DATE NAME OF CASE (DOCKET NUMBER)

8-5-10 Gina Stelluti v. Casapenn Enterprises, LLC d/b/a Powerhouse Gym (A-43-09)

The Court affirms the judgment of the Appellate Division, which upheld the dismissal of plaintiff Gina Stelluti's negligence claims against defendant Powerhouse Gym for injuries she sustained on exercise equipment. It is not contrary to the public interest, or to a legal duty owed, to enforce the pre-injury waiver of liability agreement that Stelluti entered into with Powerhouse Gym, which limited the gym's liability for injuries arising from a patron's participation in instructed activity and voluntary use of the gym's equipment.

8-4-10 State v. Wendell Mann (A-56-09)

The trial court fairly concluded that the police had reasonable and articulable suspicion to support an investigatory stop of defendant and that the seizure of drugs from both locations was lawful.

8-3-10 State v. Jeremiah Hupka (A-36-09)

The State's demand for permanent disqualification was not supported on this record; the offense to which Hupka pled does not compel his forfeiture of office and permanent disqualification under N.J.S.A. 2C:51-2.

8-3-10 Robertet Flavors, Inc. v. Tri-Form Construction, Inc. (A-70/71-08)

Courts confronted with spoliation in commercial construction litigation should consider the identity of the spoliator; the manner in which the spoliation occurred; the prejudice to the non-spoliator and whether that party bears any responsibility for the loss of spoliated evidence; and the alternate sources of information available to the non-spoliator. Courts should balance all of those considerations in crafting an appropriate remedy consistent with fundamental fairness.

8-2-10 New Jersey Lawyers' Fund for Client Protection v. Stewart Title Guaranty Company (A-44-09)

No agency relationship existed between the title company and the attorney who misappropriated the clients' funds at the time the misappropriation occurred; the title company is not liable for the misappropriation.

7-29-10 IMO David J. Witherspoon (D-157-08)

For his unethical conduct in this matter and his history of discipline, David J. Witherspoon, is suspended from the practice of law for a period of one year and until he complies with conditions by the Court.

7-29-10 State in the Interest of A.S. (A-58/59-09)

Upon consideration of the totality of the circumstances, A.S.'s confession was not knowingly, intelligently, and voluntarily given. In addition, the confession by far was the most damning piece of evidence against A.S. and thus the court cannot say that there was no reasonable possibility that its introduction into evidence contributed to the delinquency adjudication, and so, in the particular circumstances presented in this case, the Court is constrained to reverse A.S.'s conviction and remand for new proceedings.

7-28-10 State of New Jersey v. Shem Walker (A-40-09)

Based on the evidence presented in the criminal trial in this matter, the trial court should have sua sponte charged the jury with the statutory affirmative defense to felony murder. However, because the jury's findings negated most of the factors required to establish the affirmative defense, a new trial is not warranted.

7-28-10 Gloria Hubner and Michael Hubner v. Spring Valley Equestrian Center (A-52-09)

The Equine Act operates as a complete bar to plaintiff's claim because her injuries were caused by

one of the inherent risks of equine activities as defined in the statute.

7-27-10 Myron Corporation v. Atlantic Mutual Insurance Corporation (A-53-09)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Reisner's opinion.

7-27-10 In the Matter of Philip N. Boggia, Judge of the Municipal Court (D-118-08)

In light of the unique facts presented, Philip Boggia did not violate Canon 7A (4) of the Code of Judicial Conduct. The ban on making political contributions from a law firm's business account must apply not only to part-time municipal judges but to the law firm and the lawyers with whom they practice. The matter is referred to the Professional Rules Responsibility Committee and the Advisory Committee on Extrajudicial Activities to develop appropriate rules to implement this decision.

7-22-10 Abby Ryan, et al. v. Andrew Renny, M.D. (A-50-09)

Based on the plain language of the Affidavit of Merit statute, plaintiff Abby Ryan satisfied the good faith standard of the statute's waiver provision, which permits a non-board-certified physician to certify that the actions of a board-certified specialist did not meet the required standard of care.

