

QCBA

BULLETIN



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NEW MEMBERS

Christopher Adkins
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Dwayne Allen Thomas
Emily C. Walsh
Megan E. Lynch
Ron Mandel
Herberth Melendez
Robert Miklos
Madeline Marie Porta
Tawanna Marie St. Louis

NECROLOGY

Guy R. Vitacco

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

June 2014

Tue, June 10 CLE – Uncommon Problems
..... & Common Sense Solutions
..... in Every Day Real Estate Matters

..... Member / Non Member

Wed, June 18 CLE – Juvenile Justice Seminar
..... Member / Non Member

Thurs., June 26 Free Cancer Screening
..... in front of Civil Court

July - August 2014

Thurs., July 4 Independence Day
..... Office Closed

September 2014

Mon., September 1 Labor Day
..... Office Closed

Mon., September 8 Golf Outing
..... at Garden City Country Club

November 2014

Wed., November 19 CLE
..... Social Media Marketing Tips:
..... Essential Advice, Hints and Strategy

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.

Florida Attorney

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Randy Botwinick announces an association with Jay Halpern and Associates combining their experience, resources and expertise in the personal injury forum. Together they have obtained well over \$1000,000,000 in awards for their clients during the last three decades. This combination of attorneys will surely provide the quality representation you seek for your Florida personal injury referrals.



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PRESIDENT'S MESSAGE *by Joseph Carola, III*

I am extremely honored to serve as President of the Queens County Bar Association. For 138 years, this Association has been committed to enriching the lives of its members, strengthening the relationship between the bench and the bar, serving the community and pursuing justice.

Queens County has widely been recognized as one of, if not the most diverse counties in the world. Diversity is not just measured in numbers of different races, religions or ethnicities but also a recognition and respect for diversity of thought. With over 2000 members, our Association now, more than ever, is reflective of the diversity of the county in which it is situated and the community which it serves. It is this strength in membership which affords our members opportunities to network, to find employment, to get experience and to succeed.

If you are not currently a member of the QCBA, tell me why you are not. What is it that we are doing, or perhaps not doing, that is preventing you from being a member? It is only by listening to your complaints or suggestions that we can grow as an association. If you were never a member...we want you. If you were a member in the past but not one presently...we want you back.

If you are a member, thank you. If you are reading this you are interested in the QCBA. If you are a member, you are involved in the QCBA. We need more from you however. We need you to get invested in the QCBA. There are many reasons for joining the QCBA, ranging from "my boss made me join," to joining for business, social or political opportunities. Whatever your reason for joining, this association is like anything else in life...you will get out of it what you put into it. Our Association offers participation in over 60 Standing and Special Committees. Our committee chairs serve as mentors to our young members and membership in our committees provides personal and professional growth. Whether you are new to bar or coming back to the bar, take advantage of the opportunities provided to you by joining and getting active in committee membership.

The QCBA Academy of Law continues to develop and offer outstanding CLE programs given by attorneys highly respected and recognized in their respective fields of practice. These programs keep our members current on ever-changing legal issues while offering CLE credits through our New York State Continuing Legal Education Board accredited program.

Our Lawyer Referral Service is an additional benefit of membership that gives our members the opportunity to build their practices with new clients referred directly from the QCBA. Lawyers can choose from 24 areas of practice to help target appropriate referrals. All referrals are forwarded on a rotating basis to ensure equal access.

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President - Joseph Carola, III
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EDITOR'S NOTE by *Paul E. Kerson*

Secession – Yes or No?

Scotland wants to secede from the United Kingdom. The vote will be held this coming September. Such a split will leave Scotland with the United Kingdom's nuclear weapons and North Sea oil.

Russia has wrested Crimea, part of Ukraine (itself formerly part of the Soviet Union) from the recently independent Ukraine.

Kurdistan has repeatedly wished its independence from Turkey and Iraq.

Quebec wants to be free of the rest of Canada.

Staten Island has long wished to be independent of the City of New York, but of course wishes to remain in the State of New York. They have no wish to join New Jersey.

Gaza and the West Bank wish to be independent of the State of Israel. However, they make no promises about their repeatedly failed effort to conquer the State of Israel by force of arms should they gain independent status.

We live in the Internet Age. National, provincial, state, county and city borders no longer have the meaning they once did. With the click of a mouse, anyone can be in instant communication with anyone else. With Skype, any group of people around the globe can have a face-to-face meeting.

Our five-borough New York City is already the Unofficial World Capital, home to the United Nations. Really, of course, natives know that we have 14 boroughs. We have the official five of Queens, Brooklyn, the Bronx, Staten Island and overbuilt Manhattan.

Culturally, however, we have Boroughs 6, 7, 8 and 9 – the Three I League – Italy, Ireland and Israel and their sister-borough, Puerto Rico. All candidates for Mayor must visit these truly “outer” boroughs and show affinity for their people, or said candidate will never get elected. This is because of the origins of many of our people. (Special Note – the Three I League is an analogy to the Minor League Baseball federation of Illinois, Indiana and Iowa. Please do not be confused. These places are unofficial boroughs of Chicago, New York's Midwestern clone).



More than anywhere else, we in “five borough” New York City know how to accommodate and integrate wildly disparate peoples and interests.

Need help with alcohol, drugs or gambling?

Call the Lawyers Assistance Committee Confidential Helpline 718-307-7828

And then there are Boroughs 10, 11, 12, 13 and 14 – Florida, where many New Yorkers go to retire, and our local newspapers are sold daily in their shopping malls; and New Jersey, Connecticut, the northern New York City suburbs and suburban Long Island, linked to us thousands of times a day by the steel rails of the Port Authority Trans Hudson (PATH), New Jersey Transit, Metro North, and Long Island Rail Road.

More than anywhere else, we in “five borough” New York City know how to accommodate and integrate wildly disparate peoples and interests. So why not give our “outer boroughs” Florida, Ireland, Italy, Israel, Puerto Rico, New Jersey, Connecticut, suburban Long Island and the northern suburbs seats in the City Council?

And while we’re at it, let’s invite the dissatisfied peoples of the world – the Scots, Crimeans, Kurds, Quebecois, Gazans and West Bankers to elect members of the City Council as well. Then everyone can learn all about the horse-trading necessary to run a really complicated place, a place the Internet has made into one Gigantic City.

Such an expanded New York City Council would only match the Reality we really have now. All kinds of dissatisfied souls from everywhere live and thrive in New York City, so why not make it official? This might save a lot of bloodshed, and you wouldn’t need any nuclear or other weapons. We’ll just have our expanded City Council vote to set up some new police precincts. Any problems, we’ll send over a few blue and white squad cars with our multi-lingual, sensitivity trained police officers, New York’s Finest.

And then, of course, we can have the newly Expanded City Council vote to set up branches of the New York City Criminal Court in all our new boroughs. We can then send many of our arrestees to Anger Management, much as we do now.

Just as we move judges around from borough to borough now, our Mayor could send Manhattan judges to Scotland, Bronx judges to Crimea, Queens judges to Kurdistan and Brooklyn judges to the West Bank and Gaza. Whether or not Staten Island judges should be sent to New Jersey remains an open question. We would probably not want to bring Florida, Connecticut, New Jersey or suburban judges to the Existing Five Boroughs – they would be too lost in the mania.

Our New York City Government, zany as it is, will probably do a much better job of governing these “outer boroughs” than any other candidates for the post.

