

# Mercer County *Lawyer*

Winter 2024

*A Publication of the Mercer County Bar Association*

**Volume 43, Issue 1**

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## Upcoming Events

**24th Annual Bench  
Bar Luncheon  
May 8, 2024**

**Annual Golf Outing  
June 6, 2024**

## From the President’s Desk...

A lot was accomplished in the first quarter, and I am excited to meet and work with our new members. We want to provide a valuable membership experience, including free CLEs and important education, but also for social and cultural events, and opportunities to serve our community. We appreciate your membership and want to make it as worthwhile for you as we can.

The Family Bench Bar presented our first free CLE of 2024 for members in good standing who attended the Zoom seminar on “Above Guideline Child Support.” Additional free CLEs will be available to our members as we are planning a series of lunchtime Zoom seminars. Is there a topic you would like to learn more about, or do you have an idea for a seminar you want to present? Please reach out to me, our Executive Director, Anita Mangat, or our CLE committee.

The Civil Bench Bar Committee will present “Reconstructing Vehicular Accidents Using Technology,” and the Family and Real Estate Committees are joining forces to present “Wasting the House in a Divorce.” The Trust & Estates Committee is partnering with one of our sponsors, M&T Bank, to present on “Buy/Sell Agreements,” so look for those dates, as well as other



*Jennifer Zoschak, Esq.*

topics, to come.

I was honored to be a part of our Women in the Profession Section’s panel discussion on March 7, 2024, held at Stark & Stark’s new office space in Hamilton. Thanks to Stark & Stark, Hamilton Law and Hudson Court Reporting for their generous sponsorships which made the evening a success. On a personal note, I especially loved the French 75 – my favorite cocktail! I hope that all the men and women who attended left with a new perspective on what it means to be a woman in the legal profession and recognize some of the unique challenges and obstacles women attorneys face.

Our Annual Ethics Luncheon has been combined with the May General Membership Meeting and the presentation of the newly named Hon. Neil

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H. Schuster Professionalism Award, so please join me in congratulating Ayesha Hamilton of The Hamilton Law Firm on Wednesday, May 8<sup>th</sup> at The Stone Terrace on receiving this award for 2024. Ayesha concentrates her practice on Employment and Business Law and is active in the Mercer County Bar, the New Jersey State Bar Association, and national organizations. Ayesha will be highlighted in an article in the Spring newsletter.

The panel discussion on the Ethics of Generative AI will feature OAE Director Johanna Barba Jones, former U.S. Magistrate Judge for the district of New Jersey, the Hon. Ron Hedges (Ret.) and Jessica Lewis, Special Assistant to the Administrative Director of the Courts, and will be moderated by Ryan Moriarty, Statewide Ethics Coordinator for the OAE. Generative AI is coming into our courtrooms and law practices, so we as attorneys and judges had better be ready to recognize both the benefits and risks that come with using it, and how and when to challenge it.

On a brighter note, after having suffered through the tremendous judicial vacancies the state has had over the last few years, on March 18, 2024, the Honorable Robert W. Rubenstein was one of twelve (12) judicial appointments approved by the Senate, bringing the number of judicial vacancies throughout the state from 50 to 38. In May 2023, N. J. had 75 judicial vacancies so almost one-half of those are now filled. Judge Rubenstein will sit in the Family Division, although the specific docket has not yet been announced. Congratulations Judge Rubenstein and welcome to the Mercer Bench!

MCBA has so many upcoming events to look forward to. May 1<sup>st</sup> is Law Day and this year's theme is "Voices of Democracy." Our Public Education Committee needs volunteers to assist with the program, to include both attorneys and judges engaging with local students. This is a great chance to interact with community members and to recognize contributions made to and the importance of the rule of law in our society.

Our Social Justice Committee is leading our partnership with Salvation & Social Justice, our Prosecutor's Office and the Public Defender's Office, for a local Expungement Clinic to take place on June 11<sup>th</sup> at the Trenton campus of Mercer County Community College A Zoom training session (for CLE credits) for attorney volunteers will be held on May 29<sup>th</sup>.

There are plenty more programs and educational events in the works for 2024. In the meantime, I want to thank all the Committee Chairs, our dedicated staff, and Executive Director, who make these events possible. I am so impressed with and grateful for the way our Committee Chairs, Trustees and members step up, give of their time and energy to get things done and have such creative ideas! That is what keeps our organization going and what builds our community.

**\* NEW to Mercer County Bar Association! \*****We welcome the following new members...**

Tabitha Clark, Esq., Central Jersey Legal Services

Rosemary Culcasi, Esq., Hill Wallack, LLP

Jayde Divito, Esq., Szaferman Lakind

Yvette Donaldson, Esq., Eckert Seamans

Janis Eisl, Esq., Szaferman Lakind

Carolyn Fick, Esq., Goldberg Segalla

Arun Lavine, Esq., The Law Office of Arun Lavine

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Vickie Leady, Esq.

Kathryn Ng, Esq., The D'Orlando Firm, PLLC

Dwaine Williamson, Esq., The Williamson Law Firm, LLC

Allison S. Zangrilli, Esq., Epstein Becker & Green, P.C.

**Upcoming Events & Meetings****All Attorneys Are Invited To Attend Bench Bar Meetings****Trustee Meeting**

Tuesday, April 9, 2024 | 5:30 pm

- This meeting will be held at Tessara Restaurant
- A calendar invite has been emailed

**Lawyers Care**

Thursday, April 11, 2024 | 5:00 pm

- This program will be held virtually via Zoom
- Please contact Loren at [lromberger@mercerbar.com](mailto:lromberger@mercerbar.com) to volunteer

**Chancery/Probate Bench Bar**

Wednesday, April 17, 2024 | 4:00 pm

- This meeting will be held virtually via Zoom
- Register [here](#) for this meeting

February is Black History Month.

An annual celebration of achievements by African Americans and a time for recognizing their central role in US history.

The Black History Month 2024 theme was

**“African Americans and the Arts”**

which explored the “creativity, resilience and innovation from a culture that has uplifted spirits and soothed souls in countless ways across centuries.”



