

Queens County Bar Association • Vol 77, No 2 • Feb/March 2014

QCBA

BULLETIN



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NEW MEMBERS

Allison Ageyeva
Alfia Agish
Nathan Belofsky
Aditi Bhardwaj
Marisela Carpio
Theresa M. Chandler
Christy M. Demelfi
Anudeep Dhuga
Jessica T. Falco
Emily Farah
Dov Fiskus
Juanita Headley
Aleksandr Khutoryansky
Tim L. LeFebvre
Arely Lemus
Erin Lloyd
Thomas J. Maroney
Jacqueline Mazzola
Carmine J.V. Musumeci

Helen P. O'Reilly
Valentine Amaechi
Okwara
Gregory M. Osborn
Sherbune Paul
Eric Pesale
Milana Pinkhasova
Adam Roughley
Jacob Rubinstein
Emma S. Salas
Anna Shalomova
Artem Skorostensky
Ian Z. Spiridigliozzi
Victoria Spodek
David J. Szalyga
Payal G. Thakkar
Jason L. Tillman
Sarah A. Tirgary
Aida Vernon

NECROLOGY

William A. Schauer

-
- [Become a Member Today / QCBA Video](#)
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 - [Join a Committee](#)

February 2014

Wed., Feb 26 New York State Residency Audit
 1:00 - 2:00pm
 Members / Non Members

March 2014

Mon., March 10 Stated Meeting
 Thurs., March 13 .. CLE - What Every Lawyer Should
 Know About the NYC Dept of Bldgs
 Members / Non Members
 Wed., March 19 QVLP Bankruptcy
 Chapter 7 Training Seminar
 Thurs., March 27 Immigration Seminar

April 2014

Thursday, April 3 Lawyers Assistance
 Committee Seminar
 Mon., April 7 Judiciary, Past Presidents
 & Golden Jubilarians Night
 Wed., April 16 CLE - Equitable Distribution

May 2014

Thurs., May 1 Annual Dinner and Installation
 of Officers & Managers
 Tues., May 13 CLE - Construction Law

QCBA is certified by the NYS Continuing Legal Education Board as an Accredited Legal Education Provider in NY. Meeting and programs are held at Bar Association Building, 90-35 148th St., Jamaica, NY. Changes are posted at www.QCBA.org.



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PRESIDENT'S MESSAGE *by Joseph F. DeFelice*

We closed our event schedule in December with the Holiday Party held together with other local bar groups at the Douglaston Manor. The event was well attended and an enjoyable way to end the calendar year. More important was the fact that those attending brought gifts and made donations so that we and the other bar groups were able to once again provide toys for tots at Forestdale, Inc., a foster care agency.

The New Year began actively with the Bar Association offering a number of different seminars. Continuing Legal Education courses were held on Internet Marketing, and on the new mandatory E-Filing requirement in Queens County Supreme Court in Medical Malpractice matters. Paul Kerson, a member of our Executive Committee, and his law partners also presented a seminar on how his firm was able to recover assets that were stolen by the Nazis in World War II.

In the upcoming months we have a number of interesting seminars. There will be a Federal Law CLE which will include the Hon. Nicholas G. Garaufis as one of the panelists, and courses in Labor Law, Equitable Distribution, Criminal Law, Building Code rules in the City of New York, Immigration Law and Construction Law among several other planned seminars. I wish to thank our Academy of Law and the moderators of the various seminars who are giving their time and energy to putting these courses together. As someone who has handled a number of these continuing education courses in the past, I know how much time and effort is needed to make these courses interesting and a success.

We have also continued to work to encourage law students and young lawyers to be active with the Bar Association and on January 15th we held a successful networking event which was organized by our Membership Committee, Young Lawyers Committee, and QVLP in conjunction with the NY State Bar Association Young Lawyers Section. Many thanks to our sponsors and to those who helped to make this a success.

If you have not joined a Committee, I urge you to do so and get involved. You will find it a worthwhile and fulfilling experience. [Email](#) or call me at 718-261-3358 and I will suggest a Committee.



*QCBA President Joseph DeFelice with
NY Court of Appeals Judge Sheila Abdus-Salaam
at the Appellate Practice CLE*

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EDITOR'S NOTE By Paul E. Kerson

A Member Way Ahead of His Time – Paul R. Silverstein – (1905-1965)

Making new law takes vision, courage, and stamina; especially so when the law relates to civil rights. Our late member Paul R. Silverstein (1905-1965) was such an attorney. He was the driving force behind *Kemp v. Rubin*, 188 Misc. 310, 69 N.Y.S. 2d 680 (Queens County Sup. Ct. 1946), *affd* 273 A.D. 798, 75 N.Y.S. 2d 768 (2d Dept. 1947), *revd.* 298 N.Y. 590 (1948).

In *Kemp v. Rubin*, New York State's Court of Appeals struck down restrictive covenants in housing in New York on July 16, 1948. The United States Supreme Court reached a similar conclusion in *Shelley v. Kramer*, 68 S. Ct. 836 on May 3, 1948, only two months earlier.

But Paul Silverstein started this uphill struggle to change our society two years before, in 1946. Why? To find out, I spoke at length with his daughter, Susan Sandler; his son Dr. Samuel Silverstein; and his law partners, Herb Balin and Lou Soloway.

For most of his life, Paul R. Silverstein maintained a law practice in downtown Jamaica specializing in real estate law. He represented housing and shopping mall developers, and engaged in some home building himself. He was not a political or civil rights activist. But he believed in the American dream – that anyone and everyone should be able to succeed through hard work.

In 1946, their service in World War II, and the nation's recognition of the horrors of the Holocaust notwithstanding, African-Americans were left out of this dream. A housing boom was ongoing to serve returning United States service personnel. Most housing in Queens County, as in the rest of the United States, still was segregated by race. Covenants restricting sales of new houses to African-Americans were routine even in federally sponsored housing projects.

Read Full Story »

The writer is a Past President of the Queens County Criminal Courts Bar Association, a past Acting Village Justice of the Ardsley, Westchester County, Village Court, and our current QCBA Vice President and Editor of this publication.