Why not?

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*Accelerated Death Benefit option is a feature that is made available to group life insurance participants. It is not a health, nursing home, or long-term care insurance benefit and is not designed to eliminate the need for those types of insurance coverage. The death benefit is reduced by the amount of the accelerated death benefit paid. There is no administrative fee to accelerate benefits. Receipt of accelerated death benefits may affect eligibility for public assistance and may be taxable. The federal income tax treatment of payments made under this rider depends upon whether the insured is the recipient of the benefits and is considered terminally ill. You may wish to seek professional tax advice before exercising this option.

The Queens County Bar Association Member Term Life Plan is issued by The Prudential Insurance Company of America, 751 Broad Street, Newark, NJ 07102. Contract Series 83500. The Prudential Insurance Company of America issues the insurance and is authorized to conduct business in all states, the District of Columbia, Guam, Puerto Rico and the United States Virgin Islands. Principal offices are 751 Broad Street, Newark, NJ 07102. (973) 802-6000. The Plan Agent is Bollinger Insurance, 400 Market St., Suite 450, Philadelphia, PA 19106, 1-800-952-4050. 0258364-00001-00



Immigration Detainers by Joseph F. DeFelice

To what extent must a local law enforcement agency, municipality or State be required to comply with Immigration detainers? A recent Third Circuit case indicates that there is no obligation to comply because the detainer is merely a request. Further, the Court held that under the Tenth Amendment Immigration officials cannot order State or local officials to hold and imprison suspected aliens subject to removal as the Federal government cannot command the government agencies of the State to essentially imprison persons of interest to federal officials. See *Galarza v. Szalczyk*, __F3d__ (3d Cir. decided 3/4/14).

Mr. Galarza, who was a U.S. citizen of Hispanic heritage, was held by local law authorities in Lehigh County, Pennsylvania on an Immigration detainer. Despite his claim to U.S. citizenship the Pennsylvania authorities held him on a detainer for several days until Immigration and Customs Enforcement (ICE) officials verified the information.



But for the detainer, Mr. Galarza had made bail on his criminal matter, on which he was eventually acquitted, and was held in jail for several days before his status as a U.S. citizen was clarified and he was released. He sued Lehigh County and others under 42 U.S.C. 1983 and the Federal Tort Claims Act, 28 U.S.C. 346(b). The District Court dismissed his claim holding that the State authorities were compelled to follow the detainer and the Third Circuit, as noted above, held otherwise and reversed.

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ROLL CALL

by Diana Szochet

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

Bret Jay Davis (September 18, 2013)
Michael Stewart Lazarowitz (September 18, 2013)
Howard Marc Sklar (September 18, 2013)
Matthew Burstein (September 25, 2013)
Alan M. Rocoff, a suspended attorney (October 2, 2013)
Jasleen K. Anand, admitted as Jasleen Kaur Anand (October 23, 2013)
Thomas F. Bello (October 23, 2013)
Ray Alfred Jones, Jr. (November 13, 2013)
Christopher K. Kuehn (November 13, 2013)
Matter of Joel A. Grossbarth, admitted as Joel Allann Grossbarth, a suspended attorney (November 20, 2013)

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

Katherine Z. Pope, a suspended attorney (September 18, 2013)
John D'Emic, a suspended attorney (October 2, 2013)
Percy A. Randall, Jr., a suspended attorney (October 2, 2013)
Learie Richard Wilson (October 2, 2013)
Francis Gregory McClure (October 11, 2013)
Robert C. Fontanelli, admitted as Robert Carl Fontanelli (October 18, 2013)
Susan Friedman Odery, admitted as Susan Eileen Friedman (October 22, 2013)
Glen D. Hirsch (October 23, 2013)
Thomas C. Sledjeski, admitted as Thomas C. Sledjeski, II (October 23, 2013)
Robert A. Bertsch, a suspended attorney (October 30, 2013)
Michael J. DeFelippo, admitted as Michael John DeFilipo (November 1, 2013)
Joseph G. Scali, admitted as Joseph Girard Scali (November 25, 2013)
Paul D. Sirignano, admitted as Paul Davis Sirignano (November 25, 2013)
The Following Attorneys Were Publicly Censured By Order Of The Appellate Division, Second Judicial Department:
Jeffrey Charles Daniels (September 25, 2013)
Anne McGrane (September 25, 2013)
Henry Lung (October 23, 2013)
James W. Miskowski, admitted as James William Miskowski (October 23, 2013)
Roger A. Nehrer (December 4, 2013)

The Following Suspended Or Disbarred Attorneys Were Reinstated As Attorneys And Counselors-At-Law By Order Of The Appellate Division, Second Judicial Department:

Charles Berkman, a suspended attorney (October 2, 2013)
Michael L. Previto, a disbarred attorney (October 9, 2013)
Francis B. Mann, Jr., a suspended attorney (November 13, 2013)
Michael John Wynne, a suspended attorney (November 13, 2013)
Sansan Symone Fung, a voluntary resignor (November 27, 2013)
Carl H. Smith, a disbarred attorney (November 27, 2013)

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Is Your Note of Issue a Nullity? It Might Be. Factual Situation

Many plaintiffs' attorneys in Queens County are filing Notes of Issue with discovery outstanding. This is required by the court, often pursuant to a call from the Compliance and Settlement Part chambers. That call directs that the Note of Issue be filed or the case will be dismissed pursuant to the 90 Day Notice contained in the Compliance Conference Order.

Unlike the other Metropolitan area courts, Queens County is unique in that there is only one Compliance Conference, and parties are restricted to stipulating to extend the time to file a Note of Issue only up to the complex track date set forth by the court system, if that is even allowed or possible. Also unique to Queens County is the fact that Notes of Issue are not supposed to be vacated no matter what discovery is outstanding. Those of us who have appeared in CMP with a timely motion to vacate the Note of Issue upon valid grounds are told to "Stip it Out." If that stipulation provides that the Note of Issue be vacated, that language is almost always stricken by the Referee.

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Israel Philharmonic Orchestra at Carnegie Hall

The ISRAEL PHILHARMONIC ORCHESTRA ("IPO") performed in New York City for one night only on March 20, 2014, at CARNEGIE HALL. The heart of the performance was the Tchaikovsky Symphony Number 4 in F minor – in my view, the most captivating, dramatic, and intense symphonies of the classical repertoire. The IPO led by conductor and musical director for life ZUBIN MEHTA were in great form.

The concert began with the singing of both the Star Spangled Banner and Hatikvah by gifted Cantor AZI SCHWARTZ of the Park Avenue Synagogue in Manhattan. Cantor Schwartz's rendition was robust and beautiful.

The first work was by ODON PARTOS [1907-1977], the Concertino for Strings, which was well done. The next work was JOHANNES BRAHMS's [1833-1897] Concerto for Violin and Violoncello in A minor. The highlight of the Brahms work was the dazzling talent of the cellist AMANDA FORSYTH. Her performance on the cello was captivating and spellbinding. Her husband, the famous PINCHAS ZUKERMAN, did not seem at his best, however, playing the violin.

PETER TCHAIKOVSKY [1840-1893] was the first conductor when Carnegie Hall opened its doors on May 5, 1891. ANDREW CARNEGIE paid Tchaikovsky \$2,500 for the engagement [today the equivalent of \$70,000].



