

NJSBA continues *amicus* work in cases involving drug convictions, cohabitation

State v. Olenowski

The New Jersey State Bar Association will file supplemental briefing following a special master report in *State v. Olenowski*. Judge Joseph F. Lisa found that the state has clearly established its Drug Evaluation Classification Program (DECP) and the 12-step Drug Recognition Experts (DRE) protocol satisfy the reliability standard of N.J.R.E. 702 when analyzed under the *Daubert* standard. The NJSBA argued that the *Daubert* standard, not the *Frye* standard, should apply in evaluating the scientific reliability of such evidence and that under both standards, DRE testimony is scientifically unreliable.

In the case, the defendant was convicted of driving while intoxicated based on the DRE testimony, a decision that was upheld by the Appellate Division. On appeal, the state Supreme Court held that the record was inadequate to test the validity of DRE evidence and appointed a special master to conduct a plenary hearing on the admissibility of DRE evidence. The NJSBA filed an *amicus curiae*

brief questioning the legitimacy of DRE testimony, arguing that it lacks

oral argument, tentatively scheduled for June 1, following up Judge Lisa's

the state must present to prove that a prior conviction for DWI was not based on Alcotest breath sample test results deemed inadmissible because of the trooper's malfeasance for a defendant to be subject to enhanced sentencing requirements in a subsequent DWI prosecution. Judge Fall is expected to complete the hearings in the coming weeks and issue a report to the Supreme Court for further action.



CAPITOL REPORT

the foundation to meet the *Frye* standard for expert opinions. In his initial report issued last August, Judge Lisa concluded DRE testimony should be admitted under the *Frye* standard.

In the briefing among the parties, a discussion of error rates associated with DRE evidence made it evident to the Supreme Court that while they are expressly considered under the *Daubert* standard, they are not directly covered under the *Frye*'s general acceptance standard. The Court directed the parties to brief "whether this Court should depart from *Frye* and adopt the principles of *Daubert* in criminal cases."

The NJSBA anticipates filing supplemental briefing and participating in

latest supplemental report. NJSBA member John Menzel continues to represent the NJSBA in this matter.

State v. Zingis

The special master hearings in *State v. Zingis* continue, with Menzel, Jeffrey Evan Gold and Michael Troso representing the NJSBA. Special Master Judge Robert A. Fall is hearing testimony about the development of a list by the Attorney General of individuals whose DWI convictions were affected by the malfeasance of a former state trooper in failing to follow proper protocols in calibrating Alcotest machines used to determine an individual's blood alcohol content.

The case focuses on what evidence

Cardali v. Cardali

The Supreme Court granted the NJSBA's motion to participate as *amicus curiae* and oral argument is scheduled for later this month in *Cardali v. Cardali*, which centers around cohabitation in applications to modify or terminate alimony. NJSBA President Jeralyn L. Lawrence, NJSBA Incoming President Timothy F. McGoughran, NJSBA Family Law Executive Committee Chair Derek M. Freed, and NJSBA members Catherine Murphy and Brian G. Paul authored the brief. Lawrence will argue before the Supreme Court.

The NJSBA is asking the Court to adopt a *Lepis*-type standard to be applied uniformly. The three-step process would require a *prima facie* showing of cohabitation—without the necessity of proving financial entanglements, shifting the burden of proof to the payee to prove there is no cohabitation; the ability to obtain discovery for this purpose; and a case management conference to determine if there are any genuine issues of material fact necessitating a plenary hearing. If there are no genuine issues, a motion for summary judgment should be permitted. If there are genuine issues of material fact, then a plenary hearing would be conducted.

"This will provide a practical and effective approach for trial courts to apply in cases where cohabitation is alleged and will provide a clear and unequivocal standard for litigants that is sorely missing under current case law," said the NJSBA in its brief.

