

WLIB NEWSLETTER

WOMEN LAWYERS IN BERGEN

Volume 6

Winter 2012

The holidays are upon us! By the time you receive this edition of the WLIB newsletter, you will have celebrated Thanksgiving and preparing for the holidays and New Year. This time of year is a time for family and friends to gather to be thankful for the past year and make promises and plans for the upcoming year.



which focused on Global Women's Issues. Many of us volunteered and attended the events, which culminated in hearing Justice Ruth Bader Ginsburg at the NAWJ Awards Dinner. As women attorneys we should continue to support an organization that continues to support women. Congratulations to NAWJ for having such a successful event.

WLIB is like a family for many of us. We work together, laugh together, and at times, play together. Just as you turn to family to help you with a particular problem, we also turn to our members for situations outside of our areas of practice. We continue to depend on one another.

WLIB kicked off the year with our Annual Law Clerk Luncheon. While Hurricane Irene forced a short postponement, it did not deter the attendance. WLIB helped welcome a new group of law clerks who will no doubt be an asset to the court and great additions to the Bar. I thank Linda Schwager for her hard work in planning and organizing this event.

The National Association of Women Judges held its annual convention in Newark this past October. Over 500 people, including judges, attorneys, academics and nonprofit leaders, attended the six day conference

The WLIB Judicial Reception was held in early November. This year, WLIB honored three new members of the judiciary – Supreme Court Justice Anne M. Patterson, Superior Court Judge Susan Steele and Superior Court Judge Christine Farrington. Justice Patterson reminded us of the mission of our founders and urged us to continue to support and mentor the next generation of lawyers. Judge Farrington reminded us that our voice continues to be one that is relevant and one that continues to be heard. Judge Steele reminded us of the support we continue to give one another, new lawyer or seasoned attorney. WLIB is a great resource and provides our members with a wonderful support system. On behalf WLIB, I wish to congratulate Justice Patterson, Judge Farrington and Judge Steele on their appointments to the bench.

Diane Lucianna hosted the WLIB Holiday

Party. We collected donations for the Food Bank and Shelter Our Sisters. In these trying times, we should remember those who may be less fortunate. We had very enjoyable evening and great attendance. Thank you Diane for opening your beautiful home to all of us!

In the upcoming year, we will be hosting a Diversity Dinner along with our Annual Mix & Mingle with Elected Women Officials. If you have any ideas, questions or concerns, please feel free to reach out to me.

While my family is small, my WLIB family continues to grow. I encourage all of you to recruit a least one new member to join WLIB for this holiday season. This will allow WLIB to continue to grow, gain new ideas and move forward to the future. I want to thank Cathie McAuliffe for continuing to lead the membership committee and for all her hard work.

As the year comes to a close, I continue to be thankful for my family, the wonderful people I have met through WLIB, the Judiciary who continue to support WLIB and for our members who continue to make WLIB a relevant and vibrant organization. I wish you all a happy, healthy holiday and a wonderful new year. 🍷

Kathleen A. Hart, Esq.
President

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INSIDE:

- Committee Reports - 3
- Book Review - 5
 - Five Quarters of the Orange
- Restaurant Review - 5
 - Ceci Italian Cuisine
- Evidence in Administrative Law Hearings. - 7
- Bulk Sales As It Applies To Real Property - 9
- Announcements - 11
- Jean Robertson Update - 11
- Weekend Getaways. - 13
- Appellate Division Practice: Determining Finality for Purposes of Appeal - 15
- WLIB Holiday Party - 19
- Judicial Reception - 22
- Calendar of Events - 24

Appellate Division Practice: Determining Finality for Purposes of Appeal

By: Victoria Cioppettini, Esq.

