

MEMO

To: New Jersey Press Association
From: Thomas J. Cafferty, Esq., Nomi I. Lowy, Esq. and Lauren James-Weir, Esq.
Date: May 20, 2010
RE: Courier-Post Newspaper, et al. v. County of Camden, et al.
Our File No. 9970.8400

On May 20, 2010, the Appellate Division decided the case of Courier-Post Newspaper, et al. v. County of Camden, et al. The Court, reversing the decision of the trial court, determined that: (1) the Courier-Post has standing to challenge the publication of legal notices in The Philadelphia Inquirer at rates less than those specified by statute; (2) the Philadelphia Inquirer is printed and published outside of New Jersey; (3) neither Camden County nor the Sheriff of Camden County are authorized to circumvent the statutory rates applicable to legal notices; and (4) the prohibition against the publication of legal notices in out-of-state newspapers does not violate the Commerce Clause of the United States Constitution.

In determining that the Courier-Post has standing to challenge Camden County's contract with The Philadelphia Inquirer, the Court recognized that "the Courier-Post has a direct financial stake in the issues presented in this litigation." The Court noted that the Courier-Post has "previously published legal notices for defendants and maintains that it is qualified to do so" and that "it contends that if the law were properly followed, it would be the only daily newspaper qualified to publish notices for the Sheriff."

In reaching its decision that The Philadelphia Inquirer is printed outside of New Jersey, the Court stated that "the record is undisputed that paper copies...are printed on newsprint with news ink on printing presses located in Conshohocken, Pennsylvania." Regarding its conclusion that The Philadelphia Inquirer is published outside of New Jersey, the Court stated that the "home office" and "the activities central to the creation and production of the newspaper are headquartered in Pennsylvania." The Court found unpersuasive the defendants' argument that The Philadelphia Inquirer is printed and published in New Jersey because it is available online and may be viewed and printed using a computer in New Jersey. The Court emphasized that the place of publication is "where the newspaper is prepared and 'given to the world'...not the place where the reader receives the newspaper."

In concluding that the placement of legal notices in *The Philadelphia Inquirer* violates the statute governing the rates for official advertising, the Court recognized that, generally, statutory language must be given its ordinary and well understood meaning. The Court determined that the ordinary and well understood meaning of the legal advertising statute is that the rates for such advertising shall not be in excess of **or below** the statutory rates. The Court recognized one of the statute's legislative purposes is to protect the public from inflated rates. The Court also discussed NJPA's assertion that a fixed rate removes the temptation of a public entity to favor, with a higher rate, a newspaper whose coverage is positive, while punishing, with a lower rate, a newspaper whose coverage is less favorable. The Court concluded by stating that "[i]n any event, any debate about the wisdom of the current statute must be addressed by the Legislature."

Additionally, the Court determined that the statute requiring legal notices to be placed in newspapers published and printed in New Jersey does not violate the Commerce Clause because the State, as the purchaser of the advertisement, is acting a market participant and, as such, may extend a preference to in-state business.

Finally, the Court in giving prospective effect to its opinion stated that the decision would not require republication of notices already published.