



**SZAFERMAN  
LAKIND**  
ATTORNEYS AT LAW

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COUNSEL®**

# TRUE COUNSEL®

FALL 2018

## LEGAL HIGHLIGHTS

BOB LYTLE SUCCESSFUL IN CRIMINAL DEFENSE OF JERSEY CITY POLICE CAPTAIN

MICHAEL PAGLIONE SETTLES TWO PERSONAL INJURY CASES

JEFFREY HALL PREVAILS IN TRENTON ZONING APPEAL

BRIAN HEYESEY REACHES \$100,000 SETTLEMENT IN MEDICAL MALPRACTICE SUIT

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JANINE DANKS FOX APPOINTED TO SUPREME COURT DISTRICT VII ETHICS COMMITTEE

KEITH HOVEY APPOINTED TO MULTIPLE COMMITTEES

## SZAFERMAN LAKIND NAMED TIER-1 METROPOLITAN “BEST LAW FIRM” IN FOUR PRACTICE AREAS FOR 2019

For the sixth consecutive year, U.S. News & World Report has listed Szaferman, Lakind, Blumstein & Blader, P.C. among its Best Law Firms®\*. Szaferman Lakind has been publically recognized as a Princeton Metropolitan Region Tier-1 law firm every year since 2014.

The firm’s 2019 Best Law Firms recognition includes the following practice areas:

- Commercial Litigation
- Land Use & Zoning Law
- Family Law
- Personal Injury Litigation - Plaintiffs



BARRY D. SZAFERMAN	CRAIG J. HUBERT	ARNOLD C. LAKIND	BRIAN G. PAUL	KEITH L. HOVEY	JEFFERY M. HALL
FAMILY LAW	PERSONAL INJURY LITIGATION – PLAINTIFFS	COMMERCIAL LITIGATION + LAND USE & ZONING	FAMILY LAW	COMMERCIAL LITIGATION	LAND USE & ZONING + REAL ESTATE LAW
<i>Best Lawyers in America™</i> 2016 - 2019 Lawyer of the Year 2019	<i>Best Lawyers in America™</i> 2013 - 2019 Lawyer of the Year 2019	<i>Best Lawyers in America™</i> 2009, 2011, 2014 - 2019	<i>Best Lawyers in America™</i> 2013 - 2019 Lawyer of the Year 2015, 2018	<i>Best Lawyers in America™</i> 2016 - 2019	<i>Best Lawyers in America™</i> 2019

According to U.S. News & World Report – Best Law Firms, “The U.S. News – Best Lawyers® ‘Best Law Firms’ rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys, and review of additional information provided by law firms as part of the formal submission process.”

Also noted, “All of the quantitative and qualitative data were combined into an overall ‘Best Law Firms’ score for each firm. This data was then compared to other firms within the same metropolitan area and at the national level. Because firms were often separated by small or insignificant differences in overall score, we use a tiering system rather than ranking law firms sequentially.”

*(Continued on page 3)*



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## BOB LYTLE SUCCESSFUL IN CRIMINAL DEFENSE OF JERSEY CITY POLICE CAPTAIN



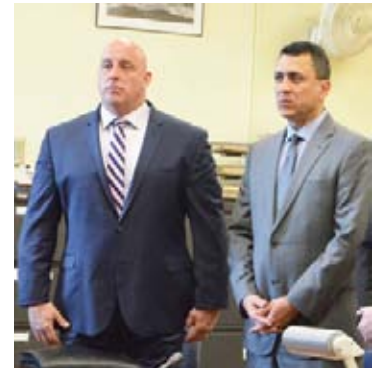
**Robert E. Lytle**  
Partner

Partner Bob Lytle successfully defended a Jersey City Police Captain who was accused, along with 3 other officers, in a 100+ count indictment with falsifying timesheets, theft and official misconduct. Based on the charges, Bob's client, if convicted on all counts, would have faced a mandatory minimum of 20 years in state prison.

The State alleged that our client, Captain Joseph Ascolese, authorized payments for work allegedly never performed by police officers assigned to work off-duty traffic control during the closure of the Pulaski Skyway. Notably, Captain Ascolese, who was a decorated officer within the department, was not charged with benefitting financially from any of the alleged misconduct.

From the outset Bob maintained that his client was innocent of the alleged wrongdoing. Bob argued throughout the trial that the State could not meet its burden of proving that the officers did not work their assignments, and even if they hadn't, that Captain Ascolese was aware that they hadn't at the time he signed their timesheets. After several weeks of trial, the assistant prosecutor who handled the case on behalf of the Hudson County Prosecutor's Office informed Superior Court Judge Mirtha Ospina that the State was dropping all charges against Captain Ascolese and his fellow officers.