## The Superior Court paid homage to this special time with an exhibit on the fourth floor.



Mercer County Bar Association  
*Installation Dinner & GM Meeting*  
*February 8, 2024*  
*Mercer Oaks*

On February 8, 2024, the MCBA hosted the Installation Dinner and General Membership meeting at Mercer Oaks. Jennifer Zoschak, Esq. was sworn in as the new President by Judge Kay Walcott-Henderson. Other officers sworn in were Brian Shea, Esq., *President-elect*; Ross Switkes, Esq., *Vice President*; Jennifer Downing-Mathis, Esq., *Treasurer* and Joseph Paravecchia, Esq., *Secretary*. 2026 Trustees were also sworn in at this meeting.

Ayesha Hamilton, Esq., Hon. Robert Lougy, and Rebecca R. Colon Esq. participated in moderating and introductions.





















## Women Lawyers Committee

### Juggling Act—How the times have changed, or have they?

The Mercer County Bar celebrated and honored its women leaders in the profession on March 7, 2024 at a packed event held at Stark and Stark. The panelists, Kiomeiry Csepes, Esq., Denise Mariani, Esq., Jessica Wilson, Esq., and Jennifer Zoschak, Esq., led by Chinsu Shahan, Esq., shared frank and honest stories about their professional experiences and personal lives and how they handle it all. The audience engagement was fantastic - stay tuned for the next Mercer WIPS event.





## “Best Practices for Above Guidelines Child Support Calculations” Seminar—1/24/2024

*Submitted by: Kimberly Gandy Jinks, Esq.  
Co-Chairperson, Family Law Committee*

On January 24, 2024, the Family Bench and Bar met virtually for another meeting, this time to discuss child support — specifically, practical tips on calculating child support when dealing with high income earners. The Honorable Supti Bhattacharya, J.S.C., Wendy M. Rosen, Esq., and Louis M. Ragone, Esq. led the panel discussion with the assistance of our Family Law Committee Co-Chairperson, Neethi Vasudevan, Esq., who moderated the conversation about the issues family law practitioners often face. The discussion began with a reminder that Appendix IX-A of the New Jersey Rules of Court is applicable to those families with a maximum net income of up to \$187,200.00 annually and is not meant to be extrapolated. In order to determine the right amount of child support for families whose income exceeds the maximum, we were reminded that the court shall apply the guidelines up to \$187,200.00 and then supplement the award with a discre-

tionary amount based on the remaining family income and upon a review of the statutory factors set forth in N.J.S.A. 2A:34-23(a). Calculation of this discretionary amount was the focus of this seminar. Ms. Rosen discussed the methodology and how the statutory factors were applied in Isaacson v. Isaacson, 348 N.J. Super. 560 (App. Div.), certif. denied, 174 N.J. 364 (2002), with an in-depth discussion of the facts of that case — particularly in the scenario where one party’s income has substantially increased above and beyond the maximum amount and a motion to modify child support is at issue — as well as in Caplan v. Caplan, 182 N.J. 250 (2005).

Mr. Ragone emphasized that the Rules of Court require the Guidelines to be used as a rebuttable presumption for the establishment and modification of all child support orders, but also that the “best interests of the child” remain the primary focus,

citing Pascale v. Pascale, 140 N.J. 583 (1995). He then discussed the statutory factors, Strahan v. Strahan, 402 N.J. Super. 298 (App. Div. 2008) and the “reasonableness” of the children’s needs, and the custodial parent’s obligation to bear the burden of proving same pursuant to Accardi v. Accardi, 369 N.J. Super. 75 (App. Div. 2004).

Judge Bhattacharya gave us some practical tips when encountering above-Guidelines child support scenarios, specifically regarding the preparation of case information statements, children’s budgets, the reasonableness of children’s expenses, etc. Overall, it was a very informative discussion. The information and seminar were made available to all members in good standing and each member earned one (1) CLE credit.

The Family and Real Estate Committees are currently working together for an upcoming seminar, so stay tuned for more details.



## Craig J. Hubert Receives James J. McLaughlin Award from the New Jersey State Bar Association

*Submitted by: Szaferman Lakind*

Szaferman Lakind proudly announces that Co-Managing Partner, Craig J. Hubert, has been honored with the James J. McLaughlin Award by the Civil Trial Bar Section of the New Jersey State Bar Association (NJSBA). This prestigious award recognizes individuals who exhibit exceptional civility, legal competence, and professionalism in the field of civil trial law.

Craig J. Hubert's receipt of the James J. McLaughlin Award is a testament to his outstanding contributions to the legal profession. As a Certified Civil Trial Attorney certified by the Supreme Court of New Jersey, Craig has consistently demonstrated his expertise and dedication to serving his clients with integrity and skill.

Throughout his career, Craig J. Hubert has received numerous accolades and recognitions for his exemplary work in civil trial law. He has been repeatedly named to the New Jersey Super Lawyers™ list by Thomson Reuters, a recognition bestowed upon only the top attorneys in the state. Additionally, Craig has been honored with inclusion

in the prestigious Best Lawyers in America® list by BL Rankings, LLC, since 2013.

Brian G. Paul, Co-Managing Partner at Szaferman Lakind, expressed the firm's pride in Craig's achievement, stating, "Our firm is immensely proud and honored to celebrate Craig's receipt of the James J. McLaughlin Award, the highest distinction bestowed by the New Jersey State Bar Association for a civil attorney. This prestigious accolade not only recognizes Craig's excep-



*tional legal expertise and professionalism but also underscores his pivotal role in setting the standard for excellence in civil trial law. His achievement is a beacon of inspiration for us all and a testament to the unparalleled commitment and skill he brings to our profession."*

The award ceremony, held on February 5, 2024, at the Palace at Somerset, provided an opportunity to honor Craig J. Hubert alongside esteemed co-recipients, including Honorable Yolanda Ciccone and Edward DePascale, Esq. This gathering celebrated their significant contributions to the legal community and highlighted their exemplary standards of professionalism and integrity.

