

DATE NAME OF CASE (DOCKET NUMBER)

8-20-13 J.B. v. W.B. (A-111-11; 069972)

A parent seeking to modify a negotiated agreement for the support of a disabled child through the establishment of a special needs trust must present a specific plan and demonstrate how the proposed trust will benefit the disabled child. When a disabled child is the subject of a proposed special needs trust, it is within the trial court's discretion to appoint a guardian ad litem.

8-19-13 State v. Santino J. Micelli, a/k/a Santino J. Miceli, a/k/a Santino Miceli (A-1-12; 070453)

The reliability of the identifications should have been assessed at a Wade hearing before the trial court.

8-15-13 Willingboro Mall, LTD. v. 240/242 Franklin Avenue, L.L.C. (A-62-11; 069082)

Plaintiff expressly waived the mediation-communication privilege and disclosed privileged communications. The oral settlement agreement reached by the parties is upheld. Going forward, however, a settlement that is reached at mediation but not reduced to a signed written agreement will not be enforceable.

8-14-13 Karen Cole v. Jersey City Medical Center (A-6-12; 070542)

Evaluating the totality of the circumstances and applying a fact-sensitive analysis, Liberty's active participation in the litigation for twenty-one months before invoking the arbitration provision on the eve of trial constituted a waiver of its right to arbitrate.

8-13-13 Harlan W. Waksal v. Director, Div. of Taxation (A-103-11; 069599)

In accordance with the plain language of N.J.S.A. 54A:5-1c, the worthless nonbusiness debt at issue is not a "sale, exchange or other disposition of property." Section 5-1c does not integrate into the Act every provision of the Internal Revenue Code governing capital gains and losses, and 26 U.S.C.A. § 166(d) (1) (B) does not constitute a federal "method of accounting" for purposes of this case.

8-12-13 Paul Emma v. Jessica Evans (A-112-11; 070071)

In a dispute to rename a child of divorced parents, the party seeking to alter the surname jointly given to the child at birth bears the burden of proving by a preponderance of the evidence that the change is in the child's best interest. Irrespective of whether the parents were married at the time of the child's birth, the best-interests-of-the-child test should be applied in a renaming dispute without a presumption in favor of the custodial parent's decision to change the jointly given surname of the child.

8-8-13 State v. Shaffona Morgan (A-119-11; 069967)

Both ex parte communications between the trial judge and jury were improper and the trial court erred in permitting the jurors to take written instructions home for the weekend. Despite those errors, the record affirmatively shows that the contacts and the decision to permit the jury to take home written instructions did not prejudice defendant and had no tendency to influence the verdict.

8-7-13 Michael E. Hirsch v. Amper Financial Services, LLC
(A-9-12; 070751)

Although traditional contract principles may in certain cases warrant compelling arbitration absent an arbitration clause, the intertwinement of the parties and claims in a dispute, viewed in isolation, is insufficient to warrant application of equitable estoppel to compel arbitration.

8-6-13 Norfolk Southern Railway Company v. Intermodal Properties, LLC (A-117-11; 070240)

Norfolk Southern's proposed use meets the requirement of N.J.S.A. 48:3-17.7 that the taking be "not incompatible with the public interest." Intermodal may not invoke the prior public use doctrine because it lacks the power to condemn and its proposed use is neither prior nor public. As used in N.J.S.A. 48:12-35.1, "exigencies of business" does not necessitate an urgent need for land in order to justify a taking. Rather, it limits a railroad's power to condemn to those circumstances where the general needs or ordinary course of business require it.

8-5-13 Ten Stary Dom Partnership v. T. Brent Mauro (A-52-11; 069079)

Defendant satisfied the positive and negative criteria and is therefore entitled to a bulk variance from a frontage zoning requirement. The trial court's affirmance of the Board's denial of the variance without prejudice violated the principle of res judicata.

7-30-13 State v. Samander S. Dabas (A-109-11; 069498)

The prosecutor's office violated its post-indictment discovery obligations under Rule 3:13-3, when its investigator destroyed his notes of a two-hour pre-interview of defendant. The trial court abused its discretion in denying defendant's request for a charge that would have allowed the jury to draw an adverse inference from the destruction of the interview notes more than a year after the return of the indictment.

