House Of Delegates Report

BY DAVID L. COHEN

As the Vice-President for the Eleventh Judicial District, I serve on the Executive Committee of the State Bar and on the House of Delegates. In that capacity I attended the Executive Committee Meeting on April 6th and the House Meeting on the April 12th. Other members of the House of Delegates are Arthur Terranova, Guy Vitacco, Jr., Leslie Nizin, Chanwoo Lee, Catherine Lomuscio, and Richard Gutierrez.

The New York State Bar Association held its House of Delegates Meeting in Albany on April 10, 2010. I am providing a copy of the Agenda so that anyone who has an interest in a specific item can get for further information, or to ask me a question. Please contact me at dcccrlaw@aol.com.

Our Association has been actively involved with other local bar associations in contesting the Mayor’s attempts to restrict the use of assigned counsel to represent indigent defendants in criminal matters. As a result of our efforts, The Queens Bar Bulletin

A Note on Equitable Tolling

BY ANDREW J. SCHATKIN

This article proposes to examine the conditions and criteria when the procedural requirement of filing a Title VII Claim, pursuant to 40 USC Sec. 2000(e) et seq. 1994 and the Age Discrimination Employment Act, 29 U.S.C. Sec. 621 et seq. (1994).

On Appeal, Sherlock contended that the District Court erred in finding her Title VII and ADEA Claims time-barred. The Court concluded that the Court erred in so ruling as a matter of law. The Sherlock Court, however, articulated that in order to be timely a claim under Title VII or the ADEA must be filed within 90 days of the complaint’s receipt of a Right to Sue letter citing Baldwin County Welcome Center v. Brown and Cornell v. Robinson.

This rule was similarly articulated, as a set rule of law, in Johnson v. Al Tech Specialties Steel Corp. In that case, the United States Court of Appeals of the Second Circuit held that the 90-day time limit to file a Title VII Federal claim was not a jurisdictional predicate, but a limitation period subject to Equitable Tolling, citing Zipes v. Transworld Airlines, Inc. et seq. 1994, which held that the requirement that the charges under 42 U.S.C. Sec. 2000(e) et seq. 1994 must be filed with the EEOC within 180 days of the allegedly discriminatory practice, is not a jurisdictional predicate. In so doing, the Zipes Court referred to the time limit at issue in Johnson, the 90-day rule of 42 U.S.C. Sec. 2000(e)-5(h), as “a related Title VII provi- sion.” It is significant, that the Johnson Court noted that the remedial purpose of the Civil Rights Legislation as a whole would be defeated... Continued On Page 11

Note*: This article had originally appeared in the March 2010 Bulletin as “A Note on Equitable Estoppel,” but was not complete.
**THE DOCKET . . .**

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

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

### 2010 Spring/Summer CLE Seminar & Event Listing

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 2010</td>
<td>Wednesday, May 26</td>
<td>Stress &amp; Sanity in Your Everyday Practice - Pt II</td>
</tr>
<tr>
<td></td>
<td>Monday, May 31</td>
<td>Memorial Day, Office Closed</td>
</tr>
<tr>
<td>June 2010</td>
<td>Tuesday, June 8</td>
<td>Juvenile Justice Committee Seminar</td>
</tr>
<tr>
<td></td>
<td>Wednesday, June 16</td>
<td>MHL Article 81/Guardianship Training (Lay Guardians Only) 2:30 - 5:00 p.m.</td>
</tr>
<tr>
<td></td>
<td>Friday, June 18</td>
<td>Surrogate’s Court Committee Seminar</td>
</tr>
<tr>
<td>September</td>
<td>Monday, September 6</td>
<td>Labor Day, Office Closed</td>
</tr>
<tr>
<td></td>
<td>Monday, September 13</td>
<td>Golf Outing, Garden City Country Club</td>
</tr>
</tbody>
</table>

