

# TRUE COUNSEL®

SPRING/SUMMER 2023

## LEGAL HIGHLIGHTS

HOW SUBSTANCE ABUSE ISSUES  
CAN IMPACT A CUSTODY DISPUTE

SCHWARTZ FAMILY LAW MERGES  
WITH SZAFERMAN LAKIND

SZAFERMAN LAKIND PARTNERS  
WITH ARC MERCER TO PROVIDE  
OPPORTUNITIES FOR AMERICANS  
WITH DISABILITIES

## Also Inside...

LAWYER SPOTLIGHT:  
JANINE G. BAUER

GOING, GOING, GONE?

THREE SZAFERMAN LAKIND  
ATTORNEYS RECEIVE  
AMICUS AWARDS

2023 BEST LAWYERS:  
10 CONSECUTIVE YEARS  
OF RECOGNITION

KRISTINE DRESS BROWN, ESQ.  
JOINS THE FIRM

## GENERAL STATE OF THE FIRM



**Barry D. Szaferman**  
Founding Partner  
Managing Partner

As we usher in the 46th Summer of Szaferman Lakind's existence, I am pleased to share that our firm has grown since this time last year. 2022 was a year filled with exciting changes and growth—from the appointment of partner Craig J. Hubert as co-managing partner with Brian G. Paul and me, to the acquisition of two prosperous practices and offices.

We announced the acquisition of Gaylord Popp in January 2022, adding that team's expertise in Worker's Compensation law as well as an office conveniently located on the river in Trenton. We expanded further this past December with the acquisition of Schwartz Family Law, which added a team of experienced attorneys to our Divorce and Family Law practice. Brian M. Schwartz has joined our firm as Partner, operating out of Summit, New Jersey, and further expanding the Szaferman Lakind footprint. You can read more about this merger further in this newsletter.

With two State Senate judicial appointments, two Equal Justice medals, and five lawyers on *The Best Lawyers in America® 2023* list issued by BL Rankings, 2022 was another year of recognition for our accomplished team. But what I remain most proud of is our firm's dedication to clients and the causes they champion.

Like many resilient New Jersey businesses, we have adapted well to the post-pandemic environment. We have deployed leading technology that enables work from anywhere. We have attorneys in several locations across New Jersey and even as far as Florida. This has spawned growth in new directions and extended our firm's capabilities. Furthermore, we completed a beautiful office renovation at our Lawrenceville headquarters, where the majority of our team is still based.

In 2022, the attorneys at Szaferman Lakind prevailed in cases in U.S. District Courts, the New Jersey trial courts, Appellate Division and the New Jersey Supreme Court. We also won life-changing pro bono cases for our clients. As the momentum propels us into 2023, I continue to be inspired by the faith our clients and colleagues have in us. While the firm has certainly changed over the years, it remains a privilege to be entrusted with our clients' most significant legal issues and to be their voice in attempting to accomplish their goals. Our commitment to True Counsel is ever renewing, and in one short year has garnered even greater reach.



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**Lindsey Moskowitz  
Medvin**  
Associate

## HOW SUBSTANCE ABUSE ISSUES CAN IMPACT A CUSTODY DISPUTE

*An Article By: Lindsey Moskowitz Medvin*

The Covid pandemic created never before seen challenges. What many people may not know is that since then, we have seen an increase in substance abuse issues. This can include alcohol, illegal drugs, or prescription drugs. There are a variety of symptoms that can occur when someone is actively using and addicted to drugs and/or alcohol. The person often will experience extreme mood swings, aggression, and emotional stress. Often times, they will also spend money excessively. Whether or not those issues are a contributing factor to the divorce, they certainly present unique challenges during the divorce. Once a person is addicted to a substance, it becomes the highest priority over everything else for them. For that reason alone, it becomes problematic to entrust an addict with the life of a child.

The Court's paramount concern will always be in the child's best interest. Thus, Family Court judges are cautious when exposing children to a parent whose alleged substance use is interfering with their daily life activities. In order to ascertain whether the parent is, in fact, using, there are various tests that can be performed. A hair follicle test is a reliable way of determining the specifics of the substance abuse. There are different variations of the hair follicle test, some of which are covered by insurance.