7-21-10 State v. Richard Clarke (A-11-09)
State v. William T. Dolan (A-12-09)

An informal hearing is sufficient for the Drug Court to give full and fair consideration to a defendant's application for admission into the Drug Court program. However, because it is not clear whether the trial court applied the correct legal standard for admission under the "second track" of the requirements, each case is remanded for further proceedings.

7-20-10 State v. Eugene Basil (A-34-09)

The on-scene identification by a citizen informant and corroborative discovery of the weapon gave officers probable cause to arrest defendant and, therefore, defendant's volunteered statement to police should not have been suppressed as the product of an unlawful arrest. In addition, the members of the Court being equally divided, the judgment of the Appellate Division is affirmed, holding that the non-appearing witness's testimonial hearsay statement was inadmissible under the Sixth Amendment Confrontation Clause. The admission of the statement had the clear capacity to cause an unjust result and was not harmless error beyond a reasonable doubt.

7-20-10 State v. Alice O'Donnell (A-54-09)

The judgment of the Appellate Division, which upheld the trial court's denial of defendant Alice O'Donnell's motion to suppress evidence, is affirmed substantially for the reasons expressed in Judge Skillman's opinion.

7-19-10 State v. Graciano Martinez Rosales (A-32-09)

On the evidence presented, the trial court properly exercised its discretion to exclude the proposed expert testimony that defendant confessed to a crime he did not commit.

7-15-10 TAC Associates v. New Jersey Department of Environmental Protection, et al. (A-57-09)

Under the Brownfield and Contaminated Site Remediation Act, an applicant for an Innocent Party Grant to defray the cost of remediating a contaminated property must own the property at the time it submits the application. Because plaintiff TAC Associates no longer owned the property when it applied for the grant, it was ineligible.

7-14-10 State v. Johnnie Davila (A-20-09)

A protective sweep conducted on private property is not per se invalid merely because it does not occur incident to an arrest. Law enforcement officers may conduct a protective sweep only when (1) the officers are lawfully within private premises for a legitimate purpose, which may include consent to enter; and (2) the officers on the scene have a reasonable articulable suspicion that the area to be swept harbors an individual posing a danger. The sweep will be upheld only if it is (1) conducted quickly, and (2) restricted to areas where the person posing a danger could hide. When an arrest is not the basis for entry, the police must be able to point to dangerous circumstances that developed once the officers were at the scene.

7-13-10 State v. Laura Moran (A-55-09)

The license suspension provision of N.J.S.A. 39:5-31, which is published in the Motor Vehicle Code of the New Jersey Statutes Annotated, is not "hidden," and defendant, like all motorists, is presumed to know the law. To ensure that license suspensions meted out pursuant to N.J.S.A. 39:5-31 are imposed in a reasonably fair and uniform manner, so that similarly situated defendants are treated similarly, the Court today defines the term "willful violation" contained in N.J.S.A. 39:5-31 and enunciates sentencing standards to guide municipal court and Law Division judges.

7-12-10 State v. German Marquez (A-35-09)

In this case involving a conviction for refusing to submit to a chemical breath test, the Court holds that New Jersey's implied consent law, N.J.S.A. 39:4-50.2, and refusal law, N.J.S.A. 39:4-50.4a, require proof that an officer requested the motorist to submit to a chemical breath test and informed the person of the consequences of refusing to do so. The statement used to explain to motorists the consequences of refusal must be given in a language the person speaks or understands. Because defendant German Marquez was advised of these consequences in English, and there is no dispute that he did not understand English, his refusal conviction is reversed.

7-8-10 State of New Jersey in the Interest of J.S. (A-85-08)

The Court finds nothing out of the ordinary in the juvenile court's determination to exercise its discretion to order probation and to place that condition of probation on J.S. Placing J.S. on probation with such a condition was entirely within the court's authority under the Juvenile Justice Code. The court erred, however, in believing that the Division of Youth and Family Services (DYFS) was the appropriate mechanism for effectuating that disposition under N.J.S.A. 2A:4A-43(b)(5).

