From Suffolk County to Scotland - Two Attorneys’ Whirlwind Adventure

By Hon. A. Gail Prudenti

I distinctly recall the moment when I realized that I would become an attorney. I was a five year old girl growing up in Blue Point, Long Island and my father, a building contractor, was closing on a house. Being somewhat inquisitive for a five year old, I happened to notice that my father was the only person in the room not represented by a lawyer, and it struck me. Neither at that time, nor over the course of my subsequent 34 year career as a lawyer, including 21 years as a judge, did I ever dream that I would witness the opening of a spectacular library at my alma mater, speak in a lecture hall before hundreds of Scottish scholars and officials, and meet Her Majesty, the Queen of England, all in one week.

Nevertheless, this is exactly what happened during my recent whirlwind trip to Scotland. Having attended law school at Scotland’s University of Aberdeen, I was invited by its current Principal, Professor Ian Diamond, to attend the official opening of the University’s Sir Duncan Rice Library. My tremendous excitement to return to Scotland B the site of so many wonderful memories for me B became utterly uncontrollable once I learned that the library was to be opened by none other than Her Majesty, the Queen of England. Meanwhile, my wonderful husband of 33 years and a fellow lawyer, Robert Cimino, was equally as excited to explore the infinite golfing opportunities that Scotland has to offer. But this was not to be our only adventure on this trip. I was informed by the Judiciary’s partners from the Center for Court Innovation that Scotland was in the early stages of exploring problem-solving justice reform, and that Scottish judges (some of whom are called “sheriffs”), officials and scholars were keenly interested in

(Continued on page 24)
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.”

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The Nominating Committee of the Suffolk County Bar Association is seeking involved leaders interested in running for the following positions: president-elect; first vice president; second vice president; treasurer; secretary; four (4) directors (terms expiring 2016) and three (3) members of the Nominating Committee (terms expiring 2016). The Nominating Committee is accepting résumés from that interest in these leadership positions. Résumés may be sent to the Executive Director at the SCBA, marked for the Nominating Committee.

The members of the Nominating Committee are: John L. Buonora, Ilene S. Cooper, Hon. John M. Czygier, Jr., Annamarie Donovan, Scott M. Karson, Hon. Peter J. Mayer, Matthew E. Pachman, Sheryl L. Randazzo and Ted M. Rosenberg.

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November 2012

5 Monday Executive Committee, 5:30 p.m., Board Room
7 Wednesday Appellate Practice Committee, 5:30 p.m., Board Room
9 Friday Labor & Employment Law Committee, 8:00 a.m., Board Room
14 Wednesday Elder Law Committee, 12 noon-2 p.m., Great Hall
19 Monday Board of Directors Meeting, 5:30 p.m., Board Room
26 Monday Surrogate’s Court Committee Meeting, 6:00 p.m., Board Room
28 Wednesday Professional Ethics & Civility Committee, 6:00 p.m., Board Room

December 2012

3 Monday Executive Committee Meeting, 5:30 p.m., Board Room
5 Wednesday Appellate Practice Committee, 5:30 p.m., Board Room
7 Friday SCBA Holiday Party, 4:00 p.m.-7:00 p.m., Great Hall
12 Wednesday Elder Law Committee, 12 Noon-2 p.m., Great Hall
14 Friday Labor & Employment Law Committee, 8:00 a.m., Board Room
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19 Wednesday Professional Ethics & Civility Committee, 6:00 p.m., Board Room

Real Property Law Committee, 6:30 p.m., EBT Room

The Suffolk Lawyer

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Pro Bono Requirements for Law Students Announced

By John L. Buonora

In last month’s Suffolk Lawyer article, Touro, Turning Law Students into Lawyers, we discussed the numerous clinic and externship programs available to students at Touro Law Center and the provisions of Court of Appeals/Board of Law Examiners Rule 520.2 that allow law students to earn credits in clinic and externship programs to be applied toward the 83 credits required to be eligible for the Bar examination. As we discussed previously, clinics and externships allow students to experience the everyday practice of law both in the courts and in transactional situations.

On the day the October issue of the Suffolk Lawyer went to press Court of Appeals Chief Judge Jonathan Lippman announced Rule 520.16, a new rule requiring law students to complete 50 hours of pro bono service prior to their application for the New York State Bar Examination. These two developments, the availability of clinics and externship programs and the impending requirements that law students complete 50 hours of pro bono work as a requirement to take the Bar examination, are related and will be the subject of this discussion.

Without getting too woozy let me say that I come from three generations of police officers and to some degree I seem y job as an inch away from being a felon. It shows because they educate the general public that this stuff is illegal. They don’t know what their rights are.

Meets Your SCPA Colleague

By Laura Lane

Even though you aren’t a police officer you are still a law enforcer of sorts. Yes I did use that catch phrase. I come from three generations of police officers and to some degree I see my job as law enforcement. I wound up in a prosecutorial area of law. Debt collection harassment is a misdemeanor crime in New York but police don’t have the funds to pursue it. The statute permits private attorneys to go after these laws in the justice system.

You received a master’s degree before going to law school. How did you decide to become a lawyer? Money was one reason and independence. I’m probably not cut out for a more structured regimens. The type of law I thought I’d go into some sort of government job maybe ending up in the Attorney General’s office but I decided to become an attorney instead. After law school I immediately went into my own practice. I’ve always been on my own, never worked with a firm or a partner.

How did you end up as a consumer attorney? I worked as a matrimonial attorney for six to seven years which was quite an introduction to the legal profession. You aren’t seeing people at their best and you see a lot of heartache.

How did being a matrimonial attorney legal services pursuant to subdi-
visions two and three of section 484 of the Judiciary Law. Section 484 of the Judiciary Law provides that only attorneys may practice law in New York State with the exception (in pertinent part) of current law students or graduates who may practice pursuant to a program approved by the Supreme Court. It is the pro-
sessions of Section 484 that allows students in clinics and externships to practice in the courts or otherwise to represent clients or other parties in interest as well as allowing graduated students who have not yet been admitted to practice under designated conditions (e.g. Jr. Assistant District Attorneys).

The start up date

The effective date of the new Section 520.16 is January 1, 2013. Present third year students are exempted from the Rule. In other words, those students eligible to take the bar exam after January 1, 2013 will have to comply. As I understand it, current first and second year students will have a shorter period to satisfy the 50 hour requirement than students entering law school after the effective date of the Rule.

The point person

The implementation of new legislation or administrative rules is often a work in progress even after the effective date. As with most definitions set forth in a rule there would still be a need for inter-
preting their application in particular situ-
ations. In the case of the new pro bono rule that will be filled by Lawrence Rafal, professor and immediate past dean of Touro Law Center. The pur-
poses of this article let’s call him Dean Rafal. I still refer to retired judges as Judge, but I digress. Dean Rafal’s general job description is to oversee the implementation of the rule throughout the entire state.

As reported in a recent New York Law Journal article he has been described by Paul Lewis, Chief of Staff to First Deputy State Administrative Judge Lawrence Marks as the point person in dealing with law schools, law firms, legal service providers and others who have questions about the new requirement.

I recently met with Dean Rafal in his modest office in a suite of faculty offices at Touro. On the floor leaning against the wall was a couple of staplers hanging from the table. The top table amongst plenty of paperwork yet to be filed were the picture hangers waiting to be used. Numerous books and scholarly articles on ethics and other subjects also were occu-
pying significant space as the Dean tried to figure out a place to shelve them. Somewhere under the paperwork was a stapler that Larry, (oh well, let’s call him Larry), handed me to staple the pages of a Nassau County Bar Association report on the new rule (More about that later). I have always felt that the best doctors seemed to have the most modest and unpretentious offices. I think the same may apply to law professors as well (But I digress).

As of this writing, the Office of Court Administration is still working on a title for his new unpaid position. Czar, director, commissioner or similar terms might be a little too grandiose for Larry. Speaking of titles, have you ever noticed that the longer more impressive sounding a title is the less important the job. Sometimes the most important person has the shortest title, for instance, President. I’m reminded of the old TV sitcom Cheers when Woody, the bartender played by Woody Harrelson, wanted a raise from Sam Malone played by Ted Danson. Instead he was offered a promotion to something like Chief Deputy Assistant Bar Manager. Ego having triumphed over practicality, Woody accepted the new title without the raise (But again, I digress).

A large part of Larry’s job will be to determine what type of work qualifies for pro bono treatment.

“Obviously, if you painted a house for Habits for Humanity that wouldn’t qualify,” Larry said. “It’s clearly not legal assistance as set forth in the Rule.” Other situations may be less clear. For instance, would the hours spent in the courts and prosecutors’ offices that external assis-
tants in the Advanced Criminal Prosecution Externship program spend qualify? Tentatively, I would say yes, although they might not qualify for credit towards Touro’s pro bono requirements (More about that below). Formally what will or will not qualify has yet to be deter-
mined. Law schools will be reviewing their programs to ensure that their pro-
grams will satisfy the new rule.

Presently at Touro a student is required to complete 40 hours of pro bono work as a

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Joseph Mauro is a consumer attorney focusing his practice on debt collection, harassment, and credit reporting. Groomed to go into law enforcement, he took a different path, but in some respects he is still carrying on the family tradition.

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It sounds like unscrupulous debt collec-
tors can pack a mean arsenal. They

lead out to you to do today? I found that on behalf of the client the client was working with debt collectors. And there was a lot going on that raised a serious suspicion with me that at least some of what they were doing was not legal. I realized they could be sued for what they were doing.

Sounds like things can get a bit dicey. Not many attorneys do this. I enjoy the cat and mouse aspect of it and it’s very inter-
esting. The laws are changing constantly and it is a constant battle to keep up with the laws as well as the debt collector attempts to avoid the laws.

Do you enjoy reading detective novels and thrillers? No. I’m a big reader but I actually like humor. Some of my cases are very contentious putting me in some ques-
tionable situations which are like detective novels. There is a breed of debt collectors who are an inch away from being felons. It is a rough world. But I want to make it clear that there are a lot of legitimate well meaning debt collectors – attorney and non-attorney. They practice professional-
ly. I’m talking about unscrupulous debt collection.

How busy are you with this type of law? There are tons of people in trouble. This field is vital and integral to the community and state with so many people jobless and losing their homes. A lawyer can turn the pressure off from the debt collectors. There are a lot of victims.

It sounds like unscrupulous debt collec-
tors can pack a mean arsenal. They

threaten rape, violence, make sexual and racial comments, threaten to take people’s cars, houses and even threaten to have people arrested. I run into people that are very frightened and unfortunately they don’t know what their rights are.

Has social media altered the playing field? I think the internet has helped and hurt consumers. Debt collectors use social media to gather information about con-
sumers and use it against them. They call the friends, relatives and co-workers and tell them they are looking to collect a debt. But on the other hand the internet has helped consumers by educating them. They can find out that the person harassing them lives in another state.

You’ve appeared on Nightline and ABC’s 20/20. Why? I appear on these shows because they educate the general public that this stuff is illegal. It shows what the average consumer does not know and that you can’t take it on face value what someone is telling you over the phone.

When did you join the SCBA? I became a member in 1996. From the beginning I got involved in the invaluable education the Association offered. Now that all the new practice in any field you want after law school but law school does not teach you the “how to,” it teaches you theoretical law. The SCBA has one of the best CLE programs in New York. It is a virtual univer-
sity and you are learning from actual practitioners.

Besides the opportunity to take great CLE courses is there any other reason you’d recommend that someone join the SCBA? You gain access to other professionals. Being a member will ground you and just to reiterate once again, the CLE programs are excellent. I believe they should be a model for the entire country.
Not so Obvious Mistakes in Criminal Trials – Closing Arguments

Failure to object during summation found ineffective assistance of counsel

By Hon. Stephen L. Ukeiley
Note: This is the second part of a two part series.

In Part I, atypical errors during jury selection were discussed. This month’s issue focuses on errors during closing arguments. In what appears to be a case of first impression, the Court of Appeals recently reversed conviction because defense counsel failed to object during the prosecutor’s summation. See People v. Fisher, 18 N.Y.3d 964 (2012). The court concluded defense counsel’s inaction “[d]eproved defendant of the right to effective assistance of counsel.” Id. at 967.

Ineffective assistance of counsel

A criminal defendant is entitled to “mean- ingful representation,” not perfect lawyering. People v. Baldi, 54 N.Y.2d 1172 (1981); and People v. Staff, 5 N.Y.3d 476, 480 (2005). The defendant will vacate a conviction for ineffective assistance of counsel where clearly inferior representation results in a serious impairment to the defendant’s right to a fair trial. See generally People v. Benevento, 91 N.Y.2d 708, 712-13 (1998). In other words, provided defense counsel’s conduct “[j]ejects a reasonable and legitimate strategy under the circumstances and evidence presented, even if unsuccessful, it will not fall to the level of ineffective assistance.”

In People v. Fisher, 18 N.Y.3d 964 (2012), the court found that the defendant’s attorney failed to object when the prosecutor made multiple impassioned remarks. Specifically, Fisher noted that the prosecutor had not made a single objection. People v. Fisher, 18 N.Y.3d 964-965 (2012).

The Court of Appeals noted the objectionable statements during the prosecutor’s closing, including: encouraging inferences of guilt based on facts not in evidence; bolstering its own case; stating the jurors “should not be apprised” of facts which the court had not allowed to be presented; and implying that the jury had the right to consider evidence not presented at trial. People v. Fisher, 18 N.Y.3d 964-966 (2012).

SCBA Announces Automated Membership ID Cards

After an idea came to the SCBA from one of our members regarding the delivery of a membership card by e-mail rather than snail mail, Barry M. Smolowitz, Esq., the SCBA’s Director of Technology ran with the idea and developed a system where our members can now receive their ID card directly from the SCBA website member portal. The newly designed card now includes the member’s photo (if one is on file) as well as incorporating QR code technology. The ID cards went live on October 12, 2012.

Bench Briefs

By Elaine Colavito

Suffolk County Supreme Court

Honorable Paul J. Baisley, Jr.

Motion to vacate default judgment denied; proper remedy was to appeal.

In David J. Felix, M.D. and Claire M. Felix v. Thomas R. Stachecki General Contracting, LLC, Thomas R. Stachecki, Robin A. Blackley, The Corcoran Group, Inc., Law Offces of Kovan & Krausz, Mordkhai Krausz, Agawam Realty, Ltd., Joan B. Minihan and Paul Robinson, Index No.: 31346/10, decided on August 15, 2012, the court denied defendants’ motion for an order pursuant to CPLR §5101 vacating the default judgment granted against the movants on October 25, 2011. In rendering its decision, the court noted that the submissions established that plaitees of a claim for a default judgment was opposed by the moving defendants’ attorney of record. In light of the foregoing, the court found that defendants could not have been aggrieved by the default judgment entered against them, was to appeal rather than move to vacate.

Motion for an order pursuant to CPLR §3126 awarding costs and fees to the defendant for plaintiff’s failure to respond to themotion granted; court has the discretion to impose a sanction of attorney’s fees based upon a party’s failure to appear for a deposition.

