

# THE BAR REPORT

WEEKLY NEWS FROM THE NEW JERSEY STATE BAR ASSOCIATION

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## The Bar Report Weekly News from the New Jersey State Bar Association *New Jersey Law Journal* August 22, 2016

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### Cross-examination: Working to inspire more charitable involvement in South Jersey

**Michael Testa Jr.** is a partner with Testa, Heck, Scrocca & Testa in Vineland, and a trustee of the New Jersey State Bar Association. This spring he received the 21st annual Paul Aiken Encore Award from the South Jersey Cultural Alliance for his work with Vineland Regional Dance Company. Testa has been a member of the dance company's board for eight years, and currently serves as its chair. He spoke recently about his involvement with the company, his service as chair of Big Brothers Big Sisters of Cumberland & Salem Counties and the Vineland Downtown Improvement District/Main Street Organization, and other philanthropic pursuits. He is also active in county politics.



#### **How did you get involved with the Vineland Regional Dance Company?**

It's a wonderful ballet company that was started by Maxine Chapman. My wife danced for the company and now my daughters dance at the studio. When the lawyer who helped it form as a 501(c)(3) 30 years ago asked me to get involved, I had to say yes. I've been chairman of the board for the past four years. It's been a pretty large part of my life. I love being there. It's one of those things that makes Vineland special. Vineland and Cumberland County don't often receive the attention they deserve, and this school is a meaningful regional dance company in the country. We probably send more ladies and young men to Julliard per capita than any other school around the country.

#### **What attracted you to be a part of the Big Brothers Big Sisters organization?**

I have been involved with Big Brothers Big Sisters of Cumberland & Salem Counties for six or seven years, and I am in my third year as chairman. I became interested in Big Brothers Big Sisters when I was at Villanova University. It has an active program with the Big Brothers Big

Sisters organization, which they call Bigs and Little program, and I was always jealous of the guys who were able to get involved. I couldn't because I was in athletics and had other commitments. I've gotten involved by first becoming a board member. I definitely want to be a big in the future since every single person I know who has been a big said they get so much more out of it than the littles.

It's a great organization, and I get a lot of rewards out of it. We live in an economically depressed area; Cumberland County has the highest poverty levels in the state, according to a 2015 study, and Salem County isn't too far behind that. That means there are so many children who can benefit from one-on-one mentoring in our community. For example, I saw a 'little' guy who didn't speak when he joined the program a few years ago. He would speak to his 'big,' but when another one of us would say hello he would just look to the ground. That child gave a speech last year at one of our fundraisers, and I realized how much he had changed in four years. Working with the organization has changed my understanding of what it means to succeed. Before I became involved, I thought not going to college was a failure, and now I realize it's a sliding scale. For a lot of kids it can be a major success to stay out of trouble and earn a high school diploma. It's humbling, and I'm so proud of the fact that we were honored as the board of the year for the entire country.

#### **What was your first philanthropic effort?**

I was 26, and three years out of law school, when Frank Guaracini Jr., who was a mentor of mine called me. He said they needed young blood on the board of the Vineland Downtown Improvement District. I said ok, what do I do? He said they were having a flower planting in some of our mini parks in the downtown that weekend. That was how I got my start, planting flowers.

#### **What does community involvement mean to you?**

It's a family tradition. The local municipal courthouse is named after my grandfather. I am trying to take it to the next level because I think so many people of my generation have left. There aren't many shareholders left to carry on the mantle. People just don't have as much skin in the game here, and I will say that it gets frustrating at times. I'm born and raised here, and I am hoping to inspire more people to come back to rebuild our economy.

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## **ADVOCACY**

The NJSBA has a robust advocacy program. The association passionately and effectively serves as the voice of the profession from the halls of Trenton to the Administrative Office of the Courts.

### **AMICUS ACTIVITY**

The association is perhaps at its most zealous when it takes on the role of *amicus curae* before the federal courts, state appellate courts and the New Jersey Supreme Court, and sometimes at the request of the Court to provide insights and guidance on issues that affect the practice of law.

With assistance of its volunteers, the NJSBA filed, argued and saw decisions in nearly a dozen cases last year. The association has tackled cases that cover everything from voir dire, to the delivery of notices in real estate matters via email, to the application of the Law Against Discrimination.

Here are some highlights of the NJSBA's *amicus* activity.