Paul R. Silverstein believed in the American dream – that anyone and everyone should be able to succeed through hard work regardless of race, religion or ethnic origins.

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Maintenance Laws

In 2010 we reviewed the provisions of the then new DRL § 236B, sections 5-a & 6-a, establishing temporary maintenance guidelines. The N.Y.S. Law Revision Commission was directed to:

1. Review and assess the economic consequences of divorce on parties;
2. Review the maintenance laws and their administration to determine their impact on post marital economic disparities and the laws' effectiveness in achieving the state's goals; and
3. Recommend legislation deemed necessary to achieve those goals.



Michael Dikman

David Dikman

A preliminary report to the Legislature & Governor was to be made no later than 9 months from the effective date with a final report to be rendered by December 31, 2011. There was a preliminary report, but that was delayed until May 11, 2011 and did nothing more than review the provisions and history, various problems and positions involved. There was no recommendation for any legislation. The final report date (December 31, 2011) came, went and was extended several times. Last year at this writing we were still awaiting the final report. In this column we had said:

"The myriad of different, relevant facts in each case, and the application of a "reality test" (actually computing what disposable income will be left for each spouse upon application of the guidelines) have convinced a number of judges that the temporary maintenance guidelines did in fact result in unjust or inappropriate awards, which they refused to make. More and more cases continue to be reported, where the judges are "deviating," and in different ways and upon different analyses. The result is that although it is taking the judges far more time to construct their decisions, they are as disparate and unpredictable as they were before the statute became effective. The statute has been criticized in as much as the application of the guidelines, based upon an automatic, mathematical calculation, basically creates a shift in resources, rather than the prior goal of tiding over the more needy party."

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Queens County Bar Association

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This is a tribute to two lawyers Russ Morea Criminal Trial Attorney (Deceased) and Arnold Ragano Real Estate and General Practice Attorney (Deceased) for their contribution to the Bar Bulletin. Both gentlemen were long time members of the Bar and we acknowledge their work by republishing their poems. We share this tribute as a way of exposing our younger lawyers who may not have experienced the pleasure of their unique work.

For Whom the Bell Tolls

*by Russ C. Morea
(People v Varn), N.Y.L.J. 11/17/99, pg 1*

In Rensselaer County in the City of Troy,
They've learned to destroy a bicyclist's joy.
Uniformed Cops make illegal stops,
(Probably carrying black, leather crops),
Of any two wheeler which hasn't a bell,
A fact which put Claude Varn in a jail cell.
"What" your saying, can this be true?"
As true as our flag being red, white and blue!

One day Mr. Varn, with drugs in his pants
Was riding his bike when he gave a glance,
And saw Officer Schoonmaker right along side,
Pulling him over and ending his ride.
"No audible warning device was affixed,"
Was the party line given, though the reasons were mixed,
For the stop of this person on a public street,
The pretext was clear, the basis was beat;
The cop recognized Varn from a past drug deal.
That's the reason he stopped him, let's get real!
But the court without even a nod to the WHREN case,
Ruled the traffic stop legal, and kept a straight face,
The bike was impounded and Varn went to jail,
Where he cleans the cell floors with mop and pail.

It seems such a pity to live in that city,
But it's good if your writing a nice little ditty.
The question so brutal, though masked in clover,
Concerns how a cop may now pull you over.
There's the auto exception we've learned to abhor,
Which shored up the previous flaw in the law;
Now I guess it's the "Schwin Rule" the cops will adore,
Still I'm thinking, and scratching my head till its sore;
What's next to be mangled by the government claw?
Will the tricycle be covered by this new fascist law?

Law's Majesty

by Arnold H Ragano

"The law's an ass" prates the sage so
zealously—
In so declaring, he tears the fabric of the
law.

This jurisprudential edifice wrought so meticulously
Adrift like flotsam, awash on the briny shore.

But we ministers of this reverential caste,
Know the cerebral efforts all-expended
To exert this monolith to last
Against chaotic tempests so defended.

What glorious judgments do we artfully frame
As Solomon's decision to cut the babe in twain?
What safeguards to protect humanity
Woven warp and woof in celestial tapestry?

"First kill all lawyers" quotes another wit—
It's meaning is not literal as writ
Should lawyers disappear from earth
"might makes right" would find rebirth.

Against slings and arrows do we endure
Castrations, damnations and mirthful ribaldry—
But in righteous toil for justice we are sure
To uphold traditions pure for all to see.



Changing Your Name in New York:

A Guide for Attorneys and the Self-Represented — Part III

By Gerald Lebovits and Taneem Kabir

Gerald Lebovits is a New York City Civil Court judge and an adjunct professor at Columbia, Fordham, and NYU law schools. Taneem Kabir, an associate attorney at DeToffol & Associates, is admitted to practice in New Jersey and before the United States Patent and Trademark Office. For their research help on all three parts of this article, the authors thank law students Aviva S. Kravitz and Todd M. Neuhaus from Cardozo School of Law and Natalie J. Puzio, an undergraduate at Villanova University.

This third part of our three-part article on New York's name change laws concludes with where to file, in which court to file, and what happens after you file name-change petitions as well as publication requirements.

IV. Where to File

If you are a New York City resident, you may file your petition form and supporting evidence in the clerk's office in the New York City Civil Court or in the Supreme Court.

Inside New York City, you may file in any county (borough) of the New York City Civil Court if you are a New York City resident. But if you file in a county in Civil Court other than the one in which you reside, you must publish your name-change notice in a newspaper with City-wide distribution and not in a local newspaper.

New York City Civil Court petitions go to the court's Special Term for judicial approval.

You may file your petition and supporting evidence in the Supreme Court of the county in which you reside, whether you live inside or outside New York City.¹ As we explained above, Civil Rights Law § 60 authorizes name-change petitioners to file petitions in County Court — a court outside New York City that hears felony cases — but every County Court we contacted directed us to the county Supreme Court to file a name-change petition. Bring an extra copy of all your materials with you in case the court clerk needs extras.



After You File. Read Full Story »

MARKETING YOUR FIRM WITH MOBILE!

by Catherine M. Zito

Mobile friendly websites can help new clients find your firm easily and quickly. 43% of people are searching and purchasing services and products from Smartphones and tablets today. It's important to have a mobile website in addition to a desktop website. Mobile sites load fast and appeal to visitors who typically have a three second bounce rate.

