THE 2024 JEFFREY P. WEINSTEIN FAMILY LAW INSTITUTE

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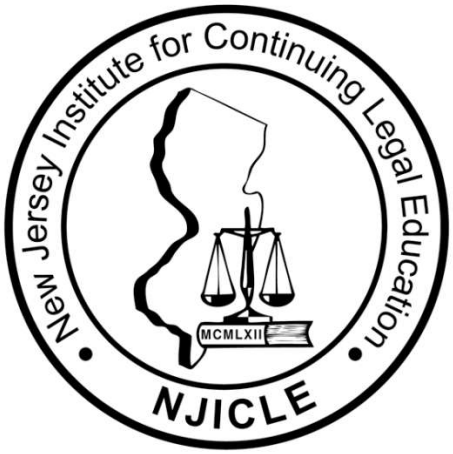

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THE 2024 JEFFREY P. WEINSTEIN FAMILY LAW INSTITUTE

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5 Most Important Cases of 2024

John P. Paone, Jr.

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C.R. v. M.T., 257 *N.J.* 126 (2024)

Issue: Was the plaintiff's testimony that she had been traumatized by the defendant as a result of being sexually assaulted by the defendant more than three years earlier sufficient in order to satisfy prong two of the Sexual Assault Survivor Protection Act ("SASPA") and warrant the entry of a Final Protective Order?

Holding: Yes. The second factor under SASPA only requires that the victim demonstrate that there be a possibility of future risk to their safety and well-being. This is a more permissive and lenient standard that was intended by the Legislature than obtaining a Final Restraining Order in which the victim seeking relief under the Prevention Against Domestic Violence Act must demonstrate that a restraining order is necessary in order to prevent future harm or abuse. Accordingly, the plaintiff's subjective fear of the defendant, notwithstanding the passage of time, was enough to qualify as a possibility of a future risk of harm under SASPA.

Discussion: The plaintiff ("Clara") initially obtained a Final Protective Order ("FPO") against the defendant ("Martin") under SASPA after testifying that she had been sexually assaulted by Martin in June 2018. As part of its initial ruling, the trial court found that Clara had been subjected to nonconsensual contact within the purview of SASPA as her extreme voluntary intoxication made it impossible for her to consent to sexual contact. Although this ruling was reversed by the Appellate Division in directing the trial court to apply the prostration of faculties test to determine whether Clara was capable of consenting to the sexual contact, the New Jersey Supreme Court overruled the decision by the Appellate Division. Specifically, the Supreme Court remanded the case back to the trial

court and instructed that the affirmative consent standard be applied in order to determine whether sexual activity by Clara was consensual or non-consensual.

On remand before the trial court, Clara testified that she had been intensely traumatized by the sexual assault in which she had seen multiple therapists, suffered intimacy issues, and lost her feeling of self-worth. Martin waived his right to testify and relied on his testimony from the initial hearing. At the conclusion of the remand hearing, the trial judge found Clara's testimony to be credible and believable while noting that Martin's prior testimony lacked credibility and was not truthful. In applying the two-factor test under SAPSA, the trial judge held that the consent to sexual contact was not affirmatively and freely given by Clara based on *N.J.S.A.* 2C:14-16(a)(1). Additionally, the trial judge noted that the second prong of the analysis, *N.J.S.A.* 2C:14-16(a)(2) only required a possibility, rather than a probability of future harm to the victim which was established by Clara's testimony regardless of the fact that Martin had not contacted Clara in the three years since the incident occurred.

Martin subsequently filed an appeal in which he asserted that the sexual contact was consensual and that Clara's fear of him was irrational as he posed no threat to her. The Appellate Division reviewed the language as set forth in the SASPA statute and in giving the key terms in the statute their plain and ordinary meaning, the Appellate Division concurred with the trial court that Clara had demonstrated a possibility of harm and loss at trial.

Following the unreported opinion by the Appellate Division, Martin's petition for certification was granted by the Supreme Court in which its review was limited to the statutory construction and interpretation of *N.J.S.A.* 2C:14-16(a)(2). Martin contended that the bar to satisfy the second prong of the SASPA analysis was too low because there is always a possibility of future risk to the victim unless either one or both parties are deceased. This would effectively lead to a result in which prong two of SASPA is established automatically in every case.

In response to Martin's argument, Clara claimed that the lower courts correctly construed the plain and unambiguous language of the statute. Moreover, Clara posited that Martin was asking the Court to apply a much more stringent test analogous to the requirements under the Prevention of Domestic Violence Act ("PDVA") in order to apply for a restraining order. Clara proffered that any correlation in this regard would be improper since the Legislature had the opportunity to incorporate the more rigorous requirements of PDVA when SASPA was enacted in 2015 but decided not to go that route.

As part of the review conducted by the Supreme Court, leave was granted to Legal Services of New Jersey and Partners for Women and Justice to participate as *amici curiae*. Amicus Partners for Women and Justice made clear in its submission to the Supreme Court that although there are some cases where a liberal standard will make the issuance of a FPO perfunctory under SASPA, this is exactly what the Legislature intended for victims of sexual assault. They further recognized that the consequences of a FPO under SASPA are far less onerous or significant than a FRO under the PDVA.

In addressing the arguments of the parties and the points raised by the amicus participants, the Supreme Court acknowledged the more lenient and permissive standard in order to obtain a FPO under SASPA. The majority opinion for the Supreme Court noted that a FPO does not require a showing that it is necessary to protect the safety and well-being of the alleged victim. Instead, it only requires the possibility of future risk to the safety or well-being of the alleged victim. SASPA fills the void by providing orders of protection only in cases where parties are not eligible for a restraining order as a victim of domestic violence under the PDVA.

The Supreme Court explained that while the procedures for seeking a FRO under the PDVA and a SASPA FPO are identical, SASPA only lists two factors that trial courts are to consider as compared to the PDVA which lists six factors. It took note that the second factor of the PDVA which addresses the existence of immediate danger to persons or property, could have been inserted by the Legislature into the SASPA statute but opted against including this language. The Supreme Court found this to be instructive in determining that the Legislature intended for SASPA's second factor be less restrictive.

Moreover, the Supreme Court observed that the penalties of a FRO under the PDVA are far more severe than a FPO under SASPA. A FRO may include nineteen (19) different forms of relief including but not limited to granting exclusive possession to a plaintiff of a shared residence, directing a defendant to pay money damages to a plaintiff, permanent forfeiture of firearms, and an award of attorney's fees. This is in contrast to the FPO which only prohibits the respondent from having any contact with the victim and prohibits the

respondent from committing any future act of nonconsensual sexual contact, sexual penetration, or lewdness against the victim.

The Supreme Court was also guided by the plain language of the statutory provisions of SASPA in finding that the Legislature intended a lenient and easy-to-satisfy standard to obtain a FPO in contrast to a PDVA FRO. Specifically, the Supreme Court noted that the definition of the word "possibility" in *N.J.S.A.* 2C:14-16(a)(2) does not require that something will happen but that something may happen or might be the case. With regard to the definition of the word "risk," the Supreme Court clarified that this meant a situation involving exposure to danger or the possibility that something unpleasant or unwelcome might happen. Thus, the plain language of factor two in SASPA requires the Court to consider whether a victim may be exposed to physical risk or danger or an emotionally unpleasant outcome that could lead to them feeling uncomfortable, unhealthy, or unhappy.

Of equal importance to the Supreme Court was that the Legislature chose to use language that there was "possibility of future risk" to a victim for a SASPA FRO rather than there be a "necessity to protect" the victim which is the language set forth under *N.J.S.A.* 2C:14-15(a) for addressing SASPA TRO's. Based on the clear and unambiguous language of SASPA, the Supreme Court added that Clara's extensive testimony detailing her physical and mental health issues, including but not limited to lack of sleep, intimacy issues, loss of self-worth, and the destructive impact that the sexual assault had on her

satisfied prong two of SASPA and there was sufficient evidence for the trial court to enter a FPO against Martin.

As for Martin's argument that an irrational fear by Clara did not warrant a restraining order where the parties had not been in contact for over three (3) years, the Supreme Court pronounced that nothing in the plain language of *N.J.S.A.* 2C:14-16(a)(2) requires that there be an objectively reasonable fear or that it be consistent with a reasonable person standard. In short, credible testimony about emotional or psychological trauma, even if it is a subjective fear on the part of the victim, is sufficient to satisfy SASPA's second factor.

Roik v. Roik, 477 *N.J. Super.* 556 (App. Div. 2024)

Issue: Does the death of one spouse which is subsequent to the execution of a written Matrimonial Settlement Agreement ("MSA") by both parties but prior to an uncontested hearing and entry of a Final Judgment of Divorce render the terms of the MSA unenforceable?

Holding: No. Where one party has become deceased pending an uncontested divorce hearing, the Family Part may enforce the MSA as long as it is entered at arm's length, and it is fair and equitable to effectuate the parties' mutual intent to divide their assets and liabilities.

Issue: Do the amended statutes, *N.J.S.A.* 3B:5-3(d), *N.J.S.A.* 3B:8-1, and *N.J.S.A.* 2A:34-23(h)(2), which close the proverbial "black hole" in matrimonial actions by permitting trial courts in the Family Part to make an award of equitable distribution where one party has died pending a divorce have retroactive application?

Holding: Yes. The revised statutes enacted by the Legislature have a curative effect since they were designed to close the *Carr* black hole and should be entitled to pipeline retroactivity to provide trial courts addressing this issue with a means to resolve cases which were not dismissed prior to the effective date of the new statutes.

Discussion: Paul Roik ("Husband") and Anita Roik ("Wife") were married for forty-six (46) years at the time that the Husband filed a complaint for divorce in August 2020. Attached to the Husband's complaint was a certification of insurance coverage confirming that there was a life insurance policy, but the Husband did not own it.

With the assistance of counsel, the parties negotiated an MSA which was signed by the parties in November 2020. The MSA contained a provision which stated that the Agreement became effective upon the last party executing the document. There was also standard language in the Agreement including but not limited to the fairness and equity of the Agreement and the fact that it was entered into by both parties free of force, coercion, or duress.

An uncontested hearing date was scheduled by the court for January 11, 2022. In December 2021, there was an email discussion which occurred between the parties, their eldest son, and their daughter about the cost and expediency as to whether the parties' divorce should be entered on the papers in lieu of attending and participating in a virtual uncontested hearing by Zoom.

On December 25, 2021, the Husband signed a certification is support of a judgment of divorce on the papers. The Husband subsequently passed away on December 29, 2021 before a judgment of divorce was entered by the court.

Following the Husband's death, the eldest son, executor of the Husband's estate, filed an application in which he petitioned the court in the Family Part for the following: substitute the estate as the real party in interest; enforce the MSA; impose a constructive trust; or alternatively intervene in the divorce litigation. The Wife opposed the motion and filed a cross-motion for other relief, including to dismiss the divorce.

In support of the Wife's cross-motion, she certified that she knew that the Husband was in ill health but denied purposely delaying the divorce until he died. The Wife further certified that she knew that the Husband had a life insurance policy with American General

– United States Life Insurance Company, on which the Husband was making payments, which had a death benefit of $750,000.00. She claimed that she learned around 2011 that the Husband transferred ownership of the policy to the eldest son and that the beneficiary designation was changed from the Wife to someone else. The Wife's certification attached a letter from the insurance carrier enclosing a change of ownership and beneficiary forms and included a handwritten notation stating as follows: "$40,000 prepaid by son[.] $750,000 policy."

The reply certification by the eldest son conceded that the Wife knew that the Husband no longer owned the life insurance policy because it was disclosed on the Husband's CIS. It was acknowledged that the policy was disclosed in discovery and the son took over the policy because the Husband could no longer afford the premiums.

Following oral argument, the trial court granted Wife's cross-motion and concluded that the MSA could not be enforced because there was no way of discerning the parties' mutual intent and whether they knowingly and voluntarily entered into the Agreement. The judge who rendered the decision cited Administrate Office of the Courts Directive #18-20 which promulgated the form "Certification in Support of Judgment of Divorce" which is required for a divorce on the papers and declared that this procedure does not relieve the court of its obligation to make findings on the record that the parties knowingly and voluntarily entered into the MSA. The judge further explained that the MSA was never made part of a final judgment of divorce and therefore could not be enforceable as a court order.

The estate argued on appeal that the trial judge erred as the existence of a signed MSA demonstrated unusual and exceptional circumstances warranting substitution of the estate as the real party in interest. Furthermore, the estate contended that the trial court should have enforced the MSA to avoid a windfall to the Wife.

Following initial briefing and oral argument in the Appellate Division, legislation was introduced proposing an amendment to the intestacy and equitable distribution status to close the black hole in cases where one spouse dies pending a divorce proceeding. The new legislation was signed into law by Governor Murphy on January 8, 2024.

In reviewing the record in the trial court, the Appellate Division noted at the outset that the trial judge relied extensively on Directive #18-20 which establishes the procedure for a divorce on the papers. However, the trial judge overlooked the fact that the Husband had signed and filed a certification in support of the judgment of divorce prior to the time of his death. Notwithstanding the certification, the Appellate Division explained that the MSA clearly expressed the mutual belief of the parties that the Agreement was fair and equitable and reflected their mutual intent to be bound by its terms.

The Appellate Division also found important that the Wife knew about the life insurance policy in which the ownership and beneficiary designations had changed but nonetheless decided to settle the case. Furthermore, the equitable distribution provisions were unremarkable and worked to the Wife's advantage as she no longer had an alimony obligation once the Husband died.

The evidence in the case further demonstrated to the Appellate Division that the final judgment of divorce would have been entered but for the scheduling delay which was

primarily attributed to the Wife's preference of wanting a Zoom divorce based on her understanding that it would be more cost efficient. Accordingly, the Appellate Division concluded there was no basis to set aside the MSA and reversed and remanded the matter back to the trial court in order for the estate to substitute as the real party in interest and enter a judgment incorporating the MSA.

The Appellate Division was further tasked with addressing the issue that was part of supplemental briefing as to whether the newly passed and amended statutes, *N.J.S.A.* 3:B-3(d), *N.J.S.A.* 3B:8-1, and *N.J.S.A.* 2A:34-23(h)(2), by the Legislature which eliminated the "black hole" in divorce actions applied retroactively or prospectively. The Appellate Division found that the revised statutes should have retroactive effect to pending cases that were not dismissed prior to the effective date of the new statutes.

In its analysis, the Appellate Division acknowledged that there is presumption against retroactivity. However, there are exceptions where (1) the legislative history makes clear that the Legislature intended that the statutes apply retroactively either expressly or implicitly; (2) where the statute is ameliorative or curative; or (3) when the expectations of the parties may warrant retroactive application.

The Appellate Division added that there is also pipeline retroactivity whereby a rule of law may apply in all future cases, matters which remain pending, and the particular successful litigant in a case already decided. The degree of retroactivity depends on a court's view as to what is just commensurate with public policy and the particular situation presented.

The Appellate Division found that based on the legislative history, the revised statutes ostensibly created pipeline retroactivity as they apply to pending complaints which have not been dismissed for failure to state a claim. The revised statutes to close the black hole were clearly intended to be curative which also support their retroactive application to cases which were still pending in the court system. In conclusion, the Appellate Division maintained that applying new laws to cases in the pipeline under these circumstances does not frustrate the administration of justice, but rather advances justice by providing courts with an effective mechanism to resolve cases in accordance with prevailing law.

Sadeeshkumar v. Venugopal, 478 *N.J. Super.* 25 (App. Div. 2024)

Issue: Did the trial court err in denying the Husband's motion to amend his Answer so as to include a Counterclaim for Divorce based on the grounds of extreme cruelty and irreconcilable differences where the case was more than one year old?

Holding: Yes. An application to amend a Complaint or Counterclaim for Divorce in the context of a family law matter should be liberally and freely permitted in the interests of justice at any time prior to the Final Judgment.

Discussion: The plaintiff ("Wife") and defendant ("Husband") were married for over 30 years in which the Wife filed a Complaint for Divorce in May 2022. As part of her Complaint, the Wife filed for divorce based on irreconcilable differences and sought an award of alimony, equitable distribution, and counsel fees. In October 2022, the Husband filed an Answer along with affirmative defenses. The Answer also referred to a separate litigation in the Law Division regarding a business founded during the parties' marriage involving the Wife who was a third-party intervenor and another individual, Selvakumar Murugan ("Murugan").

In May 2023, the Husband filed a Motion to amend his Answer to the Complaint for Divorce so as to include a Counterclaim for Divorce based on grounds of extreme cruelty and irreconcilable differences. In support of his Motion, the Husband claimed that he and his Wife met Murugan in 2000 in which the Wife unilaterally devoted herself to Murugan as a spiritual guru. The Husband further claimed that due to Murugan's influence, the Wife and Murugan made decisions for their family business which adversely affected the Husband's personal and financial well-being. He contended that Murugan and the Wife

were also involved in an inappropriate relationship which violated all acceptable societal norms and cultural values. As part of the Husband's Motion, a proposed Answer and Counterclaim for Divorce were annexed to his application.

The Wife's counsel only filed a letter brief and did not include a Certification from the Wife setting forth the relevant facts based on her personal knowledge. In the letter brief, the Wife's counsel argued that the Husband forfeited his right to amend his pleadings because he knew about the Wife's alleged conduct as early as 2013 but decided not to file a Counterclaim.

In his reply certification, the Husband disputed that he knew about the facts involving the Wife and Murugan during the marriage and that his separate travels to India reinforced the need to have a separate and independent cause of action to ensure that the divorce moved forward. The defendant also noted that if the Wife withdrew her Complaint, the Husband would be unable to obtain a divorce and the matter would have to be refiled which would be contrary to the principles of judicial efficiency and economy.

Upon review of the written submissions, the trial judge denied the Husband's request to amend his pleadings. The trial judge relied in part on the fact that the case had significantly aged being over 427 days old and since parties pled a cause of action based on irreconcilable differences, amending the pleadings at such a late stage would only engender more acrimony between the parties.

The Husband subsequently filed a Motion for Reconsideration in which he certified that the trial judge incorrectly found that he pled for irreconcilable difference since the only

pleading that he filed was an Answer with affirmative defenses. He further clarified that at the time that he filed his Answer, he did not include a Counterclaim because he was not seeking a divorce from the Wife. However, as discovery ensued, it became clear to him that irreconcilable differences existed between the parties.

The Wife's counsel filed another letter brief asserting that the Husband had not given a reason as to why he waited to amend his pleadings. The brief further claimed that the Husband had not met the criteria for reconsideration and was merely dissatisfied with the trial judge's first Order.

Notwithstanding the Husband's arguments, the trial judge denied his Motion for Reconsideration and agreed with the Wife's position. The Husband thereafter was granted leave to appeal the trial judge's prior decisions.

In addressing the issue on appeal, Appellate Division initially reviewed *R.* 4:9-1 which provides for a liberal standard in which litigants may amend a pleading "at any time before a responsive pleading is served, or if the pleading is one to which no response pleading is to be served, and the action has not been placed upon the trial calendar, at any time within [ninety] days after it is served." The Appellate Division noted that despite the liberal standard of the court rule, judges may deny leave to amend when the granting of relief may be futile such as when the new claim lacks merit or would be dismissed for failure to state a claim upon which relief would be granted.

The Appellate Division made clear that the trial judge was mistaken in his belief that the Husband pled a cause of action for irreconcilable differences when he did not file

a Counterclaim for Divorce. Furthermore, the trial judge misapplied the law when he considered the merits of the Husband's allegations in the proposed amended pleadings and then denied the Husband's application in deeming the allegations to lack substantive basis. Rather, the Appellate Division specified that the Husband pled sufficient grounds for divorce based on irreconcilable differences and extreme cruelty which outlined the alleged conduct by the Wife which endangered the Husband's health and caused the breakdown of the marriage.

With regard to the argument asserted by the Wife that the Husband was precluded by *R.* 5:4-2(e) from amending his Answer since he alleged acts of extreme cruelty and irreconcilable difference dating back to 2013 which were not included in a counterclaim when he filed his first responsive pleading, the Appellate Division found that the Wife's reliance on this court rule was misplaced and incorrect. The Appellate Division clarified that *R.* 5:4-2(e) governs the process of amending a Counterclaim, not amending an Answer to include a counterclaim which was the objective of the Husband. Moreover, while *R.* 5:4-2(e) does not alter the interests of justice standard articulated in *R.* 4:9-1 which governs all amended pleadings, the Appellate Division acknowledged that *R.* 5:4-2(e) impedes a divorce litigant's access to justice insofar as they would be barred from pursuing causes of action revealed to them during the case which would create rather than remove barriers for resolution.

The Appellate Division added that in Family Party matters an amendment to a responsive pleading to include a counterclaim is governed by *R.* 5:4-2(d) which, similar to

R. 4:9-1, requires leave of court but in recognition of the Family Part's inherent equitable authority may be granted at any time prior to final judgment. The rationale underpinning the ability for a party to seek leave at any time originates from the procedure often instituted in divorce cases where a party who may have initially pled a cause of action other than irreconcilable differences can later amend their pleadings to include irreconcilable differences as an amicable way of ending the divorce.

In finding that there was ample support in the record to amend Husband's pleadings in the interests of justice so as to include a Counterclaim, the Appellate Division reversed the prior ruling of the trial court. Significantly, the Appellate Division acknowledged that its decision effectively harmonized *R.* 5:4-2(d) and (e) along with *R.* 4:9-1 insofar as there was previously ambiguity and uncertainty as to how a party should proceed when amending a pleading in the Family Part.

T.B. v. I.W., ___ *N.J. Super.* ___ (App. Div. 2024)

Issue: Did the trial court err in drawing an adverse inference against the defendant during a Final Restraining Order ("FRO") hearing where the defendant refused to testify by invoking his Fifth Amendment right against self-incrimination?

Holding: Yes. Despite the remedial nature of the Prevention Against Domestic Violence Act ("PDVA") in which a defendant's testimony is prohibited from being utilized in a criminal proceeding relating to the same act, a defendant's election not to testify cannot give rise to an adverse inference in an FRO hearing. It is inappropriate for a trial court to draw an adverse inference in a domestic violence proceeding as the defendant's testimony is not necessary in order to secure a FRO.

Discussion: The plaintiff, T.B., obtained a Temporary Restraining Order ("TRO") against the defendant, I.W., on June 4, 2023 based on allegations that I.W. sexually assaulted her in his apartment while their son was in a separate room. The TRO was later amended twice by T.B. to include additional details regarding a prior history of domestic violence by I.W. including acts of harassment and lewdness.

The parties appeared for the FRO hearing in which they were both represented by counsel. T.B. testified on her own behalf while I.W. elected not to testify as his counsel advised the trial court that I.W. was invoking his Fifth Amendment right against self-incrimination in which he should not be compelled to testify in order to reveal a defense.

During the FRO hearing, T.B. testified that the parties were in a dating relationship for approximately three years before the relationship ended. She explained that the parties had a child together who was only two years old. T.B. testified that on the day of the incident, I.W. exercised his scheduled parenting time at his apartment pursuant to their agreement.

T.B. further testified that she slept over I.W.'s apartment the night of the of the incident. She awoke to I.W. sitting next to her masturbating. T.B. recounted in her testimony how I.W. forced her to perform oral sex on him, removed her clothing, and sexually penetrated her despite repeated protests and objections by T.B.

Following T.B.'s testimony, the trial court granted the FRO in concluding that I.W. committed the predicate act of sexual assault and that act would cover such acts as harassment and lewdness because it was all part of the predicate act. The trial court relied on I.W.'s decision not to testify and found that it was permitted to draw an adverse inference that the alleged acts were committed by I.W. The trial further noted that substantial abuse occurred and that it rose to the level of sexual assault. The credibility of T.B. was not assessed although it was acknowledged by the trial court that the parties had been engaged in litigation over parenting time for two years and that there were previously dismissed TRO's and civil restraint agreements between the parties.

I.W. subsequently appealed the FRO based in primary part on trial court's decision to draw an adverse inference against I.W.'s decision not to testify. He further contended that the trial court failed to make factual and credibility findings in entering the FRO.

The Appellate Division found that the actions on the part of the trial court during the FRO hearing constituted reversible error. At the outset of its decision, the Appellate Division explained that although the trial court found that I.W. committed the predicate act of sexual assault, there was no reference to any specific facts or events in addition to there being a lack of credibility determinations regarding T.B.'s testimony. The trial court also failed to cite the elements of the alleged three predicate acts, the PDVA, or the second prong of *Silver v. Silver*, requiring the trial court to determine whether an FRO was necessary in order to protect the victim from future risk of harm.

As for the trial court deciding to draw an adverse inference against I.W. during the FRO hearing, the Appellate Division made clear that it was improper for the trial court to draw this inference merely from I.W. invoking his Firth Amendment right not to testify. The Appellate Division observed that there was no reported case law in New Jersey which addressed this issue or any controlling case precedent that was part of the record. This was made clear by the fact that the trial court had denied the oral application of I.W.'s counsel to prepare written summations in order to address the applicability of an adverse inference and relied upon an adverse inference without citing to any legal authority.

The Appellate Division explained that while a court may generally draw an adverse inference when a party invokes his or her Fifth Amendment right against self-incrimination in civil matters, an FRO hearing is distinguishable from other civil proceedings. To be clear, there are significant adverse consequences of an FRO as it does not expire and its penalties as enumerated by the PDVA can be severe including but not limited to loss of

employment, prohibition of ownership, use, and possession of firearms, and change in residence and child custody. The Appellate Division added that the right against self-incrimination guaranteed by the New Jersey Constitution offers a defendant broader protection than its Fifth Amendment federal counterpart.

With regard to the rationale of applying an adverse inference in many civil matters, the Appellate Division elaborated that the concept is derived from notions of fairness in order to level the playing field where evidence has been hidden or destroyed. If a party elects not to testify by invoking the Fifth Amendment, the invocation prevents the opposing party from discovering potentially relevant and probative facts which squarely places that party at a disadvantage. In the context of a FRO, the Appellate Division noted that the same principle does not apply as the plaintiff has the ability to prove by a preponderance of the evidence that they meet the two prongs of *Silver* in order to obtain a FRO without the necessity of the defendant's testimony.

The Appellate Division also recognized that while the PDVA affords defendants certain protections by preventing their testimony in a FRO hearing from being utilized against them in a similar criminal proceeding, it does not encompass the broader protection afforded by the Fifth Amendment and *N.J.R.E.* 503. The protection under the PDVA only insulates a defendant from a simultaneous or subsequent criminal proceeding arising out of the same incident as the domestic violence action and does not contemplate or protect against the use of that testimony in unrelated proceedings. The Appellate Division emphasized that nothing in its holding precludes a victim from obtaining a FRO or the trial

court from finding that a victim's testimony is uncontroverted when assessing their credibility in cases where a defendant asserts the Fifth Amendment and fails to testify. Based on these conclusions made by the Appellate Division, the FRO was vacated and the amended TRO was reinstated pending a new FRO hearing.

United States v. Rahimi, ___ U.S. ___ (2024)

Issue: Does federal statute 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by individuals who are subject to a domestic violence restraining order, violate the Second Amendment of the United States Constitution where the defendant is found to pose a credible threat to the physical safety of others?

Holding: No. When an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be disarmed consistent with the Second Amendment. Furthermore, while there is no prior law based on the regulatory history of this Nation which precisely matches the restriction imposed by 18 U.S.C. § 922(g)(8), the government is able meet their burden that the statute is consistent with the historical tradition of firearm regulation and that its historical precursors are analogous enough for the challenged statute to pass constitutional muster.

Discussion: This case arises as a result of a domestic incident in which the defendant ("Rahimi") met his girlfriend, C.M., for lunch in a parking lot in December 2019. During the encounter, an argument between the two individuals ensued. As C.M. attempted to depart, Rahimi grabbed her by the wrist, dragged her back to his vehicle, and shoved her in causing her to hit her head against the dashboard. Upon realizing that a bystander had witnessed the altercation, Rahimi proceeded to retrieve a gun from under the passenger seat. Rahimi discharged the firearm as C.M. fled the scene although it was unclear whether Rahimi intended to aim the gun at C.M. or the eyewitness.

In light of the incident which occurred, C.M. went to court to apply for a restraining order. Although Rahimi had an opportunity to rebut C.M.'s testimony, he elected not to do so. On February 5, 2020, a state court in Texas issued a restraining order against Rahimi. The order stated that Rahimi had committed family violence and that this violence was likely to occur again as Rahimi posed a credible threat to the physical safety of C.M.

In May 2020, Rahimi violated the restraining order by approaching C.M.'s house at night. It was found that Rahimi had also began communicating with her through several social media accounts.

Thereafter, in November 2020, Rahimi threatened a different woman with a gun, resulting in a charge for aggravated assault with a deadly weapon. While Rahimi was in custody, Texas police discovered that he was a suspect in at least five additional shootings. Based on police having probable cause that Rahimi was connected to these shootings, they obtained and executed a search warrant for Rahimi's residence in which they discovered a pistol, rifle, ammunition, and a copy of the restraining order.

Rahimi was indicted on one count of possessing a firearm while subject to a domestic violence restraining order contrary to 18 U.S.C. § 922(g)(8). The statute provides that the following three criteria must be met in order for there to be a viable prosecution: (1) defendant must have received actual notice and opportunity to be heard before the order was entered; (2) the order must prohibit the defendant from either harassing, stalking, or threatening his intimate partner or his or his partner's child; and (3) the order must either contain a finding that the defendant represents a credible threat to the physical safety of his intimate partner or his or his partner's child.

Rahimi attempted to dismiss his indictment in arguing that the statute on its face violated the Second Amendment. His motion which raised this Second Amendment challenge was denied in multiple courts including the U.S. District Court. Following the denial of his motion, Rahimi then pleaded guilty. Rahimi subsequently filed an appeal which was unsuccessful and petitioned for rehearing *en banc* before the 5th Circuit Court of Appeals.

Rahimi's appeal was ultimately reopened as a result of the U.S. Supreme Court opinion in *New York State Rifle & Pistol Association, Inc. v. Bruen*, which overturned a law in New York that prevented law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms. Upon review of the appeal *de novo*, the Court determined that *Bruen* overruled the case precedent regarding firearm regulations and that 18 U.S.C. § 922(g)(8) contravened the Second Amendment.

Following the decision by the 5th Circuit Court of Appeals, the Supreme Court granted *writ of certiorari* and initially reviewed the leading cases of *D.C. v. Heller* and *New York State Rifle & Pistol Association, Inc. v. Bruen* addressing ownership and possession of firearms. The Court observed that under English common law "going armed" laws were instituted to prohibit people from misusing weapons to harm or menace the King's subjects. By the time of the Nation's founding, state constitutions and the Second Amendment eliminated governmental authority to disarm political opponents but regulations targeting individuals who physically threatened others persistent.

The Supreme Court cited various examples in history in which laws were enacted by the government to target and curtail the usage of firearms. Most notably, surety laws

were promulgated in Massachusetts in the early days of the Nation's founding authorizing justices of the peace to arrest all individuals who go armed offensively and required offenders to find sureties for his keeping the peace.

When viewing the surety and going armed laws together, the Court explained that common sense suggests that when an individual poses a clear threat of physical violence to another, the threatening individual must be disarmed. While 18 U.S.C. § 922(g)(8) is not identical to its legal precursors involving firearms, the Court made clear that this was not a requirement in order for the statute to be constitutional. The prohibition set forth in the statute as to possession of firearms by those found by a court to present a threat to others squarely aligns with the tradition that the surety and going armed laws represent.

Moreover, the Court declared that the burden which 18 U.S.C. § 922(g)(8) imposes on the right to bear arms also fits within the regulatory tradition of government. First, the statute is analogous to the surety and going armed laws insofar as they each require judicial determinations as to whether a particular defendant likely would threaten or had threatened another with a weapon. Second, comparable to the surety laws, the restriction against Rahimi under the statute is only temporary as it only prohibits firearms possession so long as the defendant is subject to the restraining order.

Additional significance to the Court was that the penalty under the statute also fits within the regulatory tradition. To be clear, the going armed laws provided for imprisonment or in less severe cases a temporary disarmament.

While Rahimi argued that the statute should be invalidated based on its absolute prohibition of individuals with restraining orders possessing guns in the home, the Supreme

Court did not agree with Rahimi's position. The Supreme Court pronounced that its holding in *Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home. In fact, the Court added that many such prohibitions, such as those regarding the possession of firearms by felons and the mentally ill, are presumptively lawful.

The Court concluded that it had no trouble finding that 18 U.S.C. § 922(g)(8) withstood Rahimi's constitutional challenge based on legal and historical precedent which gave context to the government's legitimate interest in prohibiting individuals with active restraining orders from having access to firearms who are a credible threat to the physical safety of others. The tradition of firearm regulation allows the government to disarm individuals who pose a credible threat to the physical safety of others.

In reversing the judgment of the 5th Circuit Court of Appeals and remanding the matter for further proceedings, the Court identified two distinct errors which were made on appeal. The first error was that there was never a requirement under *Bruen* that the government provide a "historical twin" rather than a "historical analogue" as to traditional firearm regulations dating back to the founding of the Nation. The second error was when legislation and the Constitution appears to be at variance, the objective is to seek harmony and not manufacture conflict which is where the Circuit Court of Appeals ran into problems by focusing on hypothetical scenarios where 18 U.S.C. § 922(g)(8) might raise constitutional concerns and controversies.

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TROs AND FROs FROM A JUDICIAL PERSPECTIVE

Honorable Bradford M. Bury, J.S.C. (Ret.)

1. In 1991, the Prevention of Domestic Violence Act was enacted (2C:25-17). Other than the complete revision of the criminal laws of the State of New Jersey in 1978 by enactment of the 2C Criminal Code, no more important piece of legislation has ever been passed.

2. Besides the clients we represent, we all know at least one family member, friend, or acquaintance in our work or social communities who has been the victim of domestic violence.

3. As violence sadly continues to escalate in our society, victims more than ever need the protection of the PDVA.

4. Regardless as to what facets of the family law docket within which one may practice, I believe that the DV docket is the most important one because it not only protects the victim individually, but more often than not it protects children forced to live within the abusive parental relationship, in addition to other relatives or friends who collaterally need protection from the abuser.

5. Obtaining a TRO, followed by an FRO, gives a lifeline to the victim that will often open the gates of opportunity for resolution of related issues of support, custody and parenting time.

6. Obtaining and continuing social services for a DV victim and the children is very important for long term independence from the abuser, or in the minority of cases, for safe reconciliation through mental health counseling and/or substance abuse treatment.

The domestic violence unit in each county has a list of agencies and organizations who provide resources and services, as does the domestic violence advocacy organization who counsel victims on the “cycle of domestic violence” and are present in the courtroom during the FRO trial, or during a voluntary dismissal request by the plaintiff.

When warranted, parallel criminal prosecution is essential to further protecting the victim and the children.

A paradigm program for protecting domestic violence victims is the Union County Family Justice Center, which

is a joint initiative of the County of Union, the Union County Prosecutor’s Office, an d the YWCA of Union County. Under one roof, emergency counseling with referral for services in housing, rental assistance, employment and immigration; legal advice on DV, family law and immigration; a law officer on site to assist with preparing police reports; a Union County Assistant Prosecutor on site for

consideration of criminal prosecution; medical, mental health and substance abuse referrals.

TEMPORARY RESTRAINING ORDERS

1. It is an ***ex parte*** application, and the plaintiff need only present ***prima facie*** proof as to the requisite relationship and one predicate act. At the FRO hearing, the plaintiff must prove the case by a **preponderance** of the credible, reliable, material and relevant evidence.

2. **Regular courthouse business hours versus holidays and applications after 4:30 PM to Municipal Court.**
Applications for a TRO during regular courthouse business hours are generally made before a domestic violence hearing officer between 8:30 AM and 4:30 PM. Applications that come in just before 4:30 PM will still be heard. Every County has an "after hours" judge assigned for such DV cases. Sometimes, the after-hours judge will decide to hear the matter directly, while others will defer to the hearing officer first, as would be the customary practice during regular business hours. From a time consumption perspective, if the hearing officer recommends a denial and the plaintiff requests an appeal, then the after-hours judge will have to hear the case anyway, but on a more abbreviated basis.

DV incidents that occur after 4:30 PM or on holidays and weekends must be heard by a municipal court where one of the predicate acts allegedly occurred. If a municipal judge denies the TRO, the plaintiff has a right to request an immediate appeal to a superior court judge who has emergent duty for that evening/week.

3. As to regular business hour DV complaints, strategically, do you want a DV hearing officer to consider the TRO or do you want the TRO to be heard by a judge? Customarily, the DV hearing officer is well versed and the result should be comparable, however, if previously denied by a hearing officer and the new complaint is a bit nuanced, consideration should be given to a request for a judge to hear it directly.

4. Do you want to be present with your client during the TRO testimony before the DV hearing officer?

5. If the DV hearing officer recommends **against** the issuance of a TRO, do you request an appeal to a superior court judge?

6. If the DV hearing officer recommends **against** the issuance of a TRO and the plaintiff decides not to immediately appeal to the superior court judge, may the plaintiff change their mind the next morning and request the appeal be heard then?

7. Strategy Question: Is it ever worthwhile for a defendant to appeal the granting of a TRO on the merits? On financial reliefs? On lack of residence pending the FRO hearing? On custody/parenting time pending the FRO hearing? Consideration of the rule to conduct the FRO hearing within 10 days of the granting of the TRO.

AMENDING TROs

1. Why, When and How?

2. **Poor pleadings** as to the facts (predicate acts/DV history), whether due to the plaintiff's incomplete/inaccurate recollection of events and/or incomplete testimony before the hearing officer, or ineptitude on the part of the DV unit intake and/or DV hearing officer formulating same.

The plaintiff may also want to amend the relief sought under Part I (additional barred locations, additional protected parties) and Part II (alter parenting time, award support, medical coverage, evaluations/treatment programs for the defendant). These additional or modified reliefs may all be addressed to the Court contemporaneous with the granting of the FRO and preparation of the order in court.
Materiality: Are you adding significant omitted incidents/2C offenses, or merely amending the date from late Friday evening into Saturday early morning? The court has the ability to amend the pleadings to conform to the proofs so long as it does not violate the defendant's fundamental right of due process as to notice and the ability to defend.

Harassment 2C: 33-4; the bedrock DV offense

2C:33-4. Harassment.
Except as provided in subsection e., a person commits a petty disorderly persons offense if, with purpose to harass another, he:
a. Makes, or causes to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.
A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c.443).
e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States or he knowingly directs such action to a current or former judge that relates to the performance of the judge's public duties.

Almost every predicate offense can fit into one of the subsections of Harassment. Do not rely upon the judge to have to make a finding that harassment is a lesser included offense of one of the more serious predicate offenses where you may be unable to prove all the elements by a preponderance of the evidence.

A simple example would be a case where you are not able to prove Assault under 2C:12-1, but you are able to prove subsection b under the Harassment statute:
b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so;
Foundational Element of Proof under Harassment is *"…if, with purpose to harass another…"*.

3. **Contempt after issuance of TRO:** acts violating the TRO which constitute contempt under 2C:29-9.
If the proofs on the underlying predicate offense are soft, then a violation of the TRO may be the best route to obtaining the FRO. It also enhances the likelihood of a finding under the second prong of Silver v. Silver , 387 N.J. Super. 112, (App. Div. 2006) that there is a need for the FRO to protect the victim from immediate danger or prevent further abuse.
"…the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors set forth in N.J.S.A. 2C:25-29a (1) to-29a (6), to protect the victim from an immediate danger or to prevent further abuse." Silver at 127.
4. Strategy question: If your proofs on the predicate offenses are strong, do you really need to amend the DV complaint to allege contempt on the TRO violations?

What if the Prosecutor's Office has charged the defendant with criminal contempt as to each one of the alleged violations? Should you just let the Prosecutor's Office take the lead oar criminally and not bother with the civil DV complaint amendment?
If you do not amend the DV complaint, will the court permit you to introduce those proofs regardless, on the ground that those proofs are relevant to the prong 2 analysis under Silver?

1. Reminder: Interrelationship between the civil DV complaint and parallel criminal charges arising out of the predicate offenses alleged in the DV complaint.

2C:25-29 (a) provides:
If a criminal complaint arising out of the same incident which is the subject matter of a complaint brought under [the PDVA] has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the rules of evidence that govern where a party is unavailable.

In essence, a defendant has a qualified 5th Amendment right against self-incrimination and is permitted to testify in a DV FRO hearing without risk of his testimony being used against him in a parallel or future criminal trial related to the predicate offenses. However, the defendant's testimony may be used by the State for impeachment purposes on cross-examination if the defendant testifies at variance with the testimony in the DV trial. The testimony may not be used on the State's case in chief. State v. Duprey, 427 N.J. Super. 314 (App. Div. 2012).

Whether a DV complaint is voluntarily dismissed by the plaintiff or dismissed on the merits, collateral estoppel does not bar a criminal prosecution against a domestic violence defendant. State v. Brown, 394 N.J. Super. 492 (App. Div. 2007). Similarly, dismissal of a criminal charge related to the DV case is irrelevant and not evidential in the FRO hearing because the criminal case requires proof beyond a reasonable doubt, whereas the DV case only requires proof by a preponderance of the evidence.

Query: What if a defendant in a civil DV trial decides not to testify, and there are no pending criminal charges of any nature, may the court draw an adverse inference as to defendant's decision not to testify? The Appellate Division in a recent decision on August 5, 2024 answered that question, "No". T.B. v. I. W. _____ N.J. Super. _____ (App. Div. 2024; Docket No. A-3899-22).

Generally, in a civil action, a court may draw an adverse inference when a party invokes his or her Fifth Amendment right against self-incrimination. State, Dep't of Law &Pub. Safety, Div. of Gaming Enf't v. Merlino, 216 N.J.Super. 579, 587 (App. Div. 1987). The rationale for permitting an adverse inference in civil matters derives from notions of fairness; it exists "to level 'the playing field where evidence has been hidden or destroyed.'" Lanzo v. Cyprus Amax Minerals Co., 467 N.J.Super. 476, 519 (App. Div. 2021) (quoting Rosenblit v. Zimmerman, 166 N.J. 391, 401 (2001)). If a defendant elects not to testify, the invocation prevents the opposing party from discovering potentially relevant and probative facts, putting that party at a disadvantage. See Baxter, 425 U.S. at

318; Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J.Super. 527, 533 (App. Div. 1967). (Slip Opinion at 13-14).

Also, the protection afforded to a testifying defendant by the statute is limited to "simultaneous or subsequent criminal proceeding[s]" arising out of the same incident as the domestic violence action, and does not contemplate or protect against the use of that testimony in unrelated proceedings. Therefore, testimony by a defendant in an FRO proceeding may expose a defendant to charges of other criminal activity not related to the predicate acts raised in the FRO hearing. Finally, although records are sealed, FRO hearings occur in open court, where a prosecutor or any member of the public may attend. *N.J. Div. of Child Prot. &Permanency v. S.K.*, 456 N.J.Super. 245, 275 (App. Div. 2018) (Koblitz, J., concurring). For these reasons, a defendant should not be compelled to testify at an FRO hearing merely to prevent an adverse inference from being drawn. (Slip Opinion at pages 15-16).

De Minimis Infractions

2C:2-11 provides:
The assignment judge may dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:
a. Was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
b. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
c. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense. The assignment judge shall not dismiss a prosecution under this section without giving the prosecutor notice and an opportunity to be heard. The prosecutor shall have a right to appeal any such dismissal.

The statute applies to all criminal offenses under **2C,** whether a crime (indictable), disorderly persons offense, or petty disorderly persons offense, which includes criminal contempt.

Examine State v. Hoffman, 149 N.J. 564 (1997), State v. Wilmouth, 302 N.J. Super. 20 (App. Div. 1997), State v. Krupinski, 321 N. J. Super. 34 (App. Div. 1999), plus a plethora of unpublished opinions.

"NO CONTACT"/CIVIL RESTRAINTS AGREEMENT/CONSENT ORDER

2C: 29-9 b. (1) provides:

b. (1) Except as provided in paragraph (2) of this subsection, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

b. (2) In all other cases a person is guilty of a disorderly persons offense if that person purposely or knowingly violates an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States.

For Consideration: Whenever the parties have a pending FM or FD matter, counsel will utilize that docket number to prepare such agreement and enter it as a **consent order**. When there is no pending complaint and the parties do not have a child in common there is no docket number available for a **consent order**.

When preparing a consent agreement for no contact/civil restraints, attorneys frequently include a provision that says any violation of the agreement constitutes a violation of the PDVA and automatically entitles the offended party to obtain a restraining order based upon said violation. That is not an enforceable provision, and most judges will not sign off on such an agreement or note on the record its lack of enforceability beyond a Law Division action for breach of contract. Furthermore, it creates a false belief of judicial protection in the mind of the plaintiff who is in the process of voluntarily dismissing a DV complaint/TRO. If a future act of domestic violence occurs, the victim will have to go through the same standard process of obtaining a TRO followed by an FRO trial. The residual value, however, of such a consent agreement is that it will buttress the prong 2 Silver proofs as to the need for the FRO because the defendant already demonstrated an inability to comply with the "no contact" civil restraints agreement.

Defense Strategy Points

1. If there is sufficient time between entry of the TRO and the FRO hearing, order a copy of the plaintiff's TRO testimony before the DV hearing officer. The electronic copy sent by email is inexpensive and comes quickly. It does automatically "dissolve" after a period of time, however.

2. In cases where the predicate act is very likely to be proven and it is not a serious offense (eg. harassment), consider stipulating to the requisite relationship and the predicate act and arguing that a final restraining order is not necessary given the nature of the predicate act and lack of DV history under prong 2 of Silver.

CARFAGNO MOTIONS TO DISSOLVE FRO

1. Be sure to order the transcript from the original FRO hearing, if available, depending upon the age of the case. The DV Procedures Manual requires the judge who granted the FRO to hear the Carfagno motion to dissolve, if that judge is still sitting on the bench, regardless as to what Division presently assigned. Do not serve the plaintiff directly as that is a violation of the existing restraining order. The motion must be served through the Family Division. Every plaintiff is supposed to keep their current address updated with the DV unit. If the current address is not valid, then the DV unit will be authorized to conduct a due diligence search. If the plaintiff is still unable to be located, it will be up to the discretion of the court as to whether to hear the application without the position/testimony of the plaintiff.

Attorney At Law versus Counselor At Law

Honorable Bradford M. Bury, J.S.C. (Ret.)
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Family Law and Ethics

Robert B. Hille, Esq.

A. General Overview of Ethics Process and the OAE's Report
   - Court's Jurisdiction and that of the Office of Attorney Ethics and District Ethics Committees
   - Role of District Ethics Committee Secretary
   - Role of District Ethics Committee/Investigator/Hearings and Recommendations
   - The more than two-day rule and assignment of Adjudicators (Special Masters)
   - Disciplinary Review Board
   - Cost Awards
B. Most Frequently Alleged RPC Violations
C. Advisory Committee on Professional Ethics Opinion 739

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July 3, 2024

To the Honorable Chief Justice Stuart Rabner and Associate Justices of the Supreme Court of New Jersey:

Thank you for the opportunity to present this State of the Attorney Disciplinary System Report for 2023, the 40th Anniversary of the New Jersey Office of Attorney Ethics.

