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Queens Bar Bulletin

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Guardian & Elder Law: New Power of Attorney

BY JOHN R. DIETZ

John R. Dietz

Introduction: A new Power of Attorney Law is presently scheduled to go into effect on September 1, 2009. General Obligations Law (GOL) §5-1501 has been dramatically amended and revamped. Four sections were repealed, 12 sections amended, and 13 new sections added. The new law has many laudable goals such as reducing abuse by making the Agent more accountable and better educating the Principal. This article briefly recounts the history of the Power of Attorney in New York, reviews a few of the salient provisions in the new law targeted to make the Agent more accountable, including the new Statutory Major Gift Rider, and discusses the new form.

History: The power of attorney is rooted in common law principles of agency. The power of attorney form evidences in writing the relationship between a principal and agent. New York State's power of attorney law emanated from the country's experience in World War II and post World War II. Soldiers away from home and travelers abroad needed to be able to have friends and relatives take care of their personal and financial affairs in their absence. The power of attorney form which was in use at that time was often rejected by banks and financial institutions. A simple, inexpensive, statutorily rooted legal document, which would be widely accepted, was needed. New York's statutory general power of attorney became law on March 21, 1948 (1948 NY Laws, Chapter 441, codified at NY General Business Law §422, as repealed by 1963 NY Laws Chapter 576, and recodified at NY General Obligations Law §5-1501).[1]

The power of attorney statute and form have undergone several revisions since its statutory birth in 1948. Significantly, in 1975, the law was amended to provide for durability, a power of attorney which remains in effect, survives, the Principal's mental incapacity. See: 1975 Laws of New York, NY General Obligations Law §5-1601. In 1988 a further revision allowed the principal to appoint an agent, who would assume responsibility at some future time, based on some future event. This was called a springing power of attorney. See 1988 Laws of New York, GOL §5-1602.

During the 1990's the power of attorney continued to grow in popularity as a planning tool. The public was forewarned to plan for disability, and make use of the health care proxy, inter vivos trusts, and of course, the simple inexpensive power of attorney. The campaign was successful, perhaps too successful. The power of attorney was becoming an easy way for unscrupulous family members, friends, and others, to financially exploit and abuse the elderly and infirm. Public hearings were held in New York. As a result there were recommendations to reform the law and form. The main recommendations were two pronged: First, educate and inform the principal; Second, make the agent more accountable.

In 1994, and again in 1996, the power of attorney law and form were revised. The thrust of the new changes was education of the principal. The 1994 revisions sought to educate the Principal by providing for a notice or warning to the Principal in the form, and by changing the method in which the Principal delegated the powers to the Agent in the form. The Principal was required to affirmatively initial each power that was being conferred to the Agent in the form.

The revised form was difficult to use. Critics, especially advocates for the elderly and disabled, complained. In 1996 the law and form were once again amended. The 1996 changes included: Allowing the Principal to list on one line all of the powers conferred on the Agent, instead of having to initial each power; Power to the Agent to make gifts to the Principal's parents, spouse, children and other decedents in amounts not to exceed $10,000.00, the federal annual gift tax exclusion. The power to modify the form and make gifts of larger value and to individuals other than parents, spouse, children, and decedents, was provided for in GOL §5-1503. And the Agent could be given the power to handle tax matters and retirement benefits.

Since the last statutory changes were implemented the power of attorney continues to grow in popularity. Attorneys, elder law, trusts & estates, and others, advise their clients to execute advance directives such as living wills, health care proxies, and powers of attorney. To avoid such planning invites more expensive proceedings, such as guardianship. The word has been spread and heard by the public. At the same time abuse of the power of attorney has become more widespread. Two of the most recent, highly publicized, examples of abuse are Dame Brooke Astor, and the Garson case.

Perspective on the New Power of Attorney: There is an inherent tension in the goals of most power of attorney laws. A form that is simple to use, widely available, and consumer friendly, is a form that is subject to abuse. Even in 1948 the "drafters of the original power of attorney recognized that the simple device created a danger against which some safeguard should be provided since the consequences to the Principal who chooses a dishonest Agent increased as Agent's power increases."[2] The new Power of Attorney Law seeks to make the Agent more accountable and to deter, uncover and halt abuse. This is one perspective for reading, analyzing and understanding the new law and form.

Agent Accountability: While the old law is silent about the Agent's responsibilities and duties,

the new law identifies the Agent's standard of care and makes it clear that the Agent is a fiduciary with a legal

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Serving as a Guardian Ad Litem in the Surrogate's Court

BY SCOTT G. KAUFMAN*

Scott G. Kaufman

Serving as a Guardian Ad Litem in the Surrogate's Court can be both a rewarding and invaluable experience. The following is a brief summary of when Guardian Ad Litems are needed and the requirements for an attorney to be eligible to serve. An outline as to the basic responsibilities of the Guardian Ad Litem is also touched upon.

When a Guardian Ad Litem is Needed

In a Surrogate's Court proceeding, a Guardian Ad Litem (GAL) is appointed by the Surrogate where a necessary party to a proceeding is under a disability and does not appear by a guardian, committee or conservator. (SCPA 402 (2)). The Guardian Ad Litem will represent the interests of the incapacitated person within the context of the proceeding for which the Surrogate made the appointment. SCPA 103(40) defines a person under a disability as the following, to wit: infants; incompetents; incapacitated persons; unknown persons or persons whose whereabouts are unknown; prisoners whose failure to disappear is due to their confinement in a penal institution.

The Surrogates treat the appointment of a guardian very seriously and often give careful consideration to whom the appointee should be. The Surrogates have the discretion of whom they shall designate. The Surrogates will usually consider, among other things, the type of matter, the complexity of the legal issues presented, the interest of the person under a disability, the size of the estate and the experience or particular skills or background of the attorney to be designated.

The Surrogate's Court Procedure Act (SCPA) 403 also provides that a GAL can be appointed upon the nomination of an infant over the age of

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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.

2009 SPRING CLE Seminar & Event Listing

May 2009

Thursday, May 14	Stress & Sanity in Your Everyday Practice
Tuesday, May 19	What Every Non Bankruptcy Attorney Needs to Know About Bankruptcy
Thursday, May 21	All You Might Want to Know About LLC's

June 2009

Monday, June 8	Juvenile Justice Seminar
Friday, June 12	Hot Topics in Estates Practice 1:00-4:00 pm
Tuesday, June 30	Article 81/Guardianship Training (Laypersons Only) 2:30-5:00 pm

September 2009

Thursday, September 10	Annual Golf Outing at North Hills Country Club

CLE Dates to be Announced

Elder Law
Labor Law
Real Property Law
Taxation Law

New Members

Nicholas Bavaro
Jerry Christoforatos
Marceau Edouard, Jr.
Keisha Godfrey
Lisa Jadidian
Andrew Jaloza
Jonguk Kim
Carlyet D. Marshburn
Elsayed F. Seweid

Necrology

C. Frank Sena

Leslie S. Nizin

Editor's Message

Dear Colleagues:

As this is our last Bulletin until the fall, it is time for me to acknowledge and thank those who help me make our Bulletin the huge success that.

I wish to thank our numerous contributors, our office staff, especially Janice Ruiz, whose help has proved invaluable.

I wish all our readers a happy and healthy summer.

If you or someone you know is having a problem with alcohol, drugs or gambling, we can help.

To learn more, contact QCBA LAC for a confidential conversation.

Confidentiality is privileged and assured under Section 499 of the Judiciary Laws as amended by Chapter 327 of the laws of 1993.

Lawyers Assistance Committee
Confidential Helpline 718 307-7828

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President's Message


Steven Orlow

So much to do, so little time to do it. As the year of my presidency ends, I recognize the relevancy of this thought.

A significant weakness in the ability of our Bar Association to manage and implement long range strategies is the very short tenure of each administration. The year begins and before anyone barely becomes comfortable in, and truly knowledgeable about the range of issues and tasks before them, the president's term ends. Of course, realistically speaking, anyone engaged actively in the practice of law, as is always the case with our Association presidents, is challenged enough to meet the demands of the presidency while continuing to manage the demands of their practice, so that serving more than a one year term becomes virtually impossible.

How to blend the need and benefits of adopting long term strategies to the reality of brief terms of office is a quandary worthy of attention.

The only solution currently available would be either an informal understanding leading to close cooperation between an outgoing and incoming president, or some more semi-formal arrangement through the adoption of a multi-year "issues list" by the Board of Directors to which incoming presidents would be requested to adhere - perhaps by the Nominations Committee.

My suggestions for long term attention would be the areas I sought to emphasize during my term: membership development and alleviating the burdens on the small firm and solo practitioners.

Membership development is self explanatory. It must be based on extending services to attorneys that are of value to them in their personal and professional lives. We serve this purpose best by making it known that our Association is indeed available to each and every member to meet those needs. We encourage, and always try to respond to, requests or complaints that can often alleviate some of the stress associated with our profession. Our officers, board members, committee chairs and staff are all easily identifiable (see our annual Bar Directory) and each is readily accessible.

In the matter of small firm and solo practitioners, which represent the vast majority of our membership, it must be a united effort by all committees to identify areas for improvement. A solid beginning was established this year by initiating joint discussion between our Queens Administrative Judge's office, Office of Court Administration and our Association and by identifying areas for future improvement. It is now incumbent upon future administrations to pursue this issue so crucial to the interests of so many of our members.

Finally, what has gratified me perhaps most of all is an issue that was barely on our radar screen when I was inducted – meeting the foreclosure crisis in Queens County.

With Queens having been designated the "pilot project" for a proposed foreclosure program by the Office of Court Administration, the response by the bar to our Association's "call to arms" was nothing short of extraordinary. For that I thank all of you that responded, and demonstrated through that response that the finest tradition of our profession is alive and well among the practicing bar of Queens County. No small thanks must go to Mark Weliky and to the Queens Volunteer Lawyers Project for all their work and effort in organizing and administering our efforts in this area.

Finally, words are difficult to find to express my thanks to the staff of our Association - small, but so able and energetic - without whom anything a president or administration might seek to accomplish would indeed come to naught - and which is truly the "glue" that brings some sense of continuity to our Bar by seamlessly binding one administration to the next. Thank you Arthur, Janice, Sasha, Shakema, Roger.

To everyone, thank you for this honor, and I look forward to contributing in some way into the future.

An Analysis of the Motion to Set Aside the Verdict: Subsection 2[1]

BY ANDREW J. SCHATKIN*


Andrew J. Schatkin

This article will consider the ground set forth in subsection 2 of CPL Sec. 330.30. That section contains and sets forth three grounds and bases to set aside a Criminal jury verdict. Those three grounds are as follows:

A ground appearing in the record, which if raised upon appeal from the Judgment of Conviction would result in a reversal or modification of that Judgment by the Appeals Court;

That during the trial there occurred, out of the presence of the Court, improper conduct by a juror or another person in relation to a juror, which could have affected a substantial right of the defendant;

That new evidence has been discovered since the trial, which could not have been produced by the defendant at the trial, even with due diligence on his part, and which is of such a character as to create a probability that if the evidence had been received at trial, the verdict would be more favorable to the defendant.[1]

This article will consider, more specifically, the proper interpretation of the language in Subsection (2), which references, as a basis for setting aside the verdict, conduct by a juror, of an improper character, which could have effected a substantial right of the defendant, during the trial, outside of the presence of the court.

There is a general rule that the trial court is invested, with discretion, with respect to this specific matter and issue. People v. McMillan[2] is instructive. In McMillan, the Appellate Division First Department ruled that the summary denial of a Motion to Set Aside a Verdict of guilty of Criminal Possession of a Controlled Substance in the Third Degree, on the ground of misconduct during jury deliberations, was an appropriate exercise of discretion. The Court stated that the Motion papers contained only conclusory allegations that the incident in question constituted improper influence on the jury verdict and the dropping of the bag of candy could not reasonably have been viewed as determinative of the ultimate issue in case, as to whether the defendant criminally possessed crack cocaine with the intent to sell it, and upon which issue the People offered overwhelming evidence.

Again, in People v. Costello[3], the Appellate Division Second Department held that the trial judge is vested with broad discretion in ruling on the issue of juror prejudice.[4]

Another general rule interpreting this particular statutory language concerns, which concerns itself with proper, or rather improper, juror conduct, is the standard of review. In general, one may say, that the standard of review as to a juror's alleged misconduct is that it must create a substantial risk of prejudice to the rights of the defendant, in some way. Thus, in People v. Maragh[5], the New York State Court of Appeals held that a reviewing court should evaluate whether a juror's alleged misconduct has created a substantial risk of prejudice to the rights of the defendant by coloring the views of the other jurors, as well as her own.

