Queens County Bar Association Participates in ABA Bar Leadership Institute

Joining over 300 other emerging leaders of lawyer organizations from across the country at the American Bar Association’s Bar Leadership Institute (BLI), March 10-11 was President-Elect Richard M. Gutierrez and Executive Director Arthur Terranova of the Queens County Bar Association.

The BLI takes place annually in Chicago. It offers incoming officials of local and state bars, special focus lawyer organizations and bar foundations the opportunity to confer with ABA officials, bar leader colleagues, executive staff and other experts on the operation of such associations.

Mr. Gutierrez and Mr. Terranova joined ABA President Stephen N. Zack of Miami, FL and ABA President-Elect Wm T. (Bill) Robinson III of Florence, KY in sessions on bar governance, finance, communications, and planning for a presidential term.

Various ABA entities briefed the participants on resources available from the ABA for local, state, national, and specialty bar associations and foundations.

The BLI is sponsored by the ABA Standing Committee on Bar Activities and Services and the ABA Division for Bar Services as part of the Association’s long-standing goal of fostering partnerships with state and local bars and related organizations. Collaborating ABA staff entities included the Division for Media Relations and Communications Services.

For BLI information, contact Karyn Linn, Staff Director of the Field Service Program, ABA Division for Bar Services, 321 N. Clark St., Chicago, Illinois 60654-7598, phone: 312/988-5350, e-mail: Karyn.linn@americanbar.org.

With nearly 400,000 members, the American Bar Association is the largest voluntary professional membership organization in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law.

In the next two months CREDIT SHELTER TRUST PLANNING. It has been determined that this is the best way to go. FREUD (Freudian Slip) is the best way to go. The best way is to go.

The “Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010” creates unprecedented planning opportunities for the next twenty-two months. The federal estate tax exemption is $5.0 million for deceased passing away in 2011 and 2012. Amounts in excess of $5.0 million will be taxed at a rate of 35%.

How, you ask, does this apply to individuals with less than $5.0 million?

First, the new $5.0 million exemption amount only applies to the federal tax. New York State residents must still deal with and plan for tax on estates in excess of $1.0 million.

Next, the $5.0 million federal exemption is temporary. It is currently scheduled to sunset on December 31, 2012. We cannot be certain what the exemption amount or tax rates will be after that. This is especially true given the fact that 2012 is a presidential election year.

Lastly, the new estate tax threshold can result in unintended consequences for Wills created under prior law. For example: If my husband and I did Wills in the 1990s when the estate tax threshold was $600,000, we may have a formula tax clause directing “the largest amount that can pass free of federal estate tax into a credit shelter trust.” This formula produced a desirable result at that time. Under the current law, however, pushing the “largest amount free of federal tax” (i.e. everything up to $5.0 million) into a trust, could result in the surviving spouse being deprived of everything up to $5.0 million.

Couples with assets in excess of $1.0 million should consider implementing credit shelter...
**THE QUEENS BAR BULLETIN – APRIL 2011**

**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.

**2011 Winter CLE Seminar & Event Listing**

**May 2011**
- Thursday, May 5: Annual Dinner & Installation of Officers
- Tuesday, May 10: Bankruptcy Seminar
- Tuesday, May 17: No Fault Seminar
- Monday, May 30: Memorial Day, Office Closed

**June 2011**
- CLE Dates to be Announced: Elder, Juvenile Justice, Lawyer’s Assistance
- CLE Dates Being Finalized: Surrogate’s Court, Estates & Trusts

**September 2011**
- Monday, September 5: Labor Day, Office Closed
- Monday, September 12: Annual Golf Outing

**NEw MemBERS**
- Hal N. Beerman
- Carl Anthony Benincasa
- Andre Herrera
- Elizabeth Thayer Hill
- Aisha L. Joseph
- Gregory Scott Newman
- Peter Paul Pavlou
- Daniel G. Rodgers
- Roseann Sferrazza
- David Trueman
- Y. Andre Vital

**NECROLOGY**
- Edmond A. Della Porta
- Hon. Norman George
- Paul J. Mucarella

**Editor’s Message**

**BY PAUL E. KERSON**

**Book Review: Commercial litigation in New York State Courts Third Edition**

An excellent seven volume treatise on Commercial Litigation in New York State Courts, Third Edition, has recently been issued by West-Thompson Reuters. The Editor-in-Chief is Robert L. Haig, Esq. of Kelley Drye & Warren LLP.

