



THE SUFFOLK LAWYER

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Annual Reception Honors Pro Bono Volunteers

By Laura Lane

Members of the Suffolk County Bar Association and friends celebrated the dedication and extraordinary commitment of eight Suffolk County volunteer attorneys at the SCBA Pro Bono Foundation Recognition Night held at the Watermill Restaurant.

"This evening we will celebrate the accomplishments and exemplary work of Suffolk County volunteer attorneys who have donated more than one million-dollars worth of legal service to the under represented," said Pro Bono Foundation Managing Director and SCBA Second Vice President Dennis R. Chase. "The Suffolk County Bar Pro Bono Foundation's strength springs from the many talents and professional dedication of the attorneys who have truly distinguished themselves by providing representation to clients who have nowhere else to turn for legal help."

Attorneys Richard F. Artura, Stuart P. Gelberg, Melvyn L. Jacoby, Richard A. Jacoby, Patricia F. Neumann, Leif I. Rubinstein, Harvey B. Savitt and Mitchell Shapiro received much praise for their

contributions. They were each presented with a plaque, a way to not only commemorate the occasion, but also pay tribute to them for their dedication to helping those who can not help themselves.

"Collectively, these attorneys have one thing all people, and especially attorneys, could use more of and that is perspective," SCBA President Sheryl L. Randazzo said. "These individuals have busy professional lives, families, personal interests and other obligations, yet they still find time to share their expertise as lawyers with people genuinely in need. Their perspective, and commitment to 'doing the public good,' is beyond admirable."

Leif Rubinstein said he's been volunteering his time for the Pro Bono Foundation for the past 15 to 20 years and enjoys doing so. "The fact is if we didn't give these people assistance no one would," he explained.

For some, the idea of hiring an attorney is financially out of the question. The attorneys helping these clients through the Pro Bono Foundation provide an invaluable service. But, helping people in this capacity is not only beneficial for the



Photo by Barry M. Smolowitz

SCBA President Sheryl Randazzo and Pro Bono Foundation Managing Director Dennis Chase, third from right, thanked Mitchell M. Shapiro, Leif I. Rubinstein, Melvyn L. Jacoby, Richard F. Artura, Richard A. Jacoby and Stuart P. Gelberg who were honored at Pro Bono Recognition Night for their outstanding contributions, dedication and commitment. Also honored but not in photo were, Patricia F. Neumann and Harvey B. Savitt.

client. Mitchell Shapiro said the experiences he's had are more rewarding than one might believe. "You get back as much as you give if not more," he said. "It's good to give something back and the clients are so grateful to have somebody helping them through this horrible time in their lives."

This year marked the third time that Melvyn and Richard Jacoby were named Pro Bono Attorneys of the Month as it was for Patricia Neumann. Richard Artura has spent 136 hours since 1999 working with

Pro Bono Project clients and Stuart Gelberg has amassed 226 hours in 131 cases in Suffolk County. Leif Rubinstein who closed his law office and moved to Touro Law Center as Assistant Professor and Director of the Mortgage, Foreclosure, and Bankruptcy Clinic remains committed to the Pro Bono Project. He has completed 179 cases since 2005 and also brought his students to help out at the Bro Bono Project's Clinic. Harvey Savitt has helped indigent clients in matrimonial matters

(Continued on page 26)

INSIDE... NOVEMBER/DECEMBER 2010 FOCUS LIFETIME AND ESTATE PLANNING

Personal Service Contracts After Barbato	9
POA Still Needs Work	10
Using QPRT to Minimize Estate Taxes	9
Medicaid Home Care for Seniors	6
Veteran's Benefits Programs and Payments	11
Seniors' Right to Terminate a Lease	11
Social Security Age and Disability Benefits	6

Courthouse History	3
Meet your SCBA Colleague	3
Remembering Arline Besunder	7
Join the SCBA leadership	4
SCBA photo album	14 - 15
Restaurant review - Palà Pizza	19

Legal Articles	
Bench Briefs	5
Civil Litigation	17
Consumer Bankruptcy	13
Corporate Law	12
Court Notes	10
Pro Bono	18
Real Estate	16
Second Circuit Briefs	13
Trusts and Estates (Cooper)	16
Trusts and Estates (Harper)	17

Academy News	28
Academy CLE Offerings	22
Among Us	8
Calendar: Academy	28
Calendar: SCBA	2
Committee Corner	18

PRESIDENT'S MESSAGE

Remain Healthy and Stress-free During the Holidays



Sheryl L. Randazzo

By Sheryl L. Randazzo

With the holiday season upon us, maintaining life and professional responsibilities can become even more harrowing for lawyers. Clients perceive their problems as more dire, or want results before year end. Year end business tasks are looming, while our social calendars fill up more than usual. And then there are the things we'd like to do to make the holidays extra special for the people in our lives, or to fulfill goals we have set for ourselves. My unsolicited advice to you is - "please relax."

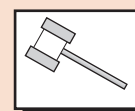
No matter how real or perceived the crisis or time crunch is in your life, a day still has only 24 hours in it and your energy to handle all that is before you is limited. Even those among us who try to control time and add hours to their day by sleeping less and having more caffeine ... you are fixing nothing and potentially setting yourself up for even greater, potentially life-altering challenges.

The reports are out there. An early 1990's Johns Hopkins University study made the connection between the legal profession, stress and its related dangers when it concluded that, among 28 types of professionals, lawyers had the highest rate of depression. More recently, a survey conducted by the Oregon Attorney Assistance Program in February of 2007 found that the majority of attorneys who responded found the most dissatisfying aspect of being a lawyer was the time pressure and workloads. Clearly these are common stresses in our profession.

So what is the answer? PERSPECTIVE.

(Continued on page 20)

FOCUS ON
LIFETIME
AND ESTATE
PLANNING
SPECIAL EDITION



BAR EVENTS

Holiday Toy Drive
Ongoing at the Bar Center

Holiday Party
Friday, Dec. 3, 4 - 7 p.m.
Enjoy a fun evening celebrating the holiday season at the Bar Center. For further information, call the Bar Center.

Judicial Swearing-In & Robing Ceremony

Monday, Jan. 10, 9 a.m.
Auditorium of Touro Law Center, Central Islip. (For further information see page 26.)

Healthy Life Series

-Acupuncture
Monday, Jan. 10, 4 - 6 p.m.
Bar Center. Speaker Nicole V. Rotundi, L.A.C., Dipl., AC., MS.



Suffolk County Bar Association

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Holiday Toy Drive

Please help us brighten the holiday season for needy children in our greater community. This year, The SCBA and the Academy of Law are collecting items for the large scale toy drive "Holiday Magic" run each year by your colleague Charlie Russo.

We hope you will take time to obtain a new, unwrapped toy for the drive. Please bring your contribution to the SCBA Center or to any of the committee meeting or Academy seminars.

Ideas for contributions include: Books, Puzzles, Miniature Cars, Dolls and Doll accessories, Board Games, Sports Equipment, Blocks, Legos, Art Supplies or any of the popular items you see advertised.

In today's troubled economy, more and more children will have holiday seasons that are less than bright without the generosity of those who participate in drives such as this. We thank you, in advance, for your help and generosity and wish you and yours a joyous holiday season and a Happy New Year!

- Joseph Hanshe

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 MORE 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**

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

NOVEMBER 2010

- 30 Tuesday** ProBono Foundation, 8:00 am., Board Room.
Supreme Court Committee, 5:30 p.m., Board Room.
Animal Law Committee, 6:00 p.m., E.B.T. Room.

DECEMBER 2010

- 3 Friday** SCBA's Annual Holiday Party, 4:00 p.m., Bar Center
7 Tuesday Insurance & Negligence - Defense Counsel Committee, 5:30 p.m., E.B.T. Room.
8 Wednesday Labor & Employment Law, 8:00 a.m., Board Room.
Executive Committee, 1:00 p.m., Board Room.
9 Thursday Criminal Law Committee, 5:30 p.m., E.B.T. Room.
Lawyer Assistance Foundation, 5:30 p.m., Board Room.
Hispanic Bar Association, 6:00 p.m., Great Hall.
13 Monday Surrogate's Court Committee, 5:30 p.m., Board Room.
14 Tuesday ADR Committee, 8:00 a.m., E.B.T. Room.
Education Law Committee, 12:30 p.m., Board Room.
15 Wednesday Elder Law & Estate Planning Committee, 12:15 p.m., Great Hall.
Solo & Small Firm Practitioners, 5:00 p.m., Board Room.
Taxation Law Committee, 6:00 p.m., E.B.T. Room.
16 Thursday Professional Ethics & Civility Committee, 6:00 p.m., E.B.T. Room.
21 Tuesday Commercial & Corporate Law Committee, 5:30 p.m., Board Room.

JANUARY 2011

- 10 Monday** Judicial Swearing-In & Robing Ceremony, 9:00 a.m. to 11:30 p.m.
Touro Law Center.
Healthy Life Series - Part III - Acupuncture, 4 p.m. - 6:00 p.m.,
Board Room.
11 Tuesday Education Law Committee, 12:30 p.m., Board Room.
12 Wednesday Surrogate's Court Committee, 5:30 p.m., Board Room.
13 Thursday Criminal Law Committee, 5:30 p.m., E.B.T. Room.
Municipal Law Committee, 6:00 p.m., Board Room.
18 Tuesday Commercial & Corporate Law Committee, 5:30 p.m., Board Room.
19 Wednesday Elder Law & Estate Planning Committee, 12:15 p.m., Great Hall.
Health & Hospital Law Committee, 5:30 p.m., E.B.T. Room.
Board of Directors, 5:30 p.m., Board Room.
20 Thursday Professional Ethics & Civility Committee, 6:00 p.m., Board Room.
26 Wednesday Solo & Small Firm Practitioners, 5:00 p.m., Board Room.



THE SUFFOLK LAWYER

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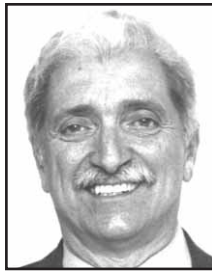
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The Suffolk County Courthouse Through The Centuries

By John L. Buonora

The following article, which will be the first in a series about Suffolk County's courthouses, is the result of a collaborative effort and substantial research and writing contribution from Martha Rogers, Principal Law Assistant to Acting County Court Judge Martin Efnan. Past discussions with Ret. Supreme Court Justice Thomas M. Stark and his book, *Riverhead: The Halcyon Years, 1861-1919*, have also been a great help. Other research sources used were Sharon A. Pullen, Suffolk County Archivist and *The Riverhead Story, 1792 -1967* by Evelyn Rowley Meyer. Some information covering the years 1969 to date came from my personal recollections, which in the past sometimes have proven to be less than perfect.



John L. Buonora

Suffolk County currently has a population of approximately 1.5 million citizens. In addition to numerous town and village courthouses in all ten of its townships, the bench, bar and citizens of Suffolk County are served in the John P. Cohalan Court Complex in Central Islip and the Arthur M. Cromarty Criminal Courts Building in Riverhead. The present incarnation of the original Suffolk County Courthouse sits on Riverhead's Griffing Avenue together with its recently built Annex on the Court Street side of the building. The massive Alphonse P. D'Amato United States Courthouse in Central Islip, while not possessing the history and tradition of some of its sister structures, is yet another impressive judicial venue.

Of course, Suffolk County was not always a municipality with a million and a half residents, nor did it always boast the impressive courthouses as it does today. Suffolk was one of the 12 original counties of New York State (actually the Province of New York at the time) created in 1683. Suffolk was named after a

similarly named county in England. Interestingly, for a time it was known as East Riding of Yorkshire, another county in the northeast of England. In 1683, Suffolk's land area pretty much resembled what it is today.

The earliest figures existing for Suffolk County are from the 1790 census showing a population of 16,400 people. In 1825 the population of Riverhead Township was 1,816. At that time the first Suffolk County Courthouse had already been in existence since 1728, having been built on Bridge Street (now known as Peconic Avenue) in the hamlet of Riverhead. It was a two story structure with a cupola and weather vane and housed biannual sessions of the County Court as well as town meetings, church services and other community gatherings. The County Court heard both civil and criminal cases and even cases of horse theft.

The County Jail was attached to the Courthouse and was the site of occasional executions carried out before an audience on a gallows outside of the jail. Execution expenses incurred by the sheriff included money for rope, a cart and rum. (I couldn't determine whether the rum was for the prisoner, the executioner or the audience). Suffolk County's last execution took place in 1854.

In 1855 the original courthouse was sold to Alex MacDonald and J.R. Perkins (as in the Henry Perkins Hotel, where in years gone by many a trial lawyer, including this writer would await a verdict from deliberating jurors while having a few....., oh never mind). The new owners renovated the courthouse to house several stores. This building stood for 185 years until destroyed by fire on July 4th, 1911. The year 1855 also saw the original courthouse replaced by the second County Courthouse that contained a single courtroom on the second floor and was located on Griffing Avenue. In 1910 a new jail



The Griffing Avenue Courthouse in 1988. The exterior of the building was substantially the same as it was when it was built in 1929.

was built adjacent to the Griffing Avenue courthouse. This second courthouse was destroyed by fire in 1929 and was replaced that year by the existing courthouse which stands to this day albeit in modified form (more about that later). I guess that would make the present building on Griffing Avenue the third county courthouse and the second county courthouse on Griffing Avenue. Once upon a time the Surrogate's Court occupied one of the floors of the three story County Courthouse, sharing the building with the County Court and the Supreme Court.

When this writer moved out to Suffolk County from Queens in 1969 to seek his fame and fortune (probably falling short on both accounts), the District Attorney's Office was housed in the classic styled building on Griffing Avenue next to and immediately south of the County Courthouse. In the District Attorney's building were the County Court Bureau (sometimes referred to as the Trial Bureau) and the Appeals Bureau. In those days there were virtually no specialized bureaus; the County Court Bureau han-

dling most every felony prosecuted in the county.

At one time there were two County Court criminal terms in the building referred to as "Part I" and "Part II." These Parts, or courtrooms, would handle all manner of felonies from arraignment to sentence. With growing volume and complexity of administering the criminal justice system an Arraignment Part was created. There was no room for it on Griffing Avenue, so it was housed in a rented building around the corner on Court Street. Since the building was not designed as a courthouse, it had some quaint features such as columns located within the well of the courtroom that lawyers would have to navigate around while making their case. I seem to recall that it had a roof that leaked considerably when it rained. In describing this courtroom the word "dingey" comes to mind. This Arraignment Part was called Part III. One would expect that the first stop in the criminal justice system would be called Part I, but since we already had a Part I

(Continued on page 21)

Meet Your SCBA Colleague *Ernest R. Wruck, Jr.*

an estate attorney from Wruck & Wallace, L.L.P. in Patchogue, believes it is important to stand up and advocate for your clients.

By Laura Lane

The creator of the television series *Perry Mason* and Harper Lee, the author of *To Kill A Mockingbird* probably never imagined just how much they would influence those contemplating a career in law. A fan of both, young Ernest R. Wruck, Jr. grew up certain that he'd dedicate his life to law. But it wasn't just the fictional lawyer heroes that convinced him. Ernest had the privilege of being the son of a real life super lawyer, his father, Ernest, who was also a Justice of the Peace. The father and son even formed a practice together, Wruck & Wruck, which lasted for 25 years until Ernest Wruck senior passed away. Yes, sometimes things are just meant to be.

Do you believe your father influenced you in your choice to become an attorney? He didn't have to push very hard. My father was a solo practitioner and at a very young age I knew I wanted to be an attorney. There was a lure about the profession.

What do you enjoy about being an attorney? The highlight has to be when

you see problems and you are able to find a resolution for everybody. I enjoy getting people to the goal line.

What do you least enjoy about being an attorney? The bad part of it is the frustration or impossibility of sometimes getting people to that goal line.

Do you feel like you always have to win; that you have failed if you don't? I have learned over the years that being there for people and explaining the process is as important as getting them the results.

You started out as a solo practitioner just like your father, right? I was for a couple of years. I was a law secretary at Surrogates Court for three years before that.

When did you join the Suffolk County Bar Association? I graduated from Balpraiso University Law School in Indiana in 1979 and was admitted shortly thereafter. I immediately joined the SCBA.

Why did you join so quickly? Being the son of an attorney I already had a rap-

port with the older attorneys. I couldn't imagine another alternative.

You were comfortable among the membership but were there any additional reasons why you joined? I thought it would be a great place to learn and get guidance.

What do you enjoy the most about being a member now? That would be the continuing legal education. You know, we are one of the best programs in the state. The Suffolk County Bar Association offers a wonderful opportunity for people to interact with people from all parts of the profession.

Would you recommend membership to other attorneys and if so, why? The bar association is a great resource for learning and the personal relationships are tremendous. In this business it is important to meet other attorneys and have a social interaction with them as well as professional.

How have you been involved in the SCBA? I have never held an official position but I have taught CLE estate



Ernest R. Wruck, Jr.

courses for the past 30 to 40 years. I am on the mentor program. We have a call list for young attorneys and I've been on it for the past 25 years in the estate area. I got a lot of calls over the years and not just from young attorneys. I'm happy to help others attorneys if they need it. I've found this to be a great opportunity to share in the profession.

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*The Suffolk Lawyer wishes to thank
Lifetime And Estate Planning Special
Section Editor Linda M. Toga Esq.,
for contributing her time, effort and expertise
to our November/December issue.*

Our Special Section Editor for November/December

LINDA M. TOGA, ESQ., founder of the Law Offices of Linda M. Toga, P.C., is a sole practitioner concentrating in the areas of estate planning and elder law, real estate and civil litigation. She is a past president of the Suffolk County Women's Bar Association, immediate past co-chair of the Suffolk County Bar Association's ("SCBA") Elder Law and Estate Planning Committee and an active member of numerous SCBA committees, including the Judicial Screening Committee. Ms. Toga has also participated as a speaker at a number of SCBA CLE programs and at the Senior Citizen Law Day held at Stony Brook University.

Preparer Tax Id Number ("PTIN") Another number that you may need

By Alan E. Weiner

Note: This written correspondence does not constitute an opinion and is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer.



Alan Weiner

(whether or not he/she will be the person signing the tax return).

This article explains the Internal Revenue Service ("IRS") reasoning and it is a 'how to' for securing the PTIN online (which gives immediate gratification, i.e., a PTIN almost simultaneously with the online filing, in most instances) or via

Executive Summary

The theme of this article is an alert to any attorney (AND his/her employees) who, on and after January 1, 2011, prepares any type of tax return (estate, gift, fiduciary, individual and other types of tax returns) and gets paid for doing so. The PTIN registration is a mandatory requirement for all such preparers

a paper application (which can take 4-6 weeks before receiving the PTIN). Even attorneys who already have a PTIN under the old system must go through a re-registration (called "refreshing") process. Such attorneys most likely will have received a letter from the IRS in November informing them of the need to 'refresh'; however

(Continued on page 26)

An Invitation to Join Our Leadership

The Nominating Committee seeks Candidates for the 2011 – 2012 Administration

Each year, our membership elects a President, President Elect, two Vice Presidents, a Treasurer, a Secretary, and four Directors. The Officers' positions are for one year, the Directors' terms are for three years. The next election, pursuant to our Bylaws, will be at our Annual Meeting, Monday, May 2, 2011. The membership also elects at the Annual Meeting, three members to serve on the Nominating Committee for a term of three years. Each member of each class shall be the immediate past president of the Association.

Except for the office of the president, the Nominating Committee is now seeking applications for the aforementioned positions. If you are interested in becoming a leader and willing to assume a role in the activities of the SCBA, please send your résumé, either by mail or email, to the Executive Director jane@scba.org by December 2010.

As Officers and Directors of the SCBA, you manage the affairs of the Association

subject to and in accordance with the Association's Bylaws and all applicable laws; elevating the standard of integrity, honor and courtesy in the legal profession and cherishing the spirit of goodwill among the members. The membership is deeply appreciative of the energy, dedication and hard work performed by the Officers and Directors of the Association especially in these challenging times. The Directors are required to attend all scheduled Board meetings of the Association. Eligibility of Board members as noted in the Association's Bylaws: "No member shall be eligible for election to the Board of Directors who has not been an Active Member of the Association for at least five years and a member of a committee, task force, recognized foundation of the association, an Officer of the Suffolk Academy of Law, or any combination thereof, for at least four years during such period."

- LaCova

BENCH BRIEFS

Suffolk County Supreme Court

Honorable Paul J. Baisley, Jr.

Motion by plaintiff to strike defendants' jury demand granted; failure to timely file jury demand after note of issue constitutes waiver; waiver may be excused if failure was inadvertent and did not result in any prejudice.

In *Marion Rose v. Gary Rose, Doreen Rose, Estate of James H. Rose, Gary Rosa, as Executor*, Index No. 20662/01, decided on August 28, 2009, the court granted the motion by plaintiff to strike defendants' jury demand. Plaintiff filed the Note of Issue on March 17, 2008. She did not demand a jury. Defendants served a demand for a jury on June 19, 2008. In granting the motion the court reasoned that pursuant to the CPLR, upon the service and filing of the note of issue, in which a jury is not demanded, a party may serve and file a demand for a jury within 15 days after service of such note of issue. Failure to do so results in a waiver. Such a waiver may be excused if the failure to demand a jury was inadvertent and did not result in any prejudice. Here, the court found that the defendants did not offer an explanation as to why they filed an untimely demand but merely asserted that since the plaintiff's claims sounded in law, they were entitled to a jury on the legal claims.