In Karen Munu, as Executrix of the Estate of Joseph Sopata, and the Estate of Joseph Sopata v. J.P. Morgan Chase and “John Doe” 1-10 and “Jane Doe” 1-10, Index No.: 42011/08, decided on August 15, 2012 the court granted defendant J.P. Morgan Chase Bank, N.A., et al. J.P. Morgan Chase’s motion for an order pursuant to CPLR §3126 awarding costs and fees resulting from the continued deposition of plaintiff. Karen Munu as Executrix of the Estate of Joseph Sopata to the extent that defendant was awarded costs and fees totaling $731.85. The court noted that the submissions reflected that after numerous adjournments, the deposition of plaintiff Karen Munu was commenced on November 10, 2011 and scheduled for two hours of testimony when plaintiff complained of back pain and announced that she was unable to continue. The continued deposition proceeded on February 8, 2012, however shortly before 9:00 a.m.

The defendant’s attorney was informed that plaintiff was ill and would not be appearing for the deposition. Defendant’s attorney placed a statement on the record noting plaintiff’s default in appearing and reserving the defendant’s right to a continued deposition and to seek costs and expenses incurred in connection with the aborted deposition. In rendering its decision, the court noted that it was well established that the court had the discretion to impose a sanction of attorney’s fees based upon a party’s failure to appear for a deposition. The court held that the defendant was entitled to recover the following costs and expenses: $5010.00 charges by the court reporter for the appearance; legal fees of $534.00 for one attorney to attend the deposition and place the default statement on the record, as well as costs of $47.00 for one attorney. The court found that defendant’s submissions did not, however demonstrate its entitlement to recover for legal fees for “preparing the attorney for the deposition” because it would have been required whether the deposition proceeded on February 8 or on a later date, or for duplicative services performed by two attorneys.

Motion pursuant to CPLR §§5101(1) and 511(a), transferring the venue of the action from Suffolk County to Nassau County granted; it was undisputed that all parties resided in Nassau County and the accident occurred in Nassau County.

In Verena Puri v. Jessica Rae Solomon and Nancy J. Solomon, Index No.: 8245/12, decided on June 15, 2012, the court granted defendants’ motion pursuant to CPLR §§5101(1) and 511(a), transferring the venue of the action from Suffolk County to Nassau County on the basis that the venue selected by the plaintiff was improper. The court noted that the plaintiff commenced the instant action in Supreme Court, Suffolk County on March 15, 2012 to recover damages allegedly sustained in a motor vehicle accident which took place on June 17, 2011. Although the summons identified Suffolk County as the place of trial, it did not specify with whom the accident occurred, thereby the courtroom should be locked for- ever.” Fisher, 18 N.Y.3d at 966-67.

(Continued on page 30)
Is Twitter for You?

By Glenn P. Warmuth

There is little about Twitter that makes it particularly useful to attorneys in general. Twitter isn’t likely to help you market your firm and Twitter is spotty as a source of information about developments in the law. Nevertheless, Twitter is a major force in the world of social media and attorneys should understand what it is, how it works and what it can do.

Twitter defines itself as “an information network made up of 140-character messages called Tweets.” This is an accurate but not very helpful definition. Let’s start with the basics. You can post messages or “tweets” and you can read tweets which have been posted by others. That’s Twitter in a nutshell. There are other things you can do like tweeting pictures and sending private messages but posting short messages and reading short messages is the majority of what you do with Twitter.

In order to use Twitter, users need a Twitter account. The easiest way to get started is to go to www.twitter.com. Creating an account is simple and requires the creation of a username. Each username is unique. Therefore, there can only be one user with the username Glenn_Warmuth that would be me. Choosing a good user name is important as it will be your first introduction to other users. There are many articles online which give tips on picking a good username. On Twitter the “at symbol” or “@” is added to the username to identify it as a username. So if I were to tell you my Twitter username I would say I am @Glenn_Warmuth.

After creating an account, users can “follow” other Twitter users. The effect of following another user is that their future tweets will instantly appear in the follower’s “timeline.” Twitter defines the timeline as “a long stream showing all Tweets from those you have chosen to follow on Twitter.”

There are many ways to find users to follow. The easiest way to start is to use Twitter’s “search” feature which is found at the top of the user’s Twitter homepage. A search for “Bar Association” yields a list of about 20 users including The American Bar Association @ABAesq which has 12,103 followers and The New York State Bar Association @NYSBA which has 2,197 followers. These organization tweet about member benefits, law updates, etc.

Another way of finding users to follow is to read tweets and look for “mentions.” A mention is the use of a user name within a tweet. For example, if I were to tweet: “I am at the debate with @BarackObama and @MittRomney” you could then click @BarackObama or @MittRomney where those usernames appear in my tweet. Twitter then gives you the option to follow them. But beware, following these politicians will subject you to an endless barrage of policy statements and donation requests.

Twitter also recommends people you might like to follow. Some recommendations are paid promotions for products or services such as @brooksrunning, the Twitter account for Brooks Running Shoes. Brooks Running pays Twitter to recommend @brooksrunning to users. Others are unsponsored recommendations such as @DalaiLama, the Twitter account of the Dalai Lama. Twitter recommended @DalaiLama to me based on a complex algorithm which they use to determine who I may be interested in. The Dalai Lama frequently tweets inspirational messages such as “Improvement requires continuous effort” to his 5,194,848 followers.

You should be mindful of the many imposters on Twitter. It can be difficult to determine whether the owner of a Twitter account is genuine because anyone can choose any unregistered username. Twitter’s policy is to revoke an imposter or squatter account only upon the showing of trademark infringement. This is often difficult to show and, as such, many impostor accounts remain active. Twitter has implemented a verification system by which certain users are assigned a check mark located in a blue circle next to their username. The check mark means that Twitter has “verified” that a “legitimate source is authoring the account’s Tweets.” Twitter does not take requests for verification. Instead, it independently identifies which “highly sought users” and “business partners” will be verified. @DalaiLama is a verified account so you can be sure that those tweets are from His Holiness.

Many Twitter users, like me, never tweet. I only use Twitter to follow what other users are tweeting. I have no audience to tweet to on Twitter. I have no followers. If I were to tweet, nobody would receive it. For those who do wish to tweet, there is a box on the user’s Twitter homepage with the words “Compose a New Tweet...” The user types in their tweet and clicks the tweet button. It is that simple.

Users can use Twitter to exchange information and ideas about particular topics by inserting “hashtags” into their tweets. A hashtag is a keyword with the hashtag symbol “#” in front of it. For example, if you search Twitter for #Scotus you will find tweets about the U.S. Supreme Court and if you search Twitter for #medicare you will find tweets about Medicare. Clicking on a hashtag in a tweet will bring up other tweets which contain that hashtag.

Inserting a hashtag into a tweet lets other users know that the tweet is part of a particular discussion and makes it more likely that the tweet will be read by an audience beyond the user’s followers.

Lady Gaga @ladygaga has 29,796,803 followers on Twitter and during the time I wrote this article she gained hundreds of thousands of additional followers as she tweeted photos of herself in her underwear.

Attorneys will find it more difficult to build such a strong following. For attorneys, using Twitter as a marketing tool requires frequently tweeting and commenting on other user’s tweets. This is a lot of work and a heavy investment of time which may be better spent on other types of marketing.

A search on Twitter for “Suffolk County Attorney” yields only three results. In contrast, a Google search for “Suffolk County Attorney” yields 1,290,000 results including websites for most local firms.

Despite my views with respect to the usefulness of Twitter to attorneys I must emphasize the importance of Twitter in general. Twitter has over 500,000,000 users and has changed the way in which the world communicates. Perhaps in time Twitter will become a more useful tool for attorneys.

Note: Glenn P. Warmuth has been working at Stim & Warmuth, P.C. for over 25 years. He is a Director of the Suffolk County Bar Association and an Officer of the Suffolk Academy of Law. He teaches a number of courses at Dowling College including Entertainment & Media Law. He can be contacted at gpw@stim-warmuth.com.
Think Before You “Cease and Desist” Somebody

By Mona Conway

Intellectual property attorneys have at least one standard form in their protective arsenals against infringement: the “cease and desist” letter. For the novice business owner or individual receiving such correspondence, this can be quite worrisome. The reason is that such letters do not tend to merely state, “Knock it off, Buddy.” They threaten litigation (usually of the federal kind) and contain statutory citations, which appear to be cryptically forceful. And they surely are packed with a punch. Many federal intellectual property statutes allow for coveted remedies such as attorney’s fees, costs, treble and punitive damages. Perhaps unlike your run-of-the-mill cease and desist letter, the ones served to prevent intellectual property infringement are to be taken most seriously.

Thanks to the ubiquitous mechanism of transparency which is the Internet, lawyers should be mindful at the outset that their correspondence, this can be quite worrisome. The reason is that such letters do not tend to merely state, “Knock it off, Buddy.” They threaten litigation (usually of the federal kind) and contain statutory citations, which appear to be cryptically forceful. And they surely are packed with a punch. Many federal intellectual property statutes allow for coveted remedies such as attorney’s fees, costs, treble and punitive damages. Perhaps unlike your run-of-the-mill cease and desist letter, the ones served to prevent intellectual property infringement are to be taken most seriously.

Thanks to the ubiquitous mechanism of transparency which is the Internet, lawyers should be mindful at the outset that their cease and desist correspondence may be newsworthy. Recently, Mitt Romney received a cease and desist letter from the creator of the TV show Friday Night Lights in response to Romney’s Facebook photos indicating the tagline: Clear Eyes. Full Hearts. Can’t Lose! Although not written by an attorney, the nature of the letter garnered enough interest to be fully scanned and published on the Web. The letter states: “I was not thrilled when I saw that you plagiarized this expression to support your campaign by using it on posters, your Facebook page and as part of your stump speeches.”

Another letter, written by the attorney for Jack Daniels whiskey, was published on the Web this month, touted as perhaps the nicest cease and desist letter ever written. It offered to pay the costs of replacing the infringing material and thanked the infringer for being such a big fan of Jack Daniels whiskey, evidenced by the blatant rip-off of the bottle’s label style.

Another important consideration for IP counsel is whether the infringement is actually a good thing for the intellectual property holder. What if the infringer’s actions actually resulted in a benefit to the holder of some intellectual property right? Here is a case in point. A couple of years ago, Long Island Newsday created a clever ad for the iPad, which, as luck would have, went “viral” on YouTube. The ad says that Newsday’s iPad app is better than the paper in all kinds of ways, except for one. The video then depicts a man attempting to swat a fly with the device (instead of a newspaper), which, of course, shatters into a million pieces.

The 30-second clip received 600,000 views in just days and was well on its way to receiving even more attention, when the ad was abruptly pulled. Apparently, all that good, free publicity was not worth seeing the iPad smashed to bits. Some call this decision by Apple one of the biggest business blunders of 2010. Yet another consideration is whether the infringement is just too ridiculous to be taken seriously. Can sending a cease and desist letter be bad for business in addition to being a tremendous waste of time and legal fees? Here is a case in point. Not long ago, attorneys for the National Pork Board (NPB) sent a 12-page cease and desist letter to ThinkGeek, Inc. for using the slogan, “Unicorn – the new white meat” on its website, thinkgeek.com. The “infringer” launched the fake product on April Fools Day (as a joke, of course). The NPB owns the mark “The Other White Meat.” ThinkGeek publically apologized, albeit sarcastically, by responding, “It was never our intention to cause a national crisis and misguide American citizens regarding the differences between the pig and the unicorn.” It seems that the April Fools stunt ended up making fools of the NPB when their letter became disclosed to public reaction. News agencies and bloggers have had a field day poking fun at the NPB’s way-too-serious reaction to the parody of their mark.

Finally, the Nestle matter should advise intellectual property attorneys to think carefully before sending out their cease and desist letters, because the backlash of such action could be much worse than the infringement. Greenpeace posted a graphic video on YouTube about how the food conglomerate, Nestle produces palm oil in a way that negatively impacts an endangered orangutan population. This is where the battle began. In response, Nestle had the video pulled for copyright issues. Greenpeace then fired-up its resolve and resources by using Facebook to get its message across to the public. Nestle then made a slew of what it admits to be “rude” remarks to its Facebook “fans,” which resulted in an onslaught of bad press. In the end, Nestle changed its source of palm oil, folding under the pressure of consumer outrage, which would not have been so forceful had it not been for Nestle’s determination to fight for its intellectual property rights.

Note: Mona Conway practices business law and commercial litigation at the firm Conway Business Law Group, P.C. in Huntington. She is also Co-Chair of SCBA’s Commercial and Corporate Law Committee.

Where you say it
Often is as important as what you say

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On the Move...

Michael S. Brady has joined Riverside 1031 LLC, overseeing operations for the 1031 Exchange Qualified Intermediary company. As a Certified Exchange Specialist®, Michael will continue to help clients navigate the treasury regulations governing tax deferred exchanges, and through the company’s affiliate, Riverside Abstract, Michael will also be assisting clients with title insurance matters.

He can be reached at mbrady@rs1031.com, and toll-free (855)526-6430.

Rick Chalifoux has joined First Republic Trust Company as a Managing Director and Senior Trust Officer, with offices located at 1461 Franklin Avenue, Garden City. He has recently been certified as an Accredited Estate Planner [AEP] by the National Association of Estate Planners and Councils (NAEPC), which is a graduate level specialization in estate planning. He can be reached at rchalifoux@firstrepublic.com.

Ettoe Simeone now has his law firm at the Suffolk Law Center, 228 East Main Street, Patchogue.

Jeffrey Mongelli has joined Lamb & Barnosky, LLP as counsel.

Congratulations…

Congratulations to Suffolk Administrative Judge C. Randall Hinrichs and Mrs. Laurie Hinrichs on the birth of their new grandson Nathaniel Charles, born August 19. Nathaniel weighed in at 7 lbs. 11 oz., and is 18-1/2” tall. His mom Alexandra and dad Brian are very proud parents.

To the Honorable Randall T. Eng, upon his appointment as Presiding Justice of Appellate Division, Second Judicial Department by NY Governor Andrew Cuomo on October 1, 2012. Justice Eng is a former prosecutor with appellate and administrative experience who will lead one of the busiest appellate courts in the nation.

To Dawn L. Hargraves, Esq., Attorney and Partner of Hagney, Quatela, Hargraves & Mari, PLLC, who is being honored as a 2011/2012 Professional Woman of the Year in Law by National Association of Professional Women. The prestigious distinction is awarded by the 400,000-strong membership of NAPW who join together to develop innovative business and social relationships.

President Arthur E. Shulman, on behalf of the Officers and Directors wishes to congratulate SCBA staff members Mary Shannon and Tina O’Connor Santiago on their 25th anniversary of service and dedication to our Bar Association. Through their long years of service they have worked with the utmost efficiency and dependability. We are happy and proud to have this opportunity to honor Mary and Tina for their achievements.


Condolences…

To the families of long-time members of the SCBA, Adolph H. Siegel and Sheldon D. Katz.

To C. Donald Shlimbaum and Lark Shlimbaum on the passing of Donald’s father, Charles W. Shlimbaum, we send our deepest sympathy.

To the family of SCBA member Fred Garner, 94, who passed away. Fred joined our Bar Association in 1956 and practiced law in Huntington for 55 years.

New Members…


The SCBA also welcomes its newest student members and wishes them success in their progress toward a career in the Law.

The Suffolk County Bar Association is a member of multiple professional organizations, including the American Bar Association, the New York State Bar Association, the New York County Bar Association, the Suffolk County Bar Association, the National Association of Estate Planners and Councils, and the New York Bar Foundation.

Announcements, Achievements, & Accolades…


District Court Supervising Judge Madeleine Fitzgibbon Retiring

By Len Badia

In 1996 at the State of the World Forum Bella Abzug, the outspoken congresswoman from New York’s nineteenth congressional district famously stated “Women will change the nature of Power; Power will not change the nature of women.”