The Tchaikovsky Symphony Number 4, from its opening chords with blasts of the horns, is one of the greatest works in classical music. I have twenty (20) versions of it in my music library. ZUBIN MEHTA and the IPO gave such a dramatic and edge-of-the-seat performance of it that I have not heard a better live version of this symphony, and the IPO's performance on March 20 was exceeded only by legendary Russian conductor Evgeny Mravinsky's performance by the Leningrad Philharmonic Orchestra [available on the Deutsche Grammophon label], with recorded music having the luxury of several takes to reach perfection, which was the unbending Mravinsky's standard.

To the delight of the standing room only audience, the concert ended with an encore. Maestro ZUBIN MEHTA publicly acknowledged the late MARVIN HAMLISCH [1944 - 2012], a great supporter of both Israel and the IPO, and then led the orchestra in an energy infused ["spirited" would be an understatement] rendition of a Hamlish overture of his most famous and recognizable works.

The IPO is Israel's greatest "good will" ambassador, playing throughout the world. A couple of years ago, Palestinian demonstrators, inside the concert hall, disrupted a live performance of the IPO led by Maestro Mehta that BBC Radio, that had been covering the concert live, was constrained to disrupt its coverage. Fortunately, no such scene occurred on March 20, 2014, with a handful of Palestinian protesters picketing peacefully outside Carnegie Hall.

Maestro ZUBIN MEHTA showed such breathtaking energy that at one point his baton flew from his hands to be retrieved by a violinist. He is a great friend of the State of Israel, even when he criticizes policies with which he disagrees. Judging by the performance of the Tchaikovsky and Hamlish works, Maestro ZUBIN MEHTA, now at age 77 [turning age 78 on April 29, 2014], who has the title of Music Director For Life of the IPO, will reign at least till age 120. And may we all say "AMEN."

CIRQUE DU SOLEIL'S AMALUNA

CIRQUE DU SOLEIL celebrates females in "AMALUNA," a wonderful, colorful production now playing right through May 18 behind CitiField in Flushing. The show is directed by Tony award winner Diane Paulus. The show's cast is composed of 70 percent [at least] women and features an all-female rock band. Shakespeare's wizard Prospero is transformed into a queenly Prospera.

The acts are wonderful. "AMALUNA" revels in the spectacle. The magic or alchemy of "AMALUNA" hits you with such dazzling speed that you could wish you could "Pause" and play "Rewind" simply to figure out how such artistry and physical accomplishment could be performed. Since there is no "Rewind," I would not blame anyone from seeing this show again and again. From female Amazon warriors and Valkyries, to Peacock-dressed women, a lizard man, an Asian troupe that keeps tumbling and jumping while spinning lanterns at furious speed, acrobats and contortionists galore, jumping off a seesaw propelling a human column, to artists swimming in a huge fishbowl, the "AMALUNA" experience, aided by a revolving stage, is incredible.

Most captivating of "AMALUNA" is the Balance Goddess, who defies gravity in creating a mobile made of thirteen palm leaf ribs, balanced all on the top of her head.

My only complaint was the recurring clown act that was not that funny and grew weary and tiresome. Other than that complaint, this Cirque du Soleil production was superb.

CIRQUE DU SOLEIL was founded by two street performers, Guy Laliberté and Gilles SteCroix, in Montreal, Quebec, Canada in 1984. Today, there are 20 shows touring internationally, playing in about 271 cities, in every continent except Antarctica, and employing over 4,000 persons. CIRQUE DU SOLEIL's creations have received numerous prizes and distinctions, including a Bambi Award in 1997, a Rose d'Or in 1989, three Drama Desk Awards in 1991, 1998 and 2013, three Gemini Awards, four Primetime Emmy Awards, and a star on the Hollywood Walk of Fame.

HOWARD L. WIEDER, the writer of both the "Culture Corner" and "Books at the Bar" columns, is a Principal Court Attorney in State Supreme Court, in Queens County, New York.



I have been trying cases in Queens County on a regular basis for almost 45 years. In that time I have seen many changes, some good, some not-so-good. This article is about a proposed change that is worse than “not-so-good.” It endangers our ability to properly represent our clients at all stages of litigation.

There is presently a budget-driven movement to replace Official Court Reporters with electronic recording devices. While we all share concerns about the rising cost of government and rising taxes, this is not the way to accomplish savings.



When parties appear in a court of record, it is usually their one opportunity to be heard on matters that can affect their freedom (even if OCA starts with civil proceedings, they will eventually implement electronic recording in criminal matters), their livelihood, their ability to provide future medical care for injuries sustained in an accident, their rights to property, and a host of other issues that impact their daily lives. An accurate record of those proceedings is vital in the event of a re-trial or an appeal.

Electronic recording cannot sort out who is speaking when there is more than one person talking at a time.

Electronic recording cannot ask the Judge, counsel or a witness to repeat something that is unclear, to spell a difficult word (especially important with expert witnesses), or clarify testimony from a witness with poor diction or heavily accented English.

Electronic recording is subject to failure which can result in vital parts of a record being lost forever or in long delays in proceedings while repairs are made.

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Marital Quiz *by George J. Nashak, Jr*

Question #1 - If a respondent fails to comply with financial disclosure, Family Court Act §424- a, must the court grant relief demanded in the support petition or preclude respondent from offering evidence as to respondent's financial ability to pay support? Your answer -

Question #2 - True or false, the CSSA minimum is \$136,000.00? Your answer -

Question #3 - True or false, the temporary maintenance cap is \$500,000.00? Your answer -

Question #4 - Should a hearing be granted to change a custody agreement based upon the mother's allegations of the child's alarming behavior? Your answer -

Question #5 - If one party occupies the marital home during the pendency of the action, does the other party, who voluntarily moved out, have to contribute to the mortgage and real estate taxes? Your answer -

Question #6 - Does the Family Court have authority to appoint a natural parent to be guardian of his or her child? Your Answer -

Question #7 - Does Plaintiff receive a credit against child support arrears for voluntary payments to the Defendant for the benefit of the child? Your answer -

Questions #8 - Should marital debt, incurred prior to the commencement of an action for divorce, be equally shared by the parties? Your answer -

Question #9 - Is reimbursement required when one party has paid the other party's share of marital debt? Your answer -

Question #10 - Is the payer spouse entitled to a credit for overpayment of child care expenses against child support arrears? Your answer -

Editor's Note: 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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Books At The Bar *by Howard L. Wieder*

With origins dating back to 1478, Oxford University Press ("OUP") is the world's largest university press with the widest global presence. OUP's Global Academic Publishing program spans the entire academic and higher education spectrum, including a wide array of scholarly and general interest books, journals, and online products. OUP has published a multitude of awardwinning books, including 15 Pulitzer Prize winners. OUP has the highest standards for academic and professional works.

