

# WLIB NEWSLETTER

## WOMEN LAWYERS IN BERGEN

Volume 13

Winter 2025

Welcome to the Winter 2025 WLIB newsletter. Thank you to all who have contributed to this edition and, as always, thank you to Linda Spiegel our editor in chief.

WLIB has been very busy. We had lunch with the new law clerks and the Bergen County judges, we held a resume seminar for the law clerks, we had a CLE specifically addressing women's financial concerns, and we started the process of making our own WLIB wine.

The piece de resistance of our Fall season lineup up, however, was our Breast Cancer Rally in conjunction with the Susan Lucianna Breast Cancer Fund. This was our second rally and it was a HUGE success. The rally is the brainchild of Past WLIB President Diane Lucianna who is the Director of the Susan Lucianna Breast Cancer Fund. The Fund has been operational for 15 years and is named for Susan, Diane and Nancy Lucianna's sister. Susan was a paralegal at the Lucianna Law Firm and was diagnosed at 38. She went through chemotherapy, surgery, and radiation. She did well for 6 years but the cancer returned. Susan went through more chemotherapy and radiation, but ultimately succumbed to the disease at 48. Susan's family remembers her as brave, optimistic, and selfless.



Donations to the Susan Lucianna Breast Cancer Fund are 100% applied to serving the community of breast cancer patients who have quality of life needs and need financial support. Over 100 women have benefitted from this generous organization, and they have received over \$150,000.

This year, WLIB and the Fund generated \$23,000 in donations! We are so grateful to everyone who donated and everyone who made this event a success!

Special recognition goes to **Diane Lucianna** who had a vision for this event and followed through; **Nancy Lucianna** who ran the silent auction; our sponsors: **Tavern 61, Danonna's Pizzeria, Callahans Lawyers Service, Columbia**

**Bank, Sunmed CBD Shop, Englewood Hospital, Morillo Eye Center, Daisy Events NJ, Primetime TShirts/Craig Weis Esq.;** US Congressional Candidate and Ridgewood resident **Mary Jo Guinchard;** NJ Assemblywoman **Lisa Swain;** **County Commissioners Zur, Amoroso and Ortiz;** golf pro and motivational speaker **Debra O'Connell;** **Englewood Hospital's Nurse Navigator;** survivor **Lynne Feldman, Esq.,** and **Kohar Boyadjian, Esq.,** who sold her Armenian cookbook with all profits going to the charity. Many thanks to all the volunteers who helped with making this a successful event.

The great success of the Breast Cancer Rally should remind us all that taking care of our mental and physical health is so very important. We wear many hats as lawyers – men and women, alike. We are mothers, fathers, sons, daughters, spouses,

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### WLIB Membership

To renew or begin your membership with WLIB please go to [www.womenlawyersinbergen.org](http://www.womenlawyersinbergen.org).

If you have any questions regarding membership, please contact Kohar Boyadjian, Esq., Membership Chair at 201-968-5800 x 213 or [kohar@damelegal.com](mailto:kohar@damelegal.com).

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# Navigating the 2024 Amendments to New Jersey's Open Public Record Act: Key Changes and Implications for Access and Compliance

By Walter M. Luers, Esq. & Christina N. Stripp, Esq.

On September 3, 2024, the 2024 amendments to the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 (“OPRA”), which was signed into law on June 5, 2024 by Governor Murphy, became effective.

This article discusses a few of the most important implications of these amendments of which practitioners should be aware, including those that set important deadlines, and those which change how practitioners will be able to use OPRA going forward.

## ***1. Changes to Mandatory Fee-Shifting***

In a major change, the Legislature removed mandatory fee-shifting for all prevailing requestors. Under the amendments, “[a] requestor who prevails in any proceeding **may** be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6 (prior to these amendment, the language was “shall”) (emphasis added). If a court finds that a public agency “unreasonably denied access, acted in bad faith, or knowingly and willfully violated” OPRA, then the award becomes mandatory.

Based on early returns, public agencies are taking the view that this language means that an award of counsel fees to prevailing plaintiffs is discretionary. But such a view is contrary to New Jersey cases that have interpreted “may” language in remedial legislation, such as the New Jersey Civil Rights Act. In that context, “[f]ees are the rule, rather than the exception, and the special circumstances exception should be applied only in unusual cases.” WHS Realty Co. v. Town of Morristown, 323 N.J. Super. 533, 578 (App. Div. 1999). We expect that this issue will be presented to New Jersey’s appellate courts or possibly even our Supreme Court.

## ***2. Limitations on the Use of OPRA by a Party to a Legal Proceeding***

In a second major change which will have sweeping implications for practitioners who rely upon OPRA in aid of discovery, the new post-amendment OPRA bars parties to a “legal proceeding” from “request[ing] a government record if the record sought is the subject of a court order, including a pending discovery request[.]” N.J.S.A. 47:1A-5(g).

Requestors are now required to certify “whether the government record is being sought in connection with a legal proceeding” and must identify that proceeding for their request to be processed. However, the amended OPRA does not define “legal proceeding,” and this requirement applies regardless of whether the public agency is involved in the proceeding. While OPRA does define a “party” to a legal proceeding as including “any party subject to a court order, attorneys representing that party, and any agents acting on behalf of that party,” this broad definition will make it challenging for requestors to circumvent the new restrictions to

use OPRA as a discovery tool. Consequently, OPRA’s utility for discovery during active legal proceedings will likely be greatly reduced, if not eliminated entirely.

Workarounds do exist, however. For instance, it stands to reason that the use of OPRA prior to the initiation of a legal proceeding should increase. Once a case is underway, practitioners can choose to utilize subpoenas to obtain documents and information from public agencies. Additionally, since the recent OPRA amendments do not restrict requests made under the common law right of access, this option remains a viable tool for obtaining public records.

## ***3. New “Commercial Purpose” Category***

The amendments introduce a new category of requestor, known as the “commercial purpose” requestor, which is defined by the intended use of the requested records. N.J.S.A. 47:1A-5(f).

