Posted Date	Name of Case (Docket Number)	Type
Aug. 8, 2024	STATE V. THOMAS ZINGIS (A-66-21 ; 087132) The Court now resolves those limited areas in which the parties could not agree regarding the implementation of the Special Adjudicator's findings and legal conclusions: (1) the proper procedure for challenging a prior Dennis-affected DWI conviction when facing enhanced sentencing on a subsequent DWI; and (2) the appropriate availability of Exhibit S-152.	Supreme
Aug. 7, 2024	BOARD OF EDUCATION OF THE TOWNSHIP OF SPARTA V. M.N. (A-16-23 ; 088378) A New Jersey State-issued diploma awarded based on passing the GED is not a "regular high school diploma" under 34 C.F.R. § 300.102(a)(3)(iv). Therefore, a student who receives such a State-issued diploma remains entitled to receive a free appropriate public education under the IDEA.	Supreme
Aug. 6, 2024	IN THE MATTER OF PROPOSED CONSTRUCTION OF COMPRESSOR STATION (CS327) (A-24-23 ; 088744) Based on the plain language deliberately crafted by the Legislature, read in context with the law as a whole, "routine" modifies only "maintenance and operations" and does not modify the remaining activities.	Supreme
Aug. 5, 2024	MADELINE KEYWORTH V. CAREONE AT MADISON AVENUE; SUZANNE BENDER V. HARMONY VILLAGE AT CAREONE PARAMUS (A-17/18-23 ; 088410) The only precondition to applying "the PSA's privilege is whether the hospital performed its self-critical analysis in procedural compliance with N.J.S.A. 26:2H-12.25(b) and its implementing regulations." Brugaletta v. Garcia, 234 N.J. 225, 247 (2018). One of those regulations requires that a facility's patient safety committee operate independently from any other committee within the facility. See N.J.A.C. 8:43E-10.4(c)(4). The facilities in these consolidated appeals did not comply with that procedural requirement, and the disputed documents are therefore not privileged.	Supreme
Aug. 1, 2024	DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION V. GEORGE HARMS CONSTRUCTION CO., INC. (A-55-22 ; 088194) The plain language of the Compact authorizes the Commission to require the use of a PLA in a publicly bid construction project. The Commission's ability to do so is not constrained by Ballinger.	Supreme
July 31, 2024	NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY V. A.P. (A-14-23 ; 088329) The Court concurs with the trial court and Appellate Division that the Division met the requirements of N.J.S.A. 2C:52-19 in this matter. The Division established good cause and compelling need based on specific facts for an order authorizing it to use Arlo's expunged records at the Title 9 abuse and neglect factfinding trial. It demonstrated that the subject matter of the criminal proceeding will also be the subject matter of the Title 9 trial. The trial court properly granted the Division's application, and the Court affirms the Appellate Division's judgment.	Supreme
July 25, 2024	VERIZON NEW JERSEY, INC. V. BOROUGH OF HOPEWELL (A-22-23 ; 088421) The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Accurso's opinion. The Court concurs with the Appellate Division "that 'local telephone exchange' as used in N.J.S.A. 54:4-1 means a local telephone network within a defined geographical area as depicted on Verizon's tariff exchange maps." ___ N.J. Super. at ___ (slip op. at 52).	Supreme
July 24, 2024	SHLOMO HYMAN V. ROSENBAUM YESHIVA OF NORTH JERSEY (A-11-23 ; 087994) The six members of the Court who participated in this appeal unanimously agree that the standard set forth in in McKelvey, 173 N.J. at 51, applies in this case. The Court thus readopts that standard, with two refinements to accord with recent United States Supreme Court precedent, as set forth in Section III.C. of Justice Patterson's concurring opinion. See infra. at ___ (slip op. at 26-32). The members of the Court are equally divided as to whether discovery is required in this case. As a result, the judgment of the Appellate Division, which affirmed the trial court's dismissal of the case on summary judgment without discovery, is affirmed	Supreme
July 23, 2024	IN THE MATTER OF BRIAN AMBROISE (A-10-23 ; 088042) The Commission acted arbitrarily, capriciously, and unreasonably for failing to credit the Department of Corrections' view that the sustained charges against the officer undermined prison security and touched directly at the heart of his ability to obey the protocols pertaining to his employment at a correctional facility. The Commission's decision to impose a six-month sanction is disproportionate to the serious and highly concerning offenses found in this	Supreme

	record.	