**CLE Dates to be Announced**

- Elder Law
- Labor Law
- Landlord/Tenant Law
- Professional Ethics

### New Members

<table>
<thead>
<tr>
<th>Name</th>
<th>Area of Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stephanie Elaine Ali</td>
<td></td>
</tr>
<tr>
<td>Andrea A. Amoa</td>
<td></td>
</tr>
<tr>
<td>Karyn Eve Bulow</td>
<td></td>
</tr>
<tr>
<td>Sally Butler</td>
<td></td>
</tr>
<tr>
<td>Ronald C. Cavglia</td>
<td></td>
</tr>
<tr>
<td>Tim Nai Anne Cheng</td>
<td></td>
</tr>
<tr>
<td>Ryan Lee Darshan</td>
<td></td>
</tr>
<tr>
<td>Jennifer Marie Frankola</td>
<td></td>
</tr>
<tr>
<td>Jeff Henle</td>
<td></td>
</tr>
<tr>
<td>Glenda Kennedy</td>
<td></td>
</tr>
<tr>
<td>Tracy A. McAllister</td>
<td></td>
</tr>
<tr>
<td>Brandon C. Mason</td>
<td></td>
</tr>
<tr>
<td>Kristen Anna Melik</td>
<td></td>
</tr>
<tr>
<td>George Papas</td>
<td></td>
</tr>
<tr>
<td>Elizabeth Powers</td>
<td></td>
</tr>
<tr>
<td>Rafael Raffaelli, III</td>
<td></td>
</tr>
<tr>
<td>Patricia Rocourt</td>
<td></td>
</tr>
<tr>
<td>Daniel Alexander Rudolf</td>
<td></td>
</tr>
<tr>
<td>Sadatu Salamis- Ly</td>
<td></td>
</tr>
<tr>
<td>Oyakhiomu</td>
<td></td>
</tr>
<tr>
<td>Luca L. Stone</td>
<td></td>
</tr>
<tr>
<td>David Storobin</td>
<td></td>
</tr>
<tr>
<td>Carly Beth Wiskoff</td>
<td></td>
</tr>
<tr>
<td>Xianonan Wu</td>
<td></td>
</tr>
</tbody>
</table>

### Necrology

<table>
<thead>
<tr>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Herbert S. Cohen</td>
</tr>
<tr>
<td>George E. Moss</td>
</tr>
<tr>
<td>David E. Bryan, Jr.</td>
</tr>
</tbody>
</table>

---

**Editor’s Message**

In that this is the final paper for the year, I wish to publicly thank all of those parties who have made my job an easy one, our many fine contributors and I wish to especially like to recognize Janice Ruiz whose help is invaluable. I wish the incoming President, Officers and Directors a very fruitful year and to all our readers a healthy and happy summer.

Thanks,
Les Nizin

---

**Electronic Filing In Surrogate’s Court**

Notice is given that Electronic Filing in the Surrogate’s Court, Queens County commences on June 7, 2010. A Continuing Legal Education Program detailing the procedures and mechanics of Electronic Filing shall be conducted on June 18, 2010. Future information to be forwarded by the Bar Association.

---

**2009-2010 Officers and Board of Managers of the Queens County Bar Association**

- **President** - Guy R. Vitacco, Jr.
- **President-Elect** - Chanwoo Lee
- **Vice President** - Richard Michael Gutierrez
- **Secretary** - Joseph F. DeFelice
- **Treasurer** - Joseph John Risi, Jr.

### Class of 2010

- Gregory J. Brown
- Joseph Caroli, III
- John Robert Dietz
- Mona Haas
- Gregory J. Newman

### Class of 2011

- David L. Cohen
- Paul E. Kerson
- Zenith T. Taylor
- Timothy B. Ronntrre
- Clifford M. Welden

### Class of 2012

- Jennifer M. Gilroy
- Richard Harris Lazarus
- Gary Francis Miret
- Steven S. Orlow
- James R. Pierret

---

**Arthur N. Terranova . . . Executive Director**

**QUEENS BAR BULLETIN**

**EDITOR - LESLIE S. NIZIN**

Associate Editors - Paul E. Kerson and Michael Goldsmith

Publisher: Long Islander Newspapers, LLC.
under the auspices of the Queens County Bar Association.
Queens Bar Bulletin is published monthly from October to May.
All rights reserved. Material in this publication may not be stored or reproduced in any form without permission ©2010

The Queens County Bar Association, Advertising Offices, Long Islander Newspapers, 1-49 Main Street, Huntington, New York (631) 427-7000

**Send letters and editorial copy to:**
Queens Bar Bulletin, 90-35 148th Street, Jamaica, New York 11435

Editor’s Note: Articles appearing in the Queens Bar Bulletin represent the views of the respective authors and do not necessarily carry the endorsement of the Association, the Board of Managers, or the Editorial Board of the Queens Bar Bulletin.