Our anniversary year was eventful. With the support and analytical input of Clerk of the Supreme Court and the Administrative Director of the Courts, this Court approved beneficial restructure of our Office in August of 2023. That reorganization added attorneys and District Ethics Committee Unit staff with the aim of more regularly satisfying the Rule 1:20-8 time goals for attorney disciplinary matters. As the year progressed, we were able to begin our statistical recovery, while maintaining the quality of the thorough and complete investigations that disciplinary precedent and the New Jersey public require.

Attorney regulatory policymaking also flourished in 2023. On May 2, 2023, this Court founded the Supreme Court Committee on Wellness in the Law, raising awareness and diminishing stigma for attorneys in need. Consistent with that wellness theme, on December 5, 2023, the Court amended two Court Rules to allow third-party referrals to the New Jersey Lawyers Assistance Program, more directly connecting lawyers to the entity the Court had founded for their support in 1999.

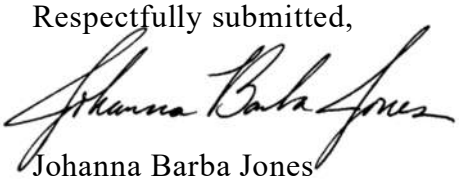
On July 3, 2023, the Supreme Court's Committee on the Duration of Disbarment for Knowing Misappropriation rendered a final report recommending that the Court afford disbarred attorneys a path back from disbarment.

The Court also honed attorney disciplinary policy. On May 12, 2023, the Court expanded the availability of Agreements in Lieu of Discipline for minor unethical conduct. Volunteer and professional disciplinary authorities must now consider whether diversion is appropriate and are permitted to do so even after the filing of a public disciplinary complaint.

On December 19, the Court announced that it would permit members of the District Fee Arbitration Committees to serve two terms, bringing those valued members of the volunteer corps into alignment with their District Ethics Committee counterparts.

The Office of Attorney Ethics is grateful for the Court's leadership on these issues and honored by the opportunity to contribute to their development. On behalf of our entire leadership team, we thank this Court for the opportunity to protect the public and the reputation of the bar through our important work.

Respectfully submitted,



Johanna Barba Jones
Director
Office of Attorney Ethics

ANNUAL REPORT

2023

Johanna Barba Jones
Director

Jason D. Saunders
First Assistant Ethics Counsel

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I. EXECUTIVE SUMMARY

As of December 31, 2023:

- New Jersey's licensed attorney population was 100,210 – one attorney for every 93 citizens of our state.
- During 2023, the Garden State had the 6th highest number of attorneys admitted to practice in the nation, with that ranking unchanged since 2017.
- During 2023, New Jersey ranked 42nd in the country in annual attorney licensing fees charged (at $239).
- During 2023, a total of 877 attorneys and non-attorney public members volunteered to serve the Court on the 18 District Ethics Committees (596 volunteers) and the 17 District Fee Arbitration Committees (281 volunteers).
- Thirty-seven (37) fewer attorneys were disciplined in 2023 (total: 102) than in 2022 (total: 139).
- New investigations increased by 11.3% during 2023 (total: 919) from the filings in 2022 (total: 815).
- New formal charges decreased by 10.7% in 2023 (total: 151) compared to 2022 (total: 169).
- The OAE's yearly average investigative time goal compliance increased by 8% during 2023, from 57% in 2022 to 65% in 2023.
- District Ethics Committees' yearly average time goal compliance for 2022 decreased by 4%, from 53% in 2022 to 49% in 2023.
- District Fee Arbitration Committees handled a total of 912 cases involving more than $5.9 million in legal fees during 2023.
- The OAE's Random Audit Compliance Program conducted 769 audits of law firms in 2023.
- Twelve (12) lawyers were disciplined (including three disbarments) through the detection efforts of the Random Audit Compliance Program.
- In 2023, 143 attorney trust account and IOLTA attorney trust account overdrafts were reported to the OAE.
- A total of eight (8) lawyers were disciplined in 2023 (including one disbarment) due to the Trust Account Overdraft Notification Program.

II. INTRODUCTION

The 1947 New Jersey Constitution provides that the "Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted." That constitutional mandate has evolved into a comprehensive system for attorney regulation which guides and governs New Jersey lawyers throughout their careers.

The Supreme Court primarily communicates its expectations regarding the practice of law through Court Rules. The nuts and bolts of the practice of law, including attorneys' financial recordkeeping obligations, are explained in R. 1:21-1 to -12. The ethical expectations of attorneys are explained in the Rules of Professional Conduct (the RPCs) (which are made expressly binding upon attorneys by operation of R. 1:14).

Beyond expressing its expectations in Rules, the Court has created regulatory entities to serve its constitutional mandate. First, the Committee on Character and the Board of Bar Examiners screen individuals proposing to enter the profession. Other Supreme Court Committees provide advisory services: Advisory Committee on Professional Ethics (ACPE); Committee on Attorney Advertising (CAA); and Committee on the Unauthorized Practice of Law (CUPL). Those entities meet periodically to consider novel issues. Their decisions do not reference particular cases or controversies and are published for the use of the entire bar.

Not all ethical dilemmas are novel or unfold slowly enough that a practitioner can wait for a written decision. Recognizing this, the Court also provides an Ethics Hotline to assist attorneys to resolve day-to-day ethical dilemmas. Questions posed to the Ethics Hotline are not shared with disciplinary authorities. R. 1:19-9(d) expressly states "[n]either the fact that an inquiry has been made nor the results thereof, shall be admissible in any legal proceeding, including an attorney or judicial discipline proceeding."

Another way in which the Court has exercised its power to assist practicing attorneys is through the creation in 1999 and annual funding of the New Jersey Lawyers' Assistance Program (NJLAP). Managed by the New Jersey State Bar Association (NJSBA), the NJLAP is a "free and confidential resource assisting all NJ Lawyers, Judges, Law Students, and Law Graduates to achieve and maintain personal and professional well-being." Like the Ethics Hotline,

NJLAP has no reporting relationships with the Office of Attorney Ethics (the OAE), bar associations, or any entity or tribunal. Its services are confidential, and stand under the broad offering, "[n]o matter what the problem, you need not manage alone." Although there is no limitation on NJLAP's service areas, it explicitly covers "depression, stress, anxiety, alcohol & substance abuse, and gambling issues." Through its funding of NJLAP, the Court strives to eliminate stigma for seeking professional and personal support.

Sometimes, all the Court's prevention and educational structure are not enough. Accordingly, the Court created the attorney disciplinary system.

The attorney disciplinary system exists to protect the public and the reputation of the bar. To support this role, the Court created two governmental entities to serve that disciplinary mission: the OAE and the Disciplinary Review Board (the DRB). In general terms, the OAE is the investigative and, when appropriate, prosecutorial arm of the New Jersey attorney disciplinary system; the DRB is the intermediate appellate tribunal of the attorney disciplinary system.

The Court also created 36 volunteer entities to serve this mission: 18 local District Ethics Committees, which are loosely organized around the Court's county and vicinage system; 17 local District Fee Arbitration Committees (the DFACs); and one Disciplinary Oversight Committee (the DOC), charged with ensuring the effective and efficient operation of the disciplinary system. The DOC exercises that oversight predominantly through its review of the Attorney Disciplinary System Budget and a financial audit annually conducted by an outside firm.

This Annual Report is intended to broadly summarize the activity of the OAE. It is presented in the context of, and informed by, certain other data about New Jersey lawyers, acquired through the attorney registration system and maintained by the Lawyers' Fund for Client Protection (LFCP).

A. Attorney Discipline in Brief

The OAE investigates and prosecutes serious, complex, and emergent matters, statewide. Attorney disciplinary matters of standard complexity are investigated by a devoted volunteer corps of nearly 600 DEC members, both attorneys and members of the public who are appointed to conduct this same important work on a more local level. For the 2023-2024 term of service, there were 596 volunteer members appointed by the Supreme Court (485 attorneys and 111 public members), serving pro bono across the state. As of the end of 2023, the District Ethics Committees were overseen and supported by Statewide Ethics Coordinator Ryan J. Moriarty.

The DEC leadership consists of three attorney officers: a chair, who serves as the chief executive officer responsible for all investigations; a vice chair, who is responsible for all cases in the hearing stage; and a secretary, a member of the bar serves as the administrator of that DEC. The secretary receives and screens all inquiries and grievances. The secretary is not a member of the DEC, and instead functions as the DEC's link to the public, fielding all calls from members of the public and the Bar and providing information about the grievance and disciplinary process. Although secretaries receive an annual emolument to defray the expenses related to their duties, they are nonetheless volunteers, as are all the members of the DECs.

DEC attorney members are assigned to investigate and, if necessary, prosecute grievances docketed with a DEC. Three-member hearing panels comprised of two attorneys and one public member decide cases after formal complaints have been filed.

Not all attorney ethics cases are fully litigated at a hearing. A significant proportion of cases proceed to appellate review by the DRB by consent, default, disciplinary stipulation, or a fully-admitted complaint. During 2023, OAE ethics counsel appeared before the DRB to argue a total of 67 separate matters. Those arguments may be viewed in real time, online, via the Court's channels service.[1] The DRB's review is de novo on the existing record. The DRB publishes its own annual report, accessible on its website.[2]

[1] https://www.njcourts.gov/public/channels
[2] https://www.njcourts.gov/attorneys/attorney-ethics-and-discipline/disciplinary-review-board

Of course, the Supreme Court itself is the ultimate authority in attorney discipline. N.J. Const. art. VI, Section II, ¶3. The Court hears oral arguments in disciplinary matters at the Richard J. Hughes Justice Complex.[3] Only the Court can Order disbarment of an attorney. In all other matters, the decision or recommendation of the DRB becomes final on the entry of a disciplinary order by the Court, unless the Court grants a petition for review or issues an Order to Show Cause on its own motion.

The OAE represents the public interest in all cases before the Court. During 2023, OAE ethics counsel appeared a total of 8 times for oral argument in 12 disciplinary cases. Arguments may be streamed in real time from the Court's website.

B. Non-Disciplinary Responsibilities of the OAE

The OAE is primarily known for conducting professional ethics investigations and prosecutions. Complex cases include Motions for Final Discipline under R. 1:20-13, where an attorney has been convicted of a crime, and Motions for Reciprocal Discipline under R. 1:20-14, where another jurisdiction has determined that a New Jersey attorney committed misconduct.

As reviewed above, the OAE provides legal and administrative support to the more than 600 volunteers who themselves investigate "standard" ethics grievances and hold local hearings to dispose of them.

However, the work of the OAE also captures compliance activities, bar support activities, and follow-ups upon discipline which are not frequently associated with the OAE.

In addition to serving the duties outlined above, the OAE serves both monitoring and supervision functions for the attorney disciplinary system. Particularly, the OAE has responsibility for the monitoring of disciplined attorneys to ensure their adherence to the Court-imposed conditions in final Orders of discipline.

Likewise, the Director of the OAE has the responsibility to monitor attorneys' adherence to conditions of diversion, a sort of pre-trial

[3] https://www.njcourts.gov/courts/supreme/supreme-court-webcast

intervention for substantiated minor discipline cases, the admission to which is addressed in "Agreements in Lieu of Discipline" ("Diversion") below.

Sometimes, an attorney must unexpectedly set aside the practice of law. Reasons range from unexpected incapacity, suspension, or disbarment of an attorney. In such situations, an Assignment Judge may appoint an attorney-trustee to wind down that attorney's practice of law. By so doing, the Judiciary intends to protect the interests of the affected clients. The OAE provides support to Assignment Judges and the attorneys they appoint as trustees, tracking all trusteeships throughout the state. The OAE also publishes a guide for attorney trustees.[4]

The OAE provides legal and administrative support to the 17 DFACs who dispose of approximately $6M in disputes concerning legal fees per year. That work is described in greater detail in "Subtracting That Which is Not Misconduct" below. The OAE's administrative functions with regard to the DECs and DFACs include facilitating the appointment of the nearly 900 volunteers upon whose talents those two important programs rely.

The OAE's education and quality assurance work, including the Random Audit Program (RAP) and the Trust Account Overdraft Notification Program (TAONP), will be discussed in "Culture of Compliance" below.

These diverse services to the public and the bar in combination serve the two purposes of the attorney disciplinary system: to protect the reputation of the bar and to protect the public at large.

[4] Office of Attorney Ethics, Closing or Assuming Temporary Control of Another Attorney's Law Practice: Manual for New Jersey Attorney Trustees (March 2017). This document is available upon request. Sample forms for a Verified Petition for Appointment of an Attorney-Trustee and an Order for Appointment of an Attorney-Trustee may be accessed on the Judiciary's website.

III. NEW JERSEY ATTORNEY DATA

According to a July 1, 2023 survey compiled by the OAE for the National Organization of Bar Counsel, Inc., a total of 2,197,083 lawyers were admitted to practice in the United States. New Jersey ranked 6th out of 51 jurisdictions in the total number of lawyers admitted, or 4.51% of the July national total.

As of the end of December 2023, there were a total of 100,210 attorneys admitted to practice in the Garden State, or one lawyer for every 93 New Jersey citizens. The total number of New Jersey lawyers added to the bar population increased by 1% in 2023.

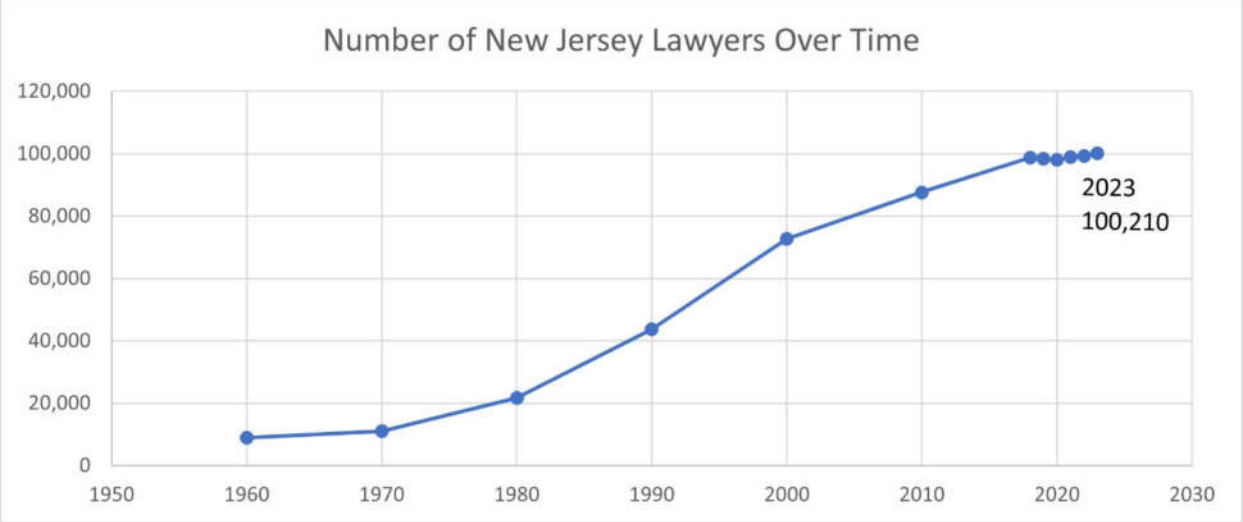

Figure 1

A. Admissions

As of December 31, 2023, 100,210[5] attorneys are admitted in our state. Of those, 49.3% were admitted since 2001 and 22.4% were admitted between 1991-2000. The other 28.2% were admitted in 1990 or earlier.

[5] This figure does not equal the total attorney population, as calculated by the LFCP, because the LFCP total does not include those attorneys who were suspended, deceased, disbarred, resigned, revoked, or placed on disability-inactive status after the attorney registration statements were received and tabulated.

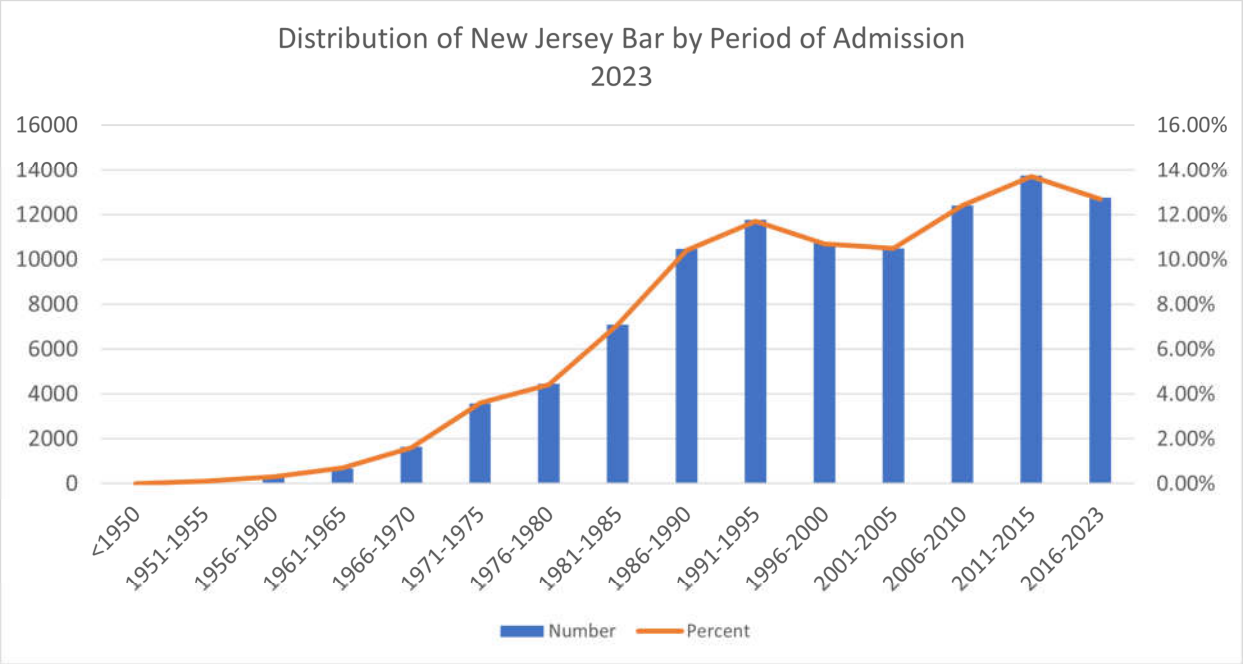

Figure 2

The data set may be viewed at Table 4 on page 55.

B. Attorney Age

Of the 100,210 attorneys for whom some registration information was available, 100,009 (99.8%) provided their date of birth. A total of 201 attorneys (0.2%) did not respond to this question.

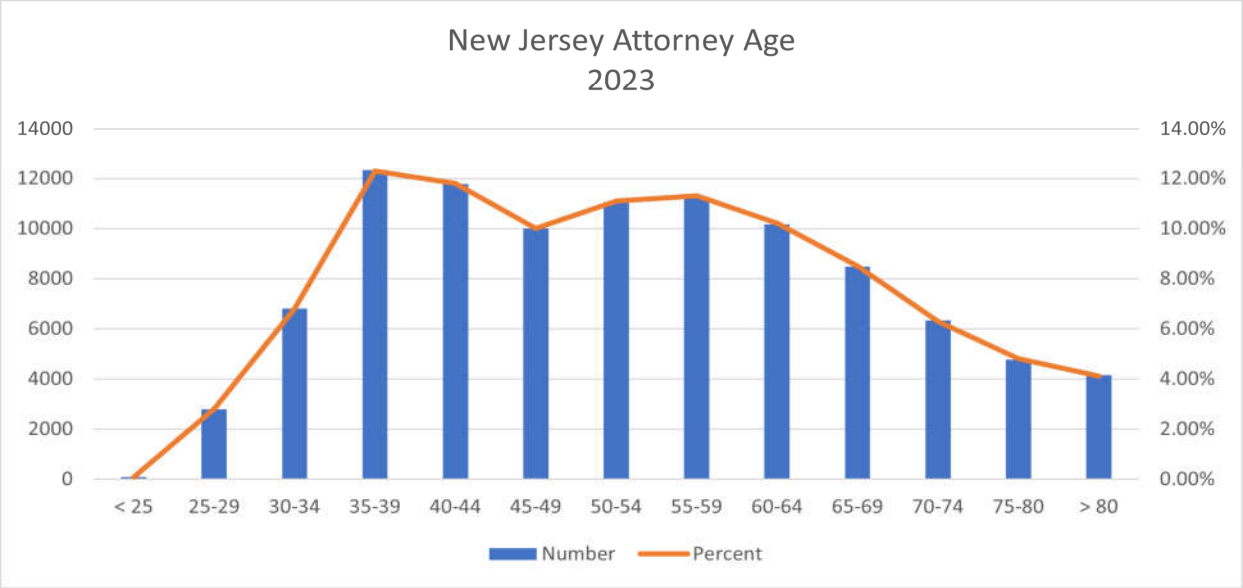

Figure 3

Attorneys in the 35-44 age range comprised the largest group of attorneys admitted to practice in New Jersey at 24.1% (24,108). The 50-59 year category comprised 22.4%, or 22,330 lawyers. Another 10% (9,995) were between the ages of 45-49. The fewest numbers of attorneys were below the age of 29 and over the age of 70. The data set may be viewed at Table 5 on page 55.

C. Other Admissions

More than 73.5% of the 100,210 attorneys for whom some registration information was available were admitted to other jurisdictions. Over a quarter (26.5%) of all attorneys were admitted only in New Jersey. The three largest additional jurisdictions for New Jersey attorneys are New York (46.71%), Pennsylvania (26.6%), and the District of Columbia (6.79%). See Table 6, p. 56.

D. Private Practice

Of the 100,210 attorneys on whom registration information was tabulated, 36,319 stated that they engaged in the private practice of New Jersey law, either from offices within New Jersey or at locations elsewhere. Accordingly, a little more than thirty-six percent (36.2%) of the attorneys engaged in the private practice of New Jersey law, while 63.8% did not practice in the private sector.

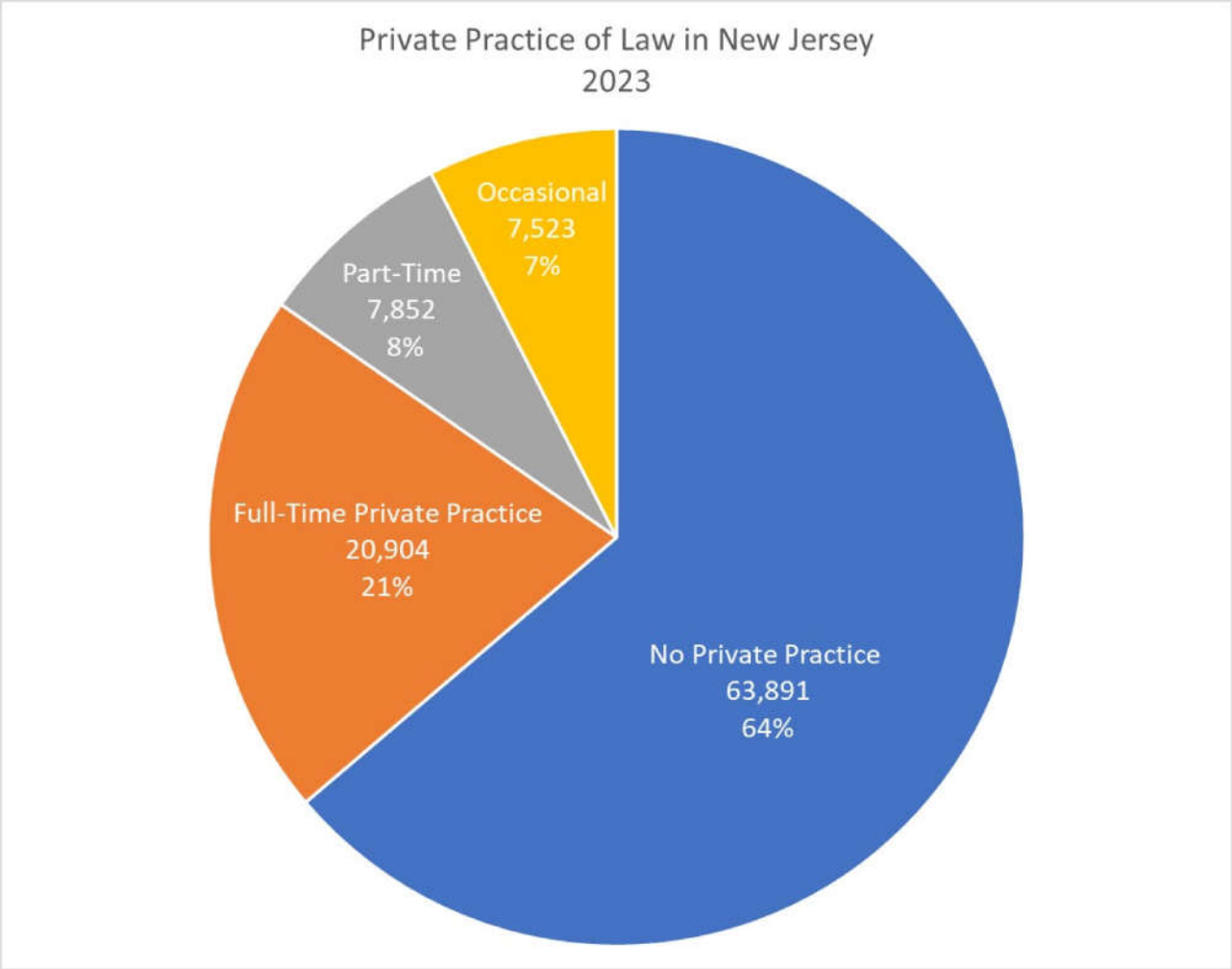

Figure 4

Of those who engaged in the private practice of New Jersey law, 99.9% responded to describe the amount of time devoted to the practice of law. Almost fifty-eight percent (57.6%) practiced full-time, 21.6% rendered legal advice part-time, and 20.7% engaged in practice occasionally (defined as less than 5% of their time). Point one percent (.1%) of responses were unspecified.

1. *Private Practice Firm Structure*

Of the 36,319 attorneys who indicated they were engaged in the private practice of New Jersey law, 97% (35,237) provided information on the structure of their practice. The largest group self-identified as partners (33.3%; 12,091). Twenty-nine point eight percent (29.8%) of the responding attorneys practiced in sole proprietorships (sole practitioners

(9,554) plus sole stockholders (1,257). Associates comprised 23.9% of the responses (8,684), followed by attorneys who were "of counsel" with 8% (2,894), and "other than sole stockholders" with 2.1% (757).

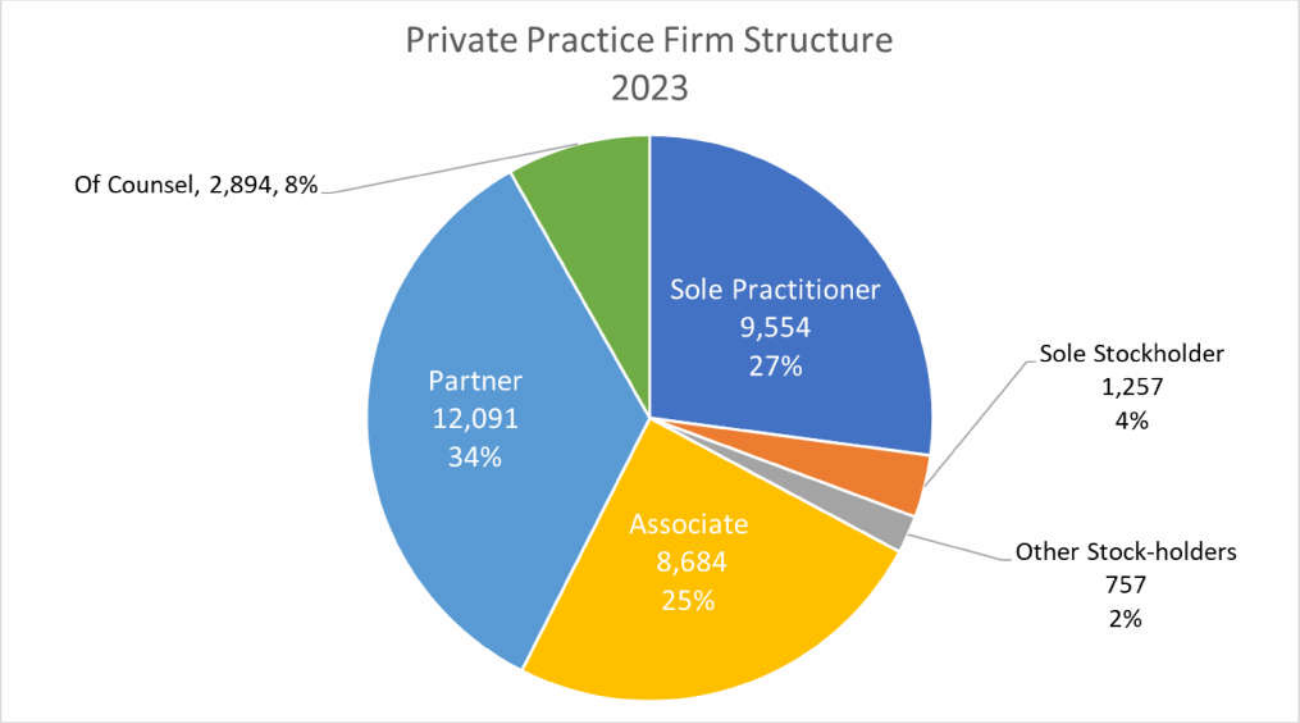

Figure 5

2. *Private Practice Firm Size*

More than 99.9% (36,290) of those attorneys who identified themselves as being engaged in the private practice of law indicated the size of the law firm of which they were a part. Twenty-nine point two percent (10,606) said they practiced alone; 8.3% (3,008) worked in two-person law firms; 12.3% (4,465) belonged to law firms of 3-5 attorneys; 28.1% (10,223) were members of law firms with 6-49 attorneys, and 22% (7,988) worked in firms with 50 or more attorneys.

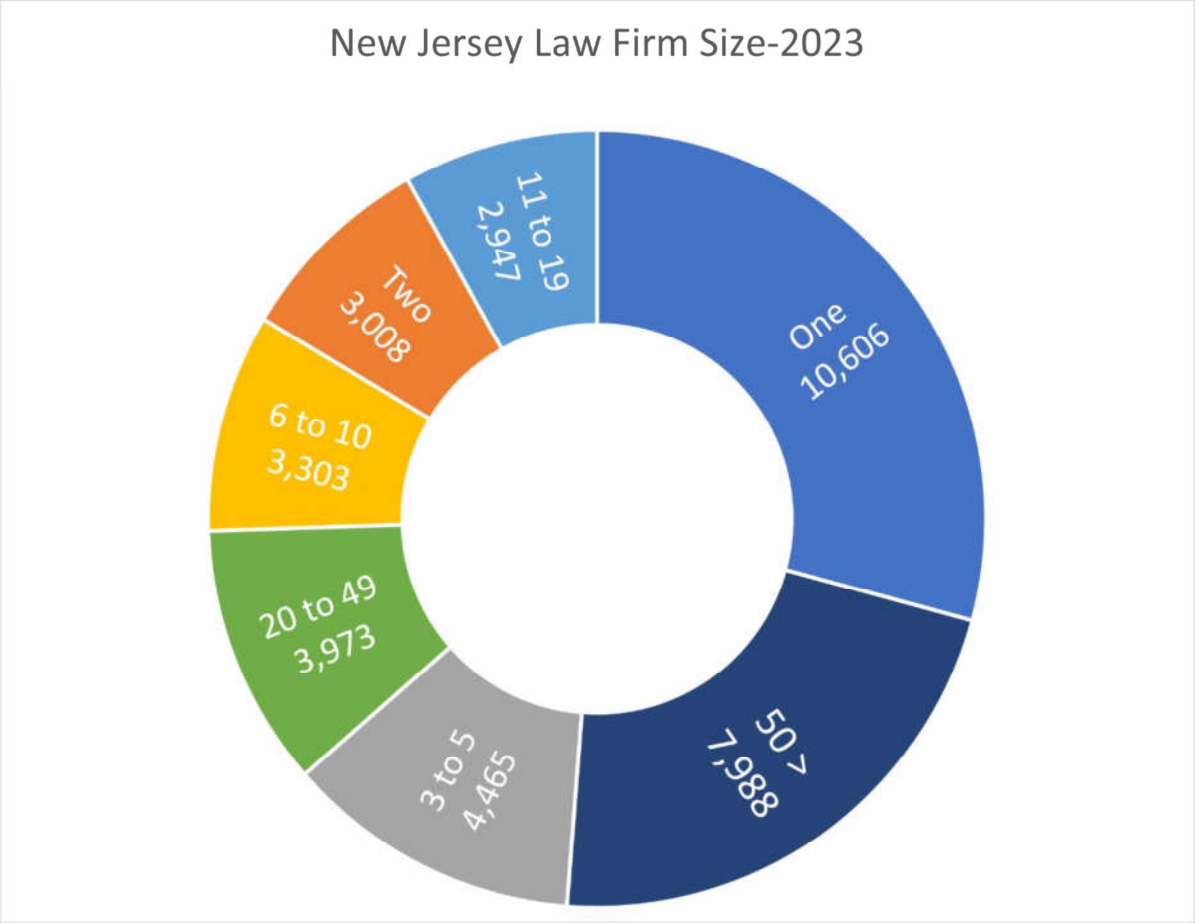

Figure 6

3. New Jersey Offices

New Jersey attorneys are no longer required to maintain a "bona fide" office in New Jersey. R. 1:21-1(a)(1). Nevertheless, in 2023, 23.3% of New Jersey attorneys (26,538) had a fixed physical location for the practice of law within the state. Almost twenty-seven percent (26.9%) of New Jersey attorneys (9,770) had offices located in other jurisdictions: New York 12.2% (4,441), Pennsylvania 12.3% (4,475), and Delaware less than 1% (0.4% 134). Other United States jurisdictions represent 2.0% (720). See Table 7, p. 57.

4. *Fixed Physical Office Locations*

The number of unique law firms registered in NJ today is 14,109.

During 2023, Essex County housed the largest number of private practitioners with 16.2% (4,291), followed by Bergen County with 13.2% (3,507). Morris County was third at 12.5% (3,309), and Camden County was fourth with 8.1% (2,147).

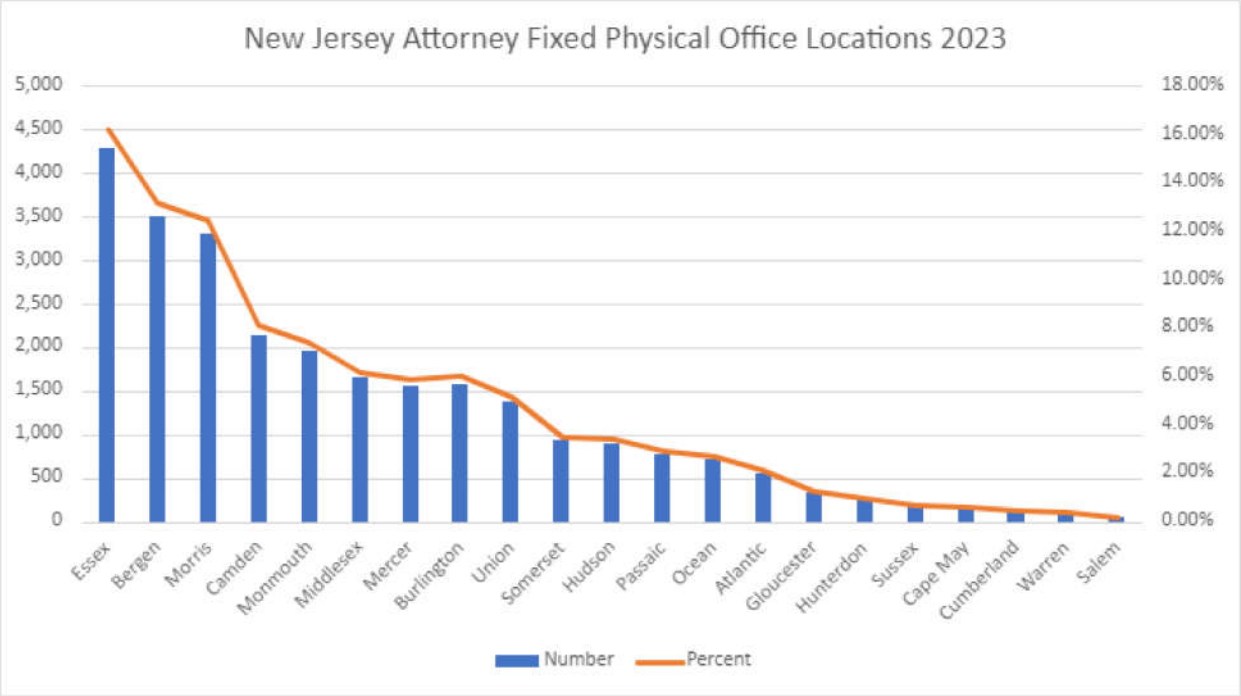

Figure 7

A full data set may be found in Table 8 on page 57.

IV. CULTURE OF COMPLIANCE

The OAE's programs support New Jersey attorneys' existing culture of compliance. The OAE's education and quality assurance efforts aim to ensure that attorneys understand the obligations of our profession, that minor deviation from those obligations are corrected through education, and that the attorney disciplinary system is well positioned to uniformly and fairly investigate serious deviations.

New Jersey has the most proactive financial programs of any state in the country, including the Trust Account Overdraft Notification Program (TAONP) and Random Audit Compliance Program (RAP). The impact of each program during 2023 is summarized below. When applicable, the impact of the TAONP and RAP is noted in each of the individual final discipline summaries appearing in the Appendix.

The OAE's staff also devotes considerable annual effort to preventive education of the bar and the training of its talented volunteer corps. Highlights of these programs appear below.

A. Random Audit Program (RAP)

The Supreme Court of New Jersey has been a national leader in protecting the public by actively auditing attorney trust accounts for compliance with mandatory fiduciary rules. New Jersey's RAP has been conducting financial compliance audits of law firms since July 1981. New Jersey is the state with the largest lawyer population in the country to conduct a random auditing program. During 2023, only eight other states had operational random programs. In order of implementation, they are Iowa (1973), Delaware (1974), Washington (1977), New Hampshire (1980), North Carolina (1984), Vermont (1990), Kansas (2000), and Connecticut (2007).

The OAE administers RAP. In 2023, RAP staff was managed by Chief Auditor Joseph Strieffler, who joined the OAE in 1998 and was promoted to Chief of Random Audit in 2020. Other staff included two Senior Random Auditors and three Random Auditors.

Pursuant to R. 1:21-6, all private law firms are required to maintain trust and business accounts and are subject to random audit reviews. On average, at

any given time, clients allow New Jersey lawyers to hold almost three billion dollars in primary attorney trust accounts ("IOLTA" trust accounts) alone. Even more money is controlled by New Jersey law firms in separate attorney trust and other fiduciary accounts in connection with estates, guardianships, receiverships, trusteeships, and other fiduciary capacities. Both public protection and the public's trust in lawyers require a high degree of accountability.

Over 40 years after RAP first began, the conclusion is that the overwhelming majority of private New Jersey law firms (98.5%) account for their clients' funds honestly and without incident. Although technical accounting deficiencies are regularly found and corrected, the fact is that only 1.5% of the audits conducted over that period have found serious ethics violations, such as misappropriation of clients' trust funds. Since law firms are selected randomly for audit on a statewide basis, the selections and, therefore, the results are representative of the handling of trust monies by private practice firms. These results should give the public and the bar great trust and confidence in the honesty of lawyers and their ability to faithfully handle monies entrusted to their care.

The central objectives of the RAP are to ensure compliance with the Supreme Court's financial recordkeeping Rules and to educate law firms on the proper method of fulfilling their fiduciary obligations to clients under R. 1:21-6. Another reason underlying the program is a by-product of the first — deterrence. Just knowing there is an active audit program is an incentive not only to keep accurate records but also to avoid temptations to misuse trust funds. Although not quantifiable, the deterrent effect on those few lawyers who might be tempted otherwise to abuse their clients' trust is undeniably present. Random audits serve to detect misappropriation in those relatively small number of instances where it occurs.

No law firm is chosen for random audit except by random selection. To ensure the randomness of that selection, RAP utilizes a computer program based on a Microsoft Corporation algorithm for randomness. The pool of attorneys randomly audited are those engaged full-time in the private practice of law. From that pool, attorneys are selected by unique telephone number. The algorithm automatically drops out of the selection process any attorneys possessing the same Firm ID number and any firm which has been the subject of a random audit that occurred within the past five years. In this way, all law

firms, regardless of size, have an equal likelihood of being selected for a random audit.

Court Rule 1:21-6 ("Recordkeeping") has provided attorneys with detailed guidance on handling trust and business accounts for more than 53 years. It is the uniform accounting standard for all audits. This Rule, which incorporates generally accepted accounting practices, also specifies in detail the types of accounting records that must be maintained and their location. It also requires monthly reconciliations, prohibits overdraft protection, electronic transfers which do not have corresponding written instructions to the Bank, the use of ATM cards for trust accounts, and requires a seven-year records retention schedule.

All private law firms are required to maintain a trust account for all clients' funds entrusted to their care and a separate business account into which all funds received for professional services must be deposited. Trust accounts must be located in New Jersey. These accounts must be uniformly designated "Attorney Trust Account." Business accounts are required to be designated as either an "Attorney Business Account," "Attorney Professional Account," or "Attorney Office Account." All required books and records must be made available for inspection by RAP personnel. The confidentiality of all audited records is maintained at all times.

Random audits are always scheduled in writing two to four weeks in advance. Although the audit scheduled date is firm, requests for adjournments are given close attention.

The auditor conducts an initial interview with the responsible attorney followed by the examination and testing of the law firm's financial recordkeeping system. At the conclusion of the audit, which averages one full day, the auditor offers to confer with the attorney in an exit conference to review and explain the findings. At that time, as applicable, the attorney is given a deficiency checklist, which highlights corrective action that must be taken. Even in the case where no corrections are necessary to bring the firm into compliance with the Rule, the auditor may suggest improvements that will make the firm's job of monitoring client funds more accurate.

The deficiency checklist is followed by a letter confirming the exit conference and describing any shortcomings for which corrective action is necessary. An acknowledgement of receipt and a response of corrections, and

in some instances a certification, must be filed with RAP within 45 days of the date of the letter, specifying how each deficiency has, in fact, been rectified. If the confirming letter is received from the attorney, the case is closed. If the letter is not received, a final ten-day letter advises the attorney that, if no confirming letter is received within ten days, the matter may be referred for formal disciplinary investigation which may result in the filing of a public disciplinary complaint. When a complaint is filed, discipline is the uniform result. In re Schlem, 165 N.J. 536 (2000).

The RAP also publishes a manual entitled New Jersey Attorney's Guide to the Random Audit Program and Attorney Trust Accounts and Recordkeeping. That manual is sent to all law firms with the initial random audit scheduling letter. Detailed information on the program is also available on the OAE's website.

The RAP conducted 769 audits of law firms in 2023, an increase of 16 from 2022.

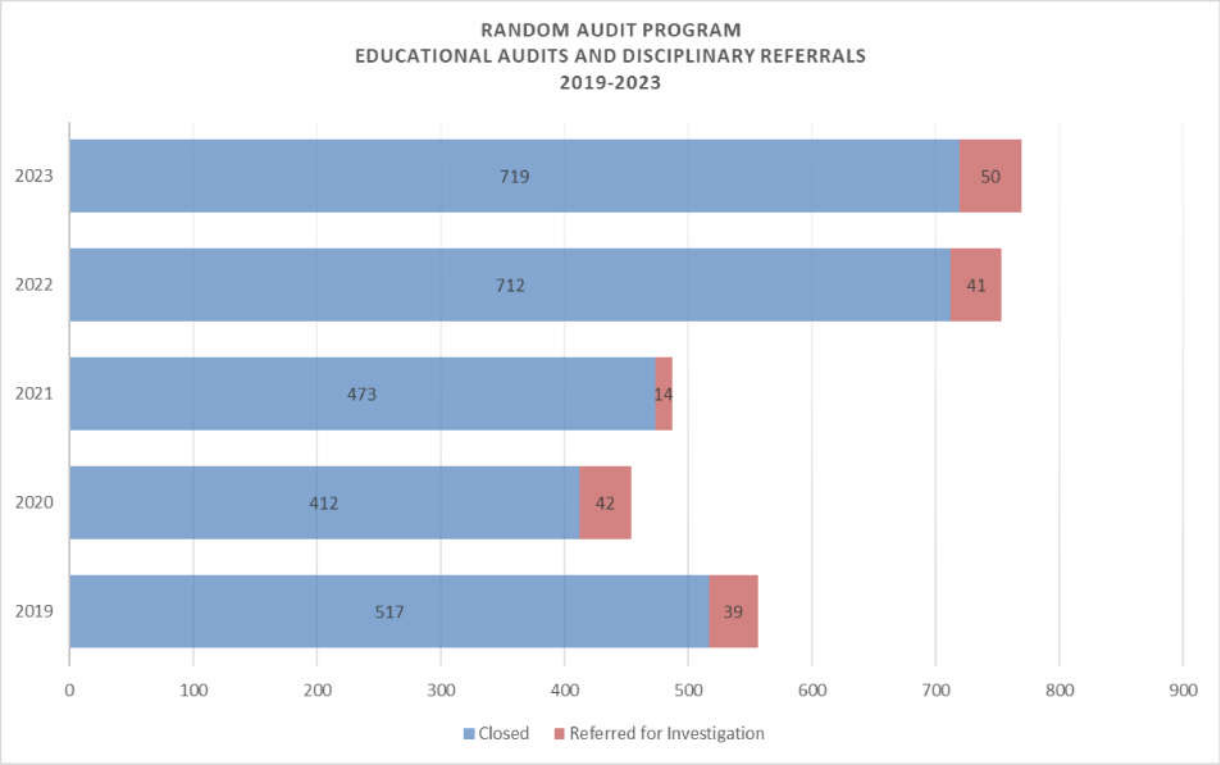

Figure 8

It is worth noting that the increase in productivity did not lead to an outsized number of referrals, the rate of which (6.5%) was in alignment with the five-year average.

Each year RAP's staff of experienced auditors uncovers a small, but significant, number of cases of lawyer theft, knowing misappropriation, and other serious financial violations. This past year, twelve (12) attorneys, detected solely by RAP, were disciplined by the Supreme Court.

During the forty two years of RAP's operation, serious financial misconduct by 270 attorneys was detected solely as a result of being randomly selected for audit. Of those, 115 attorneys were disbarred; 24 were suspended for periods of one month to three years; 30 were censured; 73 were reprimanded; and 28 received admonitions.

