

True Counsel

Issue 34
Summer 2012

Per Committee on Attorney Advertising Ethics Opinion 42, this advertising is not approved by the New Jersey Supreme Court.

SZAFERMAN LAKIND NAMED TO NEW YORK TRI-STATE AREA LIST OF TOP LAW FIRMS

The Mercer County, NJ based law firm of Szaferman Lakind and its attorneys continue to achieve recognition for their outstanding work within the legal profession. Recently the firm was named to the Lexis Nexis® Martindale Hubbell® list of The New York Area's Top Ranked Law Firms.

The 2012 list, recently published in New York Magazine, is drawn from law firms consisting of 10 or more attorneys with offices in New York, New Jersey or Connecticut. The Firm received this recognition for having at least 25% of its attorneys awarded Martindale-Hubbell's highest rating of AV Preeminent™. "Only 283 law firms in the Tri-State area have achieved this ranking, and we are proud to be in this very select group of law firms," said Barry Szaferman, Managing Partner of Szaferman Lakind.

In addition, a third of Szaferman Lakind's attorneys were designated 2012 Super Lawyers® or Rising Stars. These include:

Super Lawyers®

Arnold C. Lakind
Barry D. Szaferman
Brian G. Paul
Craig J. Hubert
Michael R. Paglione
Jeffrey K. Epstein
Daniel S. Sweetser

Super Lawyers®

Rising Stars

Robert P. Panzer
Benjamin T. Branche
Lindsey Moskowitz Medvin

Business Edition Super Lawyers®

Barry D. Szaferman
Richard A. Catalina Jr
Daniel S. Sweetser

Martindale-Hubbell™ AV Rated Attorneys:

Arnold Lakind
Barry Szaferman
Brian G. Paul
Craig J. Hubert
Daniel S. Sweetser
Daniel J. Graziano, Jr.
Jeffrey K. Epstein
Robert A. Gladstone
Michael Brottman
Nathan M. Edelstein

"A law firm is only as strong as its individual attorneys. We are very proud of the large number of our attorneys who received the Super Lawyer designations, and Martindale-Hubbell's highest rating of AV Preeminent" said Szaferman.

PRE-MARITAL AGREEMENT SET ASIDE IN ARBITRATION



Brian G. Paul of our matrimonial department was recently successful in having a pre-marital agreement set aside resulting in our client receiving approximately \$150,000 more in equitable distribution than if the pre-marital agreement had been enforced. Our client, the wife,

was married to an attorney. Approximately one month before the wedding ceremony, the husband drafted a pre-marital agreement, and presented it to our client, who did not sign it until the week of the wedding. The wife, who was initially represented by another firm, attempted to set aside the agreement on the basis that she had been coerced into signing it because of the close proximity of the wedding ceremony, and that she did not have legal representation at the time of signing. The Judge scheduled the matter for trial to resolve various disputed facts. Approximately three weeks before trial, the wife, who was not happy with her attorney, asked Brian to represent her.

After agreeing to represent the wife, Brian was able to convince the husband's attorney that it would be more cost effective for the parties to resolve the issue through binding, non-appealable arbitration, than to proceed through the court system where there was a high likelihood of appeal. Arbitration is an alternative dispute resolution practice where the parties select their own Judge to resolve their dispute outside the judicial system, with the arbitrator's decision then being confirmed and entered by the Court. The arbitrator's award has the same effect as if the Judge

had decided the case, except that the parties have the ability to make the arbitrator's decision final, and non-appealable, thereby bringing the litigation process to an end in a more expeditious fashion.

