



"We have come a long way." Queens DA Celebrates Black History Month

BY CORRY L. MCFARLAND*

I had the distinct pleasure of attending the District Attorney of Queens County's Black History Month Celebration honoring New York Deputy Mayor for Education and Community Development Dennis M. Walcott on Wednesday, February 24, 2010. Among a distinguished audience of judges, public officials, attorneys and students Mr. Walcott became the eighth recipient of the Queens DA's William Tucker Garvin Public Service Award.

William Tucker Garvin was the first African American Assistant District Attorney in Queens County. He was appointed to the position on January 1, 1952 and held the position until his retirement in July of 1966 shortly before his passing. In addition to being appointed the first African American DA in Queens County, Mr. Garvin was also one of the first African American graduates of St. John's University Law School and the first African American to serve on the Queens Local School Board 50 in 1943. Among Mr. Garvin's most notable public service achievements was his work with the NAACP Legal Defense Fund as a part of their Brown v. Board of Education research team. The William Tucker Garvin award was established in 2001 and past recipients of the award include Former New York City Mayor, David M. Dinkins (2003); U.S.



District Attorney Richard Brown presents New York Deputy Mayor for Education and Community Development Dennis M. Walcott with the William Tucker Garvin Public Service Award.

Congressman, Gregory W. Meeks (2004); Queens Administrative Judge, Leslie G. Leach (2005); Former U.S. Deputy Attorney General, Eric H. Holder, Jr. (2006); New York State Deputy Chief Administrative Judge for Justice Initiatives, Juanita Bing Newton (2007); New York State Lieutenant Governor, David Paterson (2008); and New

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A Note on Equitable Estoppel

BY ANDREW J. SCHATKIN



Andrew J. Schatkin

This article proposes to examine the conditions and criteria where the procedural requirement of filing a Title VII Claim, pursuant to 40 USC Sec. 2000 (e) may be extended beyond the 90-day period measured from receipt of the Right to Sue letter.

The leading case setting forth this procedural rule is Sherlock v. Montefiore Medical Center, 84 F.3d 522 (2nd Cir. 1996). In that case the plaintiff, Pro Se, Elizabeth Sherlock, appealed from a final judgment of the United States District Court for the Southern District of New York dismissing her Complaint alleging that the defendant, Montefiore Medical Center, terminated her employment, in violation of various Federal statutes, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000(e) *et seq.* 1994 and the Age Discrimination Employment Act, 29 U.S.C. Sec. 621 *et seq.* (1994).

On Appeal, Sherlock contended that the District Court erred in finding her Title VII and ADEA Claims time-barred. The Court concluded that the Court erred in so ruling as a matter of law. The Sherlock Court, however, articulated that in order to be timely a claim under Title VII or the ADEA must be filed within 90 days of the complainants receipt of a Right to Sue letter citing Baldwin County Welcome Center v. Brown, 466 US 147, 104 S. Ct. 1723, 80 L. Ed.2d 196 (1984), and Cornwell v. Robinson, 23 F.3d 694 (2nd Cir. 1994).

What can the Bar Association do for you?



Above are speakers and panelists for the Stated Meeting held on Monday, February 22, 2010, that welcomed law students and newly admitted attorneys to let them know why someone should be a member of the Queens Bar Association and what the Bar Association can do for them.

Save The Date
May 6th!
**Annual Dinner
& Installation**

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THE DOCKET . . .

being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th St., Jamaica, New York. More information and any changes will be made available to members via written notice and brochures. Questions? Please call (718) 291-4500.

PLEASE NOTE:

The Queens Bar Association has been certified by the NYS Continuing Legal Education Board as an Accredited Legal Education Provider in the State of New York.

2010 SPRING CLE Seminar & Event Listing

March 2010

Tuesday, March16 MHL Article 81/Guardianship Training 2:30 - 5:30 p.m.
Monday, March22 Past Presidents & Golden Jubilarians Night 5:30 - 8:30 p.m.

April 2010

Friday, April 2 Good Friday, Office Closed
Wednesday, April 7 CPLR & Evidence Update
Tuesday, April 13 West Law Luncheon Seminar 1:00 - 2:00 p.m.
Thursday, April 15 No Fault Arbitration 2010
Monday, April 19 Judiciary Night
Tuesday, April 20 Basic Criminal Law – Pt 1
Wednesday, April 21 Equitable Distribution Update 6:00 - 8:00 p.m.
Tuesday, April 27 Basic Criminal Law – Pt 2
Thursday, April 29 Selection of a Jury Seminar

May 2010

Thursday, May 6 Annual Dinner & Installation of Officers
Terrace on the Park 6:00 - 10:00 p.m.
Monday, May 10 Legal Drafting Seminar 6:00 - 8:00 p.m.
Wednesday, May 12 Labor Seminar
Monday, May 31 Memorial Day, Office Closed

CLE Dates to be Announced

Elder Law
Juvenile Justice Law

Surrogate’s Court, Estates & Trusts
Taxation Law

NEW MEMBERS

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Ester Aronova	Maritanna Isakov
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Jessica Costa	Alexander Keblish
Margaret Crowley	Jonathan Howard Mulvihill
Nathan David Decorpo	Lauren Marie Pennisi
Laura M. Dilimetin	Robert T. Reiman
Giovanni Luciano Escobedo	Argilio Rodriguez
Brittni Tara Feldenkreis	Rosanna Ruotolo
Dale Frederick	Joseph Natale Schneiderman
Daniel Furshpan	Robert Schuster
Arvind K. Galabya	Abdul Jabbar Shariff
Edalia Regina George	Victoria Spodek
Kati Elizabeth Giusti	Krishna M. Vempaty

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PRESIDENT'S MESSAGE

Recently, the New York City Criminal Justice Coordinator has taken measures to eliminate or substantially curb the role of attorneys who represent indigent defendants pursuant to the Assigned Counsel Plan better known as 18B.