July 11, 2024	CANDACE A. MOSCHELLA V. HACKENSACK MERIDIAN JERSEY SHORE UNIVERSITY MEDICAL CENTER (A-7-23 ; 088312) The AOM plaintiff submitted complied with N.J.S.A. 2A:53A-27. First, an AOM does not need to specify that the affiant reviewed medical records. Second, a doctor to whom the affidavit attributed negligence is the agent of a named defendant and is identified in the AOM as one of the John or Jane Doe defendants included in the complaint. The Court stresses the importance of the Ferreira conference in professional negligence actions.	Supreme
July 10, 2024	WILLIAM PACE V. HAMILTON COVE (A-4-23 ; 088302) Class action waivers in consumer contracts are not per se contrary to public policy, but they may be unenforceable if found to be unconscionable or to violate other tenets of state contract law. In this case, because plaintiffs clearly and unambiguously waived their right to maintain a class action and the lease contract is not unconscionable as a matter of law, it is enforceable.	Supreme
July 2, 2024	IN THE MATTER OF REGISTRANT R.S. (A-23-23 ; 088761) Under N.J.S.A. 2C:7-13(b)(2), a Megan's Law registrant is entitled to an evidentiary hearing if the registrant demonstrates that there exists a genuine issue of material fact about whether the registrant's conduct is characterized by a pattern of repetitive and compulsive behavior. The State may rely on an earlier psychological report that had been prepared pursuant to N.J.S.A. 2C:47-3, but the independent findings by a Megan's Law judge as to compulsivity and repetitiveness must be based on clear and convincing evidence.	Supreme
July 1, 2024	IN THE MATTER OF J.A. (A-19-23 ; 088405) Because J.A. was adjudicated delinquent and not convicted of a sex offense, he is required to satisfy the public safety prong of subsection (f), not the offense-free prong. See In re Registrant R.H., ___ N.J. ___, ___ (2024) (slip op. at 3). Based on the reasoning of R.H. and the trial court's finding that J.A. does not pose a safety threat, he is eligible for termination of his Megan's Law obligations under subsection (f). The Court does not reach arguments about the constitutionality of N.J.S.A.2C:7-2(f) as applied to juveniles.	Supreme
July 1, 2024	IN THE MATTER OF REGISTRANT R.H.; IN THE MATTER OF REGISTRANT T.L. (A-20/21-23 ; 088232) Based on the plain language the Legislature used in crafting N.J.S.A. 2C:7-2(f), the requirement to remain offense-free for fifteen years applies to juveniles who are prosecuted as adults and convicted of a listed sex offense, or released from a correctional facility, but not to those who are adjudicated delinquent in the family court. Consistent with the law's text, however, all registrants including juveniles must satisfy the second requirement -- the public safety requirement -- to be eligible to terminate their obligations under Megan's Law. Here, the offense-free prong does not apply to R.H. and T.L. because they were adjudicated delinquent, and not convicted, of a sex offense. The Court therefore remands each matter to the appropriate trial court to determine whether there is clear and convincing evidence that R.H. and T.L. satisfy the public safety prong.	Supreme
June 13, 2024	ALEJANDRA PADILLA V. YOUNG IL AN (A-43-22 ; 087862) Considerations of fairness lead the Court to hold that all commercial landowners -- including owners of vacant commercial lots -- have a duty to maintain the public sidewalks abutting their property in reasonably good condition and are liable to pedestrians injured as a result of their negligent failure to do so. Consistent with the rule it adopts today, the Court reverses the Appellate Division's judgment and remands the matter to the trial court for further proceedings.	Supreme
May 30, 2024	PATRICK BOYLE V. CAROL HUFF (A-42-22 ; 087900) The ambiguous indemnification provision at issue here must be construed against the indemnitee, and the Court therefore reverses the Appellate Division's judgment. Prospectively, parties to a contract intending to extend indemnification to first parties should include express language to achieve such an agreement.	Supreme
May 29, 2024	NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY V. J.C. AND K.C (A-8-23 ; 088071) The family court does not have the authority under N.J.S.A. 30:4C-12 to dismiss a Title 30 action -- and with it, a parent's appointed counsel -- but continue restraints on a parent's conduct. If the family court finds that it is in the best interests of the child to continue the restraints on a parent's conduct, it must keep the case open to facilitate judicial	Supreme

	oversight of the Division's continued involvement, while safeguarding a parent's right to counsel.	
May 23, 2024	IN RE PROTEST OF CONTRACT FOR RETAIL PHARMACY DESIGN, CONSTRUCTION, START-UP AND OPERATION, REQUEST FOR PROPOSAL NO. UH-P20-006/ IN RE SUMUKHA LLC CHALLENGE OF POST-AWARD CHANGES TO RFP UH-P20-006 (A-58/59-22 ; 088018/088019) The Court finds no evidence in University Hospital's enabling statute that the Legislature intended the Hospital to be a "state administrative agency" under Rule 2:2-3(a)(2). University Hospital's decisions and actions may not be directly appealed to the Appellate Division.	Supreme
May 22, 2024	SUSAN SEAGO V. BOARD OF TRUSTEES, TEACHERS' PENSION AND ANNUITY FUND (A-9-23 ; 087786) The TPAF Board acted arbitrarily, capriciously, and unreasonably when it denied Seago's interfund transfer application. Under the unique facts of this case, equity requires that the TPAF Board grant Seago's interfund transfer application. Seago's reasonable and good-faith attempts to ensure that her interfund transfer application was timely filed, coupled with the absence of apparent harm to the pension fund, necessitate this outcome.	Supreme
May 21, 2024	NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY V. B.P. (A-56-22 ; 087676) Although Beth left the hospital and did not return, Beth left Mia in a hospital where she was undoubtedly well taken care of and her needs were met. Nothing in the facts suggest that Beth's actions impaired Mia or put Mia in imminent danger of being impaired while she remained in the safety of the hospital's care. The Division therefore failed to meet its burden of establishing abuse or neglect pursuant to N.J.S.A. 9:6-8.21(c)(4)(a).	Supreme
May 15, 2024	CHRISTOPHER MAIA V. IEW CONSTRUCTION GROUP (A-3-23 ; 088010) Chapter 212 is to be applied prospectively to conduct that occurred on or after August 6, 2019 -- Chapter 212's effective date -- not retroactively to conduct that occurred before that date. The trial judge properly dismissed the portions of the complaint relying on Chapter 212 but arising from conduct prior to its effective date.	Supreme
May 14, 2024	DAVID GOYCO V. PROGRESSIVE INSURANCE COMPANY (A-12-23 ; 088497) An LSES rider does not fall within the definition of "pedestrian" for purposes of the No-Fault Act. Goyco is not entitled to PIP benefits.	Supreme
