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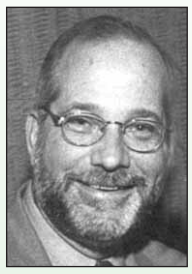
Queens Bar Bulletin

Queens County Bar Association / 90-35 One Hundred Forty Eighth Street, Jamaica, NY 11435 / (718) 291-4500

Vol. 73 / No. 8 / May 2010

House Of Delegates Report

BY DAVID L. COHEN



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 9th and the House Meeting on the April 10th. 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 dlccrimlaw@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 State Bar has become involved in this issue, and at the April Meeting, I along with Ann B. Lesk, President of NYCLA, presented a Resolution against the Request for Proposals issued by the Mayor. The Resolution (a copy of which is attached) was adopted and the State Bar is now part of the effort to insure that private counsel remains an integral part of the indigent defender system.

The State Bar affords local bar associations such as ours with resources that we otherwise would be unable to obtain. Through their Government Relations staff legislation in Albany and Washington is monitored to find any proposed legislation that is likely to have a negative or positive impact on lawyers and their clients. It can mobilize state wide efforts to support or oppose issues that are beyond the capabilities of local bar associations.

If you have an interest in the NYSBA, please contact me to discuss ways to join, or if you are a member to become a more active participant.

NEW YORK STATE BAR ASSOCIATION RESOLUTION ADOPTED BY HOUSE OF DELEGATES APRIL 10, 2010

WHEREAS, in 2007, NYSBA endorsed the report of the Kaye Commission on the Future of Indigent Defense Services (the " Kaye Commission Report"); and

WHEREAS, the City of New York (the "City") has attempted to terminate unilaterally a 45-year old agreement concerning the provision of indigent defense services anl0ng the City, the Association of the Bar of the City of New York, New York County Lawyers' Association, the Queens County Bar Association, the Brooklyn Bar Association, the Bronx County Bar Association, the Richmond County Bar Association and the First and Second Departments of the Appellate Division; and

WHEREAS, the City has issued a request for proposals concerning the provision of indigent defense services without consultation with the county bar associations or other stakeholders in the indigent defense system that may well have the effect of reducing the role of the private bar in indigent defense; it is hereby

RESOLVED, that NYSBA reaffirms its support for the Kaye Commission Report, and expresses concern with the effect the changes contemplated by the City's request for proposals may have on two important policies of NYSBA: first, that indigent defense services must meet constitutionally mandated standards, and second, that substantial involvement of the private bar is a desirable goal that should be embraced, not just tolerated, in any public defense reform process; and it is further

RESOLVED, that NYSBA renews its commitment to support quality and effective delivery of the constitutionally mandated right to effective assistance of counsel under the Sixth Amendment to the United States Constitution, including but not limited to adequate funding for every kind of provider, assigned private counsel as well as institutional providers, to meet that constitutional obligation; and it is further

RESOLVED, that NYSBA believes that changes in any indigent defense provider system should be proposed only after careful study and consideration of the impact that those changes will have on the quality and effective delivery of representation provided, and such changes should only be undertaken if they will improve the quality and effective delivery of representation.

A Note on Equitable Tolling

BY ANDREW J. SCHATKIN*

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[1]. 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. 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 complainant's receipt of a Right to Sue letter citing Baldwin County Welcome Center v. Brown[2] and Cornwell v. Robinson[3].

This rule was similarly articulated, as a set rule of law, in Johnson v. Al Tech Specialties Steel Corp[4]. 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 limitations period subject to Equitable Tolling, citing Zipes v. Transworld Airlines, Inc.[5], which held that the requirement that the charges under 42 U. S. C. Sec. 2000(e-5) 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)(f), as "a related Title VII provision." It is significant, that the Johnson Court noted that the remedial purpose of the Civil Rights Legislature 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.

Judiciary Night 2010

Hon. Charles Lopresto, Hon. Seymour Boyers, Hon. Robert Nahman, Hon. Nicholas Garaufis, Guy Vitacco, Jr., Hon. Edwin Kassoff, Hon. Sheri Roman, Hon. Joseph Golia, Hon. Randall Eng, Hon. Jeremy Weinstein, Hon. Richard Brown and Hon. Fernando Camacho.