Actually, the book is a sophisticated review of all General Practice subjects from a commercial point of view. Each chapter is written by a prominent attorney or judge.

All of the elements of Civil Procedure are covered: jurisdiction, venue, the complaint, the responses to complaints, third party actions, removal, consolidation and severance. In addition, the distinctions between state and federal practice are detailed.

Of particular interest to the General Practitioner are chapters on the investigation of the case and case evaluation. The chapter on case evaluation is particularly enlightening. It was written by Alan I. Raylesberg, Esq., a Queens native, of the firm of Chadbourne & Park LLP.

In this chapter, Alan details exactly when one should take a case and when one should not. He gives specific recommendations as to exactly how to analyze a case.

The details of discovery are thoroughly reviewed: Bills of Particulars, disclosure, document discovery, interrogatories and requests for admissions all receive separate chapters.

The all important subject of expert testimony is covered. Motion practice is addressed by Nassau County Supreme Court Justice Timothy S. Driscoll. The all important Summary Judgment motion is the subject of a separate chapter by retired Appellate Division Justice Barry A. Cozier. Most notably, the settlement of the case is addressed in detail by David N. Schraver, Esq. of Nixon Peabody LLP. Our New York State Court system features a 99% civil settlement rate. Thus, advice on how to achieve a settlement is most important.

Continued On Page 6

**Editors 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.

**2010-2011 Officers and Board of Managers of the Queens County Bar Association**

- President: Chanwoo Lee
- President-Elect: Richard Michael Gutierrez
- Vice President: Joseph John Risi, Jr.
- Secretary: Joseph Carola III
- Treasurer: Joseph F. DeFelice
- Class of 2011: David L. Cohen, Paul E. Kerson
- Class of 2012: Jennifer M. Gilroy, Richard Harris Lazarus
- Class of 2013: Gary Francis Miret, Steven S. Orlow
- Class of 2014: James R. Pieri

**Queens Bar Bulletin**

**EDITOR - Paul E. Kerson** (kersonpaul@aol.com)

**Richard Golden** (goldenlaw@nyccrr.com)

**Stephen David Fink** (finkylaw@aol.com)

**Gary DiLeonardo** (garygcd@aol.com)

**Manuel Herman** (mannyherman@aol.com)

**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.**

** Strictly Professional... **

**LEGAL MEDIA PUBLISHING**

**ADVERTISE YOUR BUSINESS TO THE LEGAL PROFESSION**

866-867-9121
The New York City Parking Violations Bureau reportedly adjudicated over 3.2 million parking tickets in fiscal year 2010, and about 2.8 million last year. According to two recent Supreme Court, New York County, decisions—Matter of Meyers, Van Lines Inc. v City of New York Dept. of Fin. Parking Violations Bur. (Nov 10, 2009, Index No. 106783/2008) and Matter of Dong Sic Ko v City of New York Dept. of Fin. Parking Violations Bur. (May 12, 2010)—PVB violated VTL 242, parking violations bureau rule 19 Rules of the City of New York (RCNY). According to Ko, PVB violated VTL 242(3)(b) (3) by making payment a prerequisite for taking an appeal, and 238 (2), by using mailing as process service. The author handled both cases. This article focuses on PVB’s nine-month failure to follow Meyers and on PVB’s continuing failure to follow Ko, and suggests PVB’s failure to follow them lacks merit.

PVB rule 19 Rules of the City of New York (RCNY) 39-12 (b) (3) makes paying fines and penalties or posting a bond a prerequisite for taking an administrative appeal. That rule states:

“No appeal shall be permitted unless the fines and penalties assessed by the Hearing Examiner are paid, or the respondent shall have posted a cash or recognized surety company bond in the full amount of the final determination appealed from.”

