



THE SUFFOLK LAWYER

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Tax Law: The 2011 Offshore Voluntary Disclosure Initiative

By Eric L. Morgenthal

As you read this article, someone, somewhere in the world, is gathering strength. Hoping and working toward someday coming to America to seek out a better life. As the expression goes, these people have taken their first steps down the road of their future "armed with nothing but their

own vision." They pray that with years of hard work and perseverance, they too can obtain success and prosperity. Oftentimes, their motivation is to transfer money back home to their families in the old country. But today this Ellis Island narrative plays out far differently than it did in generations past. Now, with the Patriot Act and the Financial Crimes Enforcement Network

(FinCEN), the U.S. government wants to know about these transfers.

I would like to describe the Federal Foreign Bank Account Reporting ("FBAR") Voluntary Disclosure program as a pathway back for tax evading criminals and financiers who intended to circumvent the U.S. tax system. And it is for many clients.

But based upon significant experience in this area of International Tax practice, it hasn't always been the case. Often, I have heard from Holocaust survivors, refugees and immigrants from impoverished parts of the globe who are first learning about the compliance and financial reporting burdens that come when combining U.S. residency with money. (Note: the standard for compliance is U.S. residency, not U.S. citizenship.)

Due to their success in receiving 15,000 applications under the 2009 enforcement initiative ("OVDP"), the Federal Government has recently unveiled Round II: *The 2011 Offshore Voluntary Disclosure Initiative ("OVDI")*. And if anything, it proves Will Rogers was wrong. Sometimes you do get a second



Eric L. Morgenthal

chance to make a first impression. Under the program, U.S. "persons" making a "voluntary disclosure" can again avoid criminal liability by declaring their offshore bank accounts and reporting certain foreign transactions. And of course, it wouldn't feel like an FBAR disclosure program without a whole new list of IRS FAQ's to follow. But

like before, not all nuances about the application of tax law set forth in the Code and Regulations are addressed in the IRS list of FAQ's about the OVDI.

The origins of the FBAR filing requirements are rooted in the Bank Secrecy Act of 40 years ago but were not heavily enforced. In 2003, the IRS was provided authority by FinCEN to police these provisions. In 2004, Congress assisted the IRS by raising the ante for those who failed to comply with the FBAR compliance provisions. And failure carried some severe penalties, raising the potential liability to the greater of \$100,000 or 50 percent of the account balance per offense, as well as potential criminal exposure. In fact, even tax return preparers can now
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Bridging The Gap



Photo by Arthur Schulman

A. Craig Purcell, Wende Doniger, and James Fagan explain the basics of civil practice at the Academy's recent CLE weekend for new lawyers. More photos on page 16.

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PRESIDENT'S MESSAGE

These Times They Are a Changin'

By Sheryl L. Randazzo



Sheryl L. Randazzo

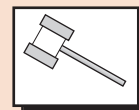
It's a good thing that the weather is finally starting to get nicer. Winter has been getting to us all and the cold and gloomy environment makes otherwise challenging events and changing circumstances even more unsettling. And this spring, challenges and changes do abound...

Personal injury attorneys, both plaintiff's and defense, as well as the public at large, are on the cusp of being dramatically impacted by the most recent incantation of tort reform. Through a recent Task Force initiated by Governor Cuomo, otherwise titled the Medicaid Redesign Team, a proposal is before the New York State Legislature to create a Neurologically Impaired Infant Medical Indemnity Fund and to institute a cap on non-economic damages for medical malpractice awards. Former SCBA President Craig Purcell, on behalf of the SCBA and in his role as a Co-Chair of the NYSBA's Committee on the Tort System, is leading the charge to oppose the proposal. (See article on page 5, "Governor's Proposed Cap to Medical Malpractice Awards Opposed," as well as Mr. Purcell's front page article from last month's *Suffolk Lawyer*, "NYSBA Committee on the Tort System Meets, Plans Opposition to Tort Reform Proposal.") Clearly, the public's rights are under attack and as members of the legal profession we need to respond immediately.

Fiscal constraints on the judiciary have also hit especially close to home. Based upon recent budget cuts, all pro bono grant funding through New York State has been eliminated. Bringing that into SCBA terms, the position of our highly respected and extremely capable Pro Bono Coordinator Linda Novick will lack funds completely effective March 31. This is a tremendous blow to pro bono efforts countywide, and it will drastically impact recruitment of new

(Continued on page 20)

FOCUS ON
DIVERSITY
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BAR EVENTS

Membership Appreciation Rescheduled

Tuesday, April 5, 6 p.m.

Bar Center.

Author and motivational speaker Jon Gordon

Healthy Life Series – Massage as a Way to Improve Your Life

Thursday, April 7, 4 to 6 p.m.

Bar Center

SCBA Supreme Court Retiring Supreme Court Justice Robert W. Doyle Honored

Tuesday, April 12, 6 p.m.

Watermill Restaurant, Smithtown

Contact Marion for further information

Annual Meeting

Monday, May 2, 6 p.m.

Bar Center



Suffolk County Bar Association

560 Wheeler Road • Hauppauge NY 11788-4357

Phone (631) 234-5511 • Fax # (631) 234-5899

E-MAIL: SCBA@SCBA.ORG

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Our Mission

“The purposes and objects for which the Association is established shall be cultivating the science of jurisprudence, promoting reforms in the law, facilitating the administration of justice, elevating the standard of integrity, honor and courtesy in the legal profession and cherishing the spirit of the members.”

Important Information from the Lawyers Committee on Alcohol & Drug Abuse:

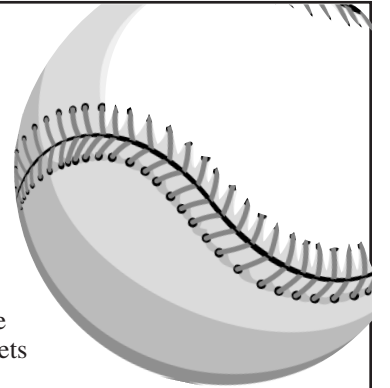
THOMAS MOORE GROUP TWELVE-STEP MEETING

Every Wednesday at 6 p.m.,
Parish Outreach House, Kings Road - Hauppauge
All who are associated with the legal profession welcome.

**LAWYERS COMMITTEE HELP-LINE:
631-697-2499**

Ballpark Fun

Join the Suffolk County Bar Association for an exciting night of baseball on Thursday, June 23, as the Long Island Ducks take on the Camden Riversharks at Bethpage Ballpark. Tickets, which are \$30 apiece, include admission to the game and a pre-game barbeque. To reserve your tickets, contact Jane LaCova at (631) 243-5511. Tickets are expected to sell out quickly. Reserve your tickets today for this popular event.



SCBA Calendar

All meetings are held at the Suffolk County Bar Association Bar Center, unless otherwise specified. Please be aware that dates, times and locations may be changed because of conditions beyond our control. Please check the SCBA website (scba.org) for any changes/additions or deletions which may occur. For any questions call: 631-234-5511.

OF ASSOCIATION MEETINGS AND EVENTS

April 2011

- 4 Monday** Annual Business Expo, Hyatt Regency Hotel, Hauppauge. Working Parents Committee, 1:00 pm to 2:15 pm, Board Room. Insurance & Negligence - Defense Counsel, E.B.T. Room.
- 5 Tuesday** Membership Appreciation Event - Guest Author, Speaker: Jon Gordon, 6:00 p.m., Bar Center. Call Bar Center for reservation.
- 6 Wednesday** Appellate Practice Committee, 5:30 p.m., Board Room.
- 7 Thursday** Healthy Life Series -Massage as a Way to Improve Your Life, 4:00 pm. - 6:00 pm., \$15:00. Call Bar Center for reservations.
- 9 Saturday** “Music with Tots: a Morning of Fun and Music Appreciation”, presented by the Working Parents Committee, featuring Mike Soloway, Music Instructor, of North Shore Musikgarten, 10:00 a.m., Bar Center. Bagel Breakfast Begins at 9:30 am. Reservations are mandatory. Call Marion at Bar Center.
- 11 Monday** Executive Committee, 12:30 p.m., Board Room.
- 12 Tuesday** Education Law Committee, 12:30 p.m., Board Room. Surrogate’s Court Committee, 5:30 p.m., Board Room. Annual Supreme Court Committee Dinner, Guest of Honor is Supreme Court Justice Robert W. Doyle, Watermill Restaurant, Smithtown. Call Bar Center for reservations.
- 13 Wednesday** Labor & Employment Law Committee, 8:00 a.m., Board Room. Solo & Small Firm Practitioners Committee, 6:00 p.m., Board Room.
- 14 Thursday** Criminal Law Committee, 5:30 p.m., E.B.T. Room. Joint New Members/Member Benefits Committee, 6:00 p.m., Board Room.
- 19 Tuesday** Commercial & Corporate Law Committee, 5:30 p.m., Board Room
- 20 Wednesday** Elder Law & Estate Planning Committee, 12:15 p.m., Great Hall. Health & Hospital Law Committee, 5:30 p.m., Board Room.
- 21 Thursday** Professional Ethics & Civility Committee, 5:30 p.m., Board Room.
- 25 Monday** Board of Directors, 5:30 p.m., Board Room.
- 28 Thursday** Intellectual Property Law, 6:00 p.m., Board Room.
- 29 Friday** Annual DLWP Dinner, 6:00 pm-11:00 pm, Crest Hollow Country Club, Woodbury. Call Dennis Chase for reservations, 631-348-7500.

MAY 2011

- 2 Monday** SCBA’s Annual Meeting, 6:00 p.m., Great Hall, Bar Center. Election of Officers, Directors and members of the Nominating Committee. Awards of Recognition, Golden Anniversary Awards and Annual SCBA High School Scholarship Award. Call Bar Center for reservations.
- 5 Thursday** Defensive Driving Course, 6:00 p.m., Great Hall. Further details forthcoming. Municipal Law Committee, 6:00 pm, Board Room.
- 9 Monday** Executive Committee meeting, 12:30 pm, Board Room. Insurance, Negligence - Defense Counsel Committee, 5:30 p.m., E.B.T. Room.
- 12 Thursday** Criminal Law Committee, 5:30 p.m., E.B.T. Room.
- 14 Saturday** Animal Law Committee, “Doggy Day”. Further details forthcoming.



THE SUFFOLK LAWYER

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James Zadroga 9/11 Health & Compensation Act of 2010

By Troy G. Rosasco and Daniel J. Hansen

President Obama signed the James Zadroga 9/11 Health and Compensation Act ("Zadroga Act") on Jan. 2, 2011. It provided a total of \$4.3 billion in health benefits and financial compensation for victims, responders, and others harmed by the attacks of September 11th and its aftermath.

The Zadroga Act accomplishes two goals important for individuals who suffered injuries or illnesses related to either the actual attacks or the subsequent cleanup. First, Title I of the Zadroga 9/11 Act establishes a comprehensive health plan to monitor and treat injuries suffered by first responders and survivors—including firefighters, police officers, EMT's, rescue workers, construction workers, cleanup workers, local residents, local area workers, and school children—as the result of exposure to toxic dust and debris around Ground Zero and other specified areas. Second, Title II of the Zadroga 9/11 Act reopens and expands a number of elements of the September 11th Victim Compensation Fund of 2001.

There are a number of health programs funded under the Zadroga Act. The new law establishes a new WTC responders medical monitoring and treatment program to provide medical evaluation, monitoring, and treatment benefits (including prescription drug benefits) to emergency responders and clean-up workers who were impacted by the WTC attack on September 11th. The benefits are delivered through medical "Centers of Excellence."

The Zadroga Act also establishes a medical monitoring and treatment program to pay for medical monitoring for WTC responders who performed rescue, recovery, demolition, debris clean-up, and

related services. If the responder meets the eligibility criteria and is accepted into the program, the responder is entitled to receive treatment if two conditions are met: (1) the condition is among those identified WTC-related listed conditions including a number of "aerodigestive" disorders, listed mental health conditions, and musculoskeletal disorders occurring during the rescue or recovery efforts, and (2) a physician at a Clinical Center of Excellence determines that a condition was caused or contributed to by exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 11th attacks.

The Zadroga Act also establishes a "survivor program" for non-responders who lived, worked, went to school or were otherwise in a defined area of lower Manhattan (and parts of Brooklyn) for a certain time period after the September 11th attacks. The criteria and medical eligibility determinations for survivors are the same as those that apply to the responders program. The survivor program is the "secondary payor" to any applicable public or private health insurance for the conditions that are not work-related.

The Zadroga Act also reopens and significantly expands a number of aspects of the September 11th Victims Compensation Fund of 2001. The Zadroga Act amends the original September 11th Compensation Fund by extending the time in which a claim may be filed for a period of five years from the date that Special Master (who has not yet been appointed) updates the regulations under the Zadroga 9/11 Act. The Victims' Compensation Fund was originally closed on December 22, 2003.

The Zadroga Act also expands the 9/11 Victim Compensation Fund (VCF) in several important respects. The original VCF

provided a right to file a claim only to those individuals injured while "present at the site" of the disasters or in the "immediate aftermath" of the September 11th attacks. "Present at the site" was originally defined by the VCF as physically present at the time of the crashes in the buildings, portions of the buildings that were destroyed as a result of the airplane crashing or any contiguous area that was sufficiently close to the crash site that there was a demonstrable risk of physical harm from the impact of aircraft or any subsequent fire, explosions, or collapse of buildings. As a result, rescue and clean-up workers injured at the buildings or areas not adjacent to the site were not originally eligible to file a claim as they were not "present at the site."

The original VCF regulations defined the "immediate aftermath" of the crashes for claimants, other than rescue workers, as from the time of the crashes for a period of 12 hours after the crashes. For rescue workers, the period of time defined as the "immediate aftermath" was extended to include the period from the crashes until 96 hours after the crashes. Again, rescue and recovery workers who arrived more than 96 hours after the crash and were injured were excluded from filing a claim under the original VCF.

The Zadroga Act expands the definition of "immediate aftermath" to well beyond the 12 and 96 hour post-crash periods defined in the original law. "Immediate aftermath" is redefined by the Zadroga Act to mean "any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on May 30, 2002." The expansion of what was considered the "immediate aftermath" of the terrorist attacks significantly broadens the pool of claimants in the VCF to include the rescue, construction, an other clean-up



Troy G. Rosasco



Daniel J. Hansen

workers who suffered injuries during the ongoing rescue and clean-up efforts that persisted for many months after the September 11th attacks.

The Zadroga Act also expands definition of the "crash site." The term "9/11 crash site" is defined by the Zadroga Act to mean: "(A) the World Trade Center site, Pentagon site, and Shanksville, Pennsylvania site; (B) the buildings or portions of buildings that were destroyed as a result of the terrorist-related aircraft crashes of September 11, 2001; (C) any "area contiguous to a site of such crashes that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm " resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (including the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured individuals); and (D) any area related to, or along, "routes of debris removal," such as barges and the Fresh Kills landfill on Staten Island.

One major issue that is unclear at the time of this writing is whether the residents, workers, and others in lower Manhattan who were sickened by the toxic fallout from the 9/11 attacks are eligible claimants under the VCF. The broadened language of the Zadroga Act amendments

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Meet Your SCBA Colleague *James Fouassier*, a healthcare law attorney, might never have joined the profession had an unlikely turn of events not shaped his future.

By Laura Lane

What happened in your life that stopped you from immediately going to law school as you'd always wanted to do? It is true that I'd always wanted to become an attorney and I was interested in politics too when I was younger. But my father died when I was in college, so there was no money for me to go to law school.

Your path to becoming an attorney may have never come to fruition had you not worked in the Nassau County Supreme Court. I was hired as a confidential attendant for the late Supreme Court Justice Douglas Young. I was inspired by these judges. Some were scholars of the highest order. My judge, Justice Young, was a big help to me professionally. I learned how to use the law library, could put a set of motion papers together by memory and got to know the attorneys. I worked in the court by day and went to law school by night.

Did this help you to get your first job as an attorney? It definitely gave me an edge. I had practical knowledge that you don't get in law school. I was at the Supreme Court for six years.

What do you do at Stony Brook University Hospital and how did you end up there? I negotiate managed care

contracts for the hospital. Prior to this job I was with the Attorney General's office where I was counsel to the hospital.

How did the opportunity with the Attorney General's office come about? I was a solo practitioner and found it difficult to earn a stable income. I was married at the time and had children. I accepted the job as an Assistant Attorney General in the New York State Attorney General's Civil Recoveries Bureau unit for Stony Brook University Hospital. I served as legal counsel to the hospital in the preparation and negotiation of managed care agreements, as well as in the resolution of significant revenue issues between the hospital and major managed care payers.

Then you were offered an opportunity to go to the hospital directly, correct? Yes, in late 2004 I joined the staff of the hospital's Managed Care Department. It was a good segue for me because in the AG's Office I was peripherally involved in managed care contract negotiations. When this opportunity came to do it full time I accepted it.

What do you enjoy about your current position at Stony Brook? What I like about it is that the work is highly specialized and technically complex. The job allows an attorney to use his negotiation skills to the fullest. The downside is that I

never get into court and I don't litigate which I used to enjoy.

Healthcare is a hot topic these days. I know you lecture often at the SCBA as well as other places. What types of issues do you find important to share? I address a number of issues but usually focus on provider payer relationships. I think this will continue to be important in the future. Healthcare is a dynamic field for attorneys today because of healthcare reform which results in many legal and contractual changes that will appear in short order. This will affect my job as well as time goes by. Even general practitioners will need to know about healthcare reform.

When did you join the SCBA and why? I became an attorney in 1982 and joined the bar in 1990 because prior to that I didn't have the flexibility to participate. I have had the luxury of being involved in the SCBA and attend the functions and activities. I've been a SCBA Health and Hospital Law Committee Co-Chair for several years too and regularly attend seminars and programs.

Why would you recommend membership in the SCBA? The Suffolk County Bar Association has been able to hold onto a genuine cordiality among its members and that's very attractive. And the bar's meetings and programs keep up with what



James Fouassier

is of interest to lawyers today.

How do you believe membership benefits new members as well as old? The new member resources and networking opportunities speak for themselves. Older members are afforded opportunities to meet other members and advance their professional knowledge and education. The law is a profession, not just a business. At the end of the day, the SCBA helps us recognize it as a profession first and a business second.

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- **Civil Cases:** Competency Issues, Head Trauma, Sexual Harassment, Discrimination, Immigration, & Post-Traumatic Stress Disorders

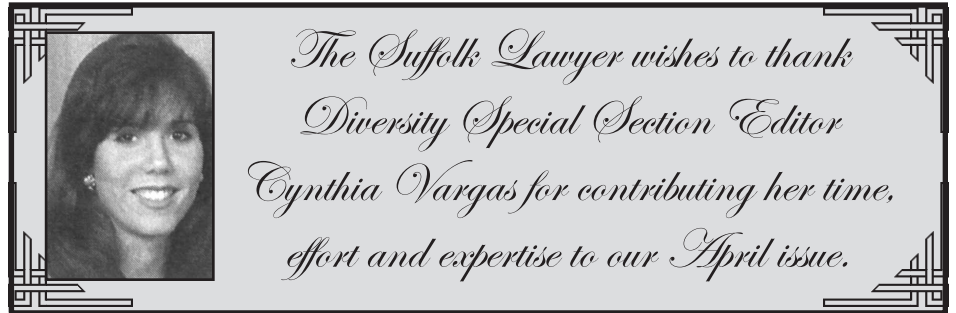
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*The Suffolk Lawyer wishes to thank
Diversity Special Section Editor
Cynthia Vargas for contributing her time,
effort and expertise to our April issue.*

SCBA Annual Meeting Elections and Recognition

By Jane LaCova

The Annual Meeting is the last important event in our administrative year. This is the occasion that provides an opportunity to conduct necessary business and to pay recognition to our members who have made significant contributions to the Association. As our Bylaws dictate, the Annual Meeting shall be held on the first Monday in May. It is also a time to become reacquainted with your colleagues free from litigation or legal dealings.

This year's Annual Meeting will be held at our Bar Center on Monday, May 2, at 6 p.m. Included in the business to be transacted is our annual election. This year's

slate includes: **Arthur E. Shulman**, President Elect; **Dennis R. Chase**, First Vice President; **William T. Ferris III**, Second Vice President; **Donna England**, Treasurer; **John R. Calcagni**, Secretary. Directors who will serve a three year term expiring in 2014 include: **Hon. Andrew A. Crecca**, **Diane K. Farrell**, **Hon. John Kelly** (who will also become Dean of the Suffolk Academy of Law) and **William J. McDonald**. Members to be elected to the Nominating Committee for a three year term are: **Hon. Peter H. Mayer**, **Sheryl L. Randazzo** and **Ted M. Rosenberg**.

The incoming President, **Matthew E. Pachman**, by virtue of his election as President Elect last year, does not stand

(Continued on page 16)

BENCH BRIEFS

By Elaine M. Colavito

SUFFOLK COUNTY SUPREME COURT

Honorable Paul J. Baisley, Jr.

Motion for an order pursuant to CPLR § 2004, granting defendant leave to serve a late answer denied; defendant's attempt to vacate her default nearly one year later, deemed untimely.

In *Abdul Q. Malik and Hodia Malik v. Builders Warehouse Corp. d/b/a Think Kitchen and Roman Hennessy and Alexandra Hennessy*, Index No.: 384/08, decided on June 30, 2010, the court denied the motion by defendant Alexandra Hennessy for an order pur-

suant to CPLR § 2004 granting such defendant leave to serve a late answer. In rendering its decision, the court noted that in its prior order dated May 20, 2009, defendant had opposed plaintiffs' motion for a default judgment against her, without, cross-moving to vacate her default or for an extension of time to answer plaintiffs' complaint pursuant to CPLR § 2004. The court further reasoned that although plaintiffs' motion for default judgment was denied against Hennessy, she took no further steps to attempt to vacate her default until nearly one year later, which the court deemed as untimely.

Motion for a default judgment pursuant to CPLR §3215(b) denied; leave of court

(Continued on page 18)

Not Among Our Law School Goals

UNMANAGEABLE STRESS • CLINICAL DEPRESSION •
ALCOHOL DEPENDENCY • SUBSTANCE ABUSE •
SLEEPLESS NIGHTS • PHYSICAL DYSFUNCTION •

Sound familiar? You're not alone.

Lawyers rank first in incidence rate for clinical depression among 105 professions surveyed. Do you need help or do you just want to talk about it?

The Lawyer Assistance Foundation and Lawyers Helping Lawyers Committee of the Suffolk County Bar Association can help. We can provide necessary assistance, whether a sympathetic ear or a referral for professional assistance when necessary.

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Interested?

Call: Rosemarie Bruno (631)979-3480,
Arthur Olmstead (631) 754-3200 from the
Lawyers Helping Lawyers Committee;

Barry L. Warren, Managing Director of
The Lawyer Assistance Foundation (631) 265-0010;

Jane LaCova, Executive Director, Suffolk
County Bar Association – (631) 234-5511, Ext. 231.

Let Us Help You.

Creating a More Equal, Balanced and Better Playing Field for Women

By Kim M. Smith

The inequality of women has been a major concern throughout history. While women as a whole have made leaps and bounds educationally and professionally, there is still a significant lag in their equality both economically and politically.

