Hispanic Heritage Award to Justice Joseph A. Zayas

BY TANGIER HARPER*

I had the privilege of attending the Queens District Attorney’s celebration of National Hispanic Heritage Month on October 11, 2012. Judge Brown presented Justice Joseph A. Zayas with the District Attorney’s 2012 Hispanic Heritage Award for his dedicated service to the legal and Latino communities. Justice Zayas who immigrated with his family from Barranquitas, Puerto Rico, graduated magna cum laude from Fordham University and from Columbia Law School where he was a Charles E. Evans Fellow. Justice Zayas who has presided in Criminal Court since 2003 and has recently served as an acting Supreme Court Justice in Queens County, was appointed by Governor Cuomo as a Judge of the Court of Claims in June, 2012. In addition to his judicial work, Judge Zayas presently serves on the Judicial Institute’s Criminal Law Advisory Committee, as the Secretary of the Association of Judges of Hispanic Heritage and is on the advisory board of the Latino Lawyers Association of Queens County, which honored him in 2008 for his dedication and commitment to the Latino community in Queens County. He resides in Little Neck, Queens with his wife, Catherine and their three children.

National Hispanic Heritage week began in 1968 and was expanded to a month-long celebration in 1988 as a tribute to Latino-American culture and traditions. Past recipients on the D.A.’s Hispanic Heritage Award include Richard M. Camacho, Administrative Judge, Criminal Term, Queens County (2009) and Justice Fernando M. Camacho, Administrative Judge, Criminal Term, Queens County (2008).

*Tangier Harper, is a Foreclosure Prevention Staff Attorney for the Queens Volunteer Lawyers Project, Inc.

Photo Corner: QCBA Installation

Stephanie Miller, Dean-CUNY Law School, Barbara Moses, then President-Elect, New York County Lawyers Association; Seymour James, then President-Elect, New York State Bar Association; Domenick Napoletano, then President-Elect, Brooklyn Bar Association; and Samuel Seymour, then President, New York City Bar Association at the QCBA Installation Dinner. For more photos from the event see pages 6-7.

INSIDE THIS ISSUE

Hispanic Heritage Award to Joseph A. Zayas..............1
Irrevocable Trusts: Irrevocable or Not........4
New pro bono requirements..................5
Profile of Justice Randall T. Eng..................1
Photo Corner: Annual Dinner..................6-7
President’s Message..........................3
Marital Quiz..........................8
History Corner..........................3
50 Years of Queens Family Court..................9
Editor's Note..........................4
Poetry Corner..........................10
CLE Seminar & Event Listing

December 2012

Tuesday, December 4
Till Death or Divorce Do Us Part

Wednesday, December 5
Advanced Criminal Law Series - Pt 2

Wednesday, December 11
Lexis/Nexis Seminar 4:00 - 5:00 pm

Thursday, December 13
Holiday Party at Douglaston Manor

Monday, December 24
Christmas Holiday - Office Closed

Tuesday, December 25
Christmas Day - Office Closed

Monday, December 31
New Year’s Holiday - Office Closed

January 2013

Tuesday, January 1
New Year’s Day - Office Closed

Monday, January 21
Martin Luther King, Jr. Day - Office Closed

Wednesday, January 30
Family Law Seminar

CLE Dates to be Announced

Civil Court
Elder Law
Insurance
Juvenile Justice
Professional Ethics
Real Property
Supreme Court & Torts Section
Worker’s Compensation

Volunteer for Sandy Relief

We are asking QCBA members to step forward and volunteer for our disaster relief initiative. Besides helping out at our clinic in the Rockaways, we will need lawyers to assist going forward in areas such as:

- Help with insurance and FEMA claims
- Landlord-tenant matters
- Foreclosures

Please contact us and add your name to our Sandy Relief pro bono volunteer panel.

To volunteer, please e-mail MWeliky@QCBA.org and indicate what type of assistance you could be available to help with.
On behalf of the Queens County Bar Association I would like to extend our well wishes to our members and their families who were affected by the devastating destruction caused by Hurricane Sandy.

