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PRESIDENT'S PERSPECTIVE

Norberto A. Garcia

Celebrating 250 Years of a Nation Governed by the Rule of Law

One of my earliest memories of living in the United States is the nation's bicentennial celebration in 1976.

My family had fled Cuba only a few years earlier in search of freedom and opportunity. I was a young boy who spoke virtually no English. I didn't yet understand the culture or fully appreciate the significance of America's history. But I vividly remember the pride that surrounded that celebration. I recall watching the majestic flotilla sail down the Hudson River from the Palisades in Weehawken with my younger sister Maria and my uncle Ernesto. I remember neighbors coming together, communities filled with patriotic displays and a shared belief that this country—despite its flaws—was something worth celebrating.

For the first time, I truly felt like an American.

As our nation marks its 250th anniversary, I find myself reflecting on those same emotions. It is easy to look back at the bicentennial through a nostalgic lens, but history tells a more complicated story. The country was emerging from Watergate. Americans had endured years of political turmoil and declining trust in government. Gerald Ford had become president without being elected and many questioned the nation's direction.

Yet Americans came together to celebrate something greater than the political moment. They celebrated the enduring ideals that have sustained this nation through war, economic hardship, social upheaval and political division.

That lesson feels just as relevant today.

Much has been written about the polarization and distrust that characterize our current public discourse. While today's challenges are real, they are not unprecedented. The United States has weathered periods of profound disagreement before—not because we all shared the same views, but because we shared a commitment to resolving those differences within a constitutional framework governed by the rule of law.

The United States is one of the world's oldest continuous constitutional republics because its institutions, while imperfect, have proven remarkably resilient. They endure in part because generations of Americans have respected and defended an independent Judiciary and accepted that no individual stands above the law.

Lawyers have always played a central role in preserving those principles.

For more than 126 years, the New Jersey State Bar Association has worked to strengthen our justice system and uphold public confidence in the rule of law. While our Association is only about half as old as the nation itself, our mission reflects the same enduring ideals: protecting judicial independence, expanding access to justice, promoting professionalism and ensuring that every person has confidence in a fair and impartial legal system.

That mission has never been more important.

Across the country, we have witnessed increasing attacks on judges and calls to impeach members of the Judiciary based solely on unpopular decisions and criticism directed at law firms simply for representing clients. Regardless of political affiliation or ideology, these developments should concern every lawyer. An independent Judiciary is not a partisan institution—it is a constitutional necessity. It protects individual rights, checks the excesses of government and ensures that justice is administered fairly and impartially.

The NJSBA has consistently spoken in defense of judicial independence because public confidence in our courts is essential to preserving the rule of law. Lawyers cannot afford to remain on the sidelines. We have a professional obligation to defend our institutions and help the public understand why an independent Judiciary serves every American.

The Association's commitment extends far beyond this advocacy. We have long worked to strengthen our communities and reinforce public confidence in the rule of law by narrowing New Jersey's justice gap. Through advocacy for increased funding for civil legal services and practical reforms that expand access to legal representation, we have helped ensure that justice is not reserved for those with the means to

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FROM THE SPECIAL EDITORS

Fraud and the Erosion of Trust

By Asaad K. Siddiqi and Joseph Paravecchia

Fraud occupies a curious place in our legal and cultural tradition. It has inspired Shakespearean villains, Hollywood blockbusters, and some of the most consequential judicial opinions in American jurisprudence. We are drawn to stories of deception not because they celebrate dishonesty, but because they expose a fundamental truth: every fraudulent scheme, whether simple or sophisticated, depends upon the exploitation of trust. The law has long understood what literature, history, and popular culture have repeatedly shown—that fraud does more than separate victims from their money; it erodes confidence in institutions, distorts markets, and undermines the very trust upon which civil society depends.

New Jersey is no stranger to fraud. Schemes designed to deceive and exploit surface across consumer transactions, public contracting, real estate, financial services, and the digital marketplace. In response, our Legislature and courts have developed robust bodies of law addressing fraudulent conduct, recognizing that the costs of fraud extend beyond individual victims to the integrity of commerce and the administration of justice.

The articles in this issue of *New Jersey Lawyer* reflect the range and complexity of fraud. While each approaches the subject differently, together they underscore an unsettling reality: fraud is not confined to any single area of the law, but instead gives rise to recurring and emerging challenges wherever trust and reliance are essential. The five contributions that follow explore those challenges from complementary legal perspectives.

ASAAD K. SIDDIQI *is a director at Trenk Isabel Siddiqi & Shahdanian P.C. in Livingston and Hackensack, where his practice includes commercial litigation, employment law, and business counseling. He serves on the Board of Trustees of the New Jersey State Bar Association, the Association of the Federal Bar of New Jersey, and the Bergen County Bar Association, and is a member of the* New Jersey Lawyer *editorial board, which he previously chaired.*

JOSEPH PARAVECCHIA *is the First Assistant Prosecutor at the Hunterdon County Prosecutor's Office in Flemington. He is a past chair of the NJSBA's Criminal Law Section.*

Asaad K. Siddiqi and Luke D. Grygier explore how New Jersey's criminal fraud statutes and the Consumer Fraud Act (CFA) apply to artificial intelligence-enabled fraud. They examine recent legislative developments and recommend reforms to strengthen our state's response to AI-driven deception.

Relatedly, Alan N. Walter discusses the threats that AI, spoofed communications, and cyber fraud pose to modern business transactions. He outlines how New Jersey law addresses these risks and offers practical strategies for lawyers to better protect clients during the closing process.

Turning to residential and commercial lease agreements, Bruce E. Gudin analyzes the challenges of application fraud involving AI-generated documents, synthetic identities, and other increasingly sophisticated schemes. He offers guidance for detecting, responding to, and preventing leasing fraud through enhanced screening procedures, careful lease drafting, and strategic enforcement.

Nadege D. Allwaters considers the nuanced application of New Jersey's Local Public Contracts Law and Local Government Ethics Law. She focuses on areas where public officials and attorneys should exercise care to guard against conflicts of interest, preserve ethical decision-making, promote compliance, and maintain public confidence in government.

Lastly, Jeffrey J. Rea examines the circumstances under which home improvement contractors may pursue recovery in quantum meruit, even where they have failed to comply with the CFA's home improvement regulations, while exploring the equitable principles and case law governing these claims.

The foregoing articles demonstrate a common theme: as the methods of fraud continue to change, the principles that guide its detection, prevention, and redress remain constant. We hope this issue provides practitioners and readers alike with both practical guidance and meaningful insight into the challenges of fraud that New Jersey faces.

Finally, we thank the authors for their contributions to this issue. ■

President's Perspective

Continued from page 5

afford it. We have also worked to improve the *Madden* assignment system, recognizing both the critical importance of providing counsel to defendants who need legal assistance and the need for a more sustainable and equitable framework for the attorneys who accept those appointments. These efforts do more than improve our legal system—they help ensure that the promise of equal justice under the law remains more than an aspiration.

No discussion of our mission would be complete without recognizing the New Jersey State Bar Foundation, the charitable arm of the NJSBA. The Foundation is the driving force behind efforts to help thousands of New Jersey residents better understand their legal rights, civic responsibilities and the role of the courts through law-related education. It serves as a hub for civics initiatives, free educational publications and community outreach, all aimed at equipping citizens with the knowledge they need to participate meaningfully in our democracy. An informed public is one of the strongest safeguards of the rule of law. The Foundation's work reminds us that preserving the rule of law begins not only in our courtrooms, but in our classrooms and communities.

As we commemorate America's 250th birthday, we should celebrate not only our history but also the institutions and principles that have enabled our nation to endure. The rule of law is not self-executing. It depends on judges who remain independent, lawyers who uphold their professional responsibilities and organizations like the NJSBA willing to defend the integrity of our justice system.

For me, this anniversary is deeply personal. Nearly 50 years after I first celebrated America's bicentennial as a young immigrant, I have the privilege of serving as president of the largest association of lawyers, judges and related legal professionals in New Jersey. It is a reminder of the opportunities this nation has afforded my family and countless others who have come here seeking a better life. No matter where your journey begins in this country, the potential of where you arrive is limitless.

As we look toward the next 250 years, may we recommit ourselves to preserving the principles that have carried this nation through its greatest challenges. By defending the rule of law and our institutions and ensuring equal access to justice, we honor not only our history, but the generations who will inherit our democracy. ■

PRACTICE TIPS

TECH TIPS

Your New Co-Counsel: Technology

A new column on the tools, trends, and innovations reshaping the way New Jersey lawyers serve their clients

By Steven Eisenstein
Lum, Drasco & Positan LLC

There is a story, perhaps apocryphal, about a senior partner at a large firm who, upon first seeing a fax machine in the early 1980s, declared that no client would ever trust a document that had been transmitted through a telephone wire. That partner, we can safely assume, eventually changed his mind. Technology has a way of making skeptics into converts—not by replacing human judgment, but by quietly making human judgment better.

Welcome to Technology & the Practice of Law, a new column that will appear in *New Jersey Lawyer* going forward. In each installment, we will examine the technologies transforming legal practice, from artificial intelligence and machine learning to cybersecurity, e-discovery, legal research tools, practice management software, and beyond. Our goal is not to confuse you with jargon or alarm you with headlines, but to offer practical, grounded guidance on how these tools actually work, when they are genuinely useful, and how New Jersey attorneys can harness them to serve their clients more effectively.

Despite the fear of many, technology will not replace lawyers. We recognize that it has become fashionable to offer such dire predictions but the reasons behind this are substantive, not merely reassuring.

The practice of law is, at its core, a deeply human enterprise. It requires sound judgment forged from experience, ethical reasoning that accounts for context, the ability to read a room, to counsel a frightened client, to sense when a negotiation has reached its tipping point, and to make decisions in the face of ambiguity that no algorithm can fully resolve. Artificial intelligence can review 10,000 documents for relevant terms in a moment. It cannot tell you whether your client's voice cracked when they described that conversation with their employer, or whether the opposing party's seemingly reasonable settlement offer conceals a hidden danger. That is your domain. That will remain your domain.

What technology, and artificial intelligence in particular, can do is absorb the burden of the mechanical, the repetitive, and the time-consuming, freeing you to do more of what only you can do. Think of it as the difference between a surgeon and a scalpel. The scalpel does not perform surgery, but without the right scalpel, expertly chosen and precisely applied, the surgery is nearly impossible.

Consider what attorneys accomplished before Westlaw and LexisNexis. Legal research used to mean weary eyes caused by hours spent in a law library, manually cross-referencing digests and reporters, sometimes traveling to a courthouse to review files in person. The introduction of computerized legal research did not eliminate the need for lawyers who could analyze case law. It did, however, eliminate the need for lawyers to spend precious billable hours doing something a machine could do faster. Client service and client satisfaction improved. Thoroughness improved. The lawyers who embraced those tools practiced better law, only this time with weary eyes caused by spending hours staring at a screen.

The same dynamic is now playing out again, only much faster and more broadly. AI-powered legal research tools can now find relevant authority in seconds. Contract review software can flag non-standard clauses and inconsistencies across hundreds of pages in minutes. Predictive analytics tools can help litigation counsel assess case value and likely outcomes with unprecedented rigor, and practice management platforms are making it possible for solo practitioners and small firms to compete with the infrastructure that once required a full administrative team.

Each issue, we will take a focused look at one or more aspects of legal technology that are directly relevant to New Jersey practitioners. We will cover tools for specific practice areas, developments in court technology and e-filing, cybersecurity obligations and best practices, ethics guidance from the New Jersey Supreme Court and State Bar on the use of AI, and profiles of attorneys who are using technology in creative and effective ways. We will also be candid about the pitfalls: the tools that overpromise, the risks of over-reliance, and the professional responsibility implications of getting it wrong.

We welcome your input. If there is a technology you've been curious about, a tool you've found transformative, or a concern you'd like us to address, we want to hear from you. This column exists to serve the New Jersey Bar and that means taking its questions seriously.

The legal profession has survived every technological revolution since the printing press. It has done so not by standing still, but by doing what lawyers do best: adapting thoughtfully, exercising judgment, and finding ways to use every available tool in service of clients. That is what this column is about. Welcome aboard.

WRITER'S CORNER

Run-On Lawyer: Why Your Sentences Keep Getting Away From You

By Veronica J. Finkelstein
Associate Professor of Law
Widener University Delaware Law School

Lawyers have a special talent for creating sentences that seem perfectly reasonable when in our heads but somehow turn into paragraph-sized labyrinths by the time they land on the page. We do it with confidence. We do it with flair. And we often do it without realizing that somewhere around clause number four, the reader will have quietly given up on trying to parse our intended meaning.

Run-on sentences are not always grammatically incorrect. Many of them are technically sound. They have commas, conjunctions, and the occasional semicolon. The problem is not grammar. The problem is efficacy. Once a lawyer starts writing a long sentence, it tends to gather more material. A caveat here. A qualifier there. A few extra facts that feel too helpful to cut. Before long, the original idea is buried under so much explanation that the point has to fight its way free.

The instinct makes sense. Lawyers think in layers. We anticipate objections. We add context. We try to be thorough. But thoroughness can lead to sentences that contain more information than the reader can process. Judges and clerks do not read your brief the way you wrote it. They do not sit with your facts as long as you have. They encounter your argument in real time. If the sentence asks too much of their attention, they will stumble. And once a reader stumbles, persuasion slows down.

The best way to understand whether you are writing run-on sentences is to read them aloud. If you run out of breath before the period, the sentence is probably too long. If you hear your tone rising in the middle as you try to keep the parts connected, the sentence is probably doing too much. If you find yourself unsure of what the sentence is actually about, it is definitely time to revise.

Run-on sentences also hide structure problems. When a writer cannot decide what belongs in a paragraph or where an idea should land, it often leaks into an overstuffed sentence. The sentence becomes a substitute for sorting. Instead of choosing between two ideas, the writer tries to hold both at once. Instead of separating logic from detail, the writer tries to fuse them. The result is a sentence that technically works but feels exhausting to read.

Judges notice this exhaustion as they read. Clerks notice it even more. Clerks are the ones annotating your brief, trying to summarize each point. A sentence that tries to make three points at once is difficult to annotate. It is also difficult to place in the

larger argument. When your reader cannot identify the sentence's job, the reader cannot understand its contribution. And when the reader cannot see the contribution, your argument loses momentum.

There is a simple remedy. Break long sentences into shorter ones. Not every idea needs to appear in the same breath. Give each idea its own space. Let your reader absorb one point before introducing the next. Shorter sentences do not make writing childish. They make it strong. They sound confident. They sound like a lawyer who knows exactly what matters and exactly how to say it.

Another useful strategy is to choose a main clause early and resist the urge to bury it. Many run-on sentences hide the main point in the middle or at the end. The reader must work to find it. Start with the point. Then add what the reader needs to know, in a sequence the reader can follow. You are not diluting your argument. You are clarifying its path.

Repetition is another culprit. Lawyers sometimes add extra clauses to restate the same idea in slightly different language, usually to feel more complete. This creates a run-on sentence disguised as emphasis. Instead of reinforcing the point, repetition makes the sentence sag. If you can remove a clause without losing meaning, remove it. If two clauses say the same thing, pick the stronger one. Readers reward strength, not accumulation.

If you mentor young lawyers, teach them to identify the core purpose of each sentence before they edit it. Ask them to label it. Is the sentence making a claim? Is it describing a fact? Is it drawing a conclusion? If it is doing more than one job, the sentence probably needs to split. This practice trains writers to think about sentences as tools rather than containers. Each tool does one thing well. When a sentence tries to do several things, it usually does none of them well.