7-29-13 State v. Bruce D. Sterling (A-93-11; 068952)

It was error to join the three crimes involving K.G., L.R., and S.P. in one trial and to admit evidence relating to the S.P. burglary in the second trial involving offenses against J.L. The convictions involving K.G. and J.L. were properly reversed. However, based on the strong evidence against defendant in respect of the crimes committed against L.R. and S.P., the errors were harmless and do not require retrial of those charges.

7-24-13 Doreen Longo v. Pleasure Productions, Inc. (A-37-11; 069257)

In cases arising under CEPA, an upper management jury charge is required to support an award of punitive damages against an employer, which can only be awarded if the jury finds wrongful conduct under the clear and convincing evidence standard.

7-23-13 TSI East Brunswick, LLC v. Zoning Bd. of Adjustment of Twp. of East Brunswick (A-124-11; 070383)

The relaxed standard of proof established in Coventry Square, Inc. v. Westwood Zoning Bd. of Adjustment, 138 N.J. 285 (1994), applies to the evaluation of the negative criteria in an application for a conditional use variance. The enhanced quality of proofs standard established in Medici governing use variances is inapplicable to an application for a conditional use variance.

7-22-13 State v. John J. Lawless, Jr. (A-89-11; 069703)

Because defendant pled guilty to only one criminal offense, aggravated manslaughter, the sole "victim" for purposes of N.J.S.A. 2C:44-1(a)(2) was the deceased driver, and the harm inflicted upon the passengers is irrelevant to aggravating factor two. Their injuries may be considered part of the "nature and circumstances of the offense." N.J.S.A. 2C:44-1(a)(1). Thus, the court may consider aggravating factor one when defendant is resentenced.

7-18-13 State v. Thomas W. Earls (A-53-11; 068765)

Article I, Paragraph 7 of the New Jersey Constitution protects an individual's privacy interest in the location of his or her cell phone. Police must obtain a warrant based on a showing of probable cause, or qualify for an exception to the warrant requirement, to obtain tracking information through the use of a cell phone.

7-17-13 Michael Battaglia v. United Parcel Service, Inc. (A-86/87-11; 069405)

Under the LAD, an employee who voices complaints and allegedly suffers a retaliatory employment action need only demonstrate a good-faith belief that the

complained-of conduct violates the LAD. An identifiable victim of actual discrimination is not required. An LAD plaintiff may only recover an award for future emotional distress if evidence of permanency is offered in the form of an expert opinion. In order to succeed on a fraud-based CEPA claim, a plaintiff must reasonably believe that the complained-of activity was occurring and was fraudulent.

7-11-13 State v. K.W. (A-128-11; 070650)

Application of State v. Worthy, 141 N.J. 368 (1995), compels the suppression of the conversation recorded in violation of the New Jersey Wiretapping and Electronic Surveillance Control Act, N.J.S.A. 2A:156A-1 to -34. Neither the County Prosecutor nor her designee authorized the consensual intercept before it was undertaken, as required by N.J.S.A. 2A:156A-4(c).

7-10-13 In re Plan for the Abolition of the Council on Affordable Housing (A-127-11/A-14-12; 070426)

Because COAH is "in, but not of," an Executive Branch department, the plain language of the Reorganization Act, which extends the Chief Executive's authority only to agencies that are "of the executive branch," N.J.S.A. 52:14C-3(a)(1), does not encompass, and thus does not authorize the Governor to abolish, an independent agency like COAH. To abolish independent agencies, the legislative and executive branches must enact new laws that are passed by the Senate and Assembly and signed by the Governor.

7-9-13 Larissa Shelton v. Restaurant.com, Inc. (A-123-10; 068404)

The TCCWNA covers the sale of tangible and intangible property. Plaintiffs are "consumers" within the scope of the TCCWNA because the certificates acquired by them through the Restaurant.com website are "property . . . primarily for personal, family, or household purposes." The certificates purchased from Restaurant.com are "consumer contracts" and the standard terms provided on the certificates are "notices" subject to the TCCWNA.