I thank our members who have volunteered to assist in providing legal services and advice to those members of our community who may have been impacted by this disaster and to those members who opened up their offices for colleagues displaced by this storm. I am honored that our members continue the long tradition the Queens County Bar Association has maintained to render legal help not only to our profession but to our entire community when called upon.

In the coming months there will be a great need by our community for assistance with legal issues. We hope that all our members consider offering their support and assistance to those in need. Thank you for your support.

I wish to congratulate Justice Randall T. Eng on his recent appointment as Presiding Justice of the Appellate Division for the Second Department. Judge Eng has been a tremendous supporter of our Association for many years and we extend our best wishes as he assumes this new leadership role.

Congratulations to our newly elected Judges of the Civil Court: Donna Marse Golia, Robert Calorfas, Laurence Love and Ulysses B. Leverett.

The Queens County Bar Association is proud of our Judiciary and we look forward to working with all our newly elected Judges. I wish each continued health and success.

Congratulations to Judge Carol Ann Stokinger and to all Judges and staff of the Family Court in celebrating the 50th Anniversary of the Family Court.

Please take the opportunity and continue to visit our website www.QCBA.org to view upcoming events, register for CLE Programs and view articles published in our Bar Bulletin. The Queens County Bar Association Academy of Law continues to develop and offer outstanding programs to keep our practitioners current on ever-changing legal issues, while satisfying CLE requirements. Please continue to support our Association and take advantage of the opportunity to meet and socialize with one another throughout the year to make our profession more enjoyable and profitable.

I urge our members to mark your calendar and attend our Holiday Party co-sponsored by many fellow Bar Associations to be held at Douglaston Manor on December 13, 2012.

I thank, once again, our members and sponsors for their continued support and look forward to working with all of you throughout the year.

If you have any concerns, suggestions or comments, please do not hesitate to contact me at josephrisi.esq@gmail.com or by calling the Queens County Bar Association at (718) 291-4500.

BY STEVEN S. FINK, ESQ.

In 1893 the New York State Prison Department was experiencing the difficulty faced by other criminal institutions throughout the world. Since it had no accurate way to identify recidivists, too many hardened criminals were being sentenced as first offenders.

At that time, fingerprinting was not a reasonable alternative. While it had begun as far back as 1858 when it was briefly utilized by a British Magistrate in India, experimentation in the use of fingerprint identification progressed slowly. During the 1870s a British doctor, Henry Faulds, took up the study of skin-furrows as a means of identification. By 1880, Dr. Faulds had created a system of classification. The use of fingerprints was eventually used to assist in identification by Scotland Yard, but only as a supplement to the Bertillon System.

Alphonse Bertillon

Alphonse Bertillon was a French police officer and bio-metrics researcher born in Paris in 1853. His system of identification of criminals was based upon physical measurements and was known as anthropometry. It was the first scientific system used by the police to identify criminals and was eventually supplanted by fingerprinting.

Bertillon’s research was motivated by the rising French recidivism rate. In his free time he took measurements and pictures of his subject. He used the famous La Sante Prison in Paris to do his work. It was his research that we see today in the continued use of the so-called “mug shot.”

By 1882, Bertillon was ready to show his research to the public. In the system, the person was identified by measuring the head and body. Tattoos, scars and other distinct markings were referred to in order to distinguish criminals. The measurements were made into a formula that would apply to only one person and would not change. In 1884, the French police used the Bertillon System to help capture 241 repeat offenders. This event established the system’s effectiveness and began its widespread use. In contrast to fingerprinting, the system lent itself to the creation of what seemed to be a reasonable method of classification in contrast to the furrows of fingerprinting.

In New York, the prison department encouraged its use to identify criminals. In June of 1893, an “indexer” was hired for the Bertillon System. A bureau was actually established to create the necessary files. It was initially housed in Room 111 of the State Capital building in Albany. In 1896, at Sing Sing, a program was established to teach the intricacies of the system. Prisoners were measured at each of the State’s prisons and duplicate Bertillon cards were created so as to establish a central state index. By the end of the first year 16,000 Bertillon cards were on file and 131 criminals in the state prisons were found to be recidivists. Discussions began as to the need to establish a national system.

