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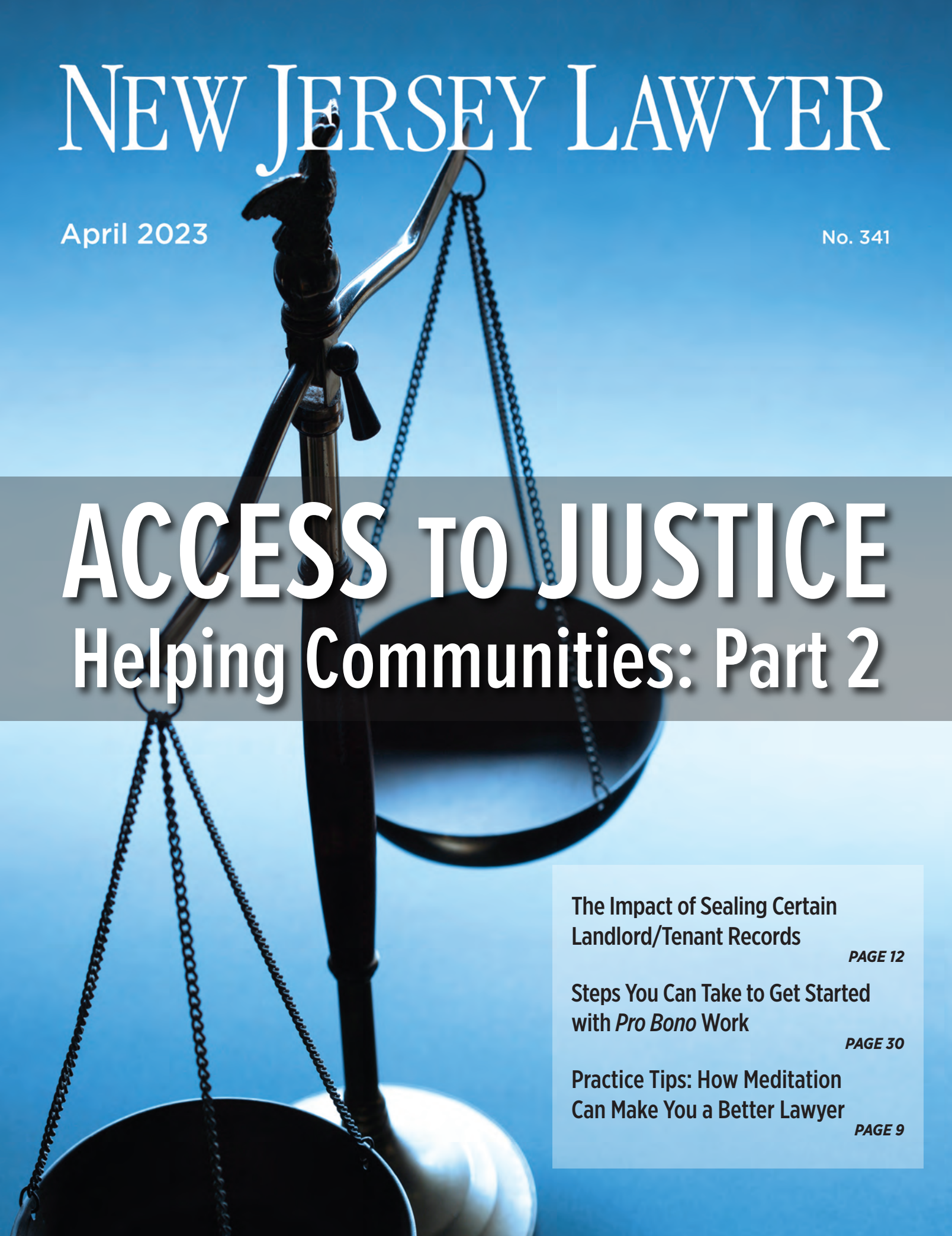

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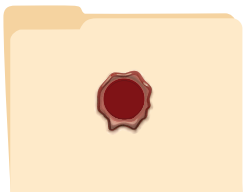

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DEPARTMENTS

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JERALYN L. LAWRENCE

We Worked for It All, as a Team. And We'll Keep Going

Wow! It is hard to believe that we are nearing the end of what has been a wonderful year.

Serving as president of the New Jersey State Bar Association has been better than I ever imagined. It has been the ultimate professional privilege to travel across the state to meet and collaborate with everyone, from the newest members of our profession to some of the most seasoned practitioners, addressing the issues we face together. The dedication and selflessness of our members—who give so generously of their time and expertise—to address the issues and challenges confronting the legal system is absolutely remarkable.

I played as many team sports as I could as a kid, including basketball, soccer and softball. I believe wholeheartedly in the importance, value and potential of a team to achieve great things. And I have always believed that working together as a team can achieve so much more than any single person who is a member of it can on their own. That foundational belief has proven itself out time and again this year. I am beyond grateful for everything we have achieved together this year and I look forward to what more this amazing NJSBA team can continue to do in the year ahead.

From the moment I took the oath as president of this Association, the work of the Putting Lawyers First Task Force was the central focus of my vision. I love being a lawyer. I love everything about it. It's just harder than I expected, and the constant demand on us has often become incredibly challenging. It is clear we are a profession in crisis. Ten percent of the attorneys who responded to our wellness survey reported suicidal ideations; and 28% report they consider leaving the profession. The pace of this practice is not sustainable. It was time to look at what was causing that crisis among our friends and colleagues and identify areas that need to change and develop plans to make it happen.

I am deeply humbled by the dedication the members of this Task Force have devoted to finding ways to make the practice of law better for all of us. Since May, this Task Force—representing attorneys from a wide arrange of practice areas, including criminal, civil, family, as well as attorneys who practice at large, mid-size and solo firms around the state—rolled up its collective sleeves to start looking for real, concrete, and meaningful ways to make the practice better for all of us. It collected information from the legal community, seeking feedback on wellness issues and interviewing officials around the country for guidance,examining ethics and fee arbitration systems and case law relevant to its work.

A goal was to move the needle to improve the health and wellness of those of us who call this profession home. Today, I am pleased to report that the efforts of the Task Force are being put into motion. At a recent meeting, the Board of Trustees accepted and discussed the Task Force's report and acted on several measures, such as to work with the Judiciary to create a task force on wellness. Once the Court reviews our comprehensive report, we will discuss the formation of a separate group to focus on the attorney ethics and fee arbitration system. We will advocate for the elimination of question 12b that asks about conditions and impairments on the Committee for Character questionnaire, enactment of daylight saving nationwide, forming an ad hoc committee to study the solo and small-firm recommendations and continuing to explore changing the law regarding defamatory online reviews, to name just a few. The issues the Task Force explored are enduring ones. Rest assured the Association will dedicate resources to making meaningful progress in putting lawyers first.

Another critical issue we have addressed this year is to raise our voice and share the experiences of our members to bring attention to the very real consequences of the judicial vacancy crisis. This issue, unfortunately, is one that preceded my tenure and sadly will extend beyond it. That said, this Association will remain an engaged advocate, urging the governor and Legislature to fulfill their constitutional obligations and return the Judiciary to a co-equal branch of government by confirming a full complement of judges. Our Judicial and Prosecutorial Appointments Committee has diligently reviewed candidates.

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FROM THE SPECIAL EDITORS

Accepting the Challenge to Expand Access to Justice

In an unprecedented step, the Editorial Board of *New Jersey Lawyer* devoted back-to-back issues to one topic: exploring and helping to improve access to justice. This topic is of paramount importance. It also works hand-in-hand with the responsibilities of our law licenses.

As lawyers, we often confront institutional or idiosyncratic roadblocks to each citizen finding equal access to justice and equality. When we received law licenses, we received more than an opportunity to enter a revered profession and make a living. In addition to an occasional obligation imposed by the *Madden* decision, we also have an ongoing obligation as informed citizens with professional degrees to find ways to promote access to justice for all. We have tried to provide as many thought leaders on this topic as possible in these two issues and hope you have gleaned some ideas that enable you to explore greater possibilities to fulfill that responsibility.

In this issue, you will notice several articles that employ more of a first-person approach that is atypical for this publication. The intention is to allow for individuals who have been working to improve access to justice to share their experiences in the form of practice pointers. We hope you derive value from their insights.

This issue also covers various legal areas. For instance, there are three articles devoted to promoting better access to justice in housing issues:

- Ariela Rutback-Goldman focuses on two recent New Jersey changes that have removed certain landlord-tenant court records from public access and their unknown impact; and,
- Drawing on his long career in tenancy matter, Gerald Brennan takes notice of a recent change in the practice by attorneys for landlords, which could cause problems for unsophisticated or unrepresented tenants.

BILL SINGER *has practiced law at Singer & Fedun, LLC in Somerset County for 50+ years. His practice concentrates on the creation and protection of families of all configurations and as counselor to nonprofit organizations.*

NANCY A. DEL PIZZO *is a partner at Rivkin Radler LLP and resident to its Hackensack office. Her practice primarily concerns intellectual property, commercial litigation and privacy, and she frequently litigates in New York and New Jersey. Nancy also has a transactional practice dealing with trademark prosecution and licensing, among others.*

Authors also provide a range of options for an individual, a law firm or in-house department to find avenues to develop *pro bono* practices. For instance,

- Faced with a new American Bar Association requirement for law schools to provide education on bias, cross-cultural competency and racism, Professor Lori Outzs Borgen describes how law schools are meeting the challenge;
- Amy Vasquez advocates for taking collaborative models used by corporations and the science community and employing them to create *pro bono* dream teams; and,
- Jessica Kitson and Jessica Hodkinson provide their roadmap for implementing a sustainable *pro bono* program for in-house departments and law firms.

It has been a challenge to cover as many laudable topics as possible in these two issues. We hope you gain some insights and look to use some of these techniques to better meet professional responsibilities and expand practice knowledge. We leave you with our special thanks to Thomas P. Hnasko, III, a paralegal at Singer & Fedun, L.L.C., for his tireless efforts guiding the authors and editors through publication process for these two issues, and of course, to Amy Vasquez for reaching out to the Editorial Board with her vision of this topic and introducing us to the various authors who amplified this theme. ■

President's Message

Continued from page 5

But despite these efforts, a staggering and catastrophic number of vacancies remain. To prevent further harm to New Jersey residents, we remain steadfast that it is imperative that the governor nominate and the state Senate provide advice and consent on qualified judicial candidates immediately.