At the arbitration hearing, Brian was able to successfully set aside the pre-marital agreement by advancing a technical argument that the wife's prior counsel had not asserted. Pursuant to N.J.S.A. 37:2-33, there are certain prerequisites that must be met for an agreement to be considered a valid Premarital Agreement under New Jersey law. One important prerequisite is that the agreement have a detailed schedule of assets and liabilities of both parties attached to it at the time of signing, so that there can be no dispute later regarding whether an individual had fully disclosed their financial circumstances at the time of signing. In this case, the husband had attached a Statement of Assets and Liabilities that was dated three weeks after the wedding, meaning it could not have been attached at the time the wife had signed it. Although the husband argued that he had simply updated the balances after the marriage and there was an earlier version of the schedule attached when the wife signed the document, the arbitrator agreed with Brian that without the husband being able to physically produce the earlier version, it was impossible for the arbitrator to determine whether there had been full disclosure. Accordingly, the arbitrator set aside the agreement, accepting Brian's argument that it failed to meet the formality requirements of New Jersey's premarital agreement statute necessary for it to be enforceable. Ultimately, our client received approximately \$150,000 more in equitable distribution than if the pre-marital agreement had been enforced.

Brian, a partner with the firm, practices exclusively in the matrimonial area of the law, and has effectively represented clients before the New Jersey Supreme Court, Appellate Division, Superior Courts of New Jersey and the Federal Court system. Brian is one of the few attorneys in New Jersey who has earned the title Certified Matrimonial Law Attorney, meaning that our State's highest court has recognized him as an expert on divorce and family law matters.

In 2007, 2008, 2009, 2010, 2011 and 2012, after a selection process based upon peer voting and credentials research aimed at identifying the top 5% of all attorneys in the State of New Jersey, a blue ribbon panel named Brian a "Super Lawyer™". In 2009, the blue ribbon panel compiling the Super Lawyers™ list identified Brian as one of the Top 100 Super Lawyers™ in New Jersey. Brian was the only Mercer County Family Law Attorney in the Top 100, and one of only two attorneys in the County to be included in the Top 100. In 2006, Brian was honored to be included on the New Jersey Law Journal's "40 under 40" list. In addition, Martindale-Hubbell™ has given Brian its highest rating of "AV Preeminent" in both of his practice areas - Family Law and Appellate Practice.

Dan Sweetser Obtains Unanimous Jury Verdict in Pregnancy Discrimination Case



In late January, Dan Sweetser obtained a unanimous jury verdict in favor of a Hamilton, New Jersey company accused of pregnancy discrimination by a former employee. The employee alleged that she was fired by Dan's client because she was pregnant at the time of her discharge.

During the five day trial, Dan was successful in proving to the jury that the employee was fired for misconduct and that her pregnancy played no role whatsoever in the company's decision to discharge her. The case was tried in the Superior Court of New Jersey for Mercer County.

Dan's client was thrilled with the jury's verdict and very pleased that Dan was able to prove to the jury that the employee's pregnancy had no bearing whatsoever on its decision to discharge her from employment.

Dan is a partner in the firm's Business Law and Litigation Group. He focuses a substantial part of his practice on the representation of clients regarding employment related matters and disputes. However, he also represents clients in the areas of business, insurance, contract, civil rights, franchise law and litigation. Dan practices in the state and federal courts of New Jersey and Pennsylvania.

WHAT AN HONOR!!?? Directors Liability Insurance Explained



By **Daniel J. Graziano**

Have you, or someone you know, been asked to serve on a Board of a for-profit or not-for-profit company? Did you feel flattered? You should. You should also be asking some questions before and after you say, "Yes."

Most importantly, you should ask if and how the position will expose you and your assets to potential claims. New Jersey provides some general protection for Board members absolving them from liability if they exercise sound business

judgment in functioning on their Board. However, the determination of reasonable business judgment is a factual one, which, if raised, will generally require that a jury or judge sitting without a jury make that determination. That means that you could be exposed to significant legal fees to successfully raise such a defense, even though you might ultimately be found not to be culpable. Though the corporate organizational documents may provide that the company or agency will defend you at their cost, with many non-profit groups the availability of funds to provide such a defense may be problematic.

Adequate insurance—Directors Liability insurance—is the only effective way to protect you from both the legal expenses of defense as well as liability for claims for damages. You should ask what kind of coverage is in force at the organization you are considering

serving and, if you are already on the Board, you should be sure that coverage is evaluated professionally at least every four or five years. The reason for that is that the types of exposure and available coverage may change over time. For example, ten years ago it was rare to have employment practices insurance. Five years ago insurance for HIPAA violations and computer security breaches were not generally available and affordable.