When assessing whether to appeal a trial court decision, one critical determination involves whether that decision is final or interlocutory. Practitioners should undertake this analysis with care, as failing to characterize the decision correctly could result in a missed opportunity for an appeal that may be outcome-determinative. Undeniably, whether an order is final or interlocutory greatly impacts a party's ability to appeal, the timing for an appeal, and the documents filed to procure the appeal. Some basic guidelines govern whether an order is final or interlocutory for purposes of appeal, but there are a few exceptions that practicing attorneys should keep in mind. Understanding those exceptions can make the difference when deciding whether a party has the right or the ability to challenge a trial court ruling immediately.

As a general matter, a final judgment resolves all issues as to all parties in the proceeding, and may be appealed to the Appellate Division as of right. A party must usually appeal from a final judgment within forty-five days of the judgment's entry by filing a Notice of Appeal and all supporting documentation with the Appellate Division. On the other hand,

an interlocutory order leaves open issues unresolved before the trial court. An appeal from an interlocutory order must typically be made within twenty days of service, and a party seeking review of an interlocutory order must ask permission to pursue the appeal. Leave to appeal is discretionary and rarely granted by the Appellate Division because the party seeking to appeal must demonstrate the immediate appeal is necessary "in the interests of justice." R. 2:2-4.

In certain circumstances, however, an interlocutory order may be immediately appealable without asking permission of the Appellate Division. For example, an order compelling or denying arbitration can be appealed immediately and as of right. R. 2:2-3(a). For public policy reasons, the Court treats such an order as final for purposes of appeal regardless of whether that order resolves all issues as to all parties in the case. Furthermore, an order appointing a statutory or liquidating receiver may be challenged directly to the Appellate Division without asking permission. R. 2:2-3(a). A final custody determination in a bifurcated family court action similarly may be appealed immediately. R. 2:2-3(a). Finally, a party may move before

the trial court to certify an order as final for purposes of appeal under Rule 4:42-2. Certifying a trial court order as final is appropriate where: (1) there has been a complete adjudication of a separate cause of action; (2) a complete adjudication of all the rights and liabilities as to any party; or (3) partial summary judgment has been awarded for payment on part of a claim. In all these situations, an aggrieved party may immediately challenge a trial court's ruling to the Appellate Division without first asking permission.

Whenever considering an appeal from a trial court determination, it is critical to evaluate whether the decision is interlocutory, final, or treated as final for purposes of appeal. This initial determination dictates the course of action for the entire appeal, and in some cases, may result in a dispositive adjudication of the issue at hand through an immediate appeal. 🐾

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Administrative Law

continued from page 11

hearsay, but concluded nevertheless that the residuum rule did not require the fact-finder to ignore hearsay evidence of that particular assault even though there was no competent evidence of the act.

The court stated:

Applying the residuum rule requires identifying the "ultimate finding of fact"

that must be supported by a residuum of competent evidence. Here, the "ultimate finding of fact" was that... the appellant engaged in one or more of eleven acts of alleged misconduct that were "unbecoming." Alternatively, one might characterize as the "ultimate finding of fact" that appellant was engaged in a course of unbecoming conduct of which the acts charged were examples. Whether each of the acts charged is viewed as unbecoming conduct, as corroborative evidence...or only as examples of a course of unbecoming conduct, there need not be a residuum of competent evidence to prove each act considered by the Commissioner so long as "the combined probative force of the relevant hearsay and the relevant competent

evidence" sustains the Commissioner's ultimate finding of unbecoming conduct.²⁰ (Citation omitted)

Clearly then, the fact-finder may rely upon relevant hearsay evidence in reaching a determination as long as there is a residuum of other competent evidence to support the ultimate finding.

Conclusion

While evidence rules are not applied in administrative proceedings, administrative law practitioners should remember the relationship evidence has to the ultimate findings in the action. Clearly, fundamental fairness requires the parties be allowed to rebut, explain or test the trustworthiness of the evidence presented.²¹ 🐾

²⁰ *Id.* at 750-51, citing, Weston, supra, note 14, at 52.

²¹ Sander v. Planning Bd. Warren Township, 140 N.J. Super. 386 (App. Div. 1976).