Our collective voice has also made an impact on many other issues. Indeed, our *amicus* and legislative advocacy remain a true powerhouse effort fueled by our members.

We have spoken out asking the Courts to consider alternatives short of disbarment in line with what 41 other states and the District of Columbia allow in some way for those who can show they have rehabilitated themselves, particularly those suffering from mental health issues or addiction. Advocating for these changes on the Supreme Court committee studying this issue has been a highlight this year. We stand ready to assist in any way we can to help the legal profession, the clients we serve and our system of justice.

The Association has been a leading voice in the call to abolish the *Madden* system and for adequate funding to be allocated to the entities that can provide effective counsel. We are *amicus* in a case that centered on *Madden v. Twp. Of Delran*, and our position was to affirm the fundamental importance of the need for indigent litigants to have effective counsel in cases of magnitude. We did not come to this conclusion lightly. Over the course of nearly two years, our Right to Counsel Committee studied the issue extensively and concluded in its 2021 report that the mandatory *Madden* system of arbitrary *pro bono* assignments—often to attorneys with no experience in a matter of consequence—creates a two-tiered justice system, where indigent litigants do not have equal access to justice. The *Madden* system does not meet the constitutional mandate of effective assistance of counsel.

Additional advocacy achievements have been numerous. Among them:

- We were proud to coordinate national advocacy with bar leaders around the country which resulted in passage of federal version of Daniel's Law to protect our federal judges.
- In New Jersey, we have been working closely with our colleagues in every county to have lifesaving automated external defibrillators be accessible on each floor of every courthouse to protect everyone who visits these facilities.
- We have continued to promote diversity and inclusion.
- We successfully convinced government officials in Newark to open a second entrance and erect an outdoor shelter to provide access to the immigration courts in a more expedient way to attorneys and their clients.
- We monitor and educate our members on the latest regarding jury reform.
- We continue to testify in Trenton on legislation that matters to the profession including updates to domestic violence bills.
- We are helping and advocating for veterans.
- We have been collaborating with the court as to which proceedings should be virtual and which need to be in person.
- We coordinated a life-changing women's conference, the lessons of which will stay with me forever.

I know that I will reflect on the whirlwind of these months as president in the years ahead with a sense of pride, gratitude and honor. I am grateful to my colleagues for their love and support. Thank you. I hope to see you at the Annual Meeting and Convention in Atlantic City, and we can toast a magnificent year and celebrate my dear friend Timothy McGoughran, who will begin what I know will be a successful term as president. I am excited to see what more this Association can do for lawyers, the clients we serve and the public. Thank you for allowing me this opportunity. It has been a privilege and a pleasure. ■

PRACTICE TIPS

TECHNOLOGY

How Attorneys Can Navigate Microsoft Word

Microsoft Word can be a headache for attorneys. A PracticeHQ webinar gave attendees a crash course on how to navigate common legal drafting problems in Word. PracticeHQ is a free benefit to help NJSBA members manage their law practices more efficiently and effectively.

Here are five quick tips from the webinar:

Fix the settings

The options tab allows users to switch off some problematic default settings in Word. For instance, the default settings for spellcheck ignore uppercase words, which can be frustrating for attorneys who regularly type phrases like "Motion For Summary Judgement." The autocorrect setting is also an issue for attorneys who make statutory references.

Default formatting

Every document in Word contains a default font like Calibri or Times New Roman. Sometimes different fonts will randomly appear when changing pages or paragraph settings. Use the Font tab to set a preferred font for all documents. The Paragraph tab will also adjust the preferred line spacing for all documents.

Customize interface

Attorneys who do a lot of drafting often use the Inset tab to add footnotes or a table. To create a shortcut, users can add the Quick Access Toolbar and customize it with functions they use frequently. Click the arrow at the top right of the screen under Ribbon Display Options to activate the toolbar.

Viewing documents

For those who don't have dual monitors, Word has a split screen function for viewing the same document in two different windows. Go to the View tab and click the Split button to access the feature.

Basic styles

Word Styles apply a set of formatting choices consistently throughout the entire document, from font and spacing to color and text indentation. Use the dropdown arrow in the Styles box on the Home tab to switch between styles or create a custom style.

WORKING WELL

Meditation For Lawyers

By Lori A. Buza
NJSBA Lawyer Well-Being Committee Co-Chair
KSBranigan Law, P.C.

Meditation can provide significant and positive benefits to individual lawyers as well as the legal community. Studies show that practicing meditation can alter the physiology of the brain such to increase one's attention span, improve self-regulation and self-awareness, while reducing the effects of stress on the body.

Employing a consistent meditation practice in a lawyer's life can help to:

- Increase concentration and precision
- Improve self-care
- Boost resilience
- Improve cognition and clarity
- Increase empathy (and hence, client care)
- Regulate emotions (reducing risk for anxiety and depression)
- Decrease stress (lowering risk for heart disease and lowering cortisol levels, which regulates weight)

So how should you get started? There are many types of meditation, including but not limited to:

- *Guided meditation* (try an app on your phone to walk you through a meditation)
- *Focused breathing meditation* (you can mentally count your breaths 1-10 and repeat, for instance; or learn a simple breathing technique like box-breathing)
- *Mantras meditation* (select an "I am" mantra such as "I am calm," or "I am grateful" that you continually recite inwardly)
- *Yoga meditation* (using poses to calm the mind with concentration, balance, and breathing)
- *Nature meditation* (try to surround yourself in nature, or find something in nature to appreciate, like the sky for instance. If not possible, try listening to "nature sounds," "ocean sounds," or "rain sounds" on your music device)
- *Walking meditation* (select a safe route to take a quiet walk, keeping your focus on your steps and/or breaths)
- *Mindful meditation* (select a meditative act in which to be fully *present* in, i.e., cooking or playing an instrument)

A good way to start is with *sitting meditation*. Here, you can simply sit quietly in any chair, feet planted on the ground, spine straight, eyes closed for a break during your workday. The reason to close your eyes is to remove the distractions your vision might capture. In sitting meditation as well as in all the above methods, remind yourself that your breath is always with you. So, if your mind wanders - it is perfectly fine, just move your immediate focus back to your breath.

Thoughts will and should enter; it's only natural. Over time, however, you will get better at allowing those thoughts to exist... but only in the background. Instead, your focus should turn to the "now" as you meditate and feel your breath enter your mouth and/or nose, fill your chest and/or belly, and then how your breath releases during your exhalation along with any tension you may hold. As you exhale, remind yourself to soften your face (the muscles around your eyes and mouth), and to let go of the tightness in your shoulders and neck. Start this meditation break once a day for five minutes, then increase it to 10 minutes, etc., until you get to 20 minutes per day. Indeed, if you can repeat the process a few times each day or whenever you are faced with a particularly stressful day, that would be ideal.

Meditation is a great skill I encourage you to develop and use to help you become the best lawyer you can be and ultimately a happier one as well. You may not be able to reduce the challenges of the practice of law, but you can certainly learn how to better face them with a stronger and healthier version of yourself. Why not give meditation a try? *Do it Now!* ■

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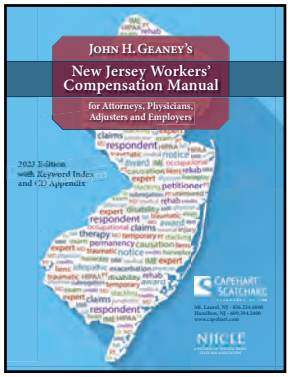

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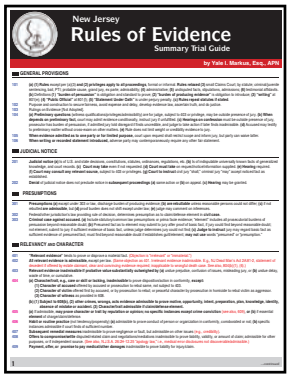

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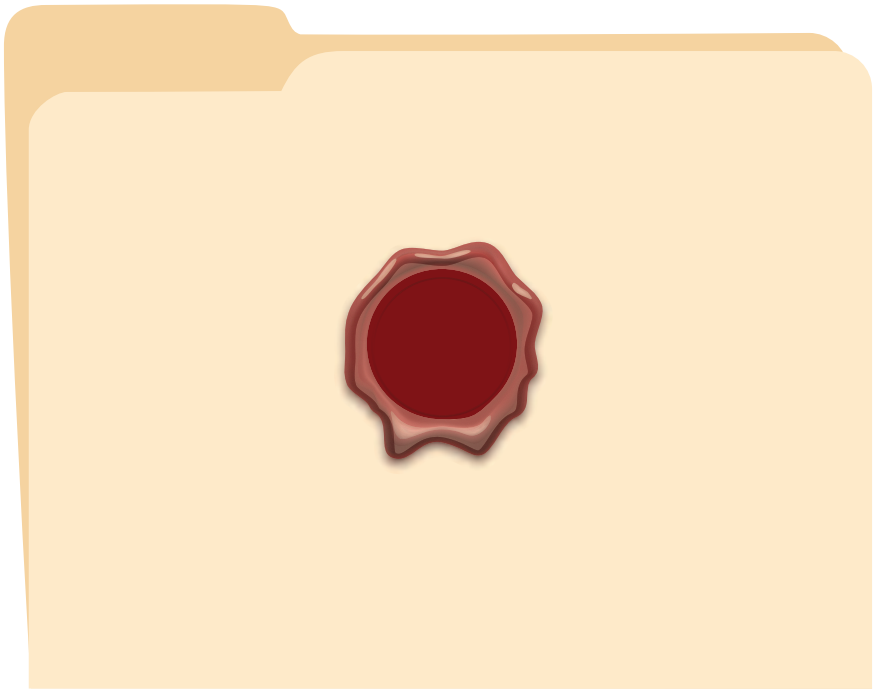

Access to Justice through Non-Access

New Jersey's Sealing of Certain Landlord-Tenant Records

By Ariela Rutbeck-Goldman

ARIELA RUTBECK-GOLDMAN *is a staff attorney at Legal Services of Northwest Jersey, where she represents individuals with limited incomes in Morris, Sussex, Somerset, Hunterdon, and Warren counties. She specializes in landlord-tenant and consumer matters.*

Court filings, unless sealed, are matters of public record.[1] Nonetheless, whether and when filings should be restricted, or sealed, has been hotly debated. This article focuses on two recent statutory and rule changes that removed certain New Jersey landlord-tenant court records from public access. One covers certain COVID-19 rent cases; the other concerns publication of an eviction action in which there is no final determination in favor of the landlord.[2] After briefly describing the history and content of each statutory or rule change, this article addresses the future for landlords, tenants, and their advocates.

