

DATE NAME OF CASE (DOCKET NUMBER)

8-23-16 Roy Steinberg v. Sahara Sam's Oasis, LLC
(A-41-14; 075294)

The summary-judgment record, viewed in the light most favorable to plaintiff, would allow a reasonable finder of fact to conclude that plaintiff's injuries were caused by Sahara Sam's gross negligence. Further, while a violation of the Safety Act, standing alone, does not give rise to a private cause of action, particular violations of the Safety Act, individually or in their aggregate, may be considered as evidence in determining whether Sahara Sam's acted with gross negligence.

8-22-16 In re: Reglan Litigation (A-56-14; 075269)

Plaintiffs' state-law failure-to-warn claims under the PLA, based on the alleged inadequate labeling of metoclopramide which did not match the brand-name labeling and warn of the dangers of the long-term use of the drug, are not preempted by federal law, and may proceed before the trial court.

8-17-16 Rachel A. Parsons v. Mullica Township Board of Education (A-69-14; 075859)

The failure to timely communicate the results of a preventative public health examination falls within the purview of N.J.S.A. 59:6-4. Therefore, defendants are immune from liability under the TCA. The Court further holds that immunizing defendants under N.J.S.A. 59:6-4 does not render meaningless the provisions of N.J.A.C. 6A:16-2.2(1)(6).

8-16-16 Salvatore Puglia v. Elk Pipeline, Inc.
(A-38-14; 075171)

Under the circumstances here, Puglia's CEPA claim, which neither requires interpretation of the CBA nor presents a question that would be within the jurisdiction of the NLRB, is not preempted by the LMRA or the NLRA.

8-15-16 Northwest Bergen County Utilities Authority v. Kathleen A. Donovan (A-36/37-14; 075060)

The County Executive's termination of the Authority commissioners was not conducted in accordance with her authority, and her unilateral action was contrary to and in violation of N.J.S.A. 40:14B-16. Likewise, the County Executive's use of the veto power to diminish the compensation (the \$5000 stipend) being paid to the commissioners since 1979 violated N.J.S.A. 40:14B-17 and must be declared void. However, in respect of the health benefits provided to the commissioners in more recent years, the County Executive's supervisory authority to review and reject Authority action through her veto power is broad and easily encompasses authority to disapprove such administrative action.

8-10-16 State in the Interest of N.H. (A-4-15; 076316)

The State is required to disclose all discovery in its possession when it seeks to waive jurisdiction and transfer a case from juvenile to adult court.

8-9-16 Stephen Meehan v. Peter Antonellis, DMD
(A-45-14; 075265)

The enhanced requirements of section 41 of the Patients First Act which govern the qualifications of persons permitted to submit an affidavit of merit, or provide expert testimony, in a medical malpractice action, apply only in medical malpractice actions. In all other actions against a licensed professional, section 27 of the AOM statute prescribes the qualifications of the person who may submit an affidavit of merit against a licensed professional. The affidavit of merit that plaintiff submitted in this action, from a licensed dentist with experience in the treatment of sleep apnea, satisfies section 27. The trial court therefore improperly dismissed the complaint.

8-4-16 Cypress Point Condominium Association, Inc. v. Adria Towers, LLC (A-13/14-15; 076348)

The consequential damages caused by the subcontractors' faulty workmanship constitute "property damage," and the event resulting in that damage - water from rain flowing into the interior of the property due to the subcontractors' faulty

workmanship - is an "occurrence" under the plain language of the CGL policies at issue here.

8-3-16 State v. Michael Cushing (A-68-14; 073925)

The record contains ample evidence to support the Appellate Division's conclusion that Betty Cushing did not have actual authority to consent to the search of defendant's room, and Betty could not have conferred through any power of attorney an authority that she did not possess herself. In addition, it was not objectively reasonable for Officer Ziarnowski to rely on an apparent authority by Mylroie as the basis for valid third-party consent to his initial search of defendant's bedroom.