- In *State v. James Buckner*, the Court found the use of recall judges was constitutional. The association had urged the Court to consider the public policy ramifications that would have sent shockwaves throughout the legal industry if the justices were to find that the use of retired judges who have been tapped to hear some matters for the past 40 years was not allowed.
- In *Ekaterina Schoenefeld v. State of New York*, the NJSBA has argued that, as New Jersey has recognized through the evolution of its bona fide office rule, with today's technological advancements, New York's in-state office requirement for non-resident attorneys impermissibly discriminates against such attorneys. The case is pending in the United States Court of Appeals for the Second Circuit.
- Though the NJSBA did not agree with the Court's findings in *Peter Innes v. Marzano-Lesnevich*, regarding whether attorneys can be held liable for counsel fees if, as trustees and escrow agents they intentionally breached their fiduciary obligation, the association is continuing to advocate for reform of professional malpractice statutes in the Legislature.
- In a case of first impression the association is a friend-of-the-court in *Heredia v. Piccininni*. The case will determine if judges must ask open-ended questions during jury selection and if the failure to do so is grounds for a new trial. In short, the case will set the stage for how voir dire is conducted at future trials. The NJSBA argued that using open-ended questions during the jury selection process is a critical way to assess the attitudes and preconceptions jurors may have that could conflict with their ability to consider the case fairly. Further, the association said such questions are required under existing Administrative Office of the Courts directives and that should be enforced.
- In a unanimous decision the Court agreed with the NJSBA's argument that *Sergio Rodriguez v. Raymours Furniture*, holding that a private agreement that contractually shortens the statute of limitations for a Law Against Discrimination (LAD) claim frustrates the purpose of LAD and is, therefore, unenforceable. The NJSBA argued in support of the plaintiff's claims that the contract was a unilateral contract of adhesion that unreasonably and unconscionably limited citizens' rights to access the courts.

## **TAKING A LEAD ON COURT REPORTS**

The NJSBA offered comments on a variety of proposals issued by the Court aimed at keeping pace with technology and the changing landscape of the legal profession. Despite the NJSBA's urging not to do so, the Court adopted proposals to implement admission by motion and to offer the uniform bar exam to qualified applicants beginning in 2017. The NJSBA also provided comments on proposed rule amendments to address the handling of metadata in documents related to litigation and legal transactions.

Noting that New Jersey already has a skilled and diverse bar capable of delivering a wide variety of legal services, the NJSBA urged the Court not to adopt a proposal for admission by motion. The NJSBA told the Court that such a policy would create unnecessary risks to the public and defeat the very rationale for lawyer licensing. The Court acknowledged the legitimate concerns about admission on motion. The Court was concerned, though, about the barrier to the practice of law under the current rules, and placed a premium on allowing New Jersey lawyers to follow their clients to other jurisdictions and the potential benefits that would be reaped from such access through reciprocal admission by motion.

In connection with the Uniform Bar Examination (UBE), the NJSBA had cautioned against its adoption before additional data was available on the impact the exam would have on the local practice of law. The Court concluded, however, that the potential benefits from the UBE outweighed the risks identified by the NJSBA. In adopting the UBE, the Court agreed to review its impact in three years.

The NJSBA also advocated for increased education about potential ethical issues in the handling of metadata in electronic documents, as recommended by a Supreme Court working group on the issue, but urged the Court to adopt rules that provided additional clarity on the issue and permitted a lawyer to sequester a questionable document until an appropriate court ruling could be obtained. The Supreme Court declined to do so, following instead the working group's recommendation to require a recipient of such a document to make an initial judgment about why a document containing metadata was sent and to take certain action based on that judgment.

## LEGISLATIVE ACHIEVEMENTS

NJSBA members continue their efforts to improve the laws and address current legal trends through legislation, policy changes, rules changes and case law.

The legislative agenda came to a dramatic close with the long-awaited Uniform Trust Code was signed into law after having been passed on the final day of the 216th legislative session. The bill codified 100 years of New Jersey trust law into statutory form. It represents a sea change in the area of trust law, especially for attorneys who are interested in venturing into the practice area as they now have a single source of reference instead of century-old case law to review.

The association's adverse possession bill also passed both houses and saw its way to the governor's desk for the first time since its introduction in 2004. The bill, authored by both the NJSBA and the NJ Law Revision Commission, sought to repeal conflicting statutes to establish a 20-year adverse possession period and protect the rights of owners of certain tidal-flowed property that has been dry for over 40 years. The bill was ultimately vetoed by the governor, but its passage in both houses is a strong sign that success is imminent.

The NJSBA was also successful in providing amendments to a bill that imposes a presumptive termination date for child support, which make clear that presumptive termination only applies to child support, and not to emancipation, and also provides additional protections for custodial parents who will receive additional notices prior to termination of support.

The juvenile justice system will undergo major reforms thanks to a bill that promises an overhaul to focus on rehabilitation of adolescents and reduce recidivism, and – at the request of legislators – the association provided input on the reforms and supported the bill.

In the year ahead, the will work to advance six bills it drafted that have been introduced, including A-1982, the professional malpractice bill, and A-339, codifying standards for removal of a child of divorced or separated parents out of the state.

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## Capitol Report

[Click here](#) for this week's issue of the **Capitol Report**.

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Information in The Bar Report is compiled by the New Jersey State Bar Association, which welcomes tips and story ideas from its readers and members. Contact Kate Coscarelli at [kcoscarelli@njsba.com](mailto:kcoscarelli@njsba.com) or 732-937-7548.

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