1. Background: The Problem

In the landlord-tenant context, the filing of an eviction action can have serious consequences for a tenant, since many landlords rely on "tenant screening reports" to help make decisions on potential renters. Tenant screening companies run an applicant's information through various databases, including court filings, and present a landlord with a summary of information about a prospective tenant. Thus, historically, the initial filing of an eviction case in landlord-tenant court could show up on a tenant

screening report and reflect negatively on a tenant—even if the eviction action was ultimately dismissed or settled.

The onset of COVID-19 presented a new challenge and amplified pre-existing problems. As the pandemic raged, tenants across the country began struggling to pay rent. Federal eviction protections were enacted, and New Jersey implemented several programs for rental assistance and eviction protection. Nonetheless, especially as the eviction moratoria expired, tens of thousands of renters in New Jersey moved out of their premises either by choice or as a result of eviction.

As tenants relocated, the question of how much of their rent payment record should be released to a new landlord came into sharp focus.

2. A Legislative Fix: COVID-Related Sealing Protections

Lawyers and non-lawyers may be familiar with the "Stack Bill" (so called after sponsoring state Sen. Brian Stack), which Gov. Phil Murphy passed in August 2021 (P.L. 2021, Ch. 188; N.J. Stat. 52:27D-287.9). That act—alternatively referred to as the Rental and Utility Assistance Bill, among other names—phased out New Jersey's eviction moratorium, allocated $750 million in rental assistance, and converted rental debt accrued by tenants during a certain COVID-19 "covered period" to civil debt. In addition, the Stack Bill imposes penalties on a landlord who "furnish[es] information about the nonpayment or late payment of residential rent, or failure to pay a rent increase, which accrued during the covered period" "directly to another residential landlord, or to a debt collection or credit reporting agency" (N.J. Stat. 52:27D-287.9 [i]). The law authorizes the Attorney General to bring an action against a non-compliant landlord, and imposes monetary fines, reasonable counsel fees, and other injunctive relief against the landlord for violating its provisions.

A corresponding bill, signed into law the same day, is directed toward members of the public more broadly. P.L. 2021, Ch. 189 (N.J.S.A. 2A: 42-144 et seq) makes an "emergency period nonpayment court record…confidential and unavailable to the public."[3] Essentially, members of the public will not be able to access court filings arising out of the following causes of action if they accrued between March 9, 2020, and Aug. 3, 2021: (1) non-payment of rent, (2) failure to pay a rent increase, and (3) habitual late payment of rent.[4] The law also imposes consequences for those who "knowingly…reveal to the public an emergency period nonpayment court record, by considering an emergency period nonpayment court record in the evaluation of a prospective tenant, or by failing to remove emergency period nonpayment eviction records restricted from public access."[5] The imposed penalties include $1,000 for the first offense and $5,000 for second and each subsequent offense, plus reasonable attorney fees.

This new law took effect Dec. 1, 2021, and immediately after, online records in the above types of cases were blocked from viewing on eCourts. While aligned with the new sealing law and arguably beneficial for tenants, the removal of these records did not affect the ongoing adjudication of these cases. These cases were not automatically dismissed (even though, under the Stack Bill, many were dismissible upon completion of a self-certification verifying certain tenant information). Instead, the actions proceeded, but the court docket was unavailable for viewing. This left practitioners with a substantial information gap when deciding whether to undertake representation in an ongoing matter.

One month later, a Notice to the Bar followed and set forth a procedure for reviewing the dockets of these cases.[6] An attorney simply needs to file an automatically propagated "Notice of Limited Appearance" on eCourts to be granted access to review the case. Once the form is uploaded, all parties receive notification of the filing, and the advocate can review the record in the same way as any other publicly available docket. Although the client must expressly permit the advocate to file such a notice, the form does not commit the attorney to any sort of representation or further appearances.

As tenants relocated, the question of how much of their rent payment record should be released to a new landlord came into sharp focus.

This strikes a balance between the law's intention of excluding records from public consumption and allowing advocates to make informed decisions before committing to representation on behalf of a client in these types of rent cases. Although these changes affect only COVID-19 related rent actions, larger changes in New Jersey parallel these rules.

3. A Court Rule Change: Records Excluded from Public Access

In late spring 2020, the New Jersey Supreme Court undertook a broad-reaching project to identify and eliminate "barriers to equality wherever they exist" in the court system.[7] The Court set out to address several areas, including "reexamining access to misused court records" by "exclud[ing] from public access records that as currently maintained create inappropriate hardships for disadvantaged populations (e.g., records of landlord/tenant complaint filings that do not note the outcome)."[8] Subsequently, the Supreme Court expanded its effort by establishing the Special Committee on Landlord Tenant, which issued a report in April 2021 proposing amendments to Court Rules, new and revised forms, improved court processes, and informational materials.

After inviting public comments on the Committee's proposed amendment to Court Rule 1:38 ("Public Access to Court and Administrative Records,"), in February 2022, the Supreme Court added new subsection (f) (11) to exclude from public access records of:

(i) adjudicated or otherwise disposed of landlord tenant cases in which no judgment for possession ever has been entered; and
(ii) landlord tenant cases in which judgment for possession was entered seven years ago or longer.[9]

Thus, as of May 2022, cases where landlords and tenants settle without entry of a judgment of possession, or where an action is dismissed, are automatically removed from public review on eCourts—identical to the outcome for COVID-19 related rent cases as discussed earlier. As of this writing, these changes in accordance with new subsection 1:38 (f) (11) (i) have already taken effect as they relate to ongoing actions. Changes in accordance with new subsection 1:38 (f) (11) (ii), for older court records, are more difficult to track, but advocates should be on the lookout for these records when reviewing a tenant screening report or court docket.

4. Looking Ahead

Both of these purported "non-access" rules are hugely significant in their own right—but they are also very new. Presently, there is no data about the impact on tenants and landlords. Issues may arise for tenants whose records should have been sealed because they included COVID-19 related nonpayment of rent, or because their eviction action was dismissed, or because a judgment for possession was entered seven years ago or longer. Tenant practitioners should be mindful of these issues.

Landlord advocates are in a good position to advise their clients on the status of what can and cannot be publicly revealed with respect to these sealing rules. Specifically, this includes consequences for noncompliance. Finally, members of the landlord and tenant bars may be best served if they work with the courts to ensure that the new rules are implemented smoothly and notify appropriate entities when issues arise. ■

Endnotes

1. See N.J. R. 1:38-1.
2. See N.J.S.A. 2A: 42-144 et seq; N.J. R. 1:38 (f) (11).
3. N.J.S.A. 2A: 42-145.
4. These are three of the 18 causes of action under which a landlord can remove a tenant under New Jersey's broad Anti-Eviction Act, which covers most tenants in New Jersey. See generally N.J.S.A 2A:18-61.1 et seq.
5. Id.
6. Notice to the Bar, LANDLORD TENANT—RELAXATION OF COURT RULES (1) TO ALIGN WITH CONFIDENTIALITY PROVISIONS OF RECENT LEGISLATION; AND (2) TO PERMIT LIMITED APPEARANCE TO REVIEW CASE FILE, Jan. 11, 2022, available at https://www.njcourts.gov/sites/default/files/notices/2022/01/n220112a.pdf (last viewed Mar. 7, 2023)
7. New Jersey Judiciary—Commitment to Eliminating Barriers to Equal Justice: Immediate Action Items and Ongoing Efforts, available at njcourts.gov/public/assets/supremecoutactionplan.pdf
8. Id.
9. N.J. R. 1:38 (f) (11). A judgment for possession in an eviction action restores possession of the rental premises to a landlord and allows the landlord to apply to the court for a warrant of removal if the tenant does not move voluntarily.

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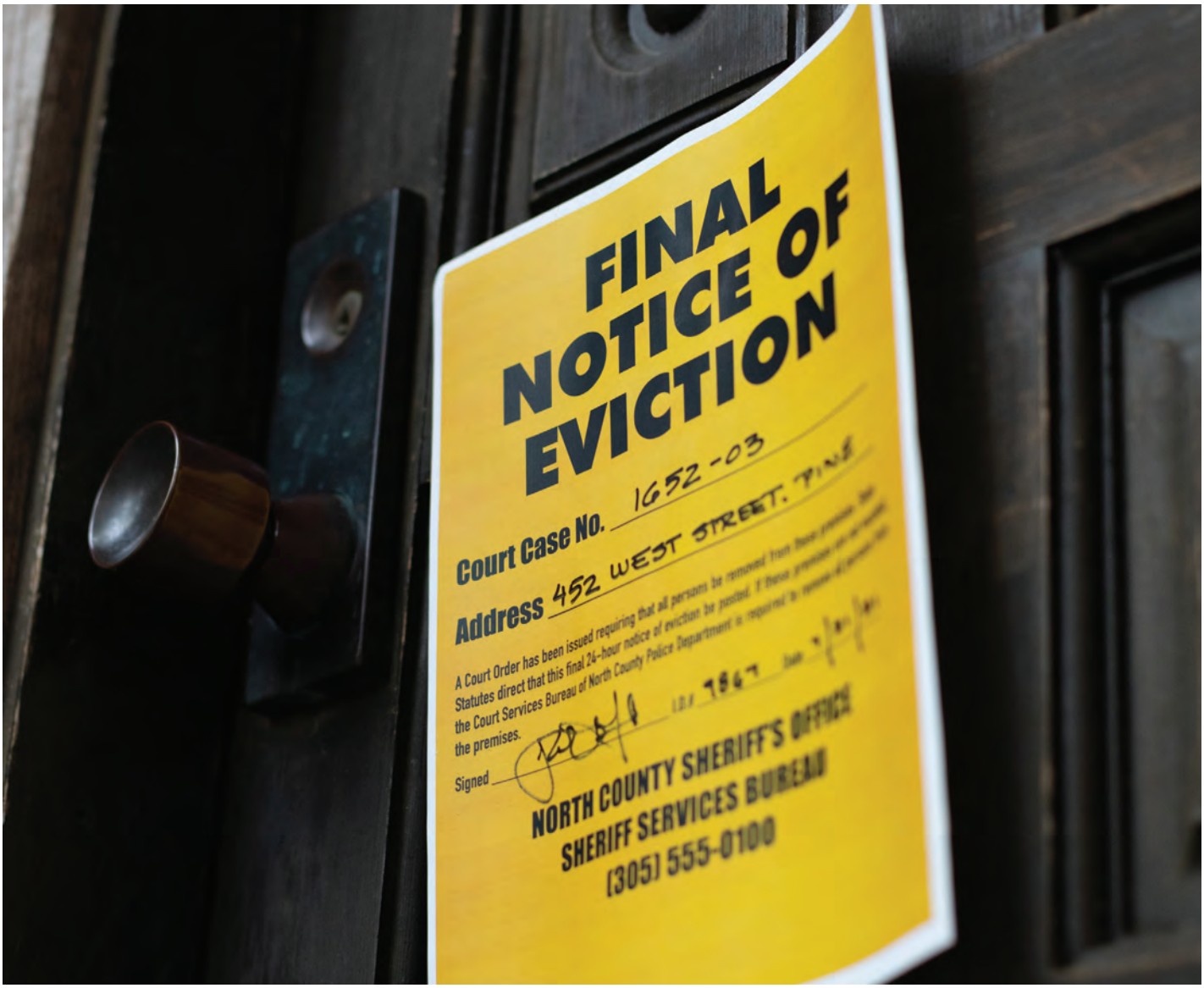