All requestors must now certify in their OPRA request whether the record will be used by themselves or another person for a commercial purpose. A requestor who “intentionally” fails to certify that a request is for a commercial purpose may be fined a civil penalty of \$1,000 for the first offense, \$2,500 for the second offense, and \$5,000 for each subsequent offense. The Superior Court has jurisdiction to impose these penalties. N.J.S.A. 47:1A-11.

This category encompasses not only businesses but also individuals who plan to use the records for “sale, resale, solicitation, rent, or lease of a service,” or for any purpose that could result in profit through commission, salary, or fees. However, exemptions apply: journalists, news organizations, educational, scientific, and scholarly institutions, government entities, political candidates and committees, labor unions, and nonprofits that do not sell the records for a fee are not classified under this “commercial purpose” category. Additionally, some signatories to collective bargaining agreements may be exempt as well. N.J.S.A. 47:1A-1.1.

One issue raised by the commercial purpose rule, and which has yet to be decided by any court, is whether an attorney in private practice who makes a request on behalf of a client has a “commercial purpose,” if the client does not have a commercial purpose.

In reality, the consequences of a request being categorized as “for a commercial purpose” are somewhat limited. First, the deadline for most records custodians to respond to commercial requests will be 14 business days, rather than 7 business days, and some fire districts will have an additional 7 business days (for a total of 21 days to respond). Second, for a premium of “two times the cost of the production of the record,” commercial requestors may demand that records custodians provide the records within 7

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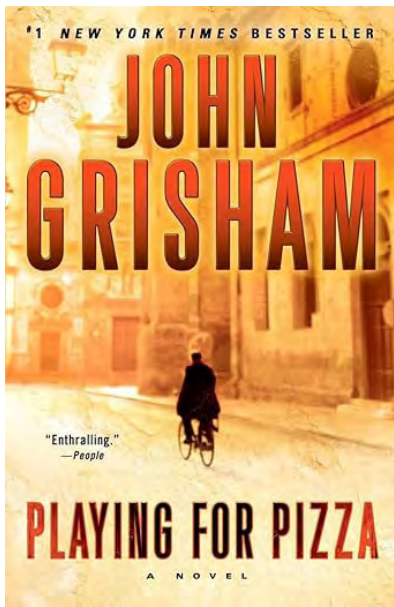
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Barbara B. Comerford is a Lawline Faculty member who presents national seminars on ERISA LTD and Disability insurance claims. She has also conducted seminars throughout the country on Social Security Disability law.





## Book Review

By: Tamra Katcher, Esq.

### Playing for Pizza

By John Grisham

We all know Grisham to be a prolific author of legal thrillers but did you know he has written several books that are not legal fiction? I have read some of these books: *Bleachers* about a

high school football team, *Calico Joe* about a son whose father was a professional baseball player; and *Playing for Pizza*.

In *Playing for Pizza*, Rick Dockery is a washed up, never-so-great professional quarterback. He has bounced around to so many professional teams over his short career that he has difficulty keeping track. Unfortunately, the one thing he is most remembered for is ruining his team's 17-0 lead in the AFC Championship Game against the Broncos. Rick was a third-string quarterback for the Browns and when the 1<sup>st</sup> and 2<sup>nd</sup> string were injured Rick was called up. There was no doubt in anyone's mind that the Browns would prevail. Rick gets the ball, drops

back, and throws a beautiful pass...to the wrong team – an interception! ...then a touchdown, then a few more points by the Broncos...and Cleveland's win becomes a loss and Rick goes down as the worst quarterback in the history of football. During the last moments of the game, Rick is sacked – hard – and ends up being carted off the field and taken to the hospital – one concussion too many and Rick remembers nothing.

Everyone else remembers it well and Rick is black balled from the game. He wants to keep playing – somehow – but his agent, Arnie, is at a loss. Until – Arnie finds the Panthers are looking for a quarterback and they are willing to bring Rick on, no questions asked, immediately. The Parma Panthers – in Parma, Italy, that is. He doesn't speak the language, he is anything but cultured, but he would be playing football – which is all that he knows. Rick swallows his pride and begins his adventures – professionally and personally – in Parma, Italy.

Rick's story of failure and success is a lesson for us all – be flexible in life as sometimes we have to reinvent ourselves to be happy. Sometimes we must make hard decisions to leave behind what we know in order to flourish.

This was a great book – a quick read...perfect for those lazy weekends in front of the fireplace as cooler weather takes hold. I hope you enjoy it as much as I did.

Until next time. 🍷

## Restaurant Review

By: Kathleen A. Hart, Esq.



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I assume many of you are like us and enjoy driving to see the many places which comprise the great state in which we live. There are many sights to visit, be it down the shore or along the Delaware River or up in Sussex County. If you are ever near the Delaware River, just north of Route 80, you might want to try the Buck Hill Brewery and Restaurant.

Buck Hill Brewery and Restaurant is located in what seems to be a residential area. There is a large parking lot and a nice

outdoor area, which I believe would be great in nice weather. When you enter, there is a full bar. The Buck Hill brews its own beer but also has offerings for those who may not like craft beer. There is a small bright dining area downstairs. The walls are light wood, and the décor is what I would call hunter chic.

We sat upstairs, which was just as bright with the light wood walls. Tables surround an opening, which looks down into the area below. Our server brought our menus and took our drink order. My husband opted to try a flight of the craft beer, where he could sample a few of the homemade libations. I opted for a soda.

The menu is a mix of pub food and fine dining with a lot of options from which to choose. For starters, we ordered the Mediterranean Mezze (\$19.00). This is a plate of homemade hummus, baba ghanoush, cheese and olives served with warm naan. It was delicious and could serve more than two. Other appetizers are the Bavarian pretzel (\$14.00), which was giant sized and served on a hook with a cheese and spicy mustard, fried pickles (\$12.00), poutine (\$16.00), French onion soup (\$12.00) and a house salad (\$9.00).