7-7-10 Wendy M. Flomerfelt v. Matthew P. Cardiello (A-4-09)

The insurer's use of the phrase "arising out of" with no further qualification makes the exclusion ambiguous, requiring an interpretation consistent with the insured's reasonable expectations. For the exclusion to apply, the injury must "originate in," "grow out of" or have a "substantial nexus" to the excluded act of drug use, transfer or possession. The insurer's duty to indemnify cannot be resolved because the present record does not permit answers to questions about the sequence of events leading to Flomerfelt's injuries and the cause or causes of her injuries. The duty to defend attaches because some theories of liability advanced in the complaint would not be excluded from coverage under the policy.

6-29-10 State v. Tysen R. Privott (A-7-09)

Based on the totality of the circumstances, there were specific and particularized reasons for the officer to conduct an investigatory stop and to frisk defendant Tysen R. Privott. However, the officer's conduct in lifting defendant's shirt exceeded the scope of a reasonable intrusion that is permitted as part of a Terry stop.

6-28-10 Paragon Contractors, Inc. v. Peachtree Condominium Association (A-41-09)

The conference instituted by the Court in Ferreira v.

Rancocas Orthopedic Associates, 178 N.J. 144 (2003), was created to remind parties of their obligations under the Affidavit of Merit statute and to avoid the dismissal of meritorious claims through inadvertence. It is not a tolling device. However, because of the confusion in the courts over the scheduling of the Ferreira conference and the effect of its omission, the Court concludes that relief should be afforded to the parties in the limited circumstances of this case.

6-22-10 Klumpp v. Borough of Avalon (A-49-09)

Ordinarily, the relief available to a property holder from a governmental taking accomplished without adherence to the Eminent Domain Act's requirements would be to pursue an inverse condemnation action within the six-year statute of limitations period under N.J.S.A. 2A:14-1. On the unique facts of this case, however, equity demands that plaintiffs be allowed the opportunity to amend their complaint to add a claim for inverse condemnation to pursue valuation of their property at the time of the taking that occurred in or around 1965, when the dune was constructed on their property.

6-21-10 Estate of Nick Hanges v. Metropolitan Property & Casualty Insurance Company (A-62-09)

The trial court's exclusion of decedent's statement to the police constitutes an abuse of discretion and cannot be sustained. Furthermore, because the trial court should have considered decedent's statement to the police as competent, relevant and material evidence of a "phantom vehicle" and because the Supreme Court owes no deference to the trial court's legal conclusions in respect of its summary judgment order, the Court concludes that the entry of summary judgment in defendant's favor was in error.

6-16-10 Nicholas Kalogeras v. 239 Broad Avenue, L.L.C. (A-42-09)

The requirement for governmental approval is an implied condition of all agreements for the transfer of alcoholic beverage licenses, and, subject to that condition precedent, a contract for the transfer of a liquor license can be specifically enforced, but only

to the extent the parties would be required to act, in accordance with the implied covenant of good faith and fair dealing, in respect of the statutory condition precedent of prior governmental approval. To the extent that 73 Bowling Center v. Aristone is interpreted otherwise, it is disapproved.

6-9-10 State v. Karlton L. Blackmon (A-18-09)

Apart from those whose rights to speak at a sentencing proceeding are established by the Constitution, statutes, and Court Rules, the decision about who may be heard remains within a sentencing court's discretion. Here, the error was not necessarily the refusal to permit defendant's step-father to speak, but the failure to provide some expression of reasons for that decision sufficient to permit appellate review of whether the refusal was arbitrary or capricious. The appropriate remedy is a remand to the Law Division for an expression of reasons, not a remand for resentencing.

6-8-10 Linden Board of Education v. Linden Education Association on behalf of John Mizichko (A-17-09)

The fair and reasonable interpretation of the decision of the arbitrator is that he found no just cause to terminate the employee. As directed by the parties, he then imposed an appropriate sanction. The arbitrator's determination satisfied the reasonably debatable standard of review and did not exceed the limits of his authority.