Run-on sentences can also be a sign of fear. Fear of leaving something out. Fear of being misunderstood. Fear of appearing simplistic. But clarity is not simplicity. Clarity is precision. A precise sentence is easier to trust. When your reader trusts you, they follow you. When they follow you, they agree with you. And agreement is the whole point of advocacy.

The next time you review a draft, look for your longest sentence. Read it aloud. Identify the main idea. Ask what the sentence would look like if you split it into two. You will be surprised by how much cleaner it becomes. You will be even more surprised by how much more authoritative it sounds.

Legal writing does not reward density. It rewards clarity. It rewards rhythm. It rewards sentences that guide rather than overwhelm. When you control your sentences, you control your argument. And when your argument is clear, your reader never has to wonder where you are going or whether they can keep up.

So give your sentences room to breathe. Let them carry one idea at a time. Trust that the reader will appreciate the clarity. And trust that shorter sentences will not make you sound less intelligent. They will make you sound more persuasive. That is the goal. And it is entirely within reach.

WORKING WELL

Making Time for Yourself and Your Family

Because of the stress of a typical work week, finding time for some fun and relaxation is usually difficult. Furthermore, it may seem like making time to enjoy your life takes a lot of effort. However, finding time for yourself and your family is well worth it: The hobbies and activities we take part in together or alone often bring us great happiness and help to enrich our lives.

Why Leisure is Important

- Physical fun, like taking an aerobics class or going on a walk with a friend, helps soothe tension and clear the mind.
- Even an hour of leisure time a day is great for the body, mind, and spirit. It helps release stress and leads to a more balanced life.
- By taking time to do things you like to do, you can better have healthier and more positive relationships with those around you.

How to Have Fun

If you've filled your life with so much work that you've forgotten how to play, take some cues from kids. They easily go from one fun activity to the next, typically with smiles and laughter. Watch your child at the playground and see how he or she becomes immersed in the present activity, whether it's playing in the sandbox, scaling a climbing wall, or going down a slide. Try to have a similar state of immersion and happiness when you take time for yourself. Here are some tips to make the most of your fun times:

- Choose activities that are just for you; choose others that involve the family.
- Schedule a time for leisure into your daily calendar.
- When having family time, pick sports, hobbies, or locations that everyone enjoys
- Take time for unexpected pleasures. Occasionally, don't schedule in an activity for your leisure time during the day. When leisure time comes, do what you feel.
- Quiet times during the morning can help you get ready for the day, and quiet times at night can help you unwind. Choose

meditation or other relaxing, quiet activities to de-stress.

- Try to be fully present when you're having fun. Let go of cares, worries, and stress during fun activities; know that you can address what you need to after you're done with your fun time.

Having Fun Solo and with Your Family

Here are some ideas for activities to do on your own:

- Try a new hobby or revive a former one
- Join a gym or start going to fitness classes
- Play a new sport
- Join a book group or enroll in a class
- Seek an artistic outlet—go to a museum and sketch or take pictures in a park
- Call an old friend
- Take a walk in the neighborhood or watch the sunset

Some activities to do as a family can include:

- Go to a sports game
- Go see a movie, museum or go to an amusement center
- Take a day trip to a special spot
- Take family walks together
- Have a game night
- Participate in fundraisers together or volunteer together
- Take dance, tennis, or other lessons together
- Plan a family vacation and get the whole family involved in the planning process

This article is from New Jersey State Bar Association Member Assistance Program provider Charles Nechtem Associates. The Member Assistance Program connects NJSBA members—and anyone else in their household—to trained, experienced mental health professionals and resources. Learn more at njsba.com/member-assistance-program. ■

VIEW FROM THE BENCH

From the Trenches to the Panel

A Practitioner's Map of Direct Appeals, Interlocutory Review, and Motion Practice in the New Jersey and Third Circuit Appellate Courts

By Justice Douglas M. Fasciale
Supreme Court of New Jersey and

Judge Patty Shwartz
U.S. Court of Appeals for Third Circuit

I. Why Trial Lawyers Should Care How the Appeal Gets There

Most litigators live in the trial court. Fewer appear in the reviewing courts with any regularity, and fewer still have a working command of the procedural gateways that decide whether an appellate court will hear an issue at all. Yet in mass-tort and complex civil practice, the pivotal rulings—class certification, discovery of privileged material, injunctions, dispositive orders touching only some parties—frequently arrive long before final judgment. Knowing how to reach an appellate court at the right moment, and how not to forfeit the chance, is often as consequential as the merits.

II. Reaching the New Jersey Appellate Division

There are generally two ways into the Appellate Division: an appeal as of right, or a motion for leave to appeal. The distinction turns on finality.

A. Appeals as of Right—The Finality Requirement

Under Rule 2:2-3(a)(1), a party may appeal as of right from *final judgments* of the Superior Court trial divisions—not from a decision, an oral opinion, or the reasons a court gives. The practical command follows directly: in the case information statement, identify the precise order or judgment appealed from. An appeal from a written or oral opinion rather than from a judgment or order invites dismissal.

There is an important exception for administrative review. When the appeal is from a *final agency determination*, the order-versus-decision distinction does not apply; under Rule 2:2-3(a)(2), the appeal runs from the agency's final decision itself.

B. Non-Final Orders That are Nonetheless Appealable as of Right

Finality is not the whole story. Rule 2:2-3(b) enumerates 12 categories of otherwise non-final orders that may be appealed as of right—without a motion seeking leave to appeal. Those include, among others, orders granting or denying class certification as a final matter, orders compelling or denying arbitration, orders appointing statutory or liquidating receivers, and orders certified as final under Rule 4:42-2. A litigator confronting an adverse interlocutory-looking order should check this list first: the order may already carry a right of appeal.

C. Trial-Court Certification of Finality—Rule 4:42-2

A trial judge may convert an otherwise interlocutory order into one appealable as of right by certifying it as final under Rule 4:42-2, which authorizes such certification in a multi-claim or multi-party case when there is no just reason for delay. The panel's caution is worth heeding: confirm that the certifying order tracks the rule's requirements. A certification that does not comply risks having the appeal "bounced back," costing the client time the 45-day clock does not forgive. *See* Rule 2:4-1.

D. Motions for Leave to Appeal—Ordinary and Emergent

When an interlocutory order does not fit into any of the categories above, review is discretionary. A party may file one of two motions for leave to appeal. First, counsel may file a motion for leave to appeal in the ordinary course with the Appellate Division Clerk in Trenton. A two-judge part rules on it. A party opposing the motion is not required to respond—but we strongly recommend filing opposition, because the court may not only grant leave but summarily decide the merits, remand, or dismiss the trial-court case. Silence forfeits the chance to be heard on that summary disposition.

Second, where the matter cannot wait, counsel may file an application for permission to move for leave to appeal *on an emergent basis*. The guidelines, the five-page application form, and a draft disposition order are available under the Appellate section of njcourts.gov. A prime example of this type of motion is a tenant facing eviction—or a sheriff's sale set for that afternoon—after entry of a judgment of possession, as one cannot simply move for leave; one must first persuade the part that the emergency warrants dropping everything. If the court grants the application, it typically sets an expedited briefing schedule (merits brief, response, possible reply), and the motion for leave is usually adjudicated within days.

III. Reaching the Supreme Court of New Jersey—Four Routes

There are four distinct paths to the Supreme Court of New Jersey.

Petition for certification (Rules 2:12-13 and 2:12-4). This is the source of most of the Court's docket. The Court considers about 30 to 60 petitions at each conference, held roughly every other week, and grants review sparingly—to settle issues of general public importance, to resolve a conflict in the Appellate Division, or in the interest of justice.

Appeal as of right from a divided Appellate Division (Rule 2:2-1(a)(2)). Where a three-judge Appellate Division panel issues a divided opinion with a dissent, a party may appeal as of right from that final judgment, and the Supreme Court cannot decline. The scope of such an appeal, however, is limited to the issues framed by the dissent.

Leave to appeal from an interlocutory order of the Appellate Division (Rule 2:2-2). Here the order under review is not from the trial court but from the Appellate Division. Counsel may move by filing a motion in the ordinary course, or—in a true emergency, such as an order requiring disclosure of assertedly privileged attorney-client material—file a two-page emergent intake form (available on njcourts.gov) seeking permission to proceed on an emergent basis. Emergent applications typically rotate among the Justices on emergent duty; and if warranted, the assigned Justice may issue a stay and present the emergent application to the full

Court for its consideration at its next conference. These are not granted freely.

Direct certification (Rule 2:12-1 and Rule 2:12-2). The Court may take a matter directly from the trial court, bypassing the Appellate Division. It is very rare and very hard to obtain, usually in matters that significantly affect public interest. One example of this occurred when the Court sought to review the constitutionality of a grand-jury presentment conducted in a virtual format.

IV. Motion Practice Within the New Jersey Appellate Courts

A point not fully appreciated by most practitioners: a great deal can be sought by motion in both the Appellate Division and the Supreme Court. Typical motions include leave to appeal, motions to file as within time, indigency applications and requests for free transcripts, motions to accelerate the appeal, *pro hac vice* admission, temporary or final remand, briefing extensions, and reconsideration. In the Appellate Division's civil practice, the two judges on duty may adjudicate roughly 30 to 40 such motions weekly; the Supreme Court disposes motions on its conference days.

V. Reaching the Third Circuit—The Federal Framework

The Court of Appeals for the Third Circuit hears appeals of orders from the federal trial courts in Delaware, New Jersey, Pennsylvania, and the Virgin Islands as well as from federal agency decisions.

A. Who May Appeal, and When

Standing to appeal belongs to a party adversely affected by the order or judgment. Winning the order while disliking the opinion confers no right of appeal. The party must be aggrieved by the disposition itself.

On timing, the civil deadline is 30 days where the federal government is not a party, and that deadline is *jurisdictional*—a late civil appeal leaves the court without authority to act. (The criminal deadline is not jurisdictional, a difference attributed to one deadline stemming from a rule and the other from a statute.) If a party anticipates missing the deadline, the extension mechanism lives in the district court under Federal Rule of Appellate Procedure 4—not in the Court of Appeals—and the request must be made before the time expires.

B. Final Orders

A final order is one that ends the case in the trial court or agency, leaving nothing but execution of the judgment. For a money judgment, for example, this includes collection activities such as garnishment. There may be a jurisdictional trap for agency appeals: some agency rulings go to the regional circuit, but others must go to the D.C. Circuit regardless of where the matter was litigated. Read the statute to confirm the proper court. If an appeal lands in the wrong circuit, a transfer mechanism exists, though it is not something to rely on by design.

C. Interlocutory Review—Mandatory and Discretionary

Federal interlocutory review divides into a mandatory bucket and a discretionary one, drawn from several sources.

1. Statutory—28 U.S.C. § 1292(a). The Court of Appeals *must* hear appeals from orders granting, continuing, modifying, refusing, or dissolving injunctions. An injunction, properly understood, directs a party to do (or refrain from) something, enforceable by contempt, and lasting more than a limited period. So, an order compelling answers to interrogatories is not an injunction, however much a party wishes it were. Section 1292(a) also reaches orders appointing receivers.

2. Statutory—28 U.S.C. § 1292(b). For an order that is otherwise non-final, the adversely affected party may ask the trial judge to certify that the order involves a *controlling question of law as to which there is substantial ground for difference of opinion*, and that immediate appeal may materially advance the litigation. If the trial court agrees, counsel petitions the court of appeals, which retains discretion to decline. "Substantial ground for difference of opinion," principally involves a circuit split, though an intra-district split—judges within one district reaching conflicting conclusions on a recurring issue—may suffice. Certification does not automatically divest the district court of jurisdiction over the remainder of the case, though continued trial-court work under a § 1292(b) scenario is unusual.

3. Rule-based—Rule 23(f) and Rule 54(b). Federal Rule of Civil Procedure 23(f) permits an appeal from an order granting or denying class certification, but *only* with the court of appeals' permission—a point of obvious salience to the mass-tort bar. Rule 54(b) allows appeal where the district court certifies that a segregable issue, resolved as to some claims or parties, may proceed to appeal where there is no just reason for delay; an application to the court of appeals follows, but whether to hear the appeal rests with the appellate court.

4. Common law—the collateral order doctrine. The final bucket comes from case law. Under the collateral order doctrine, review is available where the issue is too important to deny review and is completely separate from the merits. The classic examples involve immunities—absolute, qualified, and Eleventh Amendment sovereign immunity—and, on the criminal side, double-jeopardy orders. The unifying idea is a legal principle designed to spare a party the very burden of litigation, which a later appeal could not undo.

5. Mandamus—and its limits. A writ of mandamus is not a substitute for appeal; if an issue can be reached through ordinary appellate process, mandamus is unavailable. For example, mandamus surfaces when a party seeks to direct a district judge to act—for instance, to rule on a long-delayed motion, or to correct an order that is essentially *ultra vires*. Successful petitions are rare.

6. Contempt—the last resort. For completeness, it bears mentioning—while pointedly not recommending—that a party may violate an order, draw a contempt finding, and seek interlocutory review of that finding. It is an avenue that exists; it is not one to choose lightly.

D. Bankruptcy Appeals and the Discretionary Bypass

Bankruptcy courts are trial courts. The ordinary appellate route runs from the bankruptcy court to the district court in which it sits, and then to the circuit. A statutory mechanism permits a direct bypass to the circuit—but even where the district court grants leave, the court of appeals may decline, preferring the trial judge's view first.

E. Local Rules and Internal Operating Procedures

The most portable advice: read the local rules. Just as district courts have them, so do the courts of appeals—governing both merits cases and motion practice. Beyond local rules, each court publishes internal operating procedures, which describe how the judges interact with one another, including the timeframes for voting and for circulating opinions. Those procedures are informative when counseling a client about realistic timing, because they reveal the latitude judges must extend to one another. These rules and procedures are posted on the courts' websites.

F. Federal Motion Practice—Fed. R. App. P. 27

Motion practice in the courts of appeals is governed by Federal Rule of Appellate Procedure 27. Responses are due within a short window; there is no automatic right to a reply unless the opposition itself seeks affirmative relief, and briefs carry word limits. Motions are generally decided without oral argument unless the court requests it.

Most motions are distributed to three-judge motion panels who typically sit as a panel for the entire court year (Oct. 1 to Sept. 30). For the year ending Sept. 30, 2025, roughly 55% of the docket was pro se, handled by dedicated merits panels. Counseled motions and responses to jurisdictional show-cause orders—issued when the clerk's office screens an incoming appeal and doubts appellate jurisdiction—go to a clerk's-office motion panel. A separate panel handles largely (but not exclusively) pro se matters and certain jurisdictional dismissals. There is also an excess-page-limit panel for over-long briefs. Most substantive motions—to reopen appeals, to dismiss for lack of jurisdiction, to enforce an appellate waiver, and the permissions for interlocutory appeal described above—require a three-judge panel. A narrow set of motions, such as unopposed stays, appointment of counsel, and expedited scheduling, may be decided by one judge, and some non-dispositive remands by two.

Emergent panels assemble as emergencies arise. The most common emergent motions at present are motions to stay deportation removals, sheriff's sales, sentencings, or the release ordered on a grant of habeas relief. As a benchmark of volume, last court year, the clerk reported more than 2,300 motions were divided among the motion panels.

