

Mercer County *Lawyer*

Winter 2022

A Publication of the Mercer County Bar Association

Volume 40, Issue 4

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Upcoming Events

MCBA Installation Dinner

2/24/2022

Mercer Oaks Golf Course



From the President's Desk...

Happy Holidays! I hope everyone stayed healthy and safe and enjoyed the season with family and friends.

This is my last column as the President of the Mercer County Bar Association. While this past year has presented some challenges, I am proud of our accomplishments. Our success this year was based on the efforts of our Executive Director and dedicated staff, the judiciary, our sponsors, committee chairs, trustees and officers. I was very fortunate to work with such an exceptional group of individuals in this year.

The MCBA presented Xtreme CLE virtually on October 13th and 14th. Hopefully you all were able to attend and satisfy your CLE requirements. Thank you to all of the speakers and organizers for making this event possible. I want to give a special thank you to our CLE Chairs: Jennifer Downing Mathis, Joseph Paravecchia, and Louis Ragone. Sam Iraca has added "Zoom expert" to her myriad skills and ran multiple seminars, both simultaneously and seamlessly. Thanks so much for your hard work!

Thank you to all who attended the November General Membership meeting on November 10th at Mountain View. Congratulations again to our award recipients. I was so pleased to present the Michael J. Nizolek Award to Tracy Thompson and the Harry O'Malley



Tanya L. Phillips, Esq.

Award to Judge Jacobson. We were so honored to have Seymour and Marci Josephson with us for the presentation of the Samantha Josephson Memorial Scholarship to Gregory Corbishley. The silent auction was a success and proceeds will benefit the Mercer County Bar Foundation's scholarship and other community project endeavors. We were also able to honor Hon. Mary C. Jacobson and Hon. Catherine M. Fitzpatrick for their many years of service on the bench and their continued support of this association. Please make sure you read Barry Szaferman's article about Judge Fitzpatrick in this newsletter!

It was my privilege this year to recognize Gregory Giordano as the Professional Lawyer of the Year, and Michael Jordan as Young Lawyer of the Year. I am so proud that this year's

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Lawyer

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award recipients all show a dedication to our profession. In particular, Greg, Tracy and Judge Jacobson have all gone out of their way to mentor and support younger attorneys, and I was thrilled to recognize their accomplishments and their efforts in contributing to the diversity and the intellectual vigor of our legal community.

Trenton Country Club is always beautiful at this time of year and we were pleased to have our holiday party there on December 2nd. We collected toys from most of the attendees at this event for the Children's Home Society of New Jersey.

And now, I must close with a few words of gratitude. I would like to thank our Executive Director, Sam Iraca, and our wonderful staff, Michele Krasny and Loren Romberger for their help in making this year a success. All of the events and undertakings of the MCBA require a tremendous amount of work behind the scenes, and we would be lost without our dedicated staff.

I wish Michael Kahme a very successful upcoming year and am looking forward to his installation dinner on February 24th at Mercer Oaks. (In fact, I may be looking forward to it more than anyone else!) All the best to Margaret Chipowsky, Jennifer Zoschak, Brian Shea and Ross Switkes as the incoming officers, as well as our new slate of trustees and committee chairs. It has been both my privilege and pleasure to serve this association with all of you.

Thank you to the judiciary for your continued support of the MCBA. In particular, I would like

to thank Judge Jacobson, Judge Lougy, and all of the presiding judges, who embraced our new virtual models for programming and education, and have cultivated new growth in our relationships between the bench and bar. Thanks also to all of our sponsors who continue to support and strengthen this organization.

Thank you to Samuel Gaylord and Larry Popp for your support and patience this year with my MCBA responsibilities. A special thank you to Michael for your love and support. Thank you for your patience over the last year. I look forward to our many adventures together!

And finally, thanks to all of you for your continued support of this association, for participating in the programs, and for attending the social functions both virtually and (finally!) in-person. The last two years have not been easy. I am grateful for your willingness to continue your participation during these times. Our members are the lifeblood of the MCBA. Wishing you all a new year filled with health, happiness, and success.



A Victory for Sexual Assault Victims Delivered by the NJ Supreme Court

By, Louis M. Ragone, Esq.