For the first time in history, recent studies show that women have become the majority of the workforce at Fortune 500

companies and own the majority of small start-up businesses. However, women only account for 18 percent of the corporate officer positions and next to none of the chief executive positions at these companies. Women's pay is still far below the pay of men in the same positions and we are under-represented in the areas of technology, math, science, and engineering.

With regard to the field of law, over the



Kim M. Smith

last 25 years women have come to represent approximately 50 percent of all law school graduates and constitute a significant percentage of lawyers in law firms, corporate legal departments, and government entities. Yet most women lawyers still represent a very small percentage of the law firm leaders, general counsel, judiciary, law school deans and government officials.

Despite the significant number of women in the professional workforce, and the advancements that they have attained, the disparities of their positions in the judiciary as well as the political arena remain disconcerting. In Suffolk County, of the 18 member Suffolk County Legislature, only three are women; of the 31 village mayors, only four are women; of the 28 Supreme Court Justices, only seven are women; of the 11 County Court Judges, only one is a woman; of the 24 District Court Judges, only 6 are women; and of the 55 town and village justices only 16 are women. To date, all members of the New York State Assembly from Suffolk County are men and there has never been a woman from Suffolk County in the State Senate or in Congress.

Many ask, with all of the advancements of women within the law and with a dynamic and resourceful Suffolk County Bar Association, do we still need a Women's Bar Association. The answer to this question is yes, there is still much to be done to overcome gender bias and promote women in the field of law. While

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some of the challenges that initiated the creation of both the New York State Women's Bar Association and the Suffolk County Chapter have dissipated, many of them still remain and new challenges are being faced each day. It is as important as ever, if not even more so, for women to use their power and their strength to continue to strive to improve the status of women, to educate women lawyers, to support their professional development and to promote the advancement of women in the legal profession and society as a whole.

The SCBA on has been a great resource and support system for women in the law, as has the New York State Bar Association's Committee on Women in the Law. Together, both associations have promoted and supported women as leaders through their countless programs and numerous resources. It is my goal as current Vice President of programs and nominated President of the Suffolk County Chapter of the New York State Women's Bar Association to continue to work together with the SCBA to present joint programs and enable more opportunities for the advancement and benefit of women in the law and beyond. I believe that with continued and increased mutual

(Continued on page 20)

Saying Checkmate in a Tough Economy

By Andrea Amoa

The concept of "Diversity" is intended to describe a broad spectrum of multiple communities and, with respect to the practice of law, should serve to alleviate the apparent imbalance of representation within the legal system. Yet, the number of minority attorneys practicing in Suffolk County is truly disproportionate in comparison to the number of minority clients in need of representation.



Andrea Amoa

I attended Thurgood Marshall School of Law in Houston, Texas, a historically black law school that is ironically now known for its commitment to diversity. Thurgood Marshall School of Law not only provided me with the tools necessary to pass two bar examinations (New York and New Jersey), but also exposed me to a vast amount of successful

minority attorneys and judges that have been instrumental in my success as a practicing attorney thus far. I have been groomed to acknowledge that a diverse cultural background tends to put a different perspective on how one perceives the

(Continued on page 21)

"I have been groomed to acknowledge that a diverse cultural background tends to put a different perspective on how one perceives the law."

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Governor's Proposed Cap to Medical Malpractice Awards Opposed

By Craig Purcell

Note: This is the second of a series of articles.

The NYSBA has started a full offensive attacking recent recommendations from Governor Cuomo's Medicaid Reform Task Force to cap malpractice awards for non-economic losses at \$250,000. The Task Force also called for a major reform in malpractice litigation on behalf of brain-damaged infants.

I recently had the privilege of Co-Chairing the NYSBA's Committee on the Tort System. Committee members drafted a memo opposing the Governor's Task Force recommendations. This proposed cap of \$250,000 on malpractice awards for non-economic damages would, basically, take away the right of parents of brain-damaged children to bring lawsuits against any health care providers whose negligence contributed to the infant's condition. The memo pointed out that these proposals deprive citizens of their right to access the civil justice system and the right to a trial by jury in the case of neurologically impaired infants.

The committee added that none of the 27 members of the Governor's Task Force are attorneys, judges, or members of patient advocacy groups. In fact, the great



Craig Purcell

majority of the members of the Task Force are employed in the healthcare field by hospitals, healthcare networks and insurers. The committee is requesting clarification on how these proposals will help cut Medicaid costs; Medicaid usually does not pay for the care of these neurologically impaired infants.

Stephen P. Younger, President of the NYSBA, was quoted in a *New York Law Journal* article that addressed the governor's proposal. He said that "we plan to put a full court press on" to oppose the Task Force recommendations. Mr. Younger pointed out that the proposal was generated by a committee that heard only from the special interests that would benefit from the proposals, and not from the parties that would be affected.

The Executive Committee of the NYSBA endorsed my committee's report, and is planning to ask its governing body, the House of Delegates, to also endorse the report at their meeting in Albany on April 2, 2011. The NYSBA is urging its approximately 75,000 members to write their state senators and assemblymen expressing their outrage over the proposal. They have also asked local bar associations to lobby against its passage.

A copy of the memorandum produced

(Continued on page 20)

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Announcing the Working Parents Committee

By Stacy Poscillo

We are pleased to announce the recent formation of the Working Parents Committee. Certainly, all of our Bar Association members desire a successful career, which requires a significant amount of one's time, energy, and devotion to achieve. At the same time, it is also important to be conscientious family members and attain a desirable quality of life. This new committee will bring SCBA members together to discuss how one can balance having a successful and

growing career (either working for the good of public service or at a thriving and busy firm) with having a happy and healthy home life (including raising one's children, assisting elderly parents, and/or taking care of oneself).

The Working Parents Committee will give its members a place to trade ideas and thoughts on how one can balance all of the competing demands in their lives. In doing so, members will have an opportunity to network with colleagues relative to issues seldom addressed at bar associations, and a forum in which to

connect with others on often unaddressed but meaningful subjects. Moreover, we are delighted to plan SCBA events that are family friendly and support collegial interaction with colleagues while enjoying quality family time.

Indeed, the committee is already hard at work planning a CLE event, together with Touro Law School and the Suffolk Academy of Law, to provide practical guidance about alternative work schedules, such as compressed and flexible working schedules, creating shared work positions for themselves or their employees, and telecommuting, all of which are highly relevant to working attorneys. This event will take place on Friday, April 29.

Socially, the committee is also planning a family music class for toddlers and young children and their parent or parents. It is scheduled for Saturday,

April 9, at 10:00 a.m. (with a light breakfast starting at 9:30 a.m.), and will include musically inspired activities and instruction from Mike Soloway, a renowned music instructor for children. You can learn more about Mike at his website: <http://www.mikesoloway.com/>. Prior experience promises that this program will be fun for everyone.

More than ever before, men and women are equal partners in child raising and taking care of their families. All members of the SCBA, male and female, are invited to join us on the committee and at future meetings and events and be part of the ongoing dialogue concerning the way attorneys with families live and practice law in Suffolk County, and the implications for our future. Please look for announcements of future meetings, and join us! We would be happy to have you be a part of this exciting new endeavor.

The Suffolk County Bar Pro Bono Foreclosure Settlement Conference Project acknowledges with gratitude the following attorneys who have been representing the people of Suffolk County who have been impacted by the foreclosure crisis:

Susan Beckett	Richard Lavorata, Jr.
Linda Boswell	Barry Lites
John Brooke	Mark Needleman
James Corcoran	Marian Russo
Judy Donnenfeld	Eric Sackstein
Howard Grafstein	John Tierney
Tracy Harkins	Trudie Walker
Raymond Lane	Glenn Warmuth

The Project would also like to pay special recognition to Tracy Harkins who had more than six court appearances. When you see your colleague volunteer attorneys in court or at the Bar Center please say a special thank you to any one of them who have stepped up to the plate to help the hundreds of citizens in Suffolk County who are struggling in this time of crisis. Thank you to Barry M. Smolowitz, Project Coordinator who keeps the project running smoothly.

~LaCova

Asleep at the Switch: The Physical and Legal Consequences of Sleep Disorders

By Amy Chaitoff

Americans are exhausted. Between demanding work obligations, family responsibilities and surviving in a tough economy, none of us are getting our recommended 8 hours of sleep a night. The consequences of sleep deprivation and/or disrupted sleep when we do get it are many. Not only are we hurting ourselves by stressing out our bodies and our immune systems but consistent lack of sleep or poor sleep habits can lead to seri-



Amy Chaitoff

ous heart conditions and even risk the safety of the ones we love and the public at large when more serious sleep disorders are left untreated such as sleep apnea.

Our lack of sleep is so bad that drowsy driving has become commonplace. Sometimes this leads us to get into car accidents and there are often far reaching consequences both physical and legal.

The next program presented by the "Healthy Life Series" is "Asleep at the

(Continued on page 16)

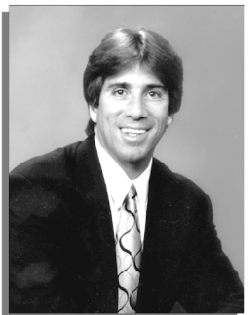
About the Speaker:

Laurence Engelberg, MD is currently Chief of Pulmonary Diseases at Good Samaritan Hospital in West Islip, Medical Director of the Good Samaritan Sleep Apnea Center, and partner in the Long Island Lung Center, a large pulmonary medicine group in Bay Shore and Commack. He has been involved in diagnosing and treating sleep disorders for 28 years, starting in his pulmonary fellowship at Stony Brook University Hospital. Dr. Engelberg is a graduate of Tufts University, and New York University School of Medicine. He is board Certified in Internal Medicine, Pulmonary Medicine, Critical Care Medicine, and twice in Sleep Medicine. Dr. Engelberg has appeared on televised discussions regarding sleep apnea and other sleep disorders, and has lectured extensively to community groups about sleep disorders.

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On the Move...

SCBA member **Stephen P. Scaring** has been named Of Counsel at Meyer, Suozzi, English & Klein, P.C.

Justin B. Lieberman and **Bernadette E. Tuthill** have joined the firm DePinto Nornes & Associates, LLP as associates.

The Law Firm of John M. Zenir, Esq., PC, announces the addition of **Jacquelyn DiCicco** as its new associate.

Douglas M. Nadjari, has joined Ruskin Moscou Faltischek's Health Law Regulatory Department and White Collar Crime & Investigations practice and **John G. Farinacci**, has joined the Trusts & Estates Department.

Stephanie Cunha and **Joseph Johnson** have joined Bryan L. Salamone & Associates P.C. as associates.

Congratulations...

Congratulations to **Brandon "Brando" Harrison Pachman** who was called to the Torah as a Bar Mitzvah on Saturday, March 5. Brando and his proud parents Rochelle and **President Elect Matt Pachman**, family and friends celebrated this momentous occasion at the Watermill Restaurant in Smithtown immediately following the services. Brando's grandparents Past President Howard E. Pachman ('87-'88) and Phyllis were, unfortunately, not able to be present at the ceremony, as grandmother Phyllis is recovering from pneu-

monia. We all wish Phyllis a speedy recovery.

Congratulations to **Lamb & Barnosky, LLP**. The firm celebrates its 30th anniversary this year. Their goal is to continue with measured growth, while maintaining the simple principle that all legal work must be done in accordance with the highest professional standards.

Announcements, Achievements, & Accolades...

Turley, Redmond, Rosasco & Rosasco, LLP is offering as a public service a free guidebook, "Facts About 9/11 Victims Compensation Under The Zadroga Act" that explains to those who were sickened from toxins while working at the Ground Zero area what they need to do to apply for a claim for the 9/11 Victims Compensation Fund. For more information, call 1 (855) WTC-INFO (982-4626) or visit www.zadrogaclaim-sinfo.com.

Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, LLP hosted a plaque ceremony in celebration of the firm achieving (Leadership in Energy and Environmental Design) LEED CI (Commercial Interiors) Silver level at RXR s Omni Building.

Edward J. Nitkewicz, will be read his essay, "Fixing the hole in my bucket" as



Jacqueline M. Siben

part of Awe in Autism's program at the Glenwood Arts Center on April 2, which also included works of art, music, literature, poetry, photography and videos to provide inspiration and encouragement to those in the autism community.

Eli Rosenbaum, Human Rights and Special Prosecution U.S. Dept. of Justice will speak at the Holocaust Memorial and Tolerance Center of Nassau County on April 5, 6:30 – 8:30 p.m. on "The Holocaust, Guatemala and Rwanda Bring-ing Perpetrators of Genocides to Justice. For further information, call 516-571-8040 ext. 106.

SCBA Past President **Ilene S. Cooper** has been named to the steering committee of the Long Island advisory board of Friends of Karen, a nonprofit that provides emotional, financial and advocacy support to children with life-threatening illnesses and their families.

Robert M. Harper, Co-chair of the Membership Services Committee, was recently appointed to the governmental relations and legislation committee of the New York State Bar Association's trusts and estates law section.

Susan J. Hermer is pleased to announce the opening of her law office at 3100 Veterans Memorial Highway, (Continued on page 21)

Diana C. Gianturco

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SCBA Committed to Promoting and Supporting Diversity

By Cynthia Vargas

The Suffolk County Bar Association recognizes the importance of the diversity that exists in our profession and encourages diversity in our membership.

I am a Hispanic female attorney. From the first moment I contacted the SCBA I was welcomed by all members and since then I have found that they offer opportunities to all attorneys to join and become actively involved.

When I became a new member I had just moved back to Suffolk County after graduating from Brooklyn Law School. I was in search of a job and was told that the SCBA accepted resumes for their resume bank, so I went to the Bar

to join personally where I was pleasantly greeted by the staff. While in the computer room, I met an extremely helpful attorney and future President of the Association, Barry Smolowitz, who explained many of the benefits of joining and invited me to an Academy breakfast. I joined the SCBA that day, left my resume, and have been a member since, although I am still trying to make that early morning Academy breakfast. The point is, opportunities to become involved in the Suffolk County Bar Association are vast and well worth taking.

Diversity encompasses identities



Cynthia Vargas

beyond race and gender, and with diversity comes access to different opportunities and resources, which benefits us all in the legal community and society in general. The SCBA and minority bar associations throughout the County and beyond realize the need to collaborate in order to benefit the entire legal community and that to do so does not diminish the value of either. The Suffolk County Bar Association's continued commitment to promoting and supporting diversity, like this Edition in *The Suffolk Lawyer* and through so many of its other efforts, can only strengthen the legal profession and

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the greater Suffolk County community, as well as help the next person walking through the Suffolk County Bar Association's doors.

Note: Cynthia Vargas is the past president of the Long Island Hispanic Bar Association. She can be reached at cyn-vargas@optonline.net.

LGBT Bar Still Matters

By Brad Snyder

We field hundreds of calls each year from members of the lesbian, gay, bisexual and transgender (LGBT) community looking for attorneys who can help on matters ranging from estate planning to domestic relations and beyond. Each month our volunteers hold a walk-in pro bono clinic at the Long Island GLBT

Community Center. Each week we do the same at our community's center in Manhattan, which means we provide free assistance to nearly 500 visitors each year. We hold the area's only career fair dedicated to LGBT law students. Our foundation publishes monthly *Lesbian/Gay Law Notes*, the most comprehensive summary of all the latest judicial and political developments affecting our community.

These are just some of the services and programs offered by the LGBT Law Association of Greater New York ("LeGaL"), a bar association of the LGBT community, and its related charitable and educational foundation.

As the above examples suggest, our organization exists to promote the profes-



Brad Snyder

sional and personal advancement of LGBT lawyers, judges and law students while serving the greater LGBT community throughout the Tri-State Area. For me, that translates into an even simpler but vital goal: we strive to do right by our members so they can do right by the public.

LeGaL began as a social organization. In 1978, ten people met in New York Law School Professor Art Leonard's living room and formed the New York Law Group, which met on a monthly basis for informal social gatherings. Art began publishing a newsletter reporting on lesbian and gay community events and legal developments. The group grew and in 1984 incorporated as the Bar Association for Human Rights, one of the first bar associations of its kind in the country. In September 1991, the name was changed to the Lesbian and Gay Law Association of Greater New York, reflecting our community's greater recognition and greater (though still incomplete) acceptance. Over the years our name has changed further to better reflect the diversity of our mission, of our membership and of the communities we seek to serve.

Like any bar association we face the challenge of persuading attorneys and law students that joining our group is worthwhile, that the work we do is essential. But at a time when participation in bar associations is historically low in comparison to prior eras, LeGaL is in a period of growth. There are many factors that may contribute to this, including the fact that the LGBT com-

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munity is growing in visibility and strength. Perhaps challenging economic times have also demonstrated anew the importance of professional networking. Maybe we enjoy the advantage of appealing to a particular segment of the bar and our tailored programs and services are less subject to larger trends.

Regardless of the reasons, it is heartening to see our community members stepping up in larger numbers to, for example, serve as a mentor for a law student, or to start a new clinic, or offering their time to educate fellow lawyers on ever-changing legislative and legal changes affecting our community. It is all the more gratifying given that the participation is occurring against the backdrop of some very real progress for our community – the recent legislative repeal of the military's Don't Ask Don't Tell policy is one important example.

To be sure, we are a long way from achieving complete equality under the law. Each time we receive one of those phone calls explaining that a deceased partner's family is challenging his or her right to remain in an apartment shared for decades by a same-sex couple or other calls from those desperately seeking guidance on how the courts will treat our families, we are reminded of the enduring

(Continued on page 27)

“Perhaps challenging economic times have also demonstrated anew the importance of professional networking.”



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Importance of Diversity in the Bar Association

By Derrick J. Robinson

Our world comprises a variety of people - of different races, ethnic backgrounds, gender, sexual orientation, and physical abilities. The same varieties of people also constitute the legal profession. Enabling diversity within the profession will require a shift from compliance to commitment. As lawyers, we must acknowledge that while we have a calling to a noble profession, the diversity of our cultures and backgrounds may often divide us. By doing so, we must further acknowledge that we have not yet reached complete unity and equality within our profession or within the justice system. The challenge is to recognize the conscious and unconscious barriers to the advancement of a diverse legal profession.

Active membership in the Suffolk County Bar Association is a true invest-



Derrick Robinson

ment toward the goal of creating diversity within the legal profession. Lawyers have never been more important to society than they are today, and our active involvement in local, county and state bar associations can help achieve further advancements toward increasing the racial, ethnic, gender, and cultural diversity of our profession. One impediment to diversity is the failure on the part of most lawyers to engage in the kind of networking that is necessary to reach decision-makers in law firms, municipal offices and client corporations. Active participation in bar associations is an important step in that direction.

On the local bar association level, I have served as the founding president of the Amistad Suffolk County Black Bar Association (2000-2002), now the Amistad Long Island Black Bar Association. Amistad was a springboard for my further bar association activity. I was encouraged to become active in the Suffolk County Bar Association by the Hon. Marquette Floyd, Justice of the Supreme Court, Suffolk County (retired).

(Continued on page 26)

“Active membership in the Suffolk County Bar Association is a true investment toward the goal of creating diversity within the legal profession.”

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Dedicated to Promoting and Supporting Persons of Italian Heritage

By Lucretia M. Lucivero

The Columbian Lawyers Association of Suffolk County is an organization consisting of persons of Italian descent who are members of the legal profession and greater business community. The Suffolk County Chapter is one chapter of the larger New York State Confederation of Columbian Lawyers Association which also includes chapters from Brooklyn, the First Department, Nassau, Queens, and Westchester. As president of the Suffolk County Chapter, I have the privilege to represent our Suffolk County membership at meetings and various functions held throughout these counties. These events include organizational meetings as well as dinner events and award receptions.

Locally, the Suffolk Chapter meets regularly over dinner where members and guests socialize, share professional experiences, and enjoy discussing aspects of our common heritage. It you are Italian yourself, or have ever had the chance to share an Italian family dinner, multiply that and add lawyers to the mix and you can begin to imagine what a good time we have at our meetings and the value of taking the time to be there.

What many people do not realize is that the Suffolk County Columbian Lawyers



Lucretia Lucivero

and Confederation are not just about organizing social events and professional networking. Together we also take positions on issues of interest to Italian-Americans, particularly where they may be cast in an unfavorable light and where there is a need to educate either the public or local officials about their misperceptions. Italian-Americans have accomplished great things in all areas of society, and getting that word out is something we strive to do.

Currently, we are actively recruiting law students, and impressing upon them the unique opportunity the Columbian Lawyers provides to interact with prominent leaders of the legal profession in less formal and truly meaningful settings. We are also working on an e-mail directory and seeking to add a CLE component to future meetings. We will also be represented at the Confederation's Annual Rapallo Award Luncheon, where this year's recipi-

(Continued on page 27)

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Diverse Group Reaches Out to the Community

By Raymond Negron

The Long Island Hispanic Bar Association is a fraternal organization with the primary function of promoting its members in the legal community. Our membership is very diverse. It includes judges, elected officials and an array of private practitioners who engage in every aspect of the law. The organization uses several methods to promote itself and its members both from within, and through community outreach.

In ten years the membership has grown from a handful of attorneys to over 100. Also noteworthy, is the fact that the organization always has a great number of associate members who are law students and local business people who work in areas that support various aspects of the practice of law. We meet regularly to discuss hot topics, plan our events, and exercise our channels of communication. Our meetings are never closed and we encourage everyone to come to listen to our discussions, including the press. We often invite speakers to share expertise on mat-

ters of collective concern to the LIHBA and have had judges, specialized attorneys and elected and civic leaders address us.

Our outward reach has become very active in the past few years. We've made ourselves available to many charitable organizations throughout the Latino community for interaction as they may see fit. The result has been our attendance at several affairs where we've offered information and consultations on a variety of legal subjects to the general public. We've come to witness ourselves provide information to people in the comfort of their own community on subjects they may never had the opportunity to inquire about but for our presence.

The LIHBA aims to be a social network and not an advocacy group. As a whole, it does not want to take positions on political matters. Our members are attorneys and available to serve any clients who may wish to contact us individually. However, some subjects have presented themselves in recent times that generally



Raymond Negron

unified the membership to speak in a unified voice. In the wake of the Arizona Laws regarding the state's enforcement of U.S. Immigration Laws, we hosted a symposium at Touro Law School which brought approximately 100 attorneys together to discuss the spectrum of issues associated with the law. Former Nassau County Executive Tom Suozzi spoke there as well. The event was a great success and positioned us as true players among objective and serious legal organizations. The Lucero tragedy in Patchogue and the Suffolk County Police Department's policy of arresting undocumented drivers were other examples of events that warranted a unified voice from the LIHBA.

The organization owes a great deal of gratitude to the Suffolk County Bar Association. It provides us with logistical help in the form of use of their space, advice with our event organization and inclusion in their program offerings. The

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SCBA constantly asks for our participation and advice and always answers our inquiries. The SCBA is a major resource for the LIHBA, a major influence upon our operational style and large part of our success as a Bar Association. We look forward to a continued relationship in the future.

All of our members are listed by location and practice areas on our web-site, www.lihba.org.

Note: Raymond Negron is in private practice. His many accomplishments include being a member of the U.S. Army Reserve, JAG Corp., a former Suffolk County ADA, Brookhaven Town ATA, and a retired member of the FDNY.

