

MUNICIPAL CLERKS' ASSOCIATION OF NEW JERSEY, INC.

PRESIDENT'S MESSAGE by Barbara M. Hawk

"Lighting the Way to Better Government" was the theme for our 2nd Annual Education Conference, held in March 2007. I offer my thanks to those of you who were part of the conference committee and those of you who attended this great conference. We had a total of 327 people registered. Our Association is 80 years old! Special thanks to the following retirees who did an excellent job with registrations and keeping the attendees informed: Al Reda, Coordinator; Barbara Camp, Joe Favaro, Tina Fiorelino, Rita Lonkey and Angela Pileggi.



MCANJ President Barbara Hawk carrying the New Jersey State Flag at the IIMC Conference

The OPRA law made headlines when one of our municipal Clerks was personally fined \$1,000 for violating the "OPEN PUBLIC RECORDS ACT". Our "Records Committee" and "Law Affecting Municipal Clerks" Committee are working hard to keep us abreast of any changes that occur and the Executive Committee is then sending letters to our Legislators informing them how these changes will affect the office of the Municipal Clerk. When in doubt about an OPRA request please contact your attorney, the GRC or your Municipal Clerk's Association.

I attended the "Conference of Mayors" on April 12th and was on a panel entitled "Mayors, Marriages and Civil Unions" with Susan Bass Levin, DCA Commissioner; Mayor David DeVecchio, President of NJ State League of Municipalities and Mayor of Lambertville; and Mayor Malcolm Fraser, NJCM 2nd Vice President and Mayor of Cape May Point. Many of the Mayors stopped by our booth for information about our association and expressed thanks and appreciation for their Municipal Clerks.

I thank all Municipal Clerks who sent a resolution opposing Assembly Bill #3959, which would extend polling hours for primary and general elections. If you haven't sent a resolution of opposition yet, please do!

Municipal Clerks' Week was April 29 through May 5, 2007. Sharon Brienza of Branchburg received a Proclamation from the Governor's Office for our week. The March 22, 2007 issue of the New Jersey State League of Municipalities Bulletin included a letter I wrote to the Mayors of New Jersey, encouraging the governing body of each municipality to honor their clerk.

We extend our thanks to Greg Hart for the great job he did as Chair of "Laws Affecting Municipal Clerks" Committee. Greg is now working as the Business Administrator in Franklin Lakes. Michele Auletto of Washington Township in Mercer County has accepted the appointment of Chair, due to Greg resigning. I thank you Michele.

Ms. Lissette Apotela-Hernandez has been appointed Acting Clerk for the Township of Teaneck. Welcome Lissette! If there is anything we can do to help you, please let us know.

Thanks to the hard work of Tom Segreto, our legal counsel, we have received our 501 © (3) Tax Exempt Status. This took many hours of filling out paperwork and dealing with the IRS.

The new updated Desk Reference disks were mailed out and if you have not received one, please email me at: barbarahawk@comcast.net. I have had requests for our Desk Reference in printed form. You can email Coded Systems at: codedinfo@aol.com for this.

The next Advisory Board Meeting will be held September 21, 2007 at Mastoris in Bordentown.

The Municipal Clerks' Association of New Jersey, Inc. is always available for your questions, concerns and comments. Call me at 856-784-1551 or email at: barbarahawk@comcast.net. Have a great summer!

Jim Doherty, Editor
973.875.7192 e-mail: administrator@wantagetwp-nj.org

PAST EDITORS:

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Joseph E. Bennett, 1971-1973 Harry C. Kates, 1974-1982
Janet L. Lynds, 1983-1993

Patricia Hullfish and Patricia Shuss, Co-Editors, 1994-1995
Patricia C. Shuss, 1996-2000 Nancy Hatton, 2001-2005

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MUNICIPAL CLERKS' ASSOCIATION OF NEW JERSEY, INC.
EXECUTIVE BOARD 2007

President: Barbara M. Hawk, Laurel Springs Borough
E-mail: barbarahawk@comcast.net

First Vice President: Heather A. Mailander, Ridgewood Village
E-mail: hmailander@ridgewoodnj.net

Second Vice President: Joan Moreland, Haddon Heights Borough
E-mail: Jmoreland@haddonheightsboro.org

Treasurer: Vincent Buttiglieri, South Plainfield Borough
E-mail: vbuttiglieri@southplainfieldnj.com

Secretary: Joanne M. Kwasniewski, Fair Lawn Borough,
E-mail: munclerk@fairlawn.org

Immediate Past President: Elaine B. Kennedy, North Hanover Twp.
E-mail: ebeverly@comcast.net