Quick Reference Bar Scan Codes are paired with each mobile website. This image routes to your Bar's mobile website at <http://QCBA.mobi>. Simply download a free scanner at <http://www.scanlife.com> and take a picture of the code with your phone or tablet. You'll route instantly! Print codes on business cards, ads, signs and brochures.



Mobile websites are affordable - approx. \$40-\$60 per month which includes design, logo, unlimited webtabs, hosting, custom domain name, SEO, Google maps, call and email functions and more.

Writer Catherine M. Zito is the President and CEO of [Image Is It](http://ImageIsIt.com) an Internet Marketing Company. For a free consult call (813) 444-2416 or email support@imageisit.net.



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MARITAL QUIZ *By George J. Nashak Jr.*

Question #1 - Are you permitted to file objections from a determination by a support magistrate that a person is in willful violation of a support order and recommending commitment?

Your answer -

Question #2 - Is a lawyer who represented a non-monied spouse permitted to seek attorney's fees from the monied spouse even after his or her client has discharged him or her without cause?

Your answer -

Question #3 - Is there a rebuttable presumption that counsel fees shall be awarded to the less-monied spouse?

Your answer -

Question #4 - May the court suspend child support, if the custodial parent unjustifiably frustrates the non-custodial parent's right of reasonable access to their child?

Your answer -

Question #5 - May a court order that a parent undergo counseling or treatment as a condition of visitation?

Your answer -

Question #6 - May a court direct a party to submit to counseling or treatment as a component of visitation?

Your Answer -

Question #7 - Is a Family Court order vacating a temporary order of child support appealable as of right?

Your answer -

Questions #8 - Is this statement true or false? In general, financial obligations incurred during the marriage which are not solely the responsibility of one party should be shared equally by the parties.

Your answer -

Question #9 - Should the court grant a party a credit of \$20,000.00 for marital funds used to pay a premarital debt?

Your answer -

Question #10 - What is the statute of limitations for pre and post nuptial agreements?

Your answer -

See Answers on Page 17



PHOTO GALLERY *Holiday Party, December 12, 2013. Photos by Photographer Walter Karling*



*Andrew Axler, Ilene Fern, Helmut Borchert
and Kenneth Brown*



*Donna Furey, Maura Wrynn
and Zenith Taylor*



*EJ Thorsen, Greg Brown
and Bernie Vishnick*



*Emilie Simone, Michael Armao
and Kristen Dubowski*



*George Nashak, Hon. Bernice Siegal, Mike
Dikman, Joseph Levin
and Mr. and Mrs. Morton Posman*



Irene and Tom Principe and Donna Furey



*Jonathan Darche, David Cohen
and Samantha Darche*



*Lois Milne, Frank Gonzalez,
Debbie Garibaldi and Heidi Luna*



*Lou Laurino, Claudia Lanzetta
and Jim Pagano*



*Richard Gutierrez-Past President of LLAQC, Zenith Taylor-President of QCWBA,
Joseph DeFelice-President of QCBA, Ron LaLande-President of Macon B. Allen
Black Bar Assn, Tom Principe-St. John's Past President of the School of Law
Alumni Assn and Janet Keller-Vice President of Brandeis Assn.*



PHOTO GALLERY *Young Lawyers Party, January 15, 2014*



*Steven Gordon, Kyle Mitchell, Joe DeFelice,
Katarzyna Wilinska
and Hon. George Heymann*



*Despina Manoloudas, Jamell Isidor
and Catalina Delahoz*



*Gerard Misk, Natasha Berg
and Yusef Abutouq*



*Jacqueline Mazzolla, Claudia Lanzetta
and Phillip Lax*



*Joe Carola, Scott Wiss, Ernest Lawson
and Simone Archer*



*Katarzyna Wilinska, Richard Gutierrez,
Larry Litwack and Susan Master*



*Payal Thakkar, Sherbune Paul, Alexa
Bonaros, Eric Pesale and Steve Gordon*



*Robert Miklos, Laura Outeda
and Salvatore Tomaselli*



*James Pagano plays the
blues for the evening.*



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Answers to Marital Quiz from page 13

Question #1 - Are you permitted to file objections from a determination by a support magistrate that a person is in willful violation of a support order and recommending commitment?

Answer: No, such a determination has no force and effect until confirmed by a Judge of the Family Court. Such a determination by a support magistrate is not a final order, to which a party may file written objections. Matter of Flanagan v. Flanagan 2013 NY Slip Op 5571 (2nd Dept.)

Question #2 - Is a lawyer who represented a non-monied spouse permitted to seek attorney's fees from the monied spouse even after his or her client has discharged him or her without cause?

Answer: Yes, Matter of Mary Gregory v. John J. Gregory 2013 NY Slip Op 5693 (2nd Dept.)

Question #3 - Is there a rebuttable presumption that counsel fees shall be awarded to the less monied spouse?

Answer: Yes, Falcone v. Falcone 2013 NY Slip Op 5795 (2nd Dept.) and DRL §237.

Question #4 - May the court suspend child support, if the custodial parent unjustifiably frustrates the non-custodial parent's right of reasonable access to their child?

Answer: Yes, Jones v. Jones 2013 NY Slip Op 5879 (2nd. Dept.)

Question #5 - May a court order that a parent undergo counseling or treatment as a condition of visitation?

Answer: No, Palmeri v. Palmderi 2013 NY Slip Op 6667 (2nd Dept.)

Question # 6 - May a court direct a party to submit to counseling or treatment as a component of visitation?

Answer: Yes, Palmeri v. Palmderi 2013 NY Slip Op 6667 (2nd Dept.)

Question #7 - Is a Family Court order vacating a temporary order of child support appealable as of right?

Answer: No, since it is not an order of disposition, leave to appeal is required. Matter of Novak v. Novak 2013 NY Slip Op 7045 (2nd Dept.) (See Family Court Act §1112 [a])

Questions #8 - Is this statement true or false? In general, financial obligations incurred during the marriage which are not solely the responsibility of one party should be shared equally by the parties.

