division, which transferred the dispute to this court.<br><br>The court concludes the LLC statutes do not empower the Department to rescind such certificates administratively, in the absence of a court order directing such relief. However, the court holds that our trial courts possess the jurisdiction and authority to grant such relief, with a proper showing of justification by the applicant and upon appropriate notice to interested or affected parties. | Appellate |
| June 12, 2024 | STATE OF NEW JERSEY VS. TAVIAUS WILSON, ET AL. (19-07-0670, CUMBERLAND COUNTY AND STATEWIDE) (A-1365-23)<br><br>The court reverses an interlocutory Law Division order suppressing handguns and a large-capacity ammunition magazine police found in a locked glove box during a traffic stop. The case presents two questions of first impression under New Jersey law. Are police permitted to search a glove box under the automobile exception based solely on the odor of marijuana emanating generally from the passenger compartment without first determining whether the odor is coming specifically from the vicinity of the glove box? And does the New Jersey automobile exception extend to a glove box that is intentionally locked, manifesting a heightened expectation of privacy in its contents?<br><br>Applying principles explained in State v. Cohen, 254 N.J. 308, 328 (2023), the court holds that the smell of marijuana emanating from the passenger compartment provided probable cause to search the entire interior for marijuana, which includes the glove box, since that was a place within the passenger compartment where marijuana could be concealed. The court declines to create a new rule that would essentially require police to follow a scent trail or pre-inspect containers in the passenger compartment before opening them.<br><br>The court likewise rejects defendants' contention that by locking the glove box, defendants manifested a heightened expectation of privacy comparable to that which applies to a home, taking the glove box outside the realm of the automobile exception. The court also holds it does not matter under the automobile exception whether the contents of the locked glove box were accessible to the vehicle occupants. In this respect, the automobile exception is different from the search-incident-to-arrest exception, which limits the scope of a warrantless search to areas "within [the arrestees'] immediate control," see Chimel v. California, 395 U.S. 752, 763 (1969).<br><br>Finally, the court rules that by using a key to open the locked glove box, rather than breaking it open, the "intensity" with which the warrantless search was executed was eminently reasonable and lawful. | Appellate |
| June 3, 2024 | STATE OF NEW JERSEY VS. JEFFREY WALKER (11-02-0411, MONMOUTH COUNTY AND STATEWIDE) (A-2384-22)<br><br>Defendant Jeffrey Walker entered into a plea agreement with the State after misappropriating health care insurance premiums from his company's employees instead of paying them to the insurance carrier. In return for defendant's plea to third-degree theft by illegal retention, N.J.S.A. 2C:20-9; and third-degree misappropriation of entrusted property, N.J.S.A. 2C:21-15 and agreement to pay restitution to his victims of $72,471.35, the State agreed to recommend five years of non-custodial probation. Defendant was then sentenced in accordance with the plea | Appellate |

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| | agreement.<br><br>Defendant's probation ended and the then-outstanding balance of his restitution was transferred to collections. At the time of the appeal, defendant had paid only $27,746 of the money he misappropriated, still owing $45,595.35. Defendant learned his restitution had been prorated among all the victims, and the prorated restitution owed to the victims not yet located had escheated to the State in case they were later located.<br><br>Defendant filed a post-conviction relief ("PCR") petition to return the escheated funds and pay the victims who had been located. Defendant then argued it would be in the interest of justice that his restitution obligation be deemed completed once the located victims were fully paid.<br><br>The court rejected defendant's proposal to essentially renegotiate individual restitution settlements as it emphasized the restitution amount and framework was part of a plea agreement negotiated with the State and approved by the trial court. To extinguish defendant's obligation to pay the full restitution would unjustly reward defendant for his failure to timely pay the full restitution amount within the negotiated five years. Defendant's proposal would allow him to keep some of the fruits of his offense and deprive his victims of compensation for the losses suffered. It would also run counter to the remunerative, rehabilitative, deterrence, and punitive goals of restitution. As a result, the court affirmed the trial court's denial of PCR. | |
| May 31, 2024 | STATE OF NEW JERSEY VS. SEAN JONES, ET AL. (88-07-2659 AND 92-12-4339, ESSEX COUNTY AND STATEWIDE AND 96-02-0526, CAMDEN COUNTY AND STATEWIDE) (CONSOLIDATED) (A-3911-21/A-1264-22/A-1358-22)<br><br>In State v. Comer, the New Jersey Supreme Court held juvenile offenders, prosecuted as adults and convicted of murder, are constitutionally entitled to reconsideration of their sentences after twenty years' imprisonment. 249 N.J. 359, 369-70 (2022). In these consolidated appeals, all three defendants were eighteen years of age or older when they were prosecuted and convicted of murder, and were sentenced to prison terms ranging from thirty years with a thirty-year parole disqualifier to life with a forty-year parole bar. Having exhausted their appeals and collateral review, defendants filed pro se applications with the motion courts for the reduction or change of sentence under Rule 3:21-10. The motion courts denied their applications on the papers, without appointing counsel.<br><br>On appeal, defendants contend, as did other similarly situated youthful offenders before them, the Court's decision in Comer should extend to youthful offenders between the ages of eighteen and twenty when they committed their offenses. Defendants therefore argue their lengthy sentences should receive the same constitutional protection as juvenile offenders prosecuted and convicted as adults. Defendants further contend the motion courts should have assigned counsel rather than denying their pro se applications without a hearing.<br><br>The court declined defendants' invitation to extend Comer's holding, concluding the Supreme Court's decision was limited to juvenile offenders tried and convicted of murder in adult court, and the Court neither explicitly nor implicitly extended this right of sentence review to offenders between the ages of eighteen and twenty. Citing its limited institutional role as an intermediate appellate court, the court expressed its obligation to follow precedential opinions of the United States Supreme Court and the New Jersey Supreme Court. Noting defendants' arguments lacked merit under Comer and were not particularly complex, the court further concluded the motion courts properly decided their applications without assignment of counsel. Accordingly, the court affirmed all three orders under review. | Appellate |
| May 30, 2024 | STATE OF NEW JERSEY VS. M.F.L. (18-02-0068, HUNTERDON COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-3372-21)<br><br>This matter involves a defendant sex offender's motion to modify his judgment of conviction (JOC) and Sex Offender Restraining Order (SORO) issued pursuant to Nicole's Law, N.J.S.A. 2C:14-2 and 2C:44-8. The SORO prohibited defendant from having any contact with the two victims—his step-daughters—his ex-wife, and their two minor biological children. Defendant moved to modify the JOC and SORO to allow him to have contact and parenting time with his two minor biological children through a third party.<br><br>Applying the framework established in Carfagno v. Carfagno, 288 N.J. Super. 424 (Ch. Div. 1995), this court concludes that based on similarities between a SORO and a final restraining order issued under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, the factors set forth in Carfagno are applicable to use in considering an application to modify or vacate a SORO, determining the continued necessity of a SORO. | Appellate |
| May 28, 2024 | AC OCEAN WALK, LLC., ET AL. VS. BLUE OCEAN WATERS, LLC., ET AL. (C-000006-21, ATLANTIC COUNTY AND STATEWIDE) (A-2312-22)<br><br>In this interlocutory appeal, defendants Blue Ocean Waters, LLC and its members Piyush Viradia and Jiten Parikh seek to vacate two orders of the Chancery court. First, its January 18, 2023 order granting partial summary judgment to plaintiff AC Ocean Walk, LLC to judicially dissociate Blue Ocean Waters and dissolve the parties' partnership agreement under the Uniform Partnership Act (UPA), N.J.S.A. 42:1A-1 to -56. Second, its March 13, 2023 order denying defendants' motion for reconsideration and amending the partial summary judgment order to reflect that the partnership had dissolved on October 10, 2020.<br><br>We affirm the January 18, 2023 order granting judicial dissociation and dissolution of the parties' partnership | Appellate |

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| | agreement. Defendants' failure to respond to AC Ocean Walk's September 30, 2020 notice of breach of the agreement is a clear indication that judicial dissociation was appropriate under N.J.S.A. 42:1A-31(e) as "it [was] not reasonably practicable to carry on the business in partnership with the partner." Although no case law in our State has interpreted the "not reasonably practicable" standard for judicial dissociation of a partner, our conclusion is supported by the interpretation of like statutes in other jurisdictions.<br><br>We, however, reverse the March 13, 2023 order by amending the effective date of the dissociation and dissolution to coincide with the date of January 18, 2023 order. Based on the record before us and the plain language of N.J.S.A. 42:1a-39(e)(3), judicial dissolution occurs when there "is a judicial determination that . . . it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement." Again, in the absence of our State's case law defining the effective date of dissociation and dissolution under N.J.S.A. 42:1A-39(e)(3), our conclusion is supported by the interpretation of like statutes in other jurisdictions. | |
| May 24, 2024 | MARMO AND SONS GENERAL CONTRACTING, LLC VS. BIAGI FARMS, LLC, ET AL. (L-1109-22, GLOUCESTER COUNTY AND STATEWIDE) (A-3120-22)<br><br>This dispute involves whether a party to a contract waived its right to compel arbitration by its conduct in a lawsuit it initiated.<br><br>Plaintiffs appeal from the trial court's denial of their motion to compel arbitration of claims against defendants for nonpayment of residential construction services they rendered. The parties' contract, which was drafted by plaintiffs, contained a provision calling for disputes to be resolved through binding arbitration.<br><br>The motion judge ruled that plaintiffs waived their contractual right to arbitrate. Among other things indicative of such a waiver, the record shows that: (1) plaintiffs filed claims in the Law Division beyond those necessary to assert a lien under the Construction Lien Law (CLL), N.J.S.A. 2A:44A-1 to -38; (2) asserted in their Rule 4:5-1(b)(2) certification accompanying their complaint that no arbitration was contemplated; and (3) waited to move to compel arbitration after receiving the benefit of significant discovery, while failing to comply reciprocally with defendants' discovery demands.<br><br>Applying the multifactor test prescribed in Cole v. Jersey City Medical Center, 215 N.J. 265, 280-81 (2013), this court concludes that plaintiffs waived their right to compel arbitration. In the course of doing so, however, the court rejects defendants' contention that the United States Supreme Court's opinion in Morgan v. Sundance, Inc., 596 U.S. 411, 417-19 (2022), eradicates the Cole factor that considers whether the party opposing arbitration was prejudiced by the movant's delay. Prejudice remains one of the pertinent, but not individually dispositive, Cole factors after Morgan. However, that particular factor is not controlling in this case, given the totality of the circumstances that otherwise, on balance, further establish waiver.<br><br>P.S.: Please note that the court is simultaneously issuing with Marmo two unpublished opinions applying the Cole waiver factors and citing Marmo. | Appellate |
| May 20, 2024 | BRYAN CALLAHAN VS. TRI-BOROUGH SAND AND STONE, ET AL. (L-0472-22, CAMDEN COUNTY AND STATEWIDE) (A-2371-22)<br><br>In this case of first impression, the court considers the limitations on property owners' liability under N.J.S.A. 39:3C-18, when certain classes of motor vehicles are operated on their premises. Plaintiff in this matter claimed he sustained severe personal injuries when he struck a steel cable while riding his dirt bike on the quarry grounds owned by defendant property owners. The cable was part of the machinery used in dredging the quarry. The incident occurred on a Sunday afternoon, while the business was closed.<br><br>The motion judge dismissed plaintiff's complaint on summary judgment, concluding defendants were immune from liability under N.J.S.A. 39:3C-18 because plaintiff lacked express consent to operate his dirt bike on their property. The judge summarily denied as moot plaintiff's motion for leave to file an amended complaint to assert allegations of willful and wanton misconduct.<br><br>Comparing N.J.S.A. 39:3C-18 to a similar statute under the Landowner's Liability Act, N.J.S.A. 2A:42A-1 to -10, the court concludes defendants did not act willfully to create a hazardous condition on their property by failing to lower the steel cable, within the meaning of N.J.S.A. 39:3C-18. Because the court holds summary judgment was warranted under N.J.S.A. 39:3C-18, the court concludes the motion judge properly denied plaintiff's motion for leave to amend his complaint. | Appellate |
| May 13, 2024 | ASSOCIATION FOR GOVERNMENTAL RESPONSIBILITY, ETHICS AND TRANSPARENCY VS. BOROUGH OF MANTOLOKING, ET AL. (L-2729-22, OCEAN COUNTY AND STATEWIDE) (A-2395-22)<br><br>This appeal presents a novel issue requiring the court to determine whether the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, or the common law right of public access, mandates disclosure of an attorney's identity when the attorney renders legal advice to a colleague or friend about an ongoing prosecution. In the present matter, a municipal prosecutor sought counsel from an attorney who, in turn, rendered advice via email to the prosecutor's personal account. The prosecutor, in turn, disclosed the contents of the email in open court and provided a printed copy of the email to the defense, but redacted the sender's name and email address. The municipality thereafter denied a government records request for the unredacted email. | Appellate |