Administrative Consultant: L. Manuel Hirshblond

Legal Counsel: Thomas A. Segreto

PAST PRESIDENTS*EX OFFICIO MEMBERS

1974*Joseph V. Valenti	1994*Kathleen A. Thorpe
1975*Alfred A. Reda	1995*Christina N. Wilder
1977*Otto M. Bock	1996*Joseph C. Favaro
1978*Norma B. Sisco	1997*Elizabeth H. Kiss
1981*L. Manuel Hirshblond	1998*Lynn Stanzlaus
1983*James F. O'Keefe	1999*Bernadette Dubuss
1985*Elizabeth G. Nolan	2000*Nancy Hatten
1987*Lewis N. Thompson	2001*Sharon L. Brienza
1988*Elaine Wallace	2002*Bernadette Standowski
1990 *Ronald Nunnenkamp	2003*Allan Susen
1991*Mildred C. Bird	2004*Joel Popkin
1992*Barbara A. Camp	2005*Jane Williams-Warren
1993*John J. Galvin	2006*Elaine B. Kennedy

ADVISORY BOARD MEMBERS

Atlantic:	Carol A. Raph, Northfield City
Bergen:	Nancy Hatten, Tenafly Borough
Burlington:	Patricia Hunt, Moorestown Township
Camden:	Nancy Saffos, Cherry Hill Township
Cape May:	Theresa Tighe, Sea Isle City
Cumberland:	Keith Petrosky, Vineland City
Essex:	Linda Wanat, Montclair Township
Gloucester:	Dawn Marie Human, Wenonah Borough
Hudson:	Robert Byrne, Jersey City
Hunterdon:	Cecilia Covino, Town of Clinton
Mercer:	Sharon Young, West Windsor Township
Middlesex:	John Mitch, Woodbridge Township
Monmouth:	Jane Gillespie, Tinton Falls Borough
Morris:	Sheila Seifert, Rockaway Township
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Sussex:	Denise Stagnari, Green Township
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Warren:	Theresa Tamburro, Blairstown Township

LEGAL DEFENSE FUND

Sharon Brienza, Chair

The Legal Defense Fund has seen its largest increase of new members (35) since the beginning of the fund. It's not too late to join!

Please remember that in order to request assistance, you must be a member in good standing of the LDF for a minimum of 90 days prior to the time the claim arose. Unfortunately, I have seen people join and then contact me two weeks later with a claim that has been going on for months.

Initial membership is \$75.00, with an annual renewal fee of \$25.00 thereafter. Applications and renewal applications were included with your annual dues membership or you can download an application form from the MCANJ website.

Please mail the completed application with your **PERSONAL CHECK** payable to MCANJ – LDF to:

L. Manuel Hirshblond, Administrative Consultant
11 Boxwood Terrace
Toms River, NJ 08755

If you have any questions or would like additional information, please feel free to contact me at 908-526-1300, ext. 103.

Sharon L. Brienza, Township of Branchburg
LDF Committee Chair

PRESS RELEASE: NJ ELEC
Pay-to-Play Filing Update

The Election Law Enforcement Commission is pleased to announce that the Business Entity Annual Statement (Form BE) and filing instructions are now available on its website at www.elec.state.nj.us. Pursuant to P.L.2005, c.271, §3, any business entity that has received \$50,000 or more in a calendar year through agreements or contracts with public entities, must file an annual disclosure statement with the Commission.

The statement is required to be filed electronically by **September 28, 2007** and will report activity relevant to calendar year 2006. The statements will be disclosed on the Commission's website after the September 28th deadline. All subsequent annual statements will be due by March 30th and will report information relevant to the previous calendar year. For further information, please review the Pay-to-Play section on the Commission's website or contact the Special Programs Staff at the Commission. Thank you.

MCANJ 2008 Committees - A Call for Volunteers

As President of our Association next year, I would like to invite you to take an active part in the MCANJ by volunteering to serve on one of our Committees. Only with your involvement can we address the present and future needs of our organization. I hope you will join me by completing the form below and returning it to me via mail or FAX, by September 1, 2007.

If you have any questions, suggestions or comments, please call me at 201-670-5500 ext. 201. I am looking forward to working with all of you in 2008 and thank you for your participation.

HEATHER MAILANDER

Constitution & Bylaws:

Reviews and recommends amendments to the Association's Constitution and Bylaws, with the purpose of enacting sound and fair rules of our organization.

Education:

Develops educational programs, reviews the certification and recertification programs and provides for seminars and conferences.

Elections:

Examines and evaluates the statutory requirements governing elections in municipalities.

