



Dictum

The newsletter of the NJSBA Young Lawyers Division

Vol. 39, No. 1 — February 2015

Chair's Column

What's the YLD Doing? A Quick Overview

by Shanna McCann

It is hard being the chair, especially if you hate being the center of attention. But, I am happy to do the work. I actually enjoy being involved in the betterment of our practice more than the practice itself. As chair, I am thrilled to have the opportunity to represent the collective conversation occurring within the NJSBA's Young Lawyers Division (YLD). This year, the conversation has taken us in a new direction.

The YLD has a long tradition of being at the forefront of public service and professional development, and has been instrumental in shaping the careers of young lawyers and the people they serve throughout New Jersey. YLD members have been writing wills for our heroes in uniform and donating their time, expertise and energy to innumerable charitable causes. As this association's only division, we hope to have the ability to expand our charitable endeavors for years to come by using our talents to rebuild one of New Jersey's most challenged communities—the prisoner re-entry community.

Although the YLD may be seen by some as the charitable arm of the NJSBA, we also host numerous social and work-life balance events, lectures and seminars, and participate, where relevant, in the legislative process. I hope to see many of you involved in these events and service areas.

All of these things would not be made possible without the help of countless YLD members, NJSBA staff and my family. My deepest gratitude to all who are helping to make this year an accomplished one for the YLD.

I look forward to seeing you, and encourage you to participate in the great events available through the YLD. ■

Shanna McCann is an associate with the firm Chance & McCann, and practices general litigation.

Inside this issue

Chair's Column

What's the YLD Doing? A Quick Overview 1

by Shanna McCann

Young Lawyers Division Leadership 3

Immediate Past Chair's Column 4

by Jeffrey Neu

Editor's Column

The Prisoner Re-entry Program 5

by Katherine M. Caola

**Jersey City Prisoner Re-entry Program: Where Ex-Offenders
and Young Attorneys Work Together on the Path to Redemption** 7

by Gary Ahladianakis

Medicaid Expansion and the Re-entry Population 14

by Frank Mazza, Shae Cali and John G. Koufos

**Once upon a Zombie: Tips on Overcoming Likelihood of Confusion
Based upon Similarity of the Marks** 19

by Victoria A. Mercer

The opinions of the various authors contained within this issue should not be viewed as those of the Young Lawyers Division, Dictum, or the New Jersey State Bar Association.

Young Lawyers Division Leadership

CHAIR

Shanna McCann
Chance & McCann LLC
8 North Main Street
PO Box 10
Woodstown, NJ 08098
856-769-9001
shannamccann@chancemccann.com

CHAIR-ELECT

James J. Uliano
Chamlin Rosen Uliano & Witherington
268 Norwood Avenue
West Long Branch, NJ 07664-1896
732-229-3200
jjuliano@chamlin-rosen.com

TREASURER

Marisa B. Trofimov
Law Offices of William P. Deni
32 Church Street
Flemington, NJ 08822
908-782-2900
mtrofimov@denilaw.com

SECRETARY

Jonas Seigel
Seigel Capozzi Law Firm LLC
505 Goffle Road
Ridgewood, NJ 07450
201-444-4000
jseigel@seigelcapozzi.com

LEGISLATIVE COORDINATOR

Josiah Contarino
Archer & Greiner, PC
Riverview Plaza
10 Route 35
Red Bank, NJ 07701
jcontarino@archerlaw.com

IMMEDIATE PAST CHAIR

Jeffrey Neu
Kuzas Neu
318 Newman Springs Road
Red Bank, NJ 07701
732-978-4053
jeff.neu@kuzasneu.com

NJSBA TRUSTEES

Jonathan Lomurro
Jeffrey Neu

ABA REPRESENTATIVE

Nicole O'Hara

PARLIMENTARIAN

Rajeh Saadeh

EXECUTIVE COMMITTEE

Gary Ahladianakis
Michael A. Austin
Joseph Bahgat
Thomas Bojko
Peter Bronzino
Katherine Caola
Kate Carballo
Joshua F. Cheslow
Mark Friedman
Meredith Friedman
Corey Gaul
Christopher Gillin-Schwartz
Louis A. Greenfield
Christopher Higgins
Jason Kanterman
Sara Katz
Emily Kelchen
Christine H. Kim
Blake R. Laurence
Hyun Lee
Jennifer Ljungberg
Daniel Mellor
Victoria A. Mercer
Amy L. Miller
Victoria Miranda
Cara Ann Murphy
Rachel Packer
Meryl Pedersen
Helen Quan
Marc Samuelson
Victoria A. Schall
Michael J. Schewe
Corrie Sirkin
Dana M. Van Leuven

TRUSTEE LIAISON

Jeffrey Neu

Immediate Past Chair's Column

by Jeffrey Neu

The last year was quite a blur. In May 2013, I took over as chair of the Young Lawyers Division (YLD) thinking I had a plan and it would be a smooth year, with little interruption. I knew it would come to an end; however, I never thought it would come so fast. Last year, we accomplished a lot of things that hopefully had a positive impact on the YLD and have planted seeds for further growth. I am glad to see the far-reaching impact of our organization's efforts in working with the local bar organizations, holding events around the state, forming partnerships, and strengthening relationships. Under Shanna McCann's leadership, filled with passion and dedication, the YLD has moved into an even brighter future.

Over the course of my year as chair, I watched law students and newly admitted attorneys transition into young professionals, and gain experiences and opportunities. Some of this was possible because of their involvement with the YLD and the numerous opportunities for professional development the division provides. Last year, over 100 YLD members gave lectures, published articles, and provided service to the community.

This is just the tip of the iceberg of what the YLD can provide. The most valuable benefit of membership is the friendships made along this journey.

I have been a member of the YLD since I became an attorney, and have developed lasting relationships that provide me with both professional and personal support and comradery. For this, I will be forever grateful. Since ending my term I have continued working with the YLD under Shanna McCann's leadership. I've worked with her for the last several years, and have yet to meet anyone more dedicated. ■

Jeffrey Neu is the co-founder of Kuzas Neu, and focuses his practice in the areas of Internet and technology law.

Editor's Column

The Prisoner Re-entry Program

by Katherine M. Caola

This year, the Young Lawyers Division (YLD) has taken on the enormous challenge of developing the Prisoner Re-entry Committee. As you will note, most of this edition of *Dictum* is dedicated to the Prisoner Re-entry Committee and the work it is doing through the Prisoner Re-entry Program with Martin's Place.

