



# NEW JERSEY STATE BAR ASSOCIATION

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January 27, 2017

VIA ELECTRONIC DELIVERY

Hon. Chief Justice Rabner and  
Associate Justices of the Supreme Court of New Jersey  
New Jersey Supreme Court  
Hughes Justice Complex  
25 W. Market Street  
Trenton, NJ 08625

Re: State v. Cassidy (078390)

Dear Chief Justice Rabner and Associate Justices of the Supreme Court of New Jersey:

Thank you for the opportunity to submit recommendations in connection with the State's request for the appointment of a special master in the above referenced matter.

The New Jersey State Bar Association (NJSBA) reiterates its recommendation in its Dec. 5, 2016 statement to the Court urging that the request for a special master be denied. The reliability of the Alcotest 7110 MkIII ("Alcotest"), and the conditions under which results obtained from its use are admissible were already extensively litigated in State v. Chun, 194 N.J. 54 (2008), and Chun II, 215 N.J. 489 (2013) (collectively, "Chun").

The special master appointed at the time, Hon. Michael Patrick King, heard countless hours of expert testimony and argument, and analyzed hundreds, if not thousands, of pages of technical reports about how the Alcotest works and what is required to ensure its reliability. His conclusions formed the basis of this Court's decision in that case, which was issued only after several rounds of argument and additional briefs on the merits. The resulting opinion and Order carefully balanced the competing interests of the parties to ensure fairness and integrity in the prosecution of drunk driving charges. F

Further, as noted in the NJSBA's earlier submission, the procedure in question - using a NIST-traceable thermometer to calibrate the machine -- is a requirement established by the State itself. Only after the State was faced with the challenging ramifications of one of its own ignoring that requirement did it suggest that use of the NIST-traceable thermometer can be eliminated as a prerequisite to the admissibility of test results. The reality is, however, that there simply is no justification for reopening the settled case law of Chun, which has informed the prosecution and defense of thousands of convictions since it was decided, because of the alleged bad actions of a single State Police Officer. For these reasons, and those expressed in the NJSBA's Dec. 5 statement, the association again urges the Court to not appoint a special master.

If the Court is inclined to do so, however, the NJSBA recommends that the special master not be tasked with examining any of the substantive issues in connection with the Alcotest already decided in Chun. The requirements for admissibility should not be reopened or re-examined, and the well-settled law of Chun should not be disturbed. To do so would only undermine the integrity of and confidence in the justice system.

The NJSBA recommends, instead, if the Court appoints a special master, it follow the precedent set in the litigation seeking relief in certain New Jersey State Police Office of Forensic Sciences North Regional Laboratory (Little Falls) Drug Unit matters. There, a State Police Lab Technician was charged with failing to appropriately conduct laboratory analysis, peer review or administrative review of purported drug evidence. This Court determined it was beneficial and in the public interest to provide for centralized case management of all appeals arising from the alleged actions of the State Police technician. See Notice to the Bar, "Centralized Case Management - Litigation Seeking Relief in Certain New Jersey State Police Office of Forensic Sciences North Regional Laboratory (Little Falls) Drug Unit Matters - Adjudicated Cases," Apr. 26, 2016, <http://www.judiciary.state.nj.us/notices/2016/n160426a.pdf>.

Similarly, the NJSBA recommends that, if a special master is appointed in this case, the role of the special master be solely

procedural to ensure centralized consideration of appeals challenging the validity of test results issued by machines calibrated by the State Police Officer in question. This would ensure uniformity in the handling of all appeals, and preserve the rights of both those defendants prosecuted based on the potentially faulty test results and any future defendants charged with drunk driving by keeping the well-settled requirements for such prosecutions in place. By addressing this matter in a procedural nature only, the Court will not disturb the well-settled law of Chun, will avoid rewarding the bad actions of a State Police Officer, and will keep the integrity of and confidence in the justice system intact.

Respectfully submitted,  
NEW JERSEY STATE BAR ASSOCIATION

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