Brehon Society Offers a Connection to Ireland

By Laurette Mulry

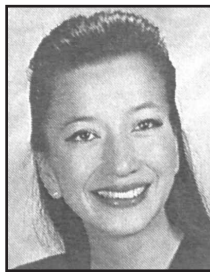
The Brehon Society of Suffolk County is a professional association of lawyers and judges founded in the spirit of the Brehons, the lawgivers in ancient Ireland. The organization was conceived by a venerable group of Irish-American attorneys and jurists who wanted to know more about their shared Irish ancestry. Judge Michael Mullen, Marian Tinari and Cornelius Rogers were among the principal members of the group who began to meet regularly at the Irish Coffee Pub in East Islip. In the fall of 1988 they decid-

ed to create a more formal organization and chose the name, Brehon, a derivation of an Irish word meaning "judgment." Indeed, in Ireland the Brehons were judges.

At its inception, it was decided that the Brehons would meet periodically to learn as much as possible about Irish history, traditions and literature. Judge Michael Mullen recalls that their impetus for gathering was purely cultural in nature, a recognition that "we have something in common, namely our Irish heritage, and that's what motivated us."

Thomas O'Connell served as the first president. He counted among his early members Harry O'Brien, Frank Murphy, Robert Quinlan, James O'Rourke, and Neil Abelson, who, though not Irish himself, considered himself Irish by marriage (via his wife, Denise Doherty)! Indeed, membership is open to all who have an interest in Irish culture. Monthly dinner meetings are informal and welcoming. We also host a more formal Annual Dinner in March, traditionally attended by the current Irish Counsel General, who participates in honoring a "Brehon of the Year."

Much has happened in the decades since the Brehons were first formed. Our membership has grown to close to three hundred individuals. The Brehons have hosted dignitaries, celebrities, historians and noted literati as featured speakers at dinner meetings. For example, authors



Laurette Mulry

Frank McCourt and, more recently, Peter Quinn has enlightened our group with stories of the literary process and the importance of incorporating the history of our native Ireland. Our members are still talking (and laughing) about the Christmas party when author and actor Malachy McCourt entertained our group with extemporaneous musings about everything Irish. "He had us all laughing, and at one point, singing," recalls Past President Brian O'Keefe, "our own resident comedian Jim O'Rourke may even have picked up a joke or two!" On a more serious note, last year we hosted retired Brigadier General Jim Cullen, a fellow Brehon, who spoke about his support of a ban on the use of torture in the detainment of political prisoners.

Though the Brehon Society is decidedly not a political organization, our members have maintained a special interest in the peace process in Northern Ireland. Like our brethren in the Brehon Law Societies of New York City and Nassau County, we have a specific interest in promoting peace and justice in our ancestral homeland. The legacy of Pat Finucane, an Irish lawyer who was murdered in Ireland ostensibly for representing nationalist clients, is a constant reminder for all of our members to use the law to challenge institutions that deny equality and civil rights.

Past Presidents like Brian Egan and Brian O'Keefe have furthered our knowledge of the Troubles in Northern Ireland to our ultimate benefit with an understanding that issues of peace, justice and freedom resonate in all cultures. We draw inspiration from Irish lawyers who, while in the process of fighting for human rights, fell victim to intimidation, threats and violence. Indeed, when our organization honors a "Brehon of the Year" at our Annual Dinner in March, we present that individual with our highest award, the "Rosemary Nelson Award" for upholding human rights and the rule of law. Like Finucane, Rosemary Nelson was a coura-

geous lawyer and human rights defender, who was killed on March 15, 1999 by a car bomb outside of her home in Northern Ireland. She sought basic due process and legal rights for her clients, who were frequently arrested for politically motivated reasons and detained without access to counsel. In 2009, Brian O'Keefe was instrumental in organizing a CLE presentation at the Bar Association. The program, "Understanding the Peace Process in Northern Ireland: Lessons in Conflict Resolution," presented in conjunction with the Suffolk Academy of Law, highlighted the principles of dispute resolution relevant in every area of law.

Past honorees at our annual dinner have included Judge Michael Mullen, Judge Mary Werner, Judge J.J. Jones, District Attorney James Catterson, and Congressman Peter King. More recently, the Brehon Society posthumously honored Medal of Honor recipient, Navy (SEAL) Lt. Michael Murphy, the son of our longtime member and Past President Daniel Murphy. On March 25 of this year we are honoring George Roach, Esquire, as Brehon of the Year, who is also well known as a past president of the Suffolk County Bar Association.

While the Brehon Society was not formed for political or networking purposes, it has fostered great friendships and lasting camaraderie among its members. The friendly and mutual respectful atmosphere of our meetings is a testament to our early founders who wanted a group that focused on the literature, tradition and history of Ireland. Indeed, the spirit of the distinguished Irish poet, W.B. Yeats, pervades our meetings and reminds us of the luck of the Irish: *Think where mans glory most begins and ends, and say my glory was I had such friends.*

The current Officers of the Brehon Society of Suffolk County include: Laurette Mulry, President; William Duffy, Vice President; Robert Barry, Treasurer; Dennis Dowd, Secretary. For information on how to join the Brehon Society of Suffolk County, contact Laurette Mulry at ldmulry@optonline.net.

“While the Brehon Society was not formed for political or networking purposes, it has fostered great friendships and lasting camaraderie among its members.”

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DIVERSITY
SPECIAL EDITION

Federal Magistrate Judge Vacancy

A public notice issued by the United States District Court, Eastern District of New York, seeking applications for a full-time position of United States Magistrate Judge in the Eastern District of New York. **Note** that the deadline of receipt of the applications has been extended to May 6, 2011. The Magistrate Judge to be selected will be assigned to the Long Island United States Courthouse in Central Islip, New York. The application form can be accessed on-line at the district's website: www.nyed.uscourts.gov. Application forms may also be obtained from the Clerk of Court, 225 Cadman Plaza East, Brooklyn, NY 11201, (718) 613-2270. The applications must be personally prepared by potential nominees. A disk in Word or WordPerfect and sixteen (16) copies of the completed application must be mailed or delivered to the office of the Clerk of Court at the above address. ~LaCova

Private Pro Bono Practitioners Seeking Recognition

A few clarifications

By Linda Novick

Many Suffolk County attorneys have been participating in the structured pro bono programs that are sponsored, or co-sponsored, through the Suffolk County Court's Pro Bono Action Committee, the Suffolk County Bar Association's Pro Bono Foundation or Nassau/Suffolk Law Services' Pro Bono Project. Other local practitioners may choose to provide private pro bono representation to their own firm's clients.

The substantial benefit of performing pro bono work through one of our county's structured pro bono sponsored programs includes an award of free CLE credits, cost-free training, one-on-one mentorship services, free legal malpractice insurance coverage and honorary pro bono recognition. However, in the event you opt to fulfill your ethical professional responsibility by performing pro bono work *independently*, you are, in no uncertain terms, serving the public good. (Reference to the independent pro bono service provider

means the attorney who *agrees* to handle a client's case without compensation, NOT the attorney left with unpaid legal fees).

While the private pro bono practitioner will not receive the other numerous benefits afforded our program's volunteers, this group of practitioners are afforded the same opportunity to receive honorary pro bono recognition. The Suffolk County Bar Association's Pro Bono Foundation is continuing its policy of extending eligibility for pro bono recognition to **all** practitioners who donate their time to pro bono work, including those who do so on their own. Any attorney, who performs independent pro bono client representation and wishes to be considered for pro bono recognition, should contact Linda Novick, Suffolk County Pro Bono Coordinator at the Suffolk County Bar Association, at (631) 234-5511 ext 233 or linda@scba.org. Information provided should include the attorney's name, all contact information as well as the date and nature of the pro bono representation provided.

Note: Linda Novick is the SCBA Pro Bono Coordinator.

MUSIC CLASS FOR CHILDREN AND PARENTS

Featuring Mike Soloway of
North Shore Musikgarten

Saturday, April 9, 2011 - 10:00a.m.
(9:30a.m. for bagels and coffee)
SCBA Bar Center, Great Hall

The program is available to SCBA members and professional colleagues who have children ages birth to 5 years, although older children/siblings are welcome. It is intended to provide a fun-filled, interactive opportunity usually enjoyed by parents who do not work during typical business hours or full time.

RSVP, including names and # of adults and children, and ages of children, a must... no later than Thursday, April 7th to Marion at (631) 234-5511 x 230\

A Doggone Good Time!

By Amy Chaitoff



Amy Chaitoff

The Suffolk County Bar Association's Animal Law Committee and the Suffolk Academy of Law will present its third annual "Dog Day Afternoon Agility Expo & Pet Fair" on Saturday, May 14 from 10:00 a.m. to 4:00 p.m. at St. Joseph's College, located at 155 West Roe Boulevard, Patchogue (*in the quad*). Hosted by WALK-FM's own K.T. Mills, this family fun event includes educational shows teaching the public about a variety of animals and their proper care, as well as, agility demonstrations throughout the day such as fly ball, doggie dancing and Frisbee provided by "All Fur Fun Agility." Rescue groups of every type from dogs to pot belly pigs will be in attendance with their animals for adoption and to see and enjoy.

This expo is a community humane education and public outreach event that seeks to teach the public about treating animals with respect and learning about their proper care and maintenance and to appreciate how animals help people every day in an incredibly fun setting.

Last year the expo hosted over 20 rescue groups of all kinds and over 23 vendors selling everything from dog toys to art work and jewelry. You never know what you will find at the fair! Presenters will include guide dog organizations, wildlife groups, farm animal rescuers, search and

rescue dogs, and much more! A professional DJ will be pumping out energy pumping tunes, food vendors will be cranking out yummy treats of all kinds and don't forget the ice cream! There will be free face painting for the kids and a balloon magician creating all kinds of fun balloon characters from their favorite cartoons. All funds

raised at the event will go toward the animal law committee's public outreach programs and CLE programs. Most importantly, many homeless dogs, cats, parrots and pigs that come to the expo each year looking for forever homes will find their perfect matches and forever families. This is what it is all about at the end of the day, making a difference in the lives of animals and the people who love them.

So come and support the good workings of the Animal Law Committee and let your inner child come out to play by joining your fellow bar members in a fun filled day outdoors with animals, entertainment, vendors, food, and great raffle prizes! Admission is \$10.00 per car! Bring your dog for fun and a run through the agility course! (All dogs must be leashed and well behaved. If your furry friend does not play well with others leave them on the couch.) For additional information, please email info@dogdayagilityexpo.com or call Amy Chaitoff at (631) 265-0155, ext 201 or 204. Rain date is Sunday, May 15.

Touro Law Center, the Suffolk County Bar Association
and the Suffolk Academy of Law present a morning CLE event

ALTERNATIVE WORKPLACE SCHEDULES

FRIDAY, APRIL 29, 2011

8:30 a.m. - 12:00 p.m.

Touro Law Center, 225 Eastview Drive, Central Islip

Program Description:

Alternative workplace practices such as telecommuting, job sharing, flex-time schedules, part-time and compressed schedules are increasingly popular within the legal profession. Such practices can benefit both the employer or firm and the attorneys who work for them, but only if employers and employees understand how to properly implement these practices by avoiding the legal, ethical, and practical pitfalls of such working arrangements. This CLE, which will be taught by attorneys with actual experience with these practices, will instruct attendees on the nuts and bolts of such alternative work arrangements, how to successfully negotiate such employment arrangements, how to avoid potential risks and challenges that might arise, and, most importantly, how to implement such an arrangement so that it is mutually beneficial for the employer, the employee and the clients, even in small firm settings. Alternative work scheduling is becoming a significant factor in the future of the legal profession. If you have ever wondered how these practices could work for you, your business or your clients, this is the CLE to attend.

3 CLE PROFESSIONAL PRACTICE CREDITS AVAILABLE

For complete program information and to register online, visit www.tourolaw.edu/cleregistration.

CLE EVENT SCHEDULE

8:30 a.m. - 9:00 a.m. Registration and Continental Breakfast
9:00 a.m. - 12:00 p.m. CLE Program

For more information or questions, please contact Barbara Hakimi
631-761-7005 or Bhakimi@tourolaw.edu

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Help a High School Student Support the SCBA High School Scholarship Fund

By Lynne Adair Kramer

How good do you want to feel about the future of this country? You need only look at the applications for the Suffolk County Bar Association Scholarship to know what an outstanding generation of young people is coming up through the ranks.

Each year our association reaches out to the community in an effort to assist a worthy graduating high school student with the cost of his or her college education. The applicants submit not only their tran-

scripts and letters of recommendation, but also an essay on a topic they select that is a matter of current interest or concern. It takes the members of the scholarship committee days to read through the numerous applications we receive and narrow the field down to our eventual winner, and the competition is extraordinary.

The community has responded to our invitation in large numbers and each year since its inception we have received over 100 impressive applications.



Lynne Adair Kramer

We would like to continue to spotlight a deserving student and show the residents of our county the Bar Association's commitment to our neighbors, but to do so we need your help!

We recognize that during these tough economic times any number of people and organizations have sought and continue to seek your support. But we are not just any organization. We are *your* Bar

Association and we are asking you to invest with us in the future. If every one of our members gave even a small donation we would easily be able to fund our scholarship and possibly assist even more than one fine student as they take on the significant financial burden of college. Please send any donation you can to the Suffolk County Bar Association Scholarship Fund. You will feel better for having done it, and I personally will be grateful to you for helping to continue this great tradition that was started during my presidency.

TRUSTS AND ESTATES UPDATE

By Ilene Sherwyn Cooper

Attorney's Fees

In a contested accounting proceeding, the objectants moved to reargue the court's prior rulings of June 29, 2010 in favor of one of the trustees, which denied objectants' requests that: the fiduciary be denied legal fees; be denied commissions or at least annual commissions on principal; and be directed to pay the legal expenses incurred by them in the litigation. The court had previously surcharged the fiduciary for losses sustained by the objectants as a result of the fiduciary's delay in distributing the principal of their respective trusts upon termination.

The court granted reargument, but adhered to its original determinations. The court found that it had neither overlooked nor misapprehended the law with respect to the issue of the fiduciary's legal fees and costs and to his entitlement to annual commissions. The court held that the remaining issues required further discussion.

Insofar as the issue of objectants' legal fees was concerned, the court opined that New York courts adhere to the American rule, under which parties prevailing in lit-

igation ordinarily may not shift their legal expenses to the losers. Although the court noted that the rule can at times undermine the financial value of a victory, it nevertheless continues to be applied, except under limited circumstances.

The court found it significant that one such circumstance involved the situation in which a fiduciary personally profits at the expense of the estate and is surcharged accordingly. In such instances, case law has sustained the fiduciary's liability for the litigation expenses incurred in pursuit of the surcharge. The court concluded that the case before it was distinguishable from this line of cases inasmuch as the fiduciary's breach of duty, attributable to his delay in distributing trust assets, was not apparent to him at the time it was committed. Indeed, the court noted that the fiduciary acted upon the advice of counsel, which, though not a defense, was relevant to the issue of whether his conduct was designed to achieve a self-serving purpose.

Accordingly, the objectants' request to reallocate litigation expenses was denied.



Ilene S. Cooper

The court further held that precedent did not sustain objectants' request for denial of all commissions to the fiduciary. In pertinent part, the court that the fiduciary did not evidence complete indifference to his stewardship, and neglect the administration of the trusts subject to his charge. Rather, the court found it relevant that his decision to relin-

quish control to his co-fiduciary was at the request of his co-fiduciary and perhaps her adult sons, the objectants. Further, the court noted that his inaction at the time of distribution did not absolve him of liability but resulted in a significant surcharge. Under such circumstances, the court held that he should not bear the loss of commissions as well.

In re Lasdon, NYLJ, Nov. 19, 2010, p. 36 (Sur. Ct. New York County)(Sur. Glen).

Subpoena

In a contested probate proceeding, the preliminary executors moved to quash subpoenas issued to JP Morgan Chase requesting financial documents relating to an attesting witness, as well as to the attesting witness personally requesting that he appear and be examined and to produce all of his individual income tax returns and bank accounts, records authored by any doctor or home care attendant, and all documents relating to the attorney-draftsman's representation of the decedent or her companion, who was named as a co-executor in the propounded will.

In support of the motion, the preliminary executors alleged that the subpoenas were overly broad, and that the personal financial information of the witness, who received no benefits under the will, had no bearing on the objections to the validity of the instrument. Additionally, the movants alleged that the attesting witness had already been deposed, and that if a further examination was requested, leave of court pursuant to SCPA 1404(6) was required.

Upon consideration of the subpoenas, the court held that they were too broad, inasmuch they were not limited to a time frame related to the execution of the propounded will. Moreover, the court concluded that the objectant had failed to show a relationship between the witness' personal tax returns and the issues in the will contest. Although the objectant alleged that the information sought could be useful to him in a future discovery proceeding should he prevail in the will contest, the court opined that this did not serve to establish the relevance of the

documents in the probate proceeding. Additionally, the court concluded that to the extent the subpoenas sought documents authored by medical professionals, they were on their face unreasonable, given the rules of confidentiality surrounding medical records, burdensome, and lacking in specificity.

Accordingly, the court granted the motion.

In re Moles, NYLJ, Nov. 4, 2010, p. 26 (Sur. Ct., New York County) (Sur. Anderson).

Surcharge

Before the court in *In re Gourary*, was a motion for summary judgment in a contested intermediate accounting by the executrix of the estate, the decedent's spouse. Objections to the accounting were filed by the fiduciary's son alleging, *inter alia*, omission of income tax refunds from the estate, use of estate funds to pay expenses attendant to the apartment in which the fiduciary resided, failure of the fiduciary to reimburse the estate for penalties and interest on late payment of estate taxes, and use of estate funds to pay for secretarial assistance in the administration of the estate.

The court denied the motion in part and granted the motion in part. With respect to the income tax refunds, the record revealed that after the decedent's death the executrix filed joint income tax returns for her and her deceased husband, and utilized estate funds to pay the tax. The tax was overpaid to the extent of \$483,157, and a refund was issued, which the executrix retained for herself. The court held that the executrix could not claim those funds as her own, inasmuch as estate property was utilized to satisfy the liability. Accordingly, summary judgment was granted on this objection and the executrix was surcharged for the amount of the refund, together with statutory interest.

The court also granted summary relief with respect to the use by the fiduciary of secretarial assistance. The court found that although the estate was large, its assets were not complex, and the fiduciary had failed to demonstrate why the estate's administrative needs were beyond her capacity to handle. Accordingly, the full amount of the fees paid was charged against the fiduciary's commissions.

Similarly, the fiduciary was surcharged for use of estate funds to satisfy the expenses of her apartment. The record revealed that the apartment had been specifically bequeathed to the fiduciary, although the shares had not been transferred to her until 15 months after the

(Continued on page 26)

COURT NOTES

Appellate Division-Second Department

By Ilene Sherwyn Cooper

Attorney Resignations

The following attorneys, who are in good standing, with no complaints or charges pending against them, have voluntarily resigned from the practice of law in the State of New York:

Giuseppe Acocella
Eric S. Angel
Wendella Ault Battey
Mark Howard Borofsky
Tony M. Chang
Jeffrey John Corradino
Edward Bertram Cowpe
Joseph Domenic Grisanti
Michael P. Gurlides
Norman Gary Knopf
Virginia E. Lupoli
Diana B. Matson
Mark Thomas McDonough
Caryn Sue Mohan
Paul L. Shapiro
Jonathan Paul Sheldon
Stuart M. Silberman
Philip D. Tobolsky

Attorney Reinstatements Granted

The application by the following attorneys for reinstatement was granted:

Susan G. Jamiolkowski

Attorneys Suspended:

Edward J. Martz: The Grievance Committee moved for an order authorizing it, *inter alia*, to suspend respondent from the practice of law based upon his professional misconduct, and to institute and prosecute a disciplinary proceeding against him. In the absence of opposition to the application, and based upon the record presented, particularly the respondent's admitted failure to preserve funds and misappropriation of funds entrusted to his charge, as well as his failure to cooperate with the committee, the motion was granted.

Note: Ilene Sherwyn Cooper is a partner with the law firm of Farrell Fritz, P.C. where she concentrates in the field of trusts and estates. In addition, she is immediate past president of the Suffolk County Bar Association and a member of the Advisory Committee of the Suffolk Academy of Law.

JUDGE PATRICK A. SWEENEY JOINS NAM'S NEW YORK METRO PANEL



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SCBA Helps New Attorneys Bridge-The-Gap



Barry Smolowitz, Barry Warren and Harvey Besunder discuss "Everyday Ethics."



Photos by Arthur E. Shulman

More than 80 new attorneys attended the Academy's Bridge-The-Gap program in mid-March.



Don Engstrand sheds light on Federal Court practice.

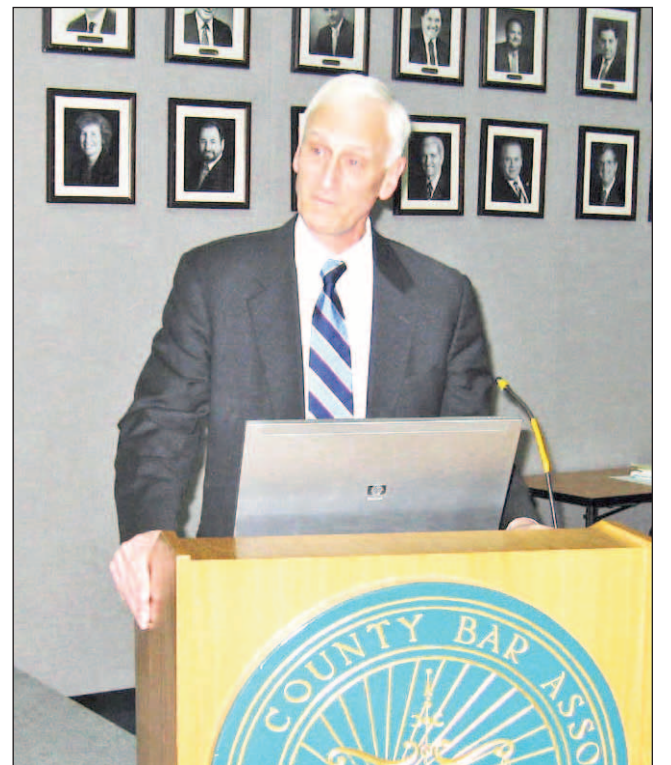


SCBA President Sheryl Randazzo describes the benefits of bar association membership.

FREEZE FRAME



The members of the SCBA and the bench met to discuss matters of mutual interest at a Bench Bar meeting at Casa Rustica.



William Ferris, who chairs Bridge-the-Gap with Stephen Kunkin.

Photo by Arthur Shulman

C. Randall Hinrichs Is Suffolk County's New Administrative Judge

Supreme Court Justice C. Randall Hinrichs has been appointed as Suffolk County's new administrative judge effective March 14, 2011, as recently announced by Chief Judge Anne Pfau of the Office of Court Administration.

Justice Hinrichs is replacing Justice H. Patrick Leis III, who has been administrative judge since 2003. Justice Leis has been assigned presiding justice of the Model Guardianship Part.