The menu has a mix of sandwiches and entrees. Contrary to what you might think, my husband did not order one of

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# Past President's Dinner

September 17, 2024





# Military Divorce 101: Considerations in Representing a Party in a Military Divorce.

*By: Carmela L. Novi, Esq.*

A military divorce differs from a non-military divorce in several key ways due to the unique circumstances surrounding military life such as deployments and frequent relocations, and due to the federal laws which preempt and govern certain areas of divorce which are typically addressed by state law. For purposes of this article, the term “military divorce” is a divorce which involves one or both parties who are, or have been, in active military service during the marriage. The divorce process itself is litigated in the applicable state court having jurisdiction over the matter<sup>1</sup>, not in a military court. While this article is not meant to provide a complete overview of all of the nuances of a divorce involving a military serviceperson, it does seek to provide the reader with a basic understanding of the primary areas of particular concern to an attorney representing a party in such a divorce.

**What laws apply?** Generally, a state’s laws govern jurisdiction over the subject matter and parties to a divorce, and over any children of the divorce; equitable distribution of assets and debts belonging to either party; and support. However, in representing a party in a divorce involving a military servicemember, it is important to familiarize yourself with the Servicemembers Civil Relief

Act (“SCRA”)<sup>2,3</sup> and the Uniformed Services Former Spouses’ Protection Act (USFSPA)<sup>4</sup>

**1. Jurisdiction and Residency Requirements:** In a divorce where no service member is involved, jurisdiction over the elements of a divorce and the parties is governed by state statute, which include matters of jurisdiction and residency requirements. However, in a military divorce, a service member can file for divorce in the state where the service member is stationed, even if the service member does not meet the residency requirements of that state, due to the provisions of the SCRA. This can make it easier for military personnel to file for divorce while stationed far from their home state.

**2. Service Member’s Deployment and Absence:** The SCRA provides protection for deployed military members from having a default judgment entered against them. If a service member is deployed or stationed overseas, the court may delay the divorce proceedings until the service member is available. If you represent a client who is deployed, you may have to apply for a stay of the proceedings until they are able to participate in the proceedings. You must also familiarize yourself with the particular details regarding service of

process of active servicemembers on military bases.

**3. Division of Military Retirement Benefits:** A significant difference between a military divorce and a non-military divorce is the requirements for the division of a military spouse’s retirement benefits. In a non-military divorce, a party’s retirement benefits accumulated or accrued between the date of marriage and the marriage end-date is subject to equitable distribution (typically by way of a Qualified Domestic Relations Order, or “QDRO). In a military divorce, the division of a pension is subject to distribution pursuant to the USFSPA. A spouse may be entitled to a portion of the service member’s military pension, however, the “10/10 Rule”, as it is colloquially referred to, applies to the division of such a pension. It requires that the divorcing couple have been married for at least 10 years, and that the servicemember must have been in service for at least 10 years. In the event the non-military spouse qualifies for a military spouse’s military pension, the spouse can receive direct payments from the military, which are processed through the Defense Finance and Accounting Service (DFAS).

**4. Child Custody and Parenting Time:** While custody and parenting

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1. Generally, a child’s “home state” has jurisdiction over custody and parenting time matters. There are some limited circumstances in which custody-related issues may be addressed in Federal Court, such as in a parental kidnapping case involving a foreign country; however, those

cases are the exception rather than the norm.

2. 50 U.S.C. 3901 et seq.

3. The SCRA provides protections which apply in areas other than family law –

including stays of legal proceedings during deployment; against the entry of default judgments; interest rate reductions on debt; eviction protection; and protection against foreclosure.

4. 10 U.S.C. 1408



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# Jean Robertson Update

By: Kathleen A. Hart, Esq.

The Jean Robertson Women Lawyers Scholarship Foundation provides an annual scholarship award of \$2500.00 to a woman attending law school in New Jersey who best exemplifies the goals and ideas of the late Jean Robertson. Applications have been sent to our local law schools and the award will be made in 2025.

In Jean's memory, the Jean Robertson Women

Lawyers Scholarship was formed to raise money to assist female students attending New Jersey law schools. The scholarship is awarded to students who embody the ideals and values that Jean held and taught by example. The funds for the scholarship are made up entirely of voluntary contributions by members of the bar and others committed to honoring the work of Jean Robertson.



Congratulations to **Alexandra L. Quirke, Esq.** on being appointed as the new WLIB liason to the Young Lawyers.

Alexandra L. Quirke, Esq., is an associate with Meyerson, Fox & Conte, P.A., and practices in matrimonial law. She is admitted to practice law in the State of New Jersey. Ms. Quirke received her undergraduate degree from High Point University in 2020 and her Juris Doctorate from Seton Hall University School of Law in 2023. She served as a Law Clerk to the Honorable Jane Gallina-Mecca, P.J.F.P., in the Family Division of Bergen County Superior Court from August 2023 to August 2024. Alexandra is an active member of the New Jersey State Bar Association, the Bergen County Bar Association, the Young Lawyer's Division of the Bergen County Bar Association and Women Lawyers in Bergen County.

## Notice to Readers

When you are considering changing a vendor or are seeking a specialist, please consider those who advertise in our newsletter.

Thank you.

## Restaurant Review





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the sandwiches. He ordered the Brooklyn pasta (\$22.00). This was a healthy portion of fusilli, sausage and meatballs covered in Sunday gravy. It was very good and enough for two meals. I opted for the chicken Milanese (\$26.00). This was a perfectly cooked large chicken cutlet served with a bean and green salad. The difference is it was placed on a thin layer of deliciously rich gorgonzola sauce, which tied the entire meal together. I had the leftovers for lunch, and they were just as good. Other entrees include shrimp and rice (\$30.00), NY strip steak (\$41.00), braised short rib (\$33.00) and fish and chips

(\$21.00). There are also a variety of burgers (\$16.00-\$19.00), a chicken sandwich (\$17.00) and an eggplant sandwich (\$18.00).

