

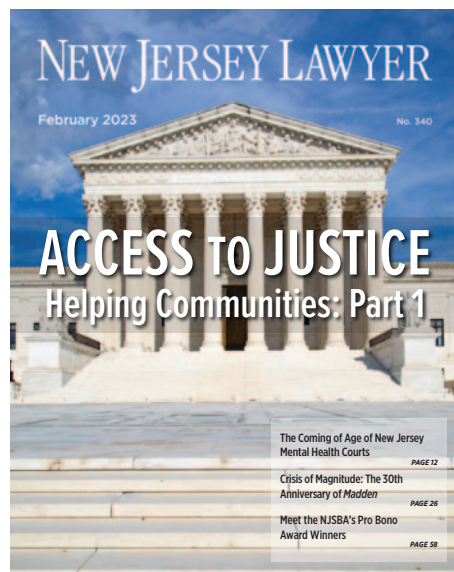


New Jersey Lawyer analyzes access to justice

The February 2023 edition of *New Jersey Lawyer* is the first in a two-part series dedicated to helping people and communities access justice.

The issue, published by the New Jersey State Bar Association, is a collaboration between the NJSBA's Pro Bono Committee and the *New Jersey Lawyer* Editorial Board to address themes of equality under the law, a person's right to counsel and pro bono work. The interest from the NJSBA community to contribute articles was so overwhelming that the Editorial Board decided to run two consecutive issues of the magazine devoted to the topic.

Some of the articles cover incarcerating non-violent criminal defendants with mental health illnesses, filing fees as a barrier to justice and a 30-year history of *Madden v. Delran*, the case



that established New Jersey's attorney assignment system to fulfill the constitutional right to counsel.

Here is a full list of the articles in the edition:

- The Coming of Age of New Jersey Mental Health Courts: Addressing a Dilemma in the Criminal Justice System—By Joanna R. Adu and Eric Marcy.
- Crisis of Magnitude: *Madden v. Delran* on its 30th Anniversary—By Amy Vasquez.
- Justice Speaks All Languages: Ensuring the Due Process Rights of Limited English Proficient Litigants through Volunteerism and Judicial Collaboration—By Victoria B. Nicholson.
- The Effect of Filing Fees on the Access to Justice—By Adelina Herrarte and Melanie Zelikovsky.
- The Impact of Court-Ordered Psychological Evaluations in Child Wel-

fare Cases—By Maling Miranda and Classie Colinet.

- The Disparate Impact of Driver's License Suspensions on Communities of Color—By Karen Robinson.
- The Impact and Consequences of True Poverty on Access to Justice—By Akil Roper and Shivi Prasad.

The edition also includes practice tips for using social media and eating well, NJSBA President Jeralyn L. Lawrence's perspective on ending the *Madden* system of assigned counsel and a look at the NJSBA Pro Bono Award winners for 2022.

The full issue of *New Jersey Lawyer* is available on njsba.com.

NJSBA Board of Trustees takes action at February meeting

The New Jersey State Bar Association's Board of Trustees convened on Feb. 10 to fill a vacant Trustee seat, approve destinations for upcoming events and support a slate of bills in the state Legislature.

The Board appointed Brett Yore to fill a vacancy on the Association's governing body. Yore, an assistant prosecutor in Cape May County, will fill the vacancy created when Daniel Kurkowski was appointed to the state Superior Court bench. Yore is the co-chair of the Association's Membership Committee active with its Young Lawyers Division, Legislative Committee

and Diversity Committee; and is a graduate of the Association's Leadership Academy. He is also a former president of the Cape May County Bar Association.

On a recommendation by the NJSBA's Meetings, Arrangement and Program Committee, the Trustees voted to approve three locations for upcoming events. The 2023 Mid-Year Meeting will be held in Paris, the 2023 Elder Law Retreat will be in Bethlehem, Pa., and the Environmental Law Section to host its annual symposium in Wildwood Crest.

The Board supported the following

bills in the state Legislature:

- S1756 Pou / A2371 Lopez "Digital Asset and Blockchain Technology Act"—a bill that regulates digital asset business activity by defining the term "digital asset" and creates a license to carry such assets, among other provisions.
- Uniform Commercial Code Amendments (2022) Uniform Law Commission's proposed amendments to the Uniform Commercial Code—a series of amendments that further the process of incorporating electronic transactions

into New Jersey law. The amendments define and address such things as electronic money and other digital assets in commercial law governing sales, leases, investment securities and secured transactions.

