



APRIL 2023

# THE CLARION

*The Somerset County Bar Association's Newsletter*



## *President's Message*

**STEVEN K. WARNER, ESQ.**

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WARNER, ESQ.**

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ARTICLE**

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As I reflect on the long list of accomplished attorneys who preceded me as President of the Somerset County Bar Association (SCBA), I can't help but feel like Wayne and Garth in the Wayne's World movie when they meet Alice Cooper and begin to bow to him proclaiming "We're Not Worthy, We're not Worthy." Yet my colleagues bestowed upon me the privilege, and corresponding obligation, of serving in this Office and I am grateful, humbled and....hey, who am I to argue?

Seriously, our County Bar has a long and distinguished reputation and the SCBA has played a critical role in garnering, and preserving, that reputation. As I take the proverbial "baton" from my predecessor, and good friend, Victoria "Vicki" Britton, I pledge to uphold the strong tradition of our SCBA and to work tirelessly and diligently to advance the stature of the legal practice and to ensure that those who need legal services the most, get access to same. I also look forward to working together with my new "Brother from another Mother and Father", Dave LaPorta, who recently has been installed as the Chair of the Somerset County Bar Foundation (SCBF). Dave and I have pledged to have the SCBA and the SCBF work together, hand in hand, as we both believe in the age old sports slogans that "There is No "I" in "TEAM"" and the "The Whole is Greater than the Sum of the Parts."

The SCBA, with our stellar Executive Director, Kelly Bender, at the helm, is off to a great start for the 2022-2023 term. We had 2 extremely successful social events over the Summer: First, our “Meet the Presidents Cocktail Hour” on July 27th at Village Brewing Company in Somerville, and then our “Clerks, Cocktails and Cornhole” event on August 24th at the Green Knoll Grill in Bridgewater. We also had a very well attended and successful Installation Dinner on September 21st at the scenic Neshanic Valley Golf Course and Country Club, and we joined with our other Vicinage County Bar Associations for our annual “Meet the Clerks” event , sponsored by the Hunterdon County Bar Association on October 12th at the Beaver Brook Country Club. The SCBA has several exciting events on tap, including our upcoming annual SCBA/SCBF Holiday Party on December 14th. We hope you will join us at the events and become, or continue to be, an active member of our SCBA.

It's tradition for each incoming President of the SCBA to have a priority project or theme to their Presidency for the coming year and, while certainly there is no shortage of important issues facing the State Bar as a whole, not the least of which is the impact of ever increasing Judicial Vacancies, I know my good friend and NJ State Bar President, Jeralyn Lawrence, and her Officers and Directors, are hard at work on all of these issues. So, I wanted to set my priority for our SCBA for this year, to be Attorney Mentoring and Reaffirming a Culture of Mentoring throughout our County Bar.

As a young lawyer I sought out other attorneys to try to learn from, and to an extent to even pattern myself after. I was lucky to have outstanding, more senior attorneys in my firms to do so. Mentoring helps attorneys at all levels advance their careers; from lawyers -to-be, to new lawyers, even to seasoned attorneys seeking to expand or change their area of practice. But of course, mentoring helps Young Attorneys the most.

More than simply passing on information and advice, Mentors impart lessons on the art and science of practicing law. And Mentees acquire crucial skills and legal wisdom more quickly, and in a more meaningful manner. The Mentor-Mentee relationship becomes an active partnership based on the sharing of experiences and insights. The Attorney Mentor is a trusted advisor and facilitator, helping to pass on vital knowledge to the young or less experienced lawyer, and the Mentee becomes a proactive and equal partner in the process.

So, I ask my fellow more senior (or should I say, more seasoned) attorneys to “Pay it Forward”, and let's focus together, this year and every year, on mentoring our younger or less seasoned colleagues, to raise the level of the practice of law, to raise the Bar of the Bar, so to speak, throughout Somerset County and beyond.

Thank you.

**Steven K. Warner, Esq.**  
**SCBA President**  
**2022-2023**





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TO OUR SPONSORS!

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## *Young Lawyers*

BY: PAUL BRANDENBERG, ESQ.

There is no time quite like a young lawyer's first few weeks out in the world as a practicing attorney. Whether you're jumping right into the deep end as a straight-outta-law-school associate or starting private practice life after a judicial clerkship, it can be an exciting change. And by "exciting", I mean a strange mix of thrilling, horrifying, interesting, and daunting. In some cases, it may even seem overwhelming. Regardless of how you're feeling, hopefully this article can calm some nerves and give you a sense of what to expect in your first year as a Young Lawyer.