The use of the Bertillon System became common place in the New York State Courts. For example in People v. Stielow, 160 N.Y. Supp. 55 (Sup. Ct., Erie Cty. 1916) an affidavit by a Bertillon operator was submitted in support of a motion for a new trial. Fingerprint evidence was also utilized in conjunction with the Bertillon identification.

So, what happened to the use of the Bertillon System? Frankly, increased technology with fingerprinting led to its demise. Additionally, it was discovered that the system was actually flawed and this reduced its effectiveness.

In 1903, a man by the name of Will West was committed to the Leavenworth, Kansas penitentiary. He was photographed and measured using the Bertillon System. However, it was soon found that his measurements were almost identical to a convicted murderer in the same prison by the name of William West. Even their photos showed a close physical resemblance. The prison therefore relied upon fingerprint evidence which proved to be more reliable.

With the onset of fingerprinting and the West incident, the Bertillon System never quite recovered. Bertillon himself was a controversial character. He even testified as a witness for the prosecution in the infamous Alfred Dreyfus affair in 1894 and again in 1899. His testimony as a handwriting expert (even though he was not one) led to one of the most famous miscarriages of justice.

Bertillon died in Switzerland in 1914. Today his primary legacy is the standardization of the criminal mug shot and the evidence picture. Bertillon also created other forensic techniques, including forensic document examination and the use of galvanoplastic compounds to preserve footprints.

Further Reading

As always there is lots of information to be found on the internet. The Bertillon System can be found in literature including a reference in the Sherlock Holmes story The Hound of the Baskervilles. Bertillon may also be found in Caleb Carr’s novel The Alienist, and Ross Macdonald’s, The Drowning Pool.

The simple answer is this: Only drink soft drinks at social gatherings. It turns out that this is not so simple. The soft drinker is mocked. “Ah, one of the soft drinkers.” Or, “Can’t you hold your liquor?” are statements directed at the person who tries to comply.

How about a “designated driver,” one who will drive everyone else home and not drink? This gives a chance to get home, which people who work in Queens County who live all over the map, from Government Center, to St. Joseph’s, to St. Francis, to Jamaica, and to the New York Medical Center that is part of the 3rd floor of the new wing of the Kew Gardens courthouse. Depending on the facts and circumstances, DWI can be charged as either a misdemeanor or a felony.

In New York, the Queens County Bar Association Publishing Co. has just issued a new book on DWI (also called DUI - Driving Under the Influence) called Preparing a DUI Defense - A Practical Guide for Defending DUI Cases written by John Ingrasias and Kathleen V. Wells. It is well worth purchasing.

There is such a temptation to commit this crime. Virtually every social gathering is “lubricated” with wine, beer and harder stuff. Even one glass of wine or one beer can slow a person’s reaction time in getting one’s foot from the gas pedal to the brake pedal. Slowing that time by just a few seconds is often the difference between a serious accident and an ordinary drive to the grocery store.

BY ANN-MARGARET CARROZZA, ESQ.

New York estate planners have more tools than ever before with which to rework or amend existing irrevocable trusts. Trust settlors and drafters need to be aware of the ways trusts can later be changed in order to ensure that their original objectives are later carried out. There are many reasons one may wish to rework, modify or revoke an irrevocable trust. The trust may have been improperly drafted. Examples of this, unfortunately, abound in the waning weeks of 2012. This is because the current federal lifetime gift tax exemption of $5.0 million is set to expire as of December 31, 2012.1 There seems to be a mad rush to utilize this credit in order to reduce one’s gross taxable estate.3 Rather than make these gifts outright to individuals, it is usually advisable to make gifts to a trust. This gives the settlor the advantage of protecting the gifted property from the possible liabilities of the ultimate beneficiaries.4 In order for the gift into trust to remain outside of the settlor’s estate, the trust must have a testamentary character.5 If E.P.T.L. §7-1.9 relief is for any reason unavailable, certain trust Terms may be changed by decanting.

The Queens County Bar Association seeks to provide all our members enhanced benefits which seemed, to many, a logical extension of a Trustee’s unlimited discretion. If a Trustee has such broad discretion that he or she may pay all, none, or some of the trust’s principal, it wasn’t really a radical change for the law to allow the exercise of this discretion in favor of a trust for the benefit of the same beneficiary.