6-7-10 State v. P.S. (A-21-09)

The Court declines to adopt a *per se* rule of exclusion in a case in which a child sex abuse victim's taped statement is lost. The Court reaffirms the totality of circumstances standard as the appropriate benchmark for the admissibility of a tender years statement under N.J.R.E. 830 (c) (27). In addition, the Court reiterates its holdings in State v. Cook and State v. Branch that simultaneous notes taken of a child sex abuse victim's interview should not be destroyed but

should be maintained throughout trial. The Court declines to interpret its decisions in State v. G.S. and State v. G.V. as providing an automatic basis for the admission of other-crimes evidence to counter a bias or vendetta defense. Rather, such other-crimes evidence may only be admitted if it satisfies N.J.R.E. 404(b) and is not offered to prove the defendant's criminal propensity.

6-3-10 Joseph M. Guido, et al. v. Duane Morris, LLP, et al. (A-31-09)

When a client alleges that he entered into a settlement based on negligent advice from his lawyers, he need not first seek to vacate the settlement, but may proceed directly against those lawyers the plaintiff asserts provided the negligent advice that culminated in the settlement.

6-2-10 State v. Pablo Carvajal (A-5-09)

The State satisfied its burden of proving by a preponderance of the evidence that the duffel bag was abandoned. Carvajal denied having any ownership or possessory interest in the bag, and the police attempted to identify other potential owners. Carvajal therefore had no standing to challenge the warrantless search of the bag.

6-1-10 New Jersey Division of Youth and Family Services v. C.M. (A-74-08)

The judgment of the trial court terminating C.M.'s parental rights is vacated. Defendant C.M. did not endanger his child's safety, health or development, he was willing to provide a safe and stable home for the child, DYFS failed to make reasonable efforts to provide services to help C.M. correct the circumstances that led to his child's placement outside the home, the trial court did not consider, in any substantive manner, alternatives to termination of parental rights, and there is no basis in the record to conclude that termination of C.M.'s parental rights to the child will not do more harm than good. In these circumstances, severing C.M.'s ties to his son constituted a gross and unwarranted abuse of the

State's extraordinary power over its citizens.

6-1-10 Rose Nini v. Mercer County Community College, et al. (A-13/14-09)

The refusal to renew the contract of an employee over seventy years old, on the basis of age, is a prohibited discriminatory act under the New Jersey Law Against Discrimination (LAD).

5-19-10 Iron Mountain Information Management, Inc. v. The City of Newark (A-100-08)

The Legislature intended to limit the right to actual notice of blight designation to owners of record and those whose names are listed on the tax assessor's records. Based on the facts presented, Iron Mountain was not deprived of any due process protections afforded by the New Jersey or U.S. Constitutions.

5-17-10 Philip A. Besler, et al. v. Board of Education of West Windsor-Plainsboro Regional School District, et al. (A-81-08)

For purposes of 42 U.S.C. § 1983, the Board of Education President was acting as a final policymaker while presiding over the public comment period of the Board meeting and therefore the Board could be held liable for a violation of plaintiff's First Amendment rights. In addition, Besler presented sufficient evidence for the jury to determine that the Board silenced him for no reason other than the unpopular viewpoint he expressed, in violation of his free speech rights. However, Besler offered minimal evidence of emotional distress and the damages award is so clearly excessive that it constitutes a miscarriage of justice.

5-12-10 In the Matter of the Tenure Hearing of Gilbert Young, Jr., District of the Borough of Roselle, Union County (A-39-09)

The determination by the Division of Children and Families that allegations of child abuse of a minor student by a teacher were unfounded did not preclude

the school district from filing disciplinary charges seeking to terminate the teacher's employment.