The city has issued a request for proposals to create public defenders (to supplement the Legal Aid Society and Queens Law Associates) to represent indigent persons in criminal cases. This would eliminate the Assigned Counsel Plan or 18B lawyers in criminal cases. This would have a detrimental effect to many of our members and to indigent defendants of Queens County.

The Queens County Bar Association has set up a special committee to investigate and report to the Board of Managers on how the Queens County Bar Association can help these indigent defendants and 18B lawyers.

The special committee is comprised of criminal defense attorneys who are past presidents of the Association, current members of the Board of Managers and Officers of the Queens County Bar Association. Stephen Singer, Leslie Nizin, Chanwoo Lee, Richard Gutierrez, Joseph DeFelice, David Cohen, Gary Miret and Paul Kerson comprise the special committee. The

committee has already held a meeting for 18B lawyers, as well as, with the other Bar Associations within the city of New York.

Rest assured the Queens County Bar Association is working hard for the benefit of its members and the indigent defendants of Queens County. I will keep you informed on this very important development.

As always, if you have any questions or concerns please contact me.

I look forward to seeing all of you at one of our many activities.

Guy R. Vitacco, Jr.



Guy R. Vitacco, Jr.

Fantastic Cajun Cuisine in Queens? Garonteed!

BY MARK WELIKY*

Want Cajun cooking at its best? Come to Cooking With Jazz in Jamaica Estates. Lovers of Cajun and Creole cooking were devastated when this restaurant's Whitestone location closed a couple of years ago because of a lease dispute. Chef/owner Steve VanGelder searched for a new venue in Queens and reopened his restaurant in December in a lovely location on Union Turnpike, most recently occupied by Vino which served Italian cuisine. Chef Steve's fans are ecstatic! Steve served a

four year tour of duty at K-Paul's Louisiana Kitchen in New Orleans and world renowned Cajun chef Paul Prudhomme's cooking talent sure rubbed off. Diners can enjoy spicy meals that feature starters such as Chicken and Andouille Gumbo, Tasso and Shrimp Ravioli or Cajun Shrimp Remoulade. Cajun entrees are highlighted by Blackened Fish or Steak, Chicken Jambalaya, Red Beans and Rice or Chicken Etouffe. There is also a "Not So Cajun" menu featuring pastas, steak, salads and burgers. If you could possibly have room left for dessert your choices include Bread

Pudding, Pecan Pie and a New Orleans favorite, Bananas Foster.

The outstanding cuisine is accompanied by live jazz two nights a week (usually Thursday and Sunday). It doesn't get any better than this and it's conveniently located just a few blocks from St. John's University. Chef Steve also offers Cajun cooking classes on Saturdays from 10-2 (call for info). Cooking With Jazz is open Wednesday through Sunday serving dinner from 5 p.m. and is closed Monday and Tuesday except for private parties. Highly recommended, you won't be disappointed!

Cooking With Jazz is located at 179-22 Union Turnpike, Jamaica Estates, NY 11366

Phone (718) 380-0896 www.COOKINGWITHJAZZ.com

**Mark Weliky is the Pro Bono Coordinator for the Queens County Bar Association*

(NOTE: Any members who would like to submit a review for a Queens restaurant should do so – call (718) 291-4500 for info)

Sunday Dinner with Grandma and Grandpa

BY ROBERT CHARLES KOHM

Last Sunday, my wife and I were babysitting our two young granddaughters, Riley who is three and her sister Sienna who turned one in January. I was in the kitchen preparing Italian style tomato sauce from a recipe handed down from generation to generation. I continued this tradition by giving this secret recipe to my

three sons. Riley was busy helping "grandpa" prepare the sauce. She brushed olive oil on a steak and was watching me open a bottle of Chianti. After I opened the bottle, I began to walk to the stove to pour some Chianti in the sauce when Riley screamed, "Grandpa, no!" I was startled and said to her, "Riley, what's wrong?" and she replied, "Grandpa, you have to let it breathe first." I couldn't

believe what I heard, so I said, "Riley, what did you say?" And she replied, "You have to let the wine breathe before you put it in the sauce." I thought I was being lectured by Julia Child. In amazement, I asked her where she learned this and she replied that when she helps my son make the sauce, he always tells her that the wine must breathe first. I, of course, put the wine down and picked her up and gave her a hug and a kiss and thanked her for saving the sauce. She was so proud of herself.

Later at the dinner table, my son was feeding Sienna, who was sitting on his lap, pasta and meatballs. Jokingly, I said to her, "Sienna, do you like the pasta and meatballs?" and to our amazement she replied, "Yeah." She then looked at her grandmother, who was sitting near her and said, "Grandma," for the first time. My wife's face lit up brighter than any Christmas tree that I have ever seen and the entire family laughed and applauded and I thought to myself, this is what family is all about - thank God.



Queens County Bar Association

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QUEENS COUNTY BAR ASSOCIATION

SCHOLARSHIP FUND

Dear Member:

The Queens County Bar Association's Scholarship Fund was created in 2005 to offer financial assistance to law students who are residents of Queens County or who attend law school in Queens County.

The recipients of the QCBA Scholarship are carefully chosen based on academic achievement, community service and financial need and is awarded at the Annual Dinner in May.

I know that times are hard, but I would hope that you could donate to this worthwhile purpose and your tax deductible donation (of any amount) will help to support and recognize those deserving law students who provide community service to the residents of Queens County. It also enhances the good name of our Association.