VI. A Bridge Between the Systems: Certification of State-Law Questions

When there is an appeal of a federal district court order that decides on a question of New Jersey law, the Third Circuit may certify the state-law question directly to the Supreme Court of New Jersey. If that Court accepts certification and renders a decision, the case returns to the Third Circuit to apply the announced law. The recent case of *Sun Chemical* is a good example, where the certified question went to the New Jersey Supreme Court, returned to the circuit, and resulted in reversal of the order dismissing the complaint.

VII. Inside the Appellate Mind: Two Windows the Bench Opened

A. "Pinks" in the Appellate Division—and Their Absence in the Supreme Court

In the Appellate Division, once a part learns which appeals it will hear, the judges exchange among themselves written preliminary impressions—printed historically on pink paper, hence "pinks." Each judge may circulate to one another a memorandum of what they think should happen (affirm, reverse, remand) before argument. The part conferences on the morning of argument, hears the argument, conferences again immediately afterward, and discusses whether the initial impressions hold—which, depending on how argument goes, they may not.

The Supreme Court of New Jersey operates in the opposite manner. The Justices do not exchange written impressions and do not confer before argument—or even the same day. They wait until the following week, then proceed, much like a law-school classroom: the Chief calls on a Justice to present on the appeal, and that Justice explains what happened below and offers a proposed disposition, with the Court working through it around the table. The absence of shared pre-argument memoranda is a very significant difference in how the two courts operate.

B. Two Judges, Not Three—What It Signals About Publication

Asked what a young lawyer should make of two judges emerging for argument rather than three, the answer is that it may relate to how the resulting opinion will be issued. A published Appellate Division opinion requires three judges. If only two hear the matter, the adjudication is unlikely to be published—though it does not signal agreement or disagreement with counsel's position. If two judges agree and wish to publish, they may, with the parties' permission, ask a third judge to join by listening to the streamed argument and then rendering and publishing the opinion. The lesson: a two-judge bench should not be read as an automatic verdict on the merits.

C. Ask for Publication—and Say What Holding You Want

In the Appellate Division, the presiding judge must sign off on publication—even a presiding judge who did not sit on the panel that heard the appeal. Publication typically follows a novel issue, an issue not interpreted since an earlier ruling by another part, or a division within the court warranting a precedential opinion. A practice tip: if you believe your case should be precedential, tell the panel so, and go further—state the issue, the rule, and the specific holding you want the court to reach. Argument tips: in the Supreme Court, counsel currently receive five minutes of uninterrupted time, and judges re-listen to archived arguments. Leading with "this is the issue, this is the rule, this is the holding we ask you to reach" serves counsel well.

VIII. Ten Practice Points to Carry Back to the Trial Court

Appeal the order, not the opinion. In New Jersey, name the exact final order or judgment in the case information statement; there is no appeal from reasons or an oral decision. (R. 2:2-3(a)(1)).

Check the 12 categories first. An interlocutory-looking order—class certification, arbitration, receivership—may already be appealable as of right. (R. 2:2-3(b)).

Make the trial judge certify finality correctly. A defective Rule 4:42-2 certification gets the appeal bounced.

Oppose the motion for leave. Even though opposition is optional, the Appellate Division can summarily decide the merits or dismiss; do not stay silent.

Know the emergent forms. The five-page Appellate Division application and the two-page Supreme Court emergent intake form are on njcourts.gov—find them before the emergency, not during it.

A dissent is a key to the Supreme Court. A divided Appellate Division opinion creates an appeal as of right, cabined to the dissent's issues. (R. 2:2-1(a)(2)).

In federal court, the civil deadline is jurisdictional. Thirty days, and file the Fed. R. App. P. 4 extension request in the district court before time expires.

Structure relief with § 1292(a) in mind. Truly injunctive relief carries mandatory interlocutory appellate jurisdiction; a discovery order does not.

Rule 23(f) needs the circuit's permission. Class-certification appeals are discretionary—plan the petition, do not assume the appeal.

Read the local rules and IOPs, and ask for the holding you want. Then tell the panel what it should hold and why.

This article is adapted from the appellate-practice panel presented at the New Jersey Institute for Continuing Legal Education Multi-county (Mass Torts) Litigation Forum in June 2026 at the New Jersey Law Center. The panel featured Justice Douglas M. Fasciale of the Supreme Court of New Jersey and Judge Patty Shwartz of the United States Court of Appeals for the Third Circuit—both former trial lawyers and former trial judges—in a session moderated by Christopher M. Placitella of Cohen, Placitella & Roth, P.C. Learn more about NJICLE programming at njicle.com.

Key Authorities Referenced

New Jersey Court Rules

- R. 2:2-3(a)(1)—appeals as of right from final judgments to the Appellate Division.
- R. 2:2-3(b)—enumerated non-final orders appealable as of right.
- R. 4:42-2—trial-court certification of interlocutory orders as final.
- R. 2:2-2—interlocutory appeals to the Supreme Court.
- R. 2:12-1—direct certification by the Supreme Court on its own motion.
- R. 2:12-4—grounds for granting certification.
- R. 2:4-1 –– 45-day time for appeal (final judgments and final agency decisions).
- R. 2:2-1(a)(2) –– appeals as of right to the Supreme Court from final judgments where there is a dissent in the Appellate Division.

Federal Authorities

- 28 U.S.C. § 1292(a)—mandatory interlocutory jurisdiction (injunctions; receivers).
- 28 U.S.C. § 1292(b)—discretionary interlocutory review on a certified controlling question of law.
- Fed. R. Civ. P. 23(f)—permissive appeal of class-certification orders.
- Fed. R. Civ. P. 54(b)—certification of separable claims for appeal.
- Fed. R. App. P. 4—time for appeal and district-court extension mechanism.
- Fed. R. App. P. 27—motion practice in the courts of appeals.
- Collateral Order Doctrine (e.g., immunities; double jeopardy)—*Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949). ■

The Deepfake and the Algorithm

Intent, Loss, and New Jersey's Two Tracks for AI Fraud

By Asaad K. Siddiqi and Luke D. Grygier

I. The Two Tracks New Jersey Has Built

A cloned voice authorizes a wire transfer no partner ever approved. Two shoppers check out side by side and pay two different prices for the same carton of eggs, because an algorithm priced each of them separately. New Jersey has no omnibus statute governing the specific use of artificial intelligence in either scenario, and none is on the horizon.

Since the spring of 2025 the state Legislature has instead been regulating machine-generated deception along two separate tracks, one criminal and one consumer, drafted by different sponsors, lodged in different code titles, and organized around different theories of harm. Each track has now produced something concrete, an enacted deepfake statute on the criminal side and, on the consumer side, a pricing bill that passed both Houses at the end of June and sits on the governor's desk. A lawyer who wants to know whether artificial intelligence-enabled conduct is actionable in New

Jersey starts with a sorting question: which track does the conduct fall on?

The criminal track came first. In April 2025, Gov. Phil Murphy signed P.L. 2025, c. 40, which supplements the criminal code and makes it a crime of the third degree to create a work of deceptive audio or visual media, the statute's term for a deepfake, for the purpose of furthering any crime or offense, with parallel offenses for soliciting, disclosing, or using such a work and fines of up to $30,000.[1] The act gives victims a civil action in the Superior Court, with liquidated damages, punitive damages, fee-shifting, and no requirement of a prior conviction.[2] It writes its First Amendment accommodations directly into the text, exempting content a reasonable viewer would take as criticism, comment, satire, parody, news reporting, teaching, scholarship, or research, along with the service providers and AI developers whose infrastructure the media passes through.[3] Subsequent legislative efforts point in the same direction. S. 3303 would extend the voyeurism and non-consensual-disclosure crimes to AI-generated images.[4] A. 3058 would establish a Deepfake Technology Unit in the Department of Law and Public Safety with a $2 million appropriation.[5] Federally, the TAKE IT DOWN Act criminalizes the nonconsensual publication of intimate visual depictions, including digital forgeries, and, since May 19, 2026, requires covered platforms to operate a notice-and-removal process.[6]

The consumer track runs through the Consumer Fraud Act. The Fair Price Protection Act, which passed both Houses on June 30, 2026, and now awaits Gov. Mikie Sherrill's signature, supplements the CFA directly and bars grocery stores and third-party delivery platforms from using algorithms to set individualized prices for particular shoppers.[7] The governor has signaled she will sign it, and if she does, New Jersey becomes the third state to restrict personalized pricing, behind Maryland and Connecticut, with New York's bill awaiting the governor's signature in Albany.[8] There are additional bills taking the same route. S. 3952 would reach surveillance and dynamic pricing in grocery sales and impose a moratorium on electronic shelf labels in larger stores.[9] A. 3989 would carry the prohibition against algorithmic pricing into residential rentals.[10] None of these builds a new enforcement system. Each drops a freshly prohibited practice into a statute that has policed the marketplace since 1960. The difficult question raised by these new laws is whether the CFA's full remedial arsenal follows, including the private right of action, the treble damages, and the mandatory fee award.[11]

The two tracks divide along a line that looks administrative and is actually doctrinal. A deepfake used to defraud is rarely part of a consumer transaction, so it sits in the criminal code. A pricing algorithm operates inside a sale, so it sits in the CFA. That sorting decision fixes everything downstream. The criminal track turns on intent, which the CFA's strict-liability lane was built to avoid. The consumer track for a private plaintiff turns on ascertainable loss, which the criminal law never asks about. Part II examines the consumer track and shows that the Consumer Fraud Act handles one kind of algorithmic conduct well and another not at all. Part III examines the criminal track and its blind spots. Part IV proposes what a Legislature this active should take up next.

II. The Consumer Fraud Act and Two Kinds of Algorithmic Conduct

Artificial intelligence poses two distinct problems for the Consumer Fraud Act. One is algorithmic personalized pricing, which the statute in its present form does not reach. That is why the Legislature has set out to prohibit it by name. The other is the use of AI to carry out ordinary deception, which the statute has prohibited since 1960 and reaches today without amendment. Treating both as a single category of "AI fraud" obscures what is new about each. What separates them is loss. Each theory rises or falls on whether the consumer can show an injury the statute recognizes.

A. The architecture: three categories and a separate loss requirement

The CFA sorts unlawful practices into three categories: affirmative acts, knowing omissions, and regulatory violations.[12] Intent works differently in each. A plaintiff who alleges an affirmative misrepresentation need not prove that the defendant intended to commit an unlawful act.[13] A plaintiff who alleges an omission must prove knowledge, so intent is an element of the claim.[14] A plaintiff who alleges the violation of a

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regulation adopted under the act need not prove intent at all, because those violations carry strict liability.[15]

That last category does most of the work in an algorithmic case. The recurring difficulty with an automated system is locating intent. A business that deploys a pricing model forms no state of mind toward any particular shopper, and the model has none of its own. An omission theory fails for the same reason. Only the strict-liability category fits a personalized-pricing claim, and it is the category the Legislature's pricing measures have chosen.

In addition to proving an unlawful practice, a private plaintiff must also establish an ascertainable loss and a causal link between the violation and that loss.[16] The loss element stands on its own, and it is unforgiving. The loss must be quantifiable or measurable, not hypothetical or illusory.[17] A plaintiff who offers no evidence of a measurable loss will lose at summary judgment, however plain the violation.[18]

Two features of the loss requirement shape everything that follows. First, it binds private plaintiffs only. The ascertainable loss requirement is a prerequisite for a private cause of action; it does not constrain an enforcement action brought by the Attorney General.[19] Whether the loss requirement applies can therefore turn on nothing more than the identity of the plaintiff. Second, the New Jersey Supreme Court raised the bar in 2024. In *Robey v. SPARC Group, LLC*, the Court held that shoppers who bought conforming, non-defective goods at an agreed price suffered no ascertainable loss, even though the advertised discount was illusory because the reference price was fictitious. The shoppers got what they paid for, and no measurable gap separated what they expected from what they received.[20] The Court closed off the fallback as well, holding that a consumer without an ascertainable loss is not an aggrieved consumer under the Truth-in-Consumer Contract, Warranty, and Notice Act.[21]

B. Theory One: personalized pricing as a per se wrong beyond the statute's current reach

A common assumption is that surveillance pricing already violates the CFA because the statute supposedly requires one fixed price on the shelf. It does not. Nothing in the CFA imposes a general one-price rule or forbids a seller from charging two customers different amounts for the same item. Charging one shopper more because an algorithm predicts she will tolerate it is not, standing alone, a misrepresentation. The price she pays is the price she agreed to and it is not a regulatory violation without a regulation on point. The federal statute aimed at price discrimination, the Robinson-Patman Act, is antitrust law that protects competing merchants, not retail consumers, and it is rarely enforced today. It is not the consumer's vehicle.

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What the CFA does require is a posted price. Section 56:8-2.5 makes it an unlawful practice to offer merchandise for retail sale unless the total selling price is plainly marked by a stamp, tag, label, or sign.[22] The unit-pricing statutes and their regulations rest on the same premise, that a shopper can read one publicly displayed price and weigh it against the alternatives.[23] The plaintiffs in *Dugan v. TGI Fridays, Inc.*, both the Dugan and Bozzi claimants, built their regulatory-violation theory on this very provision, arguing that a restaurant's failure to print drink prices violated Section 56:8-2.5.[24]

This is where the doctrine turns. Every one of the CFA's pricing rules assumes a price that sits in public view and stays put. Personalized and dynamic pricing attacks that premise at its root. There is no settled, plainly marked price, because the price is computed for the individual in real time and can change within minutes or from one transaction to the next.[25] Electronic shelf labels make even the displayed number something that moves. The wrong addressed by older rules is a missing or inaccurate posted price. The wrong now emerging is an individualized price with no public reference point at all. The statute as written catches the first and not the second.

The best evidence that current law does not reach personalized pricing is the bill written to capture it. If surveillance pricing already qualified as an unlawful practice, there would be no need for the Fair Price Protection Act to declare that it does.[26] The legislation exists because the conduct falls outside the statute as drafted. It rectifies that gap by treating such conduct as a regulatory violation, the category where *Cox* locates strict liability. That drafting choice disposes of the scienter problem that would otherwise sink an algorithmic claim.

It does nothing for the loss problem, and that is what makes Theory One hard.

A per se violation still leaves the private plaintiff at the *Robey* wall. A shopper charged a personalized price has, on the defense view, bought conforming goods at a price she accepted. An objection that she would have paid less without the profiling is the same reference-price complaint *Robey* rejected. A private claim therefore lives or dies on a single question: is a personalized markup an objective, measurable disparity, or merely a higher price the consumer agreed to pay for goods she wanted?

Dugan is where plaintiffs will look for an answer, but whether it supplies one is genuinely unsettled, because *Robey* and *Dugan* measure different disparities. *Robey*'s measurable disparity is the gap between the product a consumer expected and the product received, a value-based, benefit-of-the-bargain concept. *Dugan*'s differential, by contrast, arose in a class-certification ruling about how loss may be proved, not a holding that a cross-consumer price gap is itself a cognizable loss. The Court there rejected a market-wide price-inflation theory, in which an expert constructs a hypothetical fair-price benchmark. That approach, it held, is the equivalent of fraud on the market, a theory New Jersey has never extended to CFA claims.[27] An expert's opinion about a fair price is no substitute for proof of an actual claimant's loss and causation.[28] The same opinion, however, approved a different theory. Where the seller's own records show that customers paid different prices for the same item, those records can support findings of ascertainable loss and causation, and can carry a class through certification.[29] The Court applied that logic to the companion *Bozzi* claim, holding that a class narrowed to customers charged two different prices for the same beer during a single visit could go forward, because each claimant's loss is documented on a receipt in the seller's own records.[30]

Personalized pricing has the same documentary quality. The harm the Legislature is pursuing is the practice of charging individual shoppers different prices for the same item at the same time, the precise disparity the bills describe.[31] It is recorded in the algorithm's own logs, not dependent on an expert's reconstruction. That documentary quality is what separates a workable personalized-pricing claim from the fraud-on-the-market theory *Dugan* forbids. A plaintiff who can show from the defendant's records that she paid more than a comparable shopper paid for the same good at the same moment has her proof in the one form the Court has been willing to credit. *Dugan*'s successful theory works best where comparable shoppers and the transactional period are easy questions. One person bought two beers during one visit. An algorithm segmenting consumers by computed willingness to pay may not leave such a clean record. Whether two shoppers are truly comparable or whether two prices are truly contemporaneous can be disputed. Where *Dugan* opens the door, legislation could explicitly allow victims of personalized pricing to enter.

