

# Lawyer

## Mercer County

June 2014

A Publication of the Mercer County Bar Association

Volume 33, Issue 3

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### From the President's Desk...

When in the office, I tend to answer my own phone: "You don't know me but I just called to thank you for the amazing awards you will be presenting on May 13th and to let you know that I now reside in Florida and due to health reasons, I will not be able to attend, please, please send my regards to everyone." said Morton Deitz. Mr. Deitz was truly regretful that he would not be able to attend the Golden Jubilee in person. He explained that he joined the Mercer County Bar Association in 1955 and in approximately 1958, the MCBA hosted a similar event to honor the then most senior members of the Association: Mr. Deitz described it as a "rip roaring hoot!" I spent about fifteen minutes chatting with Mr. Deitz who told me about his long term practice in Trenton and Princeton and in passing he said that he became an attorney, in large part, because of his military "lifeboat" experience. He did not elaborate. Our conversation was a heartwarming discussion, I was proud and honored to be a part of an organization where one of our members remembered an event which occurred over 55 years ago.

About a week after speaking to Mr. Deitz, I sat down to write a speech for the Golden Jubilee. This was a daunting task, we were honoring 39 of our



*Dorothy Bolinsky*

most senior attorneys - those licensed for 50+ years (a few years before I was born). All of the honorees were significantly accomplished, including retired revered judges, politicians, founders of firms, respected practitioners; most of them being so well known in our legal community that no introduction was needed. Searching for words to capture the spirit of our Golden Age honorees, I was intrigued to research Mr. Deitz further, hoping to craft a refined theme. I was amazed at what I learned.

Mr. Deitz, at the age of 22 while serving as a cadet midshipman first class of the U.S. Naval and Merchant Marine Reserve, saw strenuous action on his first cruise. His freighter was sunk by a German submarine in the Indian Ocean off the coast of South Africa. He boarded a lifeboat designed to hold 12 men, but containing twice that number. For thirty-one days Mr. Deitz braved the elements, struggled to catch

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The **MERCER COUNTY LAWYER** is published six times per year; February, April, June, October, October, and December. Advertisements appearing in the **MERCER COUNTY LAWYER** are the viewpoints of the contributors and are not necessarily endorsed by the Mercer County Bar Association or its members. The MCBA does not vouch for the accuracy of any legal analysis, citations, or opinions expressed in any articles contained herein. Individuals who are interested in joining the Association, placing advertising, or contributing articles should contact the Bar Association office at 609-585-6200, fax 609-585-5537 or e-mail [cbrennan@mercerbar.com](mailto:cbrennan@mercerbar.com). The newsletter deadline is the last Wednesday of the month preceding the publication

sufficient rain water to survive, was blinded by sun-glare and ultimately devised a means to light one remaining flare to signal to a British plane for help before being rescued at sea by a freighter. Dietz saw 19 of his companions die from starvation, thirst, drowning and insanity. Upon his return despite his near death experience while serving his country, he was denied medical benefits and compensation for his partial disability because merchant marines were not considered “veterans” even if they served in active combat situations. He committed himself to change that restriction. Thereafter, Mr. Deitz worked for the Internal Revenue Service, became an attorney, operated his own private law practice, taught at Princeton University, published a book on the NJ Tax code of 1975, all the while fighting for over forty years to be recognized and compensated as a veteran. In 1988 Mr. Deitz was finally recognized by the Federal government as a veteran but thereafter continued to fight for veterans’ rights.

During my brief conversation with Mr. Deitz, he did not elaborate on his harrowing and amazing near death experience. He led the discussion, we talked about his respect for the law, the good times he had at MCBA events and most importantly the relationships he formed while practicing law in Mercer County. This inspired me to call many of the honorees to hear their stories. Similar to Mr. Deitz, not one of honorees spoke about their personal accomplishments or their legal victories; they wanted to discuss the relationships they forged. Each one of the honorees I spoke with clearly described the code of conduct between them, repeatedly I heard: “your word is your bond.” After witnessing the awe-inspiring interaction among the honorees the night of Jubilee, I now understand why Morton Deitz was so apologetic and sincere in sending his regrets. These attorneys respect each other, having amazing bonds and appeared truly delighted to “catch up”.

Words cannot explain what an amazing experience hosting the Golden Jubilee has been for me. As attorneys with vastly differently practices, we have our profession and our Association as a common denominator. If we learn nothing else from our Golden Jubilee honorees, in our daily practices, we need to keep in mind that when we are honored as Jubileans what matters most is our integrity and our relationships. Hope to see you at the next MCBA event!



## Nominations for Board Secretary and Trustees

The Association's Nominating Committee is seeking Association members who possess the leadership skills and desire to help the Association build on its past achievements while meeting the challenges of the future for the benefit of its members.

To that end, we are seeking nominations for the office of Board secretary, and for five Board of Trustees openings. The Trustee seats are for a term of three years beginning in January 2015 and ending in December of 2017.

Members wishing to be considered for any of the available positions are expected to have the time and means to attend and participate in the monthly Board of Trustee meetings (10), attend and participate in Association & Foundation events and programs throughout the year, and perform other duties that may be assigned by the president.

If you have the desire to help shape the future of your Association, and can meet the responsibilities outlined above, please send a letter of interest along with a resume to Dorothy Bolinsky Esq., MCBA President, c/o Mercer County Bar Association, 1245 Whitehorse Mercerville Road, Suite 420, Mercerville, NJ 08619. Submissions can also be sent via fax at 609-585-5537.

The election of officers and trustees will take place at the November General Membership Meeting and Awards Ceremony on November 19, 2014.

The deadline for consideration of nomination is 4:30 p.m., July 1, 2014.