As President of the Queens County Bar Association, I thank you for your support of this valuable community-based program.

Sincerely,

GUY R. VITACCO, JR.

President

Please make checks payable to:

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(all donations are tax deductible)

"We have come a long way." Queens DA Celebrates Black History Month

Continued From Page 1 —
York State Senator, Malcolm A. Smith (2009).

Executive Assistant District Attorney Jesse J. Sligh set the tone of the celebration by taking us on a verbal journey of the history of strife and struggle experienced by African Americans from the times of the Atlantic Slave Trade, to the quest for equality sought through the Civil Rights Movement, to the present day efforts to ensure the continued advancement of people of color by providing stellar educational and career opportunities to our youth. Throughout his speech Mr. Sligh kept repeating the phrase, "We have come a long way," stressing that hand in hand with our tumultuous past is a rich history of survival and achievement made possible by a deep commitment to family, religion, education and public service. Following Mr. Sligh's speech was a gripping musical presentation by Ms. Clarice McCollough whose heart-filled vocals flooded the third-floor conference room leading into the presentation of the award by District Attorney Richard Brown.

Listening to DA Brown's remarks it became obvious why Dennis M. Walcott was chosen to receive this award. As New York Deputy Mayor Mr. Walcott oversees and coordinates the operations of the

Department of Education, NYC Housing Authority, Department of Youth and Community Development and the Mayor's Office of Adult Education. A graduate of the NYC public school system and lifelong resident of Queens, Mr. Walcott began his career as a kindergarten teacher and later founded the Frederick Douglas Brother-to-Brother program which is a mentoring program for young boys. Mr. Walcott moved on to become the Chief Executive Officer of the New York Urban League, a position which he held for over 12 years before joining the Bloomberg Administration in 2002.

The celebration ended with a presentation of flowers to Mrs. Denise Walcott, a scholar and activist in her own right, in acknowledgement and gratitude for all that she does enabling her husband to be of such tremendous service to the City of New York. This was a perfect end to the ceremony and a prime example of the necessity of family and community support that has been the backbone of our achievements throughout the past and upon which we will continue to build successes for generations to come.

**Corry L. McFarland is the Foreclosure Prevention Coordinator for the Queens Volunteer Lawyers Project*

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Sanctions and Costs: The Enemy of Advocacy

BY THOMAS F. LIOTTI

Our litigious society together with fiscal, budgetary constraints have glutted our dockets. Judges and staff are underpaid and there are not enough of them. Our courthouses are inadequate to meet these burgeoning demands. Outside arbitrators and mediators have a new cottage industry taking the overflow of cases and alleviating some of the stressors in the system. Tort reform periodically surfaces as the panacea for high insurance costs but, at the same time, curtails access to the courts and jury determinations on the merits. In criminal law the federalization of crime by the enactment of more than 4,400 federal crimes and the creation of a vast prison bureaucracy which now costs nearly a trillion dollars per year just to maintain^[1] has engulfed our system with a deluge of cases that command pleas. Each year fewer and fewer civil and criminal cases go to trial.

In order to accommodate these statistics, Judges spend more time conferencing cases and encouraging settlements where the parties could not do it themselves. This then raises the question of how judicial resources and time are properly spent. What is the best use of those resources? For example, how much of a Judge's valuable time should be spent settling cases or resolving disputes over discovery. As frustrating as these management issues have become, the answer deployed by our courts and judges to resolve some of them, has been the use of Federal Rule of Civil Procedure 11 and Part 130 of New York's Codes, Rules and Regulations. These tangential tools may have the affect of reducing the numbers of cases and lawyers in the system. But at the same time, the benefits derived from the proper use of those rules must be measured against the negative impact that occurs when they are abused, either unwittingly or intentionally, by members of the Bar, *pro se* litigants, or the Judiciary^[2]. This article addresses the dangers that may occur from the improper use of those rules, but more importantly, why the law requires that they be used sparingly or not at all. The purpose of the rules was to deter the conduct of attorneys or *pro se* litigants who have shown an unbridled pattern of frivolous litigation. While tort reformers may market the notion that frivolous litigation or uncapped awards are driving up the costs of insurance or bankrupting companies, it is not. On the contrary, truly frivolous litigation within the context of the aforementioned rules involves a minuscule number of cases. The point of this article then is to suggest that the reaction of the Judiciary to those problems is an over-reaction much like trying to kill a fly with a shotgun.

Rule 11

When Rule 11 was first adopted in 1983, there was no state rule equivalent. The Rule 11 has no application in criminal cases. Likewise, costs and sanctions may not be imposed in New York State criminal cases. Nonetheless, the Rule was adopted with grave trepidations, particularly among members of the plaintiffs' Bar.^[3]

The Advisory Committee Notes from 1983 provided:

"The rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. The court is expected to avoid using the wisdom of

hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. Thus, what constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer, whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel, or another member of the bar."

The Rule provides for the signing of pleadings by the attorneys of record and in doing so, they make certain representations as a matter of law. The attorney or unrepresented party, by signing the pleading or other papers submitted to the Court that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances:

"(b)(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

"(2) the claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;

"(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

"(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information."

There is a "safe harbor" provision in the federal law not included in Part 130. It provides that a motion for sanctions must be separately made but only after the attorney making the averment or the affiant are given notice of the challenge and potential sanctions and then are given 21 days from the notice or such other times as the Court may set, to withdraw and correct the pleading.

The Advisory Committee Notes concerning the 1993 Amendments to the Rule give more insight into its application.