The vast majority of the matters detected were very serious disciplinary cases that resulted in disbarment or suspension. Disbarred (115) and suspended (24) attorneys account for more than five in ten of all attorneys disciplined as a result of RAP's efforts (51.48%). However, discipline alone does not adequately emphasize the full importance of RAP's role over the past forty two years and the monies potentially saved as a result by the LFCP.

B. Trust Account Overdraft Notification Program (TAONP).

The OAE's Trust Account Overdraft Notification Program (TAONP) was managed by Chief of Investigations, Alison Picione, who joined the OAE in 2017 and was promoted to Chief in 2022. The TAONP has been in existence since 1985. Rule 1:21-6 requires financial institutions wishing to hold attorney trust funds to enter into a biennial agreement with the Supreme Court.

Each bank on the Supreme Court's approved list of banks is required, pursuant to their agreement with the Supreme Court and in accordance with Rule 1:21-6(b), to report to the OAE any overdraft or item presented against insufficient funds in an attorney trust account or IOLTA attorney trust account. The overdraft notifications are received and reviewed by the Chief of Investigations.

In the event of an overdraft notification, the attorney is sent a letter requiring them to provide a documented explanation as to why the overdraft occurred. Each attorney is also required to produce for review a limited amount of trust account records (usually three months) which encompass the timeframe of the overdraft.

The majority of overdrafts are closed after receiving the attorney's documented explanation, provided the explanation is reasonable and there is no indication of recordkeeping deficiencies or a failure to safeguard client funds. If the attorney does not provide a fully responsive explanation, or the OAE's review raises concerns about proper recordkeeping or failure to protect client funds, the overdraft is assigned to an investigator or auditor for further investigation.

The OAE received 143 overdraft notifications in 2023, an 8% increase when compared to notifications received in 2022. Between 2019 and 2022, the number of overdraft notifications received had trended steadily downward. In 2023, there was an increase in trust account notifications received, resulting in an upward trend:

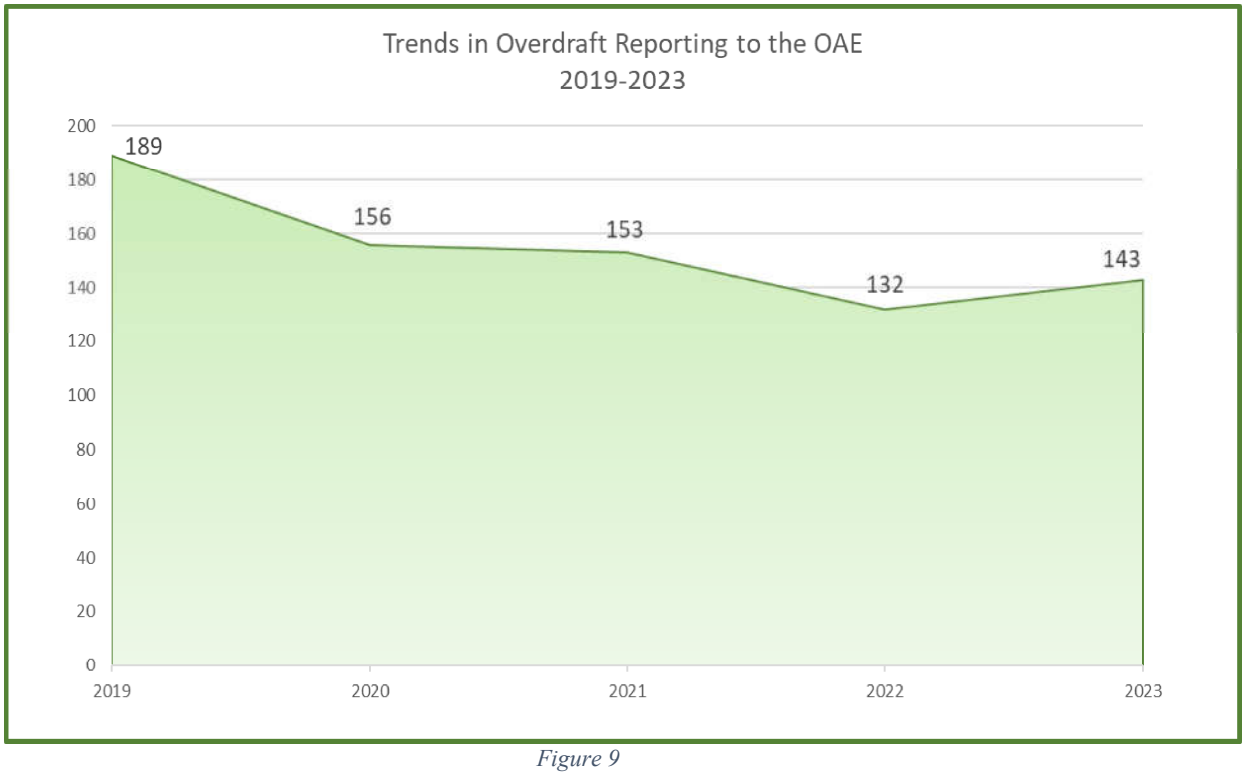

Figure 9

Of the 143 notifications received in 2023, 83% of matters (119) were reasonably explained by the attorney and the OAE exercised discretion to close these matters with no further action. Twenty-four, or 17%, of overdraft notifications received were assigned for audit and investigation, to more closely evaluate the overdraft and because the attorney's initial documented explanation raised concerns about improper recordkeeping and/or failure to safeguard client funds.

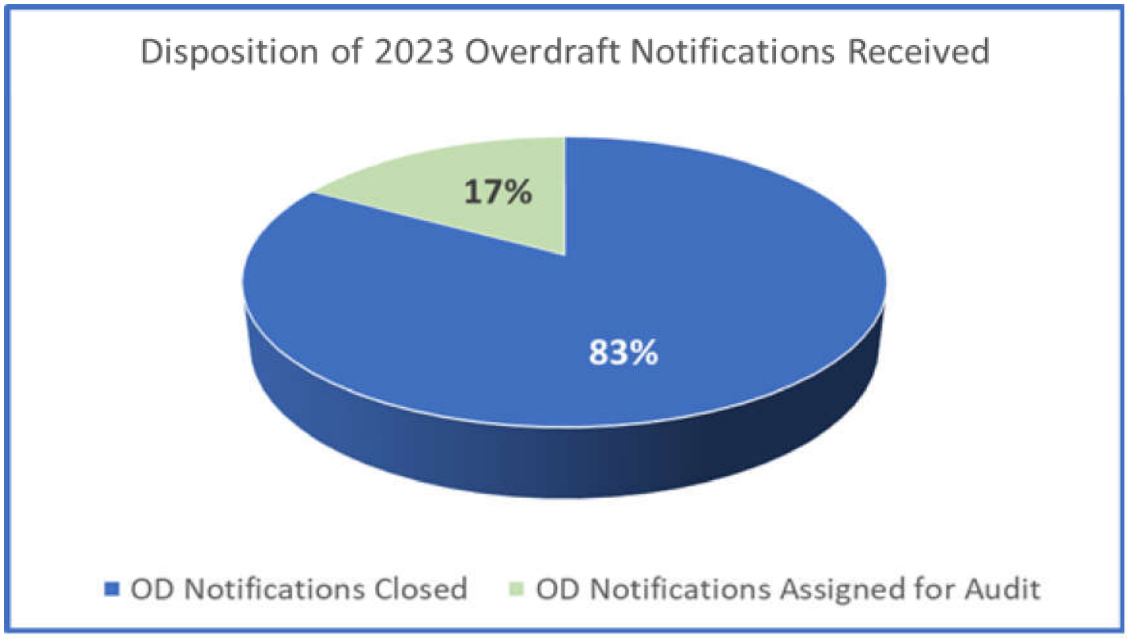

Figure 10

The OAE's review of documented overdraft explanations from attorneys showed law office errors were the leading cause (41%) of trust account overdrafts closed in 2023, followed by bank errors (24%). Regarding the 119 closed matters, the specific causes for overdrafts were generally categorized as follows:[6]

[6] This "Other" designation is usually used in cases of fraud perpetrated against an attorney trust account or unusual circumstances that do not fall into one of the other categories.

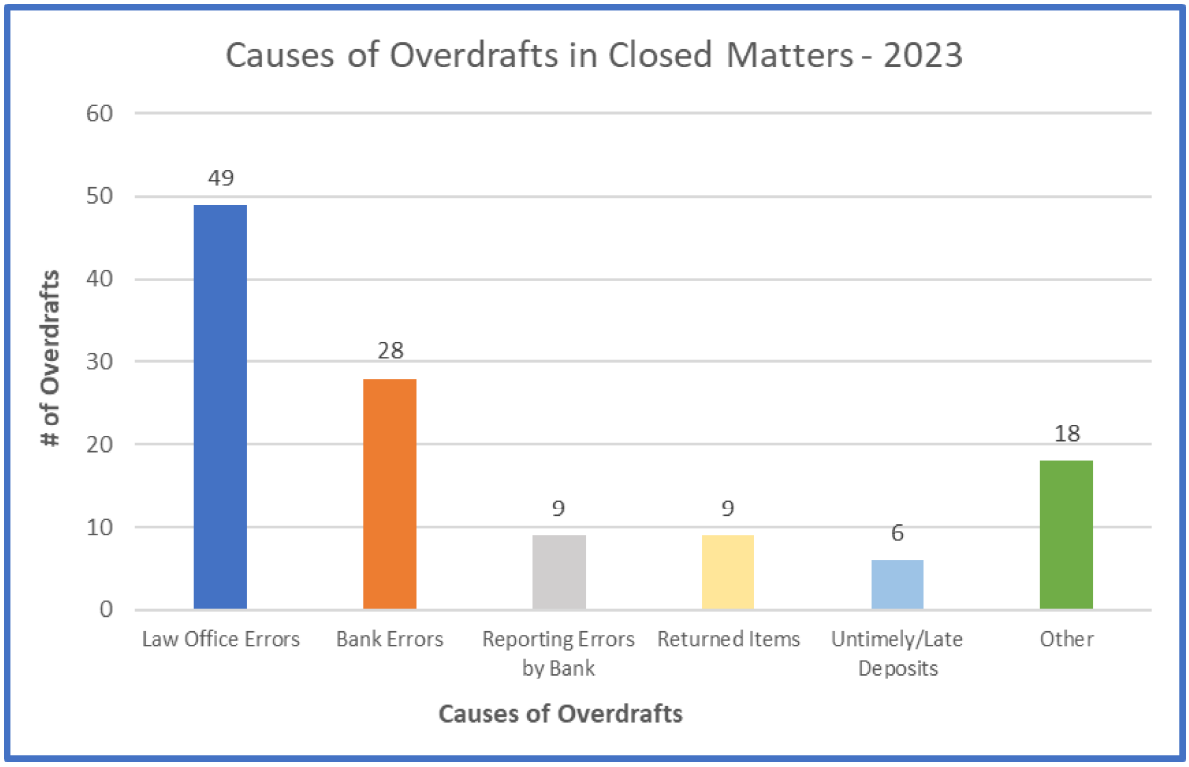

Figure 11

In 2023, eight attorneys received final discipline as the result of matters initiated by and/or discovered through the TAONP program. Of the eight attorneys disciplined, one attorney was disbarred by consent, one attorney received a term of suspension, two attorneys were censured, three attorneys received a public reprimand, and one attorney received an admonition.

In addition, one attorney was placed on disability inactive status in 2023 as the result of medical issues discovered during a trust overdraft audit/investigation. The handling of these sensitive matters, including the empathetic recognition of the attorney's health issues, coupled with the mission of protecting the public, further underscores the value of the TAONP program.

Since 1985, when the OAE TAONP was first established, and through 2023, 281 attorneys have been disciplined as the result of overdraft investigations. Of those disciplined, 115 attorneys were disbarred either by consent or via the disciplinary process.

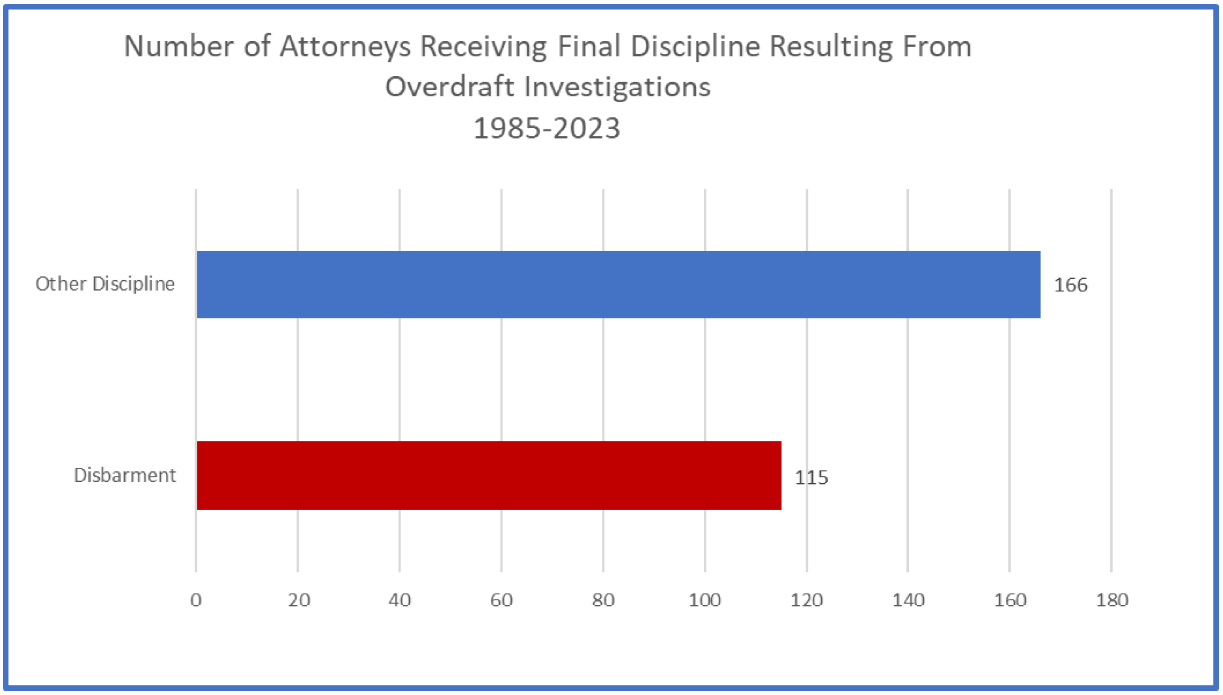

Figure 12

C. Education of the Bar

The OAE has always recognized the value of education and training as a component of its protective mission. During 2023, ten OAE staff members presented twenty-six public educational programs to audiences including, but not limited to, the New Jersey State Bar Association, the Garden State Bar Association, the New Jersey Association for Justice, the Hudson Inn of Court, the South Asian Bar Association, Rutgers Law School, and the Public Defender's office. All told, these efforts provided 54 hours of free CLE credits to attendees.

Topics included fee arbitration, referral fees, the new challenges of AI in the practice of law, the Rules of Professional Conduct, How to Prepare for a Random Audit, the roles of the OAE and the DRB, RPCs for Mental Health Public Defenders, Legal Malpractice Update-Wilson after Wade, and four separate Trust and Business Accounting seminars.

Under its Approved Provider status, the OAE presented training to the members of the DECs and DFACs totaling 3,240 minutes of free CLE credit.

D. Education of the Volunteer Corps

The OAE is committed to providing valuable training opportunities for its volunteer and full-time staff. As part of this dedication to training, the OAE held its Fourteenth Annual Training Conference on October 25, 2023. This year, the OAE offered four unique substantive programs and a concurrent session focused on Fee Arbitration.

Associate Justice Lee A. Solomon delivered keynote remarks to open the Conference. Justice Solomon began by thanking each component of the ethics system and the individuals comprising the whole. He noted the unique position of trust required by the Court of the volunteer members of the District Ethics and District Fee Arbitration committees. He acknowledged the challenges associated with the work, including the duty to remain fair and impartial, to move cases expediently, and to deal with individuals who were under pressure. He expressed gratitude for the attorney and public members who took valuable time from their busy personal and professional lives to give back to both the legal community, and the public seeking to access legal services.

Justice Solomon's well-received remarks were followed by five workshops designed to meet the specific training needs of those involved in the screening, investigation, prosecution, and adjudication of attorney disciplinary matters.

The first training session on "Disciplinary Review Board Updates" included a detailed discussion of the workings of the DRB, and included practical guidance for individuals who were writing reports for the Board as hearing panel chairs or Special Ethics Adjudicators, as well as tips for individuals called to make oral arguments before the Board.

The second session on "Preparing Strong Hearing Records" focused on evidentiary tips to establish an ethics case by clear and convincing evidence. This session also provided guidance on meeting evidentiary challenges common to ethics matters.

The third session on "Implicit Bias" featured an in-depth discussion with The Honorable Ja Paul J. Harris, Judge of the Ramsey County District Court,

Saint Paul, Minnesota, on ways to recognize and eliminate implicit bias in decision-making.

The fourth session "Insights Into Investigations" matched Deputy Ethics Counsel Rachael Weeks and Assistant Chief of Investigations Jasmin Razanica. The duo gave an informative session, filled with practical examples, on the basic process of investigating an ethics grievance. The fourth session also included an option for Fee Arbitration attendees to participate in a break-out round table discussion hosted by Statewide Fee Arbitration Coordinator Darrell Felsenstein.

A total of 361 individual users attended the online conference for at least part of the day and 81 individual users logged onto the Fee Arbitration concurrent session in the afternoon.

V. SUBTRACTING THAT WHICH IS NOT MISCONDUCT

Not every grievance against an attorney results in an investigation. Many cases are screened out of such consideration or routed into the statewide Fee Arbitration Program. This section summarizes the filtering process and fee arbitration.

A. Grievances

The attorney disciplinary process usually begins with the filing of a grievance against an attorney. Grievances come from various sources, including clients, other attorneys, judges, and the OAE itself. On receipt of a grievance, the DEC Secretary or OAE screener applies the analysis of R. 1:20-3 to determine whether the matter should be docketed.

The disciplinary system must decline for docketing any case in which the facts alleged, if true, do not constitute unethical conduct.

The disciplinary system will likewise decline for docketing any case in which the Court lacks jurisdiction over the attorney, instead routing that grievance to the appropriate jurisdiction. Similarly, allegations of improper advertising are routed to the Committee on Attorney Advertising for exclusive handling by that entity.

Cases involving pending civil and criminal litigation may be declined, unless in the opinion of the DEC secretary or Director, the facts alleged clearly demonstrate provable ethics violations or a substantial threat of imminent harm to the public. In all other situations, the case is declined with an invitation to the grievant to refile the grievance at the conclusion of the litigation.

Finally, a grievance may be declined where the allegations involve aspects of a substantial fee dispute. In such cases, the matter is generally referred to a fee arbitration committee for consideration.

B. Fee Arbitration

The New Jersey Supreme Court has long recognized that disputes between clients and their attorneys are not always matters of ethics, but sometimes

involve other issues linked to the reasonableness of the fee charged by the attorney in relation to the overall services rendered by that attorney. To assist in the resolution of these fee disagreements, the Supreme Court established a fee arbitration system, which relies on the services of volunteers (attorneys and non-attorney public members) serving on 17 DFACs. These volunteers screen and adjudicate fee disputes between clients and attorneys over the reasonableness of the attorney's fee.

The fee arbitration system was established in New Jersey in 1978. It was the second mandatory statewide program in the country, following Alaska. Fee arbitration offers clients and attorneys an inexpensive, fast, and confidential method of resolving fee disagreements. Even today, New Jersey remains one of only a handful of states with a mandatory statewide fee arbitration program.

New Jersey's Court Rules require that the attorney notify the client of the fee arbitration program's availability prior to bringing a lawsuit for the collection of fees. If the client chooses fee arbitration, the attorney must arbitrate the matter. For those matters that involve questions of ethics, in addition to the fee dispute, the ethics issues may still be addressed on the conclusion of the fee arbitration proceedings, and the OAE makes sure that both types of proceedings will proceed in a timely fashion.

The OAE Fee Arbitration Unit provides legal and administrative support to the 17 district fee secretaries and committees. For the 2023-2024 term, 281 DFAC members served the Supreme Court through this program (187 attorneys and 94 public members), serving pro bono.

1. Fee Arbitration Case Screening

New Jersey's fee arbitration program is a two-tiered system. The fee arbitration hearings are conducted before hearing panels of the 17 DFACs (Figure 14), with appeals heard before the DRB. Only clients may initiate fee arbitration.

The Fee Arbitration process begins when a client submits a completed Attorney Fee Arbitration Request Form (AFARF), along with a $50 administrative filing fee, to the district fee secretary of the DFAC. The DFAC secretary in the district where the attorney maintains an office will then screen the case to determine if the committee has jurisdiction.

Fee committees lack jurisdiction to arbitrate certain types of fees, including fees allowed by courts and statute, monetary damages for legal malpractice, and fees for legal services rendered by the Office of the Public Defender. They also may not consider any fee in which no attorney's services were rendered more than six years from the date on which the AFARF was received.

Fee committee secretaries also have the discretion to decline certain categories of case, at their option, including cases:

- affecting the interests of third parties;
- raising legal questions beyond the basic fee dispute;
- with a legal fee which is $100,000 or more; and
- of a multi-jurisdictional character, where substantial services were not rendered in New Jersey.

If the DFAC Secretary determines that the committee has jurisdiction, and the Secretary does not elect to exercise discretionary authority to decline the case, the case will proceed to the response stage.

2. *Fee Arbitration Process for Docketed Cases*

The attorney whose fee is alleged to be unreasonable is afforded an opportunity to respond to the AFARF and to provide relevant supporting documents and records. The attorney may also join other affected law firms in the proceeding. Like the client, the attorney also must pay a $50 administrative filing fee.

When both client and attorney have had the opportunity to respond in writing, the matter would be set down for a fee arbitration hearing.

Hearings are scheduled on at least ten days' written notice. There is no discovery. At that hearing, the attorney bears the burden of proving, by a preponderance of the evidence, that the fee charged is reasonable under the eight factors enumerated in RPC 1.5(a).

Following the hearing, the panel or single arbitrator prepares a written arbitration determination, with a statement of reasons annexed, to be

issued within thirty days. The Rules provide for the parties to receive the Arbitration Determination from the district secretary within thirty days of the conclusion of the hearing.

The Court Rules allow a limited right of appeal to the DRB within 21 days of the Committee's written determination. All appeals are reviewed by the DRB on the record. The DRB's decision is final.

The decision of the DFAC in the form of the written Arbitration Determination (FAD) becomes final and binding on the parties. R. 1:20A-2(a).

3. Volume

In 2023, DFACs handled a total of 912 matters, including new cases filed and those that reached a disposition during that year. The committees began the year with 389 cases pending from 2022. During the year, 523 new matters were added. Figure 13. A total of 511 cases were disposed of, leaving a balance of 401 matters pending at year's end. At the conclusion of 2023, the average number of cases pending before each of the 17 Fee Committees was 23 cases per district.

The 523 new filings received in 2023 involved claims against roughly .6% of the active New Jersey attorney population (74,424). Some areas of practice (matrimonial, in particular) involve high billings for legal fees, over the course of protracted litigation. Many such cases are filed as fee arbitration disputes per year.

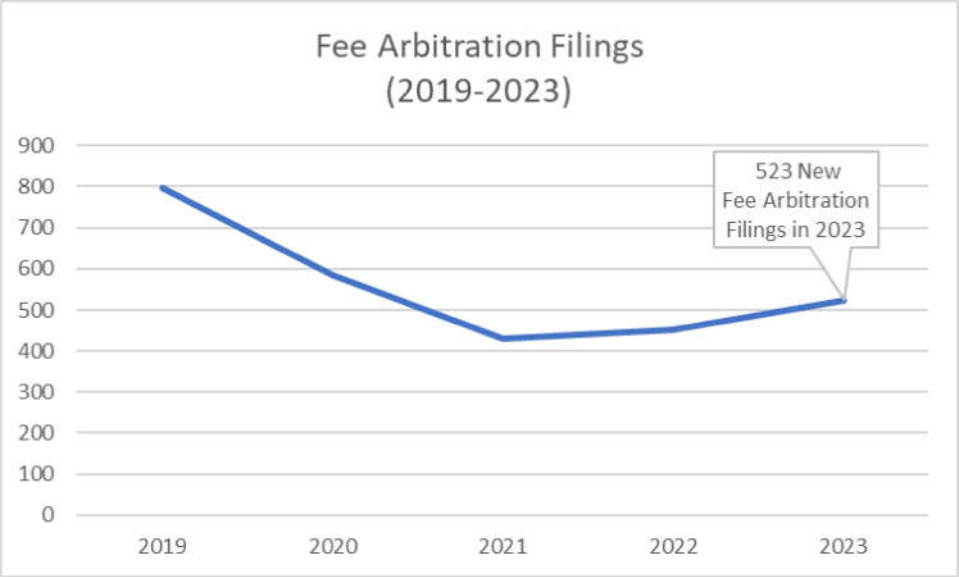

Figure 13

The number of fee arbitration filings is a very small percentage of the total attorney-client transactions.

As in 2022, DFACs arbitrated matters involving a total of more than $5.9 million in legal fees during 2023. In addition, some cases are resolved by the attorneys themselves as of the time that the client commences the process, with no further action needed by the Committee.

Of the cases that proceeded to a hearing, DFACs conducted 273 hearings during 2023, involving almost $5.3 million in total attorneys' fees charged. In 36.6% of the cases (108 hearings), the hearing panels upheld the attorney fees in full. In the balance of 56.4% of the fee cases (154 hearings), the hearing panels reduced the attorney fees by a total of almost $3 million, which represents 52.8% of the total billings subject to reduction ($2.8 million out of the total of $5.3 million subject to reduction).

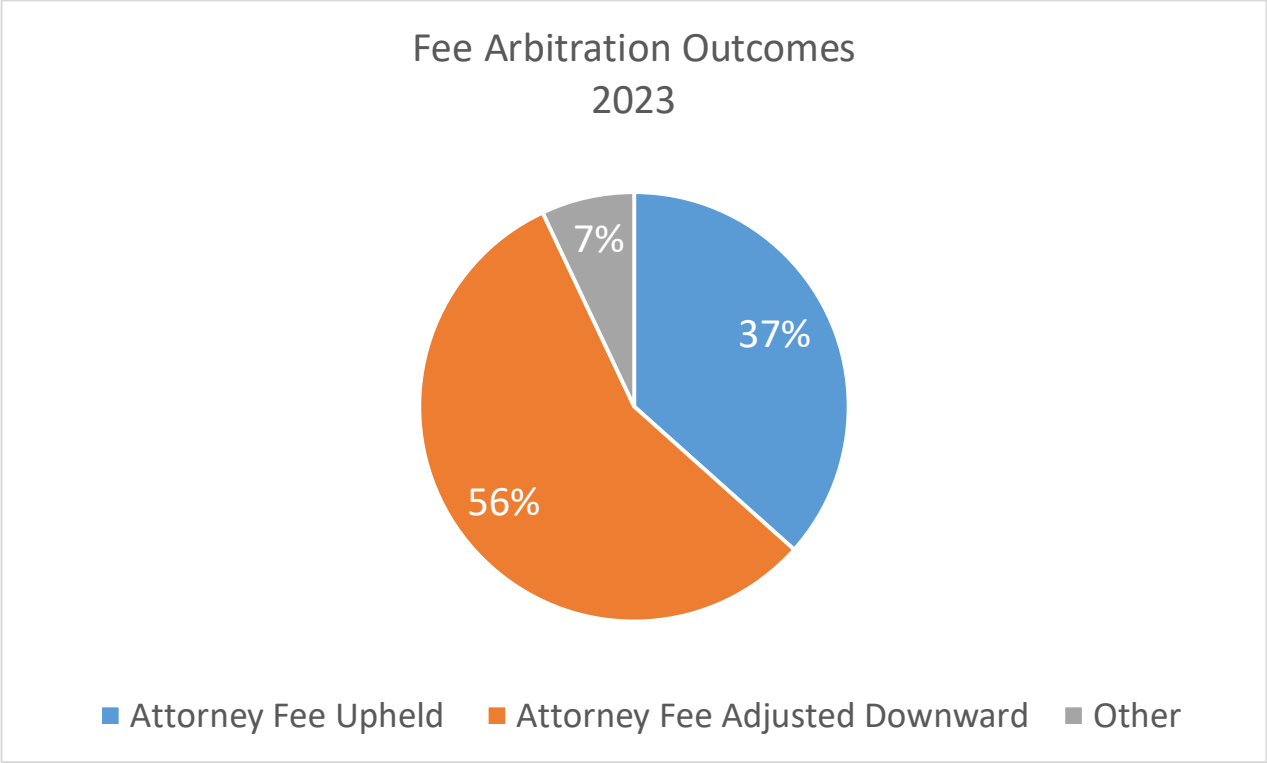

Figure 14

For an overview of the amounts at issue, the 154 cases in which the attorney fee was reduced by the hearing panel may be broken into the following categories:

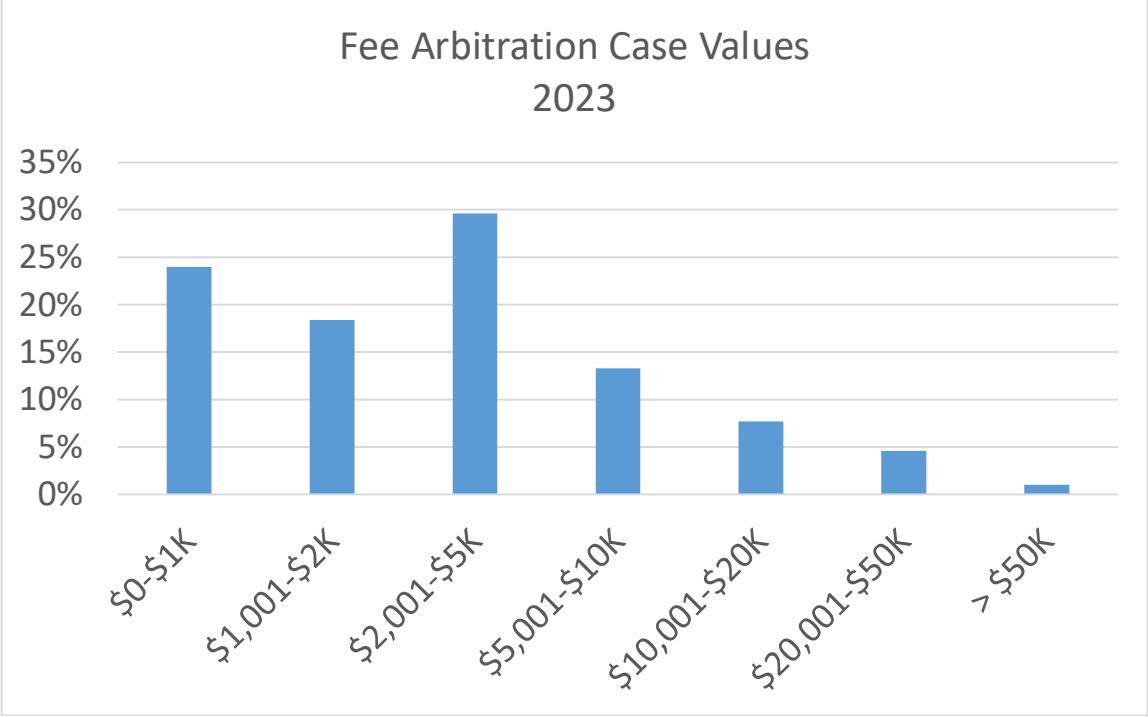

Figure 15

For all cases which proceeded to a hearing with a FAD issued by the DFAC, the average amount billed was $19,496. The median amount billed was $9,606. The average amount of the reductions in all cases which proceeded to a FAD was $4,901, with a median reduction amount of $2,500.

It should be noted that the parties reached settlement without a hearing in an additional 101 cases. The total fees at issue in the cases settled by the parties involved $582,984 in attorney fees. The attorneys agreed to a reduction in fees without going to a hearing in 42 of those cases (41.5% of the total cases settled by stipulation).

Of the 511 cases that proceeded from file-opening to case-closing in calendar year 2023, 58% reached disposition in fewer than 180 days (298 out of 511 total cases). The DFACs resolved 54 more cases in that interval than during the preceding calendar year, when 245 cases out of a total caseload of 366 were resolved in under 180 days. The data for 2023 shows that the committees resolved 30% more cases overall than during the preceding calendar year. One hundred-fifteen (115) of the total cases resolved during 2023 were resolved within 60 days of filing. For 2022, 67 cases were resolved that quickly.

4. *Fee Arbitration Case Types*

The categories of legal services for which clients seek fee arbitration highlight the importance of the fee arbitration system in particular practice areas. The system has proven to be a very effective and efficient method for resolving attorney fee disputes, while avoiding litigation between the parties as to the fee dispute.

Over the past five years, family actions (including matrimonial, support and custody cases) consistently have generated the most fee disputes (38.1%) on average. Criminal matters (including indictable, quasi-criminal and municipal court cases) ranked second in frequency (15.2%). Third place was filled by General Litigation at 11.1%. Estate/Probate at 6% came in fourth place, and Real Estate, at 5.2%, came in fifth place. The overall filings fit into an additional 20 legal practice areas.

5. Enforcement

Either party may record a FAD as a judgment under the process described in R. 4:6-7.[7]

Additionally, the OAE's Fee Arbitration Unit follows up when a client reports that he or she has not been paid by the attorney the full amount of the refund owed, as set forth by the FAD or a stipulation of settlement. This follow-up has been required in 20 to 30 cases per year, over the past five years. The OAE issues a warning letter if the attorney has not paid the full amount of the fee award within the 30-day payment period. If the attorney thereafter does not send payment in full to the client within the 10-day period specified in the warning letter, the OAE may file a motion for the temporary suspension of the attorney. Such motions are heard by the DRB, which sends any recommendation of temporary suspension to the Supreme Court.

The Supreme Court has ordered an average of nine (9) attorneys to be suspended each year, over the past five years, as a result of such motions, with the attorneys' terms of suspension continued until they submitted proof of payment in full to the clients, along with the payment of any additional monetary sanction relating to the costs of the enforcement proceedings. In 2023, the OAE filed 15 enforcement motions relating to fee arbitration cases.

C. Disability-Inactive Status

As a result of its unique responsibilities, the OAE is sometimes exposed to sensitive information concerning an attorney's inability to practice law. The Court offers attorneys the opportunity to place their license to practice law into "Disability-Inactive Status" (DIS). This status is appropriate where an attorney lacks the mental or physical capacity to practice law. R. 1:20-12.

It is important to appreciate that DIS is, by itself, non-disciplinary in nature. However, consistent with the constitutional mandate imposed upon the OAE to protect the public and maintain confidence in the bar, the OAE is

[7] For more information on this process, see Superior Court of New Jersey, "Collecting a Money Judgment" (July 1, 2022) (viewable at: https://www.njcourts.gov/sites/default/files/forms/10282_collect_money_jdgmnt.pdf).

responsible for ensuring every attorney who holds a license to practice law possesses the physical and mental ability to do so.

An attorney may voluntarily place their license into DIS. However, unfortunately, the need for an attorney to enter into such a status is sometimes identified for the first time after a grievance has been docketed. In such cases, the OAE consents to the respondent's entry into DIS.

Still other circumstances present where an attorney is unwilling or unable to consent to transfer to DIS. In those limited circumstances, the OAE will petition the DRB for the attorney to be evaluated consistent with R. 1:20-12. If the petition is granted, the attorney will undergo an evaluation for purposes of determining whether DIS is appropriate. If so, the OAE will request the placement of the attorney on DIS.

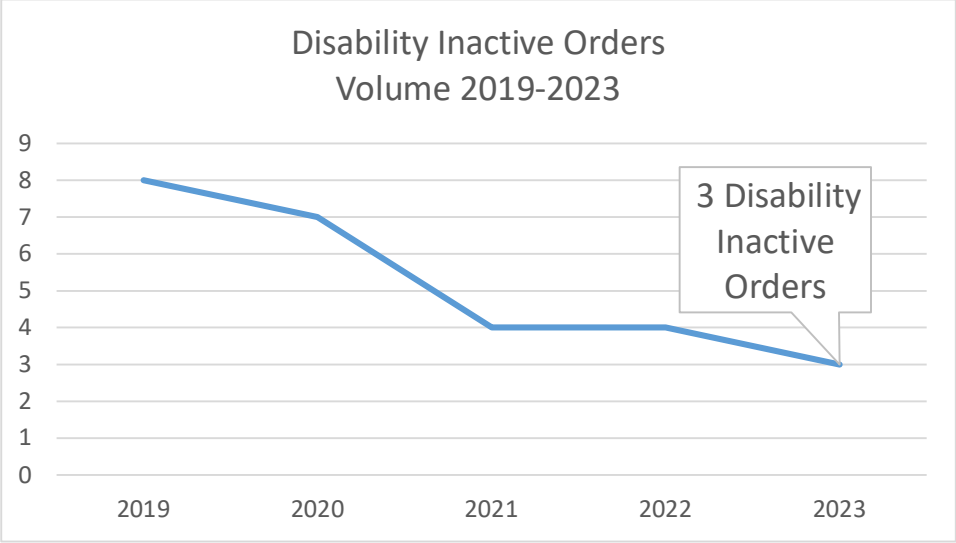

Figure 16

During 2023, a total of three (3) attorneys were the subject of a DIS Order.

DIS is not permanent. Should an attorney regain the ability to practice law, the attorney may petition to return to the practice of law. The availability of DIS received increased attention during 2023 as a result of the Court's wellness initiatives.

VI. DISCIPLINARY INVESTIGATIONS

As reviewed above, the central responsibility of the OAE and the DECs is to determine the truth of alleged wrongs by attorneys. This is accomplished via thorough and complete investigations by professional staff and the DEC volunteer corps as supported by the OAE's DEC Unit.

A. Volume

Docketed grievances are assigned for investigation to determine whether unethical conduct may have occurred and, if so, whether there is sufficient evidence to prove the charges to the standard of clear and convincing evidence. Investigations include communicating with the respondent-attorney, the grievant, and any necessary witnesses, as well as securing necessary records and documents. Pursuant to R. 1:20-9(b), all disciplinary investigations are confidential.

At the conclusion of the investigative process, a determination is made regarding whether there is adequate proof of unethical conduct. If there is no reasonable prospect of proving unethical conduct to the requisite standard, the matter is dismissed.

Overall, the disciplinary system (OAE and DECs) began 2023 with a total of 763 investigations carried over from prior years. During the year, 905 new investigations were added, for a total disposable caseload of 1,668. A total of 828 investigations were completed and disposed of, leaving a total of 840 pending investigations at year's end. Of that number, 142 were in untriable status, leaving an active pending investigative caseload of 698 matters.

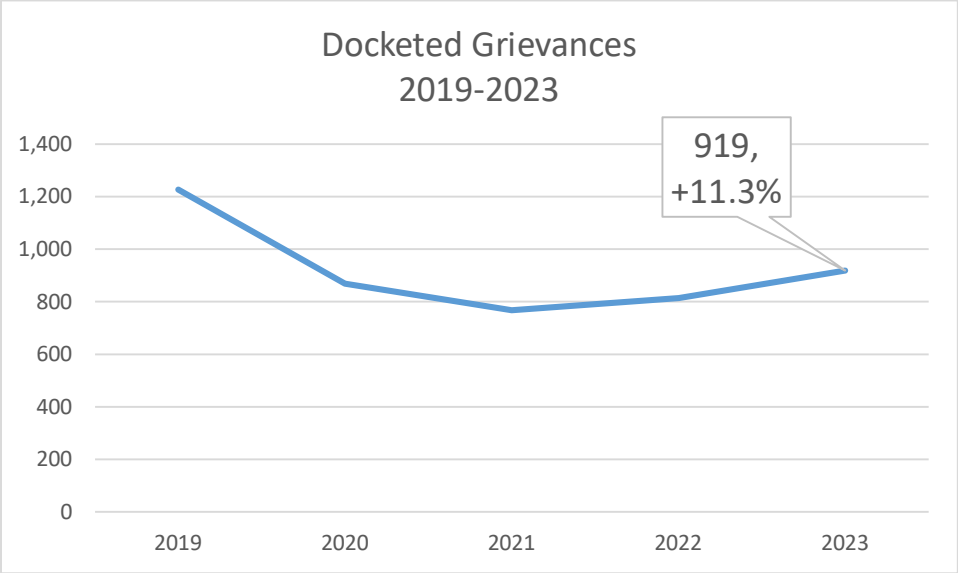

Figure 17

The number of attorneys against whom grievances are docketed for investigation is generally a very small percentage of the total lawyer population. In 2023, only 1.23% of the 74,477 active lawyers[8] as of December 31, 2023 had grievances docketed against them. **(Figure 17)**.

[8] Source: Lawyers' Fund for Client Protection

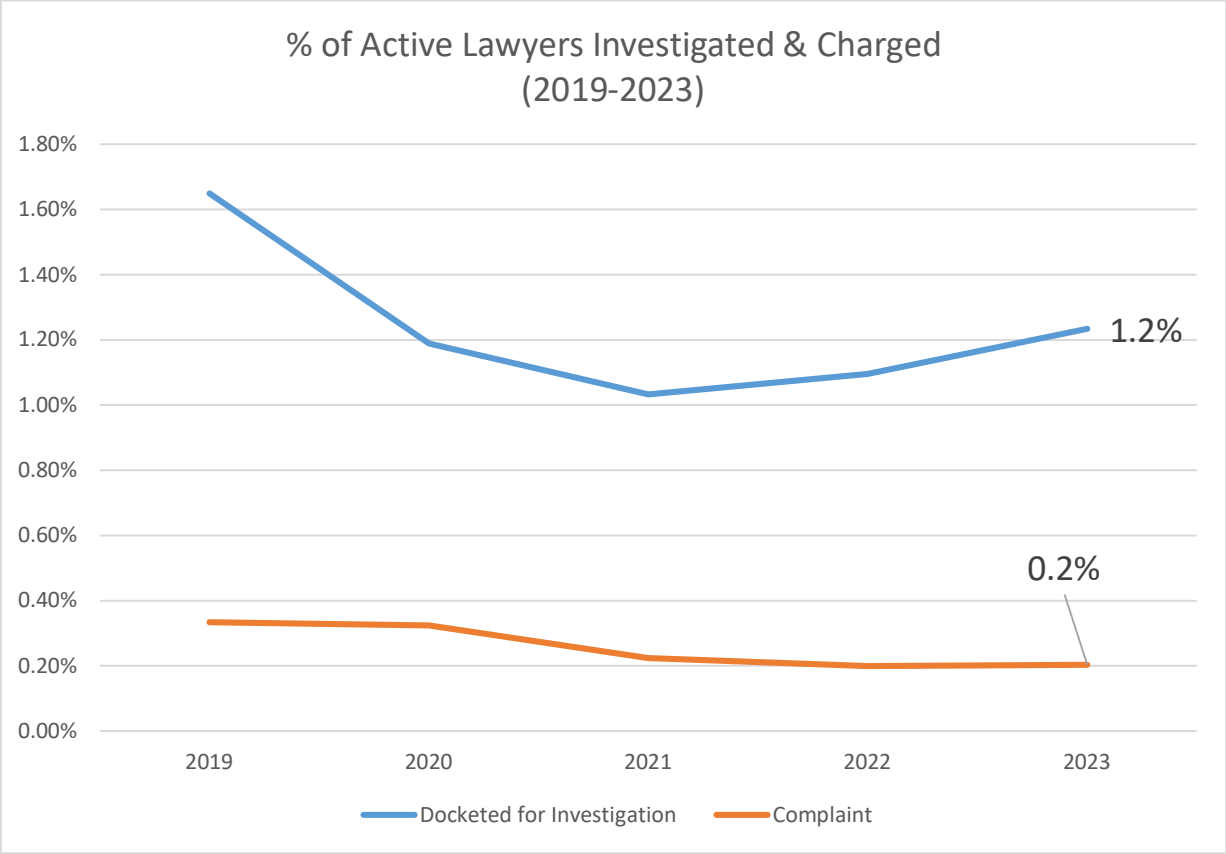

Figure 18

B. Time Goals

The New Jersey Supreme Court has established time goals for the thorough and fair completion of all disciplinary investigations and hearings. R. 1:20-8. That Rule contemplates that the disciplinary system will endeavor to complete complex investigations within nine months and standard investigations within six months. Complex cases are almost invariably assigned to the professional staff of the OAE, with standard complexity matters referred to the DECs for evaluation.

During 2023, the OAE averaged a 65% time goal compliance rate, an 8% improvement from 2022. The District Ethics Committees average time goal compliance for the year was 49%, down 4% from 2022.

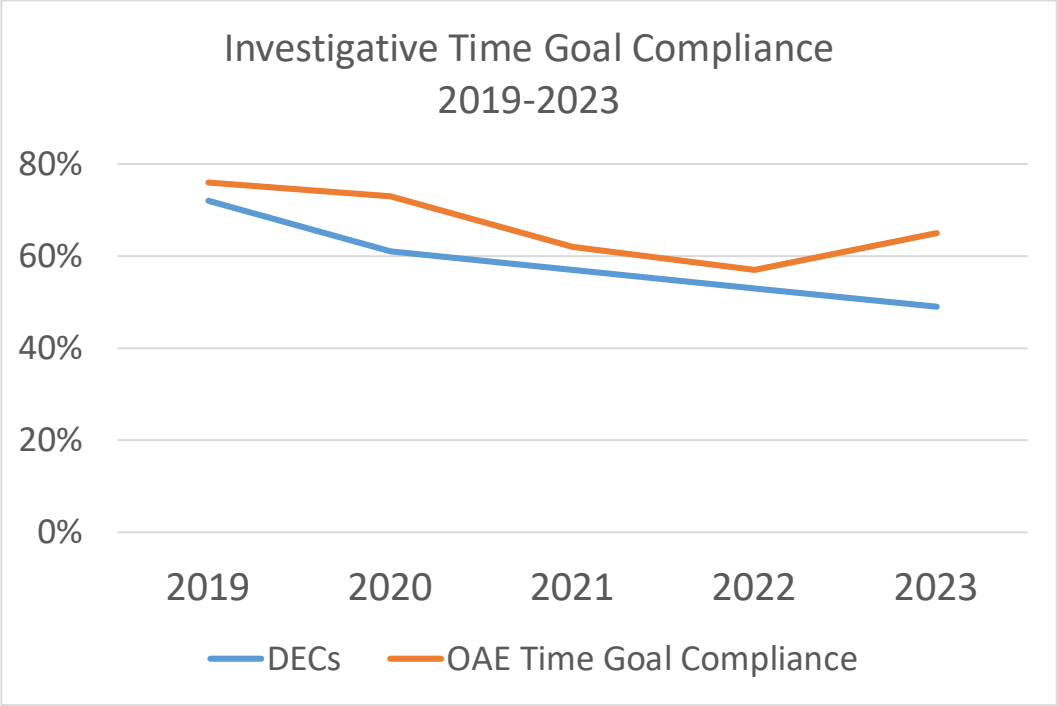

Figure 19

During 2023, the average age of the OAE's pending investigations was 252 days. The average age of the Ethics Committees' pending investigations was 236 days.