5-11-10 Thomas John Salzano v. North Jersey Media Group, Inc. (A-78/79-08)

The fair-report privilege extends to defamatory statements contained in filed pleadings that have not yet come before a judicial officer. The privilege is a hybrid, conditional insofar as it attaches only to full, fair, and accurate reports of government proceedings but becoming absolute once those prerequisites are met. Fault, sufficient to defeat the privilege, occurs when the publisher fails to do what is necessary to render the report full, fair, and accurate. If the publication satisfies that standard, the state of mind of the publisher is irrelevant. The portion of the challenged publications that was based on a bankruptcy complaint was full, fair and accurate, and thus, immune from a defamation lawsuit because of the fair-report privilege. Because the publications also contained defamatory information derived from sources other than the complaint, plaintiff may pursue his lawsuit in connection therewith.

5-6-10 State v. Danny Mai (A-98-09)

The officers presented sufficient facts in the totality of the circumstances that would create in a police officer a heightened awareness of danger that would warrant an objectively reasonable officer in securing the scene in a more effective manner by ordering the passenger to exit the car. Those same circumstances authorize a police officer to open a vehicle door as part of ordering a passenger to exit. Thus, the seizure of the weapon was proper under the plain view doctrine, and the seizure of the holster and loaded magazine from the passenger was lawful as the fruits of a proper search incident to an arrest.

5-4-10 State v. Duane Kelly (A-24-09)

The Court affirms the judgment of the Appellate Division upholding defendant's murder, felony-murder, and armed-robbery convictions. Defendant's second

trial was not barred by the principles of collateral estoppel, which are incorporated in the Double Jeopardy Clause. Because of the seemingly inconsistent verdicts in the first trial, defendant cannot establish that the jury determined an ultimate fact that precluded a retrial of the reversed convictions. Moreover, even if the verdicts were not inconsistent, the Court would not be inclined to apply the constitutional-equitable doctrine of collateral estoppel when the ultimate issue defendant seeks to preclude from relitigation is one that might well have been founded on a defense witness's perjured testimony, testimony that tainted both the acquittals and convictions in the first trial.

4-26-10 City of Atlantic City v. Zachirias Trupos (A-23-09)

For purposes of RPC 1.9, matters are "substantially related" if (1) the lawyer for whom disqualification is sought received confidential information from the former client that can be used against that client in the subsequent representation of parties adverse to the former client, or (2) facts relevant to the prior representation are relevant and material to the subsequent representation. Disqualification is unwarranted here because, during its representation of the City in 2006-2007, the law firm did not receive confidential information from the City which can be used against it in the prosecution of the 2009 tax appeals adverse to the City. Also, the facts relevant to the law firm's prior representation of the City are not relevant and material to its representation of the taxpayers in the 2009 tax appeals.

4-8-10 Hermes Reyes, et al. v. Harry C. Egner, et al. (A-90-08)

The members of the Supreme Court being equally divided, the judgment of the Appellate Division is affirmed. The Hopkins duty of care to warn of any reasonably discoverable dangerous condition in the home does not extend to a real estate agent facilitating a short-term lease of a summer rental.

4-7-10 State of New Jersey v. J.G. (A-44-08)

The cleric-penitent privilege applies when, under the totality of the circumstances, an objectively reasonable penitent would believe that a communication was secret, that is, made in confidence to a cleric in the cleric's professional character or role as a spiritual advisor.

4-6-10 In re: Petition for Referendum of the City of Trenton Ordinance 09-02

The relevant provision of the Municipal Utilities Law, N.J.S.A. 40:62-3.1, eliminates only the mandatory requirement of a referendum; it does not affect the citizens' right to contest an ordinance as provided by the Faulkner Act. Ordinance 09-02 of the City of Trenton, which authorizes the sale of a municipal water utility system to a private entity, must be submitted to the voters.

3-31-10 New Jersey Division of Youth and Family Services v. M.C. III
In the Matter of M.C. IV and N.C. (A-96/97-08)

The trial court's findings of abuse and neglect in this case were supported by sufficient evidence, defendant M.C. is barred by the doctrine of invited error from contesting on appeal the admission of documents that were admitted into evidence with his express consent, and the trial court did not err in relying on those documents.