"**Purpose of revision.** This revision is intended to remedy problems that have arisen in the interpretation and application of the 1983 revision of the rule. For empirical examination of experience under the 1983 rule, see, e.g. New York State Bar Committee on Federal Courts, *Sanctions and Attorneys' Fees* (1987); T. Willging, *The Rule 11 Sanctioning Process* (1989); American Judicature Society, *Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11* (S. Burbank ed., 1989); E. Wiggins, T. Willging, and D. Stienstra, *Report on Rule 11* (Federal Judicial Center 1991). For book-length analyses of the case law, see G. Joseph, *Sanctions: The Federal Law of Litigation Abuse* (1989); J. Solovy, *The Federal Law of Sanctions* (1991); G. Vairo, *Rule 11 Sanctions: Case Law Perspectives and Preventive Measures* (1991).

"The certification is that there is (or likely will be) "evidentiary support" for the allegation, not that the party will prevail with respect to its contention regarding the fact. That summary judgment is rendered against a party does not necessarily mean, for purposes of this certification, that it had

Continued On Page 11

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You've Come a Long Way -- But You Still Have a Thing or Two to Learn About Venue - Part II

BY PAUL S. GOLDSTEIN*

Let us consider this everyday problem. Assume that the Plaintiff resides in Westchester County, the Defendant resides in Nassau County, the accident took place in the Bronx County, a passenger in Plaintiff's car resides in Suffolk County and the attorney for the Plaintiff has an office in Queens County.

For purposes of this discussion let us further assume that it would be convenient for Plaintiff's attorney to bring the action in Queens County, but from a tactical

point of view it might be better to bring the case in New York County. The problem is simple: Where may the Plaintiff bring the action? Surprisingly, it is an easy answer. The attorney can bring the action in Westchester County, Nassau County, Bronx County, Queens County, Suffolk County or in New York County. At this point it's fair to inquire as to the basis of this holding.

The answer to the problem lies in CPLR



Paul S. Goldstein

§509. This section provides "Notwithstanding any provision of this article the place of trial of an action shall be in the county designated by the Plaintiff, unless the place of trial is changed to another county by order upon motion or by consent as provided in Subdivision (B) of Rule 511." Does section 509 really mean what it says? Can counsel arbitrarily select the venue for his client's action? The answer is an unequiv-

ocal yes! Thus, when there is an inquiry on the summons as to the basis of venue all that Plaintiff's counsel need do is state: CPLR §509.

As a final note, it should be kept in mind that the Defendant might object to the place of venue and such objection will be the subject of a further discussion to appear in the Bar Bulletin at a later date.

**Editor's Note:* Paul S. Goldstein is a Past President (94-95) of the Queens County Bar Association and in private practice.

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CORNER

Legal/Educational/Mentoring Opportunities for New Attorneys and Law Students, Monday, February 22, 2010.”



Ivanna Bilych, Johan Byssainthe, Steve Singer, Gabrielle Brown and Bernard Dufresne



Joe Carola and Musa Ali



Joe Carola, Stephanie McGregor, Agata Rumprecht-Behrens and Karyn Bulow



Joseph Carola, Chair, Program Committee



Mona Haas, Wei Gu, Monica Trombley, Paul Lee, Vinita Ullal and Guy Vitacco, Jr.



Alexander Blishteyn-Panelist for program



Stephen Singer-Speaker for program



Mari Isakov-Panelist for program



Karyn Bulow-Panelist for program

Photos by Walter Karling

PHOTO



CORNER

Legal/Educational/Mentoring Opportunities for New Attorneys and Law Students, Monday, February 22, 2010.”



Chanwoo Lee, Milana Shimanova, Mari Isakov and Levan Natalishvili



Elizabeth Yablon-Chair, Mentor Committee



George Nashak, Maria Mateo, Valerie Cartright, Joanna David, Aliyah Skelton and Joseph Schneiderman



Attendee asking a question to panelist



Guy Vitacco, Jr., Richard Gutierrez, Elizabeth Yablon and Greg Brown



Gabrielle Brown-Coordinator Legal Education and Opportunity Program, NYC Bar Assn



Agata Rumprecht-Behrens-Panelist for program



Valerie Cartright-Panelist for program

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BY HOWARD L. WIEDER

Spring, often associated with rebirth, ironically, in the culture calendar, offers the last chance to grasp at the best cultural offerings the City has to offer before the start of summer, where musicians and artists are off vacationing or on other pursuits, until the fall begins a new cultural season. Let me guide you to some fine offerings from mid-March to June in the City of New York. For those planning a vacation, the new **THEATRE LE FORUM** in **FREJUS**, France, offers added reason to visit the French Riviera.

THE FRICK COLLECTION

The **FRICK**, the famous mansion at Manhattan's East Side, at 170th Street, between Madison and Fifth Avenues, continues to offer you the opportunity to discover wonderful, European, classical music artists. The Frick's concert activity is impressive. Coordinated by Joyce Bodig, with her savvy eye for up-and-coming future, international stars of the classical music world, the Frick's late



Howard L. Wieder



Voces Intimae

CULTURE CORNER

Sunday afternoon performances offer you a chance to see and hear great talent at inexpensive prices in an intimate setting.

I heartily recommend that you attend the Frick's last two concerts of the season: on March 28, **VOCES INTIMAE** makes its New York debut. You can get more information on this wonderful

Italian chamber trio (not to be confused with a choral group by the same name) at their web site at www.vocesintimae.it.

Voces Intimae Sunday, March 28, 2010, 5 p.m.