The Rochester parking violations bureau had a rule virtually identical to 19 RCNY 39-12 (b) (3). Ahl v Howard, 12 Misc 3d 870 (Sup Ct, Monroe County 2006), held the Rochester parking violations bureau rule was unenforceable for being inconsistent with VTL 242. According to the court, VTL 242 (3)(b) provides the procedures to appeal and VTL 242 does not make payment of either a fine or a bond a prerequisite for taking an appeal. According to the second declaratory paragraph of the judgment declares PVB rule 19 RCNY 39-12 (b) (3) is unenforceable:

“ADJUDGED AND DECLARED that Respondent’s rule, RCNY 39-12 (b) (3), which requires payment of the fines in full prior to the taking of an appeal, is unenforceable inasmuch as it exceeds the requirements of VTL 242/5.”

PVB took an appeal from Meyers with a notice of appeal dated November 19, 2009. On August 27, 2010, PVB withdrew its appeal, and on or about that date ceased enforcing 19 RCNY 39-12 (b) (3). CPLR 5519 (a) (1) imposes an automatic enforcement stay during a government appeal, but that stay will not apply to declaratory provi- sions of a judgment, which do not direct performance of an act in the future but rather are self-executing and effective immediately upon publication of the judgment; however, that lack of application is not free from doubt in the First Department.

According to Ko, PVB mailed Mr. Ko a parking summons. The summons, by “Drive Off” and similar language, indicates his vehicle drove off before the summons was served. Mr. Ko moved to dismiss the summons for lack of personal jurisdiction. He denied he had been properly served under VTL 238 (2)”, in that the summons had neither been handed to him, nor placed on his car.

Administrative Law Judge Linda Hirsch denied the motion upon a hearing, found him guilty of the charged violation, and fined him $115, which he later paid. The PVB appeals board affirmed ALJ Hirsch’s decision. Mr. Ko brought an Article 78 proceeding, seeking to annul the appeals board decision and have the summons dismissed for lack of personal jurisdiction.

After Mr. Ko would not accept PVB’s offer to settle his Article 78 by dismissing the summons and refunding the fine, Chief ALJ Mary Gotospolis reminded the matter of Mr. Ko’s summons to ALJ Diane Pine, who dismissed the summons, stating the dismissal was “in the interests of justice in connection with Article 78 settlement negotiations.” Then, alleging PVB had dismissed the summons and begun the process for reimbursement of the $115 fine to Mr. Ko, PVB moved to dismiss Mr. Ko’s Article 78 proceeding as moot.

Eventually, after denying that motion, Supreme Court vacated PVB’s dismissal of Mr. Ko’s summons, concluding the dismissal exceeded PVB’s statutory authority, was in violation of lawful procedure, was arbitrary and capricious, and had no factual basis. Among its findings concerning statutory authority, the court stated (at 607) the VTL did not “empower ALJ [Gotospolis] to unilaterally remand a matter to ALJ Pine so that the PVB could dismiss the violation and render this Article 78 proceeding moot.”

As I write this letter, we seem to be finally settling into spring. I hope that all of you are enjoying the season, that you’ll find at least a little time to relax with your family and friends.

Every year, the Queens County Bar Association acknowledges our Judiciary, Past Presidents, and Golden Jubilarians for their contributions to QCBA. The dedication, experience, and knowledge of these honorees is a priceless resource, and those of us who follow in their footsteps look to them for guidance and support in offering the best possible service to you, our members.

At this year’s event, on April 11th, our honoree attendees included judiciary from the Appellate Term, Supreme, Criminal, Family, Civil, and Surrogate Courts, as well as many past presidents and members who celebrated their 50th anniversary of legal practice. (That adds up to an impressive 700 years of legal practice!). Three of our past presidents, Michael Dinakan, George J. Nashak, Jr., and Edward H. Rosenthal, were double honorees, due their jubilarian status, and Samuel, B. Freed, Chair of the Real Estate Committee, received a Special Academy Award for his dedication and service to the QCBA.