We did not have room for dessert. These are standard fares including ice cream (\$8.00), a lava cake (\$9.00) and a crème brulee (\$10.00).

Our server was great. Our food and drinks came promptly but we never felt rushed. The restaurant itself can get a little loud when full. I would recommend a reservation as the place can get busy. Our service was great, and the food was good. I give it two and a half forks.

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# Real Estate Consumer Protection Enhancement Act

By: *Linda H. Schwager, Esq.*

On August 1, 2024, New Jersey Governor Phil Murphy signed into law the Real Estate Consumer Protection Enhancement Act. The overall purpose of the Act was to ensure ethical conduct in all real estate transactions between Buyers, Sellers and Real Estate Licensees. This new legislation has put into place a number of regulations with the intent of protecting both real estate licensees and their clients, most importantly, regarding transparency in commissions.

The Act requires real estate licensees to disclose how they intend to work with Buyers and Sellers in real estate transactions. Potential Buyers and Sellers are given the Consumer Information Statement on New Jersey Real Estate Relationships (“CIS”) and are required to acknowledge same. The CIS assists the client in making informed decisions regarding their relationship with a real estate broker and sales agents (also applies to rentals).

The most important protection in this new Law is the requirement of Buyers and Sellers to sign a contract with their realtor in which commissions are clearly denoted in order to

avoid deception in their transactions and ensure that each party knows who is paying the commission and how much each party will pay.

Sellers must provide a full disclosure statement of the property’s condition, known as Seller’s Disclosure, prior to the Buyer’s contractual obligation in order to protect decisions of Buyers and ensure that they have all the information about the property before buying.

At Open Houses, real estate agents are now legally required to utilize signs clearly stating who they are representing. Furthermore, the law prohibits the agents of Sellers from revealing payments in Multiple Listing Services (“MLS”) and notifying these Services about cooperative compensations if the policy of MLS prohibits such actions.

The Law also requires that every two years real estate licensees must complete education classes in order to stay engaged with new requirements and legislation as well as expand upon their professional development real estate license. 📌

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## New Jerseys Open Public Record Act

*continued from page 3*

business days.

As such, if a practitioner or requestor is unsure about whether their request fall under this “commercial purpose” category, it is likely advisable for the requestor to err on the side of caution and elect the commercial purpose.

### **4. New Retroactive Standing Requirement**

Under previous case law, anonymous OPRA requestors could not enforce their requests anonymously in court unless a specific statute, court rule, or a “compelling reason” justified it (as outlined in A.A. v. Gramiccioni, 442 N.J. Super. 276, 284 (App. Div. 2015)). The recent OPRA amendments have essentially codified this principle.

Now, for any case currently pending before the Government Records Council or Superior Court (including appeals), if the original requestor filed using an anonymous or fictitious name, they must amend their filing to provide their real name and mailing address by **December 2, 2024**, which is 90 days after the amendments’ effective date. Failure to comply with this requirement may result in the court dismissing the complaint with prejudice at the request of the records custodian.

This new requirement presents significant challenges for attorneys representing clients whose identities are protected by state or federal laws or court rules, such as students, parents of students with disabilities, and crime victims. The amendment obliges both plaintiff and defense attorneys to examine their ongoing OPRA cases to assess whether they need to comply with this disclosure requirement. Attorneys must then consider

options: amending complaints to include the name and address of protected individuals, requesting permission to file under seal, seeking alternative relief, or potentially withdrawing the complaint altogether to avoid compromising protected identities.

### **5. Special Service Charges**

The recent amendments also significantly changed how special service charges are handled when public agencies respond to records requests.

Previously, if an agency imposed special service fees, it had to justify the cost, showing that the fee was necessary to fulfill the request (especially if extensive work or resources were needed, like in the case of large or complex data retrievals). Now, however, these special service charges are considered “presumptively reasonable.” This change makes it more difficult for requestors to challenge the fees, as they must gather enough evidence to prove that the fee imposed by the agency is excessive or unjustified.

The practical effect of this amendment is that public agencies are less likely to face financial disputes over these fees, potentially encouraging them to deter extensive or repeated requests by setting higher service charges.

Walter M. Luers, Esq., is a partner of Cohn Liffand Pearlman Herrmann & Knopf LLP. He practices in the areas of complex employment litigation, commercial litigation, and access to public records. Christina N. Stripp, Esq., is an associate of Cohn Liffand Pearlman Herrmann & Knopf LLP. She practices in the areas of commercial litigation, construction litigation, appellate litigation, and access to public records. 📌



# WLB Law Clerk Luncheon

September 20, 2024



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My latest trip included a few firsts – taking a long-distance train, visiting the city of Savannah and traveling alone with my 12-year-old daughter. I thoroughly enjoyed all three! Amtrak is a cost-effective way to travel – a seat to Savannah costs \$120-200 per person. We did not have a sleeper car but made the best out of our coach seats (Tip: bring a good neck pillow, blanket and eye mask). We left Newark Penn Station in the afternoon and arrived in Savannah early the next morning (there were a few stops along the way). The Savannah train station is located about 15-20 minutes from downtown, so it was necessary to take an Uber or taxi to the city. If you prefer to take the quicker route to Savannah, non-stop flights from Newark are only about 2.5 hours.

Savannah is a great city for tourists – it's highly walkable, has great shops and restaurants and there are lots of historical sites to visit. Our first stop upon arrival was breakfast at J. Christopher's – a nice breakfast/lunch spot good for adults and kids. We then headed on a trolley tour which took us around the

city. Our tour guide explained how the city was founded by James Oglethorpe as a colony in 1733. He is credited with designing Savannah's famous grid pattern with many squares. The city's 22 squares are all beautiful spots with gorgeous oak trees, benches to sit and relax and many have historic statues and fountains. As a result, the city is extremely walkable and we found it very easy to navigate. (Tip: wear good sneakers – most of the streets in Savannah are cobblestone) The abundance of live oak trees with hanging Spanish moss throughout the city is both unique and breathtaking at times.