For more information regarding the nominating process, please contact Executive Director Chrissy Brennan at 609-585-6200, extension 11 or via email [cbrennan@mercerbar.com](mailto:cbrennan@mercerbar.com).

## *Jennifer Zoschak, Esq.*

Family Division Manager Sandy Terry reported that cases in which all of the children are in college, or over 18 but not emancipated for child support purposes, do not need to be scheduled for Parenting Time Mediation. Please indicate those situations in your Complaints and Case Management Orders. In those cases, where the Court is notified in advance, parties will be excused for the Parent Education Program as well as Mediation.

Sandy also reported that Amy Fisher, former Assistant Family Division Manager, has moved on to Monmouth County and we all wish her well. A search for her replacement is underway.

Judge Fitzpatrick advised that the Child Support Amnesty Week (4/28-5/3) was a success and over 150 Mercer County cases were modified.

MCBA Trustee Sandy Durst advised that a proposed resolution on the pending Alimony Reform legislation will be circulated and asked that members respond quickly with any comments.

The Bench was asked if the Judges were notified when a responsive pleading was received but not filed due to a deficiency. Judge Fitzpatrick reminded the Bar that a courtesy copy of a response or reply certification delivered directly to chambers will speed up the process and increase the likelihood of a tentative decision. Case Management agreed that a copy of the deficiency letter sent to attorneys would be put in the file so that the law clerk is aware if a matter is opposed, even if the filed copy is not properly received. If using a courier to hand-deliver to chambers, Judge Warshaw suggested giving the law clerk or secretary advance notice that it would be coming directly to the 4<sup>th</sup> floor, so as to avoid deliveries to the delay of 2<sup>nd</sup> floor deliveries.

The issue of Consent Orders modifying support was also raised and the Bar was assured that the Orders are converted to USSO Orders by chambers, which are automatically sent to the liti-

gants, but not to counsel. If modifications have not been implemented after a reasonable time, counsel should contact Becky Cegielski on FM matters (571-4423) and Danielle Vitella on FD matters (571-4397). The Bar was also reminded that a CS# will be assigned to all matters, even if support is not in issue.

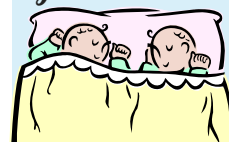
Judge Fitzpatrick was pleased to announce that the preparation of ESP memos has improved and reminded the Bar to notify the Court if a case has settled prior to ESP so that panels are not called unnecessarily.

The MCBA XCLE program is scheduled for October 29, 2014 at Mercer County Community College. The Family Law session will be an Alimony Update featuring Judge Peter Warshaw and Derek Freed, Esquire, on the panel.

Anyone who would like to suggest names of mental health practitioners to be included in the next Meet and Greet should contact Jenn Zoschak at [jz@ozfamilylaw.com](mailto:jz@ozfamilylaw.com) or Azzmeiah Vazquez at [avazquez@vazquezlaw.com](mailto:avazquez@vazquezlaw.com). The Meet & Greet will be scheduled in early 2014.

The next Family Bench Bar will be held in Judge Fitzpatrick's courtroom on Thursday, July 10 at 3:30 p.m. All are welcome.

*Congratulations to Stephanie D'Amico on the birth of her beautiful twin girls, Grace Marie and Amelia Lynn on March 25th.*



## **Upcoming Bench Bar Meetings**

All attorneys are invited to attend bench bar meetings.

**June 18th; 3:00 p.m.—Chancery Bench Bar Meeting and  
2.0 CLE Seminar (free to members in good standing)  
Special Proceedings Courtroom**

**June 19th, 3:30 p.m.—Municipal Bench Bar Meeting and  
1.0 CLE Seminar (free to members in good standing)  
Ewing Township Municipal Court**

**June 25th, 3:30 p.m.—Civil Bench Bar Meeting  
Judge Hurd's Courtroom**

**July 10th, 3:30 p.m.— Family Bench Bar Meeting  
Judge Fitzpatrick's Courtroom**



Hon. Mary C. Jacobson, A.J.S.C., Hon. Catherine Fitzpatrick, P.J.F.P., Hon. Douglas Hurd, P.J.Cv and MCBA President Dorothy Bolinsky with the 2014 1st place Mock Trial Team, Stuart Country Day School of the Sacred Heart at our Law Day Celebration on May 5, 2014.

## *Basketball League News*

Shafer's Gang" (Black) pulled off an overtime win against "Cookies & Kareem" (Blue) with a final score of 49-44. Black got off to an early lead but Blue closed the gap to tie the game up at halftime 23-23. The second half proved to be a battle with neither team leading the game by more than 3 points the entire second half. The second half ended with a score of 40-40. In overtime Black was able to hold Blue to 4 points while scoring 7 of its 9 points from the foul line. It was truly a "good game."



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## NCBJ Announces Blackshear Fellowship Opportunities for 2014 Conference

The National Conference of Bankruptcy Judges is now accepting applications for its Honorable Cornelius Blackshear Presidential Fellowships for minority lawyers who practice bankruptcy law. Click on the link below for information about Judge Blackshear, the Fellowship criteria, the application form, and other information about the program:

<http://www.ncbj.org/?page=BlackshearFellowship> ( click on link, then press Control and Enter, if the link does not work when you click on it )

Named after esteemed Bankruptcy Judge Blackshear (now retired) of the Southern District of New York, the fellowship program provides both waived conference registration (\$900 value) and a stipend for reasonable travel/hotel expenses for five up-and-coming minority bankruptcy practitioners (with less than 10 years' experience) who wish to attend the annual conference of the National Conference of Bankruptcy Judges and who otherwise meet the selection criteria. This year's conference will be held October 8 - 11 in Chicago at the Hyatt Regency. To view this year's conference agenda, go to <http://www.ncbjmeeting.org/> ( click on link, then press Control and Enter, if the link does not work when you click on it )

Judges are encouraged to announce the availability of the Blackshear Presidential Fellowship to your local bar and minority bar associations. Please consider asking the bar associations to send a blast email message to their members. If possible, please also have the announcement posted on your court's website to help advertise the Fellowship.