Justice Hinrichs who served as an assistant district attorney for nearly two decades, was first elected to the Suffolk County bench in 2002, as a County Court judge. He was appointed supervising judge of County Court in 2008 and was elected to the Supreme Court Bench in 2010. He also served as an acting Family Court judge early in his judicial career.

The officers, directors, members and staff of the Suffolk County Bar Association wish Justices Hinrichs



Justice C. Randall Hinrichs has been appointed Suffolk County's Chief Administrative Judge.

and Leis every success in their new positions. We are happy to honor them and look forward to working with them for the common good and welfare of our legal community for many years to come.

~LaCova

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Read our article, "The Personal Injury Attorney's Survival Guide to the New Anti-Subrogation Law" in the NYSTLA publication, **The Bill of Particulars**.

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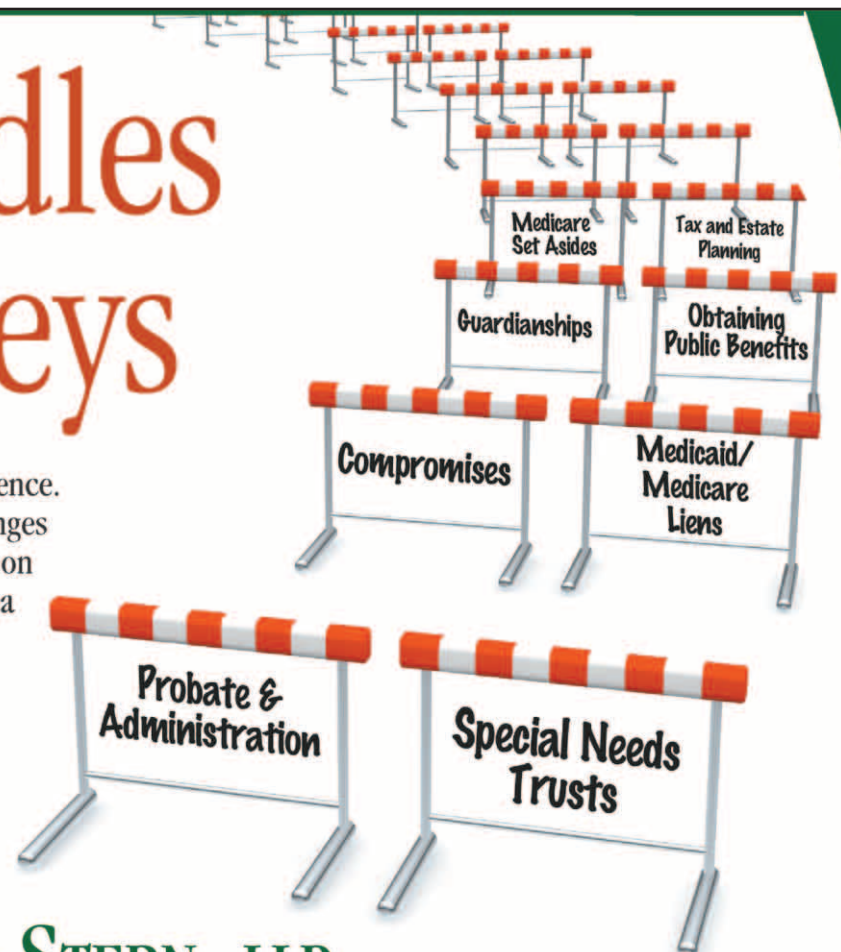
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CROSSWORD PUZZLE

Across

- 3 remedy requiring exact adherence to provisions of a contract, usually to compel conveyance of property
- 4 a written agreement promising to do or not do something relating to real estate
- 5 a right, claim, or interest in land which subsists in another, diminishes its value, and survives conveyance
- 7 nonpossessory right to enter another's land to take soil, timber, minerals, etc.
- 9 land benefiting from an easement over another parcel
- 14 the surrender or relinquishment of property or rights
- 15 an estate limited by the span of a human's time on earth
- 16 property owner only owns interior of each unit and interest in common areas
- 17 statutes requiring filing to give notice to the world that title to certain property has been conveyed
- 18 a claim, encumbrance, or charge on real property for payment of a debt, duty, or obligation
- 19 the ancient rule against remainders in a grantee's heirs
- 20 acquiring title to real property by possession for a statutory period under certain circumstances
- 21 a tenant who remains in possession after expiration of lease
- 22 to put out and/or deprive one of possession or use of property
- 24 process whereby a parcel of land is measured and its boundaries, courses, and contents defined
- 26 property owners of a single parcel, each owning a distinct, proportionate, and undivided interest in the property, are _____
- 28 right to use another's property

- 29 written result of an examination of deeds and other records of title
- 32 when a life tenant allows property to fall into disrepair or fails to protect land
- 33 state's power to take private property for public use

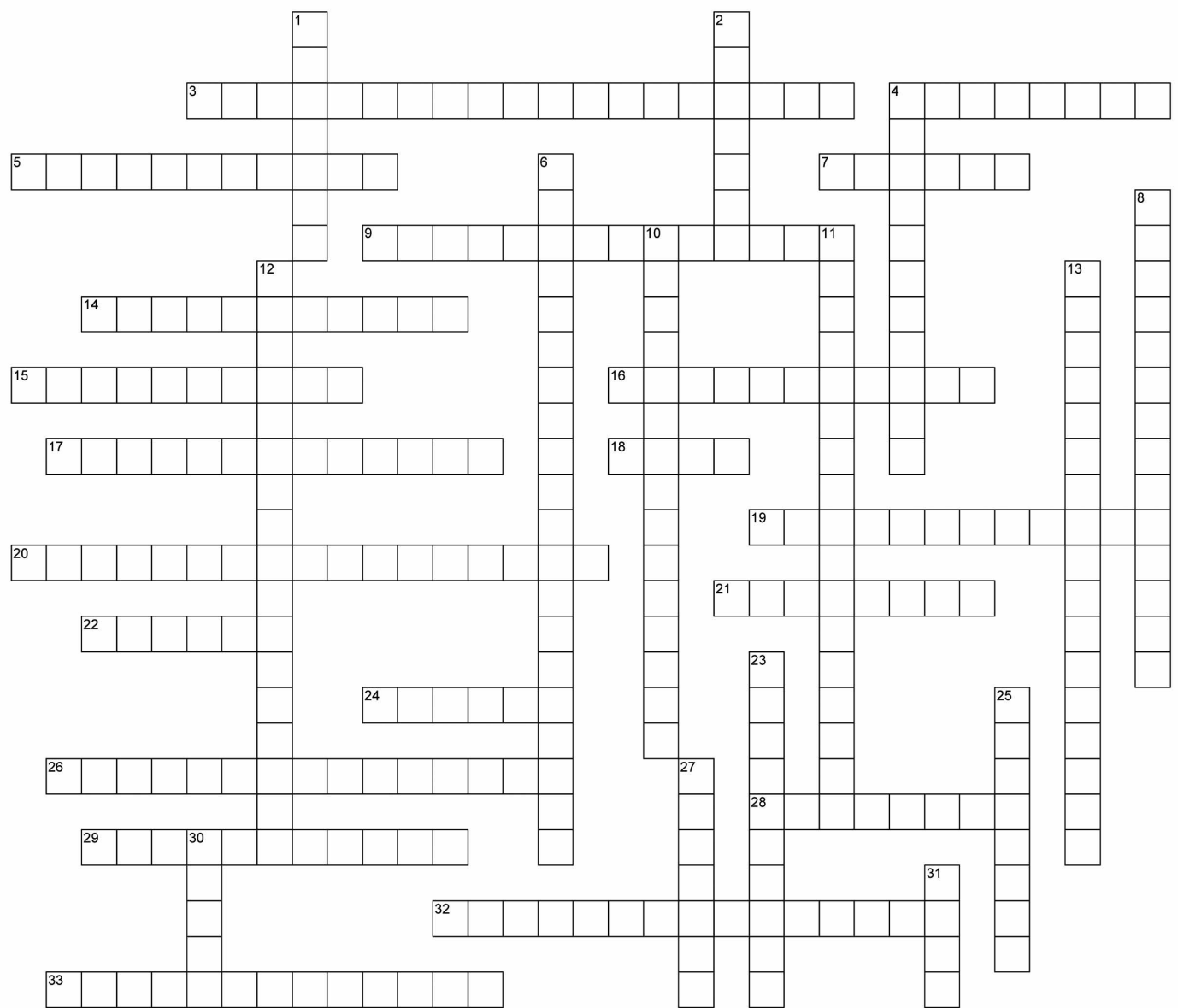
Down

- 1 revocable right to use another's land
- 2 the transferor of property
- 4 property ownership whereby title is held by a corporation with apart-

- 6 transfer of real property with the intent to hinder, defraud, or delay a creditor
- 8 a covenant allowing subsequent owners of land to enforce its provisions is said to _____
- 10 tenancy continuing for successive fractions (usually month to month) until terminated by either party
- 11 sum agreed to be paid by party to contract if promise is broken
- 12 one who purchases real property without notice of defects in title

- 13 acts that benefit property economically despite substantial change in use
- 23 Lat. a pending suit
- 25 an interest in land created by written instrument providing security payment of a debt
- 27 final transaction where consideration is paid, mortgage secured, deed delivered, etc.
- 30 any agreement creating a landlord/tenant relationship
- 31 written conveyance transferring title from one to another

MORE REAL PROPERTY



More Real Property

J. DAVID ELDRIDGE, ESQ.



J. David Eldridge

Note: J. David Eldridge, a member of the Law Office of Edward M. Taylor in Smithtown, is an attorney experienced in civil, commercial and real property law, litigation and appeals. A past-Director of the Bar, he was Associate Dean of the Academy of Law and chaired its Legislative Review Committee.

SCBA Annual Meeting Elections and Recognition (Continued from page 4)

for election this year.

Awards of Recognition are presented at our Annual Meeting as well as tributes to our outgoing Directors and outgoing Academy Officers. SCBA Directors to be recognized for completion of their three-year terms are: **Hon. W. Gerard Asher, Annamarie Donovan, Joseph A. Hanser and Derrick J. Robinson.** Outgoing Academy Officers who will receive plaques are: **Nancy E. Ellis, Diane K. Farrell, Richard L. Filiberto, Allison C. Shields and John C. Zaher.**

The "Golden Anniversary" honorees, members who have practiced law for 50 years or more, will be presented with a special tribute. They are as follows: **Richard E. Borda, Rita R.F. Brettschneider, Haig Chekenian, Hon.**

Marquette L. Floyd, Michael T. Ivone, Herbert Kotler, Ernest J. Peace, John J. Roe, III, Harold M. Rothstein, Peter D. Rubinton, Dominic J. Santoro, Hon. Allen M. Smith, and William A. Sulahian.

The \$1,000 college scholarship for a high school student will continue, thanks to monies donated by SCBA members, and the SCBA scholarship committee (Lynne Adair Kramer, Sheryl L. Randazzo, Rosemarie Tully and Ilene S. Cooper) who developed the criteria and review the applications.

The SCBA leaders are hoping for a good membership turnout for the Annual Meeting – to conduct the association business and to share in honoring those who have served so well.

Asleep at the Switch: The Physical and Legal Consequences of Sleep Disorders (Continued from page 6)

Switch: The Physical and Legal Consequences of Sleep Disorders," presented by guest speaker Dr. Laurence Engelberg, MD. It will be held on **Wednesday, May 4, 2011, from 4 to 6 p.m.** in the Board Room.

Guest speaker, Dr. Laurence Engelberg, will be discussing the physical and legal aspects of sleep disorders, including drowsy driving, sleep Apnea and car accidents, and shift workers and other job-related accidents. He will also be addressing the signs and symptoms of sleep apnea, what things or circumstances increase the risk of sleep apnea, who should be evaluated for a sleep study, the

GSH Sleep Apnea Center testing facility, CPAP Therapy, why treatment is so important, the consequences of long term sleep apnea, other common sleep disorders, helpful tips for a good night's sleep and more.

After the discussion, there will be an opportunity to relax and network with Dr. Engelberg and other like-minded SCBA colleagues over wine and cheese. But space is limited, so pre-registration is strongly encouraged. The cost is \$15.00 for pre-registrants (if received by May 2nd) and \$20.00 thereafter. You can register by contacting Marion at (631) 234-5511 x230.

CONSUMER BANKRUPTCY

Loss of Future Earnings Federal Bankruptcy Exemption

Second Circuit decision emphasizes forward-looking approach

By Craig D. Robins

Bankruptcy exemptions have been receiving a great deal of attention here in New York lately because of the recent dramatic changes to our state's exemption statutes. These changes include giving debtors the option of using either the federal or New York State exemptions.

It is therefore an ideal time to discuss a recent, interesting Second Circuit decision involving a Connecticut bankruptcy case that addresses the federal exemption for protecting entitlement to a claim for lost post-petition earnings.

Debtors had a claim for Wrongful Termination

In *Jackson v. Novak*, 593 F.3d 171 (2d Cir. 2010), the husband and wife debtors, who were a psychiatrist and a psychologist, filed a typical Chapter 7 consumer bankruptcy petition in which they sought to discharge typical consumer debt. One of the assets that they sought to exempt consisted of the proceeds of a settlement for wrongful discharge.

Prior to filing, both debtors had been employed by a health insurance company in Connecticut. The company closed the local office and terminated the debtors' employment about six months pre-petition. Also prior to filing, the debtors asserted claims against the company for wrongful termination, alleging they were fired in retaliation for challenging the way certain health insurance claims were treated.

In October 2003, the debtors filed their Chapter 7 bankruptcy petition, list-

ing the cause of action for wrongful termination. Thereafter, the Chapter 7 trustee pursued the claims against the former employer and reached a settlement of \$130,000 about a year after the bankruptcy was filed.

The settlement was "to satisfy claims for future lost earnings." After attorney's fees and expenses, the net proceeds to the debtors amounted to \$83,000. In essence, the settlement essentially bought out the debtor-husband's contract, paying him an amount equal to one year's worth of salary. The debtor had stood to earn half of this amount prior to the time the bankruptcy was filed, and the other half, after the bankruptcy was filed.

Debtors and trustee litigate over exempting proceeds from claim

The debtors sought to exempt the settlement proceeds by amending their schedule of exemptions, stating that under Bankruptcy Code § 522 (d)(11)(E), which is one of the federal exemption provisions, these proceeds were exempt.

This section of the federal exemptions permits a debtor to exclude from the bankruptcy estate "a payment in compensation of loss of future earnings of the debtor to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."

The trustee objected, arguing that the proceeds were not exempt under several different theories, and the matter landed before the bankruptcy court judge who held a trial.



Craig D. Robins

Bankruptcy Court utilizes forward-looking approach

The court noted that the debtor's schedules indicated monthly income of \$10,000 and monthly expenses of \$14,000, a monthly shortfall of \$4,000. In addition, the court also noted that debtors retained post-petition, \$6,200

in cash, and a boat and trailer; they had the use of four vehicles; they lived in a \$435,000 house; they owned a one-third interest in 20 acres of land in Tennessee; and both debtors were working "without any mental or physical disabilities or restrictions."

The bankruptcy court concluded that given the language of § 522(d)(11)(E), only earnings related to the period after the filing of the bankruptcy petition could be exempted. Property of the estate and a debtor's exemption therein, is determined as of the bankruptcy petition date. Section 522(d)(11)(E) refers only to post-petition loss of earnings, and the debtor may not exempt that portion of the settlement proceeds that provided compensation of his pre-petition loss of earnings.

In other words, the debtor was only able to protect that compensation which he stood to earn after the petition was filed. However, the court did not stop there. The statute states that debtors can only exempt such payments "to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."

Accordingly, the court conducted a computational analysis. Basically, since

the debtors had a monthly shortfall of \$4,000 a month, the court let the debtors keep that sum for the period of the settlement that covered the post-petition period. That amount was \$16,550.

The debtors, who had hoped for much more, appealed to both the District Court and the Second Circuit Court of Appeals, arguing that the bankruptcy court had improperly calculated the amount. Both appellate courts affirmed the decision of the bankruptcy court.

The Second Circuit emphasized that the provisions of § 522(d)(11)(E) apply only to post-petition earnings and defined the term "future" as "looking forward from the date of the bankruptcy filing" and not from some previous point in time, as the debtors had argued.

The Court of Appeals found no error in the lower courts' reasoning that considered such factors as the debtors' needs, including present and anticipated expenses, their assets, present and anticipated income, training and education, and "ability to earn a living" in arriving at the \$16,550 figure that represented a shortfall in their income.

Note: Craig D. Robins, Esq., a regular columnist, is a Long Island bankruptcy lawyer who has represented thousands of consumer and business clients during the past twenty years. He has offices in Coram, Mastic, West Babylon, Patchogue, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Please visit his Bankruptcy Website: www.BankruptcyCanHelp.com and his Bankruptcy Blog: www.LongIslandBankruptcyBlog.com.

PRO BONO

Pro Bono Attorney of the Month

The Touro Family Law Clinic, its Students and Director Lewis A. Silverman

By Rhoda Selvin

Too many prospective clients coming to the Pro Bono Project (PBP) seeking representation for a divorce are put on the Project's matrimonial waiting list because too few volunteer lawyers are available. In gratitude, the project has deemed the Family Law Clinic of Touro Law Center and its director, Lewis A. Silverman as Pro Bono Attorney of the Month for April 2011 for using the waiting list as its only source for matrimonial cases. Technically, of course, the students are *attorneys-to-be*; but with Professor Silverman as their mentor, they do admirable work. As a group they were honored together in January 1996. In addition, Professor Silverman received the same accolade alone in September 1999 and September 2005, primarily for his major role in planning with other local professional organizations and running pro se matrimonial clinics.

Since September 2005, the last time Professor Silverman was the honoree, the clinic has devoted over 950 hours to 75 PBP matrimonial cases in which all the clients had met the Federal poverty standards that all federally funded projects require. This is not the full extent of the Clinic's work, however. Professor Silverman trains clinic students to handle

custody proceedings, to work with custodial parents in child support proceedings, and to represent victims of domestic violence in obtaining Orders of Protection. . All their work is pro bono and all the clients are poor, but those not coming from PBP are not required to meet the stringent Federal poverty requirements.

Professor Silverman, proud of the legal accomplishments of his students would not hear of again being chosen as Attorney of the Month alone. He explained, "I really want to thank all the students who have been enrolling in the Family Law Clinic and worked so hard for the benefit of our clients." He also expressed his gratitude to Touro Dean Lawrence Rafal for all his support of the Family Clinic and to the three people who have served as the Clinic's staff attorney: Marjorie Zuckerman, who recently retired; Danielle Schwager, who has just taken up the post; and Louis Sternberg, Touro Class of 2009, who served during the interim.

As an example of the student's successful work, Professor Silverman described a recent case in which the client was an older woman in what was a second marriage for both parties. They had been married in Long Island and had moved to South Carolina after his retirement. When the husband got sick, his daughter took



him to live near her in upstate New York; the wife came back to Suffolk County. The husband filed for divorce while living in St. Lawrence County near the Canadian border. Although he knew his wife's income was less than \$1,000 per month with no hope of any increase and that she was living in someone else's house, he wanted to cut her off with no money and no health insurance.

The students worked diligently on a motion to change the venue, arguing that

the parties had never lived as husband and wife in Lawrence County, that the marriage occurred in Suffolk County, and that the wife's health issues prevented her from traveling to the upstate court; the change was granted. The next goal was to negotiate a separation agreement rather than a divorce, since as a divorcee their client would lose health insurance coverage. The student's hard work procured a deal that was in her best interests. The

(Continued on page 27)

TRUSTS AND ESTATES

Compulsory Accounting and Contempt

By Robert M. Harper

For the party that compels an accounting in the Surrogate's Court, a fiduciary's failure to account is, to say the very least, frustrating. In many instances, the party seeking an accounting — who likely already suspects wrongdoing on the fiduciary's part — is left to wonder what the fiduciary is hiding and how the fiduciary can flout a court order. Frustrating as it may be, however, the party petitioning for an accounting does have several remedies to pursue, including civil contempt. This article discusses the procedure for securing a contempt order and the consequences arising from it.

The duty to account is among the most fundamental of all fiduciary obligations and the failure to honor it may warrant civil contempt. Following personal delivery upon a fiduciary of a certified copy of the order directing an accounting and the commencement of a contempt proceeding, a fiduciary that refuses or willfully neglects to account may be held in civil contempt of court.¹ Civil contempt is especially appropriate when the fiduciary knowingly disobeys a lawful order of the

court, thereby prejudicing another party's rights.²

Matter of Sofi is instructive.³ In *Sofi*, Bronx County Surrogate Lee L. Holzman issued an order directing the executors of an estate to account. Notwithstanding the fact that certified copies of the order were personally delivered to the executors, they failed to file their account within the period prescribed by the surrogate, causing the petitioners to make a contempt application. Referencing the executors' non-compliance with the accounting order, Surrogate Holzman held them in contempt of court.

However, a contempt order — without more — may be insufficient to secure what the party that compelled an accounting really desires, *i.e.*, an accounting of the fiduciary's conduct. When a fiduciary has failed to account and been held in contempt of court, the next step may involve seeking a warrant of commitment from the Surrogate's Court.

That is precisely what happened in *Matter of Brissett*.⁴ There, the executor of an estate was directed to account for her



Robert M. Harper

fiduciary conduct, held in contempt of court for failing to do so, and afforded an opportunity to purge herself of contempt by accounting within 30 days of service upon her of the contempt order. As the executor failed to purge herself of contempt, Surrogate Holzman signed a warrant of commitment, directing the sheriff of the City of New York to take the executor into custody and bring her before the court. The sheriff did so shortly thereafter.

In addition to a contempt order and a warrant of commitment, the party aggrieved by a fiduciary's failure to account may wish to seek the fiduciary's removal and an order permitting that party to take and state the fiduciary's accounting.⁵ For while the removal of a fiduciary would normally necessitate a hearing, a hearing is not always required in the case of a fiduciary who fails to comply with an accounting order.⁶

In sum, when a fiduciary fails to comply with a compulsory accounting order, the party that compelled the accounting need not waste away in despair. The party

should weigh the options available to secure the fiduciary's compliance with the accounting order, including by civil contempt. This may ultimately inspire the fiduciary to render an accounting, allowing the interested parties to litigate the merits of the fiduciary's conduct.

Note: Robert M. Harper is an associate at Farrell Fritz, P.C. concentrating in estate and trust litigation. He is Co-Chair of the Bar Association's Membership Services and Activities Committee and Vice-Chair of the Governmental Relations and Legislation Committee of the New York State Bar Association's Trusts and Estates Law Section.

- 1 S.C.P.A. §§ 606 and 607; Judiciary Law § 753; *Matter of Armata*, N.Y.L.J., 4/28/2006, at 32, col. 2 (Sur. Ct., Suffolk County).
- 2 *Matter of Abel*, N.Y.L.J., 3/5/2010, at 32, col. 6 (Sur. Ct., Bronx County).
- 3 *Matter of Sofi*, N.Y.L.J., 3/15/2010, at 28, col. 2 (Sur. Ct., Bronx County).
- 4 *Matter of Brissett*, N.Y.L.J., 7/26/2010, at 26, col. 6 (Sur. Ct., Bronx County).
- 5 *Matter of Gaddy*, N.Y.L.J., 3/24/2009, at 36, col. 3 (Sur. Ct., New York County); S.C.P.A. § 2206 (setting forth the procedure for taking and stating a fiduciary's account).
- 6 *Matter of Chase*, 44 A.D.3d 1180 (3d Dep't 2007).

