

# TRUE COUNSEL®

WINTER 2020

## LEGAL HIGHLIGHTS

MICHAEL BROTTMAN  
SECURES \$100,000 WORKERS'  
COMPENSATION SETTLEMENT

WHAT'S IN A NAME?

JANINE BAUER NOMINATED BY  
GOVERNOR PHIL MURPHY TO  
REPRESENT NJ ON GATEWAY  
DEVELOPMENT COMMISSION

ARBITRATION CLAUSE AGREEMENT  
VACATED BY SUPERIOR COURT FOUR  
YEARS AFTER PARTIES DIVORCED

CRAIG HUBERT RECEIVES MERCER  
COUNTY BAR ASSOCIATION MICHAEL  
J. NIZOLEK AWARD

### Also Inside...

ZONING VS. HANDICAP;  
A CASE OF CONFLICT

PRINCETON ATTORNEY KIM A. OTIS  
JOINS SZAFERMAN LAKIND

FULTON PARTNERS, LLC V. NEW  
BRUNSWICK: THE IMPORTANCE OF  
DUE DILIGENCE IN TAX APPEALS

CONGRESS POISED TO END  
INCOME TAX BENEFIT TIED TO  
RETIREMENT PLANS

LIONEL FRANK PRESENTS THE  
PRINCETON MERCER REGIONAL  
CHAMBER OF COMMERCE WITH  
TRADEMARK CERTIFICATES

CRAIG HUBERT AND TOM MANZO  
AUCTION WINE TO BENEFIT NEW  
JERSEY STATE BAR FOUNDATION

HON. LINDA FEINBERG PRESENTS AT  
LOCAL AND STATE BAR PROGRAMS

## SZAFERMAN LAKIND RECOGNIZED IN 2020 "BEST LAW FIRMS" RANKINGS

Szaferman Lakind has been listed among U.S. News and World Report's "Best Law Firms®" for 2020. The firm was recognized as a New Jersey - Metropolitan Tier 1 law firm for the sixth consecutive year for the following practice areas:

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

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."

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 2020 edition of *Best Lawyers*, five (5) Szaferman Lakind attorneys were recognized 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, "It is an honor for the firm to be recognized for the sixth consecutive year by U.S. News and World Report. The attorneys and staff at Szaferman Lakind work tirelessly to serve our clients and achieve their goals. I would like to thank the participating lawyers in the New Jersey Metropolitan area, our clients and U.S. News and World Report for including Szaferman Lakind in this prestigious list."

BARRY D. SZAFERMAN FAMILY LAW	ARNOLD C. LAKIND COMMERCIAL LITIGATION + LAND USE & ZONING	CRAIG J. HUBERT PERSONAL INJURY LITIGATION - PLAINTIFFS	BRIAN G. PAUL FAMILY LAW	JEFFERY M. HALL LAND USE & ZONING + REAL ESTATE LAW
<i>Best Lawyers in America</i> ™ 2016 - 2020 Lawyer of the Year 2019	<i>Best Lawyers in America</i> ™ 2009, 2011, 2014 - 2020 Lawyer of the Year 2017	<i>Best Lawyers in America</i> ™ 2013 - 2020 Lawyer of the Year 2019	<i>Best Lawyers in America</i> ™ 2013 - 2020 Lawyer of the Year 2015, 2018	<i>Best Lawyers in America</i> ™ 2019 - 2020



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**Michael Brottman**  
Partner

## MICHAEL BROTTMAN SECURES \$100,000 WORKERS' COMPENSATION SETTLEMENT

Michael Brottman, a partner at Szaferman Lakind, secured a \$100,000 workers' compensation settlement for a client involved in a motor vehicle accident while traveling in Rhode Island.

Our client, while out of state on business, was involved in a multi-vehicle accident while riding in a taxi cab. He sustained multiple orthopedic injuries to his knee and wrist and had to undergo several surgeries to repair the damage.

When an injured worker files a lawsuit against another party who caused their injury, N.J.S.A. 34:15-40, requires the injured worker to reimburse their employer for medical and other costs incurred as a result of the work accident. Even though this client received a significant settlement from the lawsuit he filed against the drivers responsible for the accident, Michael was still able to negotiate and obtain an additional \$100,000 workers' compensation recovery for this client. Michael's assistance allowed our client to secure his recovery while ensuring that the obligation to reimburse his employer was satisfied.

Michael focuses his practice on workers' compensation, personal injury and employment matters.