All of this leads back to the enforcer. Because the loss requirement constrains only private suits, a statute enforced by the Division of Consumer Affairs avoids the *Robey* problem, while a statute that creates a private right of action runs straight into it. Each time the Legislature selects an enforcement mechanism, it makes a doctrinal choice it may not have intended. Part IV returns to the point.

C. Theory Two: AI as an amplifier of ordinary deception the statute already reaches

The second problem runs the other way. When AI is used not to price but to deceive, through fabricated scarcity timers, synthetic customer reviews, deepfaked endorsements, AI-generated fictitious reference prices, and the broader family of manipulative "dark patterns," the conduct fits the CFA's existing categories without strain. These are affirmative misrepresentations and unconscionable commercial practices under Section 56:8-2, the core of the statute, and they require no proof of intent.[32] An AI-fabricated former price already violates the fictitious-pricing regulation,[33] and a false statement about the size of a price reduction already violates the regulation that bars misrepresenting the amount of a reduction.[34]

AI changes the scale and the polish of this deception, and it makes detection harder, but it does not change the legal character of the conduct. A merchant who uses a generative model to manufacture reviews needs no new statute to be liable. Such a model is only the instrument of a misrepresentation the CFA has reached for decades. The one obstacle to a private claim is the obstacle common to every CFA case, ascertainable loss. And on that point *Robey* cuts against the

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plaintiff even here, because it holds that deception by itself, in the form of a fictitious reference price, does not establish a loss when the consumer received conforming goods at the agreed price.[35] The deceived buyer must still identify a measurable disparity.

D. Why the distinction matters

The two theories occupy very different doctrinal worlds. Theory One involves conduct the statute cannot reach unaided, conduct the Legislature is now addressing through a strict-liability per se rule, and conduct that still faces a real ascertainable-loss barrier in private litigation, one that *Dugan* narrows and that falls away only when the Attorney General is the enforcer. Theory Two involves conduct the statute already reaches, limited by the same loss requirement but needing no new law.

For the practitioner, the lesson is that the contested questions will not concern whether AI-enabled conduct is fraudulent in the abstract. They will concern loss and enforcer: whether a documented pricing differential is a cognizable injury after *Robey* and *Dugan*, and whether the Legislature has routed enforcement to a forum where the loss requirement even applies. Part III turns next to the criminal track; Part IV takes up both questions.

III. The Criminal Track and Its Gaps

Chapter 40 rewards a close read, because its architecture explains both its reach and its blind spots. The definition is broad. Deceptive audio or visual media covers video, sound recordings, electronic images, photographs, technological representations of speech or conduct derived from them, and even forgeries of documents, so long as a reasonable person would take the work to realistically depict speech, conduct, or writing that never occurred and the production depended on technical means rather than ordinary impersonation.[36] The offenses are purpose-built in the literal sense. Creating such a work for the purpose of attempting or furthering any crime or offense is a crime of the third degree, as is soliciting, disclosing, or using one for that purpose, and a knowing or reckless disclosure of a work created in violation of the statute is a crime of the fourth degree.[37] Violations carry an enhanced fine of up to $30,000, convictions do not merge with the underlying offense, and consecutive sentencing is mandatory.[38] The Legislature wanted the punishment cumulative and said so in the findings.[39]

The civil remedy deserves more attention than it has received. The action belongs to the victim, and the statute defines victim generously, reaching not just the person depicted but anyone who suffers personal, physical, or psychological injury or a loss of or injury to property as a result of the violation.[40] A criminal conviction is not a prerequisite. The Superior Court may award actual damages with a liquidated floor of $1,000 for each knowing or reckless violation, punitive damages on proof of willful disregard, attorney's fees, and equitable relief.[41] Further, the action is cumulative with defamation, false light, and misappropriation claims rather than a substitute for them.[42] A business defrauded by a cloned voice can, at least on paper, plead its way into the section; theft and fraud offenses sit on the statute's own illustrative list of predicates.[43]

The limits appear in practice rather than on the surface. Both the crimes and the civil liability attach only to a natural person, so the defendant is the individual operator, who in a commercial fraud is routinely anonymous, out of state, or judgment-proof. The exemptions then place the parties actually worth suing beyond reach. Interactive computer service providers, cloud providers, and commercial developers and providers of artificial intelligence technology are outside the act, and broadcasters and advertising channels are carved out in most configurations.[44] The plaintiff must still prove conduct that would violate the criminal provisions, purpose element included, and nothing in the act requires anyone to take the forgery down. What the section delivers, in the commercial setting, is a damages claim against the person least likely to pay it.

The legislative pipeline behind chapter 40 is meanwhile consolidating around intimate imagery, understandably given the harms that pushed the bill to the governor's desk.[45] S. 3303 would fold AI-generated images into the voyeurism and nonconsensual-disclosure crimes.[46] The federal TAKE IT DOWN Act criminalizes the nonconsensual pub-

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lication of intimate visual depictions, including digital forgeries. Its notice-and-removal mechanism, mandatory for covered platforms since May 19, 2026, and enforced by the Federal Trade Commission, gives victims of intimate deepfakes the one thing chapter 40 does not: a way to get the content removed.[47] That removal right stops at intimate depictions. A company confronting a fabricated video of its own chief financial officer circulating among customers has no takedown mechanism under any of these laws, a criminal remedy that depends on a prosecutor's interest, a civil claim aimed at an anonymous natural person, and, for the reasons Part II explains, no route through the Consumer Fraud Act, because a duped wire transfer is not a consumer transaction.

There is also an evidence problem, and it will arrive ahead of any legislative fix. Every deepfake dispute becomes, sooner or later, an authentication dispute under N.J.R.E. 901, which asks only for evidence sufficient to support a finding that the item is what its proponent claims.[48] New Jersey courts have met each new medium by applying that conventional standard rather than inventing a heightened one. The Appellate Division took exactly that approach to social media in *State v. Hannah*, holding the existing standards adequate and authenticating a tweet through its content, its nature as a reply, and details only a participant would know.[49] To the objection that a tweet is easily forged, the court answered that so is a letter.[50] Synthetic media is the first technology built to defeat that answer, because the forgery is engineered to carry the very indicia the rule looks for. The proponent of genuine evidence now faces manufactured doubt, the objection that authentic media has been fabricated, a tactic commentators have named "the liar's dividend."[51] The opponent of fabricated evidence must expose a fake designed to pass. No published New Jersey decision has yet confronted an alleged deepfake, and until one does, the practical answers are the familiar ones performed more carefully: chain of custody, metadata and provenance discovery, testimony from participants with personal knowledge, and, where the stakes justify it, forensic analysis presented at a Rule 104 hearing. Authentication fights that used to take a sentence should be budgeted to take an expert.

The criminal track, in sum, has the right instincts and a narrowing field of view: severe, cumulative punishment for deepfakes tied to crime, a civil action built to compensate the depicted and the injured, and nothing designed for the synthetic forgery as an instrument of commercial fraud. Part IV turns to what the Legislature should do about it, on this track and the other one.

IV. Where the Law Should Go

New Jersey has been legislating one headline at a time. Deepfakes produced a criminal statute in 2025. Grocery pricing produced the Fair Price Protection Act, now on the governor's desk.[52] Rent-setting algorithms have a bill of their own,[53] and pornographic deepfakes another.[54] Each measure responds to a genuine harm. Each was also drafted as though the case law described in Part II did not exist, and that case law decides who can sue and for what. Four choices, each aimed at a specific holding rather than a general mood, would turn the accumulating measures into a framework.

A. Define the ascertainable loss, or private enforcement is an illusion

The hardest holding to legislate around is *Robey*. A shopper who pays a personalized price has bought conforming goods at a price she accepted, and on that reasoning she has suffered no ascertainable loss however unlawful the pricing practice may be.[55] A statute that declares surveillance pricing a per se unlawful practice therefore accomplishes less than it appears to accomplish. The private plaintiff clears the unlawful-practice element and, absent the kind of clean records present in *Dugan*, stalls at the loss element. If the Legislature wants consumers to enforce these prohibitions themselves, it has to say what the loss is. The fix is a single definition: the difference between the price the consumer paid and the lowest price the seller contemporaneously charged or offered a similarly situated consumer for the same item is deemed an ascertainable loss.

That definition does not fight the Supreme Court. It follows the Court's own map. *Dugan* allowed a claim built on the seller's records showing that customers paid different prices for the same item to proceed, and it let those records carry loss, causation, and class certification.[56] What *Dugan* forbade was the expert-built benchmark, a hypothetical fair price constructed for litigation.[57] A statutory differential measured against the seller's own contemporaneous pricing takes what *Dugan* only pointed toward and writes it into law, removing the uncertainty a private plaintiff would otherwise face. The proof sits in the algorithm's logs, and a records-retention requirement obligating covered sellers to preserve their pricing data would make the theory litigable in practice rather than in principle only. Nothing about the definition invites speculation. It substitutes the defendant's data for the expert the Court excluded.

B. Choose the enforcer deliberately

The loss requirement is a prerequisite for a private cause of action and does not constrain the Attorney General,[58] so the choice of enforcer is not housekeeping. It determines whether *Robey* applies at all. The Fair Price Protection Act supplements the Consumer Fraud Act itself,[59] which leaves the question live. If the final law is silent, courts will have to decide whether the treble damages and fee-shifting of Section 56:8-19 attach to the new prohibition.[60] The committee substitute that advanced in March paired a fixed civil penalty with an enforcement action by the Attorney General, which suggests the drafters leaned toward public enforcement without quite saying so.[61]

Either design is defensible. A regime run by the Attorney General sidesteps *Robey*, centralizes technical expertise, and echoes the statute's original architecture, since the 1960 Act gave the Attorney General exclusive authority and the private right arrived by amendment in 1971.[62] A private right multiplies enforcement and compensates the shopper who was actually overcharged, but after *Robey* it works only if it is paired with the loss definition above. What is not defensible is silence, which converts a policy choice into a decade of motion practice. If the choice is public enforcement, it should be funded like one; the pending bill that would stand up a Deepfake Technology Unit shows the Legislature knows how to build capacity when it intends an agency to act.[63]

C. Close the commercial deepfake gap

The 2025 deepfake law is organized around a criminal predicate. It reaches deceptive audio or visual media created or used for the purpose of furthering a crime, carries third-degree exposure with fines up to $30,000, and gives victims a civil action against the natural person who committed the violation.[64] The measures behind it are consolidating the criminal track around intimate imagery,[65] and the federal TAKE IT DOWN Act does the same at the platform level, with a removal mechanism confined to intimate depictions.[66] None of this reaches the deepfake deployed for commercial theft. The cloned voice of a managing partner authorizing a wire transfer, the synthetic invoice from a vendor who never sent one, the fabricated video of a counterparty approving terms: these are the fact patterns already reaching commercial litigators, and the coverage they find is thinner than it looks. The deepfake statute's civil action requires the plaintiff to establish conduct that would violate the criminal provisions, purpose element included; it runs only against natural persons, leaving the anonymous operator as the sole defendant while the exemptions shelter the platforms, hosts, and toolmakers; and it awards damages without any mechanism for getting the forgery taken down. The Consumer Fraud Act cannot absorb the claim either, because its prohibitions run to deception in connection with the sale or advertisement of merchandise or real estate,[67] and none of these frauds occurs inside a consumer transaction. The victims are often businesses, the losses are documented to the dollar, and the remedy on the books was built around a different paradigm.

The repair is a freestanding civil cause of action for pecuniary loss caused by the knowing creation or use of synthetic media to deceive, one that reaches any person rather than only natural persons and that carries no consumer-transaction predicate, no intimate-imagery predicate, and no requirement that the plaintiff first establish a criminal purpose. Actual damages, fee-shifting, and injunctive relief would carry the CFA's remedial philosophy into the space without importing its transactional limits. The criminal statute's exemptions for criticism, comment, satire, parody, news reporting, teaching, scholarship, and research can carry over intact, which answers the First Amendment objection the same way the Legislature already answered it.[68]

D. Consolidate before the patchwork hardens

Count the instruments. A criminal deepfake statute. A grocery pricing act supplementing the CFA. A rental-algorithm bill on its own track.[69] A voyeurism amendment for pornographic deepfakes. A federal platform overlay. Five measures in roughly two years, with different intent standards, different enforcers, and different remedies, all aimed at one phenomenon, machine-generated deception. The better course is a single chapter that defines synthetic media and algorithmic pricing once, enumerates the per se practices, assigns scienter deliberately, with strict liability in the pricing lane where *Cox* already places regulatory violations[70] and a knowledge standard for synthetic-media deception where speech concerns demand it, writes the loss definition into the text, and makes the enforcement election expressly. That is not a proposal for an omnibus artificial intelligence code. It is a proposal to consolidate the deception provisions New Jersey has already decided to write before their inconsistencies become precedent.

The courts have marked the walls with unusual clarity. *Robey* says what counts as a loss, *Dugan* says how it may be proved, and *Weinberg* says who must prove it. A Legislature that drafts against those holdings, rather than around them, would give practitioners on both sides of these cases something the current approach cannot: a predictable answer to whether AI-enabled conduct is actionable in New Jersey, by whom, and for what. ■

Endnotes

1. P.L. 2025, c. 40 (codified at N.J.S.A. 2C:21-17.7 *et seq.*) (approved Apr. 2, 2025).
2. N.J.S.A. 2C:21-17.8(f).
3. N.J.S.A. 2C:21-17.8(g).
4. S. 3303, 2026-2027 Leg. Sess. (N.J.) (pending as of July 15, 2026).
5. A. 3058, 2026-2027 Leg. Sess. (N.J.) (pending as of July 15, 2026).
6. TAKE IT DOWN Act, Pub. L. No. 119-12, 139 Stat. 55 (2025).
7. A. 4085/A. 4523 (Assembly Committee Substitute), 2026-2027 Leg. Sess. (N.J.) (Fair Price Protection

Act) (passed both Houses June 30, 2026; awaiting action by the Governor as of July 15, 2026) (supplementing N.J.S.A. 56:8-1 *et seq.*).