Answer: True, Alleva v. Alleva 2013 NY Slip Op 8038 (2nd Dept.)

Question #9 - Should the court grant a party a credit of \$20,000.00 for marital funds used to pay a premarital debt?

Answer: No, Kessler v. Kessler 2013 NY Slip Op 7941 (2nd Dept.)

Question #10 - What is the statute of limitations for pre and post nuptial agreements?

Answer: Three years, but the statute of limitations is tolled until service of process in a matri-monial action or the death of one of the parties. DRL Sec. 250.



ORGANIZED 1876

Editor's Note. A Member Way Ahead of His Time – Paul R. Silverstein (1905-1964) By Paul E. Kerson

Feb-March 2014 Digital Bulletin

Making new law takes vision, courage, and stamina; especially so when the law relates to civil rights. Our late member Paul R. Silverstein (1905-1965) was such an attorney. He was the driving force behind *Kemp v. Rubin*, 188 Misc. 310, 69 N.Y.S. 2d 680 (Queens County Sup. Ct. 1946), *affd* 273 A.D. 798, 75 N.Y.S. 2d 768 (2d Dept. 1947), *revd.* 298 N.Y. 590 (1948).

In *Kemp v. Rubin*, New York State's Court of Appeals struck down restrictive covenants in housing in New York on July 16, 1948. The United States Supreme Court reached a similar conclusion in *Shelley v. Kramer*, 68 S. Ct. 836 on May 3, 1948, only two months earlier.

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Paul Silverstein commenced building houses for the African-American market in St. Albans. He was threatened by officers of local banks. They promised to "put him out of business" if he continued to try to expand the African-American population of Queens County in this way.

His daughter Susan, his son Sam, and his former law partners Herb Balin and Lou Soloway all agreed that the late

Paul Silverstein was not a religious man. However, Paul, the eldest son of first generation immigrants, had a deep respect for the law, and the precepts of our Constitution. As an attorney whose practice centered on real estate, he was all-too-well aware of the way restrictive covenants in housing thwarted the Constitution's promise of equal rights for all. To Paul Silverstein, restrictive covenants were just wrong, wrong, wrong as a matter of "straight forward principle."

What drove Paul Silverstein to challenge New York law concerning restrictive covenants in housing? Neither his children nor his law partners can say for sure. They believe the most likely reasons were his deeply ingrained sense of fairness, his respect for the spirit of the law, and his early life experiences. As a teenager, he caddied at golf courses with boys of many racial, religious, and ethnic origins. He was a good pianist, and played with musicians from diverse backgrounds in Brooklyn, first in silent movies and later in social clubs.

As a lawyer in Jamaica, when he was the first Jewish person invited to join a previously restricted businessmen's club, he made his joining conditional on the club's removing its membership restrictions. He refused to join a Long Island golf club that restricted its membership on racial and religious grounds. (Note – Paul was an excellent golfer and won the first Queens County Bar Association golf trophy.)

Paul first met Sophie Rubin in 1946. Rubin had contracted to sell her St. Albans house to Samuel Richardson, an African-American. Her neighbor, Harold Kemp, sued to enforce the restrictive covenant in all the local deeds.

Paul took Rubin's case. Together with his then-associate, Irving Schuh, he lined up a remarkable coalition of non-sectarian (The American Civil Liberties Union, The National Lawyers Guild, The Greater New York Council of Industrial Organizations, The City Wide Citizens Committee on Harlem, and The Social Action Committee of New York City), and sectarian organizations (The American Jewish Congress, the Anti-Defamation League of B'nai B'rith, The Congregational Church Association, Inc., The Methodist Federation for Social Services), as amici curiae. This was a major achievement, and evidence of Paul's commitment to end restrictive covenants in housing in New York State. In later years, many of these organizations were among the Civil Rights Movement's strongest supporters.

Due to the then prevailing legal precedents, he lost in the Queens County Supreme Court even though presiding Justice Livingston's opinion quoted Supreme Court Justice Murphy in *Hirabayashi v. United States*, noting: "Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals. They are at variance with the principles for which we are now waging war..... Nothing is written more firmly into our law than the compact of the Plymouth voyagers to have just and equal laws." Justice Livingston went on to add, "At the same time, however, and regardless of what its sentiments may be, this court is constrained to follow precedent and govern itself in accordance with what it considers to be the prevailing law."

Undeterred, Paul appealed the case, but lost again in the Appellate Division, Second Department in 1947. Finally in May, 1948, the U.S. Supreme Court reversed itself, finding restrictive covenants unconstitutional (*Shelley vs. Kraemer* 334 U.S. 1, 68 Sup. Ct. 836, 92, L. Ed. 568 (1950)). Two months later, he prevailed in the New York State Court of Appeals (*Kemp v. Rubin*, revd. 298 N.Y. 590 (1948)).

The Shelley and Kemp cases were dispositive. Throughout the nation, state courts cited both Shelley and Kemp in refusing to enforce racially based restrictive covenants. In the decade that followed, New York enacted the nation's first state-sponsored Human Rights Act. Its housing section was based directly on Kemp v. Rubin. But it took another twenty years before the Civil Rights Act of 1968 declared it unlawful "to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."

We in the Queens County Bar Association are proud of our association with the New York State Court of Appeals decision in Kemp v. Rubin, 298 N.Y. 590 (1948), a testament to the decency, humanity, bravery and courage of our late member, Paul R. Silverstein.

Family Law Annual Review by Michael & David Dikman

Feb-March 2014 Digital Bulletin

MAINTENANCE LAWS

In 2010 we reviewed the provisions of the then new DRL § 236B, sections 5-a & 6-a, establishing temporary maintenance guidelines. The N.Y.S. Law Revision Commission was directed to:

Review and assess the economic consequences of divorce on parties; Review the maintenance laws and their administration to determine their impact on post marital economic disparities and the laws' effectiveness in achieving the state's goals; and
Recommend legislation deemed necessary to achieve those goals.

