



Dictum

The newsletter of the NJSBA Young Lawyers Division

Vol. 43, No. 1 — November 2018

New Chair, Rajeh A. Saadeh, Focused on Expanding Diversity in the YLD

by Katrina M. Homel, Esq.

At its meeting on Oct. 9 of this year, Rajeh A. Saadeh became the new chair of the New Jersey State Bar Association's Young Lawyers Division (YLD). Saadeh, who had previously served as the YLD's chair-elect, assumed the chair role following the resignation of the prior chair, Dana Van Leuven, who resigned upon accepting a position as manager of continuing legal education programming for the New Jersey Institute for Continuing Legal Education (NJICLE).

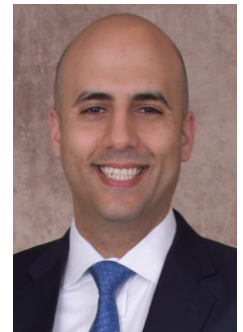
Saadeh, a native of Linden, currently runs his own family law and real estate practice, The Law Office of Rajeh A. Saadeh, L.L.C., with offices in Somerville and New York. His practice particularly focuses on complex and high-net-worth divorce and related family law matters.

Prior to private practice, Saadeh clerked for Judge Hany A. Mawla, who is currently a judge of the Appellate Division and previously served as the presiding judge of the family part in the Somerset, Hunterdon and Warren vicinage of the superior court.

When asked why he chose his current areas of practice, Saadeh cited to his clerkship, where he became fascinated with family law, as a driving influence, but also emphasized the importance of being in tune with the legal needs of your personal networks. Regarding why he chose real estate, he said: "Many of my college friends needed [real estate] attorneys for their businesses. So I took my skills, learned the subject area, and began to take real estate litigation matters—and my practice grew."

Saadeh is a graduate of the University of Pennsylvania Law School and holds a bachelor's degree in political science and Middle Eastern studies from Rutgers University.

Saadeh has been actively involved in the YLD for over seven years, since Sept. 2011. "When clerking, a young lawyer appeared before the judge, and she invited me to attend a YLD meeting; that young lawyer was Dana Van Leuven," he said. After first getting involved



with the YLD, he held various executive committee positions, including Somerset County representative, parliamentarian, and each officer position.

For the past several years, Saadeh has been involved in organizing the YLD tailgate at the Far Hills Race Meeting and the YLD Smoke Out. He said that he particularly enjoys the social events for the YLD: “You meet people [at these events] who are in a similar profession and lead similarly stressful lives, and the social events are a way to unwind with other people who are in a rigorous profession.”

Saadeh will serve as the YLD chair through the spring of 2020. He said that he has promised to continue Van Leuven’s agenda for the remainder of what would have been her term. In addition, Saadeh said, “As far as my term, laying the foundation for the goals I want to achieve starts now. I want to focus on diversity within the YLD and improving our relationships with the diversity bar associations.”

“I would like to consider how to get parts of the bar that do not currently have a presence more involved in the bar,” he added.

Saadeh emphasized that young lawyers in New Jersey should consider getting involved in the YLD because, among other things, the benefits that young lawyers receive, such as continuing legal education opportunities, are well worth the cost of membership.

“Through the YLD, you meet people who have gone through similar things that you have gone through,” he said. “It is a great place to interact with people, and many members develop genuine friendships with people that they have met at YLD events.”

In response to a question about his favorite Supreme Court justice, he said that he admires United States Supreme Court Justice Robert Jackson, who Saadeh called “ahead of his time.” Saadeh noted that Justice Jackson penned the Court’s opinion in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), which found, among other things, that a compulsory requirement to salute the flag and pledge allegiance was a violation of the First and 14th Amendments.

In his free time, you might find Saadeh spending time with his two young children or on the basketball court. He is an alumnus of the Linden High School basketball team and has played in a lawyers’ league.

He offered the following advice for young lawyers: “Don’t be afraid; the practice of law is not easy, and it is not supposed to be, but it will get better. If there is something that you need, such as guidance on opening your own practice, navigating a law firm, or ascending the ranks of government, the YLD is here to help.” ■

Katrina M. Homel, Esq. is editor-in-chief of Dictum. She is counsel at the New Jersey School Boards Association.

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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.