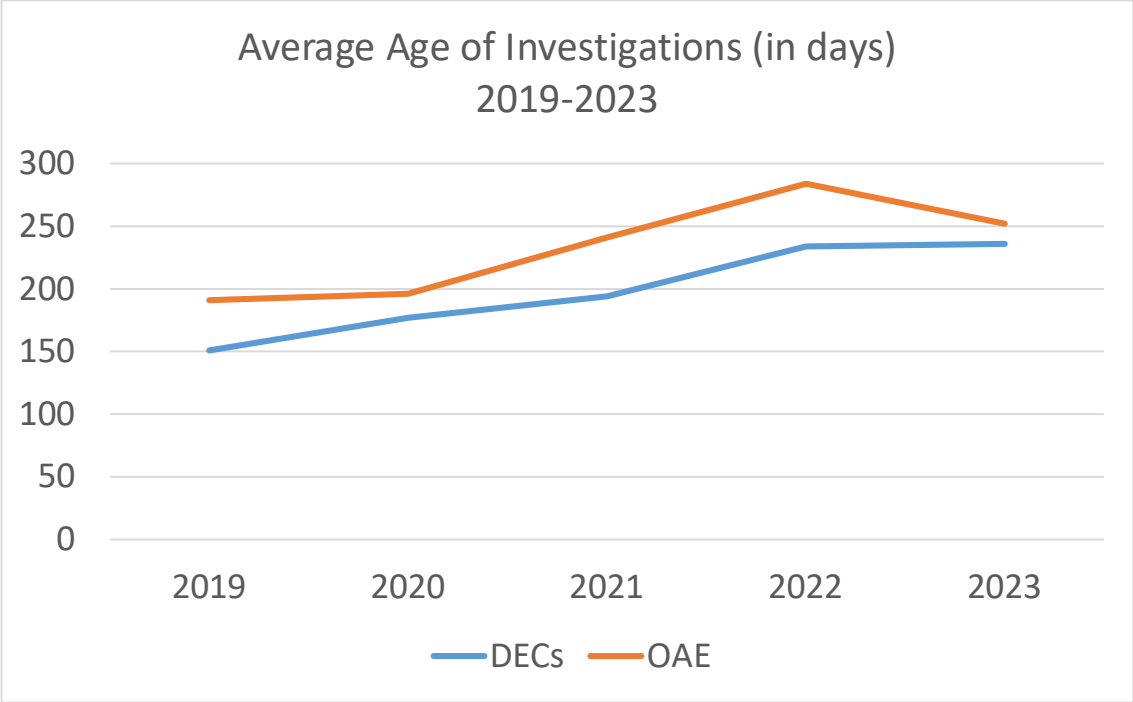

Figure 20

VII. AGREEMENTS IN LIEU OF DISCIPLINE ("DIVERSION")

Not all misconduct substantiated to the standard of "clear and convincing evidence" results in attorney discipline.

Instead, in 1996, the Court created "diversion," a non-disciplinary outcome available for only "minor unethical conduct." "Minor unethical conduct" is misconduct that would likely warrant no more than an admonition (the least serious sanction) if the matter proceeded to a hearing.

In such cases, DECs and the OAE may use an "agreement in lieu of discipline" to direct the handling of the case out of the disciplinary system and into the diversion program. Determinations to divert matters of minor unethical conduct are made solely by the OAE Director. A grievant is given ten days' notice to comment prior to the OAE Director's final decision to divert the case, but a grievant cannot appeal the Director's final diversion decision.

Diversion may take place only if the attorney acknowledges the misconduct and agrees to take remedial steps to assure future compliance with the Rules. The primary purpose of diversion is education and the productive resolution of disputes between clients and attorneys outside of the disciplinary process. It permits the disciplinary system to focus resources on the most serious cases. Diversion conditions generally do not exceed six months in duration. If successfully completed, the underlying grievance is dismissed with no record of discipline. If diversion is unsuccessful, a disciplinary complaint is filed and prosecuted.

The Court amended the diversion Rule and announced that amendment in a May 12, 2023 Notice to the Bar. As amended, the Rule requires disciplinary agency members to consider diversion in all cases involving a finding of minor unethical conduct. In addition, in appropriate circumstances, the amendment now allows individuals to enter the diversion program after the issuance of a formal disciplinary complaint. Previously, that had been prohibited.

During calendar year 2023, a total of 76 matters were approved for diversion, a 12% increase over 2022. Two of those matters were approved for diversion after a formal disciplinary complaint.

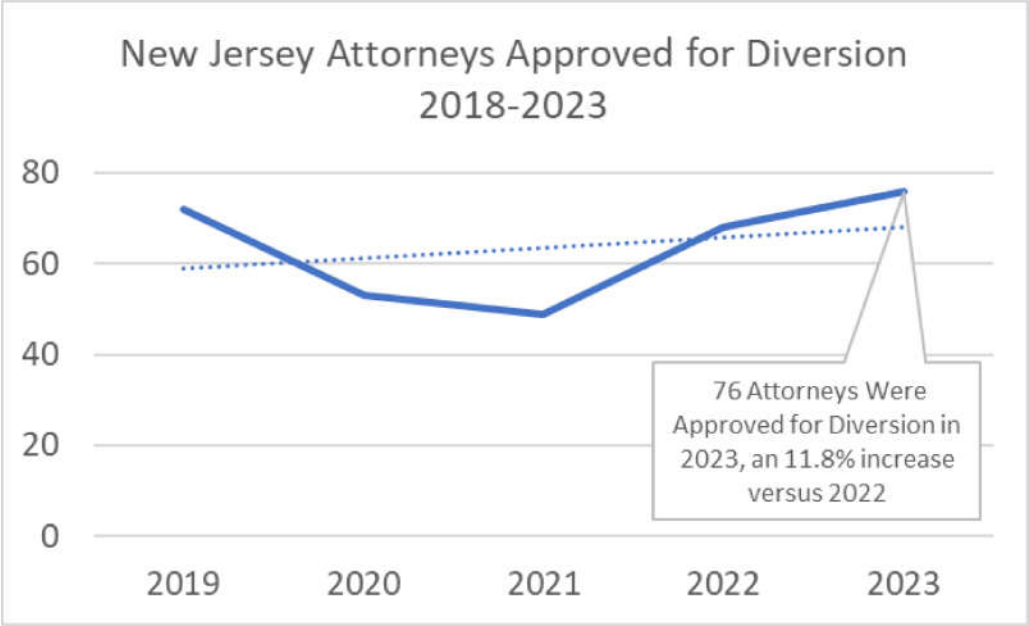

Figure 21

During 2023, New Jersey attorneys successfully completed 86 diversions.

At the end of 2023, 32 were still pending; those attorneys had been admitted into the diversion program in 2022 and prior years but had not yet completed their obligations.

The majority of individuals approved for diversion, or 72.4%, had violated attorney financial recordkeeping Rules.

The condition most commonly imposed in diversion cases required the attorney to complete the New Jersey State Bar Association's Ethics Diversionary Education Course (74). Other required conditions included: completion of a course in New Jersey Trust and Business Accounting (63) and completion of other Continuing Legal Education programs (6).

VIII. SUBSTANTIATED CASES WHICH ARE NOT MINOR

When the OAE or a DEC develops clear and convincing proof of unethical conduct which is not minor, the Rules require the filing of formal and public disciplinary charges. Most frequently, this occurs by way of complaint.

Complaints are served upon the attorney-respondent, who has 21 days in which to file a verified answer. Once a formal complaint or other charging document (such as a motion or consent) is filed, the complaint and any other document filed thereafter become public (with minor limitations) but may be subject to protective orders, as applicable.

Once the attorney files a verified conforming answer, a disciplinary hearing is scheduled and held.

In both standard and complex cases, the matter is tried before a hearing panel consisting of three members, composed of two lawyers and one public member. In some complex cases, however, a special ethics master may be appointed by the Supreme Court to hear and decide the matter.

In disciplinary hearings, the procedure followed is similar to that in Superior Court trials. A verbatim record of the entire proceeding is made. Testimony is taken under oath. Attendance of witnesses and the production of records may be compelled by subpoena. After the conclusion of the hearing, the panel or special ethics master deliberates and prepares a hearing report either dismissing the complaint, if it determines that the lawyer has not committed unethical conduct, or finding the lawyer to have committed unethical conduct, with the recommendation of the level of discipline.

All hearings are open to the public except in rare circumstances where comprehensive protective orders have been entered. During 2023, a majority disciplinary hearings proceeded virtually utilizing the Zoom platform. The OAE publishes a list of pending hearing matters that are updated monthly and made available on the OAE's website.

A. Volume of Formal Disciplinary Complaints

The disciplinary system began calendar year 2023 with a total of 245 complaints carried over from prior years. During the year, 151 new

complaints were added, for a total disposable caseload of 396. A total of 181 complaints were disposed, leaving 214 pending complaints at year's end. Of that number, 25 were in untriable status, leaving an active pending caseload of 189 complaints.

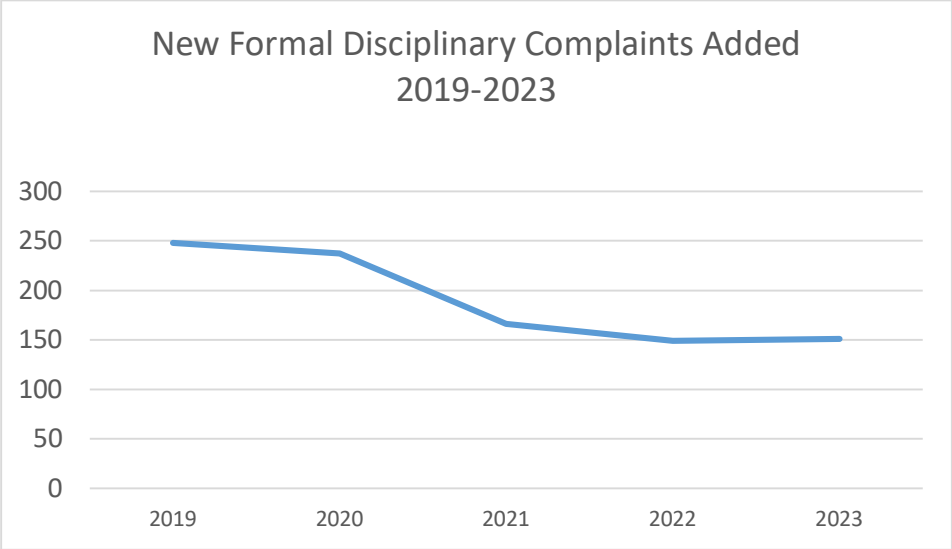

Figure 22

Evaluating that data as a percentage of the active attorney population, 0.20% of the population of active New Jersey attorneys was the subject of a disciplinary complaint in 2022, or two out of every one thousand attorneys.

B. Age of Disposed Hearings

In 2023, the average age of the OAE's disposed hearings decreased by 178 days, from 748 days in 2022 to 570 days in 2023. The average age of the disposed hearings of the DECs decreased by 104 days, from 726 days in 2022 to 622 days in 2023.

OAE executive management attributes this decrease in disposed hearing age to having filled vacant attorney positions and adding four new positions as part of a reorganization plan approved by the Supreme Court. The DECs likewise made a concerted effort to conduct more in-person and virtual hearings.

IX. SANCTIONS

There are two ways in which the Supreme Court may sanction an attorney. The first type of sanction is a temporary suspension imposed as a result of emergent action. The second, and more common type of sanction, is final discipline. Final discipline is imposed as described by Rule. 1:20-15A.

A. Types of Final Discipline

There were five primary forms of final disciplinary sanctions in our state during 2023.

Disbarment is the most severe form of discipline and may be imposed either by the Supreme Court after oral argument or with the respondent's consent. Since the issuance of the Court's decision in In re Wilson, 81 N.J. 451, 456 n.5 (1979), and R.1:20-15A(a)(1), disbarment in New Jersey has been, for all practical purposes, permanent. Like New Jersey, four other states impose disbarment on a permanent basis in all cases (Indiana, Ohio, Oregon, and Tennessee).[9] Eight other jurisdictions have recognized the importance of permanency in some, but not all, disbarment cases (Arizona, Alabama, California, Connecticut, Florida, Kansas, Louisiana, and Mississippi).

On June 7, 2022, the Court issued an opinion and Order in In re Wade, 250 N.J. 581, which set the stage for revisiting permanent disbarment. Shortly after issuing the Wade disbarment order, the Supreme Court appointed a Special Committee on the Duration of Disbarment for Knowing Misappropriation chaired by former Associate Justice Virginia A. Long (retired). On July 3, 2023, that committee issued its findings in a formal report to the Court. During 2023, customary language concerning the permanency of disbarment remained in all disbarment Orders issued by the Court.

Suspension precludes an attorney from practicing law for the period it is in effect. An attorney may not resume practicing at the end of the suspension until the Supreme Court orders reinstatement. There are two types of

[9] Effective July 1, 2020, the State of Tennessee returned to permanent disbarment. See Melissa Heelan Stanzione, "Tennessee Lawyers Can No Longer Be Reinstated After Disbarment," Bloomberg Law (January 27, 2020) (viewable at: https://news.bloomberglaw.com/us-law-week/tennessee-lawyers-can-no-longer-be-reinstated-after-disbarment).

suspensions. Term suspensions prevent an attorney from practicing for a specific term, usually between three months to three years. R. 1:20-15A(a)(3). Indeterminate suspensions are imposed for a minimum of five years. R. 1:20-15A(a)(2).

Censure is a condemnation of the attorney's misconduct that is imposed by Order of the Supreme Court. R. 1:20-15A(a)(4).

A ***reprimand*** is a rebuke for an attorney's unethical conduct. R. 1:20-15A(a)(5).

Admonition, the least serious sanction, is a written admonishment meted out either by letter of the DRB or by Order of the Supreme Court. R. 1:20-15A(a)(6).

In 2023, the Supreme Court imposed final discipline on 102 New Jersey attorneys. The 102 final disciplinary sanctions imposed included 12 disbarment Orders, of which 7 occurred by consent of respondent; 24 term suspensions; one indeterminate suspension; 23 censures; 32 reprimands; and 10 admonitions.

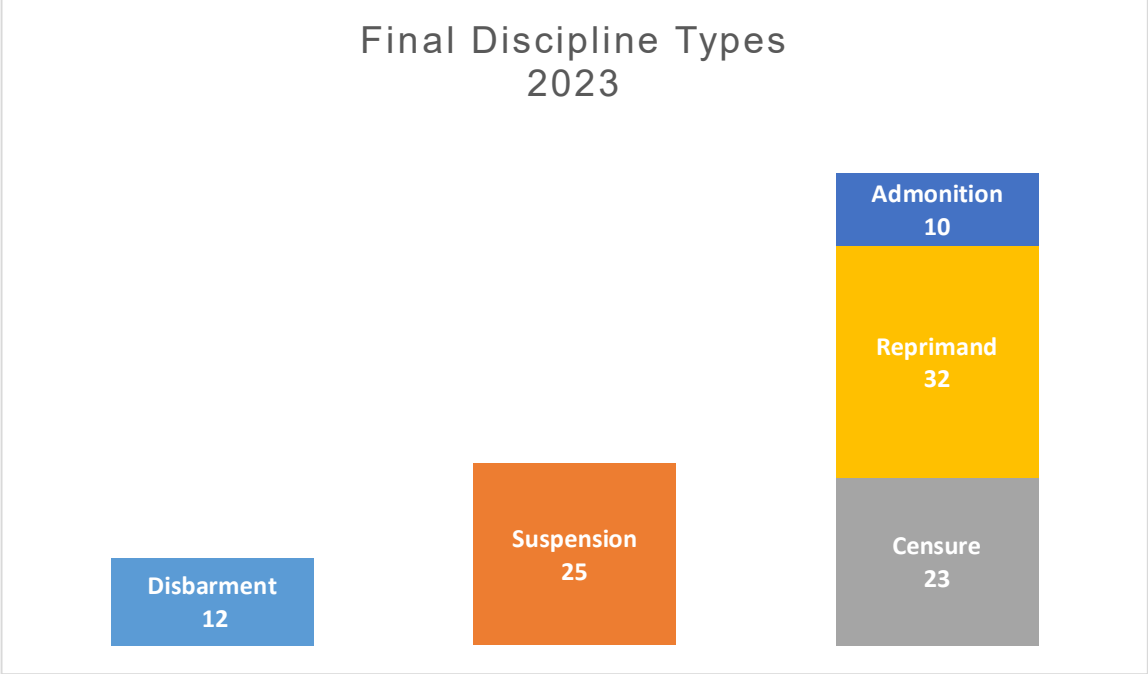

Figure 23

Comparisons of 2023 sanctions with the prior year are as follows: disbarments by Order of the Supreme Court following litigation decreased by 50% (10 in 2022 vs. 5 in 2023); disbarments by consent increased by 15.4% (6 in 2022 vs. 7 in 2023); term and indeterminate suspensions decreased by 52.8% (53 in 2022 vs. 25 in 2023); censures decreased by 14.8% (27 in 2022 vs. 23 in 2023); reprimands increased by 23.1% (26 in 2022 vs. 32 in 2023); and admonitions decreased by 37.5% (16 in 2022 vs. 10 in 2023).

B. Emergent Action

Whenever an investigation has revealed both that a serious violation of the RPCs has occurred, and that an attorney "poses a substantial threat of serious harm to an attorney, a client or the public" (R. 1:20-11), the OAE may file an application seeking the attorney's immediate temporary suspension from practice, pending ongoing investigation. If the Supreme Court determines to grant the motion, the Court may either suspend the attorney temporarily or impose a temporary license restriction, which permits the lawyer to continue to practice, but places conditions on that privilege. Conditions may include oversight by a proctor of the attorney and/or trust account.

Over the last five years, an average of 20 lawyers were subject to emergent action.

For 2023, a total of twenty-three (23) attorneys were the subject of emergent sanctions as a result of 24 separate temporary suspension Orders. The names of attorneys emergently suspended are listed in Table 9.

In 2023, the leading reasons for emergent suspension were: the attorney's conviction of a "serious crime" as defined in R. 1:20-13 at 37.5% (9 cases); non-cooperation with disciplinary authorities, at 41.6% (10 cases); and non-payment of fee arbitration committee awards at 16.6% (4 cases).

C. Total Disciplinary Sanctions

In total, the New Jersey Supreme Court entered 126 sanction Orders in 2023, by comparison with 151 Orders in 2022 (representing a decrease of 16.5%). The average number of sanction Orders over the past five years is 148. The

number of sanction Orders in 2023 is 14.9% lower than this five-year average.

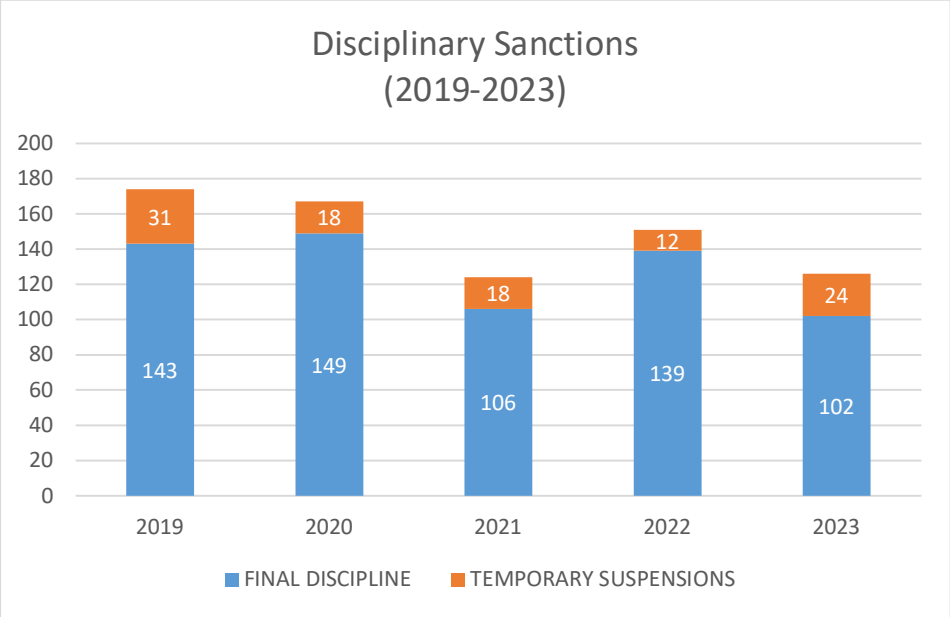

Figure 24

X. GROUNDS FOR FINAL DISCIPLINE

Over the years, the OAE consistently has studied the types of misconduct committed in final discipline cases. Many cases charge an individual respondent with a violation of more than one RPC. For the purposes of this analysis, the OAE selects the RPC with the most serious disciplinary consequence in each case.

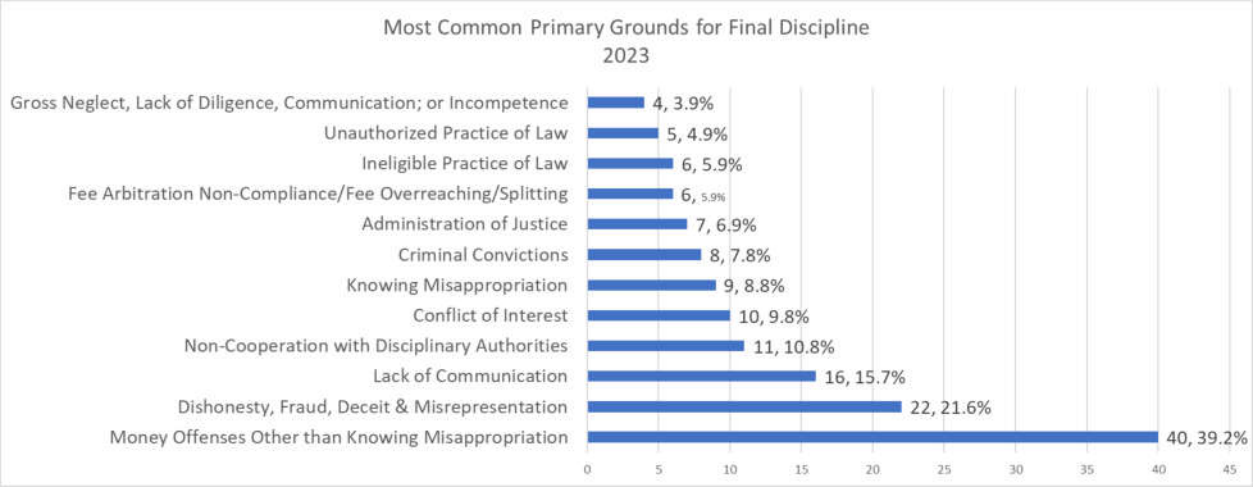

Figure 25

During 2023, 22.1% (40 of the 102 final discipline cases) of the attorneys disciplined in 2023 committed some type of money offense other than knowing misappropriation. This category includes negligent or reckless misappropriation, serious trust account recordkeeping deficiencies, and failure to safeguard funds and escrow violations.

Twenty-two (22) of the 102 attorneys disciplined in 2023 (or 12.2%) engaged in some type of dishonesty, fraud, deceit, or misrepresentation.

Sixteen (16) attorneys, or 8.8%, received public discipline for failing to communicate with their clients. RPC 1.4 requires an attorney to keep their client reasonably informed about the status of a matter and promptly comply with reasonable requests for information and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Attorneys have an ethical obligation under RPC 8.1(b) and R. 1:20-3(g)(3) to cooperate during the investigation, hearing, and processing of disciplinary matters. Some lawyers are disciplined for non-cooperation

even though the grievance originally filed against them ultimately was dismissed because there was no proof of unethical conduct. The disciplinary system could not properly function and endeavor to meet its goals for timely disposition of cases without the attorney's cooperation. Eleven attorneys were disciplined in 2023 for failure to cooperate with disciplinary authorities.

The general rule on conflicts is found in RPC 1.7, which states that a lawyer may not represent a client if the representation of one client will be directly adverse to another client, or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer. In 2023, 10 attorneys of the 102 disciplined, or 5.5%, were found to have engaged in an impermissible conflict of interest.

Of the 102 final Orders of discipline, nine (9) of the attorneys disciplined in 2023, or 5%, knowingly misappropriated entrusted funds. Knowing misappropriation cases are of special importance in this state. New Jersey maintains a uniform and unchanging definition of this offense, as set forth in the landmark decision of In re Wilson, 81 N.J. 451 (1979). This violation consists of simply taking and using a client's money, knowing that it is the client's money and that the client has not authorized its use. Knowing misappropriation cases, involving client trust/escrow funds, mandate disbarment.

In 2023, eight (8) attorneys received final discipline flowing from a criminal act that reflected adversely upon their honesty, trustworthiness or fitness as a lawyer in other respects.[10]

RPC 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice. This was the most serious act of misconduct for seven of the attorneys disciplined in 2023, or 3.9%.

Attorneys who are the subject of a DFAC determination that requires them to refund monies to their clients may be subject to discipline if they fail to comply with that determination. Fee arbitration panels may refer an

[10] This number includes all cases in which RPC 8.4(b) was the most serious charge, including but not limited to Motions for Final Discipline.

attorney's conduct to the Ethics Committee if it finds the attorney engaged in overreaching in the legal fees they charged. Also, a division of fees between lawyers who are not in the same firm may be made only if: the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; the client is notified of the fee division; the client consents to the participation of all the lawyers involved; and the total fee is reasonable. Violation of a Rule concerning legal fees was the most severe misconduct found on the part of six (6) attorneys out of the 102 attorneys disciplined in 2023.

Lawyers who continue to engage in the practice of law after they are ordered by the Supreme Court to cease practicing are captured under the case type "Ineligible Practicing Law." Those lawyers may be ineligible because they have failed to (a) make payment of the mandatory annual attorney registration licensing fee; (b) submit updated IOLTA information; or (c) comply with CLE requirements. In 2023, 6 out of 102 attorneys disciplined, or 3.3%, fell into this category.

RPC 5.5 defines the Unauthorized Practice of Law to include not only an attorney practicing New Jersey law after their license to practice here has been revoked or suspended, but also when an attorney admitted here assists a non-lawyer in the performance of activity that constitutes the unauthorized practice of law. Two point eight percent (2.8%) (5 of 102 cases) of the attorneys disciplined in 2023 were found to have engaged in the unauthorize practice of law.

Attorneys who engage in grossly negligent conduct and who lack diligence and fail to communicate with clients are a clear danger to the public and the reputation of the bar. The category of "Neglect/Lack of Competence/Lack of Diligence" represented 2.2% (4 of 102 cases).

Summaries of each of the 102 final discipline cases can be found in the Appendix.

XI. AFTER DISCIPLINE: MONITORING & REINSTATEMENT

Finally, the OAE continues its attorney regulatory and disciplinary role after final discipline is imposed. Particularly, the OAE monitors attorneys' compliance with conditions of final discipline; can initiate civil contempt proceedings in the event an attorney fails to comply with a suspension or disbarment Order; and opines on the propriety of petitions for reinstatement to the practice of law following the suspension of an attorney's license to practice law.

A. Monitoring Conditions of Final Discipline

Rule 1:20-15A(b) describes the Supreme Court's authority to impose conditions, either as a component of a disciplinary sanction or as a condition precedent to reinstatement. Included among those conditions is the capacity of the Court to impose a proctorship, as described in R. 1:20-18.

Another typical condition is the submission of an annual or quarterly audit report covering attorney trust and business records. Sometimes random periodic drug testing at the attorney's expense is imposed. Finally, some attorneys are required to take ethics or substantive law courses. As of December 31, 2023, fifty-four (54) attorneys were subject to monitoring.

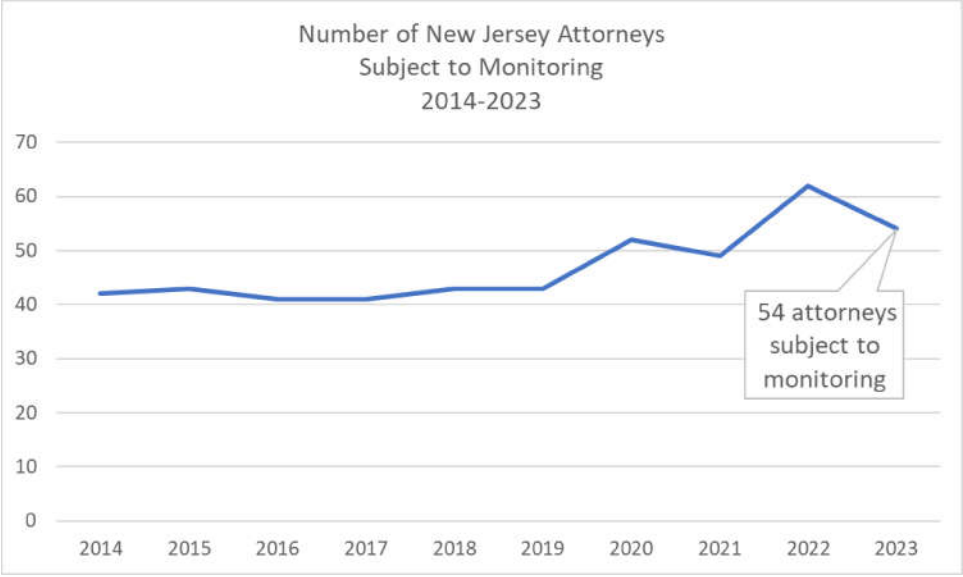

Figure 26

This represents a decrease of 12.9% in the number of attorneys subject to monitoring at the end of 2023. The OAE filed two Petitions to Compel Compliance with the Supreme Court in 2023.

B. Contempt

Prosecutions for contempt of Supreme Court Orders under R. 1:20-16(j) is another category of cases entrusted to the OAE. These actions involve the improper, continued practice of law by suspended and disbarred attorneys. The OAE is permitted by Rule to file and prosecute an action for contempt before the Assignment Judge of the vicinage where the respondent engaged in the prohibited practice of law. It also has the authority to file disciplinary complaints against offending attorneys seeking sanctions for their violations. There were no prosecutions for contempt of Supreme Court Orders in 2023.

C. Reinstatement Proceedings

A suspended attorney may not practice again until the attorney first files a petition for reinstatement, pursuant to R. 1:20-21, and the Supreme Court grants the request by Order. The application is reviewed by the OAE, the DRB, and the Court. There is no procedure for a disbarred attorney to apply for reinstatement (sometimes called readmission) because disbarment is permanent. In re Wilson, 81 N.J. 451, 456 n.5 (1979), and R. 1:20-15A(a)(1). Where the attorney is suspended for more than six months, a reinstatement petition may not be made until after expiration of the period provided in the suspension Order. R. 1:20-21(a). Where the suspension is for six months or less, the attorney may file a petition and publish the required public notice 40 days prior to the expiration of the suspension period. R. 1:20-21(b).

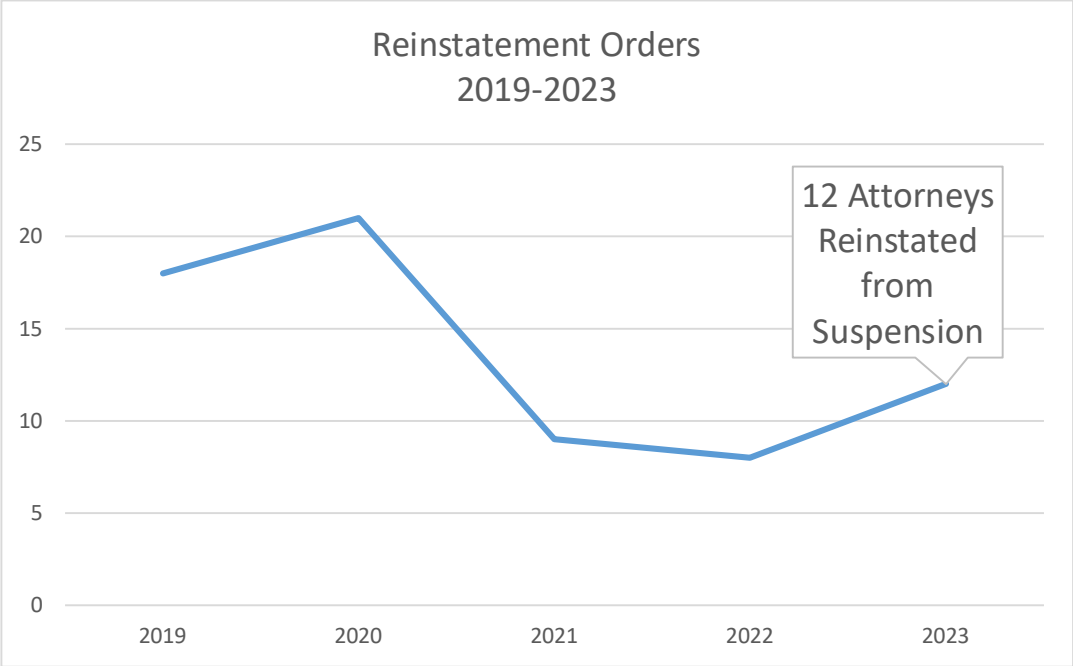

Figure 27

The Supreme Court reinstated twelve (12) suspended attorneys in 2023.

Table 1

District Ethics Committee Officers as of September 1, 2023		
CHAIR	**VICE CHAIR**	**SECRETARY**
District I - Atlantic, Cape May, Cumberland and Salem Counties		
Stephanie Albrecht-Pedrick, Esq.	Scott D. Sherwood, Esq.	Dorothy F. McCrosson, Esq.
District IIA – Bergen – North		
Jason David Roth, Esq.	Kathleen Ann Hart, Esq.	Kevin P. Kelly, Esq.
District IIB - Bergen County – South		
Michelle J. Marose, Esq.	Natalia Rawan Angeli, Esq.	William Tellado, Esq.
District IIIA - Ocean County		
Lauren Murray Dooley, Esq.	Kathleen C. Moriarty, Esq.	Steven Secare, Esq.
District IIIB - Burlington County		
Jeffrey P. Resnick, Esq.	Megan Knowlton Balne, Esq.	John M. Hanamirian, Esq.
District IV - Camden and Gloucester Counties		
Thomas McKay, III, Esq.	Anne T. Picker, Esq.	John M. Palm, Esq.
District VA - Essex County – Newark		
Dale Edward Barney, Esq.	John Charles Garde, Esq.	Natalie S. Watson, Esq.
District VB - Essex County - Suburban Essex		
Joseph A. Fischetti, Esq.	Jason R. Halpin, Esq.	Paula I. Getty, Esq.
District VC - Essex County - West Essex		
Mark H. Friedman, Esq.	Mark S. Heinzelmann, Esq.	Paula I. Getty, Esq.
District VI - Hudson County		
Stephanie L. Lomurro, Esq.	Rachael Ann Mongiello, Esq.	Daniel P. D'Alessandro, Esq.
District VII - Mercer County		
Joseph C. Bevis, III, Esq.	Graig P. Corveleyn, Esq.	John J. Zefutie, Esq.
District VIII - Middlesex County		
Leslie A. Koch, Esq.	Rahool Patel, Esq.	Barry J. Muller, Esq.
District IX - Monmouth County		
Justin M. English, Esq.	Joseph A. Petrillo, Esq.	Mark B. Watson, Esq.
District XA – East Morris and Sussex Counties		
Catherine Romania, Esq.	Risa D. Rich, Esq.	Caroline Record, Esq.
District XB – West Morris and Sussex Counties		
William D. Sanders, Esq.	Steven R. Rowland, Esq.	Caroline Record, Esq.
District XI - Passaic County		
Maria A. Giammona, Esq.	Karen Brown, Esq.	Michael Pasquale, Esq.
District XII - Union County		
Joseph H. Tringali, Esq.	Jonathan Holtz, Esq.	Michael F. Brandman, Esq.
District XIII - Hunterdon, Somerset and Warren Counties		
Rita Ann M. Aquilio, Esq.	Sarah Mahony Eaton, Esq.	Donna P. Legband, Esq.

Table 2

District Fee Arbitration Committee Officers as of September 1, 2023		
CHAIR	**VICE CHAIR**	**SECRETARY**
District I – Atlantic Cape May, Cumberland and Salem Counties		
James F. Crawford, Esq.	Rebecca J. Bertram, Esq.	Michael A. Pirolli, Esq.
District IIA – North Bergen County		
Tamer M. Abdou, Esq.	Gloria K. Oh, Esq.	Terrence J. Corriston, Esq.
District IIB – South Bergen County		
Ashley Tate Cooper, Esq.	Kali A. Trahanas, Esq.	Michael J. Sprague, Esq.
District IIIA – Ocean County		
William J. Rumpel, Esq.	Jennifer D. Armstrong, Esq.	Lisa E. Halpern, Esq.
District IIIB – Burlington County		
Domenic Bruno Sanginiti, Jr., Esq.	John S. Rigden, III, Esq.	Albert M. Afonso, Esq.
District IV – Camden and Gloucester Counties		
Salvatore J. Siciliano, Esq.	Jennie Anne Owens, Esq.	Marian I. Kelly, Esq.
District VA – Essex County – Newark		
David J. Reilly, Esq.	John R. Stoelker, Esq.	Michael J. Dee, Esq.
District VB – Essex County – Suburban Essex		
Alan N. Walter, Esq.	Patrick J. Dwyer, Esq.	Harvey S. Grossman, Esq.
District VC Essex County – West Essex		
Rufino Fernandez. Jr., Esq.	Amy E. Robinson, Esq.	Cheryl H. Burstein, Esq.
District VI – Hudson County		
John V. Salierno, Esq.	Mollie Hartman Lustig, Esq.	Marvin R. Walden, Jr., Esq.
District VII – Mercer County		
Dominique Carroll, Esq.	Rachel S. Cotrino, Esq.	Rebecca Colon, Esq.
District VIII – Middlesex County		
Waimatha Lois Kahagi, Esq.	Anthony M. Campisano, Esq.	Steven Nudelman, Esq.
District IX – Monmouth County		
Roger J. Foss, Esq.	James D. Carton, IV, Esq.	Robert J. Saxton, Esq.
District X – Morris and Sussex Counties		
Linda A. Mainenti Walsh, Esq.	Alyssa M. Clemente, Esq.	Patricia J. Cistaro, Esq.
District XI – Passaic County		
Candice Drisgula, Esq.	Jason Tuchman, Esq.	Jane E. Salomon, Esq.
District XII – Union County		
Leonard V. Jones, Esq.	Mitchell H. Portnoi, Esq.	Carol A. Jeney, Esq.
District XIII – Hunterdon, Somerset and Warren Counties		
John D. Macce, Esq.	Michael J. Wilkos, Esq.	Olivier J. Kirmser, Esq.

Table 3

Disciplinary Oversight Committee
as of September 1, 2023

Chair	Matthew P. O'Malley, Esq.
Vice-Chair	R. James Kravitz, Esq.
Members	Ms. Judith E. Burgis
	Clifford Dawkins, Esq.
	Mr. Barry Davidson
	Jeralyn Lawrence, Esq.[11]
	Mr. Luis J. Martinez
	Ms. Nora Poliakoff
	Hon. Nesle A. Rodriguez, P.J.F.P.
	Mr. Thomas J. Reck
	Ronald J. Uzdavinis, Esq.

[11] Appointed as the New Jersey State Bar Association liaison to the DOC for a one-year term effective January 1, 2023 through February 29, 2024.

Table 4

YEAR ADMITTED		
Year	**Number**	**Percent**
<1950	28	0.0%
1951-1955	102	0.1%
1956-1960	282	0.3%
1961-1965	681	0.7%
1966-1970	1,652	1.6%
1971-1975	3,565	3.6%
1976-1980	4,458	4.4%
1981-1985	7,079	7.1%
1986-1990	10,467	10.4%
1991-1995	11,762	11.7%
1996-2000	10,741	10.7%
2001-2005	10,490	10.5%
2006-2010	12,406	12.4%
2011-2015	13,750	13.7%
2016-2022	12,747	12.7%
Totals	**100,210**	**100.00%**

Table 5

AGE GROUPS		
Age	**Number**	**Percent**
< 25	91	0.1%
25-29	2,792	2.8%
30-34	6,818	6.8%
35-39	12,331	12.3%
40-44	11,777	11.8%
45-49	9,995	10.0%
50-54	11,055	11.1%
55-59	11,265	11.3%
60-64	10,159	10.2%
65-69	8,467	8.5%
70-74	6,344	6.3%
75-80	4,771	4.8%
> 80	4,144	4.1%
Totals	**100,009**	**100.00%**

Table 6

ADMISSIONS IN OTHER JURISDICTIONS

Jurisdiction	Admissions	Percent	Jurisdiction	Admissions	Percent
New York	47,194	46.71%	Indiana	126	0.12%
Pennsylvania	26,834	26.56%	Louisiana	126	0.12%
District of Col.	6,864	6.79%	South Carolina	126	0.12%
Florida	3,500	3.46%	Nevada	115	0.11%
California	2,104	2.08%	Oregon	106	0.10%
Connecticut	1,856	1.83%	Rhode Island	105	0.10%
Massachusetts	1,622	1.60%	Kentucky	93	0.09%
Maryland	1,266	1.25%	New Mexico	85	0.08%
Virginia	862	0.85%	Alabama	76	0.07%
Delaware	856	0.84%	Hawaii	77	0.07%
Texas	853	0.84%	Virgin Islands	74	0.07%
Illinois	838	0.82%	Kansas	57	0.05%
Georgia	627	0.62%	Utah	53	0.05%
Colorado	560	0.55%	Iowa	51	0.05%
Ohio	495	0.49%	Oklahoma	48	0.04%
North Carolina	433	0.42%	Nebraska	46	0.04%
Arizona	321	0.31%	Puerto Rico	39	0.03%
Michigan	296	0.29%	Arkansas	37	0.03%
Washington	261	0.25%	Alaska	34	0.03%
Minnesota	237	0.23%	Montana	33	0.03%
Missouri	235	0.23%	Mississippi	26	0.02%
Tennessee	210	0.20%	Idaho	20	0.01%
Wisconsin	172	0.17%	North Dakota	10	0.00%
West Virginia	143	0.14%	South Dakota	8	0.00%
Maine	140	0.13%	Guam	3	0.00%
New Hampshire	132	0.13%	Wyoming	0	0.00%
Vermont	127	0.12%	Invalid Responses	401	0.39%
			Total Admissions	**100,015**	**100.00%**

Table 7

NEW JERSEY ADMITTED ATTORNEY LAW OFFICES BY STATE (2023)

State	Number	Percent
New Jersey	26,538	73.1%
Pennsylvania	4,475	12.3%
New York	4,441	12.2%
Delaware	134	0.4%
Other	720	2.0%
No State Listed	11	0.03%
Total	**36,367**	**100%**

Table 8

NEW JERSEY PRACTITIONER LAW OFFICES BY COUNTY (2023)

County	Number	Percent	County	Number	Percent
Atlantic	550	2.1%	Middlesex	1,656	6.2%
Bergen	3,507	13.2%	Monmouth	1,952	7.4%
Burlington	1,584	6.0%	Morris	3,309	12.5%
Camden	2,147	8.1%	Ocean	714	2.7%
Cape May	155	0.6%	Passaic	777	2.9%
Cumberland	129	0.5%	Salem	41	0.2%
Essex	4,291	16.2%	Somerset	926	3.5%
Gloucester	335	1.3%	Sussex	199	0.7%
Hudson	894	3.4%	Union	1,382	5.2%
Hunterdon	260	1.0%	Warren	116	0.4%
Mercer	1,558	5.9%	No County Listed	2	0.0%
			Total	**26,536**	**100.00%**

OAE Yearly Discipline Report
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Table 9

Disbarment (5)				
Attorney	**Admitted**	**Location**	**Decided**	**Effective**
ALVAREZ, ESTHER MARIA ®[1]	1992	UNION	05/10/2023	05/10/2023
LONG, DOUGLAS M.	1999	GLOUCESTER	10/24/2023	10/24/2023
MACELUS, EDWYN D.	2013	BERGEN	05/10/2023	05/10/2023
MANGANELLO, CHRISTOPHER MICHAEL	1998	GLOUCESTER	10/13/2923	10/13/2023
RASMUSSEN, MATTHEW D. ®	2012	MONMOUTH	06/07/2023	06/20/2023

Disbarment by Consent (7)				
Attorney	**Admitted**	**Location**	**Decided**	**Effective**
COOPER, JON CHARLES	1994	DISTRICT OF COLUMBIA	08/31/2023	08/31/2023
LEE, MISHA $	2001	BERGEN	12/04/2023	12/04/2023
LISA, JAMES R.	1984	HUDSON	10/02/2023	10/02/2023
LONG, DOUGLAS M.	1999	GLOUCESTER	10/24/2023	10/24/2023
SHUTICK, DAVID T.	1984	PENNSYLVANIA	11/28/2023	11/28/2023
SIMOES, FAUSTO J.	1979	ESSEX	09/15/2023	09/15/2023
SIMONSON, THERESA M. ®	1993	OCEAN	03/30/2023	03/30/2023

Suspension - Term (24)					
Attorney	**Term**	**Admitted**	**Location**	**Decided**	**Effective**
ANDERSON, ANGELIQUE LAYTON	12 mo.	1989	COLORADO	09/22/2023	09/22/2023
BRUNSON, NEAL E.	3 mo.	1988	BERGEN	03/21/2023	03/21/2023
CHIRNOMAS, MORTON	6 mo.	1990	MORRIS	05/13/2023	06/12/2023
COLEMAN, KENDALL	3 mo.	2000	PASSAIC	05/16/2023	06/19/2023
DIXON, DANIEL M.	12 mo.	2006	PENNSYLVANIA	11/03/2023	12/01/2023
GENDEL, MARCY E.	12 mo.	1977	ESSEX	11/08/2023	12/08/2023
GONZALEZ, NELSON	6 mo.	1997	MORRIS	03/15/2023	04/11/2023
HEDIGER, DANIEL DAVID	3 mo.	1995	BERGEN	05/10/2023	06/12/2023
HILDEBRAND, STEPHEN PAUL	6 mo.	2015	PENNSYLVANIA	06/30/2023	07/27/2023

® The "®" symbol indicates that this discipline resulted from an investigation which was docketed following a referral from the Random Audit Program.
$ The "$" symbol indicates that this discipline resulted from an investigation which was docketed in response to a Trust Account Overdraft Notification.