A preliminary report to the Legislature & Governor was to be made no later than 9 months from the effective date with a final report to be rendered by December 31, 2011. There was a preliminary report, but that was delayed until May 11, 2011 and did nothing more than review the provisions and history, various problems and positions involved. There was no recommendation for any legislation. The final report date (December 31, 2011) came, went and was extended several times. Last year at this writing we were still awaiting the final report. In this column we had said:

"the myriad of different, relevant facts in each case, and the application of a "reality test" (actually computing what disposable income will be left for each spouse upon application of the guidelines) have convinced a number of judges that the temporary maintenance guidelines did in fact result in unjust or inappropriate awards, which they refused to make. More and more cases continue to be reported, where the judges are "deviating," and in different ways and upon different analyses. The result is that although it is taking the judges far more time to construct their decisions, they are as disparate and unpredictable as they were before the statute became effective. The statute has been criticized inasmuch as the application of the guidelines, based upon an automatic, mathematical calculation, basically creates a shift in resources, rather than the prior goal of tiding over the more needy party."

We commented that the cases regarding temporary maintenance, were very "fact intensive," and that it would be hard to find two cases presenting precisely the same facts, relative to the parties' incomes, assets, needs, ages, health, marriage duration, number and ages of children, type of residence, or whether the parties are still residing together, among others. Also, in view of the vastly varying fact patterns and the substantial number of

matrimonial judges making decisions throughout the State, we opined that the value of any one Supreme Court decision, as a precedent, will be minimal, since not binding upon judges of coordinate jurisdiction. We hoped that “by next year we should have some guidance from the Appellate Division.” But we still don’t have too much. While there have been a number of carefully considered and well written decisions on this topic, during the last three years, there is still a substantial amount of uncertainty as to what any particular court will decide in any one case. The Appellate Divisions have sent cases back when decisions have not sufficiently addressed and discussed either what the “presumptive award” would be by a strict application of the guidelines or the factors relied upon to deviate therefrom.

A full discussion of the substantive and procedural requirements is found in *GONCALVES v. GONCALVES*, 105 A.D. 3d 901, 963 N.Y.S. 2d 686 (App. Div., 2nd Dept.). In *LENOX v. WEBERMAN*, 103 A.D. 3d 550, 960 N.Y.S. 2d 89 (App. Div. 1st Dept.) the trial court was said to have explained its deviation from the “presumptive amount,” based upon the 19 statutory factors, as a result of which was the affirmance of a \$38,000 a month award. In an obviously much less monied case the same court affirmed a \$500 temporary maintenance award to the husband for six months in *WOODFORD v. WOODFORD*, 100 A.D. 3d 875, 955 N.Y.S. 2d 355 (1st Dept.). Again in *TAWIL v. TAWIL*, 100 A.D. 3d 520, 953 N.Y.S. 2d 856 (1st Dept.) the lower court award of \$12,457.25 per month as temporary maintenance was found to have been properly determined.

However, numerous Appellate Division decisions, including those above, have omitted a sufficient statement of facts to provide some value as precedent s. The long-awaited final Law Revision Commission report was issued on May 15, 2013. It was generally believed that the Commission would not recommend a wholesale elimination of the maintenance guideline concept, notwithstanding many lawyer groups’ belief that is what should be done. It should be remembered that the original law, while drafted to relate to maintenance awards at the end of cases, was so problematic that it was hastily revised to speak only in terms of temporary maintenance. The revision was not done with what might be called substantial care, and a number of provisions that obviously could or should not relate to temporary awards remained in the language of the statute ... for example a consideration of the equitable distribution award, which obviously could not be known when a temporary maintenance order was being drafted.

At the outset, the final report acknowledges that two primary desires: a) individualized treatment for each marriage and b) predictability and consistency of awards, are difficult to reconcile “because those goals point policy makers in different directions.” The Commission attempted to strike some type of balance between those two approaches. Its conclusion was that we had to take into account the differences between cases with limited assets and income and those involving substantial assets and income. In fact, the commission noted that in the limited money cases it is “less likely that either party is represented by counsel” whereas in substantial money cases “the court has more variables to consider, more options in crafting relief, and both parties are more likely to have counsel.” We would wager that nobody on the Commission, who adopted that comment about less monied litigants not having counsel, ever practiced in Queens County! We doubt there is any matrimonial lawyer in Queens who has not been retained in cases involving very limited financial circumstances from time to time.

In any event, the major change recommended by the Commission, in line with its starting premise, was to start with a formula for combined income at or below \$136,000, a level it said reflected the income of a majority of New

Yorkers, and which was consistent with the amount now effective in child support guideline computations. Where the combined income exceeds \$136,000 the court would have more freedom and discretion to apply a set of statutory factors to the excess. It would also retain the flexibility to deviate from the formula (above or below the \$136,000) were found to be unjust or inappropriate. There was no recommended change in the mathematics of the formula set forth in the current law for computing temporary maintenance, and that same formula was retained in the computation of permanent maintenance. In both instances the requirement that deviations based upon the statutory factors had to be explained in the decision was included. The recommendations were to apply to both temporary and permanent orders. In temporary orders the court was supposed to “allocate the responsibilities of each party for the family’s current expenses during the pendency of the action.” The temporary award would generally have a duration matching that of the divorce proceeding, but should be limited so as not to exceed the length of a short term marriage.

In the report, if any recommendation received the widespread approval of the matrimonial bar it was the statement that “Based on a widespread consensus ” it was recommended that “one party ‘s ‘increased earning capacity’ no longer be considered as a marital asset in equitable distribution under section 326B (5).” The report acknowledges that this enhanced earnings concept (distributing the established value of licenses and degrees, initiated not by statute but by the landmark Court of Appeals decision in O ‘BRIEN v. O’BRIEN, 66 NY 2d 576, 498 NYS 2d 743) “created much dissatisfaction and litigation because of the asset’s intangible nature, the speculative nature of its ‘value’ as well as the costs associated with valuations, and problems of double counting increased earnings in awards of post-divorce income and child support.” The recommendation was that any contribution to the career of one party by the other should only be factored into the maintenance considerations.

As to the duration of maintenance awards, various factors were set forth, which are essentially those considered and discussed in the case and statutory law before the more recent maintenance legislation (e.g. length of marriage, time necessary for the needy spouse to become self-supporting, normal retirement age, available retirement benefits, health care barriers, child care responsibilities and age). The recommendations were to be the same for orders out of both the Supreme and Family Courts. They did not retain the much criticized former provision that remarriage would not necessarily terminate maintenance.