7-8-13 Borough of Harvey Cedars v. Harvey Karan and Phyllis Karan (A-120-11; 070512)

A property's fair market value should be used as the benchmark in computing "just compensation" in a partial-takings case. Non-speculative, reasonably calculable benefits that increase the property's value at the time of the taking should be considered in determining just compensation regardless of whether those benefits are enjoyed to a lesser or greater degree by others in the community. Because the Borough was prohibited from presenting evidence of such benefits, and the trial court erroneously charged the jury as to the calculation method for just compensation, a new trial is required.

7-2-13 Robert Sipko v. Koger, Inc. (A-38/102-11; 068417)

George's gift of Koger stock to Robert was unconditional and therefore irrevocable. Robert's transfers of KDS and KPS stock are void for lack of consideration.

7-1-13 Kelly Ruroede v. Borough of Hasbrouck Heights (A-95-11; 069484)

The Law Division should have reviewed the evidence to determine whether sufficient, competent evidence supported the charges against Kelly Ruroede. The evidence was competent, and it was sufficient to support the ultimate facts necessary to sustain the Borough's charges that Ruroede engaged in inappropriate conduct unbecoming a police officer, warranting his termination.

6-26-13 Kane Properties, LLC v. City of Hoboken (A-96/97-11; 069676)

The appearance of impropriety standard governs the evaluation of a municipal attorney's conflict of interest. The City Council's decision is set aside because it was tainted by its attorney's conflict of interest. In these unusual circumstances, to balance the rights of the parties and recognize the proper roles of the relevant decision-making bodies, the Court remands this matter to the Law Division for a de novo review of the Zoning Board's resolution, and

directs the court to entertain the City Council's arguments or supplements to the record that bear upon its own expertise and knowledge of the zoning scheme and give due consideration to the City Council's evaluation of the proposed use variances.

6-25-13 Larry Price v. Himeji, LLC & Union City Zoning Bd. of Adjustment (A-46-11; 068971)

Evaluation of the particularly suitable standard is fact-specific and site-sensitive, requiring a finding that the general welfare would be served because the proposed use is peculiarly fitted to the particular location. Although the availability of alternative locations is relevant to this analysis, it does not bar a finding of particular suitability. In light of the thorough record and detailed resolution, the Appellate Division's decision to exercise its original jurisdiction was proper, as was its decision to reinstate the Board's resolution granting Himeji's application.

6-24-13 State v. Giuseppe Tedesco (A-50-12; 072323)

A criminal defendant does not have an absolute right to be absent from his sentencing hearing. Trial judges have discretion to decide whether to accept a defendant's waiver of the right to be present. In an attempt to justify a waiver, a defendant must advance specific reasons that demonstrate special circumstances. Judges must consider various concerns including the interests of the public, the defendant, the victims, and the State.

6-20-13 Town of Kearny v. Louis F. Brandt (A-60/61-11; 068992)

The ten-year period of the statute of repose commenced when the first Temporary Certificate of Occupancy was issued for the Town's public safety facility. When the claims against a defendant are dismissed on statute of repose grounds, fault may be apportioned to the dismissed defendant under the Comparative Negligence Act and the Joint Tortfeasors Contribution Law.

6-19-13 In the Matter of the Liquidation of Integrity Insurance Company/The Celotex Asbestos Trust (A-50-11; 068970)

Under the doctrine of collateral estoppel, the orders entered in the prior federal court proceedings, which found that there was one occurrence from which all pending and future claims derive and that Celotex failed to provide notice of occurrence to post-1982 excess insurers, bar the proofs of claim filed by the Trust.

6-13-13 State v. Blaine F. Scoles (A-41-11; 069212)

The Court establishes a template for courts to strike a proper balance between a defendant's right to pretrial discovery and the public's interest in protecting child pornography victims from the risk of unnecessary harm arising from the dissemination of child pornography images in the prosecution of criminal trials. Before a court grants defense counsel's request for discovery of copies of alleged child pornography for viewing in their office, counsel must demonstrate their ability and willingness to abide by stringent conditions of control. In this case, the Protective Order is set aside, and the trial court must reconsider the defendant's discovery request in light of the Court's opinion.