Regarding the State's decision to dismiss the charges, Bob commented, "Naturally, we are both pleased and relieved but not surprised by the outcome." As to the charges themselves, Bob observed, "Unfortunately, the investigation was not based upon facts but was instead motivated by internal rivalries between certain factions within the Jersey City Police Department."



*Captain Joseph Ascolese and Attorney Bob Lytle await the court's decision.*

## MICHAEL PAGLIONE SUCCESSFUL IN TWO PERSONAL INJURY CASES



**Michael R. Paglione**  
Partner

Partner Michael Paglione represented two separate clients in "slip and fall" accidents and, prior to trial, achieved settlements of \$650,000 and \$285,000 respectively.

In the first matter, the client tripped and fell over an uneven section of sidewalk outside the P.F. Changs China Bistro at the Freehold Mall in 2013. Michael brought suit against P.F. Changs and the Mall management company. As a result of the fall, the victim sustained neck and low back injuries requiring two spinal surgeries with fusions at both levels.

The case settled at Mediation before retired Superior Court Judge, Marc Baldwin for \$650,000.

The second lawsuit was brought against a homeowner when the Plaintiff slipped and fell on black ice on the front steps of the defendant's home. As a result of the fall, our client sustained a significant hip fracture which required several surgeries.

The week before trial was scheduled to begin the parties reached a settlement in the amount of \$285,000.



*P.F. Changs China Bistro located at the Freehold Mall in Freehold, NJ.*

## ATTORNEY JEFFREY HALL PREVAILS IN TRENTON ZONING APPEAL



**Jeffrey M. Hall**  
Of Counsel

Retained at the last-minute on a use variance zoning matter, Jeffrey Hall successfully presented a case for his client, a property owner in Trenton, New Jersey. The property owner, who currently owns 28 rental units in the Chambersburg area of Trenton, purchased a single family dwelling set up as two units that were used separately by former owners as a mother-daughter arrangement. However, the units in question had never been approved and thus were not in compliance with local zoning ordinances.

The property owner was informed that a variance application had to be filed with the Trenton Zoning Board of Adjustment to make the units lawful as a two family dwelling. The professional staff was split between recommending or disapproving the property owner's request as the two units appeared not to meet the

minimum living area requirements of 900 square feet each. Initially, the Trenton Zoning Board of Adjustment appeared resistant to approving the variance application, as it was perceived as setting a precedent that single family units could be purchased and then turned into multi-family dwellings, particularly those without having the minimum square footage per unit.

Jeff argued that allowing the two units to remain would not be precedential because of the structure's pre-existing condition and would be a more efficient use of the property, fulfilling a purpose of zoning. The units would also be able to serve more Trenton citizens looking for attractive housing at affordable rental rates. The property owner presented photographic evidence and testimony demonstrating the separate utilities for, and the unique nature of the floor layouts of the building.

In a 6 to 1 vote, the appeal was granted allowing his client to keep the property intact and to use the two units as separate apartments.

## BRIAN HEYESEY REACHES \$100,000 SETTLEMENT IN MEDICAL MALPRACTICE SUIT



**Brian A. Heyesey**  
Associate

Attorney Brian Heyesey brought suit against a Physical Medicine and Rehabilitation physician who performed medical acupuncture on a client, who then suffered a 20% pneumothorax (collapsed lung).

The suit asserted that the physician treated the patient in a manner outside the acceptable acupuncture standards of care by inserting an acupuncture needle at an improper angle and at a depth that pierced the lung field and caused the lung to collapse. The client required a hospital stay and the surgical insertion of a chest tube.

Brian countered defense claims that the condition was caused by something other than acupuncture by pointing out the short period of time that passed from the treatment and the onset of symptoms, such as increased heart rate, shortness of breath, pain and anxiety. At the completion of the depositions of plaintiff and defense expert witnesses, the case settled for \$100,000.

## ...SZAFERMAN LAKIND NAMED A TIER-1 METROPOLITAN "BEST LAW FIRM"

*(Continued from page 1)*

Each firm recognized on the Best Law Firms list, "must have at least one attorney who is recognized in the current edition of Best Lawyers in a 'Best Law Firms' ranked practice area/metro area." In the 2019 edition, six (6) Szaferman Lakind attorneys were recognized as Best Lawyers in five (5) practice areas including Commercial Litigation, Family Law, Land Use and Zoning Law, Personal Injury Litigation - Plaintiffs and Real Estate Law.