Once the Court can ascertain whether abuse is present, there are options to consider depending on the severity of the addiction. The Court may suspend parenting time all together. However, sometimes even when there is a parent working to overcome substance abuse issues, a suspension of parenting time is not warranted. Under those circumstances, the Court will often times utilize supervised visitation as a means of ensuring that the children get to see the parent while also ensuring that the children are safe. If the parties cannot agree upon a third party supervisor, there are options available to hire a supervisor to assist in that capacity.

Sometimes, if alcohol is the issue and not other drugs, the parties can utilize a Soberlink device. Soberlink devices are able to detect alcohol in the breath sample and can, therefore, be a means of ensuring that the party does not consume alcohol prior to or during the scheduled parenting time. It has become a more widely used tool in cases of alcohol abuse.

If the other parent of your children is suffering from substance abuse issues, there are a variety of resources and tools to assist with your custody dispute. If you are suffering from substance abuse issues and want to ensure that you maintain a relationship with your children, it is important to utilize the resources available to keep them safe.



## SCHWARTZ FAMILY LAW MERGES WITH SZAFERMAN LAKIND



**Brian M. Schwartz**  
Partner

Szaferman Lakind is pleased to welcome the attorneys Brian M. Schwartz and Jayde A. Divito to the firm. The attorneys will both join the firm's family law department and will operate out of their Summit, New Jersey location.

Brian M. Schwartz, a widely regarded divorce lawyer in New Jersey, will join the firm as a Partner. He is a former Chair of the New Jersey State Bar Association Family Law Section and has been a member of the Family Law Executive Committee of the New Jersey State Bar Association since 2002. In 2017, Mr. Schwartz received the Saul Tischler Award from the New Jersey State Bar Association presented for Lifetime Achievement in the advancement of Family Law. Mr. Schwartz also works with Volunteer Lawyers for Justice's Divorce Program, volunteering in nearly every aspect of the program. Mr. Schwartz routinely lectures for the New Jersey State Bar Association and other legal organizations. In 2011, Mr. Schwartz was a faculty member in the inaugural AICPA Expert Witness Skills Workshop in Washington, D.C.; he was again a faculty member in 2012 in Chicago, 2013 in Seattle, 2014 in New Orleans, 2016 in Denver and 2022 in Las Vegas. He has also lectured for the AICPA at its Forensic and Valuation conference in November 2021 and November 2022 in Las Vegas.



**Jayde Divito**  
Associate

Jayde Divito will join the firm as an Associate. Ms. Divito is a member of the Family Law Section and Young Lawyers Division of the New Jersey State Bar Association and the Union County Bar Association. Ms. Divito began her legal career as the law clerk for the Honorable Thomas Walsh, currently the Presiding Judge of the Family Part in Union County. In 2022, Ms. Divito successfully completed the Family Law Trial Advocacy Institute, an intensive eight-day advanced course to enhance trial skills and competency. Ms. Divito also serves as an Early Settlement Panelist in Union County.

The team brings with them their assistant Sheena Martinez.

"We are pleased to welcome Brian, Jayde and Sheena to Szaferman Lakind," commented Co-Managing Partner Brian Paul. "Brian and Jayde are prominent members of the New Jersey legal community and will bring additional depth to our family law department. We look forward to working with them and for the continued growth and success of the firm."

## SZAFERMAN LAKIND PARTNERS WITH ARC MERCER TO PROVIDE OPPORTUNITIES FOR AMERICANS WITH DISABILITIES



Szaferman Lakind understands that Americans with disabilities bring their individual skills and talents to the workplace every day and can perform jobs at all levels. Thanks to a recent partnership with The Arc Mercer, Szaferman Lakind is now able to provide social opportunities and an income for people with special needs and development disabilities. The Arc Mercer has a long history of serving children and adults with developmental disabilities in Mercer County, providing many programs and services that promote individualized skill development, independent living, and community integration.

Szaferman Lakind recently entered into an agreement with The Arc Mercer to handle a very important job involving the destruction of documents for the firm. This is a critical job to help keep sensitive and confidential information safe while reducing paper build-up in the office. We are very proud to have partnered with The Arc Mercer and to help people with special needs secure a job and be part of the Greater Mercer Country community.