May 13, 2024	JAMES KENNEDY, II V. WEICHERT CO. D/B/A WEICHERT REALTORS (A-48/49-22 ; 087975) The parties' agreement to enter into an independent contractor business affiliation is enforceable under N.J.S.A. 45:15-3.2, and Kennedy, as an independent contractor, was not subject to the WPL pursuant to N.J.S.A. 34:11-4.1(b). The trial court therefore erred when it denied Weichert's motion to dismiss the complaint	Supreme
May 8, 2024	STATE V. ANDREW HIGGINBOTHAM (A-57-22 ; 088035) Subsection (c) of the definition of "portray a child in a sexually suggestive manner" in N.J.S.A. 2C:24-4(b)(1) is unconstitutionally overbroad because it criminalizes a large swath of material that is neither obscenity nor child pornography. Because defendant was not charged under subsections (a) or (b) of the definition of "portray a child in a sexually suggestive manner," and did not challenge subsections (a) or (b) before the trial court or the Appellate Division, the Court does not reach the validity of those subsections. 1. Narrow categories of speech that are historically unprotected by the First Amendment include fighting words, obscenity, child pornography, incitement, defamation, true threats, and speech integral to criminal conduct. Child erotica is not on the list, but both obscenity and child pornography are relevant to this case. Under Miller v. California, something is obscene if (1) "the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest"; (2) "the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law"; and (3) "the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." 413 U.S. 15, 24 (1973). Whereas states may constitutionally proscribe the distribution of obscene material, possession of obscene material by the individual in the privacy of his own home is constitutionally protected. (pp. 13-14) 2. In New York v. Ferber, the Court recognized a separate exception to the First Amendment for child pornography. 458 U.S. 747, 764 (1982). The Court has upheld statutes that define child pornography as the portrayal of "sexual conduct" or "sexual acts" by children, which includes the lewd or lascivious exhibition of, or graphic focus on, a child's genitals or pubic area. Id. at 751-53, 762. Child pornography need not meet the Miller obscenity standard to be proscribed; it is a separate type of speech that is categorically unprotected by the First Amendment. And unlike obscenity, states may constitutionally proscribe the possession and viewing of child pornography in the privacy of one's home. But laws that ban images that "do not involve, let alone harm, any children in the production process," violate the First Amendment unless they conform to the Miller obscenity standard. Ashcroft v. Free Speech Coal., 535 U.S. 234, 240-41 (2002). (pp. 14-17)	Supreme

	3. A court may hold a law facially overbroad under the First Amendment "[i]f the challenger demonstrates that the statute 'prohibits a substantial amount of protected speech' relative to its 'plainly legitimate sweep.'" United States v. Hansen, 599 U.S. 762, 770 (2023). "[A] law's unconstitutional applications must be realistic, not fanciful, and their number must be substantially disproportionate to the statute's lawful sweep." Ibid. (pp. 17-18) 4. "[A]n item depicting the sexual exploitation or abuse of a child" was formerly defined as an image that "depicts a child engaging in a prohibited sexual act or in the simulation of such an act." N.J.S.A. 2C:24-4(b)(1) (2017). In 2017, the Legislature amended N.J.S.A. 2C:24-4 to expand the definition to include an image that "portrays a child in a sexually suggestive manner," which is defined in three ways in subsections (a) through (c). Subsections (a) and (b) use nearly identical language to criminalize any depiction of "a child's less than completely and opaquely covered intimate parts" or "any form of contact with a child's intimate parts," whereas subsection (c) uses different language to criminalize other depictions of children "for the purpose of sexual stimulation or gratification of any person." (pp. 19-21) 5. The first step in any overbreadth analysis is to construe the challenged statute to determine what it covers. Subsection (c) says nothing about obscenity. Although it incorporates Miller's third prong by requiring that "the depiction does not have serious literary, artistic, political, or scientific value," it says nothing about Miller's first or second prongs. Subsection (c) therefore criminalizes a substantial amount of speech that does not legally constitute obscenity. Subsection (c) also strays far beyond the definition of child pornography set forth in Ferber. Where the criminalization depends only on whether "any person who may view the depiction" can use it "for the purpose of sexual stimulation or gratification," and where the only limit is that the depiction lacks "serious literary, artistic, political, or scientific value," large swaths of protected material are conceivably ensnared. Indeed, depictions of something other than sexual contact and less than completely covered intimate parts appear to be the only thing that subsection (c) can actually reach that subsections (a) and (b) do not. On its face, subsection (c) criminalizes only materials that do not constitute child pornography. Because the application of subsection (c) to images that constitute neither obscenity nor child pornography is realistic, not fanciful, and is substantially disproportionate to subsection (c)'s lawful sweep, subsection (c) is substantially overbroad. (pp. 23-27) 6. The Court explains why it rejects the State's suggestion that limiting language from subsections (a) and (b) of the definition of "portray a child in a sexually suggestive manner" could be understood to apply to subsection (c) as well, noting that (a), (b), and (c) are disjunctive, that subsection (c) is not reasonably susceptible to the State's limiting construction, and that the Court cannot re-write a plainly written legislative enactment. The Court also rejects the State's claim that "everything that subsection (c) covers . . . fits within" the Supreme Court's most recent definition of child pornography in United States v. Williams, 553 U.S. 285 (2008). In Williams, the Supreme Court proscribed "obscene material depicting (actual or virtual) children engaged in sexually explicit conduct, and any other material depicting actual children engaged in sexually explicit conduct." Id. at 293. But subsection (c) proscribes far more than that. (pp. 27-34) 7. Because subsection (c) can be excised without impacting subsections (a) or (b), the Court holds that subsection (c) alone of the definition of "portray a child in a sexually suggestive manner" contained in N.J.S.A. 2C:24-4(b)(1) is unconstitutional. Defendant can be constitutionally prosecuted under New Jersey's obscenity law but not under a different law that is unconstitutionally overbroad. (pp. 35-36)	