But, of course, this report is only a recommendation, and to what extent it may find its way into future legislation is quite another story. The consensus of opinion we have heard is that there will, indeed be some legislation in this area, presumably before the end of this session. But the bills under consideration vary widely, some adopting the reduction in the “cap” from \$500,000 to \$136,000, others not, and still others establishing amounts somewhere in between.

So, for the near future, prior to any corrective or modifying legislation we are still stuck in the absurd position where:

a) The court is required to consider guidelines for child support at the end of cases, in the final judgment, but not necessarily in making temporary awards;

- b) The court is required to consider guidelines for maintenance in making temporary awards, but not at the end of cases, in the final judgment; and
- c) When one works out the math in cases where the court might opt (as is within its discretion) to use the current guidelines for both child support and maintenance, after income tax liabilities, more likely than not the payor spouse will wind up with less disposable income than the payee. One may ask: How did a group of legislators, the vast majority of whom are attorneys, ever allow us to get into this situation. We regret to opine that the answer is a primary concern for "politics" rather than good law or the best interests of the public.

PRELIMINARY CONFERENCES

Last year we reported on the change that was going to be made starting in January, 2013, regarding the conduct of Preliminary Conferences in Queens County.

Referee Lisa J. Friederwitzer was assigned the task of presiding over a new, centralized Matrimonial P.C. Part, which was to conduct all P.C.'s which have not previously been scheduled before the matrimonial judges, thus freeing their time and hopefully, streamlining and making the P.C. process more meaningful and productive. It was expected that we lawyers refrain from coming to the P.C. 's to more or less play a waiting game, not having yet completed Net Worth Statements or produced basic financial records, and expecting to have a schedule imposed at the P.C., which will only require later action. The intent and expectation was that the P.C. 's, which would be able to be scheduled sooner, and with staggered appearance times, will result in early agreements or orders for various issues, including support, parental access, etc. The court is not limited by the absence of any underlying motion, although it will be expected that pleadings are served, seeking various forms of relief. Temporary orders were to be made to afford parties relief or partial relief in various areas, without long waiting times. The result is that in cases where the amount of the parties' income is relatively clear and where sufficient documentation is presented, temporary orders may well be issued at the P.C., absent formal motions.

Requests for adjournments must be made only by E-Mail to QSMATPC@courts.state.ny.us.

In practice, Preliminary Conferences are scheduled the first time a motion is made. As a result, where a case starts off with an early motion, sometimes not involving financial matters, parties are not all coming in with Net Worth Statements or other financial documents. But the conferences are being handled expeditiously, and in cases where financials are not exchanged, time limits are fixed and cases are moving along. At this point we have heard nothing negative about the process. Quite the contrary, the P.C.'s are scheduled without much delay, handled competently and the judges are spared that one component of their quite over-burdened responsibilities (e.g. conferences, motions, Order to Show Cause submissions, hearings, trials, decisions and orders). There is no complaint about Queens County matrimonial practice more often heard than how long it takes to get a decision, a trial, a next conference date, etc. However, we are hard pressed to be able to identify any county in which the number of matrimonial cases assigned, per judge is higher than in Queens. Our three judges are not out playing golf or lounging around. They are working full time, as are their staffs. But you can only do so much in a day and can only deal with one case at a time. As has been the case for years, we need more judges handling

our family law cases, and they are hard to come by given the financial and physical space limitations under which our court is forced to operate. The same situation applies to the number of matrimonial clerks we have, the shortage of which is a large factor in the extremely long time it takes to have judgments or submitted orders signed and entered. Who knows – perhaps by next year's article we might at least have another elevator in operation!

Changing Your Name in New York: A Guide for Attorneys and the Self-Represented – Part III By Gerald Lebovits and Taneem Kabir

Feb-March 2014 Digital Bulletin

Gerald Lebovits is a New York City Civil Court judge and an adjunct professor at Columbia, Fordham, and NYU law schools. Taneem Kabir, an associate attorney at DeToffol & Associates, is admitted to practice in New Jersey and before the United States Patent and Trademark Office. For their research help on all three parts of this article, the authors thank law students Aviva S. Kravitz and Todd M. Neuhaus from Cardozo School of Law and Natalie J. Puzio, an undergraduate at Villanova University.

This third part of our three-part article on New York's name change laws concludes with where to file, in which court to file, and what happens after you file name-change petitions as well as publication requirements.

IV. Where to File

If you are a New York City resident, you may file your petition form and supporting evidence in the clerk's office in the New York City Civil Court or in the Supreme Court.

Inside New York City, you may file in any county (borough) of the New York City Civil Court if you are a New York City resident. But if you file in a county in Civil Court other than the one in which you reside, you must publish your name-change notice in a newspaper with City-wide distribution and not in a local newspaper.

New York City Civil Court petitions go to the court's Special Term for judicial approval.

You may file your petition and supporting evidence in the Supreme Court of the county in which you reside, whether you live inside or outside New York City.¹ As we explained above, Civil Rights Law § 60 authorizes name-change petitioners to file petitions in County Court — a court outside New York City that hears felony cases — but every County Court we contacted directed us to the county Supreme Court to file a name-change petition. Bring an extra copy of all your materials with you in case the court clerk needs extras.

V. What Happens After You File

After you file your petition, the court clerk will notify you of a name-change-hearing date — usually within 90 days

of your filing date. At that hearing, the court will examine your petition, including the reasons you offer for changing your name.² At this hearing, the judge might ask you a few questions about your name change. Answer candidly. If the judge rejects your name change request, review the judge's explanation, which will be articulated in writing. A judge might reject your name-change petition on a variety of grounds, such as if your name change will result in misrepresentation or fraud. In *Matter of B.*, the court rejected a divorcee's name-change petition to change her name to match the last name of her lover, a married man, because doing so would condone her ongoing act of adultery.³

Another reason for rejection is if your name will cause confusion. In *Matter of Greenfield*, the petitioner wanted to change his Irish-sounding name (Kelly), which he had petitioned to be changed from "Greenfield," his earlier Jewish-sounding name, seven years earlier.⁴ The court did not allow him to change his name yet again to "Anders," a Protestant-sounding name, just so he could travel to the Middle East on vacation.

