NEW JERSEY LAWYER

June 2025

No. 354

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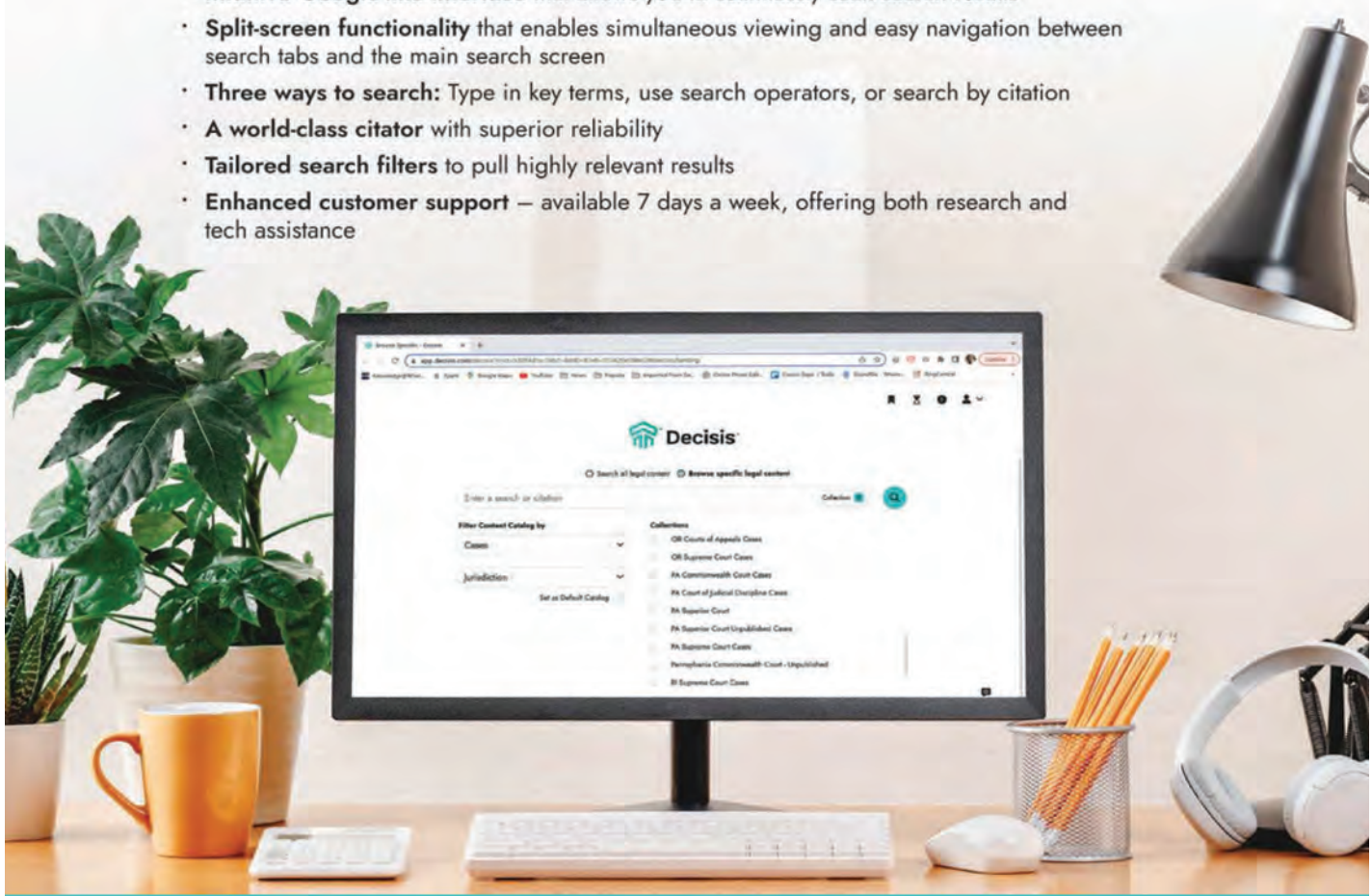

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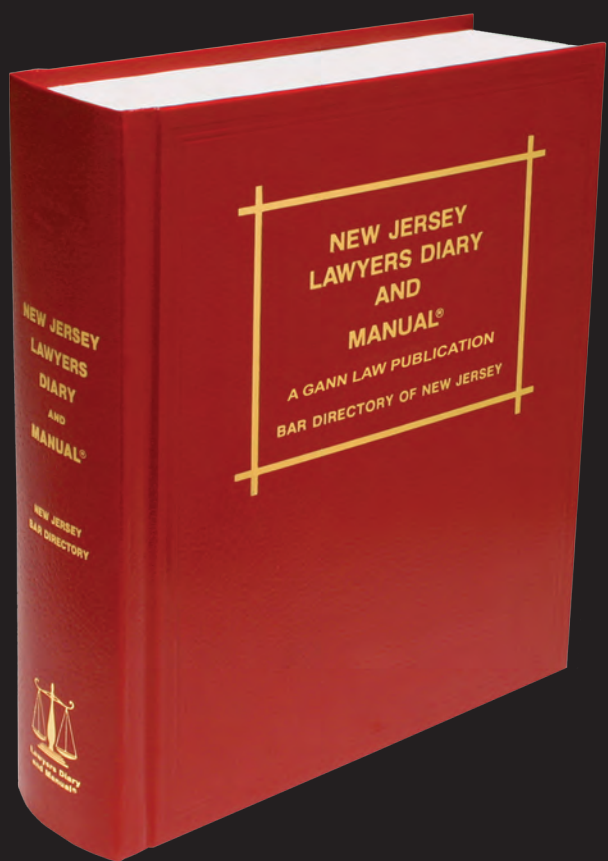

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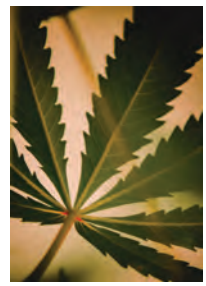

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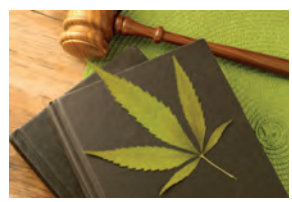

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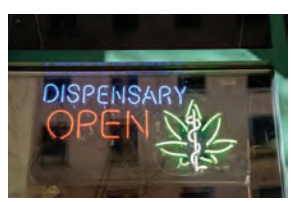

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CHRISTINE A. AMALFE

Answering the Call of Justice, Then and Now

Editor's note: *Christine A. Amalfe was installed as the 127th president of the New Jersey State Bar Association at the Annual Meeting and Convention on May 15 in Atlantic City. This is an excerpt from her installation speech. It has been edited for brevity and clarity.*

It is my honor and privilege to take the oath as the 127th President of the New Jersey State Bar Association. I am humbled and energized by the opportunity and stand ready to lead the Association forward at this unique moment for our country.

Given the challenges the legal profession and our justice system now face, I understand the trust that you have put in me. I understand the gravity of this position. I am here tonight to tell you that I am up to the task.

In the year ahead, I will use my voice to advocate for every lawyer in this state on the issues and developments that are important to our Association, the practice of law, our judicial system and the rule of law.

In truth, my roots in the NJSBA were planted long ago. I stand on the shoulders of my former partner and mentor, the late John Gibbons. In 1967, Judge Gibbons became president of the Association. This period was a difficult time for our country and especially for the city of Newark. In the summer of 1967, just after he was sworn in, an incident sparked a civil disturbance that led to six days of riots, looting, violence and destruction in Newark. The Newark Riots ultimately left 23 people dead, 725 people injured, and close to 1,500 arrested.

President Gibbons did not shy away from the challenge. He rallied attorneys from throughout the state to answer the call. He delivered cars full of lawyers to courthouses to assist in processing bail applications for those who were arrested. He enlisted lawyers throughout our state to represent those charged pro bono. He worked to ensure that the rule of law was upheld and that individual rights were protected, and justice was served consistent with our state and federal Constitutions.

I have reflected quite a bit on the parallels in our country and state now and then. I have thought about how Judge Gibbons must have felt back in 1967. He probably had an agenda that he wanted to accomplish during his year as president. He probably identified issues that were important to the bar and to him that he wanted to focus on. But then a crisis presented itself and he pivoted to do what was needed in order to best serve the Association, the state and the country. In short, he understood the challenge and carried out the mission of this organization to promote access to the judicial system, fairness in its administration, and the independence and integrity of the judicial branch.

I understand the unique and unexpected challenges facing lawyers and law firms today. I understand the serious threats to our judges for simply doing their job. I understand the crisis that is once again brewing given the shortage of judges on our state courts.

I understand how political differences have often resulted in the inability of lawyers to listen to each other, to work together, to collaborate and to create solutions for the common good. I understand the need to restore civility to our discourse.

I vow to devote the energies of the NJSBA in the next year to rise to each and every challenge that presents itself.

Lawyers and bar associations could not be more important. We should be proud to be lawyers. We have a toolbox of skills to advocate for what is right, to engage in civil discourse and to fight for our Constitution and the rule of law. We are trained to engage with fairness and process and without partisanship. Lawyers can and will make a difference.

I hope to lead the way toward restoring the public's faith in our judicial system, making sure we have enough judges to dispense justice and serve the public, educating our citizens about democracy and the rule of law, and most importantly, protecting lawyers and law firms from unlawful retaliation simply for the clients they choose to represent.

I am proud of this Association's 126-year history of protecting the rule of law, democracy, and judicial independence. I am proud to affirm the NJSBA's commitment to fostering a diverse and inclusive legal community that works for every lawyer.

I pledge to do my best to listen to every argument and viewpoint, and to work together with all stakeholders to advocate for what is right and just and what is in the best interests of our association.

I look forward to serving the lawyers of this state for the next year. ■

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FROM THE SPECIAL EDITORS

Cannabis Law Evolving, Impacting Many Practice Areas

When the New Jersey State Bar Association Board of Trustees in 2018 decided to create a NJSBA Committee to address the legal issues associated with medicinal cannabis and the potential expansion to adult use cannabis, the Board appointed these editors as the initial co-chairs, and *New Jersey Lawyer's* October 2018 issue was published as its first issue addressing cannabis law. During our initial meetings of the fledgling Cannabis Law Committee, we would look around the room, recognizing a broad area of legal practitioners from many practice areas, including health care, municipal, criminal, employment, business, real estate, land use, tax, family, litigation and even intellectual property.