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| | Plaintiff Association for Governmental Responsibility, Ethics, and Transparency (AGREAT) appeals from the March 3, 2023 Law Division order denying its order to show cause to compel production of the email requested from defendants Borough of Mantoloking, its clerk, and its custodian of records. The motion judge concluded the email did not fall within OPRA's definition of a government record. The court affirms the order under review and further holds the email is not subject to disclosure under the common law. The court also concludes, even if the email were a government record, the work product privilege and confidentiality exemptions under N.J.S.A. 47:1A-9(b) weigh against disclosure.<br><br>Smith, J.A.D., filed a dissenting opinion, concluding: the redacted email was a public record under OPRA; the redacted email was privileged pursuant to the work-product privilege, but an attorney waived that privilege in court; a balancing of the public's access to government records with the email sender's reasonable expectation of privacy under Doe v. Poritz, 142 N.J. 1 (1995), justifies disclosure of the name and email address of the sender. | |
| May 1, 2024 | MARY A. BOTTEON, ET AL. VS. BOROUGH OF HIGHLAND PARK, ET AL. (L-2068-22, MIDDLESEX COUNTY AND STATEWIDE) (REDACTED) (A-1227-22)<br><br>This appeal concerns two ordinances of the Borough of Highland Park that amended its municipal code to allow cannabis retailers, consumption lounges, and delivery services to operate in the Borough, subject to operating, licensing, and tax regulations. Although the ordinances were enacted under express authority delegated by the Legislature through New Jersey's recreational marijuana statute, the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (known as CREAMMA), N.J.S.A. 24:6I-31 to -56, several concerned residents of the Borough challenged the ordinances in the Law Division as preempted by the federal Controlled Substances Act (CSA), 21 U.S.C. § 801. They also claimed the ordinances are inconsistent with the New Jersey Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 to -163, and other state and federal laws. The Law Division judge dismissed the complaint as procedurally untimely and also substantively deficient for failure to state a claim.<br><br>In the published portion of this opinion, the court reverses the Law Division's dismissal of the complaint as untimely under Rule 4:69-6(a), but affirms the dismissal of plaintiffs' preemption claims. As to the former, the issues presented concern sufficient matters of public interest to qualify under Rule 4:69-6(c) for an enlargement of the 45-day filing period. As to the latter, the court concludes that, as other state courts have found, the text of the CSA and federal marijuana enforcement policies do not require a finding of conflict preemption of CREAMMA or the Borough's ordinances.<br><br>In the unpublished portion of this opinion, the court remands plaintiffs' remaining state-law claims, which were dismissed without an opportunity for discovery and without a possible evidentiary hearing, if one proves necessary to resolve expert opinion and credibility issues. | Appellate |
| April 23, 2024 | IN THE MATTER OF THE COMPETITIVE SOLAR INCENTIVE ("CSI") PROGRAM, ETC. (NEW JERSEY BOARD OF PUBLIC UTILITIES) (A-2232-22)<br><br>Pursuant to the Solar Act of 2021, N.J.S.A. 48:3-114 to -120, the Legislature directed the Board of Public Utilities to create a solar facilities program for awarding contracts for grid supply solar facilities and net metered solar facilities greater than five megawatts. In addition to setting renewable energy goals for the State, the Act directs the development of policy for grid supply solar siting so as not to compromise the State's commitment to preserving and protecting open space and farmland.<br><br>To that end, the Board developed a competitive solar incentive (CSI) program in coordination with the New Jersey Department of Environmental Protection, the Department of Agriculture, and the State Agriculture Development Committee to issue recommendations and a straw proposal on siting requirements. After a four-year process, which included extensive stakeholder engagement, the Board issued an order that launched the CSI Program.<br><br>N.J.S.A. 48:3-119(c) sets forth seven categories of land where solar facilities shall not be sited unless authorized by a waiver. N.J.S.A. 48:3-119(c)(7) prohibits siting solar facilities on certain agricultural soils where the grid supply solar facility exceeds the Statewide threshold of 2.5% of such soils unless authorized by the waiver process pursuant to N.J.S.A. 48:3-119(f). N.J.S.A. 48:3-119(f) describes the waiver process but also states that in no case shall a grid supply solar facility occupy more than 5% of the unpreserved land containing prime agricultural soils and soils of Statewide importance located within any county's designated agricultural development area.<br><br>Appellant moved for reconsideration, arguing the Board misinterpreted the siting provisions of the Act codified in N.J.S.A. 48:3-119. Among other arguments raised by appellant before the Board and on appeal, appellant claimed the Board misinterpreted the Act and ignored the legislative history. Appellant alleged the 5% per county limit could be exceeded if the 2.5% Statewide limit was not exceeded. The Board interpreted the siting provisions independently and held the 5% per county limit on development could not be waived.<br><br>The court affirmed the Board's ruling and found the plain language of the Act demonstrated N.J.S.A. 48:3-119(f)'s limit on solar development to 5% of a county's agricultural land was unambiguous. The 2.5% Statewide limit expressed in N.J.S.A. 483-119(c)(7) served a different purpose and was not a means for a solar developer to exceed the 5% per county restriction. Moreover, applying the per county limit only after the Statewide limit has been reached could lead to the development of the entirety of a county's agricultural lands.<br><br>Given the Act's unambiguous language, the court did not need to resort to the legislative history. Even so, the legislative history showed the Legislature intended to minimize the potential adverse environmental impacts of solar | Appellate |

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| | development and the Legislature never revised the 5% per county limit or stated the per county limit could be waived in either version of the bill before it became law.<br><br>The Board's interpretation of the Act balanced the Legislature's intent to preserve the State's vital natural resources while encouraging the development of clean solar energy. | |
| April 22, 2024 | BOROUGH OF ENGLEWOOD CLIFFS VS. THOMAS J. TRAUTNER, ET AL. (L-5785-21, BERGEN COUNTY AND STATEWIDE) (A-2765-21)<br><br>The Borough of Englewood Cliffs retained Thomas J. Trautner and Chiesa Shahinian & Giantomasi PC, (collectively CSG), Albert Wunsch III, and Jeffrey Surenian and Jeffrey Surenian and Associates, LLC, (collectively Surenian) to represent it in affordable housing litigation. After judgment was entered for developer 800 Sylvan Avenue, LLC. (Sylvan), a settlement was reached between the Borough and Sylvan. Thereafter, political control of the Borough Council majority changed hands and the newly constituted Council sued CSG, Wunsch, and Surenian, alleging professional malpractice, breach of contract, unjust enrichment, civil conspiracy, and aiding and abetting arising from their representation of the Borough in the litigation. The Borough also sued Sylvan, alleging claims of conspiracy and aiding and abetting.<br><br>The trial court granted defendants' Rule 4:6-2(e) motions to dismiss the Borough's complaint with prejudice. The trial court subsequently granted defendants' motion for sanctions, ordering the Borough to pay their attorney's fees and costs for filing a frivolous lawsuit. The Borough appeals, arguing the sanction applications were procedurally deficient; as a public entity, it is immune from paying sanctions under the FLS; and the trial court abused its discretion in finding the Borough's lawsuit was frivolous.[1]<br><br>The court rejects the Borough's arguments and affirms based on our interpretation of the FLS that the Borough is not immune from sanctions, defendants' applications for sanctions were procedurally compliant with Rule 1:4-8, and the trial court did not abuse its discretion in imposing sanctions against the Borough.<br><br>---<br><br>[1] After their merit briefs were filed, the Borough and Jeffrey Surenian and Jeffrey Surenian and Associates, LLC filed a stipulation of dismissal dismissing all claims and counterclaims, including but not limited to claims for attorney's fees. | Appellate |
| April 19, 2024 | M.R. VS. NEW JERSEY DEPARTMENT OF CORRECTIONS (NEW JERSEY DEPARTMENT OF CORRECTIONS) (A-2825-22)<br><br>M.R. appealed from a final decision of the Department of Corrections (DOC), denying his application for a certificate of eligibility for compassionate release under the Compassionate Release Act (CRA), N.J.S.A. 30:4-123.51e. The DOC denied his application because two licensed physicians designated by the commissioner of the DOC had rendered medical diagnoses in which they found M.R. had neither a terminal condition nor a permanent physical incapacity as defined by the CRA.<br><br>M.R. argued on appeal the CRA and related regulations required the designated physicians to examine him physically and the DOC's decision was arbitrary, capricious, and unreasonable because the physicians had not physically examined him and had failed to make certain findings required under the CRA. The court disagreed, concluding that, while a physician may request a physical examination, the CRA and related regulations did not require one. The court also concluded the physicians had made the requisite findings. Accordingly, the court affirmed the DOC's decision. | Appellate |
| April 18, 2024 | EARNEKA WIGGINS, ET AL. VS. HACKENSACK MERIDIAN HEALTH, ET AL. (L-0005-23, UNION COUNTY AND STATEWIDE) (A-3847-22)<br><br>On leave granted, in this medical negligence matter, we consider whether N.J.S.A. 2A:53A-41(a) under the New Jersey Medical Care Access and Responsibility and Patients First Act (Act), N.J.S.A. 2A:53A-37 to -42, requires plaintiffs to serve an affidavit of merit (AOM) from a physician board certified in both specialties if defendant physician is board certified in two specialties, and the treatment claimed to be negligent involves both specialties.<br><br>Plaintiffs rely on Buck v. Henry, 207 N.J. 377 (2011), in asserting they need only provide an AOM from a physician who specializes in either of the defendant doctor's specialties. The trial court agreed and denied defendants' motions to dismiss for failure to provide the proper AOM and for reconsideration.<br><br>Defendant physician is board certified in internal medicine and gastroenterology. He certified that his care and treatment of plaintiffs' decedent involved both specialties. Plaintiffs only served an AOM from a physician board certified in internal medicine.<br><br>In considering defendants' dismissal motions, the trial court cited to two sentences from Buck: "A physician may practice in more than one specialty, and the treatment involved may fall within that physician's multiple specialty areas. In that case, an [AOM] from a physician specializing in either area will suffice." Id. at 391.<br><br>Because the facts presented here are distinguishable from Buck and the discrete ruling in Buck was not specific | Appellate |

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| | to this issue, and in considering the legislative purpose of the Act, and the principles of law espoused in the subsequent cases of Nicholas v. Mynster, 213 N.J. 463, 480-88 (2013), and Pfannenstein ex. rel. Estate of Pfannenstein v. Surrey, 475 N.J. Super. 83, 90-91 (App. Div.), certif. denied, 254 N.J. 517 (2023), we conclude plaintiffs must serve an AOM from a physician board certified in each of defendant doctor's specialties. We are also guided by the kind-for-kind, credential equivalency requirement articulated in N.J.S.A. 2A:53A-41(a). Therefore, we reverse the court's orders denying defendants' motions to dismiss for a deficient AOM and for reconsideration.<br><br>However, because plaintiffs raised the issue of a waiver from the AOM requirement, and the issue was fully briefed and discussed during oral argument before the trial court, we remand for the court to determine the waiver argument on its merits. | |
| April 9, 2024 | STATE OF NEW JERSEY VS. SHANNON A. MCGUIGAN (19-07-0888 AND 20-03-0306, BURLINGTON COUNTY AND STATEWIDE) (A-3224-21)<br><br>This appeal addresses whether the trial court erred by admitting into evidence a statement defendant had made to police and barring in part the testimony of defendant's expert witness.<br><br>Several months after the drug-induced death of the victim, a police detective interviewed defendant, eliciting from her information about her cell-phone usage before he advised her of her Miranda rights and information regarding her drug-selling activity and contact with the victim after he advised her of her rights. The detective told defendant he was "not holding anything back" and was "laying it all out . . . on the table" but never mentioned the death of the victim and repeatedly used the present tense when discussing her. Defendant confessed to selling heroin to the victim. The parties did not raise before the trial court the admissibility of defendant's statement, and the statement was admitted into evidence. The trial court granted the State's pretrial motion to bar defendant's expert witness from testifying about drug use and addiction, finding him qualified only in toxicology and not in those fields. A jury convicted defendant of committing a first-degree drug-induced death crime, in violation of N.J.S.A. 2C:35-9(a), along with other drug-related crimes.<br><br>The court finds the trial court (1) committed plain error by admitting defendant's statement without first conducting a Rule 104 hearing to determine under a totality-of-the-circumstances test the voluntariness of defendant's statement and Miranda waiver; (2) erred in admitting the pre-Miranda questions and answers but that that error did not rise to the level of plain error because other evidence was admitted regarding defendant's cell-phone usage; and (3) abused its discretion by limiting defendant's expert testimony without conducting a Rule 104 hearing regarding the expert witness's qualifications and opinions. The court remands the case and instructs the trial court to conduct evidentiary hearings regarding the voluntariness of defendant's statement, the qualifications of defendant's expert witness, and the admissibility of his opinions. Whether defendant's convictions are affirmed or vacated for a new trial depends on the outcomes of those hearings. | Appellate |
| April 8, 2024 | STATE OF NEW JERSEY VS. J.H.P. (21-12-0268, SOMERSET COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-0467-23)<br><br>At issue in this interlocutory appeal is the propriety of a pretrial order compelling the administration of psychotropic medication in an attempt to restore competency, without a defendant's consent, when the accused has not been deemed a danger to self or others. With defendant's constitutional rights in view, the court applies the four-pronged test enunciated by the United States Supreme Court in Sell v. United States, 539 U.S. 166 (2003), and concludes the motion judge erroneously determined the State satisfied the second Sell prong. The court therefore reverses the order under review.<br><br>In doing so, the court departs from the majority of federal appellate courts and holds the standard of review under the Sell test is mixed; the court therefore reviews the motion court's legal conclusions de novo and its factual findings for clear error as to each Sell prong. Having resolved the issues by applying the Sell standard, the court does not reach the constitutional arguments urged by defendant and amici curiae. | Appellate |
| April 5, 2024 | BRITNEY MOTIL VS. WAUSAU UNDERWRITERS INSURANCE COMPANY (L-0734-21, GLOUCESTER COUNTY AND STATEWIDE) (A-0400-23)<br><br>In this automobile insurance coverage dispute, the court considered defendant Wausau Underwriters Insurance Company's appeal from Law Division orders granting summary judgment to plaintiff Britney Motil, entitling her to $100,000 in underinsured motorist (UIM) insurance coverage, and denying reconsideration.<br><br>This appeal presented the novel issue of whether plaintiff was entitled to UIM coverage as a "covered driver" injured in an automobile accident while driving a "covered auto" with an identified alternate garaging address under her parents' automobile policy. Defendant disclaimed coverage, under the policy's uninsured motorist (UM)/UIM endorsement step-down provision, because plaintiff was neither a named insured nor a defined family member. After a de novo review, the court concluded there was ambiguity between the declaration and the policy's step-down provision of $15,000 in UIM coverage because the declaration plainly provided: $100,000 UM/UIM coverage for each person; plaintiff was a covered driver; the UM/UIM premium charged was the same for each vehicle; and plaintiff's vehicle was a covered vehicle with an alternate garaging address. Further, the court concluded the policyholder's reasonable expectation of $100,000 UIM coverage should be afforded.<br><br>The court affirmed the Law Division's orders finding plaintiff was entitled to $100,000 in UIM insurance coverage | Appellate |

