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

BY CORRY L. MCFARLAND*

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

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

Congressman, Gregory W. Meeks (2004); Queens Administrative Judge, Leslie G. Leach (2005); Former U.S. Deputy Attorney General, Eric H. Holder, Jr. (2006); New York State Deputy Chief Administrative Judge for Justice Initiatives, Juanita Bing Newton (2007); New York State Lieutenant Governor, David Paterson (2008); and New York City Mayor, David M. Dinkins (2003; U.S.

Continued On Page 3

Save The Date
May 6th!
Annual Dinner & Installation

A Note on Equitable Estoppel

BY ANDREW J. SCHATKIN

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

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

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

Queens Foreclosure Conference

Sanction and Costs:
The Enemy of Advocacy .........4
Photo Corner: Opportunities For New Attorneys and Law Students ..........6-7
Culture Corner........................8
Court Notes..........................9
Queens Foreclosure Conference
Project Honor Roll .......................12

Queens County Bar Association / 90-35 One Hundred Forty Eighth Street, Jamaica, NY 11435 / (718) 291-4500
www.qcba.org
Vol. 73 / No. 6 / March 2010

What can the Bar Association do for you?

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

“Queens DA Celebrates Black History Month”

Andrew J. Schatkin

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

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

Continued On Page 3

Save The Date
May 6th!
Annual Dinner & Installation

A Note on Equitable Estoppel

BY ANDREW J. SCHATKIN

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

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

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

Queens Foreclosure Conference

Sanction and Costs:
The Enemy of Advocacy .........4
Photo Corner: Opportunities For New Attorneys and Law Students ..........6-7
Culture Corner........................8
Court Notes..........................9
Queens Foreclosure Conference
Project Honor Roll .......................12

Queens County Bar Association / 90-35 One Hundred Forty Eighth Street, Jamaica, NY 11435 / (718) 291-4500
www.qcba.org
Vol. 73 / No. 6 / March 2010

What can the Bar Association do for you?

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

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

BY CORRY L. MCFARLAND*

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

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

Continued On Page 3

Save The Date
May 6th!
Annual Dinner & Installation

A Note on Equitable Estoppel

BY ANDREW J. SCHATKIN

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

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

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

Queens Foreclosure Conference

Sanction and Costs:
The Enemy of Advocacy .........4
Photo Corner: Opportunities For New Attorneys and Law Students ..........6-7
Culture Corner........................8
Court Notes..........................9
Queens Foreclosure Conference
Project Honor Roll .......................12

Queens County Bar Association / 90-35 One Hundred Forty Eighth Street, Jamaica, NY 11435 / (718) 291-4500
www.qcba.org
Vol. 73 / No. 6 / March 2010

What can the Bar Association do for you?

Above are speakers and panelists for the Stated Meeting held on Monday, February 22, 2010, that welcomed law students and newly admitted attorneys to let them know why someone should be a member of the Queens Bar Association and what the Bar Association can do for them.
If you or someone you know is having a problem with alcohol, drugs or gambling, we can help.

To learn more, contact QCBA LAC for a confidential conversation. Confidentiality is privileged and assured under Section 499 of the Judiciary Laws as amended by Chapter 327 of the laws of 1993.

Lawyers Assistance Committee
Confidential Helpline 718 307-7828
Recently, the New York City Criminal Justice Coordinator has taken measures to eliminate or substantially curb the role of attorneys who represent indigent defendants pursuant to the Assigned Counsel Plan better known as 18B.

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

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

The special committee is comprised of criminal defense attorneys who are past presidents of the Association, current members of the Board of Managers and Officers of the Queens County Bar Association including Stephen Singer, Leslie Nizim, Chawnoo Lee, Richard Gutierrez, Joseph DelFeo, David Cohen, Gary Minet and Paul Kerson comprise the special committee. The committee has already held a meeting for 18B lawyers, as well as, with the other Bar Associations within the city of New York.

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

As always, if you have any questions or concerns please contact me. I look forward to seeing all of you at one of our many activities.

Guy R. Vitacco, Jr.
Sanctions and Costs: The Enemy of Advocacy

BY THOMAS E. LIOTTI

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

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

Rule 11

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

The Advisory Committee Notes from 1983 provided:

“The rule is not intended to chill an attorney’s enthusiasm or creativity in pursuing factual or legal theories. The court is expected to avoid using the wisdom of hindsight and should test the signer’s conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. Thus, what constitutes a reasonable cause, if any, may depend on such factors as how much time for investigation was available to the signer, whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether the signer had depended on others, e.g., counsel, or another member of the bar.”

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

1. “(b)(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;”
2. “(2) the claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;”
3. “(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery;” and
4. “(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.”