Education Conference:

Plans and implements an informative and rewarding program in conjunction with Rutgers University.

Fund Raising:

Plans and implements fund raising efforts for the benefit of the Legal Defense Fund.

Information Technology

Prepares, provides and reviews information shown on the MCANJ web page. Provides the Executive Board with other means of technology useful to the Municipal Clerk.

Legal Defense Fund:

Reviews applications of Fund members for legal assistance and promotes Fund membership.

Legislative:

Reviews and monitors all proposed legislation which may affect the Municipal Clerk or our municipalities.

Legislative Committee for Laws Pertaining to Municipal Clerks:

in conjunction with the Legislative Committee, monitor and review all proposed legislation that may directly affect the Municipal Clerks' profession.

Manual Review:

Provides the annual updates of the Study guide and Desk Reference manuals in conjunction with the Education Committee and Rutgers University.

Membership (North and South):

Strives for 100% membership in MCANJ. Assists the Peer Alliance for Learning Committee (PAL) with notification of "new" Municipal Clerks.

Peer Alliance for Learning (PAL)

Identifies new Municipal Clerks and teams them with participating experienced Municipal Clerks who share their knowledge and assistance when needed.

Professional Development:

Develops programs and seminars that address the managerial skills needed by today's Municipal Clerks.

Public Relations:

Functions as the official Welcome Committee for our members and guests during conferences and other sponsored events. Organizes and manages the MCANJ booth at the Spring Education Conference and the League of Municipalities Conference.

Quill:

Provides a comprehensive professional publication for quarterly distribution to Association members.

Records:

Reviews pertinent decisions of the Government Records Council regarding the Municipal Clerk's responsibility in complying with the Open Public Records Act.

Resolutions:

Presents Resolutions recognizing retired and deceased Municipal Clerks at the annual meeting at the League of Municipalities Conference.

Scholarship:

Advertises the availability of scholarships available, reviews applications and selects candidates to receive financial assistance.

Name _____ Title _____

Municipality/Address _____

Phone _____ FAX _____

I would like to serve on the following MCANJ Committee(s) during 2008:

1st Choice _____

2nd Choice _____

3rd Choice _____

**Deadline: Please return by September 1, 2007 to: Heather Mailander, MCANJ 1st VP
Village Clerk, Village of Ridgewood,
131 North Maple Ave., Ridgewood, NJ 07451
OR Fax to 201-652-7623
OR E-mail to: hmailander@ridgewoodnj.net**

The Municipal Clerks' Association of New Jersey is offering scholarships for the 2007 education year. Municipal Clerks, Deputies and Assistants continuing their education in pursuit of RMC, CMC and MMC certifications are eligible. Candidates for all scholarships MUST be members of the Municipal Clerks' Association of New Jersey. CMC and MMC Scholarship applicants must be tenured Municipal Clerks. Scholarships (maximum amount \$500) shall be awarded at the Annual Meeting of the Municipal Clerks' Association of New Jersey on Wednesday, November 14, 2007 during the League of Municipalities Conference in Atlantic City: One (1) RMC Scholarship, One (1) Peter H. Maclearie CMC Scholarship, and One (1) MMC Scholarship. Completed applications should be mailed directly to: MCANJ SCHOLARSHIP COMMITTEE, c/o Bonnie Leonetti, RMC/CMC, Long Beach Township, 6805 Long Beach Boulevard, Brant Beach, NJ 08008-3661. APPLICATION DEADLINE IS SEPTEMBER 1, 2007. You are encouraged to take advantage of this scholarship program offered to you by your Association. Please complete this application page (or a photocopy of it) and submit it as instructed. Should you have any questions, please contact Bonnie Leonetti at 609-361-1000.



MCANJ 2007 SCHOLARSHIP APPLICATION FORM

Name _____ Title _____

Municipality _____

Address _____

Date of Appointment as Municipal Clerk _____ Deputy/Assistant _____

Check One: MCANJ Dues are paid by municipality MCANJ Dues are paid by member

I am applying for the:

- RMC Scholarship – cost of one (1) course (not to exceed \$500)
- CMC Scholarship [tenure date _____] – Up to \$500 for tuition to CMC program by Rutgers University
- MMC Scholarship [tenure date _____] – Up to \$500 for tuition to MMC program by Rutgers University

List RMC, CMC and MMC educational courses taken and indicate whether the municipality or you paid for the course.
Reminder: All applicants must be members of the Municipal Clerks' Association of NJ, Inc. Applicants for the CMC and MMC Scholarships must be tenured. Use a separate sheet of paper for a short statement as to why you feel this scholarship should be awarded to you and attach it to your application.