Bench Briefs (Continued from page 4)

or the stipulation of all parties not obtained before serving the "Second Supplemental Summons" and "Second Amended Complaint."

In *Elver Velasquez v. Seltenreich Property Management Corp., Jennifer Seltenreich, Rochard Cohen, Hope Cohen, Twin Fork Flooring Tile & Mason, Inc. a/k/a Twin Fork Flooring & Cleaning Services, Inc., and Bogan Zalewski*, Index No.: 19083/09, decided on August 4, 2010, the court denied plaintiff's motion for an order directing entry of a default judgment pursuant to CPLR §3215(b). The court noted that the movant's submissions did not reflect that plaintiff obtained leave of court or the stipulation of all parties in accordance with CPLR §3025 before serving the "Second Supplemental Summons" and "Second Amended Complaint" on which the motion for default was predicated. The court pointed out that it is well established that after the initial time period set forth in the CPLR §3025(a) has expired, service of an amended or supplemental pleading without leave of court or the stipulation of all parties is a nullity. Here, even if the court deemed that service of the second supplemental summons and second amended complaint were otherwise proper, plaintiff's submissions failed to establish entitlement to a default judgment as there was no affidavit of the facts constituting the claim or a complaint verified by a party with personal knowledge of the facts as required by CPLR §3215(f).

Motion for summary judgment granted; the instant action was both procedurally defective and time barred.

In *Maria Zabala v. Town of Islip and County of Suffolk*, Index No.: 10061/08, decided on January 4, 2011, the court granted the summary judgment motion by defendant Town of Islip. The court pointed out that plaintiff commenced the instant action on April 9, 2008, to recover damages for injuries allegedly sustained on January 11, 2007, when she tripped and fell while walking on a sidewalk. The court noted that by order dated July 7, 2008, this court denied a motion by plaintiff for leave to serve a late notice of claim, and dismissed a prior action assigned index number 4449/08, brought by plaintiff against the same defendants seeking damages for personal injuries allegedly resulting from the same trip and fall accident. In the instant action, The Town of Islip now moved for summary judgment dismissing the complaint against it on the ground that plaintiff failed to serve a notice of claim within the 90-day period required by General Municipal Law §50-e. The plaintiff opposed the motion arguing that it was premature, as the plaintiff may appeal the order denying leave to serve a late notice of claim issued by Justice Molia in July 2008. The court documented that a review of the court's computerized records indicated no such appeal had been filed by the plaintiff in the prior action. The court held that the instant action was both procedurally defective and time barred.

Honorable Peter H. Mayer

Motion for default judgment granted; opposition failed to make the requisite showing of a meritorious defense or a reasonable excuse for the default, and failed to include a cross motion with proposed answer.

In *Andrea Valdez v. Amable DeJesus Ferreira and Maria Collado*, Index No.: 27696/09, decided on September 29, 2010, the court granted the motion by the plaintiff for a default judgment against defendants pursuant to CPLR § 3215. In granting the motion, the court noted that a defendant seeking to avoid a default judgment must personally affirm in an affidavit of merit that grounds of a defense or of a meritorious opposition to the relief sought in the complaint, and must submit a proposed answer to the court in its opposition papers. Here, the defendant's opposition failed to make the requisite showing of a meritorious defense or a reasonable excuse for the default, and failed to include a cross motion with proposed answer.

Honorable Thomas F. Whelan

Motion pursuant to CPLR§ 3211(a)(5)(7) converted into a motion for summary judgment pursuant to CPLR 3211(c); the absence of a necessary relationship between the parties may bear on the merits of the cause of action, but it is more properly the subject of a CPLR 3212 motion for summary judgment.

In *Anthony Bernardis and Rosanne Bernardis v. Town of Islip, Judith Stein, individually and as Executrix of the Estate of Kenneth Stein, Jr., and as Trustee of the 1999 Stein Trust and as a Trustee of a Testamentary Trust; David S.J. Neufeld, as Executor of the Estate of Kenneth F. Stein, Jr.; Gwendolyn Zegel, as Trustee of a Testamentary Trust, and Kenneth Stein, III, as Trustee of a testamentary Trust, Town of Islip v. LoDuca Associates, Inc., LoDuca Associates and Richard LoDuca*, Index No. 9250/08, decided on December 13, 2010, the court converted the motion by third party defendants pursuant to CPLR§ 3211(a)(5)(7) into a motion for summary judgment pursuant to CPLR 3211(c). In rendering its decision, the court noted that it was not argued that the town failed to state a cause of action for contribution or indemnification, but rather that there was no privity or relationship between the parties to support such a cause of action. The court found that this argument was beyond the scope of a CPLR 3211(a)(7) challenge. The court pointed out that on a motion to dismiss pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the court must accept the facts alleged in the pleadings as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory. While the absence of a necessary relationship between the parties may bear on the merits of the cause of action, the court concluded that it is more properly the sub-

ject of a CPLR 3212 motion for summary judgment, since it did not affect whether a cause of action has, in fact, been stated. Whenever a court elects to treat an erroneously labeled motion as one for summary judgment, it must provide "adequate notice" to the parties unless it appears from the parties' papers that they deliberately were charting a summary judgment course by laying bare in their proof. Accordingly, the court ordered that the parties have an opportunity to make an appropriate record by the service and filing of additional affidavits and other supporting papers no later than three weeks from the date of the order.

Motion for a preliminary injunction denied; preservation of evidence was not the proper subject of a motion for a preliminary injunctive relief in a tort action.

In *Edward M. Walsh, Jr., as Chairman of the Suffolk County Committee of the Conservative Party and the Suffolk County Committee of the Conservative Party v. John E. Frayler a/k/a Jeff Frayler, individually and as President of the Suffolk County Police Benevolent Association, Inc., the Suffolk County Police Benevolent Association, Inc., Gerald Gilmore, individually, and as President of the Suffolk County Police Superior Officers Association, Lawrence Faraone, as Treasurer of the Suffolk County Police Superior Officers Association, the Suffolk County Police Superior Officers Association, Suffolk County detectives Association, Inc., Michael Applequist, Kevin Early, Edward Fitzgerald, Patrick J. Maloney and Timothy Morris*, Index No.: 40784/09, decided on February 24, 2010, the court denied plaintiff's motion for a preliminary injunction restraining defendants from altering, revising, erasing, deleting or otherwise destroying documents or electronic files within the possession, custody, and control of the defendants relating to the contentions of the parties in this tort action without making a proper back up and from selling or transferring any computers or electronic equipment that contained files. The court noted that the instant motion was rendered academic by plaintiff's service of a "First Demand for Inspection of Electronic Data and for Preservation of Electronically Stored Information." Under these circumstances, and in light of the fact that the preservation of evidence was not the proper subject of a motion for a preliminary injunctive relief in a tort action, the court denied the motion.

Send decisions to appear in "Decisions of Interest" column to Elaine M. Colavito at elaine_colavito@live.com. There is no guarantee that decisions received will be published. Submissions are limited to decisions from Suffolk County trial courts. To be considered for inclusion in the May 2011 issue, submission must be received on or before April 1, 2011.

Note: Elaine Colavito is an Associate at Heidell Pittoni Murphy & Bach, LLP concentrating in litigation defense. She graduated from Touro Law Center in 2007 in the top 6% of her class. She can be contacted at (516)408-1600.

MUSIC REVIEW

No Better Than This

John Mellencamp at Radio City

By Dennis R. Chase

Fans seeking only the hits played the way they've always heard them may have been somewhat disappointed. But Mellencamp offered no excuses. He had a message to deliver. These fans were probably much more concerned whether their DVR's were recording *American Idol*, and whether they'd have the rare opportunity to catch a fleeting glimpse of Mellencamp's new flame, and media fave, Meg Ryan. For the real fans, however, understanding and enjoying Mellencamp's last two CDs and appreciating the performance of really great music at a really great venue, the show was nothing less than superior, spectacular, and stupendous . . . and the venue . . . PERFECT! As Mellencamp said, quoted by *Rolling Stone Magazine*, "you couldn't do this kind of show in an arena."

The show began, oddly enough, with the screening of *It's About You*, a documentary centered on the recording of Mellencamp's newest CD, *No Better Than This*, a musical venture produced by the legendary T Bone Burnett. Perhaps the screening of the movie is where the rubber met the road

and distinguished true Mellencamp fans from the rest. The movie produced and directed by Kurt and Ian Markus, captivated true fans, yet was merely conversation/cocktail fodder for those "fans" leaving one of music's finest venues, in seeming distress. The documentary quite convincingly channeled the dedication, enthusiasm, and commitment for which this iconoclastic performer strove in releasing his most recent CD.

Mellencamp recorded *No Better Than This* at historic locations, such as the First African Baptist Church in Savannah, Georgia as well as at the historic Sun Studios in Memphis, and the Sheraton Gunter Hotel in San Antonio, where blues pioneer Robert Johnson recorded blues staples like *Sweet Home Chicago* and *Cross Road Blues*. Mellencamp recorded the album using a 1955 Ampex portable recording machine and only one microphone, requiring all the musicians to gather together around the mic. The album was recorded in mono, the same manner as the classic folk and blues recordings of the



Dennis R. Chase

1930s and '40s. Mellencamp said, "it's unique for this day and age, the same mic I was singing into is the same mic that recorded the drums at the same time . . . and everything was cut live with no overdubs or studio nothing! These are real songs being performed by real musicians—an unheard-of process in today's world - real music, for real peo-

ple!"

Even stripped down to the very basics, Mellencamp never sounded better. "John Mellencamp and his ensemble of six musicians put on an incredible show, displaying formidable musicianship and taste, seamlessly blending new, unfamiliar songs with the unforgettable anthems from his glory days," claimed blogger of *When I Go Deaf - I Live For Music*. Hard pressed, and really hard pressed, could anyone more aptly describe this formidable performance. Mellencamp was quite enjoying himself performing the radically rearranged *Cherry Bomb*, to the *Jack and Diane* performed as a country-swing song. Mellencamp describes *Jack and Diane* as a "sad song" that he hadn't previously recognized as such "because [he] played it in the pop form so many times."

If he performed nothing other than *Save Some Time To Dream* (the opening track from *No Better Than This*), a tune Mellencamp had first performed acoustically while touring with Bob Dylan in

2009, the true Mellencamp fans would have been fully satisfied. "It's about individual freedom and thought—and controlling our own lives," Mellencamp said of the track. John delivered so very much more than that inspiring message that evening and some were grateful. The influence of Burnett, however, was not lost for but a second of the show. The music (and the message) was clean, clear, pure and ethereal.

Even perennial crowd pleasers like *Paper and Fire* were smokin' up the alleyway like never before. Every song was different in melody and spirit; in meaning and inspiration, Mellencamp's delivered the message exceedingly well. Now, if only Meg was there . . . actually, she was, waiting in the tour bus to share a post show glass of chocolate milk while Mellencamp smoked a few American Spirits.

Note: Dennis R. Chase is the current Second Vice President of the Suffolk County Bar Association, a frequent contributor of The Suffolk Lawyer, and a partner with The Chase Sensale Law Group, L.L.P. The firm, with offices conveniently located throughout the greater metropolitan area and Long Island, concentrates their practice in Workers Compensation, Social Security Disability, Short/Long Term Disability, Disability Pension Claims, Accidental Death and Dismemberment, Unemployment Insurance Benefits, and Employer Services.

COMMITTEE CORNER

News & Notes From SCBA Committees

Education Law

Robert E. Sapir, Chair

Three attorneys, Coleen Chin, Esq., Nadja Allen Gill, Esq. and Felice Bowen, Esq., from the Office of Civil Rights spoke on harassment and discrimination in a school setting. They also discussed the procedure followed by their office upon receipt of a complaint. The presentation was equally valuable for members of the committee who represent school districts, and those who act as advocates for parents and students.

Elder Law

Steven A. Kass and Kim M. Smith, Co-Chairs

On February 16, 2011, David

Grossman, Esq., spoke to the Elder Law Committee about Nursing Home Negligence litigation under Public Health Law 2801-d. Mr. Grossman explained the origins of the law, the nature of claims presented, the differentiation between these types of cases and medical malpractice cases, and potential recoveries. The meeting was hosted by Lynne Kleinmann, cSMM and Ellen Blank, cSMM, of Accent Home Staging & Organizing, Inc., and SAMMs (Senior Adult Move Management Services), who explained the benefits of their services for the senior population to help them stay in their homes safely, organize their possessions, enhance the sales price of their home and move to other residences.

Correction

Some information regarding **Richard Weinblatt** was missing from his listing in the On the Move section of Among Us in the March 2011 issue of *The Suffolk Lawyer*. Mr. Weinblatt is council at Ruskin Moscou & Faltischek PC but also remains a partner at Haley, Weinblatt & Calcagni LLP in Islandia. *The Suffolk Lawyer* regrets the error.



The wrong photo of Special Section Editor Natasha Meyers ran twice in the March issue of *The Suffolk Lawyer* on pages 4 and 5. The correct photo that should have run is at left.

The Suffolk Lawyer regrets the error.

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2011 Offshore Voluntary Disclosure Initiative *(Continued from page 1)*

incur penalties for preparing a tax return that fails to disclose a client's offshore account/activity that they knew or should have known about.

The 2011 OVDI contains a firmer deadline than the 2009 program. Under this new initiative, taxpayers must do far more than just submit an initial statement of intent to disclose their activity at a later time. They must provide corrected tax returns and remit tax, interest and penalties owed by August 31, 2011. A difficult deadline to meet when considering offshore bank takes weeks or months to provide back-year bank statements. A question remaining is whether a mad rush will occur, followed by an ambush of amended tax returns for statements which arrived after the deadline.

The framework for the OVDI was created with cognizance that it was also the IRS's second chance at the plate. The accuracy-related penalty on unreported income remains. However, in fairness to those who had already complied with the deadline for the 2009 program, the penalty on the highest asset balance was increased to 25% (from 20% in 2009). But it's not all bad. Relief was provided for some taxpayers. A reduced 12.5% penalty was created for account balances under \$75,000 and the 5% penalty bargain still remains for those with dormant accounts which meet certain requirements. The IRS has even recognized that it would be unfair for de minimis transactions (less than \$1,000 with certain conditions) to prevent taxpayers from qualify-

ing for the reduced 5% rate. Formerly, instances of a single small ATM withdrawal had disqualified taxpayer's from obtaining the reduced rate benefits. Relief was also provided for Passive Foreign Investment Companies ("PFIC's"). Under the 2011 initiative, the IRS addressed the lack of cost basis information for PFIC's with an opportunity to instead calculate its gains or losses using Mark-to-Market methodologies.

An aspect of uncertainty with the 2009 program was whether individuals or entities even had the obligation to report an offshore bank account at all. The Federal signatory authority and financial interest provisions were not clearly defined. Unfortunately, the government had deferred setting forth the final criteria until long after the initial disclosure program had expired.² Taxpayer's screaming for clarity asserted that not all beneficial interests carried access to or control over the underlying funds. Finally, the new provisions recently set forth by the FinCEN "more clearly delineate both the scope of individuals and entities that would be required to file the FBAR and the types of accounts for which such reports should be made".³

It should be noted that although the disclosure initiatives certainly mitigate taxpayer criminal exposure, the pre-designated rate structure may not prove a bargain for some clients who clearly lacked intent and willfulness for the failure-to-file the FBAR.⁴ FAQ35, set forth by the IRS to explain the 2009 program specifically pro-

vided that "under no circumstances will a taxpayer be required to pay a penalty greater than what he would otherwise be liable under existing statutes." In other words, a comparison was to be conducted between the application of the disclosure penalty regime and the penalties otherwise normally applied. The taxpayer was only supposed to be responsible for the lesser of the two. But the IRS became inundated with disclosure applications. They were short staffed, and unfortunately, agents to whom these case matters had ultimately been directed insisted upon comparison with higher "intentional" tax penalties (even when intent was not demonstrated) in lieu of the traditional civil penalties imposed under statute. The result is that taxpayer's were oftentimes locked into the OVDI penalty regime structure. Going forward under the OVDI, it will be interesting to see if the redistribution of these cases to central processing centers coupled with the addition of more IRS auditors will enable this comparison to be viewed as intended.

The world is shrinking. Even small businesses now operate globally. And to protect its revenue stream, the IRS was forced to expand its reach into financial institutions worldwide. The IRS investigations started with Swiss banks but have since broadened their probes to include Israeli and Asian banks as well. And in my opinion, the program will continue to expand. I use my trusty standard of measurement to determine the IRS's future direction with its enforcement efforts. I read the descrip-

tions of their job postings. One quick glimpse and you'll find that the vast majority of positions sought to be filled are not for Lawyers, Accountants or Tax Examiners, but rather, for Computer Scientists and Computer Engineers. This increases the likelihood that electronic banking activity will continue to be investigated and that the global hunt for tax dodgers will remain a hot button source of enforcement activity in the future.

Note: Eric L. Morgenthal, Esq., CPA, M.S. (Taxation) maintains his Tax Law practice in Melville specializing in Federal and New York State Tax Controversy Matters. He formerly served as Chair of the Suffolk County Bar Association Taxation Law Committee, is a member of the Nassau County Bar Association Tax Law Committee, New York State Bar Association Tax Section and the American Institute of Certified Public Accountants. Comments can be directed to his firm at info@litaxlaw.com.

¹ "Persons" includes Individuals, Trusts, Estates, Partnerships, Corporations, PFIC's, CFC's and other entity forms.

² IRS Notice 2009-62 extended the FBAR filing for tax years 2008 and prior to June 30, 2010; however, it did not clarify the filing requirement in time for the October 2009 initial voluntary disclosure filing deadline.

³ See 31 U.S.C. 5314 and the regulations at 31 CFR 103.24, 103.27, 103.32

⁴ Nonetheless, IRS Circular 230 sets forth additional requirements for Offshore Disclosures, i.e. notification in writing to the client of the costs and risks for the failure to comply.

These Times They Are a Changin' *(Continued from page 1)*

volunteer attorneys, the availability of ongoing support for current volunteers, and lay litigants and clients' ability to secure capable and ready legal services. We are doing everything in our power to secure funding for Linda's position from elsewhere, but money is tight everywhere, including in our budget, so I am not my typically optimistic self on this one.

In addition, we recently received other news that demonstrates change is inevitable - the Honorable H. Patrick Leis, III has stepped down as District Administrative Judge for Suffolk County. Justice Leis has been a friend to the bar and particularly our association. As District Administrative Judge he has raised the level of compassion to an all-time high, as it impacts on his fellow judges, attorneys, litigants and jurors. Although Justice Leis will continue to apply his wisdom, skill and compassion as he returns to a fulltime trial calendar, including the Model

Guardianship Part, his leadership in the Suffolk County Judiciary's administrative ranks will be missed by many. At the same time, I am confident that his successor, the Honorable Randall Hinrichs, will do a fine job as he assumes the position.

With all of these challenges and changes in mind, recognize that your Bar Association remains hard at work on your behalf to help maneuver the landscape. Your Board of Directors is actively engaged in addressing the tort reform legislation, and we are providing direction to all SCBA members with regard to how to meaningfully assist in this effort. Please read your e-blasts and your committee notices for relevant developments and important meetings.

Erin Young, a Dowling College graduate from Greenport, has been hired as much-appreciated former SCBA staff member Melissa McManaman's replacement. Erin has moved right into her role as Lawyer

Referral and Information Service Administrator/Pro Bono Settlement Conference Coordinator, and she is a welcome addition to the staff. Stop in and introduce yourself the next time you are at the SCBA Center.

Our Working Parents Committee is up and running, which is another good example of a positive change at the SCBA. Under the leadership of Stacy Posillico, the committee is being formed and meetings are taking place to bring together like-minded colleagues for the purpose of addressing issues pertaining to being a practicing lawyer and a parent, and trying to do both well at the same time. See Stacy's article on page 6 for more details and upcoming dates on interest.

And last, but by no means least, the Jon Gordon event, which needed to be re-scheduled due to one of the many snowstorms that are now behind us, is set for Tuesday, April 5th. In case you somehow missed the announcement, Mr. Gordon is a consultant, motivational speaker and international bestselling author, most notably

of *The Shark and the Goldfish: Positive Ways to Thrive During Waves of Change*, *The Energy Bus: 10 Rules to Fuel Your Life, Work and Team with Positive Energy and Soup: A Recipe to Nourish Your Team and Culture*.

Through very generous sponsorship, most notably of long time SCBA-supporter U.S. Trust Bank of America Private Wealth Management, together with Enright Court Reporting and Madison Park Consultants, Mr. Gordon will be sharing his positive and potentially life-altering perspective at a time when many of us can likely use it. The event is free to members, but space is limited so you must RSVP, and do it quickly, or you may not get in.

So, as the rains come and go, and flowers start to grow, stop asking what your SCBA is doing for you and recognize all the ways the SCBA is helping you through the changes and challenges in the practice of law and beyond. Then ask yourself: what are you doing to be a part of it all and get involved. Happy spring!

Creating a More Equal, Balanced and Better Playing Field for Women *(Continued from page 5)*

cooperation and support from both of our Associations, we can create a more equal, balanced and better playing field to promote the fair and equal administration of justice.

Note: Kim M. Smith, is solo practitioner in Islandia where she practices in the areas of Elder Law, Trust & Estates, Guardianship, Medicaid and Special needs

planning. Ms. Smith is currently serving her second year of a two year term as Co-Chair of the Suffolk County Bar Association's Elder Law and Estate Planning Committee and is a frequent lecturer at the bar association. Kim M. Smith is also serving as the current Vice President of Programs for the Suffolk County Women's Bar Association and has been nominated President for the 2011 term.

Governor's Proposed Cap to Medical Malpractice Awards Opposed *(Continued from page 5)*

by the NYSBA Committee on the Tort System can be accessed on the NYSBA website. I urge anyone who agrees that these proposals constitute a denial of access to justice to contact your state senator and assemblyman and urge them to vote against the bill.

A bill based on the Governor's task

force report has already been drafted and will be introduced shortly.

Note: Craig Purcell, a past SCBA President and NYSBA Vice President and Member of the Executive Committee, is presently Co-Chair of the NYSBA's Committee on the Tort System.

James Zadroga 9/11 Health & Compensation Act of 2010 *(Continued from page 3)*

would suggest that area residents and nearby workers are eligible claimants under the reopened VCF.

Within two weeks of the signing of the of Zadroga Act, however, Senator Kirsten Gillibrand's staff announced that lower Manhattan residents and workers were not covered by the fund, only to be contradicted by Rep. Jerrold Nadler (a co-author of the Zadroga Act) the next day, declaring that such area residents/workers were in fact covered. Resolution of this issue will need to be decided by the Special Master and the new rules implemented under the Zadroga Act.