---

**Queens Bar Bulletin** (USPS Number: 0048-6302) is published monthly except June, July, August and September by Long Islander Newspapers, LLC., 1-49 Main Street, Huntington, NY 11743, under the auspices of the Queens County Bar Association. Entered as periodical postage paid at the Post Office at Jamaica, New York and additional mailing offices under the Act of Congress. Postmaster send address changes to the Queens County Bar Association, 90-35 148th Street, Jamaica, NY 11435.
It’s hard to believe that this is my last President’s Message. My term as President has gone by fast. I heard first like a long time ago. Our Executive Director, Arthur Terranova, for all his guidance, support and friendship. I truly believe we made a good team. Arthur is well known throughout the State of New York and the country as one of the premier Executive Directors of any Bar Association. We are truly lucky to have him. Thank you, Arthur.

Also, Arthur is backed by a great staff who have been so helpful all year; Janice, Sasha, Shakesma and Roger our building managers.

I would like to congratulate Chawoon Lee, the incoming President; the first ever Asian-American Bar President in Queens County. I know she will do a fine job. I will be there for any advice and to wish her a good year. Good luck Chawoon.

Chawoon is backed by an impressive array of Officers in the new administration. The skill of Russ, (and his very able co-counsel, Christopher Renfroe) during the penalty phase saved Gordon from a death sentence. On January 11, 2005, the People dismissed a murder indictment against Jorge Hurtado because his lawyer was able to convince the People that his client’s guilt could never be proven beyond a reasonable doubt. Once again, that lawyer was Russ Morea.

Remarkably, also on January 11, 2005, the attorney for Raeburn Dyer won dismissal of his client’s murder indictment under constitutional speedy trial grounds in a case that had been pending for over two years in a court where he was convicted of Robbery in the First Degree.

On December 21, 1978, the New York State Court of Appeals unanimously reversed the conviction of the victim, thereby reversing the argument of his appellate lawyer that once judicial proceedings had commenced, the defendant’s right to counsel indelibly attached. As a matter of both state and federal constitutional law, this right could not be waived in absence of counsel and it applied to a lineup as well as an interrogation. This is the law of this State. The case is People v. Settles, 46 NY2d 154.

The appellate lawyer was Russell Morea.

In the early 1980’s he won an acquittal in the “Colombian hit man” case when no one gave him a chance to win. His cross-examination and summation were brilliant.

In 1994, Carmine Esposito was profiled on “America’s Most Wanted.” Indicted and tried for Second Degree Murder in Queens, he was acquitted by a jury. It may be the only known acquittal of an “America’s Most Wanted” subject.

His trial highlighted the genius of Russ Morea.

In 1997, Carlos Zambrano was released after 2 years in jail, having wrongfully been accused of a murder in Queens. The real killer had been convicted of the murder in Texas. Zambrano’s lawyer, through dogged investigation and persuasion convinced the Queens District Attorney’s Office that they had the wrong man. That lawyer was Russ Morea.

In 1998, James Gordon was tried for first degree murder in a Queens homicide. It was Queens’ first death penalty trial in decades following restoration of the death penalty. The skill of Russ, (and his very able co-counsel, Christopher Renfroe) during the penalty phase saved Gordon from a death sentence.

On January 11, 2005, the People dismissed a murder indictment against Jorge Hurtado because his lawyer was able to convince the People that his client’s guilt could never be proven beyond a reasonable doubt. Once again, that lawyer was Russ Morea.

Russ Morea's light will continue to shine among his colleagues for as long as we have clients who need justice and advocates to fight for them. He will continue to be an inspiration to us all.

[James P. Harding, Esq. is a partner in Harding & Moore, Esqs. in Kew Gardens, New York. He wishes to thank the following for their invaluable assistance: Grace Morea-Tinto, Esq., Private Investigator Artie Grix, ADA’s Charles Testagrossa, Jennifer Naiburg and Peter McCormack, and many members of the defense bar.]
Pictured below is a residential and commercial re-development going up on Parsons Boulevard in Jamaica. Do you know what the building was originally used for? See page 8 for the answer.

Hilary Gingold Winner of NYSBA 2010 President’s Pro Bono Service Award for the 11th J.D.