Your current insurance broker may not be keeping up with your needs or product availability. An independent review by an attorney experienced in corporate governance issues, can help to limit your exposure to liability so that you can provide such vital public service. Here at Szaferman Lakind, we have a team of attorneys who have spent years practicing in the field of corporate governance, business management and associated legal issues.

JUDGE LINDA R. FEINBERG JOINS SZAFERMAN LAKIND



Linda R. Feinberg joined the firm as of May 1, 2012. Judge Feinberg has had a distinguished judicial career, most recently serving as the Assignment Judge for the Superior Court of New Jersey, Mercer Vicinage. Previously Judge Feinberg served as the Presiding Judge in the Family Part, Mercer Vicinage and in various Municipal Courts in Central New Jersey. Judge Feinberg is the 2012 recipient of the ADR Practitioner of the Year Award, which is co-sponsored by the New Jersey State Bar Association and the New Jersey Association of Professional Mediators. She has served as Chair of the Supreme Court Committee on Complementary Dispute Resolution since 2004.

“We are extraordinarily pleased to welcome Linda to our firm. The breadth of Linda’s experience will add strength to several of our practice areas including litigation, land use and mediation” said Barry Szaferman, Managing Partner of Szaferman Lakind.

“Over the past thirty years Szaferman Lakind has built a highly successful firm with a team of exceptional attorneys and I am thrilled to be working with them. I’m excited about the prospect of participating in the future growth and success of the firm” said Judge Feinberg.

Since 1985, Judge Feinberg has been actively involved in the formulation of mediation practices in New Jersey. In her position at Szaferman Lakind, she is available to provide mediation services, consultation and advice in land use and redevelopment matters, government related applications and issues, complex civil litigation and family matters.

Judge Feinberg and her husband of 38 years are the proud parents of three sons, Adam, Matthew and Ben. Judge Feinberg is an avid reader and enjoys macro photography, hiking, biking and kayaking. She is actively involved in animal rescue and has five adopted dogs.

Judge Linda R. Feinberg was honored by the New Jersey Association of Conflict Resolution at a luncheon on June 1st.

Szaferman Lakind Practice Areas:

Business
Business Organizations and Transactions
Class Action Lawsuits
Commercial and General Litigation
Commercial Leasing
Corporate and Banking Finance
Criminal Defense
Eminent Domain

Environmental
Environmental Law
Foreign Trade Zone
Insurance Coverage
Intellectual Property
Labor and Employment Law
Matrimonial
Municipal Court

Personal Injury
Real Estate and Land Use
Solar Development and Renewable Energy
State and Federal Appeals
Tax Trusts and Estates
Transportation Law
Workers’ Compensation
Zoning

Firm Recognition

Bob Lytle Receives Mercer County Bar Association's Professionalism Award



Bob Lytle, a partner at Szaferman Lakind, recently received the Mercer County Bar Association's Professionalism Award, which comes as no surprise to his many colleagues and friends throughout the County. Bob, who has been with Szaferman Lakind since 2003, has enjoyed great success in both the public and private sectors.

That year Bob was offered a job as a Deputy Attorney General with the Environmental Crimes Bureau in the NJ Division of Criminal Justice. Bob went on to the Mercer County Prosecutor's Office where he worked until joining Szaferman Lakind.

Bob currently specializes in complex civil litigation and criminal defense. His civil practice includes business and commercial litigation, consumer class actions, representing victims of mesothelioma and other asbestos-related diseases, the prosecution of civil rights claims, the defense of professionals at administrative hearings and environmental litigation. Bob's criminal practice focuses on the representation of individuals, corporate officers and corporations who are subject to both traditional and white-collar prosecutions, as well as defending those charged with DWI offenses.

