

QCBA

BULLETIN



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Cristina I. Ramirez
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NECROLOGY

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THE DOCKET

October 2014

Wed, October 2 National Arbitration & Mediation
..... 3-Part Luncheon. Session III – 12:30-1:30 pm
Mon, October 13 Columbus Day Office Closed
Thurs, October 23 [Elder Abuse & Neglect](#):
Teaching Your Clients How to Protect Their Loved Ones

December 2014

Thurs, December 11 Holiday Party
..... Douglaston Manor
Thurs, December 25 Christmas Day – Office Closed
Fri, December 26 Christmas Holiday – Office Closed

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

November 2014

Tues, November 4 Election Day - Office Closed
Wed, November 5 Judicial Relations Committee CLE
Tues, November 11 Veteran's Day Office Closed
Thurs, November 13 Landlord/Tenant Seminar
Frid, November 14 Surrogate's Court Seminar
..... 1:00 – 4:00 pm
Wed, November 19 Social Media Marketing Webinar
..... for Lawyers
..... [Members](#) or [Non Members](#)
Thurs, November 20 [Pt 137 Attorney Client](#)
..... Fee Dispute Resolution Program Arbitrator Training
Thurs, November 27 Thanksgiving Day
..... Office Closed
Fri, November 28 Thanksgiving Holiday
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Welcome back!

I hope that everyone had an enjoyable and relaxing Summer. The days are getting shorter, the kids are back at school and the phones are ringing again. This can only mean one thing.... it's football season! Oh, and the return to work as well.

I am honored to serve as president of this association and, speaking on behalf of our hard working Board of Managers, we are excited about the prospects for this upcoming year. In speaking with our members, there is a noticeable sense of growing optimism and interest in the QCBA. It is clear that our members recognize the value of belonging to this organization including the valuable CLE programs we offer, special discounts available exclusively to our members and the realization that there is an opportunity to grow professionally and personally which is limited only by the extent of their respective participation.

Over the summer, we created two new committees, one focusing on the Professional Development of our members and the other focusing on the issues facing the LGBT community. The interest in these two committees has been extremely high and we hope that you get involved in these, as well as the other, standing and special committees that we offer.

During the summer I went to numerous installation dinners for the presidents of associations of other counties. While I understand that everyone is on their best behavior at these dinners and the crazy uncle stays in the attic, I could not help to note that there is a sense of collegiality between the bench and the bar in some of these other counties of which I am envious. While I think that the relationship between the bench and the bar is stronger now than when I first started practicing here over 20 years ago, I still feel that there is more that we can do.

If we are able to make the court understand and appreciate the pressures of private practice and if the attorneys recognized that the court really takes no great joy in yelling at you to be quiet day after day or to telling you to take the phone call outside instead of trying to hide it behind a newspaper, we would be that much closer to harmony. I will continue to work towards strengthening the relationship between the bench and the bar of this County as I think it benefits everyone; court personnel, the attorneys, our judges and litigants. . . . *Continued on page 5*

The Queens County Bar Association and the Academy of Law have some great CLEs already scheduled. I would urge you to take the opportunity to visit our website at www.QCBA.org to view the upcoming events and to register for these programs. Our upcoming schedule includes Recent Significant Decisions & Developments From our Highest Appellate Courts on September 30; National Arbitration and Mediation three part FREE CLE series on September 11, September 18 and October 2; and Social Media Marketing Webinar for Lawyers on November 19. It's not all work and no play...start making plans to join us for our annual Holiday Party on December 11.

I thank all of our members and sponsors for their continued support and I look forward to working with all of you throughout the year.

If you have any concerns, suggestions or comments, please do not hesitate to contact me by calling the Queens County Bar Association at (718) 291-4500 or emailing me at joe_carola@yahoo.com.

Joseph Carola III
President

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The year in trusts and estates was highlighted by the imposition of new New York State estate tax rules, notably with respect to increased threshold for many resident decedents, coupled with a series of procedural laws primarily expanding the options for fiduciaries in trust and accounting scenarios.

HISTORY

As was noted last year in this column, the federal estate tax rules were solidified at a lifetime maximum exemption amount of \$5,000,000 and indexed for inflation (this year - \$5,340,000). Further, the concept of portability was also preserved, consisting of the fact that any unused portion of a spouse's exemption amount, may be utilized by the surviving spouse. In the event that portability is elected on the decedent's federal estate tax return, up to \$10,680,000 could now be passed federally estate tax free by the second spouse to die.