In the same way, in People v. Rivera[6], the Appellate Division Second Department held, fashioning almost the exact rule as stated in Maragh, that generally absent a showing of prejudice to a substantial right, proof of juror misconduct does not entitle a defendant to a new trial, since not every misstep by a juror rises to the adherently prejudicial level at which reversal is automatically required.[7]

There are a number of sub-rules interpreting this particular, discrete rule. Thus, it has been held that the failure to challenge a juror by the reason of the want of knowledge as to the cause is not a ground for this Motion.[8]

There is a general rule that a verdict rendered by a jury containing some persons, who should have been excluded for technical reasons, is not void. This rule is extended to where a verdict is rendered in the presence of a juror, who was disqualified because of prior jury service.[9]

It has been held that improper communication with the jury can be a ground for granting this Motion. Thus, in People v. Khalek[10], the New York State Court of Appeals held that the defendant was entitled to have the jury's final verdict set aside as a remedy for the Court Supervisor's usurpation of the Judicial function in telling the jurors, who had been directed to cease deliberation for the day, that their verdict finding the defendant not guilty on all counts would not be reported to the court that night. The jurors were sequestered overnight, and rather than reporting the same verdict in the morning, continued their deliberations and later reported their verdict that differed from their unreported verdict of the previous evening.

People v. Flores[11] also restates this rule. In Flores, the Appellate Division Second Department held that the court officer improperly usurped the trial court's function by permitting the jury to believe that it could allow one of their members to translate a letter, written in Spanish, which injected non-record evidence into the calculus of judgment, which the defendant could not test or refute by a cross-examination, thus warranting a new trial.[12]

There is a rule concerning discussions or conversations among jurors, concerning the case. Thus, in People v. Durling[13], the Court of Appeals held that claims, if true, that members of the jury in a homicide prosecution discussed the case on several occasions before submission in the presence of the general public, expressed views as to the guilt or innocence of the defendant and as to certain witnesses in public places, and prior to rendition of a verdict, and from the jury room, carried on conversations and received communications form prosecution witnesses through open windows, empowered the trial court to grant a new trial.

Similarly in People v. Romano[14], the Appellate Division Second Department held that the defendant was entitled to have the jury verdict set aside on the ground of juror misconduct, where there was evidence that the jurors and alternate jurors discussed trial testimony, credibility of witnesses, and defendant's guilt or innocence before deliberations commenced, that some jurors and alternate jurors read and discussed newspaper articles about the case, and that jurors and alternate jurors engaged in improper communications during deliberations.[15]

Generally, it may be said, that written communications by or with jurors to the court by one juror to the Foreman of the jury, or even a letter, sent by a juror, to the District Attorney's Office applying for the position of Investigator is not a ground, under this Statute, to set aside a verdict.[16]

Generally, if a juror examines exhibits, this is not a basis for a new trial under this Statute.[17]

There is varying law concerning juror's experimentation. Thus, in People v. Santi[18], the Court of Appeals held that it would be improper for a juror to engage in experimentation, investigation, and calculation that necessarily relied on facts outside the record and beyond the understanding of the average juror. Jurors are not, however, the court stated, required to check their life experiences at the courtroom door.

On the other hand, in People v. Kelly[19], the Appellate Division First Department held that jurors may conduct a jury room crime reenactment or demonstration, provided it involves no more than the juror's application of everyday experiences, perceptions, and common sense to the evidence.[20]

There is varying law, concerning allegations of improper juror conduct in the course of Voir Dire. Thus, in People v.

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About The Bench... Hon. Pam B. Jackman-Brown

BY MERYL L. KOVIT

What's the difference between a Burger King employee and a Family Court Judge? In the case of the Hon. Pam B. Jackman-Brown, a former employee of Burger King and a new member of the Bench in the Queens County Family Court, the answer is approximately two decades.

The Judge is a self described "adventurer," and her spirit of adventure has taken her from her birth and childhood in the nation of Guyana to Brownsville, Brooklyn, and Jamaica, Queens, U.S.A., law school and the Bench. She happily shared her appreciation for having acquired her first courtroom with windows, and even a railroad that can be seen from those windows, because they both help reinforce her spirit of adventure. She sees her new position as a "nice challenge" and an opportunity to learn about the Family Court.

For Judge Jackman-Brown Family Court is her latest adventure. She chose this adventure despite the warnings of colleagues and friends that the Family Court caseload was tremendous, the problems presented by the Court's litigants overwhelming and, scariest of all, the warning that Family Court was depressing. Never one to pass up any opportunity to experience something new, Judge Jackman-Brown listened to her colleagues and then volunteered after her election to join the Family Court Bench after stepping down from her position as Supervising Judge of the Housing Part of New York County Civil Court.

Pam B. Jackman-Brown

Judge Jackman-Brown's initial verdict is that Family Court is not depressing, in fact it is fascinating. She is enjoying the Court and its litigants because for an adventurer every minute of the day in Family Court is an adventure. She gets to see everything in her courtroom. She's doing international law on some custody disputes and she gets to see every cultural background and the issues that can go with each special culture – and the great part is the adventure comes to her, she doesn't have to travel to see the world.

Mind you, the Judge is a big advocate of travel. Her computer wallpaper is a fabulous picture of the Judge on a camel in Egypt. She has also been to Tahiti, taken a European tour and she has seen most of the Carribean Islands. She wants to visit the Greek Islands and West Africa – ultimately she wants to see the entire world by going to every continent and every country (having every continent and every country come to her courtroom is nice, but she wants more). The Judge has also has traveled back to Guyana many times to visit her extended family there.

The Judge has plans underway to travel to Seoul, Korea in 2010 for the International Women Judges Conference. The last International Women Judges Conference was in Panama and was attended by Judge Jackman-Brown. The conference provided her the opportunity to meet women from all over the world -- she met women from places she had never heard of -- places in little African countries and Asia. Her fellow attendees included women who sat on judicial benches in the rural areas of these continents. The Judge learned first hand about many important current political issues around the world, including violence against women, and children's issues including adoption.

These conferences afforded the Judge the ability to gain experience in issues common throughout the world and to see how these issues play out against a backdrop of rural areas where women are still trying to break glass ceilings amidst corrupt governmental systems. She met many women in Chief Judge positions world wide -- and even in rural areas -- which this New York City Judge finds absolutely amazing.

The Judge's personal life adventure began when she left Guyana on her own as a teenager to "seek a better way of life."

Judge Jackman-Brown recalled traveling in the cold winter from her family apartment in Brownsville, Brooklyn, to work the early morning shift at Burger King. She remembered the city bus driver who got her to her early morning shift on his route always waited for her and made her feel she was an important member of the 5:00 a.m. bus route. After the driver got to know her as a regular on his route, he would wait for her at the bus stop which allowed her to wait for the bus in the warmth of her apartment and head out the door as soon as she saw the bus come down her block. The bus driver would wait a few minutes for her on many occasions. The Judge acknowledged the bus driver as one of a few angels who have watched over her in her life.

After the Judge acquired her GED, she studied at the Borough of Manhattan Community College (BMCC) while flipping burgers at Burger King. Actually, she worked the register on the early morning shift before her BMCC classes -- returned to flip burgers for the lunch hour -- and then returned to school in the evening.

The Judge did the BMCC, a two year school, on the two and a half year plan because she just needed time to figure out what to do with her life. She had given thought to being a doctor as a child, but her family said medical school would take too long and so she considered teaching. Math and history were always her strongest subjects and she considered teaching in one of these areas.

During her final year at John Jay College of Criminal Justice the Judge worked with the New York City Department of Mental Health and Mental Retardation. The Assistant Commissioner, Paul J. Cooper, gave her a gift that year -- a copy of Black's Law Dictionary -- and told her that she had to apply for law school, and, as they say, the rest is history.

The Judge says she has "no background in Family Court," but her background speaks otherwise. While in law school she mediated PINS proceedings (young Person in Need of Supervision, Article Three of the Family Court Act) at the Children's Aid Society. She has also taken Matrimonial Mediation training and sees mediation as an important mechanism that can be used to resolve many cases that really don't need to be seen by a Judge.

Her first position as an attorney was at the Legal Aid Society where she did felony and misdemeanor jury trials. Her supervisor at the Legal Aid Society is now the Hon. John M. Hunt, a long time veteran Queens Family Court Judge.

While working at Legal Aid, Judge Jackman-Brown was invited by three Judges to be their law clerk. In 1989 she chose to become law clerk to Judge Yvonne Lewis, Kings County Civil and Supreme Courts, and acquired exposure to both the criminal and civil matters which Judge Lewis handled. Judge Jackman-Brown says the most important thing she learned from Judge Lewis was judicial demeanor -- which she says Judge Lewis excelled at as she had a great demeanor, great people skills and was very patient. If demeanor is best learned by watching, then Judge Jackman-Brown's new law clerk in Queens Family Court, Denetra Thompson, Esq., is in a great spot for learning all about Judge Yvonne Lewis' judicial demeanor.

Judge Jackman-Brown was appointed as a New York City Housing Court Judge in 1998 and was appointed the Supervising Judge of New York County Housing Court in 2007. Her web page on the OCA website explains that in the Housing Court "everyday people from all walks of life appear, some with lawyers, some self-represented, all seeking justice. We are ready willing and able to achieve that goal."

From her experience so far this year, Judge Jackman-Brown says the same could be said of the Family Court The Judge says she feels more secure and better equipped to make decisions and dispense justice in Family Court when the litigants are represented by counsel who highlight all the issues for the Court. She knows the issues are raised when the parties have counsel. Such representation is more likely in Family Court due to the participation of the Court appointed 18B attorneys -- a systemic participation which is missing in the Housing Court. For Judge Jackman-Brown the regular participation of 18B counsel avoids judicial tensions and concern regarding "overreaching."

Judge Jackman-Brown has concerns as to how much she is helping the people who come before her in the Family Court. In Housing Court if you gave someone their apartment back you saw concrete evidence that you had helped them. She is finding it challenging to understand how to best help the Family Court litigants. She emphasized that it is this challenge that drew her to come to the Family Court and that she is enjoying the pursuit of this challenge. Her

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Notes from the State Bar Association April 2009 Meeting

BY STEVEN WIMPFHEIMER

In Albany, April is not Springtime. It is cold and raining.

As an aside, for those of you who may miss this quarterly missive, I have been trying to find my January report, but have been unable to find it on my various computer discs. Anyone still interested can contact me and I'll send them a copy of the approved minutes.

Back to the report, the weather inside the Fort Orange Club, where we have our usual pre-meeting dinner was warm and cozy. Conducive to meeting old friends and making new ones. Just as our President-Elect, Guy R. Vitacco, Jr., or the State Bar Association Treasurer, Seymour W. James.

The following morning the meeting started bright and early (maybe not so bright, but certainly early) at 8:30 A.M.

After the usual housekeeping and reading the minutes, Seymour James gave the Treasurer's Report. As usual the State Bar is in the black, notwithstanding that its investment portfolio took a beating of almost half a million dollars.

The next order of business was the election of delegates to the State Bar's Nominating Committee. The delegates from Queens are Arthur Terranova, Steve Wimpfheimer, with Catherine Lomuscio being the alternate delegate.

The President reported:

For a fee of $30,000.00 the Bar Association produced and distributed radio public service announcements which were worth about $700,000.00. This year the public service announcements covered the areas of climate change, equal justice for all and information on foreclosures (not on how to go into foreclosure, but to consult a lawyer about avoiding foreclosure, or what to do if you are going into foreclosure).

The State Bar now has approximately 80,000 members, which is up from 74,000 members at last count.

The President held a summit with Law School Deans to advise them what the Bar Association could do for their students and new graduates and urged the Deans to have the students join the State Bar.

Steven Wimpfheimer

In the same vein, the Bar Association sponsored a summer boat ride for newly admitted attorneys and urged them to join the Bar Association. Out of the 600 or so new graduates on the boat ride, about 200 signed up.

Bernice Leber testified in the Senate in favor of Jonathan Lippman, our new Chief Judge.

A task force on Wrongful Convictions was formed and issued its report at the meeting.

She formed a Committee to issue a report on the prisoners held in Guantanamo Bay and was pleased that the President (Obama, not Leber) announced that Guantanamo would be closed.

She further reported on efforts to bring more diversity to the selection of candidates to the Courts.

The Bar Association is seeking ways to help lawyers in transition, especially those that are unemployed because of the current economy. In this regard the Bar Association's web site has a Blog for lawyers looking for help in updating their resume or interviewing, etc.

On the legislative front she had meetings with the Governor's Counsel and various State and Federal Legislators on issues such as legal funding for the poor and the Rockefeller Drug laws. Partially as a result of the Bar Association's lobbying efforts the funds for civil legal services for the poor were restored to the current budget and the proposed fee increases for filing Court documents was defeated. Thank you Ron Kennedy (the Bar Association's legislative liaison staff person and an honorary member of the Queens County Bar).

Following the President's report there was a presentation to the Syracuse University Trial Advocacy Team for their sterling showing in the National Trial Advocacy Program. Congratulations to the Orange. I guess their law school produces a better product than their basketball program, or for that matter their football program.

The Special Committee for Solo and Small Practices Committee reported on the problems that we face and what the Bar Association is doing or proposing to do for us, such as CLE programs devoted to the solo and small practitioner, establishing an Internet and web site for us, offering advice on money management, networking, time management, communications with the Court and anything else we might need. The OCA report on Solo and Small Firms just came out and will be reported to the Bar at the June meeting in Cooperstown.

The Task Force on Wrongful Convictions issued its Report which was unanimously adopted. It is huge and I suggest that anyone who is interested should read it online. We don't need to destroy a forest for each bound report.

I slept through the next report which concerned a proposed Code of Ethics for Administrative Law Judges.