Honorable Joseph Farneti

Plaintiffs' motions for a protective order conditionally striking the answers of defendants denied; at the time that

plaintiffs' application was made, none of the depositions of the parties had been conducted; cross-motion by defendant dismissing plaintiffs' complaint pursuant to CPLR 3211(a) (7) granted; plaintiffs failed to sufficiently plead any causes of action against the cross-movant

In *Robert O' Gorman and Jayne O'Gorman v. County of Suffolk, Suffolk County Police Department, Suffolk County Police Detective Clifford, CID, Suffolk County Police Officers, John "Doe" 1 through 10, and Police Officers Jane "Doe" 1 through 10, Suffolk County District Attorney Thomas Spota and his agents, servants, representatives and Employees, including but not limited to Suffolk District Attorney Investigator Robert Berger, Long Island Power Authority ("LIPA"), Richard Kessel, Chairman of LIPA, Heather Schapiro-LIPA Customer Relations, Barbara O' Britis-LIPA Representative-Revenue Protection Division, Michael Lowndes-LIPA representative, David Whiddon-LIPA Investigator*, Index No. 9464/07, decided on April 7, 2010, the court denied plaintiffs motions for a protective order conditionally striking the answers of defendants Suffolk County District Attorney Thomas Spota and Richard Kessel, Chairman of LIPA based upon their willful failure and refusal to provide discovery and to appear for examinations before trial as demand by plaintiffs. The court further granted cross-motion by Defendant County of Suffolk for an order dismissing plaintiffs' complaint pursuant to CPLR 3211(a) (7). The court found

that at this juncture it was inappropriate to conditionally strike the answers of the District Attorney and Mr. Kessel as the court did not find their conduct to be willful or contumacious. The court noted that at the time that plaintiffs' application was made, none of the depositions of the parties had been conducted. In deciding the cross-motion, the court pointed out that County Law § 54 prevents suit for money damages against the head of any agency, department, bureau or office of a county for any act or omission of subordinates. Thus plaintiffs' complaint which sought to hold the District Attorney vicariously accountable for the acts or omissions of his subordinates, must be dismissed, as claims premised on vicarious liability do not lie against the head of an agency. Here the court found that the District Attorney's office prepared and filed misdemeanor information, which initiated a criminal proceeding against plaintiff. As such, the court reasoned that the District Attorney was entitled to absolute immunity with respect to quasi-judicial actions taken thereafter within the scope of his official duties. Plaintiff's allegations specific to the District Attorney were allegedly defamatory statements made at a press conference. In general, a qualified or conditional privilege attached to statements in which the party communicating possessed a legal duty to communicate the information to another provided that the communicator had a good faith belief that the information was true. Based on same, the court held that plaintiffs failed to sufficiently plead any causes of action against the

District Attorney.

Honorable Emily Pines

Motion for summary judgment granted; no liability attached to homeowners under the common law or under Labor Law § 200

In *Carlos A. Elgueta v. Julianne Saary Littman, Marc Littman and A & M Painting and Decorating*, Index No. 13370/06, decided on March 23, 2010, the court granted defendants Julianne Saary Littman and Marc Littman's motion for an order in favor of summary judgment. In rendering its decision, the court noted that owners of a one-or-two family dwelling are exempt from the absolute liability imposed under Labor Law § 240 (1) and the vicarious liability imposed under Labor Law § 241 (6) unless they directed or controlled the work being performed. The phrase direct control has been construed strictly and referred to the situation where the owner supervised the method and manner of work. The court found that the home owners' established that they lacked the requisite supervision and control over plaintiff's work and were entitled to protection of the homeowners exemption as a matter of law. The court noted that protection provided by the Labor Law § 200 codified the common law duty of an owner or employer to provide employees a safe place to work but here the alleged defect or dangerous condition arose from the contractor's work and the homeowners exercised no supervisory control over the method and manner of the work. As such, no liability attached to them under the common law or under Labor Law § 200.

(Continued on page 21)

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Medicaid Home Care for Suffolk County Seniors

Beyond Financial Eligibility

By Janna P. Visconti

The programs that comprise Community Medicaid on Long Island offer seniors the opportunity to age in place in their own homes. This option can provide one-on-one care at less cost than institutionalization, and is the preferred alternative for many seniors. To best guide their clients through the maze of laws and programs that comprise the Medicaid home care system, attorneys must understand their client's physical and mental condition, ability to perform the activities of daily living, and family support network, as well as the options available to their clients through

Community Medicaid. This article provides a brief survey of those options.

Home Care Agency

If the client begins home care services during the Medicaid application process, the transition to the Medicaid program will be eased if the home care agency selected also contracts with the Department of Social Services ("DSS"), and accepts Medicaid payments. Some home care agencies have a Medicaid pending program which allows the client to begin services prior to Medicaid approval.



Janna P. Visconti

Traditional Home Care

As soon as the attorney receives the DSS approval, he or she should call the home care intake desk at DDS (631-854-9584) and request a home care assessment. Be prepared to answer general questions such as your client's name, address, Medicaid number, primary care giver, physician, and health issues. Your client's physician must complete Form MA-241-A stating the diagnosis, and must make a general request for home services. The doctor's conclusions must be based upon a recent examination and

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should particularize your client's need for assistance with activities of daily living. After receiving the physician's recommendations, DSS will make an appointment for a home visit during which the

(Continued on page 24)

The Basics of Social Security Age and Disability Benefits

By Scott R. Tirrell

Estate planning attorneys are well aware that many factors should be considered when advising their clients. Among those factors are the likely sources of future income available to

their clients. This future income often includes benefits received through the Social Security Administration (SSA). Consequently, a working knowledge of the benefits that may presently be available for a given client through SSA, or that may become available in the future, is a useful tool for the estate practitioner.

One such benefit is age-related Social Security ("SS") benefits. These benefits are available to individuals who worked for a sufficient number of years and paid into the system out of their earnings during that period. At retirement age, such individuals can collect a retirement bene-



Scott R. Tirrell

fit determined by SSA based upon that individual's lifetime earnings. Historically, full retirement age was 65 but, since the Social Security Amendments of 1983, full retirement age is gradually increasing for individuals born in 1938 or later. For someone born in 1960 or later, full retirement age is 67. The full retirement age for individuals

based upon their date of birth can be found on the SSA's website at <http://www.ssa.gov/pubs/ageincrease.htm>

A person can pursue early retirement benefits at age 62 even if they were born in 1960 or later. However, electing early retirement results in a monthly benefit for

the rest of the individual's life that is less than the amount of full retirement benefits. Alternatively, working beyond full retirement age, without filing for age related SS benefits, results in a higher monthly benefit for life than the full retirement benefit amount.

Even if an individual has never worked outside of the home (an "SS non-contributor"), he/she may still be eligible for a retirement benefit equal to one-half of the amount that his/her spouse/ex-spouse is entitled to collect. This benefit is available when the married SS non-contributor reaches retirement age provided the marriage lasted for at least a year. In situations where there are children, such bene-

(Continued on page 25)

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OBITUARY

Saying Goodbye to a Loved One....

By Sarah Jane LaCova

Arline Besunder, a member of the legal community, wife of past president Harvey B. Besunder, mother of Alison and Eric, mother-in-law of Allyn, grandmother of three year old Emma, and another baby girl who will be born to Alison and Allyn by the time this edition is out, who dealt with an autoimmune disease Multiple Sclerosis, so courageously and so quietly was laid to rest on November 1, 2010.

At the funeral service held at the North Shore Jewish Center, Rabbi Hoffman, who led the service, told stories of his conversations with Arline and her family over many years. It was their House of Worship and Rabbi Hoffman was the fam-



Arline Besunder

ily's spiritual leader. In a synagogue sanctuary filled to capacity with people who knew and loved Arline, Eric eulogized his beloved mother and shared stories of his and Alison's adventures growing up in a loving household. Harvey regaled the audience with his most memorable stories, from their first meeting in P.S. 189 where they met and fell in love three months later, to two years later

when they entered into a contract known as the "Katuba." Harvey and Arline had a wonderful marriage filled with hopes, dreams and commitment; they produced two great children, both of whom followed in their parents' footsteps and became lawyers (Harvey's father Alfred

(Continued on page 8)

The Suffolk County 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:

John Aicher
Rory Alarcon
Susan Beckett
Nancy Bertolino
Deidre Byrne
James Corcoran
Vincent Cuocci
Judy Donnenfeld
Robert Edelstein
William Etherson
Anthony Focarile
Edmond Foy

Guido Gabriele, III
John Gannon
James Gentile
John Giordano
Richard Guttman
Barry Heettner
Jeffrey Herzberg
Irwin Izen
Raymond Lang
Barry Lites
Paul Margiotta
Marina Martielli
Cheryl Mintz

James Moran
Curtis Morrison
Karen Napolitano
Mark Needleman
Jerem O'Sullivan
Sam Owusu
Debra Petrillo
Eric Sackstein
Richard Satin
Trudie Walker
Glenn Warmuth
Paula Warmuth

The SCBA would also like to pay tribute to Pro Bono Foreclosure Settlement Conference Project Coordinator Barry M. Smolowitz and Administrator Melissa McManaman for their continued commitment to proving the motto serving the public good. Barry has also stepped up and helped out in court when another pro bono volunteer was not available. Through the efforts of many volunteer lawyers devoting untold hours of free professional services to hundreds of economically disadvantaged people in Suffolk County, we have been able to provide access to the legal system. Our volunteer attorneys have truly distinguished themselves by providing representation to clients who have nowhere else to turn for legal help. Please enlist your colleagues who have not yet volunteered for this most worthy endeavor to get involved. The Pro Bono Project and the unrepresented population in Suffolk County need your help.

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Congratulations...

The Officers, Directors, Members and Staff of the SCBA would like to add their congratulations to the following members who were recognized in the *Long Island Business News Who's Who in Women's Professional Services* - **Ilene S. Cooper**, SCBA Past President (2009-10), partner at Farrell Fritz, P.C.; **Deborah Aviles**, partner at Lewis Johs Avallone Aviles LLP; **Patricia Galteri**, Meyer, Suozzi, English & Klein; **Sharon Berlin**, partner at Lamb & Barnosky LLP; and **Kathryn J. Russo**, partner at Jackson Lewis LLP.

Announcements, Achievements, & Accolades...

Land title practitioner **Lance R. Pomerantz** has launched a new website, www.LandTitleLaw.com, to showcase the litigation, consulting and expert witness services he provides to the profession. His new email address is: lance@landtitlelaw.com while his phone number remains unchanged: (631) 727-0133.

Lisa Renee Pomerantz and Stacey O'Connell of Employee Support Network LLC presented a program on "What Employers Need to Know to Prevent

Workplace Violence" at The Bristol in Lynbrook on November 3.

Brian Andrew Tully has released a new guidebook which provides valuable information for adults on how they can plan for their elderly parents as they age. "How To Plan For Aging Parents 2010" is available free of charge and can be downloaded at www.elderlaw.pro.

Lamb & Barnosky, LLP attorneys **Eugene Barnosky**, will be a panelist at the 2010 Annual School Law Conference presented by the Nassau and Suffolk Academies of Law and Education Law Committees of the Suffolk and Nassau County Bar Associations in a program entitled "So You Want to Save \$1,000,000?"; **Robert H. Cohen**, will be a panelist in a program entitled "Instructional Services and Independent Contractors"; **Rita Fishman Sheena**, will be a panelist in a program entitled "What's Public & What's Private?: Executive Sessions, FOIL, FERPA, subpoenas, email, etc."; and **Mara N. Harvey**, will be a panelist in a program entitled "Student Residency: Homelessness, Foreign Students, Custody Issues, etc."

Jennifer B. Cona, managing partner of the Melville based elder law and estate plan-



Jacqueline M. Siben

ning firm Genser Dubow Genser & Cona (GDGC) has been appointed to the Long Island Alzheimer's Foundation (LIAF) Board of Trustees. She was also named Honorary Dinner Committee Chair of the 23rd annual Remembrance Ball.

On October 20, 2010, **John Ray**, of John Ray & Associates served as a panelist for the Council on Foreign Relations' economic conference, "A Call for Judgment," dealing with the banking crisis, as part of the CFR's Roundtable Series on Technology, Innovation, and American Primacy.

Condolences....

To **Fred Johs** and his family on the passing of his mother, Dorothy E. Johs.

To longtime active members **G. Ronald** and **T. Glenn Hoffman**, on the passing of their mother Margaret who died on September 4 at the age of 84. The Hoffman's said, "She was a great mom and an "attorney creator."

The Officers and Directors wish to convey their heartfelt sympathy to **Barry Tuminello** and his family upon the recent passing of his mother, Emma "Emily" Tuminello.

To the family of SCBA member **George C. Trovato**, who passed away suddenly in November.

New Members...

The Suffolk County Bar Association extends a warm welcome to its newest members: **Joseph S. Bavaro, Gregg Cohen, Daniel J. Cronin, Crysti D. Farra, Amy Gavlik, Daniel R. Howard, Hon. Cheryl Joseph-Cherry, Michael Kofsky, Michael S. Leinoff, Joshua A. Marcus, Michaelangelo Matera, Jessica L. Reznak, James K. Stern, Michael G.Vigliotta and Julie L. Yodice.**

The SCBA also welcomes its newest student members and wishes them success in their progress towards a career in the Law: **Robin Daleo and Sonia Gassan**

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

Contracts attorney - immediate need. Long Island based global corporation seeks a full time, permanent attorney with at least two years of experience in drafting and developing new contract templates with intellectual property knowledge.

Reference **Law #19.**

Attorney with West Sayville office, looking to expand his practice, seeking newly admitted or experienced attorney. Will look at all resumes of interested parties.

Reference **Law #4.**

Members Seeking Employment

Solo Practitioner, seeks to make a change. I am open to all forms of future endeavors, including employment, of counsel relationship, partnership, association or merger. Over 30 years of experience in criminal law, commercial transactional and litigated matters, personal injury litigation, real-estate transactions and litigation, landlord and tenant, some wills and estate planning, and Surrogate's Court work. I have been called a utility infielder. Perhaps an association of some type can reduce costs and stress and increase revenues. Let's talk. Reference **Att:#35**

Experienced trial attorney now accepting small claims per diem in the Fourth and Fifth District Courts. Reference **Att#36**

Results oriented executive with a law degree and a track record of providing strong, creative, energetic and strategic leadership. Demonstrated ability to provide overall direction and expertise for the development and delivery of sophisticated services, programs, reporting and metrics. Admitted to NJ Bar January 2009 and passed 2009 NYS exam. Legal experience includes: Merger & Acquisition, Contract Negotiations, Collections, Banking & Legal Affairs, Commercial Leases & Residential Mortgages and Human Resources. Reference **Att #23**

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

Saying Goodbye to a Loved One...

(Continued from page 7)

was also a well-known and beloved lawyer).

Arline had a wonderful sense of humor, she was feisty and smart and while teaching, reading and word games were her passion, she decided, after much soul searching and discussion, to take on another challenge and attend law school knowing that the children were still in their teens and the family would have to endure many sacrifices. Still, it was an endeavor they all agreed to take on.

It was in her second year of law school that Arline was diagnosed with Multiple Sclerosis, a disease that threatened to dominate her life. Undeterred, Arline completed her studies, passed the Bar and practiced her profession with honor and dignity. Harvey said that through the many years the disease progressed, through the frustration of not being able to accomplish all they had planned, she

never once complained or said "why me?" He said she never was self conscious or embarrassed by her situation. Arline said "you go with the hand you are dealt." They both believed that even though they had so much taken away from them, they never felt cheated.

Those who attended Arline Besunder's funeral service heard a true love story...the story of her life with Harvey, the story of her devotion to her children, family and community. It was quite evident that even though Harvey, Alison, Eric, Allyn, Emma and the entire family had to witness the passing of someone so loved, Arline was, and will always be, an inspiration to them all. Every day she lived was a gift and a blessing.

Note: Sarah Jane LaCova is the Executive Director of the Suffolk County Bar Association.

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Personal Service Contracts After Barbato

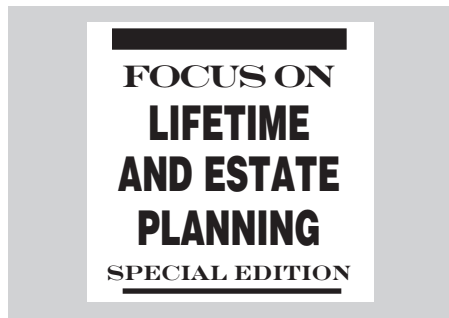
Advantages and limitations

By Vincent W. Ansanelli and Diane L. Virzera

The personal service contract ("PSC") is a written agreement between a Medicaid applicant/recipient ("Medicaid A/R") and one or more caregivers, typically relatives or close friends. Under the agreement, the caregivers agree to provide the Medicaid A/R personal and geriatric care, financial management, and related services over the statistical life expectancy of the Medicaid A/R in return for fixed compensation, often paid in a lump sum. Under New York regulatory guidance, when properly designed and executed, a PSC rebuts the

presumption that services provided by family caregivers are provided out of "love and affection,"¹ thereby providing a basis for demonstrating a fully compensated transfer of assets for fair value that is not subject to a Medicaid transfer penalty.

Local Departments of Social Services ("DSS") use guidance issued in GIS 07 MA/019 for evaluating PSCs to assess whether the payment of funds under the PSCs are deemed to be compensated transfers for Medicaid eligibility purposes.² GIS 07 MA/019 states that if the Medicaid A/R is faced with a transfer penalty, the transfer penalty amount must be reduced "for the value of services actually received



Vincent W. Ansanelli



Diane L. Virzera

sonable wage scale for caregiver services is used (with particular reference to U.S. Department of Labor statistics).

Unfortunately, in practice the regulations pertaining to PSC's are not necessarily applied as one would expect. For example, many fair hearing decisions did not uphold PSCs challenged by DSS on grounds that they did not effectively rebut
(Continued on page 21)

Using a QPRT to Minimize Estate Taxes

By Kim M. Smith

The most valuable assets held by many of our clients are their primary residences. Absent new legislation, the 2010 estate tax repeal will sunset in 2011. If this occurs, the estate tax will be reinstated at rates as high as 55 percent with an exclusion amount equal to \$1 million, putting

our client's estates at great risk for significant estate tax liability. For this reason, estate planners should focus on strategies to minimize estate taxes. One effective strategy is the use of a Qualified Personal Residence Trust ("QPRT") whereby an individual contributes his residence to an irrevocable trust, but retains the right to live in the residence for a term of years (e.g., 10 or 20 years). During the term of the QPRT, the grantor is responsible for all expenses associated with the property such as the real estate taxes and the cost of repairs and maintenance. Assuming the grantor survives the term of years, the property can pass tax free to the grantor's chosen beneficiaries or can continue to be held in trust



Kim M. Smith

for their benefit; when the grantor dies, neither the value of the residence nor any appreciation realized after the creation of the QPRT, is included in the grantor's estate for estate tax purposes. Since a QPRT is an irrevocable trust, it also provides the grantor with excellent asset protection.

For income tax purposes, a QPRT is treated as a grantor trust during the term of years. This means that the grantor can deduct the real estate taxes paid on the property during the term on his personal income tax return. Furthermore, if the grantor sells the residence held by the QPRT and reinvests the proceeds in a new residence, any gain recognized on the sale of a principal residence should qualify for the gain exclu-

sion, assuming all of the code requirements are met. In addition, if the grantor makes any capital improvements to the residence, the value of those improvements can be treated as additional gifts to the QPRT. In that case, the gift amount would be based on the value of the capital improvement and the remaining term of the QPRT.

There is several tax benefits associated with creating a QPRT. The most obvious is that QPRT's are useful for leveraging a person's estate and gift tax credit. The transfer of a residence to a QPRT is treated as a taxable gift by the grantor. Thus a Federal Gift Tax Return must be filed for the year in which the gift is made. However, the value of the gift is based only on the value of the "remainder"
(Continued on page 24)



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Suffolk County Courts Celebrate Hispanic Heritage Month

By Sarah Jane LaCova

In September 1968, Congress authorized President Lyndon B. Johnson to proclaim National Hispanic Heritage Week in September 1968. The observance was expanded in 1988 to a month long celebration.

The Honorable H. Patrick Leis III, District Administrative Judge of our Suffolk County Courts, celebrated the culture and traditions of residents who trace their roots to Spain, Mexico and the Spanish-speaking nations of Central and South America and the Caribbean.

The celebration opened with the Pledge of Allegiance and Invocation given by the Honorable Stephen M. Behar. The Mistress of Ceremony, the Honorable Toni A. Bean, introduced Justice Leis who welcomed the audience and made introductory remarks.

"This year's theme for National Hispanic Heritage Month is particularly appropriate," said Judge Leis. "Heritage, Diversity, Integrity and Honor: The Renewed Hope of America aptly describes



Photo credit: Photo by Arthur Shuman

Luis Antonio Pagan, Esq.; District Court Judge Toni A. Bean; Suffolk County Legislator Ricardo Montano; Suffolk County District Administrative Judge H. Patrick Leis III, J.S.C.; Sheryl L. Randazzo, President, Suffolk County Bar Association; Richard Montes, President, LI Hispanic Bar Association; Cynthia Vargas, Esq.; and Suffolk County Supreme Court Justice Hector Daniel LaSalle.

the dedication and hard work of Long Island Hispanic leaders in the legal community. The positive collaboration among the courts, the legal community and the bar associations is a positive force in ensuring justice for Long Island's diverse population."

I also found this year's theme very fit-

ting. Sitting in the audience, I listened to Richard Montes, President of the Long Island Hispanic Bar Association and Sheryl L. Randazzo, President of the Suffolk County Bar Association speak movingly about promoting leadership, personal development, cultural traditions and the core values of loyalty, duty,

respect and selfless service.

