

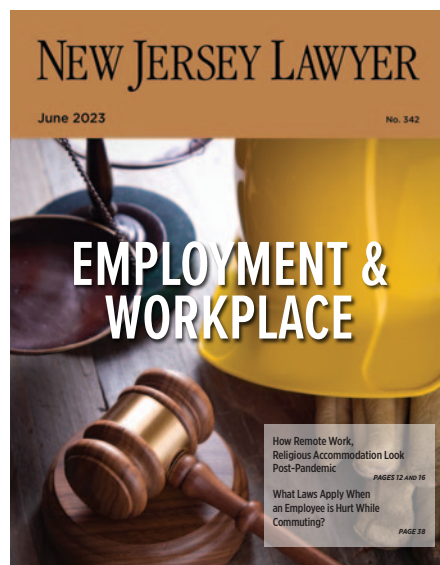


New Jersey Lawyer magazine explores workplace and employment law

The June 2023 edition of *New Jersey Lawyer* covers the latest trends attorneys should know involving the workplace and employment law.

The issue, published by the New Jersey State Bar Association, features nine articles that provide a valuable template for attorneys involved in multiple practice areas, whose clients are affected by the ever-evolving legal parameters of the employer-employee relationship.

The entries cover proposed legislation to restrict the rights of businesses to negotiate non-compete and non-poaching agreements with prospective employees, recent legal developments that expand coverage to employees entering or leaving the workplace, whether uninsured employers should receive protection from employee lawsuits under New Jersey's Workers' Compensation Act and more.



Here is a full list of articles from the edition:

- The Rise of the Digital Nomads: Employer Considerations for the Next Breed of Remote Workers—By

- Laura A. Siclari and Cara A. Fialkoff.
- Are You Serious? What Employers Get Wrong About the 'Sincerely Held Belief' Standard as Applied to COVID-19 Religious Accommodations—By Daniel R. Dowdy.
 - Who Gets the Job? Reassignment as Reasonable Accommodation—By Ann F. Kiernan.
 - Non-Disclosure and Non-Disparagement Provisions Under Scrutiny: Recent Case Law, Legislation Affecting Employment Agreements—By Susan L. Nardone and Zachary B. Possess.
 - Pushed to the Limit: Are There Any Theories of Liability that LAD Will Not Permit?—By Cindy Flanagan and Matthew Parker.
 - The Blue Eraser: New Jersey's Proposed Move Against Restrictive Covenants—By Michael Coco and Gigio K. Ninan.
 - Coming and Going and the Premis-

es Rule: What Laws Apply When an Employee is Hurt While Commuting?—By Lisa A. Lehrer and Sherwin Tsai.

- Commentary: Uninsured Employers Should No Longer Receive the Benefits of the Exclusive Remedy Provision of the Workers Compensation Act—By Christopher J. Keating and Mark R. Natale.
- Implicit Bias: Considerations for Employers to Avoid Liability Stemming From its Impact—By John L. Shahdanian II, Asaad K. Siddiqi and Valentina Scirica.

The edition also includes practice tips on how spending time in nature can improve an attorney's well-being, deposition advice for young lawyers and the inaugural *President's Perspective* from NJSBA President Timothy F. McGoughran, who outlines his mission statement for the year. ■

Scholarship fund created honoring Judge Lisa P. Thornton

The New Jersey State Bar Foundation is seeking donations for a scholarship in memory of Monmouth County Assignment Judge Lisa P. Thornton, the state's first Black female assignment judge, who passed away unexpectedly on May 27. The law school scholarship honors Judge Thornton's life and dedication to serving as a role model and mentor for young women attorneys of color.

Visit njsbf.org to contribute.

Apply today to be part of the skill-building NJSBA Leadership Academy

The New Jersey State Bar Association is now accepting applications for the 2023–2024 class of Leadership Academy Fellows. The deadline for applications is June 30.

The Leadership Academy provides intensive learning, career planning, knowledge sharing and networking opportunities essential to leadership: in the bar, workplace and in the community.

Leadership fellows meet in person for one half-day session each month, with additional opportunities for networking and conversation. As part of their tuition, fellows will receive free



registration for select NJSBA programs throughout the year. Select programs will be eligible for CLE credits.

The fellows also will be recognized during the Opening Business Session of the NJSBA's Annual Meeting and

Convention in Atlantic City in May 2024. Upon graduation, each fellow is eligible for a seat on an NJSBA standing committee.