The most interesting debate was the report on Global Warming. The only issue was whether the State Bar should adopt the report or accept it with Thanks. The real issue was whether the Bar Association should be involved in a matter of policy, which does not directly affect lawyers or the law. It was decided that this issue was important enough and there was enough scientific data that we should adopt it and allow the Association to lobby for it (the conclusions reached, not global warming).

A report on privacy was discussed.

The Task Force on Courthouses delivered its award for the best and worst courthouse in the State. The winners for the best courthouses were the Erie and Chautauqua Family courthouses and Kings Supreme Criminal Court.

The winners for the worst were Albany Supreme and Richmond County Family court.

The President of the Nassau Bar objected claiming that Nassau Family Court was so bad that it could not even be mentioned as the worst, but was in a category all by itself.

I really wasn't interested in the rest of the reports, I was hungry, it was late and I left.

James J. Wrynn Named NYSIF Executive Director

The New York State Insurance Fund Board of Commissioners has announced the appointment of James J. Wrynn as NYSIF Executive Director.

A partner in the law firm of MacKay, Wrynn & Brady, LLP, with offices in Douglaston, Queens, New York and Hoboken, New Jersey, Mr. Wrynn's appointment was approved unanimously by the board at its monthly meeting on April 22, 2009, and became effective the same day.

Mr. Wrynn is admitted to the federal and state courts in New York and New Jersey and the Supreme Court of the United States. His law firm specializes in the areas of civil litigation and appellate practice with an emphasis on insurance law. He has designations as both an Associate in Risk Management (ARM) and Associate in Captive Insurance (ACI).

Mr. Wrynn has an extensive legal background in insurance, counseling agents, brokers, risk retention groups and insurance companies in most lines of insurance and excess insurance, reinsurance, self-insurance and captive insurance. His experience includes knowledge of insurance, accounting and tax issues affecting entities doing business both on and offshore.

"I look forward to serving the New York State Insurance Fund," Mr. Wrynn said. "I want to thank Governor David Paterson and the Board of Commissioners for the confidence they have placed in me to guide such an important organization and an experienced staff, for the opportunity to further the mission of being the leading provider of workers' compensation and disability benefits insurance in New York State."

Mr. Wrynn began his legal career in 1982 in the Manhattan office of McCormick, Dunne & Foley. He has litigated hundreds of cases as a trial attorney in the areas of life insurance, accident and health, property and casualty, general lia-

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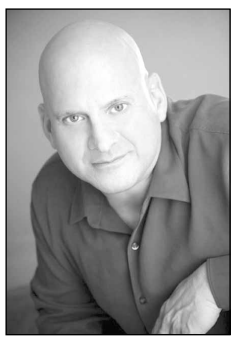
THE CULTURE CORNER

BY HOWARD L. WIEDER

This month's column is devoted principally to theater -- great theater at inexpensive prices, where you can afford to take a significant other or an entire family and have a wonderful time without rupturing the family budget. In his book ***ACTING: MAKE IT YOUR BUSINESS*** **[BACK STAGE BOOKS (RANDOM HOUSE) 2008 PAPERBACK]**, noted casting director and agent **PAUL RUSSELL** describes the economics of theater, film, and TV for both consumer, producer, and actors in today's crushing economic times. Lawyers are hurting for clients, even in prestigious large firms, and for the clients that they have, trying to get them to pay is a challenge. So everyone is forced to make rough decisions on how to use whatever "disposable income" is left. My column this month is devoted to making your decisions wise and allowing you some very entertaining times out of your home without you having to rely on a steady diet of watching reruns on Cable's TV Land or vintage films on Turner Classic Movies.

While everyone is raving at the new Broadway production of "The Norman Conquests" [composed of three distinct plays involving the same characters] now playing on Broadway [which has been praised a lot, but I have not yet seen, and I would like to!], not enough attention is paid to wonderful entertainment offered Off-Broadway and Off-Off-Broadway at not only affordable, but dirt cheap, prices! By the time you receive this paper, QCBA member Ronald Hellman, Esq.'s production of ***THE TALE OF THE ALLERGIST WIFE*** will be half-over, so you need to get to the beautifully renovated Queens Theatre in the Park to see it. The phenomenal **PEARL THEATRE**, which I have discovered recently and accidentally [I must have been sleeping under a rock!], located at St. Mark's Place and First Avenue, the "Times Square" of the East Village, will be presenting Tennessee Williams's autobiographical **VIEUX CARRE** under the direction of renowned actor-director **Austin Pendleton.**

The highly regarded **GALLERY PLAYERS**, located at 199 14th Street in picturesque Park Slope, Brooklyn, will be presenting its 12th Annual Black Box Festival, devoted to presenting the newly published and distinguished works of talented playwrights that have not been performed. Those plays already had to survive a rigorous screening process for selection for performances by this venerated acting mecca captained by its distinguished producer **DOMINIC CUSKERN. MR. CUSKERN** is a highly regarded actor whose numerous performances have consistently received rave reviews by The New York Times and other distinguished newspapers and critics. Several of the plays presented in June by the Gallery Players will involve the direction of talented actors who are permanent members of the **Resident Acting Company of The PEARL THEATRE** and whose names are familiar to dedicated New York playgoers. **That Festival begins, occurs, and continues throughout June, 2009, with several new plays presented, and they are not to be missed.**



Howard L. Wieder

For complete hilarity, **THE BOYCHICK AFFAIR** begins its highly anticipated New York run Off Broadway on the night of July 4, 2009, Independence Day**.** Written by **AMY LORD, who has already distinguished herself by her writing and acting in "Tony and Tina's Wedding" and "Grandma Sylvia's Funeral," THE BOYCHICK AFFAIR** is interactive theatre at its best and funniest. You are there to celebrate the Bar Mitzvah of Harry S. Boychick, who shocks his hopelessly and incredibly dysfunctional family by delivering his Haftorah portion in Gangsta rap style. While Moses might frown at the modern spin, audiences in Los Angeles, California, and Orlando, Florida have laughed nonstop at the antics of this berserk Bar Mitzvah affair. Critics in those cities gave **THE BOYCHICK AFFAIR** rave reviews, so the show has a proven track record. Not only is the NYC production of the show to begin in July, but productions of the show will begin also this year in Las Vegas, Nevada, and elsewhere in Florida. Considering the size of New York's Jewish population, **THE BOYCHICK AFFAIR's New York City production, at the Times Square Arts Center in the heart of Times Square, is likely to enjoy a long, long run. Mazel Tov!** [I am not aware that the Yiddish or Hebrew languages has any equivalent for "Break a Leg" since actors adhere to superstitiously to not wishing "Good L__k!" - - so I'll say the Hebrew/Yiddish "Mazel Tov" or the German "Toy, Toy, Toy!"

Two shows have completed their run but deserve special attention. THE PEARL THEATRE'S production of TARTUFFE and the Off-Off-Broadway play "HOMEWARD BOUND" by lawyer ARMEN PANDOLA.

Finally, I have recommendations for enjoyable summer reading, two excellent books by DR. PAUL DU QUENOY and Noted Casting Director-Actor PAUL RUSSELL.

Ron Hellman and the Outrageous Fortune Company present

THE TALE OF THE ALLERGIST WIFE at the

Queens Theatre in the Park Studio Theatre

The Tale of the Allergist's Wife is a play by Charles Busch that was a Tony Award nominee for Best Play. In his first play written for a mainstream audience, Busch explores the **Upper West Side milieu** of aspiring intellectual and middle-aged **upper class** matron Marjorie Taub, who lives comfortably with her doctor husband Ira in an expensively furnished **condo** near **Zabar's** and spends her days and evenings pursuing culture at various **museums** and the **theatre**. Her ongoing effort to improve her mind and soul has brought Marjorie to the conclusion she never will be more than mediocre, a feeling enhanced by her elderly mother's constant complaints about her shortcomings and her husband's altruistic dedication to serving the needs of the **homeless**. Following an emotional outburst in a **Disney Store** resulting in considerable breakage, Marjorie retires to the safety of her home to wallow in a **mid-life crisis**. Unexpectedly invading her depression is flamboyant childhood friend Lee who, much like ***The Man Who Came to Dinner,*** becomes entrenched in the Taub household as a seemingly permanent guest, not only drawing Marjorie out of her dark mood, but also affecting her marriage.

The original **Manhattan Theatre Club** production opened on February 29, 2000 and ran for 56 performances. Excellent reviews prompted a move to **Broadway**. After 25 previews, it opened on November 2, 2000 at the **Ethel Barrymore Theatre**, where it ran for 777 performances. The original cast, directed by **Lynne Meadow**, included **Linda Lavin** as Marjorie, **Tony Roberts** as Ira, and **Michele Lee** as Lee. Later in the run, Lavin was replaced first by **Valerie Harper** and then by **Rhea Perlman**.

Ron Hellman's Outrageous Fortune Company ("OFC") revives the play under the direction of Nick Brennan. The play runs at the Queens Theatre in the park on May 8, 9, 15, and 16 at 8 P.M. There are Sunday matinees on May 10 and 17 at 3 PM. There is free parking at the theatre. The number 7 train, alternatively, stops at Mets/Willets Point where Shuttle trolleys make frequent rounds to the theater before and after performances.

The last production by OFC of *OUR LADY OF 121ST STREET* was beautifully done by a gifted ensemble. Unfortunately, that production did not receive the acclaim and attendance that it deserved. One of my running complaints with Mr. Hellman is that he fails to use sufficient means to publicize some of his excellently chosen and well-cast pieces. Therefore, I urge you to see *THE TALE OF THE ALLERGIST'S WIFE*.

THE PEARL THEATRE PRESENTS *VIEUX CARRÉ*

Tennessee Williams's autobiographical work VIEUX *CARRÉ* is set in a dilapidated boarding house located at 722 Toulouse Street in the French Quarter of New Orleans in the late 1930s. The play focuses on a nameless, newly-transplanted, innocent, aspiring St. Louis writer who is struggling with his literary career, poverty, loneliness, homosexuality, and a cataract. He gradually becomes involved with the other residents, including Mrs. Wire, his demented, manipulative landlady; Nightingale, an older, predatory, tubercular artist who refuses to accept his condition; Jane, a New Rochelle society girl dying of leukemia; her sexually ambiguous, drug-addicted lover Tye, who works as a bouncer in a strip club; Mary Maud and Miss Carrie, two eccentric elderly women who literally are starving to death; and a gay photographer with a passion for orgies. The play is a raw and vulnerable look into a world of outcasts and their mechanisms for survival. Nowhere does Williams more intimately explore his own sexual identity, his own journey from man to artist than in **Vieux Carré**. He invokes the beauty and fragility of love, and the wounds it inflicts; the terror of death and the necessity of hope, the importance of memory and the longing to bury the past.

By the time you receive this paper, the production by the formidable and prestigious PEARL THEATRE will have started. **TENNESSEE WILLIAMS' VIEUX CARRÉ is DIRECTED BY the formidable talent AUSTIN PENDLETON. PREVIEW PERFORMANCES BEGIN: MAY 12, 2009 at 7 PM. OPENING NIGHT: MAY 27, 2009 at 7 PM. THIS LIMITED ENGAGEMENT ENDS JUNE 14, 2009.**

The Cast features 2008-2009 Resident Acting Company members **Rachel Botchan** as Jane, **Sean McNall** as The Writer, and **Carol Schultz** as Mrs. Wire. The production's guest artists are **Beth Dixon** as Mary, **Joseph Collins** as Tye, **George Morfogen** (HBO's "OZ") as Nightingale, **Pamela Payton-Wright** (Drama Desk winner; ABC's "One Life to Live") as Carrie, **Christian Pedersen** as Sky, and **Claudia Robinson** as Nursie. The Pearl Theatre Company is delighted to reunite the talents of director **Austin Pendleton** and actor **George**

Morfogen in their second collaboration on **Vieux Carré**; the first a successful 1984 production at the Williamstown Theater Festival.

About The Pearl Theatre Company. The Pearl Theatre Company is dedicated to two primary goals: to produce a full-range classical repertory and to foster a Resident Acting Company. An OBIE Award-winning company, The Pearl has produced five mainstage productions each year since 1984, displaying international variety and theatrical excellence, firmly rooted in the classical canon. **The Pearl Theatre Company**'s goal is to bring the audience to the world of the play, rather than mold the play to the confines of modern idiom. To accomplish this, **The Pearl Theatre Company** places its trust in the unlimited resonance of classic texts and the remarkable craft of our resident actors. With 2,500 years of our theatrical heritage as a foundation, **The Pearl is now celebrating its 25th Anniversary Season as a downtown cultural institution. The Pearl boasts a loyal base of 2,600 sub-**

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The Culture Corner

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scribers.

Ticketing and Performance Information for VIEUX CARRÉ: Contact the Pearl Theatre's box office at 212-598-9802 or in person at the historic Theatre 80 on the corner of 1st Avenue and St. Marks Place in New York's East Village. Box office hours are 12 PM – 6 PM Monday through Saturday and 12PM - 3PM on Sunday

Production Schedule for *VIEUX CARRÉ:*

Tuesday at 7 PM; Wednesday at 2 PM; Thursday, Friday, Saturday at 8 PM; Saturday and Sunday at 2PM. Previews begin May 12, 2009 at 7 PM. Opening night is Wednesday, May 27, 2009 at 7 PM.