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ISA, ULYSSES	3 mo.	2006	HUDSON	05/16/2023	06/12/2023
LEITE, ROBERT CAPTAIN	12 mo.	2012	PENNSYLVANIA	06/20/2023	07/17/2023
LYNCH, WILLIAM H. JR.	18 mo.	1987	PENNSYLVANIA	02/09/2023	02/09/2023
MAVROUDIS, JOHN M.	12 mo.	1974	BERGEN	06/05/2023	07/03/2023
McILWAIN, TIMOTHY JOSEPH	1 mo.	1996	ATLANTIC	07/20/2023	08/18/2023
MLADENOVICH, MILENA	12 mo.	2010	DELAWARE	06/20/2023	07/17/2023
PINKAS, EDAN E.	6 mo.	2005	NEW YORK	03/15/2023	04/10/2023
PLAGMANN, ROBERT ARTHUR	12 mo.	2006	VIRGINIA	06/20/2023	07/17/2023
ROWEK, MICHAEL A.	24 mo.	1987	PASSAIC	02/09/2023	03/03/2023
SAUNDERS, DARRYL M.	6 mo.	1990	MERCER	05/16/2023	06/19/2023
SCHLACHTER, DAVID M.	3 mo.	2006	PASSAIC	06/30/2023	07/27/2023
STACK, ROBERT JAMES	24 mo.	1996	MORRIS	09/12/2023	10/06/2023
TORONTO, PHILIP V.$[2]	6 mo.	1982	BERGEN	06/30/2023	07/27/2023
WALDMAN, DAVID R.	36 mo.	2005	NEW YORK	02/09/2023	02/09/2023
WILLIAMS, BRIAN D.	6 mo.	2009	FLORIDA	10/06/2023	10/06/2023

Indeterminate Suspension (1)				
Attorney	**Admitted**	**Location**	**Decided**	**Effective**
SPARK, ANDREW B.	1993	PASSAIC	05/10/2023	06/08/2023

Censure (23)				
Attorney	**Admitted**	**Location**	**Decided**	**Effective**
ABRAMS, WALTER K. ®	1975	MIDDLESEX	07/11/2023	07/11/2023
ARTUSA, SANTO V. JR.	2009	HUDSON	09/13/2023	09/13/2023
DOYLE, JOHN THOMAS $	1997	ESSEX	06/30/2023	06/30/2023
FIOCCA, VIRGINIA T.	1976	ESSEX	06/02/2023	06/02/2023
GRAY, DAVID E.	2003	MORRIS	11/03/2023	11/03/2023
HARTMAN, FRANCES ANN	1984	BURLINGTON	05/10/2023	05/10/2023
HOM, TONY CHUNG-MIN	1997	NEW YORK	09/13/2023	09/13/2023
HOWES, WILLIAM TIMOTHY $	1989	SOMERSET	06/30/2023	06/30/2023
HUFF, WARDELL	2005	VIRGINIA	06/05/2023	06/05/2023
JANDER, MARK BAE	2016	MONMOUTH	01/19/2023	01/19/2023
KASSEM, NABIL NADIM	1994	PASSAIC	06/20/2023	06/20/2023

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LISA, JAMES R.	1984	HUDSON	06/20/2023	06/20/2023
MUNDAY, WILLIAM P.	1980	MORRIS	12/08/2023	12/08/2023
NUSSEY, DAVID RYAN	1999	CAMDEN	01/31/2023	01/31/2023
PAPPAS, GEORGE N.	1967	HUDSON	01/31/2023	01/31/2023
ROSELLINI, KENNETH JAMES	1998	PASSAIC	05/16/2023	05/16/2023
SCHEFERS, STEVEN H.	1988	PASSAIC	06/30/2023	06/30/2023
SCHWARTZ, LAWRENCE S.	1965	MORRIS	12/08/2023	12/08/2023
SCOTT, JUSTIN L.	2014	CAMDEN	05/31/2023	05/31/2023
SMITH, STEPHEN E. ®	1980	OCEAN	05/09/2023	05/09/2023
THOMPSON, RONALD B.	1990	CAMDEN	03/23/2023	03/23/2023
TRELLA, MATTHEW J.	1970	PASSAIC	05/31/2023	05/31/2023
VAZQUEZ, JOSUE	2001	ESSEX	05/10/2023	05/10/2023

Reprimand (32)				
Attorney	**Admitted**	**Location**	**Decided**	**Effective**
ASTERITA, JOSEPH JOHN	1999	MONMOUTH	05/31/2023	05/31/2023
BENEDETTO, CONRAD J.	1983	PENNSYLVANIA	03/24/2023	03/24/2023
BRUNSON, NEAL E.	1988	BERGEN	03/21/2023	03/21/2023
CAPRIGLIONE, SCOTT JOSEPH $	1988	MERCER	09/13/2023	09/13/2023
CARROLL, ANDREW MICHAEL $	2004	ATLANTIC	03/14/2023	03/14/2023
CERRUTI, PAMELA MARTHA	1988	ESSEX	06/05/2023	06/05/2023
COOPER, CHERYL L.	1995	GLOUCESTER	05/10/2023	05/10/2023
COTTEE, STUART THOMAS	1999	PENNSYLVANIA	10/24/2023	10/24/2023
CROOK, DAVID WAYNE ®	1983	BERGEN	09/13/2023	09/13/2023
FELONEY, JOHN ANTHONY IV	2016	HUDSON	09/13/2023	09/13/2023
FRITZ, CHRISTOPHER RAYMOND	1998	SOMERSET	03/30/2023	03/30/2023
HEINE, I.M.	1968	BURLINGTON	06/30/2023	06/30/2023
HENNING, WILLIAM FREDERICK ®	1993	ESSEX	12/19/2023	12/19/2023
JOHNSON, ADRIAN JA WAUN	2012	MIDDLESEX	12/19/2023	12/19/2023
JOHNSON, DAVID L.	1975	SUSSEX	11/01/2023	11/01/2023
JONES, STEPHEN ROBERT $	2006	FLORIDA	11/17/2023	11/17/2023
JOZWIAK, STEVEN JAY	1983	CAMDEN	11/17/2023	11/17/2023
KASSEM, NABIL NADIM	1994	PASSAIC	06/22/2023	06/22/2023

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McHUGH, DONALD M.	1973	MORRISTOWN	01/20/2023	01/20/2023
MIRANDA, BRIAN M.	2015	UNION	09/13/2023	09/13/2023
PAPPAS, GEORGE N.	1967	HUDSON	01/31/2023	01/31/2023
POLCARI, MERYL M. ®	1986	MIDDLESEX	10/24/2023	10/24/2023
ROBINSON, RICHARD DONNELL	2004	BURLINGTON	03/23/2023	03/23/2023
SCHLACHTER, DAVID M.	2006	PASSAIC	06/30/2023	06/30/2023
SEGOTI, JAMI	1993	MERCER	01/30/2023	01/30/2023
SMITH, DARRYL GEORGE	1997	BERGEN	04/13/2023	04/13/2023
WALKOW, ALAN N.	2012	MONMOUTH	03/14/2023	03/14/2023
WALKOW, ALAN N.	2012	MONMOUTH	12/06/2023	12/06/2023
WEINER, EVAN D. ®	2012	NEW YORK	09/13/2023	09/13/2023
WITHERSPOON, WILLIAM M.	1988	OCEAN	04/13/2023	04/13/2023
WITTENBERG, MICHAEL S.	1985	HUDSON	03/15/2023	03/15/2023
WRIGHT, DOROTHY	1976	SOMERSET	06/05/2023	06/05/2023

Admonition (10)

Attorney	Admitted	Location	Decided	Effective
ARZADI, KARIM K.	1987	MIDDLESEX	10/26/2023	10/26/2023
BARNWELL, SARAH RUTH	2008	PENNSYLVANIA	01/31/2023	01/31/2023
HEIMERL, WOLFGANG	1997	SOMERSET	07/12/2023	07/12/2023
HOVATTER, EDWARD JOSEPH	1991	CAPE MAY	09/22/2023	09/22/2023
MACRI, VINCENT N.	1973	MORRIS	01/20/2023	01/20/2023
MADIN, KHALED	2012	MORRIS	05/26/2023	05/26/2023
MAVROUDIS, JOHN M. $	1974	BERGEN	12/19/2023	12/19/2023
McDONNELL, MICHAEL MARTIN	1995	UNION	10/24/2023	10/24/2023
STARKEY, KEVIN N.	1990	OCEAN	09/22/2023	09/22/2023
YOUNG, HAYES R.	1984	HUDSON	11/22/2023	11/22/2023

Temporary Suspension (24)

Attorney	Admit.	Location	Basis	Docket	Decided	Effective
ARTUSA, SANTO V. JR.	2009	HUDSON	FEE	XIV-2023-0109E	08/21/2023	08/21/2023
ARTUSA, SANTO V. JR.	2009	HUDSON	FEE	XIV-2023-0257E	10/16/2023	10/16/2023

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BENEDETTO, CONRAD J.	1983	PENNSYLVANIA	ATS	XIV-2021-0376E	02/01/2023	02/01/2023
BROWNDORF, MATTHEW CHARLES	1995	NEW YORK	ATS	XIV-2023-0305E	11/15/2023	11/15/2023
CAMPBELL, JOSEPH V. JR.	2014	ESSEX	ATS	XIV-2022-0332E	5/31/2023	05/31/2023
CEHELSKY, KATHLEEN MARIE	1989	MIDDLESEX	NC	XIV-2021-0310E	11/03/2023	11/03/2023
COOPER, JON CHARLES	1994	DISTRICT OF COLUMBIA	ATS	XIV-2022-0248E	01/20/2023	01/20/2023
DAY, DWIGHT HUGH	2004	ESSEX	NC	XIV-2023-0040E	10/24/2023	10/24/2023
DIAMOND, SCOTT ERIC	1985	PENNSYLVANIA	ATS	XIV-2020-0315E	01/12/2023	01/12/2023
FALKEN, DENA JEAN	1995	MEXICO	NC	XIV-2019-0179E	06/05/2023	06/05/2023
FISHMAN, MARTIN S.	1976	BERGEN	NC	XIV-2022-0294E	06/30/2023	06/30/2023
FRANCHIO-MINGIN, MELISSA S.	1998	BURLINGTON	NC	XIV-2021-0362E	06/30/2023	06/30/2023
GREENBLUM, JUSTIN A.	2004	NEW YORK	NC	XIV-2022-0046E	05/31/2023	05/31/2023
KASSEM, NABIL NADIM	1994	PASSAIC	NC	XIV-2022-0128E	03/13/2023	03/13/2023
LISA, JAMES R.	1984	HUDSON	ATS	XIV-2023-0011E	08/18/2023	08/18/2023
MANGANELLO, CHRISTOPHER MICHAEL	1998	GLOUCESTER	FEE	XIV-2023-0141E	07/10/2023	07/10/2023
McGUIRE, JAMES J. JR.	1974	MONMOUTH	FEE	XIV-2022-0314E	03/30/2023	03/30/2023
PARISI, BRITTANY L.	2020	MONMOUTH	NC	XIV-2022-0408E	12/08/2023	12/08/2023
REPLOGLE, DANIEL M. III	1984	CAMDEN	Other	XIV-2023-0434E	08/21/2023	08/21/2023
RODRIGUEZ, GEORGE L.	1981	SOMERSET	ATS	XIV-2021-0286E	02/02/2023	02/02/2023
ROSELLINI, KENNETH JAMES	1998	PASSAIC	NC	XIV-2023-0355E	11/16/2023	11/16/2023
SIMOES, FAUSTO J.	1979	ESSEX	ATS	XIV-2017-0595E	06/21/2023	06/21/2023
SPARK, ANDREW B.	1993	PASSAIC	ATS	XIV-2019-0425E	11/16/2023	11/16/2023
WILSON, STACEY DAWN	2008	FLORIDA	NC	XIV-2022-0133E	11/13/2023	11/13/2023

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- "ATS" refers to an automatic temporary suspension pursuant to R. 1:20-13(b)(1) upon conviction of a "serious crime."
- "Fee" refers to an Order temporarily suspending an attorney's law license until the terms of a fee arbitration stipulation or determination requiring that attorney to return funds to a client is satisfied.
- "NC" refers to an Order of temporary suspension entered pursuant to R. 1:20-3(g)(4) (danger to the public) and/or R. 1:20-11(a) (noncooperation with disciplinary authorities).

Reinstatements (12)				
Attorney	**Admitted**	**Location**	**Decided**	**Effective**
CAMPOS, CHRISTOPHER	2003	HUDSON	06/13/2023	06/13/2023
DeSANTIAGO-KEENE, GARETH DAVID	1980	BERGEN	07/21/2023	07/21/2023
GELLENE, ALFRED V.	1979	PASSAIC	03/22/2023	03/22/2023
GONZALEZ, NELSON	1997	MORRIS	12/08/2023	12/08/2023
HEDIGER, DANIEL DAVID	1995	BERGEN	09/15/2023	09/15/2023
MARZANO-LESNEVICH, MADELINE M.	1989	BERGEN	03/21/2023	03/21/2023
McILWAIN, TIMOTHY JOSEPH	1996	ATLANTIC	11/15/2023	11/15/2023
MEADEN, CHARLES E.	1982	BERGEN	09/12/2023	09/12/2023
PEPSNY, RICHARD J.	1993	MONMOUTH	01/11/2023	01/11/2023
PINKAS, EDAN E.	2005	NEW YORK	08/30/2023	08/30/2023
VACCARO, JOSEPH	1999	PENNSYLVANIA	03/28/2023	03/28/2023
WOITKOWSKI, MATTHEW WILLIAM	1996	HUNTERDON	02/27/2023	02/27/2023

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2023
Disciplinary Case Summaries

Table 10

Walter K. Abrams – Censured, on a certified record, on July 11, 2023 (___N.J.___) for violations of RPC 1.1(a) (exhibiting gross neglect), RPC 1.1(b) (exhibiting a pattern of neglect), RPC 1.3 (exhibiting a lack of diligence), RPC 1.4(b) (failing to communicate with a client), RPC 1.4(c) (failing to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), RPC 1.15(b) (failing to promptly deliver funds to the client or a third party), RPC 1.15(d) (failing to comply with the recordkeeping requirements of Rule 1:21-6), RPC 1.16(d) (failing to protect the client's interests upon termination of the representation), and RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities). Respondent also was ordered to submit 1) proof of a completed recordkeeping course, 2) open and maintain an attorney trust account pursuant to Rule 1:21-6(a), 3) monthly reconciliations of his attorney accounts on a quarterly basis for two years, and 4) documentary proof of the release of all unclaimed trust funds to their intended beneficiaries or to the Superior Court Trust Fund, within sixty days of the Order. HoeChin Kim represented the OAE and respondent was pro se. This matter was discovered solely as a result of the Random Audit Compliance Program.

Esther Maria Alvarez - Disbarred on May 10, 2023 (253 N.J. 558) for violating RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client funds), and In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation of escrow funds), RPC 1.15(a) (commingling), RPC 1.15(b) (failing to promptly deliver funds to client), RPC 1.15(d) (failing to comply with recordkeeping requirements of R. 1:21-6), RPC 8.1(a) (making a false statement of material fact in a disciplinary matter), RPC 8.4(b) (engaging in a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). Timothy J. McNamara represented the OAE and Raymond S. Londa, Esq. represented the respondent. The respondent was previously disciplined: Admonished in 2019. This matter was discovered solely as a result of the Random Audit Program.

Angelique Layton Anderson -Suspended for one year on September 22, 2023, (255 N.J. 396) based upon discipline imposed in the State of Colorado for unethical conduct that in New Jersey constitutes violations of RPC 1.4(b) (failing to communicate with the client), RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions), RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal fee), RPC 3.1 (engaging in frivolous litigation), RPC 3.4(b) (falsifying evidence), RPC 8.1(a) (making a false statement of material fact to disciplinary authorities), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice (two instances). Corsica D. Smith represented the OAE on a motion for reciprocal discipline granted by the DRB and respondent was pro se.

Santo V. Artusa, Jr. – Censured on a certified record on September 13, 2023 (255 N.J. 355) for violating RPC 1.15(d) (failing to comply with the recordkeeping requirements of Rule 1:21-6) and RPC 8.1(b) (two instances - failing to cooperate with disciplinary authorities). Rachael Leah Weeks represented the OAE and respondent defaulted. The respondent was previously disciplined: Censured on 2021 and temporarily suspended in 2023 for failure to pay several fee arbitration awards.

Karim K. Arzadi – Admonished on October 26, 2023 (*Unreported*) for violation of RPC 1.16(a)(3) (failing to withdraw from the representation despite being discharged by the client) and RPC 1.16(d) (failing to protect a client's interest upon termination of the representation). Jordan B. Rickards represented District VIII and Joseph J. Benedict represented respondent.

Joseph J. Asterita - Reprimanded on May 31, 2023 (254 N.J. 51) for violating RPC 1.7(a)(1) (concurrent conflict of interest), RPC 1.8(a) (improper business transaction), and RPC 1.10(a) (imputed conflict of interest). Amanda Figland represented the OAE and Charles Uliano represented the respondent in a disciplinary stipulation filed with the DRB.

Sarah Ruth Barnwell – Admonished on January 31, 2023 (___N.J.___) for violating RPC 1.1(a) (gross

neglect); RPC 1.2(a) (failure to abide by the client's decisions concerning the scope and objectives of representation); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with client); and RPC 1.16(d) (failure to refund the unearned portion of fee to client on termination of representation). Hillary Horton represented the OAE and Kim D. Ringler represented respondent.

Conrad J. Benedetto – Reprimanded on March 24, 2023 (___N.J.___) violating RPC 5.1 (b) (failure to make reasonable efforts to ensure that a lawyer over whom the lawyer has direct supervisory authority conforms to the RPCs) and RPC 5.1 (c) (1) and (2) (holding a lawyer responsible for another lawyer's violation of the RPCs if the lawyer orders or ratifies the conduct, or the lawyer has direct supervisory authority over the other lawyer and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action). Anthony J. Vignier appeared before the DRB for District VI and John McGill, III appeared on behalf of respondent. The respondent was previously disciplined: Reprimanded in 2001 and temporarily suspended in 2023.

Neal E. Brunson – Reprimanded on a certified record on March 21, 2023 (253 N.J. 327) for violating RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d)(conduct prejudicial to the administration of justice). Hillary Horton represented the OAE and the respondent defaulted. The respondent was previously disciplined: Reprimanded in 1998, temporarily suspended in 2021 and suspended for three months in 2023.

Neal E. Brunson – Suspended for three months on a certified record on March 21, 2023 (253 N.J. 325) for violating RPC 1.15(d) (failure to comply with recordkeeping requirements), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Colleen Burden represented the OAE and respondent defaulted. The respondent was previously disciplined: Reprimanded in 1998, temporarily suspended in 2021 and reprimanded in 2023.

Scott Joseph Capriglione – Reprimanded on September 13, 2023 (255 N.J. 354) for violating RPC 1.15(a) (negligent misappropriation of client trust funds); and RPC 1.15(d) (failure to comply with the recordkeeping requirements of Rule 1:21-6). Darrell M. Felsenstein represented the OAE and respondent was pro se. The respondent was previously disciplined: Suspended for one year in 2021. He remains suspended to date. This matter was discovered solely as a result of the Trust Overdraft Notification Program.

Andrew Michael Carroll – Reprimanded on March 14, 2023 (253 N.J. 176) for failing to comply with the recordkeeping requirements of Rule 1:21-6, in violation of RPC 1.15(d). HoeChin Kim represented the OAE and Marc D. Garfinkle represented respondent. Respondent was previously disciplined: Reprimanded in 2018 and admonished in 2020. This matter was discovered solely as a result of the Trust Overdraft Notification Program.

Pamela M. Cerruti - Reprimanded on June 5, 2023 (254 N.J. 121) for violating RPC 1.2(d) (counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent), RPC 1.4(d) (failure to advise a client of the limitations on the lawyer's conduct when the client expects assistance not permitted by the RPCs), RPC 2.1 (failure to exercise independent professional judgment and render candid advice to a client), and RPC 8.4(c) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation). Amanda Figland represented the OAE and Michael P. Ambrosio represented the respondent.

Morton Chirnomas – Suspended for six months on May 13, 2023 effective June 12, 2023 (254 N.J. 5) for violating RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information), RPC 1. 15(a) (commingling), RPC 1.16(d) (upon termination of representation, failing to take steps to the extent reasonably practicable to protect a client's interests), RPC 8.l(b) (failing to cooperate with disciplinary authorities), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). Hillary Horton represented the OAE on a motion for reciprocal discipline based on respondent's exclusion from practice before the United States Patent and Trademark Office and respondent appeared pro se.

Kendal Coleman – Suspended for three months on May 30, 2023 (effective June 19, 2023), (__N.J.__) for violating RPC 5.5(a)(1) (unauthorized practice of law-failure to maintain liability insurance while practicing

as a professional corporation, as Rule 1:21-1A(a)(3) requires); and RPC 8.1(b) (failure to cooperate with disciplinary authorities). Darrell M. Felsenstein, Assistant Ethics Counsel represented the OAE and espondent was pro se. The respondent was previously disciplined: Censured in 2019; suspended for three months in 2021; and censured in 2022.

Cheryl L. Cooper - Reprimanded on May 10, 2023 (253 N.J. 565) for improperly handling a client matter and failing to cooperate with disciplinary authorities, resulting in violations of RPC 1.3 (lack of diligence), RPC 1.4(b) (failing to communicate with a client), RPC 1.16(d) (failing to protect a client's interests upon termination of representation), and RPC 8.1(b) (failing to cooperate with disciplinary authorities). A. Victoria Shilton represented the District IV Ethics Committee. Respondent was represented by Petar Kuridza, Esq. at trial and was pro se before the DRB.

Jon Charles Cooper – Disbarred by consent on August 31, 2023, (255 N.J. 266) following Respondent's guilty plea to tax evasion, contrary to 28 U.S.C. § 7201, in the United States Federal Court for the District of Columbia, and his acknowledgment that he could not successfully defend against charges that his criminal conduct was contrary to In re Goldberg, 142 N.J. 557 (1995), and disbarment the invariable result. Hillary Horton represented the OAE and James P. Manahan represented the respondent.

Stuart Thomas Cottee – Reprimanded on a certified record on October 24, 2023 (255 N.J. 439) for violating RPC 8.l(b) (failure to cooperate with disciplinary authorities) (two instances), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Hillary Horton represented the OAE.

David W. Crook - Reprimanded on a certified record on September 13, 2023, (_ N.J. _) for violating RPC 1.15(d) (failure to comply with recordkeeping requirements) and RPC 8.1(b) (failure to cooperate with disciplinary authorities. Colleen L. Burden appeared for the OAE and respondent was pro se. This matter was discovered solely as a result of the Random Audit Compliance Program.

Daniel M. Dixon – Suspended for one year on November 3, 2023, effective December 1, 2023 (___N.J.___) based on discipline imposed in the Commonwealth of Pennsylvania for unethical conduct that in New Jersey constitutes violations of RPC 1.l(a) (engaging in gross neglect), RPC 1.3 (lacking diligence), RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information), RPC 3.3(a)(l) (making a false statement of material fact to a tribunal), RPC 3.3(a)(4) (offering evidence that the lawyer knows to be false), RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). Hillary Horton represented the OAE and respondent appeared pro se.

John Thomas Doyle - Censured on June 30, 2023 (254 N.J. 374) for violating RPC 1.15(d) (failing to adhere to record keeping requirements), RPC 5.5(a)(1) (knowingly practicing law while ineligible), RPC 8.1(a) (making a false statement to disciplinary authorities), RPC 8.4(b) (two instances - committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness), and RPC 8.4(c) (three instances -- committing conduct involving dishonesty or fraud). Amanda Figland represented the OAE and Glenn R. Reiser represented the respondent. The matter was discovered solely as a result of the Trust Overdraft Notification Program.

John Anthony Feloney, IV - Reprimanded on September 13, 2023, (255 N.J. 352) for violating RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), RPC 5.5(a)(1) (unauthorized practice of law), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). David B. Greenfield represented the District VIII Ethics Committee and respondent was pro se.

Virginia T. Fiocca – Censured on June 2, 2023 (254 N.J. 100) for violating RPC 3.1 (engaging in frivolous litigation), RPC 3.4(d) (making frivolous pretrial discovery requests), RPC 4.4(a) (engaging in conduct that has no substantial purpose other than to embarrass, delay, or burden a third person), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Respondent unsuccessfully attempted to obtain the financial records of the medical practice of grievant, her former brother-in-law, after her sister's attempt to modify her Post-Settlement Agreement on the basis of withheld funds of the medical practice was denied by the trial court. Specifically, Respondent i) formed a

non-profit medical practice in the same name and town as grievant's medical practice, ostensibly for her daughter who was in medical school in Italy at the time; ii) tried to open an account in the non-profit's name at Bank of America, but was denied as grievant's medical practice had its own account there; iii) filed a complaint alleging grievant's medical practice was misusing the name of the non-profit she had just created; iv) served the complaint on the wrong address for grievant's medical practice; and v) served a subpoena on Bank of America for the finances of grievant's medical practice, ostensibly to obtain the practice's current business address, which subpoena grievant was required to hire counsel to quash. Although not charged, the Board considered as aggravation the fact that Respondent filed the complaint against grievant while she was on retired status. Christopher Ulysses Warren appeared for the District VB Ethics Committee at the Board, and Judith Ann Hartz, Esq., appointed counsel, waived respondent's appearance.

Christopher Raymond Fritz - Reprimanded on March 30, 2023 (253 N.J. 373) for violating the Rules of Professional Conduct governing attorney advertising, including RPC 7.1(a) (engaging in false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional relationship), RPC 7.1(b) (using an advertisement or other related communication known to have been disapproved by the Committee on Attorney Advertising), RPC 7.3 (b)(5)(i) and (iv) (engaging in improper, unsolicited, direct contact with a prospective client), RPC 7.4(a) misrepresenting that the lawyer has been recognized or certified as a specialist in a particular field of law), and RPC 7.5(e) (using an impermissible firm name or letterhead. Jennifer Iseman represented the OAE, and Robert Ramsey represented the respondent on a motion for discipline by consent granted by the DRB.

Marcy E. Gendel – Suspended for one year on November 8, 2023, effective December 8, 2023 (___N.J.___) for violations of RPC 1.15(a) (negligent misappropriation of client funds), RPC 1.15(b) (failing to promptly deliver funds belonging to a client or third party), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and RPC 8.4(c) (conducting involving dishonesty, fraud, deceit, or misrepresentation) in two discrete matters. First, in her real estate practice, respondent overcharged and inflated fees and expenses in real estate transactions as detailed on the parties' form HUD-1s. Second, respondent was prosecuted for committing fraud by applying for, and receiving, federal and state relief for those residents impacted by Tropical Storm Sandy. Respondent certified she was both the homeowner and occupant of her beach property prior to the storm, when in fact she was living elsewhere and the property was being rented by tenants, who also received relief funds. HoeChin Kim represented the OAE before the Court, and respondent was represented by Marc D. Garfinkle.

Nelson Gonzalez – Suspended for six months on March 15, 2023, effective April 11, 2023 (253 N.J. 229) for violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with client), RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee), RPC 3.2 (failure to expedite litigation), RPC 5.3(a) (failure to adopt and maintain reasonable efforts to ensure that the conduct of nonlawyer employees is compatible with the professional obligations of the lawyer), RPC 5.3 (b) (failure to make reasonable efforts to ensure that the conduct of nonlawyer employees is compatible with the professional obligations of the lawyer), RPC 7.l(a) (misleading communication about the lawyer or the lawyer's services), RPC 7.S(a) (improper use of a professional designation that violates RPC 7.1), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). Pamela C. Castillo appeared before the DRB for the District XB Ethics Committee and Marc D. Garfinkle, Esq. appeared for the respondent. The respondent was previously disciplined: Suspended for three months in 2014, suspended for three months in 2020 and censured in 2020.

David E. Gray - Censured on October 31, 2023, (___N.J.__) for violating RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter), RPC 1.15(a) (failing to safeguard client funds and engaging in negligent misappropriation of client funds) (two instances), RPC 1.15(b) (failing to promptly notify a client of receipt of funds in which the client has an interest and failing to promptly delivery funds to a client) (two instances), RPC 1.15(d) (failing to comply with the recordkeeping requirements of Rule 1:21-(6)), RPC 1.17(c)(3) (engaging in the improper purchase of a law office), and RPC 5.3(a) and (b) (failing to supervise a nonlawyer assistant). Corsica D. Smith represented the OAE and Marc D. Garfinkle, Esq. appeared for respondent.

Frances Ann Hartman - Censured on May 10, 2023 (253 N.J. 557) on a certified record for violating RPC 8.l(b) (failure to cooperate with disciplinary authorities). Ryan J. Moriarty handled the matter for the OAE and Katherine Dodge Hartman, Esq. represented the respondent. Respondent was previously disciplined: Censured in 2020 and admonished in 2014.

Daniel David Hediger – Suspended for three months on May 10, 2023 effective June 12, 2023 (253 N.J. 563) for violating RPC 1.15(d) (failing to comply with the recordkeeping requirements of Rule 1:21-6), and RPC 8.l(b) (failing to cooperate with disciplinary authorities). Hillary Horton appeared before the DRB for the OAE. Joshua G. Curtis appeared for the respondent. The respondent was previously disciplined: Reprimanded in 2004, censured twice in 2007, reprimanded in 2008, and censured in 2010 and 2018.

Wolfgang Heimerl – Admonished on July 12, 2023 (*Unreported*) for a violation of RPC 1.7(a) (concurrent conflict of interest). Carrie Ferrao represented the District XIII Ethics Committee and Howard B. Mankoff, Esq. represented respondent.

I. M. Heine - Reprimanded on June 30, 2023 (254 N.J. 369) for mishandling a client's matter, resulting in violations of RPC 1.3 (exhibiting a lack of diligence), RPC 1.8(a) (entering into an improper business transaction with a client), and RPC 1.15(b) (failing to promptly deliver funds to the client). Ann Madden Tufano represented the District IV Ethics Committee. Respondent was represented by Robert N. Agre, Esq. at trial and was pro se before the Disciplinary Review Board.

William Frederick Henning - Reprimanded on December 19, 2023 (256 N.J. 102) for violating RPC 1.15(a) (engaging in negligent misappropriation of client funds) and RPC 1.15(d) (failing to comply with the recordkeeping requirements of Rule 1:21-6). Jennifer Iseman represented the OAE and Respondent was pro se on a motion for discipline by consent granted by the Disciplinary Review Board. This matter was discovered as a result of the Random Audit Program.

Stephen Paul Hildebrand – Suspended for six months on June 30, 2023, effective July 27, 2023, (254 N.J. 371) based on discipline imposed in the Commonwealth of Pennsylvania for unethical conduct that in New Jersey constitutes violations of RPC 1.1(a) (three instances) (gross neglect), RPC 1.3 (three instances) (lack of diligence), RPC 1.4(b) (three instances) (failure to keep a client reasonably informed about the status of a matter), RPC 1.5(b) (two instances) (failure to set forth in writing the basis or rate of the fee), RPC 1.16(d) (three instances) (upon termination of representation, failure to take steps to the extent reasonably practicable to protect a client's interests, including by refunding any unearned legal fee), RPC 3.2 (three instances) (failure to expedite litigation), RPC 8.1(b) (three instances) (failing to cooperate with disciplinary authorities), and RPC 8.4(d) (one instance) (conduct prejudicial to the administration of justice). Hillary Horton appeared before the DRB for the OAE and respondent was pro se.

Tony Chung-Min Hom – Censured on September 13, 2923 (255 N.J. 358) based on discipline imposed by the United States Patent and Trademark Office for unethical conduct that in New Jersey constitutes a violation of RPC 1.l(a) (engaging in gross neglect), RPC 1.3 (lacking diligence), RPC 1.4(b) (failing to keep a client reasonably informed and failing to promptly comply with reasonable requests for information), RPC 1.4(c) (failing to explain a matter such that a client can make an informed decision), RPC 5.3(a) and (b) (failing to supervise nonlawyer staff), RPC 5.5(a)(2) (engaging in unauthorized practice of law), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). Hillary Horton appeared before the DRB for the OAE and respondent was pro se.

Edward Joseph Hovatter – Admonished on September 22, 2023 (*Unreported*) for violation of RPC 1.8(a) (improper business transaction with a client). Robert N. Feltoon represented District IV before the DRB and Kim D. Ringler, Esq. represented the respondent.

William Timothy Howes – Censured on a certified record on June 30, 2023 (254 N.J. 373) violating RPC 1.15(d) (failing to comply with record keeping requirements) and RPC 8.1(b) (two instances -- failing to cooperate with disciplinary authorities). Jason Douglas Saunders represented the OAE and respondent was pro se. This matter was discovered solely as a result of the Trust Overdraft Notification Program.

Wardell Huff - Censured on June 5, 2023, (254 N.J. 122), on a disciplinary stipulation for violating RPC 1.4(a) (failing to inform a prospective client of how, when, and where the client may communicate with the attorney), RPC

1.5(a) (charging an unreasonable fee), RPC 1.5(b) (failing to set forth, in writing, the basis or rate of the attorney's fee), RPC l.8(h)(l) (making an agreement prospectively limiting the attorney's liability to a client for malpractice), RPC 1.15(d) (failure to comply with the recordkeeping provisions of Rule 1:21-6), RPC 5.3(a) and (b) (failing to supervise nonlawyer staff), RPC 5.4(c) (permitting a person who recommends, employs, or pays the attorney to render legal services for another to direct or regulate the attorney's professional judgment in rendering legal services), RPC 5.5(a)(2) (assisting another in the unauthorized practice of law), and RPC 7.l(a)(l) and (4) (making a false or misleading communication about the lawyer or the lawyer's services), RPC 7.5(b) (failing to identify the attorney's name in advertisements and communications with clients), and RPC 8.l(b) (failing to cooperate with disciplinary authorities). Amanda Figland represented the OAE and Elliot Abrutyn, Esq. represented the respondent.

Ulysses Isa - Suspended for three months on May 16, 2023, effective June 12, 2023, (254 N.J. 2) on a disciplinary stipulation for violating RPC 1.3 (lack of diligence), RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee), RPC 1.15(d) (failure to comply with the recordkeeping requirements of Rule 1:21-6), RPC 5.3(a) (failure to supervise nonlawyer staff), RPC 5.3(b) (failure to make reasonable efforts to ensure that the conduct of a nonlawyer employee is compatible with the professional obligations of the lawyer), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). Amanda Figland represented the OAE and Mario Blanch, Esq. represented respondent. The respondent was previously disciplined: suspended from practice for 3 months on December 7, 2018; and censured in 2020.

Mark Bae Jander – Censured on January 19, 2023 (252 N.J. 560) for violating RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects). Michael S. Fogler represented the OAE and Joshua D. Altman, Esq. represented respondent before the DRB.

Adrian Ja Waun Johnson - Reprimanded on December 19, 2023, (256 N.J. 104) for violating RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.16(d) (failing to refund the unearned portion of a fee upon termination of representation); and RPC 8.1(a) (knowingly making a false statement of material fact to disciplinary authorities). Amanda Figland represented the OAE and Thomas Ambrosio, Esq. represented Respondent on a motion for discipline by consent granted by the Disciplinary Review Board.

David L. Johnson – Reprimanded by consent, on November 1, 2023 (___ N.J. ___) for violation of RPC 1.8(a) (prohibited business transaction with a client) (eight instances) stemming from entering into a business transaction without the required written disclosures and signed, informed consents from the client, as well as loaning monies to the same client without the required disclosures and consents. HoeChin Kim represented the OAE and respondent was represented by Marshall Bilder, Esq.

Stephen Robert Jones – Reprimanded on November 17, 2023 (256 N.J. 31) for violating RPC l.15(d) (failing to comply with the recordkeeping requirements of Rule 1:21-6), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). Colleen Burden represented the OAE and Robert Ramsey, Esq. represented the respondent. The respondent was previously disciplined: Suspended for one year in 2021. This matter was discovered solely as a result of the Trust Overdraft Notification Program.

Steven Jay Jozwiak – Reprimanded on November 17, 2023 (256 N.J. 32) for violating RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal fee), RPC l.7(a) (engaging in a concurrent conflict of interest), and RPC l .15(a) (engaging in a negligent misappropriation of client funds). Colleen L. Burden appeared before the DRB for the OAE and Gary C. Chiumento, Esq. appeared for the respondent.

Nabil Nadim Kassem – Censured on two certified records on June 20, 2023 (___ N.J. ___) for violating RPC 1.15(d) (failure to comply with the recordkeeping requirements of Rule 1:21-6); RPC 8.1(b) (failure to cooperate with disciplinary authorities) (three instances); and RPC 8.4(d) (conduct prejudicial to the administration of justice). Ryan J. Moriarty handled the matter for the OAE and John D. Arseneault, Esq. represented the respondent. The respondent was previously disciplined: Censured in 2008, suspended for three months in 2020, and reprimanded in 2023. This matter was discovered solely as a result of the Random Audit Compliance Program.

Nabil Nadim Kassem - Reprimanded on two certified records on June 22, 2023 (254 N.J. 307) for violating RPC 1.15(d) (failure to comply with the recordkeeping requirements of Rule 1:21-6); RPC 8.1(b) (failure to cooperate with disciplinary authorities) (three instances); and RPC 8.4(d) (conduct prejudicial to the administration of justice). Ryan J. Moriarty handled the matter for the OAE and respondent defaulted. The respondent was previously disciplined: Censured in 2008, suspended for three months in 2020, and censured in 2023.

Misha Lee – Disbarred by consent on December 4, 2023 (256 N.J. 86) after acknowledging she knowingly misappropriated client funds. Saleel V. Sabnis handled the matter for the OAE and Kevin J. O'Connor, Esq. represented the respondent. This matter was discovered solely as a result of the Trust Overdraft Notification Program.

Robert Captain Leite - Suspended for one year on June 13, 2023, effective July 17, 2023, (254 N.J. 275) following a motion for reciprocal discipline based on misconduct that, in New Jersey, constitutes violations of RPC 1.1(a) (three instances) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (three instances) (lack of diligence); RPC 1.4(b) (failure to communicate with client); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee); RPC 1.16(d) (upon termination of representation, failure to take steps to the extent reasonably practicable to protect a client's interests, including by refunding any unearned legal fee); RPC 4.1(a)(1) (false statement of material fact or law to a third person); RPC 5.5(a)(1) (three instances) (unauthorized practice of law); RPC 8.4(c) (three instances) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice). Michael S. Fogler, Assistant Deputy Ethics Counsel represented the OAE and respondent was pro se.

James R. Lisa – Censured on June 20, 2023 (254 N.J. 274) for violating RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal fee), RPC 8.1(b) (two instances -failing to cooperate with disciplinary authorities), and RPC 1.16(d) (failing to protect a client's interests upon termination of the representation) in two separate matters. Monique D. Moreira appeared before the DRB on behalf of the District VI Ethics Committee and Peter R. Willis, Esq. appeared on behalf of respondent. The respondent was previously disciplined: Admonished in1995; suspended for three months in 1998; suspended for one year in 1999; suspended for six months in 2000; and censured in 2008.

James R. Lisa – Disbarred by consent on October 2, 2023, (255 N.J. 399) after acknowledging that the OAE's allegations that he knowingly misappropriated client trust funds were true, and that if he went to a hearing on the matter, he could not successfully defend himself against those charges. Darrell M. Felsenstein represented the OAE and John C. Whipple, Esq. represented respondent. The respondent was previously disciplined: Admonished in 1995; suspended for three months in 1998; suspended for one year in 1999; suspended for six months in 2000; censured in 2008; and temporarily suspended and censured in 2023.

Douglas M. Long - Disbarred on October 24, 2023 (255 N.J. 436) following his guilty plea and conviction, in the United States District Court for the District of New Jersey, for one count of federal income tax evasion, in violation of 26 U.S.C. § 7201 conduct that violates RPC 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects). Hillary Horton represented the OAE on a motion for final discipline and Michael L. Testa, Esq. represented Respondent. Respondent was previously disciplined: Reprimanded in 2016.

Douglas M. Long - Disbarred by consent on October 24, 2023 (255 N.J. 435) for violating RPC 3.3(a)(1) (knowingly make a false statement of material fact to a tribunal), RPC 3.4(b) (assist a witness to testify falsely), RPC 8.1(a) (knowingly make a false statement of material fact in connection with a disciplinary matter), RPC 8.4(b) (commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), RPC 8.4(c) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (engage in conduct that is prejudicial to the administration of justice). Ryan J. Moriarty represented the OAE and Michael L. Testa, Esq. represented the respondent. Respondent was previously disciplined: Reprimanded in 2016.

William H. Lynch – Suspended for 18 months on February 9, 2023 (253 N.J. 3) following a conviction in the Court of Common Pleas of Chester County, Pennsylvania of one count of stalking, contrary to 18

Pa.C.S.A. § 2709.1(a)(2), conduct violating RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects). Deputy Ethics Counsel Hillary Horton represented the OAE on a motion for final discipline and respondent was pro se.

Edwyn D. Macelus - Disbarred on May 10, 2023 (253 N.J. 554) for violating RPC 1.15(a) (knowing misappropriation of client funds) and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985), RPC 1.15(b) (failure to promptly deliver funds to a third party), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Ryan J. Moriarty appeared before the Supreme Court for the OAE and Gerald Miller, Esq. represented respondent.

Vincent N. Macri - Admonished on January 20, 2023 (___N.J.___) for violating RPC alvarez3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). Amanda Figland represented the OAE and John M. Iaciofano, Esq. represented the respondent on a disciplinary stipulation before the DRB.

Khaled Madin – Admonished on May 26, 2023 (*Unreported*) for violation of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer). Colleen L. Burden appeared before the DRB for the OAE and Robert Ramsey, Esq. appeared for the respondent.

Christopher Michael Manganello – No additional discipline, effective April 13, 2023 (253 N.J. 460) for violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with client), and RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation) as the timing of the misconduct overlapped the prior imposed discipline. Victoria Rand represented the District IV Ethics Committee and respondent was pro se. Respondent has a disciplinary history: Censure in 2017; Six-month suspension in 2022; One-year suspension in 2022.

Christopher Michael Manganello – Disbarred on October 13, 2023 (255 N.J. 433) for violating RPC 1 .1(a) (gross neglect) (four instances), RPC 1.3 (lack of diligence) (two instances), RPC 1.4(b) (failure to communicate with a client) (three instances), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation) (two instances), RPC 1.16(d) (failure to return the client's file upon termination of the representation), RPC 8.1(b) (failure to cooperate with disciplinary authorities) (six instances), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (four instances). Rachael Leah Weeks appeared for the OAE before the Supreme Court on the order to show cause. The respondent was previously disciplined: Censured in 2017, suspended for six months in 2022, and suspended for one year in 2022.

John M. Mavroudis – Suspended for one year on June 5, 2023 (254 N.J. 124) for violating RPC 3.3(a)(1) (making a false statement of material fact to a tribunal), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 8.1(a) (making a false statement of material fact in a disciplinary matter), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) (two instances), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) (three instances), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). Timothy J. McNamara represented the OAE and Michael D. Camarinos, Esq. represented Respondent.

John M. Mavroudis - Admonished by consent on December 19, 2023 (256 N.J. 105) for violating RPC 1.15(d) (failure to comply with the recordkeeping provisions of Rule 1:21-6). Diane M. Yandach represented the OAE and respondent was pro se. The respondent was previously disciplined: Suspended for one year in 2023. This matter was discovered solely as a result of the Trust Overdraft Notification Program.

Michael Martin McDonnell – Admonished on October 24, 2023 (255 N.J. 438) for violating RPC 8.1(b) (failure to cooperate with disciplinary authorities) (two instances). Michael Noriega handled the matter for District XII and respondent was pro se.

Donald M. McHugh - Reprimanded on January 10, 2023 (___N.J.___) on a disciplinary stipulation for violating RPC 3.3(a)(1) (making a false statement of material fact to a tribunal), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 8.1(a) (knowingly making a false statement of material fact to disciplinary authorities), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud,

deceit, or misrepresentation) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). Amanda Figland represented the OAE and Justin P. Walder, Esq. represented the respondent.

Timothy Joseph McIlwain – Suspended for one month on July 20, 2023, effective August 18, 2023 (254 N.J. 432) for violating RPC 3.1 (engaging in frivolous litigation), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice) (three instances). Amanda Figland represented the OAE and Robert Ramsey, Esq. represented the respondent.

Brian M. Miranda – Reprimanded on September 13, 2023 (255 N.J. 353) for violating RPC 1:15(a) (negligent misappropriation of client funds), and RPC 1:15(d) (failing to maintain financial records required by Rule 1:21-6). Christopher W. Goodwin represented the OAE and Scott B. Piekarsky, Esq. represented the respondent.

Milena Mladenovich – Suspended for one year on June 13, 2023, effective July 17, 2023, (254 N.J. 272) following her convictions in the Court of Common Pleas of Philadelphia County, Pennsylvania, for first-degree misdemeanor terroristic threats, in violation of 18 Pa. C.S. § 2706(a)(1), and third-degree misdemeanor harassment, in violation of 18 Pa. C.S. § 2700(a)(4), and for violating RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer). Michael S. Fogler, Assistant Deputy Ethics Counsel, represented the OAE on a motion for final discipline and respondent was pro se.

William P. Munday -- Censured on December 8, 2023, (256 N.J. 89) for violating RPC 3.1 (engaging in frivolous litigation); RPC 3.3(a)(1) (making a false statement of material fact to a tribunal) (three instances); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) (three instances); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). Amanda Figland represented the OAE and John C. Whipple, Esq. represented respondent.

D. Ryan Nussey – Censured on January 31, 2023 (___N.J.___) for violations of RPC 1.4(b) (failure to comply with a client's reasonable requests for information) and RPC 8.1(b)(failure to cooperate with disciplinary authorities). Matthew Gindele represented District IV and respondent was pro se. Respondent has a disciplinary history: Reprimand in 2020 and censured in 2022.

George N. Pappas - Reprimanded on January 31, 2023 (__ N.J ___) for violating RPC 8.1(b) (failure to cooperate with disciplinary authorities). Hillary Horton represented the OAE and respondent was pro se. Respondent was previously disciplined: Reprimanded in 2023.

Eden E. Pinkas – Suspended for six months on July 13, 2023 (retroactive to May 7, 2021), (254 N.J. 445) for violating RPC 5.5(a)(2) (assisting another in the unauthorized practice of law) and RPC 8.3(a) (failing to report another lawyer's RPC violations that raise a substantial question as to that lawyer's honesty, trustworthiness, or fitness). Michael S. Fogler represented the OAE on a motion for reciprocal discipline and Kim D. Ringler, Esq. represented the respondent.

Robert Arthur Plagmann – Suspended for one year on June 20, 2023 effective July 17, 2023 (254 N.J. 271) based on discipline imposed in the State of Arizona for unethical conduct that in New Jersey constitutes violations of RPC 8.l(a) (making a false statement of material fact in a bar admission application), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). Hillary Horton represented the OAE on a motion for reciprocal discipline and respondent was pro se.

Meryl M. Polcari - Reprimanded on October 4, 2023. (255 N.J. 403) for violations of RPC 1.15(a) (commingling); RPC 1.15(b) (failure to promptly deliver funds belonging to a client); and RPC 1.15(d) (failure to comply with the recordkeeping requirements of Rule 1:21-6). Colleen L. Burden represented the OAE and respondent was represented by Robert Ramsey, Esq. This matter was discovered solely as a result of the Random Audit Compliance Program.