Judge Bean welcomed Suffolk County Legislator Ricardo Montano and Suffolk Supreme Court Justice Hector Daniel LaSalle who regaled us with stories on making a difference for themselves, their families and their communities. Justice LaSalle spoke of his neighbor, *Doña Lydia*, who watched him grow up and the pride she felt as she followed his distinguished law career and service to his community. Legislator Montano spoke eloquently about ancestry, unique cultural experiences and the achievements, dedication, as well as the contributions made by Hispanic Americans for our nation. To cap the event Hispanic music was sung by Gerard Donnelly, Esq. and Rafael Penate, Esq. who also accompanied the duo on the guitar. The performance was exquisite and the "Irish American and El Salvadorian" team should definitely take their music on the road.

I'd like to thank the members of our legal community who prepared a bountiful and mouthwatering Latino luncheon for all participants to enjoy.

The New POA Still Needs Work

By Eileen Coen Cacioppo

Presented as a technical corrections bill, the new Article 5 Title 15 of the General Obligations Law answers some questions about the power of attorney ("POA") in New York practice while at the same time it raises some new questions. Historically, the new law, found at Chapter 340 of the 2010 Laws of New York and at www.senate.state.ny.us and www.assembly.state.ny.us, is the first revision since the major changes to the substance and procedure of the former law which were made effective on September 1, 2009. For ease of reference in this article, the 2009 statute will be referred to as

the "2009 law" and the new legislation which is the subject of this article shall be referred to as the "2010 law" or "the new law."

Section 31 of the new law states that Chapter 340 "shall be deemed to have been in full force and effect on and after September 1, 2009" provided that any Statutory Short Form Power of Attorney ("SSFPOA") and any Statutory Gift Rider ("SGR") executed after August 31, 2009 shall remain valid, as well as any revocation of a prior POA delivered to the agent before September 12, 2010.

The 2010 law keeps the basic structure of the 2009 forms in that there continue to be two parts: the Statutory Short Form

Power of Attorney and the newly titled optional Statutory Gift Rider (SGR), no longer called the Statutory Major Gift Rider (SMGR.) GOL §5-1501(2) (n) and (o) now provide that a mistake in wording, such as in spelling, punctuation or formatting, or the use of bold or italic type, shall not prevent a POA document from being deemed a SSFPOA or a SGR. The significance of these provisions is that when the exact forms presented in the statute at GOL §5-1513 and GOL §5-1514 are used, a third party located or doing business in New York may not refuse to honor the document without reasonable cause, as defined at GOL §5-1504. In fact, the statute states that it is unlawful for a third party to refuse to honor the properly executed statutory forms.

As has been the law since September 1, 2009, not only the principal but the agent must sign the POA document and have his signature acknowledged before he is authorized to act. The 2010 law now provides a place in the form for the successor agent to sign, although there is no specific direction to the successor agent to sign at the time the document is created. The new law also clarifies that the notary taking the acknowledgment of the principal may also serve as one of the witnesses to the execution of the SGR.

The SGR continues to be an optional part of the form which grants the agent the authority in separate sections of the form to make limited gifts to certain specified beneficiaries. Depending on the section of the form that is initialed by the principal, the agent may now make gifts that do not \$500.00 in any calendar year, or unlimited gifts to certain beneficiaries, or gifts to the agent himself. However, the SGR must be executed by the principal concurrently with the SSFPOA. The agent may make gifts in accordance with instructions from the principal contained in the POA document or in "any other writing provided by the principal" or gifts that are in the best interest of the principal.

Reversing the 2009 law, the 2010 law now specifies that the POA document does not revoke any powers of attorney previously executed unless the principal directs otherwise in the "Modifications" section of the form. The new law adds that if more

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than one POA document is to remain in effect, the agents appointed in the documents are to act separately unless stated to the contrary in the Modifications section. The 2010 law does not explicitly answer the question of whether a POA executed by the principal before September 12, 2010 on the 2009 form will be valid if the agent (or successor agent) signs the document after that date. Although the 2010 law requires that any POA document executed after its effective date utilize the new form(s) set forth in the 2010 statute to be recognized as a SSFPOA and/or SGR, it also provides that a POA document which was executed prior to the 2010 date will continue to be valid provided it was prepared according to the statutory form and properly executed in accordance with the statute effective on the date of execution.

Another major change to the new law is that at §5-1501(c) it states that the new law applies to all powers of attorney except those powers "given primarily for a business or commercial purpose," as identified in the statute to include, without limitation, a proxy to exercise voting or management rights, a power given to a condominium managing agent, a power on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose, and a power given to a financial institution.

Other changes have been made to the recording requirements, to revocation procedures and regarding the full force and effect affidavit.

Note: Eileen Coen Cacioppo, Esq. is a former Co-Chair of the SCBA Elder Law Committee and is currently serving her second term as Curriculum Co-Chair of the Suffolk Academy of Law.

COURT NOTES

By Ilene Sherwyn Cooper

Appellate Division-Second Department

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:

Edith Tolkin

Attorney Reinstatements Granted

The application by the following attorneys for reinstatement was granted:

Priya G. Bhatt
Rene G. Garcia
Andrew P. Jones
Gerard P. McLoughlin

Attorneys Censured:

Carl T. Woody: By decision and order of the court, the Grievance Committee was authorized to institute and prosecute a disciplinary proceeding against the respondent, and the issues were referred to a Special Referee to hear and report. The Grievance Committee



Ilene S. Cooper

served the respondent with a petition containing two charges of professional misconduct, and the Special Referee sustained both charges. The Grievance Committee moved to confirm. The record revealed, *inter alia*, that the respondent engaged in conduct adversely reflecting on her fitness as a lawyer by pleading guilty to the crime of criminal possession of a weapon in the fourth degree, namely a handgun, a class A misdemeanor. The respondent submitted no opposition. In determining an appropriate measure of discipline to impose, the Grievance Committee pointed to the respondent's past disciplinary history consisting of two letters of caution and an admonition for improper use of his escrow account. Accordingly, under the totality of circumstances, the respondent was publicly censured for his professional misconduct.

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.

Veteran's Benefits Programs and Payments

By Melissa Negrin-Wiener

Many veterans do not realize that they may be eligible for benefits from the Veterans Administration (the "VA") such as service-connected benefits and low-income pension benefits.

Service-connected benefits provide veterans with compensation for an injury or disease that occurred during service or is service-connected.¹ The amount of compensation offered is based on the veteran's disability rating as set forth in Title 38 U.S.C Section 1114. Disability compensation is not considered taxable income and there are no asset or income limitations placed on eligibility for service-connected disability benefits.

In addition to service-connected benefits, the VA also offers a needs-based, non-service connected pension program for low-income veterans for which there is no disability rating requirement. The VA pension program provides payment to a service member who served during a period of war, is 65 years of age or older² or is disabled, and has limited income and resources.³ The pension amount available to the veteran depends upon the veteran's other sources of income. Similar to disability compensation, VA pension income is not taxable.

The Aid and Attendance program is part of the needs-based pension program and, as such, the veteran does not need a service-connected disability or disability rating to qualify. However, the veteran must be determined to be permanently and totally disabled. Aid and Attendance benefits provide a pension to veterans, spouses of veterans and surviving spouses of veterans who require the regular aid and attendance of another person with respect to their activities of daily living



Melissa Negrin-Wiener

such as bathing, feeding, dressing, toileting, adjusting prosthetic devices and/or protecting the individual from the hazards of his/her daily environment.⁴

A veteran, his/her spouse or a surviving spouse of a veteran can qualify for Aid and Attendance benefits if they reside in an assisted living facility or if they live at home and require the assistance of another individual, such as a home health care aide. Additionally, the veteran must have had ninety (90) days in service, at least one (1) day of which must have been during a period of war.⁵ This does not require the veteran to have served outside the United States. In addition to the aforementioned service requirements, the veteran must have been discharged under conditions other than dishonorable.⁶

A surviving spouse may be entitled to a veteran's pension provided he/she was married to the veteran at the time of, and for at least one (1) year prior to, the veteran's death and the veteran has met all of the above service criteria.⁷ There is no age restriction for the widowed spouse but, if the surviving spouse remarries

after the death of the veteran, eligibility is terminated.

The veteran must also qualify financially for Aid and Attendance benefits. While there is no hard and fast figure⁸, the general guideline is that the applicant must have less than \$80,000 in resources (not including the primary residence and car)⁹ and the veteran's income cannot exceed the maximum annual pension rate which currently stands at \$1,645. However, monthly income can be reduced by deducting unreimbursed medical expenses such as the cost of an assisted living facility; adult day care, group, rest and nursing homes, in-home attendants, insurance premiums including health, medi-gap and long term care insurance, non-prescription drugs if physician directed, hearing aides, eyeglasses, Depends, Ensure, co-pays, dentures, and therapy.

The benefit amount a veteran receives varies depending upon the veteran's marital status and the dependence of a spouse or children. The veteran may receive up to \$1,645 per month in Aid and Attendance pension benefits,¹⁰ while a veteran with a dependent spouse may

(Continued on page 19)

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Senior Citizen's Right to Terminate a Lease

By Jennifer M. Maloney

New York State Real Property Law Section 227(a) ("RPL§227(a)") grants a senior citizen the right to terminate their residential lease without any penalty under certain circumstances. The law is very useful to senior citizens who are moving into an assisted living facility, a nursing home or a relative's home and need to terminate their residential lease prior to the expiration of the lease term. RPL §227(a) also enables senior citizens to move into senior housing that is more affordable than their existing lease without incurring a penalty for breaching their lease.

Under the statute, a senior citizen is defined as "a person who is sixty-two years or older or will attain such age during the term of such lease or rental agreement or a husband or wife of such person residing with him or her. The statute provides, in part, that a senior citizen may terminate a lease when:

1. "Such person is certified by a physician as no longer able, for medical reasons, to live independently in such premises and requiring assistance with instrumental activities of daily living or personal activities of daily living, and

who will move to a residence of a member of his or her family, or

2. who is notified of his or her opportunity to commence occupancy in an adult care facility (as defined in subdivision twenty-one of section two of the social services law) except for a shelter for adults (as defined in subdivision twenty-three of section two of such law), a residential health care facility (as defined in section two thousand eight hundred one of the public health law), or a housing unit which receives substantial assistance of grants, loans or subsidies from any federal state or local agency or instrumentality, or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate income housing, or in less expensive premises in a housing project or complex erected for the specific purpose of housing senior citizens, to terminate such lease or rental agreement and quit and surrender possession of the leasehold premises..."

RPL §227(a) allows the senior citizen to terminate his/her lease term based upon an "implied covenant by the lessor or owner to permit such lessee or tenant"

to terminate the lease. Notice of the intent to terminate the lease by the senior citizen must be in writing delivered to the lessor. Notice by mail is deemed given on the date that the envelope is postmarked. Said notice is effective "no earlier than thirty days after the date on which the next rental payment after the notice is delivered, is due and payable". So, for example, if the notice is postmarked April 10 and the next rental payment is due May 1, the earliest termination date is June 1. In certain cases, the notice of termination must be accompanied by a physician's certification and other documentation.

Knowledge of the provisions of RPL §227(a) is not only useful to elder law attorneys, but also to attorneys who represent landlords since the statute provides that in certain circumstances the landlord is required to give the tenant who is 62 years or older at the time of the execution a lease or may become 62 years old during the term of the lease of the provisions of §227(a). The statute specifically sets forth the content requirements of such notice and provides that any agreement waiving or modifying the statute shall be deemed void as contrary to public policy. Furthermore, landlords who retain a

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senior's personal property as "security" when the senior vacates the premises in pursuant to RPL §227(a) may be found guilty of a misdemeanor for violating the senior's rights under the statute. In such cases, the landlord may be punished by "imprisonment not to exceed one year or by fine not to exceed one thousand dollars, or by both..."

Clearly, RPL §227(a) is an important tool for senior citizens who need to terminate their lease and is a statute with which attorneys advising seniors should be familiar.

Note: Jennifer M. Maloney, is of counsel to Tellus Abstract Inc. where she also serves as Marketing Director.

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The Gallery of Shorthand Opens

By Joseph W. Ryan, Jr.

“The only person who can’t daydream in the courtroom—is the court reporter,” quipped Chief Judge Raymond J. Dearie at the Grand Opening of The Gallery of Shorthand at the Central Islip Federal Courthouse on September 30, 2010.

The *Gallery* is the brainchild of federal court reporter Dominick M. Tursi, and the product of investment by the Board of Judges for the Eastern District of New York. The *Gallery* chronicles the origin of shorthand from 63 BC, when Roman statesman-philosopher-lawyer Marcus Tullius Cicero invented a shorthand system. It continues through ten epochs, concluding with today’s “realtime” simultaneous reporting of the spoken word. There are artifact replicas, 30 stenotype machines, 50 books and 20 illustrations of historic trials and events, including the Nuremberg prosecution of the Nazi regime. Also prominently displayed are the works of Sir Isaac Pittman and



Robert Gregg, founders of the more recent methods of shorthand.

Attended by more than 150 people, including judges,

lawyers, historians, and court reporters who travelled from all parts of the U.S., the *Gallery* drew waves of praise. Ms. Melanie Humphrey-Sonntag, President of the National Court Reporters Association, addressed the audience saying, “There is nowhere a testament of this magnitude – a permanent exhibit to the importance of the court reporting profession.”

After conducting lectures and tours of the *Gallery* before the ceremony, Mr. Tursi addressed the audience and expressed his deep gratitude to the Board of Judges for affording him the opportunity to build a “shorthand museum” –believed to be the only one of its kind.

The *Gallery* is open to the public during regular court hours, and is located at the rotunda entrance of the Courthouse. Don’t miss it!!

Note: Joseph W. Ryan was Project Coordinator for the Gallery, and served as Past President of the Bar Association of Nassau County.

CORPORATE LAW

Accredited Investor Today Not Tomorrow

Accredited investor standard under Dodd-Frank Act

By Gisella Rivera

Beginning July 21, 2010, who can buy and to whom companies can sell privately placed securities changed when President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). Individual investors can no longer include the value of their primary residence when calculating their net worth for purposes of determining whether they are eligible, as “accredited investors,” to purchase unregistered and unlisted securities issued by companies in private placements.¹

Under the U.S. Securities Act of 1933

“ Individual investors should take out their calculators and determine if they are still eligible as accredited investors under the Dodd-Frank Act.”

(the “Securities Act”), an individual investor qualifies as an accredited investor when, at the time of purchase, he has a net worth (or a joint net worth with his spouse) that is at least \$1,000,000² or an income of \$200,000 (or a joint income with his spouse of \$300,000) in each of the two most recent years and has a reasonable expectation of reaching the same income level in the year of investment.³

This change is meant to address concerns by U.S. regulators that an increasing number of individual investors qualified as accredited investors primarily due to inflation and rising real estate prices. Regulators were apprehensive that individual investors to whom offers of privately placed securities were made did not have, at the time of purchase, the requisite sophistication and financial knowledge necessary to fully understand the risks underlying such investments.⁴

Small companies in need of capital generally look to individual investors when

they are not able to obtain funding through traditional bank financing. Individual investors may prefer to invest in these privately placed securities because of the potential for higher returns. By excluding the value of an individual investor’s primary residence, Congress has reduced the number of qualified individuals who can invest in privately placed securities and to whom companies can market privately placed securities.

Under the Securities Act, companies may sell privately placed securities to an unlimited number of accredited investors but may only sell to no more than 35 non-accredited investors and only if they provide these non-accredited investors with sufficient information about the securities.⁵ Companies generally provide this information to investors through a confidential offering memorandum describing the material terms of the offering and the related investment risks.⁶ Small companies continuing to market to investors who no longer qualify as “accredited investors” will have to incur the additional expense of preparing an offering memorandum.

A company who calls for additional capital contributions from its current investors is treated by the SEC as issuing additional securities in an offering that must comply with private placement rules if its investors can choose to make or not make such capital contributions.⁷ These companies may not be able to call capital from investors who no longer qualify as “accredited investors” until an updated offering memorandum is provided. If there are more than 35 non-accredited investors in the list of a company’s investors, the company may want to determine what its legal options are when raising capital. Can it force these non-accredited investors to sell their securities back to the company or to a third party who is an accredited investor? Must it force all of the non-accredited investors to sell? How will the company value the securities? The same issues may apply to companies who will be issuing unregistered and unlisted securities in reliance on the private placement rules in connection with exchange offers,



Gisella Rivera

mergers or other types of business combinations.⁸

The accredited investor standard is also used by commodity pool operators who are seeking an exemption from registration with the U.S. Commodity Futures Trading Commission. Commodity pool operators may be exempt from registration if, amongst other criteria, all participants in the commodity pool are accredited investors.⁹ A single non-accredited investor in a qualified commodity pool would make the commodity pool operator subject to registration unless it is able to forcibly redeem the interests of the non-accredited investor.

Individual investors should take out their calculators and determine if they are still eligible as accredited investors under the Dodd-Frank Act. Investors generally complete and submit subscription agreements when purchasing privately placed securities. These subscription agreements may require investors to inform the issuer of any change in their status, particularly with respect to their qualification as accredited investors. The subscription agreements may also provide that investors reaffirm all of their initial representations each time additional purchases of securities are made. Investors who no longer qualify may be in breach of their obligation to inform an issuer or of a continuing representation as an accredited investor. These investors may have to indemnify any losses incurred by an issuer due to their breach. Individual investors who no longer qualify may also be required to sell their securities on terms that may not be favorable.

Companies and investors can expect further changes to the accredited investor standard since the Dodd-Frank Act provides the SEC with the mandate to adjust, *in its entirety*, the financial standards under which an investor can qualify as an accredited investor every four years after July 21, 2010.¹⁰

What can we expect from the SEC in the performance of its mandate under the Dodd-Frank Act?

As early as December 2006, the SEC had expressed concerns that an increasing number of individuals are qualifying as accredited investors primarily due to

inflation and the rapidly increasing prices of the housing market.¹¹ These individuals are, therefore, gaining access to financial products, such as private funds, that are complex and possess a higher degree of risk, and about which very little information are available.¹² The SEC addressed these concerns by proposing an amendment to the accredited investor standard that would have required investors to own at least \$2,500,000 (individually or jointly with such person’s spouse) of investments,¹³ adjusted for inflation every five years.¹⁴ The SEC believed that the amount of investments owned by an investor is more indicative of whether the investor needs the protection of the Securities Act registration.¹⁵ Although this amendment was never implemented due to substantial concerns received during the comment period,¹⁶ in the current political and economic environment, it is likely that the SEC will seek to implement measures intended to protect investors. These may include the adoption of an investment-owned standard over the current asset-owned standard either as an added requirement or in replacement of the current financial thresholds. In addition, the SEC would not have grandfathered individual investors who no longer qualify so that these investors would not be able to make future investments even in private funds with which they are currently invested.¹⁷

If the SEC adopts an investment owned standard, it is likely that it will require investors to include only certain investments in calculating whether they qualify as accredited investors under the investment-owned standard.¹⁸ Under the previously proposed amendment, an individual investor would not have been able to include, as investments, the value of real estate used primarily for personal purposes (i.e. as a primary residence) or as a place of business, or securities of companies that he controls and whose capitalization is less than \$50 million.¹⁹ In addition, under the previously proposed amendment, married investors who are investing individually, not jointly with their spouse, would have been able to include only 50 percent of any investments held jointly or as communi-

(Continued on page 25)

CONSUMER BANKRUPTCY

Avoiding Judicial Liens in Chapter 13 Cases

New decision says avoidance not dependant on discharge

By Craig D. Robins

One of the extraordinary powers a consumer debtor has is the ability to avoid (eliminate) judicial liens in a bankruptcy case provided certain conditions are met.

In a typical bankruptcy filing the debtor can discharge the personal liability on most debts – both secured and unsecured. However, *in rem* liens on real estate, including mortgages and judicial liens obtained from judgments, remain protected.

The discharge prevents lien holders from pursuing the debtor personally to collect on the underlying obligation; however, the lien holder maintains the value of its security interest as a lien against the real estate. Consumer debtors have the ability

to avoid judicial liens to the extent that the lien impairs the debtor's homestead exemption.

In this month's column I will provide a brief background on judicial liens and the process to avoid them. I will then discuss an interesting recent decision by Judge Grossman which holds that avoiding a judicial lien in a Chapter 13 case should be effective immediately, rather than years later when the debtor receives his discharge.

How do creditors obtain judicial liens?

When a creditor sues a consumer and obtains a judgment, the judgment can become a lien on real estate that the con-



Craig D. Robins

sumer owns. If the creditor obtains the judgment in Supreme Court, then it automatically becomes a lien on any real estate owned by the debtor in the county where the court is located.

If the creditor obtains the judgment in District Court, then the creditor must file a transcript of judgment with the County Clerk in order to obtain a lien on realty in that county. Judicial liens are always subordinate to any other liens of record such as existing mortgages.

When a consumer debtor files for bankruptcy relief – which is usually done under Chapter 7 or 13 – the debtor can avoid judicial liens which impair the debtor's homestead exemption as long as the formula set forth in Bankruptcy Code Section 522(f) is satisfied.

If the lien only partially impairs the homestead exemption, the debtor can avoid that part of the lien, essentially reducing it.

Procedure for avoiding judicial liens

A debtor bringing an application to avoid a judicial lien must do so by motion, as opposed to adversary proceeding. This is usually done prior to discharge.

The debtor actually has the burden of filing the motion. If the debtor fails to do so, the lien remains on the property and survives bankruptcy, although the creditor is

prevented by virtue of the automatic stay and order of discharge from pursuing the debtor personally.