This contrasted heavily with the New York State exemption equivalent of \$1,000,000 which had remained static for many years. As such, only the first \$1,000,000 operated as an exclusion from New York State estate taxes, over 4,000,000 less than the federal exclusion amount.

NEW YORK ESTATE TAXATION

Effective April 1, 2014, the Governor, in his 2014-2015 budget legislation, made significant changes to New York's estate tax laws. As this constituted an anticipated, and mid year immediate change, this Update Article would not have been timely if delivered to the Bar after the first of the year, as was normal custom. Kindly accept the timing of this Article, as an attempt to include important midyear developments as part of the overall summary of relevant legislation.

Essentially the basic New York exclusion amount (amount exempt from tax) is being gradually increased over a five year period to equal the federal exemption amount. Specifically, from April 1, 2014 to March 31, 2015 the exclusion is \$2,062,500; from April 1, 2015 to March 31, 2016 it is \$3,125,000; from April 1, 2016 to March 31, 2017, it is \$4,187,500; from April 1, 2017 to March 31, 2018 it is \$5,250,000. From January 1, 2019 forward, the New York State exclusion is scheduled to be equal to the federal exclusion (approximately \$6,000,000) amount. . . . *Continued on page 7*



DETERMINATION OF TAX

One of the purported goals of this legislation was to prevent high net worth individuals from leaving New York State for more tax friendly domiciles. Yet, due to the mechanics of computation of the new New York State exclusion amount, it does not offer the same benefits to those whose estates exceed the state exclusion amount.

Essentially for estates at or beneath the present New York exclusion amount, an applicable credit offsets the computed tax, resulting in a true exemption from New York estate taxes. Yet once the exclusion amount in that year is exceeded (ie. this year greater than \$2,062,500); the credit is adjusted and decreased as the size of the taxable estate increases. The new law contains credit computations for estates within 105% of the exclusion amount, and for those exceeding 105% the exclusion amount.

For estates within 105% of that year's exclusion amount, a reduced credit is available against the tax, thereby creating a somewhat better tax scenario than existed before the legislation, yet taxability remains.

For estates greater than 105% of that year's exclusion amount, no credit whatsoever is allowed, essentially voiding any state tax benefit for larger estates. As such, the entire estate is subject to New York estate taxation.

These two larger estate scenarios seem to fly in the face of the purported primary goal of the legislation; the tax benefits decrease, as the estates increase past the new thresholds for exclusion. Further, the federal concept of portability does not apply to New York State.



For planners, allocation of assets between spouses to offset the loss of one's state exclusion amount remains a consideration, in conjunction with utilization of a by pass trust (credit shelter trust), to formally preserve each individual's exclusion amount.

QDOT

Qualified Domestic Trusts permit the federal marital deduction to apply to a transfer to a NON-US Citizen surviving spouse. Traditionally in order to qualify for this deduction, a federal estate tax return was required to be filed, even if the taxable estate was less than the federal threshold. Now, if no federal return is required to be filed (ie. the taxable estate is less than 5,370,000) there is no requirement to transfer funds to a NON-US Citizen spouse in a Qualified Domestic Trust they may be transferred outright if said transfers would, in fact, qualify for the estate tax marital deduction on their own.

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ON A PERSONAL NOTE

Congratulations to Judge Kimon C. Thermos on being appointed to the Housing Court.

Congratulations to members Richard Gutierrez, Thomas Principe and Chanwoo Lee on being appointed to the Mayor's Advisory Committee on The Judiciary.

Congratulations to Jonathan and Samantha Darche on the birth of their first child, Moses. Congrats too, Grandpa Gary and Uncle Ben.

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OFFICER INSTALLATION

Photos by Walter Karling



Members of the Board being inducted



Guest Speaker, Presiding Justice of the Appellate Division 2nd, 11th and 13th Judicial Districts, Hon. Randall T. Eng



Hon. Adetokunbo Fasanya accepting his gift from President Joseph DeFelice



Current President Joseph DeFelice and Incoming President Joseph Carola III



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Hon. Denis Butler inducting new incoming President Joseph Carola III



ANNUAL DINNER

Photos by Walter Karling



Joseph Carola with his wife, Barbara and children, Jason and Lauren



Justice Marguerite Grays presenting the Law Student Scholarship plaque to Laura Anna De Los Rios - 2014 Winner