Our thanks to all of you who attended and made this evening such a success! And very special thanks to our guest speaker, Vincent E. Doyle of Buffalo, New York, who is President Elect of the New York State Bar Association. QCBA also congratulates The Honorable Jeremy Weinstein, Administrative Judge of Supreme Court, Civil Term, who was honored at the Jewish Lawyers Guild’s annual dinner on March 31, 2011. And we extend a warm “welcome back”— and look forward to working with two esteemed Criminal Court Judges: The Honorable Michael Yavinsky, and the Honorable John Zoll.

In our continued effort to provide better service to our members, the board of managers have approved a motion to provide free term life insurance for one year to new members who have been admitted to the bar for less than 5 years. In addition, our board members are currently testing out the legal service provided by “Fastcase” with an anticipation of providing this service to our members at a nominal fee.

As Dennis Bosnack noted in his President’s Message, for their contributions to the Bar, as well as many past presidents and 14 members who celebrated their 50th anniversary of legal practice, we should be grateful for their sacrifices and contributions to justice and for their dedication to the legal profession. These are the people we should look to for guidance and support in our continuing efforts to offer the best possible service to our members.
Continued From Page 1

Estate Tax Update 2011: What You Need To Know

the credit shelter trust. I believe that the months to execute the disclaimer. First decedent. The survivor has nine disclaim into the credit shelter trust of the amount the surviving spouse chooses to other with the exception of whatever husband and wife leave everything to each shelter trusts which can operate as follows: Revocable Trusts should contain credit State estate tax. $500,000 will be subject to New York credit. The result in this example is that apply her $1.0 million New York State death. on the first death, there is no opportunity to combine to shelter the entire estate up to $2.0 million. If, for example, a couple has a combined estate of $1.5 million and they have simple Wills leaving everything to the surviving spouse and the remainder to children, a bad tax consequence will ensue. This is because the unlimited marital deduction prevents the imposition of tax on transfers between spouses. Without any tax liability on the first death, there is no opportunity to utilize the first credit. It, in essence, dies with the first decedent. Upon the death of the second spouse, her estate can only apply her $1.0 million New York State credit. The result in this example is that $500,000 will be subject to New York State estate tax.

In order to avoid this result, the Wills or Revocable Trusts should contain credit shelter trusts which can operate as follows: husband and wife leave everything to each other with the exception of whatever amount the surviving spouse chooses to disclaim into the credit shelter trust of the first decedent. The survivor has nine months to execute the disclaimer. There are several different ways to fund the credit shelter trust. I believe that the “disclaimer” method described above is the most flexible. The family has the luxury of waiting until the first death to make a good decision based upon the survivor’s age, health, expenses, as well as the estate tax laws at that future point in time.

PROPERTY SUBJECT TO TAX

Nearly all assets owned by a decedent or over which he or she retained some control are included in the estate tax base. Just because an asset passes outside of probate does not mean that it passes free of tax. Death benefits payable through life insurance, IRAs, 401Ks, bank accounts with beneficiary designations and brokerage accounts with “transfer on death” designations will all be taxed to the decedent who owned the asset as of his or her death.

RECOMMENDATIONS

It is very important to have your estate planning documents reviewed periodically. I advise my clients to come in every two years or so, to make sure that we are all on the same page. If your estate is currently less than $1.0 million, you need not be concerned about state or federal estate taxes at this time. The possibility of future long term care needs, on the other hand, may cause you to consider creating a trust or taking other steps to protect your assets.

If your estate is between $1.0 and $5.0 million, you will still need to implement New York State estate tax planning. This planning may include credit shelter trusts as well as an insurance trust to prevent the policy death benefit from being taxed. Remember that life insurance grows income tax free. It does not pass estate tax free unless it is owned by someone or something (a trust) other than the decedent. If your estate is in excess of $5.0 million, now is a great time to plan! In addition to the increased estate tax exemption, the lifetime federal gift tax exemption has also been raised to $5.0 million. This gives us an unprecedented opportunity to push some assets out of one’s taxable estate at today’s low asset valuations. These gifts should not, however, be made directly to children or grandchildren to avoid exposing the assets to their potential liabilities (divorces) or mismanagement. Instead, the assets or fractional shares thereof, can be transferred into a family trust. An added benefit is that all of the post-transfer growth and appreciation will occur free of any future transfer taxes.