Regular Ticket Prices:

$25 for all preview performances; $45 for performances on Tuesday, Wednesday, and Thursday; $55 for performances on Friday, Saturday, and Sunday.

Youth and Senior Tickets:

$23 weekdays and $28 weekends. Remaining tickets at each performance can be purchased at a reduced price by people 24 and younger or 65 and older on the day of performance, one half-hour prior to curtain, subject to availability. Valid for 1 ticket only per ID in person at the box office.

Thursday Rush Tickets:

Remaining tickets for Thursday evening performances are available for $10 fifteen minutes prior to curtain.

First Thursday Pizza Party:

Join The Pearl Theatre Company on Thursday, May 14th for its popular "First Thursday Pizza Party." Sponsored by **Two Boots Pizza**, this event is geared toward audience members under the age of 35. Participants are welcome to partake in free pizza, with the purchase of a specially-priced $10 ticket to the performance, while participating in a special presentation by production designers and guest artists and mingling with the company members and production staff of **Vieux Carré**. First Thursday Pizza Parties begin at 6 PM in the lobby of The Pearl Theatre Company.

Tuesday Talk Post-Performance Discussion:

These in-depth discussions give audiences the opportunity to participate in intimate talk-backs led by published scholars and experts within their fields. Tuesday Talks during **Vieux Carré** will take place following the performances on June 2, 2009 and June 9, 2009.

Directions:

The company performs at Theatre 80, 80 St. Mark's Place at 1st Avenue. The Pearl can be reached by taking the R/W train to 8th Street, 6 train to Astor Place, L train to First Avenue, or the F train to Second Avenue. By bus the M15 to 9th Street or the M8 to First Avenue.

***THE BOYCHICK AFFAIR*: THE BAR MITZVAH OF HARRY S. BOYCHICK**

The New York City production of **AMY LORD's** hilarious comedy ***THE BOYCHICK AFFAIR*** begins its Off Broadway run at The Times Square Arts Center (formerly Laugh Factory) at 669 Eight Avenue, on 8th Avenue between 42nd and 43rd Street, a few feet away from the Duane Reade store located at the NW corner of West 42nd Street, in the heart of Times Square. The $75 ticket price includes dinner; $69 for seniors and students. There are only two performances per week on Saturday evening and on Sunday afternoon. After all, when else would you book a catering hall? Are you a *bis mishugah* ["a little crazy"]?

AMY LORD's is one of those creative geniuses whose gifts have been blessed with actual success in her own lifetime. Like her other hilarious interactive theater projects, ***THE BOYCHICK AFFAIR*** is likely to be a favorite among New York's audience. And you don't have to be Jewish to enjoy the hilarity or understand what is going on!

If you are an absolute purist devotee of Judaism and do not believe that the holy *Shema* prayer should be delivered in gangsta rap fashion or that the Bar Mitzvah should be presided by a reconstructionist rabbi who is lesbian **and** pregnant, ***THE BOYCHICK AFFAIR*** will only aggravate you. Everyone else should come on to Times Square to enjoy the antics of one of the most incredible dysfunctional families in the history of theatre. The bar Mitzvah's boy's parents are divorced. The Bar Mitzvah boy's father, Aaron Boychick, a grandiose and egocentric theater owner magnate verging on bankruptcy, has failed to pay the catering bill for the bar Mitzvah and arrives late to the affair to face his hungry guests.

The day is saved by a Mexican family friend who brings Mexican food like chicken quesadillas to the party [thank goodness no shrimp or ham]. The family includes an adopted Ethiopian son who is flamboyantly gay. Father Aaron brings his girlfriend Penelope, a Christian Bible-thumping zealot, who gives the bar Mitzvah boy Harry a picture of Jesus, urging him that there's still time for him to be saved! The antics do not stop amidst the dancing of the Hora and the Macarena. Even the worst case of depression will be cured by attending this affair, and after seeing this family's outrageous interaction, you will happily settle for your own!

Check out details and press reviews on **www.boychickaffair.com**. Performances begin in New York on July 4, 2009, and the next five shows are: Jul. 4, 2009, at 6:30 p.m.; Jul. 5, 2009, at 1:00 p.m.; Jul. 11, 2009, at 6:30 p.m.; Jul. 12, 2009, at 1:00 p.m.; and Jul. 18, 2009, at 6:30 p.m.

As stated, because of its allure to a New York City audience, who are accustomed to all things Jewish, ***THE BOYCHICK AFFAIR*** has an open run [i.e., no closing date]. In the words of the Jewish blessing, may ***THE BOYCHICK AFFAIR*** run 120 years [reportedly the age of Moses at his death]!

The Times Square Arts Center (formerly Laugh Factory)
669 Eighth Ave.
New York, NY 10036

Ticket Price: $75; $69 students and seniors. Ticket price includes dinner. No need to bring an envelope [containing cash, the traditional American-Jewish gift] for the Bar Mitzvah boy!!!

Ticket Information: Brown Paper Tickets: 8008383006, **www.brownpapertickets.com**

THE GALLERY PLAYERS PRESENT THE 12TH ANNUAL BLACK BOX NEW PLAY FESTIVAL UNDER PRODUCER DOMINIC CUSKERN Box 1: FATHER MIKE by T.J. Edwards; directed by Mark Harborth (World premiere-full length). **Performances June 4-7, 2009.** This play was work-shopped at the Utah Shakespeare Festival in 2008. The play is a nostalgic comedy that takes place in 1955 in the home of a proud Catholic family.

Box 2, five one-act plays, all presented at each performance running only from June 11-14, 2009: NOBODY SELLS CARPET LIKE BILL by Edward Versailles. GIVEN OUR CURRENT FISCAL CRISIS by Daniel Damiano. Directed by Amanda White. UNFINISHED DEBASEMENT by Michael Kevin Baldwin. Directed by Andrew Firda. BUGS by Rich Espey. PHILOSOPHY 101 by Allan B. Lefcowitz. Directed by Chad Yarborough. Box 3, four one-act plays, all presented at each performance running only from June 18-21, 2009: HONEY & CANDY, a comedy by Lauren Cavanaugh. Directed by Justine Campbell-Elliott. DISTASTEFULLY YOURS by Denis Meadows. Directed by Robin Leslie Brown. BEAUTIFUL WORLD by Kevin Christopher Snipes. Directed by Seth Soloway. INHALE by Victoria T. Joseph.

Box 4: IN THE SHADOW OF THE LIGHTHOUSE by Carolina Aguilera. Directed by Tina Marie Casamento (World premiere-full length; performances June 25-28).

Buy Tickets Online at **www.gallery-players.com** or call (212) 352-3101

THE PEARL THEATRE'S MAGNIFICENT PRODUCTION OF MOLIERE'S *TARTUFFE*

The **PEARL THEATRE** enjoys a beautiful building, smartly decorated, and with very comfortable seats, as you will see when you attend performances of **VIEUX CARRE**. I first attended the Pearl Theatre on April 26 to see the closing matinee of one of my most favorite plays, if not my all-time favorite, Moliere's masterpiece **TARTUFFE**. I stumbled on the **PEARL THEATRE** and this production of Tartuffe, my favorite play, by accident. **MOLIERE** suffered terribly for his honesty in writing this play in France under the heavy influence of the Roman Catholic Church. Moliere describes the hypocrisy of a French cleric Tartuffe, who has the head of the household manipulated in a cobra-charming Svengali stranglehold.

The **PEARL THEATRE** enjoys a well-earned reputation for sparing no expense on costume design. This production of Tartuffe, directed brilliantly by **GUS KAIKKONEN**, was no exception. Since I am knowledgeable with the play, I particularly enjoyed the choice of Richard Wilbur's translation.

The entire cast was outstanding, and it borders on the criminal to single out some players, when there was not one weak link in the chain of commanding performances. **Nevertheless, with apologies given to those I have excluded since everyone was gifted, I particularly enjoyed DOMINIC CUSKERN** as Cleante**, ROBIN LESLIE BROWN** as Dorine, **RACHEL BOTCHAN** as Elmire**, SEAN MCNALL** as Damis**, BRADFORD COVER** as Tartuffe**, TJ EDWARDS** as Orgon, and **KILA PACKETT** as Laurent, loyal servant to the scoundrel Tartuffe.

In performing rhyming couplets and lines, it's important to bring out the beauty of the translation without getting lost in the sing-song delivery. **DOMINIC**

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James J. Wrynn Named NYSIF Executive Director

Continued From Page 5

bility, insurance coverage disputes, professional malpractice and product liability.

Among his professional affiliations, Mr. Wrynn serves on the Board of Managers and the Grievance Committee of the Queens County Bar Association, and is a member of the New York and New Jersey State Bar Associations, the New York State Trial Lawyers Association and the Network of Bar Leaders. He is a past-president of the Brehon Law Society and serves as a board member of both the St. John's University School of Law Alumni Association and the Catholic Lawyers Guild – Queens County.

He also served as a board member of the New York City Economic Development Corporation and the New York City Business Relocation Assistance Corporation.

Active in his community, Mr. Wrynn served on Community Board 13, as vice president of the Floral Park Community Council and on the Board of Directors of the Community Advocacy Center – Preventive Law for the Elderly.

A life-long resident of Queens, Mr. Wrynn is a graduate of Holy Cross High School, St. John's University College of Business Administration and St. John's University School of Law.

Mr. Wrynn resides in Douglaston with his wife, Maura, an elementary school teacher. They have three children: Katie, a graduate student at the International Business School at Brandeis University, Massachusetts; James, a senior at the University at Albany; and Kevin, a junior at St. Francis Prep High School.

Mr. Wrynn would like to thank Governor David A. Paterson and the New York State Insurance Fund Board of Commissioners for the confidence and trust they have placed in him to serve as executive director and would also like to specifically recognize the work of Deputy Executive Directors Thomas Gleason and Shirley Stark, who have diligently performed the duties of executive director following the resignation of the Fund's prior executive director.

NYSIF is a non-profit agency of the State of New York that was created as part of the Workers' Compensation Law of 1914. NYSIF is a competitive insurance carrier that sells workers' compensation and disability benefits insurance to any employer doing business in New York State.

Approximately 185,000 employers hold NYSIF workers' compensation policies (approximately 37 percent of the market), while more than 61,000 have active disability benefits policies.

About The Bench... Hon. Pam B. Jackman-Brown

Continued From Page 4

"main focus is how to help."

Another challenge for the Judge are the time constraints of her busy calendar. She is finding that many of the issues raised require time to "air out." She is initiating a system in her Part -- where she hears custody, visitation and family offense proceedings -- to put litigants requiring more of her time on her afternoon calendar.

The Judge stays busy outside of Court with her involvement as a Board member of the Macon B. Allen Bar Association and the Queens County Women's Bar Association. She also likes to garden and create flower arrangements and has scattered her chambers with much evidence of her green thumb. She is close with her mother, whom she refers to as the family "matriarch," and speaks with her mother and her siblings on a daily basis.

Now that Judge Jackman-Brown has joined the Family Court Bench, Judge Judy is no longer the only Family Court Judge to have her picture plastered all over the New York City mass transit system. Yes, Judge Jackman-Brown was profiled throughout the subway system in August, 2001 as part of the subway express campaign of CUNY students' success stories. Her adventure into subway stardom aside, Judge Jackman-Brown does not have any aspirations for her own TV show. The Judge speaks from the heart as she describes herself as a very private person who is enjoying "hiding out" in Queens Family Court. She was hesitant to be interviewed as she appreciated it might blow her cover. She's been enjoying the fact that people really don't know she is now in the Family Court.

Judge Jackman-Brown speaks from the heart as she describes herself as a "simple person trying to give justice," who really just wants to be left alone so she can "devote herself to helping others." She just wants to be another government employee helping in any way she can -- and her role model seems to be the bus driver who helped her get to Burger King on time. Fortunately for the families of Queens, Judge Jackman-Brown is definitely as motivated as that bus driver, but she has a lot more authority and these two factors together will enable her to help so many more in so many ways.

Court Notes

The Following Attorneys Were Disbarred By Order Of The Appellate Division, Second Judicial Department:

Martin N. Kroll, admitted as Martin Neil Kroll (March 3, 2009)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he improperly borrowed monies from his escrow account for personal purposes. The funds were subsequently restored, with interest, to the affected client.

Louis Haddad (March 10, 2009)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he misused his attorney escrow account by commingling, writing checks to cash, and making other improper withdrawals.

The Following Attorneys Were Suspended From The Practice of Law By Order Of The Appellate Division, Second Judicial Department:

Rene G. Garcia (February 24, 2009)

Following a disciplinary hearing, the respondent was found guilty of converting to his own use funds entrusted to him as a fiduciary, incident to his practice of law, on behalf of clients Maria Arevalo, Maribel Paz, Ronnie Recai, Catherine Doyle, and John Maloney; failing to safeguard funds entrusted to him as a fiduciary, incident to his practice of law, on behalf of client Juan Torrico; paying himself legal fees for two personal injury matters before depositing the corresponding settlement checks into his attorney escrow account; engaging in a pattern and practice of failing to promptly pay his clients the shares of the personal injury settlements to which they were entitled; failing to maintain required bookkeeping records for his attorney trust account; and engaging in a pattern of failing to file Closing Statements with the Office of Court Administration. He was suspended from the practice of law for a period of one year, commencing March 24, 2009, upon consideration of multiple mitigating factors including an absence of venality and accounting errors caused by the improper delegation of accounting responsibilities to his brother, who suffers from a psychiatric disorder that prevented him from focusing on his duties.