6-12-13 DYFS v. I.S. (A-81-11; 069672)

Where abuse or neglect is not found, a trial court cannot maintain jurisdiction under Title 9 and must dismiss that portion of the complaint. Title 30 provides alternative means for providing services to children in need and does not require the Division to meet the same burden as that imposed in proceedings under Title 9. Although FM custody proceedings should occur separately from child-protection proceedings, consolidation is permitted when the individual circumstances of the case require it and no harm results.

6-6-13 Daniel Angland v. Mountain Creek Resort Inc. (A-57-11; 069461)

The Ski Act is intended to address duties and responsibilities between ski area operators and skiers and it does not apply to claims made between skiers. Testing the record against the applicable common law recklessness standard of care, enough evidence exists to require plaintiffs' claim to be determined by a jury.

5-20-13 Estate of Naitil Desir v. Jean Robert Vertus
(A-3-11; 067899)

This business owner owed no duty of care to his neighbor under the facts contained in this record, which included the business owner leaving his premises to request that a neighbor use his phone to call the premises, who told the neighbor what he had observed before he left the premises, but who failed to prevent the neighbor from going to the scene where he encountered a fleeing robber who shot him.

5-16-13 State v. A.R. (A-63-11; 068957)

As the Court held in State v. Burr, 195 N.J. 119 (2008), and reinforced in State v. Miller, 205 N.J. 109 (2011), a video-recorded statement must be replayed in open court under the direct supervision of the judge. Applying the invited-error doctrine in this case, however, the decision to permit unfettered access to the video-recorded statements during deliberations was not plain error and does not warrant reversal of the conviction.

5-15-13 State v. Keith R. Buckley (A-55-11; 069494)

The proffered seat belt and utility pole location evidence is irrelevant to and therefore inadmissible on the issue of "but for" causation under N.J.S.A. 2C:2-3(a)(1) and the question of Buckley's awareness of the risk of his conduct under the first prong of N.J.S.A. 2C:2-3(c).

5-14-13 In the Matter of Subpoena Duces Tecum on Custodian of Records, Crim. Div. Manager, Morris County (A-25-11; 068596)

The subpoena was properly quashed because defendant is entitled to the benefit of the long-standing practice

embodied in Directive 1-06 - that "information on the intake form may not be used in grand jury proceedings or at trial." For future cases, the Directive is modified to permit disclosure of UDIR forms to investigate and prosecute a defendant's misrepresentation of financial status in limited circumstances.

5-13-13 Northgate Condominium Association, Inc. v. Borough of Hillsdale Planning Board (A-5-11; 067794)

The developer's notice of public hearings, although using lot numbers that were not included on the official tax map, did not thereby misidentify the lot to be developed, complied with the provisions of the Municipal Land Use Law, and conferred jurisdiction on the Planning Board. Plaintiff fails to point to anything in the record supporting its claim that the project design of the internal roadway did not comply with density requirements under the Residential Site Improvement Standards.

4-29-13 State v. Eric Clemente Rangel (A-88-11; 069204)

Based on the plain language of N.J.S.A. 2C:14-2(a)(3) and a textual reading of the statute as a whole, the phrase "on another" refers to someone other than the victim.

4-25-13 Edward Nicholas v. Dr. Christopher Mynster (A-6/7-11; 068439/068440)

Under a plain textual reading of N.J.S.A. 2A:53A-41, which requires that plaintiffs' medical expert must "have specialized at the time of the occurrence that is the basis for the [malpractice] action in the same specialty or subspecialty" as defendant physicians, plaintiffs cannot establish the standard of care through an expert who, although credentialed by a hospital to treat the same condition, does not practice in the same specialties as defendant physicians.

4-23-13 State v. John J. Rockford, III (A-54-11; 069106)

The Court declines to adopt a bright-line rule that would preclude the use of a flash-bang device in the

execution of a knock-and-announce search warrant. The objective reasonableness of law enforcement's execution of a warrant should be determined on a case-by-case basis, considering the totality of the circumstances. Here, the officers' execution of the warrant was objectively reasonable and, thus, constitutional.

4-10-13 State v. Rashad Walker a/k/a Derrick Moss
(A-49-11; 068742)

Under the New Jersey and federal constitutions, probable cause and exigent circumstances justified the warrantless entry into defendant's apartment and the seizure of the marijuana cigarette and all the CDS found there.