Ann Margaret Carrozza is a practicing Elder Law and Estate Planning Attorney who also served as a New York State Assemblywoman. During her fourteen (14) year tenure in the legislature, she authored dozens of bills designed to protect seniors against consumer fraud and to expand access to quality long term care. Ann Margaret Carrozza is an executive member of the N.Y.S. Bar Association, Elder Law section, the National Academy of Elder Law Attorneys, the Queens County Bar Association, and is a member of the Long Island Alzheimer’s Foundation legal advisory board. She serves as estate planning and elder law counsel to numerous organizations. She is rated as preeminent by Martindale-Hubbell.

Ann Margaret Carrozza received her Juris Doctor from Hofstra University School of Law where she served on Law Review and was on the Dean’s List. Her practice focuses on Elder Law, Trusts and Estates, Asset Protection Estate Administration and Long Term Care Planning. A frequent lecturer, Ann Margaret Carrozza has spoken before numerous professional and civic groups on state policy and legal issues. She has been a keynote speaker for the NYS Bar Association, the keynote speaker for the Surrogates and Associations and has taught numerous Continuing Legal Education courses focusing on her areas of expertise. In addition, she teaches courses on legal issues at Queensborough Community College and Queens College. Ann Margaret Carrozza has offices in Bayside, Glen Cove and Port Jefferson. Website address: www.myelderlawattorney.com.

Who Takes Care of Your Elder Law and Special Needs Clients?

- Guardianship
- Medicaid and SSI
- Special Needs Trusts
- Nursing Homes
- Advance Directives

COUNSELORS TO THE PROFESSION

Participation fees provided upon request, pursuant to DR-2-107.

VINCENT J. RUSSO & ASSOCIATES, P.C.

Long Island’s Signature Elder Law, Special Needs & Estate Planning Law Firm
800-680-1717 www.VJRussoLaw.com

- Westbury
- Lido Beach
- Islip
- Woodbury
Earning a Professional Certificate in Paralegal Studies Can Open the Doors to Legal Careers

If you are a recent college graduate, a foreign law graduate, thinking about law school, or considering a career change, paralegal studies can offer the path to success. Since 1976, Long Island University has been training paralegals who are in high demand and enjoy job security even during tough economic times.

**PARALEGAL**
- Part-Time, Evening/Weekend Program (7 months)
- Approved by the American Bar Association • Payment plans available

**Evening classes begin in April & May 2011**
**Register Now**

Paralegals must work under the supervision of an attorney and may not provide legal service directly to the public, except as permitted by law.

**SCHOOL OF CONTINUING STUDIES**
**BROOKLYN CAMPUS**

Visit our Web site at www.liu.edu/brooklyn/scs for program descriptions and further information or call (718) 488-1364
**The New York Center for Neuropsychology & Forensic Behavioral Science**

Dr. N.G. Berrill, Director

---

**Over 20 Years**

**Providing Consultation to Attorneys & the Courts on Psycho-legal Matters**

- **Criminal Cases**: Competency Issues, Criminal Responsibility, Extreme Emotional Disturbance, Risk Assessment, Sex Offender Workups & Dispositional Planning
- **Matrimonial & Family Court Cases**: Custody/Visitation, Neglect/Abuse, Termination, Delinquency, Family Violence, & Adoptions
- **Civil Cases**: Competency Issues, Head Trauma, Sexual Harassment, Discrimination, Immigration, & Post-Traumatic Stress Disorders

**Comprehensive Diagnostic & Treatment Services**

26 Court Street, Suite 912, Brooklyn, NY 11242
718-237-2127

45 North Station Plaza, Suite 404, Great Neck, NY 11021
516-504-0018

139 Manhattan Avenue, New York, NY 10025
212-280-3706

WWW.NYFORENSIC.COM

---

**Book Review: Commercial Litigation in New York State Courts Third Edition**

**Continued From Page 2**

Should a case actually go trial, there are numerous chapters concerning jury selection, motions in limine, the trial itself, opening statements, presentation of the case, cross-examination, graphics and other demonstrative evidence, admissibility of evidence, closing arguments and jury instructions.