Szaferman Lakind extends heartfelt congratulations to Craig J. Hubert for this prestigious honor. His exceptional achievements and unwavering dedication continue to inspire both colleagues and clients alike, reinforcing his position as a leader in the field of civil trial law.



# CONGRATULATIONS

## CRAIG J. HUBERT

Co-Managing Partner



On receiving the distinguished  
James J. McLaughlin Award 2024

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## For the Public Good

*Submitted by: Kalea Edmundo, Esq. & Heather Hadley, Esq.  
Co-Chairs, Social Justice Committee*

Attorneys lead very busy lives and yet somehow, we all manage to find a way to balance it all - family life, professional responsibilities, demanding clients, and the occasional self-care. The ability to multi-task and “find a balance” is always a tricky concept, no matter if you’re a lawyer or engaged in another profession. One thing that is certain for each of us is that we can do it because we are living proof every day. In New Jersey, there is an overwhelming need for attorneys to handle *pro bono* work. Integrating *pro bono* work into our busy lives and our practices can be difficult but it is possible.

The term *pro bono* is Latin for “*pro bono publico*”, and means “for the public good”. Many low-income individuals do not have the funds or other resources to retain legal counsel and end up representing themselves in court. Many self-represented litigants are unable to navigate through the complex legal system and they struggle with simple pleadings or even articulating the relief they seek. It is a struggle for

self-represented litigants to be in a system with no help or a roadmap to figure out their next steps. Attorney assistance at any point can make a difference in the outcome.

According to New Jersey Rule of Professional Conduct 6.1, every lawyer has a professional responsibility to render public interest legal services. Under Madden v. Delran, 126 N.J. 591 (1992), attorneys in New Jersey are subject to court appointed *pro bono* service. These appointments are made by the court and do not take into account your schedule or experience. These assignments from Madden are not typically in the area you practice and there is minimal training or ongoing support available when handling these types of matters. According to R. 1:21-12(a), attorneys can be exempt from the Madden list by providing at least twenty-five (25) hours of *pro bono* service to a court approved *pro bono* provider the year prior to taking the exemption.

Volunteering for a court-approved *pro*

*bono* organization allows you to do *pro bono* on your own time and in your choice of practice area. *Pro bono* work also allows you to pursue areas of law you may be passionate about and may not see in your private practice. This can also help develop untapped skills and help make a tremendous difference in the lives of those in need of help. Most importantly, you will find the *pro bono* assignment very rewarding.

Visit <https://www.njcourts.gov/attorneys/pro-bono> for more information about qualifying *pro bono* service organizations.

*Kalea Edmundo is a senior attorney at Central Jersey Legal Services (CJLS). CJLS is a court approved pro bono provider.*

*Heather M. Hadley is the Supervising Deputy Attorney General, Bureau Chief Medicaid Fraud Control Unit, Office of the Insurance Fraud Prosecutor*



## ATTENTION: PRO BONO OPPORTUNITIES AVAILABLE

Central Jersey Legal Services is seeking volunteer attorneys for pro bono cases in any of the following practice areas:

- ▶ Tenant Habitability
- ▶ Criminal record Expungements
- ▶ Family law (uncontested divorces, post-judgement motions, name changes, domestic violence TRO)
- ▶ Chapter 7 bankruptcy
- ▶ Guardianship of disabled children reaching majority
- ▶ Tort defense
- ▶ Unemployment
- ▶ Social security overpayment
- ▶ School law for IEPs
- ▶ Real Estate Closings for Trenton Program

**If interested please contact Susan at [sknispel@lsnj.org](mailto:sknispel@lsnj.org).** Please be sure to indicate the type of case that you are willing to represent.



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# Save the Date



## HOPEWELL VALLEY GOLF & COUNTRY CLUB

**Thursday, June 6, 2024**

Registration & Lunch 11:30 am

Golf Shotgun 1:00 pm

Networking Reception 5:30 pm

## **“They Paved Paradise and Called it a Parking Lot”: Stopping Warehouse Sprawl: Challenges and Opportunities<sup>1</sup>**

*Submitted by: Tirza Wahrman and Warren Mitlak<sup>2</sup>*

### **A. Introduction**

New Jersey, our nation’s most densely populated State, has witnessed a record growth of warehouses over the past ten years.<sup>3</sup> This phenomenon has occurred at a time when climate change has increased the vulnerability of many of our communities to heightened flood risk. New Jersey’s 1,777 large warehouses (exceeding 500,000 square feet in size) lie within a half mile from about 1.9 million residents throughout the State, according to a recent report from the Environmental Defense Fund.<sup>4</sup>

Properly-sited warehouses can bring significant benefits in job creation and commercial ratables. At the same time, they bring substantial costs in the form of increased flood risk with the loss of open space, traffic congestion, and air pollution from large diesel-burning trucks. In addition, warehouse siting disproportionately impacts “overburdened communities,” consisting of low-income residents who may lack the political capital to mount effective opposition to inappropriate warehouse siting.

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<sup>1</sup> “Big Yellow Taxi” is the title of a song by Joni Mitchell.

<sup>2</sup> Tirza Wahrman is a principal in the Law Office of Tirza Wahrman, LLC, located in West Windsor, New Jersey. Tirza is an elected Director of the Environmental Law Section of the New Jersey Bar Association. She also serves on the advisory board of Clean Water Action New Jersey. Tirza is also an adjunct assistant professor in Political Science at Rider University. Warren Mitlak is a paralegal in the Law Office of Tirza Wahrman and has a background in project management. The views expressed herein are those of the authors and are not attributable to the Mercer County Bar Association, Rider University or Clean Water Action New Jersey.

<sup>3</sup> Tim Evans, *Warehouse Sprawl, Plan Now or Suffer the Consequences*, New Jersey Future, January 2022.

<sup>4</sup> <https://www.northjersey.com/story/news/environment/2023/07/13/nj-warehouses-spread-possible-health-impact/70403247007/>

Siting and zoning decisions made by municipal planning boards can have outsized impacts on neighboring communities that have no say on their siting. Are our State and local regulators up to the task of imposing regulatory oversight to contain the costs and environmental impacts? The record so far is open to question. The vigilance of affected communities and engagement with our state legislators to enact meaningful legislative proposals are critical to promoting sound regional planning.