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

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

2010 Spring/Summer CLE Seminar & Event Listing

May 2010

Wednesday, May 26	Stress & Sanity in Your Everyday Practice - Pt II
Monday, May 31	Memorial Day, Office Closed

June 2010

Tuesday, June 8	Juvenile Justice Committee Seminar
Wednesday, June 16	MHL Article 81/Guardianship Training (Lay Guardians Only) 2:30 - 5:00 p.m.
Friday, June 18	Surrogate's Court Committee Seminar

September 2010

Monday, September 6	Labor Day, Office Closed
Monday, September 13	Golf Outing, Garden City Country Club

CLE Dates to be Announced

Elder Law
Labor Law
Landlord/Tenant Law
Professional Ethics

New Members

Stephanie Elaine Ali	Jeff Henle	Patricia Rocourt
Andrea A. Amoa	Glenda Kennedy	Daniel Alexander Rudolf
Karyn Eve Bulow	Tracy A. McAllister	Sadatu Salami-Oyakhilome
Sally Butler	Brandon C. Mason	Luca L. Stone
Ronald C. Caveglia	Kristen Anna Meilak	David Storobin
Tin Nai Anne Cheng	George Parpas	Carly Beth Wiskoff
Ryan Lee Darshan	Elizabeth Powers	Xiaonan Wu
Jennifer Marie Frankola	Rafael Raffaelli, III	

Necrology

Herbert S. Cohen	George E. Moss	David E. Bryan, Jr.

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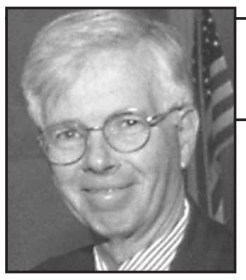

Leslie S. Nizin

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
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President-Elect - Chanwoo Lee
Vice President - Richard Michael Gutierrez
Secretary - Joseph F. DeFelice
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Joseph Carola, III	Paul E. Kerson	Richard Harris Lazarus
John Robert Dietz	Zenith T. Taylor	Gary Francis Miret
Mona Haas	Timothy B. Rountree	Steven S. Orlow
Gregory J. Newman	Clifford M. Welden	James R. Pieret

Arthur N. Terranova . . . Executive Director
Queens Bar Bulletin
EDITOR - LESLIE S. NIZIN

Associate Editors - Paul E. Kerson and Michael Goldsmith

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President's Message

It's hard to believe that this is my last President's Message. My term as President has gone fast. I would first like to thank 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. Thanks, Arthur.

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

I would like to congratulate Chanwoo 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 support she needs in the coming year. Good luck Chanwoo.

Guy R. Vitacco, Jr.

Chanwoo is backed by an impressive array of Officer's in Richard Gutierrez, President-Elect; Joseph J. Risi, Jr., Vice-President; Joseph DeFelice, Treasurer and Joseph Carola, III, Secretary. I wish you all good luck in the coming year.

Our Board of Managers is made up of a fine bunch of women and men who have the best interests of all residents of Queens County and all members of the Queens County Bar. I am privileged to call each and every one of them a friend and want to thank them for a fine year.

Our Annual Dinner and Installation of Officers this year will be held on Thursday, May 6, 2010 at the Terrace on the Park. I am honored that the Froessel Award Committee has nominated and the Board of Managers has confirmed that the recipient is Guy R. Vitacco, Sr., my father.

This is the most prestigious award that the Queens County Bar Association can bestow on a person and I have firsthand knowledge that Guy R. Vitacco, Sr. truly deserves this honor for all his many years of service and devotion to the Queens County Bar Association and the people of Queens County. So congratulations Dad for your many years of service and devotion to the Queens County Bar Association and for being the recipient of the Froessel Award 2010.

I would be remiss if I didn't thank our Administrative Justices Jeremy Weinstein and Fernando Camacho for their open door policy and support of the Queens County Bar Association this year. We are truly lucky in Queens County to have such fine gentlemen and jurists as our administrators.

It has truly been an honor and privilege to serve as your President and I would like to thank everybody for your support this year.

Guy R. Vitacco, Jr.