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*On behalf of the Bar Association  
and the legal community as a  
whole, welcome to the real world,  
Young Lawyer. Best of luck.*

”



### **It Just Got Real**

Regardless of whether you're coming from law school or a clerkship, one of the biggest changes is that the cases just got real. Gone are the days of theoretical scenarios in law school or nondescript case names coming into your Judge's chambers—each name you deal with now is a real person with a problem, and they are coming to you to solve it. Whether it's a contract dispute, an injury, a family matter, or a criminal accusation, your client is seeking out legal representation to get help that they need. The advice you give and the work you do will have real-life consequences that matter to your client. It may seem intimidating at first (and it should) but take solace in the fact that every Young Lawyer has felt some form of trepidation about the job they are now asked to perform. If you're lucky enough to be around more experienced attorneys at your firm or office, use them. It may be cliché, but clichés stick around because there's truth to them: The only stupid question is the one you didn't ask. No one expects a brand-new attorney to have all the answers. Use the experience and advice from those around you to your benefit, and suddenly the overwhelming task in front of you seems much more manageable.

### **From Referee to Player**

As a judicial clerk, you are an impartial part of the judiciary—never taking sides, only administering the law. Likewise, as a law student, you're tasked with spotting the issues in a particular scenario but rarely asked to support one side over the other. Well, Young Lawyer, you're not in Kansas anymore—you are now an advocate. You have a side, and your job is to do your absolute best in presenting your side's arguments. If the law is in your favor? Hammer that point over, and over, and over, and over, and—you get it. "This case is exactly like the case law on point, Judge, the facts are nearly indistinguishable, this issue is black and white and there's no room for argument." If the law is against you? Your job is to find every reason why that law is (a) not applicable to your specific case, (b) being misinterpreted by the other side, (c) not binding on the court you're in, or (d) all of the above. Now, I'm not telling you to argue that the sky is green and the grass is blue, but instead trying to convey that you are always working for your client, and sometimes that requires creative advocacy in order to put them in the best position possible. As a Young Lawyer, sometimes this is easy to forget.

### **Protect Ya Neck**

And in this case, "ya neck" is your reputation (we can address the wisdom of using a Wu-Tang Clan line in an article directed at new lawyers who were presumably born in the late 90s at another time). You've just entered a profession that is widely viewed as adversarial, cut-throat, and deceitful by the general public, and at times with good reason. But there is another phrase that would describe the legal community, particularly in New Jersey, that you may not expect: "tight-knit." As your career develops, you will soon find yourself running into the same people pretty frequently-- at Bar functions, attorney conventions, and on the other side of the "v." in cases you're handling. These people will soon recognize your name as well, and you'll develop a reputation amongst your legal comrades. Your reputation will follow you everywhere and, perhaps more importantly, will precede you everywhere as well. While it may be tempting to "pull a fast one" on an adversary to get a leg up for your client if the opportunity presents itself, I can promise you that the bad reputation it will create for you will far outweigh the benefit (not to mention the bad karma). There is a way to be a zealous advocate for your client while maintaining a professional and pleasant relationship with those you work with and against.

Hopefully some of this advice can calm some nerves or maybe even stoke some excitement for your new career. No matter your area of practice, there are a wealth of attorneys ready, willing, and able to help you grow as a practicing attorney. On behalf of the Bar Association and the legal community as a whole, welcome to the real world, Young Lawyer. Best of luck.



## NEW JERSEY STATE BAR ASSOCIATION

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### *A message from NJSBA President Jeralyn Lawrence, Esq.*

Hello to my Somerset County Bar Colleagues!

I hope you are all doing well. I am pleased to take this opportunity to share some of the issues we are working on at the New Jersey State Bar Association.

We have established the Putting Lawyers First Task Force. It is charged with studying ways to help lawyers manage this very challenging profession. Many lawyers are depressed and anxious and many never seek help. We are studying the areas and issues that go to the root of our stress, such as examining our ethics system with an eye toward making recommendations that will ensure it is meeting the stated purpose of protecting the public and not punishing lawyers. Right now, we are collecting data and information about the ethics and fee arbitration processes. Please reach out to share your experiences. Please also volunteer to serve on these committees. We need you!