8-2-16 IE Test, LLC v. Kenneth Carroll (A-63-14; 075842)

A disagreement among LLC members over the terms of an operating agreement does not necessarily compel the expulsion of a dissenting LLC member. If an LLC's members can manage the LLC without an operating agreement, invoking as necessary the default majority-rule provision of the LLC Act, then a conflict among LLC members may not warrant a member's expulsion under the LLC Act. Subsection 3(c) does not warrant a grant of partial summary judgment expelling Carroll from IE Test.

8-1-16 State v. Gary Lunsford (A-61-14; 075691)

As a long-standing feature of New Jersey law, telephone billing records are entitled to protection from government access under the State Constitution. Because they reveal details of one's private affairs that are similar to what bank and credit card records disclose, these areas of information should receive the same level of constitutional protection and be available based on a showing of relevance. Direct judicial oversight of the process is required to guard against the possibility of abuse, and in order to obtain a court order requiring production of telephone billing records, the State must present specific and articulable facts to demonstrate that the records are relevant and material to an ongoing criminal investigation.

7-28-16 Lamar Williams v. American Auto Logistics (A-10-15;

076004)

Trial courts may not deprive civil litigants of their constitutionally protected right to a jury trial as a sanction for failure to comply with a procedural rule. In addition, Rule 4:25-7 does not apply to proceedings in the Superior Court, Law Division, Special Civil Part.

7-27-16 Karen K. Johnson v. Roselle EZ Quick, LLC (A-33-14; 075044)

The 2011 amendment to N.J.S.A. 39:6A-9.1 does not expressly or implicitly present any of the factors necessary to rebut the presumption that, as a newly enacted law, it should be applied prospectively. Consequently, the amendment does not apply to plaintiff's claims for personal injuries. The trial court therefore properly granted GEICO's motion for summary judgment on its claim for reimbursement of the PIP benefits that it paid to plaintiff.

7-26-16 In the Matter of the Adoption of a child by J.E.V. & D.G.V. (A-39-15; 076767)

Indigent parents who face termination of parental rights in contested proceedings under the Adoption Act, N.J.S.A. 9:3-37 to -56, are entitled to counsel under Article I, Paragraph 1 of the State Constitution.

7-25-16 State v. Khalid Mohammed (A-70-14; 075901)

If Juror 14 was inattentive, it was only during inconsequential pretrial instructions and was neither prejudicial nor clearly capable of producing an unjust result. Because the trial court's finding that Juror 14 was attentive during the jury charge, which is a consequential portion of the trial, was adequately supported by the judge's personal observations, no further inquiry was required.

7-21-16 State v. Rosenthal & Rosenthal, Inc. v. Vanessa Benun (A-6-15; 076266)

When a lender holds a mortgage that secures optional future advances, the prior lien loses priority for advances made after actual notice of an intervening mortgage, in this case Riker's intervening lien.

7-20-16 State v. Al-Sharif Scriven (A-11-15; 075682)

The trial court and Appellate Division properly concluded that the motor-vehicle stop violated the Federal and State Constitutions. The language of the high-beam statute, N.J.S.A. 39:3-60, is unambiguous; drivers are required to dim their high beams only when approaching an oncoming vehicle. Neither a car parked on a perpendicular street nor an on-foot police officer count as an oncoming vehicle. The judgment of the Appellate Division upholding the trial court's suppression of the evidence is affirmed.

7-19-16 State v. Robert J. Stein (A-26-14; 074466)

Under Rule 7:7-7(b), the municipal prosecutor was required to provide defendant with the names of the police officers from the adjacent jurisdiction who responded to the accident scene. Because, when the prosecutor failed to provide the information, defendant did not raise this issue before the municipal court, or seek relief under the Rule, the issue has been waived. The prosecutor was also required to provide the videotapes that defendant requested, if they existed, since such information was clearly relevant to a DWI defense. Because the Court cannot determine from the record whether any videotapes exist, the matter is remanded to the Law Division for further proceedings on this issue.