Matthew D. Rasmussen – Disbarred on June 7, 2023 (254 N.J. 126) for violating RPC 1.3 (lacking diligence), RPC 1.4(b) (two instances -- failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information), RPC 1.15(a) (two instances - failing to safeguard client funds) and the principles of In re Wilson, 81 N.J. 451 (1979) (two instances - knowing misappropriation of client funds), and In re Hollendonner, 102 N.J. 21 (1985) (two instances

-- knowing misappropriation of escrow funds), RPC 1.15(b) (two instances -- failing to promptly deliver funds to client), RPC 1.15(c) (failing to provide an accounting to a client when separating funds in which both the client and the attorney claim interests), RPC 1.15(d) (failing to comply with the recordkeeping requirements of Rule 1:21-6)), RPC 8.1(a) (two instances -- making a false statement of material fact in a disciplinary matter), RPC 8.l(b) (two instances -- failing to cooperate with disciplinary authorities), and RPC 8.4(c) (two instances -- engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Ryan J. Moriarty appeared before the Supreme Court for the OAE and respondent was pro se.
This matter was discovered solely as a result of the Random Audit Compliance Program.

Richard Donnell Robinson – Reprimanded on a certified record on March 23, 2023 (253 N.J. 328) for violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to inform a prospective client of how, when, and where the client may communicate with the attorney), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions), and RPC 8.l(b) (failure to cooperate with disciplinary authorities). Rebecca G. Esmi represented the District IIIB Ethics Committee and respondent was pro se.

Kenneth James Rosellini – Censured on May 16, 2023 (254 N.J. 7) for violating RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). Robert Clement Papa handled the matter for the District XI Ethics Committee and Isabel K. McGinty appeared before the DRB and the Supreme Court on behalf of the OAE on appeal of the dismissal of the matter by the hearing panel.

Michael A. Rowek – Suspended for two years on February 9, 2023, effective March 3, 2023, (253 N.J. 1) following his conviction in the Superior Court of New Jersey, to two counts of third-degree possession of a controlled dangerous substance (CDS), in violation of N.J.S.A 2C:35-10(a)(1), conduct violating RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer). Deputy Ethics Counsel Hillary Horton represented the OAE on a motion for final discipline and Michael P. Ambrosio, Esq. represented respondent. Respondent was previously disciplined: Suspended for one year in 2015.

Darryl M. Saunders – Suspended for six months on May 30, 2023, effective June 19, 2023, (254 N.J. 49) for violating RPC 1.3 (lack of diligence), RPC 1.16(d) (failure to refund the unearned portion of the fee upon termination of representation), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and RPC 8.4(c) (engaging in conduct involving, dishonesty, fraud, deceit, or misrepresentation). Colleen L. Burden represented the OAE and respondent was pro se. The respondent was previously disciplined: Suspended for three months in 2021, and reprimanded in 2022.

Steven H. Schefers – Censured on June 30, 2023 (254 N.J. 370) for violating RPC 8.1(a) (conflict of interest) after engaging in an improper business transaction with a client. Colleen L. Burden represented the OAE and respondent was pro se.

David M. Schlachter – Reprimanded on June 30, 2023, (254 N.J. 375) for violating RPC 1.15(d) (failure to comply with recordkeeping requirements of Rule 1:21-6), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). On the same date in a separate matter, the respondent received a three-month suspension, effective July 27, 2023. Assistant Ethics Counsel Darrell M. Felsenstein represented the OAE and Joseph M. Tomaino, Esq. represented respondent.

Lawrence S. Schwartz - Censured on December 8, 2023, (256 N.J. 91) for violating RPC 1.15(b) (failing to promptly deliver funds to a third party), and RPC 5.3(a), (b), and (c) (failing to supervise nonlawyer staff). Timothy J. McNamara represented the OAE and Kevin H. Marino, Esq. represented respondent on a motion for discipline by consent granted by the Disciplinary Review Board.

Justin Scott – Censured on May 31, 2023 (___ N.J. ___) for violating RPC 8.1(a) (making a false statement of material fact to disciplinary authorities), RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) when respondent used software, which he had downloaded to his former firm's computer without the firm's knowledge, to access his former firm's computer system post-termination multiple times. HoeChin Kim represented the OAE and Marc D. Garfinkle, Esq. represented respondent.

Jami Segota – Reprimanded on January 30, 2023 (___N.J.___) based on discipline imposed in the

Commonwealth of Pennsylvania for unethical conduct that in New Jersey is in violation of RPC 5.5(a)(1) (practicing while ineligible). Hillary Horton appeared before the DRB for the OAE on a motion for reciprocal discipline and Robert S. Tintner, Esq. represented respondent.

David T. Shulick – Disbarred by consent on November 28, 2023 (256 N.J. 64) following his criminal conviction in the United States District Court-Eastern District of Pennsylvania of violating 18 USC Section 371- Conspiracy to embezzle from a program receiving federal funds; 18 USC Section 666(A)(l)(A) - Embezzlement from a program receiving federal funds; 18 USC Section 1344 - Bank fraud aiding and abetting; 18 USC Section 1014- False statement to a bank aiding and abetting; and three counts under 18 USC 7206- 1 - Filing false tax returns. Darrell Felsenstein represented the OAE and Andrew D. Swain, Esq. represented the respondent.

Fausto J. Simoes - Disbarred by consent on September 15, 2023 (255 N.J. 360) following respondent's guilty plea to one count of Conspiracy to Commit Bank Fraud in violation of 18 U.S.C. §1349, conduct in violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects). Diane Yandach represented the OAE and John Whipple, Esq. represented the respondent.

Theresa M. Simonson - Disbarred by consent on March 30, 2023, (253 N.J. 371). Respondent acknowledged that she was aware that the OAE alleged that she knowingly misappropriated funds, and that if she went to a hearing on the matter, she could not successfully defend herself against those charges. Timothy J. McNamara represented the OAE and Mark M. Tallmadge, Esq. represented the respondent. This matter was discovered solely as a result of the Random Audit Compliance Program.

Darryl George Smith - Reprimanded on April 13, 2023 (253 N.J. 428) on a certified record for violating RPC 1.15.(d) (failure to comply with recordkeeping requirements), and RPC 8.l(b) (failure to cooperate with disciplinary authorities). Ryan J. Moriarty handled the matter for the OAE and respondent was pro se. The respondent was previously disciplined: Censured in 2020. This matter was discovered solely as a result of the Random Audit Compliance Program.

Stephen E. Smith – Censured on May 9, 2023 (253 N.J. 543) for violating RPC l.5(a) (charging an unreasonable fee), and RPC l.15(b) (failure to promptly deliver funds dishonesty, fraud, deceit, or misrepresentation). Ryan J. Moriarty appeared before the DRB for the OAE and Fredric L. Shenkman, Esq. appeared for the respondent. This matter was discovered solely as a result of the Random Audit Compliance Program.

Andrew B. Spark – Received an indeterminate suspension on May 10, 2023, effective June 8, 2023 (253 N.J. 561) based on respondent's guilty pleas in the Sixth Judicial Circuit Court, Pinellas County, Florida, to third-degree felony introduction into or possession of contraband in a county detention facility, and first-degree misdemeanor soliciting for prostitution, contrary to Florida Statutes, and in the Thirteenth Judicial Circuit Court, Hillsborough County, Florida to third-degree introduction of contraband to a detention facility, conduct in violation of RPC 8.4(b)(commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Hillary Horton represented the OAE and Teri S. Lodge, Esq. represented the respondent.

Robert James Stack - Suspended for two years on September 12, 2023, (255 N.J. 325) for violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with a client), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions), RPC l.15(a) (negligent misappropriation of client funds), RPC l.15(d) (failure to comply with the recordkeeping requirements of Rule 1:21-6), RPC 5.5(a)(l) (practice of law while suspended) (two instances), and RPC 8.l(b) (failure to cooperate with disciplinary authorities) (four instances). Ryan J. Moriarty represented the OAE on a certified record and respondent was pro se. Respondent was previously disciplined: Admonition in 2019, and reprimand in 2022

Kevin N. Starkey – Admonished on September 22, 2023 (*Unreported*) for his violation of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information), RPC 1.16(d) (failure to protect the client's interests upon termination of the representation), and RPC 3.2 (failure to expedite litigation) in an action to quiet title. Douglas M. Nelson represented the District IIIB Ethics

Committee and William P. Cunningham, Esq. represented the respondent.

Ronald B. Thompson – Censured on March 23, 2023 (253 N.J. 329) for violating RPC 1.5(b) (failure to set forth, in writing, the basis or rate of the fee). Gil Scutti represented the District IV Ethics Committee and respondent was pro se. Respondent was previously disciplined: Censured in 2011 and 2014.

Philip V. Toronto – Suspended for six months on June 30, 2023, effective July 27, 2023, on a certified record (254 N.J. 376) for violations of RPC 1.15(a) (negligent misappropriation of client funds), RPC 1.15(d) (failure to comply with recordkeeping requirements), RPC 5.5(a)(1) (unauthorized practice of law – practicing while ineligible), and RPC 8.1(b) (failure to cooperate with disciplinary authorities) stemming from investigations into three overdraft notifications. HoeChin Kim represented the OAE and respondent was pro se. Respondent has a disciplinary history: Reprimanded in 1997; suspended for three months in 1997; and reprimand in 2005. These matters were discovered solely as the result of the Trust Overdraft Notification Program.

Matthew J. Trella – Censured on May 31, 2023 (___N.J.___) for violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information), RPC 1.5(a) (fee overreaching), RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee), RPC 1.8(a) (improper business transaction with a client), RPC 1.15(a) (negligent misappropriation of escrow funds), RPC 1.15(b) (failure to promptly deliver funds to a client or a third party), RPC 8.1(a) (false statement of material fact in a disciplinary matter), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). HoeChin Kim represented the OAE and respondent was represented by Richard S. Mazawey, Esq.

Josue Vazquez- Censured on May 10, 2023 (253 N.J. 555) on a disciplinary stipulation for violating RPC 1.7(a)(2) (engaging in a concurrent conflict of interest), RPC 4.2 (communicating with a person represented by counsel), and RPC 8.4(g) (engaging, in a professional capacity, in conduct involving discrimination). Amanda Figland represented the OAE and Justin Day, Esq. represented respondent.

David R. Waldman – Suspended for three years on February 9, 2023, (253 *N.J.* 4), following his conviction in the United States District Court for the Southern District of New York to one count of cyberstalking, contrary to 18 U.S.C. § 2261A(2)(B), conduct in violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer). Michael S. Fogler, Assistant Deputy Ethics Counsel, represented the OAE on a motion for final discipline and respondent was pro se.

Alan N. Walkow - Reprimanded on December 8, 2023 (256 N.J. 90) for violating RPC 7.1(a) (making false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement), RPC 7.1(a)(3) (making false or misleading communications by comparing the lawyer's service with other lawyers' services), and RPC 8.1(b) (failing to cooperate with disciplinary authorities) (two instances). Jennifer Iseman represented the OAE and respondent was pro se.

Evan D. Weiner - Reprimanded on September 13, 2023 (255 N.J. 351) for violating RPC 1.5(a) (fee overreaching), RPC 1.15(a) (negligent misappropriation of client funds), RPC 1.15(d) (failure to comply with the recordkeeping requirements of Rule 1:21-6), and RPC 7.5(e) (impermissible firm name or letterhead). HoeChin Kim represented the OAE and Glenn R. Reiser, Esq. represented respondent. This matter was discovered solely as a result of the Random Audit Program.

Lawrence J. Weinstein – Permanently barred from future plenary or pro hac vice admission to practice in this State on May 16, 2023, effective immediately, (N.J. ___) following his criminal conviction in the Supreme Court of Pennsylvania for one count of possession of a device for intercepting communication, one count of conspiracy to possess a device for intercepting communication, one count of criminal use of a communication facility, one count of false imprisonment, two counts of invasion of privacy (viewing a photograph of a person without consent), and one count of recklessly endangering another person, conduct in violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer). Michael S. Fogler, Assistant Deputy Ethics Counsel represented the OAE on a motion for reciprocal discipline and the respondent was pro se.

Brian O. Williams – Suspended for six months on October 6, 2023 (255 N.J. 401) following a motion for reciprocal discipline based on misconduct that, in New Jersey, constituted violations of RPC 1.1(a) (gross neglect) (four instances), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence) (four instances), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter) (five instances), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit a client to make informed decisions) (four instances), RPC 3.2 (failure to expedite litigation) (two instances), and RPC 8.4(d) (engage in conduct prejudicial to the administration of justice). Hillary Horton represented the OAE and respondent was pro se.

William M. Witherspoon – Reprimanded on a certified record on April 13, 2023 (253 N.J. 459) for violating RPC 8.l(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Hillary Horton represented the OAE and respondent was pro se.

Michael S. Wittenberg – Reprimanded on a certified record on March 15, 2023 (253 N.J. 231) for violating RPC 1.15(d) (failure to comply with the recordkeeping requirements of Rule 1:21-6), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). Colleen L. Burden represented the OAE and respondent was pro se. This matter was discovered solely as a result of the Random Audit Compliance Program.

Dorothy L. Wright – Reprimanded on June 5, 2023 (254 N.J. 118) for violating RPC 1.3 (lack of diligence), and RPC l.6(a) (failure to maintain confidential information). Sarah Mahony Eaton appeared before the DRB for the District XIII Ethics Committee and Marc D. Garfinkle, Esq. appeared for the respondent. The respondent was previously disciplined: Admonished in 1996 and reprimanded in 1998 and 2013.

Hayes R. Young – Admonished on November 22, 2023 (*Unreported*) for violating RPC 1.3, and RPC l .4(b) by failing to prosecute a client's medical malpractice lawsuit and by failing to reply to her numerous inquiries regarding the status of her matter, including the fact that her lawsuit had been filed and, thereafter, dismissed for lack of prosecution, and for violating RPC l .5(b) by failing to set forth to the client, in writing, the basis or rate of his legal fee. Paul S. Evangelista represented the District VI Ethics Committee and Stephen N. Dratch, Esq. represented the respondent.

Issued by ACPE March 10, 2021

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

ACPE OPINION 739

RPC 4.2 – Lawyers Who Include Clients on Group Emails and Opposing Lawyers Who "Reply All"

The Advisory Committee on Professional Ethics received an inquiry from a lawyer who stated that when he sends email to opposing counsel, he often copies his client. He finds that opposing lawyers often "reply all" with a response that is then delivered directly to his client without his prior consent. Inquirer suggested that this violates Rule of Professional Conduct 4.2.

Lawyers who initiate a group email and find it convenient to include their client should not then be able to claim an ethics violation if opposing counsel uses a "reply all" response. "Reply all" in a group email should not be an ethics trap for the unwary or a "gotcha" moment for opposing counsel. The Committee finds that lawyers who include their clients in group emails are deemed to have impliedly consented to opposing counsel replying to the entire group, including the lawyer's client.

Rule of Professional Conduct 4.2 provides: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter . . .

." This Rule is intended to protect clients from possible overreaching by opposing counsel. ABA Model Rule of Professional Conduct 4.2 Comment 1.

There is no question that a lawyer who receives a letter from opposing counsel on which the sending lawyer's client is copied may not, consistent with Rule of Professional Conduct 4.2, send a responding letter to both the lawyer and the lawyer's client. In contrast, if a lawyer were to initiate a conference call with opposing counsel and include the client on the call, the lawyer would be deemed to have impliedly consented to opposing counsel speaking on the call and thereby communicating both with the opposing lawyer and that lawyer's client.

Email is an informal mode of communication. Group emails often have a conversational element with frequent back-and-forth responses. They are more similar to conference calls than to written letters. When lawyers copy their own clients on group emails to opposing counsel, all persons are aware that the communication is between the lawyers. The clients are mere bystanders to the group email conversation between the lawyers. A "reply all" response by opposing counsel is principally directed at the other lawyer, not at the lawyer's client who happens to be part of the email group.[1] The goals that Rule of Professional Conduct 4.2 are intended to further – protection of the client from overreaching by opposing counsel and guarding the clients' right to advice from their own lawyer – are not implicated when lawyers "reply all" to group emails.

While there is no requirement that a lawyer use email or other forms of technology in professional communications,[2] when a lawyer voluntarily chooses to do so, that choice carries with it

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[1] Of course, if opposing counsel replies only to the other lawyer's client, or if the substance of the lawyer's group reply is directed to the other lawyer's client and not to the other lawyer, the replying lawyer violates Rule of Professional Conduct 4.2. Further, the sending lawyer who includes the client on a group email can advise the client not to reply to any group communication when the group includes opposing counsel.

[2] See Administrative Determinations by the Supreme Court on the Report and Recommendations of the Special Committee on Attorney Ethics and Admissions, p.4 (Apr. 14, 2016) (declining to

an assumption upon which others may rely that the lawyer is conversant with the customary usages of that technology, and thus intends the natural result of those usages. While under RPC 4.2 it would be improper for another lawyer to initiate communication directly with a client without consent, by email or otherwise, nevertheless when the client's own lawyer affirmatively includes the client in an email thread by inserting the client's email address in the "to" or "cc" field, we think the natural assumption by others is that the lawyer intends and consents to the client receiving subsequent communications in that thread. If the lawyer merely wants the client to see a copy of the correspondence but does not want the client to receive subsequent emails from other lawyers, then use of the "bcc" field would accomplish that goal.[3]

Moreover, many emails have numerous recipients and it is not always clear that a represented client is among the names in the "to" and "cc" lines. The client's email address may not reflect the client's name, making it difficult to ascertain the client's identity. Rather than burdening the replying lawyer with the task of parsing through the group email's recipients, the initiating lawyer who does not consent to a response to the client should bear the burden of omitting the client from the group email or blind copying the client.

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adopt proposed comment to RPC 1.1 requiring a lawyer to "keep abreast of . . . benefits and risks associated with relevant technology" in order to "maintain requisite knowledge and skill.").

[3] The inquirer states that there are times he wishes to demonstrate to opposing counsel that he has copied his client but does not want to invite direct communication with the client as a result, i.e., he wants a "one way street." We think however that if a lawyer wishes to engage in this somewhat atypical tactic, it is not unfair that he should bear the minimal burden of making it happen without using the email "cc" field that will likely lead to use of the "Reply All" function. The lawyer could simply manually type "cc: [client name]" in the text of the email message or in any attached letter, so that other counsel know the client has been copied but the client is not included in any "Reply All" communication. This alternative seems to us eminently more sensible and equitable than requiring all other lawyers in an email thread to search the email address fields and purge them of possible added client email addresses each time they add to the thread.

The Committee is aware that other jurisdictions have rejected the concept of implied consent to communications to represented parties in group emails and have decided that such conduct is a violation of Rule of Professional Conduct 4.2.[4] Many of these opinions caution the sending lawyer that it is inadvisable to include the client on the email, acknowledging that the sending lawyer may be "setting up" opposing counsel for an ethics violation. The Committee finds that these opinions from other jurisdictions do not fully appreciate the informal nature of group email or recognize the unfairness of exposing responding lawyers to ethical sanctions for this conduct.

Accordingly, the Committee finds that lawyers who include their clients in the "to" or "cc" line of a group email are deemed to have provided informed consent to a "reply all" response from opposing counsel that will be received by the client. If the sending lawyer does not want opposing counsel to reply to all, then the sending lawyer has the burden to take the extra step of separately forwarding the communication to the client or blind-copying the client on the communication so a reply does not directly reach the client.

[4] See, e.g., Illinois State Bar Association Opinion No. 19-05 (October 2019); Alaska Bar Association Ethics Opinion No. 2018-1 (January 18, 2018); South Carolina Bar Ethics Advisory Opinion 18-04 (2018); Kentucky Bar Association Ethics Opinion KBA E-442 (November 17, 2017); North Carolina 2012 Formal Ethics Opinion 7 (October 25, 2013).

About the Panelists…

Jason Addesso, CVA is a Managing Director in the Forensics, Valuation & Litigation Support practice at DLA Litigation Services, LLC in Shrewsbury and Fairfield, New Jersey. He is responsible for the day-to-day management of matrimonial litigation and business valuation engagements, tax consultation and commercial litigation matters. Mr. Addesso has 15 years of business advisory expertise including matrimonial and commercial litigation support, forensic accounting, business valuation, and tax consultation for estate, gift, and income tax purposes. He also advises on specific and complex tax issues arising from marital dissolution and his industry experience includes companies in the manufacturing, distribution, financial, real estate, healthcare, service and retail sectors.

Prior to joining DLA, Mr. Addesso was a Manager in the Advisory Services division of a large regional accounting firm and has prior experience in the tax department for a national accounting firm. He has been a panel speaker and lectured on topics such as business valuation and matrimonial accounting and holds the Certified Valuation Analyst (CVA) designation.

Mr. Addesso received his B.S. from Monmouth University.

A. Jude Avelino is Managing Partner of Avelino Law, LLP in Summit, New Jersey, where he is the leader of the firm's Estate Planning and Corporate Departments. His experience in these areas has led to a diversified client base ranging from closely-held businesses to individuals and families and a diverse blend of charitable organizations. He has particular skill and experience in navigating complex wealth retention issues in the context of estate planning, corporate and tax matters.

Admitted to practice in New York, New Jersey and Pennsylvania, and before the United States District Court for the District of New Jersey and the Southern and Eastern Districts of New York, Mr. Avelino has been a member of the New York City and Northern New Jersey Estate Planning Councils, the Downtowners Association and the Summit Bar Association. He was Chair of the Board of Trustees of Overlook Hospital and formerly served on the Board of Trustees of Gilda's Club, a charity developed in honor of the late comedienne Gilda Radner which assists cancer survivors and their families. He has been honored by Trial Lawyers Care for his *pro bono* work representing clients injured in the tragic events of September 11, 2001.

Mr. Avelino received his B.A. from Fordham University, his J.D. from Brooklyn Law School, and his LL.M. and Certificate in Estate Planning from Georgetown University Law Center.

Honorable Glenn Berman, JSC (Ret.) is Of Counsel to Greenbaum Rowe Smith & Davis LLP in the firm's Iselin, New Jersey, office, and focuses in mediation, arbitration and discovery management. He retired from the Superior Court in 2013, having served in several capacities for the court, including Presiding Judge of the Family Part, Acting Presiding Judge of the Criminal Part and Acting Assignment Judge. He was specially designated to preside over New Jersey's 2012 landmark cyberbullying case, *New Jersey State v. Dharun Ravi*.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, Judge Berman served as a Middlesex County Prosecutor from 1998-2002. He is a Fellow of the American Bar Foundation and a member of the New Jersey State Bar Association, where he serves on the Executive Committee of the Family Law Section and is a member of the Business Law Section and several committees. A former Trustee of the Middlesex County Bar Association and Foundation, Judge Berman is a former member of the New Jersey Supreme Court Family Practice Committee and the District VIII Ethics and Fee Arbitration Committees. He also sits on the American Arbitration Association's Employment and Commercial Panels.

Judge Berman is a member of the Aldona E. Appleton Family Law American Inn of Court and Past President of the Halpern-Furman American Inn of Court, Somerset and Morris Counties. He has lectured for ICLE, the New Jersey State Bar Association and other organizations, and is the recipient of several honors, including the Middlesex County Bar Association's Robert J. Cirafesi Chancery Practice Award in 2023.

Judge Berman received his B.A., with honors, from Gettysburg College and his J.D. from Case Western Reserve Law School, where he was a member of the Editorial Board of the *Case Western Reserve Law Review*.

Honorable Marc R. Brown, JSC is a Superior Court Judge, Family Part, Union County, and sits in Elizabeth, New Jersey. Appointed to the bench in 2018, he serves in the Dissolution docket and has served in the Domestic Violence and Children in Court dockets.

Judge Brown is a member and former Trustee of the New Jersey State Bar Association, and formerly served on the NJSBA Family Law Executive and Legislative Committees. He was a member of the American Bar Association, the New Jersey Association of Professional Mediators, the New Jersey Divorce Arbitration Association, the Association for the Advancement of Collaborative Practice and the New Jersey Association for Justice (NJAJ), where he served on the Family Law Executive Committee. Prior to his appointment Judge Brown was a panelist with the Matrimonial Early Settlement Program in Union County for many years, a member and Chair of the Supreme Court (District XII) Ethics Committee, President and a member of the Board of Trustees of the Union County Bar Association and a Master of the Richard J. Hughes American Inn of Court. A Master of the Barry Croland Family Law American Inn of Court, he was the 2008 recipient of the William J. McCloud Award bestowed by the Union County Bar Association for outstanding contributions to the Superior Court of New Jersey, Family Part, in Union County.

Judge Brown received his B.A. from Rutgers College and his J.D. from New York Law School. He received a Certification in Mediation from the Institute of Dispute Resolution at Seton Hall Law School and was trained in arbitration by the American Academy of Matrimonial Attorneys and in collaborative divorce by ICLE.

Honorable Bradford M. Bury, JSC (Ret.) retired in 2023 and returned to private practice in Warren, New Jersey, on a part-time basis, where he handles mediations, arbitrations and discovery adjudicator matters as well as select former private practice clients. As a Superior Court Judge, he served in Union, Somerset and Hunterdon Counties; was assigned to the Family, Criminal and Civil (SVPA) Divisions; and for 8 of those years presided over every facet of the Family Division docket.

Judge Bury was a member of the Union County District XII Ethics Committee for 5 years and Chair of the Union County Bar Association's Criminal Section. He served as an Assistant Prosecutor in the Union and Morris Counties' Prosecutor's Offices for 5 years, where he supervised trial teams, the narcotics strike force and the special enforcement unit. He was a trial attorney in private practice for 35 years and litigated civil and criminal cases in state and federal trial and appellate courts, and also served as government counsel to multiple land use boards and governing bodies.

Judge Bury received his B.A. from Kean University and his J.D. from Villanova School of Law.

Honorable Richard C. Camp, JSC (Ret.) is Of Counsel to Lum, Drasco & Positan LLC in Roseland, New Jersey, where he concentrates his practice in mediation and arbitration, complex case management, special master matters and settlement conferences in family, chancery and civil law. Prior to his appointment he worked in private practice for twenty years, concentrating in family and civil litigation as well as commercial zoning (having represented RICOH Company, Shoprite and Deluxe Check Printers, among others). Judge Camp also served as a Municipal Court Prosecutor for the Township of Verona and in 1992 was sworn in as an Essex County Superior Court Judge. While he served in the Criminal Division, most of his time was devoted to the Family Division, and he was also the disqualifying judge for Chancery and frequently handled both Chancery and Civil settlements.

Judge Camp has been highly involved with the Bench and Bar, working closely with the Administrative Office of the Courts on the Judicial Committees on Salary and Pensions and the Judicial Code of Conduct. He has been a member of the New Jersey State and Essex County Bar Associations, the American Trial Lawyers Association and the American Judicature Society. He was elected a Fellow of The American Bar Association and was selected as one of the 36 New Jersey Members to the National Academy of Distinguished Neutrals.

Judge Camp has lectured extensively at the Northern New Jersey American Inns of Court and at his alma mater, Seton Hall Law School. He has also lectured on numerous panels for state and county bar seminars, as well as family law retreats.

Judge Camp received his B.A. from Colgate University and his J.D. from Seton Hall University School of Law.

Honorable Michael Casale, JSC (Ret.) is Of Counsel to Greenbaum Rowe Smith & Davis LLP with offices in Roseland and Iselin, New Jersey, where he concentrates his practice in alternate dispute resolution of family law and complex civil and commercial cases. Appointed to the bench in 1996, he formerly served in the Criminal, Civil and Family Divisions in the Essex Vicinage, including time served as Acting Presiding Judge in the Criminal and Family Divisions.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey and the Third Circuit Court of Appeals, Judge Casale previously served as Assistant Township Attorney and Councilman for the Township of Bloomfield. He is a member of the Executive Committee of the New Jersey State Bar Association Family Law Section, the NJSBA Cannabis Law Special Committee and the Essex County Bar Association.

Judge Casale has lectured for ICLE, the New Jersey State Bar Association and other organizations. He has been a member of the Barry Croland Family Law and Brennan-Vanderbilt American Inns of Court and has been quoted in *The New York Times*.

Judge Casale received his B.A., *cum laude*, from the University of Connecticut and his J.D., *magna cum laude*, from Seton Hall University School of Law, where he was the recipient of the Peter J. Rodino Award. He was Law Clerk to the Honorable Nicholas J. Scalera.

Honorable Lisa F. Chrystal, PJFP (Ret.) is counsel to Brach Eichler, LLC in Roseland, New Jersey, where she concentrates her practice in alternative dispute resolution, mediation and arbitration, and discovery management. She is a former Presiding Judge, Family Division, Union County, and sat in Elizabeth, New Jersey. Appointed to the bench in 2000 by Governor Christine Todd Whitman, she also sat in the Civil Division.

Prior to her appointment to the bench, Judge Chrystal maintained a solo litigation practice in Scotch Plains, New Jersey. She also served as Assistant Union County Counsel and was a civil litigator for two law firms before opening her own office. Judge Chrystal served on the Supreme Court Model Jury Charge Committee and is a former Co-Chair of the Union County Minority Concerns Committee. A former Trustee of the Union County Bar Association, she is a member of the Supreme Court Committee on Diversity, Inclusion and Community Engagement, and a former member of the Supreme Court Family Practice Committee, where she served on the FM/FD Subcommittee. Judge Chrystal is a member of the New Jersey State and Union County Bar Associations, and serves on the Executive Committee of the NJSBA Family Law Section. She has also served on the Family Subcommittee on Mentoring of New Judges.

A former Master of the Richard J. Hughes American Inn of Court, Judge Chrystal is a Master of the Barry I. Croland American Inn of Court and The Justice Virginia Long Hudson County American Inn of Court. She has trained newly-appointed judges and those transferring to the Family Division in the Comprehensive Judicial Orientation Program (C.J.O.P.) and co-authored the judges' "Dissolution Manual." Judge Chrystal has taught CLE classes for the Union County Bar Association and Ethics for Trial Attorneys for ICLE, and was an Adjunct Legal Writing Instructor at Seton Hall Law School. In 2022 she was the recipient of the prestigious William J. McCloud Award bestowed by the Union County Bar Association, which recognizes significant contributions to the administration of justice in the Family Part.

Judge Chrystal is a graduate of Syracuse University and a *cum laude* graduate of Seton Hall University School of Law.

Robert A. Epstein is a Partner in Manzi Epstein Lomurro & DeCataldo, LLC in Montclair and Hoboken, New Jersey, and practices exclusively in family law. He has been involved in several reported decisions, including *Parish v. Parish*, 412 *N.J.Super*. 39 (App. Div. 2010) and *Barr v. Barr*, 418 *N.J.Super*. 18 (App. Div. 2011).

Admitted to practice in New Jersey and New York, Mr. Epstein is a member of the New Jersey State and Essex County Bar Associations as well as the New Jersey Association for Justice. He serves as Treasurer of the NJSBA Family Law Section's Executive Committee, has been a member of the New Jersey Association for Justice (NJAJ) Matrimonial Committee and has served as a Panelist for the Essex County Early Settlement Panel program and as a former Panel Chair of the District Fee Arbitration Committee.

A member of the Barry Croland Family Law American Inns of Court, Mr. Epstein has served as an Associate Editor of the *New Jersey Family Lawyer*. His articles have appeared in the *New Jersey Family Lawyer*, the *New Jersey Law Journal* and other publications, and he lectures on family law matters for professional organizations. Selected as a New Jersey Rising Star by *New Jersey Monthly Magazine* and *Law & Politics Magazine*, he was included in a list of "Trailblazers" in Divorce Law by the *National Law Journal*.

Mr. Epstein received his B.S. from Binghamton University and his J.D., *cum laude*, from St. John's University School of Law.

Honorable Lisa A. Firko, JAD is a Superior Court Judge assigned to the Appellate Division and sits in Newark, New Jersey. Appointed to the Bench in June of 2008, Judge Firko originally served in the Civil Division, Bergen County, and was subsequently assigned to the Chancery Division, Family Part, until 2013, when she was reassigned to the Civil Division. She has handled matters involving domestic violence, dissolution, non-dissolution and child support enforcement.

Judge Firko is Co-Chair of the Family Practice Committee and of the Non-Dissolution/Domestic Violence Subcommittee. She is a member of the American, New Jersey State and Bergen County Bar Associations, and a former member of the Supreme Court Committee on Women in the Courts. Prior to her appointment to the bench Judge Firko was a Partner in Lum, Drasco & Positan for more than 20 years, where she handled a variety of civil and family matters. She has lectured for ICLE, ATLA-NJ and other organizations and is a member of the Barry Croland American Inn of Court.

Judge Firko received her B.A., *magna cum laude*, from Seton Hall University, where she was elected to *Pi Sigma Alpha*, and her J.D. from Seton Hall University School of Law. She was Law Clerk to the Honorable Burrell Ives Humphreys, Assignment Judge, Superior Court, Hudson County.

Christine Fitzgerald, Certified as a Matrimonial Law Attorney by the Supreme Court of New Jersey, is an Partner in Seiden Family Law, LLC in Cranford, New Jersey, where she concentrates her practice in family law including alimony, child support, custody, divorce, equitable distribution, palimony, parental rights, prenuptial agreements, grandparents' rights and appeals.

Admitted to practice in New Jersey and New York, and before the United States Supreme Court, Ms. Fitzgerald is a Fellow of the American Academy of Matrimonial Lawyers (AAML), Vice Chair of the Executive Committee of the New Jersey State Bar Association Family Law Section and has been Co-Chair of the Section's Legislative Committee. She is a former member and Past Chair of the District VI Ethics Committee and is First Vice President of the Hudson County Bar Association and an Early Settlement Panelist in Bergen County. A member of the Board of Managers of AAML's New Jersey chapter, Ms. Fitzgerald has served on the NJSBA *Amicus* Committee, the Ethics Diversionary Program Committee and the Putting Lawyers First Task Force. She has lectured for ICLE and the New Jersey State and Hudson County Bar Associations, and was the recipient of the Hudson County Bar Association and Foundation Family Lawyer of the Year award for 2018.

Ms. Fitzgerald received her B.A. from Seton Hall University and her J.D. from New York Law School. Prior to entering private practice, she was a judicial clerk to the Honorable Thomas P. Zampino, P.J.S.C., Superior Court, Essex County, Chancery Division, Family Part. She is also a graduate of the Family Law Trial Advocacy Program, a specialized matrimonial litigation training given by the American Bar Association's Section of Family Law and the National Institute of Trial Advocacy (NITA).

Derek M. Freed is the Managing Partner of Ulrichsen Rosen & Freed LLC in Pennington, New Jersey. He concentrates his practice in matrimonial and family law.

Admitted to practice in New Jersey, Mr. Freed is Past Chair of the New Jersey State Bar Association Family Law Section and was a co-author of the Association's *amicus curiae* brief to the New Jersey Supreme Court on the matters of *Gnall v. Gnall*, *Bisbing v Bisbing* and *Cardali v. Cardali*. He is a Matrimonial Early Settlement Panelist in Mercer and Somerset Counties and a member of the Matrimonial Lawyers Alliance.

The recipient of the New Jersey State Bar Association Distinguished Legislative Service Award in 2023, Mr. Freed serves as an Associate Managing Editor of the *New Jersey Family Lawyer* and his articles have appeared in the magazine. He has lectured on family law matters for ICLE, the New Jersey State and Mercer County Bar Associations, and the New Jersey Association for Justice, and is the recipient of several other honors.

Mr. Freed received his B.A. from the College of William and Mary and his J.D., with honors, from Rutgers School of Law-Camden.

Tanya L. Freeman is Managing Partner of the Family Law Practice at Callagy Law with offices in East Hanover and Paramus, New Jersey, where she provides legal representation in all aspects of family law, including divorce, child and spousal support, child custody, interstate custody and relocation disputes, and domestic violence matters as well as personal injury and municipal court matters. Prior to practicing law, she spent fifteen years in banking and insurance in a variety of capacities directing operational audit teams. With a background as a professional auditor, Ms. Freeman has effectively represented clients with high-net-worth cases involving significant assets as well as cases concerning owners of closely-held businesses. She has represented clients in cases involving professional athletes, television personalities and other high-profile celebrities, and has been a Qualified Family Law and Civil Mediator pursuant to *Rule* 1:40.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, Ms. Freeman has been a member of the National and Garden State Bar Associations, the Family Law Section of the New Jersey State Bar Association and the Hudson County Bar Association's Family Law Committee, and has served as Vice Chair of the District VB Fee Arbitration Committee. She is a Fellow of the American Bar Association and has been a member of the Hudson County Vicinage Minority Concerns Committee and Chair of the Hudson County Vicinage Juvenile Justice/Family Court Subcommittee, and was appointed Chair of the Board of Directors of University Hospital in Newark.

Ms. Freeman has lectured for ICLE and the New Jersey State Bar Association, and is the author of "Ten Things to Consider Before You Say 'I Do'" (*Union County Women's Journal,* April 2014). She was named Family Lawyer of the Year by the Hudson County Bar Association and is the recipient of several other honors.

Ms. Freeman received her B.A., *cum laude*, from Caldwell College and her J.D., *cum laude*, from Touro Law School, Jacob D. Fuchsberg Law Center. During law school she served as a judicial intern to the Honorable William D. Wall, United States District Court for the Eastern District of New York, and to the Honorable Michelle Hollar-Gregory, Essex County Superior Court.

Stephanie F. Hagan is a named founding Partner in Hagan, Weisberg & Nunn, LLC in Cedar Knolls, New Jersey. For more than 30 years she has limited her practice to family law and has also frequently been appointed as a mediator by courts throughout the state.

Admitted to practice in New Jersey and New York, Ms. Hagan is Past Chair of the New Jersey State Bar Association Family Law Section, has been a member of the Executive Committee for more than 25 years and has served on the Meetings and Arrangement Planning and Long Range Planning Committees of the Association. Past President of the Morris County Bar Association and Foundation, she is a former Chair of the District Fee Arbitration Committee for Morris County and a former member of the Supreme Court Family Practice Committee. Ms. Hagan has also served as a Blue Ribbon Panelist for the Essex, Union and Morris County Family Law Early Settlement Panel Programs; and is Certified by the AAML as a family law arbitrator. She frequently lectures for legal groups on family law topics including alimony, child support, custody, paternity and domestic partnerships, and is the recipient of several honors.

Ms. Hagan received her B.A. from Rutgers University and her J.D. from Seton Hall University School of Law. She served as a law secretary to the Honorable Stephen J. Schaeffer, Superior Court of New Jersey, Chancery Division, Family Part, Hudson County.

Mathias R. Hagovsky, Ph.D. is a psychologist in Livingston, New Jersey, and has worked with infants, children and adolescents for more than 30 years in a variety of evaluation and treatment capacities in schools, hospitals and private office settings. As a forensic psychologist, Dr. Hagovsky has provided evaluative information to the courts and other referral agents in more than 2,200 matters and/or has testified in approximately 400 family, civil or criminal matters, many of which directly or indirectly relate to allegations of sexual abuse of children, parental alienation and/or domestic violence. He has been court appointed in 11 New Jersey counties to conduct evaluations and to provide alternative dispute resolution, and has also served as a Parent Coordinator for many years. He has also been a staff member in the Department of Psychology and Pediatric Specialty Consultant to the High Risk Clinic at Saint Barnabas Medical Center.

A licensed Psychologist in New Jersey and Certified New Jersey School Psychologist since 1971, Dr. Hagovsky is a member and Past President of the New Jersey Psychological Association as well as a member of several divisions of the American Psychological Association. He has been a member of the American Board of Forensic Examiners and the Board of Directors of the New Jersey Chapter of the Association of Family Conciliation Courts, and has been listed in the National Register of Health Service Psychologists, the National Registry of Forensic Examiners and the *Best Lawyers in America*'s Directory of Experts. A Fellow of the American Board of Forensic Examiners, he is a Diplomate, American Board of Psychological Specialties-Child Custody Evaluations.

Dr. Hagovsky is a Clinical Assistant Professor of Psychiatry and Behavioral Medicine at New York College of Osteopathic Medicine and a former Clinical Instructor at Children's Hospital of

New Jersey. A regular presenter for ICLE and at the Annual Judicial College Conferences, he has also lectured to teachers, parents' groups, and religious and civic organizations. His articles have appeared in *New Jersey Psychologist*, *Pediatric Research* and other publications.

Dr. Hagovsky received his B.A. from Benedictine College, his M.A. in School Psychology from Seton Hall University and his Ph.D. in School Psychology from Fordham University. After a Summer Externship at Marlboro Psychiatric Hospital, he did a Clinical Internship in association with the New Jersey State Junior Fellowship Program in Clinical Psychology at the New Jersey Neuropsychiatric Institute.

Ilan Hirschfeld, CPA/ABV/CFF is a licensed Certified Public Accountant and the Partner-in-Charge of the New Jersey Region of Marcum LLP, with offices in Saddle Brook, New Jersey. He specializes in business valuations, litigation support and matrimonial accounting within the firm's forensic accounting group. He holds certifications to practice accountancy in New Jersey and New York; is Accredited in Business Valuations (ABV) by the American Institute of Certified Public Accountants; and also holds the Certified in Financial Forensics (CFF) designation.

Mr. Hirschfeld is a member of the American Institute of Certified Public Accountants (AICPA) and the New Jersey and New York Societies of Certified Public Accountants. He is Past Chair of the New Jersey State Society of Certified Public Accountants' Valuations Interest Group, has been a member of the Society's Matrimonial and Litigation Support Services Committees, and served on the Litigation Support Committee of the New Jersey State Society of Certified Public Accountants.

A former Adjunct Professor of Accounting in the Graduate School of Business at William Paterson University, Mr. Hirschfeld frequently lectures on litigation support accounting, business valuation and accounting for divorce for ICLE, the AAML, the New Jersey Judicial College, the New Jersey State Bar Association and other organizations. He is the co-author of "Business Solutions: Cost Cutting Opportunities & Caveats" (*New Jersey Business Magazine*, Nov. 6, 2013).

Mr. Hirschfeld received his Bachelor of Commerce degree from Sir George Williams University and his M.B.A. in Finance from the University of Western Ontario.

Honorable David P. Katz, P.J.F.P. is Presiding Judge, Family Part, Essex County, and sits in Newark, New Jersey.

Past President of the National Council of Juvenile and Family Court Judge, Judge Katz is Vice Chair of the Council's Domestic Violence and Family Relations Advisory Committee and a member of the Curriculum Development and Legislative Committees. He is Chair of the Conference of Presiding Family Judges in New Jersey, has been Chair and Vice Chair of several committees and has served as Vice President of the New Jersey Council of Juvenile and Family Court Judges.

Judge Katz received his undergraduate degree from the University of Delaware, his M.B.A. from Fairleigh Dickinson University and his law degree, with honors, from Seton Hall Law School, where he was Editor-in-Chief of the *Seton Hall Law Review*. He was a law clerk to the Honorable Garrett E. Brown, Jr., United States District Judge for the District of New Jersey.

Phyllis S. Klein, Phyllis Klein Mediation, LLC in Chatham, New Jersey, limits her practice to family law matters and focuses in alternative dispute resolution, primarily mediation and parent coordination. Collaboratively trained, she has also been involved in several reported decisions.

Admitted to practice in New Jersey, New York and Connecticut, Ms. Klein is a Court-Approved Mediator and a member of the Family Law Sections of the New Jersey State, Essex County and Morris County Bar Associations, as well as the New Jersey Association of Professional Mediators (NJAPM). She has served on the NJSBA Family Law Section's Parenting Coordination and Child Support Task Forces. She is former Co-Chair of the Executive Committee of the ECBA Family Law Section, a former member of the District VB Ethics Committee and a former member and Chair of the District VC Fee Arbitration Committee.

Ms. Klein is a long-standing member and Past President of the Barry I. Croland Family Law American Inn of Court, a member of the Justice Garibaldi ADR American Inn of Court and has lectured for ICLE, the American Trial Lawyers Association and several bar associations and family law American Inns of Court. She is a contributing author to the custody chapter of *New Jersey Family Law Practice* and was the 2003 recipient of the Essex County Bar Association Family Law Section's Family Law Achievement Award and several other honors.

Ms. Klein received her B.A.A.S. from the University of Delaware and her J.D. from New York Law School. She was Law Clerk to the Honorable Carmen A. Ferrante, J.S.C.

Jeralyn L. Lawrence, Certified as a Matrimonial Law Attorney by the Supreme Court of New Jersey, is the Managing Member and founder of Lawrence Law in Watchung, New Jersey. She practices in all areas of matrimonial and family law including divorce litigation, mediation and arbitration, custody and parenting time issues, alimony and child support, separation and property settlement agreements, adoption and guardianship advice, domestic partnership matters under the *Domestic Partnership Act*, domestic violence and sexual abuse, and palimony. She is also a trained collaborative lawyer and divorce mediator, and has argued before the New Jersey Supreme Court on behalf of the New Jersey State Bar Association and the New Jersey chapter of the American Academy of Matrimonial Lawyers.

A Fellow of the American Academy of Matrimonial Lawyers (AAML), Ms. Lawrence is Past President of the Academy's New Jersey Chapter and has been certified by the AAML as a Family Law Arbitrator. She is also a volunteer attorney with the New Jersey State Bar Military Legal Assistance Program, which provides *pro bono* legal assistance to New Jersey residents who have served overseas or in active duty of the armed forces after September 11, 2001. Past President of the New Jersey State Bar Association, she is Past Chair of the NJSBA Family Law Section, has served as a Trustee of the New Jersey State Bar Foundation and is Past President of the Somerset County Bar Association. Ms. Lawrence has served on the District XIII Attorney Ethics Committee and has been a member of the New Jersey Association for Justice, the New Jersey Women Lawyers Association, the New Jersey Collaborative Law Group, the New Jersey Association of Professional Mediators (NJAPM) and the International Academy of Collaborative Professionals. A Fellow of the American Bar Foundation, she was appointed to the Somerset County Domestic Violence Working Group as a Representative of the Somerset County Family Law Section and has also been a member of the Association of Family and Conciliation Courts and the American Bar Association. She serves on the Matrimonial Certification Committee that oversees the statewide matrimonial attorney certification process and has been an attorney volunteer at Safe+Sound Somerset.

Ms. Lawrence is a frequent lecturer at divorce and family law programs and has been a senior editor of the *New Jersey Family Lawyer.* She is a graduate of the National Institute of Trial Advocacy (NITA) and a member and Barrister of the Central New Jersey American Inns of Court. Ms. Lawrence is a recipient of the Young Lawyers Division Professional Achievement Award, the Carol Murphy Award bestowed by the Women's Political Caucus of New Jersey, and is a 3-time recipient of the Annual Legislative Recognition Award from the New Jersey State Bar Association. She is also the recipient of the 2008 Outstanding Woman in Somerset County from the Somerset County Commission on the Status of Women, the 2009 Kean University Distinguished Alumna award and the Saul Tischler Award from the NJSBA Family Law Section in 2023 as well as the Trial Bar Award from Trial Attorneys of New Jersey (TANJ).