Performers Italian trio in New York debut, Luigi De Filippi, *violin*, Sandro Meo, *cello*, Ricardo Cecchetti, *fortepiano*

Program Hummel.; Trio in F Major, Op. 22; Mozart: Trio in G Major, KV 564;

Beethoven; Trio in C Minor, Op. 1, No. 3

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On April 11, the celebrated **HENSCHEL QUARTETT** (not a typo; there are 2 "t"s in the German spelling) performs at the Frick. For more information on this acclaimed German musical group, check www.henschel-quartett.de.

Henschel Quartett Sunday, April 11, 2010, 5 p.m.

Performers



Henschel Quartett

Christoph Henschel, *violin*; Markus Henschel, *violin*; Monika Henschel-Scjwomd, *viola*; Mathias Beyer-Karlshoj, *cello*

Program Schulhoff: Quartet No. 1; Barber: Quartet, Op. 11 Haydn: Quartet in G Major, Op. 76/1

Schumann: Quartet No. 1 in A Minor, Op. 41/1

Artist Web site See the Web site for biographical information and reviews.

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For more information, and to order tickets, please go to www.frick.org. Aside from the wonderful settings to these concerts, you can meet the artists in person after the performance.

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COURT NOTES

The Following Attorney Was Disbarred By Order Of The Appellate Division, Second Judicial Department:**Edward A. Christensen, a suspended attorney (November 10, 2009)**

The respondent was found guilty, on default, of violating his fiduciary obligations in failing to maintain funds entrusted to him and failing to cooperate with the Grievance Committee.

**Diana J. Szochet**

est based on his failure to cooperate with the Grievance Committee and substantial admissions under oath.

Regina M. Waytowich, admitted as Regina Marie Waytowich (November 9, 2009)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that she was guilty of professional misconduct immediately threatening the public interest based on her established pattern of failing to cooperate with the Grievance and uncontroverted evidence of her failure to re-register as an attorney, as required by Judiciary Law §468-a and 22 NYCRR §118.1.

Leonard H. Goldner, admitted as Leonard Howard Goldner (December 8, 2009)

On October 27, 2004, the respondent pleaded guilty in the United States District Court for the Eastern District of New York to conspiracy to obstruct the Internal Revenue Service, a Federal felony. On December 19, 2008, he was sentenced to one year of unsupervised probation and directed to pay restitution in the sum of \$112,000. He was also directed to participate in a program for the treatment of narcotic addiction or drug or alcohol dependency. The Appellate Division found that the respondent's admitted conduct was "essentially similar" to the New York felony of Offering a False Instrument for Filing in the first degree, a class E felony. As a result, the respondent automatically ceased to be an attorney upon his conviction, pursuant to Judiciary Law §90(4)(A).

The Following Attorneys Were Suspended From The Practice of Law By Order Of The Appellate Division, Second Judicial Department:**Ik C. Kim, admitted as Ik Cheol Kim (October 23, 2009)**

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based on his failure to cooperate with the Grievance Committee and other uncontroverted evidence of professional misconduct.

Loel H. Seitel, a suspended attorney (November 4, 2009)

Following a disciplinary hearing, the respondent was found guilty of having been convicted of a serious crime, which adversely reflects on his honesty, trustworthiness, or fitness as a lawyer (to wit, the federal felony of conspiring in a matter within the jurisdiction of the agencies of the United States to knowingly and willingly make and cause to be made false, fraudulent, or fictitious statements to the FBI and IRS) and conduct prejudicial to the administration of justice by reason of the foregoing. The respondent was suspended from the practice of law for a period of three years, commencing immediately. Previously, the respondent was suspended from the practice of law, pending further proceedings, as a result of his conviction of a serious crime, pursuant to Judiciary Law §90(4)(f).

Martin K. Lang (November 9, 2009)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public inter-

est based on his failure to cooperate with the Grievance Committee and substantial admissions under oath.

Ira Samuel Schwartz (November 20, 2009)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based upon his established pattern of failing to cooperate with the Grievance Committee and uncontroverted evidence of his failure to re-register as an attorney, as required by Judiciary Law §468-a and 22 NYCRR §118.1.

The Following Attorney Was Publicly Censured By Order Of The Appellate Division, Second Judicial Department:**Neal M. Pomper, admitted as Neal Meredith Pomper (December 15, 2009)**

By order of the Supreme Court of New Jersey dated February 10, 2009, the respondent was publicly censured for assisting a person who is not a member of the Bar in the performance of an activity that constitutes the unauthorized practice of law. Upon the Grievance Committee's request for reciprocal discipline pursuant to 22 NYCRR §691.3, the respondent was publicly censured in New York.

The Following Suspended Or Disbarred Attorneys Were Reinstated As Attorneys And Counselors-At-Law By Order Of The Appellate Division, Second Judicial Department:**Robert Michael Adelberg, a disbarred attorney (October 20, 2009)****William Thomas Daly, voluntary resignor (October 20, 2009)****Timothy S. McCulley, admitted as Timothy Sheldon McCulley, a suspended attorney (October 20, 2009)****Jerem O'Sullivan, a disbarred attorney (October 20, 2009)****Philip Irwin Aaron, a disbarred attorney (November 10, 2009)****Thomas Rybicki, admitted as Thomas S. Rybicki, a suspended attorney (November 10, 2009)****At The Last Three Meetings Of The Grievance Committee For the Second, Eleventh And Thirteenth Judicial Districts, The Committee Voted To**

—Continued On Page 10

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Sanctions and Costs: The Enemy of Advocacy