Signature of Applicant _____ Date _____

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ROOM RESERVATION FORM

2007 League of Municipalities Conference
November 13—15, 2007

Tropicana Casino and Resort, Atlantic City, NJ

This year, there is a block of 30 rooms available to our Association in the Havana section at the rate of \$139 per night (plus \$5 occupancy fee, \$6 shuttle fee & \$1 phone fee), and a block of 30 rooms in the rest of the hotel at \$109 per night (plus \$5 occupancy fee, \$6 shuttle fee & \$1 phone fee). If you do not pay by voucher, add the cost of the State sales tax of 13%. These rooms are available on a first-come, first served basis. Any room not reserved by September 17, 2007 will revert back to the League for its use.

League Policy Regarding Cancellations: Anyone canceling a reservation after October 22, 2007 will be responsible for the entire cost of the room. The Municipal Clerks' Association will not be responsible for the cost of any cancelled room. Please remember: If you make your room reservation through the MCANJ, you must cancel through MCANJ, not the hotel directly.

Please Print or Type:

Name: _____

Municipality: _____

Mailing Address: _____

Phone Number: _____

Enclosed: Personal Check # _____ (or) Voucher # _____

I will be arriving on November _____, 2007 and departing on November _____, 2007.

Make payable to Tropicana Casino and Resort in the amount of \$_____ for one (1) night's deposit.

HAVANA SECTION _____ OTHER _____

My reservation will be for three (3) nights at Tropicana Casino and Resort and I acknowledge that I am responsible for the full three (3) nights' accommodation and will honor the cancellation policy of notifying 2nd Vice President Joan Moreland no later than October 22, 2007. I further accept that cancellations made after October 22, 2007 will require my payment of all cancelled room nights.

Signature

Date

Title/MCANJ Position

Return by September 17, 2007 to:

Joan Moreland, 2nd Vice President
Borough of Haddon Heights
625 Station Avenue
Haddon Heights, NJ 08035
Phone: 856-547-7164 extension 24
Fax: 856-547-5259

Reminder: Tickets for the Wednesday, November 14, 2007 MCANJ BREAKFAST are available through your County Advisory Board Representative. NO TICKETS WILL BE SOLD AT THE DOOR.

PEOPLE PAGE *by Sharon Brienza*

Pictured: Heather Mailander, Daphne (Jane's Sister), Jane Williams Warren, Drew Pavlica, Allan Susen, Joanne Kwasniewski & Barbara Hawk at the IIMC Conference in May.



TRANSITIONS

Laura Graham was appointed Borough Clerk on March 16, 2007 for the Borough of Oradell in Bergen County. Prior to that, Laura was the assistant to Borough Clerk Sally Bleeker in Franklin Lakes and then moved on to Deputy Village Clerk under Heather Mailander in Ridgewood.

Jodi Pellicano, former Deputy Township Clerk, Township of Lakewood, (Ocean County) was appointed Borough Clerk for the Borough of Ocean Gate, (Ocean County) effective April 16, 2007.

Kevin Sluka, Administrator/Municipal Clerk, formerly of Long Hill Township (Morris County) was appointed as the Municipal Administrator Clerk in Somerville.

Congratulations Laura, Jodi and Kevin. We all wish you much luck in your new positions.

GET WELL WISHES

We are happy to report that Terry Tighe, Sea Isle City, came through her surgery, and is doing fine as she proved to us during the MCANJ annual conference with her usual enthusiasm and assistance!

Clerk of the Year Linda Wanat recently underwent knee replacement on both knees. We understand her surgery went well, but recovery is going a little slower than she was expecting. Linda's home address is: 240 Main St., Little Falls, NJ 07424 for anyone who would like to send a card or letter.

Drew Pavlica is also recovering from knee surgery and his recovery is also going slower than he had expected, but he can now walk without crutches.

Wishing you all a very speedy recovery!!

RETIREMENTS

Ralph "Chick" Sternadori

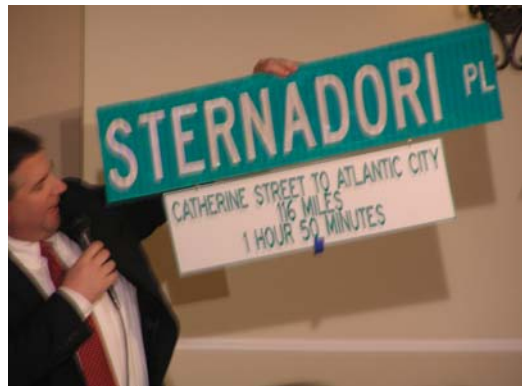
On April 27, more than 300 friends, families and colleagues, including elected officials of both parties and three Mayors from other municipalities, gathered at the Somerville Elks Lodge in Bridgewater, to celebrate the unique career and life of Ralph "Chick" Sternadori, Borough of Somerville, Somerset County. Chick became the Clerk/Administrator in 1968 after serving as Recreation Director for 16 years.