Relief under the original decanting statute was unavailable to a Trustee whose discretion to distribute principal was limited in any way. Even the commonly used ‘Health, Education and Maintenance’ standard prevented a Trustee from exercising discretion. The new law remedies this-and then some.

In 2011, New York State expanded the decanting statute to give Trustees

BY PAUL E. KERSON

Driving While Intoxicated (DWI) and its cousin, Driving While Impaired, are crimes unlike any other. See New York Vehicle and Traffic Law §1192, 1192-a, 1193, 1194, 1194-a, 1195, and 1196.

The main victim in these cases is often the defendant himself or herself. The drunk or high-on-drugs defendant can run his or her car off the road into a tree and wind up dead, or the defendant can hit and seriously injure or kill passers-by and occupants of adjacent vehicles. Such accidents can also wind up seriously injuring innocent people.

There is such a temptation to commit this crime. Virtually every social gathering is “lubricated” with wine, beer and harder stuff. Even one glass of wine or one beer can slow a person’s reaction time in getting one’s foot from the gas pedal to the brake pedal. Slowing that time by just a few seconds is often the difference between a serious accident and an ordinary drive to the grocery store.

The Queens County Bar Association is in receipt of funds which have accumulated pursuant to the termination of a Retention Agreement made, as of December 1, 2003, between US Life and the Queens County Bar Association. Accordingly, there appears to be no constitutional plan and re-entry into the community.

The entire program is one year long and consists of three phases: beginning treatment, education and re-entry.

The Queens County Bar Association invites you to contact our Executive Director, Arthur Terranova.

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In 2011, New York State expanded the decanting statute to give Trustees

Continued on page 10

If you have any comment please do not hesitate to contact our Executive Director, Arthur Terranova.
New Pro Bono Requirements For Bar Admission

Pursuant to section 53 of the Judiciary Law, it is hereby ORDERED, that Part 520 of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law (22 NYCRR Part 520) is amended, effective January 1, 2013, or as soon thereafter as section 52 of the Judiciary Law is complied with, to add section 520.16 thereto. Section 520.16 provides as follows:

§ 520.16 Pro Bono Requirement for Bar Admission
(a) Fifty-hour pro bono requirement. Every applicant admitted to the New York State bar on or after January 1, 2013, other than applicants for admission without examination pursuant to section 520.10 of this Part, shall complete at least 50 hours of qualifying pro bono service prior to filing an application for admission with the appropriate Appellate Division department of the Supreme Court.
(b) Pro bono service defined. For purposes of this section, pro bono service is supervised pre-admission law-related work that:
(1) assists in the provision of legal services without charge for (i) persons of limited means;
(ii) not-for-profit organizations; or
(iii) individuals, groups or organizations seeking to secure or promote access to justice, including, but not limited to, the protection of civil rights, civil liberties or public rights;
(2) assists in the provision of legal assistance in public service for a judicial, legislative, executive or other governmental entity; or
(3) provides legal services pursuant to subdivisions two and three of section 484 of the Judiciary Law, or pursuant to equivalent legal authority in the jurisdiction where the services are performed.
(c) Supervision required. All qualifying pro bono work must be performed under the supervision of:
(1) a member of a law school faculty, including adjunct faculty, or an instructor employed by a law school;
(2) an attorney admitted to practice in the jurisdiction where the work is performed; or
(3) in the case of a clerkship or externship in a court system, by a judge or attorney employed by the court system.
(d) Location of pro bono service. The 50 hours of pro bono service, or any portion thereof, may be completed in any state or territory of the United States, the District of Columbia, or any foreign country.
(e) Timing of pro bono service. The 50 hours of pro bono service may be performed at any time after the commencement of the applicant’s legal studies and prior to filing an application for admission to the New York State bar.
(f) Proof required. Every applicant for admission shall file with the appropriate Appellate Division department an Affidavit of Compliance with the Pro Bono Requirement, describing the nature and dates of pro bono service and the number of hours completed. The Affidavit of Compliance shall include a certification by the supervising attorney or judge confirming the applicant’s pro bono activities. For each position used to satisfy the 50-hour requirement, the applicant shall file a separate Affidavit of Compliance.
(g) Prohibition on political activities. An applicant may not satisfy any part of the 50-hour requirement by participating in partisan political activities.
Annual Dinner & Installation, May 3, 2012

Henry and Stephanie Quintin, Joseph, Karen and Christopher Risi.