PRACTICE POINTER

Understanding Modern Anti-Eviction Act Can Help People Stay in Their Homes

Some Landlords Still Using a Statute from 1877 to Charge Double Rent to Force Tenants to Vacate

By Gerald R. Brennan

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The Anti-Eviction Act

In 1877, the population of New Jersey was 1,020,584;[1] in 2022, the population of New Jersey was estimated to be 9,261,699.[2] New Jersey is the most densely populated state in the United States,[3] and affordable rental housing has long been scarce.[4] Yet, some residential landlords are using an archaic statute with origins dating to 1877 to threaten tenants with the obligation to pay double rent if they do not move, resulting in tenants forfeiting their right to possession under the Anti-Eviction Act (AEA).[5]

The AEA covers all residential tenants except those living in owner-occupied premises with no more than two rental units.[6] The AEA was enacted in 1974 as an amendment to the summary dispossess statute to protect residential tenants from unreasonable and unnecessary evictions and the effects of the severe shortage of rental housing.[7] There are 18 causes for eviction under the AEA, with some having subsections, and unless a landlord can prove one of those causes for eviction in landlord/tenant court, a tenant has a perpetual tenancy, a virtual life interest.[8]

With the exception of non-payment of rent and non-payment of a rent increase, the causes for eviction under the AEA require a landlord to serve the tenant with a notice of termination and a demand for possession specifying the reasons for ending the tenancy and the exact date the tenant is to surrender possession to the landlord.[9] The demand for possession is a jurisdictional requirement[10] for the landlord to take advantage of the summary dispossess action allowing the landlord to regain possession in an expedited manner.[11] A summary dispossess action is a privilege, not a right.[12]

1877 Meets Modernity

Beginning Sept. 1, 2008, and by court rule, landlords must attach to their eviction complaints copies of all notices upon which they intended they rely upon in court.[13] Surprisingly, in the past five years, I have come across a perusal of eviction complaints filed with the court where landlords have included in their notices to quit and demands for possession a little used holdover statute from 1877. That statute provides that a tenant who willfully holds over and retains possession of real estate after service of a demand for possession at the end of the tenant's lease, and keeps the owner or lessor out of possession, shall pay the landlord *double the yearly value of the property detained* [emphasis added]. Although the 1877 statute is almost identical to the revised New Jersey Statutes of 1937, 37 years before the AEA, and remains codified in New Jersey's current statutes, there is an argument that the AEA supersedes the 1877 statute, making such notices made under the 1877 statute subject to exclusion by thorough defense attorneys armed with this argument.[14]

The current version of the holdover statute is an almost verbatim version of the 1877 and 1937 statutes.[15] When it comes to the law of a holdover tenant, it appears not much has changed since 1877. However, the holdover statute is not mentioned in the AEA. Landlords (and their attorneys) who insert in the same notice to quit and demand for possession for eviction, language warning the tenant that pursuant to the holdover statute the tenant will be obligated to pay the landlord double the yearly value of real estate detained if the tenant fails to surrender possession by the date demanded in the notice, only serves to scare tenants from seeking justice. Frankly, many would rather vacate the premises than be liable for the yearly value of the real estate. That is why it is critical for defense attorneys who practice in this area to be aware of the argument that the AEA supersedes this holdover statute.

Some of these notices that have come across my desk cite the holdover statute and inaccurately state that the tenant will be obligated to pay double rent. However, according to the exact wording of the holdover statute, this is flat-out wrong. The holdover statute imposes a penalty of double the yearly value of real estate detained, not double the rent. Moreover, double the yearly value of real estate can only be determined in a collection action.[16] The yearly value of the real estate detained might be more, or it might be less than the rent.[17] But it is enough of a statement to scare a tenant from seeking justice.

The AEA, on the other hand, simply requires a demand for possession.[18]

Indeed, there was a seismic shift in the right to possession between the landlord and the tenant with the passage of the AEA in 1974. In 1877 when a tenant's lease term expired, the tenant's right to possession ended. Thus, to encourage and force a tenant to vacate the rental premises after the expiration of the lease term and after a demand for possession had been given, the holdover statute imposed upon the tenant a penalty of double the yearly value of the property detained.

1974: A Time of Fundamental Change

In 1974, the AEA fundamentally changed the protections for a tenant's right to possession. Upon entering a lease, whether written or oral, with a landlord, a tenant obtains the right to

The AEA is a remedial statute meant to ameliorate the effects of a critical housing shortage and to prevent unnecessary and unreasonable evictions, and should be liberally construed to effectuate its beneficial public policy.

possession of the rental premises, and for the term of the lease, that right is paramount against all others, including the landlord. The AEA was passed to protect that right and to shield tenants against pretextual evictions, and to limit the causes for eviction to ensure that blameless tenants were protected against involuntary displacement amid a rental housing shortage.[19]

Under the AEA, absent having good cause for eviction and proving that cause in court, a landlord must renew a lease for tenants protected by AEA.[20] In other words, under the holdover statute, a tenant needs to leave or be penalized; while under the AEA, a tenant does not have to leave and has a right to stay. This is the premise of the argument that the AEA fundamentally changed the holdover statute.

Under the AEA, the mere demand for possession does not affect the tenant's right to possession. A tenant protected by the AEA retains the right to possession until a judge in landlord/tenant court rules otherwise. Moreover, given the various processes available to tenants to obtain stays of warrants of removal, arguably a tenant retains the right to possession until a court officer changes the locks. This means a tenant protected by the AEA can never be a holdover tenant as defined by the holdover statute.

In essence, the AEA has obliterated the archaic concept of holdover tenant for tenants protected by the AEA, and therefore, effectively repealed the holdover statute. However, both the AEA and the holdover statute require a demand for possession to implement its provisions, but the two statutes use the demand for possession to effectuate two very different purposes.

The AEA is a remedial statute meant to ameliorate the effects of a critical housing shortage and to prevent unnecessary and unreasonable evictions, and should be liberally construed to effectuate its beneficial public policy.[21] The holdover statute is a penal, punitive law meant to encourage and to force tenants to vacate their homes, or else pay a penalty.[22] Notwithstanding the foregoing, the penal purpose of the holdover statute is completely antithetical to the remedial purpose of the AEA.

Jurisdictional Problems for Landlords and the Court

Combining the two statutes with such different public policies in one notice presents jurisdictional problems for landlords and for the court in a summary dispossess action. A proper notice to quit and demand for possession is a jurisdictional prerequisite in a summary dispossess action. The notices in an eviction action must be factually and legally correct in all aspects for the court to have jurisdiction to hear the matter.[23]

Tenants protected by the AEA cannot be holdover tenants, and threats of double rent pursuant to the holdover statute are not applicable to any AEA-protected tenant. Thus, a notice to quit and demand for possession containing such threats of double rent against an AEA-protected tenant should deprive a court of jurisdiction because the notice is factually and legally wrong.[24]

Affecting Due Process

Furthermore, by combining the AEA and the holdover statute in one demand for possession, landlords are undermining due process by including threats of double rent in a demand for possession. The summary dispossess action provides a landlord with an expedited procedure to regain possession of the rental premises. To invoke the jurisdiction of the court, a landlord must serve a proper demand for possession.

Logically, demands for possession that include threats of double rent (or liability for the value of the real estate) end up encouraging tenants to vacate the premises before the trial date. Whereas, in the demand for possession, the date by which the tenant has to surrender possession always predates the trial date because the AEA prohibits instituting an action for possession until the date for surrendering possession has passed.[25]

Accordingly, a demand for possession that contains the threat of double rent (or liability for the value of the real estate) produces a due process anomaly whereby the landlord must serve the demand for possession to invoke the jurisdiction of the court to obtain the benefit of the expedited process of the summary dispossess, but that same demand in many cases serves to deny the other party their day in court. It is difficult to think of another civil proceeding, with a jurisdictional prerequisite for a litigant to obtain a benefit, which also contains a threat detrimental to the other party's rights.

When a tenant is served with a notice containing a demand for possession, it is critical for a tenant to receive legal advice. A demand for possession in any notice does not automatically transfer possession, but a tenant might think it does. Moreover, the demand for possession is only one part of the notice. The other parts contain the cause(s) for eviction under the law and the amount of time given to the tenant to vacate. If there are any deficiencies in any of these aspects, the tenant may have legal defenses, and the court may lack jurisdiction to hear the matter.[26]

The inclusion of the holdover statute threat of double rent could adversely affect tenants' due process rights. Tenants without the benefit of the counsel or legal advice might decide they cannot afford the risk of double the yearly value of the real estate or double the rent and they might vacate, thereby foregoing their right to defend their right to possession in court. The mere leveling of a threat of double rent payments, even if the threat is wrong and cannot be implemented under the AEA, defeats the compelling remedial public purpose of the AEA.