The subject of damages is addressed by former Court of Appeals Judge Stewart F. Hancock, Jr.

There are chapters on the effects of bankruptcy proceedings. The all important question of attorney’s fees, costs and disbursements are addressed in two separate chapters.

Advice concerning Appeals to the Appellate Division is detailed by former Appellate Division Justice Francis T. Murphy.

Exactly how to pursue an appeal to the Court of Appeals is addressed by retired Court of Appeals Judge George Bundy Smith. And how about avoiding litigation itself? This treatise gives chapters on these questions and on crisis management, streamlining litigation, litigation management and litigation technology.

New York State Chief Administrative Judge Ann T. Pfeifer adds a chapter on the subject of civility, co-authored by Jeremy R. Feinberg, Esq. and Laura L. Smith, Esq. of the Office of Court Administration.

Substantive law topics are addressed in separate chapters: contracts, insurance, bank litigation, letters of credit, collections, contracts for services, employment law, sale of goods, warranties, bills and notes, secured transactions, agency, partnerships, products liability, mergers and acquisitions, securities litigation, shareholders derivative actions, director and officer liability, non-profit institution litigation, healthcare institution litigation, broker dealer litigation, intellectual property, commercial defamation and consumer protection. Notably, the consumer protection chapter was authored by Justice Thomas A. Dickerson of the New York State Court of Appeals.

The intersection of commercial law and criminal law is addressed in two chapters by Robert J. Anello, Esq. and Samuel Seymour, Esq.

The intersection of Surrogate’s Court practice and commercial law is explored in a separate chapter by Charles G. Berry, Esq. Commercial Real Estate litigation, construction litigation and environmental toxic tort litigation all are the subject of separate chapters.

A review of this treatise yields the following conclusion: it should be a required purchase for every law student in every law school in the United States. While the case method is helpful, there is no substitute for this treatise in understanding the interrelationship of all subjects of the law to each other. It has often been said that “law is a seamless web.” This work illustrates that expression more than any other.

A recent edition of the New York State Bar Association’s journal declared that the era of the general practitioner was over.

The treatise, Commercial Litigation in New York State Courts, Third Edition, shows that this theory could not be further from the truth. A lawyer who does not understand the interrelationship of all of these subjects will not be serving his or her clients properly.

---

**Diana C. Gianturco**

**ATTORNEY AT LAW**

P.O. BOX 419
LONG BEACH, NY 11561
Tel: 888-805-8282
Fax: 516-706-1275
Text: 321-480-1678

**APPEARANCES IN QUEENS COUNTY**

E-mail: DianainQueens@aol.com
When it comes to professional liability insurance, you’ve got more choices than you think.

With CBS Coverage Group Inc. some choice are better than others.

The CBS Law Division has relationships with multiple A-rated carriers to better protect your practice and your bottom line.

For more information, contact Regina Vetere at 516-394-7562 or rvetere@cbsinsurance.com

Sponsored provider of professional liability insurance for the Nassau, Suffolk, Queens, Saratoga and Albany Bar Associations.
Court rules similarly.”

“[W]here a summons contains ‘Drive Off’ or similar language, dismissal for lack of personal service may be appropriate] if the ALJ is persuaded by substantial evidence that the motorist was not evading service. If, on the other hand, the ALJ is persuaded that the motorist left the scene in order to avoid serving of a summons, the decision should reflect that finding and the basis for it. In such a case, it may be appropriate for the ALJ to make a finding of proper service or that the motorist is stopped from challenging the propriety of service.

“In the Ko case, no such record was developed regarding the circumstances of the drive off.”

The memorandum is saying that driving off to evade process may estop the motorist from challenging the lack of process service. PVB does not mail parking summonses. PVB mails statutory prejudgment notices, which are not parking summonses,15 may be served after service of process has been completed and for the time and for responding to the summons has expired17, and do not purport to be summonses. The Ko decision, before rejecting mailing as process service, stated PVB mailed Mr. Ko a parking summons18; however, no summons was mailed. In the Ko case PVB claimed notices of the summons were mailed.19 The Ko record contained no evidence or claim an original or copy of the summons was mailed.