Bob's journey to that success in some sense started in Italy where his mother lived until she was eight years old when she and her family immigrated to Jersey City. His mother's family started a small business in Morris County and that is where Bob was raised. Bob attended Susquehanna University where he played baseball, and while he no longer plays on a regular basis, he is still an avid fan. Bob attended the University of Dayton Law School where he met his wife Molly, who was pursuing her undergraduate degree. After law school he clerked for the Honorable Ronald Graves, JSC and then attended Pace University School of Law, where he received an LLM in environmental law.

Bob, who lives in Pennington with his wife Molly and their three children, Brennan, Lauren and Avery, is the Chairperson for the New Jersey Supreme Court Committee on Character (a committee he has served on for 10 years), a trustee of The Mercer County Bar Association and often speaks on issues involving children with craniofacial syndromes.

Keep abreast of breaking news and on the Szaferman Lakind blog:

Arrest or Conviction?

Clear your record with an expungement

Written by Robert E. Lytle

Unfortunately, youthful indiscretions and isolated mistakes that we make as adults can carry unanticipated consequences which significantly limit our future opportunities. That is especially true if these errors in judgment result in an arrest or conviction for a criminal offense or violation of a municipal ordinance. If you find yourself in this type of a situation you may be in need of an expungement....

...read more at www.szaferman.blog

RECENT FIRM HAPPENINGS



Jeff Epstein spoke on May 9th at the Family Law CLE Seminar Settling Cases Safely & Effectively.

Jeff's areas of emphasis includes negotiation and trial practice of major matrimonial litigation, including divorce, custody cases, post-judgment litigation, property settlement, ante-nuptial agreements, divorce mediation, and arbitration. Jeff has been named a "NJ SuperLawyer™" from 2005-2012.



Janine G. Bauer was recently asked to speak in April at back-to-back conferences in Atlantic City and Los Angeles on the subjects of "Complete Streets" and municipal liability. "Complete Streets" is a trend engineers are following to design local streets and county roads for all users-- pedestrians, bicyclists and drivers. When the road is redesigned, senior citizens, children and people of different abilities are able to use streets with confidence.

The movement has taken hold in New Jersey because our State has a higher than average ratio of pedestrians killed in traffic crashes. Many engineers and planners wanted to try Complete Streets but were concerned about trying something new, fearing liability under the Tort Claims Act, which governs lawsuits against public entities.

Janine has studied the subject over the last several years, and offers advice and counsel to public entities on how to design streets to accommodate all users, while avoiding liability. Starting in 2012, the N.J. Department of Transportation will be adding a point to a municipal application for Local Aid if the municipality has a adopted Complete Streets policy. So far, over 30 municipalities have adopted such a policy, along with Essex and Monmouth Counties.



Ryan A. Marrone spoke on June 19th at the Mercer County Bar Association Real Estate Section CLE Seminar on Renewable Energy and Real Estate.

Ryan has over fifteen years experience representing private and public companies, including several Fortune 100 companies, in various capacities. He concentrates his practice on solar development, structured finance, land use and providing general counsel services to small and mid-sized businesses.

Visit us on the web!

Visit us online to view our new website! We have full attorney profiles, contact information, practice area descriptions and more cases.

Please visit: szaferman.com.

For more information about the firm and/or for newsletter inquiries, please contact Ryan A. Marrone at rmarrone@szaferman.com or call 609-275-0400, ext. 211

WHY REGISTER A TRADEMARK?

A trademark is any word, symbol, sound or other “device” (or any combination of the forgoing) that identifies and distinguishes a source of goods or services of one party from those of others. Trademarks, and the goodwill they represent, can be enormously valuable, e.g., APPLE, MCDONALDS, MERCEDES BENZ, GOOGLE, FACEBOOK, etc. are only a few famous, and very valuable, trademarks.



Generally, trademark rights accrue with use of the actual mark; as such, they are rightfully owned by the party first using it for the respective goods and/or services. This principle has long been recognized at common law.