In 1996 when Congresswoman Abzug made her statement Madeleine Fitzgibbon had already been working as a District Court Judge from Babylon. She had been appointed to that position to replace Judge Dounias in January 1994 and was elected to the position in November of that year. Already identified as a leader who was first hired as a Hearing Examiner in the Family Court’s Part 13 in 1993 Judge Fitzgibbon quickly stood out as a jurist that could manage the challenges of a busy courtroom while never forgetting her role as a public servant. In fact, when asked what she would miss the most when she retires as the Supervising Judge of the District Court of Suffolk County in December, without hesitation and with the smiling glint in her eyes that have calmed countless defendants who stood before her, she remarked “the people.”

Judge Fitzgibbon looked fondly back on those days when she shared a suite with Judge Salvatore Alafia and her Law Secretary Terence Carroll. In her classic unpretentious style she couldn’t help but comment on Attorney Carroll’s skill at legal writing (something that every lawyer should envy). In those days the Cohalan Court Complex was new and she was assigned to Part D 61 where she heard all manner of misdemeanor complaints. After being elected again in 1997 Judge Fitzgibbon was again called upon to expand her role as a judge. She was appointed as an Acting County Court Judge and was assigned to one on the most complex courthouses in the District Court - Part D 35. There she heard felony and misdemeanor cases in an environment that on a daily basis handles a large mix of both incarcerated and at-liberty defendants. The courtroom can be a cacophony of motions and people and is certainly not the realm of choice for the faint-hearted. Judge Fitzgibbon loved it.

She (as Judge Lozito does today) managed her courtroom with clarity and precision. It was not a surprise that in January of 2000 she was appointed as the Supervising Judge of the District Court. In the 12 years that she has served in that capacity Judge Fitzgibbon has indeed changed the “Nature of Power.” During her 12 year tenure the
Piercing the Corporate Veil

Theodore D. Sklar

A Suffolk County case is rapidly becoming one of the leading cases in the State of New York on the question of what a plaintiff must plead to state a claim to pierce the corporate veil and hold the owner of a corporation personally liable for the corporation's acts, acted in bad faith and abused the privilege of doing business in the corporate form; and that the corporation is insufficient to state a claim seeking to hold the owner of the district's construction management company personally liable for an alleged breach of contract. The Court of Appeals affirmed the Appellate Division, Second Department's ruling (66 A.D.3d 122) by holding that mere allegations that a shareholder engaged in improper acts, acted in bad faith and dominated and controlled the corporation are insufficient to state a claim to pierce the corporate veil. To state a claim, the plaintiff must allege factsthat, if proved, indicate that there was also a perversion of the corporate form; much less an allegation of abuse or personal liability as leverage in litigation engaged in acts amounting to an abuse or perversion of the corporate form, much less that the school district was harmed as a result of such acts.” East Hampton Union Free School Dist., 16 N.Y.3d at 776. To state a claim to pierce the corporate veil, a plaintiff must allege that the actual abuse of the corporate form “was a cause of their alleged damages.” Smith v. Delta Int'l. Machinery Corp., 69 A.D.3d 840, 842 (2d Dept. 2010).

Note: Theodore D. Sklar is a partner with Esseks, Heftler & Angel, LLP. He argued East Hampton Union Free School District v. Sandpebble Builders, Inc. on behalf of the construction manager, Sandpebble Builders, Inc., in the Appellate Division and in the Court of Appeals. His legal career encompasses 30 years of experience as a civil litigator in the public and private sectors. Prior to joining Esseks, Heftler & Angel, LLP, Mr. Sklar was the Deputy County Attorney of Suffolk County.

By Ilene Sherwyn Cooper

Attorney Resignations

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

- Nava Bar-Avraham
- Gene Marc Bauer
- Cheryl Kuttenculer Beece
- Henry J. Florence
- Laura Barasch Gitselson
- Rhys W. Hefta
- Michelle R. Holness
- Richard Stever O'Brien
- Christopher Jon Ruckch
- David Edward Wilson
- Barbara M. Wovovitz

Attorney Resignations Granted/Disciplinary Proceeding Pending:

Joseph J. Giordano III: By affidavit, respondent tendered his resignation, indicating that he is the subject of an ongoing investigation by the Grievance Committee involving the failure to zealously advocate for clients in real estate transactions, engaged in conflicts of interest in those transactions, and drew a check on her attorney trust account that was dishonored. Respondent acknowledged her inability to successfully defend herself on the merits against any charges predicated upon her misconduct under investigation. She stated that her resignation was freely and voluntarily rendered, and acknowledged that it was subject to an order directing that she make restitution and reimburse the Lawyers’ Fund for Client Protection. In view of the foregoing, the respondent’s resignation was accepted and she was disbarred from the practice of law in the State of New York.

Leesa Shapiro: By affidavit, respondent tendered her resignation, indicating that she was aware that she is the subject of an ongoing investigation by the Grievance Committee involving the failure to completely dedicate time to her assigned duties. Respondent acknowledged her inability to successfully defend herself on the merits against any charges predicated upon her misconduct under investigation. She stated that her resignation was freely and voluntarily rendered, and acknowledged that it was subject to an order directing that she make restitution and reimburse the Lawyers’ Fund for Client Protection. In view of the foregoing, the respondent’s resignation was accepted and she was disbarred from the practice of law in the State of New York.

By Elliot F. Bloom: By decision and order of the court, the Grievance Committee was authorized to institute a disciplinary proceeding against the respondent and the matter was referred to a Special Referee. The referee sustained all five charges against the respondent, and the Grievance Committee moved to confirm. The respondent opposed the motion and cross-moved to affirm view of the foregoing, the respondent’s resignation was accepted and she was disbarred from the practice of law in the State of New York.

By decision and order of the court, the Grievance Committee was authorized to institute a disciplinary proceeding against the respondent and the matter was referred to a Special Referee. The referee sustained all five charges against the respondent, and the Grievance Committee moved to confirm. The respondent opposed the motion and cross-moved to affirm.

(Continued on page 27)
Business Arbitration a New Handicapping?

By J. Scott Colesanti

President Obama, who, on at least one occasion served as a securities arbitration attorney himself, came to high office pledging a level playing field for consumers. That pledge crystallized, in part, via a provision within the Dodd-Frank Reform Act of 2010, which empowered the Securities and Exchange Commission to “prohibit or impose conditions or limitations” on mandatory arbitration agreements. Such limitations have yet to materialize. Nonetheless, the spirit of such reform may have spread, as the last 12 months of publicly disclosed arbitration decisions provide sufficient warnings to proponents of written agreements compelling arbitration. Specifically, federal courts as of late have reaffirmed or announced new approaches in granting punitive damages, limiting review of panel decisions, and questioning the confidential nature of the proceedings themselves.

A 1953 Supreme Court decision gave rise to the doctrine known as “manifest disregard of the law.” (“MDOL”). MDOL expands the four bases for vacatur found in the Federal Arbitration Act. Over time, such expansion came to be viewed by some circuits as being too disruptive. A 2008 Supreme Court case raised, but did not answer the question of whether MDOL should survive. Ensuing case law acknowledged the open question; aggrieved parties in the Second Circuit thus often attempt use of the doctrine.

In 2009 and 2010, SDNY Judge Jed Rakoff issued colorful decisions attesting to arbitration (with its lax procedural requirements) as a “wondrous alternative to the rule of reason.” Nonetheless, in both cases, corporate appellants failed to unseat arbitral findings. In July 2012, the New York Court of Appeals upheld the latter of these decisions (thus confirming a judgment against a Goldman Sachs affiliate exceeding $20 million). The court took the occasion to restate the MDOL test for the Circuit: 1) The law allegedly disregarded must be “well defined, explicit, and clearly applicable,” and 2) The arbitrator(s) must be said to have known of the “clearly governing legal principle but decided to ignore it or pay no attention to it.” But the court stressed that the standard of review is “exceedingly difficult to satisfy.”

In January 2012, it was disclosed that a FINRA arbitration panel had, a month prior, taken the bold action of awarding punitive damages to a former securities broker. Claiming breach of contract, fraud, and negligent misrepresentation, the former employee was accorded damages of $3.6 million upon a finding that an agent of the employer had “systematically blocked” part of the employee’s business. Commentators, while noting the rarity of punitive damages in FINRA arbitration awards, speculated that the arbitrators’ decision may have been based in part on findings of intentional wrongdoing, or the onset of the 2008 recession (therefore making it difficult for the claimant to pay back the underlying note in favor of his employer). Eight months later, a separate federal court confirmed an award of $5 million in punitive damages in favor of two former brokers. In dismissing arguments that the panel had rendered unfair rulings and exceeded its authority, the U.S. District Court for the Southern District of Florida found allegations of bias “too remote and speculative to warrant vacatur.” The court also found that the panel had “some reasonable basis for the actions it took,” and that the respondent firm had not been denied a fair hearing. Of course, the specter of being unconscionable forever looms above cases stemming from arbitration clauses. A June 2012 decision on an antitrust arbitration reminded that arbitrators may, on occasion, simply do the math to determine that the arbitral forum precludes meaningful recovery for a plaintiff class.

Looming anew is judicial skepticism of strict confiden-

tiality, a staple of arbitration procedure. To wit, a seismic shift in the traditional deference accorded arbitrations may have occurred in September when a federal judge in Pennsylvania ruled unconstitutional the arbitration program linked to the famed Delaware Court of Chancery. Delaware’s statutory arbitration program – like countless arbitration protocols – keeps private pleadings and evidence. The judge nonetheless decried its closed-door nature. Equating the two year old forum to a “non-jury” civil trial before a Chancery Court judge, the jurist ruled that “[t]he First Amendment protects a qualified right of access to criminal and civil trials. Except in limited circumstances, those proceedings cannot be closed to the public.” In thus finding for the Delaware Coalition for Open Government, the court added that “[p]ublic scrutiny discourages perjury and promotes confidence in the integrity of the courts.” The defendants vowed an appeal, declaring that the decision places America at a “competitive disadvantage in providing efficient ways for business to resolve their disputes.”

While the ruling, of course, holds merely that one, relatively new trial alternative must be held to public access standards inherent to conventional trials, it also may portend a larger skepticism. The Chancery program had been openly touted to parties because of its confidentiality. Other similarly marketed, consensual forums may

(Continued on page 24)
Estate Planning for Zombies, Vampires, Werewolves, and Ghosts

By Alison Arden Besunder

Happy Halloween! By day, I help clients deal with not-so-happy life events: death, dying, disability. By night... well, I don’t turn into a vampire, but I often use my few spare moments scouring the Internet for bizarre estate-planning related issues. So, for your ghoulish enjoyment, here’s a wacky look at how to plan for the most mind-boggling of fantasmal situations: If the only certainties in life are death and taxes, how do you deal with those certainties if (as a zombie) you are “undead?”


Simultaneously citing the IRS Code and Weekend at Bernie’s (who would have guessed that both could be cited in a scholarly publication?), Chodorow examines the tax implications of being “undead” and (potentially) returning to the land of the living once succumbing to and recovering from a zombie virus. He notes that some might seek or avoid zombie-hood depending on their estate planning objective:

“If people who become zombies are considered dead for federal estate and income tax purposes, little will have changed. Becoming a zombie will be no different than dying from pneumonia, aside from the part where you eat your friends and loved ones. However, other outcomes are possible. For instance, if someone who becomes a zombie is considered not dead (as opposed to undead) for estate and income tax purposes, neither the estate tax nor the basis reset would be triggered. We would be in a situation similar to the one Congress negotiated as part of the Bush tax cuts, which relaxed the basis reset rates in conjunction with eliminating the estate tax. This could turn out well for those intending to hold onto their property for a long time. Alternately, both the estate tax and basis reset could kick in only when a person’s zombie was dispatched. Were this the rule, people might have incentives to become zombies to delay the application of the estate tax.”

Love it. And here I thought I was the only one entertaining such whack-a-doodle notions. Could this become a not-so-far-fetched future, however, if croy-genes take hold? Consider the nuanced issues raised already by fertility treatments and posthumous children, as well as the depository provisions that (deal with certain (shh) “deposits” as fertilized embryos or even cord blood left in storage centers. How should such property be disposed?

My favorite except is the following:

Count Chocula has clearly made a killing on his cereal and rumor has it that even the Count Who Counts is loaded. While harnessed to the greater good of teaching children to count, it turns out that the Count’s OCD-like fascination with numbers turns out to be typical of vampires. See BARRER supra note 76, at 49 (describing a tradition where people placed bags of grain near a suspected vampire’s grave on the theory that the vampire would be compelled to count all the grains, thus occupying the vampire through the night and precluding other, less beneficial activities). Batman is also well off, owning a mansion, the bat cave, and all the great toys at his disposal. However, all evidence suggests that he is not a vampire, just some guy who likes to dress up in tights and pretend to be bat-like.

And here the voice of Sesame Street’s Count died in 2012. I wonder if he got his full $5.12 million federal estate tax exemption. (Ah ah ah).

Stay tuned next month for some mind-blowing thoughts about the inheritance rights and difficulties planning for posthumous children! Until then - Happy Halloween!

Note: Alison Arden Besunder is the principal of the Law Offices of Alison Arden Besunder P.C. in Manhattan and Brooklyn, where she focuses her practice on trusts and estate planning for individuals and married couples, as well as trust and estate-related litigation such as contested probate and contested accountings in Suffolk, Nassau, Kings, Queens and New York counties. She also handles intellectual property matters including trademark and copyright prosecution and infringement. Alison is also of counsel to Brucken Margolin Besunder LLP in Islandia.

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Antidiscrimination & Harassment in NYS Human Rights Law Not Applicable to Public School Districts

By Candace J. Gomez

In North Syracuse Central School District v. New York State Division of Human Rights, 19 N.Y.3d 481, 973 N.E.2d 162 (June 12, 2012), the issue before the court was whether a public school district is an “education corporation or association” as contemplated by Executive Law § 296(4) (“NYS Human Rights Law”). The Court of Appeals concluded that it is not, and, therefore, the New York State Division of Human Rights (“SDHR”) lacks jurisdiction to investigate complaints against public school districts pursuant to that provision.

This case originates from complaints filed with the SDHR on behalf of public school students, claiming that their respective school districts engaged in an “unlawful discriminatory practice” under the NYS Human Rights Law by permitting their harassment on the basis of race and/or disability.

The court stated that the victimas attacks that the students were subjected to were deplorable, and the court’s holding should not be interpreted as indifference to their plight, since the merits of their underlying discrimination claims were not at issue upon this appeal. Furthermore, the court held that the ruling does not leave public school students without remedy because, in addition, to potential remedies pursuant to federal law, public school students may file complaints with the Commissioner of Education. Additionally, the recently enacted Dignity for All Students Act addresses a myriad of harassment and discrimination issues that arise within a school context and its goals comport with the goals of the NYS Human Rights Law.

In Bryant v. New York State Education Department, 10-4029-CV, 2012 WL 3553361 (2d Cir. Aug. 20, 2012), the U.S. Court of Appeals for the 2nd Circuit upheld a prohibition against the use of “aversive interventions” such as manual and mechanical restraints, food-control programs, and electric skin shocks. This prohibition extends to New York students with disabilities being served in out-of-state schools that permit such practices.