The New Jersey chapter of the American Academy of Matrimonial Attorneys is also participating as *amicus curiae* in support of a uniform procedure for these matters. Oral argument is scheduled for April 25. ■

NJSBA attorney honored among NJBIZ Leaders in Law



Congratulations to Sharon Balsamo, the New Jersey State Bar Association Assistant Executive Director/General Counsel, who was selected as one of NJBIZ's Leaders in Law for 2023.

The annual list recognizes legal professionals—lawyers and general counsels—who have an outstanding dedication to their occupation and to their communities. Balsamo has worked at the NJSBA for 27 years, serving as the Association's general counsel for the last decade.

Honorees were chosen by a panel of independent judges with experience in the justice system. A full list of NJBIZ's award methodology is available on its website.

A celebration honoring the legal professionals will take place May 25 at The Palace at Somerset Park, in Somerset.

No aspect of this advertisement has been approved by the state Supreme Court. ■

Morristown lawyer named 2023 Attorney of the Year for solo and small-firm practitioners



The New Jersey State Bar Association's Solo and Small-Firm Section honored Alice Plastoris as its Practitioner of the Year.

Plastoris, a solo practitioner of 25 years, has distinguished herself as an outstanding litigator, mediator, mentor and colleague in the areas of family law, estate litigation and guardianship matters. She is a member of several law-related associations, having chaired Morris County Bar Association Solo Practice Committee and served as an active member in the NJSBA Solo and Small-Firm Section since 2008. The award was presented at the NJSBA's Solo and Small-Firm Conference on April 1.

Plastoris also has a long history of *pro bono* work with the Legal Services of New Jersey in matrimonial and foreclosure cases, and on the Battered Women's Legal Advocacy Project. ■

New Jersey State Bar Foundation: 65 years of making a difference

The New Jersey State Bar Foundation is marking more than six decades as a law-related education resource for the people of New Jersey. Established in May 1958 as the charitable and philanthropic arm of the New Jersey State Bar Association, the Foundation strives to help people better understand the laws that affect them every day.

The Foundation's mission to increase knowledge of the law and legal system is accomplished by informing, educating, training, and supporting the citizens of New Jersey in various ways.

Informing

For more than 25 years, the Foundation has been making the law relevant and helping kids think critically by publishing free newspapers, newsletters, and blogs for classroom use. More than 1,600 New Jersey elementary, middle and high schools receive *The Legal Eagle*, a legal newspaper for kids first published in 1996. *Respect*, a newsletter about diversity and inclusion issues first published in 2001, examines social justice. Copies of *Respect* are sent to more than 1,200 middle and high schools. Over 3,500 teachers from all over the country subscribe to receive digital copies of both publications. In addition, the Foundation has more than 30 civics and law-related publications for students, educators and the public.

"The free publications are top notch and extremely well done. They really help students see law and government at work. My students actually learn about what their state is doing or has done. For example, my students can read about the Bill of Rights and learn about how it can and will affect them," said Thomas Prendergast, a middle school social studies teacher at Our Lady of Sorrows School in Hamilton.

Educating

For more than 40 years, the Foundation has worked to educate and inspire



students and lawyers through mock trial competitions.

The Foundation's mock trial competitions give students a hands-on, interactive way to learn about the justice system. Close to 5,000 students, from grades three through 12, participate in the competitions each year.

In the first year, 1982, 70 high school teams participated in the Foundation's organized, state-wide competition. In 2023, more than 200 teams competed in the Vincent J. Apruzzese High School Mock Trial Competition. The winning team represents the state in the National High School Mock Trial Championship held in May each year. The mock trial program was expanded in 1991 to include a Law Fair for third- to sixth-grade students and expanded again in 1995 when Law Adventure was launched for students in grades seven and eight.

In 2015, the program expanded again to add a high school Courtroom Artist Contest where student artists sketch a mock trial team in action during county mock trial contests. In 2023, 38 students from 19 schools entered sketches. The winning student artist is invited to represent the state at the annual National High School Mock Trial Championship.