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| | and denying reconsideration. | |
| April 4, 2024 | STATE OF NEW JERSEY VS. WONGYU JANG, ET AL. (MA-2022-006 AND MA-2022-016, ESSEX COUNTY AND STATEWIDE) (CONSOLIDATED) (A-2054-22/A-2412-22)<br><br>In these cases that were consolidated for the purpose of issuing a single opinion, defendants appeal from their convictions following municipal court appeals because the Law Division decided their appeals without conducting hearings or permitting briefing.<br><br>In both cases, the Law Division determined briefing was not required and, because defendants did not request argument, decided the appeals based solely on its review of the municipal court transcripts and the police body camera video introduced as evidence in the municipal court trials. The court found it "is incumbent on counsel to . . . tell the court why briefing is necessary and to request argument if they want it." On appeal, defendants argued the court deprived them of their rights to due process and counsel.<br><br>The court reversed, concluding Rules 3:23-4 and -8 require that the Law Division schedule and conduct a hearing on a municipal appeal. There is no requirement that a defendant request a hearing. The court also noted, although the proceeding is technically designated an appeal, the Law Division must conduct a trial de novo on a municipal appeal. At the trial de novo, the Law Division must make its own findings of fact and conclusions of law and, if the court finds the State proved its case beyond a reasonable doubt, sentence the defendant anew.<br><br>The court also concluded, based on the arguments raised by defendants, it would be appropriate to permit, if not require, the parties to file briefs in these cases. Finally, to avoid any appearance of bias or prejudice, the court required the appeals be assigned to a different judge on remand. | Appellate |
| March 28, 2024 | RAYMOND G. MORISON, JR. VS. THE WILLINGBORO BOARD OF EDUCATION, ET AL. (L-0092-22, BURLINGTON COUNTY AND STATEWIDE) (A-1280-22)<br><br>This appeal concerns issues of preclusion and the relationship between the statutory systems for the Commissioner of Education and the State Board of Examiners revoking or suspending an educator's certificate to teach in the New Jersey public schools under N.J.S.A. 18A:6-17.1, and the separate arbitration process specified since 2012 in N.J.S.A. 18A:6-38 to -39 2 (the TEACHNJ law) for a school district terminating or disciplining a teacher for improper conduct.<br><br>Appellant, a tenured teacher, was charged by the local board of education with unbecoming conduct. The school board sought to terminate his employment in the district. The contested matter was tried before an arbitrator. The arbitrator found appellant had engaged in unbecoming conduct, but she imposed a milder sanction of a one-year suspension. The arbitrator's decision was not challenged in court by either appellant or the school board. The Board of Examiners then pursued the revocation of appellant's license based on his same improper conduct, and it is anticipated that contested case will be tried in the Office of Administrative Law.<br><br>Appellant contends the Board of Examiners and the Commissioner—even though they were not parties to the tenure arbitration—have no authority to pursue the revocation of his license because the arbitrator only suspended his employment for one year. Among other things, appellant invokes a doctrine of "industrial double jeopardy" to support his preclusion argument. He also contends the revocation proceedings violate his constitutional and civil rights.<br><br>The matter was presented to a Law Division judge, who confirmed the arbitration award but rejected appellant's arguments for preclusion.<br><br>This court affirms the trial court's decision and holds the Board of Examiners and the Commissioner are not precluded by the arbitration outcome from pursuing the revocation of appellant's teaching certificate. The statewide teacher certificate revocation process authorized in N.J.S.A. 18A:6-38 and -39 operates separately from the teacher tenure arbitration process under N.J.S.A. 18A:6-17.1. The manifest legislative intent is for the two statutes to be administered independently of one another. The proceedings involve non-identical parties, and also different stakes, procedures, and avenues and standards of appellate review.<br><br>The court rejects appellant's assertion of industrial double jeopardy and his claims of the violation of his constitutional and civil rights. | Appellate |
| March 25, 2024 | ESTHER OGUNYEMI VS. GARDEN STATE MEDICAL CENTER, ET AL. (L-1263-22, MONMOUTH COUNTY AND STATEWIDE) (A-1703-22)<br><br>Plaintiff, who was fired from her job as a physician, appeals from an order of the Superior Court, Law Division staying her complaint against defendants pending arbitration. Plaintiff's claims included allegations of sexual assault, intentional infliction of emotional distress, and a statutory retaliation claim under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50.<br><br>Defendants moved to compel arbitration pursuant to plaintiff's employment contract. The trial court granted the motion, finding the contract's arbitration clause was valid and enforceable.<br><br>The court engaged in a de novo review of the employment contract using well-settled contract principles, and it | Appellate |

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| | held the mandatory arbitration clause was ambiguous and therefore unenforceable against plaintiff. Holding the arbitration clause unenforceable, the court declined to reach the question of whether the Federal Arbitration Act applies.<br><br>In a separate opinion concurring with the result, a member of the panel would reverse for a different reason, discerning no ambiguity in the arbitration provision and concluding, unlike the contract at issue in Antonucci v. Curvature Newco, Inc., 470 N.J. Super. 553 (2022), the present contract is not governed by the FAA. Accordingly, plaintiff's LAD claims would not be arbitrable pursuant to N.J.S.A. 10:5-12.7. | |
| March 18, 2024 | BIG SMOKE LLC VS. TOWNSHIP OF WEST MILFORD, ET AL. (L-3052-22, PASSAIC COUNTY AND STATEWIDE) (A-1755-22)<br><br>In this matter, the court considers the novel issue of the circumstances under which a municipality may decline to adopt a Resolution of Support (ROS) for an applicant seeking to obtain a Class 5 Cannabis Retailer License (CRL) from the State of New Jersey Cannabis Regulatory Commission (the Commission) under N.J.S.A. 24:6I-31 to -56, the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA).<br><br>Plaintiff filed an order to show cause (OTSC) and a verified complaint against the Township of West Milford, the Council of West Milford Township (collectively referred to as the Township), and SoulFlora, Inc. after the Township effectively denied plaintiff's request for a ROS for its CRL application by not placing it on a public meeting agenda for consideration by the governing body. The Township asserts its de facto denial was predicated on a Township ordinance prohibiting businesses with CRLs to be located less than 2,500 feet from each other. The proposed location of plaintiff's cannabis business was less than 500 feet from SoulFlora's.<br><br>Plaintiff sought injunctive relief to prevent SoulFlora from establishing a cannabis business; enjoining the Township from issuing a ROS to any other new cannabis business applicants; revoking SoulFlora's ROS; and requesting attorneys' fees and costs. The court affirms denial of plaintiff's OTSC under Crowe v. De Gioia , 90 N.J. 126, 132-34 (1982). The court holds plaintiff did not have a likelihood of success on the merits, finding the Township's effective denial of plaintiff's request for a ROS was not arbitrary, capricious, or unreasonable since under CREAMMA, municipalities are delegated the authority to promulgate location and density requirements for cannabis retail businesses and are statutorily vested with the right to decline to provide local support for applicants who fail to meet those requirements.<br><br>The court reverses the with-prejudice dismissal of the claims against the Township and remands to the trial court to issue a statement of reasons pursuant to Rule 1:7–4(a), along with an accompanying order. The court affirms the dismissal of the complaint against SoulFlora with prejudice, while finding that it is an indispensable party for notice purposes only. | Appellate |
| March 14, 2024 | CAROLINE J. FRANCAVILLA, ETC. VS. ABSOLUTE RESOLUTIONS VI, LLC, ET AL. (L-0170-19, ESSEX COUNTY AND STATEWIDE) (A-2951-21)<br><br>In this matter, the court considers whether the trial court properly dismissed plaintiff's complaint with prejudice after finding it was barred by the entire controversy doctrine and res judicata. Plaintiff's putative class action complaint, filed in Essex County, sought to claw back funds she paid in full satisfaction of a final default judgment, entered in a prior lawsuit adjudicated in Bergen County. The court holds that the entire controversy doctrine precludes plaintiff from relitigating a final default judgment through the filing of a new complaint in a different court when she failed to pursue any of her substantive arguments in the previous litigation.<br><br>Plaintiff defaulted on paying an outstanding credit card balance, so the bank closed out her account and assigned her outstanding debt to defendants. Through a complaint filed in Bergen County, defendants obtained a final default judgment against plaintiff, which she did not move to vacate or otherwise appeal. Plaintiff fully satisfied the judgment through wage garnishments.<br><br>Plaintiff filed a putative class action complaint in Essex County against defendants seeking a declaratory judgment voiding the debt and any judgments enforcing that debt, as well as treble damages and disgorgement of amounts previously paid to defendants, based on the assertion that defendant was not licensed, as required by the New Jersey Consumer Finance Licensing Act (CFLA), N.J.S.A. 17:11C-1 to -49.<br><br>Since the entire controversy doctrine precludes plaintiff from pursuing the Essex County litigation predicated on substantive defenses that could have been raised in the prior Bergen County litigation, there was no amendment to the pleading that could have rendered plaintiff's complaint viable. Thus, dismissal of the complaint with prejudice based on the entire controversy doctrine was appropriate. The court affirms the Essex County order. | Appellate |
| March 12, 2024 | JERSEY CITY UNITED AGAINST THE NEW WARD MAP, ET AL. VS. JERSEY CITY WARD COMMISSION, ET AL. (L-0960-22 AND L-0821-22, HUDSON COUNTY AND STATEWIDE) (A-0356-22/A-0560-22)<br><br>Following the 2020 decennial United States Census, the City of Jersey City Ward Commission (the Commission) redrew the six election wards for the City of Jersey City (the City). In these two consolidated appeals, plaintiffs challenge the ward boundaries and map adopted by the Commission. Plaintiffs contend that the new ward map violates the Municipal Ward Law (the MW Law), N.J.S.A. 40:44-9 to -18, the New Jersey Civil Rights Act (the CR Act), N.J.S.A. 10:6-1 to -2, and their rights of free speech, free association, and equal protection under the New Jersey Constitution. They also argue that the Commission did not comply with the Open Public Meetings Act (the | Appellate |

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| | OPMA), N.J.S.A. 10:4-6 to -21.<br><br>The court affirms in part and reverses in part the dismissal of plaintiffs' complaints in lieu of prerogative writs. The court affirms the dismissal of the claims asserting violations of plaintiffs' constitutional rights, the CR Act, and the OPMA. The court reverses the dismissal of the claims of violations of the MW Law. Resolution of those statutory claims requires some, albeit limited, fact-finding. Therefore, the court remands the MW Law claims for a focused and limited proceeding on whether the Commission had a rational basis for the ward boundaries and map it adopted. | |
| March 7, 2024 | STATE OF NEW JERSEY VS. ROBERT A. BAKER (20-12-0495, CUMBERLAND COUNTY AND STATEWIDE) (A-2800-21)<br><br>In this matter, the court considers whether the trial court properly denied defendant's motion to suppress evidence seized after a search of the vehicle defendant was operating following a traffic stop. When the officer approached defendant's vehicle, he noticed a burnt smell of marijuana emanating from it. The officer did not intend to search the vehicle at that point. However, after the dispatcher informed the officer defendant had an outstanding warrant necessitating defendant's arrest, and the officer smelled a perceptible odor of raw marijuana on defendant's person as they sat together in the patrol car, the officer decided to search the vehicle.<br><br>The court concludes that the officer's testimony regarding the odors established probable cause for the subsequent search of the vehicle. In addition, the finding of probable cause arose in unforeseeable and spontaneous circumstances. There were not two stops as argued by defendant. The discovery of the warrant and new smell emanating from defendant's person permitted the officer to continue the investigation. The search was permissible under the automobile exception to the warrant requirement as articulated in State v. Witt, 223 N.J. 409 (2015). The court affirms the order denying defendant's suppression motion. | Appellate |
| March 4, 2024 | STATE OF NEW JERSEY VS. ZAIRE J. CROMEDY (21-10-1004, MIDDLESEX COUNTY AND STATEWIDE) (A-1145-22)<br><br>Along with another offense, a grand jury indicted defendant on first-degree unlawful possession of a weapon under N.J.S.A. 2C:39-5(b)(1) and N.J.S.A. 2C:39-5(j). Pursuant to a plea agreement, defendant pled guilty to first-degree unlawful possession of a weapon. At sentencing, defendant argued N.J.S.A. 2C:39-5(j) was not subject to the Graves Act, N.J.S.A. 2C:43-6(c), which requires a mandatory period of parole ineligibility because N.J.S.A. 2C:43-6(c) did not enumerate N.J.S.A. 2C:39-5(j). The sentencing judge disagreed and held N.J.S.A. 2C:39-5(j) is a grading statute, and sentenced defendant to a ten-year sentence with a five-year period of parole ineligibility, pursuant to the Graves Act.<br><br>Defendant's appeal was initially heard on the court's sentencing oral argument calendar. It was then transferred to the plenary calendar given the question of law raised, and to resolve differing interpretations of the Graves Act and N.J.S.A. 2C:39-5(j) in unpublished opinions, and reported uneven practices in the trial courts. The central question on appeal was whether N.J.S.A. 2C:39-5(j) is a substantive offense not subject to the Graves Act or whether N.J.S.A. 2C:39-5(j) acts as a grading statute, thereby enhancing the penalty, which is subject to the Graves Act.<br><br>The court concluded N.J.S.A. 2C:39-5(j) is not a separate offense but instead a grading statute that is subject to the Graves Act penalty. Reading the statute to the contrary would lead to an absurd result because a person convicted of a first-degree unlawful weapons offense could serve less time than a person convicted of a lesser-degree offense by virtue of parole eligibility. The court concluded the more sensible reading of N.J.S.A. 2C:39-5(j) was as a grading statute and therefore affirmed defendant's sentence. | Appellate |
| March 1, 2024 | THE STATE OF NEW JERSEY EX REL. HEALTH CHOICE GROUP, LLC VS. BAYER CORPORATION, ET AL. (L-3311-20 AND L-3312-20, MIDDLESEX COUNTY AND STATEWIDE) (A-2731-20/A-2733-20 )<br><br>Plaintiffs first sued two pharmaceutical companies in federal court in Texas asserting claims under the federal False Claims Act and the New Jersey False Claims Act (NJFC Act), N.J.S.A. 2A:32C-1 to -18. After the claims under the NJFC Act were dismissed without prejudice, plaintiffs sued the same pharmaceutical companies in New Jersey re-asserting the NJFC Act claims. Because the allegations in plaintiffs' complaints had previously been publicly disclosed and because plaintiffs were not the original source of that information, the court holds that plaintiffs' complaints were properly dismissed under the public disclosure bar of the NJFC Act. See N.J.S.A. 2A:32C-9(c). | Appellate |
| Feb. 28, 2024 | E.T. VS. THE BOYS AND GIRLS CLUB OF HUDSON COUNTY, ET AL. (L-3355-20, L-1307-21, L-3892-21, L-4042-21, L-1442-22 AND L-1908-22, HUDSON COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-3720-22)<br><br>This appeal requires us to determine whether defendant Boys and Girls Clubs of America (BGCA), an out-of-state non-profit national youth organization, is subject to the specific personal jurisdiction of our state courts in a lawsuit pertaining to the alleged sexual abuse of plaintiffs by a counselor employed by defendant Boys and Girls Club of Hudson County (Hudson County BGC), a New Jersey non-profit youth member organization affiliated with BGCA.<br><br>The motion judge found specific personal jurisdiction over BGCA regarding plaintiffs' sexual abuse claims. The court disagrees and reverses. | Appellate |