In 2006, the New York State Board of Regents promulgated a regulation prohibiting schools, including out-of-state day or residential schools, from using aversive interventions on New York students. In response to that regulation, a group of parents and legal guardians of children with severe behavioral problems filed suit to challenge this ban. The severe behavioral problems exhibited by these students included aggressive and self-injurious behaviors such as head-banging, yanking out their own teeth, attempting to stab themselves, and assaulting teachers. Plaintiff parents and guardians claimed that they tried a number of other measures to treat and educate their children, but those methods were unsuccessful. In contrast to those unsuccessful

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Don’t Delay, Plead Laches Today!

By Lance Pomerantz

The defense of laches in land title disputes has been looked upon with favor by the Second Department in 2012. Let’s look at these cases and contrast them with the Second Department in 2012. Let’s look at these cases and contrast them with the Second Department in 2012. Let’s look at these cases and contrast them with the Second Department in 2012. Let’s look at these cases and contrast them with the Second Department in 2012. Let’s look at these cases and contrast them with the Second Department in 2012. Let’s look at these cases and contrast them with the Second Department in 2012. Let’s look at these cases and contrast them with the Second Department in 2012. Let’s look at these cases and contrast them with the Second Department in 2012.

In Wills v. Heckett, 93 AD3d 661 (2nd Dep’t., 2012), the borrowers’ fee title was found to be invalid, but the mortgage given by the borrowers remained a valid lien on the property. Beulah owned the property. She made a will leaving the property to her sister, Rovina, subject to a life estate in Beulah’s husband, Carroll. Beulah died in 1993 and, apparently, no proceeding was commenced concerning her estate. Carroll continued to live at the property. In 1999, Carroll deeded the property to his niece and nephew. The deed did not mention Beulah’s interest.

In 2004, Doukas allegedly “wrongfully” manufactured a deed for a shopping center property to his niece and nephew personally liable on the note, as a practical matter it results in a windfall for them at Rovina’s expense. Laches requires both an unreasonable delay and knowledge that the opposing party has detrimentally changed his position. The Surrogate’s Court determined that the will was valid and, therefore, fee title devolved to Rovina. The Surrogate’s Court also held that Rovina was guilty of laches in offering the will for probate, and that the Surrogate’s Court had no jurisdiction to bar someone from asserting a claim against it.”

When Wilds first came down, it was featured in “Constructive Notice” newsletter. At the time, an esteemed member of the New York land title bar had this comment: “Lance, I hope you are not suggesting that laches alone, without regard to the law as to adverse possession, should be a basis for barring someone from asserting fee title.” While I assured counsel back then that I was not suggesting that position, the Second Department has, in fact, just adopted that very position as the law. Stein v. Doukas, et al., 2012 NY Slip Op 06204 (2nd Dep’t., September 19, 2012). In 2004, Doukas allegedly “wrongfully” manufactured a deed for a shopping center property to his niece and nephew personally liable on the note, as a practical matter it results in a windfall for them at Rovina’s expense. Laches requires both an unreasonable delay and knowledge that the opposing party has detrimentally changed his position.

Lachesequitable defense is delayasa bar in a court of equity. "The essential element of this equitable defense is delay prejudicial to the opposing party. "Matter of Barabino, 31 NY2d 76 (1972) (internal citation omitted).

In Wills v Heckett, 93 AD3d 661 (2nd Dep’t., 2012), the borrowers’ fee title was found to be invalid, but the mortgage given by the borrowers remained a valid lien on the property. Beulah owned the property. She made a will leaving the property to her sister, Rovina, subject to a life estate in Beulah’s husband, Carroll. Beulah died in 1993 and, apparently, no proceeding was commenced concerning her estate. Carroll continued to live at the property. In 1999, Carroll deeded the property to his niece and nephew. Carroll died in 2002. The niece and nephew mortgaged the property to Delta Funding in 2003. In 2004, Rovina commenced an action in Supreme Court to quiet title based on Beulah’s will. The action was transferred to Surrogate’s Court for a determination of the probate issues.

The Surrogate’s Court determined that the will was valid and, therefore, fee title devolved to Rovina. The Surrogate’s Court also held that Rovina was guilty of laches in offering the will for probate, and that the Surrogate’s Court had no jurisdiction to bar someone from asserting a claim against it.”

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Reflections on a Family Vacation in Africa

By Scott M. Karson

In last month’s issue of The Suffolk Lawyer, I reported on the 134th Annual Meeting of the American Bar Association in Chicago, Illinois, which I attended as the Suffolk County Bar Association’s delegate from August 2 through 7, 2012. Four days after my return from Chicago, my wife Joleen and I, along with our 11 year old grandson Isaiah, embarked on another trip. This time, the destination was southern Africa; specifically, South Africa, Zimbabwe and Botswana.

After a seemingly interminable 16 hour flight from New York to Johannesburg, followed by another two hour connecting flight, we arrived in Cape Town, a coastal city near the southernmost point on the African continent and the meeting place of the Atlantic and Indian Oceans. Cape Town is a city of great contrasts: we observed clear evidence of poverty in some of the townships we passed on our way from the airport to the city, but the city itself showed signs of significant affluence. Regrettably, it was still winter in the Southern Hemisphere, and the weather in Cape Town reflected that. It was, for the most part, stormy, with rough seas, which prevented us from taking the cable carto Table Mountain, and from taking the ferry to Robben Island, where former South African President Nelson Mandela spent 18 of his 27 years in prison. We did, however, go through customs at the Zimbabwe-Botswana border. The driver inadvertently left the bus door open, and a monkey apparently wandered into the empty bus and helped itself to some food belonging to one of our fellow travelers. We found the monkey sitting on the road outside the bus enjoying a container of yogurt!

We returned home after 16 days, with a crate of souvenirs, thousands of photos and memories that will surely last for a lifetime.

Upon leaving South Africa, we entered Zimbabwe, the home of one of the world’s great natural wonders, Victoria Falls. As I marveled at the beauty and power of the cascading waters, I thought of the immortal words of Henry Stanley who, in 1871, upon finally locating David Livingstone, the first European to view the falls, uttered, “Dr. Livingstone, I presume?”

In addition to the majestic falls, and a cruise on the crocodile-filled Zambezi River, we took an excursion to Chobe National Park in Botswana, where wildlife abounded both around and in the Chobe River; in every direction, we saw literally thousands of animals, including great herds of elephants, buffalo, giraffes, antelopes and hippos.

One of the most memorable moments of our trip occurred when we left our bus to go through customs at the Zimbabwe-Botswana border. The driver inadvertently left the bus door open, and a monkey apparently wandered into the empty bus and helped itself to some food belonging to one of our fellow travelers. We found the monkey sitting on the road outside the bus enjoying a container of yogurt!

We returned home after 16 days, with a crate of souvenirs, thousands of photos and memories that will surely last for a lifetime.

Note: Scott M. Karson is a partner at Lamb & Barnosky, LLP. He is a former President of the SCBA (2004-05) and currently serves as a member of the NYSBA House of Delegates and the ABA House of Delegates. He is also Vice-Chair of the Board of Directors of Nassau Suffolk Law Services Committee, Inc.
Governor Andrew Cuomo announced in a press release on September 25, 2012 the completion of an ongoing review of Department of Motor Vehicles Rules and Regulations regarding the relicensing of drivers convicted of multiple alcohol offenses.

The Department of Motor Vehicles had frozen all applications for relicensing for anyone convicted of three or more alcohol or drug-related driving offense. The regulations implemented as of Sept. 28, 2012 require a lifetime review of a driving record by the Department of Motor Vehicles of all drivers seeking to have a license or privilege reinstated after a revocation. It is not clear from the press release whether it applies to clients revoked for any reason or simply, repeated alcohol related convictions.

The sum and substance is that five or more alcohol related drug convictions in a lifetime will result in a permanent license revocation. Three or more alcohol or drug related convictions in the last 25 years plus at least one other serious driving offense in this period will result in a permanent license revocation.

A serious driving offense is defined as a fatal crash, a driving related penal law conviction, 20 or more points assessed for driving for the past 25 years with two or more convictions each with five points or higher. These are very low thresholds to meet.

A client must therefore be advised that they are in jeopardy of permanent license or privilege revocation in the State of New York if they have three or more alcohol or drug related driving convictions.

The press release does not mention if there will be regulations implemented regarding whether chemical test refusal §1194 will also count toward the classification of the driver for a permanent license revocation. The regulations once promulgated would most likely be found in 15NYCRR Part §136. I will include the exact citations for the regulations when available.

The press release can be found at: http://www.governor.ny.gov/press/09252012driveregulations

This is sure to be a hot topic of discussion along with the coming changes at Suffolk TVB at the annual Vehicle and Traffic Law update on November 7, 2012 at 5 pm for the East End and November 14, 2012 at 5:30 pm at the SCBA.

Note: David Mansfield practices in Islandia and is a frequent contributor to this publication.
Pro Bono Attorney of the Month - Raymond Lang

By Maria Dosso

This month Nassau Suffolk Law Services honors Raymond Lang as Pro Bono Attorney of the Month for his hours of dedicated service to the Pro Bono Foreclosure Settlement Project.

Mr. Lang is a native Long Islander, graduate of Fordham University and then received his law degree from New York Law School in 1984. During his career, Mr. Lang often found himself balancing his family life and formal education while working in New York City, first in the computer field, then in the banking industry on Wall Street where he practiced securities law and later managed several investment firms and businesses. These experiences and skills have proven especially valuable in his current legal practice.

For Mr. Lang it has always been about networking and forging new connections. These connections have been crucial in focusing on saving homes and creating jobs. In addition to his work in foreclosure defense and loan modifications, he serves as General Counsel for Americans own at least one internet and retail businesses, who rely on his experience as a CEO, corporate counsel, and investment banker for advice on corporate governance, business development, finance and management. Mr. Lang utilizes a cadre of outside resources and experts to provide a holistic and team oriented service to his clients.

He prides his approach as being not transactional, but relationship-oriented. “I care about my clients and seek to be their family lawyer, general counsel. Anyone I introduce to a client must be good hearted,” Lang says.

Raymond Lang’s work with Pro Bono started with a particular interest in the economic crisis, analyzing the problem and possible solutions in dealing with the huge rise in mortgage foreclosures and unemployment. He founded Economic Recovery Advisors LLC to advise governmental agencies and business enterprises to meet the challenges faced by the economic downturn. Through this firm, he has advised on foreclosure legislation at the national and state levels. He has written “white papers” on the subject and his experience in mortgage foreclosure continued to grow through his advocacy in his law practice.

His familiarity with the banking industry, how banks are structured and how they think, as well as his extensive knowledge of mortgage backed securities, have been valuable assets in his foreclosure defense practice.

He soon became involved with the Suffolk County Bar Association as a way to better network and get a grassroots perspective. After attending a foreclosure seminar sponsored by the Empire Justice Center, he was inspired to participate in the SCBA’s Pro Bono Foreclosure Settlement Project spearheaded by Barry Smolowitz. The Project, especially the local administration by Nassau Suffolk Law Services, is based on a web-based software program initiated by Smolowitz, where pro bono attorneys who are interested in volunteering for the foreclosure settlement conferences, can assign themselves to a matter for a single appearance or multiple appearances, at their choosing. Lang has been a CLE presenter and loyal volunteer with the Project for several years devoting thousands of hours and seeing hundreds of clients.

Not only including his achievements on Wall Street and as an entrepreneur, Raymond believes that the most rewarding work of his career has centered around his participation with the local administration by Nassau Suffolk Law Services, is based on a web-based software program initiated by Smolowitz, where pro bono attorneys who are interested in volunteering for the foreclosure settlement conferences, can assign themselves to a matter for a single appearance or multiple appearances, at their choosing. Lang has been a CLE presenter and loyal volunteer with the Project for several years devoting thousands of hours and seeing hundreds of clients.

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In addition to his legal work, Mr. Lang shared two recent examples of how he was able to make a difference through his pro bono efforts. A senior citizen whose house was in foreclosure had denuded him of his house, and he had been too ashamed to ask neighbors to help. Lang told him that he had been misinformed and that the house was going to happen. He advised the client to unite with his family and pursue a short sale instead. The client left in tears of gratitude and relief.

Mr. Lang’s personal life is also quite full. His family is very important to him and he is very proud of his wife, daughter, two sons and grandson. He is active in sports, coached CYO and has been a religious education instructor for over 30 years.

Mr. Lang’s philosophy is that if you give, you receive. He believes that helping change a life is rewarding. Bringing faith, hope and positive energy to people through service in his law practice has become his ministry. We are very fortunate and inspired to know that given a general pro bono attorney working with the Foreclosure Settlement Project. Our congratulations go to Raymond Lang for this much deserved award.

Note: Maria Dosso, Esq. is the Director of Communications and Volunteer Services at Nassau Suffolk Law Services. She has worked at Law Services for over 25 years, first practicing in the areas of disability, consumer debt, public benefits and housing law. Currently she manages the Legal Support Center for Advocates, a community education and advocates’ consultation service, and coordinates the agency’s public relations initiatives and pro bono/volunteer projects.

A Dog By Any Other Breed

Why breed specific laws are no doggone good

By Amy L. Chaitoff

For thousands of years humans have shared their homes and lives with the family dog. Historically, there has been no other animal that has been more endeared to the hearts of humans than the dog. According to recent polls by the Human Society of the United States more than 78 percent of Americans own at least one dog. In fact, no other animal has been more devoted to be loyal to and protect its master’s property and life from harm. Dogs have a unique relationship with their human companion, than the family dog. Many of us grew up watching Lassie and Benji and stained the pages of Old Yeller and Where the Red Fern Grows with childhood tears. We cry because we understand that almost instinctual bond that the majority of us have with dogs. Many of us grieve as much for our pets as we do our human family members, some more. Perhaps that is why it is so disturbing when the public reads a story in the media of a dog attacking a human, and that attack possibly ending in a fatality. Typically when such a tragic but rare event occurs, the media frenzy has a tremendous effect on the public more than the community where the incident occurred. Many times this intense reaction is followed by a need to define some dog, something, and a public outcry to prevent the incident from ever happening again. In the old days it was getting a mob together with that of their dogs and hand to round up the guilty party and dispense justice. Today’s favored method, although more civil, is just as mindless and mob mentality based - the use of legislation, or more specifically “breed specific legislation” or (“BSL”).

Breed specific legislation is legislation that targets and places restrictions and conditions on the owning or keeping of a specific breed of dog or just plain outright bans on a specific breed of dog. Many times, the breeds that typically fall victim to these breed discriminatory laws are the breeds commonly referred to as the bully breeds and usually include, but are not limited to, the American Staffordshire Terriers or (commonly referred to as Pit Bulls), American Bulldogs, Rottweilers, Dobermans, Mastiffs, and any thing that remotely looks like it has any mix or characteristics of any of these breeds.

Fortunately, New York is among the states that make it illegal for municipality’s to pass breed specific laws under Agriculture and Markets Law Article 7, Section 107 (5) which states: § 107. Application. . . .