Even assuming PVB mails the motorist a parking summons and has authority to do so,20 the estoppel referred to in the memorandum will not support refusing to follow Ko (service by mail not permitted even in drive off cases), not even if an ALJ finds the motorist drove off to evade process. There can be no such estoppel without fraud or misrepresentation by defendant.21 Since under the applicable statute of process service may not be accomplished only by personal delivery or by affixing the summons to the vehicle,22 driving off cannot mend a process service into reasonably believing the statute authorizes process service by mailing. Therefore, driving off to evade process will not estop a motorist from denying mailing is process service.23 “[T]his is the instant of our jurisprudence to extend court principles to administrative or quasi-judicial hearings insofar as they may be adapted to such procedures.”

PVB and Ko serve to collaterally estop PVB, as well as in privity with PVB,24 from re-litigating the issues of fact or law25; they necessarily decided against PVB,26 even if the party invoking collateral estoppel were not a party in Meyers or Ko,27 the tribunals or causes of action were different,28 or PVB’s appeal in Meyers were pending.29 With Meyers and Ko involving procedural and mental operations, “on the granting of any relief to the petitioners comparable relief shall have been stayed by the appeals board.”5 VTL 242, which makes 19 RCNY 39-12 (b) (3) unenforceable,30 the triennial affirmation in support of the Mayor’s Management Report Fiscal 2010, at 182, Redmond supra, is an attorney in New York. He is Counsel to the Profession – over three decades.

EMPLOYMENT & LABOR LAW

STEPHEN D. HANS & ASSOCIATES P.C.
Counsel to the Profession

Sexual Harassment
Americans with Disabilities Act
Education Law
Arbitrations

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@hansassoc.com

Continued On Page 9
WHAT RETIREMENT HAS MEANT

To reconnect with my very deep roots
I needed to be inspired
As I bask in the Florida sun
I’m slowly becoming rewired...

I miss the action on the Boulevards
Both Saptin and Queens,
And the battle to prevail
(Of course only by acceptable means)

I’d like to stand
On that APN line
And hear pals and DA’s (also pals)
With their patented whine...

“Five to ten
And not a day less,” —
“But look at this poor kid.
His life’s been a mess,”

And we’d caçole and urge
(Isn’t this a great nation?)
And ultimately agree -
Split bit and probation!

We squeezed into
The ill designed benches
Hoping to get called
‘Ere the rush to the lunches.

I miss the aura -
The courtroom ambiance.
The matching of wits
Often taking a chance,

The constant realization
Of responsibility so real
A successful representation ...
How good does that feel!

I miss our Judges
Queens has a good bench
How often I’d comment
“’That Judge is a mensch!”

And most of all
The camaraderie - inspired.
But I’m having a ball, nonetheless..
You see...I’m retired!

Robert E. Sparrow
March, 2011

Impact of Two Court Decisions
On Parking Violations Bureau

Continued From Page 8 —

14 While the memorandum may be suggesting otherwise, “the burden of proving jurisdiction is upon the party asserting it” (Green Point Sav. Bank v. Taylor, 92 NY2d 910, 910 [2d Dept 1998]).

15 PVB mails the front of the summons in response to a request for a summons copy. 16 Ko at 609. For example, parking summons may be issued by only designated officers (VTL 237 [9]), must be sworn to or affirmed (VTL 237 [9]), and must identify the plate designation, plate type, registration expiration date, make and model, and body type of the vehicle, or indicate that that information was not available (Matter of Ryder Truck Rental v Parking Violations Bur. of Transp. Admin. of City of N.Y. 40 NY2d 1044 [1992]). VTL 238 [2]-[4]: The statutory notices PVB mails (see VTL 235 [2] [a] [2], 241 [2]) do not meet any of those summons requirements, except as to plate designation and plate type.