**Lindsey Moskowitz Medvin**  
Associate

## WHAT'S IN A NAME?

*By: Lindsey Moskowitz Medvin*

Very often the first piece of information that we have about a person is their name. A name helps you to form an identity. Under current law, an adult can request a name change as they desire, but who decides whether it is appropriate to change a child's name?

Historically, the Court left that decision up to the child's custodial parent but with the trend shifting towards shared parenting time arrangements, the law has also shifted to reflect that change. The Supreme Court expanded upon the concept initially set forth in *Gubernat v. Deremer*, 140 N.J. 120 (1995) when addressing the issue of changing a child's surname.

In applying the best interest of the child standard when determining whether to change a child's surname, New Jersey Courts have considered a number of criteria including:

- The length of time the child has used his or her given surname;
- Identification of the child with a particular family unit;
- Potential anxiety, embarrassment or discomfort that may result from sharing a different surname from the custodial parent;
- The child's preference if mature enough to express a preference
- Parental misconduct or neglect, such as failure to provide support or maintain contact with the child;

- Degree of community respect, or lack thereof, associated with either paternal or maternal name;
- Improper motivation on the part of the parent seeking the name change;
- Whether the mother has changed or intends to change her name upon remarriage;
- Whether the child has a strong relationship with any siblings with different names;
- Whether the surname has important ties to family heritage or ethnic identity; and
- The effect of the name change on the relationship between the child and each parent.

Lindsey Moskowitz Medvin successfully prevailed in her efforts to modify the name of her client's seven (7) year old son, to include a hyphenated version of his mother's name. In this matter, the child was a foster child of the Mother. Before the child was adopted by both parties, the Mother and Father were in a relationship and they lived together as a family unit. When the parties separated, the Mother desired to hyphenate her son's last name to include her name but the Father refused. After more than a year in litigation, the Judge determined that it was in the child's best interest to change his name to include his Mother's name. At trial Lindsey focused on the significance for the child to identify with members of both his mother's and his father's family because doing so is an integral part of forming a child's identity.

Lindsey focuses her practice on family law matters including name changes, adoption, divorce, domestic violence, pre-nuptial agreements and child custody.



**Janine G. Bauer**  
Partner

## JANINE BAUER NOMINATED BY GOVERNOR PHIL MURPHY TO REPRESENT NJ ON GATEWAY DEVELOPMENT COMMISSION

Partner Janine Bauer was recently nominated by Governor Phil M. Murphy to be one of the New Jersey representatives on the Gateway Development Commission. The Gateway Development Commission is responsible for the oversight of

the Hudson Tunnel Project and the Portal Bridge North replacement over the Hackensack River.

Pending confirmation by the New Jersey Senate, Janine will join fellow nominee Balpreet Grewal Virk and the interim Chair of the Gateway Development Corporation Jerry Zaro, as New Jersey's representatives. Along with representatives from New York appointed by Governor Andrew Cuomo and a representative from Amtrak, they will report on the progress of the Gateway Program to the respective governors.

"The commissioners we have chosen today represent a group of talented individuals of the highest integrity and professionalism who will provide meaningful oversight and accountability over this project of national importance," Governor Phil Murphy said. "I look forward to working with

our partners in New York to fully constitute the Board of the Gateway Development Commission so we can advance the important work of ensuring the safe and efficient mobility of our region's residents and commuters."

Janine has been successfully representing clients in transportation, infrastructure and environmental matters for over 30 years. Janine started the firm's transportation and infrastructure practice in 2003 to help businesses, local governments and individuals involved in transportation issues achieve their goals. Janine also practices land use, zoning, redevelopment and historic preservation law.



**Jeffrey K. Epstein**  
Partner

## ARBITRATION CLAUSE IN AGREEMENT VACATED BY SUPERIOR COURT FOUR YEARS AFTER DIVORCE

A clause in a Matrimonial Settlement Agreement (MSA) which mandated that all issues in a dispute between the parties be arbitrated by a religious court was vacated upon the application of our client in a motion filed by Jeffrey K. Epstein. Our client sought to set aside an arbitration clause in an MSA because it created and made mandatory an unworkable and biased forum for the resolution of disputes. Mr. Epstein successfully argued that the MSA did not conform to the requirements of New Jersey case law regarding appropriate waivers and protocols which must be adhered to before issues of custody and parenting time can be arbitrated.