Mark Weliky presenting Daniel Costigan the Floyd Alan Sheeger Pro Bono Award for Family Law



Officers Paul Kerson, Jennifer Gilroy-Ruiz, Gregory Newman and Gregory Brown being inducted



Joseph Carola with Master of Ceremonies Hon. Sidney Strauss



Mark Weliky presenting Bernadette Crowley the 2014 NYSBA President's Pro Bono Service Award



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Outgoing President Joseph DeFelice accepting his President's Medallion from Incoming President Joseph Carol



EDITOR'S NOTE by Paul E. Kerson

Book Review: Business and Commercial Litigation in Federal Courts

Once again, Robert L. Haig has done a masterful job in creating the Third Edition of Business and Commercial Litigation in Federal Courts (2011, with 2013-2014 pocket parts). There is also a CD-Rom edition. All are published by the Section of Litigation of the American Bar Association in conjunction with West – a Thomson Reuters business. All of the royalties from this publication go to the ABA Section of Litigation. In his introduction, Bob Haig tells us that the royalties have been "substantial".



Robert L. Haig

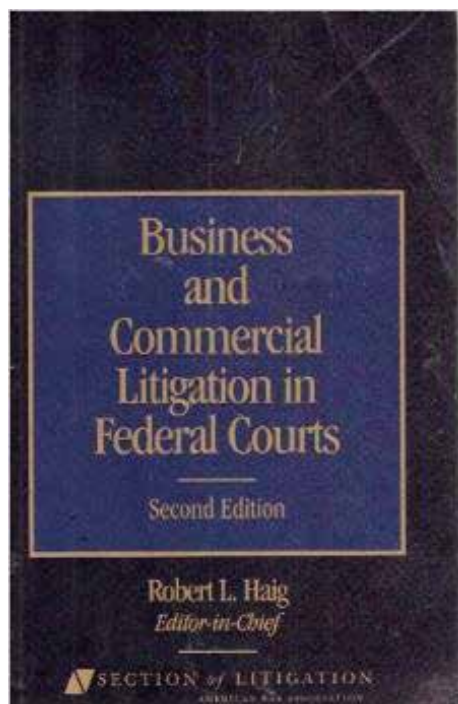
Going through these 12 volumes shows what a terrific job Bob Haig has done. There are no less than 251 principal authors, all prominent practitioners, judges, or scholars. Bob estimates that more than 60 million hours of billable time has been spent in creating this comprehensive work.

Actually, the title is a misnomer. This first class legal treatise concerns far more than commercial litigation. It also concerns every other topic of law that commercial litigation may touch upon, including but not limited to civil procedure, criminal law, torts, ethics, administrative law, contracts, insurance, admiralty and maritime law, immigration, pensions, and tax.

By far the most interesting and important sections of this treatise are the last two chapters, Chapter 129 concerning E-Commerce and Chapter 130 concerning Information Technology.

These are topics that are new to the legal system. However, in the highly computerized age in which we live, these are brand new topics which every lawyer must become familiar with.

The E-Commerce chapter was written by Prof. Herbert F. Schwartz, an adjunct professor of law at the University of Pennsylvania Law School and the New York University Law School. He is a retired partner of the law firm of Ropes & Gray, LLP. The co-author of the E-Commerce chapter is James P. Canfield, Esq. a specialist in patent litigation. He is Of Counsel to Finnegan, Henderson, Farabow, Garrett & Dunner, LLP. E-Commerce turns out to include television, radio and credit cards as well as more sophisticated recent applications, including Mapster, Aimster and Grokster. Interestingly, Mapster, Aimster and Grokster each have their own sub-chapter.



EDITOR'S NOTE *Continued*

In an age of Google, Facebook, and Twitter, E-Commerce turns out to be an area of the law where the most growth will take place. Prof. Schwartz and Mr. Canfield conclude:

"At their heart, most (but not all) federal court disputes about eCommerce are about the extent to which federal law limits one's ability to use another's creation." (Volume 11, Page 1031)

Another important chapter for the future of our profession is Chapter 130, "Information Technology" by Wayne C. Matus, a lawyer with more than 30 years of experience in Information Technology Law. As our world becomes more and more dependent on the computer, this chapter will become more and more important in everyone's law practice.