BY CORRY L. MCFARLAND*

On Law Day, May 3rd, 2010, Hilary Gingold will be presented with the New York State Bar Association (NYSBA) President’s Pro Bono Service Award for the 11th Judicial District in recognition of her exemplary volunteer work with the Queens Volunteer Lawyers Project (QVLP) Foreclosure Conference Project (the Project). For the past twenty years the NYSBA has given this award in recognition of outstanding pro bono service by members of the legal community and in recognition of the importance of such service in providing equal access to the justice system for all New Yorkers irrespective of income. The award ceremony will take place in Albany at the State Bar Center immediately following the New York Court of Appeals’ Law Day Celebration. Ms. Gingold first became affiliated with the QVLP in the summer of 2009 through NYC Service, a city wide volunteer initiative headed by the Bloomberg Administration. From the inception of

(Continued on page 8)

QUEENS COURT FACTOID QUIZ

BY MARK WELIKY*

Pictured below is a residential and commercial re-development going up on Parsons Boulevard in Jamaica. Do you know what the building was originally used for? See page 8 for the answer.

EMPLOYMENT & LABOR LAW

STEPHEN D. HANS & ASSOCIATES P.C.

Counsel to the Profession

- over three decades

Chairperson - Labor Relations Committee - Queens County Bar Association of the Bar - Employment Law Panel Member.

45-18 Court Square, Suite 403, Long Island City, New York 11101
Telephone 718-275-6700 Fax 718-275-6704
E-mail: shans@hansassociates.com
The New York State Office of Court Administration (OCA) has announced a new program to encourage retired attorneys to volunteer for pro bono programs. OCA amended its attorney registration rules to create a new status, “Attorney Emeritus,” which applies to lawyers retired from the practice of law who agree to provide at least 30 hours of pro bono service annually. This pro bono service can be provided through a qualified legal service provider such as the Queens County Bar Association Volunteer Lawyers Project (QVLP).

Annually there are more than two million unrepresented New Yorkers who appear in our courts. Many of them are low-income and vulnerable people in need of legal assistance. The new “Attorney Emeritus” program seeks to utilize the talents and experience of retired lawyers who are at least 55 years old, are attorneys in good standing and have practiced for a minimum of 10 years.

Volunteers for this program are exempt from paying the $350 biennial attorney registration fee and there are no CLE requirements beyond any free training which may be necessary to provide pro bono services. Although prior experience is helpful, it is not required since training and supervision will be provided by QVLP. Attorney Emeritus volunteers are covered by malpractice insurance coverage provided through QVLP for pro bono service referrals. Volunteers will have several choices on the type of pro bono assistance they will provide. For instance they may give limited-scope representation at a foreclosure settlement conference, or at the CLARO-Queens Consumer Debt Clinic. Volunteers may also choose to provide full representation for matters such as uncontested divorces or the drafting and execution of wills. QVLP will screen all applicants for pro bono assistance as to the subject matter of their case and their financial eligibility for pro bono services.

If you are interested in enrolling in the Attorney Emeritus program you need not wait for your registration materials. You may enroll anytime by calling (877) 800-0396 or by going to www.nycourts.gov and completing a short online form. For more information about this program you may call the number listed above or contact volunteerattorneys@nycourts.gov or contact Mark Weliky, QCBA Pro Bono Coordinator, (718) 291-4500 ext. 225, MWeliky@QCBA.org.
Annual Judiciary Night – Monday, April 19, 2010

Photos by Walter Karling
PHOTO CORNER

Annual Judiciary Night – Monday, April 19, 2010

Hon. Jeffrey Lebowitz, Hon. Lee Mayersohn and Hon. Charles Lopresto


Hon. Lawrence Cullen, Ira Futterman and Hon. Terrence O’Connor

Hon. Nicholas Garaufis, Guest Speaker and Judge of the US District Court, Eastern District of New York


Jay Abrahams, Sue Borko, Elly Vreeburg, Hon. Darrell Gavrin and Hon. Terrence O’Connor

Roberta Chambers, Jessica Sin, Hon. Carmen Velasquez, Camila Popin and Sandy Munoz

Paul Goldblum, George Nashak and Ted Gorycki


Wally Leinheirdt, Hon. Terry O’Connor, Hon. Dan Lewis and Gary Darche

Photos by Walter Karling
Queens Bar Associations Sponsor The Next Generation!

Queens Family Court Take Your Children to Work Day

On April 22, 2010, The Queens County Bar Association and the Queens County Women’s Bar Association sponsored the annual Queens Family Court Take Your Children to Work Day. The event brought more than forty (40) children of Family Court practitioners to the courtroom to see the work that members of their family do for the children and the families of Queens County every day!