May 7, 2024	CHRISTINE SAVAGE V. TOWNSHIP OF NEPTUNE (A-2-23 ; 087229) Through N.J.S.A. 10:5-12.8(a), a section of the LAD that was enacted in the wake of the "#MeToo movement," the Legislature removed barriers that previously made it difficult for individuals to report abuse. Survivors of discrimination, retaliation, and harassment now have a legal right to tell their story -- a right that cannot be taken away by a settlement agreement. Because the scope of the agreement in this case would bar individuals from describing an employer's discriminatory conduct, the agreement encompasses speech the LAD protects. The non-disparagement clause in the agreement is against public policy and cannot be enforced. 1. N.J.S.A. 10:5-12.8(a) provides in part that "[a] provision in any employment contract or settlement agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment (hereinafter referred to as a "non-disclosure provision") shall be deemed against public policy and unenforceable against a current or former employee." The law's shorthand reference -- the phrase "non-disclosure provision" -- plainly draws its meaning from the words it refers back to, not from outside sources like Black's Law Dictionary. When the Legislature sets out to define a specific term, as it did here, courts are bound by that definition. As a result, labels like "nondisclosure," which is in the text, or "non-disparagement," which is not, do not control the meaning of section 12.8. The operative terms of N.J.S.A. 10:5-12.8(a) ask whether a provision in an employment contract or a settlement agreement "has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment." If it does, the agreement is "against public policy and unenforceable even if the details relating to a claim disparage an employer. (pp. 14-16) 2. The law's structure reinforces the conclusion that it encompasses "non disparagement" provisions that would conceal details about discrimination claims. Subsection (c) of N.J.S.A. 10:5-12.8 expressly exempts particular types of clauses that might otherwise be barred by the plain language of (a), and the Legislature could have exempted non-disparagement agreements as well. But it did not. Certain language in section 12.8 -- the use of "relating to" and "a" in the phrase "relating to a	Supreme

	claim of discrimination" -- also support a broad reading of the statute. And the Court explains how the statute's legislative history, though not needed to understand section 12.8's clear language, reinforces the law's plain meaning. (pp. 16-20) 3. Paragraph 10 of the settlement agreement uses expansive language that encompasses speech about claims of discrimination, retaliation, and harassment. The scope of the agreement -- barring all statements that would tend to disparage a person -- is quite broad. It would prevent employees from revealing information that lies at the core of what section 12.8 protects -- details about claims of discrimination. In that way, the agreement directly conflicts with the LAD. The carveout at the end of paragraph 10 does not save the agreement. The last sentence states that "testimony or statements of Plaintiff related to other proceedings including lawsuits" is not precluded. Section 12.8's protections, however, extend beyond statements made in pleadings or courtrooms. Survivors of discrimination and harassment have the right to speak about their experiences in any number of ways, and they can no longer be restrained by confidentiality provisions in employment contracts or settlement agreements. (pp. 21-22) 4. The Court reviews defendants' specific objections to comments Savage made in a television interview. All of the challenged comments are protected under section 12.8, but paragraph 10 of the settlement agreement, if enforced, would have the effect of preventing Savage from making any of them. The non-disparagement clause in the settlement agreement conflicts with the LAD in that it encompasses and would bar speech the statute protects. It has the effect of concealing details relating to claims of discrimination, retaliation, and harassment, which is directly contrary to the LAD, and it is therefore against public policy and unenforceable. (pp. 22-25) 5. The Court provides guidance for remand and explains that it upholds the Appellate Division's conclusion that defendants are not entitled to attorney's fees and costs, albeit for different reasons. (pp. 25-26)	
May 6, 2024	VIKTORIYA USACHENOK V. STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY (A-40-22 ; 086861) The State Constitution guarantees an affirmative right to speak freely. N.J. Const. art. I, ¶ 6. The guarantee extends to victims of harassment and discrimination who have a right to speak out about what happened to them. Although N.J.A.C. 4A:7-3.1(j) seeks to advance legitimate interests -- "to protect the integrity of the investigation, minimize the risk of retaliation . . . , and protect the important privacy interests of all concerned" -- it reaches too far in trying to achieve those aims and chills constitutionally protected speech. The rule is overbroad under the State Constitution, and the Court strikes the relevant part of the regulation. 1. New Jersey's Constitution provides broader protection for free expression than the Federal Constitution and practically all others in the nation. (pp. 12-13) 2. The overbreadth doctrine considers the extent of a law's deterrent effect on legitimate expression. A law is facially invalid on overbreadth grounds if the statute prohibits a substantial amount of protected speech relative to its plainly legitimate sweep. The United States Supreme Court's application of the overbreadth doctrine in United States v. Stevens illustrates the principle. The Court found that the statute challenged in that case created an offense "of alarming breadth" because, although it purported to criminalize animal cruelty, the statute did not actually require "that the depicted conduct be cruel," such that hunting periodicals could run afoul of the law. 559 U.S. 460, 474-76 (2010). The Court explained that it "would not uphold an unconstitutional statute based on the Government's representation that it would use the statute "to reach only 'extreme' cruelty," and that it could not rewrite the statute "to conform it to constitutional requirements." Id. at 480-81. Because "the presumptively impermissible applications of [the law] far outnumber[ed] any permissible ones," the Court held that the law was "substantially overbroad, and therefore invalid under the First Amendment." Id. at 481-82. (pp. 14-17) 3. Consistent with the Supreme Court's approach, the "first step" in this appeal is to examine the text of the regulation to construe its scope. See id. at 474. The critical language in N.J.A.C. 4A:7-3.1(j) has few, if any, limits. It directs state actors to ask victims and witnesses not to speak with anyone about any aspect of any investigation into harassment or discrimination. That request encompasses a great deal of protected speech, and it has no time limit. One exception appears in the text of the rule -- victims and witnesses can disclose information if "there is a legitimate business reason to" do so -- but the regulation does not offer guidance about what that means. And the regulation does not require that victims be told they are free to decline to follow the request, that they can consult with an attorney about it, or that there will be no repercussions if they exercise their protected right to free speech. Although framed as a request, there is an inherent power imbalance between the investigator who makes the request and the witness who hears it, with the result that many employees will undoubtedly give up their right to speak freely. (pp. 17-20) 4. Counsel for the Attorney General proposed revisions that would help address the regulation's broad scope, but the Court cannot expand and rewrite the final sentence to render it constitutional. Id. at 481. The regulation is unconstitutionally overbroad. The Court acknowledges the State's good-faith representations that the regulation can be narrowed, but it cannot rely on those representations to uphold the rule. See id. at 480. The Court strikes the last	Supreme