The deadline for submitting an application is AUGUST 1, 2014. The correspondence and attachments in .pdf format must be sent by e-mail to: [Chambersof\\_JPHopkins@ohsb.uscourts.gov](mailto:Chambersof_JPHopkins@ohsb.uscourts.gov).

## ATTORNEY DISCIPLINE

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# Golden Jubilee May 13th, 2014 Mountain View Country Club

Over 170 guests joined us to honor the 39 attorneys in our community who have passed the significant milestone of 50- plus years of admission to the New Jersey Bar.



Seated are: Albert Stark, Hon. Daniel O'Donnell, Hon. A.J. Moore, Kester Pierson, Hon. Paul Sollami and A.C. Reeves Hicks. Standing are: Dorothy Bolinsky, MCBA President, Peter Fless, Philip Papier, Harry Hill, Lowell Curran, Bruce Schragger, Mark Segal, Charles Casale, Hon. Paul Levy, Gerald Stockman, Chrissy Brennan, Executive Director of the MCBA, Stanley Needell, Robert Maida, John W. Devlin, William Bunting, Jr., William Sutphin, Frank Reiche and the Hon. Mary Jacobson, A.J.S.C.





MCBA President Dottie Bolinsky and Honoree  
A.C. Reeves Hicks



Honoree Peter Fless



Kathleen Stockman and  
Honoree Gerald Stockman



Honoree William Sutphin



William Hartigan, Jr., Hon. Roger Haley and  
Honoree Robert Maida



Honoree Stanley Needell  
and Russell Needell



Amanda Nini, Nicole Sciotto, Honoree Kester Pierson and Shawn Neufeld



Kym Jinks, Honoree Frank Curran and Hon. Joseph Bocchini, Jr.



Honoree Harry Hill and Frank Flacks



Janet Reiche and Honoree Frank Reiche



Roseann Sollami, Paula Sollami Covello and Honoree Paul Sollami



Honoree Charles Casale and Karen Casale



Honoree Philip Papier, Wendy Herbert,  
Honoree Mark Segal and Steve Goodell



Honoree Hon. Daniel O'Donnell



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Marianne Bielamowicz



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## Members In the News

**A. Paul Genato**, an attorney in the Princeton, N.J. office of the law firm of **Archer & Greiner, P.C.**, was elected Second Vice Chair of the New Jersey State Bar Association's Taxation Law Section at the association's Annual Meeting and Convention in Atlantic City on May 15, 2014. Mr. Genato is on the path to becoming Chair of the Taxation Law Section in 2016. The Taxation Law Section studies and disseminates information on developments in tax law, and provides a forum for discussion of tax policy issues by professionals and elected/appointed officials.

Mr. Genato concentrates his practice in the areas of local property taxation, eminent domain, redevelopment, and state tax matters. He has handled matters involving all phases of property tax appeal litigation throughout New Jersey, New York, Pennsylvania, Connecticut, Massachusetts, Virginia, Ohio, Florida and various other states.

**Hill Wallack LLP partner Michael J. Shavel** has been named Executive Vice President of the Bucks County Council, Boy Scouts of America. The Council serves more than 9,500 young people in Bucks County, Pennsylvania and Mercer and Hunterdon counties in New

Jersey. Mr. Shavel has previously served as Vice President for Programs of the Council. He is also an active member of the National Boy Scout Area 5 Committee. Mr. Shavel is an Eagle Scout and has been involved in scouting his entire life.

Mr. Shavel was also recently elected to the Board of Directors of the United Way of Bucks County. He was inducted at the organization's Pep Rally Awards & Annual Breakfast which took place on Friday, May 2, 2014. The United Way of Bucks County is a volunteer-led, nonprofit organization that determines and addresses the greatest needs in Bucks County. The United Way of Bucks County is dedicated to improving lives by mobilizing the caring power of communities.

**Denise Mariani, Esq. of Stark and Stark** recently negotiated a \$1.65 million settlement on behalf of a mother who was left permanently disabled after falling down an inadequately secured stairwell at her daughter's bridal shower.

The accident occurred on April 25, 2009 when the mother tripped on a piece of raised flooring and fell down the entire length of the stairwell, which was not secured with railings or any other type of guards. At the time of

the fall, she was attempting to photograph her daughter's entrance to the surprise bridal shower.

As a result of the accident, the mother suffered a Traumatic Brain Injury, Benign Paroxysmal Positional Vertigo, shoulder and wrist tears and a low back injury. These injuries necessitated a series of four reconstructive surgeries to her wrist along with the permanent need of a four-prong cane due to vertigo. Prior to her fall the mother served for 35 years as a nurse. Due to the injuries she was unable to return to her career as an O.R. trauma nurse.

The law firm of **Archer & Greiner P.C.** recently presented two law students with \$3,000 scholarships on behalf of the Hispanic Bar Association of New Jersey (HBA-NJ): Diane Camacho from Rutgers School of Law-Camden and Lesley Sotolongo from Cardozo School of Law in New York City.

The presentations were part of the HBA-NJ's 33rd Annual Scholarship Gala and Awards Dinner on Saturday, May 10, 2014. The HBA-NJ scholarships are but one facet of Archer & Greiner's commitment to enhancing diversity at the firm and within the legal community.

## Civil Bench Bar Update

*Robert E. Lytle, Esq.*

The Civil Bench Bar meeting took place on April 2, 2014. It was well attended by members of both the Bench and the Bar. During the meeting, a number of topics were discussed.