I have a personal passion for this program and the community it serves. Shortly after graduating college, I accepted a position as a paralegal. In that position, I had access to what some view as the worst segment of society—individuals accused of having committed crimes of the worst degree. These people were accused of crimes involving murder, drug distribution and drug trafficking.

Soon after accepting this position, I realized many of these people were not what you might expect. For instance, the accused leader of a drug trafficking network was trying to earn enough money to send his young daughters to private school, so they would not grow up in the street, like he had. In a frank and candid conversation with this client, we discussed the fact that a minor felony conviction when he was young stopped him from receiving aid and being able to further his education. His story hit home when he noted he was young and foolish, but who isn't? The difference between us, he pondered, was simply a foolish act that prohibited him from continuing his education and left him searching for an alternative way to care for his young family.

While I did not, nor do I, condone illegal activities, this conversation brought into perspective the reality of life, and how things are not always black or white; there is a very real grey area. It is the ability to see the grey area that exists in everything that sets a good lawyer apart from a great lawyer. Recognizing the middle ground and developing that storyline helps develop the ability to recognize issues and arguments, and predict legal complications that may arise. Understanding a

client's life circumstances helps lawyers develop alternative solutions that may work better for the client, regardless of the type of law you practice.

As lawyers, we train to look for the technicality that will allow for the results our client seeks. The Prisoner Re-entry Program, taps into these same skills and can hone them as well, all while helping a population in need. In working with the Prisoner Re-entry Program, not only do you learn to find the grey areas, but you also realize that messy, unpredictable, and unexpected events occur, and you learn how to handle these events when they inevitably arise. What we, as lawyers, must learn is how to use that information to the client's benefit. The Prisoner Re-entry Program allows for this training and development in the areas in which prisoners face the most challenges.

Participants have the unique and rewarding opportunity to help a portion of society that normally is unassisted, in resolving the obstacles faced in returning to society following incarceration. These obstacles range from resolving municipal court fines to coping with astronomical arrears from child support accrual. Needed assistance can be as simple as reading and explaining a piece of paper to as complex as making several court appearances.

To help prepare attorney volunteers for the program, the Prisoner Re-entry Committee has developed a training seminar, set for Saturday, Feb. 28, 2015, at the New Jersey Law Center in New Brunswick. The free program provides participants with six continuing legal education (CLE) credits if they commit to assist a prisoner re-entering society with a legal challenge. The commitment could range from a phone call with an ex-offender explaining his or her child support order to representing a client on a motion to convert fines to jail time.

The program will provide training in family law, municipal court and criminal law, corrections and public benefits, and public policy changes and challenges. Speakers will include former Governor Jim

McGreevey, United States Attorney Paul J. Fishman, Acting Attorney General John Jay Hoffman, and Jersey City Mayor Steven M. Fulop, to name a few.

I encourage young and more seasoned lawyers, with all levels of training, to attend the prisoner re-entry training on Feb. 28. This is a unique opportunity to hear from attorneys with vastly differing perspectives on a number of issues the re-entry population experiences. Regardless of what your level of experience is, you will learn something through this training, including how to defend a municipal court offense, what information is important for a federal court judge, whether child support arrears can be reduced retroactively, and the use and application for public benefits and whether ex-offenders are eligible for them.

Please see the seminar brochure in this edition of the newsletter for details. If you are unable to attend, please feel free to contact me directly at kmc@caolalaw.com. ■

Katherine M. Caola is the editor of Dictum and has a criminal and family legal practice with the Caola Law Group.

Jersey City Prisoner Re-entry Program: Where Ex-Offenders and Young Attorneys Work Together on the Path to Redemption

by Gary Ahladianakis

On Sept. 15, 2014, a clear and sunny, yet rather brisk late-summer morning, hundreds of people from varying walks of life gathered at the cordoned-off street in front of 398 Martin Luther King Jr. Drive in Jersey City, to partake in the grand opening celebration of Martin's Place. There were United States senators, the United States House of Representatives speaker, governors, state senators, mayors, attorneys, reporters, blue- and white-collar citizens, recent parolees, and even currently incarcerated choir singers. Martin's Place is a state-of-the-art, one-stop reintegration center that provides three central services, namely addiction treatment, transitional housing and employment training, to ex-offenders, and unemployed and under-employed individuals. These reintegration services are provided through what is known as the Jersey City Employment and Training Program.

The ceremony included remarks from the distinguished guests of honor, including Jersey City Mayor Steven M. Fulop, the NAACP national president and CEO Cornell Brooks, former Governor Brendan Byrne, former Governor Thomas H. Kean and United States Senator Robert Menendez. The ceremony also included a town hall-style dialogue between former Governor James McGreevey and Governor Chris Christie, addressing how reintegration of ex-offenders is an important societal issue that transcends partisan lines. The featured speaker was United States House of Representatives Minority Leader Nancy Pelosi, who, in quoting Saint Francis, recognized that those connected to the program “preach the Gospel; sometimes us[ing] words.”

Mayor Fulop described the grand opening best, stating, “[t]oday is a special day, not only because we are celebrating our community and the dignity of second chances, but because we are really fulfilling our commitment to ourselves. Mainly, that we are going to

offer...a top-caliber program that provides treatment,... housing and provides employment for those reentering society from behind bars.”

What is Martin's Place and How Does It Work?

The name of the center commemorates the memory, life and work of Dr. Martin Luther King Jr. Mayor Fulop noted that, while the oppression being battled today may look different than what Dr. King faced in places like Birmingham and Selma, Alabama, it is just as formidable. Every year, thousands of people are released from prisons and jails, returning to the same pre-incarceration environment that led to their criminality, without tools to prevent recidivism. This cycle of incarceration and release, without any change, is what leads to recidivism.

Mayor Fulop expressed his gratitude that, as a result of the leadership of Hudson County Executive Thomas DeGise and the support of the director of Hudson County Department of Corrections (DOC), Oscar Aviles, a treatment program has been instituted at the Hudson County Jail. This program encourages male and female inmates to access treatment for addiction while still incarcerated. This has become a key component of the program. The continued treatment through transitional housing offered at Martin's Place, a state-licensed outpatient facility, enables clients to utilize what they learned while incarcerated in real-life situations upon release.