Continued From Page 4—
no evidentiary support for its position. On the other hand, if a party has evidence with respect to a contention that would suffice to defeat a motion for summary judgment based thereon, it would have sufficient “evidentiary support” for purposes of Rule 11.
“Denials of factual contentions involve somewhat different considerations. Often, of course, a denial is premised upon the existence of evidence contradicting the alleged fact. At other times a denial is permissible because, after an appropriate investigation, a party has no information concerning the matter or, indeed, has a reasonable basis for doubting the credibility of the only evidence relevant to the matter. A party should not deny an allegation it knows to be true; but it is not required, simply because it lacks contradictory evidence, to admit an allegation that it believes is not true.
“Rule 11 motions should not be made or threatened for minor, inconsequential violations of the standards prescribed by sub-

division (b). They should not be employed as a discovery device or to test the legal sufficiency or efficacy of allegations in the pleadings; other motions are available for those purposes. Nor should Rule 11 motions be prepared to emphasize the merits of a party’s position, to exact an unjust settlement, to intimidate an adversary into withdrawing contentions that are fairly debatable, to increase the costs of litigation, to create a conflict of interest between attorney and client, or to seek disclosure of matters otherwise protected by the attorney-client privilege or the work-product doctrine.”
Part 130
The enactment of Rule 11 then caused 22 NYCRR 130 to evolve and be adopted, albeit not by the Legislature. Part 130 does not provide for the “Safe Harbor” provisions that Rule 11 does. It also does not share the same Advisory Committee Notes or other analysis through legal articles and case law that Rule 11 has undergone since Rule 11 is statutory and Part 130 is not. The deployment of Part 130 then frequent-

ly takes the Court and attorneys into uncharted territory.
Part 130 allows for the imposition of costs for the reimbursement of actual expenses reasonably incurred and reasonable attorney’s fees resulting from “frivolous conduct.” In addition, sanctions may also be imposed under § 130-1.1 ©, if conduct is “frivolous.” Frivolous occurs if:
“(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
“(2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
“(3) it asserts material factual statements that are false.”
Courts can await the outcome of discovery and other litigation including motions for summary judgment or the actual verdict itself before reaching a determination on costs or sanctions. The imposition of sanctions, particularly during the course of liti-

gation, may also cause disciplinary action to occur. The imposition of costs and/or sanctions against an attorney or litigants can drive a wedge between attorneys and their clients or create a conflict. Clients lose confidence or trust in their attorneys when costs or sanctions are imposed. They can also result in the clients being left without any counsel. Costs and sanctions then should be the weapons of last resort when all else has failed and it becomes necessary to pull the trigger on the nuclear option.
Conclusion
Courts should be mindful that the imposition of costs and sanctions or even the requests for some pose a serious and deleterious effect on the role of advocates and access to the courts. It can be a totally unfair, premature and preemptive strike against an attorney or litigants. It is therefore an initiative that must be very carefully weighed and considered. Many other options are available including deferment of the issues pending the outcome of the litigation. While Courts may question the conduct of attorneys against whom costs and sanction applications are made, they should be even more circumspect of attorneys who cavalierly or irresponsibly make such applications. Their efforts are not destructive of the litigation and attorney/client relationships but even more damaging to our system of justice as a
Continued On Page 11



Queens County Bar Association Annual Dinner & Installation of Officers

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Annual Dinner & Installation, May 6th!

On Thursday evening, May 6th QCBA will celebrate its 134th Installation of Officers and Annual Dinner at Terrace on the Park. QCBA President Guy R. Vitacco, Jr. will preside over the installation of the Association’s new officers including President-Elect, Chanwoo Lee. The installation of Ms. Lee will mark a milestone for our Association as she will be the third woman and first Asian-American to be installed as President of QCBA. Guy Vitacco, Sr. will be honored as the recipient of the Charles W. Froessel Award, for his outstanding contribution to our profession and his extraordinary service to our Association. Charles Froessel was an Associate Judge of the New York Court of Appeals and President of QCBA from 1928-1929.

In conjunction with this event a souvenir journal will again be published. The entire proceeds from publication of the journal will be used to support the work of the Queens Volunteer Lawyers Project, Inc. (QVLP). Members and friends of the Association are invited to submit their ad subscriptions and help support and expand QVLP initiatives such as the Queens Foreclosure Conference Project and the CLARO-Queens Consumer Debt Clinic. Subscription rates for the journal are reasonable, having been frozen at 2007 levels. Sponsorship packages at varying levels are available. The cost of subscriptions and sponsorships is deductible as a charitable contribution, pursuant to I.R.C. § 501(c)(3). Please help us to help others by reserving your space in this year’s journal. For more information about the annual dinner journal please contact Mark Weliky, QCBA Pro Bono Coordinator at (718) 291-4500 ext. 225. MWeliky@QCBA.org.

Court Notes

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Sanction Attorneys For The Following Conduct:

Failing to timely re-register as an attorney with the New York State Office of Court Administration (7)

Handling a legal matter the attorney knew he or she was not competent to handle, without associating with a lawyer who was competent to handle it, and neglecting a legal matter entrusted to him or her

Having been convicted of Driving Under the Influence and failing to timely report said conviction to the Appellate Division

Compensating a non-attorney to solicit cases for him or her and including a non-refundable fee clause in his or her retainer agreements

Neglecting legal matters; failing to process settlements in a timely manner; and failing to adequately supervise law office staff

Neglecting legal matters; failing to take steps to avoid foreseeable prejudice to clients; allowing court deadlines to lapse; and failing to make appropriate motions to withdraw from litigated cases

Handling a legal matter without preparation adequate in the circumstances; acting as a facilitator, rather than an advocate, for a client in a real estate transaction; and failing to disclose a prior business relationship with the seller before obtaining his/her purchaser-client's consent to the representation in the foregoing transaction