Judge Hurd reported on the Track 2 Auto Blitz scheduled for the weeks of March 24, March 31 and April 7, 2014. Seventy-five (75) total auto cases were scheduled for the blitz. All of the scheduled cases had more than one trial listing and were over 18 months old. Out of the 75 cases scheduled, 55 have already been disposed. That number should increase since there were a few days remaining in the blitz at the time of our meeting. Judge Hurd thanked all of the judges, court staff and attorneys who were involved for their cooperation in making the blitz successful.

The second item addressed on the agenda included trial information, late adjournment requests and interpreter requests. Attorneys with cases on the trial list are reminded that they will receive a call from Civil Case Management three to four weeks prior to trial requesting the following information: (1) The name and contact information for trial counsel; (2) The number of lay and expert witnesses; (3) The estimated number of trial days; (4) Whether the trial can be expedited or handled as a bench trial; (5) The number and subject matter of trial motions; (6) The latest offer/demand; (7) Whether an interpreter is needed, including the specific language involved, the length of time required, and whether the interpreter is needed for a witness or a party; (8) Whether special accommodations are needed for any attorneys, parties or witnesses; and (9) Any additional information needed to assist with the handling of the case.

It was also emphasized that late adjournment requests are discouraged, especially when the reasons for the request were known well in advance of the trial date. Similarly, attorneys should make every effort to advise the court when interpreters are no longer needed. Cancellation fees for interpretation can run as high as \$1,000.00. The failure to timely notify the court that an interpreter is no longer needed could result in cancellation fees being passed onto the attorney for the party who requested the interpreter.

Judge Hurd also advised that judges sitting in the criminal part will be handling civil trials as their schedules permit. The criminal judges taking civil trials are Judge Smithson, Judge Brown, and Judge Fleming. They will normally handle Track 2 cases that are scheduled as expedited or damage only trials.

Judge Hurd also shared that he is presently sitting on a Supreme Court Committee that is evaluating the arbitration program to determine whether it should be continued and, if so, what changes are needed. As part of the Committee's work, it has developed data evaluation how arbitration awards in Track 2 cases compared to the eventual settlements or verdicts obtained in a given case. In addition

to using this data to evaluate the arbitration program, it is also being utilized to train arbitrators and on occasion, provided to parties at settlement conferences so that they can make a more informed decision on a particular settlement offer.

The Judges in attendance at the meeting all noted the increased use of unpublished opinions in legal briefs. If you rely on unpublished opinions, please be sure to comply with R.1:36-3 which requires, among other things, that you provide a copy of the decision, as well as all contrary published opinions that you are aware of, to both the Court and your adversary.

The final item addressed on the agenda concerned dismissals with prejudice for failure to make discovery pursuant to R.4:23-5(a) (2). The Court has asked that when dealing with a pro se party, the attorney seeking dismissal must attach to its moving papers copies of the required forms from Appendix II-A and Appendix II-B, as well as an affidavit reciting that the pro se litigant was served with both forms in accordance with R.4:23-5(a). These steps are required in order to comply with the Appellate Division's most recent opinion in Townsend v. Hilly, 2014 W.L. > 861577.

**Save The Date**  
**Annual Judges & Law Clerks Dinner**  
**Wednesday, September 17, 2014**  
**Greenacres Country Club**  
**5:30 to 8:30 p.m.**

## Welcome New Members

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## We've Moved to a New Address!

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Michael T. Barrett, Esq.  
Bergman & Barrett  
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Princeton, NJ 08540

## Cancer and Social Security Disability

*Samuel M. Gaylord, Esq.*

The Social Security Administration (SSA) defines “disability” as a condition that prevents a person from doing the work they did prior to a disease or injury, precludes them from adjusting to and performing other types of work, *and* the condition is expected to last for at least a year or result in death.

Under that definition, some people who have cancer may be eligible for Social Security Disability (SSD) benefits. Although all diagnoses of cancer are traumatic, not all cancers are the same, which means that prognoses will differ as well. Some people will go through the normal process of evaluation (with the right to appeal a denial). Others may be granted immediate approval of SSD benefits based on the type of cancer alone (e.g., metastatic brain cancer).

Any request for SSD benefits will include documentation encompassing the pathology and surgery reports, and a doctor’s statement. A doctor must be aware of the SSD benefit application; he/she may be able to expand upon the medical information contained in the chart in order to crystallize the cancer’s impact on your clients’ life.

If the original tumor and metastatic disease disappear and have not been evident for three years, you no longer meet the criteria for disability payments. However, if the after effects of the cancer and/or its treatment result in permanent impairment that prevents someone from working, you’ll likely be eligible for benefits.

Conversely, if the cancer progresses during the course of your SSD evaluation or after a denial, contact the SSA immediately. This could have a huge impact on receiving benefits



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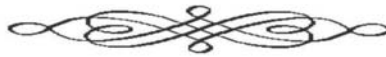




*Please join us for refreshments and to say good-bye to*

***Debbie Dickel***

*as she retires after only 42 years!*



***July 23, 2014, 2:00 p.m.***

*Lamberton Road Facility  
1589 Lamberton Road*

*\$10.00 (includes gift)*

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### **MCBA Lawyer Referral Service**

**MCBA Lawyer Referral Service**— needs attorneys who focus on *any* of the following categories: Civil Rights, Labor Law and Board of Education. We are also seeking Spanish-speaking attorneys in all practice areas.

