

PRESIDENT'S PERSPECTIVE

THOMAS H. PROL

NJSBA Members Play a Central Role in *Amicus* Advocacy



“If you see something, say something.” The New Jersey State Bar Association (NJSBA) needs you to keep your eyes and ears open and tell us about issues and cases in New Jersey that impact attorneys, their practices and their clients. We need your help in one of the most important advocacy roles

that we undertake as an association—serving as *amicus curiae* to New Jersey’s state and federal courts and tribunals.

Since its inception over 117 years ago, the NJSBA has been zealous in its important work of providing assistance and insight as a friend of the courts. During that time, we have left an indelible mark on the state’s law books, impacting and changing New Jersey jurisprudence for the better. The NJSBA has a vibrant and active record of standing up and speaking out in cases that affect the state bar mission, and we proudly promote access to justice, stake out a fiercely protective role for the sacrosanct attorney-client privilege, and safeguard judicial independence as a prime directive.

While we have largely been successful in the positions we take, there remains much work yet to do; for example, we recommit our membership to fighting to restore fairness to the state’s law books when it comes to fee shifting in suits against attorneys and protecting jury awards from improper interference.

With the assistance of its *amicus* committee volunteers and brief writers, the NJSBA filed, argued and was involved in nearly a dozen legal decisions last year. The association has tackled cases that cover *voir dire*, the electronic delivery of notices in real estate matters, attempts to curtail the Law Against Discrimination (LAD), and recall judges. By those collective efforts, NJSBA members’ fingerprints can be seen on many high-profile matters that will impact state law and legal interpretations for years to come.

Here are some highlights of the NJSBA’s *amicus* activity.

- In *State v. James Buckner*, the Court found the use of recall judges was constitutional. The association had urged the Court to consider the public policy ramifications that would have sent shockwaves throughout the legal industry if the justices were to find that the use of retired judges who have been tapped to hear some matters for the past 40 years was not allowed.
- In *Ekaterina Schoenefeld v. State of New York*, the NJSBA argued that, just as New Jersey has recognized an evolution of its *bona fide* office rule *vis-à-vis* today’s technology advancements, New York’s in-state office requirement for non-resident attorneys impermissibly discriminates against out-of-state attorneys and should be placed in the rubbish bin. The case is pending in the United States Court of Appeals for the Second Circuit.
- The NJSBA did not agree with the Court’s findings in *Peter Innes v. Marzano-Lesnevich*, where attorneys may be held liable for counsel fees if, as trustees and escrow agents, they intentionally breached their fiduciary obligation. However, the association is continuing to advocate for reform of professional malpractice statutes in the Legislature and will redouble its efforts to achieve a legislative solution to the situation.
- In a case of first impression, the association is a friend-of-the-court in *Heredia v. Piccininni*. The case will determine if judges must ask open-ended questions during jury selection and if the failure to do so is grounds for a new trial. In short, the case will set the stage for how *voir dire* is conducted at future trials. The NJSBA argued that using open-ended questions during the jury selection process is a critical way to assess the attitudes and preconceptions jurors may have that could conflict with their ability to consider the case fairly. Further, the association said such questions are required under existing Administrative Office of the Courts directives and that they should be enforced.
- In a unanimous decision, the Court agreed with the NJSBA’s argument that *Sergio Rodriguez v. Raymours Furniture*, holding that a private agreement that contractually shortens the

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intellectual property. She served as a Judiciary law clerk to the Hon. Barbara Byrd Wecker, J.A.D. (ret.). **Reka Bala** is an associate at Coughlin Duffy LLP, and practices in the firm's defense practice group. She served as a Judiciary law clerk to the Hon. Carmen Messano, P.J.A.D.

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statute of limitations for a LAD claim frustrates the purpose of the LAD and is, therefore, unenforceable. The NJSBA argued in support of the plaintiff's access to justice rights, supporting his right to have his claims heard by the court. Moreover, the NJSBA argued that the contract at issue was one of adhesion, and that it unreasonably and unconscionably curtailed a citizen's rights to access the courts.

You can see the powerful role the NJSBA plays in offering guidance and assistance to the New Jersey courts. It is a role we cherish, especially in those instances where the Court reaches out to the association and invites participation in a matter.

But we need your help. You are aware of what is going on and, with the tens of thousands of other attorneys throughout the state, you are best equipped to let the NJSBA know when an interesting or important matter is brought before the Court. While we cannot promise we will become involved in every case you point out to the state bar, rest assured, we will accept every suggestion we get and provide a thorough review through our *amicus curiae* committee and, ultimately, the NJSBA Board of Trustees, which makes the final decision on all such matters. ☺

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