7-18-16 State v. Stephen F. Scharf (A-46-14; 074922)

State-of-mind hearsay statements by a deceased about fear of a defendant, who later advances in his or her defense in a homicide prosecution a claim that the victim's death was accidental, are admissible for the purpose of proving the declarant's state of mind under N.J.R.E. 803(c)(3). Such evidence is relevant when the door is opened by the defense. A weighing for undue prejudice should follow a review for relevance under Rule 803(c)(3).

7-13-16 IMO the Imposition of Probation on Eastwick College LPN to RN Bridge Program (A-35-14; 074772)

Based on the plain language of N.J.A.C. 13:37-1.3(c)(2), the Board's construction of its regulation is plainly unreasonable. Accordingly, the Board improperly denied accreditation to Eastwick's Bridge Program.

7-6-16 Brenda Ann Schwartz v. Accuratus Corporation (A-73-14; 076195)

The duty of care recognized in Olivo v. Owens-Illinois, Inc., 186 N.J. 394 (2006) may, in proper circumstances, extend beyond a spouse of a worker exposed to a workplace toxin that is the basis for a take-home toxic-tort theory of liability.

6-30-16 I.M.O. the Application for the Forfeiture of Personal Weapons & Firearms Identification Card Belonging to F.M. (A-60-14; 074964)

The Family Part applied an incorrect legal standard and its conclusions were not supported by substantial, credible evidence in the record. The record establishes that the return of F.M.'s personal weapon and identification card is inconsistent with N.J.S.A. 2C:58-3(c)(5) and, therefore, F.M.'s weapon and identification card are forfeited.

6-29-16 Globe Motor Company v. Ilya Igdalev (A-43-14; 074996)

The record before the motion court, when viewed under the summary judgment standard prescribed by Rule 4:46-2(c), did not establish plaintiffs' right to judgment as a matter of law. When all legitimate inferences are drawn in defendants' favor, as required by the summary judgment standard, there exists a genuine issue of material fact on the critical question of whether the settlement monies paid to Globe were Auto Point's assets, or, instead, were owned by defendant's friend and owed to defendant.

6-28-16 State v. Lixandra Hernandez and Jose Sanchez (A-39-14; 075444)

Although the discovery rule generally requires that the State provide all evidence relevant to the defense of criminal charges, it does not open the door to foraging through files of other cases in search of relevant

evidence. The discovery ordered by the trial court and Appellate Division exceeds the limits of Rule 3:13-3(b) and is not supported by this Court's jurisprudence.

6-23-16 Mortgage Grader, Inc. v. Ward & Olivo, LLP (A-53-14; 075310)

The requirement in Rule 1:21-1C(a)(3) that law firms organized as LLPs maintain malpractice insurance does not extend to the firm's windup period when the law firm has ceased performing legal services, and does not require purchase of tail insurance. In addition, the violation of Rule 1:21-1C(a)(3) does not result in automatic conversion of a law firm organized as an LLP into a GP. As a result, Mortgage Grader had no vicarious liability claim against Ward.

6-22-16 Tonique Griffin v. City of East Orange (A-32-14; 074937)

The trial court erred when it barred the testimony of a witness who claimed that her superiors instructed her to lie to the person investigating sexual harassment claims because the testimony was relevant to plaintiffs' claims for compensatory and punitive damages arising from hostile work environment sexual harassment, satisfied an exception to the hearsay rule, and its relevance was not substantially outweighed by the risk of undue prejudice.

6-21-16 Robert Smith v. Millville Rescue Squad (A-19-14; 074685)

The protection that the LAD affords against discrimination based on marital status is not limited to the state of being single or married. The LAD also prohibits discrimination against a prospective or current employee based on their status as separated, in the process of divorce, or divorced. The evidence that plaintiff presented at trial suggests that defendant's animus toward divorcing persons, based on stereotypical views, affected the decision to terminate plaintiff's employment, and therefore created an inference of discrimination due to defendant's marital status. The trial court erred in finding that plaintiff failed to establish a prima facie case of marital-status discrimination in

employment under the LAD.