RUSSELL C. MOREA August 23, 1939 -- March 26, 2010

BY JAMES HARDING

On March 26, 2010, we received the sad news that our friend and colleague Russ Morea had passed away after a long illness.

There was sadness, reflection, a sense of loss and a coming together of shared fond memories of this wonderful lawyer and wonderful human being. As we gathered in small groups in the courthouse and on the telephone, everyone had a "Russ story."

Those of us above a certain age remembered Russ in so many different ways --- as a treasured colleague at the bar, as a hard-fighting and invaluable co-counsel, as a man truly learned in the law and literature and as a genuinely funny human being. I will try to share some of his career highlights and the memories and thoughts of many.

On May 1, 1974, a Queens Grand Jury indicted Martin Settles and another for two counts of murder committed during a robbery. It was a direct presentment. On August 14, 1974, Settles was arrested post-indictment, given Miranda warnings and placed in a lineup without counsel. He was indentified. He was convicted of Robbery in the First Degree.

On December 21, 1978, the New York State Court of Appeals unanimously reversed his conviction, adopting 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 vs. 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 of winning. 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 lawyer was 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 was someone who had fled to 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.

Russell C. Morea

In 1998, James Gordon was tried in Queens for a brutal triple 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.

Remarkably, also on January 11, 2005, the attorney for Raeburn Dyer won dismissal of his client's murder indictment under constitutional speedy trial grounds (CPL 30.20), a rarity in a murder prosecution. His lawyer was Russ Morea.

Prosecutors regarded him as a worthy adversary. They held him in high esteem for his skill, honesty and passionate commitment to justice. The prosecutor in the Hurtado case, Jennifer Naiburg, described Russ as a genuinely nice human being whose very presence on a case raised the level of his adversary's performance. Charles Testagrossa, an executive Assistant District Attorney tried three high profile murder cases (including the death case) against Russ. He said Russ gave 100% for every client, retained or assigned, and described him as "zealous and honorable……a man of honor…..a great human being."

In or about 1982, Russ and I were co-counsel on a five defendant murder trial where the victim was a police officer, Robert Sorrentino, who was killed in the line of duty. The hearings lasted one month and the trial lasted four months. It is the legal equivalent of being in a foxhole with someone. Russ did a masterful job as a courtroom tactician, cross-examiner and "law man" for his client and for the team. What impressed me most, however, was the way Russ had your back.

One member of the team (also, sadly, no longer with us) sometimes had very difficult afternoons. A mountain of forensic evidence had come in against his client. Seeing that our colleague was in trouble, Russ jumped in and conducted superb cross-examination of the ballistics, fiber and fingerprint experts as if for his own client. Russ was not going to let our colleague be embarrassed or his client hurt. I never forgot that.

Another memory of Russ was his holding court at an information booth in the center of the courthouse lobby. Members of the public would ask questions and he would answer with that bemused look on his face.

A floating group of us gathered there almost everyday. We were veteran criminal trial lawyers. We told tales, swapped war stories, did impersonations, insulted each other --- and Russ was always at the center.

For all his great accomplishments as a lawyer, Russ never took himself too seriously. He had no time for self-importance, posturing or pomposity. He was down to earth and loved to laugh at himself and with others. He liked people and they liked him.

Russ was a true son of Queens. Raised in Richmond Hill, he was the son of Italian immigrants. His father, Domenico, was a bricklayer and contractor. His mother, Grace, was a seamstress. His father built a lot of stoops all over Southern Queens. Russ and his brother Sonny convinced that their summers of bricklaying were a message from their father --- get an education. They did. Russ graduated from Brooklyn Tech, Hunter College and Brooklyn Law School at night. Sonny became the Chief Design Manager for the Lunar Rover and his sister Gloria (Leo) became Chief Librarian at the United Nations.

Russ loved literature, art and crazy ties.

Taking up painting in his forties, his daughter Grace said he became an "avid, avid, avid" painter especially of his beloved seascapes. She said his art became "an integral part of who he was." He painted to the last week of his life, even when he could no longer speak.