Hon. Allen Beldock, Hon. Nicholas Garaufis, Hon. Fred Santucci and Hon. William Mastro

Hon. Arthur Cooperman, Hon. Sid Strauss, Hon. Darrell Gavrin and Hon. Fernando Camacho


Hon. Bernice Siegal, Hon. Carol Stokinger and Hon. Dennis Lebwohl

Paul and Barbara Goldstein, Jay Abrahams and Steve Wimpfheimer.

Paul Vallone, Hon. Peter Kelly, Hon. Nicholas Garaufis and Joseph Risi.

Paula and Paul Pavlides, Guy Vitacco, Joe DeFelice and Cathy Lomuscio.

Camila Popin, Sandy Munoz, Frank Livoti and Margaret Mulrooney.

David Cohen and Hon. Audrey Pheffer.

David Rosen, Ilene Fern and Joseph Cristiano.

Joseph Risi, Seymour James, Hon. Sidney Strauss and Hon. Joseph Risi

Photos by Walter Karling
Annual Dinner & Installation, May 3, 2012


Hon. Sandra Sgroi, Hon. Sheri Roman and Hon. Phyllis Flug

Hon. Thomas Raffele, Karina Alomar, Geo Nicholas and Gary Muraca.

John Lopresto, Guy Vitacco, Teresa Spina and Maria DeBonis


Marc Leavitt, John Duane, Ira Greenberg and Paul Kerson.


Robert Frommer, Caroline Caulfield and Maya Petrocelli.


Hon. Fernando Camacho, Jules Eingoren and Joseph Hendrie.

Charles S. Lopresto, II - Musician for the cocktail hour.
Question #1 - Is bonus awarded after the commencement of an action for divorce subject to equitable distribution?

Your answer -

Question #2 - Maintenance is retroactive to the commencement date, does payer spouse receive a credit for voluntary payments made on behalf of emancipated children of the parties?

Your answer -

Question #3 - When a judgment does not accurately incorporate the provisions of a stipulation of settlement, is the preferred remedy (1) to move in the trial court to resettle or vacate the judgment or (2) an appeal?

Your answer -

Question #4 - The parties' stipulation of settlement, which was incorporated in and survived their judgment of divorce, did not provide for a reduction in child support after one of their two children became emancipated. Was it proper for the Family Court to refuse to reduce the payer's child support obligation after one of the parties' children became emancipated?

Your answer -

Question #5 - Is it possible for a parent who has custodial rights to a child to be guilty of kidnapping that child?

Your answer -

Question #6 - May the trial court order the payer spouse to cover the payee spouse with health insurance beyond the period for which it awarded maintenance?

Your answer -

Question #7 - May the court order a spouse to provide health insurance for his or her spouse, if maintenance is not awarded?

Your answer -

Question #8 - Should the payer parent's Family Court petition to terminate his child support obligation be dismissed, because the parties' stipulation of settlement in their divorce action provided that he would not bring on any application to modify his child support obligation?

Your answer -

Question #9 - Is a rent controlled leasehold property distributable for purposes of equitable distribution?

Your answer -

Question #10 - Does the Supreme Court have the authority to decide which party in a matrimonial action is entitled to possess nondistributable property (i.e. a rent controlled apartment)?

Your answer -

*Editor's Note: Mr. Nashak is a Past President of our Association and Vice-Chair of our Family Law Committee. He is a member of the firm of Ramo Nashak Brown & Garibaldi LLP

ANSWERS APPEAR ON PAGE 11
Trials and Tribulations - Fifty Years of Family Court

BY MERYL KOVIT

This is the second of a series of articles on Queens County Family Court.

The Family Court opened its doors on September 1, 1962. Just seventeen days later, on September 17th, 1962, Father Knows Best went off the air. It can be argued that the last episode of Father Knows Best was possibly the more memorable event of September 1962 for many New York City families. Both events forever shadowed the many changes in the family which were about to happen. Fifty years later, Kitten, Princess, and Bud, their stay at home mom, and father who knew best, are just not recognizable as a typical American family.