The Supreme Court of New Jersey recently delivered a monumental win for victims of sexual assault who seek a protective order to protect them from further physical, mental, or emotional harm from their perpetrator. In New Jersey, in accordance with the Sexual Assault Survivor Protection Act (SASPA), victims are entitled to obtain a protective order which prevents any further contact from the person who victimized them. This is not a criminal action — although if the authorities believe that a crime has been committed, a criminal prosecution could occur. Unlike in a criminal matter, where the goal is to generally punish or deter the aggressor from further criminal acts, SASPA focuses on providing protection and peace of mind to victims.

The question is when there is a dispute over whether someone was too intoxicated to consent to sexual contact, how does the Superior Court of New Jersey decide the issue? Does the victim have to prove that she or he was too intoxicated to have been able to provide consent? Or does the alleged aggressor need to prove that the sexual contact was consensual? A balancing act occurs between providing essential protection to bona fide victims and not restricting innocent defendants' personal freedom and free movement. The answer to these questions was unclear until recently when the Supreme Court of New Jersey provided guidance in the recent case, *C.R. v. M.T.* (the parties' names have been redacted for their privacy).

Before *C.R. v. M.T.*, courts regularly held that an alleged victim of sexual assault had to carry the burden of proof and show that consent was not given and that the aggressor was not too intoxicated to form intent to carry out the assault. This can be an incredibly difficult task for someone already dealing with the physical and emotional ramifications of an assault, particularly if it occurred while themselves severely intoxicated. The victim had to present enough evidence to a judge to prove that consent was not given. In contrast, the alleged perpetrator was provided the presumption of innocence and that a protective order was not necessary.

The Court's unanimous decision in *C.R. v. M.T.* correctly reversed the standard, instead essentially presuming that the sexual contact was not consensual unless the alleged perpetrator can show sufficient evidence that the other party provided affirmative and clear consent for the sexual contact. As articulated by the Supreme Court, victims seeking protection under SASPA no longer bear the burden of proving that there was no consent—instead, it is the defendant who is now responsible for showing that permission to “engage in sexual activity was freely and affirmatively given.”

A final note on SASPA protections: it is important to be aware that even if the Court finds that nonconsensual sexual



Louis M. Ragone, Esq.

conduct has occurred, the Court must also find that the protective order is necessary to protect the “possibility of future risk to the safety and well-being of the alleged victim.” This second stage of analysis is critical in obtaining a protective order under SASPA, and is meant to prevent issuing these orders unless they are found to be necessary for the protection of victims.

This landmark decision represents a major step forward for victims of sexual assault as they work toward recovering from the trauma and seeking justice. It is a major swing to the benefit of the sexual assault survivors that SASPA was meant to protect and will invariably result in an increase in the number of protective orders provided to bona fide victims.

It means that victims of nonconsensual sexual assault will no longer be forced to fight uphill against what amounted to a presumption of consent to the sexual conduct. Victims will not be prohibited from obtaining the protective order they need to feel safe and secure due to a lack of evidence that the sexual conduct was not consensual.

Celebrating The Hon. Tracy M. Thompson Michael J. Nizolek Award

Each year the Awards Committee, comprised of previous award recipients, reviews nominations for the Michael J. Nizolek Award for service to the Mercer County Bar Association. The Nizolek Award, named after a former President of the Bar Association, is given to honor a member who has furthered the interests of lawyers and the legal system in this County. The award winner is one who has given not only of their time but who maintains excellence and civility in their practice.

This award was created and named for Mike in 1995, a few years after his untimely death, and is intended to recognize attorneys who live their professional and personal lives by the standards that Mike set for himself. This annual award honors Mike's memory and is the Bar's highest honor. This year we are proud to present this award to the Honorable Tracy M. Thompson.

Attorney General Gurbir S. Grewal appointed Tracy to the position of New Jersey Acting Insurance Fraud Prosecutor in March 2018. On June 30, 2021, the New Jersey State Senate confirmed Tracy M. Thompson as the New Jersey Insurance Fraud Prosecutor. She is only the third person to be confirmed to this position since the inception of the Office in 1998. As the Insurance Fraud Prosecutor, Tracy supervises a staff of nearly 100 who investigate and prosecute all types of insurance fraud, including health care, auto, Medicaid, disability, and workers' compensation. This Office also coordinates the anti-insurance fraud activities of the state and local investigating agencies and prosecutors.

For nearly 30 years, Thompson has proudly served New Jersey, beginning as an Assistant Prosecutor in the Mercer County Prosecutor's Office, then as a Deputy Attorney General and Assistant Attorney General in the Division of Criminal Justice (DCJ) in the New Jersey Attorney General's Office.