Benjamin Katz, admitted as Benjamin Zev Katz (February 24, 2009)

By decision and order on motion of the Appellate Division, Second Judicial Department dated December 19, 2006, the respondent was immediately suspended from the practice of law pursuant to 22 NYCRR §691.13(c), based on his claimed medical disability. By decision and order on motion dated July 18, 2007, the suspension based upon the respondent's claimed medical disability was vacated. Following a disciplinary hearing, the respondent was found guilty of violating his fiduciary obligations by failing to maintain and preserve client funds entrusted to him in escrow and engaging in conduct adversely reflecting on his fitness to practice law based upon the foregoing. He was suspended from the practice of law for a period of five years, commencing March 24, 2009.

Barnett R. Rogers (February 24, 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 failure to comply with the lawful demands of the Grievance Committee for the Ninth Judicial District as well as other uncontroverted evidence of his professional misconduct.

Diana J. Szochet

Mark Crutchfield admitted as Mark Edward Crutchfield (March 11, 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 persistent pattern of failing to cooperate with the Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts.

Matthew A. Marino Admitted as Matthew Adam Marino (March 12, 2009)

The respondent pleaded guilty in the United States District Court for the Southern District of New York to a one count Information charging him with Misprision of a Felony, in violation of 18 USC §4. On the Appellate Division's own motion, the respondent was immediately suspended from the practice of law as a result of his plea to a serious crime, pending further proceedings, pursuant to Judiciary Law §90(4)(f).

The Following Suspended Attorney Was Reinstated To The Practice of Law:

Maureen Abato, Admitted as Maureen A.

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PHOTO CORNER

Judiciary Night, Tuesday, April 21, 2009

Bernie Vishnick, Hon. Diccia Pineda-Kirwan and Hon. Joseph Golia

Chanwoo Lee, Hon. Denis Butler, Howard Stave and Guy Vitacco, Jr.

Dave Adler, Hon. Martin Ritholtz, Hon. Steven Fisher, and Jim Pieret

Dominic Villoni, Hon. Joseph Risi, Howard Stave, and Ted Gorycki

Hon. Augustus Agate, Bert Herman and Hon. Valerie Brathwaite Nelson

Hon. Diccia Pineda-Kirwan, Susan Beberfall, Maria Bradley and Steve Orlow

Greg Brown, Wally Leinheardt and Hon. Peter Kelly

Helmut Borchert, Steve Orlow, Hon. Charles LoPresto and Hon. Jeremy Weinstein

Hon. Cheree Buggs, Liz Forgione and Hon. Bernice Siegal

Hon. Darrell Gavrin, Hon. Seymour Boyers and Hon. Richard Brown

Steve Goldenberg, Hon. Ann Pfau, Hon. Jeremy Weinstein and Steve Singer

Steven Goldenberg, Richard Johnson, Hon. Daniel Lewis, Hon. Ronald Hollie and Steve Singer.

Photos by Walter Karling

PHOTO CORNER

Judiciary Night, Tuesday, April 21, 2009

Tim Rountree, Martha Taylor and Hon. Kenneth Holder

Tony Mascolo, Mark Weliky and Gary DiLeonardo

Len Livote, Bernie Vishnick, Jay Abrahams and Tom Principe

Hon. Martin Ritholtz with Stephen Singer, recipient of the Academy of Law Award

Hon. Evelyn Braun, Hon. Jeremy Weinstein, Hon. Ann Pfau and Hon. Arthur Cooperman

Hon. Fran Lubow, Hon. Carmen Velasquez and Hon. Phyllis Orlikoff Flug

Hon. Joseph Golia, Ed Rosenthal, Hon. William Erlbaum, Tom Principe and Hon. Arthur Cooperman

Hon. Marguerite Grays, Hon. Janice Taylor and Hon. Valerie Brathwaite Nelson

Scott Kaufman, Hon. Rudy Greco and David Adler

Jeff Boyar and Hon. Evelyn Braun

Jim Pieret, Ed Rosenthal, Hon. Maureen Healy and John Dietz

Joe Carola, Steve Orlow and Hon. Ann Pfau

Hon. Phyllis Orlikoff Flug, Hon. Allen Beldock and John Gemelli

Hon. Edwin Kassoff, Hon. Stephen Knopf, Hon. James Golia and Hon. Leslie Purificacion

Photos by Walter Karling

An Analysis of the Motion to Set Aside the Verdict: Subsection 2

Continued From Page 3

Rodriguez[21], the New York State Court of Appeals held that the jury verdict, convicting the defendant of Criminal Sale of a Controlled Substance, would not be automatically set aside on the ground that the juror, during Voir Dire, intentionally concealed his acquaintance with the county prosecutor, who was not involved in the prosecution of the defendant's case.

On the other hand, in People v. Ceresoli[22], the Appellate Division Fourth Department held that the county court was required to set aside a Grand Larceny verdict, on the ground of jury misconduct, where the juror indicated, during Voir Dire, that he was not familiar with the club, which the victim was charged of theft of, but in fact, the juror was a former member of that club.[23]

In general, it may be said, also, that the juror's acquaintance with the defendant is not a basis for granting this Motion. Thus, in People v. Owens[24], the Appellate Division Secdond Department held that the juror's failure to disclose, during jury Voir Dire, that she knew the defendant did not require reversal, on the ground of jury misconduct, since the juror revealed sufficient evidence, during Voir Dire, to allow the defendant to recall the juror's identity at that time, but he chose not to challenge her placement on the jury and, in fact, actually requested that she be restored to the jury panel under "Batson", after the People had used a Peremptory Challenge to remove her.[25]

In general, a jury verdict cannot be impeached by probes into the jury's deliberative process. People v. Maragh[26]. Also, in People v. Testa[27] the New York State Court of Appeals stated that examination of the jury's deliberative process to assess claims of improper jury influence must be performed with caution, for inquiry into such process with a purpose of impeaching a verdict should not be undertaken, except in extraordinary circumstances.[28]

There is varying case law as to whether a juror's use of extraneous information can constitute improper conduct. Thus, in People v. Brown[29], the New York State Court of Appeals held that "improper influence" includes well intentioned jury conduct, which tends to put the jury in possession of information not introduced at trial. In People v. Saunders[30], the trial court held that the cumulative effect of four acts of juror misconduct, which involved outside influences and extraneous material, led to the conclusion that the verdict was affected by outside influences and extraneous material.[31]

There is a rule as to where a juror does independent research. This is a ground for the granting of this Motion.[32]

There are a number of cases concerning the matter of alcohol and drug use by jurors. For example, in People v. Brandon[33], the trial court held that the consumption of alcohol by a juror during deliberations, in prosecution on multiple counts of Petty Larceny, was not presumptively prejudicial. The Brandon Court went on to state that the jurors' alleged use of alcohol during deliberations was not an "outside influence" on the jury, and jury testimony with respect thereto was inadmissible to impeach the verdict in prosecution on multiple counts of Petty Larceny.

People v. Edgerton[34] states a rule about jurors reporting defendant's bad conduct or prior convictions to other jurors. The Edgerton Court held that the improper conduct by a juror, who during deliberations related to other jurors information that the defendant, who was on trial for Arson, had set fires in other counties, testified vacating Arson convictions. On the other hand, in People v. Caputalo[35], the trial court held that the defendants were not entitled to a new trial because two jurors had learned of the defendant's convictions on a former trial.[36]

In general, there is a sub-rule that juror access to law book materials is not be a basis for granting this Motion. Thus, in People v. Priori[37], the New York Court of Appeals held that the fact that a juror had a copy of the Penal Code and the Code of Criminal Procedure, which he read and exhibited to some of his fellows, but which was taken from him as soon as it was discovered, was not a ground for a new trial, in the absence of evidence that it affected the result or was prejudicial to the defendant.[38]

There is also a rule concerning the juror's use of news reports. In general, the juror's exposure to news reports will not mandate the granting of this Motion. People v. Smith[39] is apropos of this rule. In Smith, the trial court improperly found, after an abortive preliminary Hearing, that a newspaper article, read by and related to jurors during deliberations was presumptually prejudicial and that the presumption of prejudice was not rebutted by the People so as to justify setting aside the verdict. The court held that the verdict should not have been set aside without a showing as to what extra-record material came before the jury, if any, and its impact on the jurors' opinions and its ability to render a fair verdict.

In the same way in People v. Horny[40], the Appellate Division First Department held that publicity concerning general claims of police brutality, without any reference to the defendant, was not prejudicial to the defendant, especially where the defendant did not establish that the jury deliberations were poisoned by this media publicity, since there was no claim that any juror read the article, and only one juror claim that the headline had any influence on him.[41]

There is also a rule concerning juror note-taking. In People v. Saunders[42], the trial court held that note taking by a juror, and use of notes during deliberations, created a likelihood that the rights of the defendant were substantially prejudiced. People v. Mann[43] stated that where the evidence permitted a finding that the juror who took unauthorized notes during a trial did not use those notes in any significant way, during deliberations, so that no prejudice resulted to the defendants, even though the court never issued cautionary instructions with regard to the taking of the notes, since the jurors were never authorized to take the notes. People v. Dexheimer[44] states a rule that where the defendant never requests a cautionary instruction on note-taking, or makes any objection regarding note-taking during trial, the defendant waives any claim on this issue.

In general, there is a rule that where jurors show overt prejudice or bias, this is a ground for granting this Motion. In People v. Leonti[45], the New York Court of Appeals held that a juror's disqualification, shown by undenied Affidavits as to his statement after the rendition of a verdict of conviction that he would not believe a person of defendant's nationality under oath, required a new trial. Similarly, in People v. Webb[46], the Appellate Division First Department stated that a juror's response when asked if he would be able to keep an open mind in light of knowledge of defendant's previous conviction, that evidence of prior crimes would partially sway his decision and would effect his judgment, constituted sufficient grounds to dismiss the juror for cause, requiring reversal. The court noted that the defense had to exercise a Peremptory Challenge and thus exhausted all of its Peremptory Challenges prior to the end of jury selection.[47]

Also, there is a rule concerning separation of the jury as a ground for the granting of this Motion, if the separation is of a sufficient length of time. This can be the ground for the granting of this Motion, although the Motion is not easily or frequently granted.[48]

CONCLUSION

This article has analyzed and sought to indicate the proper interpretation and construction of improper or proper juror conduct within the context of sub-section (2) of Section 330.30 of the Criminal Procedure Law. There are a number of basic rules. First, the trial court is invested with broad discretion on the matter. Second, the juror's alleged misconduct must create a substantial risk of prejudice to the rights of the defendant in some way. The case law sets forth a number of specific rules. For example, the failure to challenge a juror by reason of the want of knowledge as to the cause is not a ground for this Motion. There is a rule that improper communication with the jury can be a ground for the granting of this Motion. There is a sub-rule concerning discussions or conversations among jurors concerning the case. There are rules concerning written communication by or with jurors, and when a juror examines exhibits. There is varying law concerning juror's experimentation, as well as law concerning of improper juror conduct in the course of Voir Dire. In general, there is a rule that a juror's acquaintance with the defendant is not a basis for granting this Motion, and, as well, there is a rule that a jury verdict cannot be impeached by probes into the jury's deliberative process. There are rules concerning the juror's use of extraneous information such as can constitute improper conduct, and a rule where a juror does independent research. There is a case law concerning the use of alcohol and drugs by jurors, and a rule about jurors reporting defendant's bad conduct or prior conviction to other jurors. There are sub-rules concerning juror access to law books and concerning the juror's use of news reports. There is a sub-rule concerning juror note-taking, and there is a general rule concerning where jurors show overt prejudice or bias. Finally, there is a rule concerning separation of the jury as the ground for the granting of this Motion.

It is hoped that this article will provide some sort of guide to the practitioner through this detailed and somewhat complex field of improper juror conduct under Subsection Rule (2) of Sec. 330.30 of the Criminal Procedure Law.

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ENDNOTES

[1] The case law cited in this article has its source in the annotations of McKinney's Consolidated Laws, Sec. 330.30, Volume 11A, West Publishing Company.

[1] At any time after rendition of a verdict of guilty, and before sentence, the court may, upon motion of the defendant, set aside or modify the verdict or any part thereof upon the following grounds:

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The Culture Corner

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CUSKERN was masterful in his clear diction as Cleante, the brother-in-law to the head of the household. **DOMINIC CUSKERN's** Cleante was the unparalleled and splendidly eloquent voice of reason. I was enthralled by his performance.

ROBIN LESLIE BROWN is one of the foremost veterans of New York theater, but unfortunately does not now have the name recognition of film celebrities as Julia Roberts or Angelina Jolie. **Ms. BROWN** is a gifted and extraordinary actress. Her portrayal of Dorine, the dutiful household servant is completely loyal to her family and sees through the pretense and hypocrisy of Tartuffe, was thorough, penetrating, humorous, and, in short, wonderful. I hope she will get the name recognition deserving of her towering talent.

RACHEL BOTCHAN as Elmire was excellent. Tartuffe's second wide is a warm, compassionate, and beautiful woman from without and within. Ms. Botchan captured the character of the loyal Elmire, exasperated by her husband's stupidity, beautifully, in all its many facets.