Neglecting a legal matter and failing to cooperate with the Grievance Committee

Submitting misleading written answers to the Grievance Committee; improperly withdrawing from several pending legal matters; and neglecting legal matters entrusted to him or her

Failing to satisfy an outstanding financial obligation to the County Clerk for seven (7) months; failing to apprise OCA, and the Court in which an action had just been filed, of a change of address; neglecting legal matters; failing to keep clients reasonably informed of the status of their matters; failing to promptly comply with clients' reasonable requests for information; failing to promptly refund an unearned legal fee; and engaging in conduct adversely reflecting on his or her fitness as a lawyer and conduct prejudicial to the administration of justice by reason of

the foregoing

Failing to cooperate with the Grievance Committee and engaging in conduct that reflects a fundamental lack of respect for the Committee, the Appellate Division and the legal profession

Improperly withdrawing from two matters for which he or she was retained; failing to prepare a written Letter of Engagement and/or file a Retainer Statement with OCA relative to a personal injury matter; and failing to cooperate with the Grievance Committee

Commingling personal funds with funds entrusted to him or her as a fiduciary; failing to maintain a business and/or personal account separate from his or her escrow/IOLA account; failing to maintain adequate bookkeeping records and/or a contemporaneous ledger for deposits into and withdrawals from his or her escrow/IOLA account; and making cash withdrawals from his or her escrow/IOLA account

Failing to safeguard client funds; failing to maintain a contemporaneous ledger for deposits into and withdrawals from his or her escrow account; and commingling legal fees with clients' funds in said account

Making a materially false statement on his or her application for admission to the Bar of the State of New York (in the presence of compelling mitigation)

Delaying the defense of an incarcerated client, resulting in a mistrial

Failing to timely resolve a client's matter and failing to respond to the client's inquiries

Representing multiple family members with conflicting interests; using information from a client to the client's disadvantage; knowingly representing a client when a lawyer associated with his or her firm, practicing alone, would be prohibited from doing so; delaying a client's case for a substantial period of time; and neglecting a legal matter

Undertaking representation of a client without checking for conflicts and neglecting a legal matter

Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and failing to file a Closing Statement with OCA within 15 days of a recovery

Undertaking a domestic relations matter without securing a signed written retainer agreement; failing to provide the client with a Statement of Client's Rights and Responsibilities; and failing to provide itemized bills on a regular basis

Failing to satisfy a judgment entered against the attorney incident to the practice of law

Publishing unsubstantiated statements and false accusations against the judge who presided over his or her divorce

Failing to maintain proper records for his or her escrow account and issuing a check to a client before the corresponding deposit was made

Accepting a fee to represent a client at a closing although he or she neither met the

client nor appeared at the closing

Sharing legal fees with a non-attorney while providing loan modification services

Engaging in a conflict of interest by representing a landlord whose interests were adverse to a former client, without securing a written waiver from the former client

Taking over 18 months to notify a potential client that he/she would not handle their matter

This edition of COURT NOTES was compiled by Diana J. Szochet, Assistant Counsel to the Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts and Immediate Past President of the Brooklyn Bar Association. The material contained herein is reprinted with permission of the Brooklyn Bar Association.

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Sanctions and Costs: The Enemy of Advocacy

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whole. Courts that do not adequately consider these issues then become partners, enablers and aiders and abettors in the unfortunate consequences that then occurs. Judges too far removed from the actual practice of law and the representation of clients run the risks of overlooking these issues when they are considering the imposition of costs or sanctions.

[1] See Adam Liptak, *Right and Left Join to Take on U.S. in Criminal Justice Cases*, The New York Times, November 24, 2009 at 1 and A22.

[2] See Thomas F. Liotti and Drummond Smith, *Judicial Civility*, The Attorney of

Nassau County, July, 2009 at 6, 10 and 11.

[3] "Experience shows that in practice Rule 11 has not been effective in deterring abuses. See 6 *Wright & Muller, Federal Practice and Procedure: Civil* § 1334 (1971). There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action; (2) the standard of conduct expected of attorneys who sign pleadings and motions, and (3) the range of available and appropriate sanctions. See *Rodes, Ripple & Mooney, Sanctions Imposable For Violations of the Federal Rules of Civil Procedure* 64-65, Federal Judicial Center (1981).

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Culture Corner

Continued From Page 8

ent, and is usually considered the Rolex of concert venues. I will be attending a few excellent concerts this spring. For the tempting concert calendar of Carnegie Hall, I urge you to go to www.carnegiehall.org. Among the artists performing soon include: opera stars **DMITRI HVOROSTOVSKY** - - featured in one of my prior columns, **SONDRA RADVANOVSKY**, **THOMAS QUASTHOF**, **DAWN UPSHAW**, **FREDERIKA von STADE**, the Philadelphia Orchestra, Boston Symphony Orchestra, and the San Francisco Orchestra, and great pianists including **YEFIM BRONFMAN**, and **EMANUEL AX**. In fact, Carnegie Hall's calendar for the 2010-2011 season is already available online at its web site.

LINCOLN CENTER's GREAT PERFORMERS SERIES and the NEW YORK PHILHARMONIC

Maestro Alan Gilbert and the New York Philharmonic, following a whirlwind winter tour of major European cities, return to New York City with renewed vigor for the spring season, continuing through June. For more information please go to www.nyphil.org. Among the many great concerts offered, I heartily recommend buying tickets to hear, in June 2010 violinist Lisa Batiashvili perform a masterful, breathtaking interpretation of the Sibelius violin concerto, recorded by her on compact disc, and Maestro Gilbert conducting Beethoven's *Missa Solemnis*.