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| | Jurisdictional discovery revealed BGCA had no influence or control over Hudson County BGC's hiring, training, or supervision of the counselor. Consequently, our state courts have no specific personal jurisdiction over BGCA in this matter because BGCA did not purposefully avail itself of benefits in or from New Jersey. | |
| Feb. 23, 2024 | STATE OF NEW JERSEY VS. LADOHN E. COURTNEY, ET AL. (23-02-0084, 23-02-0085, 23-02-0085, AND 23-02-0087, UNION COUNTY AND STATEWIDE) (A-3844-22)<br><br>In State v. Witt, our Supreme Court held police cannot conduct a search pursuant to the automobile exception to the warrant requirement once a vehicle has been towed away and impounded. 223 N.J. 409, 448-49 (2015). John's Law generally requires police to impound a vehicle for at least twelve hours when the driver is arrested for driving while intoxicated (DWI). This case addresses the novel question of whether police may conduct a search under the automobile exception when they are required to impound a vehicle pursuant to John's Law, but the vehicle has yet to be removed from the scene of the stop.<br><br>The trial judge suppressed a handgun found under the front passenger seat, reasoning that because the officers were required to impound the vehicle, they were also required to obtain a search warrant even though the search occurred roadside. After considering the plain text and rationale of Witt, the court reverses the suppression order, holding the inherent exigency justifying a warrantless search at the scene continues to exist so long as the detained vehicle remains at the location of the stop. The court reasons the inherent exigency is not abated by the fact the vehicle will eventually be removed from the scene. Nor is such exigency abated when the decision is made to remove the vehicle, regardless of whether the decision is made in the exercise of police discretion or in compliance with a statutory impoundment mandate. The court concludes the authority to conduct an automobile-exception search lapses only after the vehicle has been removed to a secure location, not in anticipation of such removal. So long as police satisfy the foundational requirements of probable cause, spontaneity, and unforeseeability, a contemporaneous on-the-spot search is permitted regardless of the ultimate disposition of the vehicle. Accordingly, the court declines to create a new bright-line rule making vehicles subject to John's Law categorically ineligible for an on-scene search under the automobile exception. | Appellate |
| Feb. 21, 2024 | STATE OF NEW JERSEY VS. DAISHON I. SMITH (21-08-1004, MONMOUTH COUNTY AND STATEWIDE) (A-0291-23)<br><br>In this appeal the court addresses whether an entire county prosecutor's office must be recused from a criminal prosecution when the county prosecutor has a personal, disqualifying conflict. The court holds that so long as the prosecutor has been completely screened from and has no oversight of the matter, the prosecutor's office should not be disqualified. Accordingly, the court affirms the trial court's order denying defendant's motion to disqualify the entire Monmouth County Prosecutor's Office from continuing to prosecute defendant and multiple co-defendants in this criminal matter. | Appellate |
| Feb. 20, 2024 | SACKMAN ENTERPRISES, INC. VS. MAYOR AND COUNCIL OF THE BOROUGH OF BELMAR (L-1530-22, MONMOUTH COUNTY AND STATEWIDE) (A-1102-22)<br><br>In this case the court is asked to answer three questions: first, whether a governmental body, serving as a Redevelopment Agency, is obligated to apply electric vehicle ("EV") parking credits, as required under N.J.S.A. 40:55D-66.20 ("the EV statute"), when determining a concept plan's consistency with a redevelopment plan adopted pursuant to the Local Redevelopment and Housing Law ("LRHL") (N.J.S.A. 40A:12A-1 to -89); second, under section (f) of the EV statute, when applying EV credits, how the credits are to be rounded up; and last, whether a rounded-up EV credit may reduce the total required parking by more than the ten percent limit set forth under section (e) of the EV statute.<br><br>The court held that EV credits are to be applied when determining a concept plan's consistency with a redevelopment plan. Otherwise, a plan that was confirmed as consistent by the Borough would not be the same as the one to be potentially approved at time of preliminary site plan approval. The court also concluded that when applying EV credits to the total number of calculated spaces and that number includes any decimal, based on the plain language of the statute, the calculation must be rounded up to the next whole parking spot. However, also based on the plain language of the statute, the court rejected the contention that a rounded-up EV credit can reduce the total required parking by more than the ten percent limit set forth under section (e) of the EV statute, which is more specific than section (f) and therefore controls.<br><br>Applying these principles, the court affirmed the Law Division's denial of plaintiff's motion for summary judgment and grant of defendant's cross-motion for summary judgment. | Appellate |
| Feb. 16, 2024 | CHEE NG, PH.D. VS. FAIRLEIGH DICKINSON UNIVERSITY (L-1216-19, SOMERSET COUNTY AND STATEWIDE) (A-0089-22)<br><br>Plaintiff, a tenured professor, was fired after a university received a series of student complaints. The university issued charges against plaintiff and conducted dismissal proceedings pursuant to its faculty handbook, a document which, among other things, detailed the process for removing a tenured professor. The university's board of trustees found by clear and convincing evidence that plaintiff had engaged in willful misconduct and terminated his employment. | Appellate |

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| | Plaintiff filed suit, alleging the board failed to establish adequate cause for termination by clear and convincing evidence. The trial court granted the board's motion for summary judgment, finding the board was not arbitrary, capricious, or unreasonable in its decision to terminate plaintiff in accordance with the agreed-upon guidelines established in the faculty handbook.<br><br>After a de novo review of the trial court's summary judgment order, the court affirmed, holding that the administrative agency standard of review used to analyze the internal decision-making of public universities applied to a private university's termination of a tenured professor. | |
| Feb. 16, 2024 | DORIANA R. GONZALEZ, ET AL VS. MAHER IBRAHIM, ET AL. (L-2630-21, MERCER COUNTY AND STATEWIDE) (A-3719-22)<br><br>In this medical malpractice action, the court granted defendant Perry Loesberg, M.D. leave to appeal Law Division's order's denying his motions to dismiss plaintiff's amended complaint due to their failure to serve an affidavit of merit (AOM) within 120 days of the filing of defendant's answer in accordance with N.J.S.A. 2A:53A-27. The court affirms, concluding the orders were supported by the record because there were extraordinary circumstances warranting an extension of the AOM 120-day filing deadline.<br><br>Prior to defendant being named in the amended complaint, a court order granted plaintiff's motion to waive the filing of an AOM as to the then-named defendants. The lack of a Ferreira conference after defendant answered the amended complaint, coupled with the prior court order and defendant's discovery response failure to raise the lack of an AOM as a defense, constituted "an almost perfect storm" of events that warrant affording plaintiff additional time to submit an AOM. See A.T. v. Cohen, 231 N.J. 337, 350 (2017). A Ferreira conference should have been conducted to bring the parties together to address the applicability of the AOM waiver order on the claims against the newly-added defendant. Permitting plaintiff to file an AOM outside the 120-day statutory deadline and denying defendant's motions to dismiss prevents an injustice. | Appellate |
| Feb. 12, 2024 | STATE SHORTHAND REPORTING SERVICES VS. NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, ET AL. (DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT) (CONSOLIDATED) (REDACTED) (A-1500-21/A-1710-21 )<br><br>In this appeal, as an issue of first impression, the court was asked to consider whether N.J.S.A. 43:21-19(i)(10)—from the time of its enactment in 2010—provided an exemption for court reporters under the Unemployment Compensation Law ("UCL"), N.J.S.A. 43:21-1 to -71, or whether court reporters must still establish a Federal Unemployment Tax Act ("FUTA") exemption pursuant N.J.S.A. 43:21-19(i)(1)(G). The court determined N.J.S.A. 43:21-19(i)(10) does provide such an exemption and there is no requirement for court reporters to establish a FUTA exemption.<br><br>The court noted the express language of N.J.S.A. 43:21-19(i)(10)_provides that services performed by court reporters "shall not be deemed to be employment subject" to the UCL. The court presumed the Legislature understood the implications of removing court reporters from N.J.S.A. 43:21-19(i)(7)(Y) and the corresponding FUTA mandate and placing the amendment in a different section. The DOL asserted there were no scenarios in which the new statute, N.J.S.A. 43:21-19(i)(10), would apply to court reporters in a manner distinct from the operation of the prior exemption under N.J.S.A. 43:21-19(i)(7)(Y). The court rejected that interpretation, which would have rendered N.J.S.A. 43:21-19(i)(10) meaningless because the amended statute_must be read in harmony with N.J.S.A. 43:21-19(i)(7)(Y) and the rest of the statute. The court further determined the Legislature was fully aware of the prior requirement for court reporters to establish a FUTA exemption under N.J.S.A. 43:21-19(i)(7)(Y), which is why it amended the statute to remove the requirement for a FUTA exemption under N.J.S.A. 43:21-19(i)(10).<br><br>The court noted that although a sensible reading of N.J.S.A. 43:21-19(i)(10) provides an exemption for court reporters, to the extent the statutory language resulted in more than one reasonable interpretation, the legislative history unequivocally established the Legislature intended to dispense with the requirement to establish a FUTA exemption. Accordingly, the court reversed the Commissioner's holding with respect to the applicability of N.J.S.A. 43:21-19(i)(10) and concluded petitioners are exempt from the time of the enactment of the statute in 2010. | Appellate |
| Feb. 9, 2024 | KRITHIGA SADEESHKUMAR VS. SADEESHKUMAR VENUGOPAL (FM-12-2082-22, MIDDLESEX COUNTY AND STATEWIDE) (A-0434-23)<br><br>The court granted defendant leave to appeal from two orders entered by the Family Part, which denied a motion to amend his answer to include a counterclaim for divorce and his subsequent motion for reconsideration. On appeal, the court reversed both orders.<br><br>The court concluded defendant should have been permitted to amend to include a counterclaim because discovery was not concluded, there was no trial date, and the interest of justice required it. The proposed counterclaim alleged defendant learned of conduct between plaintiff and a third party, which constituted grounds for divorce based on irreconcilable differences and extreme cruelty. Moreover, based on defendant's proposed pleading and extant business litigation in the Law Division involving the parties and the third party, the case appeared to be complex in that defendant's counterclaim sounded in claims against plaintiff for: dissipation, marital fault, and bad faith.<br><br>Plaintiff argued to the trial court and on appeal that Rule 5:4-2(e) barred defendant's ability to amend the | Appellate |

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| | answer to include incidents that occurred during the marriage because defendant knew about the claims and failed to file a counterclaim with his initial answer. The court concluded Rule 5:4-2(e) was inapplicable because it applies when a party seeks to amend an already existing counterclaim. Moreover, the court harmonized Rule 5:4-2(d) and (e) with Rule 4:9-1 and held the amendment of Family Part pleadings are subject to the liberal interest of justice standard in Rule 4:9-1, and courts should permit a party to amend where the request is timely, and not futile, frivolous, or harassing. | |
| Feb. 7, 2024 | STATE OF NEW JERSEY VS. KHALIL H. HASKINS (21-08-2068, CAMDEN COUNTY AND STATEWIDE) (A-1767-22)<br><br>In this appeal, the court held that the rule announced in State v. Smith, 251 N.J. 244, 253 (2022), that "reasonable and articulable suspicion of a tinted windows violation arises only when a vehicle's front windshield or front side windows are so darkly tinted that police cannot clearly see people or articles within the car," should be afforded pipeline retroactivity. The court also determined a defendant who had not filed a notice of appeal when a retroactive decision was issued, but was subsequently granted leave to file as within time under Rule 2:4-4 and State v. Molina, 187 N.J. 531, 535-36 (2006), is deemed within the "pipeline" for retroactivity purposes. | Appellate |
| Feb. 5, 2024 | IN RE APPEAL OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S SEPTEMBER 6, 2022 DENIAL OF REQUEST FOR ADJUDICATORY HEARING, ETC. (NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION) (A-0511-22)<br><br>In this appeal, the court considered whether a Remediation in Progress waiver (RIP waiver) issued by the New Jersey Department of Environmental Protection (NJDEP) conveys a property interest to the recipient that is constitutionally protected by the right to due process. The court concluded it does not.<br><br>The owner or operator of an industrial establishment is subject to the Industrial Site Recovery Act (ISRA) when they cease operations or transfer ownership or operation of the industrial establishment. N.J.S.A. 13:1K-9(a). Before doing so, the ISRA requires the owner or operator of an industrial establishment to remediate its industrial establishment and obtain a final remediation document. N.J.S.A. 13:1K-9(b). To expedite transfers and cessations of contaminated industrial sites, the ISRA permits alternatives to obtaining a final remediation document prior to the cessation of operations or transfer of property, including an RIP waiver. N.J.A.C. 7:26B–5.4. An RIP waiver allows the owner or operator of an industrial establishment to apply to NJDEP to close or transfer ownership or operations, provided that the industrial establishment is already in the process of remediation and specific requirements are met. N.J.S.A. 13:1K–11.5; N.J.A.C. 7:26B-5.4.<br><br>An RIP waiver is contingent on remediation being in progress; if remediation falls out of compliance, the RIP waiver applicant no longer qualifies for the suspension under N.J.S.A. 13:1K-11.5, and NJDEP may rescind the RIP waiver.<br><br>Clarios, LLC, appealed from a decision by NJDEP to deny its request for an adjudicatory hearing concerning NJDEP's decision to rescind Clarios's RIP waiver for the premises at issue, 760 Jersey Avenue, New Brunswick. Clarios argued NJDEP's grant of the RIP waiver in 2007 created a property interest protected by a right to due process in that the RIP waiver operates like a license—well-recognized to be in the nature of a property right—that permits the receiving party to conduct certain activities and exempts it from obligations subject to the State's stipulations.<br><br>The court rejected Clarios's assertion. The only benefit conferred by the RIP waiver is that the owner or operator may effect such close of operations or transfer of ownership prior to "obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement." N.J.S.A. 13:1K–11.5(a). The RIP waiver does not suspend the need to remediate the industrial establishment. It waives only the requirement to provide for remediation before the close of operations or the transfer of ownership. In addition, the regulation that provides for the issuance of RIP waivers explicitly limits the authority of the waiver to relieve the recipient of "the obligations to remediate the industrial establishment pursuant to ISRA . . . and any other applicable law." N.J.A.C. 7:26B-1.8(b). | Appellate |
| Jan. 31, 2024 | IN THE MATTER OF REGISTRANT J.R. (ML-0222, MIDDLESEX COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-0380-22)<br><br>In this appeal, as an issue of first impression, the court addresses whether a New Jersey court may consider a motion to terminate the registration requirements of an individual subject to Megan's Law[1] in New Jersey but residing in another state. The court holds that although a New Jersey court may have jurisdiction to decide the motion, it must decide on a case-by-case basis whether the registrant has standing to bring the motion.<br><br>J.R. committed a sex offense in 1993 that subjected him to Megan's Law in New Jersey. Upon moving to Montana in 2021, J.R. was subject to registration there because Montana statute requires registration for individuals who committed a sexual offense in another state for which they were required to register. He then filed a motion to terminate his registration obligation in New Jersey pursuant to N.J.S.A. 2C:7-2(f).<br><br>The court agrees with the Megan's Law judge that J.R. no longer had a registration obligation in New Jersey and his obligation in Montana was dependent on his prior conviction in New Jersey, which would remain regardless of the outcome of the motion. The court rejects J.R.'s contention that he continued to have a Megan's Law "status" in New Jersey. He neither faced harm from the denial of the motion nor could he benefit from the granting of the motion because it would not alter his registration obligation in Montana. Because he was not suffering a harm that | Appellate |