However, not surprisingly, even this most complicated subject comes back to the very beginning of law school, locating the original written agreement that covers the information technology dispute. Mr. Matus states the basic principle as follows:

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Charles Giudice, Staff Attorney, Queens Volunteer Lawyers Project

On January 25, 2008, the first session of Queens' Civil Legal Advice and Resource Office (CLARO) was held in Queens County Civil Court. Six years and more than 300 sessions later, Queens CLARO has provided more than 6,000 free legal consultations to approximately 4,000 unrepresented defendants in consumer credit collection lawsuits. More than 150 lawyers have volunteered at Queens CLARO advising people who lack the resources to hire private counsel.

"Simply by coming to CLARO and receiving free legal advice, pro se defendants significantly improve their chances of a positive outcome in court," said Mark Weliky*, executive director of the Queens Volunteer Lawyers Project (QVLP), which co-founded and continues to administer Queens CLARO. "Many of our CLARO visitors are able to negotiate settlements for thousands less than the amounts demanded. Sometimes, the cases may even be dismissed or discontinued."

"What makes CLARO a success," said April A. Newbauer*, "is the collaborative relationship between law schools who provide student interns to assist at CLARO sessions, legal service providers, bar associations, attorney volunteers and the courts."

Newbauer previously served as Attorney-in-Charge of the Queens Neighborhood Office of the Legal Aid Society and Chair of the New York City Bar Association's Civil Court Committee. She played a key role in establishing the pilot CLARO project in Brooklyn and expanding to Queens County.

"By having everyone pitch in and collaborate, we were able to put together a program that has assisted so many unrepresented litigants," said Newbauer, now a Court of Claims Judge who sits in the Supreme Court, Bronx County.

"One attractive feature for volunteer attorneys is the limited-scope nature of the service," Newbauer said. "Attorney volunteers need only agree to provide service within the hours of the clinic. They do not have to represent clinic visitors in their court cases. Supervision and support are available to volunteers on-site."

One typical CLARO visitor was Mr. T. (name changed to protect confidentiality). When he arrived at CLARO, he had a trial date scheduled, but had just received papers in the mail from the debt buyer Plaintiff. He was looking for help to understand what the papers meant.



The papers turned out to be a summary judgment motion from Plaintiff, returnable before the trial date. A CLARO volunteer explained to Mr. T. that his papers required him to come to court before his scheduled trial date. The volunteer attorney also discussed several affirmative defenses with Mr. T. QVLP staff assisted Mr. T. by preparing an affidavit in opposition to Plaintiff's motion. Mr. T. appeared for his motion date and submitted the opposition to the judge. Plaintiff's motion was denied, and, at trial, based on the affirmative defenses identified at CLARO, the case was dismissed.

While CLARO has been successful in assisting its visitors and providing greater access to justice, the debt collection industry, with its prolific filings in the courts of New York State has remained rife with issues.

In his 2014 Law Day remarks on April 30, New York State Court of Appeals Chief Judge Jonathan Lippman* highlighted reoccurring issues in consumer debt collection



cases that tip the scales unfairly against uncounseled debtors. Among the most reprehensible practices identified by the Chief Judge, was that of creditors obtaining default judgments by filing hearsay affidavits filled with boilerplate language so lacking in specificity that a layperson could not tell whether he or she was actually responsible for the underlying debt. Use of such boiler-plate affidavits is known as

'robo signing,' a practice in which mass-produced affidavits are signed in bulk by individuals lacking knowledge of the information contained in the affidavits. Many times the affiant has not written or even read the affidavit. This practice has flourished because many debt collection lawsuits are filed by third parties on debts that are several years old and may have been sold several times.

"By the time these so-called 'zombie' debts show up in court, it is extremely difficult for debtors – 98% of whom are unrepresented – to assess the validity of the claims against them," Lippman said. "In fact," Lippman went on to say, "many debtors first realize that they have been sued when they find their bank accounts frozen or their wages garnished."

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Question #1 - Are dogs just personal property?

Your answer -

Question #2 - How do you seek a review of a determination by the Support Collection Unit?

Your answer -

Question #3 - Will the court entertain a claim of ineffective counsel in the context of civil litigation?

Your answer -

Question #4 - If the court orders temporary maintenance in accordance with the formula under DRL §236(B) (5-a) (c), can it also order the payer spouse to pay the mortgage on the marital home, real estate taxes and car insurance?

Your answer -

Question #5 - In fixing temporary child support is the court required to apply the Child Support Standards Act?