Within the Attorney General's Office, Tracy began her career in DCJ prosecuting complex financial crimes in the Money Laundering Unit, and most recently served as Counsel to the DCJ Director. In that role, she advised the Director on a broad



Hon. Tracy M. Thompson

range of law enforcement policy matters, oversaw the Division's Litigation Academy, and served as a liaison between the Division and other governmental agencies. Tracy has also served as Chair of the New Jersey Human Trafficking Task Force, most notably overseeing NJ's efforts during Super Bowl XLVIII. Other significant leadership positions in the Attorney General's Office include: Deputy Director of the Office of Government Integrity; Chief Counsel for the DCJ Bureau of Fiscal Oversight; and Special Assistant to the DCJ Director.

Her nine-year tenure at the Mercer County Prosecutor's Office was marked by her leadership in the Domestic Violence Unit and prosecuting a variety of major crimes.

Tracy received her law degree from Temple University Beasley School of Law and an undergraduate degree in African-American Studies from the University of Pennsylvania.

In recognition of her service, dedication and

Celebrating The Hon. Tracy M. Thompson Michael J. Nizolek Award

professionalism over her 30 year career, she has received several awards, including: Trenton NAACP Freedom Fund President's Award for Outstanding Service to the Legal Profession and Loyalty to the Trenton Community; ABWL-NJ Award for Excellence in Public Service; NJ Commission on Professionalism Professional Lawyer of the Year Award; Temple University School of Law Black Law Students Association Cecil B. Moore Award for Community Service; NJ State Conference NAACP Hon. Robert Lee Carter Distinguished Legal

Professional Legacy Award and the Freedom Award; Garden State Bar Association Van Clinton Award; NJ Attorney General's Award for Excellence in Advancing the Department's Priorities and Initiatives; NJ Commission on Professionalism 2019 Charles J. Hollenbeck Award; and ABWL's 2020 "She Does Justice Award" acknowledging her accomplishment among only six Black women to hold the position of Chief Prosecutor in NJ.



Celebrating The Hon. Mary C. Jacobson, A.J.S.C. (ret.) Harry O'Malley Award

In 2017, Harry P. O'Malley passed away, leaving a legacy of service to our community. Born in Trenton and a lifelong Mercer County resident, he was a graduate of St. Anthony's Class of 1968, and Trenton State College Class of 1972. Harry went on to earn his law degree from Temple University School of Law. Harry worked for the Mercer County Surrogate's Office as deputy county surrogate for many years, where he was well-respected in the community and among his colleagues and peers.

He was unfailingly polite and professional during his 40-year career. He was a frequent presenter at continuing legal education programs throughout the state of New Jersey, where he gave freely of his time and expertise. Harry's work as the deputy surrogate enhanced the reputation of the Mercer County Surrogate's Office in the legal community and beyond. Harry also had his own practice in Hamilton Township, and was a member of the Mercer County Bar Association.

Harry was a legacy. Harry loved his work and enjoyed reading, especially about history. He was charitable, often offering legal advice to others at no expense. Anyone who met Harry, walked away with the feeling that he was a very special person. The Mercer County Bar Association is pleased to honor his legacy with this annual award, which will be a constant reminder of his faithful service to the profession and the community.

This year, the MCBA honors the Hon. Mary C. Jacobson, A.J.S.C. (ret.) Judge Jacobson's rise to the bench began after her graduation from New York University School of Law, when she clerked for the Honorable Samuel A. Lerner, J.A.D. of the New Jersey Superior Court, Appellate Division. She was later sworn as a deputy attorney general and served in the Department of Law and Public Safety's Division of Law, where she handled cases in the Environmental Enforcement Section. Judge Jacobson served at the Office of the Attorney General with distinction for over twenty years, during which she was elevated to an appellate supervisor and an assistant attorney general.

Judge Jacobson's contributions as assignment judge extended beyond her leadership and notable legal orders and opinions. She was and continues to be an active participant in the State and County Bar Associations. Judge Jacobson frequently appeared — alongside justices of the Supreme Court, judges of the Appellate Division, and seasoned practitioners — as a panelist for the New Jersey State Bar Association and the New Jersey Institute for Continuing Legal Education on topics including effective



Hon. Mary C. Jacobson, A.J.S.C. (ret.)

oral and written advocacy. Importantly, she is a strong supporter of the MCBA, which has significantly contributed to the success of the Association. Judge Jacobson routinely participated in MCBA programs and events and strongly encouraged the judges and law clerks in the Mercer Vicinage to similarly participate. Indeed, Judge Jacobson annually presided over the Mercer Vicinage's and MCBA's collaborative Opening Ceremony and Memorial Service, which commenced at the beginning of every new court year in September.

