

## THIS WEEK'S

### ▲ WINNERS...

● **BUSINESSES**

The Assembly passes a package of bills to eliminate red tape in corporate governance to make the state a more appealing place for companies.

● **CHILDREN**

A new law, meant to keep minors from smoking, bars the sale of flavored cigarettes other than menthol.

● **NATIVE AMERICANS**

Gov. Jon Corzine signs an order supporting legislation to protect religious observances and cultural practices.

● **N.J. TREASURY**

The state will get nearly \$2.5 million in a national settlement with pharmaceutical company Cephalon Inc. over its alleged off-label marketing.

### ...& LOSERS ▼

● **DEFAMATION PLAINTIFFS**

An appeals court holds the litigation privilege shields comments made at local administrative proceedings.

● **ELLYN LERNER**

The CEO of a Sayreville provider of training to special needs students draws three years in prison for overbilling school districts by \$1.3 million.

● **MERCER COURT EMPLOYEES**

Construction of a new criminal courthouse will displace 400 parking spots temporarily and 300 permanently.

● **SCHOOL SUPERINTENDENTS**

A Senate committee approves a bill reducing the notice period required when a superintendent's contract is not being renewed.

# inadmissible

## Ssshhh! We'll Talk Later

— On the ethics of job hunting for retiring judges, few lawyers have more hands-on knowledge than **Robert Passero**, the former Passaic assignment judge, who resumed his lawyering career last week at **Tompkins, McGuire, Wachenfeld & Barry** in Newark.



PHOTO BY CARMEN NATALE

**ROBERT PASSERO**

Last year, Passero was handed the task of deciding whether a judge in Bergen County, **Gerald Escala**, committed reversible error in a case by talking to one party's lawyer about a retirement job. It was touchy because Escala ruled in the recruiting lawyer's

favor after the offer.

Passero found that Escala shouldn't have done what he did. The state Supreme Court went even further on Sept. 24 and reversed Escala's decision in the underlying case. Henceforth, no judge should listen to job offers from lawyers appearing before them, the justices declared.

So it's not surprising that on Friday, Passero and managing partner **William McGuire** were quick to say they didn't discuss Passero's hiring until after he left the bench in June.

Passero said he had rejected "a couple of feelers" on principle before he retired "and when I was off the bench no one was knocking my door down other than Bill McGuire. When you're an assignment judge, they all want you to think they're interested in you. When you're not assignment judge the telephone stops ringing."

After Passero's retirement, they had a long discussion over dinner at Pal's Cabin in West Orange and struck a deal. Passero, as counsel to the 32-lawyer firm, will join the platoon of former judges practicing alternative dispute resolution.

## Fee Do-Over

— A plaintiffs' attorney whose \$171,000 fee request in a successful whistleblower case was slashed to \$30,000 got a second shot from the Appellate Division on Friday.

**Kevin Kiernan**, of **Kiernan & Campbell** in Montclair, represented Margaret Szwed, a dental assistant fired after she complained that her paycheck did not reflect proper withholdings. Szwed sued and a jury awarded her \$15,000 and legal fees under the Conscientious Employee Protection Act, which allows for fee-shifting to the prevailing party.

Passaic County Superior Court Judge **Ronald Sokalski** said Kiernan's \$260-\$350 hourly rates were reasonable but found the 430 hours billed excessive. He also noted that the defense counsel billed only \$30,000, and awarded that amount.

The Appellate Division said Sokalski failed to perform the analysis required by *Rendine v. Pantzer*, the legal authority for fee-shifting. A judge is to look at such factors as the risk of unsuccessful outcome, weighing the novelty and difficulty of the plaintiff's claims, and the significance of the result achieved. "Without more detailed findings, we are unable to determine whether the judge properly exercised his discretion," said Appellate Division Judges **Philip Carchman**, **Rudy Coleman** and **Marie Simonelli**.

Kiernan is in luck on remand, though. Sokalski has since been assigned to the Family Part.

## Planning for Transition

— State Bar Association presidents come and go each year, leaving little opportunity to learn on the job. What's more, the judicial and prosecutorial appointment cycle, in which the Bar has an important role, often takes longer than a president's term. And confidentiality rules prevent Bar presidents from briefing presidents-elect on pending nominations.



PHOTO BY CARMEN NATALE

**PEGGY SHEAHAN KNEE**

That's why Bar trustees support a bylaw amendment to give the president-elect a seat on the Bar's Judicial and Prosecutorial Appointments Committee. "What we're trying to do is create a smooth transition for the committee each year," says Bar President **Peggy Sheahan Knee**.

The proposed revision [published in this issue's Notices to the Bar, page 62] was recommended by a panel Knee appointed to review the committee's policies and the compact with the executive branch that allows the Bar to review judicial and prosecutorial candidates.

Bar members have been mailed ballots, which are due back by Oct. 27, and the changes, if approved, would take effect immediately. That would give President-elect **Allen Etish** a spot on the committee later this fall.

## Debt Collection Without Borders

— Interstate debt collection got a boost from a court ruling Wednesday interpreting the Fair Debt Collection Practices Act.

Joyce Cohen of Upper Saddle River filed a class action against the Maryland firm of **Wolpoff & Abramson** and six of its lawyers for pursuing her on a credit card debt. They obtained a \$14,708 award against her from National Arbitration Forum arbitrator



PHOTO BY CARMEN NATALE

**STANLEY CHESLER**

**Peter Michaelson** in New Jersey without appearing, based on documents. They then hired New Jersey lawyers to enforce the award.

Cohen argued that since none of the Wolpoff lawyers was licensed in New Jersey, they committed the unauthorized practice of law, violating FDCPA § 1692e, which prohibits the false representation that a debt collector is a lawyer, and 1692f, which bars use of unfair and unconscionable debt collection practices.

U.S. District Judge **Stanley Chesler** dismissed, saying state attorney-discipline rules should not be read into the FDCPA and an ethics-rules violation does not give rise to a cause of action under New Jersey law.

The firm's lawyer, **George Vinci Jr.** of **Spector Gadon & Rosen** in Philadelphia, admits it might be a different story if his clients had come to New Jersey. Cohen's lawyer, **Philip Stern** of **Wacks & Hartman** in Morristown, says she is considering an appeal.

— *By Henry Gottlieb, Maria Vogel-Short, Charles Toutant, Mary Pat Gallagher*



**CERTIFIED WORKERS' COMPENSATION ATTORNEYS**

We invite the referral of substantial matters from members of the bar. Referral fees will be forwarded without the necessity for work participation as permitted for Certified Attorneys pursuant to New Jersey Court Rule: 1:39-6(d)

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