## Using Social Media in Your Practice

*Christine Vassilour Harvey, Esq.*

*This limited excerpt is taken from a soon to be released book entitled **Digital Litigation: Intake to Verdict** that will be available in August 2014. The entire book is co-written by Jonathan Lomurro, Esq., Christina Vassiliou Harvey, Esq., Matthew Blaine, Esq., Stephanie Lomurro, Esq., and Christopher Campbell, and is designed as a handbook for litigator's use of new technologies.*

Social media is a commonly-used phrase that describes internet technology that facilitated interactive communication between user-created content and receiver-created response. Its use can lead to ethical pitfalls, but can also be used for investigation, information gathering, and marketing.

In 2012, the ABA Legal Technology Survey Report indicated that 88% of responding attorneys had a LinkedIn Presence, 55% utilized Facebook, and 13% could be found on Twitter. A social media presence is not limited to those in private practice; in-house counsel also utilize social media. In a 2012 survey, in-house counsel reported using LinkedIn, blogs, and Wikipedia as social media tools, used for professional reasons. Seventy-six percent of in-house counsel cited blogs as their top "go-to" media source, while 34% cited social media sites, like Twitter, Facebook, and LinkedIn.

Due to interactivity, an attorney should be careful not to un-intentionally create an attorney-client relationship. Social media has allowed anyone to self-publish articles and information. (NOTE: see your malpractice insurance to insure your ability to blog and vlog online and if there are restrictions to those activities). With the interconnectedness of various social media platforms, it is impossible to keep one's spheres completely separated, unless one fully understands the media.

With the expansion of social media becoming a part of lawyer's lives, if a lawyer chooses to utilize social media, then the lawyer has a duty to understand the consequences of that decision. The New Jersey Supreme Court Special Committee on Ethics and Attorney Admissions is reviewing whether to adopt changes to our Rules of Professional Conduct based upon changes to the Model Rules of Professional Conduct recently passed by the American Bar Association ("ABA") as part of its Ethics Commission 20/20. If the changes to the Model Rules are adopted in New Jersey, under R.P.C. 1.1, the attorney must "keep abreast of changes in the law and its practice," including understanding the "the benefits and risks associated with relevant technology."

Even without the proposed change, a lawyer must understand the consequences of using social media before its use. For instance, a lawyer who does not want to share an opinion with the world should not tweet about it via Twitter. Also problematic is the fact that a lawyer's use of social media for self-promotion may constitute advertising. A trend has been to analogize social networking sites to a lawyer's own firm website. Direct social media communications are analogized to email. Pay particular attention to R.P.C. 7.1 through 7.3.

The Supreme Court Special Committee is also reviewing whether to adopt changes to the advertising R.P.C.s. These changes could include modifying the terminology of a client solicitation. For instance, under the ABA Model Rules, a communication resulting from a client's internet search would not constitute a solicitation as long as the client did not have a reasonable expectation that an attorney-client relationship would be created. This new rule change emphasizes a good practice, which is if you have an interactive website advertising your services, place a disclaimer alerting potential clients that an attorney-client relationship will not be formed without confirmation from the law firm.

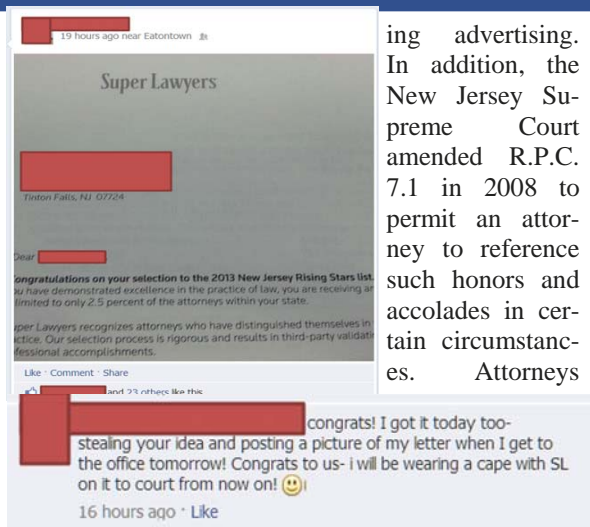
**Rule of Thumb:** Distinguish between personal and professional use.



NOTE: Attorneys and firms should be careful to ensure that their use of social media does not violate ethics rules.

**Unintended Advertising** Publication of information can provide useful tips to potential clients and allow them to learn of your expertise in a particularized field. Social media also has the ability to assist in furthering your firm's branding or marketing. However, social media also allows the potential to take a moment of pride and turn it into an ethical violation. For example: you receive your letter explaining that you have been selected as a Rising Star in Super Lawyers; you then take a picture of the letter with your phone; then you upload it onto your Facebook page. Is this advertising? Is this promotion? Is this an Ethical violation?

Although no tribunal has addressed this issue, the Facebook post could be considered advertising. However, the New Jersey Committee on Advertising has issued an opinion relating to the information that may be posted relating to Super Lawyers. The Committee found that an attorney cannot use superlatives to describe their abilities due to N.J.R.P.C. 7.1's prohibition on mislead-



selected to be included on the “Super Lawyers” list must be careful in the manner of listing that information.

The Comment to N.J.R.P.C. 7.1 only permits the attorney to refer to honors or accolades if the 1) the conferrer inquires into the attorney’s fitness; 2) the honor is not presented for a price; and 3) the conferrer’s methodology for presentation of the award is available for inspection. In 2008, the Supreme Court adopted findings of a Special Master it appointed to review the issue with Super Lawyers: “Where superlatives are contained in the title of the list itself, such as [Super Lawyers], the advertising must state and emphasize only one’s inclusion in the Super Lawyers or The Best Lawyers in America list, and must not describe the attorney as being a “Super Lawyer” or the “Best Lawyer.” In addition, the Supreme Court requires a disclaimer that the inclusion of the lawyer on such a list is not approved by the Supreme Court.