In the seven years since its start, New Jersey voters approved a constitutional amendment to legalize the possession and use of recreational marijuana, and the state enacted the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA) in 2021. Meanwhile, the scope of the Committee has expanded to include the emerging field of psychedelics, and we expect that it may continue to expand to other "drugs" and an industry practice group. It is broadly inclusive and impacts every facet of the law, and in most cases it did so quickly.

The articles in this issue underscore this point, covering a broad swath of the law on topics that are new and in many cases changing as this issue was being written.

MICHAEL F. SCHAFF *is co-chair of the corporate, health, and cannabis law practice groups and vice-chairman of the Board of Directors at Wilentz, Goldman & Spitzer, P.A. In addition to a robust private practice spanning over 35 years, Michael, having served as outside general corporate counsel for many privately held companies, brings to the table a multi-faceted understanding of the law, as well as a unique educational and professional background rooted in business, finance, and taxation. He is a former Trustee of the New Jersey State Bar Association, former co-chair of the Cannabis Law Committee, former two-time chair of the Health Law Section, former chair of the Computer & Internet Committee, and former chair and current member of the* New Jersey Lawyer *editorial board.*

SETH R. TIPTON *is co-chair of Florio Perrucci Steinhardt Cappelli & Tipton LLC's cannabis law practice group and is a leader in cannabis law. He has represented applicants for medical cannabis permits in New Jersey and Pennsylvania, guiding them on private capital raises, application requirements, and real estate acquisitions and approvals. Tipton counsels clients on all aspects of formation and compliance for cannabis companies, from start-ups to multi-state operators. He is the immediate past co-chair of the New Jersey State Bar Association Cannabis Law Special Committee, and an instructor for NJ Canna Certified where he teaches cannabis law basics to students at many of New Jersey's community colleges.*

Ruth A. Rauls and Timothy D. Intelisano write to address the significant impacts that medical and adult use cannabis has had on employment law. They stress a host of new complications that employers face with the legality of adult-use cannabis, including drug testing, and the advent of training to identify workplace intoxication. Our authors also address the challenges that cannabis businesses must confront to successfully operate in this new industry. Mollie Hartman Lustig reports on the municipal approvals and local licenses that cannabis businesses must obtain to open their doors. She also provides an update on the various lawsuits that have arisen as new businesses chase these local approvals.

Valley Wellness's Sarah Trent and Tim Weigand write about the status of the adult use cannabis market, and the potential impacts of new and increasing taxes. Specifically, the authors highlight the looming increases to Social Equity Excise Fees on cannabis, and how this could upend pricing for consumers, and the already substantial costs to operate. With any nascent law, there are enforcement issues, which Darren Gelber delves into with his discussion of administrative actions from the new Cannabis Regulatory Commission, the new agency tasked with overseeing the medical and adult use cannabis markets.

As if state law developments were not enough, there are substantial federal changes that could drastically impact the field of cannabis law. Seth R. Tipton and Sarah Powell explain the pendency of federal efforts to move cannabis from Schedule I to Schedule III of the Controlled Substances Act to allow for its treatment as a prescribed drug.

The articles in this issue reflect the diverse and dynamic nature of the fields of cannabis and demonstrate how the issues surrounding cannabis have become intertwined with so many legal practices. Practitioners in this area of the law have the opportunity to grow their cannabis practices while jointly modernizing more traditional specialties. However, they do so in a rapidly changing legal landscape. The editors encourage any lawyers interested in these topics to join the NJSBA Cannabis and Psychedelics Committee, which provides an extraordinarily helpful way for lawyers to engage in important dialogue to keep pace with all of these developments. ■

PRACTICE TIPS

WORKING WELL

Shinrin-yoko is Healthy for Lawyers

By Lori Ann Buza
KSBranigan Law P.C.

Exposure to nature is an excellent way to enhance one's overall well-being. For many years, the Japanese have been practicing and promoting *shinrin-yoko* which is translated as *forest-bathing*... or taking in the atmosphere of nature and the forest. This includes

engaging all five of your senses and being mindful while connecting to nature. It is a way to slow down and enjoy the sights, sounds and scents of nature, while feeling the earth beneath you. The act of appreciating the natural world is a very healthy way to enhance your life. Many studies over several decades have demonstrated how being exposed to nature is good for our health. Some of these studies have shown that forest bathing can even boost our immune systems, help stabilize blood pressure, cortisol levels, and reduce depression and anxiety.

Because lawyers are traditionally stuck indoors to perform their work, it is even more important for us to consciously make time to expose ourselves to nature as part of our well-being routines. No strenuous exercise is necessary! One can get the benefits of shinrin-yoko with a leisurely, slow walk or just sitting in nature. You can do so in the park, forest or even in the grass/around trees in your neighborhood. It's important that in so doing, you allow yourself to unwind, breathe in deeply the fresh air, and enjoy the natural setting/beauty around you. Take in the green and all the benefits this practice offers. Some therapeutic benefits you may also experience from shinrin-yoko is that it reportedly:

- lifts one's mood
- helps mitigate burn-out
- improves one's sleep
- boosts attention span
- cultivates calm
- promotes relaxation
- helps one power-down from technology
- sparks creativity
- strengthens social bonds if done with another
- enhances psychological peace (reduction of anxiety and depression)
- improves immune response, blood pressure, sugar levels

WRITER'S CORNER

The Case for Contractions: Weighing the Pros and Cons

By Veronica J. Finkelstein
Litigative Consultant, U.S. Attorney's Office, Eastern District of Pennsylvania

Legal writing has long been known for its formality, precision, and resistance to change. Yet, as the legal profession adapts to a more modern, accessible, and client-centered approach, even small stylistic choices—like whether to use contractions—can spark lively debate. Do contractions belong in legal writing? As is often the case, the answer is "it depends." There are pros and cons.

The Pros of Using Contractions

1. Readability and natural flow

Perhaps the most persuasive argument for contractions is that they make writing easier to read. Legal documents are often dense, and any measure that enhances clarity is positive. Contractions mirror natural speech patterns, helping readers process information more fluidly. A sentence like, "You don't have to file

before midnight," feels more natural to the reader than, "You do not have to file before midnight." Although the latter is more formal, it can come across as stiff and artificial.

2. Client accessibility

In client-facing documents—emails, memos, engagement letters, and explanatory materials—contractions can create a more conversational and approachable tone. Overly formal language can create unnecessary distance between you and your client. Using contractions in client-facing documents shows attentiveness to audience and tone, reinforcing the lawyer's role as a trusted adviser.

3. Saving space

In appellate briefs or memos with strict page or word limits, contractions can save precious space without compromising clarity. Though not a major factor, the cumulative effect of minor efficiencies can add up, particularly in tightly argued sections of a brief.

The Cons of Using Contractions

1. Perceived informality

The most common argument against contractions is that they make writing appear informal or casual—qualities that are traditionally avoided in legal contexts. Some judges may associate contractions with an inappropriately conversational tone. In court filings or formal correspondence, especially in conservative jurisdictions or with traditional audiences, contractions may feel out of place.

2. A lost opportunity to persuade

Certain contractions can introduce ambiguity or dilute emphasis. For example, "cannot" may sound firmer than "can't," and "will not" carries more rhetorical weight than "won't." In persuasive writing, tone is crucial, and even minor word choices can influence how a judge perceives a written argument. You should carefully assess whether a contraction conveys your intended meaning.

3. Internal inconsistency

Using contractions inconsistently within a document can create a disjointed tone. If a brief alternates between stiff formality and breezy informality, it may feel uneven or unpolished. Similarly, using contractions alongside archaic legalisms or overly technical language can create stylistic dissonance. You must ensure that contractions fit within the overall voice and tone of the document.

The question of whether to use contractions in legal writing doesn't have a one-size-fits-all answer. Contractions can enhance readability, approachability, and tone, particularly in informal or client-facing documents. However, they can also undermine formality and clarity when used indiscriminately. As legal writing continues to evolve toward greater accessibility and clarity, contractions will likely play a more accepted role—but with careful attention to audience and context. Ultimately, good legal writing isn't just about following rules; it's about making intentional choices that serve your reader and your purpose. And sometimes, that means deciding that "it's" better than "it is."

WHAT I WISH I KNEW

Lessons Learned

By NJSBA Staff

Early in his career, New Jersey Supreme Court Justice John J. Hoffman moved to Japan to study international law and thought that was his path ahead.

"But it wasn't the right fit. Trial law was. Trying a case felt like I was getting paid to play a game and a game that I loved," Justice Hoffman said. Realizing that taught him an important lesson about striking a balance between being purposeful and leaving room to grow and challenge yourself.

"If you find yourself fighting what you are doing that is a ton of energy that could be spent on something else," he said.

Justice Hoffman spoke on a panel, "What I Wish I Knew," at the NJSBA Annual Meeting and Convention in Atlantic City in

May. The panel featured legal professionals at various stages of their careers to share lessons learned.

Several speakers discussed the importance of being willing to try new and different things when opportunities arise.

"Keep an open mind," said Bria Beaufort, of Gibbons PC.

Marc A. Rollo, managing partner of Archer & Greiner PC, said the firm has launched an initiative to allow attorneys to work across practice groups to allow people to learn and grow.

"You have got to be open to opportunities," he said.

Rasmeet Chahil, of Lowenstein Sandler LLP, moderated the panel that also featured Yvette Cave, a lawyer at Archer & Greiner, and Christopher S. Porrino, chair of the litigation department at Lowenstein Sandler LLP.

Here are additional lessons the group shared:

- If there is a mistake, speak up right away. It will be easier to address.
- Do your homework; be a subject-matter expert.
- Difficult conversations only get more difficult if delayed and are usually best held in person.
- Avoid the blame game.
- There is rarely, if ever, a reason to overpromise or under-communicate.

VIEW FROM THE BENCH

Get Engaged
Demystifying the Path to the Bench

By NJSBA Staff

For many in the legal community, serving on the bench is the highest calling. At "Pathways to the Bench," a seminar at the NJSBA Annual Meeting and Convention in May in Atlantic City, a panel of experts in the process explained how it works.

The path to being a judge starts the first day a person begins practicing law.

"Develop a solid career with competence, with ethics… and all of that comes into play with the various skills that makes a good judge," said retired Assignment Judge Julio L. Mendez. Being a judge was the "best job I ever had…a great honor," he said.

The journey to the bench isn't always a straight path. The process is rigorous, said Alex Fajardo, an attorney at Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, PC.