A Few Words from YLD Immediate Past Chair Dana Van Leuven

by Brett Yore, Esq.

Dana Van Leuven is the immediate past chair of the Young Lawyers Division (YLD) of the New Jersey State Bar Association (NJSBA). The staff at *Dictum* would like to thank Van Leuven for her tireless efforts on behalf of the YLD. She has moved into a position as manager of continuing legal education programming for the New Jersey Institute for Continuing Legal Education, and we look forward to working with her in this new capacity.

Before Van Leuven's departure from the YLD, Brett Yore, assistant editor of *Dictum*, sat down with her as she reflected on her experiences during her time in the YLD.

What has been your favorite YLD event?

My favorite YLD event has been the YLD Dinner Cruise on the Hudson that just occurred this past September. It was a wonderful evening of young lawyers coming together with other bar members in a spectacular setting.

How has your involvement in the NJSBA helped you personally and professionally?

Personally, it's given me friendships that I value, that are important to me, and add meaning to my life. From a professional perspective, it's helped me with career opportunities. Attending my first Annual Meeting allowed me to find a summer position, which led to other opportunities. While I've had my own practice, the relationships that I've built within the bar association helped me generate business. Most of my practice came from referrals from other attorneys that I know through the bar association, and it now has led to my current position. So it's been extraordinarily useful in a professional setting.

For a young attorney beginning their career, what advice do you think is helpful?

Don't let anyone tell you that you can't do something.

For a young attorney beginning their career, what pitfalls do you think they should avoid?

I think staying in a situation that doesn't make you happy. I think that it's really hard to excel if you don't like what you're doing.

What tips would you give a young attorney for dealing with stress?

There's always going to be stress. You're going to have clients yelling at you, you're going to have bosses yelling at you. Learn to just take a deep breath and try to compartmentalize things. It's really hard to do, but don't bring it home. And make time to have fun and be with the people you love and care about. I think that's super important.

What has been one of your best professional accomplishments so far in your career?

I suppose being chair of the YLD. My journey to get to that point was very rewarding and exciting. It's been an honor to work with the various individuals that I've worked with over the years within my various roles in the YLD and the NJSBA.

If someone has never been involved with the YLD, why should they start?

They should get involved because of the opportunities that present themselves through their involvement. You meet different people, and when you meet different people it opens new doors, and you never know where those doors are going to lead until you open them. It's also a lot of fun and a rewarding experience. ■

Brett Yore, Esq., an assistant prosecutor in the Atlantic County Prosecutor's Office, is senior assistant editor of Dictum and the Atlantic County representative to the YLD.

SAVE THE DATE

December 4

Annual Holiday Brew Ho-Ho

(Co-Sponsored by the Middlesex County Bar Association's Young Lawyers Committee)

6 to 8 p.m., Fox & Hound Pub, 250 Menlo Park Drive, Edison

January 8

Young Lawyers Division Executive Committee Meeting

6:30 to 7:30 p.m., New Jersey Law Center, 1 Constitution Square, New Brunswick

January 10

Social Event with Burlington and Camden County Bar Associations

6 to 9 p.m., The Pour House, 124 N Haddon Ave, Westmont

February 11

Young Lawyers Division Executive Committee Meeting

6:30 to 7:30 p.m., New Jersey Law Center, 1 Constitution Square, New Brunswick

Date TBD (Rescheduled from November 10)

Young Lawyers Conference

New Jersey Law Center, 1 Constitution Square, New Brunswick



NJSBA President Keefe to Focus on Lawyers Helping Lawyers and Attorney Mentoring during Term

by Liana M. Nobile, Esq.

Many words can be used to describe John E. Keefe Jr.—he is a husband to Estee; a father to John, Jake, and Jack; and a son to Judge John Keefe Sr. and Jeri. I’m lucky enough to call John a mentor, and to me and many attorneys in New Jersey and across the country, John is a respected attorney and treasured friend. Perhaps most importantly, for this year, all New Jersey attorneys will know John as the New Jersey State Bar Association’s (NJSBA’s) 120th president.