Russ was deeply devoted to his family. We extend our profound sympathy to his wife, Vita, his daughters Angela and Grace, his grandchildren John, Gianna, Sophia and Christopher and his brother Saverio (Sonny) and sister Gloria.

Russell 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 McCormick, and many members of the defense bar.]

Russ Morea

I've been asked
To briefly foray
Into the life
Of Russell Morea

Here was a man
Of talent, unique
Everyone listened
When Russ did speak

As a lawyer, he
Was first among peers,
As a friend he'd always
Share a few beers

He'd take a case
From trial to appeal
And never a client
Faced a "last meal"

A relic from an era
Now forgotten and cold
When defense lawyers were fearless
Aggressive and bold

Well, Russ retired
To a life of ease
With Vita, Angela and Grace
And grandkids, if you please!

And now, though he's gone
His poetry never dies
And we'll all remember
Russ
And his outlandish ties!

ROBERT E. SPARROW
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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

Hilary Gingold

(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.

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"Attorney Emeritus" A New Volunteer Opportunity

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.

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PHOTO CORNER

Annual Judiciary Night – Monday, April 19, 2010

Chris Arzberger, Mona Haas, Hon. Joseph Risi, Hon. Margaret Parisi-McGowan, Hon. Martin Ritholtz and Maurice Rabbenou

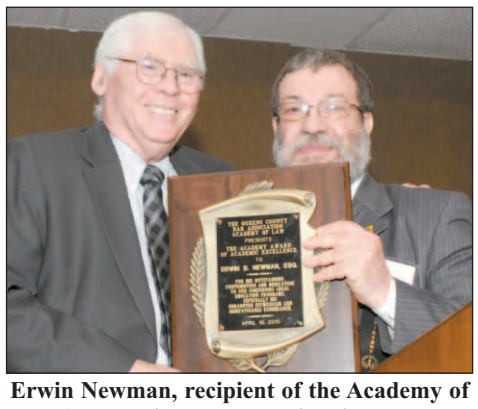
Damon Hemmerdinger, Terri Thomson, Hon. Stephanie Zaro, Steve Singer and Herbert Rubin

David Wasserman, Joe DeFelice, Seymour James and Joe Baum

Dominic Villoni, Hon. Robert Nahman, Hon. Lawrence Cullen, Greg Newman and Cliff Welden

Doug Krieger, Hon. Allen Belock, Hon. Denis Butler, Hon. Darrell Gavrin, Hon. Randall Eng and Tom Principe

Ed Rosenthal, Hon. William Erlbaum, Hon. Augustus Agate, Hon. Sheri Roman and Hon. Seymour Boyer



Erwin Newman, recipient of the Academy of Law Award with Hon. Martin Ritholtz

Hon. Allen Beldock, Hon. Richard Latin, Hon. Morton Povman, Hon. Thomas Raffaele and Len Livote

Hon. Bernice Siegal, Hon. Fernando Camacho, Tim Rountree and Hon. Pam Jackman-Brown

Hon. Cheree Buggs, Terri Thomson and Damon Hemmerdinger

Hon. Gilbert Badillo, Guy Vitacco, Jr. and Hon. Ulysses Leverett

Hon. Janice Taylor, Fearonce LaLande and Roberta Chambers

Photos by Walter Karling

PHOTO CORNER

Annual Judiciary Night – Monday, April 19, 2010

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

Hon. Jodi Orlow, Hon. Thomas Raffaele and Hon. Jeremy Weinstein

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

Hon. Ronald Richter, Hon. Carol Ann Stokinger, Hon. Margaret Parisi-McGowan, Hon. Nicholas Garaufis, Herbert Rubin and Ed Rosenthal

Hon. Terrence O'Connor, Hon. Rudolph Greco, Hon. Joseph Golia and Hon. Charles Thomas

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

Tom Graham, Hon. Joseph Golia, Ted Gorycki, Michael Mattone and Joe Mattone, Jr.

Wally Leinheardt, 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 as well as court and agency personnel to the Queens Family Court to see the important 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 ***Draco Malfoy*** 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 agency 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."

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!

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

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 92 conferences referred in 2009.

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 89th 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 Weliky, is the Pro Bono Coordinator for the Queens County Bar Association*

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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.