4-4-13 New Jersey Dep't of Env'tl. Protection v. Robert and Michelle Huber (A-116-10; 065540)

The exception to the warrant requirement for administrative inspections of commercial property in a closely regulated business recognized in New York v. Burger, 482 U.S. 691 (1987), does not apply to a regulatory inspection of residential property under the FWPA. Land subject to FWPA restrictions, which by law must be recorded, is subject to the statutory, reasonable right of entry and inspection. In exercising that right, the DEP must comply with its processes, which require presentation of credentials before seeking consent to entry at reasonable times. If entry is denied, the Commissioner may order that entry be provided and the DEP is entitled to judicial process to compel access to the property subject to the permit. Here, even excluding Nystrom's testimony about his inspection, there was sufficient evidence to sustain the finding of a violation of the FWPA.

4-1-13 State v. Michael Cahill (A-47-11; 068727)

Applying the four-factor analysis set forth by the United States Supreme Court in Barker v. Wingo, the sixteen-month delay between the remand of the driving-while-intoxicated charge to the municipal court and the notice of trial deprived defendant Michael Cahill of his right to a speedy trial and the charge must be dismissed.

3-19-13 Borough of East Rutherford v. East Rutherford PBA
Local 275 (A-24-11; 068872)

The arbitration award is sustained because it was not procured by undue means, the Arbitrator did not exceed her authority, the award was not contrary to existing law or public policy, and the award was a reasonably debatable interpretation of the CBA.

3-18-13 State v. Cesar A. Vargas (A-56-11; 069449)

The community-caretaking doctrine is not a justification for the warrantless entry and search of a home in the absence of some form of an objectively reasonable emergency.

3-14-13 In the Matter of the Letter Decision of the Committee
on Attorney Advertising, Docket No. 47-2007 (A-14-08;
062134)

RPC 7.5 is amended to permit a law firm trade name so long as it describes the nature of the legal practice in terms that are accurate, descriptive, and informative, but not misleading, comparative, or suggestive of the ability to obtain results. The name must be accompanied by the name of the attorney responsible for the management of the organization. The term "Alpha" in the Center's name is impermissible under revised RPC 7.5 and current RPC 7.1. The remainder of the name, coupled with the name of a managing New Jersey attorney, satisfies revised RPC 7.5.

3-12-13 D.D. v. Univ. of Medicine & Dentistry of N.J. and
Rutgers, The State Univ. of N.J. (A-29/30-11; 068812)

Neither attorney inattention nor incompetence constitutes an extraordinary circumstance sufficient to excuse failure to comply with the ninety-day filing deadline under the TCA; plaintiff's medical proofs were insufficient to meet the extraordinary circumstances standard; and the doctrine of substantial compliance cannot serve to relieve a claimant of the TCA's written-notice requirement.

3-11-13 Frank J. Nostrame v. Natividad Santiago, et al.

(A-40-11; 068651)

Competition for clients among attorneys must be conducted in adherence to the Rules of Professional Responsibility and the means used to induce a client may be neither improper nor wrongful. Any claim that an attorney has engaged in behavior that would constitute a form of tortious interference with the attorney-client relationship of another must be specifically pleaded. Plaintiff's complaint lacks that specificity, and the Court rejects plaintiff's application to be permitted to engage in discovery in the hope of finding the requisite factual basis for his claim as both unnecessary and unwarranted.

3-7-13 612 Associates, L.L.C. v. North Bergen Municipal Utilities Authority (A-13-11; 067931)

Each sewerage authority that serves a property for the purpose of handling and treating sewage, whether through a direct or indirect connection, may charge a non-duplicative connection fee that reflects the use of its system and contributes toward its system's cost. In this case, the connection fee was paid into an escrow account by plaintiff 612 Associates, which created an interpleader action that relieved it of any further obligation, therefore the trial court's apportionment of the fee between the parties was not an abuse of discretion.