To quote from the State Planning Commission Warehouse Siting Policy, “[in] recent years, industrial-scale warehousing for goods storage and distribution to businesses and retail customers has undergone rapid change with the growth of e-commerce and rising consumer expectations for same-day delivery services.”<sup>5</sup>

Warehouses do add jobs to the state’s economy and account for roughly 12 percent of total employment.<sup>6</sup> But the benefits of job growth and ratables can come at a steep cost.<sup>7</sup> Among the costs: 1. increased flood risk; 2. increased traffic congestion; 3. negative effects on air quality from diesel-fuel trucks that are currently in use to enter and exit these facilities; and 4. “overburdened communities” are disproportionately impacted.

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<sup>5</sup> <https://nj.gov/state/planning/assets/pdf/warehouse-guidance.pdf> (page 4) The State Planning Commission breaks warehouses into three different categories: 1. Major distribution center—large-scale regional and/or interstate distribution facility having a minimum gross floor area from 500,000 to more than 1.5 million square feet; 2. Large fulfillment center—large-format regional fulfillment facility having a minimum gross floor area from 150,000 to more than 500,000 square feet. In this category, a medium-sized fulfillment center would average between 250,000 to 350,000 square feet; 3. Last-mile fulfillment center—small local or area fulfillment center/facility or station that primarily serves local markets (roughly the same function as retail shopping centers) having a minimum gross floor area from 50,000 to 150,000 square feet. This category could include micro/small fulfillment centers of 3,000 to more than 25,000 square feet.

<sup>6</sup> Tim Evans, *Warehouse Sprawl, Plan Now or Suffer the Consequences*, New Jersey Future, January 2022; <https://www.njfuture.org/research-reports/warehouse-sprawl-plan-now-or-suffer-the-consequences>

<sup>7</sup> Tim Evans of New Jersey Future asserts that “...municipal officials are often tempted to court industrial properties like warehouses because they are “clean ratables”—they help keep property taxes low by generating property tax revenue without demanding much in the way of government services. In particular, they don’t bring in school children, who are expensive to educate. Local leaders’ fiscal incentives can thus be at odds with the desire of average citizens who may not want more trucks on their roads or more warehouse buildings eating up hundreds of acres of farmland.” Tim Evans. “Plan Now or Suffer the Consequences, New Jersey Future, January 2022. In fact, at the West Windsor Planning Board hearings held on the Bridge Point warehouse proposal in the spring of 2022, residents like the author expressed a preference for preserved open space, as a solution to reducing flood risk and preserving the character of land that had been farmed for many decades.

## 1. Flood risk caused by siting of warehouses on formerly undeveloped land

Climate change is a fact in New Jersey, and nowhere is it more evident than in the increased incidence of severe flooding and precipitation across the State. Floods are already the most common and among the most deadly disasters in the United States. Warehouses have large building footprints. Ideally, they would be built on already-developed land, e.g., land where factories or other industry have been previously sited. Tim Evans, supra. However, with the continued appetite of builders for new warehouses, combined with the fiscal self-interest of municipalities, there is pressure to build on undeveloped land. Tim Evans, supra. As extreme weather driven by climate change continues to exacerbate sea level and inland river rise, flood-prone areas in New Jersey and around the country are expected to grow by nearly half in just this century.<sup>8</sup>

New Jersey in recent years has seen a significant increase in severe weather events. Id. To quote the Watershed Institute in its pending brief challenging the Department of Protection's (DEP) issuance of a flood hazard area permit for the Bridge Point warehouse complex in West Windsor. "No one can control when and where it rains, but dangerous flooding can be anticipated." Watershed Institute Brief, In the Matter of Flood Hazard Area Verification and Flood Hazard Area Individual Permit, 1113-22-0002.1 LUP220002 (filed Appellate Division, October 6, 2022, page 1).

## 2. Traffic congestion

According to the State Planning Commission, a typical 1-million-square-foot warehouse has an average daily traffic rate of 1,740 trips per day. [Distribution Warehousing and Goods Movement Guidelines](#), issued September 7, 2022, (hereinafter State Planning Commission Guidance), page 11. This projected increase in traffic stresses our already-congested roadways and strains local police and emergency services. See Jon Hurdle, NJ Spotlight,

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<sup>8</sup> See <https://www.nrdc.org/stories/flooding-and-climate-change-everything-you-need-to-know>; Evans, supra.

“Warehouse Opponents Step Up Campaigns,” January 4, 2023 (describing citizen opposition to proposed warehouse siting in West Windsor, Robbinsville and Phillipsburg centering on projected heavy increases in truck traffic).

### **3. Impacts on air quality**

According to the State Planning Commission, emissions of air pollutants and greenhouse gasses from diesel-powered delivery vans and tractor trailers represent the most substantial environmental impact from warehouse facilities. State Planning Commission Guidance, page 22. As the Commission report reminds us: there is “mounting evidence that diesel exhaust poses major health hazards.” *Id.* The World Health Organization (WHO) “classifies diesel exhaust as carcinogenic to humans, even at low concentrations. The electrification of truck fleets to avoid these harmful emissions appears to be many years away. *Id.*

### **4. Disproportionate impact on overburdened communities**

Many warehouses are sited in “overburdened communities.” Overburdened communities are defined as those that contain a significant number of minority residents and those living below the federal poverty line. For example, the Ironbound community in Newark is multi-ethnic and largely working-class. The area is dotted with large warehouses, factories and industrial properties, abutting multi-family homes and public housing. The community is disproportionately impacted by air pollution, toxic waste and “anything that is detrimental for the environment and their health,” in the words of Tolani Taylor, warehouse organizer, Clean Water Action New Jersey.<sup>9</sup>

#### **B. The Warehouse Boom is Here; Local Planning Boards Do Not Have the Regional Regulatory Lens that Large Warehouse Projects Demand**

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<sup>9</sup><https://www.northernjersey.com/story/news/environment/2023/07/13/nj-warehouses-spread-possible-health-impact/70403247007/>

Warehouse construction has boomed in New Jersey along with a sharp increase in e-commerce, spurred on by the large Port Newark/Elizabeth shipping facility, the second busiest port in the country (behind the Port of Los Angeles). According to a 2021 report by Costar, more than 100 warehouses totaling 26.5 million square feet of rentable space are due to be built in New Jersey over the next three years alone.<sup>10</sup>

Warehouses can benefit municipalities by creating jobs and generating tax revenue. But they can bring significant problems — from stormwater runoff, additional truck traffic, air pollution and noise pollution. To quote Peter Kasabach of New Jersey Future: “Warehouses are not benign uses; they are polluting uses.” New Jersey Spotlight, *Warehouse Growth in New Jersey: Impacts and Opportunities*, moderated by Jon Hurdle, March 2, 2023.