8. Press Release, Consumer Reports, Consumer Reports Statement on New Jersey Fair Price Protection Act to Ban Personalized Pricing in Grocery Sales (June 30, 2026); *see also New Jersey Surveillance Pricing Ban Heads to Governor*, NJBIZ (July 7, 2026).
9. S. 3952, 2026-2027 Leg. Sess. (N.J.) (as introduced; pending as of July 15, 2026).
10. A. 3989, 2026-2027 Leg. Sess. (N.J.) (pending as of July 15, 2026).
11. N.J.S.A. 56:8-19.
12. *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 17 (1994).
13. *Id.* at 17-18.
14. *Id.* at 18.
15. *Id.* at 18-19.
16. *Lee v. Carter-Reed Co.*, 203 N.J. 496, 521 (2010).
17. *Thiedemann v. Mercedes-Benz USA, LLC*, 183 N.J. 234, 248 (2005).
18. *Id.* at 248-49.
19. *See Weinberg v. Sprint Corp.*, 173 N.J. 233, 237 (2002); *Thiedemann*, 183 N.J. at 246, 249-51.
20. *Robey v. SPARC Grp., LLC*, 256 N.J. 541, 548-49 (2024).
21. *Id.* at 549.
22. N.J.S.A. 56:8-2.5.
23. N.J.S.A. 56:8-21 *et seq.*; N.J.A.C. 13:45A-14.1 *et seq.*
24. *Dugan v. TGI Fridays, Inc.*, 231 N.J. 24, 34 (2017).
25. S. 3952, *supra* note 9.
26. Fair Price Protection Act, *supra* note 7.
27. *Dugan*, 231 N.J. at 34.
28. *Id.*
29. *Id.* at 34-35.
30. *Id.* at 41-42, 64-66 (sustaining certification of the class as narrowed to the price-shifting claim, while reserving whether the practice violates the CFA).
31. Fair Price Protection Act, *supra* note 7.
32. *Cox*, 138 N.J. at 17-18.
33. N.J.A.C. 13:45A-9.6.
34. N.J.A.C. 13:45A-9.2(a)(9); *see Furst v. Einstein Moomjy, Inc.*, 182 N.J. 1 (2004).
35. *Robey*, 256 N.J. at 548-49.
36. P.L. 2025, c. 40, *supra* note 1. The operative definitions and offenses appear at N.J.S.A. 2C:21-17.8.
37. N.J.S.A. 2C:21-17.8(b), (c).
38. N.J.S.A. 2C:21-17.8(d), (e).
39. N.J.S.A. 2C:21-17.7.
40. N.J.S.A. 2C:21-17.8(a).
41. N.J.S.A. 2C:21-17.8(f).
42. *Id.*
43. N.J.S.A. 2C:21-17.8(b)(1).
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45. Press Release, Office of the Governor, Governor Murphy Signs Bipartisan Legislation Establishing Civil and Criminal Penalties for Deceptive AI Deepfakes (Apr. 2, 2025).
46. S. 3303, *supra* note 4.
47. TAKE IT DOWN Act, *supra* note 6.
48. N.J.R.E. 901; *see also* N.J.R.E. 104.
49. *State v. Hannah*, 448 N.J. Super. 78 (App. Div. 2016).
50. *Id.*
51. Robert Chesney & Danielle Keats Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 Calif. L. Rev. 1753 (2019).
52. Fair Price Protection Act, *supra* note 7.
53. A. 3989, *supra* note 10.
54. S. 3303, *supra* note 4.
55. *Robey*, 256 N.J. at 548-49.
56. *Dugan*, 231 N.J. at 34-35.
57. *Id.* at 34.
58. *See Weinberg*, 173 N.J. at 237; *Thiedemann*, 183 N.J. at 246, 249-51.
59. Fair Price Protection Act, *supra* note 7.
60. N.J.S.A. 56:8-19.
61. S. 3612/S. 3717 (Senate Committee Substitute), 2026-2027 Leg. Sess. (N.J.) (as reported by the Senate Commerce Committee, Mar. 16, 2026).
62. *Cox*, 138 N.J. at 14-15.
63. A. 3058, *supra* note 5.
64. P.L. 2025, c. 40, *supra* note 1.
65. S. 3303, *supra* note 4.
66. TAKE IT DOWN Act, *supra* note 6.
67. N.J.S.A. 56:8-2.
68. P.L. 2025, c. 40, *supra* note 1.
69. A. 3989, *supra* note 10.
70. *Cox*, 138 N.J. at 18-19.

The Fraud is in the Closing

AI, Spoofed Emails and New Jersey Lawyers

By Alan N. Walter

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When Fraud Moves Into the Closing Process

Transactional lawyers have long treated fraud as a problem of deal substance: misstatements in financial disclosures, omissions in disclosure schedules, inaccuracies in representations and warranties. The risk, conventionally understood, lives in the four corners of the agreement. That framing is no longer enough.

A new category of risk has emerged, one that targets not what a deal says but how it closes. Spoofed emails redirect wire transfers at the moment of closing. AI-generated communications impersonate executives and counsel with alarming fidelity. Manipulated diligence materials circulate through virtual data rooms looking entirely authentic. These are not hypothetical scenarios. They are recurring features of the modern transactional environment, and no amount of careful drafting fully addresses them.

The legal stakes are significant. Fraud claims still depend on familiar elements: misrepresentation, knowledge, intent, reliance and damages. In *Banco Popular North America v. Gandi*,[1] the New Jersey Supreme Court reaffirmed that a plaintiff must demonstrate reasonable reliance on a misrepresentation to prevail.[2] In a world of AI-generated communications and spoofed accounts, what constitutes reasonable reliance in a digital transaction has become the central question in deal fraud litigation. The answer turns less on what the contract says than on how the parties actually conducted themselves.

The Anatomy of Modern Deal Fraud

Business Email Compromise

Business email compromise is the most prevalent form of transactional fraud today. The mechanics are simple. A fraudster gains access to or convincingly imitates a party's email account, monitors deal communications, and at a critical moment near closing sends revised wire instructions directing funds to a fraudulent account. The message looks legitimate, arriving from what appears to be a known address. By the time anyone recognizes the fraud, the money is gone.

Litigation following such a loss turns on reliance. New Jersey courts treat reliance as a fact-intensive inquiry, examining what steps the plaintiff took to verify what it received. In *Walid v. Yolanda for Irene Couture, Inc.*,[3] the Appellate Division held that whether reliance is justified depends on what the plaintiff reasonably could have done to confirm the truth.[4] Applied to modern closings, that principle has teeth. A party that wires funds based solely on emailed instructions, without independent verification, may find a court characterizing its reliance as unreasonable, particularly when simple safeguards were available and unused.

AI-Driven Impersonation and Synthetic Authority

Business email compromise is now the floor, not the ceiling. Artificial intelligence has enabled a more sophisticated category of attack. Fraudsters can generate deepfake video calls that appear to show executives approving transactions, voice clones that confirm payment instructions, and AI-generated emails that replicate a counterparty's tone, formatting and signature block with precision. Fabricated corporate records and altered diligence materials can be produced and uploaded to virtual data rooms in ways that are nearly impossible to detect. The result is what might be called synthetic authority: communications that look legally sufficient and contextually appropriate but are entirely fabricated.

This creates a doctrinal gap. In *Kaufman v. i-Stat Corp.*,[5] the New Jersey Supreme Court held that fraud requires proof the plaintiff actually received and relied on the misrepresentation.[6] When the apparent speaker is an AI impersonation, the traditional assumptions about authorship, identity and communicative intent collapse. The law has not yet fully adapted, but the practical implication is clear: verification, not appearance, must become the standard for reasonable reliance.

Not all modern deal fraud targets payment instructions. AI-assisted fabrication of financial statements, altered PDFs and manipulated diligence files are all documented problems.

Fraud Embedded in Deal Materials

Not all modern deal fraud targets payment instructions. AI-assisted fabrication of financial statements, altered PDFs and manipulated diligence files are all documented problems. These attacks resemble traditional fraudulent inducement but are amplified by the speed and accessibility of generative AI.

New Jersey law draws a distinction that matters here. Fraud claims tied to inducement, meaning misrepresentations that caused a party to enter a contract, are generally actionable even where the relationship is governed by a written agreement. Fraud claims arising from performance of the contract are typically barred by the economic loss doctrine.[7] When manipulated diligence materials cause a party to close a deal it otherwise would not have entered, the claim sounds in fraudulent inducement and may survive. When the problem surfaces only during performance, contract remedies are likely the exclusive avenue. The timing and character of the fraud can therefore determine whether a tort claim is available at all.

Why Traditional Contract Protections are Not Enough

Transactional lawyers have long managed fraud risk through familiar tools: representations and warranties, indemnities, integration clauses and disclaimers. These remain essential, but they address a different problem. They allocate risk after a deal is struck. They do not protect against fraud in the mechanics of closing.

The economic loss doctrine compounds the limitation. New Jersey courts generally bar parties from recasting contract claims as tort claims where the alleged misconduct arises from performance of the contract itself.[8] Even deliberate wrongdoing may be confined to contractual remedies if it relates to performance rather than inducement. Fraud claims that clear that barrier still face the reliance inquiry, which asks whether the plaintiff could have discovered the truth and failed to look.

The result is a structural gap. Contracts allocate risk on paper, but liability turns on what parties actually did during execution. A perfectly drafted purchase agreement offers no protection when a party wires closing funds based on a spoofed email it never thought to verify.

Adapting the Contract to Address Cyber-Fraud Risk

Contract alone cannot close this gap, but contracts can be made considerably more useful than they typically are. Several categories of provisions deserve attention.

Payment instruction clauses address the most immediate exposure. Agreements should expressly govern how wire instructions are transmitted and confirmed. Provisions that prohibit reliance on emailed instructions alone, require out-of-band telephone confirmation using independently verified contact information, and allocate loss based on compliance with or deviation from the specified protocol are now standard in sophisticated deals and should become routine across the market.

Defined communication channel provisions address the broader infrastructure problem. Contracts can designate approved email domains, require secure portals for sensitive transmissions, and restrict last-minute changes to closing instructions. These provisions establish a contractual baseline that gives meaning to the reliance inquiry: a party that followed the agreed protocol occupies a materially different legal position than one that did not.

Risk-shifting provisions make the allocation explicit. A party that follows the agreed verification procedures bears no loss; a party that deviates does. This aligns contractual allocation with how fraud actually occurs and removes ambiguity about responsibility after the fact.

Cyber-integrity representations round out the picture. Some sophisticated agreements now include representations that a party's communication systems have not been compromised, that no impersonation or spoofing is known to have occurred, and that data room materials are accurate and unaltered as of closing. These provisions do not prevent fraud, but they create additional remedies and a clearer evidentiary record if fraud surfaces after closing.

Process Design as a Legal Function

The most consequential shift for transactional lawyers is conceptual. Fraud prevention in deal execution is no longer just a drafting problem—it is a process design problem.

New Jersey's reasonable reliance standard makes this unavoidable. Courts examine whether the victim exercised ordinary diligence, and in a digital environment that inquiry focuses directly on procedure. Were wire instructions confirmed through a known phone number, not one provided in the suspect email? Were last-minute changes treated with heightened skepticism? Was there a documented protocol, and was it followed?

Transactional lawyers should build verification procedures into their standard closing practice and document them. Pre-closing verification protocols should be circulated to all parties and counsel before closing day. No-change periods, during which revisions to wire instructions will not be honored regardless of how they arrive, reduce the window of exposure. Dual authorization for transfers above defined thresholds adds a layer of internal confirmation. Test wires for significant transactions confirm account details before the full transfer moves.

These measures do more than prevent fraud. They create a contemporaneous record showing that reliance on the verified instructions was reasonable, which may be decisive in any litigation that follows.

Liability Exposure for Transactional Lawyers

As fraud migrates into the closing process, lawyers face exposure the profession has been slow to recognize. Potential claims include negligence for failing to implement reasonable verification safeguards, malpractice tied to supervision of closing mechanics, and in serious cases, claims sounding in aiding and abetting fraud where a lawyer's conduct facilitated the loss.

The exposure is sharpest for lawyers who serve as escrow agents, transmit wire instructions, or control the closing process. A court assessing liability may view the transactional lawyer as the party best positioned to prevent the loss and therefore the one whose failure to implement safeguards is most consequential. That framing shifts the negligence calculus considerably.

Insurance provides only partial relief. Coverage disputes in social engineering fraud cases are common, frequently turning on questions difficult to predict when a policy is written: whether the loss falls under cyber coverage or professional liability, whether fraud or intentional act exclusions apply, and whether the event is characterized as third-party deception or a failure of internal procedure. Transactional lawyers should understand these gaps and, where possible, align contractual risk allocation with what their policies actually cover.

Ethical Dimensions

The New Jersey Rules of Professional Conduct intersect with these developments in ways the profession has not yet fully worked out. The duty of competence requires adequate preparation and thoroughness. In a transactional context, that now includes a working understanding of how fraud is perpetrated in modern deal execution, not as a specialty area but as a baseline requirement of practice.

Harder questions arise mid-transaction. What must a lawyer do when communications begin to look suspicious? When does the absence of verification procedures cross from an acceptable judgment call into a failure of competence? New Jersey disciplinary jurisprudence has not yet addressed these questions directly, but the framework is in place. Lawyers who have not thought through their procedures before a problem arises will find themselves poorly positioned when regulators and courts eventually do.

Conclusion: From Drafting Agreements to Designing Transactions

The evolution of deal fraud reflects a broader change in what transactional practice requires. The traditional model assumed that risk lives in the substance of agreements. It does not, not anymore.

Today's fraud exploits the mechanics of transactions: their dependence on digital communication, their compressed timelines and the trust parties extend to familiar-looking messages. New Jersey law, with its emphasis on reasonable reliance and its careful line between tort and contract, means that liability often turns not on what the agreement says but on what the parties actually did.

For transactional lawyers, the message is direct. The role now extends beyond drafting agreements that allocate risk to designing the systems through which deals close. The most effective protection against modern deal fraud is not found in a representation, a warranty or an indemnity clause. It is found in a process that makes fraud harder to commit and reliance easier to defend. ■

Endnotes

1. 184 N.J. 161 (2005).
2. *Id.* at 173.
3. 425 N.J. Super 171 (App. Div. 2012).
4. *Id.* at 181.
5. 165 N.J. 94 (2000).
6. *Id.* at 120.
7. See Maurice W. McLaughlin, *New Jersey Contract Law Issues: The Economic Loss Doctrine, Fraud in the Breach Versus Fraud in the Inducement, and the Duty of Good Faith and Fair Dealing*, New Jersey Lawyers Blog (Mar. 6, 2018), https://www.newjerseylawyersblog.com/new-jersey-contract-law-issues-economic-loss-doctrine-fraud-breach-versus-fraud-inducement-duty-good-faith-fair-dealing/.
8. *See Jaynes v. Henry*, 2022 U.S. Dist. LEXIS 19560, at *13-14 (D.N.J. Feb. 3, 2022) (applying economic loss doctrine to bar tort claims arising from contract performance).

Fraud in Residential and Commercial Leasing

Prevention, Detection and Remedies

By Bruce E. Gudin

As the New Jersey Supreme Court has long recognized, fraud "in its most general and fundamental conception consists of the obtaining of an undue advantage by means of some act or omission that is unconscientious or a violation of good faith."[1] Fraud in leasing is no longer an anomaly.[2] It is a predictable operational and legal risk that requires structured screening, careful drafting and strategic enforcement. Residential landlords must navigate the constraints of the Anti-Eviction Act,[3] while commercial landlords must fortify their leases and verify applicant entities and financials with rigor.

For New Jersey practitioners, the key is understanding the different legal frameworks, vulnerabilities and remedies available in each sector. Counsel can help landlords prevent fraud where possible and respond decisively when it occurs.

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Landlords must now operate with a heightened awareness where thoughtful screening processes, diligent document drafting and comprehensive due diligence can markedly reduce risk, with the ultimate objective of preventing losses before litigation becomes necessary.

The Attorney's Role is Changing

A decade ago, the primary concern during the leasing process was whether a prospective tenant had sufficient income to cover rent. Today, landlords face a far different challenge. Artificial intelligence can generate convincing pay stubs in minutes, falsified identities can circumvent traditional credit screening, and social media platforms openly promote techniques for manipulating rental application systems.[4] What once required significant effort has evolved into an increasingly sophisticated and accessible form of fraud.