One final word is in order. To the adage that there are no small roles, only small actors, I was struck by the captivating stage presence of **KILA PACKETT** as Laurent, loyal servant to Tartuffe. Though Laurent has very few lines, his character is essential since he is loyal to his wicked master Tartuffe to the same intense manner as Dorine is to her family. **KILA PACKETT** played Laurent straightforwardly and superbly, with complete devotion to his master, unaccompanied by judgmental thinking, and humorously, to the amusement of the entire packed audience, without lapsing into shtick. And when the play ended with the brilliant touch of Laurent running back to claim a bag of valuable coins that were forgotten, **director GUS KAIKKONEN and actor KILA PACKETT** reminded everyone in the theatre that water usually rises to its own level. *Qui ressemble s'assemble* - - birds of a feather flock together. A hypocrite like Tartuffe would naturally attract a not-so-honest servant.

I was struck by the entire cast, and my only regret was that I had not known of the play earlier since I would have paid for tickets to several performances of the Pearl Theatre's magnificent production of ***TARTUFFE***.

HOMEWARD BOUND

Green Light Productions presented ***Homeward Bound***, a new play written by **Armen Pandola** and directed by **Shannon Fillion.**

Homeward Bound is the story of three GI's wounded in the Iraqi War, stuck in a hospital in Germany, waiting to go home. When two wounded Iraqi civilians are temporarily housed in the same ward, they all share the same nightmare. They have been irredeemably changed by their wounds and experiences, and now they must re-imagine their lives if they want to save themselves – and get back home, not as they left it, but as they have become. ***Homeward Bound*** is the final play in **Armen Pandola's** trilogy exploring different facets of post-9/11 America. The first of the series, *Terror at the White House*, which follows the story of a First Family torn apart by political dissension, intrigue and betrayal premiered in June 2004 and was a Stanley Drama Award Finalist. The second play of the series, *Devils Also Believe*, premiered in May 2006 and was a Smith Prize Finalist for Best New American Play.

Homeward Bound featured **BRYANT MARTIN**, **MICHAEL FISHMAN**, **LANNA JOFFREY**, **CHRISTOPHER TRAMANTANA**, **SCOTT TROOST,** and Iraqi War veteran **ED WALSH**. **LANNA JOFFREY** gave a virtuoso performance of an Iraqi woman. Had this performance been done in a Broadway theater, Ms. Joffrey should have walked away with the Tony Award for the finest performance by an actress in a leading role. The entire cast was excellent. Bryant Martin was affecting as a soldier left mentally challenged by his wounds, who learns that his wife, whom he loves, wants a divorce. Michael Fishman is a charismatic actor who played the Major Doctor very well as a rebellious, liberal, and compassionate leader. Although his performance might have allowed for more nuances of the Major's authoritative nature, Mr. Fishman gave a superb performance and should continue with his craft of acting in light of his significant gifts. Scott Troost was a sheer delight as the North Carolinian soldier whom the Iraqi war has left physically challenged. Mr. Troost's undeniable charm and superb musical talents in singing and playing the guitar were important to the show's success. Mr. Tramantana and Ed Walsh gave solid performances in intense roles. **SHANNON FILLION'S** direction was excellent.

ARMEN PANDOLA (playwright), a lawyer in Pennsylvania, is a respected American playwright whose plays often find the "joint of political tension in today's world and make you see it as immediate human frailty and suffering." He is a recipient of a Shubert Fellowship in Playwriting and was awarded the Walnut Street Theatre's Edwin Forrest Playwriting Award for his play *Forrest: A Riot of Dreams* which premiered at the Walnut in 2006. *Homeward Bound* is the final play of his trilogy about post-9/11 USA, *America's Second Coming*, which he started in 2004 and includes *Devils Also Believe* (a New Play Network Finalist for best new play of the year) and *Terror at the White House* (a Stanley Drama Award finalist). His other plays include *Friends for Life* (Best New One-Act Play Finalist Premiered March, 2006), *Hedda Without Walls* (Premiered March, 2005), *The Gift of Giving* (Premiered December, 2004), *Mrs. Warren's e-Profession* (Premiered March, 2004) and *Zelda & Scott: Boats Against the Current* (Premiered September, 2003).

METROPOLITAN OPERA

The Metropolitan Opera's 2008-2009 season has come to an end, and tickets are already on sale for the 2009-2010 season at **www.metopera.com** . In April, 2009, I heard the most phenomenal version [and I have seen and heard several] of Verdi's **RIGOLETTO** by an all-star cast of **ROBERTO FRONTALI** in the title role, **JOSEPH CALLEJAS** as the sexually-ravenous Duke, and **DIANA DAMRAU** as the sacrificing and forgiving Gilda. Ms. Damrau is one of the most gifted sopranos on the world stage. I previously heard Mr. Frontali as Germont in a film version of Verdi's *La Traviata*, and enjoyed it. Roberto Frontali was brilliant as the court jester Rigoletto, whose lust for revenge plays a tragic twist. Why hasn't this immensely gifted baritone, **MR. FRONTALI**, with a shiny voice, been signed by some prestigious record label. He was glorious. I have never heard a finer Rigoletto!

BOOKS ON THEATER AND CULTURE

In keeping with this month's focus on theatre, I heartily recommend two books on culture, theater and acting, both written by authors with the first name of Paul and both of whom are top at their expertise. First, **PAUL DU QUENOY** is not only a scholar, but a true renaissance man. A professor at the American University in Beirut, **PAUL DU QUENOY** is a world historian of enormous analytical probity. He is also a classical music and opera critic, and his fluency and knowledge of numerous, diverse languages is extraordinary. Usually, only popes are that fluent in so many languages. **PAUL DU QUENOY's** latest masterpiece is ***STAGE FRIGHT: POLITICS AND THE PERFORMING ARTS IN LATE IMPERIAL RUSSIA*** **[Pennsylvania State University 2009 hardcover].** His work explores how culture responded to power in Imperial Russia. Prof. Du Quenoy writes in a wonderful prose, easy to understand. **PAUL DU QUENOY,** in this excellently written work, has found a subject that combines his knowledge of world history, culture and the arts, and his mastery of Russian language [in addition to many others].

An entertaining, funny, direct, brutally frank statement of the entertainment industry as it exists in the United States is found in **PAUL RUSSELL'S *ACTING—MAKE IT YOUR BUSINESS: HOW TO AVOID MISTAKES AND ACHIEVE SUCCESS AS A WORKING ACTOR* [Back Stage Books div. Random House 2008]. This target of this excellent book is the community of actors. The book is primarily intended to educate actors on how they should market themselves in order to get good, paying roles. Paul Russell's book is so well-developed in terms of excellent marketing techniques that it should be purchased, read, and its lessons employed by practicing lawyers.**

This is a book that must be read not only by lawyers in the specialty of sports and entertainment law, but by actors, would-be actors, producers, and consumers of the entertainment industry, especially in a challenging market. Paul Russell, an award-winning casting director, director, former actor, and author, in ***ACTING—MAKE IT YOUR BUSINESS: HOW TO AVOID MISTAKES AND ACHIEVE SUCCESS AS A WORKING ACTOR***, describes how "a diminutive actress brought in a five-foot tall step ladder as a prop for her audition to sing *Climb Every Mountain*." After observing actors making this and similar paralyzing career mistakes in auditions, on-and-off stage and screen Russell decided to put his candid words of wisdom for actor success to font.

Russell has been in the entertainment industry for more than 25 years beginning as a successful working actor, then becoming an award-winning casting director and director. He has worked on projects for Twentieth Century Fox, HBO, Warner Brothers, Broadway, and regional theater. With ***ACTING—MAKE IT YOUR BUSINESS***, he writes of many actor successes and failures. Actors familiar with **PAUL RUSSELL** know that when he speaks, he cuts directly to the point, often, but not always, with tact.-

"I think of ***ACTING—MAKE IT YOUR BUSINESS*** as [MSNBC's] *Hardball* for actors," Russell's comments, likening his book to the tough questioning politicos endure from MSNBC journalist Chris Matthews. But Russell wants to make actors aware that while he's tough, he has plenty of empathy for them. "My sometimes fiery tone in this book, which often breaks FCC standards, is not because I'm mean-spirited. I was an actor prior to jumping the audition table. I know the hell that actors live in order to survive. Many of my casting colleagues and I have grown frustrated encountering far too many actors making mistakes they can't see for themselves. Some large -- like one actor who inappropriately turned his audition into a strip show -- and some smaller but just as damaging. The entertainment industry is all about image, image, image. The actors who don't know that or understand how to market and brand themselves properly, are the actors forever waiting tables."

Besides covering all the necessities for an actor's career -- cutting-edge audition, marketing, and networking strategies, combining traditional techniques with those best suited for the digital age, where best to train, audition technique, how to find and keep an agent, plus the ins and outs of negotiating a contract -- **PAUL RUSSELL** also includes the valuable opinions and advice of industry power agents and well-known actors throughout ***ACTING—MAKE IT YOUR BUSINESS***.

As I read his book, I was struck by the obvious parallels to trial lawyers whom I have seen operate in courtrooms, who need to buy this book since they evidently often forget that image means everything to both judge and jury. What you say to a judge or to a judge's law secretary can be devastating. When I questioned one lawyer, representing the defendant, in Socratic Method fashion, in a case recently tried before Justice Charles J. Markey in State Supreme Court, Queens County, concerning how long has she been involved before Justice Markey on trial, she tartly responded "too long." If she had conveyed her answer differently, her interaction with the court would have been better appreciated. So both trial lawyers and actors need to think before they open their mouths, remembering that you are being judged by what you say and wear. Don't lose time. Profit from the advice given by Paul Russell to actors, in many respects applicable to trial lawyers. Paul Russell's E-mail: **prussell@paulrussell.net**

Author's Web Site: **www.PaulRussell.net**

This paperback book would make a fine gift for any practicing thespian or aspiring actor. As stated, its marketing lessons can easily be adapted for lawyers. Paul Russell's book, finally, makes for entertaining and useful summer reading.

HOWARD L. WIEDER is the writer of both "THE CULTURE CORNER" and the "BOOKS AT THE BAR" columns, appearing regularly in THE QUEENS BAR BULLETIN, and is JUSTICE CHARLES J. MARKEY'S PRINCIPAL LAW CLERK in IAS Part 32 of Supreme Court, Civil Term, in Long Island City, New York.

Serving as a Guardian Ad Litem in the Surrogate's Court

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fourteen. A nomination of this type is made by a petition by the infant or the parent of the infant or the guardian of the infant. Said petition must be made by the petitioner at least two days prior to the return date of the underlying proceeding. (SCPA 403). The nominated attorney, petitioner and the infant must all submit affidavits stating, among other things, that there is a conflict with said infant and the petitioner or the attorney. If there is even a potentially adverse interest, the Court will appoint its own guardian ad litem. Said affidavits must also explain the circumstances of the nomination of the attorney and that neither the attorney nor the petitioner has influenced the infant as to the nomination. (SCPA 403(1)(b), Surrogate's Court Rules 207.13). These circumstances can very rarely be met and the nomination by an infant is hardly ever exercised leaving the appointment of the guardian ad litem in the discretion of the Surrogate.

A Guardian Ad Litem is not needed or the Court may dispense with the requirement of the GAL when there is an uncontested probate proceeding and such person will receive a share equal to or greater than their intestate share. Also, in an accounting proceeding where said incapacitated person receives a specific bequest, devise or general legacy of a stated sum of money and the accounting party has shown (to the satisfaction of the Court) that the incapacitated has received the bequest. (SCPA 403(3)). The potential issue with the instrument offered for probate or the fiduciary on the accounting the need for the GAL can be dispensed with. Additionally, the Court can dispense with the requirement for the appointment of a GAL when the Public Administrator receives process on behalf of the incapacitated person and where a surviving spouse receives the entire estate which the value of the estate is less than $50,000.00. In such cases, the Court will limit the letters of the Executor to not be able to collect over the stated $50,000.00. (SPCA 403(3)).

Qualifying as a Guardian Ad Litem

In order to be appointed guardian ad litem in Surrogate's Court, the designated person must be an attorney admitted to practice in the State of New York. Attorneys should then refer to Part 36 of the Rules of the Chief Judge to be placed in the list of potential appointees. Said list is maintained by the Chief Administrator of the Courts and said lists are made available to an appointing Judge. Attorneys should fill out the application must also be able to certify that he or she is not: a judge or married to a judge; related to a judge by marriage; to a judge within the 6th degree of relationship; a judicial hearing officer; a full time employee of the Unified Court System; the spouse; brother/sister, parent, or child of a full time employee of the Unified Court System who holds a position at or above a salary grade of JG-24; certain state or county politician or their relative; a former judge who left office on or after January 1, 2003; a disbarred attorney or one removed from the appointment list; a person convicted of certain crimes. Appointees must also be aware that Part 36 of the rules restrict the receipt of any appointment were the compensation expected exceeds the sum of $15,000.00. Also, if the attorney has been awarded in excess of $75,000.00 in a calendar year then the attorney will not be eligible to receive appointments the following calendar year. The rules require that an attorney must re-register every two years.