"When participating in mock trial competitions, my students have such fun, and grow by leaps and bounds in their critical thinking skills, public speaking, research, and ability to look at things from others' points of view," said Tracie Smith, senior naval science instructor and mock trial adviser from the Marine Academy of Science and Technology in Monmouth County.

Richard Morey, a retired U.S. history teacher and volunteer mock trial coach, added that: "The mock trial competition brings out the best in our high school participants, who learn the value of careful research and new ways of working together."

Training

In 1991, the Foundation held its first Law-Related Education Conference for educators. Three years later, it launched a conflict resolution and peer mediation program to teach children how to resolve disagreements without violence. The annual conference and the initial training program have evolved over the years. Today, the Foundation's free Anti-Bias and Violence Prevention training is offered year-round for educators. More than 3,500 educators attend trainings each year.

"NJSBF trainings include hard-to-tackle, relevant discussions with applicable strategies. I appreciate insight from a diverse class and that it is also facilitated in a fair manner. As a teacher, it is very important to remain up to date, open minded and fair and these classes are vital to maintaining a healthy class during changing times," said Jerome Bush, a teacher at DCF School in Cherry Hill.

Supporting

Since 1975, the Foundation has supported growth in the legal profession by offering annual scholarships for second- and third-year law students attending a New Jersey law school.

"Becoming the first attorney in my

family was a childhood dream. The New Jersey State Bar Foundation scholarship eased the financial obligations of law school for a transfer student and helped make that dream possible," said Carmen Y. Day, a 2019 scholarship recipient, associate at Brown & Connery, and founding member of the firm's Diversity and Inclusion Committee.

To broaden public education about the law and legal system, the Foundation began partnering with other New Jersey non-profits in 1990. The Cosponsorship Program is supported with funding from Interest on Lawyers' Trust Accounts (IOLTA). Last year, the Foundation awarded grant-based financial support to 26 nonprofit organizations to underwrite law-related programs, provide legal information and broaden public education.

"The support and funding NJSBF provides has helped create educational opportunities such as workshops, videos, and events to change mindsets, shift toxic cultures and position women as empowered instead of victims," said Helen Archontou, CEO of YWCA Northern New Jersey.

Ways to Make a Difference

Celebrate the Foundation's 65th anniversary of making a difference by joining Speakers Bureau, attending the Medal of Honor event on Sept. 26, making a tax-deductible donation or purchasing a commemorative brick at the New Jersey Law Center in New Brunswick.

Those interested in volunteering can share their legal expertise as a mock trial coach or judge, or with schools, the community and senior citizen groups throughout the state. Volunteer speakers are also needed for upcoming school career days.

For more about the Foundation's history and information about volunteering, visit njsbf.org.



Kathleen N. Fennelly, NJSBF Board President

"The Foundation's Legal Eagle and Respect newsletters are not just for kids. I recommend that everyone read these high-quality publications. The legal topics addressed are current, timely and thought-provoking. I learn something new from every issue."



Jeralyn L. Lawrence, NJSBA President

"As the charitable arm of the NJSBA, the Foundation has honorably served New Jersey residents through its publications, scholarships, speaking events and many other functions focused on serving the community. Its mission, now more than ever, is vital to expand the public's knowledge of the legal system and foster pride in the practice of law."



Charles J. Stoia, Incoming NJSBF Board President

"The belief that 'informed citizens are better citizens' is reflected in everything the Foundation offers. Our school and public programs, from mock trial competitions and publications to law-related conferences and scholarships, fosters increased awareness, appreciation, and knowledge of the law for people of all ages."



Timothy F. McGoughran, NJSBA President-Elect

"Serving as a mock trial judge for the past 20 years has been one of my most rewarding experiences as an attorney. Year after year, the quality of work and dedication these high school students exhibit never ceases to amaze me. Through the tremendous efforts of the Foundation, we can reach students at a young age and teach them the letter of the law."