In this case, Mr. Epstein convinced a Superior Court Judge that despite the four-year passage of time between the divorce and the motion filed to set the clause aside, vacating the arbitration clause was mandated due to absolute requirements as provided in the seminal NJ Supreme Court case of *Fawzy v. Fawzy* 199 N.J. 256 (2009). Mr. Epstein overcame strenuous objections by adverse counsel that the principles of estoppel and laches should easily defeat a motion filed so long after the case was over.

Jeffrey Epstein focuses his practice on matrimonial issues including negotiation and trial practice of major matrimonial litigation, including divorce, custody cases, post-judgment litigation, property settlement, ante-nuptial agreements, divorce mediation, and arbitration.



**Bruce Sattin**  
Partner

## ZONING VS. HANDICAP; A CASE OF CONFLICT

An Article By: Bruce Sattin

An interesting case at the intersection of zoning and discrimination law was recently decided by a Federal District Court Judge in New Jersey.

Joanne Gifford owns a home in a redevelopment zone in Jersey City. Ms. Gifford suffers from medical issues that restrict her mobility and

prevent her from walking any distance without pain. She requested permission to construct a carport in front of her home, but such structures are not permitted in the redevelopment zone in Jersey City. The city offered her a dedicated handicap parking space on the street in front of her home, but she argued that she needed a better accommodation to her handicap. The on-street space was subject to regular parking restrictions for street cleaning and was obstructed by a bicycle lane. The zoning officer, whose hands were tied by the ordinance, suggested that she request a variance from the Planning Board. She filed an application for such a variance, but the Planning Board never scheduled a hearing.

Ms. Gifford brought an action against the City in District Court, *Gifford v. City of Jersey City*, alleging that the City had violated the Federal Fair Housing Amendments Act and the Americans with Disabilities Act and the New Jersey Law against Discrimination and Municipal Land Use Law. Jersey City argued in a Motion to Dismiss that the case was not “ripe” for decision by the Court, since the Planning Board had not yet decided her application. Judge Esther Salas was not convinced. At that time, the Planning Board had sat on the application for 16 months.

She ruled that such an undue delay was equivalent to denial and that requiring Ms. Gifford to go back to the Planning Board created an unnecessary hardship of additional delays and more costs. She added that, “Housing discrimination causes a uniquely immediate injury.” In addressing the substantive issues, Judge Salas found that the Fair Housing Amendments Act requires municipal officials to make reasonable accommodations in their rules, policies, practices, and services when necessary to afford handicapped individuals equal opportunities to use and enjoy their dwellings. Once Ms. Gifford demonstrated the need for an accommodation to her disability, the City then had the burden of demonstrating that its accommodations to her were reasonable and that her proposed carport and curb cut would impose undue costs, administrative problems, and a fundamental alteration of its zoning plan. Jersey City failed to meet those burdens, and its Motion to Dismiss was denied. The Court never found it necessary to address Ms. Gifford’s other three statutory grounds for objecting to the Motion.

With the Motion for Summary Judgment having been denied, the case will proceed to discovery and then trial before Judge Salas. While this case is in its preliminary stages, Judge Salas has sent a strong signal to Jersey City that it will lose if this case proceeds to trial, indicating that the Court believes that the laws prohibiting discrimination against persons with handicaps will overrule zoning restrictions that are not critical to the good order of the town. It is likely that Jersey City will now settle with Ms. Gifford before there is a trial.

## PRINCETON ATTORNEY KIM A. OTIS JOINS SZAFERMAN LAKIND



**Kim A. Otis**  
Of Counsel

Szaferman Lakind is proud to welcome Kim A. Otis to the firm. Kim is a general practice attorney who focuses on trust & estate administration, real estate, criminal defense, municipal court and expungement matters. He is also a certified Criminal Trial Attorney in the State of New Jersey. Kim has joined the firm in an Of Counsel capacity.

Kim has been practicing in the Princeton community for over 35 years from his Nassau Street firm of Haveson & Otis. Paralegal, Shawn Stillwell who has worked with Kim since the inception of Haveson & Otis, is also joining him at the firm.

Before entering private practice, Kim worked for the Mercer County Prosecutor’s Office for five years where he was the Chief of the Sexual Assault and Child Abuse Unit. He has also served as a Municipal Prosecutor in Montgomery Township, Princeton Township and Borough, and Pennington Borough.

Kim is a graduate of Seton Hall University Law School and also holds an advanced degree in Estate Planning from Temple University Law School.