"It can be a very Byzantine process that a lot of people don't know how it works," said NJSBA Trustee Carlos Bollar, of Archer & Greiner, who moderated the panel and is vice chair of the NJSBA's Judicial and Prosecutorial Appointments Committee. The goal of the program was to provide education and tips about how attorneys can navigate it, he said.

Candidates have to meet the constitutional requirements, submit a resume, complete a questionnaire, and go through reviews with several groups before they can be considered by the state Senate, said Valentina DiPippo, appointments counsel to Gov. Phil Murphy.

A key to getting started is to get engaged in civics, understand the political climate, and build relationships and connections, said Kate McDonnell, chief counsel to Murphy. In addition, said Sen. Anthony M. Bucco, it is important to know why you want to become a judge, understand the gravity of the position and what the workload involves and means.

"It's very rewarding but it is also very demanding," he said. ■

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Understanding CRC Enforcement

A Legal Overview of Cannabis Regulation in New Jersey

By Darren Gelber

On Feb. 22, 2021, the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA) was signed into law, legalizing and regulating the adult recreational use of cannabis. The New Jersey Cannabis Regulatory Commission (CRC) is the governing body established by CREAMMA responsible for regulating the adult, recreational cannabis program. The agency launched on April 12, 2021, and established administrative regulations governing the licensing and operation of cannabis businesses in New Jersey.

DARREN M. GELBER *co-chairs the cannabis practice group, and chairs the criminal practice group, at Wilentz, Goldman & Spitzer, P.A. He devotes his practice to criminal, white-collar and regulatory litigation, representing clients in federal and state courts and before administrative agencies. His administrative practice extends to advising clients regarding cannabis licensing and enforcement, and in the health care field, where he represents physicians, dentists, pharmacists and other licensed professionals in criminal matters, administrative and licensing hearings, audits, and regulatory litigation. He is a member of the* New Jersey Lawyer *editorial board.*

Like most administrative agencies, the regulations adopted by the CRC provisions related to enforcement. These provisions are contained in N.J.A.C. 17:30-20.1 to 17:30-20.10, and their stated purpose is to establish "the procedures for monitoring, inspecting, and assessing premises and records of license holders pursuant to this chapter, and the procedures governing the issuance of notices of violation, the assessment of sanctions or penalties, including civil monetary penalties and the denial, suspension, or revocation of any license issued pursuant to" CREAMMA.[1] Central to this mission, the regulations authorize the CRC to hire auditors, investigators and other employees to enforce the CRC's rules,[2] and these representatives are authorized to conduct unannounced inspection of licensed facilities. These regulations also impose upon licensees sweeping duties to cooperate with CRC investigators, including requirements to allow inspection of sales and financial records and electronically stored data.[3]

Should a site inspection reveal a violation of the CRC's regulations, the licensee must be provided, within seven business days, notice of the violation, "including an official written report of the findings and the nature of the violation."[4] The licensee then has 20 business days following receipt of the notice of violation to correct the violation and to notify the CRC in writing of the corrective action that was taken, and the date the corrective action was implemented.[5] The violation will be deemed corrected if the CRC verifies, in writing, that the corrective action is satisfactory. The CRC is to issue such verification within seven days of receiving the notice of corrective action from the licensee.[6] If the licensee does not submit a notice of corrective action, or if the CRC does not find that the corrective action to be sufficient to address the notice of violation, the CRC may escalate the enforcement to seek other penalties, including license suspension or revocation, and the issuance of civil monetary penalties.[7] The CRC must issue a notice of enforcement action to any licensee against whom penalties are sought. The licensee is entitled to five days advanced written notice prior to the imposition of any penalty.[8]

One regulation provides specific procedures to be followed when the CRC seeks to impose a civil monetary penalty, more commonly referred to as a fine. The maximum fine for a "major violation"[9] is $500,000, while the maximum for other violations is capped at $50,000.[10] The CRC has established a classification system to categorize different types of violations, with suggested fines depending on the classification, and whether there is a history of prior violations.[11] Licensees who wish to contest the assessment of a civil monetary penalty may avail themselves of the right to an adjudicatory hearing pursuant to the Administrative Procedures Act.[12]

When a regulatory violation poses an immediate threat to consumers or to the health, safety, or welfare of the public, the CRC may order a summary suspension of a cannabis license. Except in the event the violation creates a life-threatening emergency, the CRC must provide the license holder with written notice of the proposed suspension, and the licensee will have 72 hours to provide the CRC with proof that the violations have been abated and corrected,[13] or 48 hours to request a hearing.[14] If the CRC determines that the violations have not been corrected, and no hearing has been requested, the suspension shall be effectuated, and the licensee shall immediately cease operations.[15] If the license holders requests a hearing, the CRC itself will conduct the hearing and issue a final agency decision, appealable to the Superior Court, Appellate Division.[16] Similar procedures govern the proposed revocation of a CRC license.[17] CRC regulations do not seem to allow for referral of contested cases to the Office of Administrative Law for proceedings before an Administrative Law Judge, instead providing for adjudicatory hearings to be heard by the CRC itself. It is therefore not surprising that, to date, decisions from the Office of Administrative Law do not contain any cases involving administrative enforcement actions emanating from the CRC.

The CRC publishes notices of violations, enforcements, and resolution actions on its website.[18] It appears most of the postings relate to violations and enforcement proceedings against entities licensed under New Jersey's Medicinal Cannabis Program,[19] with only a few of the listed matters seeming to involve licensed adult-use recreational cannabis licensees. For example, in July 2022, the CRC issued a notice of violation to Cureleaf NJ, II, Inc, alleging that Cureleaf was in possession of untested products, had violated regulations governing packaging and labeling, and had failed to affix required consumer safety and product information labeling to its products. The notice of violation proposed civil monetary fines not to exceed $50,000 per violation.[20] Cureleaf filed a response setting forth its position regarding these allegations.[21] After consideration of Cureleaf's response, the CRC basically withdrew the notice of violation by recommending that no further action be taken.[22]

More recently, in February 2024, a notice of violation was issued to URB'N Dispensary, alleging that the facility was not storing cannabis in a secure fashion as required.[23] The dispensary apparently filed a corrective action plan in response to the notice of violation which adequately addressed the issues in the view of the CRC, because the CRC subsequently passed a resolution that, while confirming the violations occurred, did not impose any penalties.[24] A July 2023 notice of violation alleged that Columbia Care New Jersey, failed to have in place a valid labor peace agreement, as required by regulation, due to the fact that a previous agreement had expired.

A new labor peace agreement was quickly put in place, so by the time the notice of violation was issued, the violation had already been cured. No further sanctions were imposed.[25] Two separate licensees were each fined $250 because, while they were licensed as diversely-owned businesses, they had failed to maintain their status as diversely-owned.[26] Leaf Haus LLC was fined $5,000 for violating regulations when it gifted to employees cannabis samples and expired cannabis products it could no longer sell.[27] By allowing cannabis consumption on its premises in violation of established regulations, another licensee was hit with a $5,000 fine.[28] Failing to seek CRC approval for a change in ownership structure before implementing it led to a $3,000 fine against one licensed entity.[29]

In the cases cited above, the penalties imposed were relatively modest because the violations were not found to have impacted public safety. That helps to explain why a licensed testing facility was subject to a more substantial fine of $10,000, due to its failure to follow established testing protocols and test cannabis products for the pesticide ethephon.[30]

As the licensed adult-use cannabis industry continues to take hold, more enforcement actions are certain. There does not appear to have been any reported instance as of the date of the writing of this article where the CRC has sought the suspension or outright revocation of a recreational cannabis license, but experience in other regulated industries tells us that such actions will inevitably be brought. As a result, it is not enough for the cannabis practitioner to be well-versed in the cannabis licensing requirements. Competence in this area of the law also requires familiarity with enforcement authority, procedures for the issuance and defense of alleged violations and with the scope and availability of appellate review. There do not appear to have been any appeals of CRC enforcement actions that have resulted in an opinion from the Superior Court, Appellate Division. We can expect to see those in due course in future cases where the CRC imposes more severe penalties than those meted out to date. ■

Endnotes

1. N.J.A.C. 17:30-20.1(a).
2. N.J.A.C. 17:30-20.1(b).
3. N.J.A.C. 17:30-20.3.
4. N.J.A.C. 17:30-20.4(a).
5. N.J.A.C. 17:30-20.4(b).
6. N.J.A.C. 17:30-20.4(c).
7. N.J.A.C. 17:30-20.4(d); 17:30-20.5
8. N.J.A.C. 17:30-20.5(c).
9. "Major violations" are defined in N.J.A.C. 17:30-20.2 as "violations that affect public health or safety or betray the public trust," with a number of examples described.
10. N.J.A.C. 17:30-20.6(b).
11. N.J.A.C. 17:30-20.7.
12 N.J.A.C. 17:30-20.6(i).
13. N.J.A.C. 17:30-20.8(b).
14. N.J.A.C. 17:30-20.8(c).
15. N.J.A.C. 17:30-20.8(d).
16. N.J.A.C. 17:30-20.8(e).
17. N.J.A.C. 17:30-20.9.
18. nj.gov/cannabis/businesses/compliance-investigations/violations-and-enforcement/. It should be noted that reviewing the resolutions posted in a separate area of the CRC website reveals more enforcement actions that those listed on the Violations and Enforcement page of the CRC website.
19. There is a separate set of regulations applicable to Medicinal Cannabis licenses. See N.J.A.C. 17:30A-1.1 to 17:30A13.11.
20. nj.gov/cannabis/documents/Violations/NOV%20to%20Curaleaf%207.20.22.pdf
21. nj.gov/cannabis/documents/Violations/NJ%20CRC%20Response_7.21.2022.pdf
22. nj.gov/cannabis/documents/Violations/NOV%20Follow-Up%20to%20Curaleaf%209.30.22_.pdf
23. nj.gov/cannabis/documents/Violations/URB'N%20NOV%202.29.2024.pdf
24. nj.gov/cannabis/documents/Violations/URB'N%20Enforcement%20Action.pdf
25. nj.gov/cannabis/documents/Violations/Columbia%20Care%20NOV%207%2023.pdf
26. nj.gov/cannabis/documents/meetings/2024-06-17/CRC%20Resolution%202024-253%20Approval%20of%20Sanctions%20Against%20QCC%20Group.pdf; nj.gov/cannabis/documents/meetings/2024-06-17/CRC%20Resolution%202024-254%20Approval%20of%20Sanctions%20Against%20FullTilt%20Labs.pdf
27. nj.gov/cannabis/documents/meetings/2024-09-19/CRC%20Resolution%202024-278%20Approval%20of%20Leaf%20Haus%20LLC%20Enforcement%20Action.pdf
28. nj.gov/cannabis/documents/meetings/2024-09-19/CRC%20Resolution%202024-280%20Approval%20of%20Botera%20Union%20Enforcement%20Action.pdf
29. nj.gov/cannabis/documents/meetings/2024-09-19/CRC%20Resolution%202024-282%20Approval%20of%20Social%20Leaf%20Enforcement%20Action.pdf
30. nj.gov/cannabis/documents/meetings/2024-09-19/CRC%20Resolution%202024-281%20Approval%20of%20Green%20Analytics%20Enforcement%20Action.pdf. According to the United States Environmental Protection Agency, "Ethephon is a plant growth regulator used to promote fruit ripening, abscission, flower induction, and other responses." www3.epa.gov/pesticides/chem_search/reg_actions/reregistration/fs_PC-099801_1-Apr-95.pdf