Attorneys should be aware that once appointed a guardian ad litem should qualify within 10 days of the notification of the appointment. This is done by signing the consent in the Courts file and fining the UCS 872 with the fiduciary clerk of the Court. In Surrogate's Court, the fiduciary clerk is the Chief Clerk of the Court and the UCS 872 can be filed in the Court's file. Attorneys should also note that the guardian ad litem's report is to be filed within ten days from the date that proceeding is finally adjourned or submitted. If it is not possible to file the report in the time frame proscribed, the guardian ad litem should inform the court. The guardian ad litem can also file a preliminary report. The guardian ad litem's report is due in 20 days from appointment or from the date that the matter is last adjourned if the proceeding that the guardian ad litem is appointed is an accounting proceeding. Guardian ad litem reports are to be in writing unless the guardian ad litem is given permission to make an oral report by the Surrogate. (Rules of the Court 207.13(A). If the Court made a direction that money or property be delivered to or for the benefit of the ward of the guardian ad litem then the guardian ad litem should file a supplemental report within 60 days of the decree. (Rules of Court 207.13(b)). Said report should advise the Court whether the decree has been complied with insofar as it affects their wards. It is good practice to attach a copy of the bank statement indicating the deposit of the funds and that the account has been properly titled in the name of the ward or their guardian of the property.

Duties of the Guardian

Good practice is for a guardian ad litem to file a Notice of Appearance on behalf of their wards. The guardian ad litem should then investigate the matter by examining the court file. A full review of all the papers filed is advised. This will help the guardian ad litem to ascertain his ward's interest. The guardian ad litem should then take all legal steps to protect his ward's interest.

In summary, the guardian ad litem should advance the rights of his ward as if the ward was a private client. This may include filing objections in an accounting proceeding; demanding an Examination of the Attesting Witnesses pursuant to SCPA 1404 and the filing of probate objections; initiating proceedings; and negotiating settlements where appropriate. It is important to note that the guardian ad litem should act in the best interest of his ward even if the guardian ad litem's actions do not coincide with the wishes of the ward. (Matter of Aho, 39 N.Y. 2d 241, 383 N.Y.S. 2d 285, 347 N.E. 2d 647 (1976)).

The guardian ad litem should file a cogent, detailed report. The report should state the basis for jurisdiction over their ward. Also, the report should set forth the interest of their ward and how the proceeding affects that interest. The reports of the guardian and the conclusions and recommendations regarding the relief requested. Attached to the report should also be a detailed affirmation of Services so that the Surrogate can fix a fee in the decree.

Editor's Note: Scott G. Kaufman is a partner in the firm Crowley & Kaufman, P.C. located in Elmhurst. He is also a Vice-Chair of our Surrogate's Court, Trusts and Estates committee.

An Analysis of the Motion to Set Aside the Verdict: Subsection 2

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Any ground appearing in the record which, if raised upon an appeal from a prospective judgment of conviction, would require a reversal or modification of the judgment as a matter of law by an appellate court.

That during the trial there occurred, out of the presence of the court, improper conduct by a juror, or improper conduct by another person in relation to a juror, which may have affected a substantial right of the defendant and which was not known to the defendant prior to the rendition of a verdict; or

That new evidence has been discovered since the trial which could not have been produced by the defendant at the trial event with due diligence on his part and which is of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant.

[2] 197 AD2d 476, 602 NYS2d 847 (1st Dept. 1993)

[3] 104 AD2d 947, 480 NYS2d 565 (2nd Dept. 1984)

[4] See also on this People v. Maragh, 94 NY2d 569, 708 NYS2d 44 (2000) and People v. Phillips, 87 Misc.2d 613, 384 NYS2d 906 (1975)

[5] Id.

[6] 304 AD2d 841, 759 NYS2d 136 (2nd Dept. 2003)

[7] See also on this rule, People v. Brown, 48 NYS2d 388, 423 NYS2d 461 (1979); People v. Johnson, 110 NY 134, 17 NE 684 (1888); People v. Leonard, 252 AD2d 740, 677 NYS2d 639 (3rd Dept. 1998); People v. Stanley, 212 AD2d 983, 624 NYS2d 313 (4th Dept. 1995); People v. Edgerton, 115 AD2d 257, 495 NYS2d 858 (4th Dept. 1985); People v. Rodriguez, 183 Misc. 2d 867, 705 NYS2d 485 (S. Ct. Kings Co. 1999); People v. Phillips, Id.; People v. Catalanotte, 67 Misc.2d 351, 324 NYS2d 106 (S. Ct. Kings Co. 1971); People v. Kraus, 147 Misc. 906, 265 NYS 294 (Ct. of Gen. Sess. NY Co. 1933); People v. Smith, 187 NYS 836 (S. Ct. Chenango Co. 1921).

[8] People v. Mack, 35 AD 114, 54 NYS 698 (3rd Dept. 1898)

[9] See on this People v. Foster, 100 AD2d 200, 473 NYS2d 978 (2nd Dept. 1984); People v. Morrisey, 1 Sheld. 295 (1872)

[10] 91 NY2d 838, 666 NYS2d 1020 (1997)

[11] 282 AD2d 688, 725 NYS2d 655 (2nd Dept. 2001)

[12] On this see also, People v. Simms, 176 AD2d 833, 575 NYS2d 159 (2nd Dept. 1991); People v. Catalanotte, Id.; People v. Smith, Id.

[13] 303 NY 382 (1952)

[xiv] 8 AD3d 503, 778 NYS2d 517 (2nd Dept. 2004)

[14] See also on this, People v. Leonard, Id.; People v. Barrett, 231 AD2d 806, 647 NYS2d 311 (3rd Dept. 1996); People v. Hill, 225 AD2d 902, 639 NYS2d 857 (3rd Dept. 1996); People v. Moon, 219 AD2d 817, 631 NYS2d 958 (4th Dept. 1995); People v. Marrero, 83 AD2d 565, 441 NYS2d 12 (2nd Dept. 1981); People v. Catalonotte, Id.

[15] See People v. Kelly, 94 NY 526 (1884); People v. Rivera, 262 AD2d 235, 694 NYS2d 13 (1st Dept. 1999); and People v. Phillips, Id.

[16] See People v. Gallagher, 11 NYAnn.Cas. 348, 75 AD 39 (4th Dept. 1902) and Wilson v. People, 4 Parker Cr.R. 619 (1859)

[17] 3 NY3d 234, 785 NYS2d 405 (2004)

[18] 11 AD3d 133, 781 NYS2d 75 (1st Dept. 2004)

[19] See also on this People v. Brown, 48 NY2d 388, 423 NYS2d 461 (1979); People v. Pino, 264 AD2d 571, 695 NYS2d 548 (1st Dept. 1999); People v. Horney, 112 AD2d 841, 493 NYS2d 130 (1st Dept. 1985).

[21] 100 NY2d 30, 760 NYS2d 74 (2003)

[22] 222 AD2d 1096, 635 NYS2d 849 (4th Dept. 1995)

[23] See also People v. West, 4 AD3d 791, 772 NYS2d 166 (4th Dept. 2004); People v. Demetsenare, 243 AD2d 777, 663 NYS2d 299 (3rd Dept. 1997); People v. Morales, 121 AD2d 240, 503 NYS2d 374 (1st Dept. 1986); People v. White, 22 AD2d 830, 253 NYS2d 583 (3rd Dept. 1964); People v. Rosenthal, 264 AD 822, 35 NYS2d 215 (4th Dept. 1942); People v. Rosen, 251 AD 584, 297 NYS 877 (3rd Dept. 1937); People v. Rodriguez, Supra.; People v. Childs, 56 Misc.2d 581, 289 NYS2d 922 (Co. Ct. Seneca Co. 1968)

[24] 191 AD2d 715, 595 NYS2d 518 (2nd Dept. 1993)

[25] See also on this, People v. Sharpe, 295 AD2d 957, 744 NYS2d 606 (4th Dept. 2002); People v. Gonzales, 228 AD2d 722, 643 NYS2d 707 (3rd Dept. 1996); People v. Mack, Id.

[26] Id.

[27] 61 NY2d 1008, 475 NYS2d 371 (1984)

[28] See also on this, People v. Brown, Id.; People v. Browne, 307 AD2d 645, 763 NYS2d 695 (3rd Dept. 2003); People v. Paccione, 295 AD2d 450, 743 NYS2d 561 (2nd Dept. 2002); 23 Jones Street Associates v. Beretta, 280 AD2d 372, 722 NYS2d 229 (1st Dept. 2001); People v. Anderson, 249 AD2d 405, 671 NYS2d 149 (2nd Dept. 1998); People v. Carthrens, 171 AD2d 387, 577 NYS2d 249 (1st Dept. 1991); People v. Thomas, 170 AD2d 549, 566 NYS2d 323 (2nd Dept. 1991); People v. Scales, 121 AD2d 578, 503 NYS2d 629 (2nd Dept. 1986).

[29] Id.

[30] 120 Misc.2d 1087, 467 NYS2d 110 (S. Ct. NY Co, 1983)

[31] See also on this, People v. Hartung, 17 How. Prac. 85, 4 Parker Cr.R. 256, 8 Abb. Prac. 132 (1859); U.S. v. Tin Yat Chin, 275 F. Supp.2d 382 (2003); People v. Santi, Id.; People v. Kelly, 11 AD3d 133, 781 NYS2d 75 (1st Dept. 2004); People v. Robinson, 1 AD3d 985, 768 NYS2d 50 (4th Dept. 2003); People v. Corines, 308 AD2d 457, 764 NYS2d 117 (2nd Dept. 2003); People v. Camacho, 293 AD2d 876, 742 NYS2d 402 (3rd Dept. 2002); People Cepeda, 251 AD2d 343, 674 NYS2d 68 (2nd Dept. 1998); People v. Marquez, 188 AD2d 619, 591 NYs2d 501 (2nd Dept. 1992); People v. Hooker, 118 Misc.2d 760, 462 NYS2d 123 (S. Ct. Kings Co. 1983).

[32] See on this People v. Thomas, 184 AD2d 1069, 584 NYS2d 706 (4th Dept. 1992).

[xxxiii] 5 Misc. 3d 501, 785 NYS2d 286 (Criminal Co, NY Co. 2004)

[33] 115 AD2d 257, 495 NYS2d 858 (4th Dept. 1985)

[35] 138 Misc. 344, 246 NYS 706 (Ct. of Gen. Sess. NY Co. 1930)

[36] See also on this, People v. Gardella, 55 AD2d 607, 389 NYS2d 118 (2nd Dept. 1976)

[37] 164 NY 459, 58 NE 668 (1900)

[38] People v. Gardella, 55 AD2d 607, 389 NYS2d 118 (2nd Dept. 1976); People v. Draper, 28 Hun 1 (1882); People v. Gaffney, 1 Sheld. 304, 14 Abb. Prac. NS 36 (1872)

[39] 187 AD2d 365, 590 NYS2d 191 (1st Dept. 1992)

[40] 112 AD2d 841, 493 NYS2d 130 (1st Dept. 1985)

[41] People v. Testa, 61 NY2d 1008, 475 NYS2d 371, 463 NE2d 1223 (1984); People v. Lafferty, 177 AD2d 1043, 578 NYS2d 56 (4th Dept. 1991); People v. Costello, 104 AD2d 947, 480 NYS2d 565 (2nd Dept. 1984); People v. Lubin, 190 AD 339, 179 NYS 691 (1st Dept. 1920); People v. Whitmore, 45 MIsc.2d 506, 257 NYS2d 787 (S. Ct. Kings Co. 1965)

[42] 120 Misc.2d 1087, 467 NYS2d 110 (S. Ct. NY Co. 1983)

[43] 125 AD2d 711, 510 NYS2d 196 (2nd Dept. 1986)

[44] 214 AD2d 898, 625 NYS2d 719 (3rd Dept. 1995)

[45] 262 NY 256 (1933)

[46] 5 AD3d 115, 772 NYS2d 333 (1st Dept. 2004)

[47] See also on this People v. Thompson, 198 NY 396, 91 NE 838 (1910); People v. Browne, Id.; People v. Rivera, 304 AD2d 841, 759 NYS2d 136 (2nd Dept. 2003); People v. Adams, 278 AD2d 920, 719 NYS2d 428 (4th Dept. 2000); People v. Gonzales, 228 AD2d 722, 643 NYS2d 707 (3rd Dept. 1996); People v. Rukaj, 123 AD2d 277, 506 NYS2d 677 (1st Dept. 1986); People v. Stewart, 96 AD2d 622, 464 NYS 2d 885 (3rd Dept. 1983); People v. Rodriguez, 183 Misc. 2d 867, 705 NYS2d 485 (S. Ct. NY Co. 1999); People v. Smith, 175 Misc.2d 692, 670 NYS2d 310 (S. Ct. Queens Co. 1998); People v. Whitmore, Id.

[48] See on this People v. Dunbar Contracting Co., 215 NY 416, 109 NE 554 (1915); People v. Hoch, 150 NY 291, 44 NE 976 (1896); Stephens v. People, 19 NYS 549 (1859); People v. Buchanan, 25 NYS 481 (1893); People v. Douglass, 4 Cow. 26, 15 Am.Dec. 332 (1825); People v. Schad, 58 Hun 571, 35 NYSt. Rep. 148 (1891); People v. Menken, 36 Hun 90 (1885)

Guardian & Elder Law: New Power Of Attorney

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responsibility to the Principal. The Agent will be subject to liability for conduct or omissions which violate the fiduciary duty. See GOL §5-1505.