**Janine G. Bauer**  
Partner

## LAWYER SPOTLIGHT: JANINE G. BAUER

### **Szaferman Lakind Partner Janine G. Bauer named among Senator Lorretta Weinberg's 2023 Women's Power List**

Janine G. Bauer, Partner at Szaferman Lakind, has been honored by being named among New Jersey's most powerful women by former State Senate Majority Leader Loretta Weinberg. Bauer is featured by InsiderNJ.com on Senator Weinberg's 2023 "Women's Power List," along with other notable and accomplished women from various backgrounds and experiences who are described by Senator Weinberg as "the movers and the feminist activists" in the state.

"One of my favorite parts of working in the Legislature for years was the opportunity to work with, advocate with, and befriend some of the smartest, savviest and most inspirational women in the Garden State," Senator Weinberg said in a statement introducing the list. "Leading efforts to protect women in the workplace, improve maternity care, bolster equal pay and expand our laws against discrimination has been one of the great joys of my life."

Bauer is known as a strategic transportation, infrastructure and environmental attorney in the tri-state region. She represents public and private clients and is also an experienced trial lawyer and former prosecutor. She also practices land use, zoning, redevelopment and historic preservation law. She is also a registered legislative agent.

"It comes as no surprise for us to see Janine's name among this list of powerful women in New Jersey," said Szaferman Lakind founding Partner Barry Szaferman. "She is a staunch advocate for mass transit and a sharp attorney whose impressive record speaks for itself. We congratulate her on this recognition."

In addition to her legal work for the region, community and clients, Bauer is a key part of the Women at Szaferman initiative, which provides advancement, professional development and a healthy work-life balance for women at the firm.

### **Szaferman Lakind Partner Janine G. Bauer now represents four New Jersey Historical Commissions**

Janine G. Bauer, Partner, has been hired by Montclair, NJ to serve as counsel to their Historic Preservation Commission. This makes the fourth History Preservation Commission that Janine now represents, including: Millburn, Madison, and Orange.

New Jersey is a state with rich history. Preserving this history often happens at the municipal level. Janine's background and experience in land zone usage and transportation law provides these municipalities with the counsel they require to mediate disputes and represent the interests of these commissions.

Szaferman Lakind is pleased to extend Janine's expertise to those who value New Jersey's and the tri-state area's place in history.

As more redevelopment occurs in our urbanized landscape, developers are likely to encounter historic properties and cultural resources that, by law, must be preserved in place unless approvals are obtained from the State and municipal governments to remove, alter or demolish such resources, especially when they are publicly-owned and listed, or eligible for listing, on a National or State Register of Historic Places. Even single property owners may be affected by federal and state laws or local ordinances that restrict development or redevelopment in historic districts, or which affect historically or culturally significant places and properties. Should approvals be obtained, a mitigation plan will have to be developed. Janine provides advice on historic tax credits, negotiates mitigation and preservation plans, and deals with environmental constraints including flood hazard mitigation and climate change adaptation to obtain approvals from local land use boards or state historic preservation offices.

We congratulate Janine on her appointments to these historical commissions.



**Scott Borsack**  
Partner

## GOING, GOING, GONE?

*An Article By: Scott P. Borsack*

Pending in the New Jersey Legislature is a bill that would severely restrict the ability of employers to use so-called restrictive covenants or post-employment restrictions for their employees, and this serves to limit potential future employment. Lest you think this is a shot in the dark, more than 14 states have enacted similar laws and the United States Federal Trade Commission recently promulgated a regulation to limit the use of these restrictions in employment. If you have not heard any of this, read on.

Slowly working its way through the New Jersey Assembly is a bill that, if enacted, would rewrite many of the rules applicable to employees. The present iteration of the legislation represents the third attempt to enact a law targeted to eliminate such restrictions. It is common for employers to attempt, by agreements or otherwise, to limit who an employee can work for once leaving the employ of their current employer. Basically, the bill provides that any post-employment restriction can be no broader than is necessary to protect legitimate interests of the employer and cannot be unduly burdensome. The employee must be made aware of the potential for the application of the restriction at the earlier of receipt of a formal offer or 30 days before employment commences. If an agreement is to be executed after employment begins, the employee must have 30 days' notice of the effective date of the provision before it can be enforced. Further, the restriction can be effective for no more than 12 months, and the geographic restriction can only be applied to regions where the employer had a substantial presence during the last two years of the employee's tenure. Under the bill, an employer would no longer be permitted to prevent employees from working anywhere in the United States, a four- state area or beyond the borders of the State of New Jersey.