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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
For grandma of the year
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!

Fondly,
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."

For I'm good natured
And never rude –
"I'm full of character
And moral turpitude!"

(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

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April 2, 2010

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

I must take issue with the article in the March issue of the Bar Bulletin that "sanctions and costs - are the enemy of advocacy." It seems to me rather than an "enemy", sanctions and the threat of the same go a long way in the disposition of litigation and bring respect and discipline in matters before the courts. Illustrative of the point that sanctions benefit courts in their work as a whole, two reported Queens cases come to mind that were reviewed not only by the Court of Appeals, but the highest Court of the land, the Supreme Court of the United States.

In the first case, *Spremo v. Babchik,* 155 Misc.2d 796, *aff'd,* 216 A.D.2d 382, *lv. to app. den.* 86 N.Y.2d 709, *cert. den.* 516 U.S. 1161 (Lonschein, J.), the *pro se* plaintiff apparently made it his hobby to bring lawsuits against sitting judges, having sued thirteen (13) Supreme Court Justices, as well as any lawyer who displeased him in his litigation, including the former president of the Queens County Bar Association. All of the lawsuits (brought *in forma pauperis*) were unsuccessful, and the sanctions were unpaid. The Order dismissing the action directed him to cease and desist from bringing any more *pro se* actions against anyone in the Unified Court System and dismissed all such pending actions. The Court ordered that violations of the Order will cause a contempt proceeding to be brought where the Court will consider the maximum jail sentence for any violation. The plaintiff brought no further *pro se* actions.

The other matter, an automobile negligence action, was brought by an out-of-state plaintiff (*Valdez v. Cibulski,* 171 Misc.2d 49, 50, *aff'd* 248 A.D.2d 707, *app. den.* 92 N.Y.2d 808 (Lonschein, J.)), in which the defendant, in settlement discussions, appeared to have no defense. In driving her car through a red light, she had no explanation for her action. Her attorney refused to concede liability and insisted on a trial, despite the accident was witnessed by independent witnesses. The defense attorney was able to obtain prior adjournments by advising the Court that the defendant was in the hospital recovering from a serious operation. The adjournment thus forced the plaintiff to come up from Florida. He was willing to settle the case at a figure less than the policy limits and less than the valuation the serious injuries warranted. The defense counsel refused to discuss settlement and said his position was "no pay." On the trial, the Court struck the defense and ordered the trial continue upon the issue of damages.

As it turned out, the excuse for an adjournment was false; the truth was the elderly defendant was suffering from Alzheimer's disease and never would have been able to testify. The trial commenced. Upon hearing the testimony before the jury, the Court struck the defendant's denial of liability and the jury awarded plaintiff an amount of damages substantially above the policy limits. Thereafter, following a hearing, the Court ordered a sanction pursuant to Rule 130 of $10,000, which was affirmed on appeal.

In almost every case that I have read where sanctions were imposed, it would appear that they were justified. It is my belief that sanctions, rather than be the "enemy of advocacy", fulfill the function for which they are intended.

Very truly yours,

Arthur W. Lonschein

Arthur W. Lonschein, J.S.C., *Ret.*

The writer sat in Queens Supreme Court-
1974-2000

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 Title VII 90-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.[6]; Oshiver v. Levin, Fishbein, Sedran & Berman[7]; Walker v. St. Anthony's Medical Center[8]; and Bluitt v. Houston Independence School District[9].

The question arises how the doctrine of Equitable Tolling may be understood. In Jordan v. Smith Kline Beecham, Inc.[10] 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 principle situations: where the defendant has actively misled the plaintiff respecting plaintiff's cause of action; where the plaintiff, in some extraordinary way, has been prevented from exerting his/her rights; or where the plaintiff has asserted his/her rights mistakenly in the wrong forum.

Davis v. U.S. Postal Service[11] stated a slightly different rule adding that the doctrine is available where the employer has actively misled the employee, the employee was unable to proceed or where other exceptional circumstances existed. Dillard v. Runyon[12] noted that Equitable Tolling is not available when the plaintiff herself fails to exercise due diligence.