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Rescheduling Cannabis

Legal Challenges and Potential Outcomes

By Seth R. Tipton and Sarah Powell

At the New Jersey State Bar Association Annual Meeting on May 16, 2024, a panelist at the Cannabis Law Committee event made a surprising announcement that was greeted by cheers from the audience: the United States Justice Department would start the process to reschedule cannabis from Schedule I to Schedule III. The possibilities that rescheduling presented for the industry were exciting, including: a possible reduction in banking challenges, federal patent and trademark protection, and, the elimination of the applicability of 280E, a tax regulation prohibiting cannabis companies from taking certain tax deductions. The promise of rescheduling, however, has run into strong opposition from interested groups, and according to some in the know, the Drug Enforcement Agency (DEA). Those challenges and the change in administration in Washington, D.C., have resulted in doubts about how the rulemaking process and potential lawsuits may delay, or even end, the attempted rescheduling; and serious questions about what the practical consequences might be.

Cannabis as a Schedule I Drug

Passed as part of President Richard Nixon's war on drugs, the Controlled Substances Act of 1970[1] (CSA) was adopted to "consolidate[] various drug laws into one comprehensive statute,"[2] and to "strengthen law enforcement tools against the traffic in illicit drugs."[3] The CSA imposes controls on the "manufacture, acquisition, and distribution the substances" in the CSA which range based upon where a substance is classified on a five-tier classification system, "designated as Schedules I through V."[4] Currently, marijuana[5] sits in Schedule I, reserved for the most dangerous drugs, which are supposed to meet three criteria:

1. The drug or other substance has a high potential for abuse.
2. The drug or other substance has no currently accepted medical use in treatment in the United States.
3. There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Other drugs in Schedule I are heroin, LSD and peyote, while purportedly safer drugs on Schedule II include opium, cocaine, morphine, amphetamines, and barbiturates.[6]

De-scheduling and Rescheduling

Placing cannabis on Schedule I has been controversial since 1970, and was immediately challenged through the scheduling, rescheduling and de-scheduling processes provided under the CSA. Congress intended for the CSA to be flexible to add and remove drugs from the schedules based upon science and substances not yet known in 1970. Consequently, Congress delegated authority for scheduling substances to the DEA. The process to reschedule or de-schedule a substance may be initiated by "any interested party,"[7] and numerous unsuccessful efforts to do just this for cannabis have been filed since 1970. Unlike prior efforts to de-schedule or reschedule cannabis filed by organizations[8] or state governors,[9] the present rescheduling process was initiated by President Joseph Biden, who issued a Oct. 6, 2022, request to the Secretary of Health and Human Services (HHS) to "initiate a scientific and medical evaluation for botanical cannabis," with assistance from the DEA.[10]

The Biden Administration Request to Reschedule

In response to President Biden's request, HHS issued a 252-page report to the DEA on Aug. 29, 2023, recommending that cannabis be rescheduled from Schedule I to Schedule III.[11] HHS based this finding on several key determinations. First, it determined that there were more than 30,000 health care professionals "authorized to recommend the use of marijuana for more than six million registered patients," demonstrating widespread clinical experience for many medical conditions in a "substantial" number of states in the United States.[12] The Food and Drug Administration (FDA) also weighed in on the report. They found that while studies on the "safety and effectiveness" of cannabis might not support approval as a pharmaceutical drug, there was sufficient evidence that cannabis was being effectively used by practitioners in ways that were supported by available data.[13] Based upon these findings, HHS suggested that cannabis be rescheduled to Schedule III because while cannabis was "associated with a high prevalence of abuse," such abuse did not result in life-threatening medical episodes, or overdose. Moreover, cannabis had an accepted medical use and did not result in serious physical dependence. Relying upon the HHS recommendation, the DEA issued a proposed rule on May 21, 2024, to reschedule cannabis to

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SARAH POWELL, *a partner with Florio Perrucci Steinhardt Cappelli & Tipton LLC and a co-chair of the firm's cannabis law practice group, has extensive experience advising clients regarding the licensing process and other regulatory issues at both the state and local levels. Powell's knowledge of and experience with the cannabis space and its quickly evolving statutes and regulations is expansive. Her regulatory knowledge, combined with her corporate, litigation and real estate background, make her particularly skilled at serving the many needs of both emerging businesses and large companies in the cannabis industry.*

Schedule III. By the end of the comment period on July 24, 2024,[14] DEA received a record 43,564 comments to the rule, with approximately 70% in favor of the rescheduling.[15]

Challenges to the Rescheduling

Following requests for a hearing on the proposed rulemaking, the DEA scheduled a Dec. 2, 2024, hearing before an administrative law judge (ALJ).[16] In advance of that hearing, the DEA filed a list of 25 selected "designated participants" to participate in the hearings. The list of designated participants included curious selections that have led to allegations of bias by the DEA against the rescheduling. For example, the DEA chose to exclude Colorado officials from the hearings, while including officials from Nebraska and Tennessee, despite Colorado being the first state to have an adult use cannabis market, and Nebraska and Tennessee having no cannabis market.[17]

On Nov. 18, 2024, the chief executive of Panacea Plant Sciences, a research and development company developing new intellectual property for cannabis and psychedelic therapies, filed for a stay of the proceedings based on being excluded by the DEA. On the same day, two groups moved to disqualify the DEA from proceeding with rulemaking process due to "undisclosed conflicts and extensive *ex parte* communications."[18] While those motions were initially denied, on Jan. 6, 2025, two parties moved for reconsideration of the ALJ's Nov. 27, 2024, order denying their request to remove the DEA from the proceedings based upon new evidence allegedly showing widespread wrongdoing by the DEA.[19] While ALJ John Mulrooney II denied the motion, he stayed the case and the hearings to permit those parties to seek an interlocutory appeal, which, as of May 2025, is pending.[20] As a result, the rescheduling process remains on indefinite hold.

Potential Outcomes

Notwithstanding the tumultuous administrative proceedings, it has been widely anticipated that based upon President Biden's request, the HHS report supporting rescheduling, and the thousands of comments issued in favor of rescheduling, that the DEA's final rule rescheduling cannabis would ultimately take effect. This could have a series of practical results for cannabis businesses. Perhaps most importantly, rescheduling cannabis to Schedule III would remove it from the terms of 26 U.S.C. 280E, which bars cannabis businesses from deducting business expenses from income, and thus dramatically increases income tax liability. The change could also impact intellectual property registrations. Presently, the United States Patent and Trademark Office (USPTO) does not permit intellectual property filings for most cannabis businesses and products. By placing cannabis among prescription medicines in Schedule III which are routinely permitted USPTO registration, it seems likely that cannabis businesses could obtain long-overdue intellectual property protections. In addition, rescheduling cannabis could also lead to a significant reduction in the current barriers to clinical research. Clinical research on Schedule I products is extraordinarily limited, while clinical studies on prescription drugs is routine throughout the country.

While there are many potential positives for the cannabis industry, many of the practical impacts of rescheduling remain uncertain. One of the largest issues raised by rescheduling is whether the Food and Drug Administration would administer cannabis products as a traditional prescription, Schedule III drug. If the FDA assumed oversight and required the same level of clinical testing for approval of each cannabis product, many state-licensed cultivators and manufacturers may not have the means to conduct clinical test and seek approval of each formulation of a cannabis product, which may change multiple times in a single year. This level of oversight would dramatically reduce the number of federally-approved cannabis products produced by state-licensed businesses, and seemingly provide an advantage for existing pharmaceutical companies with clinical testing programs and the funds

Presently, the United States Patent and Trademark Office (USPTO) does not permit intellectual property filings for most cannabis businesses and products. By placing cannabis among prescription medicines in Schedule III which are routinely permitted USPTO registration, it seems likely that cannabis businesses could obtain long-overdue intellectual property protections. In addition, rescheduling cannabis could also lead to a significant reduction in the current barriers to clinical research.

to implement them. A similar advantage would be given to pharmaceutical companies who have existing logistics operations for nationwide distribution of prescription drugs. Moreover, Schedule III drugs require prescriptions from physicians which are issued in accordance with the federal requirements at 21 U.S.C. 829. Those requirements and the prescription process may be wholly inconsistent with state-specific programs, thus making state-level prescriptions unauthorized under the CSA, and illegal federally.

As if these questions did not raise enough uncertainty, there has been a change in the federal administration with the election of President Donald J. Trump. The new Trump administration has been at times hostile, and at other points ambivalent toward cannabis. It is possible, therefore, that the new administration could attempt to withdraw the rulemaking, slow-walk its progress for years through administrative hurdles and litigation, or, simply allow it to proceed without interruption. All appear to be plausible outcomes today.