For the court to hear an eviction case, all notices must afford the tenant all statutory protections.[27] A demand for possession threatening double rent if the tenant does not move by a certain date, regardless of any other landlord/tenant laws, or what other language the demand might contain, is not affording a tenant all statutory protections. Since this is contrary to the intended purpose of the AEA, there is a strong argument that the court must refuse to exercise jurisdiction.

Conclusion

Defense attorneys can elevate their client's access to justice by arguing that the holdover statute, with origins in 1877, almost 100 years before the AEA was enacted, has no place in modern landlord/tenant law and effectively has been superseded by the AEA for tenants protected under the AEA.

We will never know how many tenants became homeless when threatened with double rent or liability for the yearly value of the real. But attorneys armed with this argument have a basis for improving tenants' access to justice. ■

Endnotes

1. *1877 Geological Survey of New Jersey*. U.S. Coast Survey Records, N.J. Geological and Topological Surveys and Various Local Surveys to Date
2. *United States Census Bureau*. United States Department of Commerce. Census.Gov
3. *State of New Jersey Profile: State of New Jersey Hazard Mitigation Plan,* page 4-16, 2019. New Jersey Office of Emergency Management.
4. *Report of National Low Income Housing Coalition: "Out of Reach" 2022; Montgomery Gateway East I v. Herrera* 261 *N.J. Super*. 235, 241 (App. Div. 1992).
5. *N.J.S.A.* 2A:18-61.1 *et seq.*
6. *Id. See* Preamble.
7. *See* Legislative Statement accompanying Assembly Bill A-1586 enacted as L.1974,c.49 and codified as *N.J.S.A.* 2A:18-61.1 *et seq*.
8. *Magiles v. Estate of Guy* 386 *N.J. Super*. 449,458 (App. Div. 2006), certification granted 188 *N.J.* 492, reversed 193 *N.J.* 108 (2007).
9. *N.J.S.A.* 2A:18-61.2.
10. *Carteret Properties v. Variety Donuts, Inc.* 49 *N.J.* 116,124 (1967); *Kroll Realty, Inc. v. Fuentes* 163 *N.J.* Super. 23, 26 (App. Div. 1978)
11. *Housing Authority of the City of Newark v. West* 69 *N.J.* 293, 300 (1976).
12. *Parkway, Inc. v. Curry* 162 *N.J. Super.* 416,417 (Dist. Ct. 1978).
13. *R.* 6:3-4(d).
14. *N.J.S.A.* 2A:42-6 is the current statute. *N.J.S.A.* §2A:2-58 was enacted in the New Jersey revised statutes 1937.
15. Copies of the 1937 statute and the 1877 statute can be obtained from the Law Library reference staff, New Jersey State Library at reflaw@njstatelib.org.
16. *Ancona Printing, Co. v. Welsbach* 92 *N.J.L.* 204, 206 (Court of Errors and Appeals of New Jersey 1918).
17. *Id.*
18. *N.J.S.A.* 2A:18-61.2.
19. *Hale v. Farrakhan* 390 *N.J. Super.* 335, 342 (App. Div. 2007); *Morristown Hospital v. Wokem Mortgage & Realty Co., Inc.* 192 *N.J. Super*. 182, 186 (App. Div. 1983).
20. *N.J.S.A.* 2A:18-61.3.
21. *McQueen v. Brown and Cook* 342 *N.J. Super.* 120, 133 (App. Div. 2001), certification granted 171 *N.J.* 44 (2002), affirmed 175 *N.J.* 200 (2002).
22. See *Lorril Co. v. LaCorte* 352 *N.J. Super.* 433, 439 (App. Div. 2002) which deals with *N.J.S.A.* 2A:42-5, the companion statute of *N.J.S.A.* 2A:42-6. *Ancona Printing Co. v. Welsbach Co.* 92 *N.J.L.* 204, 206 (Court of Errors and Appeals of New Jersey 1918).
23. *Bayside Condominiums, Inc. v. Mahoney* 254 *N.J. Super.* 323, 326 (App. Div. 1992).
24. *Id.*
25. *N.J.S.A.* 2A:18-61.2.
26. *Ashley Court Enterprises v. Whittaker* 249 *N.J. Super.* 552, 556 (App. Div. 1991).
27. *Housing Authority of the City of Newark v. Raindrop* 287 *N.J. Super.* 222, 229 (App. Div. 1996).

TEACHING JUSTICE TO LAW STUDENTS

Implementing the New ABA Curriculum Requirements for Law Schools

By Lori Outzs Borgen

When you ask lawyers who graduated from law school more than a few years ago what they remember from their law school classes, you are likely to hear stories of being called upon in a lecture hall to answer precise questions about a court decision. This "case method" of study, promoted by Harvard Law School Dean Christopher Columbus Langdell 150 years ago, employs the Socratic method to explore case doctrine and develop legal principles.[1] Some attorneys will recall a favorite professor or subject area, and others will speak about their clinic or externship work. Lawyers have a wide variety of memories of the academy, but it is not likely that someone's first response will

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be that they learned about justice. And it is even less likely that they will tell you they grappled with the "justice gap" during law school and their own moral obligation as an attorney to seek greater access to justice for all people. That is a problem. The American Bar Association's new curriculum standards will hopefully address this situation.

The Law School Curriculum and the Provision of Legal Services

The case method that dominates legal education does not focus on practical experience or providing access to justice. As legal education shifted from apprenticeship programs to university courses of study at the end of the 1800s, many educators disdained those who had actually practiced law.[2] But even as the case method took root, some faculty and students recognized the obligation of attorneys to provide legal services to those who cannot afford an attorney,[3] as well as the value of learning the law by representing real clients. Indeed, law students at the University of Pennsylvania established a "legal aid dispensary" in 1893 both to help the poor and as a way of getting practical experience.[4] But not all students participate in such programs and these values and practices have not been included adequately in the curriculum taught to all law students.

In 1921, the American Bar Association first promulgated standards for legal education, which later led to the commencement of the ABA's law school accreditation process.[5] For the first century of ABA oversight, access to justice was not a central concern in assessing a school's program. In more recent decades, law schools were required to provide opportunities for law students to do *pro bono* work, but there was no requirement to teach students about access to justice until recently.

The first clinics at Seton Hall Law School began in 1970 with the establishment of a free legal assistance program, The Legal Services Clinic, in conjunction with Essex-Newark Legal Services. Rutgers Law School launched its own clinical legal program in the same era, answering the call of Professor Arthur Kinoy to broaden the scope of legal education.[6] Over the past five decades, the clinical and *pro bono* programs in New Jersey law schools have provided a substantial and meaningful impact on access to justice in New Jersey. But again, not all students participate in these programs, and thus, they do not provide training to *all* graduating students on their obligations to promote justice as practicing attorneys.

Expanding Law School Teaching on Access to Justice

In the 1990s and 2000s, there was renewed emphasis on the themes of preparing students for practice as well as inculcating a sense of the moral obligations of members of the bar.[7] The ABA added accreditation standards stating the law schools should encourage students to participate in *pro bono* activities and provide opportunities for them to do so, and to mandate professional skills training beyond legal writing. Faculty focused more on the deficiencies in legal education that resulted in attorneys who were not practice-ready. Bar associations highlighted the importance of helping law students develop a professional identity grounded in an understanding of their moral obligations as well as the gaps of the legal system in providing justice for all. One 2007 report noted that law schools needed to improve their teaching on competence and professionalism, as law students did not understand their obligations to provide legal services to those who cannot afford them or how to provide such services.[8] The report noted the failure of the U.S. legal system to provide adequate legal services to poor people and urged that "[l]aw schools should give more attention to educating students about the importance of providing access to justice and to instilling a commitment to provide access to justice in their students."[9]

As of 2016, ABA Standard 303(a) required law schools to mandate that all students take at least six credits of experiential coursework, which could include simulation courses, clinics, and field placements. Standard 303(b) states that law schools must provide "substantial opportunities" for students to enroll in clinics or field placements, and to participate in *pro bono* legal services.

In 2022, the ABA further amended the curriculum guidance to require that law schools provide substantial opportunities

> …[T]he new standards require that law schools "provide education to law students on bias, cross-cultural competency, and racism" at the start of law school and at least one other time before graduation.

> …[A]ll law schools must offer law clinics or field placements, and must ensure that these programs operate in a manner that promotes justice.

for the "development of a professional identity." In addition, the new standards require that law schools "provide education to law students on bias, cross-cultural competency, and racism" at the start of law school and at least one other time before graduation.[10]

The ABA interpretations for the rules provide guidance to law schools regarding the requirements. Interpretation 303-5 addresses professional identity formation and "what it means to be a lawyer and the special obligations lawyers have to their clients and society." Interpretation 303-6 provides:

> With respect to 303(a)(1), the importance of cross-cultural competence to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced.

In order to educate law students about their obligation "to promote a justice system that provides equal access" as well as about bias, cross-cultural competency and racism, law schools should:

1. Provide opportunities for law students to assist those who are lacking access to justice, through *pro bono* opportunities, field placements, and clinics.
2. Increase student knowledge of legal structures that deny equal access to justice and help students understand how to address and dismantle these barriers.
3. Assist students in developing a professional identity as an attorney that will include promoting access to justice regardless of their specific career path.

Opportunities to Provide Legal Services and Train Students

First, law schools must continue to provide law students with opportunities to serve individuals and organizations that cannot afford an attorney and must provide effective teaching in the provision of these legal services. Approximately 30 law schools have a *pro bono* requirement or other public service requirement;[11] all must provide students with volunteer opportunities.[12] Similarly, all law schools must offer law clinics or field placements, and must ensure that these programs operate in a manner that promotes justice. With the expansion of the justice teaching requirements, scholars have emphasized the need to review clinical programs to determine if they are anti-racist and operating in a manner that satisfies the new standard.[13]

Understanding Systemic Bias in the Law and How to Dismantle It

The next requirement for law schools moves beyond the traditional work of legal clinics and *pro bono* projects. Law schools should train *all* students to consider existing legal structures and how their design results in a justice gap. Law schools should go further, though, and train students to consider what to do about these systemic barriers. Students must learn about the power dynamics that lead to these systems and the variety of tools they can use to address them.[14]

The ABA requires that law students have at least two opportunities to learn about bias, cross-cultural competency, and racism—once at the start of law school and at least one other time before graduation. Teaching in these areas will further focus students on access to justice and how legal systems can be better designed to promote equity.