Here's one important thing we have learned. In many ways, ethics investigators are on a prosecutorial footing. So keep this important guidance in mind: it is critical that if you should receive a grievance or are the subject to a random audit, be sure to hire a lawyer who specializes in this area.

The Task Force thought expansively and launched a survey seeking information addressing mental and physical health needs among the profession. The results of the survey will help us understand the depth of the issues our colleagues confront every day.



In addition, the Task Force is reviewing the law surrounding getting paid in cases and getting out of cases, when needed. It will suggest changes as to how lawyers can respond to false, negative, and defamatory online reviews. Even more, the Task Force is studying the issue of who can sign affidavits of merit claiming malpractice by an attorney.

In addition to the work of the Task Force, the NJSBA is working hard on the Supreme Court's Wade Committee. I have been appointed to the committee and can assure you I, with the backing of the Board of Trustees, am advocating strongly for a path back to reinstatement for lawyers who have been disbarred.

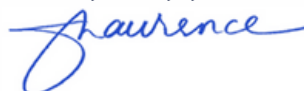
Another area keeping us very busy is addressing and raising public awareness about the catastrophic number of judicial vacancies that remain and plague our courts. Chief Justice Stuart Rabner has told us there should be no more than 30 vacancies in order for the Judiciary to function satisfactorily. Right now there are 65 vacancies with an additional 11 looming due to retirements. We still have one vacancy on our Supreme Court. While some progress has been made, we must absolutely continue to implore the Governor and the Legislature to get moving and fill these vacancies. These vacancies must be filled as access to the court is being compromised. Our judges are being overworked and stretched too thin. Twenty one county bars - including Somerset County Bar Association -- as well as eight affinity bars have signed resolutions urging action on filing these vacancies. We must all continue to press for action.

Another key issue cropped up at the American Bar Association Annual Meeting. In August, the NJSBA was part of a coalition that strongly reaffirmed policy to remain opposed to non-lawyers being lawyers, as well as non-lawyers not owning law firms. As incredible as it may sound, there is a segment of the ABA that believes non-lawyers should be able to act as lawyers and that Google or Amazon should own our firms. We continue to lead the way nationally in opposing these concepts.

On the advocacy front, we have been lobbying for automated external defibrillators (AEDs) to be located on every floor of every courthouse, as one of our Board of Trustees members tragically lost her husband who suffered cardiac arrest at a courthouse and might have been revived had an AED been close at hand. We thank the Somerset County Bar Association for lending its voice and joining that cause. The NJSBA has also reached out bar presidents in all 50 states to ask that they lobby for the passage of the federal Daniel's Law. That measure is specifically designed to protect the safety of our judges in wake of the assassination attempt on U.S. District Court Judge Ester Salas.

My presidency has been busy! It is a privilege and pleasure to serve. Our goal of effectuating change to make this profession better for lawyers requires your input and information. Do not hesitate to reach out to share any ideas or thoughts you may have. Thank you!

Very truly yours,

A handwritten signature in blue ink that reads "Jeralyn L. Lawrence". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Jeralyn L. Lawrence, Esq.  
President

# *Congratulations*

*Everyone at  
Lawrence Law  
Congratulates and  
Celebrates our own  
**Jeralyn Lawrence, Esq.**  
President of the  
New Jersey State Bar  
Association*

*We look  
forward to a great  
year under her  
leadership.*



**L** LAWRENCE  
L A W  
**DIVORCE & FAMILY LAWYERS**



# *Thank you & Farewell*

A MESSAGE FROM IMMEDIATE PAST PRESIDENT VICTORIA BRITTON, ESQ.



I want to take this opportunity to thank the members of the Somerset County Bar Association for their support during my term. Having begun my legal career in Somerset County many years ago as a law clerk, I can attest to what a wonderful organization the SCBA is. I am grateful and humbled to have been the President during the return to in-person events during the 2021-2022 year. The membership came out in force, and it was wonderful to get together with colleagues and friends again.

One focus of my term was to give voice to our members. I believe that I achieved this goal. It was exciting to hear everyone's thoughts and ideas at our monthly meetings. It may have made our meetings longer in duration, but they made our Association stronger. Based on the active involvement of our members, the SCBA remained strong and robust during the COVID-19 pandemic with a total membership of over 300 persons. I encourage all of our members to maintain this level of enthusiasm, and to continue to engage with your colleagues and friends through networking events, meetings, continuing legal education seminars and all of the other opportunities the SCBA presents.