A sub-rule with respect to the doctrine of Equitable Tolling is where the employee did not know all the facts or was unable to discover them. See Oshiver v. Levin, Fishbein, Sedran & Berman[13]. Similarly in Watson v. National Linen Service[14], the Florida Circuit Court held that the filings of Commission Complaints on February 24 and 25, 1977 were timely, though alleged discriminatory failure to promote occurred on August 26, 1976, where the plaintiff did not become aware thereof until August 31, 1976, and a reasonably prudent person would not have discovered the claim earlier. See also on this, Weinandt v. Kraft Pizza Co.[15]; Jordan v. Smith Kline Beecham, Inc.[16]

There is another rule concerning Equitable Tolling. That is that the statute of limitations applicable to the filing of charges with the Commission for racial discrimination in employment is tolled once the employee has invoked his contractual grievance remedies in effort to obtain a private settlement of his Complaint. Hutchings v. U.S. Industries, Inc.[17] See also Culpepper v. Reynolds Metal Co.[18]; Malone v. North American Rockwell Corp.[19]

On the other hand, it is the law that the pendency of arbitration or grievance procedures pursuant to a Collective Bargaining Agreement did not toll the running of the period for filing employment discrimination charges with the administrative agency or waive the filing requirements, since contractual rights, under the Collective Bargaining Agreement, were legally independent from statutory rights under Title VII. Frank v. New York State Elec. & Gas.[20] On the other hand, in Rudolph v. Wagner Elec. Corp.[21] the Missouri District court held that the filing of a grievance under a Collective Bargaining Agreement does not toll the running of the limitations period within which employment discrimination charges must be filed with the Commission under this sub-chapter. See also on this McReynolds v. General Elec. Co.[22]

A second rule concerning Equitable Tolling is where there has been an erroneous state agency procedure. Thus, in Brown v. Crowe,[23] the Tennessee Circuit Court held that Equitable Tolling would be applied where the plaintiff filed a claim with a state agency more than 240 days after his discharge and where, but for the erroneous annotation by the state agency, timely initial processing would have taken place under the terms of the work-share agreement with the EEOC and the state agency would therefore have terminated its proceeding within 300 days, so that the filing with the EEOC could be timely. Similarly, in Berkoski v. Ashland Regional Medical Center, [24] the Pennsylvania District Court held that Equitable Tolling applied if the employment discrimination charge was not properly filed with the EEOC by the 300 days 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 rule of Equitable Tolling is where the state agency gave incorrect advice or misrepresent. This in Stutz v. Depository Trust Co.,[25] the United States District Court for the Southern District of New York held that where the female formal employee claiming retaliatory discharge did not bring the claim before the Commission because of incorrect advice from the Department of Human Rights representative and where the employer 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 would be tolled.

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 Lawrence v. Cooper Communities, Inc.,[26] 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. [27]

There is also a sub-rule on Equitable Tolling that incorrect employer advice or misrepresentations can toll a period. See Oshiver v. Levin, Fishbein, Sedran and Berman.[28] See also Pearson v. Macon-Bibb County Hospital Authority;[29] Stalter v. Board of Coop. Educational Services of Rockland Co.;[30] Lawton v. State Mutual Life Ins. Co. of America;[31] Burell v. City of City University of New York.[32]

There is another rule that where there is an attorney error, Equitable Tolling will be applied. Thus, in Burton v. U.S. Postal Service[33] the Ohio District Court held that the time limitation for filing a formal complaint with the EEOC would be Equitably Tolled in case of the Complaint filed approximately 14 days late, where the claimant's attorney irresponsibly abandoned his client and the case and left town without informing his client with the result that the attorney failed to mail a formal written complaint on time.

There is also a law that where the plaintiff demonstrates mental disability, Equitable Tolling may be applied. Thus, in Bravo Perazza v. Puerto Rico,[34] the Puerto Rico District Court held that the plaintiff's mental disability can only be a basis for Equitable Tolling when it is so severe that the plaintiff was unable to engage in rational thought and deliberate decision making sufficient to pursue his claim alone or through counsel. On this see also, Llewellyn v. Celanese Corp.[35]

There is also a rule that the pendency of a Title VII class action tolls the administrative filing period for class members wishing to bring individual suits, even after class certification has been vacated. See Griffin v. Singletary.[36]

Thus far a number of bases have been examined and analyzed where Equitable Tolling may obtain. These include where discovery of the facts was difficult; where there have been pending contractual grievance procedures; where there has been erroneous state agency procedure; where there has been erroneous state agency advice or misrepresentations; where there has been a severe mental or emotional instability severely affecting the plaintiff; and where there is a class action pending.