Former Mayor David Hollod paralleled "Chick's" effect on Somerville to that of Jimmy Stewart's character in *It's a Wonderful Life*, and how different Somerville would be had Chick not been a part of the Borough for 54 years.

Mayor Brian Gallagher said he wanted to hang a picture of Chick in Borough Hall, alongside former mayors. Chick protested and said he doesn't belong there, it's for Mayors. Mayor Gallagher did better than that, presenting a street sign that the developer of Somerville's redevelopment project is required to use on one of the streets.

Chick thanked the MCANJ for the Gold Card and his lifelong membership in the Association.

People Page Editor's note: This was a tremendous tribute and there were many wonderful things said by former Mayors, current and former Council members, friends, and family, but due to space constraints I cannot include them all. The attachment to the street sign refers to Chick's weekly Thursday trips to AC!



Carol Kehoe

After 25 years of public service, Carol Kehoe has retired from her position of Municipal Clerk of the Borough of Pompton Lakes (Passaic County). Appointed in 1992, Carol Kehoe has served the Borough of Pompton Lakes (Passaic County) for the past 15 years. The Passaic County Municipal Clerks Association held a luncheon in her honor on May 17, at the Paris Inn in Wayne, NJ.

(Continued on page 7)

PEOPLE PAGE, continued

RETIREMENTS, CONTINUED

Kathy Leonard

A retirement dinner was held at the Crowne Plaza Hotel in Clark in honor of Kathy Leonard, who retired from the Township of Clark (Union County) on March 31, 2007. Kathy was appointed the Township Clerk in April 1989. She served as Treasurer of the Municipal Clerks' Association of Union County from 1995-1996, Vice President 1997-1999, and as President in 1999-2000. Kathy has also served on several MCANJ committees.

In attendance to recognize Kathy for her professionalism and to thank her for sharing her knowledge were numerous elected officials both past and present from both political parties, as well as co-workers, fellow clerks and family members.

Kathy will be enjoying her new-found free time with her husband Jim, children Tara, Cindy and Jim and her six grandchildren.

IN MEMORY

Robyn LaMorte Teaneck, Bergen County

Robyn's untimely passing in February was a profound loss to everyone in Teaneck both professionally and personally. Robyn worked for Teaneck for 13 years; 5 ½ of those years as Municipal Clerk. She was a member of the MCANJ, IIMC, the Bergen County Municipal Clerks' Association and the Registrars Association of New Jersey.

At their February 6, 2007 meeting, the Council held a moment of silence in tribute to Robyn. Several residents also expressed their condolences to her family and friends. They commented on her humor, dignity, kindness and uniqueness saying she was a wonderful person and will be missed.

Our condolences to Robyn's husband of 40 years, Robert (her high school sweetheart), daughter Ronnell and son Robert and one year old granddaughter, Rylie Logan.

Nicholas M. Esposito (retired) Raritan Borough, Somerset County

Nicholas was the last Municipal Clerk of the Borough of Raritan when it was combined with Bridgewater. He held the position of Borough Clerk/Administrator of the Borough of Raritan, for 42 years. He was a former Vice President of the Somerset County Clerks Association and a former officer of the International Institute of Municipal Clerks. Nicholas served on the Raritan Planning Board for 50 years. The Borough of Raritan named a street in his honor for his many years of service to the Borough.

Margaret K. Ture (retired) City of Trenton, Mercer County

Margaret was the first female City Clerk of Trenton, a position she held for 41 years, retiring in 1982. She was a member of the Mercer County Municipal Clerks Association and the MCANJ. She was featured in a lengthy article in the Trenton Times on June 25, 1982 where she was affectionately called the "First Lady of City Hall."

Dorothy Gray (retired) Readington Township, Hunterdon County

Dorothy began her 37-year career in public service as a secretary of the Readington Township Board of Education, after which she went to work for Readington Township as an administrative secretary, later becoming the Deputy Clerk and then serving as Clerk/Administrator for 11 years. She was recognized by the State Legislature for her high-quality administrative performance and was instrumental in establishing the Three Bridges Library. When she retired in 1992, she was an elections worker, retiring last year, and was a former member of the Municipal Clerks Association of Hunterdon County.