“We are pleased to welcome Kim Otis to the firm” Managing Partner Barry Szaferman expressed. “Kim is a highly respected attorney and he will be a great addition to our team of experienced and accomplished attorneys.”



**Jeffrey M. Hall**  
Of Counsel

## FULTON PARTNERS, LLC V. NEW BRUNSWICK: THE IMPORTANCE OF DUE DILIGENCE IN TAX APPEALS

*An Article By: Jeffrey M. Hall*

The recently decided case of *Fulton Partners, LLC v. City of New Brunswick*, 2019 N.J. Super. Unpub (App. Div. Dkt. No. A-4886-17T2, October 11, 2019) is another in a long line of cases that have ruled against property owners who appealed their assessments but who had not responded to assessors' Chapter 91 requests ("Request"). In *Fulton Partners*, the harm was inflicted on the purchaser of an income producing property who was not aware of a pending Chapter 91 Request. Rather, the plaintiff suffered from its seller's failure to respond to the New Brunswick assessor's Request. While an unpublished opinion, this case nevertheless instructs on the need to comply with a Request but also warns a purchaser to conduct appropriate and thorough due diligence prior to closing on a purchase contract in order to successfully pursue a tax appeal.

On June 1, 2016, the tax assessor sent to Fulton Partners' seller, Fulton Gardens, an Income and Expense Request for the property being sold. The Request was sent via certified mail in accordance with *N.J.S.A. 54:4-34*, which was signed at the proper address of Fulton Gardens. The closing took place on August 17, 2016 with Fulton Partners acquiring the property for \$3.5 million. Fulton Partners did not conduct any due diligence with respect to the status of the assessor's pending Chapter 91 Request. The assessor, without any information from either Fulton Gardens or Fulton Partners, assessed the property for \$4,468,300 in 2017, the year appealed. As 2017 was a revaluation year, the assessed value was in theory, the market (true) value of the property.

Because the property appeared over-assessed, Fulton Partners filed a tax appeal seeking a lower assessment. While that appeal was pending, New Brunswick filed a Motion to Dismiss the Complaint pursuant to *Rule 8:7(e)* due to Fulton Garden's failure to respond to the Assessor's Request. The parties filed certifications regarding service of the Chapter 91 Request. With this record, the Tax Court granted the City's Motion to Dismiss subject to granting Fulton Partners a reasonableness hearing. In so doing, it found in the absence of live testimony on service that Fulton Gardens received the Chapter 91 Request and that it had been properly mailed to Fulton Garden's address. Fulton Partners appealed.

On appeal, *Fulton Partners* argued that the statutory sanction of dismissal of a tax appeal could not apply

to an innocent purchaser who had no knowledge of a Chapter 91 Request made to its Seller as the Request did not "run with the land." It argued also that the assessor under these circumstances should investigate property transfers and resend Chapter 91 Requests to purchasers. The Appellate Division rejected both of these arguments in analyzing both the language and underlying purpose of the statute.

Enacted in 1918, Chapter 91 was amended in 1979. The amendment added the 45 day time limit for a response and the right to dismiss an appeal when an owner failed or refused to respond to a proper Request in order to fulfill the constitutional mandate that property should be assessed and taxed at "the same standard of value". *Fulton Partners* and other cases have pointed out that the intent of this bar was to "avoid unnecessary expense, time and effort in litigation". In such cases, the only remaining relief to a property owner is a "reasonableness hearing" where the data and the method used by the assessor could be contested.

Consequently, the Appellate Division held that the Chapter 91 bar does run with the land and the failure of a prior owner to respond will foreclose a subsequent owner's appeal, despite being unaware a chapter 91 Request was made. It also rejected the notion that the assessor had a duty to investigate property transfers and send new requests to subsequent property owners.

Two lessons emerge from *Fulton Partners*. First, every Chapter 91 Request should be responded to fully if the property owner intends to contest the property's assessment. Otherwise, the municipality and its assessor will generally hold their ground and refuse to lower an assessment. Non-compliance certainly will act as a bar to an assessment appeal by the current or successor owner. The second lesson involves the scope of due diligence by a purchaser of an income-producing property. As with Planning Board or Zoning Board of Adjustment resolutions (normally not recorded in the chain of title), Chapter 91 Requests are not recorded but are still binding on a subsequent purchaser if properly made. If not properly responded to by the prior owner, the subsequent purchaser's appeal will be barred. The best practice is to inquire of the assessor or submit an Open Public Records Act (OPRA) request directed in part to obtaining the assessor's records on the property.