For attorneys representing landlords, this shift requires a corresponding change in approach. Traditionally, counsel became involved in lease drafting and review, and once a dispute arose from a signed lease agreement. Today, an attorney can add significant value much earlier in the process, including helping clients develop procedures that prevent fraudulent applicants from ever reaching the leasing stage.

Landlords must now operate with a heightened awareness where thoughtful screening processes, diligent document drafting and comprehensive due diligence can markedly reduce risk, with the ultimate objective of preventing losses before litigation becomes necessary.

Fraud Has Become More Sophisticated

Both residential and commercial rental fraud have changed dramatically in recent years. Fraudulent applications once involved exaggerated income, altered pay stubs or inaccurate employment information. Today's schemes increasingly involve falsified identities supported by AI-generated employment records, tax returns, bank statements and forged government identification. Industry reports suggest that synthetic identity fraud (the practice of combining legitimate and fictitious information to create a new identity capable of passing conventional screening methods) now accounts for a significant portion of identity fraud nationwide.[5]

Commercial landlords are routinely faced with newly formed limited liability companies with no assets, no operating history and undisclosed beneficial owners seeking to lease space. Financial statements may be fabricated, guarantors may lack meaningful assets and shell entities may dissolve shortly after default, leaving landlords with little recourse.

The increasing availability of fraudulent documents through online marketplaces and social media compounds these risks.[6] Videos demonstrating how to manipulate rental applications, create convincing financial records and improve credit profiles have become widely available.[7] At the same time, online leasing has reduced face-to-face interaction at a time when independent verification is more important than ever.[8]

Attorneys should view fraud prevention as an integral part of their representation. A periodic review of a client's leasing policies will provide greater long-term value than prosecuting an eviction or collection case after fraud has already occurred. Clients who rely on outdated rental applications and superficial screening processes are prime targets for rental fraud.

Residential Screening

Counsel should encourage clients to implement written procedures addressing identity, employment, income and occupancy verification, as well as document retention and adverse-action procedures in accordance with the Fair Chance in Housing Act (FCHA),[9] the New Jersey Law Against Discrimination (LAD),[10] and the federal Fair Housing Act (FHA).[11] Screening policies should be reviewed periodically to ensure they remain legally compliant and operationally effective.

Credit reports alone are no longer sufficient. Although they remain valuable, they frequently fail to detect synthetic identities or falsified financial information. Landlords should consider multiple verification methods, including government-issued identification, secondary identification documents, independent employment verification, technology capable of detecting document manipulation and comparison of application information with publicly available records. Third-party identity verification and document authentication platforms are a meaningful tool available to assist landlords with verification and fraud-detection solutions.

Commercial Due Diligence

Commercial leasing requires a deeper level of investigation, including verification of entity formation, certificates of good standing, beneficial ownership, organizational authority, financial statements, tax returns or transcripts, banking relationships, insurance coverage and prior landlord references. Verification should not end with confirmation that an LLC exists. Counsel should determine who owns and controls the entity and whether sufficient assets exist to satisfy future obligations.

Meaningful guaranties remain one of the most effective risk management tools available to commercial landlords. Depending on the transaction, attorneys should consider full guaranties, good-guy guaranties or springing guaranties triggered by fraud or other specified defaults.

Drafting Leases to Reduce Fraud Risk

Residential Leases

Although the Anti-Eviction Act limits the grounds upon which residential tenancies may be terminated, carefully drafted lease provisions still serve important purposes. Applications should require certifications that all information submitted is true, complete and accurate. The lease should expressly state that the landlord relied on those representations in approving the tenancy. It should require disclosure of all intended occupants, limit occupancy to those named in the lease and prohibit unauthorized occupancy. Unauthorized occupancy after the tenancy commences, or false representations in the leasing process may constitute a substantial breach of the lease and, after compliance with the notice requirements of the Anti-Eviction Act where applicable, may provide grounds for lease termination and recovery of possession of a rented premises.

Commercial Leases

Attorneys should consider expressly providing that material misrepresentations in the lease application or financial submissions constitute immediate "Events of Default," entitling the landlord to exercise the remedies provided under the lease, and obligating the tenant for reimbursement of the landlord's damages. The lease should include attorney fee shifting provisions, expanded guaranty obligations, additional security requirements and acceleration provisions where appropriate. The objective is not merely to create remedies after fraud occurs but to discourage fraudulent conduct before the lease is executed. Heightened verification processes provide an initial line of defense in a commercial lease setting.

Training Leasing Personnel

Fraud prevention is only as effective as the employees responsible for implementing screening procedures. Attorneys should encourage clients to provide periodic training addressing inconsistent identification, suspicious financial documents, unverifiable employment, recently formed business entities, unusual urgency to obtain possession, inconsistent application information and appropriate responses when fraud is suspected, and emphasize compliance with fair housing laws to ensure that fraud-prevention measures are applied consistently and without discriminatory effect.

Equally important, staff must understand what not to do. Employees should avoid accusing applicants of fraud, refrain from applying screening criteria inconsistently and document all irregularities before referring questionable applications to management or legal counsel. Consistent procedures improve fraud detection and reduce the risk of discrimination claims arising from inconsistent application practices. Industry associations regularly provide cutting edge educational programs addressing developments in the leasing industry.

When Prevention Fails

Even the most sophisticated screening procedures cannot eliminate every fraudulent application. When fraud is discovered after possession has been delivered, counsel should advise clients to preserve all evidence, including applications, supporting documents, communications, payment histories and electronic records.

Residential landlords must evaluate available statutory remedies. Because self-help eviction remains prohibited, removal must proceed in accordance with the Anti-Eviction Act. Depending on the circumstances, available grounds may include nonpayment of rent, substantial breach of lease covenants, criminal conduct or other statutory causes for removal.

Commercial landlords generally possess greater flexibility under the Summary Dispossess Act.[12] Where fraud constitutes a lease default, landlords may terminate the lease, pursue summary dispossess proceedings where appropriate and seek contractual damages. Separate civil actions for common-law fraud, negligent misrepresentation, breach of contract, unjust enrichment, conversion, civil conspiracy or veil piercing may also be appropriate depending on the facts.

Certain conduct may warrant referral to law enforcement where identity theft, forgery, theft by deception or falsification of records appears to have occurred. Counsel should encourage landlords to preserve not only the application itself but also associated electronic records, including emails, metadata, IP address information, electronic signatures and uploaded documents.

New Jersey Authorities

Although fraud cases are highly fact-sensitive, several New Jersey decisions provide useful guidance. *Jewish Center of Sus-*

sex County v. Whale[13] remains the leading authority regarding the elements of common-law fraud, requiring proof of a material misrepresentation, knowledge of its falsity, intent that another rely on it, reasonable reliance and resulting damages.

Gennari v. Weichert Co. Realtors[14] confirms that actionable fraud may arise not only from affirmative misrepresentations but also from misleading and material omissions.

Commercial practitioners should remain mindful of *Richard A. Pulaski Construction Co. v. Air Frame Hangars, Inc.*,[15] which illustrates circumstances under which the corporate form may be disregarded when used to perpetrate fraud or injustice.

Although not a fraud case, *Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Associates*[16] serves as an important reminder that New Jersey courts expect parties to commercial leases to perform their contractual obligations in good faith.

Practical Guidance for New Jersey Counsel

Attorneys representing landlords should periodically review clients' leasing practices and recommend improvements before problems arise. Counsel should encourage clients to adopt written screening policies, verify identity independently of credit reports, independently verify employment and income, confirm commercial entity ownership and authority, obtain meaningful guaranties whenever appropriate, strengthen lease representations and default provisions, train leasing personnel to identify fraud indicators, preserve all application materials when fraud is suspected and consult counsel before taking adverse action.

Preventive measures are often significantly less expensive than eviction proceedings, commercial collection litigation or attempting to enforce an uncollectible judgment.

Conclusion

Fraud in the leasing process affects virtually every segment of New Jersey's rental market. For residential landlords, attorneys must help clients navigate the balance between effective fraud prevention and compliance with the Anti-Eviction Act and other statutory protections. For commercial landlords, counsel should focus on rigorous due diligence, carefully drafted lease provisions and meaningful financial security before possession is delivered.

The modern landlord-tenant attorney is no longer simply an eviction lawyer. Increasingly, the attorney's greatest value lies in helping clients prevent fraudulent tenancies before they begin. Effective screening, thoughtful lease drafting, consistent training and proactive legal counseling are now as important as successful litigation. ■

Endnotes

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11. Fair Housing Act (FHA), 42 U.S.C. § 3601 et seq.
12. Summary Dispossess Act N.J.S.A 2A:18-53
13. *Jewish Ctr. of Sussex Cty. v. Whale*, 86 N.J. 619 (1981).
14. *Gennari v. Weichert Co. Realtors*, 148 N.J. 582 (1997).
15. *Richard A. Pulaski Constr. Co. v. Air Frame Hangars, Inc.*, 195 N.J. 457 (2008).
16. *Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs.*, 182 N.J. 210 (2005).

Navigating the Gray Areas of the Local Public Contracts Law and the Local Government Ethics Law

By Nadege D. Allwaters

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According to the last annual report issued by the Office of the State Comptroller, an independent state watchdog agency charged with scrutinizing public contracts and investigating misconduct, the OSC has issued more than 100 audits, reviews, and reports uncovering fraud, waste, and abuse within the state over the last five years.[1] Although New Jersey law contains a multitude of safeguards designed to protect against fraud and corruption, these statutory schemes are highly complex and full of gray areas. This article examines some of those gray areas in the context of two such statutes, the Local Public Contracts Law and the Local Government Ethics Law.

Local Public Contracts Law

In New Jersey, there are three main public bidding statutes: the Local Public Contracts Law, which applies to counties, municipalities, and any non-state board, commission, authority, or agency;[2] the Local Public School Contracts Law, which applies to boards of educations within New Jersey;[3] and the provisions of N.J.S.A. 52:34-6, et seq., which applies to state contracts.[4] For purposes of this article, focus will be on the LPCL.

The most important thing to remember about the LPCL is that it is intended to guard against "favoritism, improvidence, extravagance and corruption," and to secure for the public the benefits of unfettered competition without fraud or favoritism.[5] In some instances, adhering to the requirements of the LPCL may require contracting units to reject a bid that would otherwise save them money; however, the New Jersey Supreme Court has stressed that the integrity of the public bidding process is more important than the isolated savings that may be gained from any single contract.[6]

Under the LPCL, when the value of a contract exceeds the applicable bid threshold, it may typically only be awarded to the lowest responsible bidder by resolution of the contracting unit's governing body after public advertising for bids.[7] The bid threshold amount, which is subject to adjustment every five years,[8] is currently $53,000 for contracting units with a qualified purchasing agent (QPA) and $17,500 for contracting units without a QPA.[9] By requiring contracts to be publicly advertised and awarded to the lowest responsible bidder, the LPCL facilitates open competition and transparency in contracting, both of which help to protect against occurrences of fraud and favoritism. However, these protections are only effective when they are appropriately utilized. The LPCL is a complex statute with numerous exceptions, and it can often be unclear whether public bidding is required with respect to a specific contract. Some common gray areas are addressed below:

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Aggregation

The bid threshold is obviously a key component of the LPCL, but it is only part of the equation. Another important factor is how contracts are aggregated. Consider, for example, a contracting unit determines that, in the aggregate, it needs to purchase $100,000 worth of fencing in a given year. Even assuming this contracting unit has a QPA, public advertisement and bidding would be required before this purchase could be made. However, what if the contracting unit underestimates its need and makes a purchase for $50,000 in fencing without public bidding, only to realize several months later that it needs to make another $50,000 purchase? In this scenario, assuming that the contracting unit will not require any fencing in the following year, the governing body could authorize the second $50,000 without public bidding.[10] For obvious reasons, applicable regulations expressly prohibit intentional miscalculations for the purpose of avoiding public bidding requirements.[11] While the vast majority of occurrences arise from unexpected or changed circumstances, it is often advisable to err on the side of utilizing the public bidding process for unpredictable contracts, to avoid the perception of circumventing the LPCL.

Professional Services

As mentioned above, there are numerous exceptions to the LPCL, which allow contracting units to procure certain types of goods and services without the need for public advertisement or bidding. One of these exceptions applies to professional services, which are not defined in the LPCL itself, but are defined by the regulations to include services performed by a person: 1) who is authorized by law to practice a recognized profession, 2) whose practice is regulated by law, and 3) who possesses knowledge of an advanced type, acquired by a prolonged formal course of specialized instruction and study distinguishable from general academic instruction.[12] New Jersey courts have recognized that the term "professional services" are no longer limited to traditional professions such as law and medicine,[13] but have held that they do not extend to contracts for things like towing and storage services, which may require special skills and training, but which fall short of the elements required by the regulations.[14]

Extraordinary Unspecifiable Services

In instances where a contract cannot be classified as one for professional services, a contracting unit may be tempted to instead utilize the LPCL's exception for extraordinary unspecifiable services, which are defined by the regulations as "services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor."[15] The use of this exception is intended be construed narrowly in favor of open and competitive bidding wherever possible,[16] but in practice, it is occasionally employed without the necessary procedure, which requires the submission of a certification to the governing body that describes the work to be done, explaining why the services cannot be reasonably described by written specifications, and describing the informal solicitation of quotations.[17]

Local Government Ethics Laws: Preemptive Measures to Stop the Conflict Beforehand

Local societies and governments have recognized the effect of a tainted government body going back to the Code of Hammurabi (circa 1754 B.C.) which included provisions punishing judges for altering decisions after receiving gifts. Likewise, modern society has developed criteria for how government officials should act when entrusted with public authority. That authority is known as the Local Government Ethics Law under *N.J.S.A.* 40A:9-22.1 *et seq.* While the Local Public Contracts Law does much to police the transaction, the Local Government Ethics Law polices the *individuals* who facilitate or authorize the transaction. Those individuals could be county commissioners, division directors or administrators, or even county or government employees.

What most people miss about local government ethics is that a local official does not need to be caught taking a bribe to have violated the ethics law. It is enough that a reasonable, informed citizen would see a financial or personal stake *capable* of impairing that official's independent judgment. The statute's prohibitions are narrow and concrete. An office, employee, or an immediate family member of that employee, may not hold an interest in a business, or engage in any transaction, that substantially conflicts with the proper discharge of public duties.[18] Officials may not use their office to secure special favors, may not vote or act on matters in which they or their family have a financial or personal stake, and may not accept a job or service, paid or unpaid, that would compromise independent judgment.[19]

Consider a hypothetical. Commissioner Smith, a local commissioner who sits on the volunteer board of a nonprofit that provides after-school programming, also sits on the parks committee. The county's parks department proposes a resolution awarding the nonprofit a facilities-use grant. Smith, in an abundance of caution, reaches out to county counsel for advice on whether he should refrain from participating in the vote. County counsel advises that he has done nothing wrong yet, but that he should refrain from participating in the vote on the award.

Suppose, however, that Smith never went to counsel. He remains at the table through the parks department's presentation on the grant, speaks in favor of raising the award from the $15,000 originally proposed to $40,000, and then casts the deciding vote at the dais when the resolution passes. Smith gained nothing monetarily from this resolution. No cash changed hands. No family member holds a financial stake in this matter and Smith has nothing to gain from the grant award. If anything, Smith is accomplishing what he sought to do when he ran for public office— to use his network and knowledge of the community to give opportunity to organizations that provide meaningful, perhaps even critical, public benefits. That intuition, however, is mistaken.