Despite these sub-rules, there is a more general rule that, income way, exceptional circumstances must be present. See Perezic v. Crespo;[37] Howze v. Virginia Polytechnic;[38] and Smith v. McGinnis,[39] where the Second Circuit held that Equitable Tolling is appropriate only in rare and exceptional circumstances in which a party is prevented in some extraordinary way from exercising his rights. See also Johnson v. Nyack Hospital.[40] More to the point, is Chapman v. Choice Care, Long Island Term Disability Plan[41] where the United States Court of Appeals for the Second Circuit held that in determining whether to apply Equitable Tolling, a court must consider whether the party seeking it: 1) has acted with reasonable diligence during the time period and 2) has demonstrated extraordinary circumstances. See also Jacobs v. SUNY at Buffalo School of Medicine.[42]

CONCLUSION

This article which has presented an overview and somewhat cursory analysis of the doctrine of Equitable Tolling reveals a general rule that a showing of exceptional circumstances must be made with a number of sub-rules attached to this overriding 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.

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

1 84 F. 3d 522 (2nd Cir. 1996)
2 466 US 147, 104 S. Ct. 1723, 80 L. Ed.2d 196 (1984)
3 23 F. 3d 694 (2nd Cir. 1994)
4 731F. 2d 143 (2nd Cir. 1984)
5 455 US 385, 102 S. Ct. 1127, 71 L. Ed. 2d 234 (1982)
6 Id.
7 38 F. 3d 1380 (3rd Cir. 1994)
8 881 F. 2d 554 (8th Cir. 1989)
9 236 F. Supp.2d 703 (S.D. Tex 2002)
10 958 F. Supp. 1012 (E.D. Pa. 1997)
11 934 F. Supp. 1210 (D. Colo. 1996)
12 928 F. Supp. 1316 (S.D.N.Y. 1996)
13 Id.
14 686 F. 2d 877 (11th Cir. 1982)
15 217 F. Supp. 2d 923 (E.D. Wis. 2002)
16 Id.
17 428 F. 2d 303 (5th Cir. 1970)
18 421 F. 2d 888 (5th Cir. 1970)
19 457 F. 2d 779 (9th Cir. 1972)
20 871 F. Supp. 167 (W.D.N.Y. 1994)
21 445 F. Supp. 836 (E.D. Mo. 1978)
22 406 F. Supp. 1278 (S.D. Ohio 1976)
23 963 F. 2d 895 (6th Cir. 1992)
24 951 F. Supp. 544 (M.D. Pa. 1997)
25 497 F. Supp. 654 (S.D.N.Y. 1980)
26 132 F. 3d 447 (8th Cir. 1998)
27 137 F. Supp. 2d 276 (S.D.N.Y. 2001)
28 Supra.
29 952 F. 2d 1274 (11th Cir. 1972)
30 235 F. Supp. 2d 323 (S.D.N.Y. 2002)
31 924 F. Supp. 331 (D. Mass. 1996)
32 894 F. Supp. 750 (S.D.N.Y. 1995)
33 612 F. Supp. 1057 (N.D. Ohio 1985)
34 218 F. Supp. 2d 176 (D. Puerto Rico 2002)
35 693 F. Supp. 369 (W.D.M.C. 1988)
36 17 F. 3d 356 (11th Cir. 1994)
37 902 F. Supp. 438 (S.D.N.Y. 1995)
38 901 F. Supp. 1099 (W.D. Va. 1995)
39 208 F. 3d 13 (2nd Cir. 2000)
40 86 F. 3d 8 (2nd Cir. 1996)
41 288 F. 3d 506 (2nd Cir. 2002)
42 204 F. Supp. 2d 586 (W.D.N.Y. 2002)

SORRY

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