We passed several cemeteries on the trolley tour. Did you know that Savannah is considered a Necropolis? It is believed that thousands are buried under Savannah's streets, buildings and homes. In 2001, the American Institute of Parapsychology deemed Savannah one of the most haunted cities in the United States. If you are interested in ghost stories and haunted sites, Savannah is the place for you! There are numerous ghost tours – both walking and via trolley – available for tourists (you can even

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## Weekend Getaway

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take a ghost tour in a hearse). We took part in a 2-hour walking tour at night that was fantastic. The tour included a stop in front of the home of the grisly murder made famous by the book and subsequent movie *Midnight in the Garden of Good and Evil*. If you're a fan of the book and/or movie, you must experience one of Savannah's many ghost tours!

During our second day in Savannah, we visited the Birthplace of Juliette Gordon Low, the founder of the Girl Scouts. She started the Girl Scout movement in Savannah in 1912. Her birthplace is a well-preserved historic home open for public tours and provides special programs for Girl Scouts from all over the country – both young and old! Just a few blocks away, we visited Congregation Mikvah Israel, the third oldest Jewish congregation in America. The synagogue includes a museum that holds many interesting artifacts related to the founding of Savannah, including a 15<sup>th</sup> Century Torah (the oldest in America) brought over by the first settlers. This is a must see for history buffs!

We visited the First African Baptist Church during our third day in Savannah. The church was organized in 1773 which makes it older than the United States! The church was an important connection in the Underground Railroad and Civil War. It also served as the largest gathering place for whites and blacks during segregation. This is another must see for anyone visiting the city! Just a block away is City Market – an open area of four city blocks full of shops, restaurants and art studios. This is the perfect place to grab lunch or a coffee and enjoy the laid-back atmosphere of Savannah!



Our final day in Savannah was our busiest! We started the day at Old Fort Jackson which is a 15-minute drive from downtown Savannah. The fort is located on the Savannah River and is a great place for photos. The fort was built in the 19<sup>th</sup> century and used by the Confederate Army during the Civil War. There are cannons and small arms firing demonstrations daily.

Just down the road from Old Fort Jackson is the causeway to Tybee Island. Tybee Island is 3 square miles and is Georgia's easternmost point. We enjoyed lunch at the Crab Shack, a unique waterfront dining experience. After enjoying fresh seafood, we spent time watching the gators in Crab Shack's gator lagoon and visiting the rescued parrots in the aviary. The Crab Shack is a great spot for both kids and adults – we could have stayed all day but we had a boat to catch! Next, we boarded a boat at Captain Derek's Dolphin Adventure Tour. Although it was windy and the water was choppy, it was a sunny day and we were able to see several pairs of dolphins. Captain Derek did a great job explaining about the ecosystem and resident dolphin pod. We also got to see Tybee Island from the water – including the Tybee Island Lighthouse which is one of only a handful of eighteenth century lighthouses still in operation in North America. We would love to experience Tybee Island's beaches in the summer!

Savannah's unique architecture and rich history are enhanced by the Savannah College of Art and Design, more commonly known as SCAD. In addition to being a top-rated art and design school, SCAD has been responsible for revitalizing more than 100 buildings in Savannah. Be sure to check out the SCAD Museum of Art – it opened in 2011 and is a premier contemporary art museum.

I wish we had time to explore more of Savannah's historic sites and vibrant museums and restaurants, but we were able to get a good taste of the city known as the Hostess of the South in just a few days. Savannah really is a low county wonderland! 🐦





# Ralley Against Breast Cancer Nov. 1, 2024

On Friday November 1, Women Lawyers in Bergen co-hosted their second Rally Against Breast Cancer in conjunction with the Susan Lucianna Breast Cancer Fund. Past President Diane Lucianna organized and ran the event and Nancy Lucianna organized and ran the silent auction. Sponsors provided food, tshirts, balloons and giveaways and included Tavern 61, Danonna's Pizzeria, Callahans Lawyers Service, Columbia Bank, Sunmed CBD Shop, Englewood Hospital, Morillo Eye Center, Daisy Events NJ, Primetime TShirts/Craig

Weiss Esq.

Diane emceed the event and meaningful, inspiring speeches were made by US Congressional Candidate and Ridgewood resident Mary Jo Guinchard, NJ Assemblywoman Lisa Swain, County Commissioners Zur, Amoroso and Ortiz, golf pro and motivational speaker Debra O'Connell, Englewood Hospitals Nurse Navigator, WLIB President Tamra Katcher, survivor Lynne Feldman, Esq., and several others.

Nancy Lucianna ran the silent auction and a beach condo vacation,

Virgin Islands vacation, golf foursome, and opera tickets were auctioned off and raised \$6975 for the charity.

Kohar Boyadjian sold her Armenian cookbook with all profits going to the charity. She also auctioned off a breast cancer Nomination bracelet donated by Massoyan Jewelers.

Local business owners, attorneys, judges and courthouse staff attended and many donated. The rally generated over \$23,000 for the charity, which will help many local breast cancer patients that can't pay their bills. Thank you! 🙏



*Dedication*

This book is dedicated to my family and friends. Thank you all for being such a special part of my life. May this cookbook bring happiness to everyone in the kitchen and out.

The net proceeds of this book will be donated to the Susan Lucianna Breast Cancer Fund.





# Bergen County Bar Assoc. Gala September 26, 2024

in honor of WLIB member and President of the BCBA, Laura Sutnick, Esq.



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## It's Time to Bring the National Labor Relations Act Into the 21<sup>st</sup> Century

by

**Beverly A. Williams, Esq.<sup>1</sup>**

After years of decline in union membership, more than two years of COVID-19 and working remotely, and the impact of the Great Resignation, there is cautious optimism about a resurgence of unionism. The possibility of more union activity, and the negative financial impact that strikes have had on businesses and workers, warrant reassessment of whether business as usual is beneficial to either labor or management.