The day began by offering each child an opportunity to have his/her picture taken while dressed in either a judge’s robe or a court officer’s uniform. Thanks to the generosity of the Bar associations and the hard work of Family Court lawyers and staff, the children enjoyed a wonderful day starting with a breakfast of juice and donuts as they had fun testing their knowledge while playing an interactive court trivia game. They also participated as the jury in a mock trial of Dracu Mufife who was accused of stealing Harry Potter’s broomstick. The Honorable Ronald Richter presided over the trial answering questions from many interested children about his role in family court as well as nuances of the case. The children were given tours of the courthouse during which they visited secure areas and had candid discussions with court officers, corrections and juvenile justice personnel regarding the difficulties faced by those who find themselves in trouble and in Family Court. They returned to a pizza lunch where they met lawyers and court personnel who spoke with the children about their roles and again, engaged them in a lively dialogue! The Honorable Pamela Jackman Brown also spoke with the group and even joined them in a rendition of Taylor Swift’s “You belong with Me.”

If you said Queens Family Court you’re WRONG! This building was first used as the central branch of the Queens Library. The original Queens Central Library at Parsons Boulevard and 169th Avenue in Jamaica was opened in 1930 and was expanded with Works Progress Administration (WPA) funds in 1941. It was a fine four-story Renaissance Revival building. In spite of its elegance, it was too small for the growing demand for library space and it was replaced by a new more spacious facility in 1966, located at 89-11 Merrick Boulevard in Jamaica.

Of course, many of us know that this building was Queens Family Court for many years until the new courthouse opened on Jamaica Avenue in 2003. I think those of us who had to appear at the “old Family Court” would agree that whatever shortcomings the building had as a library, it certainly wasn’t meant to be a courthouse. However, the façade of the building survives as a historical landmark which is being restored as part of the revitalization of the downtown Jamaica area.

Each child received a certificate of participation and books, pencils and informational material that had been donated by the Office of Court Administration, the New York State Court Officers Association, the New York State Court Clerks Association, and the New York City Law Department, Office of the Corporation Counsel.

The children were truly excited to learn of the Family Court process and at the end of the day, there were certainly some future judges, lawyers, officers and members of the Queens Bar Association in the audience!

continued from page 4

Ms. Gingold’s service with the Project it was clear that she would be of immeasurable value to the program. In less than a year Ms. Gingold has accepted over 14 pro bono conference cases, well above and beyond her initial pro bono commitment to the Project. Further, without Ms. Gingold’s dedicated service and willingness to take on conferences at a moment’s notice the Project would not have been able to represent homeowners at all of the conferences distributed to all Project volunteers.

Hilary Gingold Winner of NYSBA 2010 President’s Pro Bono Service Award for the 11th J.D.

Ms. Gingold’s service with the Project it was clear that she would be of immeasurable value to the program. In less than a year Ms. Gingold has accepted over 14 pro bono conference cases, well above and beyond her initial pro bono commitment to the Project. Further, without Ms. Gingold’s dedicated service and willingness to take on conferences at a moment’s notice the Project would not have been able to represent homeowners at all of the conferences distributed to all Project volunteers.

In addition, Ms. Gingold has furthered the effectiveness of the Project by mentoring other pro bono volunteers and by participating as a panelist at the Project’s March 2, 2010 CLE, “Representing Homeowners at Foreclosure Conferences.” The “Foreclosure Conference Checklist,” that she created as a guide to navigating the foreclosure conference process and presented at the March 2nd CLE is now a part of the conference case assignment package distributed to all Project volunteers.

Hilary Gingold is an experienced real estate attorney and has represented developers, lenders and individuals in a variety of real estate transactions. In addition to volunteering with the Project, she is also an active member and volunteer with the Nassau County Bar Association and with the CLARO Queens Pro Se Debtor Assistance Clinic also offered by QVLP.

Ms. Gingold is a graduate of St. John’s University School of Law where she was a published member of the Law Review. She is a magna cum laude graduate of the Adelphi University School of Social Work with a B.S.W.

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

Court Factoid Quiz Answer from page 4

If you said Queens Family Court you’re WRONG! This building was first used as the central branch of the Queens Library. The original Queens Central Library at Parsons Boulevard and 169th Avenue in Jamaica was opened in 1930 and was expanded with Works Progress Administration (WPA) funds in 1941. It was a fine four-story Renaissance Revival building. In spite of its elegance, it was too small for the growing demand for library space and it was replaced by a new more spacious facility in 1966, located at 89-11 Merrick Boulevard in Jamaica.