6-15-16 Sergio Rodriguez v. Raymours Furniture (A-27-14; 074603)

A private agreement that frustrates the LAD's public-purpose imperative by shortening the two-year limitations period for private LAD claims cannot be enforced.

6-14-16 Annemarie Morgan v. Sanford Brown Institute (A-31-14; 075074)

The arbitration provision and purported delegation clause in the enrollment agreement fail to comply with the requirements of First Options of Chi., Inc. v. Kaplan, 514 U.S. 938 (1995), and Atalese v. U.S. Legal Servs. Grp., 219 N.J. 430 (2014), cert. denied, 135 S. Ct. 2804 (2015). They also fail to satisfy the elements necessary for the formation of a contract. Consequently, whether the parties agreed to arbitrate their dispute is an issue for determination by the court. The Court holds that the arbitration and delegation provisions of the agreement are unenforceable.

6-9-16 Richard W. Berg v. Hon. Christopher J. Christie (A-71/72-14; 074612)

To construe a statute as creating a contractual right, the Legislature's intent to limit the subsequent exercise of legislative power must be clearly and unequivocally expressed concerning both the creation of a contract as well as the terms of the contractual obligation. In this instance, proof of unequivocal intent to create a non-forfeitable right to yet-unreceived COLAs is lacking. The Legislature retained its inherent sovereign right to act in its best judgment of the public interest and to pass legislation suspending further COLAs.

6-8-16 State v. David Bueso (A-15-14; 074261)

When the witness is a child, the concepts of truth, falsehood, and punishment may be difficult to reach with open-ended questions. Subject to the discretion of the trial judge, who must carefully monitor the

examination to ensure that the child's answers are his or her own, leading questions may be used in a competency inquiry. There was no plain error in the procedure used by the trial court in this case.

6-1-16 Torres v. Pabon (A-116-13; 074307)

The trial court's five erroneous determinations, affecting both the issue of liability and the determination of damages, gave rise to cumulative error warranting a new trial.

5-26-16 State v. J.M., Jr. (A-48-14; 075317)

The evidence of defendant's prior sexual assault in Florida is inadmissible under N.J.R.E. 404(b) because it fails to satisfy the four-factor test established in State v. Cofield, 127 N.J. 328 (1992). The Court declines to adopt the appellate panel's bright-line rule that evidence of a prior crime for which a defendant was acquitted is always inadmissible. The Court also declines the appellate panel's reformulation of the instruction provided to jurors governing the circumstances under which a jury may give any weight to acquitted-crime evidence.

5-17-16 State v. Bobby Perry a/k/a Bobby Penny
(A-34-14; 075114)

The semen found on the victim's clothing constitutes inadmissible evidence of sexual conduct under the Rape Shield Law, and was not relevant to defendant's defense of third-party guilt. Any probative value of the evidence is substantially outweighed by its prejudicial effect.

5-12-16 State v. James Denelsbeck (A-42-14; 075170)

Third or subsequent DWI offenders are not entitled to a jury trial, and defendant's conviction procured by a bench trial did not violate his Sixth Amendment right to a jury trial.

5-11-16 State v. Richard Willis (A-115-13; 073908)

The relevance of an alleged sexual assault three years before defendant's encounter with K.M. was so marginal

that it should have been excluded. Moreover, the erroneous admission of this evidence cannot be considered harmless as the quality and quantity of the evidence, introduced to inform the jury of defendant's intent in April 2006, overwhelmed the State's case-in-chief.

5-5-16 State v. Lee Funderburg (A-29-14; 074760)

Defendant was not entitled to a jury instruction on attempted passion/provocation manslaughter because the facts before the trial court did not clearly indicate that the elements of attempted passion/provocation manslaughter were present. In particular, there was insufficient evidence before the jury to demonstrate that a reasonable person in defendant's position would have been adequately provoked by the victim's behavior.