Your answer -

Question # 6 - May the Court order the payment of temporary child support and the carrying charges on the marital residence?

Your Answer -

Question #7 - Can the proceeds of fraud constitute marital property?

Your answer -

Questions #8 - If a party dies while a divorce case is pending, does the decedent's claim of equitable distribution abate?

Your answer -

Question #9 - Is receiving Social Security Disability sufficient proof of disability to obtain a downward modification of child support?

Your answer -

Question #10 - Is an order of the Family Court directing the mother to seek permission of the court before filing any future petitions or motions regarding custody or visitation with respect to the parties' child appealable as of right?

Your answer -

Mr. Nashak is a Past President of our Association and Vice-Chair of our Family Law Committee. He is a member of the firm of Ramo Nashak Brown & Garibaldi LLP.



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MARITAL QUIZ ANSWERS

Question #1 - Are dogs personal property?

Answer: No, dogs are a special category of personal property when it comes to resolving disputes between owners. *Alisha B. Hennet v. William R. Allan, Jr.* 981 N.Y.S. 2d 293 (Supreme Court, Albany County, 2014).

Question #2 - How do you seek a review of a determination by the Support Collection Unit?

Answer: Pursuant to CPLR article 78 in the Supreme Court. *Matter of Hirsch v. Hirsch* 2014 NY Slip Op 2932 (2nd Dept.).

Question #3 - Will the court entertain a claim of ineffective counsel in the context of civil litigation?

Answer: No, if extraordinary circumstances are absent. *Matter of Lorys v. Powell* 2014 NY Slip Op 2938 (2nd Dept.).

Question #4 - If the court orders temporary maintenance in accordance with the formula under DRL §236(B)(5-a)(c), can it also order the payer spouse to pay the mortgage on the marital home, real estate taxes and car insurance?

Answer: Yes, if special circumstances exist. In this case the Payer Spouse's annual income exceeded \$500,000.00 and the gross disparity between the parties' incomes. *Vistocco v. Jardine* 2014 NY Slip Op 2574 (2nd Dept.).

Question #5 - In fixing temporary child support is the court required to apply the Child Support Standards Act?

Answer: No, *Margolin v. Margolin* 2014 NY Slip Op 3803 (2nd Dept.).

Question #6 - May the Court order the payment of temporary child support and the carrying charges on the marital residence?

Answer: Yes, *Margolin v. Margolin* 2014 NY Slip Op 3803 (2nd Dept.).

Question #7 - Can the proceeds of fraud constitute marital property?

Answer: Yes, provided the recipient spouse is unaware that some or all of those assets were illegally acquired by the other spouse. *Commodity Futures Trading Commission v. Walsh et al* 17 NY3d 162 (Court of Appeals, 2011).

Questions #8 - If a party dies while a divorce case is pending, does the decedent's claim of equitable distribution abate?

Answer: No, *Cristando v. Lozada* 2014 NY Slip Op 4462 (2nd Dept.).

Question #9 - Is receiving Social Security Disability sufficient proof of disability to obtain a downward modification of child support?

Answer: No, *Matter of Matter of Mikhlin v. Giuffrida* 2014 NY Slip Op 5187 (2nd Dept.).

Question #10 - Is an order of the Family Court directing the mother to seek permission of the court before filing any future petitions or motions regarding custody or visitation with respect to the parties' child appealable as of right?

Answer: No, *Matter of Tedeschi v. Tedeschi* 2014 NY Slip Op 5438 (2nd Dept.).



OCTOBER 15 – DECEMBER 15 “REFER A COLLEAGUE” CONTEST

Dear Colleague:

The Queens County Bar Association is holding a “**Refer A Colleague**” contest, where the member who refers the most nonmembers that become paid members (admitted attorneys only) by the end of the contest will win a \$150 gift card/certificate.

If you are interested in participating, refer them to apply online at www.qcba.org/membership/join/ or in writing with a paper [application](#). Make sure you or they let us know that you were the person who referred them.

Good Luck and Happy Referring!

Yours truly,

QCBA



Rules

Be a member of QCBA in good standing.

Prospective member referred has to have their membership dues paid in full before contest ends.

Person with most referrals will receive a \$150 gift card/certificate.

In the event of a tie, the winner will be drawn at random.

Board members are excluded from participating.

QUEENS COUNTY BAR ASSOCIATION

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www.qcba.org

Start: October 15, 2014
End: December 15, 2014



ORGANIZED 1876