Of course, many of us know that this building was Queens Family Court for many years until the new courthouse opened on Jamaica Avenue in 2003. I think those of us who had to appear at the “old Family Court” would agree that whatever shortcomings the building had as a library, it certainly wasn’t meant to be a courthouse. However, the façade of the building survives as a historical landmark which is being restored as part of the revitalization of the downtown Jamaica area.

* Mark Welisky, is the Pro Bono Coordinator for the Queens County Bar Association
QVLP Holds CLE on New Legislation Governing Mandatory Settlement Conferences

BY CORRY L. McFARLAND*

On March 2, 2010 the Queens Volunteer Lawyers Project (QVLP) held a CLE Seminar entitled, “Representing Homeowners at Mandatory Settlement Conferences.” The free, three hour seminar was conducted in the auditorium of the Queens County Bar Association and boasted an audience of 60 plus attendees comprised of both new and old volunteers of the QVLP’s Foreclosure Conference Project (the Project).

The primary purpose of the seminar was to review the new Foreclosure Prevention, Tenant Protection and Property Maintenance Act (the Act) adopted by Governor Patterson in December of 2009 and effective February of this year. The Act builds on the previous Foreclosure Prevention and Responsible Lending Act of 2008 with the most pertinent change being the expansion of mandatory settlement conferences to all foreclosure filings where the property at issue is the primary residence of the defendant homeowner, no longer limiting conferences to only those foreclosure filings where the mortgage is deemed subprime or non-traditional in accordance with the definitions set forth in the 2008 legislation.

In keeping with the Project’s tradition of partnering with sister organizations in providing training to pro bono attorneys in order to combat the foreclosure crisis, the seminar was held in conjunction with various state and local legal services providers. Kirsten Keefe of the Empire Justice Center gave an overview of the 2009 Act and the Home Affordable Modification Program (HAMP). Ms. Keefe was followed by Hilary Gingold, who shared her experiences as a current pro bono volunteer with the Project as well as a conference preparation checklist that she created which is now a part of the assignment package distributed to all Project volunteers who accept conferences. Hilary Bauer (Legal Services for the Elderly in Queens-JASA), Sumani Lanka (Queens Legal Aid Society-Civil Practice Division), Sara Manaugh (South Brooklyn Legal Services), Donna Daugherty (Legal Services for the Elderly in Queens-JASA), and Tracy Catapano-Fox (Law Secretary to Justice Jeremy S. Weinstein, Queens Supreme Court) then made a joint presentation regarding the nuts and bolts of settlement conferences in Brooklyn and Queens including how best to advocate for homeowners and how to deal with various issues arising out of the conference process. The evening ended with a panel discussion and Q&A period conducted by the evening’s moderator April Newbauer (Queens Legal Aid Society-Civil Practice Division).

The evening was a great success for the Project, adding just over thirty new volunteers to the Project’s pro bono foreclosure settlement conference panel as well as referring several new volunteers to the Brooklyn Volunteer Lawyers Project’s Foreclosure Prevention Project for those in attendance naming Brooklyn as their volunteer borough of choice. Additional mandatory settlement conference trainings are being planned for the fall of this year. For more information or to volunteer for the Queens Foreclosure Conference Project contact Corry L. McFarland, Foreclosure Prevention Coordinator at (718) 291-4500 ext. 302.

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

On a Personal Note

Congratulations to Justice Allen Beldock on being the eldest judge still working for the NYC Courts and Happy Belated 91st Birthday! Speedy recovery to Justice Markey and Howard Wieder.

Congratulations and sympathies go out to David Cohen. Sympathies for his mother, Florence, who passed away recently. Congratulations for the birth of his twin grandsons last month to his daughter, Jeri.
**Honorable Joan O’Dwyer**

If one is asked

“Why, oh why’re”

We honoring

Judge Joan O’Dwyer

The answer is clear

One can plainly see

She’s a remarkable Judge

And a great referee

Who broke all records

Of judicial longevity

And thus I can hardly

Resort to brevity

In praising this charming lady

Of wisdom and grace,

Who set the “bar” high

In her 50 year race.

But Joan O’Dwyer’s life

Is so much more

Than just a Judge

With an open door,

She’s raised a family.

Thus we share her pride

For Shane, Liam and Kelly

Match her – stride for stride.

And those 5 little grandkids

Upon whom she dotes

She’s earned their votes

Now we must not forget

The love of her life

Judge Tony Savarese

Made them judicial man and wife.

I remember Joan

In JP One

First to sit in that Part

(When trying cases was still fun).