Originally, the Hudson County re-entry initiative was funded by a United States Department of Justice Second Chance Act grant. Now, due to its success in the reduction of recidivism, the Jersey City program is one of two remaining programs out of the original 100 around the nation. Due to the collective efforts of those involved, the recidivism rate of women enrolled in the program was 24 percent, while the overall recidivism rate was 38 percent.

Apart from addiction treatment, the program

provides clients transitional housing, which is integral to recovery. For instance, ex-offenders convicted of drug distribution charges are denied access to federal housing, rental assistance and welfare benefits and, thus, are often forced to sleep in less than desirable places. However, due in large part to the coordinated efforts of the Hudson County DOC re-entry director, Frank Mazza, and the Hudson County Department of Family Services director, Ben Lopez, the program utilizes Medicaid funding to provide safe, structured and drug- and alcohol-free housing for many clients.

Employment assistance is the next integral service provided to the program's clients. Mayor Fulop is working with the Jersey City development community to increase the number of residents employed at Jersey City construction sites. As Mayor Fulop noted, Jersey City has a "terrific asset," namely the 6,000 units under construction and the 12,000 in the pipeline, along with 20 of the state's largest buildings that are scheduled to be constructed in Jersey City. City leaders are leveraging this asset to create employment for both Jersey City's re-entry and non-re-entry residents, all of which is presently happening at Martin's Place.

Introducing Martin's Place to Young Lawyers

Prior to the Martin's Place grand opening, McGreevey addressed the Young Lawyers Division (YLD) of the New Jersey State Bar Association at the Annual Kickoff Barbecue, held at the Law Center in New Brunswick on Sept. 11, 2014. On the steps of the Law Center, McGreevey explained that if incarceration had demonstrable effects then one could argue that "it was immoral but it worked," quoting the German philosopher Friedrich Nietzsche. However, the inconvenient truth of incarceration is that 67 percent of people released from U.S. prisons reoffend. This means within three years of release, two-thirds of ex-offenders will commit another serious felony. Even more eye opening is that New Jersey spent \$1.5 billion on corrections last year, which, in turn, has a pernicious effect on state support for educational funding. "In an era of declining state and federal funds," McGreevey proclaimed, "we have to be entrepreneurial and do what works."

However, the reality is that 70 percent of all people behind bars are addicts, and the proximate cause of their criminality is their addiction. Therefore, if addiction is not addressed during incarceration, the correc-

tions system has achieved nothing except exposing addicts to other addicts, which arguably increases the propensity to commit crimes. The primary goal of the program, as McGreevey expressed it, is "treatment, treatment, treatment." McGreevey recalled a quote from a priest who worked with inmates, "You can't think your way into new behavior, but you can behave your way into new thinking." This philosophy is the foundation for the program, the ultimate purpose of which is to get people to change their behavior, maintain structured housing and become productive citizens.

Appropriately, McGreevey called upon not only the YLD, but the entire New Jersey State Bar Association to volunteer their legal services for clients of the program. He noted that most people in the program have many impediments with the law, such as a suspended driver's license or not being able to obtain necessary proof of identity to obtain a driver's license. By way of example, he pointed out that parolees only have a Department of Corrections identification card, which, although issued by the state, is not accepted by the state as an official identification for certain purposes. It does not, for instance, qualify as one of the six points of identification for obtaining a New Jersey driver's license.¹

"We need...lawyers to help...ex-offenders to navigate [the legal system] whether it's credit agencies, whether it's the DMV, whether it's parole, probation, [or] child support...because all of that is an impediment to getting a job," he explained.

Battling Recidivism—A Statewide Concern

The day after the grand opening ceremony, McGreevey took the time to discuss with the author the framework of the reintegration services that are offered at Martin's Place and how YLD members can be an integral part of the program. He advised that the program is in the process of developing a re-entry corporation based on the Jersey City model for the purposes of franchising it to other areas of the state and, potentially, to other cities across the nation. McGreevey noted that "the challenge of re-entry plagues all of New Jersey." To that end, he has discussed with leaders of Paterson, Newark, Trenton, Toms River, and Atlantic City establishing similar re-entry programs in those cities. "We're looking at Republican and Democratic areas, rural and urban areas, because the challenges of addiction and the resultant criminal behavior crosses the entire bandwidth... and party lines," he said.

Ultimately, sobriety is the cornerstone of all services provided at Martin's Place. Integrity House, where McGreevey previously worked for three-and-a-half years, is the largest provider of clinically licensed substance abuse treatment in the state. Integrity House, licensed by the state's Division of Mental Health and Addiction Services, ascribes to what are known as best practices, meaning it values and enshrines aspects of psychiatry, medical and psychological practices that are recognized by the National Institutes of Health. McGreevey explained that this service is critical, based upon national statistics that of the 70 percent of offenders who are clinically diagnosed as addicts and whose addiction is the proximate cause of their criminality, only 11 percent receive treatment. McGreevey called those statistics, which essentially parallel New Jersey's state and county treatment rates, "startling." "We're basically, as a country, as a nation, as a state, locking up addicts and expecting them to miraculously...help themselves," he said.

Breaking the Pattern

The program was created to prevent the vicious cycle of incarceration, serving a sentence and release, having never addressed the cause of the incarceration—addiction. McGreevey explained that the underlying element of the services provided through the program, whether addiction treatment, housing placement, or workforce development, is "all about changing behavior which is so critically important. It's changing behavior to make sure that there is accountability [and] that there's consistency of job performance and that's essential."

With respect to client intake at the program, there are different tracks that clients are placed in depending on whether they are coming from county jail or state prison, or are merely non-offenders who are unemployed or underemployed. An initial clinical assessment is performed by Integrity House. The purpose of the assessment is to determine a client's history, including whether it involves narcotics, alcohol or other substance abuse. Thereafter, a professional decision is made regarding the needs of the client, and Integrity House provides a recommended course of treatment for each client. Undoubtedly, it is imperative that once a client is referred to an employer the person be sober and of sound mind and capacity.

The program helps take the risk out of hiring for

potential employers. McGreevey explained that once the program makes a recommendation, the potential employer can be reassured that the potential employee has gone through the "checks and balances" of the re-entry program, especially since the majority of the clients are non-violent offenders. In Jersey City, program clients have found roots through Mayor Fulop, who has taken the position that "employment is critical; working is essential," and has taken a clear stance with both the development and the business community of Jersey City.