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


“The certification is that there is (or likely will be) ‘evidentiary support’ for the allegation, not that the party will prevail with respect to its contention regarding the fact. That summary judgment is rendered against a party does not necessarily mean, for purposes of this certification, that it had...”
Let us consider this everyday problem. Assume that the Plaintiff resides in Westchester County, the Defendant resides in Nassau County, the accident took place in the Bronx County, a passenger in Plaintiff’s car resides in Suffolk County and the attorney for the Plaintiff has an office in Queens County.

For purposes of this discussion let us further assume that it would be convenient for Plaintiff’s attorney to bring the action in Queens County, but from a tactical point of view it might be better to bring the case in New York County. The problem is simple: Where may the Plaintiff bring the action? Surprisingly, it is an easy answer. The attorney can bring the action in Westchester County, Nassau County, Bronx County, Queens County, Suffolk County or in New York County. At this point it’s fair to inquire as to the basis of this holding.

The answer to the problem lies in CPLR §509. This section provides “Notwithstanding any provision of this article the place of trial of an action shall be in the county designated by the Plaintiff, unless the place of trial is changed to another county by order upon motion or by consent as provided in Subdivision (B) of Rule 511.” Does section 509 really mean what it says? Can counsel arbitrarily select the venue for his client’s action? The answer is an unequivocal yes! Thus, when there is an inquiry on the summons as to the basis of venue all that Plaintiff’s counsel need do is state: CPLR §509.

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

*Editor’s Note: Paul S. Goldstein is a Past President (94-95) of the Queens County Bar Association and in private practice.
Legal/Educational/Mentoring Opportunities for New Attorneys and Law Students, Monday, February 22, 2010.”
Legal/Educational/Mentoring Opportunities for New Attorneys and Law Students, Monday, February 22, 2010.”
Aside.

Complimentary:

Estate Valuations for 706 Schedule B
- Security Transfers
- Consolidation of Assets

Upon receipt of a list of all items in the estate, we will provide a 706 Schedule B Ready Valuation within 3 business days.

We will contact transfer agents, dividend reinvestment plans, financial institutions, etc. and provide you with a list of documentation required to deposit consolidated assets to one professionally managed estate account.

Leverage your Time & Streamline your Trust and Estate Practice by Outsourcing to Us.

BY HOWARD L. WIEDER

Spring, often associated with rebirth, ironically, in the culture calendar, offers the last chance to grasp at the best cultural offerings the City has to offer before the start of summer, where musicians and artists are off vacationing or on other pursuits, until the fall begins a new cultural season.

Let me guide you to some fine offerings from mid-March to June in the City of New York. For those planning a vacation, the new THEATRE LE FORUM in FREJUS, France, offers added reason to visit the French Riviera.

THE FRICK COLLECTION

The FRICK, the famous mansion at Manhattan’s East Side, at 1 70th Street, between Madison and Fifth Avenues, continues to offer you the opportunity to discover wonderful, European, classical music artists. The Frick’s concert activity is impressive. Coordinated by Joyce Bodig, with her savvy eye for up-and-coming future, international stars of the classical music world, the Frick’s latest Sunday afternoon performances offer you a chance to see and hear great talent at inexpensive prices in an intimate setting.

I heartily recommend that you attend the Frick’s last two concerts of the season: on March 28, VOCES INTIMAE makes its New York debut. You can get more information on this wonderful Italian chamber trio (not to be confused with a choral group by the same name) at their web site at www.vocesintimae.it.

VOCES INTIMAE Sunday, March 28, 2010, 5 p.m.

Performers

Italian trio in New York debut, Luigi De Filippi, violin, Sandro Meo, cello, Riccardo Cecchetti.

Program Hummel; Trio in F Major, Op. 22; Mozart: Trio in G Major, KV 564; Beethoven; Trio in C Minor, Op. 1, No. 3

Tickets Order General Admission

Tickets Online: $30.00

Member Tickets Order Member Tickets Online: $25.00

On April 11, the celebrated HENSCHEL QUARTETT (not a typo; there are 2 “t”s in the German spelling) performs at the Frick. For more information on this acclaimed German musical group, check www.henschel-quartett.de. Henschel Quartett Sunday, April 11, 2010, 5 p.m.

Performers

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

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

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

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

Tickets Order General Admission

Tickets Online: $30.00

Member Tickets Order Member Tickets Online: $25.00

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

CARNEGIE HALL

“How do you get to Carnegie Hall?” goes the timeless inquiry. “Practice, practice, practice.” CARNEGIE HALL has historically been associated with the world’s premium and most prestigious talent.