Smith has violated the Local Government Ethics Laws. New Jersey courts have interpreted the LGEL to mean that public officials must step aside when their private affiliations, *even non-financial ones*, create a reasonable risk of divided loyalty.[20]

Counsel serving in an advisory role to a public entity must be ready to act even where there is no voluntary disclosure. In other words, counsel must be proactive. Thus, when an official fails to seek guidance—as Smith did in the second scenario—counsel may be placed in the position of addressing the consequences of that failure, whether through internal review, referral to the Local Finance Board, or defending the public entity against challenges to the validity of the action taken.

By far, the biggest warning sign of neglect of ethical considerations is absence of consultation. Good counsel is well-utilized counsel. Clients serving as public officials must view their counsel as a resource. When utilized properly, counsel can navigate the gray areas and prevent well-intentioned officials from inadvertently undermining public confidence. For example, annual, mandatory ethics training for elected officials, board, and commission members, and senior staff could be crucial. Rather than a one-time onboarding formality, it should be a recurring session that walks through recent Local Finance Board opinions and real hypotheticals like the Commissioner Smith scenario above. Officials retain far more from a concrete story with a wrong answer than from a recitation of statutory text. Local counsel should also have a clear, low-friction process of taking ethics inquiries so that officials like the first version of Smith, who did the right thing, are rewarded with a quick answer rather than discouraged by a formal, intimidating process. None of these measures require dramatic institutional change. What they require is a shift in posture from an ethics function that responds to alleged wrongdoing after it has happened already to one that is baked into the ordinary rhythm of how a public body does business. That shift is where counsel provides the greatest value. ■

Endnotes

1. Office of the State Comptroller, *Fiscal Year 2025 Annual Report*, November 2025, nj.gov/comptroller/news/docs/2025-OSC-Annual-Report.pdf
2. N.J.S.A. 40A:11-2(1)
3. N.J.S.A. 18A:18A-2(a)
4. N.J.S.A. 52:34-6
5. *Terminal Constr. Corp. v. Atl. Cnty. Sewerage Auth.*, 67 N.J. 403, 409-410 (1975)
6. *Meadowbrook Carting Co. v. Borough of Island Heights*, 138 N.J. 307, 325 (1994)
7. N.J.S.A. 40A:11-4(a)
8. N.J.S.A. 40A:11-3(c)
9. State Treasurer, *Adjustment to Public Bidding Threshold*, July 1, 2025, nj.gov/treasury/purchase/adjpubbid05.shtml
10. N.J.A.C. 5:34-8.3(d); N.J.A.C. 5:34, App'x.
11. N.J.A.C. 5:34-8.4
12. N.J.A.C. 5:34-1.2
13. *Nachtigall v. New Jersey Turnpike Authority*, 302 N.J. Super. 123, 135 (App. Div. 1997)
14. *N.E.R.I. Corp. v. N.J. Highway Auth.*, 147 N.J. 223, 237 (1996)
15. N.J.A.C. 5:34-1.2
16. N.J.S.A. 40A:11-5
17. N.J.A.C. 5:34-2.3
18. N.J.S.A. 40A:9-22.5(a)
19. N.J.S.A. 40A:9-22.5(c), (d), and (e)
20. *Grabowsky v. Township of Montclair*, 221 N.J. 536 (2015); N.J.S.A. 40A:9-22.5

Consumer Fraud and Contractor Recovery

When Quantum Meruit Remains Available

By Jeffrey J. Rea

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It is fairly well known among members of the New Jersey Construction Law bar that New Jersey courts liberally construe the Home Improvement Contracting Regulations[1] promulgated by the New Jersey Division of Consumer Affairs pursuant to the New Jersey Consumer Fraud Act,[2] as well as the requirements under the New Jersey Contractors Registration Act[3] to afford broad legal protection for homeowners from breach of contract claims by home improvement contractors who fail to comply with the requirements under the CFA and/or CRA.[4] While home improvement contractors would be wise to take all necessary measures to comply with the HICR to avoid being potentially barred from recovering monies due for their services under a breach of contract cause of action, contractors who have furnished home improvements in good faith and with a reasonable expectation to be paid for same may, under certain circumstances, pursue recovery for their work pursuant to the equitable remedies of *quantum meruit* and/or unjust enrichment. These equitable remedies have been afforded home improvement contractors despite the rigorous regulations promulgated under the CFA and CRA which are primarily designed to void contractual rights of a non-compliant home improvement contractor, in furtherance of New Jersey's public policy to safeguard homeowners from potentially unscrupulous practices within that industry.

Quantum meruit is a form of *quasi*-contractual recovery and "rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. ...Courts generally allow recovery in *quasi*-contract when one party has conferred a benefit on another, and the circumstances are such that to deny recovery would be unjust."[5]

Quantum meruit is a form of *quasi*-contractual recovery and "rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another."

To recover under a theory of *quantum meruit,* a plaintiff must establish: "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefore, and (4) the reasonable value of the services."[6] To demonstrate the element of unjust enrichment for recovery in *quantum meruit*, "a plaintiff must show both that defendant received a benefit and that retention of that benefit without payment would be unjust," that the plaintiff "expected remuneration" and the failure to give remuneration unjustly enriched the defendant.[7]

In *Marascio, d/b/a A.M. Electric v. Campanella*,[8] the plaintiff sought to recover monies allegedly due under a contract for electrical improvements made to the residential portion of a mixed use property. The property owner claimed there was no written contract and that the property owner never requested the plaintiff to perform any additional work which was part of plaintiff's monetary claim.[9] Notwithstanding its finding that the contractor had clearly violated the CFA by performing certain of the home improvements without a written contract, the *Marascio* court stated that recovery in *quantum meruit* may be asserted to determine what services were actually provided with the property owner's knowledge, as well as the reasonable value of those services (citing to *Weichert Co. Realtors v. Ryan*, *supra*.). The *Marascio* court thus held that *quantum meruit* was a remedy available to a contractor like *Marascio* who could not enforce an oral agreement for home improvements prohibited by *N.J.S.A.* 56:8-151(a) and *N.J.A.C.* 13:45A-16.2(a)(12).[10]

The case of *Gemini Restoration Inc. v. Leone*[11] provides a more in-depth analysis of when a *quantum meruit* claim can be successfully asserted by a home improvement contractor in the face of that contractor's failure to comply with the HICR and otherwise not adhere to its obligations under the CFA. The disputes in *Leone* were premised upon a written contract to perform extensive renovations to Leone's multi-million-dollar house in Spring Lake. A previous contractor had begun the work but had not completed the job, and Leone thereafter retained Gemini to finish the project. Under the supervision of Christine Miseo, an architect whom Leone had retained to oversee the renovation project, Gemini completed extensive renovations. Leone paid for most of Gemini's work, except for a portion of Gemini's last invoice. Although Miseo had approved the work reflected in Gemini's invoices, Leone withheld payment, claiming that Gemini had charged excessive labor rates. Gemini filed suit against Leone for the balance due, and Leone filed a counterclaim alleging that the contract Gemini was seeking to recover upon violated the Consumer Fraud Act, *N.J.S.A.* 56:8-1 to -20, as well as claiming that some of Gemini's work was defective. In 2007, after reviewing the parties' respective summary judgment motions, the court dismissed Leone's CFA counterclaim on equitable grounds, but did not dismiss his affirmative defense that Gemini's suit was barred because the contract violated the CFA.

The Leone case proceeded to a jury trial in 2009. At the close of Gemini's evidence, Leone moved for an involuntary dismissal of the complaint pursuant to *Rule* 4:37-2(b). The court dismissed the breach of contract claim because the contract violated the HICR and the CFA, but allowed Gemini to proceed in *quantum meruit* for the reasonable value of its services. The jury returned a $92,000 verdict in Gemini's favor.

On appeal, Leone asserted that the trial court erred in dismissing his counterclaim, allowing Gemini to proceed in *quantum meruit*, failing to properly instruct the jury on *quantum meruit*, denying Leone counsel fees under the CFA, and awarding Gemini counsel fees under the Offer of Judgment rule. The Appellate Division in Leone affirmed the trial court's verdict *in toto*. Based on *D'Egidio Landscaping v. Apicella*[12] and

Messeka Sheet Metal Co., Inc, v. Hodder,[13] the Appellate Division held that the trial judge correctly concluded Leone was equitably estopped from asserting a CFA claim. The Appellate Division quoted the trial judge's statement "[I]n this case . . . you have a plaintiff who's completed all of the work and at the end, after everything is all done, the [defendant] essentially argues that the [CFA] has not been complied with." Accordingly, the *Leone* court upheld a home improvement contractor's right to recover in *quantum meruit* for services furnished with the homeowner's knowledge, consent and/or acquiescence.

In *D'Egidio, supra*, the Appellate Division had previously held that a homeowner was equitably estopped from invoking the CFA against a contractor based on the contractor's alleged violations of the HICR.[14] The *D'Egidio* court reached this conclusion because the homeowner, who was the contractor's relative, had induced the violation by insisting that a contract was not necessary due to their family relationship and longstanding friendship. Later on, however, a dispute arose and the homeowner claimed he should be able to avoid paying the balance of the contractor's bill because the contractor had violated the HICR. In rejecting the homeowner's agreement, the *D'Egidio* court stated as follows:

> We are satisfied, nonetheless, that defendant is not entitled to the protections offered by the statute and the regulation because it was his own conduct which caused the violation. Were we to conclude that defendant is entitled to invoke *N.J.A.C.* 13:45A-16.2(12). the result would be to permit defendant to retain, at no cost, the fruits of D'Egidio's labor when he was the one who insisted a written contract was unnecessary in light of their longstanding relationship. It would also reward defendant with the remedial provisions of the consumer fraud statute. We consider such a result unacceptable; one who induces the alleged wrongdoing should not benefit as a result of it.[15]

However, the Appellate Division in *D'Egidio* also recognized the remedial purpose of the CFA and the usual rule of liberal construction applied to CFA claims. However, the court concluded that allowing this particular plaintiff to invoke the CFA would be inconsistent with the purpose of the act:

> We are satisfied...that in the unique circumstances presented here, we are not... weakening the scope of the statute's protective reach when we apply the doctrine of estoppel. Defendant is, as the trial court noted, in the home improvement business himself as a painter and as chargeable for knowing the applicable regulations as plaintiff. "The consumer fraud statute is aimed at promoting truth and fair dealing in the market place." Permitting this defendant in the context of this case to invoke the statutory remedies afforded by the Consumer Fraud Act would not further those laudable legislative objectives.[16]

In *Community Fire Water Restoration v Rothschild,*[17] the Appellate Division affirmed the trial court's decision to award a home improvement contractor *quantum meruit* relief, following the equitable principals articulated in *Marascio.* The Appellate Division stated as follows:

> The trial court [in this case] concluded CFW [Community Fire and Water Restoration] was entitled to $34,938.29...as the reasonable value for the services invoiced, which 'substantially discounted' the invoiced amount, finding that CFW did the work expecting payment and Rothschild would be unjustly enriched if not required to pay the reasonable value (citing to *Marascio v. Campanella*, 298 *N.J. Super.* 491, 504-05 (App. Div. 1997)).[18]

However, a home improvement contractor's ability to seek recovery in *quantum meruit* for services rendered is not without limitation. In *Houston v Lieber,*[19] the Appellate Division cautioned that, while *quantum meruit* claims are potentially available to home improvement contractors, they still run the risk of being foreclosed from recovery where their dealings with a homeowner violate the CFA. In *Scibek v. Longette,*[20] which involved an approximately $3,000 bill for car repairs, the court declined to apply equitable estoppel against the customer where there was no evidence of any inequitable conduct by the customer in inducing a violation of the CFA. However, a "somewhat mechanical and rigid" rule precluding a contractor from any recovery, due to a technical CFA violation, was arguably inappropriate

> where the consumer has obtained the benefit of his bargain and attempts to use the Act as a sword rather than a shield. Where, for example, there is no dispute as to the work authorized to be done and the agreed upon price, it seems highly unfair to deny the repairman any affirmative right to recover merely because of a technical, inadvertent violation of the Act's prescriptions[21]

Moreover, where a home improvement contractor's violation of the HICR exists which defeats its contractual rights against a homeowner, even where the homeowner does not have an ascertainable loss,[22] "a consumer-fraud [claimant] can recover reasonable attorneys' fees, filing fees, and related costs if that [claimant] can prove that [the other party] committed an unlawful practice, even if the victim cannot show any ascertainable loss and thus cannot recover treble damages."[23] Thus, a homeowner may recover attorney's fees and costs under *N.J.S.A.* 56:8-19 if they successfully assert a contractual defense based upon the CFA.[24]

Conclusion

For those attorneys representing home improvement contractors in New Jersey, it is recommended that they consult with their client(s) and make certain written agreements are furnished to homeowners for execution which comply with the HICR and the CFA. Such clients should also be informed of their obligation to diligently engage in business practices in conformance with the HICR, including those practices concerning the issuance of change orders and/or schedule impacts which may occur during the course of a project. However, even in those instances when your home improvement contracting client is facing a CFA violation defense or counterclaim by a homeowner, the equitable remedies of *quantum meruit* and/or unjust enrichment may still be available to compensate the client for the fair and reasonable value of its services, although there may be potential exposure to compensate the homeowner for their attorney's fees and related costs in the event of a successful contractual defense under the CFA. ■

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Endnotes

1. N.J.A.C 13:45A-16.1-16.2 (2025).
2. N.J.S.A. 56:8-1 to 20 (2025).
3. N.J.S.A. 56:8-136 to 152 (2025).
4. *Houston v. Lieber*, Docket No. A-2326-13T3(U) (App. Div. 2015).
5. *Weichert Co. Realtors v. Ryan,* 128 *N.J.* 427, 437, 608 A.2d 280 (1992) (quoting *Callano v. Oakwood Park Homes Corp.,* 91 *N.J. Super.* 105, 108, 219 A.2d 332 (App. Div.1966)).
6. *Longo v. Shore & Reich, Ltd.,* 25 F.3d 94, 98 (2d Cir.1994) (internal quotations and citations omitted); *accord Weichert Co. Realtors, Ltd., supra,* 128 *N.J.* at 437-38, 608 A.2d 280. See also *Starkey, Kelly, Blaney & White v. Estate of Nicolaysen,* 172 *N.J.* 60, 68, 796 A. 2d 238 (2002).
7. *VRG Corp. v. GKN Realty Corp.,* 135 *N.J.* 539, 554, 641 A.2d 519 (1994).
8. 298 *N.J. Super* 491, 689 A.2d 857 (App. Div. 1997)
9. In *Marascio*, the plaintiff apparently entered into a written contract with a general contractor, who was terminated during the course of the project and plaintiff continued to perform improvements beyond the contracted for scope of work with the property owner's knowledge and consent.
10. 298 *N.J. Super*, at 503.
11. Docket No. A-6171-0954(U) (App. Div. 2012).
12. 337 *N.J. Super.* 252 (App. Div. 2001)
13. 368 *N.J. Super*. 116 (App. Div. 2004),
14. *D'Egidio, supra*, 337 *N.J. Super,* at 252.
15. *Id.* at 257
16. *Id*. at 258-59 (citation omitted).
17. Docket No. A-2133-15T4(U) (App. Div. 2017).
18. *Id*. at 504-05. In applying *quantum meruit*, the trial court relied on this court's decision in *Marascio v. Campanella*, 298 *N.J. Super.* 491 (App. Div. 1997).
19. Docket No. A-2326-13T3(U) (App. Div. 2015).
20. 339 *N.J. Super.* 72, 85 (App. Div. 2001)
21. *Id*. at 82.
22. See *Thiedemann v. Mercedes-Benz USA, LLC*, 183 *N.J.* 234, 248 (2005)
23. Citing to *Cox v. Sears Roebuck & Co.,* 138 *N.J.* 2, 24 (1994); *Performance Leasing Corp, v. Irwin Lincoln-Mercury*, 262 *N.J. Super.* 23, 31, 34 (App. Div. 1993), *certif. denied*, 133 *N.J.* 443 (1993)
24. *Delta Funding Corp, v. Harris*, 189 *N.J.* 28, 49 (2006).