A review of www.oup.com will review numerous titles that are of great interest to the practicing lawyer. I have chosen seven titles that are of interest to lawyers and litigators, five of them in the newly emerging field of international commercial arbitration. The field of international commercial arbitration especially rose to prominence with the publication in 2012 of S.I. Strong's "INTERNATIONAL COMMERCIAL ARBITRATION: A GUIDE FOR U.S. JUDGES," a 152 - page handbook that is available online at www.fjc.gov. I invite you to stroll through the OUP web site at oup.com for many titles in your particular field. Here are my favorites chosen for this Spring-Summer 2014 column:

THE NEW YORK RULES OF PROFESSIONAL CONDUCT WINTER 2012 RULES, COMMENTARY, AND PRACTICE AIDS

Edited by New York County Lawyers' Association Ethics Institute

New York Rules of Professional Conduct

\$225.00

Hardcover

23 November 2012

1552 Pages

7 x 10 inches

ISBN: 9780199855711

Increasingly, courts are citing and relying on the new New York Rules of Professional Conduct. They took effect in April, 2009 and have binding force. They are not precatory. So whether your opponent is guilty of misleading a tribunal or is involved in an impermissible conflict of interest in representation, this book is the Bible in the field. The Fall 2012 edition includes the latest NYSBA Commentary and Ethics Opinions, including the effect of social media on today's law practice, permissible legal marketing services, legal fees, contingency fees, and feesplitting arrangements, and maintaining client confidentiality.

HOWARD L. WIEDER, the writer of both the "Culture Corner" and "Books at the Bar" columns, is a Principal Court Attorney in State Supreme Court, in Queens County, New York.

[Read Full Story »](#)



PHOTO GALLERY "Judiciary, Past Presidents and Golden Jubilarian Night 4-7-2014"

Photos by Photographer Walter Karling



Past Presidents

Standing: David Cohen (07-08), Steven Orlow (08-09), Chanwoo Lee (10-11), Steven Wimpfheimer (99-00), Howard Stave (82-83), Wallace Leinhardt (77-78), Gary Darche (89-90), Jules Haskel (73-74) and Current President Joseph DeFelice

Sitting: Leslie Nizin (00-01), Hon. Sidney Strauss (90-91), Richard Gutierrez (11-12), Joseph Risi (12-13), George Nashak (05-06), Michael Dikman (78-79), David Adler (98-99), Seymour James (01-02) and Edward Rosenthal (02-03)



Current President, Joseph DeFelice presenting Past President Joseph Risi with his President's Scroll



Hamid Siddiqui, Jeffrey Kuhlman, Greg Newman, Hon. Sid Strauss and Jay Abrahams



Hon. Allen Beldock, Hon. Ronald Hollie, Helmut Borchert, Hon. Daniel Lewis and Hon. Ulysses Leverett



Guest Speaker Glenn Lau-Kee, NYSBA President-Elect, addressing our members



PHOTO GALLERY "Judiciary, Past Presidents and Golden Jubilarian Night 4-7-2014"
Photos by Photographer Walter Karling



Hon. Augustus Agate, Hon. Jeremy Weinstein, Seymour James and NYSBA President-Elect Glenn Lau-Kee



Hon. Bernice Siegal, Violet Samuels, Chanwoo Lee and Tamar Samuels



Hon. David Elliot, Hon. Randall Eng, Hon. Phyllis Orlikoff Flug, Hon. Jeremy Weinstein and Hon. Donna Golia



Hon. Joseph Golia, Hon. Seymour Boyers, Hon. Donna Golia, Hon. James Golia and Hon. Denis Butler



Hon. Martin Ritholtz, Dean of the Academy of Law, presenting David Adler with the Academy of Law Award.



Hon. Sally Unger, Hon. Larry Love, Hon. Phyllis Orlikoff Flug and Tracy Catapano-Fox

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ORGANIZED 1876

A Message From The President by Joseph Carola, III

Filed in: Uncategorized

Catherine Zito

June 2, 2014

I am extremely honored to serve as President of the Queens County Bar Association. For 138 years, this Association has been committed to enriching the lives of its members, strengthening the relationship between the bench and the bar, serving the community and pursuing justice.

Queens County has widely been recognized as one of, if not the most diverse counties in the world. Diversity is not just measured in numbers of different races, religions or ethnicities but also a recognition and respect for diversity of thought. With over 2000 members, our Association now, more than ever, is reflective of the diversity of the county in which it is situated and the community which it serves. It is this strength in membership which affords our members opportunities to network, to find employment, to get experience and to succeed.

If you are not currently a member of the QCBA, tell me why you are not. What is it that we are doing, or perhaps not doing, that is preventing you from being a member? It is only by listening to your complaints or suggestions that we can grow as an association. If you were never a member...we want you. If you were a member in the past but not one presently...we want you back.

If you are a member, thank you. If you are reading this you are interested in the QCBA. If you are a member, you are involved in the QCBA. We need more from you however. We need you to get invested in the QCBA.

There are many reasons for joining the QCBA, ranging from "my boss made me join," to joining for business, social or political opportunities. Whatever your reason for joining, this association is like anything else in life...you will get out of it what you put into it. Our Association offers participation in over 60 Standing and Special Committees. **Our committee chairs serve as mentors to our young members and membership in our committees provides personal and professional growth.** Whether you are new to bar or coming back to the bar, take advantage of the opportunities provided to you by joining and getting active in committee membership.

The **QCBA Academy of Law** continues to develop and offer outstanding **CLE programs** given by

attorneys highly respected and recognized in their respective fields of practice. These programs keep our members current on ever-changing legal issues while offering CLE credits through our New York State Continuing Legal Education Board accredited program.

Our **Lawyer Referral Service** is an additional benefit of membership that gives our members the opportunity to build their practices with new clients referred directly from the QCBA. Lawyers can choose from 24 areas of practice to help target appropriate referrals. All referrals are forwarded on a rotating basis to ensure equal access.

Over the summer months, your Bar Association will begin preparation for the upcoming year. Our outgoing President, **Joe DeFelice and his Board of Managers** had an extremely productive year with accomplishments ranging from refurbishing the QCBA home, upgrading our website, introducing a mobile app (QCBA.MOBI) and recruitment of new members, particularly law students. In the upcoming year, we hope to continue our recruitment and promotion of the next generation of attorneys while also addressing the needs of the solo and small firm practitioners. We will look to address the issues of concern to our profession by offering a variety of programs focusing on practical issues such as debt management, leadership development, business development, ethics, networking, work and life balance, personal development and more.

We offer many social events during the year. These social events provide a unique opportunity to network. These events include **Judiciary Night, Stated Meetings** (which provide the opportunity to earn FREE CLE credits) and our **Holiday Party**. The first event up after the summer is our **annual golf outing at the Garden City Country Club on September 8, 2014**.

On behalf of the Board of Managers I would like thank you, our members, sponsors and corporate sponsors, for your continued support and look forward to hearing from you throughout the year.

Joseph Carola III, Esq.

Employees of The Corporate Law Department

State Farm Mutual Automobile Insurance Company

joe_carola@yahoo.com

Immigration Detainers by Joseph F. DeFelice

Filed in: Uncategorized

Catherine Zito

June 2, 2014

To what extent must a local law enforcement agency, municipality or State be required to comply with Immigration detainers? A recent Third Circuit case indicates that there is no obligation to comply because the detainer is merely a request. Further, the Court held that under the Tenth Amendment Immigration officials cannot order State or local officials to hold and imprison suspected aliens subject to removal as the Federal government cannot command the government agencies of the State to essentially imprison persons of interest to federal officials. See *Galarza v. Szalczyk*, ____ F3d ____ (3d Cir. decided 3/4/14).