Schools have taken a variety of approaches to meeting this requirement.[15] Some require participation in an orientation program that focuses on justice. For example, Seton Hall Law School asks all incoming students to read *The Color of Law* by Richard Rothstein and participate in an orientation program about the book. Another approach is to include training on justice topics in a class that is already required of all students during their first year of law school, such as a lawyering or legal writing class, or to create a new required class for all students. Other schools are reworking classes across their curriculum to incorporate topics about race and justice and developing new elective courses.[16] All law schools were required to have a plan by fall 2022 for how they will implement this requirement by fall 2023.[17]

Professional Identity Development for All Law Students

Finally, law schools must do more to help students develop a professional identity that recognizes the responsibility of attorneys to their clients and to society, and more specifically, that the justice gap is a problem for all attorneys. Unfor-

tunately, unless a student is planning a public interest career, they might not view the justice gap as a problem that impacts them.

Yet, the Preamble to the Model Rules of Professional Conduct emphasizes that:

> [A] lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.[18]

Developing a professional identity with this focus requires a legal education that teaches a broader array of skills than the traditional curriculum.

Assessing the Impact of the ABA Curriculum Change

The impact of the new ABA standard on legal instruction is yet to be seen. Following the murder of George Floyd in 2020, many institutions, including law schools, paid more attention to race, access to justice, and the need to understand the systemic biases that pervade the legal system. Many have observed that institutional attention spans are waning in their commitment to developing antiracist practices, and there is less emphasis on the need for reform. Fortunately, the requirements of ABA Standard 303 will ensure that law schools continue to shine a spotlight on bias and racism in the law and the need to create fairer systems that provide more access to justice.

As law schools develop their plans to implement the new curriculum standards, they are looking beyond the skills championed by Langdell. Legal reasoning and critical thinking are still crucial skills for attorneys, but so too are cultural competency to understand a client's need, effective communication skills to listen attentively to clients, creative problem solving, collaboration, and an entrepreneurial mindset.[19]

The hope is that is by teaching this broader skill set, law schools will help students develop a professional identify grounded in an understanding of an attorney's role as an agent of justice. Furthermore, law schools will provide new lawyers with the tools they need to change the system and promote access to justice. ■

Endnotes

1. Russel L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 Vill. L. Rev 517 (1991).
2. Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 Dick. L. Rev. 551, 553 (2018).
3. William V. Rowe, *Legal Clinics and Better Trained Lawyers—A Necessity*, 11 Ill. L. Rev. 591, 592 (1917) (cited by Stuckey, Best Practices for Legal Education, at 25) ("In this process, lawyers are an absolutely essential element [for seeking justice under the law], but, for a majority of our people, the expense of the process, especially under the complicated conditions of modern life, is prohibitive...The remedy is plain... For those who cannot bear the burden of expense, legal advice and justice must be free. Otherwise, our boast of freedom, our whole system, indeed, becomes a mockery.").
4. Cynthia F. Adcock, *Beyond Externships and Clinics: Integrating Access to Justice Education into the Curriculum*, 62 J. of Legal Educ. 566, 566 (2013).
5. americanbar.org/about_the_aba/.
6. Arthur Kinoy, *The Present Crisis in American Legal Education*, 24 Rutgers L. Rev. 1 (1969). *See also* Adcock, *supra* note 4 (discussing the development of *pro bono* programs at law schools, including Ford Foundation funding to more than 100 law schools from 1959-1978 to support programs that provided legal services to the poor).
7. Joy, *supra* note 2, at 570-73 (discussing the 1992 MacCrate Report that identified 10 lawyering skills and 4 professional values that it encouraged law schools to develop with their students).
8. Roy Stuckey, et al., *Best Practices for Legal Education, A Vision and a Road Map*, at 24-26 (CLEA 2007).
9. *Id.* at 26.
10. 2022-23 ABA Standards and Rules of Procedure for Approval of Law Schools, Standard 303(c)(effective February 2022). The full standard states:

    Standard 303. CURRICULUM

    a. A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:
        1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
        2) one writing experience in the first year and at least one additional experience after the first year, both of which are faculty supervised; and,
        3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be

a simulation course, a law clinic, or a field placement, as defined in Standard 304.

b. A law school shall provide substantial opportunities to students for:
   1) law clinics or field placement(s);
   2) student participation in *pro bono* legal services, including law-related public service activities; and
   3) the development of a professional identity.

c. A law school shall provide education to law students on bias, cross-cultural competency, and racism:
   1) at the start of the program of legal education, and
   2) at least once again before graduation. For students engaged in law clinics or field placements, the second occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses.

For students engaged in law clinics or field placements, the second educational occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses.

11. ABA Center for Pro Bono, Law School Directory (as of 12/16/2022), available at americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pb_structure/.
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14. Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 Clin. L. Rev. 147 (2016) (discussing four broad areas of influence: political, communications/media, grassroots support, and legal).
15. ABA Standard 303, Interpretation 303-7 states, in part, that the "requirement that law schools provide education on bias, cross-cultural competency, and racism may be satisfied by, among other things, the following: (1) Orientation sessions for incoming students; (2) Lectures on these topics; (3) Courses incorporating these topics; or (4) Other educational experiences incorporating these topics."
16. The Law Deans Antiracist Clearinghouse Project provides a number of resources for law school faculty seeking to address issues of race and bias. S*ee* aals.org/about/publications/antiracist-clearinghouse/.
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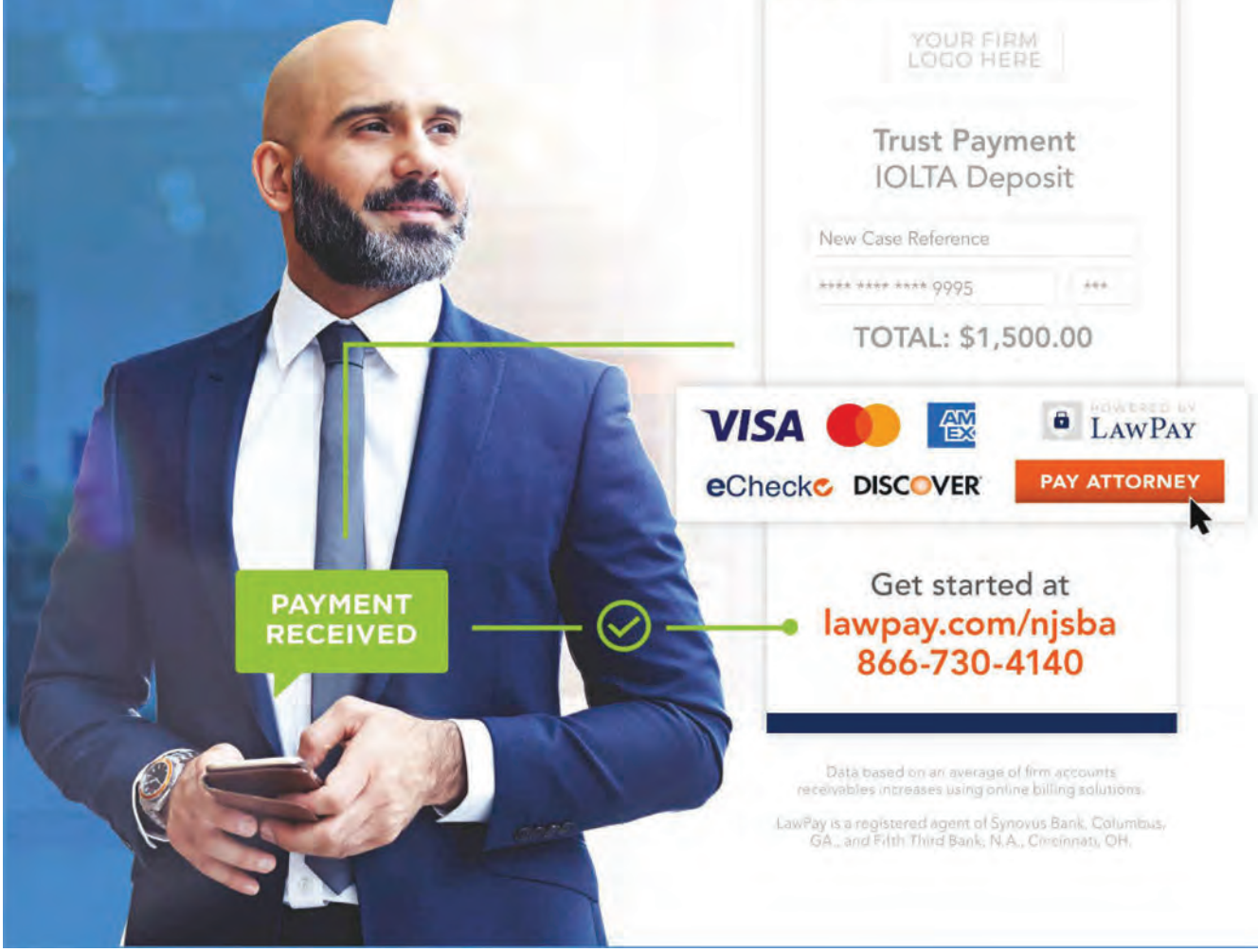

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Applying the Collaborative Models Between Corporations and Science to Pro Bono Dream Teams

By Amy E. Vasquez

They advertised the audience would fly. They advertised the audience would see without light. "9 Evenings" was a series of performances in October of 1966 held at New York City's 69th Regiment Armory showcasing the technological feats Bell Laboratories' ("Bell Labs") engineers and their collaboration with notable artists.[1]