Under existing laws, individual municipalities can determine where proposed warehouses are sited. See generally N.J.S.A. 40:55D-10; N.J.S.A. 40:55D-51(b). It is well-established that “[w]hen a party challenges a zoning board’s decision[.], . . . the zoning board’s decision is entitled to deference.” Kane Props., LLC v City of Hoboken, 214 N.J. 199, 229 (2013); see also Price v. Himeji, LLC, 214 N.J. 263, 284 (2013). Short of a finding that a municipality acted “arbitrarily, capriciously or unreasonably,” courts are loath to invalidate their actions. See Dunbar Homes Inc. v. Zoning Bd of Adjustment of Twp of Franklin, 233 N.J. 546, 558 (2018); Grabowski v. Twp of Montclair, 221 N.J. 53 (2015). This lax standard can have disastrous consequences for communities in our State that are flood-prone and lack the political muscle or will to fight the staying power of builders who seek to build these large projects. See Order Dismissing Plaintiffs’ Complaint with Prejudice, Gonzalez, Fox v. Township of West Windsor, et al., MER L 2205-22 (December 11, 2023) (rejecting Plaintiff’s Complaint that West Windsor Township acted improperly in approving a 5.5 million square foot seven-warehouse site, even though the site sits on 64 acres of wetlands and is flood-prone).

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<sup>10</sup> <https://nj.gov/state/planning/assets/pdf/warehouse-guidance.pdf>

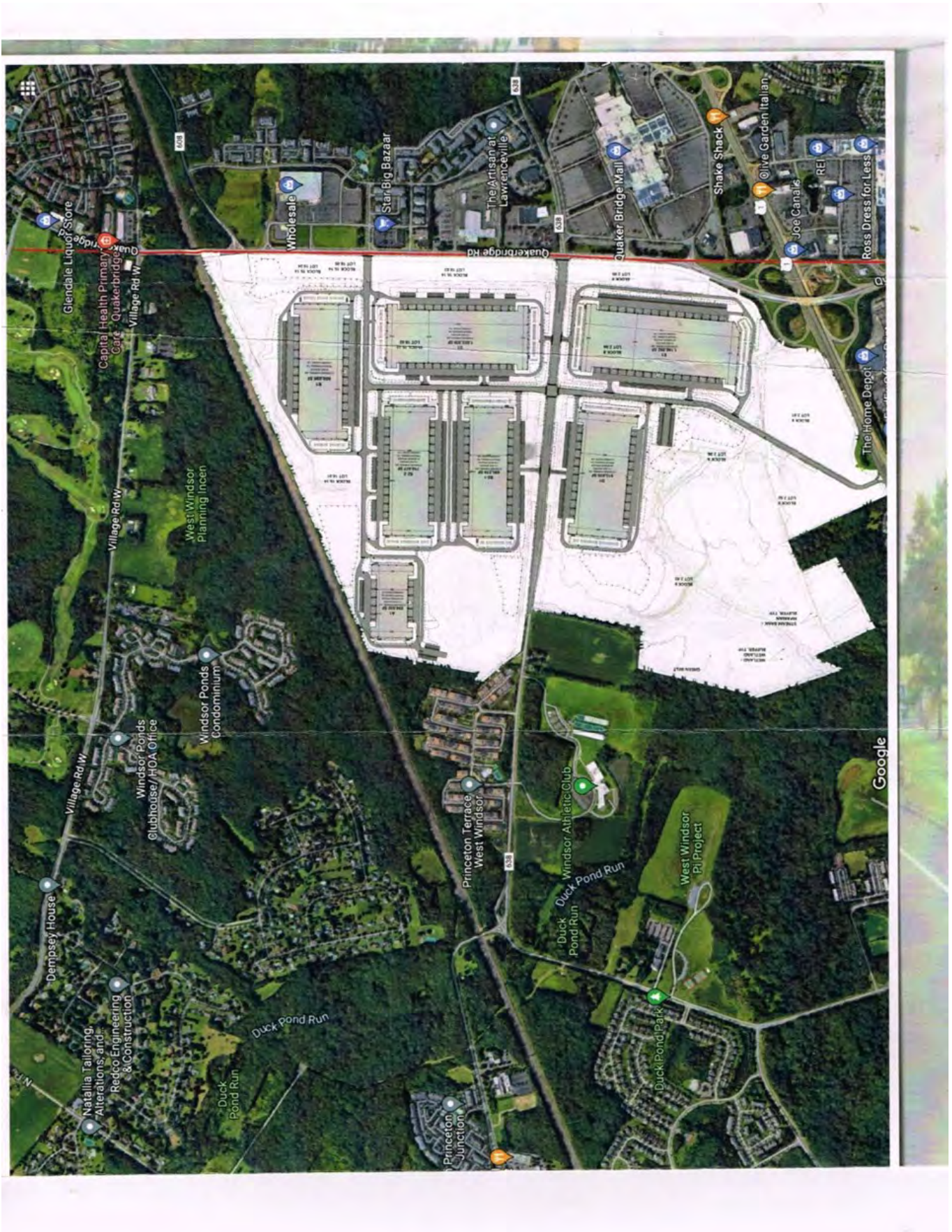
C. The Recent Approval of the Bridge Point West Windsor, LLC Warehouse Project by the West Windsor Planning Board Illustrates the Need for Meaningful Regulation