5-3-16 Cathleen Quinn v. David J. Quinn (A-5-14; 074411)

An agreement to terminate alimony upon cohabitation, entered by fully informed parties, represented by independent counsel, and without any evidence of overreaching, fraud, or coercion, is enforceable. The trial court was required to apply the remedy of termination, as fashioned by the parties.

5-2-16 In the Matter of Frank J. Cozzarelli
(D-151-13; 074742)

There is clear and convincing evidence the respondent knowingly misappropriated client funds, and that his mental illness did not cause him to suffer a loss of competency, comprehension or will that excused his misconduct when it occurred. Respondent is not entitled to mitigation and shall be disbarred.

4-28-16 Patricia Delvecchio v. Township of Bridgewater
(A-25-14; 074936)

The testimony of a treating physician is admissible to support a plaintiff's disability claim under the LAD, provided that the proponent gives notice of the testimony to the adverse party, responds to discovery requests in accordance with the Rules of Court, and the testimony satisfies N.J.R.E. 701 and other

applicable Rules of Evidence. Plaintiff provided the information that defendants requested in discovery regarding the proposed treating physician witnesses, and the trial court should have permitted her to present the vital testimony of these witnesses.

4-27-16 Alexander Bardis v. Kitty Stinson (A-44-14; 075208)

The judgment of the Appellate Division is **REVERSED** substantially for the reasons expressed in Judge Sapp-Peterson's dissenting opinion. The terms of plaintiffs' commercial dwelling policy are unambiguous, and defendants properly denied plaintiffs' claim for insurance benefits.

4-26-16 IMO the Estate of Adrian J. Folcher, Jr.
(A-3-14; 074590)

The Court declines to expand the exception to the American Rule created in In re Niles Trust, 176 N.J. 282 (2003), to a person who does not owe a fiduciary responsibility to an estate and its beneficiaries. In this case, because the confidential relationship endowed Bernice with an obligation to only her husband, and not the Estate, a fee award was not the proper vehicle to do equity.

4-26-16 Innes v. Marzano-Lesnevich (A-16-14; 074291)

Defendant attorneys can be held liable for counsel fees if, as trustees and escrow agents for both Innes and Carrascosa, they intentionally breached their fiduciary obligation to Innes by releasing Victoria's United States passport to Carrascosa without Innes' permission.

4-25-16 State v. Demetrius Cope (A-13-14; 074206)

1) After arresting defendant in his living room, the police conducted a protective sweep of an adjoining porch to ensure no individuals posing a safety risk were on the premises. The sweep did not violate constitutional standards and the trial court properly denied the motion to suppress the rifle. 2) The trial court abused its discretion when it denied defendant the right to present a full third-party-guilt defense. A witness whose testimony is central to a defense of

third-party guilt cannot be kept off the stand unless the expected version of events is so patently false that the events could not have occurred.

4-20-16 State v. Chad Bivins (A-23-14; 074374)

Because the State did not provide adequate proof that the individuals found in a car had been present at the targeted residence when the warrant was being executed moments before their apprehension, the warrant did not provide authority for the search of the two off-premises individuals.

4-19-16 John J. Robertelli v. New Jersey Office of Attorney Ethics (A-62-14; 075584)

Consistent with the broad authority that the Rules of Court grant the Director and the important goals of the disciplinary process, the Director has authority to review a grievance after a DEC Secretary has declined to docket the grievance. The OAE may therefore proceed to prosecute plaintiffs' alleged misconduct.

4-7-16 State v. Patrick McFarlane (A-7-15; 075938)

The trial judge's statement during a subsequent, unrelated status conference that he always gives sixty-year sentences to defendants convicted by a jury of first-degree murder undermines public confidence in our system of criminal sentencing. Consequently, the matter is remanded for resentencing by a different judge.