Ms. Lawrence received her B.A. from Kean University and her J.D., *summa cum laude*, from Seton Hall University School of Law. While in law school, she was awarded the New Jersey Chapter of the American Academy of Matrimonial Lawyers' Award in addition to serving as the Student Director of the Family Law Clinic.

Ronald G. Lieberman, Certified as a Matrimonial Law Attorney by the Supreme Court of New Jersey and as a Board-Certified Family Trial Lawyer by the National Board of Trial Advocacy, is a Shareholder in Rigden Lieberman & Mignogna, P.A. in Marlton, New Jersey. His practice is limited to family law issues including matrimonial law, divorce, child custody, child support, parenting time, domestic violence and appellate work.

Admitted to practice in New Jersey, New York and Pennsylvania, and before the United States District Court for the District of New Jersey, the Third Circuit Court of Appeals and the United States Tax Court, Mr. Lieberman is Past President of the Camden County Bar Association, has served as Co-Chair of the Association's Family Law Committee and is Past Chair of the New Jersey State Bar Association Family Law Section. A Fellow of the American Academy of Matrimonial Lawyers (AAML), he is President-Elect of the AAML New Jersey Chapter and has also been a long-standing member of the Supreme Court's Family Law Practice Committee. He has been Chair of the NJSBA Legal Education Committee and has served on the Scholarships Committee and *Respect* Newsletter Editorial Board of the New Jersey State Bar Foundation.

A former Master of the Thomas S. Forkin Family Law American Inns of Court, Mr. Lieberman has lectured on family law topics for ICLE, the New Jersey Association for Justice, Sterling Educational Services, the National Business Institute and the New Jersey State, Burlington County and Camden County Bar Associations. He has been Executive Editor of the *New Jersey Family Lawyer*, has authored articles which have appeared in the publication and has been quoted in the *Courier Post*, *U.S. News and World Report*, *The New York Times* and on CBS 3 Philadelphia. He is the recipient of the 2014 Camden County Martin Luther King, Jr., Freedom Medal and several other honors.

Mr. Lieberman received his B.A. from the University of Delaware and his J.D. from New York Law School. He was Law Clerk to the Honorable F. Lee Forrester, P.J.F.P. (Ret.).

Frank A. Louis is a Partner in Greenbaum Rowe Smith & Davis LLP in Red Bank, New Jersey. A substantial portion of his practice involves the mediation of complex matrimonial matters, and he generally represents individuals in Ocean and Monmouth Counties who are involved in complicated equitable distribution cases with a view towards negotiating resolutions.

Mr. Louis served as Chair of the Family Law Section of the New Jersey State Bar Association and as President of the Ocean County Bar Association, where he also chaired the local Family Law Committee for several years. A Diplomate Member of the American College of Family Trial Lawyers, he also serves as an *Emeritus* member of the Executive Committee of the NJSBA Family Law Section and a Fellow of the American Academy of Matrimonial Lawyers (AAML). Mr. Louis was selected by Governor Florio as the NJSBA's representative to the New Jersey Commission to Study the Law of Divorce. He was a member of the New Jersey Supreme Court Family Part Practice Committee from its inception through 2011 and has served on a number of Supreme Court Committees, including the Special Committee on Matrimonial Litigation and the Economic Consequences of Dissolution Committee.

The 2006 recipient of the Alfred C. Clapp Award bestowed by ICLE for Excellence in Continuing Legal Education, Mr. Louis has also received the Tischler Award from the Family Law Section of the NJSBA and the Young Lawyer Award from the Ocean County Bar Association. He has lectured extensively for attorney and CPA groups, and has authored more than 50 articles, a number of which have been cited by courts in New Jersey in reported and unreported opinions. He organized and moderated ICLE's Family Law Symposium from 1996-2013 and is the author of *New Jersey Family Law Volume II: Divorce, Alimony & Property Division* (Gann Law, 2023).

Mr. Louis received his undergraduate degree, *cum laude*, from Brooklyn College, City University of New York, and his law degree from Rutgers Law School-Newark.

Nicole D. Lyons, CPA/CFF, CVA is a Partner in the Forensic and Valuation Services Team of WithumSmith+Brown in the firm's Princeton, New Jersey, office. Involved in the family law arena, she performs business valuations of closely-held companies; prepares cash flow, tax and complex tracing analyses; and analyzes marital lifestyle. Ms. Lyons is involved in shareholder and/or partner disputes relating to commercial litigation matters and has performed damage calculations, business valuations and forensic investigations into several businesses, including those in the professional services, construction, real estate, manufacturing, and restaurant industries. She also has experience in corporate investigations involving fraud, securities litigation and their corresponding class-action lawsuits, and environmental litigation, specifically a national class-action property dispute.

Ms. Lyons is a licensed Certified Public Accountant in New Jersey and New York, a Certified Valuation Analyst through the National Association of Certified Valuation Analysts (NACVA) and is Certified in Financial Forensics by the American Institute of Certified Public Accountants (AICPA). She is a member of the AICPA, the New Jersey Society of Certified Public Accountants (NJSCPA) and the Association of Certified Fraud Examiners (ACFE). She has been a member of the AICPA Forensic and Valuation Services (FVS) Executive Committee and the Women in Business Alliance (WIBA) of Princeton Mercer Regional Chamber.

Ms. Lyons received her B.S. from Villanova University and studied abroad for a semester at the Universitat de Valencia in Valencia, Spain.

Honorable Hany A. Mawla, J.A.D. is a Superior Court Judge, Appellate Division, Part A, in Trenton, New Jersey. From 2010-2017 he served in the Superior Court, Vicinage 13.

Judge Mawla received his undergraduate degree from Rutgers University and his J.D. from Seton Hall University School of Law.

Timothy F. McGoughran is the founding Partner of the Law Office of McGoughran & Sanvenero, LLC in Ocean, New Jersey. He concentrates his practice exclusively in family law and handles matters related to divorce, custody, alimony, domestic violence, adoption, prenuptial agreements, parenting rights, same-sex marriage and other issues. He has also served as a Municipal Court Judge in Ocean Township and is a former Municipal Prosecutor for the Township.

Mr. McGoughran is admitted to practice in New Jersey and Pennsylvania, and before the United States District Court for the District of New Jersey and the United States Supreme Court. A member of the New Jersey State, Pennsylvania, Ocean County and Monmouth Bar Associations, he is Past President of the New Jersey State Bar Association, Past Chair of the NJSBA Family Law Section Executive Committee, has served on the Executive Committee of the Association's Military and Veterans Affairs Section and is a member of the Legal Education Committee. Mr. McGoughran is also Past President of the Monmouth Bar Association and Past Co-Chair of the Monmouth Bar Association's Family Law Committee. He has been a Trustee for Monmouth County on the NJSBA's Board of Trustees and has co-chaired the Legislation and Meeting Arrangements and Program Committees.

In 2010 and 2013 Mr. McGoughran was the recipient of the Distinguished Legislative Service Award bestowed by the New Jersey State Bar Association, and the Monmouth Bar Association Family Law Committee presented him with the Family Lawyer of the Year Award in 2012. He is a regular lecturer on law and ethics topics and argued the NJSBA *amicus* position before the New Jersey Supreme Court in *Bisbing v. Bisbing*.

Mr. McGoughran received his B.A. from the University of Pittsburgh and his J.D. from Seton Hall Law School. He was a law clerk to the Honorable Robert W. O'Hagan, JSC.

Sharon Ryan Montgomery, Psy.D. is a licensed psychologist in private practice in Morristown, New Jersey. Her areas of expertise are in all areas of forensic psychology, child custody evaluations, child sexual abuse, criminal and personal injury, family violence, mediation/arbitration, therapeutic mediation, parenting coordination, therapeutic visitation, child and adolescent psychopathology, and emotional sequelae/complications of juvenile diabetes. She also sees patients in individual, marital and group psychotherapy, and served as a psychologist and Coordinator of the Family Enrichment Program at Morristown Memorial Hospital for several years.

A Board-Certified Forensic Examiner, Dr. Ryan Montgomery is a Diplomate of the American Board of Forensic Examiners and holds certification in group psychotherapy from the New Jersey Academy of Group Psychotherapy. She has been Clinical Supervisor of Morris County's Family Court Mediation Program, on the Steering Committee of the New Jersey State Bar Association's Child and Family Project, and a member and President of the Morris County Psychologist Association. Dr. Ryan Montgomery has also been a member of the New Jersey Psychological Association (NJPA) and the American Psychological Association. She was a member of the Task Force for the American Bar Association, Family Law Section, Standards of Practice on Divorce Mediation, and the Board of the New Jersey Psychological Association, chairing its Interpersonal Relations Committee, and has been a member-at-large on the NJPA Executive Committee. She

has served as President of the New Jersey Chapter of the Association of Family and Conciliation Courts (AFCC).

A lecturer at national and international child abuse conferences and for ICLE and the Newly-Appointed Judges Orientation Program, Dr. Ryan Montgomery has served as an expert witness in numerous custody disputes in several New Jersey counties. She has also conducted evaluations in criminal matters and has testified in court on numerous occasions.

Dr. Ryan Montgomery holds a doctorate in psychology from Rutgers University.

William J. Morrison, CPA/ABV, CFF is an Emeritus Partner in Withum Smith+Brown, P.C. in the firm's Saddle Brook, New Jersey, office, and a member of the Litigation, Valuation and Insolvency Group. He founded and was President of the forensic accounting firm Morrison & Company, which joined with Withum in 2010, and has more than 25 years of experience as an investigator, accountant and valuation analyst.

A Certified Public Accountant in New Jersey, Mr. Morrison is also accredited in business valuation and forensics by the American Institute of Certified Public Accountants (AICPA). He is also a member of the AICPA, the New Jersey Society of Certified Public Accountants (NJSCPA) and the National Association of Certified Valuation Analysts (NACVA). He has authored articles for *Fairshare* and the *Encyclopedia of Matrimonial Practice*, and is the co-author of *Standards of Value, Theory and Application*.

Mr. Morrison received his B.A. from Boston College and his M.B.A. from Fairleigh Dickinson University.

Cassie Murphy, Certified as a Matrimonial Law Attorney by the Supreme Court of New Jersey, is a Partner in Paone, Zaleski & Murphy with offices in Red Bank and Woodbridge, New Jersey, where she focuses her practice in family law, child custody and divorce.

Admitted to practice in New Jersey, New York and the District of Columbia, Ms. Murphy is a Fellow of the American Academy of Matrimonial Lawyers and Secretary of the New Jersey State Bar Association's Family Law Section Executive Committee. She is an appointed member of the NJSBA *Amicus* Committee (and co-author of the *amicus* brief on behalf of the NJSBA to the New Jersey Supreme Court on the matter of *Cardali v. Cardali*) and the Monmouth County Family Law Committee. Ms. Murphy is a member of the Monmouth and Middlesex County Bar Associations and has served on the Middlesex County Family Law Committee. Past Co-Chair of the NJSBA Young Lawyers Section, she was elected as a Trustee for the Monmouth County Legal Aid Society for the 2017-2018 and 2018-2019 terms.

The author of a monthly column, "Ask Cassie," for the *Navesink Journal*, Ms. Murphy is an Associate Editor for *New Jersey Family Lawyer*, a publication of the New Jersey State Bar Association's Family Law Section, and the author of several articles which have been published in that periodical, including "Cohabitation and the Amended Alimony Statute: Has the Economic Needs Standard Been Replaced?" (June 2016). She has lectured at several seminars on issues relating to family law. In 2018 she was the recipient of the Martin Goldin Award for excellence in the practice of family law and she is the recipient of several other honors.

Ms. Murphy received her undergraduate degree, *summa cum laude*, from the University of Maryland, where she was elected to *Phi Beta Kappa*, and her J.D., *cum laude*, from the University of Maryland School of Law, where she served as an Associate Editor of the *Maryland Law Journal of Race, Religion, Gender and Class*. She served as Law Clerk to the Honorable Lisa Perez-Friscia, J.S.C., Family Part, Bergen County.

Tamires M. Oliveira is an associate with Greenbaum Rowe Smith & Davis LLP in the firm's Red Bank and Roseland, New Jersey, offices, where she concentrates her practice in family law. She represents clients in divorce and separation proceedings, child custody and support, alimony, marital settlement agreements, domestic partnerships, prenuptial and postnuptial agreements, domestic violence cases, the valuation and distribution of marital assets, and post-judgment enforcement and modification applications.

Admitted to practice in New Jersey and New York, Ms. Oliveira is a member of the New Jersey State Bar Association Family Law Section and Young Lawyers Division, as well as the Hispanic Bar Association of New Jersey, the National Hispanic Bar Association and the Dominican Bar Association. A member of the Hague Convention Attorney Network, she sits on the Board of Directors of the New Jersey Women Lawyers Association and is Co-Chair of the Association's Diversity Committee.

A member of the Barry Croland American Inn of Court, Ms. Oliveira has lectured for the National Hispanic Bar Association. She is the co-author of "10 Tips for Your First Family Law Trial" (*New Jersey Family Lawyer Magazine*, December 2023).

Ms. Oliveira received her B.A. from Montclair State University and her J.D. from Seton Hall University School of Law, where she was a student attorney at the Seton Hall Law Center for Social Justice in the immigrants' Rights/International Human Rights Clinic. She was Law Clerk to the Honorable Stacey D. Adams, Superior Court of New Jersey, Family Division, Monmouth County.

John P. Paone, Jr. is a Diplomate of the American College of Family Trial Lawyers and a Fellow of the American Academy of Matrimonial Lawyers (AAML) with 40 years of experience in the practice of family law. He is the Senior Partner of Paone, Zaleski & Murphy with offices in Woodbridge and Red Bank, where he limits his practice to high asset, high net worth and complex divorce, family law and custody matters. He is an AAML approved arbitrator.

Mr. Paone is a past Chair of the New Jersey State Bar Association (NJSBA) Family Law Section, a past President of the AAML New Jersey Chapter, and a past President of the Middlesex County Bar Association. He has been appointed by the Supreme Court of New Jersey to several committees relating to the practice of divorce and family law. He has served as Chair of the Supreme Court Board on Attorney Certification and as a member of the Board on Continuing Legal Education. The NJSBA appointed Mr. Paone Chair of the *Ad Hoc* Committee on Continuing Legal Education. He is a past member of the NJSBA Judicial and Prosecutorial Appointments Committee which evaluates every candidate for judicial appointment or reappointment to the Supreme Court, the Superior Court, and as county prosecutor. He served as 2018-2019 Co-Chair of the Monmouth Bar Association Family Law Committee and serves as a member of that Committee.

The 1996 recipient of the NJSBA Distinguished Legislative Service Award and the 2010

recipient of the ICLE Distinguished Service Award, Mr. Paone was in the first class of attorneys to be Certified by the Supreme Court as a "Matrimonial Law Attorney." An Editor *Emeritus* of the *New Jersey Family Lawyer*, he is a frequent writer and lecturer on family law issues and has made television appearances on *Court TV* and other programs. In 2002 the NJSBA Family Law Section awarded Mr. Paone its Tischler Award for his contributions to family law practice and the legal profession, and in 2023 he received the David Pavlovsky Award for his service to the bar. He has also served as a Master of the Aldona E. Appleton Family Law American Inn of Court.

Mr. Paone received his B.A., with honors, from Rutgers College and his J.D., *magna cum laude,* from the American University Washington College of Law, where he was Articles Editor of the *Law Review*.

Marcy A. Pasternak, Ph.D. is a clinical and forensic psychologist with a practice in Watchung, New Jersey. While her practice serves individuals of all ages in both the clinical and forensic arena, Dr. Pasternak's special interests include marital and family therapy, divorce therapy, forensic evaluations concerning custody and parenting time, removal, grandparent visitation, risk assessment and personal injury. She often serves as a parenting coordinator and is a certified divorce mediator, conducting both divorce mediation and therapeutic mediation. She conducts Intensive Family Interventions through "Building Family Resilience," an outgrowth of her practice.

A licensed psychologist in New Jersey, New York and Vermont, Dr. Pasternak has been a member of the American, New Jersey and Somerset Hunterdon Psychological Associations, and has an APA Certificate of Proficiency in the Treatment of Alcohol or Other Psychoactive Substance Use Disorders and an NCC AP Master Addiction Counselor Credential. She has been a member of the New Jersey Psychological Association's Forensic Committee and is Past President of the New Jersey Chapter of the Association of Family and Conciliation Courts (NJ-AFCC).

Dr. Pasternak has served as a psychological expert in eleven New Jersey counties and as an adjunct staff member at Muhlenberg Regional Medical Center, and has been a Clinical Assistant Professor of Psychiatry at New Jersey Medical School, UMDNJ. She has given workshops and presentations to the mental health and legal communities.

Dr. Pasternak received her B.A., *magna cum laude*, from the State University of New York at Buffalo, where she was elected to *Phi Beta Kappa.* She received her Ph.D. in Clinical Psychology from Duke University.

David E. Politziner, CPA, ABV, CFF is a Partner in the Financial Advisory Services Group of EisnerAmper LLP in the firm's Iselin, New Jersey, office. With more than 35 years of experience serving as a technical resource in litigation actions, he provides expert advice and testimony for plaintiffs and defendants in areas including business valuations, damage assessments, lost profit calculations, matrimonial matters, shareholder disputes, malpractice matters and the sale or purchase of businesses. He has also been appointed by judges in several counties to act as an expert witness in these matters and to issue reports for the court on these cases.

A Certified Public Accountant in New Jersey and New York, Mr. Politziner is Accredited in Business Valuation and Certified in Financial Forensics by the American Institute of Certified Public Accountants (AICPA). He is a member of the AICPA and the New Jersey and New York

State Societies of Certified Public Accountants, Past President of the Hunterdon/Warren Chapter of the NJSCPA and a Charter Member of the American Academy of Matrimonial Lawyers Foundation's Forensic & Business Valuation Division. He is a frequent presenter for ICLE and other professional and civic organizations, and is often quoted by local newspapers and business publications.

Mr. Politziner received his B.A. from Rutgers University and his M.B.A. from the University of Michigan.

Honorable Gary Potters, JSC is a Superior Court Judge, Hudson County, and sits in Jersey City, New Jersey.

Judge Potters is a member and former Trustee of the New Jersey State and Essex County Bar Associations as well as a member of the Hudson County Bar Association. He served on several committees of the New Jersey State Bar Association and was a Grader for the New Jersey Bar Examination for six years. Prior to his appointment he was a Partner in Potters & Della Pietra LLP.

Judge Potters received his undergraduate degree from George Washington University and his law degree from the University of Bridgeport School of Law.

Caroline Record is a Partner in Greenbaum Rowe Smith & Davis LLP in the firm's Roseland, New Jersey, office. A member of the Community Association Group and Real Estate Department, she concentrates her practice in community association law and residential real estate. Her practice also includes estate planning and administration, special needs trusts, guardianship applications, foreclosure and other real estate-related work.

Admitted to practice in New Jersey, New York and the District of Columbia, Ms. Record is a past President of the Board of Trustees of the New Jersey chapter of the Community Associations Institute (CAI) and a former Trustee and Past Chair of its Editorial and Legislative Action Committees. She is Past Chair of the Common Interest Ownership Committee of the New Jersey State Bar Association, a former member of the Board of Consultors of the NJSBA Real Property, Trusts and Estates Section, and Past President of the New Jersey Community Association Political Action Committee. Ms. Record was elected to the Board of Directors of the Foundation for Community Association Research, is Past President of the Foundation and served on CAI's Business Partner's Council from 2009-2012. She was an investigator for the District X Ethics Committee from 1999 to 2003 and has served as Secretary of the District XA and XB Ethics Committees since 2006. She also teaches the M204 class in Community Governance for CAI.

Ms. Record received her undergraduate degree, with highest honors from the Political Science Department, from Rutgers College, and her law degree from Seton Hall University School of Law.

Steven M. Resnick, Resnick Law Firm, LLC in Short Hills, New Jersey, handles family law and matrimonial litigation matters including divorce, business valuations, high-net-worth matters, real estate issues, appellate division services, domestic violence, custody and visitation issues.

A former partner in Budd Larner, Mr. Resnick is a member of the Family Law Sections of the American and New Jersey State Bar Associations and has been a volunteer attorney at the Jersey Battered Women's Shelter, Inc. He is a former member of the District VB Ethics Committee and a former Adjunct Professor at Montclair State University.

Mr. Resnick received his B.A., *magna cum laude*, from Montclair State University and his J.D. from Rutgers University School of Law, where he was Managing Research Editor of the *Rutgers Computer and Tech Law Journal*. He interned with the Honorable Ralph Deluccia and the Honorable Catherine Langlois, both of the New Jersey Superior Court, Family Part; and was Law Clerk to the Honorable Jo-Anne B. Spatola, New Jersey Superior Court, Family Part.

Honorable Jodi L. Rosenberg, JSC is a Superior Court Judge, Family Division, Essex County, and sits in Newark, New Jersey. Prior to her appointment, she practiced in Millburn, New Jersey, where she litigated, mediated and arbitrated a broad range of disputes including commercial, matrimonial, custody, employment and municipal matters.

Judge Rosenberg has served as Secretary of the Supreme Court of New Jersey District V-A Fee Arbitration Committee, is Past Chair of the District V-B Fee Arbitration Committee and formerly served on the Supreme Court of New Jersey Committee on Jury Selection in Civil and Criminal Trials. She has been a member of the Board of Trustees of the New Jersey State Bar Association and Past Chair of the Association's Women in the Profession Section. She is also Past Co-Chair of the Solo and Small Firm Section of both the Essex County Bar Association and the New Jersey Women Lawyers Association.

Judge Rosenberg has lectured for the New Jersey State Bar Association on work-life balance. She is a contributing author to the ABA publications *The Road to Independence: A Woman's Guide to Forming Her Own Law Firm* and *Her Story: Lessons in Success from Lawyers Who Live It*.

Judge Rosenberg received her B.A., *magna cum laude*, from the University of Michigan and her J.D. from Boston University School of Law.

Jeanette Russell is a Partner in Greenbaum Rowe Smith & Davis LLP in the firm's Red Bank, New Jersey, office, where she focuses her practice in family law. She represents clients in divorce and separation proceedings, domestic partnership disputes, prenuptial and postnuptial agreements, custody, parenting time and relocation, child support, spousal support, domestic violence, complex asset valuation and the distribution of property and other marital assets. She litigates, mediates and arbitrates family law matters and has been appointed guardian *ad litem* by the New Jersey Superior Court.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey, Ms. Russell has served on the Executive Committee of the New Jersey State Bar Association Family Law Section. She is a member of the Monmouth Bar Association, the Ocean County Bar Association and the Hispanic Bar Association of New Jersey, and is an Ocean County Early Settlement Panelist. She is the recipient of several honors.

Ms. Russell received her B.A. from Manhattanville College and her J.D., *summa cum laude*, from Pace University School of Law, where she was a member of the *Pace Law Review*. She

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Brian M. Schwartz is a Partner in Szaferman, Lakind, Blumstein & Blader, P.C. in Summit, New Jersey, and has been involved in the practice of family law for more than 20 years. He assists his clients through the difficulties of divorce, custody, alimony and equitable distribution.

Mr. Schwartz is Past Chair of the New Jersey State Bar Association's Family Law Section and has been a member of the Section's Executive Committee since 2002. A former Executive Editor of the *New Jersey Family Lawyer*, he has lectured for ICLE's *Skills and Methods* course in family law multiple times, moderated the 2014 Family Law Symposium, lectured at the Symposium several times, and was the Co-Moderator for the ATLA/NJAJ Boardwalk Seminar in 2010-2012. Mr. Schwartz has been a faculty member at the AICPA Expert Witness Skills Workshop several times; has lectured for ICLE, NJAJ/ATLA, the New Jersey State Bar Association, the New Jersey Society of Certified Public Accountants and local bar associations; and has authored numerous articles on family law which have appeared in the *New Jersey Family Lawyer*, *Sidebar* and publications of ICLE and NJAJ/ATLA. Several of his articles have been cited by courts and attorneys for authority, including "Deviation from the Child Support Guidelines: A Pipe Dream or Reality" (*New Jersey Family Lawyer*), which was cited in the published opinion *Fichter v. Fichter*. A former Barrister and group leader for the Barry I. Croland American Inn of Court, he was the 2017 recipient of the Saul Tischler Award from the New Jersey State Bar Association for Lifetime Achievement in the advancement of Family Law as well as several other honors.

Mr. Schwartz received his B.A. from George Washington University and his J.D. from the University of Pittsburgh School of Law.

Sheryl J. Seiden is the founding Partner of Seiden Family Law, LLC in Cranford, New Jersey. She is a seasoned matrimonial lawyer, having practiced family law exclusively since January 2000. Prior to forming Seiden Family Law, Ms. Seiden was a Partner at a boutique law firm in Summit, where she practiced family law for thirteen years.

Admitted to practice in New Jersey and New York, Ms. Seiden is Past Chair of the Family Law Section Executive Committee ("FLEC") of the New Jersey State Bar Association and a Trustee of the Association. She is a past Co-Chair of the Legislative and Young Lawyer Family Law Subcommittees for FLEC and has been a member of FLEC since 2008. An officer and Fellow of the American Academy of Matrimonial Lawyers–New Jersey Chapter ("AAML-NJ"), Ms. Seiden has served on the Board of Managers for several years and was sworn in as the President of AAML-NJ in June 2024. She is also a Fellow of the International Academy of Family Lawyers, a member of the Union and Essex County Bar Associations and has volunteered for Partners for Women and Justice. In November 2014 Ms. Seiden argued as *amicus curiae* for AAML in *Gnall v Gnall* before the Supreme Court of New Jersey. She has been an Early Settlement Panelist for the Superior Court of New Jersey, Chancery Division, Family Part, Union County, and has been asked to serve as a blue-ribbon panelist on several occasions by the Early Settlement Panel for the Superior Court of New Jersey, Chancery Division, Family Part, Essex County.

Ms. Seiden has lectured on family law issues for ICLE and the Union County Bar Association, and is the co-author of *Marriage, Divorce and Dissolution* (Gann Publishing, 2019, now in its 3rd

Edition). She has moderated and participated in a seminar on domestic violence as part of the Power Act Seminar presented to the United States District Court for the District of New Jersey for the past five years. She is the recipient of several honors.

Ms. Seiden received her B.A., *cum laude*, from American University and is a *magna cum laude* graduate of New York Law School, where she served as the Managing Editor of the *New York Law School Law Review*.

Jenna N. Shapiro practices with Szaferman Lakind Blumstein & Blader, P.C. in Lawrenceville, New Jersey, where she concentrates her practice in family law issues including child support, alimony, equitable distribution, valuation of assets and businesses, custody, parenting time and domestic violence matters. Experienced in all aspects of matrimonial law, from inception through trial and post-judgment litigation, she is also certified as a trained mediator, enabling her to engage productively with opposing counsel to negotiate advantageous settlements for her clients.

Ms. Shapiro is admitted to practice in New Jersey and before the United States District Court for the District of New Jersey and the United States Supreme Court. She has been a member of the Family Law Executive Committee for the New Jersey State and Monmouth Bar Associations as well as a member of the Assignment Judge's Family Committee of the Middlesex County Bar Association.

Ms. Shapiro received her B.A. from George Washington University and her J.D. from the Catholic University of America, Columbus School of Law.

Barry S. Sobel is an associate with Greenbaum Rowe Smith & Davis LLP in Roseland, New Jersey, where he concentrates his practice in family law and civil litigation. His experience includes complex commercial litigation, business and shareholder disputes, employment law issues and general equity matters.

Mr. Sobel is admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey. He has been a member of the New Jersey State Bar Association Family Law Section and the Technology Subcommittee of the Young Lawyers Section. A member of the Barry Croland Family Law American Inn of Court, he has lectured for ICLE and is the recipient of several honors.

Mr. Sobel received his B.A. from the University of Maryland and his J.D., *cum laude*, from New York Law School, where he was Senior Staff Editor of the *New York Law School Law Review*. He was a judicial intern to the Honorable Frank M. Ciuffani, New Jersey Superior Court, Middlesex County, Chancery Division; and the Honorable Freda L. Wolfson, United States District Court for the District of New Jersey.

Mark H. Sobel, Certified as a Matrimonial Law Attorney by the Supreme Court of New Jersey, is Co-Managing Partner of Greenbaum, Rowe, Smith & Davis LLP in Short Hills, New Jersey, where he is also Chair of the Family Law Practice Group. He concentrates his practice in litigation, primarily in family law matters.

Mr. Sobel is Past Chair of the Executive Committee of the New Jersey State Bar Association Family Law Section and has served as Chair of the Alimony and Child Support Sub-Committee. He has been a member of the New Jersey Supreme Court Committee on General Practices and Procedures and the Supreme Court's Special Committee to Revise Matrimonial Law. He was also a member of the Essex County Bar Association Judicial Appointments Committee and for two years ran the Early Settlement Program for mediation of Family Court matters in Essex County.

Mr. Sobel is Editor in Chief *Emeritus* of the *New Jersey Family Lawyer* and has lectured on legal topics for ICLE and the New Jersey State Bar Association and its annual convention. He is the author of several articles on family law topics and in 2009 received the Tischler Award from the New Jersey State Bar Association Family Law Section.

Mr. Sobel received his B.A., with distinction, from George Washington University, where he was elected to *Phi Beta Kappa*, *Phi Sigma Alpha* and *Phi Eta Sigma*. He received his law degree from the University of Pennsylvania, where he was a member of the Moot Court Board.

Honorable Andrea J. Sullivan, JSC, appointed to the bench by Governor Murphy, sits in Family Part, Middlesex County, in New Brunswick, New Jersey. She was formerly a Partner in the Litigation and Family Law Departments of Greenbaum, Rowe, Smith & Davis LLP, where her practice included commercial litigation, estate litigation, matrimonial litigation, chancery litigation and alternative dispute resolution; and she also represented professionals in actions from professional malfeasance to claims of fraud, and in cases of alleged professional malpractice.

A Fellow of the Litigation Counsel of American, Judge Sullivan is Past President of the Middlesex County Bar Association and has been Chair of the Women Lawyers Section and several of the Association's committees. She was a member of the Board of Trustees of the New Jersey State Bar Association, a former Trustee of the Women in the Profession Section and a former member and Vice Chair of the Equity Jurisprudence Committee. Past President of the Middlesex County Bar Foundation, Judge Sullivan has been Chair of the Foundation's Finance Committee and a member of the Scholarship Committee, and has served on the New Jersey Supreme Court Committee on Mandatory Continuing Legal Education. She has also been a member of Executive Women of New Jersey, served on the Supreme Court Committee on the Rules of Evidence and is Past President of Central Jersey Legal Services.

Judge Sullivan has lectured for ICLE and the New Jersey State and Middlesex County Bar Associations, and authored *New Jersey Business Litigation* (New Jersey Law Journal Books, 2012-2022 Editions) and *Guidebook to Chancery Practice in New Jersey* (ICLE, 10th Edition, 2018). She is the recipient of the 2010 Robert J. Cirafasi Chancery Practice Award bestowed by the Middlesex County Bar Association as well as several other honors.

Judge Sullivan received her A.B., *cum laude*, from Mount Holyoke College and her J.D., *magna cum laude*, from Rutgers University School of Law-Newark, where she was a member of the Order of the Coif and the recipient of an Alumni Senior Prize. She was Law Clerk to the Honorable Eriminie Lane Conley, Chancery Division, General Equity Part, Superior Court of New Jersey.

Stacey M. Valentine is a Partner in Avelino Law, LLP with offices in Summit, New Jersey, and New York City, and co-leads the Trusts and Estates Practice Group. With a practice

encompassing all aspects of trusts and estates law, she handles income, estate, inheritance, gift, and generation-skipping transfer tax issues, and helps clients maximize the benefits of charitable giving. Ms. Valentine assists estate and trust beneficiaries and fiduciaries in enforcing their rights and adhering to their obligations in the event of a dispute, and serves as legal counsel to numerous financial institutions and corporate trustees, assisting those entities in the implementation of their fiduciary duty while addressing the risks inherent to the role of executor or trustee. She also advises clients in general corporate matters arising in closely-held family businesses and has experience working with individuals with special needs.

Ms. Valentine is admitted to practice in New Jersey and New York. She is a member of the New Jersey State, New York State and Morris County Bar Associations, and the Board of the Estate Planning Council of Northern New Jersey. She has also sat on the Board of the Women's Association for the Morristown Medical Center and the Young Professionals Board of Eva's Village.

Ms. Valentine received her B.A., *magna cum laude*, from Colgate University and her J.D., *cum laude*, from Washington & Lee University School of Law.

Richard H. Weiner is the Managing Shareholder of Aronsohn Weiner Salerno & Kaufman, P.C. in Hackensack, New Jersey, and has been practicing law for more than 39 years, with a focus in matrimonial and family law. He handles complex family law matters involving professionals, business owners and their spouses, with a particular expertise in the financial service industry, and has also been involved in complex business and estate litigation matters. He has been appointed as a mediator and arbitrator by Superior Court Judges and other prominent matrimonial attorneys, and as Guardian *Ad Litem* and Discovery Master in high-conflict matters related to children.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey and the Third Circuit Court of Appeals, Mr. Weiner is Past President of the Bergen County Bar Association and was the representative from Bergen County to the State of New Jersey Judicial and Prosecutorial Appointments Committee of the New Jersey State Bar Association from 2008-2014. He is also Past Chair of the Bergen County Bench Bar and Ethics Committees.

A frequent lecturer for CLE programs, Mr. Weiner has provided commentary to publications including the *Bergen Record,* the *Newark Star Ledger* and the *New Jersey Law Journal*. He was named the 2016 Professional Lawyer of the Year by the Bergen County Bar Association and is the recipient of several other honors.

Mr. Weiner received his B.A. from the University of Maryland and his J.D. from Hofstra University. He clerked for the Honorable Edward J. Van Tassel, Superior Court, Bergen County.

Evan R. Weinstein is Managing Partner of Weinstein Family Law, P.C. in Short Hills, New Jersey, and concentrates his practice in family law, particularly divorce, equitable distribution, alimony, spousal support, martial property settlement agreements, cohabitation agreements, premarital agreements, child custody and parenting time disputes, domestic violence and other related matters.

Admitted to practice in New Jersey and New York, Mr. Weinstein is a member of the Essex County Bar Association and the Family Law Section of the New Jersey State Bar Association. He has co-authored several articles on family law topics which have appeared in state and national publications.

Mr. Weinstein received his B.A. from Syracuse University and his J.D. from the Benjamin N. Cardozo School of Law.

Honorable Marcella Matos Wilson, JSC was appointed to the Superior Court in 2014, is assigned to the Family Division, Essex County, and sits in Newark, New Jersey. She serves as the Lead Judge for the FM Unit in Essex County. Prior to being appointed to the bench, she was a solo practitioner for 20 years and concentrated her practice in family law.

Co-Chair of the Supreme Court Child Support Subcommittee, Judge Wilson serves on the Supreme Court Family Practice Committee and Presiding Judges FD-FM Committee. Prior to being appointed to the bench, she was a member of the Essex County Family Law Executive Committee, a volunteer for the Early Settlement Panel and was a court approved Mediator. She was the recipient of the Essex County Prosecutor's Award for her outstanding contributions to crime victims and their families.

Judge Wilson received her B.S. from Caldwell University and her J.D. from Seton Hall University School of Law. She clerked for the Honorable John J. Dois and the Honorable Joseph A. Falcone.

Amanda M. Yu is a Partner in Drisgula Divorce and Family Law in Wayne, New Jersey, where she concentrates her practice exclusively in family and matrimonial law. In addition to litigation she offers mediation, guardian *ad litem*, parenting coordination and parenting time supervision services.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey, Ms. Yu is a member of the Family Law Section and Young Lawyer's Division of the New Jersey State Bar Association. She serves on the Family Law Executive Committee and has been a member of the Family Law, Lawyer Referral/*Pro Bono* and Dinner Meetings Committees of the Bergen County Bar Association. Ms. Yu has been accepted into the American Academy of Matrimonial Lawyers – New Jersey Mentorship Program and has served as Co-Chair of the Recent Graduate Committee and as an Officer of the New Attorneys Division Subcommittee of the Fordham Law Alumni Attorneys of Color. She is the recipient of several honors.

Ms. Yu received her B.A. from Rutgers University and her J.D. from Fordham University School of Law. She clerked for the Honorable Linda E. Mallozzi, J.S.C., Superior Court of New Jersey, Union County, Chancery Division, Family Part.

Honorable Thomas P. Zampino, PJFP (Ret.) is Of Counsel to Snyder Sarno D'Aniello Maceri & da Costa LLC with offices in Roseland, Bridgewater, Hackensack and Morristown, New Jersey, and limits his practice to the mediation and arbitration of matrimonial cases by referral or appointment by the court. He served as a Judge of the Superior Court, Family Part, for more

than two decades, where he settled or decided thousands of divorce cases, and for a time also served as Presiding Judge of the Family Court.

Admitted to practice in New Jersey and New York, and before the United States Supreme Court, Judge Zampino is a Trustee of the National Council of Juvenile and Family Court Judges and has co-chaired the Council's Permanency Planning for Children Committee. As an attorney, he is Past Chair of the New Jersey State Bar Association Family Law Section and the New Jersey Child Support Commission, as well as a member of the New Jersey Supreme Court Family Practice Committee. A member of the American Academy of Matrimonial Lawyers (AAML), he has lectured for ICLE and the National Council of Juvenile and Family Court Judges, and is the author of articles which have appeared in *New Jersey Lawyer* and *New Jersey Family Lawyer*.

Judge Zampino is a graduate of St. Peter's College and Seton Hall University School of Law.

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Effective Cross-Examination and Use of Evidence Rules in Family Law Cases

By Matheu D. Nunn and Robert A. Epstein

Cross-examination can be described as both an art *and* a science. It is typically the part of a litigated matter that advocates enjoy the most—perhaps the closest thing we as lawyers get to the "*You can't handle the truth*"[1] moments we see on television or in the movies. The excitement. The thrills. Perhaps even a "smoking gun"-type answer where you walk back to counsel table trying to hide your smile and sense of fulfillment. Ultimately, how are we as family law practitioners expected to get to the truth of a matter and persuade a trial court judge in our client's favor without this very fundamental trial skill? The last time we checked, each litigant always enters a courtroom with their own version of the truth. Developing and arriving at the version you need a judge to find in a trial decision is, as a result, a product of strategy, preparation, and performance.

Indeed, it is very difficult to conduct a great, *case-defining* cross-examination of a witness. It is far easier and within our reasonable grasp as lawyers to conduct a very good, *effective* cross-examination—it merely requires knowledge and preparation. Preparation in this context, however, requires an understanding of the *Rules of Evidence*; an encyclopedic knowledge of the "file;" and at least a modicum of knowledge about psychology. Although attorneys should know every *Rule of Evidence*, the purpose of this article is to highlight key evidence rules for use at trial, as well as helpful cross-examination tips.

I. Creating a Theme and Using Discovery as the Building Block of an Effective Cross-Examination

Before we get to the *Rules of Evidence*, it is important that we discuss fundamental cross-examination principles. Indeed, without those principles, the *Rules of Evidence* are nothing more than a chronological series of rules that may help you *admit* certain evidence at trial if you know how to properly apply them. This is, of course, only half the battle (and not the "fun" half).

As Francis L. Wellman opined in *The Art of Cross-Examination*, "There is no short cut, no royal road to proficiency, in the art of advocacy. It is experience, and one might almost say experience alone, that brings success . . . Success in the art, as someone has said, comes more often to the happy possessor of a genius for it."[2] The authors of this article learned and developed their cross-examination skills by observing others (the "what to do and not do" approach), reading trial and cross-examination literature, creating their own voice and style to their examinations, knowing the law, knowing the case, and more. Every lawyer who performs a cross-examination has their own style. Every lawyer walks out of a cross-examination thinking it went well in some respects and could have been better in others. We are lawyers after all, and a mix of confidence and second-guessing is in our DNA. Where, ultimately, do the building blocks of an effective cross-examination begin? The simple answer: long before the cross-examination ever occurs.

i. Developing a Theme and Determining a Desired Outcome for Your Case and for Each Witness

From the outset of your case, think about what you are trying to prove and what result you want from the trial judge. By way of examples:

- How do I prove that my client should be awarded primary physical custody?
- How do I persuade the judge that my client should receive a certain amount of alimony for a specified length of time?
- What information do I need to procure my client's desired equitable distribution of the subject business in dispute?

In a similar vein, all cases—including non-jury, Family Part cases—should have a "theme" (or a story you wish to tell) during cross-examination. You can break the themes down into sections or "chapters"[3] to assist the court. For example, you may have a section or "theme" during cross-examination about the other party's inability to co-parent. You may have a theme about the witness's poor decision-making vis-à-vis medical care. You should think about that theme from the consultation,

through summation, and develop each of your sections or "chapters" with those themes in mind.

Also think about what you are trying to procure from each adverse witness – are you trying to procure information from the witness to develop your factual narrative? Are you trying to discredit the witness? Are you cross-examining the witness with some other goal in mind? Each witness has its own purpose, whether testifying for your client or for the adverse party. Using adverse witnesses to develop your overall case theme and achieve your desired outcome is a critical component of case strategy that you should consider at all times during your matter.

With a desired outcome and narrative theme, the next step in developing your cross-examination is to procure discovery that will aid you in achieving your desired result.

ii. Discovery

Preparing an effective cross-examination actually starts with the discovery process. The goal of cross-examination is to elicit responses you want (i.e., the "right" answer) to, as indicated above, craft your client's narrative and persuade of its truth. Use discovery to build the foundations for the "right" answer you will seek to elicit on cross-examination. Obtain the information you need for your trial and closing summation—and use that information on cross-examination to get you *to that summation.*

Use of traditional and non-traditional discovery techniques will help you achieve your goal if you know how to properly procure and apply the information received from the opposing party. The techniques can be as general as issuing written discovery in the form of Interrogatories[4] and a Request for Documents,[5] or be as specific as ensuring you have the right forensic accountant to investigate your case and help determine/obtain the information necessary to craft your examination (and perhaps even aid in preparing that examination).

During a divorce most family law practitioners issue a similar form of traditional discovery requests, which include Interrogatories and a Request for Documents. There may be several types of interrogatories to address finances, custody and parenting time, employability, lifestyle, and more. The requests typically cast a very broad net to ensure no stone goes unturned. Some cases may merit the issuance of a Request for Admissions or the taking of a deposition to pinpoint an opposing litigant's point of view.

What if your case involves a business and the opposing party is the business owner where a valuation of the marital business interest is required for equitable distribution? Starting with discovery may be somewhat daunting because the information you may need to build your cross-examination could fall beyond what is covered by the more traditional Interrogatories and Request for Documents. Once you receive the information, you may also not be able to interpret the information like your expert can. Working with your forensic accountant to develop a list of tailored document and information requests, decipher the information received, prepare the valuation, understand the targeted points for inquiry, and, ultimately, working with the expert to prepare specific questions to ask the opposing party/opposing expert/other relevant third parties could make or break an outcome on issues involving the value of the marital interest in a business, an opposing party/business owner's cash flow and more. These steps can be both valuable during an information-gathering or cross-examination type deposition, or at a future cross-examination at trial.

Upon collecting the responses and (often inevitably) addressing deficiencies, it is then incumbent upon the attorney to use the information to start building that future cross-examination. In fact, it is better to start envisioning what the future examination may look like rather than waiting until the eve of trial to start formulating your approach. Moreover, you are not just using the information/documentation procured to build your cross-examination, but also to procure more information to support your theme. You are developing your set of facts and your examination roadmap one building block at a time.

II. Developing Your Cross-Examination Style to Tell Your Client's Story and Impeach Testimony and Discredit a Witness

i. Style *and* Substance

We all have our own examination style in litigation. We also all have our own examination skill sets. No one style or skill set can be used as a blanket in questioning a witness. Each examination depends, in part, on the witness, the theme, the discovery, the adversary, the judge and so much more. No one cross-examination, as a result, can mimic the next if it is done correctly.

You are not just merely confronting the witness. You are, more importantly, examining the witness. Too many practitioners relish only in the former and undervalue the latter. Cross-examination is not merely an opportunity

for you to impeach the witness's testimony and discredit the witness in the eyes of the jurist presiding over your case. In fact, the best cross-examiners use the "credibility" component of cross-examination as an ancillary (though important) benefit. Rather, cross-examination is the opportunity for you to *tell your client's story* through the words of an adverse party, expert or third-party witness. When you can achieve that end—and master it (which no one will ever do since we will all be "practicing" until we decide to step away) —there is nothing more powerful or persuasive in a trial. This relates to the next principle.

ii. Know Your Witness from the Inside/Out

Proper and effective cross-examination of a witness also requires you to know the witness to the extent possible since a large part of any cross-examination, or any examination for that matter, is psychology. Who is your witness? What is their personality? How will they react to a more tough-minded/confrontational approach compared to a friendlier approach? What is the person's backstory? What will resonate with the witness?

It may sound obvious, or even pointless, but pinpointing what resonates with your witness may (if not "should") aid you in getting to the testimony you want to hear. For instance, what are your witness's interests and hobbies – innocuous questions to comfort the witness may make them more willing to talk. A more serious approach may require you to know or understand a difficult time the witness had in their life. In some ways it is not entirely unlike the adverse witness lying on the therapy couch and you as the therapist knowing what opening you can use to get the patient to start talking.

As expected, most adverse witnesses already dislike the attorney conducting the cross-examination. There is immediate skepticism, frustration, perhaps even anger toward the opposing attorney. If the witness sees or hears that you as the cross-examiner understand them and perhaps can even relate on a human level, which, quite frankly, is not always easy as an attorney, you may more easily get the witness to say what you want said. The old "you catch more flies with honey" expression comes to mind. Of course, as discussed below, it is imperative that once you get the witness talking on cross that you know what the person is actually going to say – cross-examiners generally do not like surprises so framing your questions and how you get your witness to settle in also requires precision.

On the flip side, many adverse witnesses are like a block of ice that simply cannot be thawed with charm or a transparent attempt at bonding. In those cases, adjusting to the tenor of the witness from the outset and simply diving right into a sharp examination may be your only effective approach.

iii. What are Your Client's Goals with the Cross-Examination of an Adverse Party or Witness?

As difficult as it may be to comprehend on occasion, we also must consider what our client wants out of a particular cross-examination. What story do they want told? What facts do they want you to elicit to build on what was addressed during your direct examination? What tone do they want you to take? Will they only accept a tough-minded approach, or will they accept you attempting to coax answers from the witness by being more "friend than foe"? To that end, does your client even care if your examination results in the right story being told, or do they simply want you to hold the witness's feet to the fire? What makes the cross-examination a success or worthwhile in the client's eyes?

At the most basic level, for example, how we cross-examine a party witness as compared to a third-party or expert is vastly different. While the cross-examination of a party is far more expansive based on the entirety of facts and circumstances involved, the cross-examination of a third-party or witness is commonly a far more focused endeavor.