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In Murray Hill, New Jersey, Bell Labs was known for its porous work environment, often referred to as the "Idea Factory." It applied this model to the "9 Evenings" project, pairing artists with engineers for 10 months to create seemingly impossible theatrical events, inspired by the artists.[2] For instance, choreographer Deborah Hay asked for floating wireless platforms, which resulted in a dance performance featuring eight remote controlled platforms.[3] Robert Rauschenberg's idea resulted in a production of a live scoreless tennis match where infrared television cameras picked up movements and projected these images onto three large screens.[4] These collaborations were not initially easy, as the artists and scientists encountered communication challenges. Bell Labs, champions of communication, had a breakthrough at a low point in the collective's interactions by demonstrating some technologies available to the artists.[5] The result was the first on stage television projections, use of fiber optics and infrared cameras, among other "firsts" in theatrical productions.[6]

Bell Labs implemented this model among its researchers for decades before "9 Evenings." When Bell Labs was incorporated nearly 100 years ago, in 1925, it hired thousands of researchers and encouraged multidisciplinary interaction among its scientists with the belief that groundbreaking technological breakthroughs would result through collaborations.[7] "The Idea Factory" became synonymous with the name "Bell Labs" as this recipe for innovation resulted in nine Nobel prizes and Bell Labs having a hand in every technological advancement of the 20th century including pioneering the laser and satellite communication, the C programming language, and the transistor, among other discoveries and inventions.[8]

Similar collaborations among lawyers and other support service providers are often referred to as "dream teams." For example, a law firm that created an idea - factory-style environment is the Neighborhood Defender Service of Harlem (NDS). When the National Association for Public Defense awarded NDS with the Defender of Justice Award, NDS was described as representing clients by a "team that includes criminal and civil attorneys, social workers, investigators, paralegals, law school and social work interns, and *pro bono* attorneys."[9] On its website, NDS describes its model. Numbers of caseloads are counted by team, not by individual attorney. NDS touts that it has a 45% rate of dismissals and adjournment in contemplation of dismissal, while at the same time takes partial credit for reducing crime rates.[10] Decline in crime is due, in part, to the "many innovations in public defense coming from NDS," and "collaborative and holistic defense should be recognized for the contribution it is making," NDS claims.[11]

The American Civil Liberties Union of New Jersey uses a model it calls "integrated advocacy." This model integrates its arms of advocacy in impact litigation, legislative advocacy, community organizing and coalition building, public education, and strategic communications. Integrated advocacy requires internal cross-departmental collaboration and external partnerships.[12]

Some lawyers might regard *pro bono* work as an isolated practice, where an attorney is paired with a client and the experience is limited to a court appearance. However, there are *pro bono* opportunities that offer collaborative models of practice as well. For instance, the Pro Bono Collaborative at Roger Williams University, which houses Rhode Island's only law school, connects law firms, attorneys and law students to community organizations that need *pro bono* legal services.[13] This model offers a three-way partnership to service each client. This strategic alliance allows for the talents and resources of each partner to assist the client using a supportive framework, but also for the attorney who may have otherwise handled the matter with limited or no resources.

In New Jersey, there are an array of collaborative *pro bono* opportunities. These types of programs include Central Jersey Legal Services (CJLS), which offers an opportunity for private attorneys to provide legal services to low-income clients through its Volunteer Attorney Program. CJLS provides training and support to the *pro bono* attorney.[14]

At the Center for Social Justice, Seton Hall University School of Law's award-winning Pro Bono Service Program, law students gain critical hands-on experience in the clinical community-based program.[15] The Kids in Need of Defense (KIND) *pro bono* attorney program provides *pro bono* attorneys with training, mentoring, and other resources to represent children in immigration matters. Each *pro bono* attorney is assigned a KIND attorney for the duration of their case who provides guidance on case strategy, feedback on drafts, mock adjudications, samples and checklists.[16]

Additionally, Legal Services of New Jersey (LSNJ) and the five regional legal services organizations function as a concerted, coherent, coordinated legal assistance delivery system with the goal to ensure full access to equal justice for all economically disadvantaged people. It is the largest provider of free legal assistance in civil matters in the state. LSNJ operates the designated statewide *pro bono* website, probononj.org, which links volunteers, agencies providing legal assistance, and clients. LSNJ provides coordination and supportive resources to its *pro bono* partners.[17] Legal Services of Northwest Jersey works with *pro bono* attorneys providing community-based collaborations. Legal clinics are held in senior centers, community centers, and soup kitchens where it provides legal assistance in the areas of eviction diversion and preparation of life planning documents.[18] The New Jersey State Bar Association (NJSBA), through its Military Law and Veterans' Affairs Section, in conjunction with McCarter & English, has established the Military

Legal Assistance Program. This *pro bono* program helps New Jersey residents who have served overseas as active duty members of reserve components of the armed forces after Sept. 11, 2001. This program offers NJSBA's vast supportive services and resources to *pro bono* attorneys and clients.[19]

Partners Pro Bono Programs collaborate with attorney volunteers to bring justice and safety to survivors of domestic and sexual violence. Volunteers can help in many ways. Through its Domestic Violence Representation Program, volunteers help survivors obtain final restraining orders and protective orders in Family Court. Through its Advice and Counsel Program, volunteers provide survivors with life-saving advice telephonically, while balancing *pro bono* service with busy work schedules. Volunteers participating in its Children of Domestic Violence Program represent survivors in actions involving the establishment, modification, or enforcement of child support and child custody. Through its Appellate Advocacy Program, volunteer teams from major partner firms ensure continued safety for victims with cases on appeal and advocate for positive change through *amicus curiae* filings. Partners offers second-seating by staff attorneys for volunteer attorneys who are new to domestic violence representation, as well as provide mentor associates and brief banks, and memoranda and motion samples.[20] The Private Attorney Involvement Program (PAI) of South Jersey Legal Services, Inc. (SJLS) assists income-eligible clients within the SJLS service area. PAI may refer cases to *pro bono* attorneys regarding government benefits, family law, landlord/tenant issues, health law, consumer and finance law, employment law, individual rights and other civil law matters. PAI provides attorneys with training, resources, and support.[21]

Pro Bono Partnership provides free business and transactional legal assistance to other nonprofit organizations. It offers to pair *pro bono* counsel to work together where appropriate, provides model documents, and reviews draft documents.[22]

The Rutgers Pro Bono and Public Interest Program allows Rutgers law students an opportunity to work collaboratively with attorneys, faculty, other students in community-based *pro bono* services with an emphasis in integrating existing resources to create innovative collaborations.[23] The South Jersey Bankruptcy Practitioners' Group, as organized by the SJLS Private Attorney Involvement Program, offers a supportive collaborative effort between SJLS and the bankruptcy bar in nine county service areas. Volunteer bankruptcy attorneys attend free Zoom continuing edition courses the third Wednesday of each month, October through March, and earn two credits for each session. In exchange, the member attorney agrees to accept three *pro bono* bankruptcy cases by May of the term year.[24]

Finally, at Volunteer Lawyers for Justice (VLJ), volunteers work alongside staff to address critical legal needs across New Jersey, advancing racial, social, and economic justice for the most vulnerable members of the communities it serves. VLJ has staff onsite at legal clinics where volunteer attorneys assist, provides mentors, and CLEs. Collaboration is a cornerstone of VLJ's delivery of services.[25]

Pro bono "dream teams" may be thought of occuring in only high-profile cases, but collaborative models also are used to serve low-income people every day in New Jersey. Alexander Graham Bell, who was awarded the first U.S. patent for the telephone and founded Bell Labs, valued collaboration. He is credited with stating, "Great discoveries and improvements invariably involve the cooperation of many minds."[26] In light of the accomplishments of structured collaborations at Bell Labs and elsewhere, Bell's famous first successful telephone transmission takes on enhanced meaning: "Mr. Watson, come here, I need you." ■

Endnotes

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PRACTICE POINTER: HOW TO DO IT

THE POWER OF *PRO BONO* PARTNERSHIPS

Implementing a Sustainable *Pro Bono* Program for In-House Departments and Law Firms of All Sizes

By Jessica Kitson and Jessica Hodkinson

"Pro bono *work is vital to our court system."*
Chief Justice Stuart Rabner

According to the Legal Services Corporation (LSC) *2022 Justice Gap Study,*[1] U.S. residents experiencing poverty "did not receive enough legal help for 92% of the problems that substantially impacted them in the past year."[2] While that number is shockingly high, it is not surprising when factoring in that "3 in 4 (74%) low-income households experienced 1+ civil legal problems in the past year" or that "2 in 5 (39%) experienced 5+ problems and 1 in 5 (20%) experienced 10+ problems." The numbers indicate a gap between people's ability to access justice and the magnitude of the work that must be undertaken to reduce it.

In the United States, there is no right to counsel for individuals with non-criminal (civil) legal issues.[3] That means, for example, a tenant facing eviction has no right to an attorney. For a survivor of domestic violence seeking a restraining order, no right to an attorney. For parents seeking special education services for their children, no right to attorney. For a veteran whose claim was denied for service-connected disability compensation from the U.S. Department of Veterans Affairs, no right to an attorney. And while the consequences of those legal proceedings are not the same as incarceration, they can be nearly as catastrophic. The U.S. legal system is adversarial in nature by design, putting *pro se* litigants at a significant disadvantage.

There are, however, nationwide nonprofit organizations trying to meet this need. LSC-funded organizations operate in 50 states and are persistently trying to do more with less as they see an increased need for funding that has remained woefully inadequate for decades.[4] As a result, LSC-funded organizations are only able to provide some degree of legal help for about one-half of the civil legal problems brought to them.[5]

Closing the Gap: The Power of *Pro Bono*

Without question, there is an urgent need for a significant increase in funding to LSC and other nonprofit legal services providers. We cannot have true access to justice for all in the U.S. without a robust, properly funded legal services network.

That should be a priority for legislators at both the state and federal level.

But we can't stop there. Right now, there are more than 1.3 million licensed attorneys in the United States, and more than 40,000 right here in New Jersey.[6] That is an army of individuals who have the power to address the access to justice gap right now. And yet, a 2018 report by the American Bar Association (ABA), *Supporting Justice—A Report on the Pro Bono Work of America's Lawyers*, found that only one out of five attorneys had ever undertaken *pro bono* work.[7] This suggests that there is significant potential for *pro bono* services to make a meaningful dent in the access to justice gap, and that the power of the remaining 80% of attorneys is just waiting to be harnessed.

