

SUPREME COURT OF NEW JERSEY

WHEREAS the Court in State v. Eileen Cassidy (A-58-16) issued a decision on November 13, 2018 holding that Alcotest results from machines calibrated without using a thermometer that produces NIST-traceable temperature readings in the calibration process are inadmissible as evidence; and

WHEREAS the Administrative Office of the Courts previously had been notified by the New Jersey Office of the Attorney General that evidential breath samples from defendants in 20,667 driving while intoxicated (DWI) cases were procured using Alcotest machines calibrated without using a NIST-traceable thermometer and over 13,000 of those cases involved findings of guilty, either by trial or by plea; and

WHEREAS the Court's opinion in State v. Cassidy directed the Administrative Office of the Courts to monitor and determine how best to handle cases affected by the Court's decision; and

WHEREAS the Administrative Office of the Courts has recommended that a special master be appointed for coordination of the management of such cases on a statewide basis to develop better processing of these cases, to provide greater consistency and efficiency, and to minimize conflicts and delays; and

WHEREAS the Administrative Office of the Courts also has recommended that the special master have the authority to dismiss or take other appropriate judicial action on affected cases;

IT IS ORDERED pursuant to N.J. Const. (1947) Art. 6, § 2, ¶ 3, that, effective immediately and until further order, **Superior Court Judge Robert A. Fall**, retired and serving on recall, in addition to any other judicial assignment on recall, is hereby designated as the special master with judicial authority on a statewide basis to make judicial and administrative decisions relating to adjudicated cases in which evidential breath samples

were procured using Alcotest machines calibrated without using a NIST-traceable thermometer; and

It is FURTHER ORDERED that this designation of Judge Fall as special master shall last until further order, with Judge Fall being asked to report to the Court as soon as practicable, and regularly thereafter, on the issue of whether statewide management of the subject issues remains beneficial and in the public interest or whether the cases would be better managed at the vicinage and/or municipal level.

For the Court:

/s/ Stuart Rabner

Chief Justice

Dated: January 29, 2019