3-30-10 Marina Stengart v. Loving Care Agency, Inc. (A-16-09)

Under the circumstances, Stengart could reasonably expect that e-mail communications with her lawyer through her personal, password-protected, web-based e-mail account would remain private, and that sending and receiving them using a company laptop did not eliminate the attorney-client privilege that protected them. By reading e-mails that were at least arguably privileged and failing to promptly notify Stengart about them, Loving Care's counsel violated RPC 4.4(b).

3-22-10 State of New Jersey in the Interest of C.V. (A-6-09)

The Supreme Court has no disagreement with the Appellate Division's unassailable determination that C.V.'s placements in YCS and VisionQuest do not satisfy the intended concept of detention in Rule 5:21-3(e) to qualify for mandatory day-to-day credit. In addition, the Court holds that the Family Part court retains the flexibility, in appropriate cases, to grant a probationer who violated or otherwise imperfectly performed the conditions of probation any sentence the court could have initially imposed.

3-17-10 Lucent Technologies, Inc. v. Township of Berkeley Heights (A-95-08)

Although the municipality's dismissal motion was not untimely, the Court reverses the appellate panel's judgment that that tax appeal be dismissed in its entirety and remands to the Tax Court for a reasonableness hearing consistent with the Court's holding in Ocean Pines, Ltd. V. Borough of Point Pleasant.

3-17-10 1717 Realty Associates, LLC v. Borough of Fair Lawn (A-26-09)

Judgment of the Appellate Division is affirmed based on the Court's judgment in Davanne Realty v. Edision Township, also decided today.

3-17-10 Davanne Realty v. Edison Township (A-25-09)

Judgment of the Appellate Division is affirmed substantially for the reasons set forth in Judge Grall's thorough and thoughtful opinion. The statutory-appeal dismissal sanction does not violate the Excessive Fines Clause of the Eighth Amendment or the State Constitution.

3-9-10 State v. Jason V. Broom-Smith (A-3-09)

The Court affirms the Appellate Division's determination that N.J.S.A. 2B:12-6 and Rule 1:12-3, which address the designation of judges, were broad enough to authorize the Berkeley Township municipal judge to issue the search warrant for defendant's

house in Dover Township under the circumstances presented in this case.

3-8-10 In re Election Law Enforcement Commission Advisory Opinion No. 01-2008 (A-83-08)

The Election Law Enforcement Commission's interpretion of N.J.S.A. 19:44A-11.2(a)(6) is not plainly unreasonable. An "ordinary" expense of holding public office does not include legal costs incurred defending against an indictment charging official corruption.

2-24-10 New Jersey Division of Youth and Family Services v. L.L. (A-68-08)

Pursuant to N.J.S.A. 3B:12A-6(f), the parent seeking to terminate the kinship legal guardianship has the burden of proving by clear and convincing evidence both that the parent has overcome the incapacity or inability to care for the child that led to the original guardianship proceedings, and that termination of kinship legal guardianship is in the best interest of the child.

2-23-10 State v. Fareed M. Gandhi (A-101-08)

The jury charge in this case was not erroneous because New Jersey's anti-stalking statute, N.J.S.A. 2C:12-10, reaches and punishes one who purposefully or knowingly engages in a course of stalking conduct that would cause a reasonable victim to fear bodily injury or death. The statutory offense applies even if the defendant is operating under the motivation of an obsessed and disturbed love the purportedly obscures appreciation of the terror that his or her conduct would reasonably cause to the victim.

2-18-10 Vivian Crespo v. Anibal Crespo (A-28-09)

Judgment of the Appellate Division is affirmed substantially for the reasons expressed in the thorough opinion of Judge Fisher. The Prevention of Domestic Violence Act is constitutional.

2-3-10 State v. Thomas Best (A-77-08)

A school administrator need only satisfy the lesser reasonable grounds standard rather than the probable cause standard to search a student's vehicle parked on school property.