Mr. Galarza, who was a U.S. citizen of Hispanic heritage, was held by local law authorities in Lehigh County, Pennsylvania on an Immigration detainer. Despite his claim to U.S. citizenship the Pennsylvania authorities held him on a detainer for several days until Immigration and Custom Enforcement (ICE) officials verified the information. But for the detainer, Mr. Galarza had made bail on his criminal matter, on which he was eventually acquitted, and was held in jail for several days before his status as a U.S. citizen was clarified and he was released. He sued Lehigh County and others under 42 U.S.C. 1983 and the Federal Tort Claims Act, 28 U.S.C. 346(b). The District Court dismissed his claim holding that the State authorities were compelled to follow the detainer and the Third Circuit, as noted above, held otherwise and reversed.

The legislation for Immigration detainers can be found at 8 C.F.R. §287.7. That section reads in pertinent part as follows:

a. Detainers in general. Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter.

1. Any authorized immigration officer may at any time issue a form I-247, Immigration Detainer – Notice of Action, to any other Federal, State or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to the release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impractical or impossible.

.....

d. Temporary detention at Department request. Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays and holidays in order to permit assumption of custody by the Department.

One of the issues in Galarza was whether the phrase “shall maintain custody” was meant to be mandatory in nature even though the paragraph was entitled “Temporary detention at Department request.” Lehigh County argued that the word “shall” meant that it was not a request but an order. Galarza’s attorneys argued that the word “shall” meant that only if the agency decided to comply with an ICE detainer that it should hold the person no longer than 48 hours.

The Third Circuit accepted the view of Galarza and his lawyers noting that the title of the paragraph in the statute referred to “request.” The Court cited *Almendarez Torres v. United States*, 523 U.S. 224, 234 (1998) which noted that a statute’s title and a section’s heading may be considered in resolving doubt about a provision’s meaning. It was also noted that the statute seemed to define detainers as a request.

Further, the Court addressed constitutional concerns and noted that the Tenth Amendment prohibits the Federal government from commanding agencies of the States to imprison persons of interest to federal officials. The Court stated that under the Tenth Amendment, all powers not explicitly conferred to the federal government are reserved to the States. Therefore, any law that commands the States or their local agencies or municipalities by directly compelling them to enact or enforce a federal regulatory program is beyond the inherent limitations of federal power. As such, any conclusion that a detainer issued by a federal agency can order State and local agencies to comply with its order is inconsistent with the Tenth Amendment.

Other Courts of Appeals have also, when commenting on Immigration detainers, referred to them as “requests.” See, e.g. *Ortega v. U.S. Immigration & Customs Enforcement*, 737 F3d 435, 438 (6th Cir. 2013); *Liranzo v. United States*, 690 F3d 78, 82 (2d Cir. 2012); *United States v. Uribe-Rios*, 558 F3d 347, 350 n.1 (4th Cir. 2009); *United States v. Female A.F.S.*, 377 F3d 27, 35 (1st Cir. 2004) and *Giddings v. Chandler*, 979 F2d 1104, 1105 n.3 (5th Cir., 1992).

On April 18, 2014 the New York Times reported that nine counties in Oregon announced they would no longer hold people in jail on “requests” from Immigration authorities. This as a result of a U.S. magistrate in Portland holding that an immigrant’s rights had been violated when he was held in jail on such a request.

The result of these rulings may be that vigilant criminal defense attorneys may seek to obtain a client’s release from jail pending trial when the only thing holding him is the Immigration detainer. Further, civil practitioners may be able to obtain compensation for their clients who have their constitutional rights violated when they are held on these detainers without a warrant or sufficient probable cause.

* Joseph F. DeFelice practices Immigration and Criminal Law and maintains his law office in Kew Gardens.

Roll Call by Diana Szochet

Filed in: Uncategorized

Catherine Zito

June 2, 2014

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

Bret Jay Davis (September 18, 2013)

By order filed on December 28, 2005, the Supreme Court of California disbarred the respondent, and struck his name from the roll of attorneys, following a prior order of suspension, which required him to make restitution to six clients for a combined total of \$20,150 in unearned legal fees, and to one client for a \$950 fee he charged and collected illegally. The respondent also was required to notify his clients, and his adversaries, of his suspension, and to file a declaration of his compliance. When the respondent failed to file the required declaration, a further disciplinary proceeding was commenced, charging him with willfully disobeying an order the court. He thereafter was disbarred on default. Upon the Grievance Committee's application for reciprocal discipline pursuant to 22 NYCRR 691.3, the respondent was disbarred in New York.

Michael Stewart Lazarowitz (September 18, 2013)

The respondent tendered an affidavit of resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he failed to safeguard funds entrusted to him as a fiduciary, incident to his practice of law.

Howard Marc Sklar (September 18, 2013)

The respondent tendered an affidavit of resignation wherein he acknowledged that he could not successfully defend himself on the merits against pending charges of failing to fully and timely cooperate with the Grievance Committee; neglecting a legal matter; engaging in a conflict of interest; and failing to comply with the rules pertaining to the maintenance of escrow accounts by, inter alia, failing to promptly deliver funds to a person entitled to receive them, failing to preserve client funds, commingling, making cash withdrawals, and failing to maintain bookkeeping records.

Matthew Burstein (September 25, 2013)

On July 26, 2012, the respondent was found guilty, after a jury trial in the United States District Court for the Eastern District of New York, of one count of conspiracy to commit bank and wire fraud, in violation of 18 USC 1349, two counts of wire fraud, in violation of 18 USC 1343, and seven counts of bank fraud, in violation of 18 USC 1344. Inasmuch as the federal felony of bank fraud is essentially similar to the New York felony of

grand larceny in the second degree, a class C felony in violation of Penal Law § 155.40, and scheme to defraud in the first degree, a class E felony in violation of Penal Law § 190.65, the respondent was automatically disbarred, and ceased to be an attorney, effective July 26, 2012.

Alan M. Rocoff, a suspended attorney (October 2, 2013)

The respondent tendered an affidavit of resignation wherein he acknowledged that he could not successfully defend himself on the merits against disciplinary charges predicated upon his plea of guilty before the Honorable John P. Walsh, in the Supreme Court, Kings County, to petit larceny, a class A misdemeanor in violation of Penal Law § 155.25.

Jasleen K. Anand, admitted as Jasleen Kaur Anand (October 23, 2013)

The respondent proffered an affidavit of resignation wherein she acknowledged, inter alia, that she could not successfully defend herself on the merits against pending charges that she misappropriated funds or other property belonging to another person, failed to maintain complete records of all funds of a client or third person coming into her possession or render appropriate accounts to the client or third person, disbursed estate funds to herself and/or her law firm without authorization, failed to maintain required bookkeeping records for an estate, failed to keep a client reasonably informed of the status of a matter, and engaged in conduct involving dishonesty, deceit, fraud or misrepresentation.

Thomas F. Bello (October 23, 2013)

The respondent proffered an affidavit of resignation wherein he acknowledged, inter alia, that he could not successfully defend himself on the merits against pending charges that he engaged in a pattern of neglecting legal matters entrusted to him (two counts), engaged in a pattern of failing to maintain adequate communication with his clients (two counts), failed to comply with numerous court directives, and failed to timely satisfy the terms of a settlement agreement.