The Bridge Point West Windsor, LLC Warehouse Project (hereinafter Bridge Point) sits on a 650-acre site at the intersection of U.S. Route 1 and Quakerbridge Road. It represents the largest warehouse development in the State of New Jersey. Watershed Institute Brief, In the Matter of Flood Hazard Area Verification and Flood Hazard Area Individual Permit,

1113-22.0002.1 LUP220002 (filed Appellate Division, October 6, 2023, page 1. The permit, granted to it by the West Windsor Planning Board, authorizes a disturbance of more than 400 acres, an increase of more than 241 acres of impervious coverage, which would include a total of 5.5 million square feet of building footprint coverage, 2,435 car parking spaces, 1,072 truck-trailer parking spaces, internal access roads, improvements to adjacent public roadways, utilities, stormwater management, lighting, and significant landscaping and earth grading. *Id.* ([Bridge Point West Windsor Site Plan](#))

In spite of massive public opposition to the project, and substantial coverage in the local press, the West Windsor Planning Board approved the project by a vote of 7 to 2 on June 30, 2022.





(Site plan for the Bridge Point LLC Warehouse Development in West Windsor.<sup>11</sup>)

The project, which would traverse two major County roads — Quakerbridge Road and Clarksville Road — still requires County approval under the County Planning Act. Following the West Windsor Planning Board approval, the Watershed Institute was quick to weigh in with a strong letter of opposition to Mercer County Executive Director Brian Hughes. The letter stated, “While the applicant has asserted that the stormwater management system for the Bridge Point development meets current state requirements, precipitation is likely to increase by more than 20% from the 1999 baseline by 2100.” Letter, Jim Waltman, The Watershed Institute, July 26, 2022. (emphasis added).

Applying the deferential standards that current law permits, a residents’ lawsuit, challenging the West Windsor Planning Board’s approval of the project, was dismissed on December 11, 2023. Order Dismissing Plaintiffs’ Complaint with Prejudice, Gonzalez, Fox v. Twp of West Windsor, et al., MER L 2205-22. Among the counts in the Complaint was the charge that the West Windsor Planning Board’s approval of the builder’s application was “arbitrary, capricious, unreasonable and contrary to law.” Another count claimed that the Township failed to provide adequate notice to the public regarding the details of the application. Order, pages 5, 37. The Court rejected all counts, finding that the record “contain[ed] sufficient documentary and testimonial evidence to support the Board’s action. Court Order, page 37. The Court agreed with the builder’s assertion that general welfare concerns like offsite traffic, noise and air quality impacts were insufficient to block the warehouse site application, which the Court found could properly be built in a planned

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<sup>11</sup> Bridge Point still requires an additional approval from DEP for a freshwater wetlands permit and approval from Mercer County under the County Planning Act related to drainage capacity and expected impacts from the disturbance of 400 plus acres on the site. In addition, DOT must approve a new access road which would be required to connect with U.S. Route 1 to accommodate the additional 8,760 trips per day that are anticipated to use the site. See State Planning Commission Warehouse Siting Guidance at page 11 (The Bridge Point site, if approved, would take up 5.5 million square feet of space; extrapolating out from the Guidance’s estimate of 1,740 trips per 1,000,000 square feet of space, this comes to 8,760 trips per day).

commercial development (PCD). Order, pages 24, 33 (finding that warehouse and distribution facilities were authorized by Township resolution to be built in a PCD.)

Still pending is the Watershed Institute's challenge in the Appellate Division to DEP's puzzling decision to grant a Flood Hazard Area permit to the Bridge Point applicant under 1999 flood maps, just days before DEP proposed the updated Inland Flood Protection Rules ("IFPR"), requiring flood maps based on updated precipitation data. Watershed Institute Brief, page 5 (challenging DEP's permit approval, dated December 1, 2022). The DEP flood hazard area permit was approved under flood maps drawn in 1999. The Watershed Institute appealed the grant of the permit on the grounds that the newly-updated Inland Flood Protection Rules (IFPR), which would have raised the required elevation of the site by two feet to reflect updated precipitation data, should have applied. As set forth in the Watershed Institute brief, it appears that DEP staff "work[ed] in concert" with the applicant (Bridge Point West Windsor, LLC) to give them a finding of "administrative completeness" in advance of the release of the more rigorous Inland Flood Protection Rules. As stated in the Brief, "it appears that the DEP and the applicant were working in concert to avoid having to comply with the new rule in the event the application was not yet deemed complete for review by the time the rule was effective. It is not clear from this record why the DEP would have preferred the application be "grandfathered" rather than for the applicant to address all of the deficiencies in the permit application first and then be governed by the imminently forthcoming set of emergency regulations." Watershed Institute Brief, supra, at page 10.

D. How to Address the Problem: Warehouse Sprawl is a Regional Problem, Requiring Regional Solutions

1. The State Legislature Should Act to Codify the Timely Recommendations in the State Planning Commission

The recent controversy around improvidently-granted approvals by local planning boards like the West Windsor Planning Board's approval of Bridge Point in June 2022 has spurred our State legislators to introduce legislation. Some of these pending proposals would adopt some of the State Planning Commission recommendations, and have the effect of adding additional checks on local planning boards. Here is a summary of recent proposals:

- a. A 5123 – would limit the building of warehouses until 500,000 acres of farmland are preserved. (Assemblyman Sauickie, sponsor);
  - b. A 4950 – would require model ordinances to develop and provide funding for updated municipal master plans; (Assemblyman Sauickie, sponsor);
  - c. A-5677 –would provide money to save Revolutionary War sites from warehouse and other development. This was an issue raised with the West Windsor Planning Board for the Bridge Point site, with Planning Board members listening politely and moving ahead with project approval.<sup>12</sup>
  - d. A-5768 — requires State Planning Commission to adopt model buffer ordinances for towns to use when siting warehouses;
  - e. A critical recommendation by policymakers is for planners to reuse brown-field or redevelopment sites and steer clear of open land. <sup>13</sup>
2. The Highlands Council Recommendations Should Serve as a Model for Counties and Municipalities Throughout the State

The Highlands Council is a “Special Resource Area” of the State of New Jersey, designated for water and resource protection by the Highlands Water Protection and Planning

<sup>12</sup> See, e.g., [Clarksville.hughes.tract.revolutionary.war.docs.f.misiura.2013.pdf](https://www.clarksville.hughes.tract.revolutionary.war.docs.f.misiura.2013.pdf) (this document describing critical prisoner-taking of British soldiers on the Bridge Point West Windsor LLC site in the lead-up to the Battle of Princeton was included in the DEP and West Windsor Planning Board files for this project).