Well, Your Honor

A half century’s gone by

You’ve earned your rest

So Godspeed – but not goodbye,

Joan O’Dwyer –

Though 50 years more may pass

There will never be another

Lass with your class!

Robert E. Sparrow
April 16, 2010

---

**MORE LAW OFFICE ANECDOTES**

(1) I went to court

With a trembling client

Fearing jail, he promised

To be compliant

With Judicial directives

But the courtroom displayed a lighted sign

“Is Judge Charging”

“A good Judge,” he asked, in a whine

But I’m innocent –

I never confessed

I’m even willing to take

A “lie detector” test.

And, if all else fails

Rather than scram

He’d be willing to be

“Reprimanded to a program.”

(2) I had a client

From another state

Who vociferously tormented

His unfortunate mate,

But he said the charges

Were purely fiction

And thus we must contest

Any “extradition” –

But he couldn’t pay

His funds were stagnant

And he bluntly asserted

That he was “indignant.”

(3) George was arrested

He never hesitated

He mumbled “I was charged

With drunken while intoxicated.”

And when he confessed

At the police station

He proclaimed his statement

“Is to the best of my recantation.”

Robert E. Sparrow
April 2010

*All of these malaprops actually occurred during the course of a long and interesting career*
Equitable Tolling

Continued From Page 1

if the aggrieved plaintiffs were absolutely barred from pursuing judicial remedies by reason of excusable failure to meet the time requirement. The Johnson Court concluded that the 90-day time limit may be equitably tolled.

This caveat in Johnson brings us to the doctrine of Equitable Tolling. It may be said, as a general rule, that Title VII time limitations, such as the 180-day rule are not jurisdictional, but are analogous to a statute of limitations, and are thus subject to equitable modifications, such as tolling. See Zipes v. Transworld Airlines, Inc. 14 Osbeyer v. Levin, Fishbein, Sedman & Berman, 2 Walker v. St. Anthony's Medical Center, 2 and Bunt v. Houston Independent School District 2.

The question arises as to how the doctrine of Equitable Tolling may be understood. In Jordan v. Smith Klene Beechem, Inc. 3 In that case, the Pennsylvania District Court held that the doctrine of Equitable Tolling is appropriately used to extend the deadline of filing Employment Discrimination actions in three particular situations. Where the defendant has actively misled the plaintiff, the plaintiff did not know all the facts or was unable to discover them. See Oshiver v. Levin, Fishbein, Sedman & Berman, 4 Walker v. St. Anthony's Medical Center, 5 and Bunt v. Houston Independent School District 6.

On the other hand, it is the law that the pendency of arbitration or grievance procedures pursuant to a Collective Bargaining Agreement does not toll the running of the period for filing employment discrimination charges with administrative agency or waive the filing requirements, even if the Collective Bargaining Agreement was not valid. See Brown v. Crowe, 7 The Tennessee Circuit Court held that if an agreement existed with a state agency more than 240 days after his discharge and where, but for the erroneous annotation of the state agency, timely initial procedures would have been taken place under the terms of the work-share agreement with the EEOC and the state agency would therefore have terminated its investigation within 30 days, so that the filing with the EEOC could be timely. Similarly, in Berkoski v. Ashland Regional Medical Center, 8 the Pennsylvania District Court held that Equitable Tolling applied if the employment discrimination charge was not properly filed with the EEOC but was required, where the employee submitted a verified complaint to the State Civil Rights Agency with the statement it was to be referred to EEOC, but the state agency failed to timely refer it.

Another turn on the road of Equitable Tolling is where the state agency gave incorrect employer advice or misrepresentations. See Stutz v. Depository Trust Co., 9 the United States District Court for the Southern District of New York held that where the action of the employee claiming retaliatory discharge did not bring the claim before the Commission because of incorrect advice from the Department of Human Resources representative and where the employee was not prejudiced as it was aware of the claim of retaliatory discharge, the 300-day time period for filing a claim with the Commission.