The entire MCANJ organization sends our thoughts and prayers to all of the families.

CONDOLENCES

Condolences to Gwen Gabbert, whose mother recently passed away.

MUNICIPAL CLERKS ASSOCIATION OF NEW JERSEY, INC. MEMBERSHIP REPORT as of MAY 31, 2007

of Members Paid

Municipal Clerks:	472
Deputy Municipal Clerks	254
Acting Municipal Clerks	16
County Clerks	9
Deputy County Clerks	4
Assistants	11
Affiliate Members	20

Total Membership: 786

**Vincent Buttiglieri, RMC, CMC
MCANJ Treasurer**

PEOPLE PAGE, continued

ON A LIGHTER NOTE....



Ceil's son Mike helping
Maria hang new light fixture

The film crew from The Learning Channel featured the recent move of Maria Covino, the daughter of Ceil Covino (Clinton Borough, Hunterdon County) and her husband Mike, on their *Moving Up* series.

Maria decided it was time to move out of her parents house and buy her own. Unfortunately, the one she bought needed a lot of work as the man she bought it from was a bachelor with and ferrets running through the house – need I say more?! She needed to, as she said, “de-tactify” the house and bring in her own modern/sophisticated style, even through the show, Ceil kept referring to it as “our” style! With the help of Ceil, her husband Mike, Maria’s brother Mike, and many others, Maria did a wonderful job “de-tactifying” the house. Even after all the “stay calms” and “our” references, Maria admitted, on camera, that she could not have done it without her parents, but hopes they call first before coming over!



Above Left: Meet and Greet at the MCANJ Conference
Above Right: Hard Work went into Preparation for the MCANJ Conference.
Great Job everyone!!!

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The Difference Between an OPRA Request and Discovery in Litigation

By Thomas A. Segreto, MCANJ Legal Counsel

Documents are requested all the time and for various reasons. Sometimes the document requester is a member of the public seeking access to a government record and sometimes the requester happens to be an attorney. Other times an attorney in a litigated matter requests access to documents for purposes of discovery. Custodians of Records and Attorneys often mistake the underlying process or mix and mingle that which usually does not mix and mingle. It is vitally important to understand the difference between an Open Public Records Act (OPRA) request for government records pursuant to N.J.S.A. 47:1A-1 et seq. and a discovery request in litigation pursuant to the NJ Rules of Court and Rules of Evidence.

With an OPRA request, the requester is a member of the public who is seeking access to government records and generally speaking, the reason for the request is not a relevant consideration. It is important to note that the requester may be seeking information, but the information must be embodied in a Government Record or it is not an OPRA request. The Government Records Council and the Superior Court have uniformly ruled that OPRA does not require a public agency to respond to a request for information unless it is in the form of a Government Record and is not otherwise exempt from disclosure. There are a myriad of exemptions to access Government Records, but at the heart of any exemption is the need for confidentiality and or the preservation of privacy. As a Custodian of Records you will find that certain exemptions are cookie cutter simple and others are more complex or even involve partial access in the form of access to redacted government records. If an OPRA requester is not provided access within seven days (subject to extraordinary OPRA requests or consent by the requester to exceed the seven day time frame) or is denied access to a government record, the requester may file a complaint in either the Superior Court or the Government Records Council. The statute even provides that “*A requestor who prevails in any proceedings shall be entitled to a reasonable attorney’s fee.*”

Discovery requests in litigation are not limited to documents and the process is often a complicated labyrinth of format, objections, time frames and procedural nuances which are designed to educe relevant evidence (which is defined by N.J.R.E. 401 as “evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action”), in support/defense of/against the cause of action. For purposes of this article, I will forego an explication of the litany of details of every discovery requests except to indicate that discovery tools available to a litigant are interrogatories, demands for production of documents, requests for admissions, notices in lieu of subpoenas to take oral depositions with or without a videographer, written depositions, subpoenas duces tecum (for things) and subpoenas ad testificandum (for testimony). The Rules of Court do not foreclose other means of discovery so long as same tends to lead to relevant evidence. For the most part, the above list can be understood as the staple tools of discovery in litigation.