3-15-16 State v. Scott M. Cain (A-8-14; 074124)

The testimony of the law-enforcement drug expert expressing an opinion on defendant's state of mind, more particularly, whether he intended to distribute drugs, exceeded appropriate bounds and encroached on the jury's exclusive domain as finder of fact. In future drug cases, an expert witness may not opine on the defendant's state of mind. Whether a defendant possessed a controlled dangerous substance with the intent to distribute is an ultimate issue of fact to be decided by the jury. Defendant's conviction is reversed and the matter is remanded for a new trial.

3-15-16 State v. Yasin Simms (A-14-14; 074209)

The erroneously assumed fact in the hypothetical question -- that the object in defendant's hand was a bundle of heroin packets -- unfairly buttressed the State's case. It was for the jury to decide the identity of the object based on an examination of the totality of the evidence. The ultimate-issue testimony on conspiracy, moreover, impermissibly intruded into the jury's singular role as trier of fact.

3-9-16 State v. Hector Feliciano (A-24-14; 074395)

When a target purposely changes facilities to avoid detection, law enforcement officers may switch over and begin to monitor a new facility under the State's wiretap law, provided they have otherwise fully complied with the statute. Going forward, law enforcement must notify a wiretap judge within 48 hours of the switch and obtain authorization to continue monitoring the new facility.

3-8-16 State v. Saladin Thompson (A-47-14; 074971)

The record below demonstrates that the prosecutor's race-neutral reasons for striking the jurors were supported by the record and that the trial court conducted an adequate Gilmore analysis. Therefore, the Appellate Division's reversal and remand for a new trial was inappropriate.

3-7-16 State v. David Bass (A-118-13; 072669)

The limitation on defendant's cross-examination of Sinclair constituted reversible error. Defendant is entitled to a new trial on the charges of murder, attempted murder and the possession of a weapon for an unlawful purpose. In addition, the substitute expert read portions of the deceased medical examiner's autopsy report to the jury, rather than testifying based on his own observations and conclusions, which violated defendant's confrontation rights. On retrial, any expert testimony by a substitute medical examiner should conform to State v. Michaels, 219 N.J. 1, cert. denied, 135 S. Ct. 761, (2014), and State v.

Roach, 219 N.J. 58 (2014), cert. denied, 135 S. Ct. 2348 (2015). Defendant was not entitled to an instruction on the use of force against an intruder because he voluntarily admitted the victims to his room.

2-23-16 Sundiata Acoli v. New Jersey State Parole Board (A-52-14; 075308)

The administrative scheme for parole envisioned that a convicted murderer would undergo a full hearing before the Parole Board prior to securing release from incarceration. In Acoli's circumstances, the appropriate remedy is a remand to the full Parole Board for completion of the administrative parole process. That process in its totality requires a full hearing before the Parole Board on his suitability for parole release and shall permit the victims of his criminal acts to be heard, if they wish, by the Board prior to a decision on his parole.

2-11-16 Templo Fuente De Vida Corp v. National Union Fire Insurance Company of Pittsburgh (A-18-12; 074572)

First Independent's failure to comply with the notice provisions of the bargained for Directors and Officers "claims made" policy constituted a breach of the policy, and National Union may decline coverage without demonstrating appreciable prejudice.

2-10-16 State v. Raymond Daniels (A-90-13; 073504)

In the context of a trial record that contains evidence of an incomplete affirmative defense and where the potential for jury confusion exists, a trial court may, over a defendant's objections, issue a modified jury charge on the affirmative defense in order to elucidate legal principles pertinent to the evidence. In so doing, the court must balance the need to educate the jury and the need to protect the defendant's rights. Here, the trial court's affirmative defense charge on renunciation unfairly prejudiced the defense, requiring reversal and remand for a new trial.

2-8-16 State v. Eugene C. Baum (A-107-13; 073056)

The jury instructions, taken as a whole, are neither ambiguous nor misleading because they did not blend, and explicitly distinguished, the concepts of mental disease or defect and self-induced intoxication, in charges that reflected an accurate statement of the law. The sequence of instructions given by the court, addressing the diminished capacity defense followed by the self-induced intoxication instruction, did not negate the diminished capacity defense.