Rescheduling cannabis to Schedule III could result in major changes for cannabis businesses. However, it does not appear to be a panacea for the tensions between state and federal law and could result in state-licensed cannabis businesses being at a significant disadvantaged in a nationwide marketplace. If anything, should it ultimately occur, it could open a series of new challenges for state-licensed businesses, and a potential seismic shift in the cannabis industry as a whole. ■

Endnotes

1. 21 U.S.C. 801 et seq.
2. *U.S. v. Green*, 222 F. Supp.3d 267, 271 (W.D.N.Y. 2016)
3. *Gonzalez v. Raich*, 545 U.S. 1, 10, 125 S. Ct. 2195, 2200, 162 Le. Ed. 2d 1, 7 (2005).
4. *NORML v. DEA*, 559 F.2d 735, 737 (D.C. Cir. 1977) (citing 21 U.S.C. 812(c)).
5. "Marijuana" is the operative term under the CSA, despite its pejorative and racist background, and will be used here only when referring to the actual text of the CSA and the Schedules.
6. 21 U.S.C. 812(a)-(c).
7. 21 U.S.C. 811(a). DEA and the Department of Health and Human Services may also initiate this process.
8. *Ams. For Safe Access v. DEA*, 706 F.3d 438, 439 (D.C. Cir. 2013).
9. Denial of Petition to Initiate Proceedings to Reschedule Marijuana, 81 FR 53767 (Aug. 12, 2016).
10. Department of Health and Human Services, Memorandum, "Basis for the Recommendation to Reschedule Marijuana Into Schedule III of the Controlled Substances Act," 1 (Aug. 29, 2023), available at dea.gov/sites/default/files/2024-05/2016-17954-HHS.pdf (last visited March 27, 2025) (quoting Statement from President Biden on Marijuana Reform, whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/).
11. Department of Health and Human Services, Memorandum, "Basis for the Recommendation to Reschedule Marijuana Into Schedule III of the Controlled Substances Act," 1-2 (Aug. 29, 2023).
12. Department of Health and Human Services, Memorandum, "Basis for the Recommendation to Reschedule Marijuana Into Schedule III of the Controlled Substances Act," 24 (Aug. 29, 2023).
13. Department of Health and Human Services, Memorandum, "Basis for the Recommendation to Reschedule Marijuana Into Schedule III of the Controlled Substances Act," 24-25 (Aug. 29, 2023).
14. Schedules of Controlled Substances: Rescheduling of Marijuana, Public Comments, Federal Register, available at federalregister.gov/documents/2024/05/21/2024-11137/schedules-of-controlled-substances-rescheduling-of-marijuana (last visited March 28, 2025).
15. DeAngelo, Andrew, Forbes, "Cannabis Rescheduling: Record 43,000 Public Comments Submitted to the DEA" (Aug. 12, 2024) (available at forbes.com/sites/andrewdeangelo/2024/08/12/cannabis-rescheduling-record-43000-public-comments-submitted-to-the-dea/ (last visited March 28, 2025)).
16. United States Drug Enforcement Administration, "DEA to Hold Hearing on the Rescheduling of Marijuana", November 26, 2024 (available at dea.gov/stories/2024/2024-11/2024-11-26/dea-hold-hearing-rescheduling-marijuana (last visited May 15, 2025)).
17. Roberts, Chris, "Colorado Shut Out of Marijuana Rescheduling Hearings by 'Biased' DEA, Filing Alleges," MJBiz Daily (Jan. 8, 2025) (available at mjbizdaily.com/biased-dea-kept-colorado-out-of-marijuana-rescheduling-hearings-filing-says/ (last visited April 1, 2025)).
18. *Id.*
19. Roberts, Chris, "Marijuana Rescheduling Process Paused Indefinitely After Judge Cancels Hearing," MJBiz Daily (Jan. 13, 2025) (available at mjbizdaily.com/judge-cancels-marijuana-rescheduling-hearing/ (last visited April 1, 2025).
20. *Id.*

Municipal Discretion, Resident Opposition, Lawsuits Fuel Zoning and Licensing Battles Under CREAMMA

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By Mollie Hartman Lustig

The legalization of cannabis in New Jersey has introduced new business opportunities, but it has also prompted a wave of litigation as municipalities grapple with their responsibilities under the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA)[1] and its rules.[2] The rules imposed by CREAMMA for cannabis licensing allow municipalities significant discretion in regulating cannabis businesses. This *home-rule* environment has led to a complex and often contentious legal atmosphere. Several key areas of litigation have emerged, including disputes over local licensing processes, zoning laws, and opposition from residents, commonly referred to as NIMBY (Not In My Backyard).

Local Licensing and Resolutions of Support

A central legal issue in New Jersey's cannabis business licensing process is the requirement for municipalities to issue resolutions of support to hopeful business operators before those businesses can apply for state-level licensing.[3] This has led to many legal disputes, particularly over the way they license these businesses, whether municipalities are applying their own criteria consistently and fairly, all while operators race to get the first resolution—and in some towns, the *only* resolution. Unlike the

straightforward and "known" state licensing requirements, municipalities in New Jersey have the authority to decide whether they will permit cannabis businesses and, if they do—how many licenses are issued, to whom, and establish the permitted manner, locations and hours of operation.

One key case, *Fresh Dispensary Eatontown LLC v. Borough Council,*[4] highlights the complexities of zoning rules and local regulations. Fresh Dispensary applied for a retail cannabis license, but its application was rejected by Eatontown due to its proximity to a school, as the town's zoning code required a 1,000-foot buffer from schools. However, the dispute centered around the definition of "school" in the local ordinance. While all parties agreed that the distance from the property line to the nearest school was less than 1,000 feet, they disagreed about whether the measurement should be taken from the property line or the building itself. The court ruled that the municipality's interpretation of its own ordinance was wrong and held that "school" referred to the building, not the property. This decision led to the court vacating the resolutions of support for two other applicants and ordering the municipality to establish an objective selection process for retail cannabis licenses. This case underscores the legal challenges municipalities face in defining and applying zoning laws consistently, especially specifics of distance requirements.

Similarly, in *Big Smoke LLC v. West Milford Township,*[5] the applicant sought to open a cannabis retail store in West Milford. After initially obtaining a zoning permit, Big Smoke was denied approval when the town introduced a 2,500-foot distance requirement between cannabis retailers. Big Smoke argued that the town's decision to apply the new rule retroactively was unfair, especially considering that it had already obtained zoning approval. The trial court initially dismissed the case, but the Appellate Division affirmed the township's right to impose such restrictions under local zoning laws. This decision highlights the broad discretion New Jersey municipalities have in regulating cannabis businesses, as long as their actions are not arbitrary or capricious. It also points to the challenges businesses face when local governments change rules mid-application process.

Land Use Challenges and Zoning Disputes

Land use disputes have been another significant source of litigation, particularly concerning the requirements for zoning variances and approvals. In *Treatment v. City of Asbury Park*[6], Breakwater, a medical cannabis operator, sued after the Asbury Park Zoning Board denied its application for a use variance to open a dispensary. The city had passed a resolution prohibiting all cannabis businesses, including alternative treatment centers that provide medical cannabis only, within its borders. Breakwater alleged that the denial was part of a conspiracy with a competing cannabis business. The Court dismissed many of Breakwater's claims, including its constitutional challenges, noting that federal courts are generally not the proper venue for contesting local zoning decisions unless there is a clear violation of constitutional rights. The dismissal emphasizes the limited scope of federal courts in reviewing state or local zoning matters, a crucial point for operators considering legal challenges to zoning decisions.

NIMBY and Public Opposition

Opposition to cannabis businesses from local residents, often called "NIMBY" cases, has led to several lawsuits in New Jersey. In *Mary A. Botteon et al. v. Borough of Highland Park,*[7] a group of residents filed a lawsuit challenging the municipality's decision to allow cannabis sales. The plaintiffs argued that the federal prohibition on marijuana under the Controlled Substances Act (CSA),[8] despite New Jersey's legalization, rendered the town's actions illegal under federal law. The Superior Court initially dismissed the case in 2023, but the Appellate Court later reinstated the lawsuit, stating that the matter was one of public importance.

The court held that the CSA explicitly allows state laws to operate unless there is a direct conflict. CREAMMAs provisions defer to federal law where conflicts arise, suggesting that New Jerseys regulatory framework is designed to coexist with federal law.[9] The Appellate Division's decision to reinstate the case reflects the importance of addressing this tension, particularly given the public interest in resolving the legal status of cannabis businesses.

Unlike the straightforward and "known" state licensing requirements, municipalities in New Jersey have the authority to decide whether they will permit cannabis businesses and, if they do—how many licenses are issued, to whom, and establish the permitted manner, locations and hours of operation.

The court remanded the plaintiffs' remaining state-law claims, which had been dismissed without an opportunity for discovery or a potential evidentiary hearing. These claims included allegations that the ordinances violated the New Jersey Municipal Land Use Law (MLUL) and other state laws. The court emphasized that the remand would allow for further proceedings to address expert opinions and credibility issues, if necessary. The court also clarified that the present facial challenge to the ordinances does not preclude future "as-applied" challenges regarding their implementation.[10] The court was scheduled to hear oral arguments on Highland Park's motions to quash certain discovery on May 23, 2025.

Another example of a NIMBY challenge is *Hoboken for Responsible Cannabis, Inc. v. City of Hoboken,*[11] which centered around the city's adoption of a new ordinance restricting cannabis retail stores near schools. The applicant, Blue Violets LLC, had initially received conditional use approval to open a store, but the city passed a new zoning law that prohibited cannabis retailers near schools. Blue Violets argued that its application should be evaluated under the regulations in effect when it filed its original application, invoking the Time of Application (TOA) rule. The trial court initially ruled against the business, but the Appellate Division reversed the decision, affirming that the TOA rule applied because the review by the Cannabis Review Board was integral to the land development process. This ruling reinforces the principle that municipalities cannot change zoning laws in a way that undermines the vested rights of applicants during the review process.

Licensing Revocation and Other Legal Hurdles

Because of the enormous hurdles in getting a cannabis business open, some towns have run into situations where they have issued all the available resolutions of support, but those operators have been unable to open their doors. As a result, towns have had to grapple with the revocation of resolutions and licenses in some instances to companies whose progress has been stagnant. In *UMA Flowers v. Morristown*, a cannabis company had its license revoked after delays in construction. Despite receiving a license in 2022, UMA Flowers failed to open its store by the expected date, leading the Morristown Township Council to vote against renewing its license. UMA Flowers challenged the decision, alleging that the revocation was part of a coordinated effort to remove it in favor of another applicant.[12] Following the court's issuance of an order restraining Morristown from issuing a second license until the dispute was resolved, UMA Flowers did successfully open its doors at the end of April 2025. The case has been dismissed and Morristown is now free to issue a second license—albeit not within 1,000 feet of UMA Flowers[13]. This case demonstrates the risks businesses face in meeting local government expectations and the continuing tension between municipalities and cannabis operators. It also highlights the difficulty in navigating the political dynamics that can impact licensing decisions.