Interestingly, under the same bill, if an employee does not solicit a customer of the former employer but is instead contacted by the customer directly, the employee cannot be prevented from providing services to the customer. My favorite provision addresses employees terminated without cause. Most employees in New Jersey understand that they can be fired at any time, for any reason or no reason at all. This is sometimes referred to as employment "at will." The bill provides that a restrictive covenant cannot be applied to an employee who is terminated without a determination of misconduct, which is defined in the bill. As a result, an employee who is terminated for no reason cannot be restricted from providing services to other employers. Other states that limit the application of post-employment restrictions include New York, Rhode Island, Connecticut, Indiana and Utah. Some states prevent such restrictions to health care providers only.

Lest you think this is some way- out provision, the US Federal Trade Commission issued a notice of proposed rule-making earlier this year limiting the application of restrictive covenants. Finding that restrictive covenants amount to an unfair method of limiting competition, the USFTC proposed to eliminate the application of all restrictive covenants except those in a limited set of circumstances. The prohibition would not apply to those restrictions that are a part of the sale of a business or substantially all assets of a business. The prohibition is far broader than the restriction proposed in New Jersey or those on the books in other states. The proposed rule would take precedence over state laws, pre-empting their applications. So, for example, while the New Jersey bill — if enacted — would permit a restriction for one year following termination, the federal rule would not; and because of the pre-emption provision in the rule, the federal rule would apply. Any agreements that contain restrictive covenants on the date the federal rule is adopted would have to be rescinded, according to the rule. The rule becomes effective 180 days after its final publication. As we go to press with this edition of the Szaferman newsletter, the comment period for the rule is open. Once the comment period concludes, the rule can be further amended, rescinded, or published in final form. We might expect some final word on the rule this coming summer.

Whether it is the New Jersey bill which becomes law, or the USFTC rule, which is finally promulgated, chances are pretty good in 2023 that employees in New Jersey and potentially around the country will likely have more choices of where to seek employment after separating from an employer. Post-employment restrictions could be going, going, GONE.



## THREE SZAFERMAN LAKIND ATTORNEYS RECEIVE AMICUS AWARDS



**Craig J. Hubert**  
Co-Managing Partner

### **Craig J. Hubert and Thomas J. Manzo Receive Amicus Award for their Work Preserving the Rights of Childhood Sexual Assault Victims**

Szaferman Lakind Co-Managing Partner Craig J. Hubert, Esq. and Partner Thomas J. Manzo, Esq. were each presented with an Amicus Award from the New Jersey State Bar Association (NJSBA) for their amicus curiae efforts in the New Jersey Supreme Court case of *W.S. vs. Hildreth*.

In this matter, the defense argued that the sexual assault victim's statute of limitations had expired as it related to a public entity defendant, despite the broadening of the statute of limitations in 2019 for all sexual assault victims. The NJSBA successfully argued that this victim maintained the right to pursue damages, confirming retroactive elimination of the Tort Claims Act requirement for victims to file a notice of claim within 90 days. Thus, the victim, whose cause of action had accrued in 2016, was able to maintain a claim for damages. Thomas J. Manzo and Craig J. Hubert drafted the briefing for the NJSBA, and Craig J. Hubert had the privilege of arguing the matter before the Supreme Court on behalf of the Association.

This ruling preserved the rights of childhood sexual assault victims and equal application of the law in New Jersey, granting victims the opportunity to pursue justice. We are proud of the work Craig and Thomas and congratulate them on these awards.



**Thomas J. Manzo**  
Partner

### **Brian G. Paul Presented with Sixth NJSBA Amicus Award of his Career**

Szaferman Lakind Co-Managing Partner Brian G. Paul, Esq. was presented with an Amicus Award from the New Jersey State Bar Association (NJSBA) for his work as author in the case of *Moynihan v. Lynch*.

*Moynihan v. Lynch* was a palimony case in which the NJSBA successfully argued that the provision in the Statute of Frauds requiring that palimony agreements be reviewed by attorneys was unconstitutional. The New Jersey Supreme Court agreed with this position, citing the interference of the provision with an individual's right to autonomy and its disproportionate burden on those who cannot afford legal representation.

The NJSBA Amicus award is given to recognize exceptional contributions to the legal profession. This team's efforts in this case have helped to establish important precedents for individual autonomy and due process in New Jersey.