Judge Jacobson was instrumental in the development of the Harry O'Malley Award, and her lifetime of service makes her a fitting recipient. The Harry O'Malley Award is intended to honor a member of the Bar who has shown a true commitment to the equal representation and rights of all litigants who come before the courts, without regard to status or ability to pay. Throughout her distinguished career, Judge Jacobson devoted herself not only to skillful interpretation of the law, but also to ensuring the fair and equal administration of justice for all. She exemplifies the spirit of Harry O'Malley. The MCBA is proud to honor Judge Jacobson.





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Celebrating The Hon. Catherine M. Fitzpatrick P.J.F.P. (ret.)

By, Barry Szaferman, Esq.

Judge Fitzpatrick (fondly known as “Fitz”) retired this past August as the Presiding Judge of the Family Part in Mercer County. Her retirement, after 40 years as a lawyer and Judge, is well deserved. It made me think, however, how fortunate family law attorneys practicing in Mercer County have been to have had a presiding judge who saw it all as an attorney and was able to bring that experience to the benefit of her fellow family law judges and the many attorneys and litigants who appeared before her. Former Chief Justice Robert Wilentz established a general rule, still in effect, to rotate Judges as part of an effort to bring different experiences and backgrounds to different parts of the Superior Court. Fitz was a notable exception to this general rule for good reason.

First, some background. Before being appointed to the Bench in 2010, Fitz practiced family law for 27 years. First with Larry O’Hara, Esquire, an aggressive attorney, who certainly influenced her, but Fitz remained her own person. After a few years, Fitz started her own practice, where she balanced her practical approach to resolving issues with the occasional need to be aggressive to protect the interests of her clients. She recognized that in most instances her clients wanted to settle their cases in a way that was fair to the family unit and especially the children.

As I think of the cases I handled with Fitz, I am reminded not only of how effective she was at settling most cases, but also that she was willing to go to trial when necessary. As a trial attorney, Fitz always kept it simple and hammered home the points that were effective for her client. She knew that Judges do not want extraneous testimony. She had an uncanny ability to read the Judge and know which arguments to emphasize. Equally important, Fitz knew how to settle a complicated case. I remember handling a case with her shortly before she was elevated to the bench where because the parties had interests in multiple complex businesses, settlement required a combination of creativity and practicality. Fitz brought those attributes to the negotiating table and after a number of sessions the case was settled in a manner fair to the parties and their children. Fitz was always sensitive to the best interests of the children, especially when special needs children were involved.

Fitz brought this same talent to the bench. When a case had to be tried or a Motion argued, she expected the attorneys to avoid extraneous testimony and repetitive

arguments. It was always evident during Motion hearings that Fitz had carefully read the papers, including the relevant exhibits. Of course, Fitz had seen it all as an attorney, and attorneys appearing before her knew, or should have known, not to make unreasonable arguments.

Fitz had a special talent for helping lawyers resolve difficult cases. As a Judge, with the consent of the litigants and lawyers, she was always willing to roll up her sleeves and bring her creativity and practicality to the resolution of intractable issues. She gave litigants the opportunity to express their views directly to her in an informal setting. She then effectively explained her recommendations for settlement, making it clear that the litigant was entitled to a full trial and that her final decision might differ from her recommendations.

During her long career, Fitz received many honors, including the 2006 Mercer County Professional Lawyer of the Year award. She was President of the Mercer County Bar Association in 2002. She served on various Supreme Court Committees and brought her considerable experience to improving the practice of law for family lawyers. She was an exemplar of a woman who did it all. She pursued her impressive career while enjoying a fulfilling and happy life as a wife, mother and most recently as a doting grandmother.

I know I speak for the family lawyers of Mercer County in wishing Fitz the best in her retirement. We look forward to spending time with her at various Bar functions and learning how she will continue to contribute for the benefit of the Bar and society as a whole.