Conclusion

New Jersey's cannabis legalization has created a dynamic and rapidly evolving legal landscape. While the state's local control over cannabis business licensing allows for flexibility, it has also resulted in numerous legal challenges for businesses and municipalities alike. Key areas of litigation, including disputes over resolutions of support, land use approvals, and local opposition, have exposed the complexities of cannabis regulation in a state where legal ambiguities and shifting political dynamics create significant hurdles for operators. As New Jersey continues to refine its cannabis laws, businesses must be ready to navigate these legal challenges carefully, and local governments will need to make sure their regulations follow both state laws and constitutional principles. ■

Endnotes

1. Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. § 24:6I-31 to - 56
2. N.J.A.C. § 17:30- 1, et. seq.
3. N.J.S.A. § 24:6I-36 and 45; N.J.A.C. § 17:30-5.1; 7.6; 7.8; and 7.10
4. *Fresh Dispensary Eatontown v. Borough of Eatontown*, et al., Docket No. MON-L-907-22 (N.J. Super. Ct., July 22, 2022), Trans ID: LCV20222711627
5. *Big Smoke LLC v. Tp. of W. Milford*, 478 N.J. Super. 203 (App. Div. 2024)
6. *Treatment v. City of Asbury Park*, Civil Action No. 23-3661 (MAS) (JTQ), 2025 U.S. Dist. LEXIS 18038 (D.N.J. Jan. 31, 2025)
7. *Botteon v. Borough of Highland Park*, Docket No. MID-L-2068-22 (N.J. Super. Ct., April 29, 2022)
8. Controlled Substances Act, 21 U.S.C. 812
9. *Botteon v. Borough of Highland Park*, 478 N.J. Super. 452 (App. Div. 2024)
10. *Id*.
11. *Hoboken for Responsible Cannabis, Inc. v. City of Hoboken Planning Bd.*, 480 N.J. Super. 357, 362 (App. Div. 2024)
12. *UMA Flowers v. Morristown Cannabis Advisory Board and Morristown Town Council*, Docket No. MRS-L-1545-24 (N.J. Super. Ct., August 8, 2024), Transaction ID: LCV20241965642
13. *Id*., October 7, 2024, Transaction ID: LCV20242575293

How New Jersey's Social Equity Excise Fee Structure Challenges the Industry

By Sarah Trent and Tim Weigand

Amid ongoing budget challenges, the Social Equity Excise Fee (SEEF) on cannabis sales is back in the spotlight. New Jersey Gov. Phil Murphy's 2026 budget proposes an increase from $2.50 to $15 per ounce to help close New Jersey's budget gap, fueling debate over current cannabis prices and taxes, as well as the use (or non-use) of the funds already collected.[1]

Under New Jersey's 2020 Constitutional amendment legalizing cannabis—taxes on cannabis products are set at the state sales tax rate. Municipalities are also allowed to charge up to 2% local tax.[2] These taxes are both line items calculated and shown at the bottom of the receipt from a licensed dispensary.

In contrast, the SEEF is not a tax, and it fluctuates year to year. It is defined in the Cannabis Regulatory Enforcement and Marketplace and Modernization Act (CREAMMA) as an "optional fee assessed on class 1 cultivators," in the amount of "⅓ of 1% of the Statewide average retail price of an ounce of useable cannabis."[3] CREAMMA lets the CRC set the SEEF at no more than $30 per ounce when the average retail price of an ounce of cannabis is between $250 and $350 (current New Jersey average).[4]

Unlike the state sales tax or any local transfer tax imposed, the SEEF does not show up as a line item on a receipt. Like excise fees imposed on alcohol, the SEEF is baked into the price charged for a product. Therefore, the SEEF is passed on to the consumer just like any other tax.

Large SEEF Increase in 2024

On Dec. 12, 2024, the Cannabis Regulatory Commission (CRC) voted to increase the SEEF to $2.50 per usable ounce of cannabis. This was the first significant increase since CREAMMA went into effect in 2022 and the SEEF was originally set by the CRC at $1.10 per usable ounce of cannabis.[5] This marked a 127% increase in the SEEF in just under three years.

Leading up to the Dec. 12 vote to raise the SEEF industry stakeholders were uneasy about the possibility of it being raised to as much as $30 per usable ounce of cannabis—he maximum allowable under CREAMMA. Two cannabis trade associations held an event in the fall of 2024 where operators voiced concerns that such a significant rise in the SEEF might cripple the industry and turn consumers back to the illicit market.[6]

What drives the price of New Jersey cannabis?

Considering New Jersey sales tax at 6.625%, local municipal transfer tax at 2%, and the SEEF set at $2.50 per usable ounce of cannabis, New Jersey still has one of the lowest total cannabis sales tax rates in the country. Compare New Jersey to Alaska's tax at $50 per ounce or Washington, D.C., that charges a 37% excise fee in addition to the standard 6.5% sales tax. Despite the low tax rate, it still ranks in the top 30% of state averages for the cost of an ounce of cannabis.[7] Why this discrepancy?

For starters, New Jersey has the highest licensing fees for cannabis operators in the country, creating large upfront costs and creating significant barriers to entry, especially impacting small locally owned businesses. Compare New Jersey to Maryland—another state with high cannabis licensing fees—their annual fee for large cultivators is $10,000 per year. In New Jersey, large cultivators pay $50,000 per year—making New Jersey licenses five times more expensive.[8] Further, municipal licensing fees add an additional burden; the city of Bayonne, for instance, charges a $10,000 licensing fee for standard cannabis businesses.

Beyond the high licensing fees, New Jersey is an expensive state to start and run a business. It ranks at the top of most lists for costs of real estate, energy, and general contractor services.[9] Finally, New Jersey arguably has the highest corporate income tax in the country.[10] This gets rolled up into operational costs and is reflected in the final price of the product.

Relative to other states, the current combination of low cannabis taxes and relatively high prices, puts New Jersey close to the middle of the pack for overall price per ounce. This has let the industry maintain stability in its formative years.

Where do SEEF Funds go?

The CRC votes yearly to set the SEEF at a meeting by Nov. 1, and then the new SEEF takes effect in January the following year.[11] No less than 60 days before the start of the fiscal year, the CRC must provide recommendations to the governor and Legislature regarding how SEEF funds should be appropriated. Leading up to that recommendation, the CRC must hold at least three meetings calling for public input regarding the appropriation of SEEF funds. However, ultimately, the Legislature determines how the funds will be used.[12]

Under CREAMMA, SEEF revenue is collected and put into the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Fund. Monies in the fund are collected from different sources, including licensing fees, sales tax, and the SEEF, but certain monies are earmarked for designated purposes. Specifically, SEEF monies are designated to fund educational support, economic development, social support services, and legal aid for civil and criminal cases. The CRC may also keep part of the SEEF to administer start-up grants, low interest loans, application fee assistance and job training programs.[13]

After practicing law as a public defender, in 2019 **SARAH TRENT** *founded Valley Wellness, a dispensary in Raritan. Valley Wellness is now one of the top-performing non-MSO (multi-state operator) dispensaries in the state, and Sarah is active in day-to-day operations. She is on the Board of Directors of the Somerset County Business Partnership, the Somerset County Regional Center Partnership, and the current co-chair of the New Jersey State Bar Association Cannabis and Psychedelic Law Committee.*

TIM WEIGAND *is a certified Project Management Professional who began his career with Greenleaf Compassion Center, New Jersey's first licensed dispensary, in 2011. After serving as Senior Director of Operations for several years with Compassionate Care Foundation, later acquired by The Botanist, Tim now serves as Chief Operating Officer at Valley Wellness.*

Monies in the fund, excluding SEEF dollars, are designated for social equity programs—with 70% of tax dollars going to municipalities that are also affect zones (as defined by CREAMMA), and the remaining 30% of tax dollars going to, (1) fund the medical cannabis program, (2) reimburse municipalities for police training as drug recognition experts, and (3) further impact zone investments.[14]

New Jersey has had several state programs designed to help qualifying entrepreneurs to get their cannabis businesses off the ground; none have been funded by SEEF dollars. The first is the Cannabis Training Academy (CTA), run by the New Jersey Business Action Center, and designed to give cannabis entrepreneurs technical assistance. The CTA is funded by general tax dollars collected from adult use cannabis sales. Inside sources have indicated this program may be directed to halt spending and is excluded from the upcoming state budget, creating a confusing and possibly concerning situation.[15] The other programs are grants through the NJ Economic Development Authority. The first two, called the Seed Equity and Joint Ventures Grant Programs, include close to $14 million that have been awarded to social equity cannabis businesses. These funds came from the general fund and not cannabis tax revenue.[16] Recently, the NJEDA announced a third grant program, called the "Cannabis Business Development (CDB) Grant Program" which includes $5 million designed to reimburse start-up costs for operating and early-stage cannabis businesses. This is also funded through cannabis sales tax revenue allocated by the FY25 State Appropriations Act. More information on this program will be made available in the upcoming weeks and months.[17]

In addition to the $100 million in tax revenue collected on adult use cannabis sales since 2022, the SEEF generated an additional $7 million. To date, no SEEF funds have been spent.[18]

The Future

There are over 200 dispensaries open in the state and most are small businesses, not large corporations.[19] While over 200 dispensaries have been licensed to open, hundreds of more licenses have been issued[20]—showing the hurdles that businesses must overcome to open their doors. Small businesses are likely not well equipped, financially, or with the expertise, to overcome those hurdles. Already, underperforming dispensaries in the state are going up for sale. These are not promising signs for a healthy industry.