Ray Alfred Jones, Jr. (November 13, 2013)

On October 25, 2012, the respondent entered a plea of guilty in the Supreme Court, Kings County (Walsh, J.) to one count of grand larceny in the second degree, a class C felony in violation of Penal Law § 155.40. His subsequent motion to withdraw the plea was granted on December 20, 2012. On January 29, 2013, the respondent entered another plea of guilty to one count of grand larceny in the second degree, in the same court (Chun, J.) During his allocution, the respondent admitted that, between April 10, 2007, and April 13, 2007, he stole property with an aggregate value in excess of \$50,000 from the complainant. On March 25, 2013, he was sentenced, inter alia, to a term of imprisonment of 1 1/3 to 4 years. By virtue of his felony conviction, the respondent was automatically disbarred and ceased to be an attorney, pursuant to Judiciary Law § 90(4)(a). Accordingly, the Grievance Committee's motion to strike the respondent's name from the roll of attorneys and counselors-at-law, pursuant to Judiciary Law § 90(4)(b), was granted to reflect the respondent's automatic disbarment on January 29, 2013.

Christopher K. Kuehn (November 13, 2013)

The respondent proffered an affidavit of resignation wherein he acknowledged, inter alia, that he could not successfully defend himself on the merits against allegations that he misappropriated funds entrusted to him as a fiduciary for his own use and benefit.

Matter of Joel A. Grossbarth, admitted as Joel Allann Grossbarth, a suspended attorney (November 20, 2013)

Following a disciplinary proceeding, and a further decision and order of the Court dated November 2, 2011, authorizing the Grievance Committee to file a supplemental petition of charges against the respondent, he entered a plea of guilty, on March 19, 2013, to two counts of grand larceny in the second degree, a class C felony in violation of Penal Law § 155.40, and one count of forgery in the second degree, a class D felony in violation of Penal Law § 170.10. By virtue of his felony conviction, the respondent was automatically disbarred and ceased to be an attorney, pursuant to Judiciary Law § 90(4)(a). Accordingly, the Grievance Committee's motion to strike the respondent's name from the roll of attorneys and counselors-at-law, pursuant to Judiciary Law § 90(4)(b), was granted to reflect the respondent's automatic disbarment as of March 19, 2013, and the pending proceedings were discontinued.

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

Katherine Z. Pope, a suspended attorney (September 18, 2013)

On or about November 15, 2011, before the Honorable Stephen L. Braslow, in the County Court, Suffolk County, the respondent entered a plea of guilty to the crime of identity theft in the third degree, a class A misdemeanor in violation of Penal Law § 190.78. By decision and order on motion of the Appellate Division dated May 22, 2012, the respondent was immediately suspended from the practice of law based upon her conviction of a serious crime. Following a disciplinary hearing, the respondent was found guilty of having engaged in illegal conduct reflecting on her honesty, trustworthiness, or fitness as a lawyer. She was suspended from the practice of law for a period of two years, effective immediately.

John D'Emic, a suspended attorney (October 2, 2013)

On October 1, 2009, the respondent pleaded guilty in the Supreme Court, Queens County, to a violation of Judiciary Law § 491, a misdemeanor, which prohibits the sharing of compensation by attorneys with non-lawyers. By decision and order of the Appellate Division dated April 22, 2010, the respondent was immediately suspended from the practice of law based upon his conviction of a serious crime. Following a disciplinary hearing, the respondent was found guilty of professional misconduct, in that he was convicted of a serious crime; knowingly sharing his attorney fees with an attorney whom he knew was disbarred; authorizing the proceeds of the sale of real property owned by his client to be redistributed to third parties without his client's authorization; and making misrepresentations to a government entity. He was suspended from the practice of law for a period of two years, effective immediately, with no credit for the time elapsed under the interim order of suspension.

Percy A. Randall, Jr., a suspended attorney (October 2, 2013)

On or about February 3, 2011, the respondent pleaded guilty before the Honorable Robert C. McGann, in the Supreme Court, Queens County, to criminal facilitation in the fourth degree, a class A misdemeanor in violation of Penal Law § 115.00, as a result of his involvement in a mortgage fraud scheme in which stolen identities were used to buy and sell properties in Queens.. By decision and order of the Appellate Division dated December 11, 2011, the respondent was immediately suspended from the practice of law based upon his conviction of a serious crime. Following a disciplinary proceeding, the respondent was found guilty of having been convicted of a serious crime. He was suspended from the practice of law for a period of two years, effective immediately.

Learie Richard Wilson (October 2, 2013)

Following a disciplinary hearing, the respondent was found guilty of engaging in conduct involving dishonesty, deceit, fraud and misrepresentation, which adversely reflects on his fitness as a lawyer, as a result of aiding and abetting a client in deceiving a lender at a real estate closing by withholding material information from the lender, and engaging in conduct involving dishonesty, deceit, fraud and misrepresentation, which adversely reflects on his fitness as a lawyer, by exercising a lack of candor with the Grievance Committee. He was suspended from the practice of law for a period of one year, commencing November 1, 2013.

Francis Gregory McClure (October 11, 2013)

The respondent was suspended from the practice of law pursuant to 22 NYCRR 691.13(a) effective immediately and for an indefinite period and until the further order of the Appellate Division, based upon a judicial determination of his incompetence and his commitment to a mental health treatment facility.

Robert C. Fontanelli, admitted as Robert Carl Fontanelli (October 18, 2013)

The respondent was immediately suspended from the practice of law pursuant to 22 NYCRR 691.4(l)(1)(i) and (iii) upon a finding that he posed an immediate threat to the public interest as a result of his failure to cooperate with the Grievance Committee, and other uncontroverted evidence of professional misconduct, to wit, misappropriation of clients' funds, and the Committee was authorized to institute and prosecute a disciplinary proceeding against him.

Susan Friedman Odery, admitted as Susan Eileen Friedman (October 22, 2013)

The respondent was immediately suspended from the practice of law pursuant to 22 NYCRR 691.4(l)(1)(iii) upon a finding that she posed an immediate threat to the public interest as a result of uncontroverted evidence of professional misconduct, to wit, misappropriation of client funds and fabrication of evidence, and the Grievance Committee was authorized to institute and prosecute a disciplinary proceeding against her.

Glen D. Hirsch (October 23, 2013)

The respondent was immediately suspended from the practice of law pursuant to 22 NYCRR 691.4(l)(1)(i) upon a finding that he posed an immediate threat to the public interest as a result of his failure to cooperate with the Grievance Committee in its investigation of bounced check notices, received by them pursuant to 22

NYCRR 1300, and the Committee was authorized to institute and prosecute a disciplinary proceeding against him.

Thomas C. Sledjeski, admitted as Thomas C. Sledjeski, II (October 23, 2013)

The respondent was immediately suspended from the practice of law pursuant to 22 NYCRR 691.4(l) (1) (i), (ii) and (iii) upon a finding that he posed an immediate threat to the public interest as a result of his failure to cooperate with the Grievance Committee, his substantial admissions under oath, and other uncontroverted evidence of professional misconduct, to wit, conduct involving, inter alia, dishonesty, deceit, fraud or misrepresentation, and the Committee was authorized to institute and prosecute a disciplinary proceeding against him.

Robert A. Bertsch, a suspended attorney (October 30, 2013)

Following a disciplinary proceeding, the respondent was found guilty of having engaged in illegal conduct that adversely reflects on his honesty, trustworthiness or fitness as a lawyer, as a result of his federal conviction for misprision of a felony, to wit, securities fraud. In consideration of the financial and other hardships the respondent has endured as a result of his conviction, and the absence of remorse, he was suspended from the practice of law for a period of three years, commencing immediately.