Szaferman Lakind Managing Partner Barry Szaferman commented, "On behalf of the Szaferman Lakind family I'd like to thank U.S. News and World Report, the participating lawyers from this area and our clients. It is indeed an honor to have the firm so identified for the fifth consecutive year. Recognition such as that accorded the firm by U.S. News & World Report serves to reinforce our commitment to provide quality services to our clients and the legal community."

## APPELLATE DIVISION REVERSES DISMISSAL OF COMPLAINT AGAINST NON-PROFIT

Attorneys Craig J. Hubert, Janine G. Bauer, Brian A. Heyesey and Christopher S. Myles all participated in persuading the Appellate Division to reverse a trial court's grant of summary judgment in favor of a non-profit organization. The agency now faces substantial liability for neglect and abuse of a child who was ultimately removed from foster care by the New Jersey Department of Children and Families' Institutional Abuse Investigation Unit. Szaferman Lakind represents the child.

Pursuant to a contractual agreement with the State of New Jersey, the non-profit identified and trained the foster parent. Thereafter, its staff allegedly attempted to check on the child after placement, which is when the neglect and abuse occurred. The Appellate Division agreed with Szaferman Lakind that because

the overwhelming majority of the funds received by the non-profit were from the State of New Jersey based on that contractual agreement, the non-profit was not immune from claims of neglect and abuse under New Jersey's Charitable Immunity Act. The Act was established to preserve charitable funds by avoiding their diversion to non-charitable purposes, to encourage private philanthropy and to alleviate the government's burden to provide "beneficent services."

The case was argued in the Appellate Division by Brian A. Heyesey on November 1, 2017 and the opinion reversing the grant of summary judgment to the non-profit was issued on August 14, 2018. The case against the non-profit is currently pending trial in NJ Superior Court in Newark, Essex County.



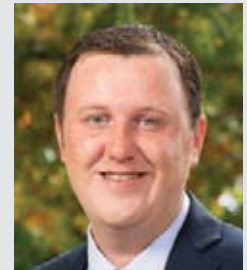
**Craig J. Hubert**  
Partner



**Janine G. Bauer**  
Partner



**Brian A. Heyesey**  
Associate



**Chris Myles**  
Associate

## JANINE DANKS FOX APPOINTED TO SUPREME COURT DISTRICT VII ETHICS COMMITTEE



**Janine Danks Fox**  
Partner

Partner and Family Law Attorney Janine Danks Fox has been appointed by the New Jersey Supreme Court to the District VII Ethics Committee for a one-year term. The appointment commenced on September 1, 2018 and will run through August 31, 2019.

The District VII Ethics Committee is one of 18 such committees throughout New Jersey and is managed by the NJ Office of Attorney Ethics, which acts as the prosecutorial and investigative arm of the Supreme Court, acting to supervise and discipline New Jersey attorneys.

Committee members are tasked with investigating any grievances related to possible violations of attorney ethics rules or law.

Janine focuses her practice on family law matters including divorce, child custody, child support, adoptions, pre-nuptial agreements, and post-judgement divorce matters.





## ENTREPRENEUR OPPORTUNITIES: GROWING A CANNABIS BUSINESS

An Article By: Benjamin T. Branche, Esq.



**Benjamin T. Branche**  
Partner

On January 18, 2010, the New Jersey legislature enacted the New Jersey Compassionate Use Medical Marijuana Act (the “Act”), N.J.S.A. 24:61-1 et seq. The Act declared that marijuana has beneficial uses in treating or alleviating pain or other symptoms associated with certain medical conditions, and established a system enabling “qualifying patients” and their primary caregivers to register with the New Jersey Department of Health. With the

availability of marijuana being extended to recreational adult users pursuant to the proposed State Senate Bill 2703, “New Jersey Marijuana Legalization Act” (the “MLA”), not only are the number of consumers increasing, but also opportunities for new businesses.