Creditors can object to a motion to avoid a judicial lien. The most common ground is a dispute over the valuation of the real estate, thus creating an issue as to whether the debtor's homestead exemption is actually impaired.

If the debtor is successful, the court will grant the motion and enter an order declaring the judgment to be void as a lien of record. The debtor must then file a certified copy of the order with the County Clerk to remove the judgment lien from the judgment roll.

When should the order granting lien avoidance become effective?

In Chapter 7 cases, the order is effective immediately. However, a unique issue exists in Chapter 13 cases. This is because a great number of Chapter 13 cases eventually fail, resulting in dismissal of the case and no discharge for the debtor. An argument can be made that a debtor should not be permitted to finalize the avoidance of a judicial lien by expunging it from the public records of the County Clerk if the Chapter 13 case can be dismissed for non-payment of Chapter 13 obligations a few months later.

So here's the big question: Should a Chapter 13 debtor be able to avoid a judi-

(Continued on page 18)

SECOND CIRCUIT BRIEFS

Famous Horse Standing

By Eugene D. Berman

This month we discuss a decision in which the United States Court of Appeals for the Second Circuit vacated the dismissal of a Lanham Act (15 U.S.C. §§ 1051, *et seq.*) action.

Famous Horse Inc. v. 5th Ave. Photo Inc., No. 08-4523-cv, 2010 WL 4117673 (2d Cir. October



Eugene D. Berman

21, 2010), concerned claims of trademark infringement under Lanham Act Section 32(1)(a), 15 U.S.C. § 1114(1)(a), and unfair competition and false endorsement under Lanham Act Section 43(a)(1)(A), 15 U.S.C. § 1125(a)(1)(A). Famous Horse sells name-brand sneakers and jeans at discount prices through its "V.I.M." clothing stores. The original and amended complaints asserted that the defendants sold counterfeit "Rocawear" brand jeans to V.I.M., as well as to several other retail stores, and that V.I.M. discontinued selling the jeans when it learned that they were counterfeit. Famous Horse additionally claimed that the defendants continued to sell the counterfeit Rocawear jeans to V.I.M.'s competitors, and, in advertising the counterfeit jeans to the other retailers, used Famous Horse's registered V.I.M. mark in connection with false claims that V.I.M. was a satisfied customer.

As relevant to Famous Horse's complaint, Section 43(a) pro-

hibits:

any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which ... is likely to cause confusion, or to cause mistake, or to deceive as to the *affiliation, connection, or association of such person with another person*, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.

15 U.S.C. § 1125(a)(1)(A) (emphasis added). Based on the statute's language, the Second Circuit found that Famous Horse's assertion that the defendants falsely claimed that V.I.M. was a satisfied customer was actionable as a false endorsement claim under Section 43(a)'s prohibition against false or misleading representation as to the approval of another person's commercial activities.

Section 32, in contrast to Section 43(a), does not, by its language, specifically prohibit causing confusion as to association or sponsorship of commercial activities. Rather, using more general language, Section 32 prohibits:

any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive ...

15 U.S.C. § 1114(1)(a). Thus, contrary to the district court's view, Section 32 is not limited to confusion as to a product's

(Continued on page 19)

The district court dismissed the action for failure to state a cause of action. In its view, Famous Horse's failure to plead a likelihood of confusion concerning the source of a product's origin was fatal to both its Section 32 and Section 43(a) claims. In this regard, the district court held that the Lanham Act Section 32 claim failed because Famous Horse had not pleaded that the defendants' use of the V.I.M. registered mark was likely to cause confusion as to the source of a product and the Lanham Act Section 43(a) cause was defective since the complaint did not assert a likelihood of confusion between Famous Horse's and the defendants' products.

In vacating the dismissal, the Second Circuit examined the Lanham Act sections' statutory language, and found that likelihood of confusion concerning the source of a product's origin is not the only

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REAL ESTATE

Demonic Possession: What hath the Legislature Wrought?

By Lance R. Pomerantz

Real estate practitioners around the state took notice when the adverse possession statutes underwent a major overhaul in 2008 (L. 2008 c. 269). For the first time, New York has explicit statutory recognition that an adverse possessor “gains title” to the occupied property upon the expiration of the statute of limitations for an action to recover the property.¹ In this respect, New York has joined several other states, as well as England,² where the concept of adverse possession dates back to 1275.³

Under prior law, the acquisition of title by the adverse possessor was held to be a necessary corollary to the barring of the “true owner’s” right to bring an action seeking recovery of the property.⁴ Unfortunately, the new statute goes further than merely codifying widely accepted law. And, in so doing, creates a substantial ambiguity that was not present under prior law.

Among the many significant changes introduced by the new statutes, is the requirement that the adverse possessor “gains title” only if the occupancy complies with the long-established common-law requirements⁵ and the possessor are acting under a “claim of right.”⁶ “Claim

of right” as used in the statute, is defined in RPAPL §501(3) as “a reasonable basis for the belief that the property belongs to the adverse possessor....” Apparently, the statute requires that possessors not only prove they believe that the property already belongs to them, but that the belief must be “reasonable.” Since the doctrine of adverse possession was developed specifically for the purpose of quieting titles that originated in wrongful possession,⁷ this new requirement represents an historic departure from the common law. It also imposes a substantial burden on claimants to which they were hitherto not subject.⁸

RPAPL §501(1) defines an “adverse possessor” as one who occupies real property “in a manner that would give the owner a cause of action for ejectment.” However, by conditioning the adverse possessor’s right to obtain title on a showing of prior entitlement, *in addition to those acts that would be sufficient to give rise to an action in ejectment*, the legislature has created a gap in the available remedy. An “adverse possessor” can enter into adverse, open, notorious, continuous, exclusive and actual occupancy

of a parcel, protect it with a substantial enclosure,⁹ remain in such possession in excess of ten years, yet still not obtain title. In the meantime, however, the statute of limitations to recover possession of the property (RPAPL §212) will have run against the “true owner.” Hence, the “true owner” has “naked title” to the land. The possessor, however, continues in possession and cannot be ejected by legal process.

The question then arises: what is the legal nature of this possession? Obviously, it’s not a freehold estate. Nor is it a leasehold, a tenancy at will, or at sufferance. Will the courts defend the right of the possessor against trespassers or other “off-record” interests? Can the possessor transfer possession to another possessor who also asserts no claim of right? Or, will that trigger the running of the statute of limitations afresh? Will it pass to the heirs, legatees or devisees of the possessor upon death? These and other questions will need to be answered by the courts on a case-by-case basis.

The Senate Sponsor’s Memorandum in support of the 2008 legislation portrays it as a remedy to perceived “offensive” use of adverse possession to wrongfully

deprive landowners of property.¹⁰ Ironically, the legislature wound up creating a scheme whereby an out-of-possession landowner may be left with no practical remedy at all!

Note: Lance R. Pomerantz is a solo practitioner who provides expert testimony, consultation and litigation support in land title disputes. He can be reached by email at lance@LandTitleLaw.com. Learn more at www.LandTitleLaw.com.

¹ RPAPL §501(2), as amended by L. 2008 c.269, §1.
² See III American Law of Property §15.1, pg. 757 (fn. 6) (Casner ed., 1952).
³ Statute of Westminster I, 3 Edw. I, c. 39 (1275).
⁴ Brand v. Prince, 35 NY 2d 634, 636 (1974); III American Law of Property §15.2, pg. 760 (at fn. 3 and cases cited) (Casner ed., 1952).
⁵ I.e. the possession is adverse, open, notorious, continuous, exclusive and actual.
⁶ RPAPL §501(2).
⁷ See American Law of Property, *supra*, note 4.
⁸ See, e.g. Franza v. Olin, 73 AD 3d 44 (4th Dept. 2010), where the court held that the 2008 amendments were unconstitutional as applied to the plaintiff adverse possessor because they would deprive her of a previously vested property right, *viz.*, the vesting of title by adverse possession under prior law.
⁹ RPAPL §512, as amended by L. 2008 c.269, §3 and RPAPL §522, as amended by L. 2008 c.269, §5.
¹⁰ See Senator Elizabeth Little’s Memorandum in support of N.Y. Leg. Bill S-7915-C.



Lance R. Pomerantz

TRUSTS AND ESTATES UPDATE

By Ilene Sherwyn Cooper

Attorney’s Fees

In *In re Rodriguez*, the petitioner, one of the two sons, requested an order, *inter alia*, directing payment of his distributive share of the estate, a portion of which was previously ordered, denying administrator’s commissions, and surcharging the administrator for the fees incurred by the petitioner for the fees incurred in bring the application and a prior application for a distributive share, payable from the administrator’s own funds or his presumptive share of the estate.

The decedent died intestate, and letters of administration issued to the respondent on consent of the petitioner upon his posting a bond. Thereafter, the petitioner and his counsel requested the respondent to account and to produce documents. An account was prepared but never signed. Based upon a prior petition filed with the court by the petitioner, the respondent was ordered to pay the petitioner his distributive share and to account. The respondent failed to comply with these directives.

As a consequence, the petitioner instituted the proceeding seeking the relief *sub judice*. The respondent failed to oppose the application. As a consequence of the respondent’s default, the uncontroverted allegations in the petition regarding the administrator’s failure to comply with the court’s directives, to pay the petitioner his distributive share and to account were deemed due proof thereof pursuant to SCPA 509.

In view of the administrator’s failure to account and to distribute estate assets, he was denied commissions. As such, the petitioner was awarded an additional distributive share of the estate equal to one half the commissions that otherwise would have been paid to respondent. In addition, the petitioner’s request for his reasonable

legal fees, costs and disbursements incurred in commencing the proceedings to recover his distributive share was granted, pursuant to *Matter of Hyde, supra*. The court directed that said award, as well as the distributive share of the petitioner be paid in the first instance by the respondent personally or from his distributive share before the surety was held liable for such sums.

In re Rodriguez, N.Y.L.J., July 23, 2010, p. 35 (Sur. Ct. Bronx County).

Discovery Proceedings

In *In re Delgatto*, the court denied a motion and cross-motion for summary judgment finding that there were triable issues of fact regarding the decedent’s mental capacity to execute a revocable living trust and deed to which title to his home was transferred.

In support of their respective motions, the petitioner and the respondent submitted affirmations of their respective counsel with exhibits, including but not limited to unsigned, unsworn deposition transcripts. The court noted that an attorney’s affirmation is of no probative value on a motion for summary judgment unless the attorney has first hand knowledge of the facts, or is accompanied by documentary evidence that constitutes admissible proof. However, neither attorney represented that he had personal knowledge of the facts. Moreover, the court opined that the deposition transcripts were of no probative value, because they were unsigned, and there had been no indication that the deponent had refused or otherwise failed to sign the transcript within 60 days after it was delivered for signature.

Within this context, the court concluded that the respondent had failed to submit sufficient proof that the decedent had



Ilene S. Cooper

the requisite capacity to sign the instruments in issue. Although respondent had proffered hospital and nursing records in support of her position, the court held that the affidavits of nursing and medical personnel submitted by the petitioner were sufficient to create a question of fact. Further, while the court concluded that the petitioner

had not established a prima facie case of undue influence, it found that a confidential relationship existed between the respondent and the decedent which shifted the burden to the respondent to explain the circumstances surrounding the transactions. The court determined that a question of fact existed as to whether the proffered explanation was adequate.

In re Delgatto, N.Y.L.J., April 6, 2010, p. 27 (Sur. Ct. Kings County).

Marriage

In *In re Farraj*, the Appellate Division affirmed an Order of the Surrogate’s Court, Kings County (Torres, S.), which denied the fiduciary’s motion to dismiss a petition for a compulsory accounting. The petitioner was the alleged spouse of the decedent. The record revealed that the petitioner and the decedent entered into a formal marriage ceremony in accordance with the laws of Islam at the home of the petitioner’s brother in New Jersey. An Islamic clergyman came to New Jersey to solemnize the marriage, although a marriage license was not obtained. Thereafter, the petitioner and the decedent returned to Brooklyn to hold a wedding celebration. They resided in New York until the decedent’s death, intestate, in 2007. The decedent’s son from a prior marriage obtained letters of administration with respect to his estate. Thereafter, the petitioner moved to compel an

accounting, and the fiduciary moved to dismiss alleging that the petitioner was not the decedent’s surviving spouse, since her marriage to him was not valid under the laws of New Jersey.

The Surrogate’s Court denied the motion, and the Appellate Division affirmed, concluding that New York law should apply to determine the validity of the marriage, and that under New York law the marriage was valid, even without a marriage license, since it was solemnized. In reaching this result, the court relied upon the Restatement Second of Conflict of Laws §283, which provides that the validity of a marriage will be determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the spouses and the marriage. Analyzing the circumstances surrounding the marriage from this perspective, the court noted that the petitioner and the decedent were married in New Jersey only to satisfy Islamic law, which requires that the parties be married at the residence of the bride’s eldest male relative. However, thereafter, they resided in New York and held themselves out as a married couple in New York. The court found that New Jersey’s contacts with the couple were tangential, since they left the state immediately after the marriage ceremony to return to New York, where they remained for the entirety of their marriage.

In re Farraj, 72 A.D.2d 1082, 900 N.Y.S.2d 340 (2d Dep’t 2010).

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.

CIVIL LITIGATION CORNER

Robolawyers Beware!

By David J. Eldridge

As a result of the national foreclosure crisis and subsequent avalanche of paperwork submitted by purportedly fraudulent “robo-signers” of insufficient and highly questionable foreclosure papers, including affidavits and other related foreclosure documents, New York’s Court System has imposed a new rule upon attorneys throughout the state.

The Chief Judge and Court Administration further defined the problem during the issuance of the new court directive:

During and after August 2010, numerous and widespread insufficiencies in foreclosure filings in various courts around the nation were reported by major mortgage lenders and other authorities. These insufficiencies include: failure of plaintiffs and their counsel to review documents and files to establish standing and other foreclosure requisites; filing of notarized affidavits which falsely attest to such review and to other critical facts in the foreclosure process; and “robosignature” of documents by parties and counsel. The wrongful filing and prosecution of foreclosure proceedings which are discovered to suffer from these defects may be cause for disciplinary and other sanctions upon participating counsel.

Based upon these widespread problems experienced throughout the country, Chief Judge Lippman squarely addressed the matter, stating that, “[w]e cannot allow the courts in New York to stand by idly and be party to what we now know is a deeply flawed process, especially when that process involves basic human needs — such as a family home.”

As a result, effective immediately, citing, *inter alia*, CPLR §2106, the new rule requires counsel in residential foreclosure actions to verify (via submission of a sworn affirmation) the following:

a That he or she is licensed to practice in the state of New York, including the



David J. Eldridge

name of the law firm with which they are employed; and
b That they directly communicated with a representative of the foreclosing plaintiff, including the name and title of said representative; and
c That the attorney has reviewed the plaintiff’s documents and records relating to the case, including the Summons and

Complaint, and **all other papers** filed in support of foreclosure; and

d That the attorney has confirmed (i) both the factual accuracy of all filed foreclosure papers; and (ii) the accuracy of the notarizations contained therein (one must wonder how an attorney in Suffolk County is supposed to “confirm the factual accuracy” of an out-of-state notarization from a bank in Utah); and
e That, based upon the attorney’s communications with the plaintiff’s representative, their “own inspection” of the papers filed, and through “diligent inquiry,” to the best of his or her knowledge, information and belief, the Summons, Complaint, and all other documents filed in support of foreclosure are “complete and accurate in all relevant respects”; and
f That the attorney understands the continuing obligation to amend his or her affirmation in light of newly discovered facts subsequent to filing; and
g That the attorney understands the court will rely upon his or her affirmation in considering the application.

While the new directive is silent as to what the penalties may be for failure to comply, and no case law currently exists to provide further insight, it is clear that the new rule creates a significant obligation on the part of attorney handling such matters, and the court has made clear it intends to swiftly and unabashedly address and correct any and all such failures taking place in the State of New York with the full power and authority of the Unified Court System — backed by the full support of Chief Judge Lippman.

The official form is included to the right.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

Plaintiff, _____

AFFIRMATION

v. _____

Defendant(s) _____

Mortgaged Premises: _____

Index No.: _____

N.B.: During and after August 2010, numerous and widespread insufficiencies in foreclosure filings in various courts around the nation were reported by major mortgage lenders and other authorities. These insufficiencies include: failure of plaintiffs and their counsel to review documents and files to establish standing and other foreclosure requisites; filing of notarized affidavits which falsely attest to such review and to other critical facts in the foreclosure process; and “robosignature” of documents by parties and counsel. The wrongful filing and prosecution of foreclosure proceedings which are discovered to suffer from these defects may be cause for disciplinary and other sanctions upon participating counsel.

* * *

_____, Esq., pursuant to CPLR §2106 and under the penalties of perjury, affirms as follows:

1. I am an attorney at law duly licensed to practice in the state of New York and am affiliated with the Law Firm of _____, the attorneys of record for Plaintiff in the above-captioned mortgage foreclosure action. As such, I am fully aware of the underlying action, as well as the proceedings had herein.

2. On the date of _____, I communicated with [name and title:] _____, a representative of Plaintiff, who informed me that he/she (a) has personally reviewed plaintiff’s documents and records relating to this case; (b) has reviewed the Summons and Complaint, and all other papers filed in this matter in support of foreclosure; and (c) has confirmed both the factual accuracy of these court filings and the accuracy of the notarizations contained therein.

3. Based upon my communication with [person specified in ¶2] _____, as well as upon my own inspection of the papers filed with the Court and other diligent inquiry, I certify that, to the best of my knowledge, information, and belief, the Summons and Complaint and all other documents filed in support of this action for foreclosure are complete and accurate in all relevant respects. I understand my continuing obligation to amend this Affirmation in light of newly discovered facts following its filing.

4. I understand that the Court will rely on this Affirmation in considering the application.

DATED: _____

Note: J. David Eldridge is a partner at Taylor Eldridge, P.C., located in Smithtown, New York, with emphasis in civil litigation, real property, and Condominium, Cooperative and HOA law. A Past-Director of the

Suffolk County Bar Association and frequent contributor to The Suffolk Lawyer, he is currently Co-chair of the Legislative Review Committee and a member of the Bar’s Grievance Committee.

TRUSTS AND ESTATES

Surrogate’s Court Jurisdiction Over Shareholder Derivative Suits

By Robert M. Harper

As the Surrogate’s Court is a court of limited jurisdiction, an interesting issue exists with respect to whether a surrogate may exercise jurisdiction over a shareholder derivative suit. Like so many other jurisdictional issues, the answer is not necessary clear cut.

The Surrogate’s Court derives its jurisdiction from Article VI of the New York Constitution. Under Article VI, the Surrogate’s Court is vested with “jurisdiction over all actions and proceedings relating to the affairs of decedents, probate of wills, administration of estates and actions and proceedings arising hereunder or pertaining thereto, guardianship of the property of minors, and such other actions and proceedings, not within the exclusive jurisdiction of the supreme court, as may be provided by law.”¹

The standard set forth by the Court of

Appeals in *Matter of Piccione*, the seminal case on Surrogate’s Court jurisdiction, is whether the controversy “affects the affairs of the decedent or the administration of the estate.”² If the matter in “no way affects the affairs of the decedent or the administration of the estate,” the Surrogate’s Court must decline jurisdiction.

Under *Piccione*, the simple fact that an estate or trust “owns stock in a corporation does not [necessarily] confer jurisdiction upon [the] Surrogate’s Court to resolve all matters involving the corporation.”³ Rather, as Nassau County Surrogate John B. Riordan explained in *Matter of Baum*, questions concerning corporate affairs typically “should . . . be litigated in the Supreme Court.”⁴

Indeed, many courts have held that Surrogate’s Court jurisdiction does not



Robert M. Harper

encompass shareholder derivative actions.⁵ For example, in *Lincoln First Bank, N.A. v. Sanford*, the Appellate Division, Fourth Department, held that the Surrogate’s Court lacked jurisdiction over a shareholder derivative action “instituted by an executor and testamentary trustee on behalf of the estate of a deceased” shareholder.⁶ The

court reasoned that: (1) it was the corporation in question, not the estate, that stood to benefit from the action, as the petitioner sought the return of cash reserves to the corporation; and (2) “[t]here [was] no demonstration that [the] decedent’s stock [was] to be sold and the proceeds distributed as part of the administration of the estate or the testamentary trust.”

Despite that line of cases, however, that is “not to say that all shareholder deriva-

tive actions are outside the jurisdiction of the Surrogate’s Court.”⁷ As several surrogates have acknowledged, “[t]he trend is one of steadily expanding jurisdiction,” and may include shareholder derivative actions where the relief sought would directly benefit the estate.” Thus, “where it is demonstrated that [a] decedent’s stock is to be sold and the proceeds distributed as part of the administration of the estate, or where the valuation of stock is involved, or where a shareholder derivative action is commenced against the estate, the matter would sufficiently involve the affairs of the decedent to invoke the jurisdiction of the Surrogate’s Court.”

Matter of Denton is instructive. In *Denton*, the petitioner, the executor and co-trustee under his father’s will, commenced a discovery proceeding against the respondent, the decedent’s business
(Continued on page 24)

Pro Bono Attorney of the Month: Carole A. Burns

By Rhoda Selvin

When Carole A. Burns, a retired Nassau County attorney, and her semi-retired husband Jim moved to Rocky Point, she also moved her extensive pro bono activities from Nassau's Volunteer Lawyers Project (VLP) to Suffolk's Pro Bono Project.

Previously VLP had honored her and her Garden City firm as Pro Bono Attorney of the Month in March 2003.