*Fulton Partners'* failure to investigate turned out to be a costly mistake resulting in higher taxes.



**Scott P. Borsack**  
Partner

## CONGRESS POISED TO END INCOME TAX BENEFIT TIED TO RETIREMENT PLANS

*An Article By: Scott P. Borsack*

As we go to press with this edition of the Newsletter, the Administration, with the assistance of Congress is poised to drastically limit the benefits afforded to those beneficiaries of individual retirement accounts

and 401K balances inherited from others upon death.

Under current law, a plan participant may designate one or more individuals to inherit the balance in such account by transferring or rolling the balance into an individual retirement account (IRA) in the beneficiaries' name designating the account as an inherited IRA. Distributions from the inherited IRA are then made with reference to the age of the beneficiary instead of the age of the decedent. Under present law, distributions from these inherited IRA balances can be made over a longer period of time, or stretched out. If the law is enacted, and it appears that it will, distributions from these accounts will be made over no more than 10 years and not stretched over the life expectancy of a beneficiary who is not the surviving spouse of the decedent participant. This could have a significant and adverse impact on the planning of IRA and 401K participants who were thinking that children and grandchildren, for example, could receive a significant income tax benefit from such accounts.

The ability to stretch IRA distributions over the life expectancy of a younger beneficiary allows the funds in the account to enjoy a longer period of tax free growth. Without the stretch, assets in the account are distributed sooner and, as a result, tax liabilities are accelerated. As

proposed, following the death of a participant, the named beneficiaries would have 10 years to liquidate the inherited account. Failing to do so would subject the beneficiary to a penalty of 50% of the balance of the account. Therefore beneficiaries would be well advised to take the distribution before the end of the 10th year following the death of the participant.

The opportunity to stretch an IRA balance over the lifetime of a beneficiary was a substantial benefit. It allowed participants to use retirement plan balances as both a vehicle for income or cash flow planning, as well as estate planning. With the change in the federal estate tax exemption to an amount in excess of \$11 million (or more than \$22 million considering the ability to move unused estate tax exemptions between spouses on death) the use of an IRA balance in estate planning has been minimized. By limiting the stretch period to no more than 10 years, accumulating funds in an IRA beyond the needs of the participant may not make as much sense as it did under current law.

This proposed legislation, known as the SECURE Act, is tied to certain income tax extenders and an interim funding measure intended to keep the government operating. Since Congress needs to authorize interim funding measures in this era where budget bills are too complex and controversial to be enacted by a divided Congress, there is a lot of pressure to pass both SECURE and the funding measure. With enactment, a significant income tax benefit will be cast out with little explanation.

## LIONEL FRANK PRESENTS PRINCETON MERCER REGIONAL CHAMBER OF COMMERCE WITH TRADEMARK CERTIFICATES

On October 3, 2019, Partner Lionel Frank presented the Princeton Mercer Regional Chamber of Commerce with trademark certificates for their new logo and tagline. Lionel worked with the Princeton Mercer Chamber to secure trademarks for their brand new logo and tagline "Champions for Business." The Princeton Regional Chamber of Commerce recently merged with the MidJersey Chamber of Commerce.

Lionel presented the certificates to President and CEO of the Chamber, Peter Crowley, Chairman of the Board John Goedecke, Vice Chair Jeannine Cimino and Chair Elect Brenda Ross-Dulan. The presentation was made at the chamber's monthly luncheon before over 100 chamber members.

Lionel Frank concentrates his practice in commercial law, with particular emphasis on intellectual property, trademark, copyright and technology law along with other business related matters.

Szaferman Lakind is a proud sponsor of the Princeton Mercer Regional Chamber of Commerce.



