

# **Bond Case Briefs**

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## **CITY COUNSEL - NEW JERSEY**

### **Booker v. Rice**

**Superior Court of New Jersey, Appellate Division - July 5, 2013 - A.3d - 2013 WL 3357614**

Mayor, city clerk, members of city council, and appointee for vacant council position filed suit against members of city council who voted against appointment and two council members who abstained from vote, seeking order to show cause why declaratory judgment should not enter confirming appointee's appointment to council or, in alternative, why mandatory injunction should not issue to compel council members to attend and vote at special council meeting. With parties' consent, the Superior Court, Law Division, Essex County, Dennis F. Carey, III, J., issued interim order compelling all council members to appear for special vote. Four council members voted yes, two voted no, and two abstained. Mayor voted to break alleged tie, in favor of appointment. The Superior Court then issued ruling that abstention was not yes or no vote, and therefore, there was not "tie" that triggered mayor's authority to vote to break tie. Plaintiffs appealed.

The Superior Court, Appellate Division, held that:

- Abstentions of two city council members on vote to fill vacant position were not "no" votes resulting in tie, so as to trigger statutory authority for mayor to vote in order to break tie;
- City council rule of procedure that council member "may abstain from voting on any matter," and that "such abstention shall not be counted as a yes or no vote but shall be recorded in the minutes," was not arbitrary, capricious, and unreasonable; and
- Abstention on vote was permissible exercise of statutory discretion to choose to have vacancy filled by election of voters.

Incidentally, Cory Booker was a law school classmate of mine. Probably should have latched on to those coattails, eh?