That being the case, I am often asked, “why Register a mark with the United States Patent and Trademark Office?” The answer is: Registration has its benefits, which are specifically granted by the Federal Lanham Trademark Act. Such benefits include, but are not limited to, the following:

- Use of the ® symbol to denote federal Registration (the ™ symbol is to be used for marks not Registered).
- The Registration is prima facie evidence of the validity of the Registered mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the Registered mark.
- The Registration is constructive notice of a claim of ownership, eliminating any justification or defense of good faith adoption and use made after the Registration date.
- Original jurisdiction in the Federal District Courts for trademark infringement actions.
- Original jurisdiction in the Federal District Courts for claims under state common law for unfair competition when they are joined with a substantial and related claim under the Lanham Act.
- Monetary remedies as provided by the Lanham Act, including infringer’s profits, damages, and costs, and in appropriate cases, treble damages and attorney’s fees.
- The Registration is proof that the mark has acquired secondary meaning.
- The Registration becomes incontestable after five (5) years on the Principal Register upon the filing of the appropriate affidavit or declaration of continuous use and, thus, becomes conclusive evidence of the registrant’s exclusive right to use the mark, subject to certain statutory defenses.
- The Registration may be used as a basis to obtain registration in foreign countries; and
- The Registration may be filed with U.S. Customs Service to prevent importation of infringing foreign goods.

While Registration is not required to maintain ownership in a trademark, the benefits conferred by Federal Registration are numerous and significant – so much so that Registration alone increases the value of the trademark, in addition to the goodwill it represents, thereby increasing its value as an asset of the business. Every business – from an individual to a large company – should consider Registering any mark used (or intended to be used) with a good and/or service that is of any meaningful value to the business. Lionel Frank and Richard Catalina work together in our Intellectual Property Group. For more information please email lfrank@szaferman.com or rcatalina@szaferman.com.

Prenuptial Agreements - Your Answer To The “What ifs” Of The Future

When basking in the bliss of engagement and impending marriage, people often don't want to have to think about the “what ifs” of the future. And if they do, their soon to be spouse, may not. Maybe they are even afraid to raise the issue with one another, embarrassed to discuss it and unsure if it is the right thing to do. But, in today's world, where people are getting married later in life, getting married for the second or third time, and where divorce is more prevalent, we have no choice but to think about the future while living in the present.



Despite what people may think, prenuptial agreements are not taboo, they are not wrong, and they certainly do not mean that you are giving up on marriage before even saying “I do”. Rather, prenuptial agreements are a way to plan for the future and to organize your finances. It is a way to communicate the “what ifs” and ensure that you and your soon to be spouse are on the same page.

Prenuptial agreements can be crafted to address various issues. Customarily, they fall into 2 categories; the terms of settlement in the event of divorce; and the rights and liabilities of the surviving spouse in the event of death.

In New Jersey, a Prenuptial or Pre-Marital Agreement must meet certain statutory guidelines to be deemed valid and enforceable. The Agreement is guided by N.J.S.A. 37:2-31 to -41, which requires that it be in writing, with a statement of assets and liabilities annexed thereto and that it be signed by both parties. It is strongly recommended that both parties be represented by independent counsel. Furthermore, the overarching idea is that the Agreement not be deemed unconscionable at the time it is enforced. The underlying purpose of attaching a statement of assets and liabilities is to ensure a complete disclosure between the parties. After all, an individual cannot waive their right to something that they do not know exists.

With respect to the content of a Prenuptial Agreement, the statute permits parties to contract with respect to their rights and liabilities pertaining to their own property, the right to support, the drafting of will or trust documents, ownership rights regarding life insurance, choice of law and any other matter which includes their personal rights and obligations, which are not in violation of public policy. See N.J.S.A. 37-2:34.

It is no secret that there is a high level of acrimony commonly associated with divorces. Consequently, it makes sense that a well thought out, well communicated plan for support and a division of property, would be best negotiated and resolved when the parties are getting along. Moreover, a Judge has wide discretion in applying the law to the facts of each case. Isn't it best to take matters into your own hands, rather than leave them to chance in the Court?

Szaferman, Lakind, Blumstein & Blader, P.C.

ATTORNEYS AT LAW

101 Grovers Mill Road, Suite 200

Lawrenceville, NJ 08648 609.275.0400

PRESORTED STANDARD US POSTA PAID W. CALDWELL, NJ PERMIT NO. 55