5. Nothing contained in this article shall prevent a municipality from adopting its own program for the control of dangerous dogs; provided, however, that no such program shall be less stringent than this article, and no such program shall regulate such dogs in a manner that is specific as to breed. [Emphasis Added]

For well over 100 years the law of the State of New York regarding injuries/damages caused by a domestic animal has been that of strict liability, provided the owner knew or should have known of the animal’s vicious propensities. Collier v. Zambito, 1 N.Y.3d 444, 807 N.E.2d 254 (2004). See also, (Bard v. Jahnke, 6 N.Y.3d 902, 905, 848 N.E.2d 463 (2006)). Mr. Lang often found himself focusing on saving homes and creating jobs. In addition to his work in foreclosure defense and loan modifications, he serves as General Counsel for Americans own at least one internet and retail businesses, who rely on his experience as a CEO, corporate counsel, and investment banker for advice on corporate governance, business development, finance and management. Mr. Lang utilizes a cadre of outside resources and experts to provide a holistic and team oriented service to his clients.

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Author’s Night at the SCBA - DISROBED
Annual Lawyer Assistance Foundation Golf Outing

Founded in 1991 by a handful of lawyers including Judge Ira P. Block, its mission is to provide relief, aid and assistance to all members and former members of the Suffolk County Bar Association and other members of the legal profession who reside in Suffolk County. About five years ago, the golf outing was named in Judge Block’s memory.

Murphy Receives Rare Military Honor

A 510-foot Navy destroyer was recently christened the USS Michael Murphy in honor of Lt. Michael P. Murphy, son of SCBA member Dan Murphy. Lt. Murphy was a Navy SEAL killed in Afghanistan and posthumously awarded the Medal of Honor.
By Dennis R. Chase

Take a load off, Annie, Take a load for free, Take a load off, Annie, And (and) (and) you put the load right on me, (You put the load right on me.)

Sometimes, you see what appears to be a very clear path and are fairly certain of the direction in which you are headed... then you decide to try to experience divine intervention and realize true inspiration. While the course change may be uncharted, there are no regrets.

This review was scheduled to chronicle attendance at the opening night of the New York Philharmonic at Avery Fisher Hall in Lincoln Center... and, more importantly, meeting Itzhak Perlman in the green room following his performance. Then, a friend mentioned this tribute show taking place two days later at the Izod Center in Jersey for Levon Helm. Mark Levon “Levon” Helm (May 26, 1942 – October 19, 2012) was an American rock music band member, singer, songwriter, and actor who achieved fame as the lead vocalist and frequent lead and backing vocalist for The Band. Helm suc- cumbed to throat cancer in April of this year.

“This is one of the great pleasures of my life” were the immortal words first uttered by Neil Young just prior to his performance. In a mag- nificent tribute to an unbelievably amazing and talented performer, these words were echoed by Grace Potter, 36 years later, in a show where the primal role was played by classic Dylan tunes, I Shall Be Released. Larry Campbell, a singer and multi-instrumentalist serving as the show’s unofficial master of ceremonies, was clearly moved by her per- formance just barely managing to choke out, “how about that?”

Potter highlighted a show featur- ing rock ‘n’ roll luminaries from rock, blues, soul and country like Chuck Garth Hudson of The Band, Roger Waters, My Morning Jacket, John Prine, Jorma Kaukonen, Marc John Jakob Dylan, Dave Bromberg, and Mark Gordon. All performed with the house band, the Levon Helm Band, renamed the Midnight Rambles Band and led by Campbell. The concert, eventually to be released as a DVD, money raised to help music going at Mr. Helm’s barn in Woodstock, N.Y. The band is recording a studio album, and, since 2005, the band has played the Midnight Rambles, a concert series where the Levon Helm Band has been joined, through the years, by most of the original members, including Helm.

Original band member, Robbie Robertson, who had been feuding with Helm, reconciled with Helm prior to Helm’s death; however, Robertson’s band, still composed of many of Robertson’s music, was still full with swing. Although worn and weary and required assistance getting on and off the stage, 75 year old keyboardist, Garth Hudson, the other surviving member of The Band, still managed to quite enthusiastically join his fellow performers for many of the times Robertson wrote. Haynes, best known for his work as a long time guitarist with The Allman Brothers Band and as founder of the The Gov’t. Notable, opening the evening with an especially stirring rendition of one of The Band’s live staples, The Shape I’m In. Gregory Allman joined Hayna for a bluesy, organ heavy, moving version of one of The Band’s covers, Long Black Veil.

Iris McClay, from The Star Herald may have said it best, Helm stood for many things: authenticity, dignity, respect for history, dedication to musical craft and an old-fashioned Southern gentility that did not always seem to fit the buzzing arenas of professional rock ‘n roll. His work with the Band helped redefine the relationship between musicianship and a cultural performance. One of the first notable singing drum- mers, was both and his austere great and powerful music served as the perfect storytelling. Many of the younger artists at the benefit played their Band covers with reverence and remarkable fidelity to the source material. Louisville roots-rockers My Morning Jacket tackled ‘Ophelia’ and “It Makes No Difference” with all the tones, cadences and inflections taken straight from the versions in the Band’s “Last Waltz.”

Country music superstar, Eric Church, CMA’s 2011 winner for Top New Solo Vocalist and 2007 winner of Artist of the Year, nominated the tributes in 2012 including Main Vocalist of the Year: Single of the Year – Springsteen Album of the Year – Chief; Song of the Year – Springsteen; and Title Track of the Year – Springsteen; ripped through spirited versions of Band deep cuts, A Train Robbers, and Get Up John. More sentimentally, Church spoke of his experience play- ing a Ramble, closing with the pervasive theme throughout the evening, “I’ve been told that I march to the beat of a different drummer, and I do... Levon Helm.”

The Band singer and drummer’s daughter received some of the biggest applause of the night, according to the Paste Magazine Journal. Amy Helm helped deliver two songs, including ‘Wide River to Cross’ with Roger Waters of Pink Floyd. Waters also performed ‘The Night They Drove Old Dixie Down’ with My Morning Jacket. Late he told the story of his favorite red hat.

The culmination of the evening, after near- ly three and a half hours of great music, was an eight and a half minute version of Robertson’s The Weight, a song listed as number one on Rolling Stone’s 500 Greatest Songs of All Time. The set was packed with big with over 55 performers each having something special to offer... each alone and together expressing their love for Levon.

Note: Dennis R. Chase is the current President-Elect of the Suffolk County Bar Association and the current President of the St. John’s University School of Law Alumni Association-Suffolk County Chapter. Mr. Chase is the managing partner of 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, Employer Services, and Retirement Disability Pensions.

“Love For Levon: A Tribute to Levon Helm”

By Andrew M. Lieb

If you litigate foreclosures pay atten- tion. Transactional attorneys take notice. Whether you are a generalist or focus your practice in debt relief it is your job to know that an act with great implication to our region is expiring. While many have commented that they have it on good authority that the Act will be extended and logic dictates that it should, your is a realist and believes that until something happens, nothing has happened. So let’s discuss what is without a doubt one of the Bush era’s most logical legislative accomplish- ments and the implications of its expiration.

Cancellation of debt income is reported on IRS Form 1099-C by the creditor for each debtor for whom the creditor can- celed $600 or more of a debt owed. The relevant IRS publication on this topic is Publication 4681, entitled “Canceled Debts, Pardons, Forfeitures, and Abandonments.” Therein, Canceled Debts are explained as follows: “If a debt for which you are personally liable is canceled or forgiven, then other than as a gift or bequest, you must report the canceled amount in your income.” Therefore, pur- suant to Publication 4681, a mortgage modification that involves a principal reduction will result in income owed the debtor. Likewise, a short sale that includes principal forgiveness will result in income tax to the debtor. Additionally, a deed- in-lieu of foreclosure will result in income tax to the debtor where any underwater sums are released on the property note.

However, The Mortgage Forgiveness Debt Relief Act of 2007 avoided this income tax outcome for many homeowners in our county and throughout the United States. According to the IRS, the Act “allows taxpayers to exclude income from the sale of their primary residence.” To obtain this relief, the taxpayer was required to file Form 982 and attach it to their federal income tax return. Pursuant to Form 982, a principal resi- dence is defined as follows: “your main home, which is the home where you or- derarily live most of the time. You can have one or more residences.”

Moreover, the form caps the exclusion from taxable income as follows: “This indebtedness is a mortgage you took out to buy, build, or substantially improve your main home. It also must be secured by your main home. If the amount of your original mortgage is more than the cost of your main home plus the cost of any substantial improve- ment, only the debt that is not more than the cost of your main home plus improvements is qualified as principal residence indebtedness. Any debt secured by your main home that you use to refinance qualified principal residence indebtedness is treat- ed as qualified principal residence indebtedness, but only up to the amount of the old mort- gage principal just before the refinancing. Any additional debt you incurred to substantially improve your main home is also treated as qualified principal residence indebtedness. Lastly, the ‘maximum amount you can treat as qualified principal residence indebtedness is $2 million.”

During the previous five years it has become commonly understood among all real estate industry professionals that short sales of owner-occupied residences are excluded from income tax. Real estate brokers and salespersons preach this gospel when making their short sale listing presenta- tions. Any firm that supports this understand- ing when engaging in negotiations and/or closing a short sale transaction. In fact, accountants ratify this understanding when preparing tax returns. Our message must be changed.

As attorneys we are charged with the duty to advise clients and the public with an understanding of the laws that will impact their lives. Hopefully, The Mortgage Forgiveness Debt Relief Act of 2007 will be extended. Yet, it’s imperative for practitioners to begin advising clients and ancillary real estate service providers with whom we work that this act is set to expire and that they must make informed strategic decisions under this light. While the Act existed, a short sale offered credit score and esteem advantages over bank- ruptcy coupled with the fact that the debtor in a short sale would not be pre- cluded from filing for bankruptcy for eight years. Yet, with the Act expiring it is submitted that a discharge of a Mortgage Note pursuant to a Chapter 7 Bankruptcy is the best practice as opposed to obtaining debt forgiveness in a short sale. Our advice to clients should mirror this understanding as obtaining debt forgiveness in a short sale will cost the homeowner thousands of dollars in taxes should the Act not be extended.

Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Center Moriches and Manorhat. Mr. Lieb serves as Co-Chair to the Real Property Committee of the Suffolk Bar Association and served as this year’s Special Section Editor for Real Property in The Suffolk Lawyer.

REAL ESTATE

The Mortgage Forgiveness Debt Relief Act of 2007 Expires December 31, 2012

By Andrew M. Lieb

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Suspended Bankruptcy Attorney and Paralegal Punished
Pair flouted bankruptcy petition preparer statute

By Craig D. Robins

Non-attorney bankruptcy petition preparers can get into a heap of trouble if they do not accurately follow certain Bankruptcy Code provisions designed to protect consumer debtors. This was evident in a case just decided by Judge Carla E. Craig, the Chief Bankruptcy Judge of the Eastern District of New York, sitting in the Brooklyn Bankruptcy Court.

To make matters more interesting, the case also involves disgraced attorney, Peter J. Mollo, who was the subject of my column in May 2012. Despite having been suspended from practicing law earlier this year, Mollo continued to represent clients and tried to get away with it by forging another attorney’s name on several bankruptcy petitions which he then filed. Judge Craig sanctioned him in a decision dated March 22, 2012. In re: Clyde Flowers, (01-12-40298-ecce Bankr. E.D.N.Y.)

It seems that Mollo didn’t learn his lesson and immediately embarked upon a new scheme to circumvent his suspension by having his paralegal, Anna Pevzner, continue to meet with debtors and prepare petitions. When the Office of the United States Trustee learned about this conduct in four separate Chapter 7 consumer cases, it quickly brought proceedings against both of them seeking sanctions and disgorgement of fees.

After several evidentiary hearings, Judge Craig issued a 31-page decision on September 28, 2012, in which she severely sanctioned the pair, and in doing so, discussed the various statutory requirements that bankruptcy petition preparers must adhere to. In re Edith L. Mass et. al, (12-41111-ecce, Bankr. E.D.N.Y.).

A bankruptcy petition preparer (BPP) is essentially a non-attorney who prepares bankruptcy petition legal forms. Congress was so concerned about vulnerable debtors who had been victimized by non-attorney petition preparers who rendered bad legal advice and charged unreasonable fees that in 1994 it implemented Bankruptcy Code section 110 which is devoted to regulating their services.

That section defines a BPP as a person

other than an attorney or an employee of an attorney, who prepares a bankruptcy court document for a fee.

Since BPPs are non-attorneys, they are not permitted to give legal advice and may only type documents and charge a reasonable fee for doing so. That means that they cannot assist with determining what assets are exempt or what exemptions statutes to use, nor can they suggest what chapter to file. They cannot offer advice as to whether a debt is dischargeable or whether a car loan should be reaffirmed.

In addition, BPPs may not collect, receive, or handle court filing fees in connection with a bankruptcy case. That means that BPPs cannot file petitions with the bankruptcy court. BPPs may not use the word “legal” or any similar term in any

(Continued on page 30)

TRUSTS AND ESTATES UPDATE

By Ilene Sherwyn Cooper

Revocation of letters due to Status as creditor denied

In a proceeding for revocation of letters of co-trusteeship issued to the decedent’s son, the petitioner, the decedent’s spouse, moved for summary judgment.

The trust at issue was created pursuant to the terms of the decedent’s will for the benefit of his wife during her lifetime, and upon her death, his three children. Upon admission of the will to probate, letters of trusteeship issued to the petitioner and the decedent’s children, who were the nominated trustees there under. The assets of the trust allegedly consisted, in part, of shares of stock of two corporations, of which the decedent’s son was also a shareholder.

These corporations were the subject of two other related proceedings commenced by the petitioner; one for discovery pursuant to SCPA 2103, and the second for judicial dissolution of the entities.

In opposition to the petition for his removal, the decedent’s son asserted eight counterclaims against the decedent’s estate based upon breach of contract and unjust enrichment. In support of her motion for summary relief, the petitioner argued that by alleging these counterclaims, the respondent placed himself in a conflict of interest with the estate that required his disqualification as trustee as a matter of law.

The court opined that a conflict of interest in itself did not warrant removal of a fiduciary. Indeed, given the great deference accorded to the testator’s selection of a fiduciary, only a finding of actual misconduct, as specified by the provisions of SCPA 707, would justify the removal of a fiduciary or a refusal to issue a fiduciary letters.

Within this context, the court found that the petitioner had failed to establish a basis for summary relief. Specifically, the court held that the mere fact that the decedent’s son had asserted claims against the estate and was thereby an estate creditor did not constitute grounds for his removal as a matter of law.

In fact, the court noted that the provisions of SCPA 1805 were designed to enable a fiduciary with a claim against an estate to serve by requiring that court approval be obtained for payment of such claim.

Further, the court opined that the counterclaims asserted by the decedent’s son did not create a de facto conflict of interest with the trust since they were asserted against the estate. To this extent, the court found it significant that the decedent’s son was not a fiduciary of the estate, and thus, was not in a position where he would be forced to make decisions regarding litigation strategy as a fiduciary of the estate that would conflict with the prosecution of his claims. The court held the petitioner’s claims that the subject trust was impacted by these claims conclusory and belied by the record, which revealed that the trust had already been funded. As in the case of the estate, the court concluded that even if the claims of the decedent’s son were against assets purportedly owned in part by the trust, it was not sufficient to warrant his removal as trustee on the basis of a conflict of interest. Accordingly, summary judgment was denied.

In re Estate of Hersh, NYLJ, June 18, 2012, at 26 (Sur. Ct. Queens County).

Wrongful Death Compromise Order held jurisdictionally defective

In a proceeding for the allocation and distribution of the proceeds of a wrongful death action, the Surrogate’s Court, Queens County, in re Stokes, scheduled a hearing on the grounds that the order of compromise issued by the Supreme Court, purportedly pursuant to EPTL 5-4.6, was not in compliance with the statute.