Legal Assistance

The author then asked McGreevey to propound on his speech given at the YLD Annual Kickoff Barbecue, and to clarify how YLD members can begin providing assistance and volunteer their services to the reintegration program. He explained the program needs advocates and not just criminal lawyers. Potential legal issues facing ex-offenders do not involve defending criminal charges but, rather, negotiating with parole officers, dealing with child support, navigating the Motor Vehicle Commission (MVC) and even the onerous process of obtaining a birth certificate. The legal obstacles program clients face are what many view as day-to-day errands, but they amount to survival challenges for an ex-offender seeking reintegration into mainstream society.

McGreevey gave an example of a common obstacle where legal advocacy is necessary for ex-offenders. An ex-offender may have passed the Test of Adult Basic Education (TABE), a timed aptitude test that assesses both reading and math skills, which is required in order to become a member of certain labor trades. However, as previously mentioned, once parolees are released they only have a DOC identification card, which is not a valid form of identification under the MVC's six-point identification verification system to obtain a New Jersey driver's license. To compound the issue further, a DOC identification card also cannot be used by an ex-offender to obtain a birth certificate, the latter of which is a valid form of identification under the MVC regulations. Therefore, this legal impediment greatly limits an ex-offender's ability to provide an acceptable form of identification necessary for procuring a New Jersey driver's license.

Thus, the program client has successfully passed the TABE test, but cannot obtain a driver's license, and as a result cannot become a member of the construction or building trades.

Another scenario outlined by McGreevey is the need to negotiate for a fee settlement with MVC regarding outstanding fines. However, in order to actually reapply for a driver's license the client needs to have the requisite identification under the MVC regulations. "The irony is that you are negotiating with MVC to pay your fines for the driver's license you had, but...you can't qualify for a new driver's license while you're paying [the fines from] the old one because you don't have the means [to obtain] the necessary credentials," he said.

Getting Involved

Accordingly, an attorney seeking to volunteer with the program does not need to specialize in criminal law or a specific area of the law for that matter. "All you need is advocacy skills [which are] the skills that every lawyer, by virtue of going to law school, has hopefully garnered," noted McGreevey. To that end, a lawyer seeking to volunteer for the program also does not need to have been practicing extensively in order to be a successful advocate on behalf of the program's clients.

Notwithstanding, the program is offering a training seminar for young lawyers in conjunction with the YLD on Feb. 28, 2015. The seminar will provide continuing legal education (CLE) credits. The training session will include McGreevey, Director of Reintegration Frank Mazza, Hudson County DOC Director Oscar Aviles, YLD lawyers, and others. The seminar will provide lawyers who wish to volunteer for the program guidance in how to navigate the everyday legal hurdles ex-offenders face by providing proper forms, manuals

and mentorship. The training will allow young lawyers to be confident in volunteering their services. Additionally, with the re-entry corporation franchise model the program is planning to expand to other cities and towns across the state in the near future, lawyers from every corner of New Jersey will be able to volunteer on a more local level, and will not necessarily have to travel to Jersey City to be involved with a reintegration program.

Any lawyer seeking more information or interested in volunteering for the program is asked to contact John Koufos, program development specialist, at 551-222-4341 or at jkoufos@jcetp.org.

Ultimately, besides getting CLE credit, legal training and providing *pro bono* services to the underserved population, any lawyer or non-lawyer who volunteers for the program will be able to experience firsthand the "human element," as McGreevey puts it. That is, working with a client who is striving to change and understanding the human dimension and impact of law and the regulatory structure of society. It is helping overcome the everyday struggles to reintegrate into mainstream society that mimic the same struggles that were tackled decades ago, by the Reverend Martin Luther King Jr., during the Civil Rights Movement. Like its namesake Martin's Place, "the keystone of the archway to reintegration," as McGreevey referred to it, is a shining example of the spiritual glory gained through helping those less fortunate. ■

Gary Ahladianakis is an associate with the firm of Kent/McBride, P.C., and focuses his practice on civil litigation, in the areas of personal injury, motor vehicle accidents, premises liability, and asbestos litigation.

Endnote

1. N.J.A.C. 13:21-8.2(b).



The Sept. 2014 grand opening celebration of Martin's Place included Former Governor James McGreevey, Governor Chris Christie and Congresswoman Nancy Pelosi.



Road to Reentry

Presented by the NJSBA and NJICLE

A New Beginning: Prisoner Reentry Training for Lawyers

Sat., Feb. 28, 2015
9 a.m. to 4 p.m.
NJ Law Center, New Brunswick



Co-sponsored by the Jersey City Employment and Training Program, the New Jersey Reentry Corporation, and the NJSBA Young Lawyers Division

Prisoner reentry is a fascinating intersection of criminal, family, administrative and federal law, and President Obama and Governor Christie have each made it a major priority.

Prisoners who have served their time and are ready to reenter society face many hurdles, including legal problems that may continue after their incarceration has ended. Overcoming them – from re-establishing family relationships and dealing with neglected financial responsibilities to restoring driver’s licenses – often requires a special kind of help.

That’s where you come in – the NJSBA YLD and JCETP invite you to join a blue-ribbon panel of speakers to discuss legal and practical obstacles to re-entry and the ways in which you can help.

Whether it’s job-seeking (and the internet knowledge that task now requires) or mastering technologies that the rest of us take for granted, like smartphones, returning home from prison can create overwhelming challenges for even the most focused individuals.

Join NJICLE, a division of the New Jersey State Bar Association, for this special event, designed to provide you with insight into the challenges facing prisoners seeking a path to re-enter society, as well as the services and solutions available to help.

Featuring a panel of New Jersey’s top experts, you’ll get a comprehensive understanding of the key issues you need to know.