2021 Holiday Party December 2, 2021

On December 2, 2021, the MCBA held its annual Holiday Party at the beautiful Trenton Country Club. The event was well attended and the décor was spectacular, as always. On behalf of the Mercer County Bar Foundation, children's toys were collected to benefit the Children's Home Society in Trenton, NJ. Many items were collected for this important charity. Thank you to all who attended this lovely evening. Happy Holidays!









MCBA

MERCER COUNTY
BAR ASSOCIATION

GENERAL MEMBERSHIP MEETING *and* INSTALLATION DINNER

THURSDAY, FEBRUARY 24, 2022 – 5:30 PM to 8:30 PM

Mercer Oaks Golf Course – 725 Village Rd West – West Windsor Township, NJ

Please join us for an elegant evening as

MICHAEL KAHME, ESQ.

HILL WALLACK LLP

*is sworn in as the new President of the Mercer County Bar Association
along with the 2022 Officers and 2024 Trustees*

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INTRODUCTION AND SWEARING-IN BY: Hon. Christine M. Gravelle, U.S.B.J.

REGISTRATION: \$60.00 | AFTER FEBRUARY 17, 2022: \$100.00

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*The Mercer County Bar Association invites you
to pay tribute by placing an ad in the program booklet.*

PROGRAM BOOKLET CONGRATULATORY MESSAGES

Messages to honor the 2022 President Michael Kahme, the Executive Board and the 2024 Trustees will be included in the program booklet.

Please select the size of your ad and return this form along with your payment and the ad by February 17, 2022.

If you are unable to attend the dinner, you can still pay tribute to them by placing a message in the program booklet.

PROGRAM BOOK ADVERTISING RATES

If you would like to place an advertisement and congratulatory message in the Program Book,
it must be in .PDF or .JPG format and should be sent to info@mercerbar.com prior to February 17, 2022.

For an ad created by the MCBA, add \$50 to your ad total.

FULL-PAGE AD — 5X8" — \$500

HALF-PAGE AD — 5X4" — \$350

WELL-WISHER (YOUR NAME) — \$25

GENERAL MEMBERSHIP MEETING AND INSTALLATION DINNER SPONSORSHIPS

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Mercer County Clerk Announces Notary Night Schedule for 2022

Happy New Year to all! With another year behind us, Mercer County Clerk Paula Sollami Covello is pleased to announce the monthly Notary Night schedule for 2022. Notary Nights will continue to be held on the first Thursday of each month, from 3:00pm to 7:30pm. at the Mercer County Connection satellite office in Hamilton, as well as on business days at the Mercer County Clerk's Office, in Trenton, daily from 8:30 to 4:30 pm and Wednesdays until 6:30 pm. A mask or face covering must be worn to enter. The dates for 2022 are as follows:

January 6
February 3
March 3
April 7
May 5
June 2
July 7
August 4
September 1
October 6
November 3
December 1



To be sworn in by Mercer County Clerk's Office staff as a new notary, prospective notaries must apply and have their applications signed by a legislator. If you file your application online it will be sent to your legislator electronically. After the State of New Jersey processes your application, you will be sent your commission by mail. You must take your oath of office. The fee is \$15, checks and money order are accepted. Prospective notaries will also need a photo ID and their certificate on hand to be sworn in. After July, 2022, all notary applications will have to be completed electronically.

The Clerk's Office also has new updated Notary Handbooks, these are available for pick up at our office on 209 South Broad Street, in Trenton. For more information about notaries public and for updates on office openings and closings in the wake of the COVID-19 pandemic, please visit the Mercer County Clerk's website at <http://www.mercercounty.org/government/county-clerk-/office-services/notary-public>, or call the office's main number at **609-989-6465**.

Mercer County Clerk Announces Passport Book Fee Increase

Mercer County Clerk Paula Sollami Covello announced that per the U.S. Department of State Passport Services Department, there will be a **Passport Book** fee increase starting Dec. 27, 2021. Starting on Monday, the fee for a **Passport Book** will increase by \$20, from \$110 to \$130, and it will increase to \$100 for minors. This increase will only be reflected in the cost of the **Passport Book**. This increase will be effective immediately on Dec. 27, 2021.

For more information regarding passports, please visit the Mercer County Clerk's website at <https://www.mercercounty.org/government/county-clerk-/office-services/passports> or call **609-989-6465**.



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Frank P. Spada, Jr., Esquire

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In addition to mediation and arbitration, Frank represents clients in all areas of employment law/labor relations including the following areas of law:

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