There is a similar rule that misleading information or misrepresentations provided by the EEOC to the employee can be a basis for Equitable Tolling. Thus, in Burton v. U.S. Postal Service, 10 the United States Court of Appeals for the Eighth Circuit held that misleading information provided to the employee by the EEOC was a basis for Equitable Tolling of the Title VII requirement that the employee file a timely EEOC charge. The Court held that the EEOC misled the employee into reasonably believing that submitting an unverified charge information form within fifteen days of the 180-day filing deadline, with subsequent verification, would meet filing requirements. See also Tsai v. Rockefeller University. 11

There is also a sub-rule on Equitable Tolling that incorrect employer advice or misrepresentations can toll the 90-day time limit for filing a claim with the EEOC. See Osbeyer v. Levin, Fishbein, Sedman & Berman, 12 and also Pearson v. Macon-Bibb County Hospital Authority, 13 Stabler v. Board of Cooper Education Services of Rockland Co., 14 Lawton v. State Mutual Life Ins. Co. of America, 15 Burell v. City of New York, 16.

Therefore, as a general rule that, income way, exceptional circumstances must be present. See also Jacobs v. SUNY at Buffalo School of Medicine. 17

CONCLUSION

This article which has presented an overview of the analytical framework of the doctrine of Equitable Tolling reveals a general rule that a showing of exceptional circumstances must be made with a burden of proof that, in this case, overrides basic rule and requirement. It is hoped that this article will provide the practicing lawyer with a guide through this detailed and complex area of law. 18

Andrew J. Schaitkin practices law in Jericho, New York and is the author of over 150 legal articles and the contributor to five books. After graduating with his law degree, he has a Dip. In International Human Rights from Strasbourg, France and a Certificate in International Law from the Hague, Netherlands. He is also listed in Who’s Who in America.

1 84 F. 3d 522 (2d Cir. 1996)
2 466 US 147, 104 S. Ct. 1723, 80 L. Ed.2d 196 (1994)
3 231 F. 2d 694 (2d Cir. 1994)
4 731F. 2d 143 (2nd Cir. 1984)
5 14 686 F. 2d 877 (11th Cir. 1982)
6 7 38 F. 3d 1380 (3rd Cir. 1994)
7 9 236 F. Supp.2d 703 (S.D. Tex 2002)
8 10 Id. 102 (E.D. Pa. 1997)
9 11 934 F. Supp. 1210 (D. Colo. 1996)
11 13 6 Id.
12 14 486 F. 2d 877 (11th Cir. 1974)
13 15 457 F. 2d 923 (E.D. Wis. 2002)
14 16 6 Id.
15 17 425 F. 2d 103 (3rd Cir. 1970)
16 18 421 F. 2d 888 (5th Cir. 1970)
17 19 457 F. 2d 779 (9th Cir. 1972)
18 20 244 F. Supp. 836 (E.D. Mo. 1965)
20 22 963 F. 2d 895 (9th Cir. 1992)
23 25 26 1516 3d 447 (9th Cir. 1998)
24 26 27 137 F. Supp. 2d 276 (S.D.N.Y. 2001)
25 27 28 28 Supra.
26 28 29 952 F. 2d 1274 (11th Cir. 1972)
31 31 32 894 F. 2d 750 (S.D.N.Y. 1995)
32 32 33 616 F. Supp. 1057 (D.N.J. 1985)
33 33 34 4218 F. Supp. 2d 176 (D. Puerto Rico 2002)
35 35 36 617 F. Supp. 1161 (S.D.N.Y. 1985)
37 37 38 8901 F. Supp. 1099 (W.D. Tex. 1995)
38 38 39 209 F. Supp. 3d 13 (2nd Cir. 2002)
39 39 40 86 F. 3d 38 (2nd Cir. 1996)
40 40 41 212 F. Supp. 2d 123 (S.D.N.Y. 2002)
41 41

Although we mistakenly omitted her ad from our 2010 QCBA Annual Dinner Journal we would like to acknowledge the generous contribution to the Queens Volunteer Lawyers Project by Donna Furey, Esq.

Law Office of Donna Furey
21-83 Steinway Street
Astoria, N.Y. 11105
Tel: (347) 448-2549
Fax: (718) 721-7981
DFurey@Fureylaw.net

* Donna Furey, Esq.
ATCO Advisory Services ...
Property management for receivers and estates
in Queens, Brooklyn, Long Island, and throughout metro NYC.

In addition to ATCO’s general third-party property management business, we have developed an expertise at managing properties on behalf of court-appointed receivers, as well as estates during probate. ATCO is an approved property manager and real estate broker under Part 36.

For more information, please contact
Damon Hemmerdinger
718-326-3560
damon@atcoadvisory.com

• www.atcoadvisory.com  • www.essentialnewyork.com  •
• www.essentialdesignbuild.com  • www.atco555.com  •
• www.facebook.com/atcoadvisory  •