However, if there is to be a sustainable resurgence of unionism, more than lip service will be needed to embrace all those who seek to move forward to bargain collectively regardless of backgrounds, opinions, and interests. Intentionally and authentically embracing diversity, equity, and inclusion holistically is essential to revitalize the labor movement.

Anticipatory planning, and mandatory, more effective use of Alternative Dispute Resolution (ADR) procedures should be adopted whether or not the National Labor Relations Act (NLRA) is amended. Additionally, working to improve labor-management relationships, and extending the terms of National Labor Relations Board (NLRB) leadership in furtherance of agency decision-making stability should be adopted by amendment, rule or regulation.

The vagaries of political elections which result in changes in federal administrations and agencies, and the full-frontal attacks currently on diversity, equity and inclusion are harbingers that call into question whether workforces will continue to reflect the eclectic mosaic of our population. American workers and workplaces are better served when they see people who look like them in administrative and leadership roles in unions, companies, the NLRB and its regional offices.

A review of potential sources of new union members is

worthwhile. Significantly, in 2021 the number of female-identifying union members declined by 182,000 to 6.5 million workers. Following a historic trend, at 11.5 percent, Black workers had a higher union membership rate than White workers at 10.03 percent, Hispanic workers at 9.0 percent, and Asian workers at 7.7 percent.<sup>2</sup>

From 2020 to 2021, union membership rates declined by 0.4 percent for White workers, by 0.8 percent for Black workers, by 0.8 percent for Hispanic workers, and by 1.2 percent for Asian workers. The 2021 rates for Whites, Blacks, and Hispanics are little or no different from 2019, while the rate for Asians is lower.<sup>3</sup>

Age is also an important demographic. Workers aged 45 to 54 had the highest union membership rate in 2021, at 13.1 percent. Younger workers between the ages of 16 and 24 had the lowest union membership rate, at 4.2 percent.<sup>4</sup>

Admittedly, organized labor is now more diverse and broadly based than in the 1950s. In 2018, of the 14.7 million wage and salary workers who belonged to a union, 25 percent were female-identifying, and 28 percent were Black.<sup>5</sup>

Whether unionism will resurge or simply sputter, there is union activity in interesting and surprising areas. Congressional staffers have begun an organization drive toward unionism.<sup>6</sup> Starbucks employees in Oxford, Mississippi, and reportedly in more than 100 stores nationally have made moves toward becoming unionized.<sup>7</sup> Apple Store employees are also “quietly” exploring whether to unionize.<sup>8</sup> More recently, Dartmouth men’s basketball voted to become the first college team to unionize.<sup>9</sup>

Quite simply, as the Writers Guild of America, SAG-AFTRA and other unions have found, there is strength in numbers, and unions know it. 🐾

1. Beverly A. Williams is a Partner, and Chair of the Labor and ADR practices at Wong Fleming, P.C., Princeton, NJ.

2. U.S. Bureau of Bureau of Labor Statistics, Economic News Release, Union Members Summary, January 20, 2022.

3. *Id.*

4. *Id.*

5. History.com Editors, History, last updated

September 1, 2020, originally published October 29, 2009. <https://www.history.com/topics/19th-century/labor>

6. Rebecca Shabad, Congressional staffers announce effort to unionize on Capitol Hill, THE HILL, Feb. 4, 2022.

7. Sara DiNatale, Mississippi Starbucks Workers Want a Union in Oxford, MISSISSIPPI TODAY, Emmerich News, Mar. 7,

2022.

8. Reed Albergotti, Some U.S. Apple Store employees are working to unionize, part of a growing worker backlash, THE WASHINGTON POST, Feb. 18, 2022.

9. Money Watch, CBS News Updated on: March 5, 2024, <https://www.cbsnews.com/news/dartmouth-college-basketball-union-players-vote/>



# Announcements

Condolences to **Marguerite Simon, J.S.C. ret'd**, on the passing of her husband, Donald Frederick Howard on September 22, 2024. Marguerite and Don were introduced by one of Judge Simon's law clerks. They were married for more than twenty years. Contributions in memory of Don should be made to the Michael J. Fox Foundation for Parkinson's Research.

Congratulations to **Felicia Farber, Esq.** on her First Place win for her book **FAKE OUT** in the 2024 Hollywood Book Festival in the Artificial Intelligence Category and First Runner-Up in the Young Adult Category!

## Military Divorce

*continued from page 8*

time issues litigated as part of a divorce filed in New Jersey will be governed by New Jersey law, a service member has rights under the SCRA which govern in circumstances in which orders are entered respecting the custody and parenting time of children of that service member while deployed. Pursuant to section 3938 of the Act, if a court renders a temporary order for custodial responsibility for a child based solely on a deployment or anticipated deployment of a parent who is a service member, the court shall require that the temporary order shall expire not later than the period justified by the

deployment of the service member.

### **5. Spousal Support (Alimony) and Child Support.**

In a non-military divorce, a spouse's right to alimony is based upon the state's alimony statute. Factors like the length of the marriage, the financial needs and resources of both parties, and the recipient spouse's ability to support themselves are considered. There are no special considerations tied to the employment type of either spouse and Courts will generally simply utilize an obligor's gross pay when calculating the amount of the alimony obligation.

Military pay differs from civilian income and includes  
*continued on page 24*

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# WLB Holiday Party

December 12, 2024





# WLB Holiday Party

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# WINTER 2025 LEGISLATIVE UPDATE

By: *Carmela L. Novi, Esq.*

For your information, helpful websites:

[www.njleg.state.nj.us/](http://www.njleg.state.nj.us/) the New Jersey Legislature's site; enables you to find bills by subject and track where any proposed bill is in the process.