3-6-13 IMO Advisory Letter No. 7-11 of the Supreme Court Comm. on Extrajudicial Activities (A-12-11; 068633)

A fully informed and reasonable person could question a judge's ability to be impartial in ruling on matters concerning law enforcement colleagues of the judge's child. Thus, consistent with the canons of the Code of Judicial Conduct, a municipal court judge whose child becomes a police officer in the same municipality may not hear any cases involving that police department. The judge also may not supervise other judges who hear those cases.

2-6-13 DYFS v. A.L. (A-28-11; 068542)

The finding of abuse and neglect under Title 9 cannot be sustained because the Division failed to show

actual harm or demonstrate imminent danger or a substantial risk of harm to the newborn child, which N.J.S.A. 9:6-8.21(c) (4) (b) specifically requires.

1-24-13 Jersey Central Power & Light Co. v. Melcar Utility Co.
(A-96-10; 067444)

N.J.S.A. 48:2-80(d), on its face, provides no right to a trial by jury. It is unusual in that it is binding on litigants who are effectively suing in negligence under a statutory standard of care for a claim rooted in common-law negligence causing damage to property. The Court has no recourse except to declare the statute as written to be constitutionally flawed.

1-22-13 State v. Askia Nash (A-36-11; 068546)

Evidence that the purported victim, J.B., was assigned an aide who accompanied him throughout the day at school constitutes newly discovered evidence as defined by New Jersey jurisprudence. Because the evidence likely would have changed the outcome of the trial if it had been presented to the jury, the integrity of the verdict has been cast in doubt and a new trial is warranted on all charges.

1-17-13 Prime Accounting Dep't v. Twp. of Carney's Point (A-32-11; 068380)

Boccelli's misdesignation of the plaintiff did not deprive the Tax Court of subject-matter jurisdiction. The tax appeal complaint was timely, accurately described the property, and put the Township and the public on notice that the 2008 assessment for the property was disputed by the taxpayer. The defect in the complaint did not prejudice the Township and can be corrected by an amended complaint that relates back to the filing of the original complaint.

1-14-13 State v. Ralph Sowell (A-27-11; 068245)

The expert's opinion regarding the exchange of narcotics was improper because it related to a straightforward factual allegation that was not beyond the understanding of the average juror, and because the expert referred to facts not contained in the hypothetical question. Under the plain error

standard, however, defendant's conviction is affirmed based on the overwhelming evidence of his guilt.

1-11-13 Valeria Headen v. Jersey City Board of Education (A-17-11; 068598) REVISED - Originally filed 11-15-12

The Civil Service Act's paid vacation leave provisions apply to career service, non-teaching staff employees of school districts that have opted to be part of the civil service system, including ten-month employees such as plaintiff Valeria Headen. Because the Act and its implementing regulations establish a floor for the amount of leave to be provided to such employees and a collectively negotiated agreement provided Headen with more than the minimum paid vacation leave to which she was entitled under the Act, her claims were properly dismissed.

1-10-13 State v. Kevin M. Campfield (A-43-11; 068666)

Defendant's admissions in his plea colloquy satisfied the standard set by Rule 3:9-2 and established an adequate factual foundation for his guilty plea to the crime of reckless manslaughter in violation of N.J.S.A. 2C:11-4(b).

12-13-12 State v. Don C. Shaw (A-48-11; 068741)

The police did not have a reasonable, articulable suspicion of criminal activity to justify the investigatory detention, which was based on nothing more than a non-particularized racial description of the person sought. The parole warrant was not an intervening circumstance that sufficiently purged the taint from the unlawful detention.

11-15-12 Valeria Headen v. Jersey City Board of Education (A-17-11; 068598) See Revised Version filed 1-11-13

The Civil Service Act's paid vacation leave provisions apply to career service, non-teaching staff employees of school districts that have opted to be part of the civil service system, including ten-month employees such as Valeria Headen. Because the Act and its implementing regulations establish a floor for the amount of leave to be provided to such employees and a collectively negotiated agreement provided Headen with

more than the minimum paid vacation leave to which she was entitled under the Act, this matter was properly dismissed.