Interrogatories are questions posed to parties and even non parties in some instances. Within an interrogatory, the interrogator may ask the person answering the interrogatory to identify documents and provide a copy thereof. Technically speaking that would be a demand for production of documents imbedded within an interrogatory. Requests for admissions are exactly that; a request for a person to admit something pertaining to the issues in controversy and if a denial is asserted, the person not so admitting must provide details surrounding the denial or it will be deemed admitted. The details may necessitate the production of documents controverting the request for the admission. Oral depositions are interviews under oath and many times a notice to take oral depositions will include a demand that the person to be deposed produce certain documents at the deposition. A court stenographer is present to transcribe the dialog and mark exhibits during the deposition. A videographer is typically used if circumstances exist in which evidence, which is reasonably expected to be discovered, may be lost without the recordation of video. Often the emotions or the physical condition of the party is a determinative factor. Written depositions can be understood in a similar light to interrogatories, but instead of written answers, the deposed person responds to a designated officer who prepares, certifies and files the responses. Subpoenas, whether duces tecum or ad testificandum, are commands under threat of being held in contempt to either produce things such as documents or information or to give testimony at trial. In some instances, attorneys utilize subpoenas for depositions where there is a lack of cooperation in producing the person to be deposed.

Because of the limited space within an article, I will focus on the discovery tool of demands for production of documents and the process and procedure thereof.

The key differences between OPRA and discovery in litigation in the form of demands for production of documents is the process and means by which documents are requested, objected to and provided. First, OPRA requests are served on “Custodians of Records” and regard “Government records” which are statutorily defined in N.J.S.A. 47-1A-1.1. OPRA requestors need not have a reason for a request; merely the desire to have the government record. Discovery requests are served on parties or on counsel if so represented pursuant to R. 4-18(b) and must seek relevant evidence to the cause of action. The responses with objections and/or assertion of privileges are due within 35 days of service pursuant to R. 4-18(b). A party may seek a Protective Order (R. 4-10) limiting the scope of discovery or seek the outright preclusion of a document’s production. Generally speaking the grounds upon which objections are made as to document production are as to relevance, vagueness, over breadth, overly burdensomeness, harassment, undue costliness and/or otherwise improperly motivated requests. Privileges asserted based upon a legally recognized relationship whose nature is such that there are confidential and/or otherwise protected communications such as attorney/client privilege, doctor/patient, therapist/patient and or other like relationships. An attorney typically prepares a motion on notice to the adversaries and in compliance with R. 1-6-3 and briefs the issue for the judge and submits a discovery log of all documents sought to be protected. The judge typically reviews the documents *in camera*, (meaning in his/her chambers and outside of counsel’s presence) to determine whether to protect the document from disclosure. In many cases the privileged document is clearly exempt from disclosure, but in many instances, there are nuances over which lawyers must argue both sides. The unfortunate reality of litigation is that there are some attorneys who use discovery as a blunt object to attempt to bury the other side in the endless dreck of paperwork.

Continued on Page 10

The Difference Between an OPRA Request and Discovery in Litigation, Continued

By Thomas A. Segreto, MCANJ Legal Counsel

Continued from Page 9

An interesting question arises as to whether a protective order in a litigated matter transforms a document otherwise a government record into a non-government record upon the issuance of a protective order. My best read on the present state of the law is that, subject to the analysis below, once a judge issues a protective order in a litigated matter, an otherwise Government Record ceases to be a government record because the information has been made confidential pursuant to a court order. By the statutory terms of the definition of Government Record; it is no longer a Government Record. That is not the end of the story.

Litigation typically involves a distinct group of parties and members of those parties. By way of example, imagine your municipality is involved in an employment matter which evolves into litigation. The plaintiff's attorney serves demands for production of documents on the attorney representing the municipality. The attorney for the municipality files a motion seeking a protective order on the basis that certain information is confidential, irrelevant, privileged and/or otherwise protected. The judge reviews the documents sought to be protected in that litigated matter and an order is entered protecting the documents from disclosure. Typically, judges do not specify in protective orders that it only applies to the parties and their representatives, but given the notice requirements of the Rules of Court, it is logical to conclude that otherwise Government Records, are protected by order of the court in litigation and only apply to the parties and their representatives for use in that litigation. It would seem that absent language applying the order to the general public or other exceptional circumstances based upon statewide applicability of the litigation, otherwise Government Record, protected by order of the court in litigation do not automatically become exempt from OPRA as to the public at large. The question then becomes whether an OPRA requestor must wait until the litigation ends for the otherwise Government Record, protected by order of the court in litigation to be provided. The simply answer, barring future controlling authority to the contrary, is that OPRA requestors don't have to wait until litigation is concluded to be provided with access to otherwise Government Records, protected by order of the court in litigation not involving the requestor.