<sup>13</sup> <https://www.njfuture.org/research-reports/warehouse-sprawl-plan-now-or-suffer-the-consequences>; State Planning Commission Guidance, pages 18-19; see generally [docs.google.com/document/d/1yTOGSxf-p40tnVKA76r0c-vXVp8Q6Q1GFTcTygiledg/edit](https://docs.google.com/document/d/1yTOGSxf-p40tnVKA76r0c-vXVp8Q6Q1GFTcTygiledg/edit)

Act of 2004. On April 20, 2023, the Highlands Council recommended rules that municipalities in the Highland District could add to their master plans.

These including restricting area where warehouses could not be built at all, so called “no-go” areas and a number of rules for where warehouses could be located under certain conditions, for example:

#### **a. Interstate Highway Proximity & Access**

“Very large facilities, including warehouses of 500,000 square feet or more, and facilities designed for high-intensity interstate truck traffic, potentially 24/7 operation, overnight truck parking, etc., must be located within 3 miles of an Interstate Highway interchange.”<sup>14</sup>

#### **b. State Highway Proximity & Access**

“State highway locations may be suited to serving very large facilities, where they provide proximate (3 miles or less) access to an Interstate Highway. State highways may also be appropriate for smaller/medium sized facilities, dependent upon conditions and surrounding areas, and again dependent on distances from interstate highway access points. Where centrally located for proximate access to surrounding communities, state Policy Standards for Warehousing in the New Jersey Highlands Region 11 routes are also appropriate for small and micro distribution centers that rely on van or smaller truck fleets (ideally electric vehicles) for local deliveries. Ibid.

#### **c. Scenic Byways**

“Roadways that have been designated as Scenic Byways, or that are under formal consideration for such designation, shall not be used in support of warehouse facilities, whether for direct facility siting or for truck routing associated with facilities located elsewhere.” Ibid

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<sup>14</sup> Policy Standards for Warehousing in the New Jersey Highlands, at 10.

### 3. Townships and Municipalities Should Partner with County and State Government to Use Open Space Funds to Purchase Land

Our State has a storied commitment to preserving open space, dating back to the Christie Whitman administration. Every level of government can access open space dollars; but few municipalities use their leverage to acquire and preserve sensitive land. Municipalities like Hillsborough in Somerset County can be a model for open land preservation. For example, in November 2023, the Township used nearly \$10 million from its Open Space Trust Fund to purchase two vacant properties that were expected to be the sites of new warehouses. The township is set to pay \$4.2 million for an 11-acre site on Amwell Road and \$5.3 million for a parcel on Millstone River Road.

### 4. With the Adoption of the Newly-updated Inland Flood Protection Rules on July 17, 2023, Townships and Municipalities Should Incorporate the New Rules in their Ordinances

The newly-updated Inland Flood Protection Rules require the use of updated flood maps, which will be used to reduce the causes of flooding and prevent future projects from being built within flood plains. Municipalities must incorporate the new rules in their ordinances within a year of their issuance. Among its key features is to raise Design Flood Elevation for non-tidal fluvial flood elevations by two feet and stop reliance on maps that use data from 1999.

N.J.A.C. 7:13, Appendix 1. Townships and municipalities should incorporate the new rules as promptly as possible to ensure that developers are put on notice and held to the more protective flood standards contained in the Rules.

## **E. Conclusion**

The movement and storage of goods is big business in our state, thanks to its location and proximity to the Port of New York and New Jersey's major facilities in Newark and Elizabeth

and the growth in e-commerce. Warehouse growth, while important to our State, must be properly managed to avoid the perils of flood risk, traffic congestion and air pollution that plague many of our communities. The legislative and regulatory tools exist to enable communities to address proactively the problem of warehouse sprawl.



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1030 Broad St., Suite 101 • Shrewsbury, NJ 07702



For those who don't know me, my name is Ryan Moriarty I am one of the co-chairs of the Mercer County Bar Association CLE Committee. I alongside Darrell Felsenstein, are the Statewide Coordinators for the New Jersey Supreme Court's District Ethics and Fee Arbitration Committees, respectively.

As you may or may not know, the District Fee Arbitration Committees (DFACs) offer a low-cost alternative to litigation when disputes arise between an attorney and client as to the attorney's fee. The DFACs conduct arbitration hearings and then make a binding arbitration determination regarding whether either the client or attorney is due payment.

The District Ethics Committees (DECs) investigate, prosecute, and preside over allegations of attorney misconduct. Volunteer attorney members have the opportunity to investigate the allegations, make charging determinations, present those cases before a hearing panel and argue them before the Disciplinary Review Board, the intermediate appellate body of the disciplinary system.

Our statewide programs are staffed and primarily run by volunteer attorney and public members. They both provide invaluable opportunities for attorneys to give back to the legal community while ensuring the public is protected and the integrity in the profession remains high. Both programs offer exemptions from the Madden requirements, free CLEs as a function of rule, as well as many free CLE opportunities throughout the year. They also offer the opportunity for the volunteers to learn about different areas of the law and new and valuable attorney skills they may not otherwise have the opportunity. All for free.

Your membership would be invaluable in both of these committees. We are seeking applications for our 2024 recruitment cycle. Attached [here](#) is the application for your ease of use and distribution. Applications are due back by May 3, 2024, and can be sent to [oe.mbx@njcourts.gov](mailto:oe.mbx@njcourts.gov).

Thanks!