### **False or Misleading Statements**

Another issue that lawyers must be aware before utilizing social media is that once an attorney, always an attorney. An attorney should not utilize social media to make false or misleading statements. In 2010, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 10-457, where it found lawyer websites must comply with N.J.R.P.C. 7.1, which prohibits false or misleading statements.

This might include a lawyer who presents himself as an expert on his LinkedIn site. A lawyer might improperly portray himself as an expert in a field against individual state attorney regulations, such as

ing advertising. In addition, the New Jersey Supreme Court amended R.P.C. 7.1 in 2008 to permit an attorney to reference such honors and accolades in certain circumstances. Attorneys

N.J.R.P.C. 7.4. A lawyer might want to rephrase the Headline portion of LinkedIn to state “accepting cases in” and listing the attorney’s area of practice rather than including a “specialty”.

### **Unanticipated Solicitations**

Lawyers should also be aware that online communications through social media might constitute a solicitation under the N.J.R.P.C. 7.3. A “friend request” or other social networking invitation used for professional purposes may violate the rules against solicitations, if sent to a non-lawyer with whom you do not have any existing familial or professional relationship. Such prior existing relationships include current or former clients, relatives, other lawyers, or someone who has requested information from you. As discussed above, the New Jersey Supreme Court Special Committee on Attorney Ethics and Admissions is reviewing whether to amend N.J.R.P.C. 7.3. The comment period ends on June 16, 2014.

N.J.R.P.C. 7.3 prohibits soliciting clients unless the lawyer has a prior relationship or the communication is marked as an “advertisement”; the rule further prohibits contacting a victim of a mass tort for 30 days, or a person who could not reasonably exercise judgment to hire the lawyer, or a person who has made known a desire not to receive such communications.

The direct solicitation prohibition also applies to attorney’s conduct in chat rooms. In a Florida Bar Standing Committee on Advertising Advisory Opinion, the Committee found that lawyers could not enter a chat room to solicit clients but could answer questions posed to them. However, the California Standing Commission on Professional Responsibility and Conduct found attorney communications with a potential client in a mass-disaster victim chat room were strictly prohibited.

Attorneys may also create unanticipated solicitations merely by using the automatic features of the social networking website. For instance, LinkedIn features an option to scan or import your Outlook contacts to send automatic batch invitations. Sending batch invitations may result in invitations being sent inadvertently to represented parties and witnesses whose information is stored in your Outlook address book. These batch invitations are not personalized by person. If the person does not accept, LinkedIn sends two automatic reminders unless the sender affirmatively withdraws the invitation. Each invitation sent could constitute a separate ethics violation.

**Continued on Page 22**

# Calendar

## June

### **June 17, 2014**

Real Estate Section 2.0 CLE  
Luncheon Seminar  
Greenacres County Club  
Lawrenceville, NJ  
11:30 a.m. to 2:00 p.m.

### **June 18, 2014**

Chancery Bench Bar Meeting &  
2.0 Free CLE Seminar  
Special Proceedings Courtroom  
3:00 p.m.

### **June 18, 2014**

Young Lawyer's Happy Hour  
RHO Restaurant, Rt. 29  
Trenton, NJ  
5:30 pm

### **June 19, 2014**

Municipal Bench Bar Meeting  
Ewing Twp. Municipal Court  
2 Jake Garzio Dr.  
Ewing, NJ 08628  
3:30 p.m.

### **June 25, 2014**

Civil Bench Bar Meeting  
Judge Hurd's Courtroom  
175 S. Broad Street  
3:30-5:00 pm

### **June 27<sup>th</sup>, 2014**

Mercer County Bar Association  
and American Red Cross Blood  
Drive, Hamilton Township Library  
10 a.m. to 3 p.m.

## July

### **July 1, 2014**

Bankruptcy Meeting  
Judge Kaplan's Courtroom  
4:00 p.m.

### **July 10, 2014**

Family Bench Bar  
Judge Fitzpatrick's Courtroom  
3:30 p.m.

### **July 10, 2014**

Lawyers CARE  
Lawrence Twp. Library  
2751 Brunswick Pike  
Lawrenceville, NJ 08648  
5:30 p.m. – 7:00 p.m.

### **July 15, 2014**

Real Estate Trustees Meeting  
MC Bar Assoc. Office  
9:00 am

### **July 16, 2014**

Domestic Violence Working Group  
Judge Warshaw's Courtroom  
Civil Court Building  
3:30 p.m.

## August

### **August 5, 2014**

Bankruptcy Meeting  
Judge Kaplan's Courtroom  
4:00 p.m.

### **August 14, 2014**

Lawyers CARE  
Hamilton Twp. Library  
1 Justice Samuel A. Alito, Jr. Way  
Hamilton, NJ 08619  
5:30 p.m. – 7:00 p.m.

### **August 19, 2014**

Real Estate Trustees Meeting  
MC Bar Assoc. Office  
9:00 am

### **August 20, 2014**

Foundation Topper Golf Classic  
Mountain View Golf Club

## September

### **September 2, 2014**

Opening Ceremony of the Courts  
Criminal Courthouse  
Special Proceedings Courtroom  
8:30 a.m.

### **September 2, 2014**

Bankruptcy Meeting  
Judge Kaplan's Courtroom  
4:00 p.m.

### **September 2, 2014**

Trustees Meeting  
One 53  
153 Washington St.  
Rocky Hill, NJ  
5:30 p.m.

### **September 11, 2014**

Family Bench Bar Meeting  
Judge Fitzpatrick's Courtroom  
Civil Court Building  
3:30 p.m.

### **September 11, 2014**

Lawyers CARE  
Mercer County Connection  
Hamilton Square Shopping Center  
Rt. 33 @ Paxson Ave.  
Hamilton, NJ 08690  
5:30 p.m. 7:00 p.m.