Earn up to

6.0

CLE CREDIT(s)

Faculty



Paul J. Fishman



John Jay Hoffman



Gary M. Lanigan



James T. Plousis



Hon. Madeline Cox Arleo



Oscar Aviles



Mayor Steven M. Fulop



James McGreevey



Veronica R. Norgaard



Supti Bhattacharya



Allison C. Williams



Dana M. Van Leuven



Steven W. Hernandez



Frank Mazza



Caroline A. Sadlowski



John G. Koufos

You’ll also hear a series of panel discussions, featuring a wide range of perspectives on the subject, including Family Law, Municipal Court/Criminal Law, Corrections & Public Benefits and other issues affecting reentry:

You’ll also hear a series of panel discussions, featuring a wide range of perspectives on the subject, including Family Law, Municipal Court/Criminal Law, Corrections & Public Benefits and other issues affecting reentry:

New Jersey Reentry - A Public Policy Challenge:

- United States Attorney Paul J. Fishman
- Acting Attorney General John Jay Hoffman
- Mayor of Jersey City, Steven M. Fulop
- Governor James E. McGreevey (moderator), Executive Director, Jersey City Employment and Training Program

Family Law:

- Custody - Supti Bhattacharya, Esq., Skey & Bhattacharya, LLC
- DCPP - Allison C. Williams, Esq., Williams Law Group, LLC
- Domestic Violence - Dana M. Van Leuven, Esq., O’Sullivan Law Group, LLC
- Child Support - Veronica R. Norgaard, Esq. (moderator), The Weinberger Law Group, LLC

Municipal Court/Criminal Law:

- Defense - Steven W. Hernandez, Esq., The Hernandez Law Firm, PC
- YLD Perspective - Katherine Caola, Esq.
- AUSA - Caroline A. Sadlowski, Esq. (District of New Jersey)
- Honorable Madeline Cox Arleo, District Court Judge
- John G. Koufos (moderator), Jersey City Employment and Training Program

Corrections & Public Benefits:

- Director Oscar Aviles, Hudson County Department of Corrections
- Frank Mazza, Hudson County Department of Corrections (Director of Community Reintegration Program)
- NJDOC Commissioner Gary M. Lanigan
- Robin Stacy, NJ State Parole Board Legal/Appeals Unit
- Chairman James T. Plousis (moderator), NJ State Parole Board
- ... plus additional speakers to be announced

Where can reentering prisoners turn, and what resources are available to them?

Medicaid Expansion and the Re-entry Population

by Frank Mazza, Shae Cali and John G. Koufos

The Patient Protection and Affordable Care Act (ACA), signed into law by President Barack Obama on March 23, 2010, dramatically increases federal funding for substance abuse treatment, chronic mental and physical health issues, and other medical services for individuals re-entering society following incarceration through the expansion of Medicaid.¹ As part of the ACA, New Jersey extended Medicaid coverage as of Jan. 1, 2014, to all non-elderly, non-disabled adults with a household income up to 138 percent of the federal poverty level (FPL).² The Medicaid expansion in New Jersey will save state, county and local funds and, in effect, shift this cost to the federal government while minimizing associated health and public safety concerns.³ Prior to implementation of the ACA, states were responsible for paying a federal Medicaid matching rate, typically between 50 and 70 percent, for those individuals on the Medicaid rolls, with New Jersey paying 50 percent of Medicaid costs through 2013.⁴ With the institution of the ACA, the federal government will assume 100 percent of the cost of the Medicaid expansion over the first two years of the implementation of the ACA, and will never require the state to match more than 10 percent of the increased Medicaid costs.⁵

People re-entering society following incarceration often have complex and costly healthcare needs, the costs of which are typically borne by state, county and local governments. Most of this population is uninsured, low income, with high rates of chronic and communicable illnesses, as well as having mental health and substance disorders—up to seven times higher than rates in the general public.⁶ Healthcare costs for the re-entry population comprised as much as one-third of total state and local spending on uncompensated healthcare for the uninsured, approximately \$17.2 billion, in 2008; estimates suggest that between 70 and 90 percent of the approximately 10 million individuals released from prison or jail each year are uninsured.⁷ The lack of coordinated care and insurance coverage available to this population results in overreliance on emergency room care funded at the local level.⁸ Moreover, post-incarceration disruptions in the continuity of medical

care have been shown to increase rates of recidivism and lead to poorer and more costly health outcomes.⁹

The ACA renders more than half of the roughly 730,000 federal and state prisoners annually re-entering the community eligible for Medicaid or federal subsidies to buy health insurance from state health insurance exchanges, in addition to a significant percentage of the millions of individuals released from local jails each year.¹⁰ Medicaid and, by extension, the state health insurance exchanges, mandate that essential health benefits be provided. These benefits have been broadly defined as including 10 categories of services: “ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance abuse disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness and chronic disease management; and pediatric services, including oral and vision care.”¹¹ The inclusion of mental health, behavioral health, and substance abuse disorder services is of critical importance to re-entry clients, who are disproportionately affected by mental health disorders.¹²

In order to ensure effective continuation of healthcare alongside reduced local costs, in addition to capitalizing on the opportunity to enroll a frequently transient population in health insurance, all eligible individuals returning from jail or prison should be enrolled in an appropriate health insurance program as soon as possible. At present, the small percentage of individuals that previously held health coverage lose it following incarceration. Removing the requirement of a permanent address allows the re-entry population to enroll in Medicaid from within the correctional institutions, utilizing the assistance the institutions have to offer.¹³

Opportunities for Coordinated Care and Reduced Local Costs

The ACA expands Medicaid coverage to include medical services rendered outside correctional settings, significantly diminishing the prospective Department of Corrections medical budget. At present, the

Vera Institute of Justice estimates that 18 percent, or \$250,000,000, of the New Jersey Department of Corrections (NJDOC) budget is represented by costs for healthcare services outside the correctional environment.¹⁴ Both NJDOC and county corrections departments provide funding for the medical services rendered inside their respective correctional facilities. State and federal regulations do not currently allow for Medicaid reimbursements while an individual is incarcerated.¹⁵ Conversely, inmate medical care provided outside of the correctional facility for a period greater than 24 hours can be billed to Medicaid, reducing the cost burden on localities.¹⁶ Although the Medicaid billing exception predates the ACA, the ACA expands the number of state and county inmates now eligible for Medicaid.

At present, New Jersey terminates benefits or places an inmate in a Medicaid-terminated status at the time of incarceration, effectively removing the individual from the Medicaid rolls.¹⁷ The termination of Medicaid benefits is mandated even if the individual continues to meet eligibility criteria.¹⁸ The net effect is that, upon release, returning citizens must apply for reactivation of Medicaid status, a process that can take up to 30 days, during which time significant healthcare costs frequently accrue.

Placing individuals in a Medicaid-suspended status upon incarceration, as opposed to a terminated status, will result in decreased costs, particularly at the local level, provide for a continuum of care, and improve the public safety.¹⁹ According to the Social Security Act, termination of Medicaid benefits is not required upon incarceration. A Medicaid-suspended status, as opposed to a terminated status, allows the individual to remain on the Medicaid rolls while incarcerated. Medicaid benefits may then be restored within 24 hours of release, allowing for a continuation of coordinated care, removing the need for a reapplication process, and reducing costs to both NJDOC and local county corrections departments.