Although John initially thought he would become an English or history teacher and baseball coach upon graduation from Gettysburg College, it was his father’s influence—and an understanding of what trial work meant—that helped John to instead turn to a career in the law. A graduate of Seton Hall University Law School, John, a certified civil trial attorney, began his legal career as a clerk to the Hon. Kenneth C. Mackenzie, J.S.C., before transitioning to private practice at Wilentz, Goldman, & Spitzer, where he worked as an associate for five years. Thereafter, he worked as a co-managing partner at Lynch Martin, and 10 years later he founded Keefe Bartels, LLC, now Keefe Law Firm. John recently served as part of the transition team for New Jersey Governor Phil Murphy.

As long as I’ve had the honor of knowing John, he has talked about and planned for his time as NJSBA president. He was elected as secretary in 2013, the same year I began working as John’s associate at then Keefe Bartels, LLC. Although John approached all of our cases and work with vigor, his eyes truly lit up with excitement and passion when he spoke about what he planned to do during his term as president, which was still five years away at that point.

John had been planning for his presidency for a while when he hit an unexpected speed bump that almost threw a wrench in his plans. Almost one year to the day before John took the oath and was sworn in as president of the NJSBA, he was diagnosed with throat cancer. This

diagnosis, and the intensive medical treatments and road to recovery that stretched before John, who was by then the managing partner of a Monmouth County plaintiff’s law firm, were a journey and a challenge.

However, this experience served as the inspiration for the overarching theme of his year as NJSBA president—“Lawyers Helping Lawyers.” While he was fortunate enough to have a supportive network of friends, colleagues, employees, and family who were able to help step in to run Keefe Law Firm in John’s absence and handle cases as well as drive him to and from appointments and stay with him during his treatments, John realized not all solo or small-firm practitioners may be as lucky as he was in times of crisis. John further realized that as NJSBA president, he would be in a great position to create a system where New Jersey lawyers will be able to help other New Jersey lawyers in times of unexpected crisis.

Not only is John a great mentor, but he readily acknowledges that he is “extremely grateful for the mentors [he’s] had in [his] career.” It comes as no surprise, then, that in addition to developing programs to assist all New Jersey lawyers (especially through difficult times), John intends to focus on fostering relationships between experienced lawyers and new lawyers—who John describes as “the future of the profession”—by developing a formal mentorship program aimed at connecting new attorneys and/or attorneys in a state of transition with more experienced attorneys who can offer guidance.

In addition to these two initiatives, John's other areas of focus as NJSBA president will be on the professional liabilities bill and diversity issues within the bar.

John's friends and colleagues describe him as loyal, smart, humble, and hardworking. Overwhelmingly, though, people describe John as being an incredible leader. This year, we will all get the privilege of watching John live up to his reputation. Michael Convery Jr., a life-long friend to John and attorney with Keefe Law Firm, says "I know John will be the best president." I, for one, couldn't agree more.

If you didn't get the opportunity to see John sworn in this past May, I encourage you to watch the following video: https://www.youtube.com/watch?reload=9&v=YlyY3TMT_Ss&feature=youtu.be. ■

Liana M. Nobile, Esq. is a litigation associate at Scarinci Hollenbeck in Lyndhurst.

Do You Have Something to Say?

Do you have something to say that you think other members of the YLD should know about? Why not submit an article or announcement to the YLD's newsletter, *Dictum*?

In the next issue of *Dictum*, we would like to print articles on the following topics:

- **Clerking**—tips for clerks considering next steps after the clerkship and/or clerks who are navigating their first position practicing law
- **Immigration issues**—for immigration lawyers reading this, what new legal developments have you seen through your practice?
- **Potential legalization of cannabis and general related legal issues**—what issues are you/do you anticipate seeing in your practice?
- **Lawyer wellness**
- **The fee arbitration process, explained**
- **Ethical issues faced by new attorneys**
- **Young lawyers in film, books, etc.**

We are also open to publishing other submissions of interest to young lawyers, so don't let this list of topics limit your writing. Additionally, *Dictum* is seeking photos from YLD and other NJSBA events.

Written submissions to *Dictum* should generally be around 1,500 words or less, and concern something of interest to young lawyers. **The deadline to make it into the next edition of the newsletter is Jan. 31.**

Please email potential content you would like considered for publication to *Dictum*'s editor-in-chief, Katrina Homel, at kmhomel@gmail.com, with "*Dictum*" in the subject line.