If you are a transgendered individual and you want to change your name to correspond with the gender with which you identify, you are not required to present medical evidence to support your proposed name change.

New York name-change law has progressed significantly in the last twenty years. In 1992, in *Matter of Anonymous*, the court denied the petition to change a man's name from an obviously male name to an obviously female name merely "to avoid embarrassing situations due to [his] sexual preference and physical well being" because the petitioner did not corroborate his claim by competent medical and psychological evaluation, including whether he was a transvestite or transsexual and, if he was a transsexual, whether he had undergone a sex-change operation.⁵

In 1995, in *Matter of Rivera*, the court granted the petitioner's name change from a male-gendered name to a female-gendered name even though there was no claim that he had undergone a sex-change operation.⁶ But the court granted his petition on condition that he not use or rely on his name-change court order as proof that his gender had been changed anatomically where the prevailing psychiatric evaluation was that he was a "transsexual whose behavior, mannerisms, and appearance" were feminine and that he was "confident about his sexuality and choice of female gender."

Appellate authority from 2009 now holds that there is no "additional requirement that a transgendered petitioner present medical substantiation for the desired name change."⁷ In granting the petitioner's name-change application, the Appellate Term, First Department, in *Matter of Winn-Ritzenberg* added that it did not need to "address the separate legal issue of whether petitioner has changed gender for legal purposes."⁸

Sometimes petitioners' wishes to change their names overlap with other well-recognized rights. In *Matter of Nawadiuko*, a family petitioned to change its last name from Nwadiuko to "ChristIsKing." The court denied the petitioners' name-change application, reasoning that although the petitioners' proposed name "has [a] personal religious meaning to them," ChristIsKing "would require third parties to make a religious statement when just calling petitioners' names."⁹

On the other hand, the Appellate Division, Third Department, in *Matter of Madison*, reversed the denial of an inmate's petition to change his name to Diallo Rafik Asar Madison in compliance with his newfound Islamic faith.¹⁰

If you are thinking about changing your name to a single name, you will be disappointed to learn that doing so is unlawful. In *Matter of Douglas*, the court denied the petitioner's request to change his name to "Arindam" because of his contact with the teachings of a spiritual and philosophical leader in India. The court found that "judicial approval of the use of a single name would be a retrogression to antiquity, cause havoc and chaos" in properly identifying and locating persons and official records, and "lead to all kinds of complications on the economy," which depends upon being able to track down debtors.¹¹

Your name-change petition may not be based on an "unworthy motive," and your new name may not be "bizarre, unduly lengthy, ridiculous or offensive to common decency and good taste."¹² In *Matter of Jama*, a 1966 case perhaps no longer in keeping with 2013 judicial sensibilities, the petitioner tried to add "von" before his last name to reflect his German heritage, but the court denounced this as an un-American desire to affiliate himself with people who adopted the philosophies of a "monstrosity and his cohorts."¹³ The name "von" was, according to the court, used among German nobility, so the petitioner's using it in New York might also have resulted in confusion about whether the petitioner had a title he did not have.¹⁴

If the court rejects your name change petition, you can still ask everyone who interacts with you to call you by your desired name. (E.g., "My legal name is Francis, but please call me 'Frank.'"¹⁵) Unless you change your name under the common law, however, you must continue to use your legal name on all legal documents, contracts, and applications.

VI. Publication Requirement

A court that approves your name change will issue a written order to you within 60 days of approval. Sometimes the court will sign the order right on the spot at the name-change hearing. This order will direct you to file the order with the court clerk either in the county in which you live or in a county the ordering court decides. This order will also direct you to publish your new name in at least one local newspaper the judge chooses.¹⁶ Some courts, such as the Bronx County Civil Court, require you to publish in two newspapers.¹⁷ All the other counties in New York City require publication in one newspaper only.

You must then take this order to the newspaper(s) to ask it to publish your new name in compliance with the judge's order and pay the newspaper's publishing fee, a fee that will depend on the newspaper.¹⁸ As of July 2013, the New York Times' fee is \$168. The Bronx Free Press, on the other hand, charges \$95. The petitioner is responsible for the cost of this publication. You must publish the name change within 60 days of the date of the order.¹⁹ The following is an example of a name-change publication notice:

Notice is hereby given that an order entered by the Civil Court, Bronx County, on May ____ 2013, Index #_____-13/BX, a copy of which may be examined at the Office of the Clerk, located at 851 Grand Concourse, Bronx, NY 10451, grants me (us) the right to:

Assume the name of (First) Todd (Middle) Michael (Last) Oldhaus.
My present name is (First) Todd (Middle) Michael (Last) Neuhaus.
My present address is 1234 Poland Spring Blvd., Apt. 4L, Bronx, NY 10463.
My place of birth is Bronx, NY.
My date of birth is April 25, 1980.

Once you receive the court order, you will also want to notify the Department of Motor Vehicles, the U.S. Citizenship and Immigration Services, Social Security Administration, and schools of your name change.

The newspaper that publishes your new name will give you an Affidavit of Publication. Within 90 days of your new name's being published in the local newspaper, you must then file, in the same court that issued your name change order, the Affidavit of Publication along with the original name-change order. The court clerk of that court will then verify that you have complied with the name-change order by certifying it.²⁰ If you are a felon under section II(b) above, the court clerk will mail by first-class mail a copy of this order to the New York State Division of Criminal Justice Services in Albany.²¹ If you have any current court-ordered support obligations, the court clerk may, in the clerk's discretion, also mail by first-class a copy of this order to that court to notify the appropriate agencies,²² such as the New York City Division of Child Support Enforcement (DCSE) for child support or the New York City Human Resources Administration (HRA) for spousal support.

You may then purchase from the court certified copies of your name change order to keep for your records.

VII. In Which Court You File a Name-Change Petition

There is a general filing fee for any court in which you file. For New York City residents, who have the option to petition either Civil Court or Supreme Court, it is both faster and less expensive to petition Civil Court than to petition Supreme Court.