From the Courtroom to the Apiary

Sussex County Prosecutor Finds Peace, Purpose and Plenty of Honey

By day, **DANIEL M. PEREZ** *spends his time navigating the demands of the justice system as Sussex County's new prosecutor. Outside the courtroom, he's more likely to be found in a bee suit tending hives than behind a desk. What began as a suggestion from his wife to help pollinate their garden has grown into a passion spanning more than a decade. Along the way, Perez has become a beekeeping instructor—educating first graders as "Beekeeper Dan"—and discovered an unexpected connection between practicing law and caring for honeybees. In this conversation, he discusses how beekeeping became a lifelong hobby, what it has taught him about patience and learning and why spending time in the apiary remains the perfect antidote to the pressures of practicing law.*

What first got you interested in beekeeping, and what has kept you involved over the years?

My wife is a gardener. When we moved to Sussex County, she planted a garden and said to me one day, "You know, there really aren't many honeybees pollinating around here. Why don't you find out how to become a beekeeper?" So I took a beekeeping course offered by the Sussex County Beekeepers Association and I fell in love with it. It's a fascinating world. It's so different from sitting behind a computer screen or standing in a courtroom. Being outside in a bee suit—or even just a T-shirt and shorts—watching your bees is incredibly peaceful and calming. After I'd been keeping bees for a few years, I became an instructor for the same organization. I've been teaching honeybee biology and behavior for more than 10 years now. I'd also visit the first-grade classes at Frankford Township School as "Beekeeper Dan," wearing my bee suit and talking to students about honeybees, pollination and the effects of pesticides on the environment.

Describe for the layperson how the beekeeping and honey harvesting process works.

Beekeepers are also called apiarists, and the place where we keep our bees is called an apiary. Depending on how much backyard space you have, you could have anywhere from one to several hundred or even thousands of hives. The hives are the actual boxes the bees live in. Typically, a hive starts with two boxes, and then we add additional boxes on top for the honey we harvest. Those are called honey supers. We'll usually put the honey supers on in May, the bees will fill them with honey, and then we'll take them off in late June or July. Inside each super are 10 frames of honey. The bees cap the honey with wax, so we first have to remove those caps. We basically take a hot knife and cut through the wax cappings, then put the frames into a spinner, which uses centrifugal force to spin the honey out of the honeycomb. After that, we put the empty frames back into the box, put the box back on the hive, and hope the bees give us another honey crop in the fall. I've had anywhere from one hive to as many as six. It really depends on how much time I have to devote to it. One of the great things about becoming a beekeeper is that you very quickly become a student of meteorology, biology, ecology and chemistry, because all of those fields play a role in the everyday life of a beekeeper. If there's a lot of rain in the spring, you'll have more flowers and, potentially, a stronger honey flow. If it's cold through late March and early April, it takes the bees longer to get going in the spring, so you'll have a later harvest. And if someone is spraying pesticides nearby—especially if there are farms in the area—that can have a significant impact on your bees. There are so many different factors you have to understand, and over

time you become conversant in all of them. That's part of what makes beekeeping so fascinating.

How much honey do you typically collect?

Anywhere between 50 and 100 pounds of honey. I'm a hobbyist, so that's actually a fairly modest amount. There are beekeepers who harvest hundreds of pounds of honey every year. New Jersey also has professional beekeepers who make their living at it. In addition to harvesting honey, many provide pollination services. You've probably seen flatbed trucks carrying beehives from one farm to another. They'll place the hives in a blueberry field, for example, so the bees can pollinate the crop. Once that bloom is finished, they'll load the hives back onto the trucks and move them to the next location that's ready for pollination.As for our honey, we eat some of it, but it's far more than our family could ever use. My wife usually puts a post on Facebook letting people know it's available, and it's typically gone within a day or two.

Beyond the honey, what has beekeeping given you personally?

The greatest benefit to being a beekeeper is that you always have something to talk about because everybody has questions about honeybees. Everyone seems to have a story about them, too. People are fascinated by bees, and for good reason. They've been around for millions of years and they'll likely be here long after we're gone. One of the greatest joys for me as a parent was bringing all three of my children into the apiary on a regular basis. They helped me inspect the hives, extract the honey and treat the colonies for mites, which are tiny parasites that feed on developing honeybees. It was a wonderful way for us to step away from the television, phones and laptops, get out into nature and spend time together as a family. From an environmental standpoint, honeybees play an incredibly important role. Roughly one out of every three bites of food we eat depends, at least in part, on pollinators. Crops like watermelons, cantaloupes, cucumbers and many fruits and vegetables rely on pollination. Honeybees are among the most important agricultural pollinators, so we owe them a tremendous debt. The world—and our food supply—would look very different without them.

Do you find that beekeeping provides a mental reset from the pressures of your job?

Always. Whenever I'm stressed or restless, I'll go out to my apiary. I'll bring a folding chair, sit down next to my hives and just watch the bees come and go. I don't even suit up for it because you really don't need to. Honeybees are generally very gentle. They'll land on me, realize I'm not a flower, and then go on their merry way. It's incredibly meditative to sit there and watch them. Seeing them fly in with nectar and knowing they're turning it into honey is fascinating. It's about as far removed from sitting behind a computer or being in a courtroom as you can get. It's funny, we have a saltwater pool and we're always fishing bees out with the pool net or gently scooping them up with our hands. Even that's a peaceful experience. You can hold a tired bee in your hand while it dries itself off, fans its wings, and then, a couple of minutes later, flies away. They're truly one of the most fascinating creatures I've ever encountered. Of course, I've been stung many times. I lost count during my first year. That's really the only downside of beekeeping—you are going to get stung. It doesn't matter how careful you are.

Are there qualities that make someone a good beekeeper—like patience, observation or preparation—that also make someone a good prosecutor?

Absolutely. You have to be patient. You have to be willing to learn, to experiment and to learn from your mistakes. And you have to be willing to ask for help. Even after all these

years, I still run into situations where I'll call one of my former mentors and say, "What do you think about this? I'm dealing with something I've never seen before." There's always someone who's been doing it longer than you, and there's always something new to learn.You also have to enjoy it. The moment it feels like nothing but work, it's no longer fun, and you're probably not going to stick with it. The same is true of practicing law. No matter what area you're in, you're constantly learning. In my field, I might get a DNA case. At the beginning, I may not know much about the science, but a few months later I've immersed myself in it and can speak knowledgeably about DNA testing and the terminology that goes with it. Beekeeping is the same way. One season, you might know very little about mites or how to treat them. By the end of that season, you've learned about different mite treatments, when to use them and how to apply them in your hives. Both professions reward curiosity and a willingness to keep learning.

What advice would you give someone who's interested in becoming a beekeeper?

My advice is always the same: take a course and find a mentor. Nearly every county has a local beekeepers association, and that's the best place to start. Learn the fundamentals before you get your first hive and connect with experienced beekeepers who can guide you. It's very difficult to be successful without a mentor because you're going to run into challenges as a new beekeeper. Having someone you can call with questions or ask to look at your hives makes all the difference. In that sense, beekeeping is a lot like practicing law. You're much more likely to succeed if you have a good mentor who's willing to share their knowledge and help you along the way. ■

NJSBA Events

Celebrate Service, Inclusion and Professional Excellence

Throughout the spring and summer, the NJSBA brought members of the legal community together for service projects, educational programs, networking opportunities and celebrations of diversity and achievement. Events ranged from free legal assistance for veterans and support for community organizations to Pride and Juneteenth observances, career outreach and recognition of outstanding professionalism.

Young Lawyers Division Leads Summer Service and Networking Events

The NJSBA Young Lawyers Division hosted another successful Wills for Warriors event at the Passaic Police Academy in Wayne. Volunteer attorneys, paralegals and law students provided free estate planning services to 17 veterans and their spouses. The YLD also organized a networking fundraiser benefiting Volunteer Lawyers for Justice's New Jersey Survivors Justice Project, which provides legal services and support to survivors of domestic violence and sexual assault

NJSBA Celebrates Pride Month with Flag-Raising Ceremony

The NJSBA marked Pride Month with a flag-raising ceremony on June 3. NJSBA President Norberto A. Garcia joined members of the Association's LGBTQ Rights Section in raising the rainbow Pride Flag over the New Jersey Law Center in New Brunswick, where it remained on display through the end of the month. Speaking at the Law Center, Garcia said Pride Month is an opportunity to reflect on the LGBTQ community's history and its ongoing pursuit of equality.

NJSBA Supports Danny's Pantry 5K

NJSBA President Norberto A. Garcia joined members of the legal community at the Danny's Pantry 5K on June 14 in West Orange, supporting a fundraiser that benefits Danny's Pantry, a food pantry established by the U.S. District Court for the District of New Jersey in memory of Daniel Anderl. Garcia participated in the walk/run alongside attorneys, judges and community members to help raise awareness and support for the pantry's mission of assisting individuals and families facing food insecurity and the federal reentry program.

NJSBA President Speaks to Bergen County Prosecutor's Office Summer Interns About Legal Careers and Professional Growth

NJSBA President Norberto A. Garcia visited the Bergen County Prosecutor's Office in Hackensack to speak with summer interns about the benefits of joining the Association and the opportunities available to those pursuing careers in the legal profession. Before more than two dozen interns, including several law students, Garcia emphasized that their experience at the prosecutor's office offers valuable exposure to the justice system and the critical role attorneys play in serving the public.

NJSBA Celebrates Diversity at Annual Summit

The NJSBA hosted its annual Diversity Summit on June 25, bringing together members of the legal community for a day of thoughtful discussion on the future of the profession through the lens of equity, inclusion and accessibility. Programs explored topics ranging from the state's role in civil rights investigations to navigating power dynamics in law firms, government agencies and corporations. Attendees also heard from special guest Antonio Romanucci, the nationally recognized trial attorney who represented the families of George Floyd and Sonya Massey.

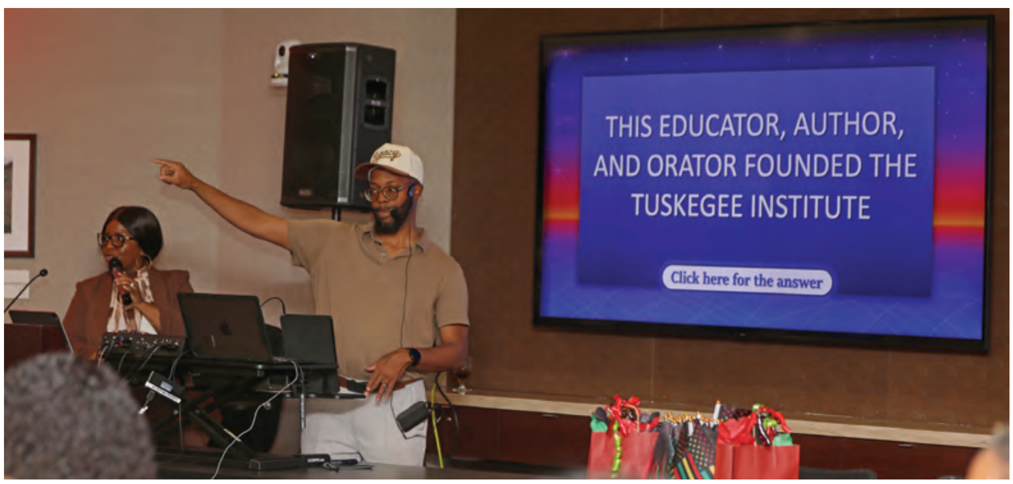
Commission on Professionalism Recognizes Three Distinguished Attorneys, Dozens of Professional Lawyers of the Year

The New Jersey Commission on Professionalism in the Law honored three distinguished attorneys and dozens of others at its annual awards ceremony recognizing excellence, integrity and professionalism in the legal profession. Top honors at the ceremony went to:

Jeffrey J. Greenbaum, who received the *Daniel J. O'Hern Award*, given to an attorney who exhibits integrity, competence, high ethical standards, career achievement and service to the bar; **Joyce M. Maxberry Malliet**, recognized with the *Charles J. Hollenbeck Award*, which honors an attorney in a governmental agency or nonprofit organization; and **Nancy Eberhardt**, who received the *Lighthouse Award* for her community-based efforts that served as an inspiration to colleagues.

Minorities in the Profession Section Hosts Juneteenth Celebration

The NJSBA Minorities in the Profession Section welcomed members of the legal community and guests to the New Jersey Law Center for an evening of trivia, fellowship and reflection in recognition of Juneteenth. Observed annually on June 19, Juneteenth commemorates the day in 1865 when Union troops arrived in Galveston, Texas, and announced that enslaved African Americans were free. The event provided an opportunity to honor that history while reflecting on the ongoing pursuit of equality and justice within the legal profession and society.



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The NJSBA is Here to Help

The NJSBA Member Assistance Program connects our members—and anyone else in their household—to trained, experienced mental health professionals and resources.

At the heart of the program, provided through industry leader Charles Nechtem Associates, is 24/7 access to a mental health professional with at least seven years of experience. The professional will counsel callers and help them find resources. If needed, they will help people find an accessible clinician who is accepting patients. Members are eligible for **up to three** in-person counseling sessions per issue. They can also access **unlimited text, phone and email support** and search an extensive Wellness Library with 25,000 interactive resources to improve their personal and professional lives.

Contact MAP Counselors Anytime

1-800-531-0200
Phone counseling services are available 24 hours a day, 7 days a week, 365 days a year with immediate access to clinicians. Access to English and Spanish speaking therapists, with other languages upon request.

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Available from the Apple App Store and Google Play.

Connect via the website, charlesnechtem.com
Click "Member Login" and log in as a new user. The employer is NJSBA.

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The Member Assistance Program is a benefit of membership.

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NEW JERSEY LAWYER

The New Jersey State Bar Association invites members to submit subject area articles for *New Jersey Lawyer*

OCTOBER 2026
New Lawyers

DECEMBER 2026
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FEBRUARY 2027
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APRIL 2027
A Living Legacy: New Jersey and the Evolution of American Law

JUNE 2027
Technology

AUGUST 2027
Family Law

OCTOBER 2027
Labor and Employment

EDITORIAL CALENDAR

Authors interested in submitting articles pertaining to a scheduled topic should contact **Mindy Drexel**, legal publications editor, at **mdrexel@njsba.com** for information on the specific needs for the issue.

Article assignments are typically made from six to nine months in advance and deadlines for completed articles are usually three months in advance of publication. Due to space limitations we cannot always run every article, unless we have discussed the topic with an author first.

Please note: *New Jersey Lawyer* is always looking for law-related articles and creative material unrelated to the topic assigned to a specific issue.

Departments such as **Ethics and Professional Responsibility, Practice Perfect, Diversity, Equity and Inclusion, Tech Tips, View From the Bench, What I Wish I Knew** and **Writer's Corner** are always open to new authors.

Magazine topics are subject to change.

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