NJSBA Sends Delegation to American Bar Association's Young Lawyers Division Annual Meeting

New Jersey had its largest delegation in recent history attend the American Bar Association's (ABA) Young Lawyers Division Annual Meeting, held from Aug. 2-5 in Chicago. At the conference, the delegation networked with other young lawyers from across the country, represented the NJSBA YLD in the ABA YLD Assembly, and attended continuing legal education sessions. This year, the ABA YLD honored retired Seventh Circuit Judge Ann Claire Williams at its annual YLD Fellows Gala, also held during the annual meeting. The NJSBA YLD will accept new candidates to serve as part of its delegation to the ABA going forward. Interested YLD members should contact Brandon Lee Wolff, Esq.



Photo by Brandon L. Wolff, district representative to the American Bar Association's Young Lawyers Division

All Aboard! NJSBA YLD Sets Sail on the Hudson for Inaugural Gala



On Sept. 20, the NJSBA YLD cruised the Hudson River for its inaugural gala aboard the Spirit of New Jersey. Members of the YLD, as well as other sections of the NJSBA, attended the event. During his remarks at the event, NJSBA President John Keefe promoted the NJSBA's new mentorship initiative to engage young lawyers, among others.

Photos by Jennifer Brown

The YLD Goes to the Races: A Day Out at the Far Hills Race Meeting



On Oct. 20, members of the YLD enjoyed a beautiful fall day out at the Far Hills Race Meeting in Far Hills. The YLD's tailgate, organized annually in recent years, provided an opportunity for YLD members to relax and connect with each other. The Far Hills Race is an steeplechase race attracting tens of thousands of spectators each year.

Photos by Claudia Volk

How I Learned to Stop Worrying and Love the Game of Golf

by Emily Kelchen, Esq.

I'm not by any means athletic. And my idea of enjoying the great outdoors is grilling out on the patio with a cold beverage. So why in the world would I decide to take up golf? To paraphrase *The Godfather*, it's not personal; it's business.

I took up golf because I got tired of being the person stuck in the office whenever my coworkers were participating in a golf tournament. It made sense for me to be the one left behind since I didn't know how to play, but it was disappointing.

So, I decided to take some lessons so I could also take an afternoon off every once in awhile. I bought a cheap set of clubs and signed up for a golf class. I was incredibly intimidated because I viewed golf as something you have to be athletic or introduced to at a young age to find worthwhile, but I was determined to find out what I was missing out on.

My county has a public course with pros who offer very reasonably priced group and personal lessons (and clubs you can borrow if you don't have your own). I also went golfing with a friend who played golf in college who was excited to give me some pointers. Tip: Spend the extra money to learn from a pro and ignore your friend's advice. You'll learn more and keep your friendship intact.

After my lessons ended, I started playing after work a few times a month. Sometimes my husband or a friend would play with me, but I was often placed with people I had never met before. I quickly learned that even people who are 'good' at golf make terrible shots all the time. My horrible drives and time spent in the sand traps were par for the course. (No pun intended.) The only time I embarrassed myself was when I broke a rule of golf etiquette. (My cart driving has not injured anyone, but I've promised to be more careful.)

My time spent on the course has given me a new hobby that I enjoy, but I have not forgotten that I took up the sport in part to advance my career. That was a good move. Golf is a great way to meet new people and add to your network. You are spending a few hours with other people who have a common interest, are enduring a common struggle, and you come out the other side with a new acquaintance.

I'm incredibly glad I let my want of an afternoon or two out of the office overcome my hesitations and misconceptions. ■

Emily Kelchen, Esq. is the YLD treasurer. She is a freelance lobbyist and attorney marketing consultant.

What is the New Jersey False Claims Act and Why Should You Know About It?

by Bradford W. Miller, Esq. and Jason S. Kanterman, Esq.

At its core, the New Jersey False Claims Act (NJFCA)¹ imposes liability on any person or entity that submits a claim to the government they know, or should know, is false. While seemingly straightforward, the NJFCA is quite complex in application. This brief article will introduce the NJFCA and will help counsel who are otherwise unfamiliar with the NJFCA to spot situations where it may apply.