"It is an honor to work alongside Brian, and we congratulate him on this well-deserved recognition," said Szaferman Lakind Managing Partner Barry Szaferman. "This was an important case for New Jersey, and we're proud to have argued in favor of this precedent-setting verdict."

This is the sixth Amicus award Brian has received. Congratulations, Brian



**Brian G. Paul**  
Co-Managing Partner

## 2023 BEST LAWYERS: 10 CONSECUTIVE YEARS OF RECOGNITION

For the tenth consecutive year Szaferman, Lakind, Blumstein and Blader, P.C. has been included in the 2023 Edition of U.S. News – Best Lawyers® “Best Law Firms”\* list. For 2023, the firm was recognized as a New Jersey – Metropolitan Tier-1 law firm in the following practice areas:

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



According to U.S. News – Best Lawyers®, “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.” This data is combined into an overall score and firms are then compared by metropolitan area and ranked using a tiering system.

“Thank you to U.S. News – Best Lawyers® for including the firm in the “Best Law Firms” list for the tenth consecutive year.” commented Co-Founder Barry Szaferman. “We are honored to be recognized and we sincerely appreciate the dedication of all of our attorneys and staff and their continuous hard work on behalf of our clients.”

In order to be included on the “Best Law Firms” list each firm, “must have at least one attorney who is recognized in the current edition of The Best Lawyers in a ‘Best Law Firms’ ranked practice area/metro area.” In the 2023 edition of Best Lawyers\*, five (5) Szaferman Lakind attorneys were recognized in five (5) practice areas including:

<b>BARRY D. SZAFERMAN</b> FAMILY LAW	<b>BRIAN G. PAUL</b> FAMILY LAW	<b>ARNOLD C. LAKIND</b> COMMERCIAL LITIGATION + LAND USE & ZONING	<b>CRAIG J. HUBERT</b> PERSONAL INJURY LITIGATION – PLAINTIFFS	<b>JEFFERY M. HALL</b> LAND USE & ZONING + REAL ESTATE LAW
				
<i>Best Lawyers</i> 2016 - 2023 Lawyer of the Year 2019	<i>Best Lawyers</i> 2013 - 2023 Lawyer of the Year 2015, 2018, 2023	<i>Best Lawyers</i> 2009 - 2011, 2014 - 2023 Lawyer of the Year 2017	<i>Best Lawyers</i> 2013 - 2023 Lawyer of the Year 2019	<i>Best Lawyers</i> 2017 - 2023 Lawyer of the Year 2023

Furthermore, Brian Paul and Jeffrey Hall were each recognized as “Lawyer of the Year” for Family Law and Real Estate Law respectively, in the Princeton-Metro Area.

To learn more about the selection methodology of the “Best Law Firms” list please visit their website.

*No aspect of this advertisement has been approved by the Supreme Court of New Jersey.*



**Kristine Brown**  
Of Counsel

## KRISTINE DRESS BROWN, ESQ. JOINS THE FIRM

Szaferman Lakind is pleased to announce that Kristine Dress Brown, Esq. joined the firm in January. Kristine is a former Senior Associate at Faegre Drinker Biddle & Reath, LLP and has joined the Szaferman Lakind litigation department in an “of counsel” role.

She earned her undergraduate degree, with honors, in political science from Rutgers University and her J.D. from Rutgers University School of Law – Newark, where she was the research editor for the *Computer and Technology Law Journal*. She has nearly 20 years of experience in commercial litigation and labor and employment law and is a member of the New Jersey State Bar.

“We welcome the expertise and talents of Kristine Brown to the litigation team,” said Co-Managing Partner Brian G. Paul, Esq. “We look forward to her contributions to our cases and the perspective she brings along with her strong background and education.”

Kristine practices remotely from her home office in Northern New Jersey.

## IN THE NEXT ISSUE...

*Szaferman Lakind announced June 1 that Jonathan I. Epstein has joined the firm as Partner. Epstein formerly practiced at Faegre Drinker for more than 35 years and specializes in commercial litigation and real estate development. He brings a wealth of experience to the firm and aims to build a new practice handling mediations and all facets of commercial disputes. Jon was the Managing Partner of the Faegre Drinker Princeton office for 25 years. Be on the lookout for details in the next edition of this newsletter.*

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