The New Jersey cannabis industry is an emerging market with years to go before reaching maturity. Market trends in other states like Massachusetts, Michigan, and Oregon show that prices will come down over time. Price fluctuations, including fluctuations in the SEEF, are hard to budget and plan for as they are largely out of the small business owner's control. An increase in the SEEF will primarily affect the consumer and small businesses. The same arguments made by the cannabis trade associations in the fall of 2024[21] will likely continue to be relevant as the CRC adjusts the SEEF yearly. ■

Endnotes

1. nj.gov/cannabis/highpoints/20241028.shtml
2. C.24:6I-50 Cannabis regulatory, enforcement assistance, and marketplace modernization fund.
3. C.54:47F-1 Optional social equity excise fee assessed on Class 1 cannabis cultivator licensees.
4. C.24:6I-50 Cannabis regulatory, enforcement assistance, and marketplace modernization fund.
5. nj.gov/cannabis/highpoints/20241028.shtml
6. newjerseymonitor.com/2024/10/28/cannabis-advocates-debate-whether-social-equity-fee-should-increase/
7. oxfordtreatment.com/substance-abuse/marijuana/average-cost-of-marijuana/
8. mpp.org/states/maryland/maryland-cannabis-regulation-laws-hb-556-and-sb-516-detailed-summary/#:~:text=Growers%3A%2075%20standard%20(up%20to,under%2040%2C000%20square%20feet%20outdoors)
9. wallethub.com/edu/best-states-to-start-a-business/36934
10. taxfoundation.org/data/all/state/state-corporate-income-tax-rates-brackets/
11. 17:30-3.4
12. C.24:6I-50 Cannabis regulatory, enforcement assistance, and marketplace modernization fund.
13. C.24:6I-50 Cannabis regulatory, enforcement assistance, and marketplace modernization fund.
14. C.24:6I-50 Cannabis regulatory, enforcement assistance, and marketplace modernization fund.
15. headynj.com/dispensary/njcrc-address-cannabis-testing-lab-issues-reviews-market/#:~:text=%E2%80%9CIt%27s%20%28state%29%20budget%20season,excluded%20leading%20longtime%20cannabis%20entrepreneurs.
16. njeda.gov/wp-content/uploads/2023/02/December-21-2022-EDA-Board-final.pdf
17. njeda.gov/njeda-board-approves-new-5m-cannabis-grant-program/
18. nj.gov/cannabis/highpoints/approved/20241028.shtml
19. foleyhoag.com/news-and-insights/blogs/cannabis-and-the-law/2025/january/new-jersey-opens-applications-for-consumption-lounges/
20. nj.gov/cannabis/resources/reports-stats-info/
21. newjerseymonitor.com/2024/10/28/cannabis-advocates-debate-whether-social-equity-fee-should-increase/

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A Right Without a Remedy?

The Uncertain Enforcement of CREAMMA's Employment Provisions

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By Ruth A. Rauls and Timothy D. Intelisano

In 2021, New Jersey Gov. Phil Murphy signed into law the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA).[1] CREAMMA created a statewide Cannabis Regulatory Commission (the "commission"), tasked with enforcement and oversight over the state's cannabis industry.[2] Included in CREAMMA were provisions that included rights and obligations for New Jersey workers and employers, as well as a unique drug testing scheme.[3] Despite the presence of these provisions, it is still unclear how and by whom they can be enforced. Below we discuss recent litigation developments regarding the enforcement of the employment related provisions in CREAMMA, as well as the current state of the Workplace Impairment Recognition Expert (WIRE).

Employment Related Provisions in CREAMMA

CREAMMA includes important employment provisions, which are meant to provide protections for cannabis users who aim to work in New Jersey. As an initial matter, CREAMMA provides that employers may not refuse to hire, nor can they fire or take any adverse action against an employee, "because that person *does or does not* smoke, vape, aerosolize or otherwise use cannabis items, and an employee shall not be subject to any adverse action by an employer solely due to the presence of cannabinoid metabolites in the employee's bodily fluid...."[4] However, upon a finding of rea-

sonable suspicion that an employee's cannabis use is interfering or coinciding with the performance of their job duties, an employer may require an employee to undergo drug testing.[5] The statute also provides that the commission, in consultation with the Police Training Commission, shall develop standards by which a WIRE can detect or identify when an employee is impaired on the job as a result of cannabis use.[6] Notably, in the commission's Personal Cannabis Use Rules, the commission provided that "until such time that the commission, in consultation with the Police Training Commission…develops standards for a Workplace Impairment Recognition Expert certification, no physical evaluation of an employee being drug tested… shall be required."[7] To date, the commission has not promulgated WIRE certification standards. Finally, CREAMMA empowers the commission with the requisite powers to enforce the statutory scheme, including enforcement of the employment related provisions.[8]

The Federal Court's Application of the Employment Provisions in CREAMMA

In January 2022, following CREAMMA's enactment, Erik Zanetich applied for a job in the Asset Protection Department at Walmart.[9] Walmart offered Zanetich a job, on the condition that he pass a drug test.[10] At the time, Walmart had a policy which informed applicants that, upon a showing of cannabis in their system, any job offer could be rescinded.[11] After learning that Zanetich tested positive for cannabis, Walmart withdrew his employment offer.[12] Zanetich filed suit, alleging, among other things, that Walmart's decision to rescind his offer based on a positive cannabis test ran afoul of CREAMMA.[13] Walmart moved to dismiss Zanetich's claims, in part on the grounds that CREAMMA did not provide private individuals with a cause of action to enforce its employment provisions.[14]

In May 2023, Judge Christine O'Hearn of the United States District Court for the District of New Jersey granted Walmart's motion to dismiss. In so granting, the Court noted that the New Jersey Legislature did not explicitly create a private cause of action for people alleging CREAMMA violations, nor did an implied cause of action exist under the statute.[15] To the contrary, the Legislature explicitly endowed one entity with CREAMMA enforcement powers: the commission.[16] CREAMMA explicitly states that "[t]he Cannabis Regulatory Commission shall have *all* powers necessary or proper to enable it to carry out the commission's duties, functions, and powers," and more specifically, the commission has the power "[t]o investigate and aid in the prosecution of every violation of the statutory laws of this State relating to cannabis and cannabis items."[17]

In her decision, Judge O'Hearn acknowledged that, when the Legislature does not explicitly create a private cause of action to permit private citizens to enforce their rights under a given statute, courts may find that an implied cause of action exists.[18] In determining whether CREAMMA contained an implied cause of action, the District Court undertook a three step analysis, relying on factors first articulated by the United States Supreme Court in *Cort v. Ash*, 422 U.S. 66 (1975) (the "*Cort* factors"), and later adopted by the New Jersey Supreme Court.[19]

The first *Cort* factor asks "whether Plaintiff is a member of the class for whose special benefit the statute was enacted."[20] Judge O'Hearn determined that Zanetich was a member of the class for whom CREAMMA was enacted, noting that the Legislature wanted to protect recreational cannabis users, particularly those facing adverse employment actions as a result of their cannabis use.[21] The first *Cort* factor, according to the Court, weighed in favor of finding an implied cause of action.[22]

The second *Cort* factor looks at the Legislature's intent.[23] The District Court found that the Legislature intended for the commission to handle all aspects of CREAMMA's enforcement, because they explicitly declined to provide a private right of action.[24] To that end, the second factor weighed against the finding of an implied cause of action. Finally, the third *Cort* factor "requires a finding that it is consistent with the underlying purposes of the legislative scheme to infer the existence of such a remedy."[25] The District Court found that, in light of the substantial powers given to the commission, this third factor also weighed against the finding of an implied cause of action.[26] As noted above, Judge O'Hearn accordingly granted Walmart's motion to dismiss Zanetich's CREAMMA claim.[27]

The Third Circuit Weighs In

Zanetich appealed the District Court's granting of Walmart's motion to dismiss. This past December, the United States Court of Appeals for the Third Circuit weighed in, affirming Judge O'Hearn's holding that there is no implied private cause of action under CREAMMA.[28]

The Third Circuit's analysis differed from the District Court's in a few ways. As an initial matter, Judge Peter J.Phipps, writing for the majority, disagreed with the District Court's holding as to the first *Cort* factor. The majority held that Zanetich was not a member of a class who the Legislature intended to benefit in enacting CREAMMA, because the Legislature explicitly prohibited "adverse employment actions because a person '*does or does not* smoke, vape, aerosolize or otherwise use cannabis items.'"[29] In other words, the Legislature prohibited an employer from taking an adverse employment action whether the employee was or was not a cannabis user. In the majority's eyes, this meant that CREAMMA was not enacted solely to benefit cannabis users, and thus the first *Cort* factor weighed against the finding of an implied cause of action.[30]

On the second *Cort* factor, the majority determined that the Legislature's

silence on the availability of a private remedy is indicative of the fact that they did not want such a remedy to exist. After all, the Legislature, in countless other statutes, namely those related to employment discrimination, explicitly created private causes of action.[31] To that end, the majority reasoned, if they wanted to do so here, they would have. Further, the majority observed that CREAMMA's factual findings largely deal with public health and law enforcement concerns, not the ability of people to enforce their own CREAMMA rights.[32] The majority determined that the second *Cort* factor likewise weighed against the finding of an implied cause of action. Finally, as to the third *Cort* factor, the majority looked at CREAMMA's purposes and determined that they weighed against the finding of an implied cause of action as well.[33] A private right of action, in the eyes of the majority, is entirely unrelated to goals such as preventing people under the age of 21 from purchasing or consuming cannabis, or regulating cannabis akin to alcohol.[34] The Third Circuit ultimately found that all three of the *Cort* factors weighed against the finding of an implied cause of action.

Judge Arianna J. Freeman, a member of the *Zanetich* panel, wrote a partial concurrence and partial dissent. Notably, Judge Freeman agreed with Judge O'Hearn as to the first *Cort* factor, writing that she believed that the Legislature intended to benefit individuals who faced adverse employment actions because of cannabis use or non-use.[35] On the second *Cort* factor, looking at legislative intent, Judge Freeman observed that, in the case of the Prior Marijuana Prosecution Law (which was enacted the same day as CREAMMA), the Legislature specifically included a provision foreclosing the existence of a private cause of action.[36] In Judge Freeman's opinion, the Legislature's choice not to include such a provision in CREAMMA demonstrates that it did not intend to foreclose a private cause of action to enforce the statute.[37] Finally, Judge Freeman looked at CREAMMA's broad remedial purposes and held that the third *Cort* factor likewise supports finding an implied cause of action.[38] In balancing the *Cort* factors, Judge Freeman would have found the existence of an implied cause of action under CREAMMA.[39]

To date, no state court ruling has contradicted the panel's decision, nor has any other member of the Third Circuit shown an inclination to adopt Judge Freeman's view on this question. In fact, following his loss before the Third Circuit panel, Zanetich petitioned for the Third Circuit panel to rehear the case, and in the alternative, asked the Third Circuit to take his case en banc. The panel (and prospective en banc panel) denied the petition outright.

Zanetich also asked the Third Circuit to certify the question of whether CREAMMA contained an implied private right of action to the New Jersey Supreme Court.[40] The majority declined his invitation, noting that the application of the *Cort* factors was straightforward.[41] The majority also found that the question of whether a private right of action exists for CREAMMA claims is not particularly important or "transcendental."[42] As it stands, private individuals, according to the Federal Court, are currently without a mechanism to enforce their CREAMMA rights.