Discussion of the NJFCA must begin with an introduction to the federal False Claims Act (FCA),² the law on which the NJFCA is based. Enacted in 1863 over concerns that suppliers for the Union Army during the Civil War were defrauding the Army, the FCA was created to protect the government and taxpayers against fraud targeting government-funded programs. The FCA has been described as the United States of America's "primary weapon" for combating fraudulent activity affecting it.³ Today, the FCA is most often used to combat fraud in the healthcare and defense-contractor contexts, but its application is certainly not that limited.⁴

Recognizing that the government would be unable to uncover all fraudulent activity on its own, Congress enacted the *qui tam* provision of the FCA, which permits civilians and others to bring civil suit, on the government's behalf, to recover for such fraud. For their efforts, these whistleblowers, commonly known as *relators*, are often entitled to a percentage of the government's recovery. The FCA has gained greater recognition as more and more *qui tam* actions are resolving for multi-million, and even multi-billion dollar sums. The NJFCA was enacted to prevent these same types of fraud at the state level.

Fraud against the New Jersey state government appears in various forms and across numerous sectors, and practitioners, both plaintiff and defense counsel, should always be on alert for potential NJFCA application. For example, a nurse may contact an employment lawyer due to purported discrimination at work, and the lawyer may learn the nurse has knowledge that her office is illegally billing Medicaid for services that were not actually

provided. This would constitute a violation of the NJFCA. Additionally, a potential client who works for a government contractor may come to counsel's office concerned about what he perceives as fraud occurring in his workplace, and counsel may learn that the contractor is over-billing for the services it is providing to the state. This, too, would constitute a violation of the NJFCA. Another example would be if a corporate client who provides office supplies to state agencies contacts defense counsel regarding a disgruntled employee in its finance department. The client informs counsel that the employee previously complained to a supervisor about the company's billing practices, including concerns that the company may be using potentially unlawful or reckless billing practices. The client further advises counsel it believes the disgruntled employee may be copying billing records to build a case. Counsel would be wise to investigate these allegations with an eye towards discerning whether the disgruntled employee may be preparing to file, or may have already filed under seal, a *qui tam* action.⁵

As the examples highlight, the possibilities are, quite literally, endless. By understanding the general concepts behind FCA and NJFCA application, counsel can learn to spot these issues and alert their clients to potential causes of action that may have otherwise been overlooked.

For relators' counsel, one of the advantages of *qui tam* litigation is the opportunity for a significant recovery. First, the NJFCA awards relators a share of the government's recovery (whether that recovery was obtained through settlement or litigation), with the statutory share in an intervened⁶ case being "at least 15% but not more than 25% of the proceeds" recovered by the government.⁷ That share increases to between 25 and 30 percent for a non-intervened case, the logic being that a successful relator in a non-intervened case carried a more significant burden than a relator in an intervened case where the government took the lead in litigating the matter.⁸ Usually, relators' counsel will craft in their fee agreements a provision where counsel is entitled to

a “result fee” of anywhere from 25 to 40 percent of the amount awarded to the relator. Thus, in an intervened case, if the government recovers \$1 million and awards the relator a 20 percent share (\$200,000), and counsel’s bargained-for result fee with the relator is 30 percent, relator’s counsel will receive a result fee of \$60,000 (with the relator walking away with the remaining \$140,000 from the relator share award).

In addition to a result fee, under the NJFCA counsel is entitled to reasonable costs and attorneys fees.⁹ Pursuant to the statute, “[i]f the court awards proceeds to the person bringing the action under this act, the person shall also be awarded an amount for reasonable attorneys’ fees, expenses, and costs. All such expenses, fees, and costs shall be awarded against the defendant.”¹⁰ Thus, in a successful NJFCA case, relators’ counsel can receive both a contingent result fee, as well as statutory costs and attorneys’ fees. In the event the statutory fee award cannot be successfully negotiated with the defendant and has to be litigated, the court will undertake a traditional analysis to determine the reasonableness of the hours expended and the hourly fee charged.

One final word of caution, however, is that if a relator decides to proceed with a non-intervened case and is unsuccessful, a prevailing defendant can seek reasonable costs and attorneys’ fees against the unsuccessful relator.¹¹ This fee-shifting provision should give counsel some pause before proceeding with a non-intervened NJFCA case. At the very least, a relator who seeks to move forward with a declined, non-intervened claim should be cautioned about the potential for an adverse fee award.