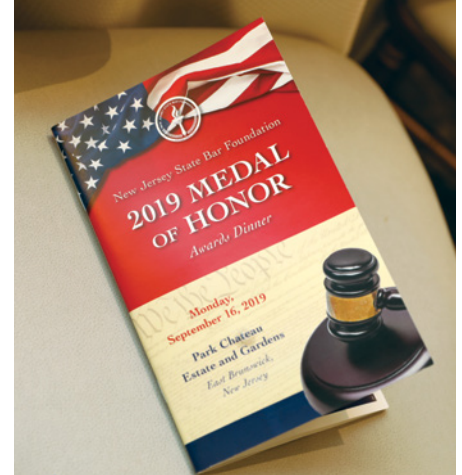
*Lionel Frank presents Chamber President Peter Crowley with trademark certificates.*



**Craig J. Hubert**  
Partner

## CRAIG HUBERT AND TOM MANZO AUCTION WINE TO BENEFIT NEW JERSEY STATE BAR FOUNDATION

Personal Injury Partners Craig Hubert and Tom Manzo served as auctioneers at the 2019 Medal of Honor Awards Dinner hosted by the New Jersey State Bar Foundation (NJSBF), auctioning two lots of wines that they donated and giving away several raffle prizes to attendees. In addition, Szaferman Lakind donated wines for the annual “wine pull,” with all proceeds from both the auction and pull going to the NJSBF.



**Thomas J. Manzo**  
Partner

From hosting an annual, state-wide moot court competition, to writing and circulating magazines to young readers and implementing anti-bullying programming in schools, the NJSBF concentrates its time, energy and financial resources to helping New Jersey youth with a special concentration on legal and civics topics. Tom proudly serves as a Trustee on the NJSBF Board.

The Medal of Honor is the NJSBF’s greatest recognition, honoring lawyers and law-related professionals who demonstrate professional excellence or have made significant contributions to the improvement of the justice system and legal profession in New Jersey. This year’s event took place on September 16, 2019 at the Park Chateau in East Brunswick, New Jersey, drawing over 400 attendees and generating the most revenue for the foundation in the event’s history.



**Judge Linda R. Feinberg (Ret.)**  
Of Counsel

## HON. LINDA FEINBERG PRESENTS AT LOCAL AND STATE BAR PROGRAMS



Hon. Linda Feinberg, J.S.C. (ret.) was a speaker and moderator at multiple educational forums during October 2019.

At the Mercer County Bar Association’s Xtreme CLE event on October 17, 2019, Judge Feinberg acted as a moderator and speaker at the 2019 Land Use Update, as well as “Professionalism Day – A Town Hall Meeting.”

The Land Use Update consisted of the year’s hottest land use and zoning topics including updates to the law. The Town Hall Meeting gave insights from Judge Feinberg, as well as other former judges regarding what they expected from attorneys in their courtroom. Additionally, the Judges provided other tips that attorneys, both new and experienced, can utilize in everyday practice.

Judge Feinberg was also part of the New Jersey State Bar Association’s 2019 Animal Law Symposium. Her presentation addressed the animal law issues in matrimonial and family litigation. She discussed how parties can use mediation to resolve custody and visitation time when they separate or divorce.

The program also featured other hot topics such as domestic violence against animals, the latest bills to protect “dangerous” animals, emotional support and service animal issues and the efforts to change the legal status of animals from property.

# CRAIG HUBERT RECEIVES MERCER COUNTY BAR ASSOCIATION MICHAEL J. NIZOLEK AWARD



Craig Hubert, Partner and member of the Szaferman Lakind Executive Committee, was selected as this year's recipient of the Mercer County Bar Association's (MCBA) Michael J. Nizolek Award, the County Bar Association's highest honor.

The Nizolek Award was created in 1995 in honor of past MCBA President and Trustee Michael J. Nizolek, for his countless contributions to both the local community and legal profession.

In his personal injury practice, Craig provides a voice for victims of traumatic injury, including those who have been sexually assaulted, are victims of clergy abuse, or have suffered due to nursing home negligence, product liability and motor vehicle injuries.

Craig proudly served as President of the MCBA in 2005. He currently serves as a Trustee to the New Jersey State Bar Association (NJSBA) and has done so for the past five years. He has chaired various NJSBA and MCBA committees, remaining actively involved on the state and local level. Craig is a Certified Civil Trial Attorney and Criminal Trial Attorney.

Craig Hubert commented, "It is an honor to be chosen as the recipient of the 2019 Michael J. Nizolek Award. Thank you to the Mercer County Bar Association and the Szaferman Lakind family of attorneys, especially the Personal Injury team."

The Mercer County Bar Association Awards Gala was held on Saturday, November 2, 2019 at the Trenton Country Club in West Trenton, New Jersey.



*From left to right: Angelo J. Onofri of the Mercer County Prosecutors Office, Szaferman Lakind Partner Craig Hubert, Hon. F. Lee Forrester, J.S.C. (Ret.) and MCBA President Brian J. Duff.*



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