Plaintiffs and their attorneys may very well start bifurcating their document requests and draft OPRA requests for Government Records and serve Discovery Requests for documents to avoid the prospect of having to pursue either an actual or quasi complaint for unreasonable denial of access with GRC or Superior Court within the 8 days one has to respond to a motion. They may very well engage in pre-litigation OPRA requests to have their proverbial ducks in line before actually filing suit. Where municipality may have received notice of the potentiality of a tort claim, a good practice for attorneys representing the municipality and Clerks alike is to collect and assemble all documents pertaining to the matter for which a tort claim notice has been filed. Then, pre-identify all exempt documents as well as the basis for the exemption and/or redactions from Government Records with a Vaughn Index of all information so redacted. Attorneys representing the municipality can prepare their research ahead of the request and have the proverbial map to the battlefield before the first cannon is fired.

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If I Were President

Joe Bennett, retired Municipal Clerk from the Township of Neptune and former Quill Editor (1971-73), provides us with this article written by another retired Municipal Clerk and Reprinted with permission from The COASTER, Published by The COASTER, LLC, 1011 Main St., Asbury Park, N.J. Joe writes: “Just a note to let you know that old retired clerks don’t just fade away. They run for President!”

By GEORGE H. MOFFETT

I am presently in the middle of my campaign running for the office of President of the United States. Part of my platform is, if elected, to never lose the personal touch with the citizens who voted in the Presidential election. They are what this country is all about. They are the heart beat of the United States. On day one as president my first action will be to honor that pledge. Looking out the window of the Oval Office I zero in on the line of people waiting to take the White House Tour. As my eyes move down the line I spot a family with young children whose excitement and anticipation are so evident in their demeanor and in their faces. Leaving my office, much to the annoyance and anxiety of the Secret Service, I head over to the waiting line and search out my chosen family. Being very friendly and nonchalant, I start a conversation with them asking where they live, how long they plan to be in Washington, and if they have made any arrangements for dinner this evening. If they were available I would invite them to share the evening in my residence with the First family starting out with having dinner together. Dress would be casual. After dinner we would tour the living quarters of the White House. Since this would be my first day living in the White House, I would avail myself of a guide who is knowledgeable about the history of the rooms we will visit and an explanation of the historical items in those rooms. My excitement will peak when we visit the Lincoln bedroom as Mr. Lincoln was such an inspirational President to me. At the conclusion of the tour we would relax in the residence while enjoying a special White House dessert. The Presidential limousine will of course take the family to their residence. What a neat thing to do and also a very proper thing to do. After all I will be living in the house they provided for me. In subsequent weeks I would like to extend further invitations to other families who have provided the President with so many wonderful amenities. Like a trip on Air Force One, or attending a State Dinner, or accompanying the President to Congress for the State of the Union address, and certainly spending a weekend at Camp David. I’m sure I could find enough invitations to extend during my four years as President. Who knows, maybe even eight years? Yes, I would be making the dreams of the public come true — by meeting with them on a one to one basis, but I must reach much deeper than that. It is a privilege I must earn as their president. I must go beyond political decision making. I must make decisions based on, not what is good for me, but what is best for the development and growth of our republic at home and in the eyes of the world. By accomplishing this I will have earned the respect of the public. Then, and only then, will I have earned the privilege of meeting with the citizens of our country. *(George H. Moffett is a former Bradley Beach Borough Councilman and Borough Clerk. He currently lives in Wall Township.)*

The Difference Between OPRA and Discovery

By Thomas A. Segreto, MCANJ Legal Counsel

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In short, OPRA and Discovery in Litigation are two separate animals who have similar markings. Municipal Clerks should follow OPRA and where there is litigation; follow the attorney’s lead regarding the Rules of Court. Where there is overlapping and or competing forces, the Municipal Clerk and attorney should work together and address the particular issues in the best interest of the municipality and in furtherance of the interests of justice. At the end of the day, listen to the advice of counsel, preferably in writing, do what is right and document, document, document everything!

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**Tickets (\$30 each) for MCANJ Breakfast Buffet on November 14, 2007
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(see page 2 for listing by County)**

Annual Business Meeting following Breakfast

2008 MCANJ Officers sworn in

Newest RMCs, CMCs and MMCs honored

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DEADLINES FOR NEWS ITEMS

The deadline for the October issue is August 20, 2007. Please send People Page news to Sharon Brienza, Municipal Clerk, Branchburg Borough, 1077 US Highway 202 North, Branchburg, NJ 08876. Questions or comments regarding this or any issue of the *Quill* should be directed to the Editor, Jim Doherty, Township of Wantage, 888 Route 23, Wantage, NJ 07461 or by calling 973-875-7192 or via email to: administrator@wantagewp-nj.org. Articles for submission should be prepared in Microsoft Word, using Times New Roman 10-point font, and sent as an email attachment to administrator@wantagewp-nj.org by the deadline specified.

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