**Ryan J. Moriarty** (he/him/his)  
Statewide Ethics Coordinator  
Office of Attorney Ethics  
P.O. Box 963  
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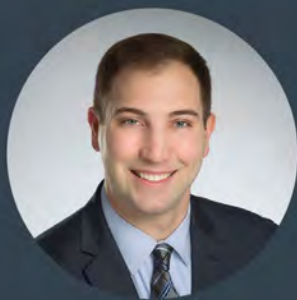




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## Mercer County Clerk Paula Sollami Covello Provides Passport and Notary Information

*Submitted by: Mercer County Clerk Paula Sollami Covello, Esq.*

Happy New Year! Another year has gone by and we welcome the new year with optimism. As we step into 2024, I extend my warmest wishes for a year filled with joy, prosperity and new beginnings. And, hopefully, some travel. This column is going to be dedicated to obtaining or renewing your passport and also obtaining or renewing yourself as a notary public, two services my office provides.

It's true that nothing can ruin a trip more than finding out you need a valid passport to travel to an exciting island destination and that your passport is expired.

With all of the planning that goes into a trip abroad, some travelers will sometimes delay applying for a new passport until it is too late. My office recommends that you take a look at your passport and its expiration date well in advance of your trip departure so you are not forced to rush at the last minute.

The good news is that routine service time for passport processing by the U.S. Department of State now takes four to six weeks, which is less time than last year. An expedited application will take at least two to four weeks. We are here to serve you and have two offices with both extended hours and Saturday hours that will assist with your passport needs. Our Trenton Office is located at 209 S. Broad Street and an



appointment is not required. Our County Connection Office in Hamilton is located at 957 Rt. 33 (near Paxon Ave.), and while appointments are not required, they are recommended for guaranteed service. For a full list of the office hours, please visit the [Mercer](#)

[County Clerk's Passport Services page](#).

In addition to encouraging Mercer residents to renew and apply for passports well before their departure, my office would also like to provide some tips for international travel.



### Travel Tips:

- Make a copy of the first two pages of your passport before leaving for your trip. Travel with your passport on your person and put the two pages in your checked bag. This prevents you from losing both at the same time.
- If you lose your passport abroad, you then have to go to the US consulate and it can be difficult to get back to the United States.
- If you leave your passport at any location, make sure it is in a secure location – ideally a locked safe.

To apply for a US Passport, residents need: 1) Proof of US citizenship in the form of a state certified birth certificate, a US naturalization certificate or a previous US Passport; 2) Proof of identity in the form of a current

driver's license or state issued identification card.

Passport photos may be taken onsite. There will also be fee, which must be made by check or money order.

The process may be extensive, but it is to help protect you from identity fraud and other security threats. We are here to answer any questions you have and assist you in whatever way we can. Feel free to call our office at (609) 989-6465.

The County Clerk's Office also swears in those who wish to become a Notary Public. Notary services are vital for various transactions, and we are here to make the process convenient for you.

The first step of the process is to apply to become a notary through the NJ Department of the Treasury. That paper-

work can be found online [here](#). The Department of the Treasury can be reached directly at 609-292-6748. Once you receive your commission from the State of NJ in the mail, then you can come into our Trenton Office any day of the week to be sworn in.

We also swear in notaries at our County Connection Office in Hamilton, NJ once a month (every 1st Thursday of the month). The dates can be found on the Mercer County Clerk's Website here [Mercer County Clerk Notary Public Services](#), or below. Appointments for Notary Nights can be scheduled by phone at (609) 989-6466.

Here is the Notary Schedule for 2024 at the County Connection:

<i>February 1, 2024</i>	<i>March 7, 2024</i>
<i>April 4, 2024</i>	<i>May 2, 2024</i>
<i>June 6, 2024</i>	<i>July 11, 2024*</i>
<i>August 1, 2024</i>	<i>September 5, 2024</i>
<i>October 3, 2024</i>	<i>November 7, 2024</i>
<i>December 5, 2024</i>	

\*second Thursday due to July 4th holiday

## **Reasons your peers are members of the Mercer County Bar Association—and why you should join, too!**

“Professional relationships and friendships that I've made over many years of attending Bar Association meetings, dinners and seminars have lasted well beyond my retirement as an attorney. For most young lawyers, their first job isn't the job they have forever. Attending Bar Association functions gives one the opportunity to meet other attorneys, see who is hiring and most importantly, make connections. Given the nature of our legal practice today, there is little in-person contact at a Courthouse. Participating in what our Bar Association offers, gives one the opportunity to keep up with what is happening at the Courthouse and what is expected of practicing attorneys...and, of course, there is the gossip! My experience with the Mercer County Bar Association has been nothing but positive. One of my best experiences as an attorney.” **Franklin L. Flacks, Esq.**

“When Arnie, Jeff and I started Szaferman Lakind in October 1977, we immediately joined the Mercer Bar and actively participated in Bar activities. Over the years we developed many personal relationships with our colleagues. Aside from the friendships we developed, it led to referrals and an ability to resolve cases to the mutual benefit of the clients. As our firm has grown, we automatically enroll all new attorneys into the Mercer Bar.” **Barry D. Szaferman, Esq.**

“As a Solo Practitioner and newer attorney, I primarily joined the Mercer County Bar Association to network with other attorneys in my community. Throughout the years, however, I have not only gained professional relationships but also lasting friendships. It has further made me a better attorney and afforded me the opportunity of being published, speaking on several CLEs, and volunteering within the community and the Bar. It is an integral part of my career!” **Kiomeiry Cepes, Esq.**

“Membership in the Mercer County Bar Association has given me professional connections and friendships that have lasted throughout my career. As a government attorney, this organization has allowed me to share information and develop best practices with my lawyer colleagues. Further, I really look forward to attending Bar events which are always fun networking opportunities and often provide an opportunity to earn CLEs through attendance or by teaching a course. My favorite events include the Annual Bench Bar Luncheon and the Holiday Party. I also enjoy the Opening Ceremony of the Courts each year, which is attended by all Mercer judges. While this is more somber in nature, it is a great way to pay respects to those members who have left us and mark the beginning of a new year in the legal profession.” **Paula Sollami-Covello, Esq.**

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