[www.judiciary.state.nj.us/](http://www.judiciary.state.nj.us/) the New Jersey judiciary site; includes a legislative news site that lists new laws by subject (e.g., family, criminal), bills on the Governor's desk and legislative updates. There is also a report opinions site where recent New Jersey Supreme Court and Appellate division opinions are posted.

[www.ca3.uscourts.gov](http://www.ca3.uscourts.gov). The United States Court of Appeals (Third Circuit) discontinued issuing printed Slip Opinions. They are now available free of charge through the Court's website as noted.

## **PENDING FEDERAL LEGISLATION OF INTEREST**

**Update from Fall Report: Kids Online Safety Act ("KOSA") (S.1409) and Children and Teens' Online Privacy Protection Act (S. 1418)** After passing the U.S. Senate by a 91-3 vote, the bill went to the House of Representatives for review (i.e., "Mark-up") within the Energy and Commerce Committee. Changes to the Senate version have been made; no further action taken at this time. (See, <https://www.congress.gov/bill/118th-congress/house-bill/7891/text>) The proposed amendments to the 1998 Children and Teens' Online Privacy Protection Act also went through a committee "mark-up" session without further action. <https://www.congress.gov/bill/118th-congress/house-bill/7890/all-actions?overview=closed#tabs>

## **PENDING STATE LEGISLATION OF INTEREST**

**A4730 - Bill Expanding Admission of Prior Act Evidence** – introduced September 12, 2024. This bill would permit the admission of evidence of prior acts of domestic violence, child abuse, and sex offenses in prosecutions for those offenses and would effectively amend N.J.R.E. 404(b). No vote has been taken to move the bill out of the Assembly Judiciary Committee.

## **ADMINISTRATIVE DETERMINATION BY THE SUPREME COURT - DURATION OF DISBARMENT FOR KNOWING MISAPPROPRIATION OF FUNDS**

On October 15, 2024, The New Jersey Supreme Court announced a relaxing of the rule, set in 1979, requiring the permanent disbarment of an attorney for knowing misappropriation of funds. With this change in position, New Jersey joins 42 other jurisdictions in providing a path to readmission after disbarment on those grounds.

In 1979, in In re: Wilson, 81 N.J. 451 (1979) the Supreme Court declared that any lawyer who knowingly misappropriates client funds, under any circumstances, will be disbarred. The attorney in Wilson had no prior discipline, and none of her clients lost money. She cooperated with the Office of Attorney Ethics (OAE), was contrite and took prompt remedial measures.

The Supreme Court subsequently reaffirmed the "Wilson rule" in 2022 (250 N.J. 581) but a review was undertaken to determine whether the disbarment should be permanent. A Special Committee was convened, which recommended creating a path to readmission, consistent with the policies governing the issue in most states. In its decision, the Court noted that such a disbarred attorney may apply for admission after 5 years, subject to certain conditions and evidentiary burdens which would need to be met, as well as post-admission supervision.

## **AWAITING DECISION**

**In Re Supreme Court Advisory Committee on Professional Ethics Opinion No. 735** (Lawyer's Use of Internet Search Engine Keyword Advertising). In 2019, The Advisory Committee on Professional Ethics (ACPE) issued Opinion 735, in which it found that an attorney could engage in the practice of purchasing a Google Ad-word or keyword that is a competitor lawyer's name, in order to display the lawyer's own law firm website in the search results. On September 24, argument was heard by the NJ Supreme Court in support of reconsideration of Opinion 735 on behalf of the NJSBA.

## **SAMPLING OF RECENT DECISIONS**

**Family Law – Domestic Violence - Satisfying the Second Prong of Silver v Silver**

S.G. v. D.R.M., No. A-11-23 (Appellate Division; Decided September 20, 2024) (Not Approved for Publication)

Facts: Plaintiff S.G. appealed the denial of her application for a final restraining order against defendant D.R.M., her former paramour. The parties dated for about seven months when Defendant engaged in a five hour long sessions of physical assault on the Plaintiff which included strangulation; threats to kill Plaintiff; ripping of Plaintiff's hairpiece; holding her down; breaking her glasses; causing her to lose consciousness. The Court denied the entry of a final restraining order basing the decision on the fact that the parties had no children together and therefore no need to maintain or be in contact and therefore the second prong of Silver v. Silver was not present.

Held: Reversed and remanded. The Court determined that even though the parties did not have a prior history of domestic violence, the brutality of the predicate acts, along with their duration, were sufficient in keeping with other statutory factors to warrant the entry of an FRO. On appeal, the court reversed and remanded. The court held that the brutal and violent assault committed by defendant, despite no prior history of domestic violence, as well as other facts, was sufficient to warrant the entry of a Final Restraining Order.

## **Legal Malpractice**

John Miranda v. Rinaldi, No. A-3720-22 (Appellate Division; *continued on page 23*)

# Winter Legal Report

*continued from page 22*

Decided October 1, 2024) (Not approved for publication.)

Facts: Plaintiffs Victor Miranda and John Miranda were the children of decedent Modesto Miranda, who died testate in 2018. When Victor and John discovered that their father's Will named their sister Maria as the sole heir, Victor Miranda signed a retainer agreement with Defendants for representation in a Will contest; however, John did not sign the Retainer Agreement and his signature line on the Retainer was crossed out and replaced with "N/A". Modesto's Will was admitted to probate; by the time Plaintiff's moved to intervene in the probate action, they discovered that they were time-barred.

John and Victor brought suit against the Defendants based upon malpractice. Defendants filed a motion for summary judgment dismissing John's claims against the Defendant, which was granted. John appealed the dismissal of his action against the Defendants.

Held: As John Miranda never signed the retainer agreement with Defendants, he was not their client and therefore no duty of care existed towards him. Therefore, dismissal of John's action was proper. The trial court found no duty was owed by the Defendants to Plaintiff, as there was no attorney-client relationship or reliance by Plaintiff on Defendants' representation. The trial court emphasized that Plaintiff, who had experience with legal counsel, did not act as if he believed Defendants. 🐾

## President's Message

*continued from page 1*

caregivers to the old and young, all while working in the stressful and fast-paced legal community. It is important – even IMPERATIVE – that you take time for yourself. You do not need to go to a spa or on vacation to give yourself some downtime (although that is always wonderful). You just need to unwind and unplug...even for a few brief minutes every day. If you are not well, then you cannot help others.