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| | a New Jersey court could address, J.R. lacked standing to have a New Jersey court decide his motion, and we affirm the Megan's Law judge's decision.<br><br>Because registration requirements vary across the country, there may be instances where a registrant's obligation to register in another jurisdiction would be impacted by the outcome of a motion to terminate in New Jersey. Therefore, a court must examine the legislative scheme in the jurisdiction where the registrant resides to determine whether the motion presents a justiciable controversy that amounts to standing.<br><br>[1] N.J.S.A. 2C:7-1 to -23. | |
| Jan. 30, 2024 | SHELLEY PRITCHETT VS. STATE OF NEW JERSEY (L-2189-13, MERCER COUNTY AND STATEWIDE) (A-1414-21)<br><br>In this matter, arising out of a failure to accommodate and discrimination action under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50, a jury returned a verdict for plaintiff awarding her compensatory damages and $10 million in punitive damages. On appeal, the court affirmed the finding of liability and the compensatory damage award but remanded for further proceedings on the amount of punitive damages, and specifically, for substantial consideration of the factors discussed by our Supreme Court in Baker v. National State Bank, 161 N.J. 220 (1999), and the United States Supreme Court in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996).<br><br>The Supreme Court granted defendant's petition for certification and modified this court's remand instructions. The Court held that when reviewing a punitive damages award against a public entity, a trial court must not only consider the Baker/BMW factors, but also needs to apply heightened scrutiny as required under Lockley v. State, Department of Corrections, 177 N.J. 413 (2003).<br><br>On remand, the trial court concluded the punitive damages award was "reasonable" and "comport[ed] with due process."<br><br>In the present appeal, the court established a hybrid standard of review when considering an award of punitive damages against a public entity. The court should accord a deferential standard of review to a judge's determination of whether the jury's punitive damages award is "reasonable" and "justified in the circumstances of the case" under N.J.S.A. 2A:15-5.14(a). However, when a party challenges the punitive damages award on constitutional due process grounds, the court should review the trial court's decision as to the amount of the punitive damage award de novo.<br><br>After considering the Baker/BMW factors using the heightened scrutiny required under Lockley, we concluded the punitive damages award was not unreasonable or disproportionate to the harm caused by defendant's upper management representatives in their disregard of the LAD. Although mindful the source of the damages award is public funds, the court concluded the award was necessary to deter future unlawful conduct and to encourage high-level officials to conform their behavior. | Appellate |
| Jan. 23, 2024 | IN THE MATTER OF THE APPOINTMENT OF THE COUNCIL ON AFFORDABLE HOUSING BY GOVERNOR PHILIP MURPHY (NEW JERSEY COUNCIL ON AFFORDABLE HOUSING) (A-0050-22)<br><br>In this appeal, the court considers whether the Governor can be compelled by mandamus to act on an appointment power when the statute at issue neither expressly requires, nor provides a deadline for, the exercise of that discretionary function. Seventeen municipalities challenge the Governor Murphy's inaction, demanding he fill long-standing vacancies on the Council on Affordable Housing (COAH). The court rejects appellants' contentions that the Fair Housing Act (FHA), N.J.S.A. 52:27D-301 to -329, requires the chief of the executive branch to fill those appointments and that Governor Murphy's inaction violates that obligation and undermines the public policy reflected in the FHA.<br><br>Persuaded by the Governor's responding argument, this court held it cannot compel the Chief Executive to make appointments to COAH because mandamus – the relief appellants seek – cannot be applied against the Governor, generally. Further, even if mandamus were applicable to the Governor, the remedy is unavailable here because appellants seek to compel an exercise of discretion. The court thus held the Governor cannot be compelled by mandamus to fill COAH's vacancies. Accordingly, the court dismissed the appeal. | Appellate |
| Jan. 18, 2024 | PAUL ROIK VS. ANITA ROIK (FM-13-0156-21, MONMOUTH COUNTY AND STATEWIDE) (A-2522-21)<br><br>Following a long-term marriage, plaintiff filed a complaint for divorce and the parties, represented by counsel, entered a comprehensive marital settlement agreement (MSA). Plaintiff sought an uncontested divorce "on the papers" and filed the certification required by the Administrative Office of the Courts for such a proceeding. However, defendant sought an uncontested divorce hearing by way of Zoom, which the court in turn scheduled. Plaintiff died before the uncontested hearing.<br><br>His estate, represented by the parties' eldest son, sought to be named the real party in interest and to enforce the MSA, among other relief. Defendant cross-moved to dismiss the complaint because of plaintiff's death. The trial judge denied the motion and dismissed the complaint. It ruled that under Carr v. Carr, 120 N.J. 336 (1990), | Appellate |

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| | plaintiff's death abated the divorce and there were no unusual or exceptional circumstances warranting invocation of an equitable remedy, such as a constructive trust, to prevent an unjust enrichment by defendant.<br><br>The court reversed and remanded for entry of an order permitting the estate to be substituted as the real party in interest and incorporating the MSA into a final judgment. Although defendant did not engage in conduct warranting the imposition of a constructive trust, the trial court overlooked the fact the parties had a fully signed MSA that was fair and equitable, whose validity defendant did not challenge, and that but for the delay in scheduling the uncontested hearing, both parties intended to proceed with the uncontested divorce. Therefore, the equities and our public policy of encouraging and enforcing settlements in matrimonial matters did not warrant discarding the MSA and dismissing the matter.<br><br>While the appeal was pending, the Legislature amended the intestacy and equitable distribution statutes. The amendments to the equitable distribution statute authorize Family Part judges to effectuate equitable distribution where a party dies during a divorce proceeding and the complaint has not been previously dismissed pursuant to Rule 4:6-2. The Legislation is effective January 8, 2024.<br><br>The court reviewed the plain language of the new statutes and the legislative statement accompanying their passage, and concluded the Legislature intended to afford pipeline retroactivity to pending cases. Therefore, the new statutes applied to this case and provided independent grounds to uphold and enforce the parties' MSA. | |
| Jan. 17, 2024 | ALLURE PET PRODUCTS, LLC VS. DONNELLY MARKETING & DEVELOPMENT LLC, ET AL. (L-1281-21, MORRIS COUNTY AND STATEWIDE) (A-0429-23)<br><br>This interlocutory appeal concerns whether the New Jersey courts have personal jurisdiction over a defendant Utah company and its sole owner who entered into a contract to reserve a booth for plaintiff, a New Jersey company, at a biannual trade show in Germany planned for 2020. The 2020 trade show was eventually cancelled because of the COVID-19 pandemic, and the company and its owner declined to refund plaintiff's payment or apply it to the next show in 2022.<br><br>Defendants argue they lacked the required "minimum contacts" to be sued in New Jersey, stressing that plaintiff originally initiated the parties' relationship in 2011 by asking defendants to arrange for space at an earlier trade show in 2012. They further contend it would offend constitutional principles of fair play and substantial justice to compel them to litigate this civil case in this distant state.<br><br>The court affirms the motion judge's finding of personal jurisdiction. Although cases that have found specific jurisdiction often have involved a defendant that first initiated contact with a plaintiff in the forum state, the court holds it is not dispositive that the New Jersey plaintiff originally initiated contact with the Utah company and its owner years before the present transaction. The record shows the Utah defendants sought and procured renewal contracts with plaintiff for the next four biannual trade shows, including 2020. In addition, the Utah defendants repeatedly solicited new or renewal business from at least ten other New Jersey pet company exhibitors during that time frame.<br><br>Given that conduct, the Utah defendants "purposely availed" themselves of doing business with New Jersey customers to a level sufficient to satisfy the criteria for in personam jurisdiction under the Due Process Clause.<br><br>In addition, the norms of fair play and substantial justice are not offended here. Defendants could have included a forum selection clause in their form contract but failed to do so. The parties have already taken depositions remotely, and defendants can request the trial court—in this modest non-jury case with few witnesses—to consider in its discretion allowing them to appear remotely at trial. | Appellate |
| Jan. 9, 2024 | FUNTOWN PIER AMUSEMENTS, INC. VS. BISCAYNE ICE CREAM AND ASUNDRIES, INC., ET AL. (L-2438-15, OCEAN COUNTY AND STATEWIDE) (CONSOLIDATED) (A-1797-21/A-1943-21)<br><br>After Hurricane Sandy struck New Jersey in October 2012, high water levels flooded several communities, causing extensive damage to infrastructure. After the floodwaters receded, municipalities and businesses worked with their electric utility, Jersey Central Power & Light (JCP&L), to restore power on the boardwalk for the spring 2013 tourist season. After being notified that required repairs had been completed and municipal inspectors had approved the repair work, JCP&L restored power to the boardwalk in May 2013. Months later, a fire broke out, causing severe damage to boardwalk businesses. After an investigation revealed that the source of the fire was likely malfunctioning electrical equipment which had been submerged beneath the boardwalk during the storm, multiple plaintiffs sued for damages, alleging negligence by various parties, including JCP&L.<br><br>Defendant JCP&L moved for summary judgment and the trial court granted it, finding plaintiffs' expert issued a net opinion on the question of JCP&L's duty to inspect customer owned electrical equipment. The trial court next found plaintiffs failed to make any showing on the question of duty, warranting summary judgment.<br><br>Plaintiffs appealed, contending the trial court erred by barring the expert's opinion and granting summary judgment dismissing plaintiffs' various theories which supported the proposition that there is an existing duty on the part of JCP&L to inspect customer owned and maintained equipment. Plaintiffs further argued that if such a duty did not already exist, the severe nature of the superstorm and the JCP&L's "knowledge" that an electrical inspection may have been negligently performed at the fire origin site, supported the imposition of an enhanced duty to re-inspect the work of state-licensed municipal inspectors before restoring power. | Appellate |

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| | The court held that: the trial court engaged in a proper exercise of discretion when it barred plaintiffs' expert testimony; public utility JCP&L had no duty to inspect the privately-owned electrical equipment of a commercial businesses as a pre-condition to restoring power. The court therefore affirmed the trial court's order. | |
| Dec. 27, 2023 | ANTONIO FUSTER, ET AL. VS. TOWNSHIP OF CHATHAM, ET AL. (L-1814-22, MORRIS COUNTY AND STATEWIDE) (A-1673-22)<br><br>In this case of first impression, the court addressed the disclosure of a body worn camera (BWC) video statement recorded pursuant to the Body Worn Camera Law (BWCL), N.J.S.A. 40A:14-118.3 to -118.5, under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law right of access. The recorded statement was made by a father, a plaintiff in the action, who had alleged sexual misconduct perpetrated against his special needs minor son by a relative. Law enforcement determined there was insufficient probable cause to charge.<br>The court concluded plaintiffs' argument that the BWCL's exemption provision, N.J.S.A. 40A:14-118.5(l), abrogates OPRA's exemptions was without merit. The court further concluded OPRA's exemption, N.J.S.A. 47:1A-9(b), applied to preclude disclosure of the BWC recording because our case law has long-established that information received by law enforcement regarding an individual who was not arrested or charged is confidential and not subject to disclosure. See N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Off., 447 N.J. Super. 182, 204 (App. Div. 2016). A review of the plain language of the BWCL's inspection provision, N.J.S.A. 40A:14-118.5(k), which provides that a review of a BWC recording is subject to OPRA, demonstrated the four exemptions listed in N.J.S.A. 40A:14-118.5(l) are in addition to OPRA's exemptions. Further, reading OPRA in pari materia with the BWCL demonstrated the Legislature did not intend to preclude the application of OPRA's exemptions to BWC recordings.<br>The court further rejected plaintiffs' argument they were entitled to the BWC recording under the common law right of access. The court concluded the common law right of access did not compel release of the BWC recording because under the balancing of interests factors established by the Supreme Court in Loigman v. Kimmelman, 102 N.J. 98, 113 (1986), law enforcement's and the individual's interests in confidentiality outweigh the public's and plaintiffs' interests in disclosure.<br>Therefore, the court affirmed the judge's order that plaintiffs were not entitled to disclosure of the BWC recording under either OPRA or the common law right of access. | Appellate |
| Dec. 22, 2023 | IN THE MATTER OF THE APPEAL OF THE DENIAL OF R.W.T.'S APPLICATION, ETC. (GPA-BER-0011-22, BERGEN COUNTY AND STATEWIDE) (A-3899-21)<br><br>This matter presents a question of first impression concerning the rights and responsibilities of New Jersey gun permit applicants under the Second Amendment to the United States Constitution as recently interpreted by the United States Supreme Court in N.Y. State Rifle & Pistol Assoc. v. Bruen, 597 U.S. __, 142 S. Ct. 2111 (2022). Petitioner appeals the denial of his application for a Firearms Purchaser Identification Card (FPIC) and a permit to purchase a handgun (PPH). He raises several contentions, including a challenge to the constitutionality of a statute that requires denial of an FPIC/PPH application if it includes any knowingly false information, N.J.S.A. 2C:58-3(c).<br><br>Bruen adopted a new test for resolving Second Amendment challenges, requiring modern regulations be consistent with this Nation's tradition of firearms regulation as shown by a well-established and representative historical analogue. The court upholds the constitutionality of the falsification disqualification provision even though there appears to be no historical analogue for it. Bruen acknowledged the constitutionality of "shall-issue" licensing regimes, which require gun permit applicants to file an application that prompts a background check. Truthfulness on an application is an integral part of the background investigation process acknowledged in Bruen. The falsification disqualifier safeguards the integrity of the licensing system without imposing additional substantive limits on who can purchase a firearm.<br><br>The court further notes the plain text of the Second Amendment does not cover lying on an application form. Because that conduct is not protected by the Second Amendment, the court concludes its regulation is not subject to the new "analogical" paradigm.<br><br>The court also rejects petitioner's contention the falsification disqualifier applies only to material falsehoods. Relatedly, the court rejects petitioner's contention the falsification disqualifier does not apply in this case because he retracted the false statement in his application during the Law Division hearing. Petitioner's admission at the hearing that he had, in fact, been treated by a psychiatrist came too late, precluding the licensing authority from conducting a follow-up investigation before the hearing.<br><br>Because the falsification disqualification provision categorically requires denial of petitioner's application, the court chooses not to address petitioner's facial and as-applied challenges to the trial court's alternative determination that issuance of an FPIC and PPH "would not be in the interest of public health, safety or welfare" under N.J.S.A. 2C:58-3(c)(5). | Appellate |
| Dec. 21, 2023 | MARIA AZZARO, ET AL. VS. BOARD OF EDUCATION OF THE CITY OF TRENTON, ETC. (NEW JERSEY COMMISSIONER OF EDUCATION) (A-0188-22)<br><br>In this appeal, the court addressed the novel issue of whether N.J.S.A. 18A:16-6 allows school board employees to wait until the final disposition of a civil or administrative action filed against them before seeking defense costs and indemnification from a school board. The court concluded an employee cannot wait until the action is completed and must provide the school board with reasonable notice after the initiation of the proceeding. The court observed the procedure under N.J.S.A. 18A:16-6.1 is distinguishable, which provides that an employee cannot seek reimbursement | Appellate |