10-25-12 State of New Jersey v. Stanley Cliff Smith, a/k/a Jerry Johnson (A-68-10; 066806)

The question of suppression of the telephone records and the evidence developed from those records involves a two-step analysis, involving both the inevitable discovery doctrine and the independent source rule. The independent source here is the murder weapon once that was recovered, the police would, through their normal investigatory steps, have inevitably been led to defendant. The Appellate Division concluded correctly that the trial court should not have granted the motion to suppress. In addition, the Court finds no prosecutorial misconduct warranting a new trial.

10-24-12 In the Matter of The Parentage of a Child By T.J.S. and A.L.S., h/w (A-130-10; 067805)

The judgment of the Appellate Division is affirmed by an equally divided Court. Absent adoption, the Act does not recognize an infertile wife as the legal mother of her husband's biological child born to a gestational carrier. The Act does not violate the right to equal protection under Article I, paragraph I of the New Jersey Constitution because the distinctions drawn between an infertile husband and an infertile wife are grounded in actual reproductive and biological differences, which the Legislature may consider in defining alternative means of creating parenthood.

10-22-12 State v. Joseph Schubert, Jr. (A-15-11; 068149)

The trial court's action in amending defendant's judgment of conviction to add community supervision for life after he had fully completed his sentence violated the constitutional prohibition against double jeopardy.

10-16-12 State v. Johnnie Parker (A-115-10; 067670)

After considering the arguments of defendant Johnnie Parker in support of post-conviction relief, and

applying the strong presumption in favor of oral argument for initial post-conviction relief petitions, the Court determines that Parker was entitled to oral argument and it remands the matter to the trial court.

10-10-12 D.W. v. R.W. (A-4-11; 068214)

Neither the trial court nor the Appellate Division referenced the applicable statutory provision, N.J.S.A. 9:17-48, which addresses the circumstances that warrant an order of genetic testing when parentage is in doubt. Even under the most generous view of the facts from Mark or Diane's perspective, there is an absence of good cause to deny genetic testing.

9-26-12 New Jersey Department of Environmental Protection v. Ofra Dimant (A-2-11; 067993)

To obtain damages under the Spill Act, the DEP must demonstrate, by a preponderance of the evidence, a reasonable connection between the discharge, the discharger, and the contamination at the damaged site. The proofs failed to establish a sufficient nexus between the groundwater contamination and Sue's discharge during its operation.

9-25-12 State in the interest of A.W. (A-1-11; 067984)

Considering the totality of the circumstances, A.W.'s father willingly and voluntarily left the interview room, the questioning comported with the highest standards of fundamental fairness and due process, and the confession was made knowingly, intelligently, and voluntarily; therefore, A.W.'s confession is admissible.

9-20-12 State in the Interest of A.D. (1); State in the Interest of A.D. (2) (A-122-10/A-10-11; 068232)

The evidence presented by the prosecution, combined with reasonable inferences drawn from that evidence, gave rise to a well-grounded suspicion or belief that defendant A.D. #1 and A.D. #2 were criminally responsible for murder and/or aggravated assault and are criminally liable as accomplices for those crimes. The Appellate Division's determination that defendants

can be tried as adults, pursuant to N.J.S.A. 2A:4A-26, is affirmed.

9-13-12 Steven J. Winters v. North Hudson Regional Fire and Rescue, et al. (A-45/46/47-10; 066968)

When an employee and employer engage the system of public employee discipline established by law and the employee raises a claim that employer retaliation at least partially motivated the decision to bring the charge or the level of discipline sought, both the employee and employer must live with the outcome, including its potential preclusive effect on related employment-discrimination litigation as a matter of the equitable application of estoppel principles.

9-12-12 State in the Interest of V.A., a minor (A-9/19/20-11; 068707)

The abuse of discretion standard, rather than the patent and gross abuse of discretion standard, governs judicial review of a prosecutor's decision to waive a juvenile aged sixteen and over charged with an enumerated offense under N.J.S.A. 2A:4A-26 into adult criminal court.

9-12-12 State v. Manaf Stas (A-14-11; 068060)

The use of defendant's silence as substantive evidence of his guilt and for the purpose of assessing his credibility violated his federal constitutional privilege against self-incrimination, and his state statutory and common law privilege against self-incrimination. Given the prominent role that defendant's silence played in his conviction, the error was clearly capable of producing an unjust result and warrants a new trial. R. 2:10-2.