Pursuant to the MLA, it is anticipated there will be 218 dispensaries, two recreational dispensaries in each legislative district, an additional 40 throughout the state, and 98 medical licenses. Furthermore, the number of growing facilities would increase to a cap of 25, with 15 reserved for medical marijuana alternative treatment centers. In order to obtain a permit as an operating entity, careful planning is required, which should include:

- 1. Funding:** Financing a cannabis business requires funding, lots of it. Although the application fee for the most recent RFA (Request for Applications) was \$20,000 (\$18,000 was refundable to denied applicants), many applicants spent thousands of dollars in preparing their applications.
- 2. Key Persons:** Experience and an ability to operate a marijuana facility were very important factors considered by the State in the last round of applications. Applicants are carefully scrutinized and must have an unblemished background. Crucial to a successful application are experts in finance, security, growing, engineering, insurance, law, lobbying, and other areas, all of whom should be identified and retained early in the process.
- 3. Location:** Each applicant must demonstrate control of a site for the facility or must have a site under control within thirty (30) days of approval. Any site must be carefully considered as there will be a limited number of facilities in each region of the state, and each site is intended to serve a certain portion of the population. A further complicating factor to site selection is that the host municipality must provide written notice that it supports such a facility within its boundaries.

- 4. Prepare Early:** Submitting a competitive application will be a lengthy process requiring detailed information and, as such, adequate time to prepare. To maximize the likelihood of success, planning early is of the utmost importance.

The most recent RFA was for 6 permits and there were 146 applications submitted. The application process limited submissions to 300 pages. With a high degree of competition, it is imperative to have a thorough and complete application.

However, under the MLA there may be micro-permits for ancillary businesses that “touch” the plant, and opportunities for ancillary businesses that do not “touch” the plant and do not require a permit. Such “ancillary businesses” include hydroponics and cultivation products, testing and lab services, lighting, packaging and warnings, security services and equipment, technology and software, banking and payment processing, insurance, “paraphernalia” (marijuana delivery systems), and professional training and education.



**FOR MORE INFORMATION REGARDING  
OUR CANNABIS PRACTICE PLEASE CONTACT  
BENJAMIN T. BRANCHE.  
BBRANCHE@SZAFERMAN.COM**

## NEW JERSEY MOVES CLOSER TO CHALLENGING LIMITATIONS ON FEDERAL INCOME TAX DEDUCTIONS

*An Article By: Scott P. Borsack, Esq.*



**Scott P. Borsack**  
Partner

Late in 2017 President Trump signed legislation which, among other things, increased the standard deduction and reduced the amount which taxpayers could deduct on account of the payment of state and local taxes. State governments in the northeastern United States, among them New York and New Jersey at first complained about the limitations. They then began to search for work arounds allowing residents to claim deductions for funds delivered to state and local governments. In May of this year, Governor Phil Murphy signed legislation allowing municipalities to create charitable alternatives to local property taxes. Enabling regulations were required to guide municipalities. Those regulations were published by the Director of Local Government Services on September 25, 2018 and now it's up to local municipalities to take action to provide a means for its residents to seek a replacement for lost real estate tax deductions.

Under the legislation enacted by the State of New Jersey recently, 90% of the contribution which a taxpayer makes to a charitable fund established by a municipality can be credited to the property tax obligation of the property owner. A municipality, for example, may establish separate funds for public safety, capital improvement, public works, public health, social services, recreation, open space and public library just to name a few of the potential beneficiaries of locally established funds. These funds can be established by local ordinance and a single fund can be established for multiple purposes. Where a municipality has separate funds, a taxpayer will have to make contributions to each fund. School districts and county governments can establish funds as well.

Taxpayers will be permitted to contribute any amount, but no more than 90% of donations by a property owner can be credited toward the property owner's real estate tax obligation. So a contribution of \$10,000

for a property owner with property taxes of \$11,000 would yield a credit to property taxes of only \$9,000 (90% of \$10,000). The property owner would have to write a separate check to the municipality of \$2,000 to cover the uncredited portion of the contribution.

Apparently, the Internal Revenue Service has followed the activities in Trenton and Albany and other state capitols and has proposed regulations which would limit the amount of the charitable contribution deduction. Under the federal regulation, a charitable contribution deduction is not permitted where the credit afforded to state real estate taxes is more than 15% of the amount contributed to a state or local charitable fund intended to supplant local property taxes. So in New Jersey where the maximum amount of the credit is 90% of the contribution to a local charitable fund, the new federal regulation would limit the amount of the charitable contribution deduction to the lesser of \$1,000 or 15% of the amount of the contribution.

New Jersey's Attorney General, as well as the Attorneys General of other states whose residents have been adversely affected by the change in the so called SALT deduction, have threatened to challenge the propriety of the federal limitations, both statutory and administrative. The impact of these disputes is difficult to predict and likely won't be known for several years.

Since the Director of Local Government Services has posted a model ordinance on its website, and municipalities have to enact their ordinances before the end of the year to provide some benefit to taxpayers, watch for action on these concepts in your home town in the coming weeks. We will continue to monitor these developments closely.