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| | of defense costs and indemnification until the conclusion of a criminal or quasi-criminal action.<br><br>Petitioners sought reimbursement of attorney fees and costs from the Trenton Board of Education following the favorable resolution of an administrative action against vice principal, Maria Azzaro, stemming from alleged improper grading practices and other improprieties. The court affirmed the Commissioner of Education's final agency decision denying petitioners' request and held that bringing an action under N.J.S.A. 18A:16-6 twelve years after the initiation of an administrative action was not reasonable under the facts of the case. | |
| Dec. 21, 2023 | STATE OF NEW JERSEY VS. FUQUAN K. KNIGHT, ET AL. (19-01-0010, ESSEX COUNTY AND STATEWIDE) (CONSOLIDATED) (REDACTED) (A-0377-20/A-0437-21)<br><br>These two consolidated appeals by codefendant brothers in an armed robbery case concern a surveillance video recorded at the crime scene. The key approximately six-second portion of the video shows three men, two of whom were allegedly armed, escorting the victim behind a deli moments before he was robbed. The State contended the culprits in the video were the two brothers and their father. The video was played without objection during the trial and the State's closing argument.<br><br>During its deliberations, the jury requested that the video be shown again multiple times, in slow motion and with pauses. Over defense counsel's objection, the trial judge granted the jury's requests, and the videos were replayed in the courtroom under the judge's supervision. On appeal, defendants argue the slow-motion video replays were unduly prejudicial, citing research showing that such slow-motion replays can increase juror perceptions of an actor's intentionality.<br><br>In this opinion of first impression, the court holds that, subject to offsetting concerns of undue prejudice, surveillance video footage may be presented to jurors during a trial and in summation in slow motion or at other varying speeds, or with intermittent pauses, if the trial court in its discretion reasonably finds those modes of presentation would assist the jurors' understanding of the pertinent events and help them resolve disputed factual issues.<br><br>The courts further holds—again subject to offsetting concerns of undue prejudice—that trial judges in their discretion may grant a jury's requests during deliberations to replay the videos in such modes one or more times, provided that the playbacks occur in open court under the judge's supervision and in the presence of counsel.<br><br>Going forward, the court offers several non-exclusive factors to assist judges when considering whether to allow surveillance videos to be shown in varying speeds or with intermittent pauses during the trial and summations, and on a jury's request during deliberations. The court further recommends that the Model Criminal Jury Charge Committee consider crafting an instruction to guide jurors when surveillance videos are presented in such modes.<br><br>Other issues raised on appeal are addressed in the unpublished portion of this opinion. | Appellate |
| Dec. 11, 2023 | ROSETTA HARGETT, ETC. VS. HAMILTON PARK OPCO LLC, ET AL. (L-1587-21, HUDSON COUNTY AND STATEWIDE) (A-2036-22)<br><br>In this medical malpractice action, plaintiff, as administratrix ad prosequendum for the estate of decedent, sued a nursing facility and a hospital alleging negligent care that resulted in pressure wounds and, ultimately, decedent's physical decline and death. Plaintiff asserted direct claims of administrative negligence against both facilities as well as claims based on vicarious liability for nursing malpractice. Plaintiff served a single affidavit of merit ("AOM") executed by a registered nurse who opined that the nursing home, the hospital, and members of their nursing and nursing administrative staff deviated from the applicable standards of care. The AOM did not distinguish between the nursing staffs at the separate facilities and did not name any individual nurses.<br><br>The trial court conducted two Ferreira conferences. Defendants objected to the AOM because the nurse who executed it was not qualified to render an opinion as to direct administrative negligence claims against the facilities and the AOM did not identify any individual nurses for whom the facilities could be held vicariously liable. Plaintiff did not seek to conduct any pre-AOM discovery and declined the opportunity to serve a supplemental AOM. Defendants moved to dismiss for failure to serve an appropriate AOM, and the trial court dismissed the complaint on that basis. Plaintiff subsequently settled her claims against the hospital. On appeal, plaintiff abandoned her direct administrative negligence claim against the nursing home and proceeded based only on vicarious liability.<br><br>The court affirmed, concluding the AOM was not sufficient to support plaintiff's vicarious liability claim because it indiscriminately combined the nursing staffs of two separate facilities and did not identify any individual nurses. The court also concluded plaintiff's claim was in essence an administrative negligence claim because it was based on the nursing home's systemic failure to provide adequate care rather than a claim based on the negligence of any individual nurses. | Appellate |
| Dec. 7, 2023 | D.T. VS. ARCHDIOCESE OF PHILADELPHIA, ET AL. (L-1327-20, ATLANTIC COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-0372-22)<br><br>In this appeal, the court considers whether a non-resident, religious organization is subject to personal jurisdiction in New Jersey related to allegations of sexual abuse of a child in New Jersey by a priest of the religious organization. Plaintiff D.T. alleges that Michael McCarthy, a former Catholic priest, sexually abused him in New | Appellate |

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| | Jersey in 1971. At that time, plaintiff was fourteen years old, and McCarthy was serving as a priest and teacher in the Archdiocese of Philadelphia (the Archdiocese). Plaintiff appeals from an order dismissing his claims against the Archdiocese for lack of personal jurisdiction. Because there are no facts establishing that the Archdiocese purposefully availed itself of any benefits in or from New Jersey related to McCarthy's alleged abuse of plaintiff, the court affirms. | |
| Dec. 7, 2023 | JA/GG DOE 70 VS. DIOCESE OF METUCHEN, ET AL. (L-5430-21, MIDDLESEX COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1919-22)<br><br>In this appeal, the court considers whether a non-resident, religious organization is subject to personal jurisdiction in New Jersey related to allegations of sexual abuse of a child in New Jersey by a priest of the religious organization. Plaintiff alleges that Father John Butler, a Catholic priest, sexually abused him from approximately 1995 to 1998, when plaintiff was approximately nine to twelve years old. At that time, Butler was serving as a priest in New Jersey, and the Diocese of Richmond, Virginia (Richmond) had encouraged and allowed Butler to go to New Jersey to serve as a priest, knowing that Butler had sexual propensities towards children.<br><br>Richmond appeals from an order finding that it was subject to specific personal jurisdiction in New Jersey related to Butler's actions in New Jersey. Because the facts establish that Richmond purposefully availed itself of the benefits of allowing Butler to go to New Jersey to serve as a priest, the court holds that there is specific personal jurisdiction over Richmond and affirms. | Appellate |
| Dec. 7, 2023 | STATE OF NEW JERSEY VS. JOSE Y. MARTINEZ-MEJIA (20-01-0028, SOMERSET COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-3472-21)<br><br>The main issue in this criminal appeal is whether the Luring, Enticing Child by Various Means statute, N.J.S.A. 2C:13-6(a), requires the State to prove a defendant lured or enticed a "child," in this case an undercover law enforcement officer posing as a fourteen-year-old girl, into traveling or accompanying the defendant to some location other than the victim's own home.<br><br>The court rejects defendant's contention that because he enticed the "child" to meet him alone, and defendant traveled to the "child's" home, a judgment of acquittal should have been entered. By its plain language, the statute forbids an adult from "luring or enticing a child to meet or appear at any other place." The child's home can be the "other place." Here, that location is a place "other" than where the defendant was when he communicated with the child.<br><br>There is no reason to construe the expansive language of "any other place" as somehow containing an unwritten exception for places where the child is already located. When the prohibited meeting was arranged, the course of action into which the child was lured was staying alone, isolated, and vulnerable.<br><br>Applying these principles, the court affirms the conviction and sentence for second-degree luring, N.J.S.A. 2C:13-6 (a); second-degree attempted sexual assault, N.J.S.A. 2C:5-1(a)(3) and 2C:14-2(c)(4); third-degree attempted endangering the welfare of a child, N.J.S.A. 2C-24-4(a)(1); 2C:5-1(a)(1) and (a)(3); and third-degree attempted promoting obscene material to a minor, N.J.S.A. 2C:34-3(b)(1), 2C:5-1(a)(1) and (a)(3).<br><br>The unpublished portion of this opinion rejects unrelated arguments raised by defendant alleging evidentiary errors. | Appellate |
| Dec. 5, 2023 | MARY HORNE, ET AL. VS. JASI MIKAE EDWARDS, ET AL. (L-0402-23, MERCER COUNTY AND STATEWIDE) (A-2619-22)<br><br>This matter arises from a petition to invalidate the candidacies of two individuals elected to the Trenton City Council. Plaintiffs alleged Yazminelly Gonzalez did not satisfy the requirement that she reside in Trenton for one year prior to the election. They also alleged defendant Jasi Mikae Edwards was ineligible for office because she had a criminal history in Pennsylvania. The court affirmed the trial court's order dismissing both challenges.<br><br>The court first addressed plaintiffs' failure to establish standing under N.J.S.A. 19:29-2, which provides a petition challenging an election must be signed by at least fifteen voters in the county or, alternatively, by a candidate defeated in the election. Plaintiffs' petition had at most three signatures. Moreover, a subsequent attempt to add a defeated candidate to the petition was untimely.<br><br>Despite plaintiffs' failure to establish standing, the court addressed the substantive issue of whether Gonzalez was eligible to run for Council. The court ultimately affirmed the trial judge's credibility findings that Gonzalez satisfied the residency requirements set forth in N.J.S.A. 40A:9-1.13, in that she resided in Trenton for more than a year prior to her election.<br><br>As to Edwards, the court observed plaintiffs conflated the forfeiture and eligibilty provisions of N.J.S.A. 2C:51-2. The court noted the distinction between criminal offenses requiring the forfeiture of office pursuant to N.J.S.A. 2C:51-2(a) and offenses rendering a candidate ineligible from holding office under N.J.S.A. 2C:51-2(d). N.J.S.A. 2C:51-2(a) authorizes forfeiture of public office when a person is convicted while "holding" public office if the offense: involves dishonesty, is a crime of at least the third degree, or involves or touches upon the candidate's public office. Importantly, Edwards was not convicted—while holding public office—of any predicate offense under N.J.S.A. 2C:51- | Appellate |

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| | 2(a). Instead, her conviction occurred in 2019, prior to her holding office. N.J.S.A. 2C:51-2(a) does not bar a person from seeking public office in the future based on a past conviction.<br><br>The court noted an individual may run for public office so long as the candidate was not convicted of an offense "involving or touching on his public office." N.J.S.A. 2C:51-2(d). Plaintiffs did not allege Edwards' prior conviction touched on her public office. Although the court does not deem a shoplifting offense to be trivial, Edwards' conviction for shoplifting occurred prior to her election to Council, and she disclosed it when she became a candidate. Therefore, the court determined Edwards' conviction did not implicate N.J.S.A. 2C:51-2(d).<br><br>Lastly, the court further concluded that even if this matter involved a forfeiture claim, plaintiffs lacked standing under N.J.S.A. 2C:51-2(b)(2), because only the county prosecutor or the Attorney General have standing to challenge the holder of public office "when the forfeiture is based upon a conviction of an offense under the laws of another state or of the United States. . . ." | |
| Dec. 4, 2023 | 257-261 20TH AVENUE REALTY, LLC VS. ALESSANDRO ROBERTO, ET AL. (F-003349-21, PASSAIC COUNTY AND STATEWIDE) (A-3315-21)<br><br>In this tax sale foreclosure appeal, the court addressed whether the United States Supreme Court's recent decision in Tyler v. Hennepin County, 598 U.S. 631 (2023), which declared a taxing authority's confiscation of a property owner's equity violated the Fifth Amendment Takings Clause, bars a third-party tax sale certificate holder's foreclosure of a property owner's equity under the New Jersey Tax Sale Law (TSL), N.J.S.A. 54:5-1 to -137, and if barred, whether pipeline retroactivity is afforded. The court also addressed whether the motion judge's decision to vacate final judgment under Rule 4:50-1(f), based primarily on defendant having redemption funds and significant property equity, was an abuse of discretion.<br><br>Defendant Alessandro Roberto[1] owned a mixed residential and commercial use property located in Paterson. In 2010 and 2016, defendant failed to pay his municipal sewer tax bills resulting in plaintiff's $606 purchase of three property tax sale certificates. Almost eleven years after the last tax sale certificate was purchased, plaintiff commenced a tax sale foreclosure. As the matter was uncontested, plaintiff obtained final judgment for $32,973.15. Defendant moved to vacate final judgment pursuant to Rules 4:50-1(e) and (f), arguing entitlement to equitable relief because he had redemption funding, would lose significant equity, and suffered COVID-19 related financial difficulties. The Chancery Division judge vacated final judgment pursuant to Rule 4:50-1(f).<br><br>Plaintiff 257-261 20th Avenue Realty, LLC appealed from the Chancery Division orders, which conditionally vacated final judgment and permitted redemption, vacated final judgment upon satisfaction of the conditions, and dismissed the action with prejudice. Plaintiff argued the judge erred in finding exceptional circumstances existed to vacate final judgment. Defendant argued the totality of facts weighed in favor of exceptional circumstances to vacate final judgment and the judge did not abuse his discretion. After the judge's decision and the submission of merits briefs on appeal, the United States Supreme Court decided Tyler.<br><br>The court affirmed the decision to vacate final judgment, based on the judge's detailed findings of exceptional circumstances under Rule 4:50-1(f), discerning no abuse of discretion. The court also concluded cause existed to vacate judgment as the application of Tyler to New Jersey's similar TSL framework established that the confiscation of a New Jersey property owner's equity, through a tax sale foreclosure, violates the Fifth Amendment Takings Clause. As Tyler established a new principle of law, pipeline retroactivity is afforded.<br><br>[1] Defendant's first name was incorrectly pleaded as Alesandro. | Appellate |
| Nov. 30, 2023 | ERNEST BOCK & SONS-DOBCO PENNSAUKEN JOINT VENTURE VS. TOWNSHIP OF PENNSAUKEN, ET AL. (L-1878-23, CAMDEN COUNTY AND STATEWIDE) (A-3684-22)<br><br>In this matter of first impression, the court considered whether a joint venture formed for the sole purpose of bidding on a public contract is required to be registered as a contractor under the Public Works Contractor Registration Act (PWCRA), N.J.S.A. 34:11-56.48 to - 56.57, at the time of the bid submission. The court held that the PWCRA applies to a joint venture and requires registration at the time of bid submission to local governments. The court likewise concluded the lack of a PWCRA registration certificate by the joint venture renders the bid substantially non-compliant and non-conforming with the local governments' bid specifications. Lastly, the court held a local government's decision to require all bidders to comply explicitly with the PWCRA as set forth in the bid specification was not arbitrary, capricious, or unreasonable because it was consistent with the local finance and public contract laws. Accordingly, the court affirms the rejection of the joint venture's bid and the award of the public contract to the lowest responsible bidder. | Appellate |
| Nov. 29, 2023 | IN THE MATTER OF A.D., ETC. (P-000982-20, SUSSEX COUNTY AND STATEWIDE) (CONSOLIDATED) (A-2563-21/A-2652-21)<br><br>The issue in this appeal is whether the trial court erred in its application of the law or abused its discretion in its denial of appellants' fee applications. In a guardianship matter filed by Adult Protective Services (APS), the trial court appointed appellants to serve as the counsel and the temporary guardian of the alleged incapacitated person (AIP), who had no assets and a limited income. After working together to obtain services for the AIP, appellants and APS | Appellate |