Given this pool of untapped legal talent, the question becomes how best to use their skills and expertise in a way that will do the most good for those most in need.

Getting Started: Finding the Right Fit

All lawyers can do *pro bono* work, but not all *pro bono* projects are right for every attorney. Given the myriad of practice areas that exist within the profession, it would be silly to think that every attorney would be interested in taking on just any *pro bono* matter. In fact, an unhappy and unwilling lawyer is not good for the client. The good news is that there are enough unique *pro bono* opportunities available that, with good systems and partnerships in place, every law firm and corporation can find the right project(s) that will work for their team.

One way to get started is to reach out to an organization such as Volunteer Lawyers for Justice, New Jersey Reentry Corporation, or Legal Services of New Jersey, that specializes in helping residents access justice.

These types of groups can offer various opportunities for volunteers (attorney and non-attorney alike) from speaking engagements at Know Your Rights seminars, mentoring less experienced volunteers, writing thought pieces and white papers on current events and important legal issues, hands-on limited-scope legal clinics, and of course, the traditional full representation cases.

Volunteers include people working for law firms, corporate legal departments, solo practitioners, retired attorneys, and lawyers just beginning their careers.

JESSICA KITSON *is the Director of Legal Advocacy at Volunteer Lawyers for Justice (VLJ) where she leads the legal and policy work for the organization. Jessica is a national expert on advocacy for human trafficking survivors, representing survivors through VLJ's New Jersey Human Trafficking Victims' Legal Assistance Program, and serving as a consultant with the national Survivor Reentry Project. Jessica graduated from Rutgers Law School.*

JESSICA L. HODKINSON *serves as Vice President, Chief Legal Officer and Corporate Secretary, and a member of the Board of Directors of Panasonic Corporation of North America (PNA). Jessica currently serves as a member of the Board of Trustees of Volunteer Lawyers for Justice. In 2020, Jessica was the recipient of the NJBIZ 'General Counsel of the Year' award. Jessica graduated magna cum laude from Brooklyn Law School.*

The work they do ranges from "do what you know" (i.e., bankruptcy attorneys who regularly take on *pro bono* bankruptcy cases) to "learn something new" (such as in-house attorneys at Merck learning how to do Chapter 7 bankruptcy cases) and everything in between. Whether it is a family law attorney representing a survivor of domestic violence with their divorce, or a corporate transactional attorney volunteering at a veterans clinic, these types of organizations strive to provide the training, tools, and mentorship needed to help every volunteer succeed.

Some of these organizations are also New Jersey Supreme Court certified *pro bono* providers. This entitles volunteers to several benefits. Most importantly this designation allows all volunteers who complete 25 hours of *pro bono* service in the prior year to claim an exemption from court-mandated *Madden pro bono* assignments. Unlike mandatory court assignments, lawyers who volunteer with a court-certified provider can take a case in an area of law that is of interest to them and at a time that works with their schedules.

A Case Study of Corporate Partnership

In 2017, the lawyers and legal staff at Panasonic focused their efforts on assisting U.S. military veterans and service members. Panasonic co-founded VLJ's Veterans Legal Wellness Clinic—the first legal clinic at the East Orange VA Hospital, and served as dedicated *pro bono* volunteers and strong financial partners of VLJ. Through the provision of vital legal services, Panasonic is transforming the lives of veterans experiencing poverty in New Jersey.

For the leadership at Panasonic, *pro bono* directly ties into the company's longstanding commitment to DEI (diversity, equity, and inclusion) and social justice work.

As part of its efforts to use company policies and procedures to shift culture, Panasonic grants its staff 40 hours a year of volunteer time, and encourages their legal staff to do something that is meaningful and not forced, while also encouraging them to be willing to step outside of their comfort zone. The Veterans Legal Wellness Clinic is a perfect example—none of the volunteers are experts in working with veterans or in the many legal issues they face, but with VLJ's support, they received training, found law firm partners to work with them in teams, and have been helping veterans for the past six years.

Panasonic regularly attributes the success of that program to finding an organization that specializes in access to justice as a supportive partner.

Getting Started—What's Next?

Great! You are convinced that you are ready to join the army of *pro bono* attorneys fighting the good fight to close the access to justice gap! But what comes next? How do you bring *pro bono* to your law firm or in-house corporate department? It's easier than you think, and the good news is that you can (and should) start small.

Transitioning from the "We should do this!" to "We did that!" doesn't have to be a Herculean effort. In fact, chances are an applicable roadmap is already in existence that can help guide you while avoiding a reinvention of the wheel. It is best to make sure there is not just an appetite for *pro bono*, but a hunger. A hunger to do good using your company's/firm's resources and the time and talent of its staff. Before making a formal pitch to the managing team, go on a listening tour. Speak with coworkers, especially those who have undertaken *pro bono* efforts at prior companies/firms. Informally raise the idea with your supervisor who may point you in the direction of an even more senior staff member willing to champion your cause. As with any new pitch, do your homework so that you make a "yes" more possible.

Discuss any new *pro bono* venture with the executive/managing team. Feel them out. Make your case and listen and learn from their response. If their response is lackluster or non-committal, you may need to adjust. A mindset that will save you time, stress, and a few gray hairs is to limit your expectations. Rome wasn't built in a day and neither will your ideal *pro bono* program.

Teamwork Makes the Dream Work—Identify Core Supporters

As with any new idea, there may be a tendency to want to keep close control over it to see it grow into your dream. However, dreams, much like children, can only be parented so much. At some point you will have to share your idea with coworkers not just for their feedback, but for their help. Any successful *pro bono* program, whether at a small firm, mid-sized firm, or "Big Law" usually involves more than one person, so when developing a new *pro bono* program for your

company/firm, find those like-minded staff who are part of the choir that does not need preaching. They're already sold on *pro bono*, so you don't have to spend any time or energy convincing them. Use their energy to nurture the *pro bono* vision.

When looking for companions in your new "Fellowship of Pro Bono," don't limit your pool to attorneys. As with many of VLJ's partners, for example, non-attorney staff and paraprofessionals (e.g., paralegals, legal assistants, accountants, and social workers) play a big role in the success of the *pro bono* program. In fact, many non-attorney staff volunteer at VLJ's legal clinics assist with document collection, interviewing, note taking, and other client support activities. This type of partnership only enrichens the experience and success of the company's/firm's *pro bono* program.

Start Small—Under Promise and Over Deliver

Once the managing team has given the green light to transform the *pro bono* dream into a reality, your next job is to focus on two key words: scalability and sustainability. This will likely be determined by the parameters set down by the managing team, along with available resources. All that to say, you may have to do more with less, so start out in a way that ensures resources (which very much includes you) are not quickly depleted. Also, make sure your initial efforts are scalable, so that your dream isn't so small that it can never grow, or too large that it never gets off the ground. Some specifics that may help guide your "sustainability and scalability" review:

I. Determine capacity, parameters, and limitations
   a. Internal requirements: Does your company/firm provide any staff time for volunteering? If so, how much time?
   b. How will the company/firm handle timekeeping, monitoring and oversight of *pro bono* cases and conflict checks? And by whom?
   c. How will your company/firm gather and track information?
      i. You absolutely want to gather and track the information required to keep the firm in legal and ethical compliance, but you also want to gather and track information that tells a story. The story of your company's/firm's *pro bono* efforts is more than numbers: it is the people doing the work and the community members who need your help. A helpful reminder is to think of output and outcomes:
         1. Output—The numbers
            a. Hours volunteered
            b. Value of legal services donated
               i. The billable rate of every individual volunteer + the number of hours they volunteered (Example, a billable rate of $200 per hour with 30 hours donated/volunteered = $6,000)
            c. Number of staff volunteering
            d. Number of clients helped
            e. Number and type of legal matters
         2. Outcome—The narrative
            a. Client's background and lived experience prior to *pro bono* legal help
            b. Result(s) of *pro bono* service
               i. How did the *pro bono* service impact the client?
                  1. Depending on the structure of your *pro bono* program and whether you have a partnership with a local legal aid, this information may be tracked externally.
                  2. Impact at time of case closing vs. impact one year after?
               ii. How did the *pro bono* service impact the volunteer? The company or firm?
            c. Capturing client and volunteer stories
               i. Not all stories are "successes." Some are indicative of the unjust nature of the civil justice system.
               ii. Make sure to have necessary consent and media releases.
               iii. Be mindful of "poverty porn" and not portray your client's story in a way that exploits or exudes white saviorism, stereotypes, and generalizations. Remember, the story and experience belong to the human telling it, so recognize, respect, and honor that.

II. Have investigatory/preliminary conversation with local legal services organization ("legal aid")
   a. There is at least one LSC-funded legal services organization in every congressional district and many more who are funded outside of LSC.[8] Federal regulations mandate that organizations receiving LSC funding allocate at least 12.5% of their Basic Field-General grant to *pro bono*[9] (what LSC calls "Private Attorney Involvement (PAI) requirement") which means it is very likely your local legal services organization will have a dedicated *pro bono* team.

The organization Corporate Pro Bono (CPBO) created a Pro Bono Development Guide that may help kick off a *pro bono* program. The Pro Bono Development Guide is the cumulation of CPBO's work with hundreds of diverse legal departments and provides a starting point for in-house teams.[10] This guide details concerns and considerations that may not be readily apparent, saving time, resources, and avoiding the dreaded "going back to the drawing board."

Final Thoughts

No two *pro bono* models will be the same. Indeed, rarely should a *pro bono* model be a "one size fits all" as that could lead to the exclusion (even if inadvertent) of volunteers, and more significantly, potential clients in need of *pro bono* services. Our collective experience shows that when you design a competent *pro bono* program that is human centered (clients, volunteers, and staff) and mission driven, it can not only be fun, it can be life-changing. ■

Endnotes

1. For this study, LSC used the benchmark of 125% of the federal poverty level. The report indicated that "About 50 million Americans have household incomes below 125% of poverty, including more than 15 million children." justicegap.lsc.gov/the-report/
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Honoring 2023 award recipient

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TUESDAY, APRIL 25

6–7 p.m.—Cocktail Reception • **7–7:20 p.m.**—Award Presentation

7:20–9 p.m.—Congratulations and Networking

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