

CIVIL PRACTICE AND PROCEDURE**Affidavit of Merit Statute****APPELLATE DIVISION**

***Hill Intern., Inc. v. Atlantic City Bd. of Educ.*, 438 N.J. Super. 562, 106 A.3d 487, 2014 N.J. Super. LEXIS 177 (App.Div. 2014)**

Opinion by Sabatino, P.J.A.D.

When a professional in one of the categories listed in *N.J.S.A. 2A:53A-26* has been sued for malpractice or negligence, a supporting affidavit of merit ("AOM") is required from a "like-licensed" professional. This "like-licensed" requirement applies even where the functions of one profession may overlap with those of another profession. However, such an AOM is not required for claims (1) solely involving matters of common knowledge; (2) based on a defendant's conduct outside the scope of his or her professional duties; (3) of intentional wrongdoing; or (4) based exclusively on theories of vicarious liability or agency.

Applying these principles here, we reverse the trial court's interlocutory order permitting a licensed engineer to issue an AOM against defendant architects regarding alleged negligence in design and construction contract administration. Even though there is some overlap between these two professions, the statute requires an AOM from a like-licensed architect. We remand to allow plaintiff to obtain such an affidavit.

***Mazur ex rel. Armstrong v. Crane's Mill Nursing Home*, 441 N.J. Super. 168, 117 A.3d 181, 2015 N.J. Super. LEXIS 95 (App.Div. 2015)**

Opinion by Nugent, J.A.D.

In this medical malpractice action, we reverse the trial court's order dismissing the complaint due to a deficient affidavit of merit. The trial court based its decision on the misstatement in an answer that a defendant was board certified when he treated the patient; a misstatement repeated by defense counsel in the certification and throughout the brief filed in support of the motion to dismiss.

We conclude that the appropriate remedy on remand is to require defendant to amend the answer to correct the misstatement and to permit plaintiff to file an affidavit of merit within sixty days, extendable by sixty days for good cause. We also review the procedural requirements concerning affidavits of merit as well as those of *Rule 1:6*, particularly the requirement of *Rule 1:6-6* that affidavits intended to establish facts not appearing of record be based on personal knowledge.

***Mortgage Grader, Inc. v. Ward & Olivo, L.L.P.*, 438 N.J. Super. 202, 102 A.3d 1226, 2014 N.J. Super. LEXIS 153 (App.Div. 2014)**

Opinion by Fasciale, J.A.D.

In this legal malpractice case, in which plaintiff asserts claims against two attorneys who practiced law as a limited liability partnership ("LLP"), we hold that the direct claims against defendant John Ward must be dismissed because Ward is not vicariously liable for the alleged malpractice of his partner John Olivo. Ward was shielded from liability under the Uniform Partnership Act, *N.J.S.A. 42:1A-1 to -56*, and the LLP did not revert to a general partnership, as the judge had concluded, notwithstanding the LLP's failure to maintain professional liability insurance covering the claims in this lawsuit, as required by *Rule 1:21-1C(a)(3)*. We also hold that plaintiff failed to comply with the Affidavit of Merit Statute ("AMS"), *N.J.S.A. 2A:53A-26 to -29*, by not serving an affidavit of merit on Ward or otherwise substantially complying with the AMS.

Discovery

APPELLATE DIVISION

***Mernick v. McCutchen*, 2015 N.J. Super. LEXIS 143 (App.Div. Sept. 3, 2015)**

Opinion by Hayden, J.A.D.

In this interlocutory appeal we considered a trial court order requiring the defendant to provide video surveillance of a plaintiff to her before the plaintiff's deposition. Based on the reasoning in *Jenkins v. Rainer*, 69 N.J. 50 (1976), we determined that as a general rule the defendant is not required to provide the surveillance video until after the plaintiff's deposition.

***Wacker-Ciocco v. Government Employees Ins. Co.*, 439 N.J. Super. 603, 110 A.3d 962, 2015 N.J. Super. LEXIS 38 (App.Div. 2015)**

Opinion by Espinosa, J.A.D.

In *Procopio v. Government Employees Insurance Company*, 433 N.J. Super. 377 (App. Div. 2013), the plaintiff insured asserted a claim for underinsured motorist (UIM) benefits and a bad faith claim against his carrier. Although the trial court bifurcated the claims for trial, holding the bad faith claim in abeyance, it compelled discovery to proceed on all claims. We held it was an abuse of discretion for the trial court to order that discovery on both claims proceed simultaneously. In this case, the initial decision to deny the severance motion came after some discovery related to the bad faith claim had been provided and before *Procopio* was decided. This interlocutory appeal presents the question whether the disclosure of some bad faith-related