Michael J. DeFelippo, admitted as Michael John DeFilipo (November 1, 2013)

The respondent was immediately suspended from the practice of law pursuant to 22 NYCRR 691.4(l) (1) (i) upon a finding that he posed an immediate threat to the public interest as a result of his failure to cooperate with the Grievance Committee in its investigation of a complaint of professional misconduct against him, and the Grievance Committee was authorized to institute and prosecute a supplemental disciplinary proceeding. (By prior decision and order of the Court dated December 31, 2012, the Grievance Committee was authorized to institute and prosecute a disciplinary proceeding against the respondent based upon a petition of charges dated June 1, 2012.)

Joseph G. Scali, admitted as Joseph Girard Scali (November 25, 2013)

The respondent was immediately suspended from the practice of law pursuant to 22 NYCRR 691.4(l) (1) (i) upon a finding that he posed an immediate threat to the public interest as a result of his failure to cooperate with the Grievance Committee, and the Committee was authorized to institute and prosecute a supplemental disciplinary proceeding against him. (By prior decision and order of the Court dated November 2, 2011, the Grievance Committee was authorized to institute and prosecute a disciplinary proceeding against the respondent, based upon a petition of charges dated July 22, 2011.)

Paul D. Sirignano, admitted as Paul Davis Sirignano (November 25, 2013)

On September 27, 2012, the respondent entered a plea of guilty before the Honorable Douglas M. Kraus, Judge of the New Castle Town Court, Westchester County, to attempted criminal tax fraud in the fourth degree, a class A misdemeanor, in violation of Tax Law § 1803 and Penal Law § 110. On May 9, 2013, a judgment and order of restitution was entered against the respondent in the amount of \$44,019. He was

immediately suspended from the practice of law pursuant to Judiciary Law § 90(4)(f) as a result of his conviction of a “serious crime,” and the Grievance Committee was authorized to institute and prosecute a disciplinary proceeding against him, based upon the foregoing conviction.

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

Jeffrey Charles Daniels (September 25, 2013)

Following a disciplinary hearing, the respondent was found guilty of converting funds entrusted to him as a fiduciary for a use other than that for which they were intended; issuing a check payable to cash from his attorney trust account; and engaging in conduct adversely reflecting on his fitness to practice law by reason of the foregoing. In determining an appropriate measure of discipline to impose, the Appellate Division noted the conversion of funds was “not made with venal intent. Rather, [it was] the result of negligent oversight by the respondent of his attorney trust account...”

Anne McGrane (September 25, 2013)

On or about August 10, 2011, the respondent was convicted, upon her plea of guilty, of operating a motor vehicle under the influence of alcohol or drugs, an unclassified misdemeanor in violation of Vehicle and Traffic Law § 1192(3), based upon an incident that occurred in November 2009. Following a disciplinary hearing, the respondent was found guilty of engaging in illegal conduct that adversely reflects on her honesty, trustworthiness, or fitness as a lawyer. In determining an appropriate measure of discipline to impose, the Appellate Division considered, inter alia, the absence of charges concerning the respondent’s practice of law, the respondent’s successful completion of a rehabilitation program, and the respondent’s sincere remorse, statements that she has remained sober, and her determination not to abuse alcohol in the future. However, the respondent’s opposition notwithstanding, the Court also took into account her prior history of alcohol related offenses. In addition, in August 2011, the respondent was convicted of disorderly conduct, a violation under Penal Law § 240.20(7), and harassment in the second degree, a violation under Penal Law § 240.26.

Henry Lung (October 23, 2013)

Following a disciplinary proceeding, the respondent was found guilty of compensating a non-lawyer for recommending a client, and rewarding a non-lawyer for having made such a recommendation, resulting in employment of the respondent by a client, and sharing a legal fee with a non-lawyer. In consideration of impressive evidence of the respondent’s good moral character and his generous charitable donations, as well as his prior disciplinary history, the respondent was publicly censured.

James W. Miskowski, admitted as James William Miskowski (October 23, 2013)

By corrected order of the Supreme Court of New Jersey dated March 8, 2011, the respondent was publicly reprimanded in that state based on his violation of rule 1.15(a) of the New Jersey Rules of Professional Conduct (hereinafter the RPC) for failing to safeguard client funds, as well as rule 1.15(d) of the RPC and rule 1:21-6 of the New Jersey Court Rules for record-keeping violations. Upon the Grievance Committee’s

application for reciprocal discipline pursuant to 22 NYCRR 691.3, the respondent was publicly censured in New York.

Roger A. Nehrer (December 4, 2013)

Following a disciplinary proceeding, the respondent was found guilty of engaging in conduct prejudicial to the administration of justice, which reflects adversely on his fitness as a lawyer, as a result of his failure to file biennial registration statements with the Office of Court Administration, and pay the designated fees, for the seven consecutive registration periods beginning with 1999-2000, and failing to cooperate with the Grievance Committee in its investigation of the same. He was publicly censured.

The Following Suspended Or Disbarred Attorneys Were Reinstated As Attorneys And Counselors-At-Law By Order Of The Appellate Division, Second Judicial Department:

Charles Berkman, a suspended attorney
(October 2, 2013)

Michael L. Previto, a disbarred attorney
(October 9, 2013)

Francis B. Mann, Jr., a suspended attorney
(November 13, 2013)

Michael John Wynne, a suspended attorney
(November 13, 2013)

Sansan Symone Fung, a voluntary resignor
(November 27, 2013)

Carl H. Smith, a disbarred attorney
(November 27, 2013)

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Recordings or Reporters? by Jim Pieret

Filed in: Uncategorized

Catherine Zito

June 2, 2014

I have been trying cases in Queens County on a regular basis for almost 45 years. In that time I have seen many changes, some good, some not-so-good. This article is about a proposed change that is worse than “not-so-good.” It endangers our ability to properly represent our clients at all stages of litigation.

There is presently a budget-driven movement to replace Official Court Reporters with electronic recording devices. While we all share concerns about the rising cost of government and rising taxes, this is not the way to accomplish savings.

When parties appear in a court of record, it is usually their one opportunity to be heard on matters that can affect their freedom (even if OCA starts with civil proceedings, they will eventually implement electronic recording in criminal matters), their livelihood, their ability to provide future medical care for injuries sustained in an accident, their rights to property, and a host of other issues that impact their daily lives. An accurate record of those proceedings is vital in the event of a re-trial or an appeal.

Electronic recording cannot sort out who is speaking when there is more than one person talking at a time.

Electronic recording cannot ask the Judge, counsel or a witness to repeat something that is unclear, to spell a difficult word (especially important with expert witnesses), or clarify testimony from a witness with poor diction or heavily accented English.

Electronic recording is subject to failure which can result in vital parts of a record being lost forever or in long delays in proceedings while repairs are made.

The transcription of electronic recording is subject to the interpretation of the transcriptionist. In the event of an appeal, that results in counsel being forced to listen to the recording and make changes to the “official” transcript to reflect what was actually said. If the attorneys cannot agree on what was actually said, then the Trial Court or the Appellate Court will have to sort out what was said.

Even with a “playback” function, electronic recording cannot read back portions of testimony, especially where more than one person is speaking at a time. Playback is subject to the individual juror’s interpretation of what the recording says.

Official Court Reporters can do all of the above and more.