The standard of care of the Agent in dealing with the property of the principal, according to GOL §5-1505 (1), is the " standard of care that would be observed by a prudent person dealing with property of another."

The Agent has a fiduciary duty, GOL §5-1505 (2). The fiduciary duty includes the following obligations:

1. To act according to any instructions from the principal or, where there are no instructions, in the best interest (See also Matter of Ferrara, Ct. Of Appeals, 7 NY3d 244, 2006) of the principal, and to avoid conflicts of interest.

2. To keep the principal's property separate and distinct from any other property owned or controlled by the agent.

3. Not to transfer the principal's property to himself or herself without specific authorization.

4. To keep a record of all receipts, disbursements, and transactions entered into by the agent on behalf of the principal and to make such records and power of attorney available at the request of the principal.

The Agent also has a duty to furnish a copy of the power of attorney, when requested, to certain individuals, government agencies, and court appointees: A monitor, a co agent or successor agent acting under the power of attorney; a government entity, or official thereof, investigating a report that the principal may be in need of protective or other services, or investigating a report of abuse or neglect; MHL 81 Court Evaluator; SCPA §1754 Guardian ad Litem, MHL 81 Guardian or Conservator of the estate of the principal, if such records have not already been provided to the court evaluator or guardian ad litem; or the personal representative of the estate of a deceased principal if such records have not already been provided to the guardian or conservator of the estate of the principal.

The Monitor: One way to make the Agent more accountable is to provide multiple mechanisms for review of the Agent's records and transactions by various third parties. A new third party is provided for in the statute, The Monitor (GOL §5-1509). Appointment of the Monitor is optional. The Principal elects to have a Monitor by designation in the form. The Monitor is not a fiduciary, according to the statute. The Monitor is defined as a "person appointed in the power of attorney who has authority to request, receive, and seek to compel the Agent to provide a record of all receipts, disbursements, and transactions entered into by the Agent on behalf of the Principal" GOL 5-1501 (8). The Monitor is also one of a group of individuals who can commence legal action, a special proceeding, against the Agent in the event of suspected wrongdoing.

Special Proceedings: Under current law it is difficult to challenge an abusive Agent. A recalcitrant Agent refusing to disclose the power of attorney, or make records available, can be a difficult litigation target. There are also issues of standing, venue, and the nature of the cause(s) of action. Where the Principal is incapacitated, a MHL 81 guardian proceeding may offer a suitable method of challenge and review of the power of attorney. Otherwise, it may be necessary to commence a costly, time consuming, plenary proceeding. The new law, GOL §5-1510, changes all of this. The new law authorizes the commencement of a special proceeding under CPLR Article 4.

"The special proceeding is a quick and inexpensive way to implement a right", writes Professor David D. Siegel, in his treatise, New York Practice.[3] "It is as plenary as an action, culminating in a judgment, but is brought on with the ease, speed and economy of a motion." "Whether the legislative motive in allowing a special proceeding in a given instance is plain or not, its availability is always good news to the petitioner, the person with the claim."[4]

Who is the recipient of the good news in the new statute? A power of attorney special proceeding may be commenced by any of the persons, government agencies, or court appointees, who are entitled to request a copy of the power of attorney from the Agent. Additionally the special proceeding can be brought by the principal, the principal's spouse, child, parent, the principal's successor in interest, or any third party who may be required to accept a power of attorney.

The several grounds for commencement of the special proceeding are:

1. to compel the agent to produce a copy of the power of attorney and records of all receipts, disbursements, and transactions entered into by the agent on behalf of a principal;

2. to determine whether the power of attorney is valid;

3. to determine whether the principal had capacity at the time the power of attorney was executed;

4. to determine whether the power of attorney was procured through duress, fraud or undue influence;

5. to remove the agent upon the grounds that the agent has violated, or is unfit, unable, or unwilling to perform, the fiduciary duties under the power of attorney;

Not all of the purposes for commencing a special proceeding are aimed at remedying abuses by the Agent. Some of the provisions may actually be beneficial to the Agent, providing a legal mechanism for dealing with ambiguities in the form and duties of the Agent. The Agent, for example, can commence a special proceeding:

6. to determine whether the agent is entitled to receive compensation or whether the compensation received by the agent is reasonable for the responsibilities performed;

7. to approve the record of all receipts, disbursements and transactions entered into by the agent on behalf of the principal;

8. to determine how multiple agents must act;

9. to construe any provision of a power of attorney;

10. to compel acceptance of the power of attorney in which event the relief to be granted is limited to an order compelling acceptance.

11. A special proceeding may also be commenced by an agent who wishes to obtain court approval of his or her resignation.

The effect of this new special proceeding means easier access to the Courts and probably a significant increase in litigation. It may be necessary to have the current guardianship judges preside over such special proceedings, or even create a new specialized part.

Execution: Another way that the new law seeks to prevent abuse is by better education of the Principal. The new law, GOL §51501B, seeks to make the execution of the power of attorney more deliberate, more solemn, and if the principal is contemplating gift giving or asset transferring, more like the execution of a will. Under the new law for a power of attorney to be valid it must be:

a. Typed or printed using letters which are legible or of clear type no less than twelve point in size, or, if in writing, a reasonable equivalent thereof.

b. Signed and dated by a principal with capacity, with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property.

c. Signed and dated by any agent acting on behalf of the principal with the signature of the agent duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property. A power of attorney executed pursuant to this section is not invalid solely because there has been a lapse of time between the date of acknowledgment of the signature of the principal and the date of acknowledgment of the signature of the agent acting on behalf of the principal or because the principal became incapacitated during any such lapse of time.

d. Contain the notices and warnings to the Principal and Agent: "Caution to the Principal" and "Important Information for the Agent."

The new law requires that the form be signed by the Agent. The power of attorney is effective on the date on which an agent's signature is acknowledged; provided, however, that if two or more agents are designated to act together, the power of attorney takes effect when all the agents so designated have signed the power of attorney with their signatures acknowledged

Statutory Major Gift Rider (SMGR): The powers in the new statutory form do not include gift giving or the power to transfer assets. This is a significant statutory change. The form's powers are limited to those relating to management of the principal's financial affairs. A principal who wishes to confer upon the Agent the power to make gifts, transfer or redistribute assets, must: First, execute the statutory short form power of attorney with the gifting authority (SMGR) initialed by the principal, and, then, execute the Statutory Major Gifts Rider. See GOL §5-1514.

In order to be valid the SMGR must: Be signed and dated by the principal (with capacity). The principal's signature must be acknowledged. The signature must be witnessed by two disinterested witnesses, persons who are not named in the instrument as permissible recipients of gifts or other transfers. Be accompanied by a statutory short form power of attorney in which the authority (SMGR) is initialed by the principal. Be executed simultaneously with the statutory short form power of attorney and in the manner provided in the new law.

The New Power of Attorney Form: The new form and SMGR can be viewed and obtained online at ww.nysba.org/POALeg. The new form consists of 15 sections (a-m).

The form includes a new plain language **warning** (§a). The principal is cautioned that the power of attorney is an important document; that the appointed agent has "authority to spend your money and sell or dispose of your property" "without telling you". The principal is told that the agent must act according to the principal's instructions, or in the absence of instructions in the "best interest" of the principal and in accord with the duties and responsibilities enumerated later on in the form (§n). The principal is reminded that the power of attorney is revocable at any time and for any reason. Principals who want more information about the law are told that the law is available at a law library or online at *www.senate.state.ny.us* or *www.assembly.state.ny.us*. The warning makes it clear that health care decisions are the province of a health care proxy, not an agent.

The next four sections (§b-e) include designation of the Agent and Successor Agent(s), a statement that the power of attorney shall not be affected by the subsequent disability of the principal (durability), unless modified, and a statement that the power of attorney revokes any and all power prior powers of attorney, unless modified. Modifications can be made in subsequent (§g) Modifications: Optional.

The subjects of the authority of the agent are listed in (§f). The Principal selects the authority to be given to the agent by either placing his initial in the bracket next to each power or writing or typing the letters for each authority on the blank line (P), as with the current power of attorney form. The authority to be give to the agent includes some old standbys: real estate transactions, chattel and goods transactions, banking, business, insurance and estate transactions, claims and litigation, and some new subjects: personal and family maintenance, and health care billing, payment, records, reports and statements. There is no gifting authority of any kind, including making use of the annual exclusion. Gifting is reserved to the optional "Power of Attorney New York Statutory Major Gifts Rider".

In the next section (§h) the agent can elect to authorize the agent to make "major gifts" and other "transfers of property". The principal must initial the statement in §h and at the same time execute the "Statutory Major Gifts Rider". The form suggests that the preparation of the Statutory Major Gifts Rider should be supervised by a lawyer.

The new form includes the designation of a Monitor (§i). The monitor is a further protection for the agent. The Monitor is statutorily defined (GOL §5-1501(8)) as a person appointed in the power of attorney who has the authority to request receive, and seek to compel the agent to provide a record of all receipts, disbursements, and transactions entered into by the agent on behalf of the principal.

The Principal may provide for compensation to the agent for services rendered. The new form §(j) specifically provides that the agent is entitled to be reimbursed from the principal's assets for reasonable expenses, and may be entitled to reasonable compensation if the principal so elects. The principal can define reasonable compensation and include that in the Modification section (§g).

Third parties acting and relying on the power of attorney are afforded protection in §k. The new form, mirroring the current form, provides for indemnification of third parties by the principal for all claims against the third party.

The Power of Attorney continues until revocation or death, §l.

The principal signs and acknowledges the document at §m. The new form requires that the agent also sign and acknowledge the power of attorney. Before signing, however, the Agent is

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LETTERS TO THE EDITOR

April 21, 2009

Queens Bar Bulletin
90-35 148th Street
Jamaica, NY 11435

Dear Editor:

Is Paul Kerson, Esq. correct when he states "the Notary's sole function at the Will signing, the real estate closing or the candidate's nomination, is to verify the truth of the transaction."? All the Notary does is have the person signing state that the person who signs the document swears under oath that the information above is true. The Notary Public doesn't know if the person swearing to the truth and accuracy is correct or whether that person is deliberately lying.

A person swearing in front of a notary and signing his name may be deliberately telling an untruth. When the Notary places his name and stamp on the document does the Notary know whether the person swearing to the truth is really telling the truth?

Very truly yours,

KENNETH L. BROWN, ESQ.
Notary Public Extraordinaire'

P.S. How about getting the State Legislature to raise the fee to $5.00 per signature.?

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reminded of his duties, responsibilities, and liabilities in §n "Important Information For The Agent." This is a brand new section. The agent is reminded that he must act in accordance with the instructions of the principal. That he is a fiduciary and as such must avoid conflicts of interest, keep the principal's property separate and apart from one's own assets, keep records, nor otherwise personally benefit from the principal's assets. The agent is warned that if it is found that he has violated the law or acted outside the authority granted, he may be liable under the law for such violation.

The Principal may authorize an agent to make gifts, but only by making use of the optional "New York State Statutory Gifts Rider". The new law provides a sample rider. The rider provides for limited gifts to the principal's spouse, children, and more remote descendants, and parents, not to exceed, for each, the annual federal gift tax exclusion amount. If the principal wants to make gifts in excess of the annual exclusion there is a modification section. The principal may also authorize the agent to make self gifts. The rider must be signed and acknowledged by the principal, and signed by two witnesses.

Summary: While the New Power of Attorney Law has many goals, it is clear that one of its primary goals was to deter, uncover and halt abuse by the Agent. The new law already has many critics. There are complaints of yet another new form. Most are dubious that a form alone can change the widespread financial abuse of the elderly and vulnerable. For now we can only wait and see, and guide our clients in the use of the new form and law.

John R. Dietz is a Past President of the Queens County Bar Association and the Chairperson of the QCBA Elderly and Disabled Committee.

1 The history of the New York State Power of Attorney is more fully discussed in "The New York State Law Revision Commission 2008 Recommendations on Proposed Revisions to the General Obligations Law Powers of Attorney".
2 "The New York State Law Revision Commission 2008 Recommendations on Proposed Revisions to the General Obligations Law Powers of Attorney".
3 New York Practice, Second Edition, David D. Siegel, page 860.
4 Siegel, page 861

Court Notes

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Abato
(March 10, 2009)

At The Last Meeting Of The Grievance Committee For The Second, Eleventh And Thirteenth Judicial Districts, The Committee Voted To Sanction Attorneys For The Following Conduct:

Failing to timely re-register as an attorney with the New York State Office of Court Administration (9)

Having received a Public Remand in another jurisdiction based upon a contempt finding

Failing to maintain a ledger and other bookkeeping records for an IOLA account and breaching his/her fiduciary responsibility by deducting the fee from funds held in escrow for two clients without obtaining permission from the clients

Neglecting his/her duties as an interim guardian

Failing to properly withdraw from a case; failing to reduce significant communications with a client to writing; and accepting referrals from a suspended or disbarred attorney under circumstances that were inherently risky

Neglecting a legal matter

Unilaterally withdrawing from a case and failing to respond to client inquiries

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

SERVICE DIRECTORY