	sentence of N.J.A.C. 4A:7-3.1(j) on overbreadth grounds based on the broad protections in the State Constitution. The Court explains why its opinion in R.M. v. Supreme Court of New Jersey, 185 N.J. 208 (2005), does not alter its analysis here. (pp. 20-22) 5. In striking part of the regulation, the Court does not question the principles the regulation tries to foster. The concerns addressed by confidentiality are entirely legitimate and are also important considerations in criminal and internal affairs investigations. The Court stresses that nothing in its opinion should be construed to limit requests for confidentiality by investigators in those settings. (pp. 22- 23)	
April 22, 2024	C.R. V. M.T. (A-47-22 ; 087887) The plain language of N.J.S.A. 2C:14-16(a)(2) creates a standard that is permissive and easily satisfied. Here, plaintiff testified that a sexual assault "destroyed" her, she was intensely traumatized, and she was "terrified" for her safety. The family court found her testimony credible. Based on that testimony, the court held plaintiff had demonstrated a "possibility of future risk" to her "safety or well-being." The Court affirms. 1. "Any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct," who is not eligible for a restraining order as a "victim of domestic violence" under the Prevention of Domestic Violence Act of 1991 (PDVA) may apply for a protective order under SASPA. N.J.S.A. 2C:14-14(a)(1), -16. The standard for granting a SASPA protective order differs depending on whether the applicant seeks a temporary or final order. Importantly, an FPO does not require a showing that it is "necessary to protect the safety and well-being" of the victim like a TPO does, see N.J.S.A. 2C:14-15(a); rather, an FPO requires only the "possibility of future risk to the safety or well-being of the alleged victim," N.J.S.A. 2C:14-16(a)(2). (pp. 14-18) 2. The permissive standards for a SASPA TPO and a PDVA temporary restraining order (TRO) are nearly identical, as are the procedures for seeking a PDVA final restraining order (FRO) and a SASPA FPO. Notably, both SASPA FPOs and PDVA FROs require consideration of a list of non-exhaustive factors, but SASPA lists only two such factors -- "(1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness . . . ; and (2) the possibility of future risk to the safety or well-being of the alleged victim," N.J.S.A. 2C:14-16(a) -- whereas the PDVA lists six, see N.J.S.A. 2C:25-29(a). The Legislature could have duplicated the second factor for a PDVA FRO -- "[t]he existence of immediate danger to person or property," N.J.S.A. 2C:25-29(a)(2) -- in SASPA, but it did not. In addition, the consequences to a defendant of a PDVA FRO are drastically different from the consequences to a respondent of a SASPA FPO. (pp. 18-22) 3. Applying ordinary definitions of the terms used in N.J.S.A. 2C:14-16(a)(2), the statute's plain language requires a court to consider whether there is a chance that a survivor may be exposed to physical danger, risk, or injury, or may be exposed to something emotionally unwelcome or unpleasant that could make the survivor feel uncomfortable, unhealthy, or unhappy. Because the language of factor two is centered on the safety or well-being of the victim-survivor, a survivor's own testimony regarding possible future risks to their safety or emotional well-being can suffice. The Court's reading of the plain text of factor two as creating a lenient and easy-to-satisfy standard is reinforced by context: the "possibility of future risk" required for a SASPA FPO is less demanding than the "necessary" protection required for a SASPA TPO or the "immediate danger" required for a PDVA FRO. Applying that standard, the Court defers to the trial court's factual findings because they are supported by substantial evidence and finds no error in the court's legal conclusion. (pp. 22-26) 4. The Court explains why it is not persuaded by Martin's claims of error, why it disagrees with the concurrence's view of N.J.S.A. 2C:14-16(e) and (f), and why it declines to adopt either the six PDVA factors or the standard established for PDVA FROs for use in the SASPA context. Finally, the Court explains that its discussion of Clara's testimony is not intended to imply that such evidence of psychological symptoms or treatment is necessary to satisfy N.J.S.A. 2C:14-16(a)(2). (pp. 26-33)	Supreme
April 17, 2024	AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY V. COUNTY PROSECUTORS ASSOCIATION OF NEW JERSEY (A-33-22 ; 087789) CPANJ is neither a public agency under N.J.S.A. 47:1A-1.1 nor a public entity subject to the common law right of access. The ACLU's factual allegations do not support a claim against CPANJ under OPRA or the common law. 1. OPRA applies only if the entity to which a request is directed meets the statutory definition of a public agency. For purposes of OPRA, the terms "public agency" or "agency" denote the entities specified in N.J.S.A. 47:1A-1.1, which include "any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions." The term "political subdivision" denotes a division of a state that exists primarily to discharge some function of local government, such as a county or municipality, as well as certain entities formed by counties and municipalities, such as parking authorities. The ACLU argues that CPANJ is an instrumentality of the county prosecutors. Accordingly, the core question in this appeal is whether a county prosecutor constitutes a "political subdivision" for purposes of OPRA. (pp. 14-22) 2. A county is indisputably a "political subdivision of the State" as defined in OPRA, N.J.S.A. 47:1A-1.1. The status of the counties themselves as political subdivisions under OPRA, however, has no bearing on the analysis. A county prosecutor is distinct from the county that the prosecutor serves for purposes of OPRA's reach. A county prosecutor, like the Attorney General, is a constitutional officer who serves by virtue of gubernatorial nomination and Senate confirmation. Although a county exercises considerable control over the fiscal operations of the county prosecutor's office, a county prosecutor's law enforcement function is unsupervised by county government or any	Supreme