Lingering Questions: Cannabis Drug Testing and the WIRE

One key feature of CREAMMA is the establishment of a WIRE. Unlike alcohol, there is a not currently an acute intoxication test for cannabis, meaning that presence does not necessarily equal impairment when it comes to cannabis. That is where the WIRE comes in. According to CREAMMA, a WIRE should be a full- or part-time employee of a company, tasked with recognizing when employee cannabis use will impair someone's ability to safely perform their job duties.[43] The Legislature tasked the commission with prescribing standards for the WIRE, namely the educational/training process, as well as the standards which will be used to certify each WIRE.[44]

While the commission has not promulgated any such regulations, in the fall of 2022, the commission did issue temporary guidance, meant to give employers guardrails for ensuring safe workplaces, free from individuals who may be impaired by cannabis. The commission provided that employers could designate temporary/interim employees, who could fill out a Reasonable Suspicion Observation Report if they felt that an employee was under the influence of cannabis while on the job.[45] Companies may also hire third-party contractors to conduct this monitoring.[46] The commission also prescribed the use of a standard Reasonable Suspicion Observation Report, while noting that employers could use, among other things, a cognitive impairment test, to ensure that their employees were capable of carrying forth their job duties.[47]

Conclusion

CREAMMA, in premise but not practice, is a sweeping piece of legislation regarding employment issues pertaining to cannabis use and impairment. However, the Third Circuit has made clear that there is no private cause of action available to New Jersey employees who face adverse employment actions resulting from cannabis use. Without any state court authorities to the contrary, this appears to be, for now, the last word on the question. Obviously, it is possible either that a state court hears a CREAMMA claim and comes to the opposite conclusion, or the Legislature steps in to resolve the question definitively themselves. The likelihood of those events is uncertain.

Additionally, until the commission puts together the pieces of the regulatory puzzle, insofar as they publish definitive regulations pertaining to the WIRE, New

Jersey employers remain in limbo. To that end, the full scope, impact, and potential of CREAMMA's employment provisions, remain unclear. ■

Endnotes

1. New Jersey Cannabis Regulatory Commission, CREAMM Act, nj.gov/cannabis/resources/cannabis-laws/CREAMM-Act.shtml.
2. N.J.S.A. § 24:6I-34.
3. N.J.S.A. § 24:6I-52 (a)(1).
4. *Id.* (emphasis added).
5. *Id.*
6. N.J.S.A. § 24:6I-52 (2)(a).
7. N.J. Admin. Code § 17:30-2.3(e).
8. N.J.S.A. § 24:6I-34.
9. *Zanetich v. Wal-Mart Stores E., Inc.*, No. 22-cv-05387, 2023 WL 3644813 at *1 (D.N.J. May 25, 2023).
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.* at *2.
15. *Id.*
16. *Id.* at *3.
17. N.J.S.A. § 24:6I-34 (a), (b)(3) (emphasis added).
18. *Zanetich*, 2023 WL 3644813 at *4.
19. *Id.* (citing *Matter of State Comm'n of Investigation*, 527 A.2d 851, 854 (N.J. 1987)).
20. *Zanetich*, 2023 WL 3644813 at *4.
21. *Id.* at 5.
22. *Id.*
23. *Id.* at *5-6.
24. *Id.* at *6.
25. *Id.* at *9.
26. *Id.*
27. *Id.*
28. *Zanetich v. Wal-Mart Stores E., Inc.*, 123 F.4th 128, 134 (3d Cir. 2024)
29. *Id.* at 142 (citing N.J.S.A. § 24:6I-52 (a)(1) (emphasis added)).
30. *Zanetich*, 123 F.4th at 142.
31. *Id.* at 144.
32. *Id.* 143-44.
33. *Id.* at 145.
34. *Id.*
35. *Id.* at 154 (Freeman, J., concurring in part and dissenting in part).
36. *Id.* at 155.
37. *Id.* at 157.
38. *Id.*
39. *Id.* at 158.
40. *Id.* at 149 (Phipps, J., Opinion of the Court).
41. *Id.* at 149-50.
42. *Id.* at 150.
43. N.J.S.A. § 24:6I-52 (2)(a).
44. *Id.*
45. New Jersey Cannabis Regulatory Commission, On "Workplace Impairment," nj.gov/cannabis/documents/businesses/Business%20Resources/Workplace%20Impairment%20Guidance%20922.pdf.
46. *Id.*
47. *Id.*

ANNUAL MEETING
AND CONVENTION

2025 Recap

PHOTOS BY: AMANDA BROWN AND JIM BECKNER

Last month, the New Jersey State Bar Association wrapped up another spectacular Annual Meeting and Convention in Atlantic City, the premier event of the state's legal community. Lawyers, judges, paralegals, clerks, law students and other professionals from around New Jersey descended on the Borgata Hotel Casino & Spa for an unforgettable three days of educational programming, networking and fun with colleagues. By the numbers, this year's conference welcomed 3,183 total attendees, who earned more than 36,000 CLE credits across more than 120 seminars and took part in dozens of receptions and business meetings. Thanks to everyone who made the 2025 Annual Meeting and Convention one for the ages. We hope to see you next year.

Check Out Some Highlights for the Week...

Amalfe Becomes President for 2025–2026

Christine A. Amalfe took the oath to the become the NJSBA's 127th president. In a speech, she pledged to use her voice to advocate for every lawyer in the state, the practice of law, judicial system and the rule of law.

AI Panel Kicks Off Annual Meeting and Convention

Keynote speaker Andrew Perlman, the dean of Suffolk Law School, delivered an opening address on why generative artificial intelligence is likely to transform the delivery of legal services in the years ahead and offer practical—and ethical—tips for using it.

Legislators Share Insights from State Capitol

Legislators and government officials talked legislative priorities and developments in the law at the NJSBA Annual Meeting and Convention panel "Inside Trenton New Laws, New Updates and What It Means."

State of Judiciary Speeches

New Jersey's top two jurists—U.S. District Court Chief Judge Renée Marie Bumb and state Supreme Court Chief Justice Stuart Rabner—gave updates on the most pressing issues facing the federal and state courts at the annual States of the Judiciary session.

NJSBA Welcomes Retired U.S. Supreme Court Associate Justice Stephen Breyer

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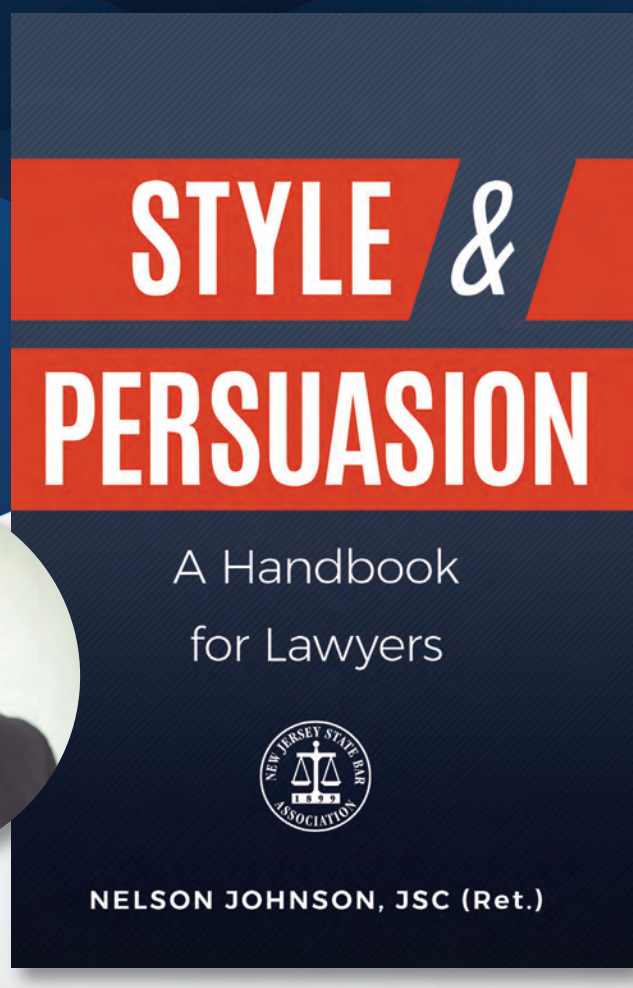

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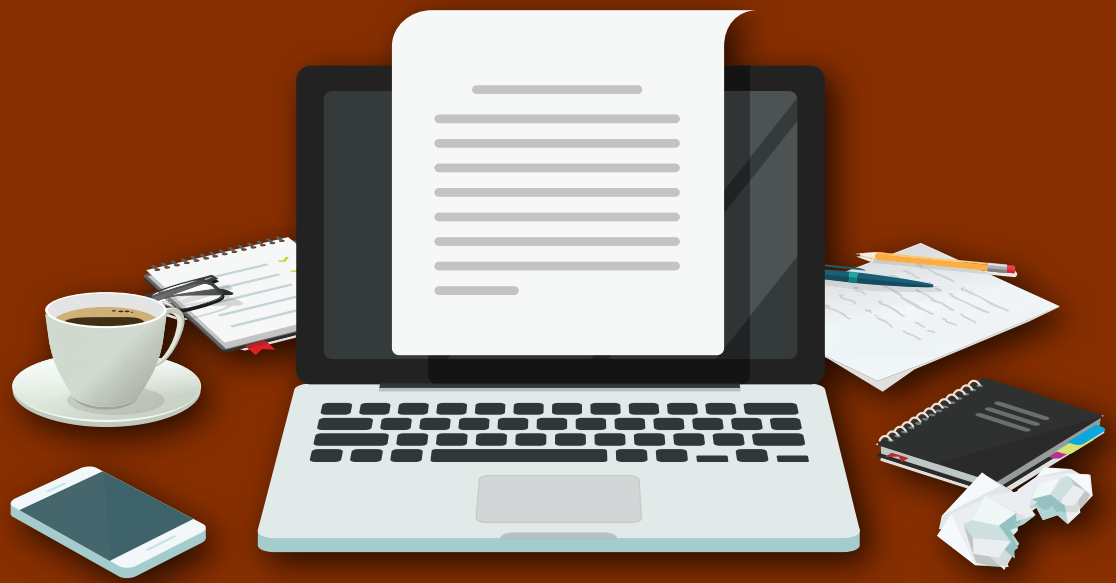

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