The court noted that the Supreme Court order allowed the payment of attorney’s fees and disbursements without requiring that those funds remain in an interest-bearing escrow account pending the filing of a petition for allocation and distribution.

Additionally, the court found that one of the distributives of the decedent was a person under a disability for whom a guardian ad litem should have been appointed. Further, the court determined that in the application before the Supreme Court, the petitioner had not served all the necessary parties interested in the decedent’s estate.

The court opined that the foregoing problems and issues raised by the Supreme Court proceedings were not isolated incidents within the context of wrongful death

promises. Indeed, the court indicated that there appeared to be a consistent misunderstanding of the provisions of EPTL 5-4.6, as evidenced by compromise orders that are facially and procedurally non-compliant with the statute. To this extent, while the court recognized the significant efforts of trial counsel in bringing a wrongful death action to fruition, it also found that the safe-guards and procedural prerequisites of the statute were to be strictly adhered to by practitioners seeking relief in the Supreme Court. In like manner, it is the duty of the Surrogate’s Court to insure compliance with the statute, especially when a person under disability was interested in the proceeding. Based on the foregoing, specifically, the jurisdictional deficiencies of the Supreme Court action, the fact that a guardian ad litem had not been appointed prior to entry of the Supreme Court order, and that counsel in the Supreme Court had appeared in the Surrogate’s Court as counsel for the fiduciary, the court directed that counsel return all attorney’s fees previously paid and to deposit same in escrow, and that the petitioner amend her petition and accounting to include all necessary parties.


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 Chair of the New York State Bar Association Trusts and Estates Law Section, and a member of the Board of Directors and a past-president of the Suffolk County Bar Association.
He Wanted His Day in Court!

By Edwin Miller

This is a true story. The names of the three judges have been withheld out of respect.

The Accident

The plaintiff was a union carpenter. His car was hit in the rear on Sunrise Highway near Patchogue on June 30, 1973. He injured his neck and lower back and claimed that he could no longer work as a carpenter. A federal ordinance made it impossible to file a claim prior to the enactment of the No-Fault Law in 1974 so there was no "threshold" problem. His doctor confirmed his injuries and disturbances in a report prepared a few years later. He was able to perform light carpentry work. Because of the great calendar delay which existed in Suffolk County this case was not tried until 1979.

The Insurance Coverage

The other driver had a $20,000 liability policy. The insurance company thought the plaintiff was a malingerer and only offered $3,000. Even if the jury gave us a verdict, there would be no interest on the verdict for the six years it took to get to trial. This was a boon for the insurance companies. That is where the matter stood until shortly before trial.

The History of Plaintiffs

The plaintiffs were from England. He was in the British Army and after his discharge they migrated and had children. They then immigrated to the United States. They were from a very poor section of East London. The family found themselves reduced to the condemned, demolished, and was now a parking lot. They were like a couple from "Upstairs/Downstairs." The wife wore white gloves and a little hat with a flower.

The Final Conference

Shortly before trial, there was a final attempt by a judge for a mediator wanted his day in court. The case was tried, and all of the witnesses testified, including the plaintiff’s doctor. His wife also testified, with her white gloves, as to loss of services. The jury’s verdict was $55,000, $50,000 to plaintiff and $5,000 to his wife. The plaintiffs were ecstatic! I told them not to get too excited since they would only collect the $20,000. A judgment was then entered, the carrier paid the $20,000, and a partial satisfaction of the judgment was given.

Epilogue

A week or so after we gave the plaintiff a copy of the $55,000 judgment, I received a call from a local collection lawyer whom I knew well. He was all excited about collecting the excess $35,000. I asked him if his "new" client had told him about the impending bankruptcy filing. Of course, he had not. I quickly called the bankruptcy notice came in the mail. The collection lawyer then called me to tell me he wasn’t going to waste any more time on this matter. The plaintiff was technically within his rights to insist on "his day in court," but to what end?

At another time, and in another place, another English had written, "What fools these mortals be!"

Note: Edwin Miller has been practicing law in Suffolk County for more than 50 years. He is a partner in the firm of Campbell & Miller, Esqs. at 94 Maple Avenue, Smithtown, New York. He has a general practice with an emphasis on litigation.
Standing of “Potential Heirs” to Sue for Their Parents’ Assets

By Robert M. Harper

Oftentimes estate litigation arises when parents favor one or more of their children over others in their estate plans. Fortunately, at least for the parents, they do not have to deal with the issues involved in the litigation, as they are deceased by the time that it arises. As the Second Department’s decision in Sharrow v. Sheridan demonstrates, however, disfavored children do not always wait for their parents to pass before commencing litigation concerning the parents’ assets. Indeed, some disfavored children have gone so far as to sue their parents and siblings as “potential heirs” of the parents’ estates. This article explains why such a strategy will prove unsuccessful.

In Sharrow, the plaintiff commenced an action against his mother and his sister, seeking to impose a constructive trust on certain assets that the mother transferred to the sister. The plaintiff alleged that a constructive trust was warranted because the sister exercised duress and undue influence on the ailing mother in pressuring her to transfer the assets to her. When the deposed mother and sister moved to dismiss the plaintiff’s complaint, the plaintiff asserted that he had standing to seek a constructive trust over the assets formerly belonging to his mother as a “potential heir” of her estate.

The Supreme Court granted the defendant’s motions to dismiss and the Appellate Division affirmed. In affirming, the Second Department found that the plaintiff lacked standing to seek to impose a constructive trust on the assets that his mother transferred to his sister. As the court explained, for as long as she was alive, the mother had “the absolute right to change her intentions regarding the distribution of her assets.” Accordingly, the court concluded that the plaintiff’s interest as a “potential heir” of his mother’s estate was a “paternalistic, speculative interest” that did not vest him with standing to prosecute a constructive trust claim concerning his mother’s former assets.

Of course, Sharrow is not the only case in which a child sought to void an inter vivos transfer made by a parent as a potential heir of the parent’s estate. In Schneider v. David, the plaintiff commenced an action to impose a constructive trust on real property that her mother transferred to her brother. Among other things, the plaintiff alleged that her brother had fraudulently induced their elderly mother to convey the property to him by telling the mother that the deed she signed only permitted him to manage the property while she was out-of-state. The defendant moved to dismiss, arguing – with his mother’s support – that the plaintiff lacked standing to seek a constructive trust.

Although the Supreme Court denied the defendant’s motion, the First Department reversed. The Appellate Division reasoned that the plaintiff was not a party to her mother’s conveyance of the property and could not void it simply because she considered herself to be an heir of her living mother’s estate. In short, the plaintiff’s self-serving description of herself as a potential heir of her mother’s estate did not clothe her with standing to sue or exercise rights on her mother’s behalf.

There are several lessons to take away from Sharrow and Schneider, the most obvious of which is for children to respect the wishes of their parents as those wishes relate to the parents’ assets during life. Putting the obvious aside, however, disfavored children and their attorneys should take note of the well-recognized legal principle that, as “potential heirs” of their parents’ estates, they lack standing to take legal action concerning their parents’ assets. During their lives, the assets belong to the parents and are subject to the parents’ absolute right to dispose of their property as they wish.

Note: Robert M. Harper is an associate at Farrell Fritz, P.C., concentrating in trusts and estates litigation. In addition to his work at Farrell Fritz, Mr. Harper is a Special Professor of Law at the Maurice A. Deane School of Law, an officer of the Suffolk Academy of Law, and a member of the New York State Bar Association’s House of Delegates.


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Track was Prologue

By William E. McSweeney and Ryan Bergen

“Survival,” it is said, “is often accidental, sometimes it is engineered by creatures or forces that we have no conception of, always it is temporary.” —Wallace Stegner, “Crossing To Safety”

In Seatbiscuit: An American Legend, Laura Hillenbrand celebrated a fleet-footed Olympian. Jesse Owens was likely impressed by a white-haired talking head—a man animated, enthusiastic, youthful, white hair notwithstanding—who informed him that his brilliant performance in Berlin in 1936. That witness to Owens’s performance was Louise Zamperini, who had himself been a teammate of Owens on their Los Angeles Track Team, and, though he couldn’t get to stand victorious on the tripartite podium, had spun his final lap in the 3000-meter event in an astonishing 56 seconds. His finishing kick so strong, he remarked at that time, “so remarkable that his performer was brought to The Fuhrer’s box. ‘Ah,’ said Hitler, ‘you’re the boy with the flying feet.’”

Yet, for Zamperini, his speed of foot as a 19-year-old Olympian would serve merely as prologue to his service in the United States Navy during World War II. His Eighty-Yard Run, whose brush with greatness lay behind him, his solo college touchdown in an untested intramural scrimmage, having been locked in memory as life’s highlight, Zamperini states, “had turned out to be a long, unceasingly gained in physical stoicism and a salutary psychological system with an obdurate optimism. No matter what fate’s vagaries, Zamperini was, simply stated, ‘defiant.’”

He maintained a code of conduct formulated by creatures or forces that we have no conception of. Zamperini didn’t whine at his loss; he understood that military superiors, and that, according to his prisoners, he was an important soldier, the select few who had the preserve of the system with an obdurate optimism. No matter what fate’s vagaries, Zamperini was, simply stated, “defiant.”

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Serving as a bombardier, he was among the crew of the “Green Hornet,” a B-24 Liberator. This savage, Mutsuhiro Watanabe, was reared among  the POWs, some of whom, those who had already been served with the Pacific, the result of an inexperienced copilot’s error. Three men survived. Zamperini among them. For 47 days they drifted in their rubber life raft across the Pacific living on rainwater and what fish they could catch; their sleep broken regularly by visions of sharks, triggered by sharks that passed under the raft, their dorsi fms rubbing against its hull. When they finally reached the island, the men were joyful but it was fleeting. A Japanese patrol boat cut across their bow, guns were fired, and they were forced to surrender to the Kwajalein Island. Soon thereafter, they were transported to a POW camp at Omori, which sat on an artificial island in Tokyo Bay. There, the guards at Omori were the most feared of these guards was “The Bird,” a man whose nickname was conspiratorial and mysterious to most; he was known as an expert in a bird of prey; predator ever-ready to swoop down and ravage the defenseless. His conduct toward his prisoners was marked by the constant infliction of gratuitous assaults; the imposition of degrading drills, including push-ups over excrement pits; the supervision of forced labor in the advancement of Japan’s war effort, violations of Geneva protocols. “This isn’t Geneva!”

The Bird would scream at protesting officers, his screams invariably accompanied by attacks on the protesters, leaving them concussed and broken-honed. In this manner did the Bird carry out his work.

Who was The Bird? Who was this savage? This savage, Motohiro Watanabe, was reared in a privileged household, his family made wealthy due to real estate holdings. He held a degree from Tokyo’s prestigious Waseda University, where he had majored in French literature; so much for “good breeding” and higher learning as conferrers of civility. At all events, by pedagogy and education, then, he felt entitled to a commission. Military superiors thought otherwise. He attained only the rank of corporal, and this rejection, according to Hillenbrand, “...detracted him, leaving him feeling disgraced, infuriated... Those who knew him would say that every part of his mind gathered around this blazing humiliation, and every subsequent action was informed by it. This defining event would have tragic consequences for hundreds of men.”

After serving briefly with a regiment of the Imperial Guards—his superiors soon wanting to rid the guards of an unstable and venomous soldier or perhaps to put his volatility to use transferred him to the military’s most ignominious station for NCOS, a POW camp. As a POW, he was imprisoned in direct proportion to allied victories. When our B-29s began bombing Tokyo, unopposed, panic set in among the guards, horror set in among the POWs, some of whom, some strong enough to speak, expressed it vocally: “You must be sober.” The Bird allowed the exhausted, “You must be sincere! You must work for earnest! You must obey! I have spoken. You must obey!”

With photographs.

Photo credit: Shortell McSweeney.
Justice Above the Law

By Justin A. Giordano

Attorney General Eric Holder was held in contempt of Congress on June 20, 2012. This was the culmination of a lengthy investigation by the U.S. House of Representatives’ Committee on Oversight and Government Reform into the “Operation Fast and Furious” gun tracking debacle conducted under the previous administration. Ultimately two guns were found at the scene by an agent.

The implications for the practice of law in America, especially as it pertains to the Justice Department that he heads turn over documents to white house investigators is the last and least step down from his post. This is particularly true when that individual’s position represents that of a president’s cabinet to be held in contempt of Congress. The duty to become culturally competent rests with the attorney, not the discretionary power of the Justice Department that he heads.

The Clinton White House saw several of its attorneys held in contempt of Congress, including White House Counsel Jack Quinn, as a consequence of the “Travelgate” investigation of the firings of White House travel office employees. Former Clinton White House Associate Counsel William H. Kennedy III was also found in contempt of Congress for failing to turn over documents in the investigation into the firing of U.S. attorneys.

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President’s Message (Continued from page 1)

One day soon find themselves subject to an accessibility inquiry.

The odds of Constitutional challenges to the conduct of arbitrations would have been as disfavored to seek more lawsuits into the forum. Overall, while handicapping chances in arbitration remains a difficult business, some noteworthy decisions from the last year hint at a possible new set of odds for corporate litigants weighing

Business Arbitration (Continued from page 9)

To encourage your participation in this program, the SCBA is planning to offer a free three-credit CLE seminar dealing with assisting our returning veterans and I recently met personally with Dean Salkin at the end of this year. I am looking forward to all of the members of the Armed Forces who have attended countless banquets, open-air receptions to welcome and honor Touro School in Glasgow. Soon our itinerary was steered more lawsuits into the forum. And I am proud to participate in the commissioning of the vessel named in their son’s honor.

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Business Arbitration (Continued from page 9)
condition of graduation so that perhaps a Touro student would need to acquire only ten additional pro bono hours to satisfy the rule.

The impact of the pro bono requirement on law schools

Touro is one of only two law schools in New York State that require students to complete a pro bono program as a graduation requirement, the other school being Columbia. I am told that nationwide there are only approximately 20 law schools with a pro bono requirement for graduation. Tom Maligno, the Executive Director of the Public Advocacy Center and Executive Public Interest at Touro Law Center, advised me that all of the 40 plus pro bono requirements would satisfy 40 hours under the new rule. Doing the math, one can see that 10 hours of Touro’s requirement would need to add only 10 hours of pro bono work requirements to satisfy the new rule. Schools that do not have major pro bono programs, whether mandatory or not, will have some work to do to be in compliance with the new rule.

The new rule is pretty broad in allowing the schools to identify what constitutes a pro bono requirement in many ways. In addition to what has long been considered pro bono work such as representing an indigent person, say in a landlord tenant matter, or a criminal defendant who cannot afford a lawyer, the rule allows the student to get credit for working in a public agency such as a District Attorney’s office or in supervision will negatively impact the quality of service; that if pro bono service is to be mandated, the requirement should not fall on future law school graduates; that students from out of state law schools may be at a disadvantage as there is doubt as to their ability to initiate programs;

It may be that the law schools will undertake the responsibility of placing their students in situations to earn their hours. Touro already does that through its clinics and public advocacy programs. Service to the poor, disadvantaged, etc. The term pro bono work or the type of programs they will be.