	other agency of local government. In short, the county prosecutor is not the alter ego of the county itself, and does not constitute a "political subdivision" as that term is used in N.J.S.A. 47:1A-1.1. CPANJ, meanwhile, constitutes an organization in which the county prosecutors are members and is not the alter ego of the prosecutors themselves. Because a prosecutor does not meet the definition of a "political subdivision" under N.J.S.A. 47:1A-1.1's plain language, CPANJ is not a public agency for purposes of OPRA. The ACLU's factual allegations do not support its assertion that CPANJ is a public agency within the meaning of N.J.S.A. 47:1A-1.1. Because the ACLU did not seek the documents from a public agency in accordance with N.J.S.A. 47:1A-5 and -6, the Court does not reach the question whether the documents identified in its request constitute "government records" under OPRA. (pp. 22-26) 3. A public record under the common law is one that is made by a public official in the exercise of the official's public function, either because the record was required or directed by law to be made or kept, or because it was filed in a public office. Here, the ACLU identifies no statute, regulation, or other mandate requiring CPANJ to create or maintain the requested documents. It suggests no statutory or regulatory mandates of any kind addressing the records at issue. The ACLU does not allege that CPANJ maintains public documents in a public office; indeed, it does not dispute CPANJ's assertion that it maintains no office at all. The ACLU identifies no precedential decision discussing, let alone upholding, a request for public documents served on a private entity such as CPANJ. In short, the ACLU asserts no factual allegations that would suggest that CPANJ constitutes an entity upon which a common law right of access request for documents may properly be served. The Court does not reach the question whether the documents that the ACLU requested from CPANJ would be considered common law public documents if requested from a public entity. (pp. 26-29)	
April 16, 2024	COMPREHENSIVE NEUROSURGICAL, P.C. V. THE VALLEY HOSPITAL (A-52-22 ; 087469) Plaintiffs' good faith and fair dealing claim properly survived summary judgment, but the jury was not correctly charged or asked to rule on that claim. The trial judge failed to instruct the jury that the only underlying contract to which the implied covenant could attach to had to be one beyond the rights afforded by the Bylaws. Adding to the significant uncertainty created by the jury charge and verdict sheet are the improper admission into evidence of the privileged emails and the improper remarks by plaintiffs' attorney. Those errors, cumulatively, had the capacity to lead the jury to reach a verdict it would not have otherwise reached and thus deprived Valley of a fair trial. 1. A claim for breach of the covenant of good faith and fair dealing that is implied by law into every contract requires a plaintiff to demonstrate that the defendant's alleged misdeeds prevented the plaintiff from enjoying the full benefit of a particular bargain. Although medical staff bylaws impose reciprocal legal obligations and rights between those who agreed to be bound, those obligations do not give rise to a traditional contract, to a claim for the traditional contract remedy of damages, or to a separate breach of the implied covenant claim. Instead, when a hospital violates its medical staff bylaws, equitable relief may be available. Thus, plaintiffs here would have been entitled to a hearing if Valley had violated the Bylaws by failing to provide one in the first place; the jury, however, expressly found that Valley did not violate the Bylaws. The Bylaws cannot constitute the underlying contract for purposes of plaintiffs' separate breach of the implied covenant claim. (pp. 28-34) 2. Just as the Bylaws here offer no ground for a breach of an implied covenant of good faith and fair dealing claim, Valley's administrative healthcare decision to award exclusive privileges to a particular group cannot on its own give rise to a claim for breach of the implied covenant of good faith and fair dealing. A hospital may not act in bad faith and simultaneously serve a "genuine" healthcare objective based on "reasonable and reliable" information. See Desai, 103 N.J. at 91-93. Physicians who are adversely affected by a hospital's administrative healthcare decision may challenge that decision by arguing that it was not made in accordance with the standard set forth in Desai. Here, however, the trial judge concluded that plaintiffs' challenge to the Valley's grant of exclusive privileges was "subsumed" with their implied covenant claim. As a result, the legal principles related to Valley's administrative decision became relevant only as to its defense to the implied covenant claim, and not as an asserted basis for money damages. (pp. 34-38) 3. The final basis advanced in the course of this litigation for finding that Valley was bound to act in good faith and deal fairly with plaintiffs is an alleged implied contract between the parties, one that goes "beyond the Bylaws." Plaintiffs allege that, from Valley's initial offer to join and collaboratively build Valley's neuroscience department and from the parties' course of dealings since plaintiffs joined, it can be reasonably inferred that an implied contract existed between plaintiffs and Valley that would allegedly support their expectation to indefinitely maintain their privileges and rights absent a valid administrative healthcare decision providing otherwise. In the event that plaintiffs could demonstrate that all the fundamental elements of contract formation had been established, their theory of an agreement beyond the rights afforded by the Bylaws would be contractual in nature. Among the three possible sources to support plaintiffs' claim here -- the Bylaws, Valley's administrative healthcare decision, and the alleged implied-in-fact contract between plaintiffs and Valley -- the only alleged source of mutual obligation to which the implied covenant of good faith and fair dealing could properly attach to is the implied-in-fact contract. (pp. 38-41) 4. The Court explains how the evidence in the record, taken in the light most favorable to plaintiffs, was sufficient to raise a factual dispute as to whether there was an implied-in-fact contract between plaintiffs and Valley and whether Valley acted in bad faith in revoking certain of plaintiffs' privileges, such that the claim properly survived summary judgment. Although the claim properly reached the jury, however, the jury charge and verdict sheet did not properly instruct the jurors on the elements of the claim. Notably, the jury was given no law on how to measure Valley's defense to the implied covenant claim, and consideration of the jury charge as a whole raises significant doubt as to whether the jury found the underlying contract for plaintiffs' implied covenant claim to be some implied or oral agreement beyond the Bylaws, or just the Bylaws. The jury could have come to a different result had it been correctly instructed on the contract claims, especially because the underlying contract on the implied covenant claim -- purportedly an endless right to treat "unassigned" ER patients with special tools -- was not in writing. (pp. 41-52).	Supreme