The academy is open to all New Jersey attorneys who have been in practice for at least five years. Care will be taken to ensure that each class of fellows reflects the diversity of the profession, and that new and historically underrepresented attorneys are equitably afforded this opportunity for growth and leadership. Fellows must be members of the NJSBA.

Visit njsba.com to apply.

MIPS hosts Juneteenth celebration

Dozens came to the New Jersey Law Center on June 8 to commemorate the end of chattel slavery in the United States. The program, hosted by the NJSBA's Minorities in the Profession Section, featured a panel discussion with notable Black leaders in the law on empowerment and why representation matters. The panel was moderated by Cheyne R. Scott, a member of the MIPS Board of Directors. Speakers included U.S. District Court Judge Julien X. Neals, Bergen County Sheriff Anthony Cureton and Ron McCormick, a Bergen County assistant prosecutor.

Juneteenth commemorates the June 19, 1865, arrival of Union General Gordon Granger in Galveston, Texas. The general informed the enslaved African Americans of their freedom and that the Civil War had ended, nearly two-and-a-half years after the Emancipation Proclamation. Juneteenth became a New Jersey state holiday in 2020 and a federal holiday the following year. ■



Photos by Jim Beckner

NJSBA to state Supreme Court: DRE testimony does not meet *Daubert* standard

The New Jersey State Bar Association argued its position that Drug Influence Evaluations (DIE) lack scientific reliability under the *Daubert* standard of review because of the lack of objective standards in several of the 12 steps of the DIE. Therefore, a Drug Recognition Evaluator's (DRE) reliance on a DIE is inadmissible as expert testimony because it fails to meet the *Daubert* standard. The Association appeared as *amicus curiae* before the state Supreme Court in *State v. Olenowski* to argue that DREs are not qualified as expert witnesses. Instead, the NJSBA said, they are more properly classified as specialized lay witnesses or evaluators who have received specialized training in taking vital signs and assessing eye movements. Past NJSBA Municipal Court Practice Section Chair John Menzel argued on behalf of the NJSBA and wrote the joint brief with the National College for DUI Defense.

"While vital signs and eye movements may be indicative of drug impairment by an admissibility standard of reasonable suspicion or probable cause, their relevance by standards of a preponderance of the evidence or proof beyond a reasonable doubt is limited," said the NJSBA in its brief. "This Court should limit the scope of DRE testimony to facts they

are competent to speak of, such as general observations and observations of vital signs, eyes, and the like, but



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prohibit the expression of an ultimate opinion of drug impairment except in the most florid cases."

Special Master retired Appellate Division Judge Joseph F. Lisa issued a report and supplemental report on the issue. A special focus of this argument was to address the findings in the report that the *Daubert* standard, rather than the *Frye* standard, should apply to a determination on the admissibility of DIE evidence and the DRE evidence derived therefrom.

The Association argued that only parts of the 12-step DIE process could be judged on scientific reliability and that would be for the limited purpose of drug ingestion, not drug impairment. As such, the *Daubert* standard cannot be applied to DRE testimony because there is no scientific reliability in DRE testing, rather DRE evaluations are based on data that is not

able to be measured with scientific reliability, the NJSBA said.

The Court reserved its decision.

Judicial vacancy crisis looms and county bar presidents want action

The presidents of the Somerset, Warren and Hunterdon county bar associations pleaded with the state's leaders to address the judicial vacancy crisis that has shut down civil and matrimonial trials in their counties.

Somerset County Bar Association President Steven K. Warner, Hunterdon County Bar Association President Patrick Heller, and Warren County Bar Association President Kelly Shelton wrote a joint letter to Gov. Phil Murphy, Senate President Nicholas Scutari and Senate Judiciary Chair Brian Stack imploring the governor to "nominate qualified candidates" and "work with our Senators and the Governor to immediately confirm the nominees."

The letter comes on the heels of sustained appeals by the NJSBA and the Supreme Court to address the

widening dearth of judges. According to the letter, when the crisis began "Vicinage 13 was down approximately 29% of the judges required to run an efficient court system."

"Without your intervention by June 30, Vicinage 13 will remain down 29%, and by the end of the year, Vicinage 13 will be down 33%," said the county bar presidents.

The Senate has not yet announced another Senate Judiciary Committee, which is where the judicial candidates must first appear. According to the legislative calendar, only two more Senate quorum dates are posted—June 12 and June 15. While the Senate President can call an emergency meeting of the committee, the Legislature is expected to break for the summer at the end of this month.

The NJSBA continues to monitor judicial nominations in its continuing efforts to close the gap of judicial vacancies.

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.