Later, in December 2006, VLP honored her by herself for the pro bono hours she had spent as an in-house volunteer since her retirement two years earlier. Now, as

a Suffolk County resident since August 2009, having spent 152 hours as an in-house volunteer for the Pro Bono Project, she is Suffolk's own Pro Bono Attorney of the Month for November 2010.

Ms. Burns' pro bono service to Nassau/Suffolk Law Services (which houses both PBP and VLP) includes much more than the in-house hours of interviewing prospective clients (mostly for matrimonial cases) and pursuing cases that can be handled from her desk. Since June 2010, when Law Services lost its funding for the Consumer Debt Project in Suffolk, she signed on to be Of Counsel to

Executive Director Jeffrey Siegel and has been working on consumer debt cases, mostly from her home office, adding an estimated 160 hours of pro bono service.

Ms. Burns finds this additional assignment especially rewarding. "I enjoy using my litigation experience in a new area of the law and representing clients who otherwise would not have meaningful access to our legal system," she explained.

Ms. Burns's service to the profession extends beyond her pro bono work. Her memberships include the Suffolk County Bar Association, the Nassau County Bar Association, the New York State Bar

Association, and the New York State Trial Lawyers Association. She is vice chair of the Nassau/Suffolk Law Services Advisory Council and a member of its ad hoc Strategic Planning Committee, which is preparing a report to be submitted later this year. Along with these activities she devotes many hours to the Senior Lawyers Section of NYSBA and its Program and CLE Committee, which she has chaired for the last two years; this entails planning the Section's fall meeting and its program for NYSBA's annual meeting in January.

A 1969 graduate of Hunter College, Ms. Burns graduated from Fordham Law School in 1972 and received an LL.M. from New York University School of Law in 1975. After working briefly as a staff attorney at New York Life Insurance Company, she moved into private practice in 1973. She retired from her firm, Burns, Russo, Tamigi & Reardon, LLP in December 2004.

Moving the family home from Manhasset to Rocky Point was easy. In the first few years of retirement the couple, who had had a summer place in Rocky Point for many years, planned and built a year-round house there. By the time they moved in over a year ago with Maggie, their now seven-year-old black Labrador retriever, they were completely at home. Their daughter Jennifer, who is a pediatrician in Frederick, Maryland, and her husband, Christopher Kosmaceski, chair of the Music Department at Walter Johnson High School in Bethesda, make frequent trips to visit them in Rocky Point. This year the Burns and Kosmaceski clans will be celebrating Christmas there.

Already familiar with Carole A. Burns's excellent pro bono work from her service in Nassau County, the Pro Bono Project warmly welcomed her change of venue. It is with great delight and respect that the Project claims her as a Pro Bono Attorney of the Month in Suffolk County.

COMMITTEE CORNER

News & Notes From SCBA Committees

Taxation Law

James P. O'Connor, Chair

The meeting was held to discuss various current events/decisions in the tax area. Guest speakers Lawrence Lucarelli & Kenneth Laks, CPA's with Albrecht, Viggiano, Zureck & Co, PC, made a presentation on the impact and timing of the changes caused by The 2010 Health Care Reform Act.

Members received valuable information in a small group setting, and a give and take ensured between an interested, experienced membership and knowledgeable, experienced speakers.

Workers Compensation & Social Security Disability

Joanne Agruso
and Sharmine Persaud, Co-Chairs

A discussion was held regarding the frequency of meetings and an agenda was set. There will be monthly meetings.

Topics for the next meeting will be new

Workers' Compensation guidelines. Some suggestions were made. They include: CLE regarding Medicare Set-Asides. The program will explain effects of Medicare set-asides in compensation claims as well as potential liens in negligence actions; Mock trial - social security disability; CLE on motor vehicle accidents, highlighting Kelly rights. This could be in conjunction with New Member, Sole Practice and Negligence Committees; discussion of new regulations promulgated by Workers' Compensation Board within the past month.

Elder Law

Steven A. Kass
and Kim Smith, Co-Chairs

The committee's meeting was held for a review of the new Power of Attorney form, effective September 12, 2010. There was a lively discussion of how people are handling the drafting, execution and administration of the new Power of Attorney form. For the balance of the

meeting, using a projector, we showed the attendees: where the form can be obtained from the NYSBA website and Blumberg's Forms; integrating the suggested modifications from NYSBA, and; we solicited comments from attendees as to how they draft the form (stylistic, modifications). A number of attendees shared their thoughts and drafting techniques. We asked attendees to share by e-mail actual modifications, and we will follow-up to see if they will provide.

Education Law

Robert Sapir, Chair

The status of School Law Conference preparations was reviewed. We identified speakers for future meetings, selected a speaker for Lunch and Learn for January and discussed matters of common interest

The suggestions made are to try to get a speaker from OCR, contact a speaker to address committee on e-discovery and have Lunch and Learn on amendments to 504.

Avoiding Judicial Liens in Chapter 13 Cases (Continued from page 13)

cial lien shortly after filing the case? Or should the effectiveness of the lien avoidance be dependant upon the debtor demonstrating 100 percent success with the bankruptcy, which means fulfilling all obligations under the Chapter 13 plan over a period that is three to five years?

In a case where there is no binding case law in the Second Circuit, Judge Robert E. Grossman, sitting in the Central Islip Bankruptcy Court, just issued a decision on October 26, 2010 in which he determined that a Chapter 13 debtor who avoids a judgment lien pursuant to Section 522(f) should not have to wait until discharge for the order to become effective. *In re: Kathleen Mulder*, no. 10-74217, (Bankr. E.D. New York 2010). In doing so, he reversed the court's policy of many years.

In the *Mulder* case, the debtor owned a home worth \$255,000 at the time of filing. There were mortgages on the property totaling \$220,000. Thus there was about \$35,000 worth of equity. The debtor was entitled to exempt up to \$50,000 worth of equity under her New York homestead exemption.

At the time of filing, there was a judg-

ment lien in the sum of \$160,000. The debtor, who was represented by my colleague, Donna M. Fiorelli of Garden City, filed a routine motion to avoid the judgment lien. The creditor filed a limited objection arguing that its rights would be severely prejudiced if the court permitted the debtor to expunge the lien prior to discharge.

The sole issue before the court was whether Section 522(f) lien avoidance is effective immediately or whether it must be conditioned upon the entry of a discharge in the case. (There was no dispute that the lien should be avoided).

The court overruled the judgment creditor's objection and permitted the debtor to immediately expunge the lien, finding nothing in the code to prohibit this. In reaching this conclusion, the court adopted the minority view in this country and essentially changed the policy of the court in Central Islip (or at least those cases before Judge Grossman).

The court pointed out that other provisions of the code protect the creditor, in particular, Section 349 which provides that when a case is dismissed; all property rights are restored to the position in which they

were found at the commencement of the case. Thus, Section 349 automatically reinstates liens avoided by Section 522(f).

However, as a practical matter, this is not automatic, and if the debtor expunges the lien and the case is later dismissed, it places a burden on the judgment creditor to immediately take steps to protect itself.

Judge Grossman pointed out that the minority view seeks to preserve the function of Section 349 if the case is dismissed. "Courts which condition lien avoidance on the entry of a discharge perceive a weakness in the code that could adversely affect judgment lien holders. . ." However, he found good cause to part from this view because the code does not explicitly provide for this.

It appears that Judge Grossman's approach here greatly differs from his approach in other cases. Here he has taken a strict constructionist approach, stating, "the court finds that the words of Section 522(f) are clear, and when reading a statute, if the meaning is clear, the analysis ends there."

He also quoted another decision stating, "Congress 'says in a statute what it means

and means in a statute what it says there.'" He concluded, "While this court shares a similar frustration with what appears to be drafting deficiencies of the code, this court is bound by the plain meaning of the statute."

Yet, most of Judge Grossman's previous decisions have been more geared towards reaching a logical outcome, as opposed to citing strict constructionist grounds, something I addressed in my March 2010 column. In any event, this decision is a win for the consumer.

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.

RESTAURANT REVIEW

Palà Pizza is No Pizza Parlor

Mouthwatering pizza and so much more

By Dennis R. Chase

Are you ready for the best pizza you've ever eaten? Every restaurant these days boasts of using only the finest, freshest ingredients but how many of them actually do? Would you drive all the way to lower Manhattan for really great pizza? After sampling Palà Pizza, you'll be happy to answer each of these three questions with a very enthusiastic YES! Even a cursory review of Palà's menu tells you this isn't your average neighborhood pizza parlor. With menu choices to satisfy either the carnivore or the vegan among us (or anything in between for that matter), Palà will leave no one wanting more.

But before getting to the pizza that is, well, *to die for*, prepare your pre-Palà pizza palate perfectly with something special; start your experience with the divinely superb *arancine*, risotto balls filled with garden fresh spinach and mozzarella cheese. Calling them rice balls would not be doing this antipasti justice. While we're on the subject, there are no meatballs here, but *polpette*, served with incredibly thin slices of aged parmesan cheese and a delectable red sauce. Fancy *fancy mushrooms* instead? Try the *funghi*

al tartufo, select Portobello mushroom layered with parmesan cheese and drizzled with truffle oil. There are nine magnificent antipasti from which to choose, but feel free share dishes to save room for other equally tasty treats from the menu.

Next stop - insalate. Being quite partial to the one root vegetable invoking the most passion from fellow diners (either you love beets, or you hate them), try the *rappa*, roasted yellow beets, fresh ginger, red onions, mixed salad greens and pecorino cheese drizzled with extra virgin olive oil and balsamic vinegar. Late night diners would be wise to consider altering plans and dining early because this dish frequently sells out. Also quite refreshing is the *mela*, arugula, apples and sweet pecorino cheese. If your appetite leans more towards grilled vegetables, experience the *carciofi al parmigano*, perfectly grilled and extremely tender artichokes, ripe cherry tomatoes, and parmigano cheese. There are still four more selections of insalate.

And then there's pasta, with each dish also available with your choice of organic penne (made with rice, potato and soy flour), organic fusilli (made with brown rice flour), or organic spaghetti made with corn and quince flour). Recommended is the *bucatini all matri-ciana*, bucatini (a thick spaghetti like pasta with a hole running through the center) with pancetta, pecorino romano cheese and spicy tomato sauce. There's another six pasta dishes to delight diners,



Dennis R. Chase

but where's the phenomenal pizza we've all heard so much about, already?

Palà makes each pizza to order, and don't expect to see a traditional round pie. The better term to describe this pizza is free-form. All the pizzas can be ordered vegetarian, gluten free or dairy free. Palà takes the diners' dietician concerns very seriously.

The crust on all their pizza is exactly what you would expect from the perfect pizza, thin, crispy, but with just the right amount of chewiness. Perhaps you'd like a simple pizza . . . then recommended is the *bufala cruda*, buffalo mozzarella, cherry tomato sauce, and fresh basil leaves. There may be no taste more satisfying than the combination of really fresh tomatoes and basil . . . yum. Care for something a little more interesting? Try the *funghi e saiscicia*, field mushrooms, pork sausage, hot pepper, and mozzarella, a carnivore's delight. Most, but not all of Palà's pizza has mozzarella and yet still manage to be delightful, like the *romana*, sweet pecorino cheese, field mushrooms, tomato sauce, and fresh parsley or the *arrabbiatta*, adorned with fresh cherry tomatoes, hot pepper, and garlic. There are 14 specialty pizza choices in all and each pizza is served fresh from the oven on its own wooden peel.

There's an entire vegan menu from which we have not, as yet, sampled, but as mentioned previously, Palà takes very seriously, your dietary concerns, boasting dedicated fryers and ovens and offering not only vegetarian and vegan fare, but gluten free and/or dairy free pizza, as



well. While the service is always refreshingly warm, friendly, and attentive, the only drawback to the restaurant's somewhat cramped quarters is the single unisex restroom that invariably sports a line in front of the extremely tiny bar. Unless you manage to score one of the three stools at this miniscule bar, you can't wait for your table at the bar lest you be run down by the always busy staff. Take the drive to lower Manhattan (but avoid the Williamsburg Bridge, unless of course, you enjoy mind numbing traffic delays) just for the pizza. Once you've tried Palà's there can be no other pizza in your life. Palà . . . a little slice of Rome in lower Manhattan.

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.

Palà Pizza

198 Allen Street

New York, NY 10012

212.614.7252

<http://www.palapizza.com>

Famous Horse Standing

(Continued from page 13)

source.

Since Famous Horse asserted that the defendants used its V.I.M. mark in connection with the false representation that it was a satisfied customer, the Second Circuit reasoned that the complaint stated a Section 32 claim by alleging "a use that is plainly likely to deceive and create confusion and mistake regarding the relationship between [the defendants'] goods and services and Famous Horse." *Famous Horse Inc.*, 2010 WL 4117673*3.

Although the Second Circuit unanimously vacated the Sections 32 and 43(a) false endorsement claims' dismissal, the panel split concerning the remaining claim that the defendants' sale of counterfeit Rocawear jeans to Famous Horse's competitors constituted Section 43(a) unfair competition. Circuit Judges Sack and Lynch determined that the district court's judgment should be vacated, while Circuit Judge Livingston's dissenting opinion urged that since Famous Horse did not own the Rocawear mark, it lacked standing to maintain an action based on that mark's infringement.

In making its claim, Famous Horse alleged that the defendants' misuse of the Rocawear mark injured it in two ways. It claimed that it lost sales of genuine Rocawear jeans when consumers, who believed that they were buying genuine goods, bought lower-priced counterfeits

from the defendants or from competing retailers who had purchased the defendants' counterfeits. Famous Horse additionally urged that its reputation as a discount seller of genuine brand-name jeans was being damaged because its competitors' sales of lower-priced counterfeits will likely cause its customers to believe that Famous Horse was selling Rocawear jeans at an inflated price. In this regard, Famous Horse further asserted that when its customers learn that counterfeit Rocawear jeans are generally available, they will likely believe that Famous Horse's V.I.M. discount outlets are among the vendors of those counterfeit goods.

In determining that Famous Horse had standing, the majority held that the V.I.M. outlets' lost sales to the defendants' lower-priced counterfeit jeans demonstrated that Famous Horse suffered a competitive injury for Section 43(a) standing purposes. The majority additionally determined that Famous Horse's claim – that the defendants' false advertising (offering counterfeit jeans as genuine) caused a unique harm to its specific reputation as a discounter of genuine brand-name jeans – also sufficed to demonstrate standing to assert a Lanham Act Section 43(a) cause of action.

Note: Eugene D. Berman is Of Counsel to DePinto, Nornes & Associates, LLP in Melville.

Veteran's Benefits Programs and Payments

(Continued from page 11)

receive up to \$1,949 per month.¹¹ Additionally, a surviving spouse alone may receive up to \$1,057 per month.¹² These amounts are generally adjusted every year for inflation.¹³

There is **no penalty** for asset transfers and, as such, with proper planning, a veteran can become financially eligible for the pension benefit. Nevertheless, when engaging in planning for VA pension benefits, it is necessary to remain mindful of the potential Medicaid eligibility consequences of such planning. For example, assume a veteran transfers assets in the amount of \$100,000 to a trust and \$50,000 outright to his children in order to reduce his assets to the \$80,000 limit for Aid and Attendance benefit purposes. The veteran then moves into an assisted living facility, the cost of which he is able to meet with the help of the Aid and Attendance program. Two (2) years later, the veteran's health deteriorates and he requires care in a nursing home. The veteran will not be eligible for Medicaid benefits for approximately 15 months after he enters the nursing home based upon the \$150,000 he transferred 2 years ago. The veteran will have to find a way to pay for his care in the nursing home for the next 15 months.

Clearly, understanding VA benefits and how they overlap with other government

benefits available to veterans is extremely important in guiding clients towards the appropriate benefits programs.

Note: Melissa Negrin-Wiener, is a partner at Genser Dubow Genser & Cona LLP. She manages the Government Benefits Department while concentrating her practice in the areas of Medicaid eligibility planning, asset protection planning, disability matters, guardianships and estate planning. Melissa is also the chair of GDGC Charitable Events, a not-for-profit organization committed to enhancing the quality of life for the elderly, disabled and the underprivileged.

¹ 38 U.S.C. §1110² 38 U.S.C. §1513³ 38 U.S.C. §1522⁴ 38 U.S.C. §1502(b)⁵ 38 U.S.C. §1521(j)⁶ 38 U.S.C. §1110⁷ 38 U.S.C. §1102⁸ 38 U.S.C. §1522 (a) states only that a veteran's pension shall be discontinued if the "corpus of the estate of the veteran [and the veteran's spouse, if any] is such that under all circumstances...it is reasonable that some part of the corpus of such estate be consumed for the veteran's maintenance".⁹ 38 C.F.R. §3.275(b)¹⁰ 38 U.S.C. §1521(d)(1); 38 U.S.C. §5312¹¹ 38 U.S.C. §1521(d)(2); 38 U.S.C. §5312¹² 38 U.S.C. §1541; 38 U.S.C. §5312¹³ 38 U.S.C. §1521(a); 38 U.S.C. §5312

Best One Yet!!!

By Barry M. Smolowitz

The reviews are in, and the consensus of those who went on this year's wine tasting event has overwhelmingly said that this year's trip was the "Best One Yet"

As we have for the past several years, the SCBA had its annual wine tasting and east end tours on November 13. If we could have ordered the weather, we would not have done any better! It was a



Barry M. Smolowitz

perfect 65-degree sunny day. As in years past, we met at the SCBA where we all enjoyed a full continental breakfast.

We departed the SCBA via motor coach, and upon arriving at our first stop, was greeted by our host, Ms. Paula Geonie, who is a family member of the family owned and operated, Baiting Hollow Farm Vineyards (BHFV). This vineyard is the most westerly vineyard on the North Fork. It comprises a lovely vineyard and horse farm. Without boring you about its history, BHFV is very involved in organic and semi-organic farming as well as equine rescue. It produces many different wines, including several in the Rosé family, a Cheval Bleu desert wine, four whites including Chardonnay, Riesling and varietals Angel and White Satin. Their reds consist of Merlot, Cabernet Franc, Cabernet Sauvignon, and two blended offerings, Red Velvet and Mirage. Our guests were able to request a tasting of any wine produced. The wines were quite good. I especially enjoyed the Merlot and the Red Velvet. For those who crave sugar, the Cheval Bleu was the way to go.

In addition to enjoying the various wines produced by BHFV, our group also had the opportunity to experience a private tour of the horse farm, where we were given the history of how the family became involved in the equine rescue effort. During the tour, our guests were able to meet and pet the various horses that reside at BHFV. I want to thank Paula and Steve for being such gracious hosts to the SCBA.

Our next stop was the Roanoke Vineyards. Our host was the vineyard's resident sommelier, Adam Ehmer. Our group was treated to a private tasting, complete with bread and cheese platters. Each guest had a choice of a red or white flight, or they could mix and match. Each flight consisted of five tastings. The reds were all very good, and, while I am not a big white wine fan, the Wolffer Estate Perle Chardonnay, which was poured as part of the white flight, was a clear favorite. For those of you wondering why a Wolffer



Everyone enjoyed their visit to the Winkler's home where they were treated to a private pouring from Martha Clara Vineyards.

wine is being poured at Roanoke, the answer is simple - Roanoke's winemaker is Roman Roth. He is also the winemaker for Wolffer Estate. Roanoke vineyard offers some, but not all, of the Wolffer vintages.

Our next and last tasting of the trip this year was very special. This tasting was not at a vineyard. Rather, Geri Pravetz of Martha Clara Vineyards provided a private pouring at the home of Past President James and Nancy Winkler. Nancy and Jim were so gracious to open their home, which is situated on the waterfront of the Long Island Sound, to over 45 of our members.

This tasting was the most unique and pleasurable sampling I had ever experienced. The setting was absolutely stunning. The group was given full access to the Winkler's home, deck and back yard. The deck is gigantic and sits approximately 6 feet above ground level. This gave all on the deck a complete and unobstructed view of the calming Long Island Sound. The Winkler's had their home beautifully decorated for the autumn season, which was adorned with colorful mums and other flowers. The deck, which runs the length of the house, was set with tables and chairs so all could enjoy the wines and the lunch that were supplied by the Winklers. Each end of the deck had its own appeal. On the west end of the deck, Geri had set up an open wine bar. Each of our guests could partake in as much of any of the many wines there. On the east end of the deck, my friend Jeffrey Greene supplied background music on keyboard. To complete the ambiance, Mr. Greene was dressed in a formal black tuxedo. While I just did my best to describe the scene, the truth was, you just had to be there. The visit to the Winklers culminated with deserts of assorted cookies and pastries. Now Jim said he did not personally make the lunch or desert, but I am not so sure. It sure did taste homemade, and rumor has it, Jim is quite the cook.

As we departed the Winklers, there is little doubt that the neighbors were all wondering why there was a motor coach bringing in guests to a private home. Could it be an unannounced wedding perhaps???? Ha! Oh the curiosity!

The final stop, before our return trip, was our traditional visit to Briermeir Farms where those who had not yet had enough sweets, could load up on pies and cookies. Of course for the more health conscious, there were the seasonal fruits and veggies.

As always, the road trip home was a lot quieter than the morning trip out.

I would like to offer personal thanks to Nancy & Jim Winkler, who certainly were the hostess with the mostess. To them I say, wow, what a day!! Also, a special thank you to: my good friend Geri Pravetz, who donated her time to host the pouring and thank you to Jeffrey Greene. He traveled from western Suffolk, and also donated a portion of his time. And finally, a very special thanks you to my wife Kim Smolowitz, and VIP Vacations, Inc. for sponsoring the event.