	5. The emails between Valley and its general counsel for the purpose of legal advice, rather than business purposes, are protected by the attorney-client privilege. Valley did not place its general counsel's pre-litigation legal advice "in-issue," nor did it call its general counsel as a witness. Valley's inadvertent disclosure of the emails -- allegedly consisting of 352 pages -- in the course of an exchange of about 57,000 documents in roughly two months did not amount to waiver of the attorney-client privilege. The parties' discovery agreement's claw-back provision anticipated precisely such an inadvertence. And admission of the emails into evidence was not harmless. Select emails in many ways became the centerpiece of plaintiffs' case. On remand, if plaintiffs attempt to introduce emails from the batch Valley attempted to claw back, the judge should conduct a document-by-document review to determine whether the emails are privileged and thus not admissible. (pp. 52-58) 6. Certain comments by plaintiffs' trial counsel in summation were improper. Plaintiffs' trial counsel knew that Valley had evidence of sixty cases of patient transfers. The summation remarks implied, however, that there was evidence of only two cases of patient transfers, and that inaccurate statement impacted Valley's contention that it made a valid healthcare decision. (pp. 58-61) 7. The cumulative errors here deprived Valley of a fair trial and warrant a new one. The Court sets forth specific guidance for the remand proceedings. (pp. 61-62)	
March 27, 2024	STATE V. KALIL COOPER (A-35-22 ; 087742) Conspiracy to distribute CDS is not an enumerated predicate offense of the promoting statute, N.J.S.A. 2C:33-30, and defendant's conviction for a crime that does not exist must be vacated. 1. N.J.S.A. 2C:33-30(a) provides in relevant part that "[a] person promotes organized street crime if he conspires with others . . . to commit any crime specified in" one of several enumerated chapters of Title 2C of the New Jersey statutes or one of the additional statutes listed from chapters 34 and 39 of Title 2C. To prove "promoting," the State must prove beyond a reasonable doubt the accused conspired to commit at least one offense on that specific list of predicate offenses. Conspicuously absent from that list is the substantive offense of conspiracy pursuant to N.J.S.A. 2C:5-2. The offense of conspiracy is not listed as a predicate offense itself, nor is it specified within any of the enumerated chapters as a predicate offense of the promoting statute. The jury instruction in this case thus erroneously departed from the list of permissible predicate offenses in N.J.S.A. 2C:33-30(a) and erroneously opened to the jury the possibility of convicting defendant for conspiracy to conspire to distribute CDS, a crime that does not exist because conspiracy to distribute CDS is not a predicate offense under the promoting statute. (pp.13-15) 2. If the party contesting the jury instruction fails to object to it at trial, the standard on appeal is one of plain error; if the party objects, the review is for harmless error. Defendant raised an objection to the now challenged jury instruction at various points leading up to, during, and through the end of the trial. The issue was properly preserved, thus the Court reviews for harmless error. (pp. 15-19) 3. Defendant was convicted and sentenced based upon a charge that does not exist within the criminal code. Such a result is not harmless, but rather unjust. The jury's verdict, premised upon the instructions provided by the trial court, is legally invalid. Because defendant was not on notice of any other proper predicate offense for the promoting statute under count four of the indictment, the jury's verdict on that count is vacated without a remand. The Court does not reach the question as to whether a double inchoate crime may exist within New Jersey's criminal code. (pp. 19-20)	Supreme
March 26, 2024	STATE V. DONNIE E. HARRELL (A-13-23 ; 088412) The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Rose's opinion. The Court adds one additional point. Defendant did not challenge the three-year delay between the child's interview and the return of the original indictment. The Court has no way to assess the reason for the delay and does not suggest that the delay violated defendant's rights. A lengthy delay in a future case, however, might prompt a legal challenge. As a result, it is incumbent on the State to act expeditiously as it investigates and prosecutes matters that rely heavily on a young child's ability to recall events	Supreme
March 25, 2024	CHRISTA ROBEY V. SPARC GROUP LLC (A-50-22 ; 087981) A plaintiff can establish an ascertainable loss by demonstrating either an out-of-pocket loss or a deprivation of the benefit of one's bargain. The Court does not find either type of ascertainable loss applicable here because plaintiffs purchased non-defective, conforming goods with no objective, measurable disparity between the product they reasonably thought they were buying and what they ultimately received. Plaintiffs' CFA claim therefore fails, and, absent an ascertainable loss pursuant to the CFA, plaintiffs are not "aggrieved consumers" under TCCWNA, cannot show injury or damages under their common law claims, and are without claims entitling them to equitable relief.	Supreme

March 13, 2024	PLAYERS PLACE II CONDOMINIUM ASSOCIATION, INC. V. K.P. AND B.F. (A-60/61-22 ; 088139) Requests for reasonable accommodations like the one here should be assessed under the following framework: Individuals who seek an accommodation must show that they have a disability under the LAD and demonstrate that the requested accommodation may be necessary to afford them an "equal opportunity to use and enjoy a dwelling." N.J.A.C. 13:13-3.4(f)(2). Housing providers then have the burden to prove the requested accommodation is unreasonable. During that process, both sides should engage in a good-faith, interactive dialogue. In the end, if the parties cannot resolve the request, courts may be called on to balance the need for, and benefits of, the requested accommodation against the cost and administrative burdens it presents. Here, the claims should not have been dismissed.	Supreme
March 5, 2024	STATE V. SHLAWRENCE ROSS (A-34-22 ; 087823) The proper analysis for determining whether the State can obtain this physical evidence rests within the principles of search and seizure under the Fourth Amendment. Neither the Fifth nor the Sixth Amendment would preclude issuing a valid search warrant for the bullet in this case, and the trial court should have determined whether there exists probable cause on which to issue such a warrant.	Supreme
March 5, 2024	STATE V. ISAIAH J. KNIGHT (A-39-22 ; 087822) The sought-after affidavit is physical evidence of the crimes of witness tampering and kidnapping for which defendant and others have been charged. It is therefore subject to reciprocal discovery under Rule 3:3-13(b)(2)(B) and (D).	Supreme
Feb. 12, 2024	AMADA SANJUAN V. SCHOOL DISTRICT OF WEST NEW YORK, HUDSON COUNTY (A-45-22 ; 087515) N.J.S.A. 18A:6-16 provides the basis to refer a case to arbitration but does not limit an arbitrator's authority to impose penalties. The award here is reinstated.	Supreme