Continued On Page 12
The Following Attorney Was Disbarred By Order Of The Appellate Division, Second Judicial Department:

Edward A. Christensen, a suspended attorney (November 10, 2009)

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

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

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

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

Ik C. Kim, admitted as Ik Cheol Kim (October 23, 2009)

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

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

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

Martin K. Lang (November 9, 2009)

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

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

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

The Following Attorney Was Publicly Censured By Order Of The Appellate Division, Second Judicial Department:

Neal M. Pomper, admitted as Neal Meredith Pomper (December 15, 2009)

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

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

Robert Michael Adelberg, a disbarred attorney (October 20, 2009)

William Thomas Daly, voluntary resignor (October 20, 2009)

Timothy S. Mc Culley, admitted as Timothy Sheldon McCulley, a suspended attorney (October 20, 2009)

Jerome O’Sullivan, a disbarred attorney (October 20, 2009)

Philip Irwin Aaron, a disbarred attorney (November 10, 2009)

Thomas Rybicki, admitted as Thomas S. Rybicki, a suspended attorney (November 10, 2009)

At The Last Three Meetings Of The Grievance Committee For the Second, Eleventh And Thirteenth Judicial Districts, The Committee Voted To

...Continued On Page 10
Sanctions and Costs: The Enemy of Advocacy

Continued From Page 4

Part 130 allows for the imposition of costs for the reimbursement of actual expenses reasonably incurred and reasonable attorney’s fees resulting from “frivolous conduct.” In addition, sanctions may also be imposed under § 130.11(d), if conduct is “frivolous.” Frivolous occurs if:

1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
3) it asserts material factual statements that are false.

Courts can await the outcome of discovery and other litigation including motions for summary judgment or the actual verdict before an initiative that must be very carefully weighed and considered. Many other options are available including deferment of the issues pending the outcome of the litigation. While Courts may question the conduct of attorneys against whom costs and sanction applications are made, they should be even more circumspect of attorneys who cavalierly or irresponsibly make such applications. Their efforts are not destructive of the litigation or attorney/client relationships but even more damaging to our system of justice as a whole.

Conclusion

Courts should be mindful that the imposition of costs and sanctions or even the threat of same cannot be used as a deleterious effect on the role of advocates and access to the courts. It can be a totally unfair, premature and preemptive strike against an attorney or litigants. It is therefore an initiative that must be very carefully weighed and considered. Many other options are available including deferment of the issues pending the outcome of the litigation. While Courts may question the conduct of attorneys against whom costs and sanction applications are made, they should be even more circumspect of attorneys who cavalierly or irresponsibly make such applications. Their efforts are not destructive of the litigation or attorney/client relationships but even more damaging to our system of justice as a whole.

—Continued On Page 11

Queens County Bar Association
Annual Dinner & Installation of Officers
May 6, 2010—Terrace on the Park
QVLP JOURNAL DRIVE-2010

Journal Sponsorships & Subscriptions

JOURNAL SPONSORSHIPS
(includes seating package, sponsorship recognition banner and gold page ad)

- Diamond—$5,000
- Platinum—$3,500
- Gold—$2,500

JOURNAL SUBSCRIPTIONS

- $1,750 Back Cover
- $1,000 Gold Page
- $550 Full Page
- $250 Quarter Page
- $1,250 Business Card

Rates Frozen At 2007 Level!

Please attach camera ready or typed copy to this form and return to:
Queens Volunteer Lawyers Project, Inc.
90-35 148th Street, Jamaica, N.Y. 11435
(718) 291-4500 FAX (718) 657-1789
Or e-mail copy to MWeliky@QCBA.org—COPY DEADLINE APRIL 26th

Please make checks payable to QUEENS VOLUNTEER LAWYERS PROJECT
QVLP is a 501(c)(3) charitable organization - sponsorships & subscriptions are tax deductible

Sponsorships and subscriptions may be charged:

- Visa - MC - AMEX - Discover

Amount $__________________
Account #__________________
Exp. Date__________________
Signature__________________

(please return to above address)
Court Notes

Continued From Page 9
Sanction Attorneys For The Following Conduct:

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

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

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

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

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

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

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

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

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

Failing to satisfy an outstanding financial obligation to the County Clerk for seven (7) months; failing to apprise OCA, and the Court in which an action had just closed although he or she neither met the closing although he or she neither met the

OCA or appeared at the closing

Neglecting a legal matter; failing to maintain a contemporaneous ledger for deposits into and withdrawals from his or her escrow account; and commingling legal fees with clients’ funds in said account

Failing to safeguard client funds; failing to maintain an adequate bookkeeping system, and failing to cooperate with the Grievance Committee

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

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

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

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

Accepting a fee to represent a client at a closing although he or she neither met the client nor appeared at the closing