Some concerns expressed

There have been some concerns and reservations expressed by some members of the New York State Bar Association. Among the concerns expressed are the following:

- that the addition of large numbers of students and the strain on agencies to provide adequate supervision will negatively impact the quality of service;
- that if pro bono service is to be mandated, the requirement should not fall on future law school graduates;
- that students from out of state law schools may be at a disadvantage as there is doubt as to their ability to initiate programs;

In Francine Nachtigall v. ECA Construction, Inc., E.C.A. & Sons Construction & Services, Inc., Nicholas Arthur Varlotta, R.A., and The Town of Islip, Index No.: 17298/10, decided on April 12, 2011, the court noted that a party seeking a judgment on default was required to submit proof of the service of the summons and complaint, proof of the facts constituting the claim, and proof of the default in answering or appearing. In addition, when service of the summons and complaint had been made, a default judgment may not be granted against a non-appearing corporation without proof of compliance with the additional service requirements of CPLR §3215(g)(4)(i).

In Louis Boisignano v. Sunrise Leasing, Inc., “John Doe,” being the fictitious and unknown operator of Sunrise Leasing, Inc.’s commercial vehicle and Curtis Patterson, Index No.: 28414/10, decided on August 30, 2012, the court found that the affidavit submitted in support of defendant’s contention that records sought were destroyed was woefully inadequate and no longer existed was woefully in adequate. The court noted that on or about September 16, 2011, the plaintiff submitted a post-EBT notice for discovery and inspection for certain documents and records of the corporate defendant. In response to said demand, plaintiff was provided with an affidavit, which indicated that Sunrise Leasing ceased to exist on August 15, 2011 and no longer existed was woefully inadequate and no longer existed was woefully inadequate.

In Nicholas Arthur Varlotta v. M & F Construction & Services, Inc., N icholas Arthur Varlotta, R.A., and The Town of Islip, Index No.: 27953/11, decided on November 23, 2011, the court converted the article 78 proceeding into a declaratory judgment action, with the order to show cause deemed satisfied as the petition for an order pursuant to CPLR §3215 for a default judgment against defendants ECA Construction, Inc., and E.C.A. & Sons Construction & Services, Inc. was denied without prejudice.

In denying the motion, the court noted that a party seeking a judgment on default was required to submit proof of the service of the summons and complaint, proof of the facts constituting the claim, and proof of the default in answering or appearing. In addition, when service of the summons and complaint had been made, a default judgment may not be granted against a non-appearing corporation without proof of compliance with the additional service requirements of CPLR §3215(g)(4)(i).

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Managed Medicaid

(Continued from page 22)

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(Continued from page 2)

Track Was Prologue

(Continued from page 22)
Law Article 7, Section 107 (5), to avoid regulating dogs in accordance specifically by their breed is echoed by New York State case 225, 48 N.E. 524 (1897). Evidence that the New York 255 A.D.2d 251, 680 N.Y.S.2d 239 (1998). A dog's breed can be considered as a factor, but is only one factor among many. Mulhern v. Chai Mgmt., 309 A.D.2d 909, 906, 765 N.Y.S.2d 694 (2003). Knowledge of vicious propensities may be established by evidence of prior acts of a similar kind of which the owner is aware. See, Tren & Lansingburgh R.R. Co., 154 N.Y. 223, 225, 48 N.E. 524 (1897). Evidence that the dog has been known to growl, snap or bite, is the best evidence because it is considered by the court. Celler v. Zambito, 1 N.Y.3d 444, 446-47, 807 N.E.2d 254, 256 (2004). See also, Bard v. Jahnke, 6 N.Y.3d 592, 597, 815 N.E.2d 256, 259 (2004). Also of relevance to the court in determining if the owner had knowledge of the dog's vicious propensities, and which may give rise to such an inference, is whether or not the owner chose to restrain the dog, in the manner in which the dog was restrained, and whether the dog was kept as a guard dog. Hahnke v. Friederich, 140 N.Y.2d 224, 256, 35 N.E. 487 (1895). Celler v. Zambito, 1 N.Y.3d 444, 446-47, 807 N.E.2d 254, 256 (2004). See also, Bard v. Jahnke, 6 N.Y.3d 592, 597, 815 N.E.2d 256, 259. 815 N.E.2d 463 (2006). Unfortunately, this has not stopped some New York Municipalities from drafting and even passing "breed specific laws" when no evidence of a, draft or even passing the proposed law and even more so the residents effected by the proposed law are unaware of Agriculture and Markets Law Article 7, Section 107 (5). For example, right here on Long Island, The Village of Hempstead Code Chapter 57, Article III, §57-13. (C)defines American Staffordshire terriers or pit bulls as vicious and includes any dogs wholly or partly of the breeds known as American pit bull terrier, American Staffordshire terrier, bull terrier and Staffordshire bull terrier.

The Village of Larchmont, Chapter 97, Article IV Section 97-21, goes even further and places a complete ban on pit bulls other than those already owned at the time of the passing of the law. For those unfortu- nately placed in a smallish area of the town, the dog owner would no longer be allowed to keep his dog, and must turn his beloved companion (although it may have never harmed a fly), the owner is subject to a myriad of requirements that range from having the dog spayed (if not in-use or not added) to being required to obtain a $500,000.00 liability policy; to lock the animal up in a pen with no animal outside, to microchip the dog, to keep the dog on a leash at all times. Violators are subject to 6 months jail time or 1,000 fine or both. You really cannot make this stuff up!

There are numerous reasons why breed specific laws do not work and are usually wind up hurting animals, the people who love them, and our society at a large. A few reasons are as follows; breed specific laws discriminate against the innocent, anyone, as well as their responsible law abiding owners, are punished as severely as dogs that have been allowed to become vicious and their negligent owners. Breed specific laws punish entire breeds of dogs and their owners, rather than examining the real factors surrounding a specific incident; looking at the actual behavior of the individual dog (and the owner, and that owner's prior knowledge and training); and fails to punish the inaction or irresponsibility of the “individual” owner and thus control and regulate the individual owner, instead of the inaction or irresponsibility of the human defendant's due process rights and in turn the accused animal. Agriculture and Markets Law §123 also provides with judges with different alternatives to permanent confinement as a last resort euthaniza- tion. The law also lists instances where a dog shall not be declared dangerous if the dog's conduct was justified. See, Agriculture & Markets Law §123 (4). Other effective methods of controlling danger- ous dogs, are through the establishment of local leash laws, and more importantly, educating the public.

The bottom line is that breed specific laws are not only unfair to both innocent well behaved dogs and the people who love them, but more importantly, they are com- pletely ineffective at reducing the number of dog attacks. The reality is that any dog can choose to inflict injury at any time regardless of breed, taking into consideration the number of interactions that humans have with dogs of all types of breeds, on a daily basis, all across the nation, it is a testament to the love we have with our family dog, and the special bond that dogs have with their human companions, that they choose not to.

Note: Amy Chaitoff is a solo practition- er with a practice in Bayport who focuses on representing individuals, organiza- tions, municipalities, and businesses with animal related legal issues. She is Chair of the New York State Bar Association’s Committee on Animals and the Law and co-founder of the Animal Law Committee of the Suffolk County Bar Association’s Animal Law Committee. Ms. Chaitoff has written numerous articles as well as lectured on a variety of issues. She can be reached at: (631) 265-0155 or amy@chaitofflaw.com.

Court Notes (Continued from page 8)

the report. The charges against the respond- ent alleged, inter alia, that he falsely nota- rized documents and submitting them or causing them to be submitted to the Nassau County Court and Nassau County Clerk. Based on the record, the court granted the Grievance Committee’s motion. In assess- ing the appropriate measure of discipline, the court noted the respondent’s prior dis- ciplinary history consisting of two letters of admonition and three letters of caution. The motion stated that the respondent did not have a proper understanding of the issues, and further, that the respondent was censured for his misconduct.

Attorneys Suspended:

Christoper P. Hummel: Application by the Grievance Committee to impose reci- procal discipline. By order of the Supreme Court of the State of New Jersey, the respondent’s registration to practice law in the state was suspended from the practice of law in that state until further order of the court. A notice was served on the respondent giving him the opportunity to file a verified response to the suspension, within a time certain. The respondent failed to do so. Accordingly, the motion by the Grievance Committee was granted, and the respondent was sus- pended from the practice of law in the State of New York.

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 past presi- dent of the Suffolk County Bar Association and a member of the Advisory Committee of the Suffolk Academy of Law.

A Dog By Any Other Breed (Continued from page 15)

When Judge Fitzgibbon retires at the end of the year I will hold many personal memories of her- the time that she helped me find a supply of clothing for released prisoners. She also took the opportunity to file a verified defense to the motion by the Grievance Committee to suspend, within a time certain. The respondent failed to do so. Accordingly, the motion by the Grievance Committee was granted, and the respondent was sus- pended from the practice of law in the State of New York. Judge Fitzgibbons Retiring (Continued from page 7)

The report by the Grievance Committee to impose reciprocal discipline. By order of the Supreme Court of the State of New Jersey, the respondent’s registration to practice law in the state was suspended from the practice of law in that state until further order of the court. A notice was served on the respondent giving him the opportunity to file a verified response to the suspension, within a time certain. The respondent failed to do so. Accordingly, the motion by the Grievance Committee was granted, and the respondent was sus- pended from the practice of law in the State of New York.

When we spoke, Judge Fitzgibbon remarked how, when she graduated with a Juris Doctor Degree in 1982. She remarked how, when she graduated with a strong commitment to public service. She plans on retiring from the Suffolk Academy of Law. She has been very active in the community, and a member of the Advisory Committee of the Suffolk Academy of Law.
UPDATE
ANNUAL DMV UPDATE
Wednesday, November 7, 2012 – on the East End
November 14, 2012 – at the SCBA Center

This program is a must-attend for all attorneys who represent motorists on issues related to license revocations and suspensions and similar matters.

Presenter: David Man theoretic East
End
Time: 9:00–10:15 a.m. (Sign-in from 8:30 a.m.) Location: Seaview Center Referrals: Light supper

LATE FALL CLE
No 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.

OCAs MCLE requirements:

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

Tuition & Registration: Tuition prices listed by the registration form are for discounted pre-registration. A-Door registration entails 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.

Amenities 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 Academys 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.

This program will provide attorneys with valuable strategies for counseling families on managing monetary and other potential estate assets. Topics include:

• How to Choose a Trustee (potential candidates; trustee qualities; trust objectives, etc.)

• Fiduciary Liability (Prudent Investor Act; standards of conduct; investment strategies, etc.)

• Family & Wealth Sustainability (wealth trends; defining wealth; family dynamics; children and philanthropy, etc.)

Presenters: C. Shirlene Metzger (Opelka, Dollars & Checks, LLC); Kevin H. Rogers (BNY Mellon Wealth Management); David J. DePinto, Esq. (Off Counsel–Lazer Apyher Roselle & Yeild, PC)

Coordinator: Eileen Coen Cacioppo, Esq. (Academy Curriculum Coordinator–SCBA Immigration Law Committee) ;

Chair–SCBA Immigration Law Committee) ;

Lunch ‘n Learn

Presented in conjunction with the SCBA Immigration Law Committee & the Long Island Hispanic Bar Association

HELPING OUR IMMIGRANT YOUTH: DACA; Views from the Bench on Guardianship & Special Immigrant Juvenile Status
Thursday, November 8, 2012

This program will explore two important areas of law related to immigrant youth: Deferred Action for Childhood Arrival (DACA), which aims to benefit many young immigrants brought to the United States as children; and the Special Immigrant Juvenile (SIJ) program, which helps immigrant children who have been abused, abandoned or neglected by one or both parents to obtain legal permanent residence and guardianship to which they are entitled.

Be able to determine if a young immigrant qualifies for DACA and submit an application for DACA to USCIS with required evidence.

Have the information you need to submit a petition for Guardianship for Immigrant Youth and a Motion for “Special Findings” in Family Court

Know the requirements to submit the SIJ application and take steps to help the immigrant juvenile to receive legal permanent residence

Presenters: Victoria Campos, Esq. (Huntington Station and Bay Shore; Chair–SCBA Immigration Law Committee); Charlotte Adam, Esq. (Hempstead; Former Chief Counsel for DHCS); Hon. John Kelly (Suffolk County Family Court);

Coordinator: Aniella Russo, Esq. (Afran & Russo, PC)

Time: 7:00–10:00 p.m. (Sign-in from 6:30 p.m) Location: SCBA Center Referrals: Light supper

LUNCH ‘n LEARN

EXPLORE LITIGATION SOLUTIONS
Friday, November 2, 2012

This low-cost ($10 or FREE (without credit) lunch program will show you how to use a number of Litigation Tools to build your case.

You will learn to organize, analyze, store, communicate, and collaborate on the law, information, and documents generated by a typical case. The emphasis is on the identification of the documents that need to be produced. This seminar will shed light on the use of predictive coding, which has been adopted as an acceptable method of obtaining ESI (electronically stored information), and examine the ground-breaking decision by Judge Peck in Monique Da Silva Moore v. Publicis Group.

Presenters: Experts from DOAR Litigation Consulting

Glen P. Warmuth, Esq. (Slim & Warmuth, PC)

Co-author: Gloria Lerner, Esq. (Academy Officer)

Coordinator: Aniella Russo, Esq. (Afran & Russo, PC)

Lunch ‘n Learn

E-Discovery: RECENT DEVELOPMENTS IN LAW & TECHNOLOGY RELATED TO PREDICTIVE CODING
Monday, November 5, 2012

Predicative coding takes electronic discovery to a new level. It is a method whereby a human identifies whether or not a random selection of documents is responsive to an e-discovery demand; the computer program then takes these responses, “learns” what to search, and gives each document a “relevance score.” The end result is that the identification of the documents that need to be produced. This seminar will shed light on the use of predictive coding, which has been adopted as an acceptable method of obtaining ESI (electronically stored information), and examine the ground-breaking decision by Judge Peck in Monique Da Silva Moore v. Publicis Group.

Presenters: Experts from DOAR Litigation Consulting

Glen P. Warmuth, Esq. (Slim & Warmuth, PC)

Co-author: Gloria Lerner, Esq. (Academy Officer)

Coordinator: Aniella Russo, Esq. (Afran & Russo, PC)

Lunch ‘n Learn

ANNUAL FAMILY COURT UPDATE
Part One: Wednesday, November 28, 2012
Part Two: Wednesday, December 5, 2012

All the latest developments affecting Family Court practice will be covered by an expert faculty for each part presentation.

Coordinators: Hon. John Kelly; Hon. Isabel Buse; Hon. John Raimondi

Time: 9:00 – 9:15 a.m. Location: SCBA Center – Hauppauge Referrals: Light supper

MCLE: 6 Hours (4 professional practice; 2 ethics)

ANNUAL REAL ESTATE UPDATE
Thursday, November 29, 2012

This is a must-attend program for lawyers who handle residential or commercial real estate transactions, landlord-tenant disputes, zoning and land-use matters, and the like.