The digital age in which we live provides a plethora of resources to assist

in resetting ourselves and giving ourselves a metaphorical or literal hug. A small investment in doing some breathing exercises at your desk, in the car, or before bed can provide you with huge benefits for body and soul. Even easier, get up from your desk and go for a walk! Get out there and get some fresh air! A small 5-10 minute investment in a walk around the block can help your mind and body reset for the rest of your day. Finally, I encourage you to stretch. We are sedentary beings in our fast-paced world of law. Get up and MOVE or find one of those apps and do some chair yoga to stretch your hips and back.

Our collective mental and physical health is more important than anything else. We do not get a second take at life. We are given our bodies and minds and we have to care for them as if they were the feather in Forrest Gump. It is fleeting. It is precious. Give yourself that gift of time so that you are your best self to continue being all those things to all those people.

I wish you all the best in the coming months. Happy Holidays to all. Be well. Until next time...namaste.

Tamra Katcher, Esq.  
President



**Victoria Pekerman, Esq.**

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# Military Divorce

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allowances and benefits such as housing allowances (BAH), subsistence allowances (BAS), and hazard pay or combat pay. Hazard and combat pay cannot be considered for alimony purposes; however, they are includable for the purpose of calculating child support obligations. You should also check local (state) rules for which components of a service member's pay are includable for the purpose of calculating child support.

- **Basic Pay vs. Allowances:** In many cases, the court may consider basic pay (the service member's standard salary) as well as other allowances, depending on how they are structured in the divorce decree.
- **VA Disability Pay:** If a service member receives disability compensation from the **Veterans Administration (VA)**, that amount is generally exempt from being used for alimony payments. This is important because VA disability benefits cannot be garnished for alimony.
- **Post Divorce Enforcement of Alimony Obligations:** Military service members are still obligated to pay alimony, and enforcement mechanisms, such as wage garnishments, can be applied to military pay if necessary (this is through Defense Finance and Accounting Service, or DFAS). However, if the service member is receiving disability benefits, those cannot be garnished for alimony.
- **Enforcement of Child Support obligations:** Enforcement of a child support order against a service member who is frequently relocated can be complicated, but it does not absolve the service member from the obligations. If a military service member is stationed overseas or is being deployed abroad, child support payments can still be enforced under the International Child Support Enforcement Act. The Uniform Interstate Family Support Act (UIFSA) allows child support orders to be enforced across state lines and even internationally in some cases. The service member's base pay and other benefits may still be subject to garnishment for child support, even if the service member is stationed outside the United States.

- **Modifications of alimony and child support obligations:** If the service member's financial situation changes due to military service (e.g., deployment, relocation, or retirement), the service member can petition the court for a modification of the alimony order. Courts will consider the service member's income and the circumstances of the change in pay when determining if a reduction in alimony is appropriate.

There are also special considerations for military spouses who may be eligible for certain Survivor Benefit Plans and benefits related to the service member's military service, and where those eligibilities might end with a divorce.

Where a party is a retired military service person, there are also limitations on the amount of support which can be ordered from the military pay pursuant to USFSPA.

**6. Health Insurance and Benefits:** In a non-military divorce, a party can only be insured on their spouse's employer-sponsored health insurance plan through the entry of a Judgment of Divorce. The right to be insured on a spouse's employer sponsored health insurance can then only continue for a specified-post-judgment period through the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). A military spouse may be entitled to health care benefits through TRICARE (the military's health insurance program) after a divorce, but only if the couple was married for at least 20 years, and the service member served for 20 years. This is known as the "20/20 rule".

Military divorces and civilian divorces differ in several important substantive and procedural aspects. When preparing to represent a client involved in a military divorce, attention must be given to the particular nuances and rights a service member, and their spouse, will have to confront in deciding when, and how, to initiate the dissolution of their marriage. I hope that this article has given you the general overview you need to start you on the path to understanding what has to be accounted for in order to provide proper legal advice and representation to a party in a military divorce. 🙌

# WLIB

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### Calendar of Events

#### January 2025

Wednesday, January 29

12-2 pm "Ethical Reasons for Protecting Networks" WLIB FREE CLE, via Zoom, please register on the WLIB website

Thursday, January 30

6pm - Annual Talk with Wellness Coach Mary Ellen Zung (virtual)

#### February 2025

Tuesday, February 18

5:00 pm WLIB Board Meeting via Zoom

#### March 2025

Tuesday, March 18

5:00 pm WLIB Board Meeting via Zoom

Thursday, March 20

TDB - Armenian Night at Kohar's House

#### April 2025

Tuesday, April 18

5:00 pm WLIB Board Meeting via Zoom

Board Meetings are currently being held via Zoom and are open to all members.

If you wish to attend the board meeting go to <https://www.womenlawyersinbergen.org/> login as a member and you will find the Zoom link for the board meeting.

### WLIB is proud to announce its new Mentorship Program!

In this unique program, interested students from Seton Hall Law will fill out a detailed questionnaire to pinpoint the types of law they are interested in and whether they have any specific concerns related to their future careers. An email will then be sent to the WLIB membership asking for volunteers who are best suited to assist the student.

Once a match is made, the mentor and mentee will be given each other's contact information. Mentors are encouraged to reach out to their mentees once a month to touch base, and to invite them to WLIB events. Once enough students are matched with a WLIB member, we will set up a date to have an in-person reception for all current (and future!) mentees and mentors. In future years, this reception will also include past mentors and mentees.

I encourage everyone to participate as we are positive that this program will increase the number of younger attorneys who join WLIB, and foster a supportive community for future young lawyers. If you have any questions or suggestions for this program, please reach out to me at any time.

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