1-27-16 Christina Silviera-Francisco v. Board of Education of Elizabeth (A-28-14; 074974)

The Commissioner's September 2012 decision, which rejected the ALJ's Initial Decision and remanded to the OAL for calculation of tenure and seniority rights, was an interlocutory order. Until the calculation was complete and adopted by the Commissioner, all of the issues presented by the petitioner remained unresolved. The order became a final decision from which an appeal could be filed as of right only when the Commissioner adopted the decision of the ALJ following the remand proceedings.

1-20-16 State v. Howard Jones (A-112-13; 073827)

In determining the reliability of evidence obtained through a suggestive showup identification procedure, extrinsic evidence of guilt should play no role in the determination of the evidence's admissibility. A reliability assessment must restrict its focus to the accuracy and trustworthiness of the specific identification. In this matter, the showup was impermissibly suggestive, and evidence from that showup was assessed for reliability under an erroneous analysis. Defendant's conviction is reversed and the matter is remanded for new proceedings.

1-19-16 State v. Robert Goodwin (A-20-14; 074352)

A person violates the insurance fraud statute, N.J.S.A. 2C:21-4.6(a), even if an insurance carrier is not induced by that person's false statement to pay a damage claim.

1-14-16 IMO the Revocation of the Access of Block #613, Lots

#4 & 5, Township of Toms River (A-102-13; 074011)

The record fully supports that the Department of Transportation satisfied its burden of proof to establish that the revocation of direct access from Route 166 to commercial property belonging to Arielle Realty, L.L.C. conforms with the State Highway Access Management Act and the State Highway Access Management Code.

1-13-16 State v. Julius Smith (A-62-13; 073059)

The trial court abused its discretion in declining to grant a mistrial, particularly in light of the materiality of the evidence that surfaced midtrial, defendant's inability to investigate it while the trial proceeded, and the nature and strength of the evidence against defendant.

1-12-16 Anthony C. Major v. Julie Maguire (A-110-13; 074345)

Plaintiffs, who commenced an action under the statute, alleged in detail their involvement in their granddaughter's life from birth and contended that their alienation from the child will cause her harm. Based on these allegations, plaintiffs established a prima facie showing of harm to the child at the pleading stage, as required by Moriarty v. Bradt, 177 N.J. 84 (2003), cert. denied, 540 U.S. 1177 (2004). The trial court should have denied defendant's motion to dismiss and given plaintiffs the opportunity to satisfy their burden of proving harm. Procedural guidelines are now established for proceedings under the statute.

12-21-15 In re: Petition for Referendum to Repeal Ordinance 2354-12 of the tp. of West Orange (A-54-13; 073069)

A challenge to a redevelopment bond ordinance must be filed within twenty days of the final publication of the ordinance pursuant to Rule 4:69-6(b)(11) and N.J.S.A. 40A:2-49, barring the most extraordinary circumstances, which are not present here. Although Rule 4:69-6(c) permits an enlargement of the filing period in the interest of justice, N.J.S.A. 40A:2-49, which states that a bond ordinance is conclusively

presumed to be valid twenty days after publication, counsels against exceptions to the twenty-day filing rule. Consequently, plaintiffs' action, which was not filed until fifty-three days after publication of the ordinance, is untimely and was properly dismissed.

12-17-15 State v. Duquene Pierre (A-86-13; 072859)

By virtue of the combined errors of his trial counsel, defendant was denied his constitutional right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution and Article I, Paragraph 10 of the New Jersey Constitution, and he is entitled to a new trial.

12-16-15 In the Matter of William J. Torre (D-77-14; 075524)

Respondent caused substantial harm to a vulnerable, eighty-six-year-old victim. The egregious circumstances of this case warrant a one-year suspension to protect the public, guard against elder abuse by lawyers, and help preserve confidence in the bar.