Accurate read backs are a vital part of any trial or jury deliberation. Juries ask for read backs when they have differing recollections of what a witness may have said. Electronic recording playbacks may, or may not be clear, and may or may not resolve the issue.

Most litigators have had occasion when the Official Court Reporter essentially stopped the proceedings by indicating that he or she was unable to get a clear record because multiple people were speaking at once. A recording device cannot alert the Court, counsel and the parties that an accurate record is not being taken. That results in an inaccurate or incomplete record without the opportunity to correct it in real time.

Many litigators have had occasion where the Official Court Reporter has told them or told a witness that they are not speaking clearly, or that they are speaking too rapidly for an accurate record. A recording device cannot do that, resulting in an incomplete or inaccurate record without the opportunity to remedy the situation at the time that it is occurring.

As attorneys, it is our particular responsibility to insure that the Courts of the State of New York continue to function as dispensers of justice for all who appear before them. We cannot abdicate that responsibility to The Chief Judge, to the Chief Administrative Judge, or to OCA for budgetary reasons. As members of the Queens County Bar Association, we must let our elected officials know that we are vehemently opposed to the implementation of electronic recording devices in the place of Official Court Reporters.

Marital Quiz by George J. Nashak Jr.

Filed in: Uncategorized

Catherine Zito

June 2, 2014

Question #1 – If a respondent fails to comply with financial disclosure, Family Court Act §424-a, must the court grant relief demanded in the support petition or preclude respondent from offering evidence as to respondent's financial ability to pay support?

Answer: Yes, matter of Speranza v. Speranza 2014 NY Slip Op 109 (2nd Dept.).

Question #2 – True or false, the CSSA minimum is \$136,000.00?

Answer: False, for 2014, the amount has been increased to \$141,000.00.

Question #3 - True or false, the temporary maintenance cap is \$500,000.00?

Answer: False, it is now \$543,000.00.

Question #4 – Should a hearing be granted to change a custody agreement based upon the mother's allegations of the child's alarming behavior?

Answer: Yes, Matter of Lore v. Sclafani 2014 NY Slip Op 667 (2nd Dept.)

Question #5 - If one party occupies the marital home during the pendency of the action, does the other party, who voluntarily moved out, have to contribute to the mortgage and real estate taxes?

Answer: Yes, Judge v. Judge 48 AD3d 424; 851 NYS2d 639 (2nd Dept. 2008).

Question # 6 – Does the Family Court have authority to appoint a natural parent to be guardian of his or her child?

Answer: Yes, Matter of Marisol N.H., 2014 NY Slip Op 664 (2nd Dept.)

Question #7 – Does Plaintiff receive a credit against child support arrears for voluntary payments to the Defendant for the benefit of the child?

Answer: No, O'Brien v. O'Brien 2014 NY Slip Op 1590 (2nd Dept.)

Questions #8 – Should marital debt, incurred prior to the commencement of an action for divorce, be equally share by the parties?

Answer: Yes, Diaz v. Gonzalez 2014 NY Slip Op 2010 (2nd Dept.)

Question #9 – Is reimbursement required when one party has paid the other party's share of marital debt?

Answer: Yes, Diaz v. Gonzalez 2014 NY Slip Op 2010 (2nd Dept.)

Question #10 – Is the payer spouse entitled to a credit for overpayment of child care expenses against child support arrears?

Answer: Yes, Zengling Shi v. Shenglin Lu 2013 NY Slip Op 6373 (2nd Dept.)

Books At The Bar by Howard L. Wieder

Filed in: Uncategorized

Catherine Zito

June 3, 2014

With origins dating back to 1478, Oxford University Press ("OUP") is the world's largest university press with the widest global presence. OUP's Global Academic Publishing program spans the entire academic and higher education spectrum, including a wide array of scholarly and general interest books, journals, and online products. OUP has published a multitude of award-winning books, including 15 Pulitzer Prize winners. OUP has the highest standards for academic and professional works.

A review of www.oup.com will review numerous titles that are of great interest to the practicing lawyer. I have chosen seven titles that are of interest to lawyers and litigators, five of them in the newly emerging field of international commercial arbitration. The field of international commercial arbitration especially rose to prominence with the publication in 2012 of S.I. Strong's "INTERNATIONAL COMMERCIAL ARBITRATION: A GUIDE FOR U.S. JUDGES," a 152-page handbook that is available online at www.fjc.gov. I invite you to stroll through the OUP web site at oup.com for many titles in your particular field. Here are my favorites chosen for this Spring-Summer 2014 column:

THE NEW YORK RULES OF PROFESSIONAL CONDUCT WINTER 2012

RULES, COMMENTARY, AND PRACTICE AIDS

Edited by New York County Lawyers' Association Ethics Institute

New York Rules of Professional Conduct

\$225.00

Hardcover

23 November 2012

1552 Pages

7 x 10 inches

ISBN: 9780199855711

Increasingly, courts are citing and relying on the new New York Rules of Professional Conduct. They took effect in April, 2009 and have binding force. They are not precatory. So whether your opponent is guilty of misleading a tribunal or is involved in an impermissible conflict of interest in representation, this book is the Bible in the field. The Fall 2012 edition includes the latest NYSBA Commentary and Ethics Opinions, including the effect of social media on today's law practice, permissible legal marketing services, legal fees, contingency fees, and feesplitting arrangements, and maintaining client confidentiality.

Highlights:

Authoritative commentary provides much needed clarity on the transition to the Rules of Professional Conduct which govern attorney conduct in the State of New York

Cases and opinions have been fully updated to reflect the adoption of the Rules of Professional Conduct

Where portions of the prior Code are retained in the new Rules of Professional Conduct, Dean Mary Daly's commentary to the Code is retained for historical reference

Commentary and practice notes address issues specific to specialty practice areas

Finding aids, including a cumulative index, table of rules, table of cases, and tabs have been added for ease of use and accessibility

THE NEW YORK STATE CONSTITUTION, SECOND EDITION

Peter J. Galie and Christopher Bopst

Oxford Commentaries on the State Constitutions of the US

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01 June 2012

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Herfried Wöss, Adriana San Román Rivera, Pablo Spiller, and Santiago Dellepiane

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Edited by Michael Ostrove, Claudia Salomon, and Bette Shifman

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09 March 2014

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ISBN: 9780199655717

Highlights:

The first book to provide indepth coverage of strategic considerations in choosing the seat of an arbitration

Comparative analysis of twenty venues, allowing evaluation of every major global seat

Written by a team of expert contributors with a wealth of experience in their regions

CLASS, MASS, AND COLLECTIVE ARBITRATION IN NATIONAL AND INTERNATIONAL LAW

S.I. Strong

\$185.00

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22 October 2013

432 Pages

6 1/8 x 9 1/4 inches

ISBN: 9780199772520

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This is the first book to deal comprehensively with class, mass, and collective arbitration in a comparative context (or with any of these procedures individually).

Offers a detailed comparison of the different types of specialized rules on largescale arbitration, including some that have not yet been discussed in legal literature.

Discusses how largescale arbitration is likely to develop in new jurisdictions, either as an ad hoc mechanism or under nonspecialized arbitral rules.

Provides numerous new authorities including cases and statutes that have not previously been discussed in legal literature

HOWARD L. WIEDER, the writer of both the "Culture Corner" and "Books at the Bar" columns, is a Principal Court Attorney in State Supreme Court, in Queens County, New York.

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