2-2-10 Robert Nicastro, et al. v. McIntyre Machinery America, Ltd. (A-29-08)

This Court reaffirms the reasoning of its decision in Charles Gendler & Co. v. Telecom Equipment Corp., 102 N.J. 460 (1986), and holds that a foreign manufacturer that places a defective product in the stream of commerce through a distribution scheme that targets a national market, which includes New Jersey, may be subject to the in personam jurisdiction of a New Jersey court in a product-liability action.

1-25-10 Asbury Park Press v. County of Monmouth, et al. (A-8-09)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Ashrafi's opinion. The Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, requires disclosure of a settlement agreement between the County of Monmouth and an employee who filed a lawsuit claiming sex discrimination, sexual harassment, retaliation, and a hostile work environment. The Court also agrees that plaintiffs Asbury Park Press and John Paff are entitled to reasonable attorney's fees, which the trial court is to determine on remand.

1-25-10 State v. Terence McCabe (A-88-08)

Part-time municipal court judges must recuse themselves whenever the judge and a lawyer for a party are adversaries in some other open, unresolved matter.

1-21-10 State v. Cory Bieniek (A-99-08)

The sentence imposed on defendant Cory Bieniek by the trial court is valid and must be affirmed.

1-21-10 Wilman Pinto and Alvaro Vasquez v. Spectrum Chemicals, et al. (A-94-08)

The Court upholds the decision of the trial judge who found that the parties did not reach a settlement through the mediator. In addition, the Court lifts the bar that Coleman v. Fiore Bros., 113 N.J. 594 (1989) placed on public-interest attorneys and defendants from simultaneously negotiating merits and attorneys' fees claims in Consumer Fraud Act (CFA) cases. In the Conscientious Employee Protection Act (CEPA) and the New Jersey Law Against Discrimination (LAD) claims at issue in this case, and in future CFA cases, public-interest counsel may simultaneously negotiate merits and fees. Defendants, however, may not insist on a waiver of fees or dictate how settlement proceeds should be divided between a public-interest attorney and her client in a fee-shifting case.

1-14-10 Fernando Roa and Liliana Roa v. LAFE and Marino Roa (A-72-08)

Under New Jersey's Law Against Discrimination, the statute of limitations begins to run on a discrete retaliatory act, such as a discharge, on the date on which the act takes place, and a timely claim based on post-discharge retaliatory conduct does not sweep in a prior untimely discrete act which the victim knew or should have known gave rise to a retaliation claim. However, a discrete post-discharge act of retaliation is independently actionable even if it does not relate to present or future employment, and evidence relating to barred claims may be admissible in the trial of the timely claim.

1-6-10 Hildegard Kay v. George Kay (A-93-08)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Grall's opinion below. A trial court may not refuse to consider the equitable claims raised by the estate of a deceased spouse who, during the divorce litigation, was attempting to pursue a claim that the surviving spouse had diverted marital assets.

12-29-09 State v. Peter O'Brien (A-89-08)

Defendant was entitled to face a single adversary, the State. He should not have had to bear the

consequences of a judge who appeared to disbelieve him and his expert witness, revealed that disbelief to the jury, and supported a witness adverse to him. Because that conduct was clearly capable of producing an unjust result, a new trial is in order. However, the trial judge's refusal to provide the jury with written instructions did not constitute plain error and therefore does not warrant reversal.

12-29-09 State v. Richard Chippero (A-50-08)

Although the evidence that justifies both an arrest and the issuance of a search warrant must support a finding of probable cause, the two probable cause determinations are not identical. A finding of probable cause as to one does not mean that probable cause as to the other must follow, nor does the lack of one compel a finding of the lack of proof for the other. Accordingly, nothing in the Supreme Court's earlier holding in this case (Chippero I) should be perceived as having compelled the suppression of the evidence seized from defendant's home.