- A4939 McKeon—a measure that establishes a fundamental right of person to marry or enter into a civil union with person of any race.
- A4965 Matsikoudis—a bill allowing those serving overseas in the military to be married or enter into civil union by video conference or other electronic means. ■

NJSBA

**ANNUAL MEETING
AND CONVENTION**

Presented by the New Jersey State Bar Association
and the New Jersey Institute for Continuing Legal Education



May 17–19, 2023
Borgata Hotel, Casino & Spa, Atlantic City

Champions of justice: NJSBA celebrates Pro Bono Award winners for 2022

The New Jersey State Bar Association recognized New Jersey attorneys, corporate legal departments and a group of Seton Hall Law students for their outstanding commitment to providing pro bono legal services to the state's underserved residents. An award ceremony at the New Jersey Law Center on Feb. 15 honored 20 individuals across six award categories. ■

Photos by Steve Hockstein



Pre-CREAMMA conditional discharges not a bar to future PTI admission, says Supreme Court

The state Supreme Court ruled that people who received conditional discharges for marijuana offenses now considered automatically expunged under the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA) are not precluded from future admission into pretrial intervention (PTI). The holding is consistent with the New Jersey State Bar Association's argument that CREAMMA wiped the slate clean for these charges. The NJSBA participated as *amicus curiae* in both the Appellate Division and the Supreme Court, with Association Criminal Law Section Chair Michael B. Roberts arguing on behalf of the NJSBA. Roberts also wrote the brief.

"Upon harmonizing the [CREAMMA, PTI and expungement] statutes, we conclude that persons who received pre-CREAMMA conditional discharges specified for marijuana offenses—just like persons who had pre-CREAMMA convictions for those marijuana offenses—are no longer categorically precluded from future admission into PTI," said the Supreme Court in its 39-page opinion written by Judge Jack Sabatino, who is temporarily assigned to the Supreme Court. The Court was unanimous in this decision.

"As an *amicus* party to the case, the NJSBA argued to the Court that CREAMMA undid the harms of the past and tried to right the wrongs

already done," said NJSBA President Jeralyn L. Lawrence. "We are gratified that the Court has interpreted the law as the Legislature intended—to give defendants in marijuana cases a clean slate."

The consolidated matter of *State v. Gomes* consisted of two appeals



CAPITOL REPORT

involving charges against Richard Gomes in Middlesex County and Moataz Sheira in Morris County. Gomes and Sheira received conditional discharges before CREAMMA, both received additional charges and both were denied PTI because of their prior conditional discharges. Sheira filed a PTI motion with the support of the Morris County Prosecutor to appeal his ineligibility, which was denied by the trial court. In Gomes' case, the Middlesex County Prosecutor opposed his appeal to the Law Division.

The posture of this matter was made even more complicated because the Middlesex County Prosecutor's Office was the only party arguing that conditional discharges operated as a bar to PTI, despite CREAMMA's effect on prior marijuana offenses. But state

Attorney General Matthew Platkin, who was asked by the Court to appear as *amicus curiae*, argued that this was not the intent when Gov. Phil Murphy signed CREAMMA into law.

Aligned with Platkin were the state Office of the Public Defender, who represented Sheira; Scott Gorman, who

represented Gomes; Matthew W. Kelly of the Morris County Prosecutor's Office; and *amici* American Civil Liberties Union of New Jersey, Association of Criminal Defense Lawyers of New Jersey, Legal Services of New Jersey, as well as the NJSBA.

The case hinged on statutory interpretation and legislative intent, parsing out the language in the PTI and expungement statutes and highlighting CREAMMA's language "by operation of law." "Notably, the phrase 'by operation of law' appears nowhere else in the entire Criminal Code," said the Supreme Court in its opinion.

"At the very least, 'by operation of law' signifies that an individual with an eligible marijuana conviction or conditional discharge should not have to take affirmative steps to file an

expungement petition with a court or prove rehabilitation to obtain relief. The record and adverse effect of those previous charges is to be eliminated automatically and instantaneously. The previous conduct, which had been illegal under the former statutes and is now legal, is intended to be treated as if it did not happen," said the Court.

The Court underscored that their reversal does not automatically entitle a PTI applicant with a previous marijuana conditional discharge to be admitted into the program. Rather, the matters have been remanded for further review in Gomes' case and to implement the prior decision in Sheira's case unless his circumstances have materially changed.

"We stress that this is an exceptional situation involving a sweeping new statute that we have endeavored to harmonize sensibly with pre-existing laws," said the Court.

This is a status report provided by the New Jersey State Bar Association on recently passed and pending legislation, regulations, gubernatorial nominations and/or appointments of interest to lawyers, as well as the involvement of the NJSBA as amicus in appellate court matters. To learn more, visit njsba.com.