*Scott Borsack is the Chair of the Business Department and has over 30 years of experience representing clients in a variety of transactional matters. He is routinely called upon to structure transactions to minimize the burden of federal and state taxes. He also counsels clients on minimizing the tax burden when passing wealth from one generation to the next.*

## CRAIG HUBERT APPOINTED TO NEW JERSEY SUPREME COURT COMMITTEE AND NJSBA COMMITTEES



**Craig J. Hubert**  
Partner

Partner Craig Hubert has been appointed to the New Jersey Supreme Court Committee on Model Civil Jury Charges. The Model Civil Jury Charges Committee works to prepare and update instructions that can be useful to trial judges and litigants to effectively educate civil juries. Craig's appointment is for two years.

The goal of the committee is to enhance understanding by jurors while also maintaining a balanced and accurate statement of the law. Each case that is tried is based on unique facts. The committee works to provide the framework of instructions that is then tailored for each case.

Craig was also recently appointed to two committees of the New Jersey State Bar Association (NJSBA), those appointments being the Co-Chair of the Judicial Administration Committee, as well as a member of the Nominating Committee.

The NJSBA Judicial Administration Committee works to ensure that court management systems are efficient, just and economical, as well as ensuring independence and communication of judges, attorneys and administrators.

The NJSBA Nominating Committee works in collaboration to nominate candidates within the Bar Association for positions on the Board of Trustees, Nominating Committee, as well as delegates to the American Bar Association.

Craig heads the firm's Personal Injury practice and represents plaintiffs in areas of the law including Nursing Home Negligence, Victim's Rights and other Personal Injury matters.



Richard J. Hughes Justice Complex in Trenton, NJ.

## KEITH HOVEY APPOINTED TO MULTIPLE COMMITTEES



**Keith L. Hovey**  
Of Counsel

Keith Hovey, Of Counsel, was recently elected as Chair of the Interested Nurses Political Action Committee (INPAC) for New Jersey State Nurses Association (NJSNA). As the nonpartisan political action committee for NJSNA, INPAC's goal is to promote and advance quality in nursing and healthcare in New Jersey. According to the NJSNA, INPAC "aims to influence healthcare policy discourse by endorsing and contributing to candidates who support the nursing profession and quality healthcare."

Keith was also recently appointed as the Litigation Section Chair of The American Association of Nurse Attorneys (TAANA). TAANA provides resources and education to those working in the healthcare and legal communities.

In addition to his involvement with the nursing profession, Keith has been selected to two committees within the New Jersey State Bar Association. He was appointed to both the Cannabis Law and Medical Malpractice Committees. As an attorney and registered nurse, Keith will contribute his specialized knowledge to both committees.







# BARRY SZAFERMAN CHOSEN AS THE PRINCETON REGIONAL CHAMBER OF COMMERCE 2018 BUSINESS LEADER OF THE YEAR

**Barry D. Szaferman**  
Founding Partner

Barry D. Szaferman, Managing Partner of Szaferman Lakind Blumstein & Blader, P.C., has been selected as the 2018 Business Leader of the Year by the Princeton Regional Chamber of Commerce. Barry has been the Managing Partner of the firm since its founding in 1977.

The others honored by the Princeton Chamber this year are; Paula Troy of RWK Consulting, Community Leader of the Year, David DeMuth of CFO Consulting, Entrepreneur of the Year and Princeton Innovation Center Bio Labs, which has been chosen as the Innovator of the Year.

Barry Szaferman commented, "It is an honor to be chosen as the Princeton Regional Chamber of Commerce 2018 Business Leader of the Year. My thanks go to the Princeton Regional Chamber for all of its work within the business community and for this award. Finally, congratulations to my fellow honorees Paula Troy, David DeMuth and the Princeton Innovation Center Bio Labs."

According to the Princeton Regional Chamber of Commerce, The Business Leader of the Year Award "recognizes an individual who has made significant contributions to the communities of the Princeton-Mercer Region. This individual's ideas, vision and hard work have led to significant tangible benefits in our community. By using the resources at their disposal, the actions of this person have led to growth in the stature, reputation and significance of the Princeton-Mercer Region."

The Annual Business Leadership Awards Gala will be held on Wednesday, November 28, 2018 at the Tournament Players Club Jasna Polana in Princeton, New Jersey.



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PER COMMITTEE ON ATTORNEY ADVERTISING ETHICS OPINION 42, THIS ADVERTISING IS NOT APPROVED BY THE NEW JERSEY SUPREME COURT.



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