The Zadroga Act places sharp limitations on attorneys' fees. The Zadroga Act amended the original Victim Compensation Fund law to place a "cap on attorneys' fees of no more than ten percent" of an award made on a claim. The ten percent attorneys' fee cap is further

limited by fees previously received by attorneys representing VCF claimants who were also part of any settled civil action, including the recently settled litigation in the Southern District of New York. The Zadroga Act also prohibits an attorney from charging a legal fee in the case of an individual who was charged a legal fee in connection with the settlement of a prior civil action, except if the legal fee charged in connection with the settlement of a civil action is less than 10 percent of the aggregate amount awarded by a subsequent Victim Compensation Fund.

Bottom Line - attorneys who represented the over 10,000 September 11th responders in the recently settled actions against New York City cannot "double dip." If their fees in the NYC litigation were higher than the 10 percent attorney fee cap in the Zadroga Act, they cannot

charge any fee for the Zadroga VCF claim. New attorneys who represent the claimant solely in the Zadroga VCF claim are also limited by the 10 percent aggregate cap, which may dissuade some attorneys from taking claims where claimants previously paid attorneys a 25 percent fee under the NYC settlements. In some cases, the result might be that the attorney fee on the Zadroga Victim Compensation Fund claim could be significantly less than 10 percent, and could be offset completely.

The passage and enactment of the James Zadroga 9/11 Health and Compensation Act of 2010 was a huge victory for 9/11 first responders and survivors. Most importantly, it provides much needed medical monitoring and treatment to thousands of individuals who are now sick as a result of the 9/11 attacks and its aftermath. We are all aware now of the "toxic soup" that enveloped the area surrounding Ground Zero.

The Zadroga 9/11 Act also provides a second chance for many individuals, who were either ineligible or became sick after the closure of the original Victim Compensation Fund, to apply for a mone-

tary award for their damages. As of February 11, 2011, President Obama has not selected the new Special Master of the Fund.

The original Special Master of the VCF was Kenneth Feinberg, who is now administering claims related to the BP Gulf oil spill. Mr. Feinberg has offered to act as Special Master in the reopened VCF on a *pro bono* basis. The Special Master must issue new regulations on fund procedures within 180 days of enactment of the Zadroga 9/11 Act. Once these regulations are issued, attorneys will be in a much better position to counsel our clients on their rights and potential benefits under the new Zadroga Act.

Note: Troy G. Rosasco is a Senior Partner at Turley, Redmond, Rosasco & Rosasco, LLP with offices in Nassau, Suffolk and Queens. He has been representing 9/11 victims and first responders since soon after the September 11th attacks. Daniel J. Hansen is a personal injury trial attorney with his own practice and offices in the Woolworth Building in Manhattan. They are jointly handling 9/11 Victim Compensation Fund claims.

Saying Checkmate in a Tough Economy *(Continued from page 5)*

law. It does not necessarily make that perspective right or wrong, but it does allow for a unique understanding.

This March marks my one-year anniversary of admission to the New York Bar. As a newly admitted attorney and a woman of color it is my opinion that, on the surface, Suffolk County Courts leave a lot to be desired as far as diversity is concerned. According to the U.S. Census Bureau, minorities are approximately 26 percent of the population of Suffolk County and that number is definitely not represented within the ranks of practicing attorneys in the Suffolk County Court system. Contrary to this imbalance, it has been my experience that the need to have a representation of a diverse group of attorneys is very much recognized in Suffolk County. However, the reality of learning how to recruit and retain attorneys of a diverse cultural background is an ongoing query within the Suffolk County legal community.

I have found that the old religious adage – "seek and ye shall find; ask and ye shall receive," can be part of the solution. I have taken advantage of that adage and have been met with nothing but an open door and helping hands. As a result of an economy that is not hiring attorneys, or, more accurately, not hiring attorneys with little or no experience, last year I enrolled in Touro Law School to attain a LL.M. after just passing the bar. However, I quickly realized that another degree was not what I wanted; I wanted to practice law. To my good fortune, I began work as "Of Counsel" for an African-American attorney who gave me an opportunity to practice law when no other firm would. He introduced me to the ins and outs of the court system and I received a "baptism by fire," if you will, about practicing law in Suffolk County.

In addition, to working "Of Counsel," I began my quest to explore my interest in family law. I became a member of the Suffolk County Bar Association and the Amistad Long Island Black Bar Association. Through these associations, I have been introduced to many attorneys and judges who have extended numerous courtesies and advice. For example, during a family law CLE at the SCBA, a judge shared a moving story about a case that came before him and the positive transformation of an abused child's life;

his passion sealed my interest in family law and I knew that it would be the basis of my practice. I introduced myself to that judge and shared my interest in family law. Since then, he has guided and introduced me to other lawyers who have served as mentors.

Despite, the lack of apparent diversity in Suffolk County, I have found that many of my colleagues have been more than willing to guide and mentor me. Moreover, I have had judges and court referees pull me aside and offer words of wisdom, opposing counsel have always been accommodating, and the attorneys whom I see on a daily basis have provided me with a plethora of information that provides assistance in the representation of my clients.

Notwithstanding all of the opportunities I have been able to experience or create for myself, there still has to be an active effort by all to improve the employment of minorities. As employers seek to hire more minorities, we must position ourselves to take advantage of opportunities as they present themselves. Seeking employment opportunities in today's economy must not be calculated like a chess move; one cannot await a potential employer's next move in an effort to counter it. We must take note from the ones who broke barriers before us and make our presence known in order to foster diversity in the law.

Ideally, I would like to see a multicultural representation of the masses of minorities that are exposed to the Suffolk County Court system, but there is a long way to go. As W.E.B. Dubois so eloquently stated - "Herein lies the tragedy of the age; not that men are poor-all men know something of poverty, not that men are wicked-who is good? Not that men are ignorant-what is truth? Nay, but that men know so little of men."

Note: Andrea Amoa was born in London, England and moved to the United States when she was 10 years old. She is currently on the 18b panel for family law and serving as "Of Counsel" to two law firms. Additionally, she is the co-founder of ReCycle for Education, a 501(C)(3)not-for-profit organization that recycles 5-cent bottles and cans using the proceeds to fund scholarships for Central Islip students.

Among Us *(Continued from page 7)*

Bohemia, NY 11716. Her contact information is: telephone: 631-676-9300; fax: 631-588-0276 and email: sjh@hermer-law.com.

SCBA member **Joanne S. Agruso** is pleased to announce her new office location: 150 Motor Parkway, Suite 401, Hauppauge, NY 11788 (631) 787-8522; fax (631) 361-7815.

New Members...

The Suffolk County Bar Association extends a warm welcome to its newest members: Elaine Barraga, Christopher A. Bianco, Erin M. Conway, Cara P. Cronin, Eric Dubinsky, Nilli Farzan, Kevin Griffiths, Matthew Hereth, Kathleen Herr-Evers, Alexander Lopez, Kathleen M. Mahoney, MaryAnn Marino, Edward Monaghan, Sean O'Toole, Christopher D. Palmieri, D. David Parr, Steven A. Pilewski, Kimberly C. Preston, Donny Secas, Leland S. Solon, William F. Treuber and Bernadette Tuthill.

The SCBA also welcomes its newest student members and wishes them success in their progress towards a career in the law: Alexandra T. Busa, Douglas Moliterno, John Rienzo,

On the Move – Looking to Move

This month we feature two employment opportunities and three members seeking employment. If you have an interest in the postings, please contact Tina at the SCBA by calling (631) 234-5511 ext. 222 and refer to the reference number following the listing.

Firms Offering Employment

General practitioner, with Patchogue law office, seeking full-time attorney.

Reference Law #1.

Attorney with active matrimonial practice in Hauppauge seeking full-time attorney. **Reference Law #2.**

Members Seeking Employment

Attorney seeking full-time employment. Practicing since 1984 in areas of general civil litigation. Admitted to the New York and Texas State Bars, as well as the United States District Courts for the Eastern and Southern Districts of New York.

Reference Att. #10

I am a charismatic, highly motivated and newly admitted attorney seeking a part to full time associate position in a respectable law firm. I am interested and open to employing all facets and specialties in the law. I have a diversified history and strong background in different types of law earned while working at the Manhattan District Attorney's Office, interning at the Attorney General's Office, graduating law school, serving as President on a cooperative board, starting an entrepreneurial business and passing the New York State Bar Exam. I am results orientated and look forward to meeting with you to provide further information.

Reference Att #25

Experienced trial attorney now accepting small claims per diem in the Fourth and Fifth District Courts.

Reference Att#36

Keep on the alert for additional career opportunity listings on the SCBA Website and each month in *The Suffolk Lawyer*.



SUFFOLK ACADEMY OF LAW

OF THE SUFFOLK COUNTY BAR ASSOCIATION

560 WHEELER ROAD, HAUPPAUGE, NY 11788 • (631) 234-5588

EARLY SPRING CLE

The Suffolk Academy of Law, the educational arm of the Suffolk County Bar Association, provides a comprehensive curriculum of continuing legal education courses. Listings include some of the updates, series, and seminars to be held this spring. Watch for additional program details and announcements.

REAL TIME WEBCASTS: Many programs are available as both in-person seminars and as real-time webcasts. To determine if a program will be webcast, please check the SCBA website (www.scba.org) – Internet CLE).

ACCREDITATION FOR MCLE:

The Suffolk Academy of Law has been certified by the New York State Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York. Thus, Academy courses are presumptively approved as meeting the OCA's MCLE requirements.

NOTES:

N.B. - As per NYS CLE Board regulation, you must attend a CLE program or a specific section of a longer program in its entirety to receive credit.

Program Locations: Most, but not all, programs are held at the SCBA Center; be sure to check listings for locations and times.

Tuition & Registration: Tuition prices listed in the registration form are for **discounted pre-registration**. **At-door registrations entail higher fees.** You may pre-register for classes by returning the registration coupon with your payment.

Refunds: Refund requests must be received 48 hours in advance.

Non SCBA Member Attorneys: Tuition prices are discounted for SCBA members. If you attend a course at non-member rates and join the Suffolk County Bar Association within 30 days, you may apply the tuition differential you paid to your SCBA membership dues.

Americans with Disabilities Act: If you plan to attend a program and need assistance related to a disability provided for under the ADA, please let us know.

Disclaimer: Speakers and topics are subject to change without notice. The Suffolk Academy of Law is not liable for errors or omissions in this publicity information.

Tax-Deductible Support for CLE: Tuition does not fully support the Academy's educational program. As a 501(c)(3) organization, the Academy can accept your tax deductible donation. Please take a moment, when registering, to add a contribution to your tuition payment.

Financial Aid: For information on needs-based scholarships, payment plans, or volunteer service in lieu of tuition, please call the Academy at 631-233-5588.

INQUIRIES: 631-234-5588.

SPRING UPDATES

EVIDENCE UPDATE

Date TBA

A year's worth of developments in state and federal, civil and criminal, issues.

Presenter: Professor Richard Farrell (Brooklyn Law School // Author—Richardson on Evidence)

Time: 6:00– 8:30 p.m. (Sign-in from 5:30 p.m.)

Location: Nassau County Bar Association (Mineola)

Refreshments: Light supper

MCLE: 2 ½ Hours (professional practice)

[Non-Transitional and Transitional]

AUTO LIABILITY UPDATE

Monday, May 23, 2011

A must-attend for negligence lawyers!

Presenter: Professor Michael Hutter (Albany Law School);

Jonathan Dachs, Esq. (Shayne, Dachs, Stanisci, Corker & Sauer)

Coordinator: James K. Hogan, Esq. (Academy Advisory Committee)

Time: 6:00– 9:00 p.m. (Sign-in from 5:30 p.m.)

Location: SCBA Center **Refreshments:** Light supper

MCLE: 3 Hours (professional practice)

[Non-Transitional and Transitional]

BANKRUPTCY LAW UPDATE

Thursday, June 23, 2011

All the new developments summed up and interpreted!

Presenter: Panel TBA

Coordinator: Richard L. Stern, Esq. (Academy Dean)

Time: 6:00– 9:00 p.m. (Sign-in from 5:30 p.m.)

Location: SCBA Center **Refreshments:** Light supper

MCLE: 3 Hours (professional practice)

[Non-Transitional and Transitional]

SERIES

TRUSTS A TO Z

One lunchtime program each month through June (Live & Webcast)

Past sessions are available as on-line video replays and may also be purchased as DVDs or audio CDs.

Each Program:

Time: 12:30–2:15 p.m. (Sign-in from noon.)

Location: SCBA Center **Refreshments:** Lunch

MCLE: 2 Hours (professional practice)

[Non-Transitional and Transitional]

Series Coordinator: **Ralph Randazzo** (Randazzo & Randazzo, LLP – Huntington)

DYNASTY TRUSTS..... Tuesday, April 5, 2011

Presenter: Paul McGloin

(Deutsche Bank Private Wealth Management)

CHARITABLE TRUSTS..... Wednesday, May 10, 2011 (Note new date.)

Presenters: Richard Chalifoux, Esq. & Raymond Radigan

(U.S. Trust/Bank of American)

LIFETIME TRUSTS FOR MINORS Tuesday, June 7, 2011 (postponed from Jan. 11)

Presenter: Ralph Randazzo

(Randazzo & Randazzo, LLP – Huntington)

SEMINARS

PERSUASIVE WRITING

Thursday, March 31, 2011 (Live & Webcast)

Esteemed guest presenter will show practitioners at all experience levels how persuasive writing can make a significant difference in a court case. Topics include story telling; style; rhetoric; ethics; legal methods; and how to make every word count.

Presenters: Hon. Gerald Lebovits (Author of "The Legal Writer," NYSBA Journal; NYC Civil Court Judge)

Coordinator: Diane Farrell, Esq. (Academy Officer)

Time: 6:00– 9:00 p.m. (Sign-in from 5:30 p.m.)

Location: SCBA Center **Refreshments:** Light supper

MCLE: 3 Hours (2.5 skills; 0.5 ethics)

[Non-Transitional and Transitional]

Appreciation for Underwriting Support: Echo Appellate Press, Inc. (Stu Davis, President)

RESCHEDULED

Presented in Conjunction with SEPA Mujer & the SCBA Immigration Law Committee

IMMIGRATION OPTIONS FOR SURVIVORS OF DOMESTIC VIOLENCE & OTHER CRIMES

Thursday, April 7, 2011

This training program is intended to fill a need on Long Island for legal services for battered immigrant women on Long Island. The program will cover immigration law basics, an overview of the family visa process and other key topics. No tuition will be charged those willing to take a case on a pro bono basis.

Presenters: Jessica Glynn, Esq. (SEPA Mujer); Elizabeth Newman, Esq. (SEPA Mujer); SEPA Mujer Volunteers.

Moderator: Eric Horn, Esq. (Chair–SCBA Immigration Law Committee)

Time: 6:00– 8:30 p.m. (Sign-in from 5:30 p.m.)

Location: SCBA Center **Refreshments:** Light supper

MCLE: 2.5 Hours (professional practice)

[Non-Transitional and Transitional]

Presented in Conjunction with the SCBA Health & Hospital Law Committee

PALLIATIVE CARE: Legal, Clinical, & Ethics Issues

Wednesday, April 13, 2011

This program developed by the SCBA Health & Hospital Committee will explore issues related to palliative care and assisting clients in end-of life-planning. Treatment of the relevant laws and regulations will be complemented by discussion of clinical matters and the medical and legal ethics issues that come into play.

Presenters: James Fouassier, Esq. (Stony Brook University Hospital); Denise Snow, Esq. (Nassau Suffolk Law Services); William J. McDonald, Esq. (Ruskin, Moscou, Faltischek, PC); Dr. Lynn Hallarman; others TBA

Moderator: William J. McDonald, Esq. (Co-Chair–SCBA Health & Hospital Law Committee // Academy Officer-Elect)

Time: 6:00– 9:00 p.m. (Sign-in from 5:30 p.m.)

Location: SCBA Center **Refreshments:** Light supper

MCLE: 3 Hours (2 professional practice; 1 Ethics)

[Non-Transitional and Transitional]

APRIL LUNCH 'N LEARNS AT THE 400 CARLETON AVENUE COURTHOUSE I SUPERSEDING INFORMATIONS

Thursday, April 14, 2011

This succinct program will comprise a review of a recent Appellate Term case and discussion of ramifications for criminal defense. For your convenience, a boxed lunch will be available before the start of the program.

Presenters: TBA

Moderator/Coordinator: Harry Tilis, Esq. (Tilis Law Group–Bohemia // Academy Officer-Elect)

Time: 12:30–1:50 p.m. **Location:** Courthouse at 400 Carleton Avenue (tentatively in the Central Jury Room)

Refreshments: Boxed Lunches **MCLE:** 1 Hour (professional practice) [Non-Transitional and Transitional]

II ORDERS OF PROTECTION IN CRIMINAL COURT

Wednesday, April 27, 2011

Instruction will focus on both recurrent themes and new concepts in this area of law. Topics will include, among other things, threat cases (*People v. Dietz*; *People v. Phelan*); harassment cases (*Julie G. V. Yu-Jen G.*); and new law regarding delays in seeking court intervention. A panel of judges, attorney referees, and experienced practitioners will be assembled. Boxed lunches will be available before the start of the program.

Moderator/Coordinator: Harry Tilis, Esq. (Tilis Law Group–Bohemia // Academy Officer-Elect)

Time: 12:30–2:15 p.m. **Location:** Courthouse at 400 Carleton Avenue (tentatively in the Central Jury Room)

Refreshments: Boxed Lunches **MCLE:** 1.5 Hours (professional practice) [Non-Transitional and Transitional]

Lunch 'n Learn

OCCUPATIONAL & ENVIRONMENTAL MEDICINE: Legal Issues

Thursday, April 28, 2011

This program for Workers' Compensation and other interested attorneys has been developed in conjunction with the Long Island Occupational Environmental Health Center (LIOEHC). It is subsidized through a LIOEHC grant and is, thus, offered to attendees at an extremely low tuition cost. Don't miss this opportunity to gain insights into an important field.

Presenters: Victor Fusco, Esq. (Fusco, Brandenstein & Rada-Woodbury) Craig J. Tortora, Esq. (Commack)

Time: 11:45 a.m.–1:15 p.m. (Sign-in from 11:45; program at Noon) **Location:** SCBA Center – Hauppauge

Refreshments: Lunch from 11:45 a.m.

MCLE: 1 Hour (professional practice)

[Non-Transitional and Transitional]

Morning at Surrogate's Court PROBATE & ADMINISTRATION

Friday, April 29, 2011

Surrogate John M. Czygier, Jr., and representatives of the Surrogate's Court Law Department will take you through the technical steps of probate-administration and discuss how and why problems sometimes arise. You will learn how to deal with creditors, claims against the estate, trusts, distribution of assets, real property, taxes, potential or actual contests, and much more. If you handle wills and estates, you will want to attend.

Moderator/Coordinator: Scott P. McBride, Esq. (Surrogate's Court Law Department // Academy Advisory Committee)

Time: 9:30 a.m.–12:30 p.m. (Sign-in from 9 a.m.)

Location: Surrogate's Court in Riverhead



SUFFOLK ACADEMY OF LAW

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Refreshments: Donuts during sign-in
MCLE: 3 Hours (1.5 professional practice; 1.5 skills)
 [Non-Transitional and Transitional]

ALTERNATIVE WORK SCHEDULES

Friday, April 29, 2011

Alternative workplace practices – telecommuting, job sharing, flex-time schedules, part-time and compressed schedules – are increasingly popular in the legal profession. The experienced faculty assembled for this program will address how to successfully negotiate and implement such employment arrangements and avoid potential risks.

Presenters: **Sheryl L. Randazzo, Esq.** (Randazzo & Randazzo, LLP; SCBA President); **Dennis Chase, Esq.** (The Chase Sensale Law Group, LLP // SCBA Vice President); **Marian Rose Tinari, Esq.** (District Administrative Judge's Office); **Karen D. McGuire** and **Patricia Condon** (McGuire, Condon, P.C.); **Professor Michael C. Schmidt** (Touro Law Center)
Closing Remarks: **Dean Lawrence Rafal** (Touro Law Center)
Program Coordinator: **Stacy F. Posillico, Esq.** (Chair: SCBA Lawyers & Parenting Committee)
Time: 9:00 a.m. – 12 noon (Sign-in from 8:30 a.m.)
Location: Touro Law Center—Central Islip
Refreshments: Continental Breakfast
MCLE: 3 Hours (2.5 professional practice; 0.5 ethics)
 [Non-Transitional and Transitional]

PRACTICE IN THE APPELLATE DIVISION: Soup-to-Nuts Guidelines

Wednesday, May 4, 2011

An illustrious faculty will shed light on how to bring an appeal in the Appellate Division of the Second Judicial Department. You will gain both new insights and a plethora of practical information.

Agenda & Faculty

General Appeal Issues (what to do, how to file)
Harris J. Zakarin, Esq. (Rivkin Radler, LLP)
 Procedures at the Court (Second Dept. Rules; recent changes)
Matthew G. Kiernan, Esq. (Clerk of the Court)
 A View from the Bench (brief writing, oral argument)
Hon. Sandra L. Sgroi (Justice—Appellate Division, Second Dept.)
Moderator/Coordinator: **Glenn P. Warmuth, Esq.** (Co-Chair—SCBA Appellate Practice Committee // Academy Officer-Elect)
Time: 6:00– 9:00 p.m. (Sign-in from 5:30 p.m.)
Location: SCBA Center **Refreshments:** Light supper
MCLE: 3 Hours (1.5 professional practice; 1.5 Skills)
 [Non-Transitional and Transitional]

FORECLOSURE LAW & PROCEDURE:

Soup to Nuts

Friday, May 13, 2011 – Full Day Program

Suffolk County ranks first in New York State foreclosure rates! – This comprehensive program, developed in response to requests from Academy constituents, will feature bank and defense attorneys, representatives of the bench, a settlement conference referee, and court administrators. The program will take you through all the steps of threatened and actual foreclosures. Presenters will review developments in the law, highlight potential problems and pitfalls, and provide guidance for doing the best possible for those you represent. Topics include:

- How the dangers of a pending foreclosure are flagged
- How the bank starts the process (*lis pendens*, etc.)
- How service and notice are made
- How the recent Settlement Conference Statute changed how foreclosure is processed
- Potential settlement outcomes
- The role of bankruptcy proceedings
- What happens if settlement fails
- The actual foreclosure prosecution and defenses
- Kinds of litigation outcomes
- New attorneys' fees legislation

Program Chair: **Barry M. Smolowitz, Esq.** (Former SCBA

President // Pro Bono Foreclosure Settlement Project Coordinator)
Planning Committee: Cheryl M. Mintz, Esq.; Joseph Rosenthal, Esq.; Eric Sackstein, Esq.; Brian Duggan, Esq.; Stephen Beyer;
Time: 9:00 a.m. – 4 p.m. (Sign-in from 8:30 a.m.)
Location: SCBA Law Center **Refreshments:** Continental Breakfast; Lunch Buffet
MCLE: 6 Hours (4 professional practice; 1 skills; 1 ethics)
 [Non-Transitional and Transitional]

ALSO THIS SPRING

DETAILS TBA

- NEGOTIATING** (May 11 - Evening)
- COURT ACCOUNTINGS** (May 18 – Evening)
- DANGEROUS DOG CASES** (May 19 – Evening)
- FINDING ASSETS (Matrimonial to Stolen Art)** (May 24 – Evening)
- ANNUAL ANIMAL LAW SEMINAR** (May 25 – Evening)
- IMMIGRATION LAW FOR CRIMINAL LAWYERS** (May 26 – Evening)
- COMPREHENSIVE INSURANCE SEMINAR** (Date TBA)
- PRACTICING IN SUFFOLK'S COMMERCIAL PART** (June 2 – Evening)
- ESTATE & RETIREMENT DISTRIBUTION PLANNING** (June 14 – Morning)
- FAMILY COURT PRACTICE: Custody & Visitation** (June 14 – Evening)
- NEW DOMESTIC WORKERS LAW & RAMIFICATIONS** (June 16; Time TBA)
- NEW IRS INITIATIVE ON INTERNATIONAL DISCLOSURE BY FOREIGN BANK ACCOUNT HOLDERS** (Lunch—Date TBA)
- CONTINUING CARE RETIREMENT COMMUNITIES** (Date TBA)

APRIL 2011 REGISTRATION FORM

Return to Suffolk Academy of Law, 560 Wheeler Road, Hauppauge, NY 11788
 Circle course choices & mail form with payment // Charged Registrations may be faxed (631-234-5899) or phoned in (631-234-5588).
 Register on-line (www.scba.org) and take a \$5 discount per course.