12-15-15 New Jersey Division of Child Protection and Permanency v. K.N. and K.E. (A-10/11-14; 074161)

The Family Part had the authority to determine that the child's best interests were served by his continued placement with a relative not licensed as a resource family parent under the Act. The Family Part did not have the authority to compel the Division to pay financial assistance under the Act to a relative not licensed as a resource family parent. Accordingly, the Appellate Division's judgment is affirmed as to those determinations. Because the Division returned Tommy to the care and custody of his mother, the Appellate Division's remand to the Family Part is dismissed as moot.

12-14-15 State v. R.P. (A-108-13; 073796)

The Appellate Division erred when it denied the State's request to mold the verdict because defendant was given his day in court, all of the elements of sexual assault are included in the crime of aggravated sexual assault, and defendant was not prejudiced.

12-2-15 State v. Antoine D. Watts (A-21-14; 074556)

The police did not act in an objectively unreasonable manner in violation of the Federal and State Constitutions by conducting an initial pat-down of defendant and detaining defendant for a thorough search in a more controlled, safe, and secure location.

12-1-15 Thomas DeMarco v. Sean Robert Stoddard, D.P.M.
(A-104-13; 073949)

The RIJUA owed neither a duty to defend nor a duty to indemnify its insured, who had misrepresented the proportion of his practice generated in Rhode Island, which was a fact that formed the basis for his eligibility for insurance through the RIJUA.

10-21-15 State v. Darryl Bishop and State v. Wilberto Torres
(A-26/27-13; 072395)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in the Appellate Division's opinion, reported at 429 N.J. Super. 533 (App. Div. 2013).

10-7-15 Anna Mae Cashin v. Marisela Bello (A-98-13; 073215)

The Legislature's use of the word "building," in its singular form, is both deliberate and dispositive. "Building" designates a discrete physical structure, not a number of such structures connected only by the ownership of the land on which they sit. By the plain language of N.J.S.A. 2A:18-61.1(1)(3), the converted garage constitutes its own "building" for purposes of the Act, and plaintiff may evict defendants.

9-29-15 James R. Jarrell v. Richard A. Kaul, M.D. (A-42-13; 072363)

Under N.J.S.A. 45:9-19.17, an injured patient does not have a direct cause of action against a physician who does not possess medical malpractice liability insurance or a suitable letter of credit. Moreover, failure to comply with the statutory liability insurance mandate does not give rise to an informed consent claim. Finally, a cause of action for negligent hiring may be asserted against a health care facility that grants privileges to a physician who has not complied with the statutorily required insurance provisions.

9-28-15 Janice J. Prioleau v. Kentucky Fried Chicken, Inc. (A-99-13; 074040)

The mode-of-operation rule applies only in situations where the customer foreseeably serves himself or herself, or otherwise directly engages with products or services unsupervised by an employee. Plaintiff's theories of liability did not involve a self-service operation that might warrant a mode-of-operation jury instruction. Because the trial court's erroneous mode-of-operation charge may well have determined the jury's verdict, defendant is entitled to a new trial on the issue of liability.

9-24-15 State v. William L. Witt (A-9-14; 074468)

The exigent-circumstances standard set forth in Pena-Flores is unsound in principle and unworkable in practice. Citing Article I, Paragraph 7 of New Jersey's State Constitution, the Court returns to the standard articulated in State v. Alston, 88 N.J. 211 (1981), for warrantless searches of automobiles based on probable cause: The automobile exception authorizes the warrantless search of an automobile only when the police have probable cause to believe that the vehicle contains contraband or evidence of an offense and the circumstances giving rise to probable cause are unforeseeable and spontaneous.

9-22-15 Bruce Kaye v. Alan P. Rosefielde (A-93-13; 073353)

In accordance with the broad discretion afforded to courts fashioning equitable remedies that are fair and practical, the remedy of equitable disgorgement may be awarded in an appropriate case even in the absence of a finding that the employer sustained economic loss as a result of the employee's disloyal conduct. If a court determines that disgorgement is an appropriate equitable remedy, it should apportion that compensation and order disgorgement of only the compensation received during the period in which the employee breached the duty of loyalty.