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| | agreed the AIP needed only a limited guardianship, and the trial court granted that relief.<br><br>Appellants moved for an order requiring APS to pay their fees and costs, arguing they were entitled to fees pursuant to Rule 4:42-9(a)(3), which permits a trial court to award fees in a guardianship matter pursuant to Rule 4:86-4(e), which in turn authorizes a court to compensate appointed counsel and the guardian ad litem in a guardianship matter "out of the estate of the [AIP] or in such other manner as the court shall direct." The trial court denied the fee applications, finding courts do not have the statutory authority to require APS to pay the fees of court-appointed counsel and temporary guardians and that APS had not engaged in any misfeasance warranting fee-shifting. The court agreed, concluding the Adult Protective Services Act, N.J.S.A. 52:27D-406 to -425, did not give courts the authority to order APS to pay fees under these circumstances. | |
| Nov. 16, 2023 | STATE OF NEW JERSEY VS. WILLIAM J. SILVERS, III (19-07-0813, HUDSON COUNTY AND STATEWIDE) (A-2353-21)<br><br>The main issue in this criminal appeal is whether the trial judge erred during jury selection in denying defense counsel's requests to remove for cause two potential jurors who are police officers. The officers are employed by police departments in different municipalities from where the alleged offenses occurred, investigated, and were prosecuted, but within the same county.<br><br>The court rejects defendant's contention that because interaction with the county prosecutor's office is inherently a "necessary component of their jobs as police officers," active-duty police officers who work in the same county where the criminal charges arose must be stricken for cause from juries upon a defendant's request. Instead of applying a categorical bar, the court continues the tradition of State v. Reynolds, 124 N.J. 559, 565 (1991), in which the Supreme Court recognized the concerns about the potential bias of police-officer-jurors, but which also declined to endorse a strict policy to remove them for cause. The Court in Reynolds instructed judges "should be inclined to excuse a member of the law enforcement community" from the jury on a defendant's request, leaving it to the trial courts to perform an individualized assessment of each juror's ability to be fair and impartial. Ibid.<br><br>Extending the nuanced approach of Reynolds, the Court holds that a per se finding of cause to strike a criminal juror in law enforcement should only apply to employees of the same police department or prosecutor's office that investigated or prosecuted the charged offense. To aid trial judges and counsel, the court presents non-exhaustive factors that should be considered in evaluating, on a juror-by-juror and case-by-case basis, whether there is cause to remove a juror employed in law enforcement. If, on the whole, those factors establish cause, the trial court "shall" remove the juror, as is required under the recently reinforced language of Rule 1:8-3(b).<br><br>Applying these principles, the court affirms the trial judge's denial of defendant's request to strike for cause one of the two police officers, but finds error with respect to the other officer, based on the officers' respective voir dire responses. However, the latter officer was never summoned to the jury box, so the error in failing to remove the juror for cause was harmless.<br><br>The unpublished portion of this opinion rejects unrelated arguments raised by defendant alleging evidentiary and sentencing errors. | Appellate |
| Nov. 15, 2023 | C.P. VS. THE GOVERNING BODY OF JEHOVAH'S WITNESSES, ET AL. (L-5508-21, BERGEN COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1779-22 )<br><br>On leave granted in this child sexual abuse case, the court affirmed the trial court's denial of summary judgment to defendants Watchtower Bible and Trust Society of New York, Inc. and East Hackensack Congregation of Jehovah's Witnesses (defendants).<br><br>Plaintiff C.P., now an adult, was sexually abused by her grandfather in the 1970's and 1980's. He was authorized to serve as an elder for defendants' congregations. Plaintiff alleges defendants owed her a "special duty" to protect her from her grandfather's sexual criminal acts because they knew he had engaged in sexual conduct with at least three minors, including herself, but did not discipline him and negligently retained him as an elder.<br><br>In 1994, plaintiff filed a lawsuit against her grandfather and other family members, which resulted in a sizeable jury award in her favor. Plaintiff did not name defendants in the 1994 lawsuit because the Charitable Immunity Act (CIA) as it existed at the time precluded actions against non-profit, educational, and religious institutions for willful, wanton, or grossly negligent conduct resulting in sexual abuse. In 1995, the CIA was amended to permit such causes of action. N.J.S.A. 2A:53A-7(a). In 2006, the CIA was again amended to provide an exception to immunity for negligence claims where the supervision, hiring, and retention of an employee, agent, or servant led to sexual abuse. N.J.S.A. 2A:53A-7.4.<br><br>In 2021, plaintiff filed suit against defendants under the Child Victims Act (CVA), L. 2019, c. 120, which provided a two-year revival window for victims to file otherwise time-barred claims for sexual crimes committed against them while minors. N.J.S.A. 2A:14-2(b). The CVA also amended the CIA to allow retroactive liability against religious and other organizations. N.J.S.A. 2A:53A-7 and N.J.S.A. 2A:14-2(b).<br><br>The court agreed with the trial court that defendants were not entitled to summary judgment because plaintiff's claims asserted in her 2021 complaint were not cognizable under the CIA in 1994. The court further found the trial court properly supported its decisions rejecting the applicability of the entire controversy doctrine and judicial estoppel. | Appellate |

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| Nov. 14, 2023 | IN THE MATTER OF THE ESTATE OF MICHAEL D. JONES (P-000005-20, CAMDEN COUNTY AND STATEWIDE) (A-2944-21)<br><br>In this probate dispute, the court considered whether application of N.J.S.A. 3B:3-14 conflicts with federal regulations governing ownership of United States Savings Bonds to warrant preemption by virtue of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution. Under N.J.S.A. 3B:3-14, divorce automatically revokes a disposition of property in a governing instrument made by a divorced individual to his or her former spouse before the divorce. Defendant ex-wife filed a claim against her ex-husband's estate seeking payment of outstanding obligations under the parties' divorce settlement agreement (DSA) when her ex-husband died intestate prior to satisfying the obligations. The ex-husband's estate sought to offset payment of the DSA's outstanding obligations with payment defendant received as the pay-on-death (POD) beneficiary when she redeemed federal savings bonds owned by her ex-husband.<br><br>Although her ex-husband had not changed or revoked the POD beneficiary designation on the bonds following the divorce as permitted under federal regulations and the DSA was silent as to the disposition of the bonds, the trial court applied the presumptive revocation provision of N.J.S.A. 3B:3-14 to grant the estate partial summary judgment, allowing the redemption of the savings bonds to partially satisfy the DSA obligations. The court reversed, holding that because federal regulations govern the rights and obligations created by a beneficiary's bond ownership, absent evidence of fraud, breach of trust, or other wrongful conversion of property, the regulations take precedence and preempt the inconsistent provisions of N.J.S.A. 3B:3-14. The court held that by determining defendant's beneficiary designation was automatically revoked under N.J.S.A. 3B:3-14 by virtue of the divorce, the trial court misinterpreted the DSA and failed to give effect to defendant's federal ownership rights, "render[ing] the award of title meaningless." Free v. Bland, 369 U.S. 663, 669 (1962). | Appellate |
| Nov. 9, 2023 | BOARD OF EDUCATION OF THE BOROUGH OF KINNELON, MORRIS COUNTY VS. KAREN D'AMICO (NEW JERSEY COMMISSIONER OF EDUCATION) (A-2764-21)<br><br>The court considered the final agency decision of the Commissioner of Education granting the Board of Education of the Borough of Kinnelon's motion for summary decision, denying appellant's cross-motion for summary decision, and removing appellant from her position on the Board.<br><br>The Commissioner ruled a ten-day letter filed by a parent of a child in need of special education services constituted a substantial conflict of interest sufficient to remove the parent from her duly elected position on the Board of Education. Our Supreme Court of New Jersey previously addressed circumstances wherein a due process claim that included a request for specific monetary relief was determined to be a substantial conflict between a board member and the board, requiring removal. Bd. of Educ. of City of Sea Isle City v. Kennedy, 196 N.J. 1, 22 (2008). The question the court considered here is whether the submission of a ten-day letter raises a similarly substantial conflict of interest. The court concluded, based on the record, it did not. | Appellate |
| Nov. 8, 2023 | IN THE MATTER OF THE EXPUNGEMENT APPLICATION OF K.M.G. (XP-21-002190, MONMOUTH COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-0363-22 )<br><br>In this appeal of first impression, the court must determine whether the "clean slate" statute, N.J.S.A. 2C:52-5.3, which permits an expungement of a New Jersey criminal record if ten years have passed "from the date of the person's most recent conviction," applies to a conviction from another state. (Emphasis added). The trial court entered an order expunging petitioner's New Jersey criminal record after determining her 2017 Virginia misdemeanor conviction did not preclude eligibility for expungement under the "clean slate" statute because an out-of-state conviction does not constitute a "most recent conviction." The State contends the trial court erred in its interpretation of the "clean slate" statute, arguing petitioner's Virginia conviction must be considered, and because it was entered within ten years of her petition for expungement, her petition should have been denied.<br><br>The court reverses because the text of the "clean slate" statute and related expungement statutes do not support the trial court's interpretation to preclude consideration of an out-of-state conviction from the phrase "most recent conviction." Moreover, such interpretation defies common sense given the "clean slate" statute's purpose to expunge a criminal record of an applicant who has not violated the law within ten years of their last New Jersey conviction. Consequently, petitioner's Virginia offense presently disqualifies her from expungement of her New Jersey criminal record under the "clean slate" statute. | Appellate |
| Nov. 6, 2023 | ANIMAL PROTECTION LEAGUE OF NEW JERSEY, ET AL. VS. NEW JERSEY FISH AND GAME COUNCIL, ET AL. (NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION) (A-1019-22 )<br><br>New Jersey's black bear hunt has drawn considerable public and judicial scrutiny over the years. At issue on this appeal is the validity of the emergency rule that precipitated the December 2022 hunt.<br><br>On November 15, 2022, the State authorized the adoption of a new Comprehensive Black Bear (Ursus americanus) Management Policy (CBBMP) and related amendments to the State Fish and Game Code (Game Code), N.J.A.C. 7:25-5.1 to -5.39, pursuant to its emergency rulemaking authority under the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 to -15, thereby permitting a two-week black bear hunt that was scheduled to commence three weeks later on December 5, 2022. The emergency rule was approved by respondents New Jersey Fish and Game Council (Council); Council Chairman Frank J. Virgilio; New Jersey Department of Environmental Protection | Appellate |