Sales Tax Included in recording & material orders.

COURSE	SCBA Member	SCBA Student Member	Non-Member Attorney	Season Pass	12 Sess. Pass	MCLE Pass	New Lawyer MCLE Pass	DVD	Audio CD	Course Book
UPDATES										
Evidence Update	\$ 90	\$50	\$120	Yes	Yes	2 cpn	2 cpn	\$125	\$115	\$20
Auto Liability Update	\$100	\$50	\$125	Yes	Yes	3 cpn	3 cpn	\$150	\$125	\$50
Bankruptcy Law Update	\$100	\$50	\$125	Yes	Yes	3 cpn	3 cpn	\$150	\$125	\$35
SERIES										
TRUSTS <input type="checkbox"/> Dynasty <input type="checkbox"/> Charitable <input type="checkbox"/> Lifetime Trusts for Minors	\$55 per session	\$45 per session	\$75 per session	Yes	1 use each	2 cpn ea.	2 cpn ea.	\$95 ea	\$85 ea	\$20 ea
SEMINARS										
Persuasive Writing	\$90	Free	\$100	Yes	Yes	3 cpn	3 cpn	\$150	\$125	\$35
Immigration Options for Survivors of Domestic Violence	Free with pro bono case \$45 without pro bono case			Yes	1 use	2 cpn	2 cpn	N/A	N/A	N/A
Palliative Care	\$75	\$25	\$85	Yes	Yes	3 cpn	3 cpn	\$100	\$90	\$25
Superseding Informations	\$30	\$15	\$40	Yes	Yes	1 cpn	1 cpn	N/A	N/A	N/A
OP's in Criminal Court	\$35	\$15	\$45	Yes	Yes	1 cpn	1 cpn	N/A	N/A	N/A
Occupational & Environmental Med	\$15	\$10	\$15	Yes	N/A	1 cpn	1 cpn	N/A	N/A	N/A
Probate & Administration	\$95	\$75	\$115	Yes	Yes	3 cpn	3 cpn	N/A	N/A	N/A
Alternative Work Schedules	\$25	\$25	\$25	Yes	Yes	1 cpn	1 cpn	N/A	N/A	N/A
Practice in Appellate Division	\$85	\$50	\$95	Yes	Yes	3 cpn	3 cpn	\$100	\$90	\$25
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Writing Bad Briefs: How to Lose a Case in 100 Pages or More

REPRINTED FROM THE NEW YORK STATE BAR JOURNAL ("THE LEGAL WRITER")

By Gerald Lebovits

Writing a really bad brief — a brief so bad you're sure to lose your case — is a skill few attorneys acquire. Only a select few can do that more than once or twice in a lifetime.

You might wonder why you'd ever want to lose a case. Perhaps you hate your client. Let's face it: Some clients are scam artists, especially those who don't pay you. Perhaps you hate your client's case. On an ethical level, the world will be better off, frankly, if some of your clients lose. Or perhaps you like your client, but you realize that your client will lose sooner or later. You might want to throw your client's case before your legal fees grow too high. Or perhaps you're in league with your adversary. The job market is tough, after all; maybe you're trying to get a job at your adversary's law firm. Or perhaps you want to ingratiate yourself with a judge who'll probably rule against your client anyway. Lawyers need to think about their next case, don't they? Or perhaps you've learned that your client has shallow pockets, and you need to cut your losses and move on before your firm downsizes you. That can happen a lot these days.

“The longer your brief, the less the judge will understand your case. If you choose to be deferential, make it sound phony: Use “respectfully” a lot. Obfuscate with jargon.”

The reasons you might want to lose are many, and writing a bad brief is a key to losing. For those lawyers who want to lose — and lose big — this column's for you.¹

Rule #1: Ugly's in the Eye of the Beholder.

Stimulate readers visually. Make sure you have a bad cover. Because first impressions count when it comes to briefs, judges will notice a bad cover. They'll assume that if you don't care about presentation, you probably won't care about getting the law right. Include a border, preferably with a seasonal motif. Flowers and snowflakes add a great touch. If the court has specific requirements about how the cover should look, ignore those rules. Judges have little sense of style anyway.

Then reverse the caption. If, at the trial level, the People of the State of New York had prosecuted the defendant, make it look on appeal as if the defendant-appellant is suing the People. If you include a caption, use a typeface like Old English Text or any other font that looks like hieroglyphics. Omit your firm's name and your name if you want to disassociate yourself from your loser client.

It'll be easier for your client to go down in defeat if you leave little white space on a page. The white space is the space in the margins and between words, sentences, and paragraphs. The more words you put on a page, the greater your chances of losing. Judges will know right away that

they're reading a losing brief. No need for margins. Margins were created for legal-writing teachers to critique your work in law school. Judges, too, need margins because their eyesight has dimmed over the years, so don't give them any. Your goal is to make sure the judge won't read your brief.

The more typefaces in your brief, the more you'll distract the judge from finding any good arguments your client might have. You're closer to losing than you think if your brief looks like a ransom note. Challenge yourself to write each paragraph in a different typeface. If you really want to signal that you and your brief are losers, write each sentence in a different typeface: one in Times New Roman, another in Courier, and a third in Garamond. When neon lights fail, bold, underline, and italicize, preferably all at once, and all in quotation marks. How else are you going to emphasize your lack of forthcoming content, show sarcasm, and prove your paranoia? Then uppercase as many words as you can. Capitalizing excessively makes your writing memorable, albeit unreadable.

Black ink signals professionalism. Don't use it, unless you want to win. Make your brief ugly by using baby pink or sky blue ink. The judge will notice the cute feminine or masculine charm.

If you want to irritate a judge, don't include page numbers at the bottom of each page. Judges should know how to count.

Include lots of footnotes, all in a small typeface. That'll cause the judge to dwell on the irrelevant red herrings in your case. Burying substantive arguments in footnotes is how you'll get judges and their law clerks to make law, even if the law they'll make favors your adversary. Great law started in the footnotes. Ask any Supreme Court clerk.

To lose, don't bind your brief. If you must bind it, use a rubber band or string. That'll help the judges lose some or all the pages. Or bind the brief with a metal clip with razor-sharp edges. You spilled blood writing the brief. Why shouldn't the judge and law clerk? They'll reward your thoughtlessness when they write their decision. If you decide to bind your brief, make sure the binding prevents the judge from reading the brief. Every time the judge turns the page, the brief should snap shut. When submitting the brief, include a paperweight to hold the brief open. The judge might think it's an exhibit.

Non-gender-neutral writing is like a bump on the road that focuses travelers on the trip rather than the destination. Make the judge dwell not on your content but on why you used "he" or "she." If you're not sure whether to use "she," "he," or "it," use all three, like so: "s/he/it." There's nothing like a few "s/he/its" to make your brief look exactly like that.

Boilerplate doesn't work, and that's why you should use it. Your brief should look like a cut-and-paste job. Reuse large portions of your brief from another brief you've written. Another tactic is to regurgitate a brief an intern wrote 10 years ago, and neither update nor check the old citations. Go green: Recycle your arguments. Diligent judges know that clients and cases are unique. You need to disabuse them of the notion that your client's case is unique.

Get an intern to photocopy your brief. Make sure the text on the photocopies is crooked and distorted. Have the intern photocopy half of each page. You'll leave the judge wondering what's missing.

Rule #2: Maintain Order With Disorder.

Winners pick and choose their issues and arrange them in order of strength. Loser wannabes include as many issues as they can think of and arrange them in alphabetical order. Like a law school exam, a brief is all about issue spotting, no? Besides, if you don't include all the atmospheric issues, you won't preserve issues for your appeal. Having many issues means you've thought about your case in depth. Put substantive issues first. Leave dispositive issues for the end. Save jurisdictional issues for the last page. Doing so will catch the judge's attention. Not.

Don't organize your arguments. Let the judge figure out what's important. That's not your job. If you're dealing with a conscientious judge, raise facts and issues not in the record.

When it comes to standards of review, who needs standards? Don't tell the judge what standard to use. Judges know what standards apply. If they don't, so much the better. If someone at your firm forces you to discuss legal standards, mix them up. Judges appreciate an enlightened discussion about why they have the discretion in the interests of justice to disregard a constitutional statute whose plain language is not subject to reasonable debate.

A brief is mystery writing in disguise. Leave the main point for the last line of the last page. You want to stun the judge.

Divert the judge's attention from real arguments and focus instead on bogus ones. Instead of making legal arguments, make only policy arguments, regardless of any binding authority that rejects the policy you suggest. Or avoid policy arguments altogether. Policy is for politicians.

Include at least one argument that doesn't pass the laugh test. It's helpful if the argument is outrageous. Putting a smile on the judge's face: Priceless.

Judges need much structure. That's why your brief shouldn't have any. Don't include headings or subheadings. No need to tell the court in what direction you're headed. Forget IRAC or any other organizational tool you've learned. Your law professors made you learn that stuff to make their job easier when they graded exams — and to help you win cases. If losing is your goal, forget what the experts told you.

Never weave a theme or theory of the case into the brief. Themes and theories tell the judge what your case stands for — something about which your judge should remain clueless. A confused judge means a happy client. And happy clients want you to write about why your adversary is a jerk, not about pretentious and arcane themes and theories.

Invert the parties' names. Write "appellee" when you mean to write "appellant." Never use your client's name or your adversary's name. But if you must, use acronyms. If your client's name is "Olivia Knight," use "OK" throughout your brief. If the appellant's name is "Bob Smith," write "BS."

Because good writing is planned, formal speech, avoid outlining and editing, and use contractions and abbreviations.

Include many facts. Leave nothing out. Be sure to mention a witness's eye color, social security number, and family history. Including every irrelevant fact, person, place, and date will guarantee that the court won't know whether the case involves a tort, a contract, or a constitutional wrong. Arrange the facts in reverse chronological order. Don't even think

Don't Miss Judge Lebovits's CLE, "Persuasive Writing for Litigators"

The Honorable Gerald Lebovits will share the secrets of good writing at an Academy seminar scheduled for the evening of March 31. Topics include legal writing do's and don'ts; organizing a draft; making writing powerful and precise; the art of storytelling, and giving readers what they need and want.

The program runs from 6:00 to 9:00 p.m., with sign-in and light supper from 5:30. The presentation also will be available as a real-time webcast and, after, as a CD or DVD recording and an on-line video replay.

Underwriting for this program has been generously supplied by Echo Appellate Press, Inc. (President Stu Davis).

about techniques of storytelling, making your client come alive, and offering a succinct, concise procedural history from your client's perspective.

Misstate the law. Make it up if the court's holding favors your client. Logic tells you that the law can be so wrong. Don't explain how the law applies to your client's facts. The law is what it is. You can't change anything about it. Avoid common sense. If you pretend that you want to win and you decide to integrate law and fact, start the sentence as follows, "In my humble opinion . . ." Every judge will know that true enlightenment will come at the end of the sentence. That's why you're guaranteed to lose in the end.

When you've lost all hope, and things seem to be going your way despite all your efforts, or lack thereof, throw all the pages to the brief down a flight of stairs, collect them, and submit them in the order the pages fell on the floor. Every case is a puzzle waiting to be solved.

Rule #3: Quote Other Judges and Lawyers Because Your Ideas Don't Matter.

No one wants to hear what you have to say. Someone smart said it before. Just repeat it. Using lots of long quotations means you didn't do independent research and analysis. Make your lack of effort obvious. Block quotations are essential in a loser brief. They waste tons of space. And no one reads them. The less the judge reads, the likelier you'll lose. When you quote, misquote. How else will you know whether the judge read your brief? Make sure you quote dicta, not holdings. Also, quote language that sounds good, even if the case goes against your client's position — and even if the case facts are different from your case. If you've read it before, it must be true. Don't bother checking other authorities. Quote all the language from the source. Include everything. Regurgitate the holdings of the case, paragraph by paragraph. Take the holdings from the headnotes. Better yet, quote from the headnotes.

Rule #4: Citations Are for the Lame and the Weak.

Miscite your authorities. Get the volume of the reporter right, but forget page numbers. Close enough is good enough, unless

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Writing Bad Briefs: How to Lose a Case in 100 Pages or More

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your goal is to lose by winning. If a decision is longer than one page, never give the pinpoint citation. Your goal is to make it so difficult for the judge to find any morsel of accuracy that the judge will turn to your adversary's brief.

String cite whenever possible. If you have 20 cases for the same proposition, add them all. To show that you're smarter than the judge — a losing and therefore effective strategy — cite after every proposition in your brief, even for obvious statements. But don't cite the record below. Pointless.

Nor should you cite much legal authority. Judges are busy skeptics. It's fun to make them and their law clerks research from scratch. If they don't, and they probably won't, you're half-way to your losing goal line.

Never write the name of the case correctly. Pick one party and leave the other one out of the citation. Annoying the court will help you lose.

Don't cite the official reporters. Make the judge and law clerk find the correct citation. You just know they won't.

If you cite, don't explain why your citations are relevant. Mention that the cases are on point, but don't say why. If you try to explain the case, make the case more complicated than it is. If you want to be analytical and fancy, start every paragraph with "My adversary's argument is mendacious and ridiculous." And never use parenthetical explanations after citations. Parentheticals just throw judges a curve.

Don't cite binding cases from your jurisdiction. Cite oral decisions. Cite and quote only from dissenting and concurring opinions. Don't cite constitutions, statutes, or other laws.

Never attach the hard-to-find cases or the law you've cited.

Rule #5: Being a Lawyer Means Knowing How to Break the Rules.

The more rules you break, the greater your chances of losing. If the judge presiding over your case limits your brief to 15 pages, ignore the page limit. Rules are made to be broken. The judge obviously doesn't know that more is better. Exceed the limit. Make it 25, 50, 100, or more pages. The longer your brief, the less the judge will understand your case. Hauling heavy briefs will give the judge the excuse not to read your brief. Besides, most judges can't concentrate for more than 10 minutes at a stretch. And judges will usually fall asleep — they call it "deliberating" — by the mid-afternoon from all the hard work they've done digesting their two-hour lunches. The longer and more boring the brief, the faster you'll get the judge to deliberate over your brief.

If you're a stickler for the rules, condense your 100-page brief to fit a 15-page limit. It doesn't matter whether the text is too small to read. It'll give the judge an opportunity to take out a magnifying glass and see your case for what it really is: a loser.

Deadlines are for deadbeats. The more important it is to the court or your adversary for you to file a brief on time, the more you should be late. That's why, when you get a project, you shouldn't start early.

Don't include a table of contents or a table of authorities. Including either one of them, or including both of them, means you're a showoff.

Rule #6: Make It Personal.

If you've tried all the above rules, and you still haven't lost, go for the jugular.

Attack the court, opposing counsel, and your adversary with insults, condescending language, snide remarks, irony, and humor. Destroy them: Denigrate their intelligence, motives, and integrity. Tell them how you really feel. Assail the court's earlier decisions. Pour it on like salt on a wound. Critique your adversary's writing skills. It's obvious you went to the better law school. Don't be deferential to the court. We all know that the judge isn't the sharpest tool in the shed, just the more politically connected. If you choose to be deferential, make it sound phony: Use "respectfully" a lot. If you do that, the court might not sanction you for frivolous litigation.

Losing briefs are those that demonstrate how the court is conspiring with your adversary against your client and you personally. Use the phrase "in cahoots" often.

Tell the court that your adversary is a "liar" who likes to tell "fanciful fairytales." From then on, call your adversary "My opponent's 'esteemed' attorney." If your adversary responds in kind, keep fighting back. Hit below the belt. Judges love it when both parties take off the gloves. You'll entertain your judge, who'll place bets with court personnel on which lawyer will end up the bigger loser.

Rule #7: Bury the Bad Stuff.

Losers concede nothing. Fight to the end, especially on the little things that don't matter. How else will the judge know that you're passionate about the case?

Include only the facts favorable to your client. Hide unfavorable facts. A judge who thinks you're sleazy will reward you with the loss you seek.

Bury the bad cases — the ones that go against your client's position. If you've found a case that goes against your argument, don't mention it. Let your adversary find it. No point in talking about one meaningless case when you have 20 other cases on your side. Let the law clerks do some research. They get paid to do your research. And they get unlimited access to Westlaw and LEXIS. You don't. Count yourself fortunate if you never get a chance to address unfavorable cases later.

Don't cite the record. The past is the past.

Rule #8: You're a Lawyer, Not an Editor.

Lawyers don't have time to spellcheck, proofread, or cite check. Time is money for lawyers. But for judges, seeing typos in a brief is like having a cellular phone go off in a quiet courtroom to the doleful Ramones' "I Wanna Be Sedated" ballad. Don't sweat the details. It's the big stuff that counts in a brief. Use typos to signal that you're a busy and successful lawyer — albeit a loser — with a great practice.

Repeat your arguments every chance you get. That will guarantee that the judge won't care even if you're right on the law. Belabor the obvious.

No need for clarity or brevity: Hapless virtues.

Don't begin paragraphs with topic sentences or draft transitions to connect paragraphs.

Punctuation is important, but not in a losing brief. You've never learned the difference between a comma, period, semicolon, and colon. No reason to start now. To make your brief stand out, challenge yourself to write a sentence that covers an entire paragraph. Stream of consciousness means you've thought about the case.

Handwritten edits will do. Put arrows

and stars for the judge to follow your argument. You want your work to stand out; show the judge that you didn't put the effort to proofread. If you want to look like you care, handwrite the page numbers in black ink in the bottom left-hand corner, right near the brief's binding. Finding the page numbers is half the fun in reading a brief.

Misspell your client's name. Misspell the judge's name. If you can't remember the judge's name, call the judge "Mr.," especially if the judge is a woman.

Rule #9: Be Superficial: It's Not the Substance That Counts.

Write emotionally: Show the judge what matters. Because understatement is persuasive, be sure to exaggerate. Details are what convince, so be conclusory.

Don't tell the court what relief you seek. If by some mishap you win, you'll at least get the relief you neither need nor want.

In a losing brief, the question presented should be several paragraphs long. You've got lots of questions, and judges always think they have lots of answers. Write the question in a way that the judge will respond with a definite "maybe."

In your facts section, include facts that aren't in your argument section. Include facts that aren't in the record. If you must cite the record, direct the judge to the wrong page. A quicker way to lose: Don't cite facts at all. Argue law but never fact. Don't explain how the case reached the appellate court. Don't explain what happened at trial.

In your summary of the argument, write only one or two sentences detailing what your case is about. If you must summarize, make sure your summary is longer than your entire argument section.

The heading and subheadings, if you include any, should be objective and neutral. You want the judge to think you're honest and fair — and wrong. Label your headings "Introduction," "Middle," and "Conclusion."

Start every argument in your opening by predicting what your adversaries might say. Then don't say why they're wrong.

In your reply briefs, don't respond to your adversaries' arguments. Restate everything you've already mentioned in your brief. Or, even better, raise new arguments.

Rule #10: When All Else Fails, Confuse Them With Words.

Write like a real lawyer. Confound with legalese: "aforementioned," "hereinafter," "said," "same," and "such." Obfuscate with jargon: "the case at bar" or "in the instant case." Bore with clichés: "wheels of justice"; "exercise in futility"; and "leave no stone unturned."

Treasure nominalizations: Turn powerful verbs into weak nouns. Although nominalizations are wordy and abstract, relying on them is good for losing. *Examples:* Use "allegation" instead of "allege," "violation of" instead of "violating," and "motioned for" instead of "moved."

Metadiscourse is verbal throat clearing. That's why you need to know about this device. Every chance you get, use "it is important to remember," "it is significant to note," "it should be emphasized that," and "it goes without saying that." Use "it is well settled" and "it is hornbook law" to describe what the less-educated might call a split in authority.

Use the passive voice everywhere: Be obtuse about who's doing what to whom. Write "The victim was murdered by the

defendant" instead of "The defendant murdered the victim." When the issue is who murdered the victim, obscure the actor altogether: "The victim was murdered" should suffice.

Grammar — adverbs, adjectives, nouns, pronouns, agreement, parallelism, sentence fragments, verb tenses, fused participles, and gerunds — is a big blur for some lawyers. Keep it that way. Who knew about modifiers? Don't learn the difference between "who" and "whom" and "that" and "which." Mixed metaphors will set you apart from your adversary: Your brief will cause the judge to close the barn door after a horse shut it.

Throw in adjectives and even some adverbial excesses. Use "clearly" and "obviously," especially when your point isn't at all clear or obvious.

Use plenty of acronyms, especially those you never define.

Be cowardly. Include doubtful, timid, and slippery equivocations, phrases, and words: "at least as far as I'm concerned," "generally," "probably," "more or less," and "seemingly." That's how you show what a lousy case you have.

Instead of writing in the positive, write in the negative. Appellate judges, who themselves love expressions like "This case is remanded for proceedings not inconsistent with this opinion," will identify with expressions like "This case is not unlike . . ."

Have fun and play with language. Create run-on sentences. Combine complicated, multisyllabic words. Construct long sentences — learned lawyers do that all the time.

Employ foreign words. It behooves you to replace English words with French, Italian, and Spanish. If you're educated, use Latin. The judge will think you're sui generis.

Redundancy is necessary in a losing brief. Two or more words are better than one. Use the following: "advance planning," "few in number," and "true facts."

Reach for a thesaurus every chance you get. Use different words to mean the same thing. Forcing the judge to expend energy reaching for a dictionary leaves little time for the judge to read your brief.

Talk about freedom, justice, equity, and the American dream. Bring up the U.S. Constitution even if your case has nothing to do with a constitutional issue.

Include at least one rhetorical question in each paragraph. Isn't that a good way to tell the judge you're a LOSER?

Conclusion

Writing a bad brief takes preparation and practice. The preparation begins during law school. Few things academic apply to practicing in the real world. Lawyers must know the real rules to writing a bad brief — the things you never learned in law school and, likely, the things no one will teach you when you practice law.

If a winning brief makes it easy for the judge to rule for you and want to rule for you, the loser's goal is to make it hard for the judge to rule for you and to make the judge want to rule against you.