And so, to all our friends, guests and colleagues - see you next year.



Remain Healthy and Stress-free During the Holidays *(Continued from page 1)*

In Webster's Dictionary, "perspective" is defined as "the ability to look through, see clearly." For lawyers, I add to this definition "the ability to recognize our relationship to the problem(s) before us." I am a firm believer that as lawyers we are all relied upon by our clients to be problem solvers, and being able to see our role as such, while not becoming otherwise involved in the issue, is essential to being able to "see clearly" and doing our job effectively.

With that perspective, I implore you, particularly if you are feeling in over your head, to please do what you are reasonably able to do to help yourself. This includes

- Take care of yourself. Eat right, sleep, fit in some type of exercise.
- Respect your limits. None of us can be everything to everybody.
- Keep in touch with other lawyers. Isolation, though often our default mode, fixes nothing.
- Ask for help - from your family and friends, from your partners and colleagues, from other professionals. Sometimes, just one call to the Suffolk County Lawyers' Assistance

Foundation ((631) 697-2499) or the SCBA's Lawyers Helping Lawyers Committee can get us back on track. (All calls are confidential, and colleagues who want to help you are always available.)

- Forgive yourself. We are all human and none of us are perfect.
- Don't forget to laugh a little. Some things are just funny, and if you can't figure out which things they are, take in a comedy.

In wishing you and those you care about a wonderful holiday season, I'd like to close with some words from Ralph Waldo Emerson, a special little gift for each of us to help keep perspective and encourage self-forgiveness - "Finish each day and be done with it. You have done what you could. Some blunders and absurdities no doubt crept in; forget them as soon as you can. Tomorrow is a new day; begin it well and serenely and with too high a spirit to be encumbered with your old nonsense."

Happy Hanukah, Merry Christmas, Happy Kwanza, and, for all you Seinfeld fans, Festivus for the Rest of Us!

Sincerely, Sheryl L. Randazzo

FREEZE FRAME



Congratulations to Harvey B. Besunder on the birth of his newest granddaughter, Avery Sloane Arden who was born on November 15. She was 7 lbs. 6 oz.

The Suffolk County Courthouse Through The Centuries (Continued from page 3)

and Part II, I guess someone figured that it would be easier to just call it Part III and not have to designate the existing Parts with names other than those that lawyers had gotten used to.

With the construction of yet another “new” building to house the County Court, “across the river” (as in the Peconic River which separates the Riverhead Township part of Riverhead hamlet with the Southampton Town side) in the Riverhead County Center that opened in 1975, the County Court Parts relocated to their new home. This new home would no longer be called the County Court Building but rather the Criminal Courts Building. By this time the County Court Bench had expanded to approximately 10 judges and its former home on Griffing Avenue would house civil terms of the Supreme Court. At the same time that the County Court moved to the County Center location, the District Attorney’s Office also moved to new space from its Griffing Avenue location to be replaced there by the Supreme Court Clerk’s Office. If my memory serves me correctly, the engraved words “Supreme Court” now appearing high above the entrance to what was once the District Attorney’s Office replaced the

words “District Attorney.”

In the years ensuing after 1975, the now “old” County Courthouse on Griffing Avenue, which no longer housed the County Court, (Are you still with me?), was really showing its age. Crumbling concrete, cracked plaster walls and water damage, to name a few problems witnessed by this writer, began to worsen. Some repairs and maintenance were done for a while which included refurbishing and restoring the building’s classic and stately courtrooms. It was not until October of 2004 that ground was broken for a new courthouse annex on Court Street which was around the corner from the entrance to the original building. The construction of the new annex was accompanied by extensive renovations to the old building which included connecting the old building with the new annex. The new annex which opened in 2005 has nine Supreme Court courtrooms, empanelling rooms, additional office space and state of the art technology.

Meanwhile, back on the other side of “the River,” not too long after 1975, the County Court and the D.A.’s Office had outgrown their space. The “new” County Court building (you know, the one in the County

Center, which would now be known as the Criminal Courts Building) had only six courtrooms with two Grand Jury rooms and offices for Court and District Attorney personnel. Approximately 15 years after the construction of the “new” Criminal Courts Building construction began for a newer expanded courthouse. The “new-er” courthouse would be physically connected with the 1975 building. This “new-er” expanded courthouse would open in 1990. In 1995 the Suffolk County Legislature passed Resolution 1880-95 naming the new expanded courthouse after Justice Arthur M. Cromarty. Now the “new” Criminal Courts Building would become the “old” Criminal Courts Building and the “new-er” expanded Criminal Courts Building known as the Arthur M. Cromarty Criminal Courts

Building. Actually, as noted, they are one expanded building. (I hope that you’re still with me). In addition to County Court criminal parts and courtrooms with Supreme Court Justices sitting in criminal terms the Cromarty Building is also home to several Supreme Court Justices sitting in civil terms.

So there you have it; a trip from Suffolk County’s founding in 1768 to its first courthouse in 1768 to today. We’ve come a long way, baby!

Note: John L. Buonora recently retired as the Chief Assistant District Attorney for Suffolk County, is a former president of the SCBA, the past president director of the SCBA and an adjunct professor at Touro Law School.

Personal Service Contracts After Barbato (Continued from page 9)

the presumption that caregiver services were provided out of “love and affection.” However, in *Matter of Barbato v. New York State Department of Health*,⁴ the fourth department appellate division reviewed and modified five such fair hearing decisions in a manner consistent with GIS 07 MA/019, remanding the cases back to DSS to take into account the fair market value of services rendered between the date on which each PSC was executed and the date of the Medicaid eligibility determination. The *Barbato* court ordered that caregiver logs be used to identify which services were not duplicative of those provided (or to be provided) by the nursing homes under New York regulatory operating standards.⁵ It also held that transfers of assets for services to be rendered from the date of the Medicaid eligibility determination, through the remainder of the lifetime of the Medicaid A/R, should be valued at less than fair market rates because the PSCs contained language inconsistent with the guidance set forth in GIS 07 MA/019.⁶

Accordingly, New York case law provides firm support for the general proposition that PSCs are valid for Medicaid purposes. Even in cases when PSCs were executed in nursing homes and shortly prior to Medicaid applications, and therefore deemed to be more suspect on fair hearing, the *Barbato* court directed the local DSS to recognize, up to the time of the Medicaid eligibility determination, the fair market value of services provided under the PSCs as compensated transfers.

The key issue for a Medicaid A/R that enters a nursing home (whether before or after executing the PSC) is whether the services provided are non-duplicative of those provided by the nursing home. In advocating a client’s position, it is important to review New York regulatory operating standards for nursing homes and the Medicaid A/R’s comprehensive care plan with the nursing home to understand how services provided by caregiver children can fill the gap. To date, there is no clear judicial guidance on whether financial services or one-on-one companionship is considered to be non-duplicative. However, it is clear from fair hearing decisions that it is not compelling to argue that caregiver children have provided services that nursing homes should be providing in accordance with operating standards, but in fact are not providing.⁷

The validity of transfers of assets under PSCs for fair value after the date of the

Medicaid eligibility determination also is open to question after the *Barbato* court decision. In our opinion, a properly drafted PSC should not include language considered to be subjective for purposes of determining fair value. That is, if the PSC specifies the hours of care to be provided, contains a provision rebating excess funds to the estate should the Medicaid A/R die before the stated life expectancy, and otherwise is consistent with the standards set out in GIS 07 MA/019, a court is more likely to uphold the validity of the PSC for services rendered after the date of the Medicaid eligibility determination than if subjective language is used. Again, if the Medicaid A/R enters the nursing home, it is essential that the attorney drafting the PSC surmount the hurdle of establishing that the services are not duplicative of those provided by the nursing home, if the PSC is going to withstand DSS scrutiny.

Note: Vincent W. Ansell is the managing partner of Ansell, Kugler & Svendsen, LLP, located in South Amityville. His primary area of expertise is in the field of Elder Law and Estate Planning, having more than 20 years of experience in this field. Diane L. Virzera is an associate at Ansell, Kugler & Svendsen, LLP and specializes in Elder Law and Estate Planning.

Bench Briefs (Continued from page 5)

Motion to vacate Note of Issue denied; plaintiff had complied with the demand there was no basis to vacate the timely note of issue

In *Margaret Okerblom v. Macy’s East, Inc., Macy’s East An Incorporated Division of Macy’s Retail Holdings, Inc., and Macy’s Retail Holdings, Inc., Macy’s East An Incorporated Division of Macy’s Retail Holdings, Inc., and Macy’s Retail Holdings, Inc. v. North American Building Services d/b/a Lashellda Maintenance Corporation, Inc., and Eastco*, Index No. 17181/06, decided on September 16, 2010, the court denied defendants’ motions to vacate the Note of Issue for lack of a response to their demand for Discovery and Inspection and a Bill of Particulars from the third party defendant and for failure to provide the transcripts of depositions of plaintiff’s daughter and defendants’ employee who witnessed the incident. Plaintiffs’ contended that they had complied with all discovery demands. In denying the motion, the court noted that though the transcripts of the witnesses were not confirmed or submitted, both witnesses were disclosed and known to the defendants. Since the record reflected that plaintiff had complied with the demands there was no basis to vacate the timely note of issue or to extend the time in which to file for summary judgment.

Honorable Thomas F. Whelan

Leave to serve an amended complaint to the extent provided within the decision granted; party opposing the motion to amend must overcome a heavy presumption of validity in favor of the movant and demonstrate that the facts alleged and relied upon in the moving papers are obviously not reliable or are insufficient

In *Lenny Gullo, Maria S. Gullo and Catherine Gullo v. Bellhaven Center for Geriatric and Rehabilitation Care, Inc., a/k/a Bellhaven Nursing Center, “ABC” Corporation a/k/a Bellhaven Nursing Center, Apex Laboratory, Inc., and Mark*

Shapiro, M.D., Index No. 25986/09, decided on April 15, 2010, the court granted plaintiffs’ cross-motion for leave to serve an amended complaint to the extent provided within the decision and otherwise denied same. The cross-motion sought to assert separate causes of action for negligent infliction of emotional distress, constructive fraud and “violation of statute” on behalf of the three named plaintiffs. In granting the cross-motion, the court noted that leave to serve an amended pleading should be freely given upon such terms as are just. Leave to amend will generally be granted provided the opponent is not surprised or prejudiced by the proposed amendment and the proposed amendment appears to be meritorious. The court noted that there is an established rule that the legal sufficiency or merits of a proposed amendment of a pleading will not be examined on the motion to amend unless the insufficiency or lack of merit is clear and free from doubt. Thus, the party opposing the motion to amend must overcome a heavy presumption of validity in favor of the movant and demonstrate that the facts alleged and relied upon in the moving papers are obviously not reliable or are insufficient.

Please send future 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 January 2011 issue, submission must be received on or before December 1, 2010. Submissions are accepted on a continual basis.

Bio: 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.

¹ See New York State Office of Children and Family Services, Division of Health and Long Term Care, “OBRA ’93 Provisions on Transfers and Trusts,” 96 ADM-8, at p. 12 (March 29, 1996); Health Care Financing Administration State Medicaid Manual 3257-3259, Transmittal 64, Section 3258.1(A).

² New York Department of Health, Office of Health Insurance Programs, “Evaluating Personal Contract Services for Medicaid Eligibility,” General Information System (GIS) 07 MA/019 (Sept. 24, 2007) (“GIS 07/MA 019”).

³ *Id.* at 2.

⁴ 65 A.D.3rd 821, 884 N.Y.S.2d 525 (4th Dept. 2009) (“*Barbato*”).

⁵ See 10 N.Y.C.R.R. §§ 415.1-415.27.

⁶ Specifically, the PSCs stated that services would be provided “as needed” and also lacked provisions rebating excess funds for services not rendered due to premature death of the Medicaid A/R’s prior to their stated life expectancies, which left open the possibility that caregivers “would receive a windfall.” 65 A.D.3rd at 823. See also *Stern v. Daines*, 2009 N.Y. Slip Op. 32836(U) (Queens Co. 2009) (holding that such language does not render entire PSC invalid); *In re Gitter v. State of New York*, 2009 N.Y. Slip. Op. 33238(U) (New York Co. 2009) (holding that DSS had authority to rely on GIS 07 MA/019 in assessing transfer penalty).

⁷ In one fair hearing, this even extended to an emergency situation when the caregiver alerted the nursing home that her mother’s oxygen tank had been depleted. See *In the Matter of the Appeal of M.G.*, Fair Hearing No. 473952M (March 2, 2007).



SUFFOLK ACADEMY OF LAW

OF THE SUFFOLK COUNTY BAR ASSOCIATION

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

LATE FALL CLE

The Suffolk Academy of Law, the educational arm of the Suffolk County Bar Association, provides a comprehensive curriculum of continuing legal education courses. December courses are listed here, plus winter updates. Watch for additional program details or 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, see the listings in this publication or 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:

Program Locations: Most, but not all, programs are held at the SCBA

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.

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

WINTER UPDATES

ELDER LAW UPDATE

Monday, February 14, 2011 (Live & Webcast)

Presenter: George L. Roach, Esq. (Grabie & Grabie)

Time: 2:00 – 5:00 p.m. (Sign-in from 1:30 p.m.)

Location: SCBA Center **Refreshments:** Valentine snacks

MCLE: 3 Hours (2 ½ professional practice; ½ ethics)

[Non-Transitional and Transitional]

MATRIMONIAL LAW UPDATE

Monday, March 7, 2011 (Live & Webcast)

Presenter: Stephen Gassman, Esq. (Gassman, Baiamonte, Betts & Tannenbaum, P.C.–Garden City)

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]

ANNUAL CRIMINAL LAW UPDATE

Video Replay

January Date TBA

Presenters: Hon. Mark Cohen (NYS Court of Claims; Acting Justice, NYS Supreme Court) and Kent Mostin (Appeals Bureau, Nassau Legal Aid)

Time: 4:00–7:00 p.m. (Sign-in from 5:30 p.m.)

Location: SCBA Center

MCLE: 3 Hours (professional practice)

[Non-Transitional and Transitional]

SERIES

TRUSTS A TO Z

One lunchtime program each month through May (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)

SUPPLEMENTAL / SPECIAL NEEDS TRUSTS

Tuesday, December 7, 2010

Presenter: Beth Polner Abrahams (Garden City)

LIFETIME TRUSTS FOR MINORS

Tuesday, January 11, 2011

Presenter: TBA

IRREVOCABLE LIFE INSURANCE TRUSTS

Wednesday, February 2, 2011

Presenter: Richard A. Weinblatt (Haley Weinblatt & Calcagni,

LLP – Islandia)

GRANTOR RETAINED ANNUITY TRUSTS (GRATS)

Tuesday, March 1, 2011

Presenter: Paul E. Dorr, Jr. (Bernstein Global Wealth Management)

DYNASTY TRUSTS

Tuesday, April 5, 2011

Presenter: Paul McGloin (Deutsche Bank Private Wealth Management)

CHARITABLE TRUSTS

Wednesday, May 4, 2011

Presenter: Paul E. Dorr, Jr. (Bernstein Global Wealth Management)

SEMINARS & CONFERENCES

IS YOUR WEBSITE WORKING FOR YOU?

A Free Seminar from Lexis-Nexis

Wednesday, December 1, 2010

This guest seminar from Lexis Nexis will address best practices in internet marketing and optimizing marketing dollars. You will learn, among other things, how to use the internet to increase client traffic, how consumers are looking for attorneys, and how to control advertising costs. The program is FREE and includes complimentary lunch. Pre-registration is requested.

Faculty: Certified SEMPO Institute Consultant

Time: 12:30–1:30 p.m. (Sign-in from 12:15 p.m.)

Location: SCBA Center **Refreshments:** Lunch

MCLE: 1 Hour (skills) [Non-Transitional and Transitional]

ANNUAL SCHOOL LAW CONFERENCE Presented by the Education Law Committees of the Suffolk and Nassau County Bar Associations

Monday, December 6, 2010

The theme of this year's conference is "Navigating Troubled Waters," and presentations clearly reflect that perspective. The conference comprises two plenary sessions and two breakout sessions (with three topic choices each). Lawyers, educators, and others with an interest in education law will find much of value in this program.

Agenda

Morning General Session: "So You Want to Save \$1,000,000?"

Faculty: Robert Sapir, Esq., Eugene Barnosky, Esq., Florence Frazer, Esq., Richard Guercio, Esq., Carrie Ann Tondo, Esq.

Afternoon General Session: The Internet-Friend or Foe?

Faculty: Randy Glasser, Esq., John Dockswell (Nassau County Police), Joseph Lilly, Esq., Christopher Powers, Esq., John Sheahan, Esq., Thomas Volz, Esq.

Morning Breakouts:

1. What's Public & What's Private? – Carol Hoffman, Esq.,

Howard Miller, Esq., Rita Sheena, Esq.

2. The New APPRs for Teacher & Principal Evaluations – John Gross, Esq., Gregory Guercio, Esq., Gerard McCreight, Esq.

3. Special Education Update – Debora Berger, Esq., Jacob Feldman, Esq., Brad Rosken, Esq.

Afternoon Breakouts:

1. Student Residency – Gary Steffanetta, Esq., Mara Harvey, Esq., Christie Medina, Esq.

2. Instructional Services & Independent Contractors – Douglas Libby, Esq., Robert Cohen, Esq., Lawrence Tenenbaum, Esq.

3. Unfunded Mandates – Laura Ferrugiari, Esq., Alan Adcock (Massapequa UFSD), Antonia Hamlin, Esq.

Conference Chairs: Robert Sapir and Randy Glasser

Time: 9:00 a.m. – 3:30 p.m. (Sign-in from 8:30 a.m.)

Location: Sheraton Long Island Hotel

Refreshments: Continental Breakfast and Luncheon Buffet

MCLE: 5 ½ Hours (professional practice) [Non-Transitional and Transitional]

THE BASIC FUNDAMENTALS & PURPOSE OF MEDICARE SET ASIDE Presented by the SCBA Workers' Compensation & Social Security Disability Committee

Tuesday, December 7, 2010

The impact of Medicare on Workers' Compensation and personal injury settlements can be complicated business. Key questions must be addressed or the claimant may be denied future Medicare payments and the employer and insurance carrier may be faced with penalties and held liable. This succinct seminar will address the major issues. Note that this program will not be webcast or recorded.

Faculty: Joanne Agruso, Esq. (Dell, Little, Trovato & Vecere, LLP–Ronkonkoma)

Rachel Nelsen, Esq.

Coordinator: Sharmine Persaud, Esq. (Co-Chair–SCBA Workers' Compensation Law Committee)

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

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

MCLE: 2 Hours (professional practice)

[Non-Transitional and Transitional]

COPYRIGHT, TRADEMARKS & PATENTS: What General Practitioners Need to Know

Wednesday, December 8, 2010 (Live & Webcast)

Will you know what to do when that budding author or inventor appears on your law firm doorstep...or when your business client wants to protect its trademark...or when someone you represent "borrows" text or images from the internet? The laws and conflicts involving intellectual property are complex and challenging – especially in the new world of the internet and social media. This program will cover the basics and show you how to protect clients' rights or help them to avoid needless legal trouble.

Faculty: Thomas A. O'Rourke, Esq. (Bodner & O'Rourke)

Coordinator: John R. Calcagni (Academy Advisory Committee)

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

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

MCLE: 3 Hours (professional practice)

[Non-Transitional and Transitional]



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Information & Insights for Attorneys Who Handle Estate & Elder Law Matters *(Continued from page 25)*

and George Tilschner.

Between the tax intricacies of a Sy Goldberg program and the nuts and bolts concepts of a primer lies an array of two and three credit offerings. Some deal with broad issues, some with specific matters, and some with topics that are ancillary to elder law and estate practice. All are available as DVDs or CDs and as on-line video replays or MP3 recordings.

Broad instructional programs include **“Estate Practice 101,”** a six credit (including one in ethics) treatment of everything from wills and trusts for a variety of situations through what to do *after* someone dies (including probate and administration when there is no will); **“Estate Tax: The Latest on the Repeal and What to Do in the Meantime,”** a two-credit exploration of effects on executors, capital gains issues for inheritors, and similar issues; and **“Miscellaneous Proceedings in Surrogate’s Court,”** a three-credit discussion by Surrogate’s Court law department attorney Scott McBride on wrongful death compromise, special needs trusts, and other less frequent proceedings.

Programs focusing on specific issues – all supplying two MCLE credits – include **“Frequently Asked Questions on Probate,”** providing detailed guidance by Kurt Widmaier on avoiding common and not-so-common pitfalls; **“Frequently Asked Questions About Medicaid Applications,”** in which Richard Weinblatt and his firm’s Medicaid administrator, Susan Cozzolino, dissect the new form and how it is to be completed; **“Planning Opportunities with Promissory Notes & Annuities,”** featuring valuable instruction by Richard Weinblatt on how to help a family retain assets when immediate nursing home placement becomes necessary (now that the “rule of halves” is no longer an option); and **“Five Kinds of Annuities,”** a discussion by Vincent Russo and Henry Montag on how to help clients assess and invest “four kinds” of money (needed immediately, needed soon, needed eventually, and “never” needed).

Marital issues in the context of elder law and estate planning are the focus of two recent CLE’s now available on-line or as recordings: The first, aptly entitled **“Elder Law & Estates Issues in Matrimonial Matters,”** features attorneys from both disciplines: elder law lawyers Sheryl Randazzo and Ronald Lanza and matrimonial lawyers Lynn Poster-Zimmerman and Diane Carroll. The syllabus for this three-credit seminar covers pre-nups, estate strategies, spousal rights, Medicaid and other issues in planning *for* marriage, planning *during* marriage, planning *during the dissolution* of a marriage, and in divorcing an incapacitated person. The second program, **“Protecting Assets Without a Pre-Nup”** (two credits), looks generally at asset-protection measures and specifically at

“Delaware Trusts,” i.e., spendthrift protections extended to a settlor-beneficiary of a discretionary trust. The faculty for this program comprised guest lecturers from BNYMellon Wealth Management and the New York City law firm Moses & Singer, LLP.