### **September 12, 2014**

CLE Local Public Contract Law  
Breakfast Seminar  
MCBA Office  
9:00-11:00

### **September 16, 2014**

Real Estate Trustees Meeting  
MC Bar Office  
9:00 am

### **September 17, 2014**

Judges & Law Clerks Dinner  
Greenacres Country Club  
5:30-8:30 pm

Registration forms for seminars and events are posted on the Mercer County Bar Association website [www.mercerbar.com](http://www.mercerbar.com). On the home page there are tabs across the top. Hover your mouse over the “events” tab, and then choose “calendar of events” from the drop-down menu. That will take you to a page where you will find the seminars and events listed in chronological order. Clicking on an underlined event will take you to the registration form. If you have any questions, call the MCBA office 609-585-6200.

<p><b><u>October</u></b>  <b>October 7, 2014</b>            Bankruptcy Meeting            Judge Kaplan’s Courtroom            4:00 p.m.</p> <p><b>October 7, 2014</b>            Trustees Meeting            Cappunano’s            217 Clarksville Rd.            West Windsor, NJ            5:30 PM</p> <p><b>October 9, 2014</b>            Lawyers CARE            Lawrence Twp. Library            2751 Brunswick Pike            Lawrenceville, NJ 08648            5:30 p.m. – 7:00 p.m.</p> <p><b>October 15, 2014</b>            Domestic Violence Working            Group            Judge Warshaw’s Courtroom            3:30 p.m.</p> <p><b>October 16, 2014</b>            Municipal Bench Bar Meeting            Ewing Twp. Municipal Court            3:30 p.m.</p> <p><b>October 21, 2014</b>            Professionalism Day            Details to follow</p> <p><b>October 21, 2014</b>            Real Estate Trustees Meeting            MC Bar Office            9:00 am</p>	<p><b>October 29, 2014</b>            Xtreme CLE            The Conference Center at            MCCC            8:00am -8:00 pm</p> <p><b><u>November</u></b>  <b>November 4, 2014</b>            Bankruptcy Meeting            Judge Kaplan’s Meeting            4:00 p.m.</p> <p><b>November 4, 2014</b>            Trustees Meeting            Location (TBA)            5:30 p.m.</p> <p><b>November 13, 2014</b>            Family Bench Bar Meeting            Judge Fitzpatrick’s Courtroom            3:30 p.m.</p> <p><b>November 13, 2014</b>            Lawyers CARE            Hamilton Twp. Library            1 Justice Samuel A. Alito, Jr. Way            Hamilton, NJ 08619            5:30 p.m. – 7:00 p.m</p> <p><b>November 18, 2014</b>            Real Estate Trustees Meeting            MC Bar Office            9:00 am</p> <p><b>November 19, 2014</b>            November General Membership            Meeting &amp; Awards Dinner            Mercer Oaks            5:30 to 8:30 p.m.</p>	<p><b><u>December</u></b>  <b>December 2, 2104</b>            Bankruptcy Meeting            Judge Kaplan’s Courtroom            4:00 p.m.</p> <p><b>December 2, 2014</b>            Trustees Meeting            Revere Restaurant            802 River Rd.            Ewing, NJ            5:30 p.m.</p> <p><b>December 3, 2104</b>            MCBA Holiday Party            RHO, 50 Riverview Dr.            Trenton, NJ            5:30 p.m.-8:30 p.m</p> <p><b>December 11, 2014</b>            Lawyers CARE            Mercer County Connection            Hamilton Square Shopping Center            Rt 33 @ Paxson Ave.            Hamilton, NJ 08690            5:30 p.m. – 7:00 p.m.</p>
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## Using Social Media in Your Practice cont.

The ABA Model Rule 7.3 permits blasted emails, however, and therefore if New Jersey adopts the model rule, using this automatic service to send a blast email would not be a violation.

LinkedIn also presents a potential N.J.R.P.C. 7.3 violation in its introduction feature. The site encourages users to “introduce” people within their network to each other. If one of your connections improperly introduces you to a potential client on your behalf, it could constitute an improper solicitation.

**Duty of Confidentiality** Social media also presents issues relating to inadvertent disclosure of confidential relationships. For instance, on LinkedIn, if you become connected to a former client, you could inadvertently breach the duty of confidentiality owed by N.J.R.P.C. 1.6. Including a client on a professional networking site, like LinkedIn, might inadvertently disclose a relationship the client thought was confidential, particularly if someone like a secretary accepts the relationship on the client’s behalf. ABA Formal Opinion 10-457 provides that lawyers must obtain client consent before posting information on websites about current or past legal matters or the identity of current or past clients.

### **Duty of Confidentiality and Cloud Computing**

As a result of the ABA Ethics Commission 20/20’s in-depth study of new technologies upon the Model Rules of Professional Responsibility, the ABA House of Delegates adopted a change to Model Rule 1.6 in August 2012. The change adds a new provision: (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Even though New Jersey has not yet proposed or adopted this language, the broad language in N.J.R.P.C. 1.6(a), prevents an attorney from utilizing remote storage techniques that do not provide ample protection from unintentional disclosures, including sharing information or hacking. Moreover, the New Jersey Supreme Court Special Committee on Attorney Ethics and Admissions may propose the change be made to New Jersey’s rules consistent with the ABA Model Rules.

### **Friending Judges or Mediators**

In traditional networking spheres, attorneys love to

network with judges. Different jurisdictions have divergent opinions on whether a judge may befriend a lawyer on social media.

In jurisdictions where ethics authorities have said judges cannot friend the lawyers through Facebook or other social media, the restriction is typically reciprocal, meaning a lawyer cannot attempt to “friend” a judge through social media if the judge would be prohibited from doing so. Florida has provisions against judges and mediators “friending” attorneys. North Carolina also has an opinion finding “friending” is a violation of the R.P.C.s. However, New York, Kentucky, and South Carolina permit “friending” as long as discretion is exercised.