Our new Executive Director, Kelly Bender, joined the SCBA at the start of my term, and hit the ground running. Kelly brought energy, friendliness, eagerness, and knowledge, and impressed me with her capabilities and responsiveness. The SCBA has also benefited from the myriad of connections Kelly has throughout Somerset County, as well as her ability to get anything done. Please take a moment at our next event to thank Kelly for our hard work. I would not have made it through my term without her.

On June 7, 2022, I turned over the reins of the Association to Steven Warner. The SCBA is in good hands, and I wish Steve the best of luck.

# *A Quick Primer on Joint Accounts - the Non-Probate Asset Increasingly at the Heart of Probate Litigation*

BY: NICHOLAS J. DIMAKOS, ESQ.

To a non-lawyer, the phrase “probate litigation” usually evokes (if anything more than a blank stare) thoughts of a will contest. Lawyers who may not practice in the field may also be aware of the existence of other types of proceedings, such as fiduciary accountings or trust reformations. Increasingly in our practice, however, we are seeing disputes over non-probate assets, i.e., assets that pass after the owner’s death outside of the owner’s Will.

Disputes over joint accounts are becoming increasingly common. In the typical scenario, one or more of the decedent’s bank accounts is titled in joint name with one of the decedent’s children, often the personal representative of her estate; other estate beneficiaries are aware of the account and question why the personal representative is not distributing the account in accordance with the decedent’s Will or the intestacy statute. The joint owner then points to the Multiple-party Deposit Account Act, which provides, in relevant part, “Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created.” N.J.S.A. 17:16I-1-5(a).

## **Convenience Accounts**

A challenge to the joint designation typically takes two forms. The first is to argue that the decedent did not intend the account to pass to the other named owner but, rather, added the surviving owner to the account as a matter of convenience, i.e., to provide a way for the other party to access the account for the payment of the decedent’s expenses while the decedent is alive but in need of assistance. In *re Estate of Penna*, 322 N.J. Super. 417, 423 (App. Div. 1999) (“[J]oint accounts are sometimes ... used as ‘convenience accounts,’ so that another party may more easily handle the financial affairs of the true owner of the asset.”) (quoting *Bronson v. Bronson*, 218 N.J. Super. 389, 394 (App. Div. 1987)).

As set forth in the statute, in addition to having to satisfy the elevated standard of clear and convincing evidence, the challenger must show that the claimed contrary intention existed at the time of the account’s creation.

Like most issues that arise in probate litigation, or that involve intent more generally, the question of whether the decedent truly intended joint ownership with a right of survivorship, as opposed to mere convenience, is fact-sensitive. Relevant factors include whether the account was funded by both the survivor and the decedent, or the decedent only; whether the decedent’s expenses were paid from the account, and if so, by whom; and the timing of the funding account. Any conversations about the account involving the decedent and any of the parties to the litigation may also be probative of intent, though such conversations may be scrutinized, like many alleged statements in probate litigation, under the rules of hearsay and the dead man’s statute.

## **Undue Influence**

A separate but related challenge can be made by claiming that the joint designation is the product of undue influence, with the focus being on whether the joint designation truly reflects the decedent’s will, as opposed to the will of the surviving owner. See *In re Livingston’s Will*, 5 N.J. 65, 73 (1950) (defining undue influence) (“[T]he coercion exerted upon the testator’s mind must be of a degree sufficient to turn the testator from disposing of his property according to his own desires by the substitution of the will of another which he is unable to resist or overcome.”).

The undue influence claim is analyzed in the same manner as it would be for any lifetime gift. *Penna*, 322 N.J. Super. at 424 (“Here, the creation of joint accounts was an *inter vivos* gift.”). That is, if the court finds, by a preponderance of the evidence, that a confidential relationship existed between the two owners of the joint account, the burden shifts to the survivor to prove, by clear and convincing evidence, that the joint designation was not the product of undue influence. *Ostlund*, 391 N.J. Super. at 401 (“[I]f the challenger can prove by a preponderance of the evidence that the survivor had a confidential relationship with the donor who established the account, there is a presumption of undue influence which the survivor donee must rebut by clear and convincing evidence.”);