As a threshold matter, for example, a third-party witness customarily has a more limited knowledge of the case as compared to a party witness and is presented by opposing counsel with a specific focus in mind. A few examples include, but are not limited to: (i) a third-party parent of the opposing spouse may testify as to whether money provided to purchase the marital home was provided only to the opposing spouse or to both parties, and/or whether the money was a loan or gift; (ii) a third-party cohabitant testifying as to the nature of their relationship with the payee spouse; (iii) a third-party business partner of the opposing spouse testifying regarding details of the business subject to equitable distribution; and (iv) a third-party co-respondent testifying about monies spent on them by the opposing spouse in connection with a dissipation claim. When the authors of this article draft a third-party cross-examination, we use our more expansive knowledge of the case to devalue/discredit the witness's direct testimony. Cross-examination here may also be ripe to explore the witness's poten-

tial bias, especially if they are a family member, friend or significant other of the opposing party.

The authors of this article also find that cross-examining an expert not only requires a detailed knowledge of the entire case and the expert's area of claimed expertise, but also a knowledge and understanding of how to effectively question the expert and ideally discredit the subject report. For instance, many of us have read forensic accounting business valuations and cash flow reports, but how many of us really understand their contents and conclusions to the point that we know how to develop a cross-examination calling said contents, methodologies and conclusions into question. Doing so is not just about having your own expert (if you have one) develop for you your cross-examination, but being able to – while on your feet – address the expert's answers, adjust to answers that may differ from what you expect, and ultimately elicit testimony that will persuade the trial judge to favor your own expert's report over that of the opposing party.

iv. Credibility – Impeach the Testimony, Discredit the Witness

It is well-known that trial courts, especially in the Family Part, are owed substantial deference in their findings when supported by "adequate, substantial, credible evidence."[6] Deference is especially appropriate "when the evidence is largely testimonial and involves questions of credibility."[7] "Because a trial court hears the case, sees and observes the witnesses, [and] hears them testify, it has a better perspective than a reviewing court in evaluating the veracity of witnesses."[8]

There is no question that credibility is at the heart of almost every family law matter. Establishing and impeaching credibility, as a result, is a critical component of any litigation, especially in this practice where so much of what we do is dependent on "he said/she said" allegations. There are five generally acceptable modes of attack upon the credibility of witness: prior inconsistent statements; partiality (or bias); defective character, subject to N.J.R.E. 608; defective capacity of witness to observe, remember, or recount matters; and proof by others that material facts are otherwise than as testified to by witness under attack.[9] There is perhaps no better example of how the impeachment of testimony and discrediting of a witness can result in success than during hearing for a Final Restraining Order where the practitioner has minimal access to the traditional discovery tools referenced above.

If you have studied trial practice or attended any CLE courses regarding cross-examination, you know that most attorneys agree: "*do not ask a question on cross-examination to which you do not know the answer.*" While that is true 99% of the time, we would add: "do not ask a question on cross-examination to which you do not know the answer(s)." Meaning, you may face a difficult witness who could theoretically provide one of two different answers based on the evidence in the case (and either answer is helpful for you). You should know how to deal with *both* answers—and have impeachment[10] material prepared and ready regardless of which path the witness takes.

To that end, Wellman sagely comments about how we as litigators should not only be prepared with how to address *both* answers, but also how to physically react when the answer is not necessarily as we anticipated:

> A good advocate should be a good actor. The most cautious cross-examiner will often elicit a damaging answer. Now is the time for the greatest self-control. If you show by your face how the answer hurt, you may lose your case on that one point alone . . . With the really experienced trial lawyer, such answers, instead of appearing to surprise or disconcert him, will seem to come as a matter of course, and will fall perfectly flat. He will proceed with the next question as if nothing had happened, or even perhaps give the witness an incredulous smile, as if to say, "Who do you suppose would believe that for a minute?"[11]

On a related point, do not ask a question on cross-examination for which you do not have impeachment material. As noted above, while we want the adverse witness to tell your client's story, we also want answers that we know are coming, perhaps only in "yes" or "no" form as needed, and not a narrative that allows the witness to escape or do an end-run around what our ultimate goal is in both cross-examining the witness and in the case as a whole. Moreover, consider the value of your intended line of questions designed to impeach. In other words, what answer are you trying to discredit? Is there real value in doing so, what issue does it help you prove, is it just designed to make the witness look bad and, by focusing on such impeachment is the trial judge going to side with your desired view of the opposing witness? You want to elicit your desired response. You want to effectuate your desired impeachment. Most importantly, you want to persuade the trial judge of in support of your theme.

v. Effective Cross-Examination Techniques and Examples

a. Showing a Witness Their Own Words.

You are probably not one of the 1% (or less) of individuals with eidetic memories. Accordingly, you should prepare an outline — one that corresponds with your developed themes. Your outline should have the locations, in the record, of deposition testimony you may use to impeach an "incorrect" answer.[12] After all, it is during the deposition when you often asked more open-ended questions now opening the door to the very impeachment you seek to effectuate. And by this we mean: exhibit numbers, as well as page and line numbers, which you will provide to the court, the court reporter, and the witness. This same principle applies to Certifications you may use, emails, and any other material you may use to impeach. Rest assured, if you confront witnesses three or four times with conflicting testimony from a transcript (or Certification) inclusive of the page, line, and place in the record — before the witnesses even have a moment to catch their breath — you may break their will very early on in the cross-examination.

Consider the famous philosophical saying, "*Tell me and I will forget; show me and I may remember; involve me and I will understand.*"[13] If you confront a witness with "didn't you say . . .[,]" the witness may very well say "I don't know." This may be a proverbial "death knell" for an entire line of questioning. If you show witnesses their words, they are more likely to remember. But if you convince the witnesses that you are working with them, you will have them testifying on your behalf in no time. Take this real-world excerpt from a cross-examination by one of the authors (Nunn) regarding PTSD, disability, collateral information, and forensic guidelines, all of which stemmed from a payor's attempt to avoid alimony:

- He told you that his accountant made an error that caused him to take a lot of money out of savings to give to the IRS? [*Yes.*]
- And you've opined that financial stress is a contributing factor to his disability; correct? [*Contributing factor, yes.*]
- Did you speak to his accountant? [*Nope.*]
- Did you speak to anyone from the IRS? [*No.*]
- Did you review any records that would corroborate that statement about the accountant making a mistake? [*I did not.*]
- **Because they weren't provided to you; correct?** [*Correct.*]
- He's worried about his financial situation? [*Correct.*]
- Worried about losing his home? [*Correct.*]
- Over the course of your four reports, you did not review a single financial record of Mr. _____? [*Correct.*]
- **Because none were provided to you; correct?** [*Correct.*]

. . . .

- Where in your report do you have any details about the traumatic events he allegedly suffered? [*He asked me not to put it in, but I will state – say that he was abused at summer camp.*]
- According to him? [*According to him.*]
- He's the ***lone source*** of that information? [*Absolutely.*]
- You reviewed his therapists' notes? [*Yes.*]
- Nothing about this abuse in those notes? [*Correct.*]

. . . .

- You're familiar with the "Specialty Guidelines for Forensic Psychology"? [*I am.*]
- Do you believe you followed them? [*I believe that I asked for the records that were available. I believe that, you know, I had sufficient sources of information on which to base my opinion. So, yes.*]
- Look at guideline 8.03 on Page 14. [*Ok.*]
- You believe you complied with this guideline? [*I would have liked to have seen the relevant discovery. That's the one part that I wish I had seen.*][14]
- Can you also turn to guideline 9.02? [*Yep.*]
- Would you agree with me that that guideline is titled "Use of Multiple Sources of Information"? [*Yes.*]
- It reads: "Forensic practitioners ordinarily avoid relying solely on one source of data and corroborate important data whenever feasible," and then there are citations; correct? [*And I would argue that I utilized batteries of psychological and neuropsychological tests in order to meet that standard.*]
- And Mr. _____is the one who took the tests? [*Correct.*]
  And gave you the information in the interviews. [*Yes.*]
- And you didn't speak to anyone else? [*Correct.*]
- **And so your opinion was limited by what was provided to you?** [*Yes.*]

Through this examination the witness believed the examiner was "helping" him or giving him a "way out." In other words, the examiner "involved" the witness in the examination as opposed to just impeaching him with documents. The consistent theme of the examination was

to lay blame at the feet of the litigant who was less than candid with his expert.

b. Primacy and Recency.

Next, remember the principles of primacy and recency (or "start strong" and "end strong"). These principles are based on, respectively, the well-accepted notion that factfinders, even judges, will believe the credible or impactful testimony they hear first and remember that which they hear last. You can use this to your advantage in the "middle" of your cross-examination to throw the witness off the "scent" of your overall theme. It is essential in planning cross-examination to ensure a strong opening and stronger finish (hopefully, with your best point or points). Take this real-world excerpt from a cross-examination by one of the authors (Nunn) in which the expert's report included a recommendation that the child (age 3 at the time of trial), who had been living *pendente lite* with both parents, should be in the mother's primary custody because it was important to form the primary attachment with his mother through ***age 4***:

- Now, the third phase of the formation of attachments is referred to as the attachment phase? [*Yes.*]
- This occurs between seven months and two years? [*Yes.*]
- And the final phase is referred to as the Goal Corrected Partnership Phase? [*All right.*]
- **And this from the ages of 2 to 4?15 [*All right. Correct.*]**
- We then moved on, for approximately an hour-and-a-half, to other subjects. When the witness appeared tired, I circled back:
- You cited to an article from Lamb and Kelly? [*Kelly and Lamb, yes.*]
- Now can you go to page 44 of your report? [*Yes.*]
- I asked you earlier about the final attachment phase, correct? [*You did.*]
- And you agreed with me that this occurs between . . . [*Two and four.*]
- Two and four? [*Mm-hmm.*]

The witness was then confronted with the first page of the (updated) article from Kelly and Lamb.

- Would you agree this is the article that you are referring to in the referenced at Page 44 of your report? [*Yes.*]
- Turn to page 4. What are the last words at the bottom of page? [*Goal Corrected Partnerships.*]
- Can you turn the page? Can you read the first sentence? ["*Finally, the Goal of Corrected Partnerships phase occurs between 24 and 36 months of age.*"]
- **Not 48 months of age, correct? [*Thirty-six months, correct.*]**
- **So, you mis-cited this article, correct? [*I did.*]**
- So, we've already established that _____is attached to both parents, correct? [*Yes.*]
- He's thriving? [*That's my opinion, yes.*]
- Spending equal time with the parents? [*Hour-wise, yes.*]
- And in both your report and your testimony today, you misrepresented, the final phase is from 24 months to 4 years, correct? [*I am I stand corrected, correct.*]
- **You believe Ms. _____ is the Primary attachment figure, correct? [*No.*]**
- **No? [*She said she was. I didn't say she was.*]**

As you can see, the expert, who previously identified the mother as the primary attachment figure in his report, changed his opinion on the stand. The examiner did not further impeach the witness with the report—the damage was done, which leads to another tip: *do not ask one question too many.*[16]

c. Visual Aids

Another useful approach is to use visual aids when appropriate. This may not only provide a level of comfort for the opposing witness, but also simplify matters for a trial judge who is attempting to make sense of it all. The authors of this article find the use of visual aids to be of particular potential value when examining an expert witness. In the below example taken from the testimony of an opposing custody expert, one author (Epstein) challenged the expert's ultimate conclusions, especially as to the recommended parenting time schedule, by presenting the expert with a blank piece of paper and marker and asking her to draw a calendar of her recommended schedule. At the conclusion of this line of questioning – which the author designed to coincide with the end of that day's testimony – the expert discredited her own primary custody and parenting time recommendation:

- You make a [ ] recommendation that mom should be designated as the parent of primary residence, correct? [*Yes*].
- And that the children should really only be at one residence, right? [*Yes*].
- I want you to do me a favor . . . I want you to write out for me just so I have an understanding of what your recommended parenting time schedule is. [Attorney approaches with piece of paper to have

expert draw a calendar of her recommended schedule for both children at issue].

- [Approximately five minutes of silence pass while the expert attempts to write out her recommended schedule. The delay only further highlighted counsel's effort to discredit the expert's recommendation.]
- How's it going? [*I made a mistake. I'll explain what I did.*] [Attorney approaches to retrieve the drafted schedule after which expert attempts with difficulty to explain the schedule broken down for each child and her admitted mistake.]

. . .

- Just to reiterate my question, you just made an indication that you recommended the children should also spend time together with one parent. [*Yes.*]
- Can you let me know as to the regular parenting time schedule, where in your report it says that? [Long pause follows.] The parenting time schedule is detailed on pages 45 and 46. [*Right.*] [Long pause follows.] [*Okay, I was leaving that up to the, um, parents' discretion . . .*]

. . .

- Let's take a step back. You just made an indication before you started going into that calendar again that you were leaving it up to the discretion of the parties. Where in your report as to the parenting time does it indicate that you are leaving anything to discretion of these parties with respect to these children being together? [*I don't see it in the report.*]

. . .

- Upon further being questioned about her recommended parenting time schedule and the hand drawn calendar she drew during her testimony, the expert further backtracked. [*I'm sorry, I misspoke. And I also made a mistake in this chart here too.*]
- What do you mean? [*It wouldn't work out because I separated them too much.*]

. . .

- [Attorney then approaches with his own hand drawn schedule based on his understanding of the expert's recommended parenting time.] Based on your recommendation, doesn't that confirm that the only day the children are together is on Monday? [*Yes.*]
- If I told you that both parties agree that the children should not be separated during their parenting time, would that impact upon your determination and recommendations here? [*That would effect it, yes.*]
- And isn't it fair to say that if the children are only together, because they're in school for most of the day, they're only together one day a week, that their relationship will essentially be non-existent? [*Yes. Yes.*]
- And that would not be in their best interests, correct? [*Right, right.*]
- [At this point in the time the expert asks to stop testimony for the day.]

Thus, even the simple presentation of a visual aid – handcrafted by the expert under cross-examination scrutiny – helped in discrediting the expert's core recommendation upon which the entirety of a substantial report was based.

d. Looping

An effective cross-examination almost always includes "looping," which is the practice of repeating important answers or themes elicited in the testimony through follow-up questions (i.e., the examiner keeps "looping" back to prior answers).[17] Arguably, the use of looping implicates N.J.R.E. 403 and N.J.R.E. 611. Though certainly not the most important substantive evidence rules, a trial attorney must understand those two rules. These rules serve as bedrocks of *how* the court will conduct trial. While many family law attorneys know N.J.R.E. 611 as the "leading question" rule and N.J.R.E. 403 as the "exclusion" rule, their importance goes far beyond those issues.

If you watch enough *Law and Order*, you will hear "asked and answered;" you will not find that phrase in the *Rules of Evidence*. Indeed, when you hear that phrase, what the objecting attorney really means is "Judge, the question calls for the needless presentation of cumulative evidence,[18] it is harassing in nature,[19] and/or it is a waste of the court's time."[20] Simply expressing by rote use of "asked and answered" fails to inform the court (or the Appellate Division) as to the specific evidence-based objection. The key, therefore, to avoid a sustained objection on those grounds is to add additional facts to subsequent questions—the practice of looping:

- Where did you go to college? [*I attended Rutgers University.*]
- When did you graduate from Rutgers? [*In 1997.*]
- After your graduation from Rutgers in 1997, did you attend any other school? [*I attended Harvard Law School.*]
- Did you graduate from Harvard Law School? [*Yes.*]
- What year did you graduate from Harvard Law School? [*2000.*]
- After you graduated from Rutgers in 1997 and

finished Harvard Law School, what did you do? [*I went on to clerk for a circuit court of appeals judge.*]

This is a very simple example of "looping" prior facts into later questions. Why would you care to "loop" like this? In broad terms, most witnesses will agree with questions in which their own words are accurately recited. As to this specific snapshot, you just established and re-affirmed to anyone listening, that this individual is highly educated. Bear in mind though, even though you may add additional facts as part of "looping," the key to cross-examination is to breakdown your questions into small pieces that require the witness to respond with short answers (i.e., break down every sentence into a series of one-word statements). Here is another real-world example from one of the authors (Nunn) in a relocation trial on remand from the Supreme Court:

- You just testified about 27 email chains, correct? [*Yes.*]
- Each of those 27 email chains were between you and your ex-husband? [*Yes.*]
- Each of those 27 email chains between you and your ex-husband occurred after the court ordered your return from _____? [*Yes.*]
- In each of those 27 email chains, your ex-husband asked for additional parenting time? [*Yes.*]
- In none of those 27 email chains did you afford your ex-husband any additional parenting time? [*I don't know.*]
- Show me which one of the 27 email chains includes additional time offered by you to your ex-husband? [*I can't.*]
- You answered discovery in this case? [*Yes.*]
- You provided documents in discovery? [*Yes.*]
- You did not produce in discovery any documentary evidence of any additional parenting time you afforded your ex-husband since you returned from _____? [*I don't know.*]
- You did not produce, at trial, any documentary evidence of any additional parenting time you afforded your ex-husband since you returned from _____? [*I don't know.*]
- You did not produce any written documentation in which you afforded additional parenting time to your ex-husband since you returned from _____? [*I don't know.*]

Anecdotally, there was no concern on the examiner's part that the witness would produce any written evidence as none had ever been produced and the examiner had copies of all emails and text messages between the parties, as well as communications between counsel. Moreover, the three "I don't knows" made the witness look foolish to the trial court judge.[21]

Another effective use of looping is to loop in previously provided answers to "box in" an opposing witness to a desired series of answers. For example, using an opposing spouse's answers to custody and parenting time interrogatories is often a ripe source of attack through the looping method. A line of questioning often employed in similar by one author (Epstein) is as follows (with presumed answers included to develop the point):

- In response to interrogatory #X, you answered that you believe you should have primary residential custody of the children because you are a better parent than the other party. [*Yes.*]
- How are you a better parent than the other party? [*Because I am more available to our children than he is.*]
- You heard him testify earlier that he can modify his working hours so that he can take the children to school, pick them up from school and transport them to after-school activities? [*Yes.*]
- Assuming that is true, would you say he would be just as available to the children as you are? [*....I guess.*]
- Are there any other reasons that you believe you are a better parent than the other party beyond your claimed greater availability for the children? [*I expect our children to follow rules and he is more "hands off" with them.*]
- So you have a different parenting style than he does? [*Yes.*]
- Different, but not necessarily better for the children? [*Yes.*]
- There has been no proof you have provided to this Court that your style of parenting is more in the children's best interests than his style of parenting? [*No, there is no proof.*]
- In fact, when your own custody expert testified on your behalf, at no point in time did she state that you should have primary residential custody of the children over him simply because you have different parenting styles, right? [*Right.*]
- Other than your claimed greater availability for the children and allegedly more effective parenting style, are there any other reasons why you believe you are a better parent than the other party? [*No, that is all.*]

The author has used a similar line of questioning to that outlined above on numerous occasions and it often proves effective in cornering the opposing witness into

your desired theme while simultaneously discrediting their testimony. The author will also often combine this technique with a visual aid approach by having the opposing witness write down each answer as the line of questioning unfolds. In other words, the opposing witness is bearing witness to the looping of their own answers.

III. Specific Rules of Evidence to Remember

i. Relevancy and its Limits

Relevancy is another bedrock rule of evidence. "Relevant evidence" means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action.[22] With respect to cross-examination, you generally cannot ask questions on cross-examination that are outside the scope of direct examination unless your questions relate to credibility.[23] Accordingly, if you ask a question on cross-examination and an objection is sustained for being "outside the scope of direct," make a notation in your outline and call the adverse witness as your witness; this will enable you to both ask the question and do so in a leading manner.[24] Bear in mind though, you have some latitude to develop your cross-examination.[25] That is, it is appropriate—in response to a relevancy objection—advise the judge that the questions will be connected in the next few questions, 10 minutes, etc. (i.e., conditionally relevant facts).

Now consider the "27 email" email line of examination. The attorney opposing the examination could have objected on "cumulative" grounds (i.e., "Mr. Nunn is wasting time going through 27 email chains").[26] The opposing attorney also could have objected that the witness's failure to allow visitation in any of the 27 email chains was impermissible "propensity"[27] evidence or designed to make the witness look bad.[28] In response, the cross-examiner could have answered: (i) propensity evidence is permissible to show intent (i.e., the witness's intent[29] is to deprive the children of a relationship with the parent); and (ii) that the best interest factors require a consideration of whether there is "any history of unwillingness to allow parenting time not based on substantiated abuse . . . ."[30] *Practice tip: anticipate objections and have the corollary evidence rules at your disposal.*

ii. Hearsay

Perhaps the most important substantive rule is "hearsay"[31] and its exceptions.[32] It is also the rule upon which practitioners rely most when addressing an opposing advocate's ongoing examination. Much of the initial law school evidence courses focus on hearsay—and with good reason. As practitioners know, hearsay is not admissible[33] except as set forth in N.J.R.E. 803. Hearsay can be broken down as follows: (i) a statement made by a declarant; (ii) the statement is not made by the declarant while testifying at the trial; and (iii) the party offering the statement does so for the *truth* of the out-of-court statement.[34] Hearsay is *not* implicated where an attorney seeks to use an out-of-court statement at trial for some purpose *other than* the truth of the statement. If the statement is only offered to show that a statement was made and something occurred *as a result of that statement*, it is not hearsay (i.e., an "effect on the listener" is not hearsay).[35] Take the following for example of a direct examination regarding the purchase of shares of stock:

- You purchased 1,000 shares of Blackberry at $100 per share? [*Yes.*]
- The stock dropped $90 per share over the course of the marriage? [*Unfortunately, yes.*]
- Why did you buy the shares of Blackberry? [*My investment advisor told me it would be a great idea.*]
- OBJECTION, HEARSAY. [*Response from counsel: the litigant's answer is not intended to demonstrate that the purchase was actually a "great idea," it is to explain why the litigant purchased the stock.*]

The witness's answer is an appropriate use of an out-of-court statement for non-hearsay purposes. Clearly the purchase of Blackberry was not a "great" idea.

Similarly, statements made by the opposing party, which you seek to introduce against the adverse party, are not hearsay (meaning, they are not even an exception to hearsay—they are *not* hearsay).[36] Take the preceding Blackberry example and now consider cross-examination:

- On September 22, 2009, your financial advisor told you that your wife called regarding stock holdings? [*Yes.*]
- He advised you that your wife expressed concern about the Blackberry shares? [*Yes.*]
- Specifically, that you should sell them? [*Yeah.*]
- Because they had rebounded a bit? [*Yes.*]
- The shares as of September 22 were valued at $84/share? [*Looks that way.*]
- You told the financial advisor: "screw her. You are my guy, do not sell anything without my approval" [*Appears so.*]
- At the time of the divorce, the shares were $8 per share? [*uh huh.*]

The witness's statement: "screw her. You are my guy,

do not sell anything without my approval" is a non-hearsay, party-opponent statement.

Lastly, before discussing hearsay exceptions[37] you must understand how to properly impeach a witness with a prior inconsistent statement.[38] This rule implicates a few "hurdles": (i) the prior statement you seek to use as impeachment (inconsistent) must be admissible;[39] (ii) the statement must actually be inconsistent with the testimony at your trial; (iii) you must use the prior statement in accordance with N.J.R.E. 613;[40] and (iv) if you called the witness, the prior inconsistent statement must be: in a sound recording; in a writing made or signed by the witness in circumstances establishing its reliability (e.g., a Certification); or given under oath at a trial or other judicial, quasi-judicial, legislative, administrative or grand jury proceeding, or in a deposition.

N.J.R.E. 803© provides the hearsay exceptions. A frequently encountered scenario occurs with the use – or attempted use – of police reports. Assuming a party can obtain access to relevant police reports, a question is: *how can the records be used in my case*? Police reports are frequently relied upon in domestic violence matters. A party seeking, or defending, the imposition of a Final Restraining Order may attempt to use police reports to their advantage. Often, attempts are made to offer the report without the necessary witness(es) that would make the contents of the report admissible. For example, the proponent of the police report does not call the police efinier who wrote the report or a custodian of records who can authenticate the report.

Generally, assuming you call the appropriate witness to authenticate the record and lay a foundation,[41] a police report should be deemed admissible as a record of a regularly conducted activity (i.e., that a police officer responded to a call on a particular date and time).[42] To what end can the contents of the report be used? A police report may be admissible to prove the fact that certain statements were made to an officer. For example, the police report may relay that a domestic violence defendant — if offered against the defendant in a domestic violence trial — admitted to striking the victim, which would be admissible under N.J.R.E. 803(b)(1)(party-opponent). But, absent another hearsay exception, the report may not be offered for the truth if the police officer's report contains statements from non-party witnesses. In other words, the report may be admitted, but the out-of-court (non-party) statement is hearsay (unless it meets another exception, like excited utterance[43]).

The contents of the police report can also be used to impeach the opposing party's testimony even if the report is deemed inadmissible. There may be occasions where you do not want the contents of the report admitted into evidence, but still want to discredit an opposing witness's testimony. Simply identifying the exhibit and asking questions during cross-examination to impeach can be a highly effective technique.

What do you do, however, if the report is admitted over your objection and the police officer is unavailable for cross-examination? Fortunately, N.J.R.E. 806[44] allows the credibility of a hearsay declarant (e.g., the police officer who wrote the report that is admissible under N.J.R.E. 803©(6)) to be attacked as if the officer had been in court that day. For example, in a different context (a contested adoption case Nunn tried), the trial court allowed admission of a party's hearsay statements (the statement was *not* offered *against* the party) offered in court through hearsay documents. Fortunately, a private investigator was hired to observe that party prior to the proceeding. Following admission of the hearsay statements, we called the private investigator to testify. The adverse counsel objected on relevancy grounds and the adverse litigant failed to appear in court for cross-examination. We relied on N.J.R.E. 806 as grounds to impeach the party (also a hearsay declarant in this context) as to the statements made in the hearsay document.

Due to the reliance of experts in Family Part matters, you must understand how to use a learned treatise as part of your cross-examination.[45] A learned treatise is "A statement contained in a published treatise, periodical, or pamphlet on a subject of history, medicine, or other science or art, if: (A) the statement is relied on by an expert witness on direct examination or called to the attention of the expert on cross-examination; and (B) the publication is established as a reliable authority by testimony or by judicial notice.[46] Consider, from this emotional distress case, the following questions by Nunn:

- You provided your CV in this case? [*Yes.*]
- You listed lectures you have given? [*Yes.*]
- In ____ you gave a lecture for _____? [*Yes.*]
- You wrote an article about malingering?[47] [*Yes.*]
- You cited Dr. Richard Rogers in that article? [*Yes.*]
- Dr. Rogers is an expert in the field of malingering? [*Yes.*]

I asked the expert to read into the trial record the definitions of "pure malingering" and "false imputation" from Dr. Rogers's book (a different book than the one

cited by the witness in their article, which is why it was important to get the witness to accept Rogers as an expert in the field).[48] The following then occurred:

- Assume Mrs. Litigant testified in this case that in July of 2012, Mr. Litigant threw her down a flight of steps in Bayhead, New Jersey, and as a result she injured her back. Assume that event *never* happened, yet, Mrs. Litigant claims to suffer back pain and other related discomfort related to that alleged incident, would that qualify as pure malingering? [*Yes, if it never happened.*]
- Assume in December of 2011, Mrs. Litigant informed a physician that she injured her back while moving a pile of leaves and suffered a disc herniation. Four years later she testified during this trial that Mr. Litigant body slammed her 9 times resulting in that same back injury. If Ms. Litigant actually injured her back moving leaves, would you agree with me that that would be a situation of a false imputation? [*Yes.*]

A few more examples of malingering and false imputation were addressed, resulting in similar Responses. The key to this line of cross-examination is that the court already heard testimony, *from the treating physician for Mrs. Litigant*, regarding Mrs. Litigant's chronic back issues, all of which she attributed to reasons other than Mr. Litigant.

iii. Excited utterances and present sense impressions

Excited utterances[49] and present sense impressions[50] are also important hearsay exceptions. They bear similarities, but they are not the same. Think of it this way—almost every excited utterance is a present sense impression, but many present sense impressions are not excited utterances. Consider a diary entry in which the scrivener writes:

> *"a beautiful bird is flying past my window."*

Consider, the same scrivener, now on the telephone with a friend:

> *"moments ago I saw a beautiful bird fly past my window . . . holy sh-t, it just smashed into the windshield of a car; now the car crashed; and now the car is on fire."*

The former is a present sense impression, and the latter contains both present sense impressions and excited utterances.[51] These statements would be admissible as exceptions to hearsay.

iv. Prior consistent statements, prior inconsistent statements, and impeachment by conduct.

You should know that under N.J.R.E. 607 you can attack the *credibility* of a witness with extrinsic evidence, e.g., a prior inconsistent statement,[52] but under N.J.R.E. 608, you are generally prohibited from using extrinsic evidence (outside evidence of conduct) to attack a witness's character for "truthfulness or untruthfulness."[53] For example, in an extreme cruelty/*Tevis* case based on allegations of abuse, a defendant can introduce medical records under N.J.R.E. 607 to impeach the plaintiff if those medical records delineate that the plaintiff offered a different causation for the injuries than espoused in a Complaint for Divorce. However, in that same trial, N.J.R.E. 608 prohibits the defendant from using extrinsic evidence in the form of a fraudulent property insurance claim (unrelated to the case) submitted by the plaintiff solely to demonstrate that the plaintiff is, in general, untruthful. Moreover, even if the judge does allow you to delve into specific instances of conduct (e.g., the fraudulent property insurance claim example), you must know that you are barred from impeaching the witness with extrinsic evidence (i.e., the actual documentation demonstrating the fraud) to prove your assertion. In other words, you are "stuck" with the witness's answer. Consider the following:

- Isn't it true you claimed $50,000 of insurance damage for tree damage? [*Yes.*]
- You claimed it happened during a storm? [*Yes.*]
- But in reality you cut the branch directly over your garage causing it to fall on the garage? [*No.*]

If a judge is following N.J.R.E. 608—and assuming that the $50,000 is not a relevant issue in the case—the examiner would be precluded from introducing into evidence "extrinsic" evidence to rebut the witness's lie.

v. Refreshing recollection with records and substantive use of records

A writing used to refresh a recollection,[54] is different than a writing introduced as a recorded recollection.[55] A writing used to refresh recollection allows a witness to review any writing, even one prepared by a third-party, to "jog" the witness's memory. It does not allow that witness to admit the writing in evidence. On the other hand, a recorded recollection permits admission of trustworthy

writings prepared by the witness if the witness has insufficient present recollection; the writing was made while the person's memory was fresh; it was made by or at the witness's direction; and the witness had requisite knowledge when made.[56] For example, in a custody case, N.J.R.E. 612 (writing to refresh recollection) would permit a party to look at pediatrician records to refresh her recollection as to whether she attended doctor visits. Under N.J.R.E. 803©(5) (recorded recollection), that same party could introduce as evidence a calendar of wellness visits she prepared if the entries were made at or near in time of each visit, each entry was made by the witness, and she had actual knowledge when it was made.

vi. Completeness and authentication

Many family law trials are document intensive. You must know N.J.R.E. 106,[57] also referred to as the "doctrine of completeness,"[58] as well as N.J.R.E. 901,[59] which covers authentication. N.J.R.E. 106 requires a party who has introduced a writing/recording to introduce, contemporaneously, any other part of the writing/recording that "in fairness ought to be considered at the same time."[60] In practice, we used this rule during our adversary's direct examination to discredit their mental health expert. In that case, which involved an alimony obligor who sought to eliminate his support payments based on "disability," the expert cited to theefinitionn of "malingering," which in lay terms means "faking sick," within the DSM-V (as in, the expert opined the obligor was not malingering). As we followed along with the expert, we realized that he excluded a key component of the definition. We objected and the expert was then forced to read that malingering should be strongly suspected where: "*the individual is referred by an attorney to the clinician for examination or the individual self-refers while litigation or criminal charges are pending.*" Note: you may also encounter completeness issues with the use of deposition transcripts. If so, you should look to *Rule* 4:16-1(d).

On a related point, N.J.R.E. 901 is a "must-know" since it implicates the mechanics of admitting evidence. Since many of our cases involve Facebook, emails, and text messages, we direct you to *State v. Hannah*, a case involving social media (Twitter) messages, where the New Jersey Supreme Court held that traditional authentication principles apply.[61] Specifically, it held "Authenticity can be established by direct proof—such as testimony by the author admitting authenticity—but direct proof is not required."[62] The Court added: "Authentication does not require absolute certainty or conclusive proof—only a prima facie showing of authenticity is required."[63] It provided helpful examples of how to authenticate: "circumstantial proof may include demonstrating that the statement 'divulged intimate knowledge of information which one would expect only the person alleged to have been the writer or participant to have" and "under the reply doctrine, a writing "may be authenticated by circumstantial evidence establishing that it was sent in reply to a previous communication."[64] Thus, while it is easy to authenticate and admit text messages or emails, do not forget that you can, contemporaneous with the direct examination about those writings, insist that other portions of the text or email are read into the record, so the Judge does not have a misconception about the relevancy.

vii. Conclusion

We hope you found this material instructive and helpful. We intended it to provide some basic principles, as well as some more nuanced, higher-level cross-examination techniques. We also highlighted evidence rules that often arise during trials—but you really should know all of them to which we could devote another 10,000 words. ■

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Endnotes

1. A Few Good Men (Columbia Pictures 1992).
2. Francis L. Wellman, *The Art of Cross-Examination: With the Cross-Examinations of Important Witnesses in Some Celebrated Cases* (Good Press 2002), pp. 13 and 14 (separate quotes utilized).
3. Dodd, Roger and Pozner, Larry, "Cross-Examination: Science and Techniques," §§2.01-2.25, Lexis-Nexis (3d. 2018).
4. *R.* 4:17-1 to -8.
5. *R.* 4:18-1.

6. *Cesare v. Cesare*, 154 N.J. 394, 411-12 (1997) (citing *Rova Farms Resort, Inc. v. Investors Ins. Co.*, 65 N.J. 474, 484 (1974)).
7. *In re Return of Weapons to J.W.D.*, 149 N.J. 108, 117 (1997).
8. *Cesare*, *supra* (quoting *Pascale v. Pascale*, 113 N.J. 20, 33 (1988)).
9. *State v. Silva*, 131 N.J. 438 (1993).
10. When we say "impeachment material" it is not necessary to think of this information as "smoking gun" evidence. It could simply be that the witness said "X" during trial, but wrote "Y" during discovery. If you repeatedly impeach a witness with "small" material, you may effectively achieve the "death by a thousand cuts" of that witness's credibility.
11. Wellman, *supra*, *The Art of Cross-Examination*, pp. 15-16. Similarly, when your cross-examination elicits from the opposing witness what you want to hear, also maintain your composure as you try to convey that there could not possibly have been any answer other than what the trial judge just heard.
12. You may also want to Bates stamp every document you intend to use so that you can simply refer to the Bates stamp numbers.
13. Both Benjamin Franklin and Confucius have been credited with this or a similar form of this saying, so the authors determined it cannot hurt to credit both of them.
14. Although additional questions were prepared, the examiner moved on because of the favorable answer.
15. This was from the expert's report. He was citing an outdated edition of the article.
16. Had the witness answered "yes," I had approximately 10 additional questions based on his report, and the Kelly and Lamb article, to show the absurdity of the opinion.
17. Timothy B. Walthall, *The Secrets of Cross-Examination How to Avoid the Pitfalls at Trial*, 44 ABA Litigation Journal 4, at 26, 29 (Summer 2018).
18. N.J.R.E. 403(b).
19. N.J.R.E. 611(a)(3).
20. N.J.R.E. 611(a)(2).
21. *See Bisbing v. Bisbing*, 468 N.J. Super. 112 (App. Div. 2021) (regarding large counsel fee award).
22. N.J.R.E. 401.
23. N.J.R.E. 611(b). Of course, attacking credibility is an exception.
24. N.J.R.E. 611(c).
25. N.J.R.E. 104(b)(conditional relevance).
26. N.J.R.E. 403(b)(allowing a court to exclude cumulative evidence).
27. N.J.R.E. 404(b)(1) ("Except as otherwise provided by Rule 608(b), evidence of other crimes, wrongs, or acts is not admissible to prove a person's disposition in order to show that on a particular occasion the person acted in conformity with such disposition.").
28. N.J.R.E. 403 (permitting a court to exclude unduly prejudicial evidence).
29. N.J.R.E. 404(b)(2)(" This evidence may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident when such matters are relevant to a material issue in dispute.").
30. N.J.S.A. 9:2-4(c).
31. N.J.R.E. 801(c).
32. N.J.R.E. 803(c).
33. N.J.R.E. 802.
34. N.J.R.E. 801(c).
35. *See, e.g.*, *Carmona v. Resorts Hotel*, 189 N.J. 354, 376 (2007)(permitting use of a company's investigative report to rebut the allegation that an employee's termination was based on retaliation); *see also Jugan v. Pollen*, 253 N.J. Super. 123, 136-37 (App. Div. 1992) (holding that statements made to plaintiff regarding the limitations of his activity were not hearsay when "offered to prove that plaintiff limited his activity based upon advice given to him.").
36. N.J.R.E. 803(b). In Family Part cases, "party-opponent" statements are often the most used source of information for party cross-examination, as well as the cross-examination of the adverse party's expert.
37. N.J.R.E. 803(c).
38. N.J.R.E. 803(a)(1):

    (a) A Declarant-Witness' Prior Statement. The declarant-witness testifies and is subject to cross-examination about a prior otherwise admissible statement, and the statement:

    (1) is inconsistent with the declarant-witness' testimony at the trial or hearing and is offered in compliance with Rule 613.

    However, when the statement is offered by the party calling the declarant-witness, it is admissible only if, in addition to the foregoing requirements, it (A) is contained in a sound recording or in a writing made or signed by the declarant-witness in circumstances establishing its reliability or (B) was

given under oath at a trial or other judicial, quasi-judicial, legislative, administrative or grand jury proceeding, or in a deposition; . . . .

[(Emphasis added).]

39. *Ibid.*
40. The Rule requires as follows:
    (a) Examining Witness Concerning Prior Statement. When examining a witness about the witness' prior statement whether written or not, a party need not show it or disclose its contents to the witness. But the party must upon request show it or disclose its contents to an adverse party's attorney or a self-represented litigant unless the self-represented litigant is the witness.
    (b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a witness' prior inconsistent statement may be excluded unless the witness is afforded an opportunity to explain or deny the statement and the opposing party is afforded an opportunity to interrogate on the statement, or the interests of justice otherwise require. This rule does not apply to admissions of a party opponent as defined in Rule 803(b).

    Consider the language in (b) allows—even on cross-examination—a witness to explain a prior inconsistent statement with which the witness has been impeached. In other words, the typical "yes" or "no" responses you seek may be temporarily halted to allow a more robust response (if the Judge and/or your adversary know the rules).
41. *See* N.J.R.E. 601 (competency); N.J.R.E. 602 (personal knowledge requirement); and N.J.R.E. 901 (Authentication).
42. *See* N.J.R.E. 803(c)(6)(business records), and as a public record, *see* N.J.R.E. 803(c)(8).
43. *See* N.J.R.E. 805 (hearsay within hearsay). In this example, the hearsay statement of the non-party witness embedded within the hearsay report, may not be admissible without some other exception.
44. This little-known and little-used rule is quite powerful:

    When a hearsay statement has been admitted in evidence, *the credibility of the declarant may be attacked*, and if attacked may be supported, *by any evidence which would be admissible for those purposes if the declarant had testified as a witness.* The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, that party is entitled to examine the declarant on the statement as if under cross-examination. [(Emphasis added).]
45. N.J.R.E. 803(c)(18).
46. *Ibid.*
47. "Malingering" is defined in the American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 726-727 (5th ed. 2013) as:

    The essential feature of malingering is the intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs. Under some circumstances, malingering may represent adaptive behavior—for example, feigning illness while a captive of the enemy during wartime. Malingering should be strongly suspected if any combination of the following is noted:

    1. Medicolegal context of presentation (e.g., the individual is referred by an attorney to the clinician for examination, or the individual self-refers while litigation or criminal charges are pending).
    2. Marked discrepancy between the individual's claimed stress or disability and the objective findings and observations.
    3. Lack of cooperation during the diagnostic evaluation and in complying with the prescribed treatment regimen.
    4. The presence of antisocial personality disorder.

    Malingering differs from factitious disorder in that the motivation for the symptom production in malingering is an external incentive, whereas in factitious disorder external incentives are absent.

    Malingering is differentiated from conversion disorder and somatic symptom–related mental disorders by the intentional production of symptoms and by the obvious external incentives associated with it. Definite evidence of feigning (such as clear evidence that loss of function is present during the examination but not at home) would suggest a diagnosis of factitious disorder if the individual's apparent aim is to assume the sick role, or malingering if it is to obtain an incentive, such as money.

    If you handle personal injury litigation or Tevis

claims in your divorce cases (e.g., claims regarding intentional infliction of emotional distress and other tort-based claims), you must be aware of malingering and structure discovery around it.

48. Practice point: it is fair game to use a learned treatise if the witness on the stand does not identify it as such. Accordingly, if your expert recognizes a treatise as an authoritative material in the field, you may rely on it. The judge, however, decides how much weight to give the dueling witness testimony about the treatise.
49. N.J.R.E. 803(c)(2)("A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition and without opportunity to deliberate or fabricate.").
50. N.J.R.E. 803(c)(1)(" A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it and without opportunity to deliberate or fabricate.").
51. For an example of an utterance that did not qualify as an excited utterance, *see Gonzales v. Hugelmeyer*, 441 N.J. Super. 451 (App. Div. 2015). On the other hand, *State v. Buda*, 195 N.J. 278 (2008), provides an explanation of the importance of the "shock" or uncontrolled response to a startling event.
52. N.J.R.E. 613(b).
53. *See* N.J.R.E. 405(a) and N.J.R.E. 608(a). However, in a criminal case, specific instances of conduct can be used to attack the character of a witness. In September 2019, the New Jersey Supreme Court ordered amendments to the New Jersey Rules of Evidence (approved and adopted effective July 1, 2020) following recommendations from the Supreme Court Committee on the Rules of Evidence (the "Committee"). The amendments to N.J.R.E. 608 expanded the scope of permissible cross-examination in criminal trials, permitting inquiry into specific acts of the conduct of a witness when probative of his/her character for truthfulness or better stated, lack of truthfulness. The amendments came in the wake of the Court's opinion in *State v. Scott*, 299 N.J. 469 (2017), which led to the Court's referral of the matter to the Committee. As noted in the Scott opinion, the federal courts and a majority of other state courts allow examination into specific instances of conduct that bear upon untruthfulness. In the Committee's 2017-2019 Report (issued in January 2019), a narrow majority of committee members recommended expanding N.J.R.E. 608 to allow inquiry on cross-examination, in certain limited circumstances, into a witness's specific instances of conduct. The committee's Minority Report argued against the amendments as did the State Bar Association and the County Prosecutors Association. By way of example—and to show what is impressible in a civil case—in *United States v. Jones*, 900 F.2d 512, 520-21 (2d Cir. 1990), the court affirmed use, as character impeachment, of false statements on applications for employment, an apartment, driver's license, loan, and membership in an association. In *United States v. Carlin*, 698 F.2d 1133, 1137 (11th Cir. 1983), the court allowed cross-examination of a witness as to the truthfulness of his answer on his verified application for used car dealer licenses. In *United States v. Leake*, 642 F.2d 715, 718-719 (4th Cir. 1981), the court held that conduct such as obtaining money under false pretenses, defrauding an innkeeper, writing checks that were returned for insufficient funds, and having numerous default judgments entered against the witness regarding repayment of loans "established a pattern of fraudulent activity that, if revealed, would have placed [the witness's] credibility in question." The information in this footnote is provided because efforts are being made to allow this line of attack in Family Part cases.
54. N.J.R.E. 612.
55. N.J.R.E. 803(c)(5).
56. *Ibid.*
57. "If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part, or any other writing or recorded statement, that in fairness ought to be considered at the same time."
58. *Alves v. Rosenberg*, 400 N.J. Super. 553 (App. Div. 2008).
59. "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must present evidence sufficient to support a finding that the item is what its proponent claims." N.J.R.E. 901.
60. N.J.R.E. 106.
61. *State v. Hannah*, 448 N.J. Super. 78, 88-92 (App. Div. 2016).
62. *Id.* at 90.
63. *Id.* at 89.
64. *Id.* at 90 (internal quotations and citations omitted).

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FINDINGS OF FACTS AND CONCLUSIONS OF LAW

By: Christine C. Fitzgerald, Esq.

As most family matters are conducted as bench trials, the theater of openings and closings and of intense cross examination that you see in the movies is less important. Although being persuasive is an art form, Judges are generally less inclined to be swayed by theatrics. In some cases, after the testimony and evidence is concluded, a Court may ask you for an oral summation or a written summation also known as Finding of Facts and Conclusions of Law. If you have had multiple days of trials with time in between trial dates as is typical, time to prepare is key. This part of your trial is possibly the most important part as it is your chance to direct the Court's attention to the evidence and the testimony that is relevant to an issue in a case and then explain how that evidence and facts apply to the law. A good summation or Finding of Facts and Conclusions of Law should tie all the evidence and testimony together with the law.

A Court is required after a trial to issue a decision which sets forth the findings of facts and conclusions of law. A written summation that lays out your case is your opportunity to essentially write the Court's decision. Writing a Finding of Facts and Conclusions of Law can be difficult, especially the longer the case and the more complex the issues are, the following are some tips to writing a Finding a Facts and Conclusions of Law so that you can get the most out of your opportunity:

1. Order the Transcript from the Trial: This will allow you to quote and pinpoint testimony accurately and fill in any holes in your notes. If your client's financial circumstances do not allow you to order the written transcripts or you do not have time to order them, order the audio. It is free and takes about a day.

2. Note the Court's Questions: As the trial is ongoing, if the Court stops to ask for clarification or a question during the testimony, make a note that the Court was interested in that particular topic – it may be an important point that you have missed or did not think would resonate with the Court. This will allow you to see how that can tie into your case and evidence.

3. Be Consistent with Your Theme: Before you start your trial, you should have a theory of the case or a theme that you have weaved in your opening statement, the testimony, the evidence, and now in your conclusion.

4. Review all Evidence: Review all of your evidence for any documents that are especially important to your case so that you can highlight it upfront.

5. Organize your thoughts: Depending on the length of the case and the issues, you may want to organize the summation by witness or by issue. If by witness, then pull all evidence that was used for that witness and the transcripts from that witness and pull out

the most important evidence and testimony to highlight the points you were making. If by issue, then organize the witnesses and evidence by issue and do the same.

6. Balance between Thorough and Brevity: This is a tough balance to walk. The Court was there so you do not need to remind the court of every single statement made by the parties.

7. Research: You have already done much of the research in your trial brief but now is the chance to take that law and then point to the specific testimony and evidence. Additionally, there may have been issues that arose during the trial that you need to brief or that maybe you need to further clarify.

8. Relief: Always include exactly what you are asking the court to do in its decision with specificity.