Individuals entering correctional institutions should be screened at intake for Medicaid eligibility and history. Those without previous Medicaid cases may be deemed eligible for Medicaid during their incarceration, and immediately placed in a suspended status, facilitating access to Medicaid-funded services immediately upon release.

Collateral Consequences of Distribution Charges: Barriers to Reintegration

The intention of the ACA is to enhance quality of life across an entire portion of those most in need of

healthcare services. The New Jersey inmate population is largely comprised of adults without dependents, with a criminal history of convictions for drug charges, including use, possession and distribution. As a result of the ACA's influence on Medicaid eligibility requirements, a substantial portion of the state inmate population is now eligible for medical insurance in the form of Medicaid. Enrollment in Medicaid provides access to a myriad of treatment resources that can subsequently affect benefit eligibility for other types of state aid.

Work First New Jersey General Assistance (GA) is a state program that provides cash assistance to low-income adults without dependents. Traditionally, the regulations set forth governing GA and Medicaid eligibility have been linked; New Jersey provided Medicaid coverage to any GA recipient by way of a federally approved Medicaid waiver. Prior to Jan. 1, 2014, N.J.S.A. 44:10-48 imposed a lifelong prohibition on the provision of GA and Medicaid benefits to any individual convicted of a felony under federal or state law involving the distribution of controlled dangerous substances (CDS). Furthermore, N.J.S.A. 44:10-48 prohibits any individual with a possessory CDS conviction from receiving GA and Medicaid benefits unless he or she is enrolled in a New Jersey Division of Mental Health & Addiction Services-certified residential treatment program. While those with CDS distribution convictions still are unable to access GA cash benefits, the ACA indirectly renders this population eligible for Medicaid benefits.

The potential community, health, and quality-of-life benefits of increased access to Medicaid will not be fully realized, however, if the re-entry population is not also afforded access to stable housing. The ACA does not provide for influence of regulations dictating GA cash eligibility, emergency assistance (EA), or affordable housing laws. The presence of stable, secure, and safe housing undergirds successful reintegration of formerly incarcerated persons into the community. Setting in place treatment plans consistent with the overall needs of a client cannot be sustained if the individual lacks the basic human need of shelter.

In 2010, the Council of State Governments (CSG), at the behest of the Bureau of Justice (BJA), examined the importance of accessing stable housing in the population leaving corrections:

Without a stable residence, it is nearly impossible for newly released individuals to reconnect positively to a community. More often

than not, when these individuals are not linked to the services and support that could facilitate their successful re-integration; they end up re-incarcerated for either violating the conditions of release or for committing a new crime. There are significant costs to public safety in the form of increased crime and victimization. In addition, when individuals lack stable housing and fail to maintain steady employment, children and others who depend on them for support are adversely affected. Taxpayer dollars are increasingly being spent on re-incarceration instead of much less expensive community services that could reduce recidivism and improve the lives of people returning from prison or jail.²⁰

The Urban Institute also conducted research on the consequences of inadequate housing afforded to the re-entry population.²¹ The data revealed that over 30 percent of those released only have access to temporary living environments and after six months had lived in multiple housing environments, and that returning citizens view supportive housing as the most essential benefit, further attributing this resource as the determining factor of whether or not they will continue criminal behaviors.²² The consistent need to relocate in order to attain shelter support was demonstrated to be a contributing factor to new offenses as well as technical violations leading to incarceration.²³ The research revealed a dearth of re-entry-based programs concentrated on providing housing, highlighting the critical importance of providing housing to maximize enrollment, participation, and retention in those interventions intended to reduce recidivism.²⁴

CDS convictions continue to prevent individuals from having access to housing-related benefits in New Jersey.²⁵ Both GA and EA—one of the largest resources in New Jersey for housing assistance for people living below the poverty line—are unavailable to individuals with drug distribution convictions; the ACA does nothing to affect the cited restrictions. EA, funded through the NJ GA block grant, provides housing support via rental and shelter assistance, food, clothing, household furnishings and utilities. New Jersey law provides EA only to individuals eligible for GA cash benefits, barring individuals with distribution charges from housing support in addition to other EA benefits.

As it pertains to alternative housing benefits outside of EA, criminal histories inclusive of drug charges

continue to serve as a barrier to housing. New Jersey public housing authorities set forth policy barring those with specific criminal backgrounds from obtaining this assistance or being placed on a lease of another receiving a housing benefit. The Housing Opportunity Program Extension Act of 1996 allows public housing authorities to deny applicants with prior CDS convictions both project-based public housing and Section 8 housing. Until the barriers to stable housing are removed, the net positive effect of the Medicaid expansion and increase in coordinated care for the re-entry population will be significantly diminished.

Beginning in 2014, Medicaid will cover treatment for mental illness and substance abuse and, in states that opt to expand Medicaid eligibility, this coverage will be available to many people who are at risk for being incarcerated, as well as those being released from correctional facilities.²⁶

Individuals who interact with the criminal justice system are significantly more likely to suffer from mental health and/or addiction issues when compared to the general public.²⁷ Prior to the expansion of Medicaid under the ACA, many in this population lacked access to health insurance.

The behaviors leading to criminal justice system involvement are often influenced, exacerbated, or motivated by mental illness. Addressing the systemic cause of deviant behavior has the greatest potential to augment public safety. Historically, the cost associated with treating illness represented a barrier to the Judiciary connecting individuals with appropriate treatment. Additionally, judges have limited sentencing options.

The cost of mass incarceration limits the funds jurisdictions might otherwise make available for treatment services for mental health and substance abuse conditions.²⁸ Rehabilitative reactions to behavior, including intensive treatment, to a substantial portion of the inmate population present the greatest potential for lasting behavioral change. The ACA offers the courts financial resources to expand sentencing options and more efficiently address the systemic motivation for criminal behavior throughout the entire inmate population. ■

Frank Mazza is the director of the Hudson County Corrections Community Reintegration Program. Shae Cali is the welfare program coordinator for the Jersey City Employment & Training Program. John G. Koufos is the re-entry manager for the Jersey City Employment & Training Program.

