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## Inadmissible

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**Counting Causes** — You'd think **McCarter & English**, as the leader in total pro bono hours among all New Jersey firms, has sophisticated software in place to track it. Not so. The general time-and-billing system is used, and it's proven inadequate to account for the special needs associated with pro bono work — especially in a firm dispersed across six states.



Emily Goldberg

That's why **Emily Goldberg**, McCarter's new pro bono director, got the firm to sign on to new software written for the task: Pro Bono Manager, created by Pro Bono Net, a nonprofit organization in New York.

Goldberg says tracking pro bono work is more complex because data must be sliced and diced in different ways. For one thing, most every case has two clients: the actual pro bono client and the referring organization. Also, cases are often part of larger initiatives. "It's so much more than just client numbers and the number of hours," she says.

Goldberg says the new system makes it much easier to pull together data as it's requested, whether by the press — the *Law Journal* does an annual pro bono survey — or by the Law Firm Pro Bono Challenge, instituted by the Pro Bono Institute in Washington, D.C., which sets targets for large firms' pro bono activity.

Pro Bono Manager is also a data-gathering tool, allowing Goldberg to send notifications to lawyers firmwide, prompting them to update case information. And attorneys can set up profiles indicating their areas of interest, making case assignments easier.

McCarter cracked the 20,000-pro-bono-hour mark in 2007, the only N.J. firm to have done so. Goldberg expects the system to be in operation by Oct. 1, the start of the firm's fiscal year.

Pro Bono Manager was created three years ago with a grant from the Bill and Melinda Gates Foundation. About 10 firms are now licensed users, the organization says.

**Cup Comes Up Empty** — **Harold Hoffman's** unusual brand of consumer advocacy had a setback last Monday. The Englewood solo has filed dozens of consumer fraud putative class actions in recent years in which he is the class representative as well as the class counsel. Several of the suits have targeted products claiming to improve male sexual performance, but his latest case is over an espresso machine.

Last week, the Appellate Division affirmed dismissal of his consumer fraud suit over a Nespresso Model D290 he bought for \$299 at Bloomingdale's in Hackensack. He says the store made fraudulent claims that the regular price was \$625 and the manufacturer's suggested retail price was \$425. Bergen County Superior Court Judge **Joseph Conte** dismissed the case, finding no ascertainable damages. The appeals panel of **Carmen Messano** and **Laura LeWinn** agreed. "The claim that defendant misrepresented the MSRP or regular price of this item provides no basis for establishing an ascertainable loss," the panel said.



The Nespresso D290

Hoffman says he has petitioned the Supreme Court for certification. "The court is saying merchants, with impunity, can lie about goods being sold at a discount which does not exist," he says.

Defense lawyer **Sigrid Franzblau**, of **Riker, Danzig, Scherer, Hyland & Perretti** in Morristown, declines to comment.

**Fast Break** — Divorces can drag on for a long time, bogged down by custody and property disputes, but Craig and Kristen B. got theirs done much faster. Ocean County Superior Court Judge **Sheldon Franklin** granted them one on June 23, a day after the case was filed.

Craig's lawyer, **Sarina Gianna**, says he retained her for a hearing in a domestic violence case filed by Kristen, who claimed he threatened to kill her if she divorced him. Craig denied saying that and insisted he actually wanted a divorce, so Gianna, a Brick solo, advised him to go ahead and file one before the June 23 hearing to help refute Kristen.



Agnes Rybar

Craig filed the complaint pro se on June 22. At the hearing the next day, the couple negotiated a property settlement and agreed on the custody, support and parenting of their daughter, then decided there was no reason to delay the divorce.

They were sent to Franklin, who granted it, remarking that it was a record for him. Franklin has been a Family Part judge since 1999.

Kristen's lawyer, **Agnes Rybar** of **Horn Turnbach & Rybar** in Toms River, says it was also a record breaker for her but notes that the marriage lasted less than five years and there was little property to divide.

According to court spokeswoman Tammy Kendig, the median time for a divorce is 2.5 months.

**Baking Done Off Premises** — The right to smoke pot for health reasons while not on the job has triggered a suit against Wal-Mart Stores Inc. Joseph Casias, a 30-year-old store manager in Battle Creek, Mich., suffering from an inoperable brain tumor and cancer, alleges he was fired after testing positive for marijuana, although he was legally registered to use the drug.

Similar suits have been filed in California, Montana, Oregon and Washington state. So far, the courts have sided with employers, holding that they don't have to accommodate medical



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marijuana users because pot is still illegal under federal law and its use could pose a safety risk.

In Michigan, however, the medical marijuana statute has language designed to protect those who use pot for health reasons from adverse employment actions. "We think there's a very solid basis to distinguish those cases [from the Michigan case]," says **Scott Michelman**, an American Civil Liberties Union staff attorney who is one of the lawyers for Casias.



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Wal-Mart said in a statement that it was sympathetic to Casias' condition but had to consider the overall safety of customers and employees. It also seemed to make a plea for clearer standards: "As more states allow this treatment, employers are left without any guidelines except the federal standard. In these cases, until further guidance is available, we will always default to what we believe is the safest environment for our associates and customers."

— *By Candida DaFonseca, Charles Toutant, Mary Pat Gallagher and Tresa Baldas*

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