When presented with a client who has been terminated or otherwise punished for whistleblowing activities, in determining whether to bring a *qui tam* action, as opposed to a traditional New Jersey Conscientious Employee Protection Act¹² or wrongful termination claim, there are several pros and cons counsel and the client

should consider. First, the potential recovery in a *qui tam* action is likely greater than that of a traditional wrongful termination action. That is because the relator not only receives the damages available under the NJFCA’s whistleblower protection provisions,¹³ which entitles the relator to the full panoply of compensatory, statutory, and punitive damages, but also a share of the amount recovered by the government, which could be significant. A drawback, however, is the significant time lapse that often takes place between the filing of the under-seal complaint and the final resolution of the matter. This time lapse occurs because of the significant complexities that come with *qui tam* investigations and litigation.

Unlike normal litigation, *qui tam* actions usually begin with confidential meetings with potential relators; early communications with law enforcement (the United States Department of Justice/state attorneys general); drafting a unique and complex complaint and disclosure statement, which are filed under seal; state-by-state service rules; and working hand-in-hand with the government during the investigation and litigation of the matter. As a result, it may take several years for a client to be compensated, as opposed to a potential quicker resolution through traditional employment-related causes of action.

Similarly, defense counsel must be sure to properly guide clients so as to avoid the substantial risks, costs, and uncertainties that accompany *qui tam* litigation. Accordingly, when deciding whether to proceed with a *qui tam* matter, it may be wise to contact experienced *qui tam* counsel, who can guide the process. ■

Bradford W. Miller, Esq. and Jason S. Kanterman, Esq. are attorneys at Stone & Magnanini LLP, where they maintain a national complex litigation practice, including a qui tam practice.

Endnotes

1. N.J.S.A. 2A:32C–1 to 2A:32C–17.
2. 31 U.S.C. §§ 3729–3733.
3. Press Release, Department of Justice Recovers \$3 Billion in False Claims Cases in Fiscal Year 2010, Justice.gov, Nov. 22, 2010, available at <https://www.justice.gov/opa/pr/departments-justice-recovers-3-billion-false-claims-cases-fiscal-year-2010>; Press Release, Justice Department Recovers Over \$4.7 Billion From False Claims Act Cases in Fiscal Year 2016, Justice.gov, Dec. 14, 2016, available at <https://www.justice.gov/opa/pr/justice-department-recovers-over-47-billion-false-claims-act-cases-fiscal-year-2016>; *accord* U.S. *ex rel.* Wood v. Allergan, Inc., 246 F. Supp. 3d 772, 797 (S.D.N.Y. 2017), interlocutory appeal pending, (2d Cir. 2017).

4. The FCA was recently used to prosecute professional athletes for seeking and receiving millions of dollars in United States Postal Service sponsorship funds while concealing use of performance enhancing supplements. *Landis v. Tailwind Sports Corp., et al.*, No. 1:10-cv-00976 (D.D.C.) (resolved by settlement agreement in 2018).
5. All NJFCA matters begin with a complaint being filed under seal. These complaints remain under seal while the State investigates the allegations of the complaint. Therefore, defendants may be unaware that an action has been filed against them until months (or longer) after the initial filing date.
6. Intervention occurs when the government decides to take over primary responsibility for litigating a *qui tam* action.
7. N.J.S.A. 2A:32C-7a.
8. N.J.S.A. 2A:32C-7d.
9. N.J.S.A. 2A:32C-8.
10. N.J.S.A. 2A:32C-8b.
11. N.J.S.A. 2A:32C-8c.
12. N.J.S.A. 34:19-1 *et seq.*
13. N.J.S.A. 2A:32C-10c.

How Well Do You Know New Jersey Law?

Are you a legal expert? The staff at *Dictum* will be testing your legal knowledge in each issue with the new feature, “How Well Do You Know New Jersey Law?”. We will be asking a question about a state law, and the first person to respond to the editor-in-chief, Katrina Homel, will have their name printed in the next issue of *Dictum*, along with their answer.

Because Election Day is in November, our first question is election related: New Jersey designated March 31 of each year to honor an important person in state history who cast a ‘first’ vote that day. Please send us your answer to the following:

- 1) Who was this person and why was this vote significant?
- 2) What is the statutory reference designating March 31 as a day to honor this person?

Emails should be sent to kmhomel@gmail.com, with “NJ Law” in the subject line.