Endnotes

1. A Summary of the Affordable Care Act, Kaiser Family Foundation (April 25, 2013), <http://kff.org/health-reform/fact-sheet/summary-of-the-affordable-care-act/>.
2. How Will the Uninsured in New Jersey Fare Under the Affordable Care Act?, Kaiser Family Foundation (Jan. 6, 2014), <http://kff.org/health-reform/fact-sheet/state-profiles-uninsured-under-aca-new-jersey/>.
3. Medicaid Financing: An Overview of the Federal Medicaid Matching Rate (FMAP), Kaiser Family Foundation (Sept. 2012), available at <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8352.pdf>.
4. *Ibid.*
5. Medicaid Moving Forward, Kaiser Family Foundation, (June 17, 2014), <http://kff.org/medicaid/fact-sheet/the-medicaid-program-at-a-glance-update/>.
6. Justice Center the Council of State Governments, Implications of the Affordable Care Act on People Involved with the Criminal Justice System (Feb. 2013), available at http://csgjusticecenter.org/wp-content/uploads/2013/04/4.5.13_Affordable_Care_Act_FINAL.pdf.
7. Allison Hamblin, *et al.*, Medicaid and Criminal Justice: The Need for Cross-System Collaboration Post Health Care Reform, Community Oriented Correctional Health Services (Jan. 2011), http://www.cochs.org/files/CHCS_Final.pdf.
8. Nicholas Freudenberg, *et al.*, Comparison of Health and Social Characteristics of People Leaving New York City Jails by Age, Gender, and Race/Ethnicity: Implications for Public Health Interventions, *Public Health Reports*, 733-743 (Nov.- Dec. 2007) available at <http://www.publichealthreports.org/issueopen.cfm?articleID=1950>; *see also* E.A.Wang, *et al.*, A High Risk of Hospitalization Following Release from Correctional Facilities in Medicare Beneficiaries: A Retrospective Matched Cohort Study, 2002 to 2010, *Jama Internal Medicine*, 1621-28 (2013).
9. Justice Center The Council of State Governments, Medicaid and Financing Health Care for Individuals Involved with the Criminal Justice System, (Dec. 2013) available at <http://csgjusticecenter.org/wp-content/uploads/2013/12/ACA-Medicaid-Expansion-Policy-Brief.pdf>.
10. Justice Center the Council of State Governments Implications of Affordable Care Act on People Involved with the Criminal Justice System, 1 n.5, (May 27, 2013), <http://www.corrections.com/news/article/33145-the-implications-of-the-affordable-care-act-on-people-involved-with-the-criminal-justice-system>.
11. *Id.*
12. Freudenberg, *supra*.
13. Implications of Affordable Care Act, *supra* 1 n.5.
14. Christian Henrichson and Ruth Delaney, The Price of Prisons: What Incarceration Costs Tax Payers, The Vera Institute of Justice, 7 (Feb. 29, 2012), http://www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf.
15. State of New Jersey Department of Human Services, Presumptive Eligibility for Inmates (2014), available at http://www.nj.gov/humanservices/dmahs/info/resources/inmate_pe.html.
16. *Ibid.*
17. National Association of Counties, County Jails and the Affordable Care Act: Enrolling Eligible Individuals in Health Coverage, 3 (March 2012), http://www.naco.org/programs/csd/Documents/Health%20Reform%20Implementation/County-Jails-HealthCare_WebVersion.pdf.
18. *Ibid.*
19. Andrea A. Bainbridge, White Paper: The Affordable Care Act and Criminal Justice: Intersections and Implications, Bureau of Justice Assistance – U.S. Department of Justice, https://www.bja.gov/Publications/ACA-CJ_WhitePaper.pdf.
20. Katherine Cortes and Shawn Rogers, Reentry Housing Options: The Policymakers' Guide, Bureau of Justice Assistance – U.S. Department of Justice & Justice Center the Council of State Governments, vii-viii (2010), https://www.bja.gov/Publications/CSG_Reentry_Housing.pdf (citations omitted).
21. *See* Christy Visher, *et al.*, Returning Home: Understanding the Challenges of Prisoner Reentry, The Urban Institute Justice Policy Center, (Jan. 2004), http://www.urban.org/UploadedPDF/410974_ReturningHome_MD.pdf.
22. *Id.*
23. *Id.*

24. *Id.*
25. See N.J.S.A. 44:10-51; N.J.A.C. 10:90-1; N.J.S.A. 44:10-48.
26. Patricia Blair and Robert B. Greifinger, The health care reform law: What does it mean for jails?, *Correct Care*, Winter 2011, at 10-12, available at http://www.ncchc.org/filebin/images/Website_PDFs/25-1.pdf.
27. Laura M. Maruschak, Medical problems of jail inmates, Bureau of Justice Statistics Special Report, Nov. 2006, available at <http://www.bjs.gov/content/pub/pdf/mpji.pdf>.
28. Bryan Stevenson, Drug Policy, Criminal Justice and Mass Imprisonment, Global Commission on Drug Policies (Jan. 2011), available at http://www.globalcommissionondrugs.org/wpcontent/themes/gcdp_v1/pdf/Global_Com_Bryan_Stevenson.

Once upon a Zombie: Tips on Overcoming Likelihood of Confusion Based upon Similarity of the Marks

by Victoria A. Mercer

One of the more challenging refusals to trademark registration to overcome is likelihood of confusion pursuant to Section 2(d) of the Lanham Act. Likelihood of confusion is a barrier to registration when the applied-for trademark resembles a registered or common law trademark and is likely, when used in connection with applied-for goods or services, to cause confusion.¹ While likelihood of confusion is a 12-factor analysis, the United States Patent and Trademark Office (USPTO) will place particularly strong weight on: 1) similarity of the goods and services, and 2) similarity of the marks.² Between these two factors, the similarity of the marks is where a trademark lawyer can make an argument that an application should rejoin the living based upon dissimilarities between the marks in appearance, sound, meaning or connotation and commercial impression.³

One recent example that illustrates two underutilized arguments against similarity of the marks is found in *In re United Trademark Holdings, Inc.*, in which the Trademark Trial and Appeal Board (TTAB) reversed an examiner's refusal to register *Zombie Cinderella*, finding no likelihood of confusion with the registered trademark *Walt Disney's Cinderella*.⁴ The applicant, *United*, produces a line of dolls under the name *Once Upon Zombie*, whose basic premise is to take famous fairytale princesses and turn them into zombies. In addition to *Zombie Cinderella*, *United* also manufactures and sells *Zombie Snow White*, *Zombie Sleeping Beauty* and *Zombie Rapunzel*. In its efforts to convince the TTAB to allow *Zombie Cinderella* to proceed toward registration, *United* had put forth several arguments, including: 1) the matter common between the marks, the term "*Cinderella*" was weak, and thus entitled the registrant, *Disney Enterprises*, to a narrow scope of protection, and 2) the incongruity of the trademark *Zombie Cinderella* creates a unique connotation and commercial impres-

sion, which served to further distinguish the mark from *Walt Disney's Cinderella*.