The Academy also has recordings of programs that, while not covering elder law or estate planning specifically, may be of interest to attorneys in these fields. **“Nursing Home Litigation”** (three credits), featuring Michael Glass and others known for their work in the field, covers OBRA & PHL statutes, case intake and investigation, and trial considerations.

“The Family Health Care Decisions Act” (two credits) features James Fouassier and Dr. Lynn Hallarman in a review of the new law and how it modifies existing laws.

Finally, the Academy has a new recording, **“Article 81 Guardianship Training for Laypeople,”** that elder law attorneys may wish to supply to their clients who have been appointed guardians. Instruction – by Hon. H. Patrick Leis, Bronwyn Black, Richard Weinblatt, Jeffrey Grabowski, and Carolyn Lindenbaum – covers both personal needs and property management responsibilities. Additionally, older recordings intended for lawyers who have

been appointed court evaluators and supplemental needs trustees are available on request.

Those seeking more information on estates and elder law CLE in any format – live seminars, real-time webcasts, on-line video replays and MP3 recordings, or DVD and audio CD recordings – are invited to call the Academy at 631-234-5588.

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

New York Times, November 10, 2010, “Pledge to Give Away Fortunes Stirs Debate.”

DECEMBER 2010 REGISTRATION FORM

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UPDATES										
Elder Law Update	\$125	\$ 75	\$150	Yes	Yes	3 cpn	3 cpn	\$150	\$125	\$50
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TRUSTS <input type="checkbox"/> Supplemental Needs <input type="checkbox"/> Lifetime Trusts for Minors <input type="checkbox"/> Irrevocable Life Ins. <input type="checkbox"/> GRATs <input type="checkbox"/> Dynasty <input type="checkbox"/> Charitable	\$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 & CONFERENCES										
Websites (Lexis-Nexis)	Free	Free	Free	n/a	n/a	n/a	n/a	n/a	n/a	n/a
School Law Conference	\$175	\$175	\$175	Yes + \$50	2 uses	5 cpn	5 cpn	\$200	\$195	\$40
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Medicaid Home Care for Suffolk County Seniors *(Continued from page 6)*

attorney should be present. Home care hours are based upon how long DSS believes it will take the home care aide to accomplish specific tasks. DSS will not allot time to provide companionship. To be eligible, the client must need assistance with at least two activities of daily living: feeding, toileting, grooming, bathing, ambulating, and transferring. If the client needs an extended period of monitoring, an adult day care program may be beneficial.

Medical Model Adult Day Care

An applicant who qualifies for home care is likely to qualify for medical model adult day care. After receiving a doctor's diagnosis, the day care facility itself will conduct the intake assessment. These programs, often located in a nursing home, usually provide door-to-door transportation, a cooked meal, socialization, trained supervision, and assistance with bathing. They also provide a much higher level of skilled care than most home attendants can provide, such as medication management, physical therapy, diabetes management, wound care, lab work, x-rays, social services and access to ancillary services such as a dentist, psychiatrist, podiatrist, optometrist, and/or audiologist. Adult day programs can be combined with traditional home care services to extend the number of hours a senior is supervised.

Social Model Day Care

This type of program may be an excellent alternative for a patient who is isolat-

ed, blind or is memory impaired, but who has no skilled medical needs. It can be particularly useful for the client who needs constant supervision, socialization and meaningful recreation. Medicaid payment for social model day care can only be accessed through waived programs such as GuildNet, Nursing Home Transition and Diversion Waiver and Lombardi Program. Day Haven, in Port Jefferson and Ronkonkoma, provides Social Model Day Care programs.

Consumer Directed Personal Assistance Program – (CDPAP)

CDPAP allows the client or the client's family to take responsibility for locating, hiring, training, supervising, and firing the care giver paid by Medicaid. Since the CDPAP aide is trained and supervised by the family, he or she can perform tasks that an agency personal care aide is not authorized to perform, and can be a good choice for clients with complex medical problems or who need direct assistance with medications. The client and/or his/her family are responsible for training or arranging for the training of the aide. The aide must register and report his/her hours to the CDPAP program which handles all paychecks. CDPAP agencies in Suffolk County are: Recco Home Care Services, in Smithtown, and South Shore Home Health Services, in Oakdale.

Managed Care Programs

GuildNet, run by The Jewish Guild for

the Blind, is a managed long-term care plan established to coordinate services for adults wishing to remain in their homes as long as possible. It provides a wide array of services, and it is especially useful for the client who can benefit from social model day care. Although it is a managed care program GuildNet allows the client to continue to use his or her current physician. A complete list of the available services can be found at http://www.jgb.org/programs_guildnet.asp. GuildNet is accessed after the client has been approved for Medicaid by calling (917) 386-9319. GuildNet conducts its own assessment of the client for services.

Nursing Home Transition and Diversion program – (NHTD)

NHTD is a waived program designed to help bring seniors out of nursing homes and back into the community or to keep them safely in their homes even though they would medically qualify for nursing home services. The Medicaid recipient is budgeted as Community Medicaid. In addition to traditional home attendants and medical model day care, applicants can receive the services of a care manager, assistive technology, counseling, moving assistance, home modifications, meals and rental subsidy. After financial eligibility is determined, the NHTD program will evaluate the client and provide a plan of care. For more information, call the L. I. Regional Resource Development Center at the Suffolk Independent Living Organization or access the Department of Health website: <http://www.dhcr.state.ny.us/Programs/NHTD/>

Private Duty Nursing

This program provides RN and LPN level services on a long term basis to Medicaid recipients who need it. The program is administered through Albany after the senior's county approves financial eli-

gibility. Physician's orders plus an assessment by a certified home health agency are necessary. Information is available at http://www.emedny.org/ProviderManuals/NursingServices/PDFS/Private_Duty_Nursing. One of the flaws in the program is that the hourly pay that Medicaid provides is so low that it can be difficult to find nurses willing to work at that rate. The nurses must be privately contracted to accept Medicaid payment or work for an agency that contracts with Medicaid. Enhanced pay may be available if a high level of skill needed. In some instances, it may be more advantageous to hire and train someone through the CDPAP program.

Lombardi Program

This program, also known as the Long-Term Home Health Care program, provides for nursing home level of services in the home setting. It provides coordinated home care that includes skilled nursing, rehabilitation therapy, medical social work, nutrition counseling, and home health aide services. Other services include recreational therapy, social day care, transportation, moving assistance and home repairs. The estimated cost of care cannot exceed 75 percent of Medicaid's cost to care for that recipient at a skilled nursing facility. The Lombardi program is budgeted like chronic care Medicaid, and there is no look-back period for asset transfers. If there is a healthy spouse, he/she is entitled to spousal impoverishment protection. Information is available at: http://www.health.ny.gov/health_care/medicaid/reference/lthhpc/lthhpcmanual.pdf.

Note: Janna P. Visconti is an attorney with Grabie & Grabie, LLP, concentrating her practice in Elder Law, Medicaid, and Estate Planning. She can be reached at (631) 360-5600 or JanVisconti@Gmail.com.

Using a QPRT to Minimize Estate Taxes *(Continued from page 9)*

interest which is calculated by taking the present fair market value of the property and reducing it by the value of the grantor's retained interest as determined by the IRS's actuarial tables. This results in the value of the gift being significantly less than the value of the property.

For illustrative purposes, assume that a 65 year old individual owns a home with a current fair market value of \$1,000,000 and he transfers this residence into a QPRT for a term of 12 years. Based on the IRS tables, the grantor would be treated as having made a gift to his beneficiaries valued at only \$549,000, effectively transferring an asset worth \$1,000,000 to his beneficiaries but only using \$549,000 of his gift tax credit. In the year following the creation of the QPRT, the grantor would be required to file a Federal Gift Tax Return to report the gift in the amount of \$549,000. Assuming no prior gifts have been made, no gift tax would be due and, if he survives the term of the QPRT, the grantor would have reduced his taxable estate by \$549,000. With the possibility of the estate tax rate for 2011 reaching as high as 55 percent, a plan like this could significantly reduce the grantor's estate tax liability.

Not only can a QPRT effectively reduce the size of the grantor's estate but, additional tax benefits result from creating a QPRT because all of the future appreciation associated with the property will be transferred to the beneficiaries estate tax free. The longer the QPRT term, the greater the potential for the property to appreciate and the greater the grantor's potential tax savings. Assuming the grantor survives the term of his retained interest, the beneficiaries named in the

QPRT own the property. However, the grantor can lease the property back from the beneficiaries at a fair market rental value. This feature actually gives the grantor the opportunity to transfer additional assets (rent payments) to his beneficiaries free of estate taxes.

While a longer term provides greater tax savings, there is a risk in choosing too long a QPRT term because the grantor must outlive the term in order to realize the tax benefits of the QPRT. There is no penalty if the grantor dies before the term ends but, the entire value of the property will be included in the grantor's estate. When creating a QPRT, it is important to consider the grantor's life expectancy based on current actuarial and life expectancy tables, the client's risk tolerance and other variables such as the client's health and family history.

Note: Kim M. Smith, is a partner at the law offices of Burner, Smith & Associates, L.L.P., with offices located in Setauket and Westhampton Beach, where she practices in the areas of Elder Law, Trust & Estate Planning, Trust and Estate Administration, Guardianship, Medicaid and Special needs planning. Prior to her career as an attorney, Ms. Smith worked in the health care profession for more than fifteen years. She is the current Co-Chair of the Elder Law Committee of the Suffolk County Bar Association and the Suffolk County Women's Bar Association, where she also currently serves as the Vice President of Programs. In addition to the numerous committees Ms. Smith is involved in, she is also a frequent speaker at the Suffolk County Bar Association.

Surrogate's Court Jurisdiction Over Shareholder Derivative Suits *(Continued from page 17)*

partner and a co-trustee of the credit shelter trust established under the will. The gravamen of the petition was that the respondent, individually, as the sole shareholder of an agency he founded after the decedent's death, and as the 50% percent shareholder of the agency he founded with the decedent, possessed money and property that properly belonged to the decedent's estate.

Following service of the petition and the accompanying Order to Attend, the respondent moved to dismiss on the ground that the Surrogate's Court lacked subject matter jurisdiction over what he described as a shareholder derivative action. However, the Surrogate's Court denied the motion, noting that "[a]ny recovery on behalf of the corporations [would] benefit the estate by increasing the value of its shares and decreasing its exposure to potential liability for corporate indebtedness." Additionally, "a sale of [the] decedent's stock [would] make the proceeds available for distribution."

What practitioners should take away from this is that while the Surrogate's Court generally lacks jurisdiction over

shareholder derivative actions, there are limited circumstances in which a surrogate may exercise jurisdiction over such a dispute. Those limited circumstances arise when it is demonstrated that any recovery on behalf of the corporation would benefit the estate or trust involved in the proceeding.

Note: Robert Harper is an associate at Farrell Fritz, P.C., concentrating in trusts and estates litigation. He also serves as Co-Chair of the Suffolk County Bar Association's Membership Services and Activities Committee.

- ¹ N.Y. Const. Art. VI.
- ² *Matter of Piccione*, 57 N.Y.2d 278 (1982).
- ³ *Matter of Castaldo*, N.Y.L.J., 2/6/1998, at 34, col. 2 (Sur. Ct., Westchester County).
- ⁴ *Matter of Baum*, 7 Misc.3d 1027(A) (Sur. Ct., Nassau County 2005).
- ⁵ *Matter of Posalski*, 21 Misc.3d 1139(A) (Sur. Ct., Bronx County 2008); *Matter of Lever*, N.Y.L.J., 7/25/2003, at 22, col. 4 (Sur. Ct., Nassau County).
- ⁶ *Lincoln First Bk., N.A. v. Sanford*, 173 A.D.2d 65 (4th Dept. 1991).
- ⁷ *Matter of Denton*, N.Y.L.J., 1/19/1995, at 32, col. 4 (Sur. Ct., Westchester County); *Matter of Visconti*, N.Y.L.J., 1/30/1995, at 29, col. 6 (Sur. Ct., Nassau County).

Information & Insights for Attorneys Who Handle Estate & Elder Law Matters (Continued from page 28)

by non-marital children, DNA testing, power of attorney as related to Surrogate's Court, significant ethics issues, and key decisions affecting legal fees, malpractice claims, and *in terrorem* clauses. The program, which provided 2 □ credits including a half credit in ethics, is archived on-line and also is available for purchase as a DVD or audio CD.

Also just presented and now archived was a two-credit program on "Long Term Care Planning & Annuities." Featuring Vincent Russo, the co-author of *New York Elder Law and Special Needs Practice* (Thomson Reuters), and Henry Montag, a well known financial planner, the seminar covered the new "linked annuity," Medicaid treatment of annuities, and an assortment of planning strategies.

Power of Attorney issues, which remain an ongoing challenge for elder law and estate planning attorneys, were addressed in two recent presentations by the three lawyers who have been keeping colleagues up to date on POA developments since the first changes went into effect in September 2009, Eileen Coen Cacioppo,

George Roach, and George Tilschner. The trio's newest presentations are "Frequently Asked Questions About Power of Attorney" (presented during Summer 2010) and "The New Technical Changes in New York Power of Attorney Law" (presented in September 2010). The programs are available individually on-line and as a set of DVDs or CDs through the Academy's *Recorded CLE Catalog*.

Most of the Academy's recorded elder law and estate planning programs have value for both attorneys who are new to the field and those who are quite experienced. Some presentations, however, may be accurately characterized as one or the other: that is, somewhat advanced or primarily introductory.

Presentations by Seymour Goldberg, CPA, MBA, JD, most would agree, fall into the "advanced" category. Mr. Goldberg addresses fine points of the law and the sophisticated strategies attorneys well versed in these points may use for the tax benefit of their clients. Three of his more recent presentations include "IRA Trusts & Retirement Trusts as

Beneficiary of Retirement Assets" (June 2010); "Inherited IRAs: What the Practitioner Must Know" (June 2009); and "New York Trusts & Estates" (August 2009). All of the recordings are accompanied by information-packed manuals written by Mr. Goldberg.

On the opposite end of the spectrum, three recorded in-depth programs are highly recommended as primers or valuable refreshers. "Elder Law Boot Camp" (April 2010) featured a faculty of skilled practitioners (Marilyn Gormley, Jeanette Grabie, Ronald Lanza, George Roach, Kim Smith, and George Tilschner) who covered Medicaid, Article 17 and Article 81 guardianships, advance directives, wills and trusts, and a variety of ethics issues. The program provides 5-1/2 hours of MCLE credit, including 1/2 in ethics. Also treating Elder Law basics was a six credit program (five general, 1 ethics) entitled "Introduction to Elder Law" (April 2009). Once again featuring an outstanding faculty (Sheryl Randazzo, Ralph Randazzo, George Tilschner, Ronald Lanza, Jeanette Grabie, Kim Smith, Richard Weinblatt, and Robert Howard),

this primer addressed the elder law consultation, capacity, guardianships, Medicaid planning, home care services, nursing home placement, and implementation of the elder law plan. Finally, the third program recommended for its comprehensive treatment of key matters is "All About Wills" (March 2010). In this program, a skilled faculty (Sheryl Randazzo, William Bernstein, Donna Stefans, Linda Toga, Richard Weinblatt, and Ernest Wruck) addressed will basics, dispositive provisions, contingent beneficiaries, testamentary trusts, testamentary fiduciaries, miscellaneous provisions, and the ethics issues related to rush wills, judging capacity, and the like. The program provides eight MCLE credits (six general; two ethics).

Those seeking not a grounding in the basic elements, but just a quick look at introductory issues — perhaps to see if the field is of interest — might want to consider the Academy's one-credit recordings: "Basics of Wills, Trusts & Estates" featuring Scott McBride (Surrogate's Court Law Department) and "Elder Law Basics" featuring Eileen Coen Cacioppo (Continued on page 23)

Accredited Investor Today not Tomorrow (Continued from page 12)

ty property when calculating whether they qualify as accredited investors under the investment-owned standard.²⁰

In addition, if, as expected, the SEC adjusts for inflation the net worth and income standards using 1982, the year in which such standards were adopted, as the base year, individual investors would need an annual income of \$500,000 (or joint income of \$700,000) or a net worth of at least \$2,200,000, not including the value of their primary residence, to qualify as accredited investors.

In this market where housing prices have declined, the change in the accredited investor standard could have helped rather than hindered an individual from qualifying where the debt on the property exceeded the value of the residence. In a move that closes this loophole, the SEC announced on July 23, 2010, that an individual investor must include any indebtedness in excess of the fair market value of

such person's primary residence when determining net worth.²¹

The SEC has shown that it intends to be aggressive in its rulemaking under the Dodd-Frank Act. Investors and companies should speak to their securities law counsel to determine where they stand in the wake of the recent change and where they can expect to be in anticipation of further changes the SEC is likely to adopt to the accredited investor standard.

Note: Gisella Rivera, JD, CPA is an associate in the corporate law practice at Meltzer, Lippe (Mineola). She has extensive experience advising U.S. and non-U.S. issuers, including sponsors and emerging managers, engaged in private offerings of equity securities and acting as counsel to, and negotiating terms of investments for, highly sophisticated investors looking to invest in private equity funds and hedge funds.

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 413(a) (July 21, 2010).

² 17 C.F.R. §230.501(a)(5).

³ 17 C.F.R. §230.501(a)(6).

⁴ See "Implications of the Growth of Hedge Funds, Staff Report to the United States Securities and Exchange Commission," September 2003, 81, available at <http://www.sec.gov/spotlight/hedge-funds.htm>.

⁵ 17 C.F.R. §230.506.

⁶ The offering memorandum, when used, is provided to all investors in view of the anti-fraud provisions of the Securities Act. 17 C.F.R. §230.502(b)(1).

⁷ See e.g. SEC No-Action Letter, Southwest Bancorp, 1986 WL 66822, May 20, 1986, at *11; *Goodman v. Epstein*, 582 F.2d 388, 414 (7th Cir. 1978), cert. den. 440 U.S. (1979) (stating that "when an investment decision remained to be made at the time of a call for a capital contribution by a Limited Partner, the contribution by each Limited Partner in response to the call constituted a separate 'purchase' of a security").

⁸ 15 U.S.C.S. §77b(a)(15)(ii).

⁹ CFTC Rule 4.13(a)(3).

¹⁰ See Dodd-Frank Act, *supra* note 1, at Section 413(b)(2).

¹¹ Securities Act Release No. 8876 (December 27, 2006) 2006 WL 3814994, at *8. The SEC estimat-

ed that in 1982 when the accredited investor standard was adopted, there were approximately 1.87% of U.S. households that would have qualified. By 2003, the number of U.S. households qualifying as accredited investors had grown by 350% to 8.47%.

¹² *Id.*

¹³ *Id.* at *9. The SEC believed that the additional requirement will bring back the level of qualifying households to 1.3%, a percentage that is below the 1982 levels. See also Securities Act Release No. 8828. (August 3, 2007) 2007 WL 2239110, at *4.

¹⁴ SEC Release No. 8876, *supra* note 11, at *12.

¹⁵ SEC Release No. 8828, *supra* note 13, at *7.

¹⁶ The SEC received approximately 600 comments on the December 2006 proposed rule, many of which were unfavorable. *Id.*, at *4.

¹⁷ See SEC Release No. 8876, *supra* note 11, at *13.

¹⁸ See SEC Release No. 8876, *supra* note 11, at *13; SEC Release No. 8828, *supra* note 13, at *14.

¹⁹ 17 C.F.R. §270.2a51-1(b) (1997).

²⁰ See SEC Release No. 8876, *supra* note 11, at *14; SEC Release No. 8828, *supra* note 13, at *17.

²¹ Securities and Exchange Commission Compliance and Interpretations under the Securities Rules 179.01, July 23, 2010, available at <http://www.sec.gov/divisions/corpfin/guidance/securitiesrules-interp.htm>.

The Basics of Social Security Age and Disability Benefits (Continued from page 6)

fits may be available at a younger age. When a divorced spouse files for benefits based upon the record of his/her former spouse, requirements for eligibility include, but are not limited to, the requirement that the marriage lasted for at least 10 years; the divorce became effective at least two years before filing and the individual seeking benefits has not remarried.

It is noteworthy that the spouse/former spouse of the SS non-contributor need not be deceased for benefits to be available. Where the spouse is deceased, the widow/widower can collect benefits based upon the deceased spouse's record provided he/she is at least 60 years old, or at least 50 and disabled. In addition, it is possible for a divorced widow/widower to collect based upon a deceased former spouse's record, but he/she must have

been married to the wage earner at least 10 years immediately before the divorce became final, and there are limitations if the divorced widow/widower has remarried. In the case of a disabled widow/widower or a disabled divorced widow/widower, the onset of disability must have occurred within seven years of the wage earning spouse's/former spouse's death.

The benefits available to an individual with an earnings record is not reduced if a spouse and/or an ex-spouse or two also collect benefits on that person's earnings record. SSA will pay the highest monthly benefit amount in situations where an individual can qualify for more than one benefit or for benefits under more than one earnings record. Therefore, an individual with his/her own earnings record may qualify for a higher monthly benefit

under the earnings record of a spouse/former spouse, and is not limited to receiving the lower benefit under his/her own earnings record.