Presenter: Scott E. Mollen, Esq. (Herrick Feinstein LLP – NYC)

Coordinator: Aniella Russo, Esq. (Academy Officer)

Time: 6:00 – 9:00 p.m. Location: SCBA Center – Hauppauge Referrals: Light supper

MCLE: 3 Hours (professional practice)
MCLE: 5 credits (3 law practice management; 2 ethics)

Six Hour CLE Presented in Two-Parts
WHO’S BEHIND THE CURTAIN? – Advanced Standing Issues in Securitized Mortgage Foreclosure

Recent discoveries regarding the foreclosure process indicate severe abuses of the legal system and the land record recording systems. This course will cover legal and practical understanding of the RMBS (Residential Mortgage Backed Security) transaction and explain the contractual interrelationships between and among the parties to the transaction. The course will also explain how and why the RMBS transaction calls plaintiffs’ standing into question in RMBS foreclosures. The complexities of the RMBS transaction is created by the confluence of securities law, tax law, bankruptcy law, real property law, contract law, agency law, and trust law such that the party claiming an interest in a loan’s cash flow may have no legal standing to enforce the promissory note contract in a foreclosure against the person who actually borrowed the money. Topics include:
• A Brief Introduction to Structured Finance
• What Is a Securitized Mortgage Transacted?
• Document Flow in a REMIC (Real Estate Mortgage Investment Conduit) Transaction
• Document Flow in a GSE (Government Sponsored Entity) Transaction
• The Voting and Servicing Agreement
• Recordable & Possessory Interests in the Loan

Statutory and Case Law Requirements for Foreclosing a Mortgage in New York

Faculty: Hon. Jeffrey Arpin Spinner (Suffolk); Hon. Dana Winslow (Nassau); Hon. Arthur Bealock (Kings); Hon. Peter Mayer (Suffolk); Charles Weissblum, Esq. (Macco & Stern)

Coordinator: Richard Stein, Esq. (Macco & Stern)

Appraiser for Underwriting Support: The Resources Guaranty Company

Time: 9:00 – 9:00 p.m. (Sign-in from 9:30 a.m.) each evening
Location: SCBA Center Refreshments: Light breakfast
MCLE: 6 credits (4 professional practice; 2 ethics)

Afternoon Seminar
EFFECTIVE DEPOSITIONS
Friday, November 30, 2012
The deposition is an important component of civil litigation and often evolves into a key evidentiary document. This program, presented by a highly skilled faculty, will utilize both lectures and demonstrations to impart strategies for deposing witnesses (lay and expert), for gaining the information you need, and for using a deposition at trial. Topics will include:
• Personal liability of fiduciary for tax debts
• Much more...

Presenter: Seymour Goldberg, CPA, MBA, JD (Goldberg & Goldberg, PC)
Coordinator: Eliean Coen Cacallo, Esq. (Curriculum Co-Chair)
Time: 9:00 – 11:45 a.m. (Sign-in from 9:30 a.m.) Location: SCBA Center Refreshments: Light breakfast
MCLE: 3 credits (professional practice)

NOVEMBER 2012 REGISTRATION FORM

NOVEMBER PROGRAMS

ANNUAL UPDATES

Choosing a Trustee... $95
$95 $110 $110 $10 $110 $100 $20
Exploring Litigation Solutions $10
$10 $10 $10 $10 $10 $10 $10
E-Discovery: Predictive Coding $50
$50 $50 $50 $50 $50 $50 $50
Helping Immigrant Youth $50
$50 $50 $50 $50 $50 $50 $50
Lawyers Helping Lawyers $60
$60 $60 $60 $60 $60 $60 $60
Securitized Mortgage Foreclosures... $150
$150 $150 $150 $150 $150 $150 $150
National Mortgage Settlement... $50
$50 $50 $50 $50 $50 $50 $50
IRA Guide to IRS Audit Issues $50
$50 $50 $50 $50 $50 $50 $50
Depositions $100
$100 $100 $100 $100 $100 $100 $100

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The Court concluded after its review of the record that there was no acceptable or reasonable basis for defense counsel to refrain from objecting to these “highly prejudicial instances of prosecutorial abuse.” As a result, the court held that the BPP’s violation on the grounds of ineffective assistance of counsel and ordered a new trial. Id. at 967.

The Dissent – failing to object did not rise to the level of ineffective assistance of counsel

In a scathing dissent, Justice Smith highlighted the absence of any case law supporting the court’s ruling. He further stated that although it may have been error to not object to the prosecutor’s misstatements, he speculated counsel might have intentionally done so due to the minimal resistance he received during his closing. He further opined it was feasible defense counsel may have believed the jury would have had a negative view to any such interruption.

Although both the majority and dissent speculated as to the thought processes of defense counsel, the record revealed defense counsel “excoriated” the victims’ mother and jailhouse informant during his closing and foretold the jurors that the prosecutor might resort to “theatrics” and attempt to “play your sympathies of these poor little kids.” Id., at 967-70.

Justice Smith noted that although the BPP’s actions did not rise to the level of ineffective assistance of counsel. Specifically, he deemed it reasonable to “sit quietly and appear unconcerned” when the prosecutor did what he had told the jury she would do.” Id. at 970. He further noted other factors may have resulted in the conviction including the testimony of the jailhouse informant, the mother and their mother and the damaging testimony that the defendant responded to an innocent statement by the victims’ mother that “I’m not a child molester” when he was not familiar with Bankruptcy Code section 110. Although Code section 110 provides for the court to require the court to triple the fines if the BPP failed to disclose his or her identity. As you will see, it was this provision that really socked Mollo and Peyzner big time.

After Mollo was sanctioned in March, potential clients were still contacting him from his advertising, which he failed to discontinue. Rather than turn them away, he had Peyzner, his paralegal of six years, meet with them, and in some instances, he met with the clients as well. She then prepared the bankruptcy petitions and rendered legal advice in doing so. She had the debtors sign a retainer agreement which contained the name of a different attorney who did not have anything to do with these cases.

As to defense counsel Peyzner admitted that she prepared the petitions and claimed that she was not an employee of Mollo and worked strictly as a “volunteer” for him with the clients. Peyzner testified that she was familiar with Bankruptcy Code section 110. Although Code section 110 required the BPP to sign the petition and prove retention by a retainer or fee, she did not do that either, claiming that this was an “honest mistake.”

Judge Craig stated that both Mollo and Peyzner were not credible witnesses and stated that the BPP had ”violently violated a number of subsections of the statute and that they both engaged in the unauthorized practice of law. The judge pointed out that Mollo continued to hold himself out as a bankruptcy attorney, despite his suspension, and despite his representations to the court in the earlier case.

It was found that Judge Craig that Peyzner was the BPP, as she prepared the petitions. However, the judge applied an unusual theory and held that Mollo was vicariously liable for Peyzner’s violations. The judge rejected Peyzner’s claim that she was a volunteer; instead concluding that she continued to be a compensated employee of Mollo. The court found that Mollo also violated the same provisions of section 110 under the doctrine of vicarious liability.

As for punishment, Judge Craig directed both of them to disgorge all fees received ($3,100), and in addition, fined them jointly and severally $15,000. Please see Craig Robins’ bankruptcy blog at

Plead Laches (Continued from page 12)

Jay Raye's expenditure of funds to acquire the property gave rise to an equitably estoppel against Stein.

While Jay Raye prevailed on its laches claim, the Appellate Division panel also held Raye's claim separately based on the issue of fact as to whether the deed transferring the shopping center property from Stein to Telcor was forged. The net result is that while the deed to the alleged forger may ultimately be overturned, the alleged forger’s purchaser can keep the property, to the detriment of the record owner. Raye v. Stein, 85 A.D.2d 820, 728 N.Y.S.2d 376 (2nd Dept., 2001).

One tenant-in-common had delivered a deed that purported to convey the entire property to a third party owner in 1996. The buyer also borrowed over $1,000,000 secured by mortgages on the property. The other tenant in common became aware of the deed in 2001, but failed to bring an action to quiet title until 2008. The buyer and the lender asserted, inter alia, the affirmative defense of laches. The court declined to recognize the defense, stating that delay in identifying a known defect in title does not, by itself, give rise to laches. It requires “inexcusable delay” coupled with knowledge that “the opposing party has changed his position to his irreparable injury.”

The court noted that the buyer and lender “made no allegation” that the owner both 1) knew of the sale and 2) did nothing to prevent the same, their defense of laches was dismissed. At a minimum, it is difficult to reconcile the holdings in Wilds and Doukas with Bank of America. Nevertheless, if you are defending an RPAPL Article 15 action in the Second Department, consider whether laches might be a viable defense to plead.

Note: Lance R. Pomernetz is a sole practitioner who provides representation, expert testimony, consultation and research in land title disputes. He is also the publisher of the widely-read land title newsletter Constructive Notice. For more information, visit www.LandTitleLaw.com.

1. There is abiding precedent stating that a forged deed is void, but the Doukas opinion does not address the implicit contradiction it creates with those cases.
Statement of Ownership, Management, and Circulation (All Periodicals Pub. as of Oct. 1, 2010) Publication Title: The Suffolk Lawyer. 2. Publication No. 006-995. Filing Date 10/1/10. 4. Issue Frequency: monthly-except July & Aug. 5. No. of Issues Published Annually: 10. 6. Annual Subscription Price: $50.00. Complete Mailing Address of Known Office of Publication (not printer): Street, city, state, & postal zone: Main St., Huntington, N.Y. 11743. 7. Complete Mailing Address of Publisher (not printer): Street, city, state, & postal zone: 500 Wheeler Road, Huntington, N.Y. 11743. 8. Contact Person: Peter Sloggatt Telephone 631-427-7000. 9. Complete Mailing Address of Headquarters Office of the Publisher (not printer): Street, city, state, & postal zone: 500 Wheeler Road, Huntington, N.Y. 11743. 10. Full Names and Complete Mailing Address of Publisher, Editor, and Managing Editor (Publisher must submit explanation of change with this statement.) Publisher (Name and complete mailing address) Long Island LLC 149 Main St. Huntington N.Y. 11743. 11. Editor (Name and complete mailing address) Laura Lane 560 Wheeler Road, Huntington, N.Y. 11743. 12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) x Has Not Changed During Preceding 12 Months. 13. Known Bondholders, Mortgagees, and Other Securitization Owners Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages or Other Securities. If none, check box. None. 14. Issue Date for Circulation Data (Publisher must submit explanation of change with this statement.) October 1, 2010. 15. Extent and Nature of Circulation. Average No. Copies per Issue During Preceding 12 Months Has Changed During Preceding 12 Months. 16. Paid Circulation (By Mail and Outside the Mail) (1) Mail Nationwide: 3,476. (2) Mail Outside-County Paid Subscriptions Stated on PS Form 354 1 0 0 (3) Total Paid Distribution (By Mail and Outside the Mail) 3,526. 17. Extent and Nature of Circulation. Average No. Copies per Issue During Preceding 12 Months Has Changed During Preceding 12 Months. 18. Purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes: x Has Not Changed During Preceding 12 Months. 19. Name Complete Mailing Address: Peter Sloggatt 149 Main St. Huntington N.Y. 11743 10. (2) Mailed In-County Paid Subscriptions Stated on PS Form 354 1 0 0 (3) Mail Outside-County Paid Subscriptions Stated on PS Form 354 1 0 0 (4) Total Paid Distribution (By Mail and Outside the Mail) 3,629. 20. Extent and Nature of Circulation. Average No. Copies per Issue During Preceding 12 Months Has Changed During Preceding 12 Months. 21. Purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes: x Has Not Changed During Preceding 12 Months. 22. Name Complete Mailing Address: Peter Sloggatt 149 Main St. Huntington N.Y. 11743 10.

Psychologists and Code of Conduct. These standards are mandatory and provide for minimal competencies. The Special Jury for Forensic Psychology released on August 3, 2011, on this date, delineate a broad spectrum of ambitious guidelines for psychologists who perform work in forensic contexts. These principles and guidelines as a whole cut out basic ethical boundaries that psychologists are expected not to cross. There also are well-defined cultural and diversity-based components. Psychologists must, for instance, be familiar with cultural differences and be aware of nuances stemming from age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status. They must employ culturally sensitive and valid methods in their assessments and valid methods in their assessments and be aware of their own limitations. The Guidelines on Multicultural Education, Research, Practice, and Organizational Change for Psychologists also are not mandatory. Like the Special Jury for Forensic Psychology, these may be viewed as ambitious. They may be looked upon as a work-in-progress that will evolve methods in the assessments and be aware of their own limitations. The DMS-IV-TR is the “bible” relied on by mental health practitioners in the U.S. in educational, clinical, and forensic settings. Several places pertain to race, culture, and gender and the manual furnishes an outline for cultural formulation designed to assist the clinician in systematically evaluating and reporting the impact of the individual’s cultural context.

Note: Roy Aranda is Secretary of the Long Island Hispanic Bar Association and is on the Editorial Board of Notices, the official publication of the Hispanic National Bar Association. Dr. Aranda is a psychologist who holds a law degree and has a forensic psychology practice with offices in Long Island and Queens.

What Will You Gain from Internet CLE?

And what lawyer doesn’t need more of skilled presenters, the main thing is time. Besides strategic information taught by where you have a computer with an Internet connection. And if you are interrupted, you have 60 days to log back into and complete the program. And that surely equates to more time for other things – like leisure or billable hours.

The Academy offers scores of programs on line. To see what is available, go to the SCBA website (www.scba.org), click “MCLE” from the left-hand menu, select “On-Line Video Replays and Live Webcasts,” and peruse the available offerings.

Both video replays and live webcasts have advantages. Webcasts allow you to email questions to the presenters – and receive an answer – in real time. While you have to take a webcast at a specified time, if you do not finish it you can access the program again in its archived version. (In fact, if you register for a webcast and don’t take it at all, you will have access to the video replay.) If, on the other hand, you want to consider various treatments of a given topic, you might want to opt for on-line replays. Some of the best programs the Academy has presented in the last few years – all conveniently listed under practice areas and all available 24-7 – are available as video replays. You can even sample a replay before deciding to purchase a program.

When you take an on-line CLE course of either kind, virtually everything is done on-line: registration, tuition payment, downloading of course materials, and receipt of your MCLE certificate. And if – as occasionally happens – the course also includes a tangible hand-out that cannot be accessed on-line (a published book, for example), the Academy mails it to you within a few days.

Under the OCA rules, attorneys admitted more than two years may fulfill their MCLE requirements in non-traditional formats, including on-line CLE. If you fall into that category, we urge you to try the Academy’s on-line seminars, one of the largest such collections anywhere.

Bill Gates said, “The Internet is becoming the town square for the global village of tomorrow.” For many a busy lawyer, tomorrow has come. While there may be nothing better than joining colleagues for a break at the virtual “town square” of shared expertise and ongoing professional enlightenment. – Dorothy Ceparano

NEED FLORIDA CLE CREDITS?

SCBA members who are admitted in Florida may borrow the Florida Bar’s “2012 Survey of Florida Law” audio compact disk set through the Academy. The disks provide twelve hours of general CLER credit, including four hours of ethics.

This year’s disks cover malpractice avoidance; a public records and Sunshine Law overview, ethics and technology; ethical advertising; Social Security benefits; Bert Harris issues and property rights cases; presenting evidence from an iPad; hearsay; wills, trusts and estates case law update; privacy issues and probate law; mediation of probate disputes; and ethical rules for drafting attorneys.

To borrow the CDs, call the Academy at 631-234-5588. The recordings will be loaned out on a first-come, first served basis. A waiting list will be established, and members are asked to return the disks promptly so that others who need them may be accommodated. There is no charge to borrow the Florida recordings, but a refundable fee may be charged at the Academy’s discretion.

DPC

More than 120 attorneys turned out for the Academy’s October 11 program on Commercial Litigation in New York State Courts. A prestigious panel of four judges and sixteen experienced litigators disseminated advice for all the stages of litigation, from case evaluation through appellate advocacy. As a bonus, the attendees received a six-volume commercial litigation treatise published by the virtual “town square” of shared expertise.

The program is now available on-line as a video replay or for purchase as a DVD.