

**Conviction Reversed Where Court Excluded
Character Evidence**

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character evidence**

State v Mahoney

**____ NJ Super. ____ 868 A.
2d 1171**

**(App. Div., A-3364-02T2
decide March 17, 2005).**

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Defendant is an attorney who was tried before a jury and convicted of third-degree theft by failure to make required disposition of property; third-degree misapplication of entrusted property; and two counts of third-degree forgery. The conviction for theft was based on defendant's delay in disbursing to his clients proceeds from a settlement of a wrongful-death case. With respect to the forgery conviction, the state presented evidence that defendant endorsed and deposited the three-party settlement check without his clients' authorization. The prosecutor denied defendant's application to enter pretrial intervention (PTI) and, on appeal from the prosecutor's denial, the trial court affirmed. Relying on PTI Guideline 3(i), as codified in Rule 3:28, the prosecutor concluded that, as a licensed attorney, defendant was presumptively ineligible to participate in PTI because he was charged with committing crimes that involved a breach of the public trust.

The Appellate Division reversed the convictions. They concluded that the trial court improperly excluded substantial portions of proffered testimony by defendant's character witnesses. The trial court erroneously prevented these witnesses from testifying about defendant's character traits as an attorney, and improperly barred them from testifying about the specific experiences they had with defendant that formed the basis for their opinions. The trial court also improperly submitted to the jury the full text of Rule 1:21-6. The error here involved the court's failure to provide instructions to the jury on how to consider and apply the rule's directives to the facts of this criminal case. The court also reversed based on the prosecutor's improper remarks during summation.

The Appellate Division court affirmed, the trial court's denial of defendant's PTI application. Although defendant's status as a lawyer does not operate as a per se impediment for

consideration for enrollment into PTI, we are satisfied that the trial court correctly determined that defendant failed to show that the prosecutor's application of the presumption of ineligibility articulated in Guideline 3(i)(4) constituted a patent abuse of discretion.

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