Penna, 322 N.J. Super. at 419 (“Because of the confidential relationship between the mother-daughter, the surviving daughter, in order to claim entitlement to the account, must show that the creation of the joint account was free of undue influence and intended as an inter vivos gift.”); DeFrank, 433 N.J. Super. at 269 (“Thus, where a confidential relationship exists between a defendant and her mother, a defendant has the burden of showing that she did not use undue influence and that her mother understood the legal effect of the transfer of assets into joint accounts, namely that her assets would pass to defendant rather than in accordance with the terms of her Will.”). Again, the relevant time period is the opening of the joint account. Ostlund, 391 N.J. Super. at 403. Like the convenience account inquiry, claims of undue influence are fact-sensitive and will depend on the trial judge’s interpretation of the facts and the inferences drawn therefrom. See *In re Reynolds’ Estate*, 132 N.J. Eq. 141, 149 (Prerog. Ct 1942), *aff’d*, 133 N.J. Eq. 344 (1943) (“It is true that such [undue] influence can never be precisely defined. Each case must necessarily depend upon so many and varied factors, such as physical condition, sex, age, temperament and the means of coercion or influence employed, as well as other circumstances, that it must be governed by its own peculiar circumstances.”).

#### Need to Advise Regarding Potential Claims

A client may want to use a joint account as a means of avoiding the need to probate a Will or to allow for another person to pay the client’s expenses but without having to cede what the client views as too much control to another person by way of a power of attorney. While joint accounts can be used for these worthwhile goals, they frequently give rise to fact-intensive challenges that do not lend themselves to quick, cheap, or easy resolution.

It is unfortunate that the account owner who intends to simplify matters after his or her death often complicates them by using joint accounts, given their susceptibility to challenge. Attorneys involved at the estate planning stage should be sure to discuss the pros and cons of joint accounts with the account owner, as well as ways to potentially eliminate ambiguity if the joint account is going to be maintained. Similarly, early in the engagement counsel should discuss potential challenges to the joint designation with a personal representative who is the surviving owner of the joint account, as such claims often are only first made when the personal representative has presented an accounting to estate beneficiaries and believes that he or she is.

close to finalizing administration. If a claim is made challenging the joint designation at that time, the estate would need to remain open indefinitely until the claim is fully resolved. Conversely, if the personal representative is not the surviving joint owner but believes the account properly belongs to the estate, counsel should advise the personal representative of the need to take action as soon as possible.



**Nicholas J. Dimakos, Esq.**

# CONGRATULATIONS MARISSA!



**MARISSA A. DEL MAURO,  
PARTNER**

Everyone at Lyons &  
Associates, P.C.  
congratulates you on  
your promotion to  
Partner!



# SCBA & SCBF Event Recap



**Installation Dinner  
September 2021**



**Holiday Party  
December 2021**

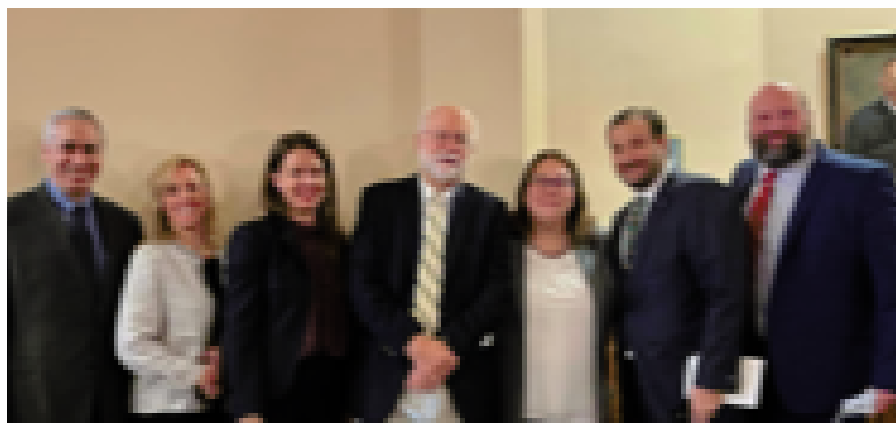
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*Meet the Clerks is one of my favorite events, what a great time everyone had this year!*

”



**Meet the Clerks  
October 2021**



**Justice Helen Hoens Portrait Unveiling  
January 2022**



**First Annual Land Use Symposium  
April 2022**

**SCBF Legal Runaround 5k  
May 2022**

“

*My family is thrilled the Legal Runaround is back in person this year. We love this event and what it does for our community!*