Jan. 24, 2024	AC OCEAN WALK, LLC V. AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY (A-28-22 ; 087304) Ocean Walk has not pled facts supporting a conclusion that its business losses were caused by a "direct physical loss" or "direct physical . . . damage" under the policy language. And even if Ocean Walk had pled facts supporting a finding of a covered "loss" or "damage," the losses it alleges are excluded from coverage by the policies' contamination exclusion.	Supreme
Jan. 18, 2024	STATE V. WILLIAM HILL (A-41-22 ; 087840) N.J.S.A. 2C:28-5(a) is not unconstitutionally overbroad. It may, however, have been unconstitutionally applied to defendant in this case. The Court therefore vacates defendant's witness tampering conviction, without dismissing any portion of the indictment, and remands the case for a new trial on that charge. The Court does not vacate defendant's conviction for carjacking.	Supreme
Jan. 17, 2024	STATE V. CURTIS L. GARTRELL (A-31-22 ; 087597) Defendant's possessory or ownership interest in the suitcase ceased when he fled police outside Penn Station and deliberately left his suitcase behind in a public place with no evidence of anyone else's interest in the bag. Because the State has demonstrated by a preponderance of the evidence that the suitcase was abandoned, defendant is without standing to challenge its seizure and search.	Supreme
Jan. 16, 2024	STATE V. CALVIN FAIR (A-20-22 ; 086617) A mental state of recklessness -- defined in this context as "morally culpable conduct, involving a 'deliberate decision to endanger another,'" Counterman v. Colorado, 600 U.S. 66, 79 (2023) -- is constitutionally sufficient for a "true threats" prosecution under N.J.S.A. 2C:12-3(a). An objective component is also necessary for a "true threats" prosecution to survive constitutional scrutiny: the State must prove that a reasonable person similarly situated to the victim would have viewed the message as threatening violence. Here, defendant was charged with terroristic threats in violation of N.J.S.A. 2C:12-3(a) and/or (b). On remand, the jury should be charged that they must unanimously agree as to whether defendant violated N.J.S.A. 2C:12-3(a), (b), or both.	Supreme
Jan. 10, 2024	WILLIAM DESIMONE V. SPRINGPOINT SENIOR LIVING, INC (A-37-22 ; 087891) The refund provision is limited in scope: N.J.S.A. 56:8-2.11 provides relief only to victims of food-related fraud as identified in Chapter 347 and does not extend to all CFA violations. Because the allegations in this matter are unrelated to misrepresentations of the "identity of food," plaintiffs are not entitled to a full refund under N.J.S.A. 56:8-2.11.	Supreme

Jan. 8, 2024	STATE V. BRANDON M. WASHINGTON (A-29-22 ; 087477) Finding no reason to treat impermissibly suggestive events during trial preparation differently from other suggestive identification procedures, the Court extends the relevant principles in Henderson to trial preparation sessions. Witnesses who have made a prior identification should not be shown photos of the defendant during trial preparation -- neither new photos of the defendant for the first time nor, absent good reason, the same photos they previously reviewed. If a party can demonstrate a good reason to show witnesses a photo of the defendant they previously identified, the party must prepare and disclose a written record of what occurred. If, however, a witness has not previously identified a suspect, investigators can conduct an identification procedure during pretrial preparation in accordance with Henderson. A record of the procedure should be created and disclosed under Rule 3:11. Here, to determine the admissibility of the identification evidence, the Court remands to the trial court to conduct a hearing under United States v. Wade, 388 U.S. 218 (1967), and develop a more complete factual record.	Supreme
Dec. 14, 2023	JAMES MEYERS V. STATE HEALTH BENEFITS COMMISSION (A-27-22 ; 087633) The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Smith's opinion. The Court agrees with the Appellate Division's assessment that petitioner was never eligible for the exemption under N.J.S.A. 52:14-17.28d(b)(3) and that correcting the erroneous exemption was therefore proper. Neither petitioner's subsequent service nor his purchase in 2013 of four years of military service credit could change the fact that he did not meet the bright line drawn by the Legislature by June 28, 2011. The Court also agrees with the Appellate Division's determination that it was not necessary to reach the issue of equitable estoppel, and it offers additional comments on that point.	Supreme
Dec. 13, 2023	STATE V. JERRY ROSADO (A-53-22 ; 088067) The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Gilson's opinion.	Supreme
Nov. 21, 2023	HENRY KEIM V. ABOVE ALL TERMITE & PEST CONTROL (A-30-22 ; 087603) Keim was "in the course of employment" under the "authorized vehicle rule" at the time of the accident because Above All authorized a vehicle for him to operate and his operation of that identified vehicle was for business expressly authorized by Above All.	Supreme
Nov. 20, 2023	STATE V. AMANDEEP K. TIWANA (A-36-22 ; 087919) Defendant was in custody at the hospital in light of the police presence around her bed area. But no interrogation or its functional equivalent occurred before her spontaneous and unsolicited admission. Miranda warnings were therefore not required, and defendant's statement -- that she "only had two shots prior to the crash" -- is admissible at trial.	Supreme
Nov. 16, 2023	NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY V. D.C.A. AND J.J.C.B. (A-44-22 ; 087604) Based on the plain language of the 2021 Amendment, the Court concurs with the trial court and Appellate Division that the Legislature did not intend to bar trial courts from considering evidence of the child's relationship with the resource family when they address the fourth prong of N.J.S.A. 30:4C-15.1(a). The trial court properly considered the relationships between the children and their resource families when it considered the fourth prong of the best interests test, N.J.S.A. 30:4C-15.1(a)(4), and its determination as to all four prongs of that test was grounded in substantial and credible evidence in the record.	Supreme
Nov. 15, 2023	STATE V. MICHAEL OLENOWSKI (A-56-18 ; 082253) Daubert-based expert reliability determinations in criminal appeals will be reviewed de novo, while other expert admissibility issues are reviewed under an abuse of discretion standard.	Supreme
Sept. 12, 2023	C.V. V. WATERFORD TOWNSHIP BOARD OF EDUCATION (A-24-22 ; 087260) The Court reverses the Appellate Division's judgment because it conflicts with Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587 (1993), and L.W. v. Toms River Regional Schools Board of Education, 189 N.J. 381 (2007). Under Lehmann, sexual touching of areas of the body linked to sexuality happens, by definition, because of sex. The Court affirms the denial of plaintiffs' motions to amend their complaint and to obtain certain records.	Supreme