In fact, the ABA Model Canon of Judicial Conduct 4A indicates, “Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.” Variations of this Canon have been adopted in states like New Jersey, New York, Florida, and South Carolina.

### **Duty of Candor**

Similar to the duty of confidentiality, a lawyer always owes the duty of candor. Social media has been used to uncover lies. For instance, a lawyer who asked for adjournment due to a death in the family was caught in a lie when he discussed his social plans on Facebook. Even when privacy settings may be set to block access to your social media accounts, remember to always be candid in everything you do.



Once a lawyer, always a lawyer; Online or Offline.

1. Stephanie Francis Ward, *Lawyers Using Social Media More, Says ABA Tech Survey*, ABA Journal (2012) available at [http://www.abajournal.com/news/article/lawyers\\_using\\_social\\_media\\_more\\_says\\_aba\\_tech\\_survey/](http://www.abajournal.com/news/article/lawyers_using_social_media_more_says_aba_tech_survey/).
2. In-House Counsel New Media Engagement Survey by Inside Counsel (2012), <http://www.greentarget.com/wp-content/uploads/2012/01/2012GTZGICSurveyReportFinal-WebsiteVersion.pdf> (last visited May 21, 2013).
3. NJ Comm. on Attorney Adver., Op. 42 (2010).
4. *In re Opinion 39 of the Committee on Attorney Advertising*, 197 N.J. 66 (2008).
5. N.J. Comm. on Atty. Adver., Op. 42 at p. \*2.
6. Available at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/professional\\_responsibility/ethics\\_opinion\\_10\\_457.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/professional_responsibility/ethics_opinion_10_457.authcheckdam.pdf) (Aug. 5, 2010) (last accessed May

## SZAFERMAN LAKIND PARTNER CRAIG HUBERT APPOINTED TO STATE BAR ASSOCIATION BOARD OF TRUSTEES



Craig J. Hubert has been appointed as the Mercer County representative to the Board of Trustees for the New Jersey State Bar Association. A member since 1994, Craig has long been active with the State Bar. Prior to appointment as trustee, he served for six years on the Association's Judicial and Prosecutorial Appointments Committee (JPAC), where he volunteered hundreds of hours vetting and investigating persons nominated to be judges and prosecutors, and performing seven-year tenure reviews for the Judges and Justices in the State. In addition to his longstanding commitment to the State Bar, Craig has remained an active member of the Mercer County Bar Association for his entire career, holding several offices and serving as the organization's President in 2005.

Craig received his undergraduate degree from the University of Wisconsin and his J.D. from Seton Hall University of Law. He began his career as a Judicial Law Clerk for the Honorable Neil H. Shuster, who, at the time, was the Presiding Judge of the Mercer County Civil Division. Following his clerkship, Craig served for more than three years as an Assistant Prosecutor in the Office of the Mercer County Prosecutor through 1994 before entering private practice. Craig was a partner at Brotman, Graziano & Hubert until he joined the Szaferman Lakind firm in 2004.

In his practice, Craig specializes in representing plaintiffs in personal injury matters. He has expressed that "representing victims in civil trials seemed to me a natural extension of my experience with victims in criminal matters." In this regard, Craig continues to represent victims of various crimes, nursing home neglect, dangerous property conditions, defective products and other types of accidents, including but not limited to bicycle and automobile accidents.

Craig's peer recognition includes the following:

- U.S. News & World Report, "Best Lawyers" 2013 and 2014
- New Jersey Super Lawyer*, 2005-2014
- Attorney of the Year*, Mercer County American Inn of Court
- Certified Civil Trial Attorney, NJ Supreme Court
- Certified Criminal Trial Attorney, NJ Supreme Court

Outside the practice of law, Craig commits a great deal of time and energy to family and fitness. As a competitive swimmer and member of US Masters Swimming, Craig's day begins in darkness with lengthy pre-dawn training sessions at Princeton University's pool. He competes at U.S.M.S. Nationals and international swimming and triathlon events. Craig and his wife, Susan, reside with their four children in Ringoes, New Jersey.

**ONE PLACE  
ONE DAY  
ONE YEAR OF CREDITS**

**OCTOBER 29, 2014  
8:00 A.M. TO 8:00 P.M.  
THE CONFERENCE CENTER  
AT MCCC**



**Mercer County Bar Association**  
1245 Whitehorse Mercerville Road  
Suite 420  
Mercerville, NJ 08619

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**The Association's Awards Committee is seeking nominations for our annual Michael J. Nizolek, Young Lawyer of the Year and Community Partner Awards.**

Mike Nizolek was a former President of the Bar Association, a leader in the community and one of our most beloved members. Since his death we have honored his memory annually with the Association's highest honor to be bestowed upon those who demonstrate outstanding commitment to service and to the Bar Association.

The Young Lawyer of the Year award goes to a lawyer under the age of 35 or in practice less than 10 years whose actions raise the profile of our association in the community and whose commitment to service helps to better our legal profession and the community where we live in and work.

The Community Partner Award recognizes contributions of a local firm or community group which has made a substantial commitment to time, effort and support to the Bar Association and the Bar Foundation.

To nominate attorneys, firms or a community group for these awards please send a letter of recommendation to Scott Krasny, MCBA Awards Committee Chairman, c/o Mercer County Bar Association, 1245 Whitehorse Mercerville Road, Suite 420, Mercerville, NJ 08619 or via fax at 609-585-6200.

The award recipients will be honored at the November General Membership Meeting and Awards Ceremony on November 19, 2014.

**The deadline for nominations is 4:30 p.m., June 22, 2014.**