”



**SCBF Legal Runaround 5k  
May 2022**

## Installation of NJSBA's President, Jeralyn Lawrence, Esq. May 2022



## Annual Golf, Tennis, and Pickleball Outing June 2022

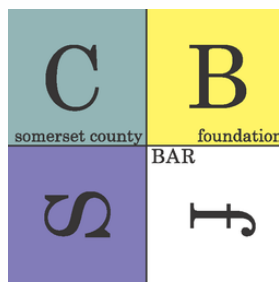


## Installation Dinner September 2022

“

*The SCBA/SCBF Installation Dinner is such a great event. It really brings the Association and Foundation together*

”



## A Welcome Message from SCBF Chair David LaPorta, Esq.

According to Article I of the Somerset County Bar Foundation By-Laws, the purpose of the Foundation “is to strengthen the relationship between Somerset County residents and their judicial system through better awareness and understanding.” The Foundation has traditionally achieved these goals by being both educational and charitable.

The primary way that we fulfill the educational goal is via the annual Vincent J. Apruzzese High School Mock Trial Competition where students “bring law to life” through preparation and participation in a real trial setting. We are always seeking out members of the bar that are interested in serving as judges and bailiffs, so please let Kelly Bender, our Executive Director, know whether you wish to do so this year.



We are able to fulfill the charitable goal of the Foundation through the annual Legal Runaround 5K.

This Spring event allows us to bring attention to the legal community by raising money for a designated charity. I have every confidence, thanks to the training I received last year, that the event will again be a success.

I will also be working with the Nominating Committee of the Foundation to ensure that all Trustee positions that expire this term are properly filled at the annual meeting in June.

Finally, I’d like to echo the sentiments of Steve Warner in his welcome letter and look forward to working with the Bar Association as a team.

I look forward to a successful year, and on behalf of the Foundation, I thank you all for your past, present, and future support.

**David LaPorta, Esq.**  
**SCBF Chair**  
**2022-2024**



# SCBA

## Upcoming Events

MAY  
**2**

### SCBA Law Day

Join us for Law Day at the Somerset County Courthouse for an Oxford Style Debate!

6:00 PM - 8:00 PM

MAY  
**25**

### SCBF Legal Runaround

Please join us and donate to this year's benefactor, Steps Together!

5:30 PM

JUNE  
**13**

### SCBA Golf, Tennis & Pickleball Outing

Register today and enjoy one of the best event's of the year!

11:00 AM - 8:00 PM

**TO REGISTER OR  
FOR MORE INFO**

[Somersetcountybar@gmail.com](mailto:Somersetcountybar@gmail.com)

# Upcoming Events



**SCBA LAW DAY**  
May 2, 2023

Please join us for the SCBA's Law Day presentation for an "Oxford Style" debate regarding the First Amendment. Featured panelists are: Alexander Shalom, Esq. (ACLU-NJ, Supervising Attorney), and Rebecca Uwakwe, Esq. (ACLU-NJ, Decarceration Attorney) Jeralyn Lawrence, Esq. (N.J.S.B.A. President) and Michael Robertson, Esq. (Former Somerset County Prosecutor).

In an "Oxford Style" debate, attendees participate by voting for, or against, a particular motion and by engaging with the other panelists. We look forward to this exciting program and hope you will be able to join us!

**Somerset County Courthouse**  
6pm-8pm  
20 N. Bridge Street, Somerville, NJ



**STEPS TOGETHER**

Join the Somerset County Bar Foundation for our **ANNUAL LEGAL RUNAROUND 5k** Benefitting Steps Together  
[www.steps-together.org](http://www.steps-together.org)

When: May 25, 2023  
Where: Downtown Somerville  
Time: 5:30pm

Come meet Sparkee from the Somerset Patriots and enter to win tickets to a Patriots game!



 [www.legalrunaround.org](http://www.legalrunaround.org)



**SCBA**

*Registration Now Open!*  
JOIN THE SCBA FOR THE 2023 ANNUAL GOLF, TENNIS AND PICKLEBALL OUTING!

Tuesday  
June 13, 2023  
Raritan Valley Country Club  
Bridgewater, NJ



**RARITAN VALLEY COUNTRY CLUB**