Lincoln Center also offers the **GREAT PERFORMERS SERIES**, where established classical music artists and orchestras perform. In February's column, I included

an expanded listing of the wonderful concerts offered by the **GREAT PERFORMERS SERIES of LINCOLN CENTER**. For further calendar details and ticket information, please go to www.lincolncenter.org and check out the **GREAT PERFORMERS SERIES**. You can save by subscribing to next year's 2010-2011 **GREAT PERFORMERS SEASON** by going to www.lincolncenter.org.

METROPOLITAN OPERA

The Met Opera continues its season through mid-May, offering new productions of *Tosca* and *Carmen*, among many others. For further information, please visit www.metopera.com.

The 92nd STREET Y

The 92nd Street Y offers many events and concerts, listed at the concert schedule at www.92y.org, including pianists Jonathan Biss and Peter Serkin, the Hagen Quartet, guitarist David Russell, the Billy Taylor Trio, and soprano Olga Makarina with baritone Jesus Suaste.

Le "FORUM" in FREJUS on the FRENCH RIVIERA

For vacation planners, the allure, climate, and colors of the Riviera are irresistible. Especially from May to October, throngs of international visitors land in Nice, France, and head to the Riviera's beaches and the coastal highway, from St. Tropez in France to Albenga [a few towns after San Remo] in Italy.

Famous towns and cities on the French Riviera are also known for their cultural appeal, not only for their beauty. Nice has wonderful museums. Cannes is famous for its prestigious annual film festival in late May. Golfe Juan attracts jazz lovers. Menton, the French town right before the



Le Forum Theater In Frejus, France

border to Italy, is a resort mecca for classical music. Now, with the construction of a beautiful and architecturally impressive theater called LE "FORUM," the twin, adjoining towns of FREJUS and SAINT RAPHAEL, situated between St. Tropez and Cannes, offer further reasons to visit them year round.

FREJUS was founded by Julius Caesar himself in 49 B.C.E. The Roman ruins still attract visitors. It has a formidable and historic cathedral dating to the 11th century, and Napoleon Bonaparte made a famous entrance from FREJUS after his conquest of Egypt and also departed France from FREJUS for his first exile in Elba. The long stretch of beach of FREJUS and SAINT RAPHAEL is the finest on the FRENCH RIVIERA. They are sandy and inviting, unlike some of the rocky beaches in other Riviera towns.

FREJUS not only offers sandy beaches, but is located within minutes from the Esterel forests and mountains. The ESTEREL MOUNTAINS and forests of FREJUS offer wonderful trails for hikers, including MONT VINAIGRE. Within one hour by car from Frejus, you can be at the Parc du Verdon, the gateway for the

breathtaking and beautiful Gorges du Verdon, known as the French Grand Canyon, Sainte Croix Lake, and Picturesque Provencal towns and villages as Comps sur Artuby, Mons, Castellane, and Moustiers St. Marie.

Visitors to Frejus might go the main center, Centre Ville, to visit the shops along the town's winding streets. Other shops and restaurants are located around the marina and houses that comprise PORT FREJUS. Golfers might enjoy visiting several spectacular golf resort hotels in SAINT RAPHAEL. Saint Raphael's casino and great cathedral are only a block apart, for those who would like to hedge their bets.

With the construction of a modern theater, Frejus has embarked on a tourist-oriented campaign for 2010 promoting itself as a "lieu remarquable" or "a remarkable place." The new, four-story, glass THEATRE LE FORUM houses 850 seats in the main Charles Gounod auditorium [named after the 19th century French composer], 18 places/seats specifically for physically challenged persons, an orchestra pit, and a smaller theater/rehearsal room of 250 seats.

The THEATRE LE FORUM was designed by noted architect JEAN-MICHEL WILMOTTE. The 4-story building has a spacious, circular glass façade. The main auditorium is wood-paneled with gray colored upholstery. The new theater in FREJUS is at 83 Boulevard de la Mer, right by l'Avenue de Provence. The THEATRE LE FORUM was inaugurated on February 7, 2010. The theater will be used for plays, ballets, orchestras, classical music and pop concerts, and shows. Theatrical ventures and plays, which began in February, 2010, come under the supervision of the theater's director Michel Perrault and assistant director Anne-Marie Franon.

The name of the new theater, "LE FORUM," is understandable given Frejus's Roman origins. This new theater explains why FREJUS is not only attractive to the local FREJUSIENS, but also to the Baby Boomer generation living in Paris and the North of France making plans to retire soon to a warmer climate, but wanting also culture.

Tourists flock to the French Riviera, and one of the advantages of FREJUS was that, until recently, it provided a little-known haven to duck the bustling summer crowds found at some known resort cities and towns such as St. Tropez. The new THEATRE LE FORUM is another reason why FREJUS and SAINT RAPHAEL may soon lose their relative anonymity.

For further information on FREJUS, go to www.frejus.fr or www.ville-frejus.fr. For further information on SAINT-RAPHAEL, go to www.saint-raphael.com. Both web sites have English translations available. For general information, you can consult the English-speaking friendly riviera.angloinfo.com and www.beyond.fr. In your rental car, visitors speaking only English can tune in to RIVIERA RADIO or read www.riviera-times.com, the English language newspaper for the French and Italian Riviera and the Principality of Monaco.

HOWARD L. WIEDER is the writer of the **CULTURE CORNER** and the **BOOKS AT THE BAR** columns, running regularly in the **QUEENS BAR BULLETIN**. Mr. Wieder is also the **Principal Law Clerk to Justice Charles J. Markey** in Supreme Court, Queens County, at the historic **LONG ISLAND CITY** courthouse.

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Stephen S. Weintraub
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*as of 2/25/10