If you're unlucky enough to have smart, honest colleagues edit your brief, ignore their suggestions. Accuse them of being egotistical to deflect any notion that they're offering helpful comments. And disregard all comments offered by your partner or supervisor. Their comments might be subversive — and actually favor

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Dog Day Afternoon Agility Expo & Pet Fair

The Suffolk County Bar Association's Animal Law Committee and the Suffolk Academy of Law present their Third Annual "Dog Day Afternoon Agility Expo & Pet Fair" on Saturday, May 14, from 10:00 a.m. to 4:00 p.m. at St. Joseph's College, located at 155 West Roe Boulevard, Patchogue, NY 11772 (*in the quad*).

Hosted by WALK-FM's own K.T. Mills, this family-fun event includes educational shows teaching the public about a variety of animals and their proper care, as well as agility demonstrations throughout the day provided by "All Fur Fun Agility." Rescue groups of every kind will be in

attendance with their animals for adoption and to see, enjoy, and learn about.

Come join your fellow bar members and enjoy a fun filled day outdoors with animals, entertainment, vendors, food, and great raffle prizes! Admission is \$10.00 per car! Bring your dog for fun and a run through the agility course!!!! All dogs must be leashed and well behaved. Please leave furry friends who do not play well with others on the couch.

For additional information, please see insert in this issue or email info@dog-dayagilityexpo.com or call 631-265-0155, ext 204. *Rain date is Sunday, May 15th.*

- Amy Chaitoff

Importance of Diversity in the Bar Association

(Continued from page 9)

My active membership in the SCBA (on the Bench/Bar, Judicial Screening, Nominating, Municipal Law, and Environmental Committees, and as a panel participant on several CLE programs) was and continues to provide me with tremendous opportunities to contribute on many significant levels, including service as a member of the Board of Directors for a full three-year term (2003-2007).

I would like to particularly point out that it was because of my personal commitment to be actively involved in the SCBA that I was given the very valuable opportunity to serve on one of the most important committees of the association - the Judicial Screening Committee. Initially I was appointed to the committee by then SCBA President Eugene O'Brien, and I was later designated as the committee's chair by a subsequent president, Douglas Lerosé. The obvious significance of serving on the Judicial Screening Committee is due to its critical charge of reviewing the qualifications of all county-wide judicial candidates. However, participation on that committee also opened the door to meaningful discussions about the need for diversity on such committees and among judicial candidates, law clerks and other court personnel in all jurisdictions.

Subsequently, the SCBA's Board of Directors elected me to serve as one of the association's representatives on the New York State Bar Association's House of Delegates. The NYSBA's House of Delegates constitutes the leadership of our statewide professional association, which is currently 77,000 members strong, and it is the governing body that controls and determines the policies of the NYSBA, subject to referendum. It was my privilege and honor to have served in that capacity for three years (2008-2010).

My opportunities to be a leader at the SCBA have provided me with many treasured relationships, both professionally and personally; the warmth, friendship and camaraderie that I have found through the SCBA are palpable, and my commitment and personal investment to the SCBA have been well-worth my time and energy. But as with all of my efforts with various bar associations, each has demonstrated that diversity in the legal profession requires active personal participation

to advance diversity with bar associations and the profession more broadly.

I am a man from humble beginnings that has risen to local, county, and state bar association leadership positions. Through all of my ongoing experiences I have, for the most part, witnessed a professional commitment to treat all people with respect and dignity. On all levels of my involvement, I have observed firsthand a commitment to the ideal that [w]e want to enhance the opportunities for minorities and women in our bar association and profession. I have also observed firsthand that the qualities that are essential for any person to achieve success, whether it is in public service or in the private sector, are integrity, honesty, ethical behavior, good work habits, and respect for others. These qualities are required regardless of ethnic or personal background.

Diversity in the legal profession is necessary. As lawyers, we not only speak for the legal rights of our clients, but we have also taken an oath to uphold the Constitution that guarantees "Equal Justice under Law." The Suffolk County Bar Association provides a genuine opportunity for each of its members to actively participate in the profession, and I have made the time to do so and benefited by that opportunity. So can you. Diversity can be achieved within the profession, but it is ultimately up to individual members within the profession to make that happen.

Note: Derrick Robinson was appointed by Andrew Cuomo to the State of New York, Office of the Attorney General, as an Assistant Attorney General, and works out of the Nassau Regional Office. He is a litigator, responsible for representing state officials, agencies and employees, in both State and Federal Court, on a wide range of issues. In addition, Mr. Robinson does community outreach presentations on consumer protection matters involving deceptive trade practices, consumer frauds, identity theft, student loans, and mortgage modification schemes. He is a former member of the House of Delegates (2008-2010), and a member of the SCBA Board of Directors (2011) and Nominating Committee. Mr. Robinson was the founding president of the Amistad Long Island Black Bar Association.

Writing Bad Briefs: How to Lose a Case in 100 Pages or More

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your client.

Sometimes judges will feel so sorry for you that they'll wade through your brief to find a nugget of merit. You might have a chance to win — er, lose — after all. But if losing is your goal, just read your brief, typos and all, at oral argument.

GERALD LEBOVITS is a judge of the New York City Civil Court, Housing Part, in Manhattan and an adjunct professor at Columbia Law School and St. John's University School of Law. He thanks Alexandra Standish, his court attorney, for her help with humor. Judge Lebovits's e-mail address is GLebovits@aol.com.

In case you win despite following the foolproof advice in this column, the Legal Writer suggests some more articles. They'll help you lose your next case: Sarah B. Duncan, *Pursuing Quality: Writing a Helpful Brief*, 30 St. Mary's L.J. 1093, 1132-35 (1999); James W. McElhaney, *Twelve Ways to a Bad Brief*, 82 ABA J., Dec. 1996, at 74; Jane L. Istvan & Sarah Ricks, *Top 10 Ways to Write a Bad Brief*, N.J. Law. 85 (Dec. 2006); Eugene Gressman, *The Shalls and*

Shall Nots of Effective Criminal Advocacy, Crim. Just., Winter 1987, at 10; Peter J. Keane, *Legalese in Bankruptcy: How to Lose Cases and Alienate Judges*, 28 Am. Bankr. Inst. J. 38 (2010); Alex Kozinski, *The Wrong Stuff: How You Too Can . . . Lose Your Appeal*, 1992 BYU L. Rev. 325, 325-29 (1992); Paul R. Michel, *Effective Appellate Advocacy*, 24 Litig. 19, 22-23 (Summer 1998); William Pannill, *Appeals: The Classic Guide*, 2 Litig. 6 (Winter 1999); Harry Pregerson, *The Seven Sins of Appellate Brief Writing and Other Transgressions*, 34 UCLA L. Rev. 431, 433-37 (1986); Harry S. Silverstein & Edwin C. Ruland, *How to Lose an Appeal Without Really Trying*, 4 Colo. Law. 831 (1975); Harry Steinberg, *The 10 Most Common Mistakes in Writing an Appellate Brief*, N.Y.L.J., Aug. 31, 2009, at S4; Susan S. Wagner, *Making Your Appeals More Appealing: Appellate Judges Talk About Appellate Practice*, 59 Ala. Law. 321 (Sept. 1998); Joseph F. Weis, Jr., *The Art of Writing a Really Bad Brief*, 43 Fed. Law. 39 (Oct. 1996).

Academy Completes 2011-2012 Elections

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year terms after successful completion of which eligibility is acquired for three-year terms) fill openings that will occur as outgoing Officers **Nancy Ellis, Diane Farrell, Richard Filiberto, Allison Shields, and John Zaher** complete four years of service, the limit set by Academy bylaws.

This spring, Ms. Farrell was nominated by the SCBA Nominating Committee as a new SCBA Director, term commencing on June 1, and is thus scheduled to trade her position as Academy officer for one as Academy trustee. SCBA Directors serve as the trustees of the Academy and have oversight authority over Academy activities.

Management (as opposed to oversight) of Academy affairs is in the hands of a 21-member board of officers. Along with the newly elected officers, next year's Academy board will include **Robin**

Abramowitz, Brian Duggan, Sean Campbell, Amy Chaitoff, the Honorable James Flanagan, Jeanette Grabie, Herbert Kellner, Scott Lockwood, Marilyn Lord-James, Gerard McCreight, Lynn Poster-Zimmerman, Lita Smith-Mines, Daniel Tambasco, George Tilschner, and the Honorable Stephen Ukeiley.

Mr. Campbell, Ms. Chaitoff, Judge Flanagan, Ms. Grabie, Mr. Lockwood, and Ms. Smith-Mines were elevated from one-year to three-year terms in the recent elections.

The service provided by all of the Academy's officers and volunteers cannot be lauded often enough. Volunteering time and expertise, they bring the SCBA membership 100-150 inventive and rewarding continuing legal education programs each year.

- Ceparano

Trust And Estates

(Continued from page 12)

decedent's death. Nevertheless, the court opined that a specific bequest passes directly to the beneficiary thereof upon the testator's death, subject to the probate of the will and any need to sell the bequeathed asset to pay a valid administrative expense. The court concluded that the circumstances did not demonstrate any type of problem, such as a contest over title, or occupancy by a third party, that would require the estate to carry the apartment at its own expense. Accordingly, the fiduciary was directed to restore to the estate the monies used by her for the expenses of the apartment, together with statutory interest.

Finally, the court surcharged the fiduciary to the extent of the interest and penalties paid by the estate, together with statutory interest.

In re Gourary, NYLJ, Nov. 16, 2010, p. 25 (Sur. Ct. New York County) (Sur. Glen).

Note: Ilene Sherwyn Cooper is a partner with the law firm of Farrell Fritz, P.C. where she concentrates in the field of trusts and estates. In addition, she is immediate past-president of the Suffolk County Bar Association and a member of the Advisory Committee of the Suffolk Academy of Law.

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Dedicated to Promoting and Supporting Persons of Italian Heritage

(Continued from page 9)

ent is Suffolk County's very own A. Gail Prudenti, Presiding Justice of the Appellate Division, Second Department. As with all prior years' recipients, Justice Prudenti is an Italian-American Jurist who has distinguished herself and our Italian-American heritage through her great achievements, intelligence, compassion and dedication; she is the first recipient from Suffolk County. For anyone interested in attending the luncheon, it will be held on Saturday, April 30, 2011, at the Waldorf Astoria in New York City and you may contact me for details.

In addition to myself, the Suffolk County Columbian Lawyers are currently lead by Vice President/Treasurer Greg Caggiano and Secretary Stephanie Buffa. We have an active Board and approximately 125 committed members, including past and present Suffolk County Bar Association Presidents John L. Juliano, Vincent A. Malito, John Buonora, and Sheryl L. Randazzo. Our past and present membership has also proudly included numerous distin-

guished members of the Suffolk County Judiciary, including Judges Copertino, Prudenti, Filiberto, Alamia, Garguilo, Weber, Fitzgibbon, Ohlig and Crecca.

Although our organization's intention is to promote and support persons of Italian heritage, the membership is not limited to persons of Italian descent. The goal of the Columbian Lawyers is to bring together persons who appreciate and support the advancement of Italian-Americans and all are welcome to join. The membership year extends from the Annual Installation event in September through to May of the following year. Our next and final meeting of the year will be May 24 at 6:00 pm and will take place at San Marco's Ristorante located at 658 Motor Parkway, Hauppauge, New York. All are welcome and encouraged to attend to see firsthand what we are all about.

Anyone interested in learning more about or joining the Suffolk County Columbian Lawyers may contact me at 631-862-0751 or by email at lluciveroesq@optimum.net.

lluciveroesq@optimum.net. Annual dues are only \$40.00, the company of warm-hearted and interesting colleagues is readily available, and dinner is always delicious.

Note: Lucretia M. Lucivero is a Suffolk County attorney from St. James and can be reached at 631-862-0751 or by email at lluciveroesq@optimum.net.

Pro Bono (Continued from page 17)

separation agreement they drafted provided for health insurance and maintenance paid directly from her husband's pension.

Professor Silverman, who completed his undergraduate degree at New York University, received his J.D. from Boston University School of Law. He began his career as Assistant Suffolk County Attorney, rising to Supervising Attorney of the Abuse/Neglect Unit and Deputy Family Court Bureau Chief. In 1985 he was appointed Family Court Hearing Examiner and had several of his opinions published in the New York Law Journal. Director of Touro's Family Law Clinic since January 1995, he recently became Director of Externship Programs as well. He teaches courses in Family Law, Civil Procedure, Sexual Orientation and the Law, Pre-Trial Litigation, and The Rights of Children.

He is a member of the Suffolk County Bar Association, the American Bar Association, the International Society of Family Law, and the New York State Bar Association. As a member of NYSBA's Committee on Gay People and the Law, he has developed two CLE seminars on that subject.

Some students in the Family Law Clinic over the years have come to Touro directly from completing their undergraduate work while others came during or after pursuing other careers. Still others

came after undergoing a painful divorce. They came from SUNY or CUNY colleges or from private colleges on Long Island, from upstate or out of state. Once members of the bar some have specialized in matrimonial and family law, while others have chosen other specialties or had general practices. A few have been a Pro Bono Attorney of the Month in Suffolk or Nassau County.

Professor Silverman is especially gratified that so many alumni of the Family Law Clinic are practicing family law, representing indigent clients, or engaging in other types of public service. With the kind of training he gives in the Family Law Clinic, he feels that he is "giving back" to the legal profession and performing a form of pro bono service himself.

The Pro Bono Project and Suffolk County's indigent population have benefited enormously from Touro's Family Law Clinic, its students, and its director, Lewis A. Silverman. It honors the project to honor them once again as Pro Bono Attorney of the Month.

Note: Rhoda Selvin is a former administrator at Stony Brook University. She was a member of the Grievance Committee for the Tenth Judicial District, 1987-95, and has been a volunteer with the Pro Bono Project since November 1995.

LGBT Bar Still Matters (Continued from page 8)

fact of our unequal status under the law.

But when the day comes when all of our discriminatory laws are purged from the books – and I suspect that most of us who have dedicated ourselves to the work of organizations serving the LGBT community share the stubborn belief that the day will, in fact, come – I think our bar association will endure.

The reasons for our existence are no less compelling today than they were more than 30 years ago when our organi-

zation was in its infancy. There will always be a place for organizations that, at their core, seek to bring together people of shared backgrounds and shared interests to serve shared goals.

Note: Brad Snyder is the Executive Director of LeGaL, the LGBT Bar Association of Greater New York, one of the largest and most active organizations of its kind in the country. For more information on LeGaL, visit www.le-gal.org.



ACADEMY OF LAW NEWS

More Academy News
on pages 22-23;
CLE Course Listings
on pages 24-25

Spring Ahead....

Let CLE move your professional life forward.

By Dorothy Paine Ceparano

At this writing, the clocks are about to move forward, and spring's arrival is close at hand. For those involved in the world of continuing legal education, it's a perfect time to think about how the new season can translate into a period of growth and renewal for the attorneys we serve.

At the Academy, to a large degree, each new semester is a *tabula rasa*: a time to decide what we will do and how we will do it. At planning meetings, Academy officers and volunteers talk about what lawyers need to keep pace with changes in the law, with changes in the economic environment, and with changes in the public's need and desire for legal services. Some immediate trends – and the CLE courses they engender – are obvious:

divorces continue; bankruptcies are soaring; the exchange of residential property is down; estate planning is permeated by tax questions. Our CLE courses keep pace with these trends. But the Academy's mission goes beyond just that. Academy goals include helping lawyers to discover potential new practice areas to grow and invigorate their practices and providing learning environments that meet a range of needs, from those of practitioners who are too busy to attend classes in person to those of lawyers who wish they were busier.

This spring we invite *you* to try something new. Peruse the Academy's curriculum with an eye toward gaining skills that will help you to serve new clients or handle new matters for existing clients. If you are extremely busy, think about taking a program by real-time webcast. You may

tune into a webcast virtually anywhere you have an Internet connection and may even question the presenters, during the program, via email. If, on the other hand, your practice is languishing, start to think of CLE classes not only as sources of information, but as networking opportunities. The contacts you make – with presenters and co-attendees – may lead to new business when you least expect it.

The Academy's syllabus for the new semester (April–June), like a spring garden, is still a work in progress. And we invite you, our constituents, to help us till the soil. Let us know what you need to move toward a more gratifying, energizing practice. Academy board and curriculum meetings are open to all SCBA members, and we also invite ideas and suggestions by letter, phone, or email.

In the meantime, the seeds are planted for many course offerings we hope you will find inviting and rewarding.

April includes programs on **Dynasty Trusts** (lunch on April 5); **Immigration Options for Survivors of Domestic Violence** (pro bono training on evening of April 7); **Legal Issues & Palliative Care** (from the SCBA Health and Hospital Committee on the evening of April 13); **Probate & Administration** (April 29, morning, at Surrogate's Court); **Alternative Work Schedules** (April 29, morning, at Touro Law Center); two lunch seminars at the Carleton Avenue Courthouse (April 14 and 27); and **Comprehensive Insurance: A Look at What Businesses and Individuals Need** (date TBA).

May classes comprise **Practice in the Appellate Division** (from the SCBA Appellate Practice Committee on the evening of May 4); **Charitable Trusts** (lunch on May 10); **Negotiations** (evening, May 11); **Elder Law Litigation** (tentatively on May 12); **Foreclosure – Soup to**

Nuts (full day on Friday, May 13); **Court Accountings** (evening, May 18); **Dangerous Dog Cases** (evening, May 19); **Finding Assets—A Treatise for Matrimonial, Bankruptcy, and Criminal Lawyers** (evening, May 24); **Annual Animal Law Seminar** (evening, May 25); **Immigration Law for Criminal Lawyers** (from the SCBA Immigration and Criminal Law Committees on the evening of April 26); **International Taxation Issues: a New Initiative from the IRS** (lunch program on a date TBA); and **Negotiating to Win** (evening—date TBA).

In June, the Academy will present **Practicing in Suffolk's Commercial Part** (June 2); **Lifetime Trusts for Minors** (June 7, lunch); **Estate and Retirement Distribution Planning for Plan Participants and IRA Owners** (morning of June 14 by Sy Goldberg); **Family Law** seminar (evening, June 14); **Domestic Workers' Law: Issues for Elder Law and Employment Law Attorneys** (June 16); and a **Bankruptcy Law Update** (evening of June 23).

Spring also brings two annual updates our constituents traditionally attend in good numbers: **Annual Auto Liability Update** by Jonathan Dachs and Professor Michael Hutter; and **Evidence Update** by Professor Richard Farrell. These dates will be announced shortly.

In the coming weeks, the Academy will firm up some of the tentative dates and offerings and add a substantial number of additional programs to its spring semester. We invite the thoughts and involvement of SCBA members. The Academy's overriding objective is to develop a syllabus that truly contributes to the professional growth and revitalization of those we serve.

Note: The writer is the executive director of the Suffolk Academy of Law.

ACADEMY

Calendar

of Meetings & Seminars

Note: Programs, meetings, and events at the Suffolk County Bar Center (560 Wheeler Road, Hauppauge) unless otherwise indicated. Dates, times, and topics may be changed because of conditions beyond our control. CLE programs involve tuition fees; see the CLE Centerfold for course descriptions and registration details. For information, call 631-234-5588.

April

- 1 Friday Meeting of Academy Officers & Volunteers. 7:30–9:00 a.m. Breakfast buffet. All SCBA members welcome.
- 5 Tuesday **Trust Series: Dynasty Trusts.** 12:30–2:10 p.m. Sign-in and lunch from noon.
- 7 Thursday **Immigration Options for Survivors of Domestic Violence** (Pro Bono Training program from the SCBA Immigration Law Committee and SEPA Mujer, a Latina Rights Organization). 6:00–8:00 p.m. Sign-in and light supper from 5:30 p.m.
- 13 Wednesday **Palliative Care** (SCBA Health & Hospital Law Committee). 6:00–9:00 p.m.; sign-in and light supper from 5:30 p.m.
- 27 Wednesday **District Court Practice** (tentative date). 6:00–9:00 p.m.; sign-in and light supper from 5:30 p.m.
- 29 Friday **Probate & Administration.** 9:30 a.m.–12:30 p.m. at Surrogate's Court, Riverhead. Sign-in and donuts from 9:00 a.m.
- 29 Friday **Alternate Work Schedules.** 9:00 a.m.–12:00 noon at Touro Law School. Sign in and continental breakfast from 8:30 a.m.

May

- 4 Wednesday **Practicing in the Appellate Division** (SCBA Appellate Practice Committee). 6:00–9:00 p.m.; sign-in and light supper from 5:30 p.m.
- 6 Friday Meeting of Academy Officers & Volunteers. 7:30–9:00 a.m. Breakfast buffet. All SCBA members welcome. (Last meeting of the current administrative year.)
- 10 Tuesday **Trust Series: Charitable Trusts.** 12:30–2:10 p.m. Sign-in and lunch from noon. [Note change from originally announced date.]
- 11 Wednesday **Negotiating.** 6–9 p.m., sign-in from 5:30 p.m.
- 12 Thursday **Elder Law Litigation** (tentative date). Details TBA.
- 13 Friday **Foreclosures: Soup to Nuts.** Full day. Sign in and continental breakfast from 8:30 a.m.
- 14 Saturday **"Dog Day Afternoon Agility Expo & Pet Fair."** (SCBA Animal Law Committee). St. Joseph's College (in the quad). 10:00 a.m.–4:00 p.m.
- 18 Wednesday **Court Accountings.** 6:00–9:00 p.m.; sign-in and light supper from 5:30 p.m.
- 19 Thursday **Dangerous Dog Cases.** 6:00–9:00 p.m.; sign-in and light supper from 5:30 p.m.
- 24 Tuesday **Finding Hidden Assets.** 6:00–9:00 p.m.; sign-in and light supper from 5:30 p.m.
- 25 Wednesday **Annual Animal Law Seminar.** 6:00–9:00 p.m.; sign-in and light supper from 5:30 p.m.
- 26 Thursday **Immigration Law for Criminal Law Practitioners** (SCBA Immigration Law and Criminal Law Committees). 6:00–9:00 p.m.; sign-in and light supper from 5:30 p.m.

Check On-Line Calendar (www.scba.org) for additions, deletions and changes.

Academy Completes 2011-2012 Elections

In two election meetings, one in February and one in March, Academy Officers elected a new dean for 2011-2012 and five new officers to fill vacancies that will occur on the Academy board at the end of the current administrative year (May 31).

The **Honorable John Kelly**, a Family Court judge and long time participant in Academy activities, was elected dean. He will take over for **Rick Stern**, the Academy's current dean, on June 1. As dean, Judge Kelly will automatically become a director of the Suffolk County Bar Association. Mr. Stern, who has served as dean during 2009-2010 and 2010-2011, continues on the SCBA board for another

year, completing his second of two three-year terms as an association director. Academy bylaws limit service as dean to two one-year terms.

Newly elected Academy Officers are **William McDonald** (current chair of the SCBA Health and Hospital Committee), **Harry Tilis** (Academy volunteer and CLE presenter), **Peter Walsh** (an active Academy volunteer), **Glenn Warmuth** (current chair of the SCBA Appellate Practice Committee), and the **Honorable Thomas Whelan** (a justice of the Supreme Court in Suffolk County and a frequent presenter for the Academy).

The new Officers (elected to one

(Continued on page 26)

ACADEMY OF LAW OFFICERS

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