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

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

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

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

Sanctions and Costs: The Enemy of Advocacy

Continued From Page 10

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


[3] Experience shows that in practice Rule 11 has not been effective in deterring abuses. See 6 Wright & Milley, Federal Practice and Procedure: Civil § 1334 (1971). There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action; (2) the standard of conduct expected of attorneys who sign pleadings and motions, and (3) the range of available and appropriate sanctions. See Rodes, Ripple & Mooney, Sanctions Imposable For Violations of the Federal Rules of Civil Procedure 86-65, Federal Judicial Center (1981).
QUEENS FORECLOSURE CONFERENCE PROJECT HONOR ROLL

ATTORNEYS PROVIDING FREE LEGAL ASSISTANCE TO QUEENS HOMEOWNERS FACING FORECLOSURE*

Khalid O. Abbasi
Salvatore J. Acquista
Richard D. Ades
Emmanuella M. Agwu
Theresa E. Agunwa
Robert J. Aiello
Regina Alberty
Camille T. Allen
John M. Allen
Archibong Archibong
Edwin Arnes
M. David Bach
Jeffrey Benjamin
Nivea Castro
Allan G. Chambers
Martin W. Chow
Jonathan Coats
Jane Conlon-Muller
Ira G. Cooper
Stephen S. Danetz
Ramesh Desai
Gary C. Di Leonardo
David Eliot Duhan
Luis Echeverria
Zamirah El-Amin
Joseph L. Fox
Chana L. Frid
Hilary Gingold
Morton Gitter
Richard N. Golden
Stephanie S. Goldstone
Francisco Gonzalez
Madhureema Gupta
Judy Moses
Lisa Jaddian
Andrew J. Jaloza
Rose E. Kalachman
Zhanne Kandel
Mandeep Kaur
James A. Kiernan
Jeeyoung Kim
Fearonce G. La Lande
John J. Lawless
Thomas J. Lavin
Marc C. Leavitt
M. Joseph Levin
Irene Lu
Naor Yair Maman
Irène M. Mattone
Thomas McCloskey
Marc J. Monte
Gabriel R. Munson
Irene Nwanyanwu
Dena Orenstein
Steven S. Orlove
Nicole A. Palumbo
Susan E. Paulovich
Patrick J. Reilly
James R. Reiser
Jay A. Sanchez
Sukhbir Singh
Lynne Strokin
Marvin J. Small
Looknauth Rajesh Sobhai
Stacia Stein
Soma Sutanla Syed
Easta Tanebaum
Danial Vakili
Basilos Vassos
Jason S. Vishnich
Stephen S. Weintraub
Barry M. Weiss
Steven Wimpfheimer
Charles Zolot
*as of 2/25/10

Le Forum Theater In Frejus, France

Carnegie Hall offers a tempting concert calendar of Carnegie Hall , where established classical music artists and orchestras perform. In February’s column, I included an expanded listing of the wonderful concerts offered by the GREAT PERFORMERS SERIES of LINCOLN CENTER. For further calendar details and ticket information, please go to www.lincolncenter.org and check out the GREAT PERFORMERS SERIES. You can save by subscribing to next year’s 2010-2011 GREAT PERFORMERS SEASON by going to www.lincolncenter.org.

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

The 92nd Street Y

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

LE “FORUM” in FREJUS on the FRENCH RIVIERA

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

Famous towns and cities on the French Riviera are also known for their cultural appeal, not only for their beauty. Nice has wonderful museums. Cannes is famous for its prestigious annual film festival in late May. Golfe Juan attracts jazz lovers. Menton, the French town right before the border to Italy, is a resort mecca for classical music. Now, with the construction of a beautiful and architecturally impressive theater called LE “FORUM,” the twin, adjoining towns of FREJUS and SAINT RAPHAEL, situated between St. Tropez and Cannes, offer further reasons to visit them year round.

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

FREJUS not only offers sandy beaches, but is located within minutes from the Esterel forests and mountains. The ESTEREL MOUNTAINS and forests of FREJUS offer wonderful trails for hikers, including MONT VINAIGRE. Within one hour by car from Frejus, you can be at the Parc du Verdon, the gateway for the breathtaking and beautiful Gorges du Verdon, known as the French Grand Canyon, Sainte Croix Lake, and Péry-Serre. These twin, adjoining towns and villages as Comps sur Artuby, Mons, Castellane, and Moustiers St. Marie.

Visitors to Frejus might go the main center, Centrale Ville, to visit the main town’s winding streets. Other shops and restaurants are located around the marina and houses that comprise PORT FREJUS.

Golfers might enjoy visiting several spectacular golf resort hotels in SAINT RAPHAEL. Saint Raphael’s casino and great cathedral are only a block apart, for those who would like to hedge their bets.

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

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

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

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

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

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