17 Ko at 609; see VTL 235 (2) [a] (2), 241 (2). 18 Ko at 604, 608.


20 PVB’s powers and duties (VTL 237) include hearing and determining charges of parking violations (VTL 257 [1]), entering and enforcing judgments, without court proceedings (VTL 237 [5]), and adopting rules and regulations that are not inconsistent with any applicable provision of law to carry out the purposes of VTL article 2-B, Adjudication of Parking Infractions (VTL 237 [3]), but do not appear to include issuing those charges (see VTL 237 [9]). NYC admin. Code 41-29 (c) [1] serving parking summons. An administrative agency has only those powers conferred by statute (Matter of Bock v New York City School Constr. Auth. 84 NY2d 1014, 84 NY2d 1014, 1994, at 22, col 4 (Sup Ct, NY County 1994), see Pump v Transportation Admin. Parking Violations Bur. of City of N.Y. 40 AD3d 910, supra

24 See Sambumur v. Home Mut Ins., 120 AD2d 59, 64 (2d Dept 1986); Sipez v. Nutz Corp. 444, 444 at 752 (4th Dept 1984). But compare Northern Newspapers, Inc. v. Securus Mobile Old Co., 368 F.3d 384, 387-388 (2d Cir 2006) (denying collateral estoppel effect to order still under appeal, where execution of that order was automatically stayed by statute pending the time for filing and after filing the notice of appeal).


26 People v. Damien, 87 NY2d 477, 489 (1996) (concurring opinion) (c) at 488-489.
27 E.g. E. Mellenberger, 95 F2d 709, 719-720 (Oregon 1940).
FUTURE ANXIETY, written by Laurel Haines and directed by Jim Simpson, starring The Bats, the resident acting company of THE FLEA. Performances run April 15 May 26 at The Flea (41 White Street between Church and Broadway in Tribeca).

FUTURE ANXIETY is set in the not too distant future. Unfortunately, the planet has become uninhabitable. Fortunately, Karl has built a spaceship. In this fiercely intelligent and wildly conceivable vision of the apocalypse, a new generation tries to make sense of how to live on a planet with increasingly drained resources and susceptible inhabitants.

The production stars a cast of twenty-two talented actors: Brett Aresco, Allison Buck, Holly Chou, Ugo Chukwu, Katherine Folks Sullivan, Grant Harrison, Alex Herald, Josephine Huang, Amanda Idoko, Raill Sigmund Julia, Yvette King, Vin Kridakorn, Maren Langdon, Betsy Lippitt, Seth Moore, Joy Notoma, Reynaldo Piniella, Donaldo Prescod, Anita Sabherwal, Joann Sacco, Keola Simpson, Hansel Tan and Monica Wyche. The design team includes Kyle Chepulis (set), Brian Piniella, Donaldo Prescod, Anita Sabherwal, Joann Wyche.

The program was held in honor of “Women’s Month.” The attending members of the Social Security office were very grateful for Justice Haines’ visit. The event was attended by the community near the Courthouse.

Respectfully submitted,
Guy R. Vitacco, Sr.
Chair of Speaker’s Bureau
Dear Member:

The Queens County Bar Association’s Scholarship Fund was created in 2005 to offer financial assistance to law students who are residents of Queens County or who attend law school in Queens County.

The recipients of the QCBA Scholarship are carefully chosen based on academic achievement, community service and financial need and is awarded at the Annual Dinner in May.

I know that times are hard, but I would hope that you could donate to this worthwhile purpose and your tax deductible donation (of any amount) will help to support and recognize those deserving law students who provide community service to the residents of Queens County. It also enhances the good name of our Association.

As President of the Queens County Bar Association, I thank you for your support of this valuable community-based program.

Sincerely,
CHANWOO LEE
President

Please make checks payable to:
QUEENS COUNTY BAR ASSOCIATION FUND, INC.
(all donations are tax deductible)
Picture yourself in front of 27,000 New York lawyers.

It’s a good place to be. Especially if your firm provides services to the legal profession. Whether it’s lawyer-to-lawyer or business-to-business, your advertisement in our network of legal publications puts your message in front of more than 27,000 attorneys, judges and legal professionals in five metro New York and Long Island counties.

Let us put you there.

NEW YORK COUNTY LAWYER - QUEENS BAR BULLETIN - BROOKLYN BARRISTER - ATTORNEY OF NASSAU COUNTY - THE SUFFOLK LAWYER

5 PUBLICATIONS ONE CALL!

866-867-9121