12-17-09 Edward Zabilowicz v. Roslyne Kelsey (A-87-08)

In this automobile insurance case, under the plain language of N.J.S.A. 39:6A-8(a), the limitation-on-lawsuit threshold can be invoked only by a defendant who is eligible to receive New Jersey PIP benefits. Because the defendant's out-of-state insurance policy does not provide her with this State's PIP benefits, she is subject to suit for noneconomic damages without restriction under that statute.

12-15-09 Praxair Technology, Inc. v. Director, Division of Taxation (A-91/92-08)

Praxair's business arrangement with its corporate parent gave rise to liability under the Corporation Business Tax Act, N.J.S.A. 54:10A-2, for the years 1994-1996, before an example was added to the relevant regulation, N.J.A.C. 18:7-1.9.

12-8-09 Highland Lakes Country Club and Community Association v. Frank W. Nicastro, Sr., et al. (A-10-09)

Judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Grall's written opinion. Application of the Affidavit of Merit Statute, N.J.S.A. 2A:53A-26 to -29, would be inconsistent with its overall purposes under the present circumstances of this case.

12-7-09 State v. Quadir Whitaker (A-67-08)

Defendant could not be found guilty as an accomplice of robbery and felony murder unless he shared the principal's intent to commit the theft before or at the time the theft or attempted theft was committed. Because the prosecutor improperly advised the jury that it could convict defendant or robbery and felony murder solely on the ground that he aided in the robber's escape, even if he did not participate or assist in any way in the attempted theft or killing, the Court is constrained to order a new trial.

11-23-09 In the Matter of the State Grand Jury Investigation (A-80-08)

The Rules of Professional Conduct forbid a lawyer from accepting compensation for representing a client from one other than the client unless three factors coalesce: (1) the client gives informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and (3) information relating to the representation of the client is protected. Applying these Rules, the Court affirms the trial court's denial of the State's motion to disqualify attorneys retained and paid by an employer to represent employees who were potential witnesses in a grand jury investigation into the employer's conduct.

11-10-09 Hina K. Patel v. New Jersey Motor Vehicle Commission (A-86-08)

Under N.J.S.A. 39:4-97.2(e), the exemption provision for assessing motor vehicle penalty points for an unsafe driving offense that occurs more than five years after "the prior offense," "the prior offense" refers only to the most recent preceding offense based on both a plain reading of the statute and a

review of the legislative history. Thus, the Motor Vehicle Commission correctly imposed motor vehicle points on Patel for having a fourth unsafe driving conviction in 2007, only one year after the date of her prior, third, unsafe driving offense.

11-2-09 Litton Industries, Inc. v. IMO Industries, Inc., et al. (A-10/11-08)

The Purchase and Sale Agreement provided for attorneys' fees and costs and the amount of the fee award is governed by traditional principles applicable to attorneys' fee awards, within the context of the contract. The trial court did not abuse its discretion in the amount awarded for pre-judgment interest or commit error in the claimed trial deviations.

10-14-09 Thomas Best v. C&M Door Controls, Inc. (A-57-08)

A defendant can never be awarded fees under Rule 4:58, the offer-of-judgment rule, in a case involving the Conscientious Employee Protection Act (CEPA), the Prevailing Wage Act (PWA), or a similar fee-shifting statute. However, a trial judge may take into account a plaintiff's unreasonable rejections of an offer of judgment in calculating plaintiff's award under such a statute.

9-30-09 In re: Attorney General's "Directive on Exit Polling: Media and Non-partisan Public Interest Groups," Issued July 18, 2007 (A-47-08)

New Jersey's election law statutes direct that voters will have a 100-foot free, unobstructed passage to polling places, without interference from any person, and this ban applies to all expressive activities within the 100-foot zone, including exit polling and handing out voting-rights cards. The election laws are constitutional because they are reasonable time, place, and manner restrictions under the First Amendment intended to secure and enhance another vital constitutional right – the right to vote.

9-24-09 Joan Marino v. Larry L. Marino, et al. (A-18-08)

The plain language of the statutory provisions relating to interment and disinterment expresses that a different regulatory scheme applies to each; therefore, the Appellate Division erred in determining that the provisions must be read in pari materia.