SS benefits are also available to individuals that are disabled from working. There are two types of disability benefits through SSA: Social Security Disability (SSDI) and Supplemental Security Income (SSI). To qualify for SSDI benefits on a person's own work record, in addition to having to satisfy the stringent definition of "disabled" under the applicable statute and regulations, the worker must have worked and contributed into the system out of his/her earnings long enough to be "insured" for SSDI purposes. After 24 months of SSDI benefits, the recipient of said benefits qualifies for Medicare coverage.

SSI is a need-based benefit program in which eligibility is based upon certain criteria relating to assets and income. For this reason, the receipt of an inheritance or other moneys by an individual may adversely impact on that individual's eligibility for ongoing SSI benefits. A special needs trust may be appropriate to protect an individual's eligibility for SSI benefits. Once an individual is approved for SSI benefits, he/she is also Medicaid eligible.

Note: Scott R. Tirrell is a partner with Turley, Redmond, Rosasco & Rosasco, LLP in Ronkonkoma, concentrating in Social Security Disability, SSI, and Long Term Disability benefits claims. He can be reached at stirrell@nydisabilitylaw.com or (631) 582-3700, ext. 142.

Preparer Tax Id Number ("PTIN") *(Continued from page 4)*

er, every professional firm still need to be alert to having certain of their employees (whether or not they are attorneys) also secure a PTIN.

Attention: Estate, Elder Care, and Other Attorneys

If you expect to sign any (and I do mean ANY- there is no de minimus rule) Federal tax return for which you receive compensation, you need a PTIN (Preparer Tax Identification Number) from the Internal Revenue Service ("IRS"). If your answer is 'no', you can skip the rest of this alert.

Certified Public Accountants and non-licensed storefront tax preparers seem to be aware of this new IRS initiative but my experience over the last two months from speaking with fellow attorneys is that many never have heard about a PTIN (which has been in existence for many years but was not required for tax preparation) and the rules announced by the IRS on September 28, 2010 requiring all compensated tax preparers (and, in many cases, many of their employees such as paralegals¹) to register with the IRS before the tax preparer signs and files his/her first tax return on or after January 1, 2011.

This author has had a PTIN for many years from the time that it replaced the need to include a tax preparer's Social Security number on the income tax return. There is no telling how many clients have their tax preparer's Social Security number on tax returns prepared in the pre-internet age. You still may be using your Social Security number when you sign off on the Federal Estate Tax Return (706) or Federal Gift tax Return (709) prepared by you or someone in your office. Well, that era is closing fast.

While you are encouraged to continue reading this article, here is the IRS link for you to obtain your first (and only) PTIN or 'refresh' (a new IRS term) an existing PTIN. You are not required to enter your current PTIN when registering but 'refreshing' professionals will be assigned the same number they have had providing all of the newly submitted information matches what the IRS already has on file. <http://www.irs.gov/taxpros/article/0,,id=210909,00.html>

Since you can't copy and paste the above unless you're reading an online version of this article, you can go you www.irs.gov; click on the tab that says "Tax

Professionals"; and drill down and around until you find the "Sign Up Now" information. (I'll call some oddities to your attention later in this article but it's a pretty easy procedure.) You will need to have certain information available before you go through the process but you'll be alerted to that fact before you begin. If you choose not to file online, you can access new form W-12 (IRS Paid Preparer Tax Identification Number (PTIN) Application) which was issued in September and (already) revised in October. Make sure to use the October 2010 edition if you are doing a paper application.

Did I mention that I have 4 inches of PTIN reading material since this process began? That's the thickness as I write what you are reading. The IRS alerts you that a paper application will take 4-6 weeks to process. For some readers, that may be too long to wait. I registered on the first day that it could be done online- -September 28. The online process should be instantaneous although for me, who was 'refreshing', it took the IRS 6 days to compare my submission to what it already had on file for me. My approval arrived, via email, on Sunday, October 3. I suspect that length of time to dissipate as the process evolves.

On October 15, I received a postcard from the IRS (not that envelope with the eagle on the front connoting an audit or unexpected assessment) saying that if it wasn't me who created my PTIN online account, I should immediately contact the PTIN telephone hotline (see below). This is just an IRS precaution to make sure that it was really me who applied for the PTIN and not some nefarious prankster who had all of the necessary information to apply in my name.

Well, I'm all set come January 1. Now let me help you get set. It is estimated that there are 1.2 million tax preparers, so don't procrastinate.

Here is what you'll need to begin:

Your Social Security Number.

Personal information (name, mailing address, date of birth).

Business information (name, mailing address, telephone number). This line is completed only by self-employed practitioners or individuals who are owners, partners or officers of a tax preparation business.

Your name, address, and filing status

EXACTLY as it appears on the most recent individual income tax return filed by you. Note to the newly married woman: Follow the aforementioned instruction literally. After you get your PTIN, call the PTIN hotline (below) and have it changed, if that is what you want.

Explanations for any felony convictions in the past 10 years (Hopefully you can check 'none').

Explanations for problems with your U.S. individual or corporate tax obligations.

Credit or debit card for the \$64.25² PTIN user fee (When the author applied, AMEX was not accepted. That still may be the case when you apply. Have your Visa, MasterCard, or Discover or debit card available.)

Your CAF (Central Authorized File) number. That's the number that you put on tax powers of attorney. If you do not know this number, it should not prevent you from obtaining a PTIN but if you think that you have one, it's best to include it.

If applicable, any U.S.-based professional certification information (CPA, attorney, enrolled agent, enrolled retirement plan agent, enrolled actuary, certified acceptance agent, or state license) including certification number and state of issuance. If you don't list your professional license number, you will be treated as a tax preparer who is subject to the new IRS test-taking and continuing education requirements. If you have dual licenses (e.g., attorney and CPA), each is to be entered on the application.

Every applicant needs his/her own unique email address- -no sharing. Also, you only get 3 attempts within a 24 hour period to correctly register online. If you still have a question, you can call an IRS PTIN specialist at 1- 877-613-PTIN (7846).

Why Compensated Tax Preparers Need a PTIN

All tax preparers are governed by Treasury Department Circular 230 "Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents, and Appraisers before the Internal Revenue Service" (<http://www.irs.gov/pub/irs-pdf/pcir230.pdf>). Failure to comply with Circular 230 can lead to suspension from practice before the Internal Revenue Service and penalties. The final PTIN regulations were published in the Federal register on September 30, 2010.³ The aforementioned regulations expand the reach of Circular 230 to all compensated tax preparers.

Your Employees Who Are Not Attorneys, CPAs, or Enrolled Agents

It's back to test-taking⁴ for these people. Initially (but not until sometime in 2011) two types of tests will be offered. One test will cover wage and 1040 non-business tax returns and the second type will cover wage and 1040 small business tax returns. There is no mention in the regulations about a test for estate (assuming that Congress refreshes the estate tax) and gift tax returns. Nevertheless a PTIN will be required. In Frequently Asked Questions, the IRS has said that "The IRS will issue additional guidance or instructions for other tax returns."⁵ There is some discussion of possibly changing the PTIN requirement for non-signing employees who work for a law firm or accounting firm under the direction of an attorney or CPA.⁶ In addition to the test, 'registered tax return preparers' will be required to take 15 hours of continuing education courses in each 'registration' year.⁷ This is not the same as a calendar year. 3 of those 15 hours must be for a federal tax law update and 2 of those hours must be for tax-related ethics topics. Just as we (attorneys) do, Registered Tax Return Preparers must keep records (proof) of their compliance with the continuing education rule. Attorneys, CPAs, and enrolled agents are excepted from the Circular 230 continuing education requirement. Whew! New York Attorneys already need 12 hours per year and New York CPAs need 24 specialty hours or 40 non-specialty hours of continuing education each year.

Any ...individual who is compensated for preparing, or assisting in the preparation of, all or *substantially* all of a tax return or claim for refund of tax...⁸ must have a PTIN. The word *substantially* is troubling. It lacks definition although the regulations do give some examples.

Generally, the IRS will be considering the complexity of the work performed by the non-signing preparer; decision making authority; the dollar amount of the items on the tax return; and/or the amount of the tax or income tax credit. Observation: if in doubt, register. The preamble to the regulations states that the employer identification number (not the PTIN) of others who were relied on "for the ... substantive accuracy of the preparation of the tax return or claim for refund" (e.g., subcontracted work) must be included on the tax return⁹ (possibly resulting in a new form to be associated with the client's tax return). That leads to an interesting observation. Where an accounting firm retains a law firm (or a law firm retains an accounting firm) to provide specialized tax advice for a tax return that the accounting (or law) firm is preparing, how will it look to the client, fee wise, when he,

(Continued on page 27)

Association to Sponsor Its Annual Judicial Swearing-In And Robing Ceremony

Historically, January symbolizes the beginning of a new year with new dreams and expectations. It marks the commencement of continued terms of reelected Judges, and first terms of others.

We are proud of the close relationship which lawyers of this county and the judiciary have enjoyed over the years. The development of this alliance is the result of the efforts of the SCBA in conjunction with the members of the judiciary, all devoted to elevating the quality of the legal system including the Bench and the advocates who appear before it.

It is in this tradition that we have, over the years, sponsored a Swearing-In &

Robing Ceremony which will be held on **Monday, January 10, 2011**, commencing at 9:00 a.m. in the auditorium of Touro Law Center, Central Islip. We hope you will be able to join the following members of the Judiciary who will be sworn in:

Supreme Court: Hon. Andrew A. Crecca; Hon. W. Gerard Asher; **County Court:** Hon. Stephen M. Behar; Hon. Stephen L. Braslow; Hon. James C. Hudson; **Family Court:** Judge Elect Bernard C. Cheng; Judge Elect Caren L. Loguercio; **District Court:** Hon. Toni A. Bean; Hon. Joseph A. Santorelli; Hon. Martin I. Efman; Judges Elect John Andrew Kay and Philip Goglas.

— *Lacova*

Annual Reception Honors Pro Bono Volunteers *(Continued from page 1)*

completing 184 hours. Mitchell Shapiro, outraged by the number of women who are financially abused by their errant husbands has worked 131 hours committed to helping them. This is but a summary of the fine accomplishments of those who were honored for their volunteer services.

Mr. Chase, appreciative of the honorees efforts said that "Honoring those attorneys demonstrating a genuine commitment to pro bono legal services not only serves as role models for their colleagues, more-

over, when examining their individual motivation for doing so, there is a common theme . . . the joy they derive from their ability to assist those in dire need and the heartfelt thanks they receive from being able to do so."

Note: Laura Lane is the Editor-in-Chief of The Suffolk Lawyer. She is an award-winning writer, former journalist, and currently works in the HAVA Department at the Nassau County Board of Elections.

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Preparer Tax Id Number ("PTIN") (Continued from page 26)

she or it sees one or more such listings? Currently, it will not be necessary to list, on the tax return, the PTINs of all of your employees who perform *substantial* work on a tax return but as has been stated, they all need a PTIN.

Miscellaneous

A piece of trivia - I started preparing payroll and simple income tax returns at age 13 for my CPA father. Under the upcoming PTIN rules, I could not *substantially* help him since a PTIN cannot be issued to anyone under the age of 18.

Special PTIN application rules apply to foreign (non US) tax preparers who do not have a US Social Security number, and to conscientious religious objectors without a social security number.¹⁰

Sometime in the future, there will be a public database of return preparers.

According to David Williams, head of the IRS Return Preparer Office, the IRS will not reject a tax return, or penalize the taxpayer, because of a missing PTIN. The responsibility for including it on the tax return falls squarely on the signing tax preparer.

Currently, a PTIN will need to be renewed annually, and a user fee paid, on the anniversary date of the issuance of the PTIN.¹¹

If you walk away from your computer during the registration process (as I did to attend to another business matter for 15 minutes), you will get knocked off the site. The good news is that when you sign back in, you won't need to re-enter information previously entered. It will have been saved.

On the online application under "Addresses," the Permanent Mailing Address area accepted my 9 digit zip code but in the area for the Address used on my U.S. Individual Tax Return, the 9 digit zip code was rejected and only my 5 digit zip

code was accepted (even though my tax return includes my 9 digit zip code).

For those thirsting for more detailed information, you can visit Google, Bing, Wikipedia, irs.gov or your favorite search engine.

Note: Alan E. Weiner, CPA, JD, LL.M. is Partner Emeritus of the CPA firm of Holtz Rubenstein Reminick LLP, with offices in New York City and Melville, Long Island. He founded the Firm's tax department in 1975 and headed it through 2006. He is active on the tax committees of the Bar Associations of Suffolk County and Nassau County, and the New York State Society of CPAs ("NYSSCPA"), for which he served as the 1999-2000 President and also as a Chairman of its Tax Division Executive Committee. He is the author of "All About Limited Liability Companies and

Partnerships" and DFK International's "Worldwide Tax Overview."

- The following letter from The American College of Trust and Estate Counsel to the Internal Revenue Service addresses the possible need for paralegals to obtain a PTIN. It was written before the regulations were finalized on September 30, 2010. The questions have not yet been addressed by the IRS. http://www.actec.org/public/Governmental_Relations/Sherby_Input_09_10_10.asp
- \$50 is the IRS portion of the user fee and \$14.25 will go to the third party vendor (Accenture) administering the program. The total fee may change in the future as the program matures.
- Federal Register/Vol. 75, No. 189, Page 60309; Treasury Regulation Section 1.6109-2.
- See Frequently Asked Questions on the IRS website. Testing is expected to begin in mid-2011; although an applicant can take the test an unlimited number of times, a fee will be charged each time; applicants who have a valid PTIN when testing begins will have until December 31, 2013 to pass the test; the test is taken at a designated testing site. Here are links to the IRS FAQs

- (Frequently Asked Questions)
<http://www.irs.gov/taxpros/article/0,,id=218611,00.html#Tips> and <http://www.irs.gov/taxpros/article/0,,id=230145,00.html> These FAQs are as of November 18th and October 29th, respectively. FAQs are updated frequently. A bright person thought to put a date after each of the questions. As a result, if you visit these FAQs often, you can skip over questions that predate your most recent visit.
- ibid
 - IRS News Release IR-2010-99, Sept. 28, 2010; repeated in IRS News Release IR-2010-107, Oct. 27, 2010.
 - In IRS News Release IR-2010-107, Oct. 27, 2010, the IRS announced that the 15 hour continuing education requirement would be waived for 2011.
 - Treasury Regulation Section 1.6109-2(g); Treasury Regulation Section 301.7701-15
 - Federal Register/Vol. 75, No. 189, Page 60310
 - Revenue Procedure 2010-41, Internal Revenue Bulletin 2010-48, November 29, 2010
 - Treasury Regulation Section 300.9 and the preamble thereto; also IRS News Release IR-2010-99, Sept. 28, 2010

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ACADEMY OF LAW NEWS

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

Information & Insights for Attorneys Who Handle Estate & Elder Law Matters

By Dorothy Paine Ceparano

These days, questions and quarrels about the distribution and protection of wealth abound. Will the Bush tax cuts stay in effect or won't they...and, either way, what will the result mean for those bequeathing assets or acquiring them? How have the tumultuous events in the investment world affected the fiduciary responsibilities of those making decisions

for or rendering advice to others? Is the "Giving Pledge" a worthy redistribution of wealth through outsized philanthropy or a way to leverage control that rightly belongs to the government?¹ While the various debates go on, one thing remains certain: Elder law and estate planning lawyers – most of whom represent people with more modest means than the 40 richest Americans who initiated the "pledge" – will continue to be called upon to advise

their clients on the best ways to preserve wealth and the best ways to give it away or pass it on.

Attorneys in the field will be interested to learn that the Academy provides an abundance of CLE offerings on elder law issues and estate planning techniques...programs on virtually everything from basic will drafting, through sophisticated Medicaid planning, through trusts for virtually any situation, through handling probate and other court proceedings. Important new programs are being planned, and a considerable number of past presentations have been recorded and archived. Archived programs are available on-line as video replays or MP3 recordings and in tangible formats as DVD or audio CD recordings.

To check out what is archived, attorneys have a few alternatives. The Academy's new 2011 *Recorded CLE Catalog*, which groups audio and DVD recordings by subject matter, has been mailed to SCBA members and is also available on the SCBA website (www.scba.org) with a click to the oval entitled "Current Audio/Video Catalog." A listing of archived on-line programs (plus real-time webcasts), also grouped by subject matter, may be viewed (at www.scba.org) by clicking the oval entitled "Internet CLE." Would-be purchasers of on-line video replays may view a short demo before deciding to take the course.

The 24-7 availability of recorded programs – on-line or in a tangible format – is a boon to many practitioners. But those who prefer their CLE live and in real time should be sure to calendar a number of important new offerings on the horizon.

On February 7, skilled practitioners David DePinto and David Okrent will offer an evening estate planning seminar entitled "The State of the Estate Tax." A huge turnout is anticipated, and the program will also be webcast in real time. Another potentially SRO program is George Roach's popular "Elder Law Update," scheduled, as in the past, as a Valentine's Day (February 14) matinee (plus a real-time webcast).

An ongoing series, **Trusts A to Z**, organized by elder law attorney Ralph Randazzo, also has been drawing a considerable turn-out. Already presented components (now available on-line and as recordings) include **Revocable Trusts** (Steven Kass), **Testamentary Trusts** (William Bernstein), and **Medicaid Trusts** (Kim Smith). Coming up are lunch-time seminars covering **Supplemental Needs Trusts** (Beth Polner Abrahams on December 7); **Lifetime Trusts for Minors** (January 11); **Irrevocable Life Insurance Trusts** (Richard Weinblatt on February 2); **GRATs** (Paul Dorr on March 1); **Dynasty Trusts** (Paul McGloin on April 5); and **Charitable Trusts** (Paul Dorr on May 4). All will also be available as real-time webcasts and, after the live programs, in recorded formats.

Just prior to this writing, the Academy was privileged to present a program featuring Suffolk County Surrogate Court Judge, the Honorable John M. Czygier, Jr. Entitled "Evolving Issues in Surrogate's Court," the presentation, infused with the judge's characteristic wit and energy, addressed, among other things, death bed marriages, inheritances

(Continued on page 25)

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.

November

- 30 Wednesday **Trial Skills Series: Evidence—What You Thought You Learned in Law School.** 6:00–9:00 p.m.
Sign-in and light supper from 5:30 p.m.
- 30 Wednesday Academy Curriculum Committee Meeting. 4:30 p.m.
All invited.

December

- 1 Wednesday **Guest Seminar: Is Your Website Working for You?**
Free CLE presented by Nexis-Lexis, with complimentary lunch. 12:30–1:30 p.m. Pre-registration requested.
- 3 Friday Meeting of Academy Officers & Volunteers. 7:30–9:00 a.m.
Breakfast buffet. All SCBA members welcome.
- 6 Monday **Annual School Law Conference.** Sheraton Long Island Hotel. 9 a.m. to 3:30 p.m. Continental breakfast (from 8:30 a.m.) and buffet lunch.
- 7 Tuesday **Trusts Series: Supplemental/Special Needs Trusts.** 12:30–2:15 p.m. Sign-in and lunch from noon.
- 7 Tuesday **The Basic Fundamentals and Purpose of Medicare Set-Aside.**
Presented by the SCBA Workers' Compensation Law Committee. 6:00–8:00 p.m. Light supper and sign-in from 5:30 p.m. *N.B. This program will NOT be recorded or webcast.*
- 8 Wednesday **Copyright, Trademarks & Patents: What the General Practitioner Needs to Know.** 6:00–9:00 p.m.
Light supper and sign-in from 5:30 p.m.

January

- 7 Friday Meeting of Academy Officers & Volunteers. 7:30–9:00 a.m.
Breakfast buffet. All SCBA members welcome.
- 11 Tuesday **Trusts Series: Lifetime Trusts for Minors.** 12:30–2:15 p.m.
Sign-in and lunch from noon.
- 12 Wednesday **E-Discovery.** 6:00–9:00 p.m. Light supper and sign-in from 5:30 p.m.
- 13 Thursday **Medical Billing.** Presented by the SCBA Health & Hospital Law Committee. 6:00–9:00 p.m. Light supper and sign-in from 5:30 p.m.
- 19 Wednesday **Dealing with Title Companies.** 6:00–9:00 p.m.
Light supper and sign-in from 5:30 p.m.
- 20 Thursday **Bankruptcy Law for New Lawyers & Paralegals.**
Lunch 'n Learn, 12:30–2:30 p.m. Lunch and sign-in from noon.

February

- 2 Tuesday **Trusts Series: Irrevocable Life Insurance Trusts.** 12:30–2:15 p.m. Sign-in and lunch from noon.
- 4 Friday **Law in the Workplace Conference.** Presented by the SCBA Labor & Employment Law Committee. 9 a.m.–4:00 p.m.
Sign-in from 8:30 a.m. Continental breakfast and luncheon.
- 7 Monday **State of the Estate Tax.** 6:00–9:00 p.m.
Light supper and sign-in from 5:30 p.m.
- 9 Wednesday **Family Court Update.** 6:00–9:00 p.m.
Light supper and sign-in from 5:30 p.m.
- 10 Thursday Meeting of Academy Officers & Volunteers. 7:30–9:00 a.m.
Breakfast buffet. All SCBA members welcome. [Note change of date.]
- 14 Monday **Elder Law Update with George Roach.** 2:00–5:00 p.m.
Sign-in from 1:30 p.m. Valentine's Day snacks.

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



In early November, Surrogate John Czygier discussed "Evolving Issues in Surrogate's Court" for an in-person audience of more than 80 and a simultaneous audience of webcast participants.

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