To obtain an index number for your petition, the New York City Civil Court charges \$65.00, while the New York State Supreme Court charges \$210.00. Supreme Court also requires a Request for Judicial Intervention (RJI) form with the name-change petition.²³ Supreme Court does not charge extra for an RJI in connection with a name-change petition. Courts accept only cash, money orders, or certified checks.

If you cannot afford these amounts, you may request a fee-waiver application, also known as a Poor Person Affidavit, officially called an "Affidavit in Support of Application to Proceed as a Poor Person." In the affidavit, you must state the action or proceeding for which you are submitting the fee-waiver form (e.g., name-change petition), where you reside, your income, the value of your property, any "extraordinary out-of-pocket expenses," a list of people you financially support, and any other fact relevant in determining your ability to pay the court fees.²⁴ Keep the receipt of your payment with you, and write on your petition the index number that the clerk printed on your receipt.²⁵

This petition for poor person's relief is a separate petition²⁶ that might take a few extra days to process before you

may proceed with your name change.

For cases of parents petitioning to change their child's name, the New York State Family Court inside and outside New York City is empowered to change a child's surname, but only if a paternity petition for that child is pending.²⁷ Once paternity is established, the Family Court in New York City will send the filiation order, which states who the child's father is, to the the New York City Department of Health and Mental Hygiene (DOHMH).²⁸ DOHMH then processes the filiation order and sends it back to Family Court. If both parents consent, Family Court will have both parents sign the name-change form, and Family Court will forward the completed name-change form to DOHMH. About 10 weeks later, the parents will receive a birth certificate with the new surname. Family Court does not charge a fee in connection with a name change during a paternity proceeding.

If you have a problem with your birth certificate, you must correct the certificate before you petition in Civil Court. Civil Court does not have the jurisdiction to correct a birth certificate. To correct a birth certificate, you may petition Supreme Court. But often there are other ways to correct your birth certificate without petitioning Supreme Court.²⁹

VII. Conclusion

Changing your name in the State of New York can be a challenging task. Although the common-law method provides a relatively straightforward way to change your name, there are numerous reasons why you might still want and need to seek court approval by filing a petition. We hope that this article will help you change your name or the name of a loved one — and that you prefer a good name to great riches.

See Sylvia Rivera Law Project, *How to Legally Change Your Name in New York City*, 2013, <http://srjp.org/resources/namechange/> (last visited July 17, 2013); N.Y. City Civ. Ct. — Name Change Law, <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml> (last visited July 17, 2013); Name Changes, <http://www.nycourts.gov/courthelp/namechangeinfo.html> (last visited July 17, 2013).

Matter of Sakaris, 160 Misc. 2d 657, 661, 610 N.Y.S.2d 1007, 1010 (Civ. Ct. Richmond County 1993) (citing *Matter of Douglas*, 60 Misc. 2d 1057, 1059, 304 N.Y.S.2d 558, 561 (Sup. Ct. N.Y. County 1969).

Matter of B., 81 Misc. 2d 284, 286, 366 N.Y.S.2d 98, 100 (Wayne County Ct. 1975).

Matter of Greenfield, 66 Misc. 2d 733, 734, 322 N.Y.S.2d 276, 277 (Civ. Ct. N.Y. County 1970).

Matter of Anonymous, 155 Misc. 2d 241, 242, 587 N.Y.S.2d 548, 548 (Civ. Ct. Queens County 1992).

Matter of Rivera, 165 Misc. 2d 307, 309-12, 627 N.Y.S.2d 241, 242-45 (Civ. Ct. Bronx County 1995).

Matter of Winn-Ritzenberg, 26 Misc. 3d 1, 3, 891 N.Y.S.2d 220, 221 (1st Dep't 2009) ("Apart from the prevention of fraud or interference with the rights of others, there is no reason — and no legal basis — for courts to appoint themselves the guardians of orthodoxy in such matters.") (quoting *Matter of Guido*, 8 Misc. 3d 825, 828, 771 N.Y.S.2d 789, 791 (Civ. Ct. N.Y. County 2003).

Id.

Matter of Nawadiuko, 37 Misc. 3d 1207(A), 2012 N.Y. Slip Op. 51931(U), *4 (Civ. Ct. Richmond County 2012).

Matter of Madison, 261 A.D.2d 738, 738-39, 689 N.Y.S.2d 732, 733 (3d Dep't 1999) ("[T]he Attorney-General has

submitted a letter to this court indicating that the Department of Correctional Services does not oppose petitioner's application to change his name. Accordingly, in the absence of a 'demonstrable reason not to do so', the petition should be granted.").

See Douglas, 60 Misc. 2d at 1058-59, 304 N.Y.S.2d at 560-61.

See Kushner, *supra* note 3 of Part I of this article, at 314–18 & 332 for the "substantial reason" standard.

Matter of Jama, 51 Misc. 2d 9, 9, 272 N.Y.S.2d 677, 677 (Civ. Ct. N.Y. County 1966).

Id. at 10, 272 N.Y.S.2d at 678.

See Matter of Di Masi, N.Y.L.J., May 9, 2000, at 33, col. 1 (Civ. Ct. Richmond County) (denying father's petition to change son's name from Francis to Frank because father did not "support his petition with competent psychological affidavits as to the emotional harm" his son suffered from his androgynous name, but noting that because son maintained his "common-law right to use whatever name he chooses, there is nothing to prevent him from calling himself Frank and insisting that others do so."); see also Gersh Kuntzman, Judge Nixes Teen's "Frank" Appeal, N.Y. Post, May 2000.

N.Y. Civ. Rights Law § 63, available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec64> (last visited July 17, 2013).

N.Y. County Law § 907 requires most notices published in the Bronx to be published "in at least two [Bronx] newspapers."

N.Y. CourtHelp, Name Change DIY Forms, <http://www.nycourts.gov/courthelp/namechangeinfo.html#Q4>.

N.Y. Courts, Self-Help Ctr., Procedures for Adult Name Change Petition,

http://www.nycourts.gov/courts/6jd/forms/SRForms/name_change-adultproced.pdf (last visited July 17, 2013).

Id.

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