While *United* is not a precedential ruling of the TTAB, its analysis and ruling provides an example of how creative reasoning can combat an assertion of likelihood of confusion based upon similarity of the marks.

Weakness of the Matter Common between the Marks

In the context of trademarks, weakness is a term used to describe the source-identifying prowess of the trademark. On one end of the trademark spectrum, words that are generic, descriptive or highly suggestive of the named goods or services are considered weak. On the other end of the spectrum, words that are suggestive, arbitrary or fanciful (i.e., made up) of the named goods or services are considered strong trademarks. Accordingly, weak trademarks, if registrable, are entitled to a narrow scope of protection, while strong trademarks are given wide berth in a likelihood of confusion analysis.

In this case, the TTAB accepted *United's* argument that the matter common between the marks—the term "*Cinderella*"—was conceptually weak. *United* provided evidence that the story of *Cinderella* has been known to the public since at least as early as 1697, when a version was published by Charles Perrault. *United* also provided ample evidence that the practice of depicting the character of *Cinderella* as a doll is widespread among unrelated businesses, which the board stated served to further establish *Cinderella* as a part of the cultural fabric and extremely recognizable by the public. As such, for a doll that depicts the character *Cinderella*, the term "*Cinderella*" is, at a minimum, highly suggestive of the product.

The board was also persuaded by *United's* evidence of the widespread practice of producing and selling dolls that depict the character *Cinderella* as indicative of the commercial weakness of the term "*Cinderella*." Commer-

cial weakness occurs when a term is so commonly used that the public will look to other elements of the trademark to distinguish the source of the goods.⁵

An important note to make is that weakness is relative to the named goods and services. As such, in order to demonstrate commercial weakness, practitioners must provide evidence of third-party use of the term in connection with goods or services similar to the applied-for goods or services. In *United*, the board expressly stated that it gave no weight to the third-party registrations that showed the term “Cinderella” registered in connection with cleaning services, slot machines and medical services. Moreover, while it may seem nonsensical, third-party registrations of similar marks on similar goods are not enough by themselves. They must be accompanied by evidence that demonstrates the third-party registered marks are currently being used, and the extent of such use, because in a likelihood of confusion analysis the board is interested in the effect of a trademark on the public mind, and, as quipped by one court, “the purchasing public is not aware of registrations reposing in the Patent Office.”⁶

Incongruity Creates a New and Unique Connotation and Commercial Impression of the Mark

Arguments for incongruity are usually utilized when an application is facing refusal to registration based on Section 2(e) being merely descriptive of the goods or services to which it relates. However, in the context of a likelihood of confusion refusal, incongruity can be used to distinguish the applied-for mark based on the new and unique meaning and commercial impression it possesses.

To best explain incongruity, look at the word “Zombie.” According to the record in *United*, a zombie is a “human...who is held to have died and been supernaturally reanimated.”⁷ The board also noted from the record that “zombies are characterized by eyes having a blank or unnerving stare, blood-stained mouth and signs of bodily decomposition.”⁸ Now, look at the word “Cinderella.” Most likely, images of a pretty young lady, singing mice, a glass slipper and Prince Charming come

to mind. As described by the board in this case, “incongruity occurs where each term is widely known and understood by the public and their respective meanings are so different as to be virtually irreconcilable.”⁹ Other examples include Urban Safari, Frankwurst and Sno-Rake.¹⁰ The combination of incongruous terms has a transformative effect, giving a mark a unique connotation and commercial impressions that can distinguish it from other marks.

In this illustrative case, United argued that the mark “Zombie Cinderella” “juxtaposes the grotesqueness of a monster commonly portrayed in horror films with the beauty and innocence of a classic fairytale princess... [and] this odd combination of horror and fantasy creates a cognitive dissonance in the minds of consumers and results in a feeling of disequilibrium.”¹¹ Compared to the connotation and commercial impression created by Walt Disney’s Cinderella of “prettiness and goodness,” Zombie Cinderella creates an “uneasy mixture of innocence and horror.”¹²

Conclusion

While it likely seemed to United that it was facing a strong barrier to registration, creative arguments and supporting evidence helped them convince the USPTO to reverse the refusal. In addition to arguments for weakness of the senior mark and incongruity, there are several under-utilized approaches that are discussed in the *Trademark Manual of Examining Procedure*, which is available on the USPTO’s website. Having a comprehensive understanding of how trademark applications are reviewed and the legal issues that may arise will eliminate a lot of worry that may come with Section 2(d) refusal. In the case of *United*, the applicant was able to focus the board’s attention on not what was similar between Zombie Cinderella and Walt Disney’s Cinderella, but on what was unique about Zombie Cinderella—a doll depicting the undead, blank-staring, flesh-eating fairytale princess.

Victoria A. Mercer is an associate with Kuzas Neu, P.C., and provides commercial transactional services for large media companies and early stage technology companies.

Endnotes

1. See 15 U.S.C. §1052(d).
2. See *In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); TMEP §§1207.01 *et seq.*
3. See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973); TMEP §1207.01(b).
4. *In re United Trademark Holdings, Inc.*, Serial No. 85706113, (TTAB Oct. 9, 2014) (not precedential).
5. See, e.g., *In re Hartz Hotel Servs., Inc.*, 102 USPQ2d 1150, 1153-54 (TTAB 2012); TMEP 1207.01(d)(iii).
6. *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973).
7. *In re United Trademark Holdings, Inc.*, Serial No. 85706113, at *12 (TTAB Oct. 9, 2014) (not precedential).
8. *Id.* at *13
9. *Id.* at *16
10. See TMEP §§ 1209.01(a); 1209.03(d).
11. *In re United Trademark Holdings, Inc.*, Serial No. 85706113, at *14 (TTAB Oct. 9, 2014) (not precedential).
12. *Id.* at *16