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| | (DEP); DEP Commissioner Shawn M. LaTourette; and Governor Philip D. Murphy.<br><br>Following the November 30, 2022 emergent application of appellants Animal Protection League of New Jersey, Angela Metler, Doreen Frega, and others to move for a stay of the November 15, 2022 concurrent emergency rule and proposed 2022 CBBMP, the court temporarily stayed the hunt and considered appellants' application. On December 5, 2022, the court denied appellants' motion and lifted the stay; the Supreme Court denied appellants' ensuing emergent application for relief. The black bear hunt thus proceeded. Thereafter, the 2022 CBBMP and amendments to the Game Code rule were adopted pursuant to formal rulemaking.<br><br>Noting the issues raised on appeal concern matters of public interest, the court considered the merits of appellants' contentions on a full record and concludes the State violated the emergency rulemaking requirements under section N.J.S.A. 52:14B-4(c) of the APA, both by failing to demonstrate enactment of the rule was necessary on fewer than thirty days' notice and the hunt was necessary to avert imminent peril. Accordingly, the court reverses the State's emergency rulemaking. | |
| Nov. 2, 2023 | J.P. ELECTRIC, INC., ET AL. VS. LPMG CONSTRUCTION MANAGEMENT, LLC, ET AL. (L-0219-18, ATLANTIC COUNTY AND STATEWIDE) (A-0918-22)<br><br>Prior to this non-jury trial, defendant served an offer of judgment, which plaintiff rejected. At the close of plaintiff's case in chief, the trial judge granted defendant's motion for involuntary dismissal under Rule 4:37-2(b). Defendant then applied for counsel fees and costs pursuant to Rule 4:58-6, which the judge denied.<br><br>The court holds that because a successful motion under Rule 4:37-2(b) results in the "dismissal of the action" and no verdict in the plaintiff's favor is rendered, the denial of fees and costs was manifestly correct. The policy reasons underlying the zero-recovery exceptions to Rule 4:58-3(c) would be undermined if such fee-shifting were permitted. | Appellate |
| Oct. 27, 2023 | STEVEN BREITMAN VS. ATLANTIS YACHT CLUB (L-3219-21, MONMOUTH COUNTY AND STATEWIDE) (A-0557-22)<br><br>This appeal concerns the interpretation and application of N.J.S.A. 15A:2.1(d), a provision within the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 to 14-26. In relevant part, Section 2.1(d) states:<br><br>No corporation organized under this act shall have or issue capital stock or shares. No dividend shall be paid and no part of the income or profit of a corporation organized under this act shall be distributed to its members . . . but a corporation may pay compensation in a reasonable amount to its members . . . for services rendered, may pay interest on loans or other credit advances by members . . . [and] may confer benefits on its members in conformity with its purposes . . . .<br><br>[(emphasis added).]<br><br>Plaintiff paid $7,500 to become a member of defendant Atlantis Yacht Club, a nonprofit organization formed under N.J.S.A. 15A-2.1. His payment was memorialized in a Certificate of Interest ("COI"). In 2015, plaintiff informed the Club he was withdrawing as a member. Pursuant to the Club's by-laws, upon his withdrawal plaintiff would be eligible to receive a repayment from the Club to "redeem" his COI at such time when a new member joined.<br><br>By the time plaintiff withdrew in 2015, the Club had raised its membership fee to $25,000. Under the extant by-laws, the Club was authorized to pay plaintiff (subject to adjustments for any unpaid charges) the amount of the new member's fee, minus a $5,000 capital assessment, for a net sum of $20,000. When a new member eventually joined in 2020, the Club notified plaintiff that it would pay him the $20,000 redemption amount in installments over three years. The Club accordingly paid plaintiff a first installment in 2020 of $3,333.33, informing him that his second- and third-year annual payments in 2021 and 2022 would each be $8,333.33.<br><br>Before the second-year installment to plaintiff was due in July 2021, the Club had what is described as a "compliance review" conducted by a law firm. The firm advised the Club that making such a payment to withdrawing members at a higher amount than their original membership fee would risk the Club's nonprofit status. That advice prompted the Club to rescind its scheduled installment payments to plaintiff.<br><br>Plaintiff sued the Club to enforce its promise to pay him the additional installments. The Law Division judge ruled in plaintiff's favor. The Club now appeals.<br><br>The novel legal question presented is whether the payment arrangement was, as the Club contends, an illegal contract because it would entail the "distribution" to a member of "income or profit of the corporation" disallowed for nonprofits under N.J.S.A. 15A:2–1(d).<br><br>The court affirms the trial judge's decision. The funds a new member pays the Club for a COI is a form of collateral to secure against future sums the member may owe the Club. Any higher amount paid to the withdrawing member at the time of the COI's redemption is not "income or profit of the corporation" within the meaning of N.J.S.A. 15A:2-1(d). | Appellate |
| Oct. 25, 2023 | DCPP VS. D.A. AND L.A., IN THE MATTER OF THE GUARDIANSHIP OF I.E. AND H.E. (FG-09-0134-20, HUDSON COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1540-21 ) | Appellate |

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| | In this guardianship action, defendant appeals from a January 7, 2022 judgment that terminated her parental rights to her two biological children, who have resided in a non-adoptive home since shortly after their removal in March 2019. At the time of trial, the Division's plan for the children was termination of parental rights followed by placement with their maternal relatives in Dubai. Concurrently, the Division was exploring select home adoption.<br><br>At trial, the Division elicited hearsay testimony and lay opinion from the adoption caseworker concerning the Division's conversations with the consulate and unspecified attorneys in Dubai. Referencing those conversations, the worker testified that placement with the maternal relatives was not a viable option for the children under Dubai law unless the court makes certain findings about defendant's inability to care for the children and defendant consented to the transfer. The trial judge relied on that hearsay testimony and lay opinion to find there were no alternatives to termination under the second part of prong three of the best interests of the child test, N.J.S.A. 30:4C-15.1(a)(3).<br><br>The court concludes the admission of the caseworker's testimony constituted harmful error. The feasibility of adoption or a Kinship Legal Guardianship (KLG)-type arrangement under United Arab Emirates law is best elicited through expert testimony. Further, it appears the testimony elicited by the Division at trial may not have been accurate. Post-judgment, the Division has been exploring placement with the maternal relatives in Dubai – in the absence of defendant's consent. Because the Division's plan appears to be a form of KLG, the Division has not clearly and convincingly proven all alternatives to termination have been ruled out.<br><br>The court therefore remands the matter to the trial judge to reopen the guardianship proceedings. On remand, the judge should consider whether adoption or a KLG-type custodial arrangement with the maternal relatives in Dubai is feasible under Dubai law only after considering the testimony from a qualified expert; and whether, under the current circumstances, termination would not do more harm than good, under the fourth prong, N.J.S.A. 30:4C-15.1(a)(4). The court does not foreclose the judge from considering whether defendant has continued therapeutic services and whether she could safely parent the children in the foreseeable future under the second prong, N.J.S.A. 30:4C-15.1(a)(2). | |
| Oct. 12, 2023 | CARGILL MEAT SOLUTIONS, CORP. VS. DIRECTOR, DIVISION OF TAXATION (TAX COURT OF NEW JERSEY) (A-1537-21)<br><br>In this appeal, the court affirmed the Tax Court's opinions finding plaintiff Cargill Meat Solutions Corp. is subject to the litter-generating tax under the Clean Communities Program Act (the Act), N.J.S.A. 13:1E-213 to -223, which imposes a tax on the sale of litter-generating products in this state involving manufacturers, wholesalers, distributors, and retailers. Cargill is a Delaware corporation headquartered in Kansas that manufactures litter-generating packaged meat products throughout the country. Cargill stores and distributes meat products through its Swedesboro facility.<br><br>The court affirmed the Tax Court's finding that Cargill was not subject to the wholesaler-to-wholesaler exemption under N.J.S.A. 13:1E-716 and rejected Cargill's argument that it should not be considered a manufacturer under the Act because its operations occur out-of-state. The court also affirmed the Tax Court's determination that the monies in the Clean Communities Program Fund were not appropriated under the Annual Appropriations Act and did not violate the Appropriations Clause of the New Jersey Constitution, or the commerce and due process clauses of the United States Constitution. | Appellate |
| Oct. 12, 2023 | JOHN DOE VS. THE ESTATE OF C.V.O., JR., ET AL. (L-3924-21, UNION COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-2780-21)<br><br>This appeal pertains to the civil personal injury prosecution of statutory and common law claims arising from allegations of sexual abuse committed fifty-five years ago against a child by his sister, who also was a minor when the acts occurred.<br><br>In 2019, the New Jersey Legislature enacted the Child Victims Act (CVA), L. 2019, c. 120, which supplemented and amended the statute of limitations for statutory and common law causes of actions for sexual abuse. The CVA enacted two statutes of limitations that expanded the time for filing personal injury claims resulting from the commission of one of the following four enumerated sexual offenses: (1) "the commission of sexual assault"; (2) "any other crime of a sexual nature"; (3) "a prohibited sexual act as defined in [N.J.S.A. 2A:30B-2]"; (4) "or sexual abuse as defined in [the Child Sexual Abuse Act (CSAA), N.J.S.A. 2A:61B-1]." N.J.S.A. 2A:14-2a; N.J.S.A. 2A:14-2b. Pertinent to this appeal is the enacted statute of limitations which provided a two-year revival window for victims to file otherwise time-barred claims for sexual crimes committed against them when they were minors. N.J.S.A. 2A:14-2b.<br><br>The court considered the dismissal of plaintiff's CSAA claims, concluding a derivative statutory passive abuser claim against a parent was properly dismissed by the motion judge as not cognizable under the CSAA because the alleged sexual abuse was committed by a minor. Because the CSAA defines sexual abuse as sexual contact or sexual penetration committed by an adult, a CSAA claim alleging sexual assault by minor does not present a valid cause of action.<br><br>The court further considered the motion judge's dismissal of plaintiff's common law claims stemming from the alleged sexual abuse committed by a minor, which were timely filed under the two-year revival window. The court concluded the common law claims are actionable independent of the CSAA. | Appellate |

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| Oct. 11, 2023 | IN THE MATTER OF ROUTE 66, ETC. (NEW JERSEY DEPARTMENT OF TRANSPORTATION) (A-2564-21)<br><br>This administrative appeal concerns a State roadway project's alteration of a commercial property owner's access to a State highway. It is the first published opinion to address certain provisions adopted in 2018 that extensively revised the State Highway Access Management Code (the "Access Code"), N.J.A.C. 16:47-1.1 to -14.1.<br><br>The pivotal legal issue concerns whether the roadway project's replacement of appellant's direct access to State Highway 66 through an existing driveway with access through a shared driveway connecting to an adjacent landowner's parcel comprises a "revocation" or "removal" of appellant's means of access, or, alternatively, whether the change is simply a "modification" of access. The configuration will enable motorists going to appellant's property from Route 66 to turn into the shared driveway, briefly travel on an easement through the adjacent property, and then branch off to an internal driveway on appellant's lot leading to appellant's commercial building.<br><br>The court affirms the Department of Transportation's final agency decision deeming the new configuration a "modification" of appellant's access to Route 66, rather than a "revocation" of access under N.J.S.A. 27:7-94, or a "removal" of access under N.J.A.C. 16:47-2.1. Under the revised 2018 version of the Access Code, the configuration is a modification because it entails "replacing all ingress or all egress between a State highway and a lot or site with ingress or egress via a private easement on a different lot or site." N.J.A.C. 16-47-2.1.<br><br>The configuration is not a revocation or a removal because it does not eliminate all access to Route 66 and does not require motorists to traverse another public street in order to connect to appellant's premises. The Department did not misapply its authority and regulatory expertise in deeming the roadway changes a modification. | Appellate |
| Sept. 26, 2023 | JUSTIN ZIMMERMAN, ACTING COMMISSIONER, ETC. VS. MICHAEL PATRICK DIVINEY, ET AL. (NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE) (A-3422-21/A-3664-21)<br><br>In these consolidated matters, appellants are public adjusters who challenge final agency decisions by the commissioner of the Department of Banking and Insurance, finding appellants' contracts violated the New Jersey Public Adjuster's Licensing Act (PALA), N.J.S.A. 17:22B-1 to -20 and regulations enacted by the commissioner governing the conduct of public adjusters. N.J.A.C. 11:1-37.1. The commissioner found appellants violated PALA because their contracts did not comply with N.J.A.C. 11:1-37.13(b)(5), which requires every public adjuster contract include "(i) [t]he procedures to be followed by the insured if [they] seek[] to cancel the contract, including any requirement for a written notice; [and] (ii) [t]he rights and obligations of the parties if the contract is cancelled at any time[.]" The commissioner found appellants violated these regulations because their contracts did not contain language permitting consumers to cancel their contracts at any time.<br><br>The court reviewed PALA's legislative history and found no evidence the Legislature intended public adjuster contracts contain provisions for cancellation at any time. The plain language of the regulations only requires that public adjuster contracts set forth the procedures to be followed in the event of a cancellation and advise consumers of their rights in the event of cancellation. Therefore, the commissioner misinterpreted the regulations, and her findings were ultra vires of her authority under PALA. As a result, the court reversed the findings appellants violated N.J.A.C. 11:1-37.13(b)(5)(i) and (ii) and remanded for a recalculation of the penalties and costs imposed on appellants. | Appellate |
| Sept. 13, 2023 | STATE OF NEW JERSEY VS DARRYL NIEVES (17-06-0785 AND 17-11-1303, MIDDLESEX COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (CONSOLIDATED) (A-2069-21/A-2936-21)<br><br>In these matters, the court considered the scientific reliability of expert testimony that shaking alone can cause the injuries associated with shaken baby syndrome (SBS), also known as abusive head trauma (AHT). The State sought to admit the testimony to prove aggravated assault and child endangerment charges against defendants Darryl Nieves and Michael Cifelli, fathers of infant sons who exhibited associated symptoms while in their respective fathers' care. Following a hearing in the Nieves matter pursuant to Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), the trial judge concluded that expert testimony of shaking-only SBS/AHT was not scientifically reliable and barred admission of the evidence at trial. The trial judge in the Cifelli matter adopted the finding.<br><br>The court affirmed the judge's decision in Nieves, holding that the State failed to establish SBS/AHT's general acceptance within the medical community through expert testimony, supporting authoritative scientific studies, and judicial opinions. Where, as here, the underlying theory integrates multiple scientific disciplines, the proponent must establish cross-disciplinary validation to establish reliability. The State failed to do that here. Despite its seeming acceptance in the pediatric medical community, the evidence showed a real dispute surrounding the hypothesis that the biomechanical principles underlying SBS/AHT actually supported the conclusion that shaking only can cause the injuries associated with SBS/AHT. | Appellate |
| Sept. 6, 2023 | S.B.B. VS. L.B.B. (FV-20-1159-21, UNION COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-0305-21)<br><br>In this matter, the court considered whether defendant's act of making and disseminating a video accusing her estranged husband of improperly withholding a get, a Jewish bill of divorce, and asking community members to "press" her husband to deliver the get constituted the predicate act of harassment, in violation of N.J.S.A. 2C:33-4(a), to justify the issuance of a final restraining order under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. The court held that defendant's communication was protected by the Free Speech Clause of the First Amendment and the New Jersey Constitution and did not fall into any of the narrow exceptions—incitement to | Appellate |

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| | imminent violence or true threats—which would rob it of its protected status. The court likewise concluded that because defendant's communication was not impermissibly invasive of plaintiff's privacy and was animated by a legitimate purpose, the acquisition of a get, rather than a purpose to harass, it was not violative of the harassment statute. Lastly, the court held that plaintiff's allegation that there was a general tendency of violence toward get refusers in the Jewish community was inapposite because the claim was not supported by the record and because the theoretical possibility that a third party will commit a criminal act cannot render otherwise permissible speech unlawful. As a result, the court vacated the final restraining order entered against defendant. | |