To fully grasp the look and feel of the new Family Court on opening day in September, 1962, we need to rewind the history tape briefly. It’s 1959, Judge John Warren Hill, is the Presiding Justice of the New York City Domestic Relations Court, the predecessor court to Family Court, and he is preparing to retire. Judge Hill’s writing that year reflects a man who saw his retirement as an opportunity to blast city officials as to their treatment of the Court. His writing also provides an enlightening starting point for understanding how family issues have been treated in the court system and, as well, by the collective political powers of the day.

Judge Hill wrote, in his last annual report on the Court, about “the failure of the city government, over the years, even down to the present, to fully recognize the usefulness of this court and to provide this court with adequate staff and services.” Judge Hill validated his argument with statistics showing that the “hearings and conciliation service — deemed a “chamber of horrors” to both counselors and the “troubled” families seeking advice. It appeared that “constant yelling and screaming can be heard coming from the counseling rooms. There appeared to be a problem in that two counselors were using one room at the same time. The counselors were allowed to con- fer with two troubled families and their attorneys at the same time in order to keep up with the caseload.”

This was what was happening on the inside. It was said, however, that from the outside the original Union Hall Street Courthouse, between Liberty Avenue and South Road, Jamaica, was reported as “impressive from the outside with its striking entrance. However, inside the court, the place is “a snake pit.”10

In 1962, the Domestic Relations Court held 27,296 hearings.8 Hundreds of other cases were settled by a “new” screening process. There was a “new” set up marriage and conciliation service — deemed a “chamber of horrors” to both counselors and the “troubled” families seeking advice. It appeared that “constant yelling and screaming can be heard coming from the counseling rooms. There appeared to be a problem in that two counselors were using one room at the same time. The counselors were allowed to con- fer with two troubled families and their attorneys at the same time in order to keep up with the caseload.”9

About this same time Henry Eisenberg, the chairman of the Domestic Relations Law Committee of the Queens County Bar Association told the Queens County Bar Association President, Nat H. Henkel, that conditions in the Family Courthouse are “shocking.” Eisenberg also reported that “There is obviously a crying need for a new building for the Family Court.” The Chair of the Domestic Relations Committee, recommended that the Bar Association “add to its efforts for a new Civil Court, the obtaining of a new Family Court so desperately needed.” A site large enough to house both courts under one roof or adjoining buildings was being suggested.13

The discussion as to where to house the new Family Court continued; a mini saga in the longer fascinating history of the Court itself. In 1965, the Queens County Bar Association supported the use of the Queensborough Central Library in Jamaica, on Parsons Boulevard, as a temporary home for the Family Court — a centrally located complex. The Queens County Bar Association emphasized, referring to the library building that the association does not recommend “this temporary usage as a permanent solution” for the Family Court needs and urged that the City Planning Commission reject “piecemeal and disjointed” solutions to Queens Family and Civil Courts “troubles” and urged consideration of “government facilities in a centrally-located complex.”14

The Long Island Daily Press reported in December, 1964, that “Mrs. Martha K. Zelman, president of the Queens County Women’s Bar Association,” would be attending the planning commission meeting (which was to be held in the library on Parsons Boulevard) and Mrs. Zelman is credited with reporting to the press that the Family Court on Union Hall failed to “observe the basic rules of hygiene....” Mrs. Zelman said that “the children’s lunch is prepared next to an open toilet. There is no other place to prepare food.”

This court has been described as a “snake pit” and as “out of a Dickens’ tale.”16

If this were a tale written by Mr. Dickens, he would no doubt to fill the reader in on the following: the open toilet, while not hygienic, sat open, approximate- ly four years after the conclusion of a law suit by counselor Marie A. Beary that resulted in her being granted permission to become a member of the Queens County Bar Association. Prior to the lawsuit, the QCBA Committee on Professional ethics stated: “NO GIRLS ALLOWED.”17

Beary’s success has lived on. This writer is a long term member of the Queens County Bar Association and had no problems getting my membership application approved even though the female box is checked on my birth certifi cate — and while women are regularly admitted to membership in the Queens County Bar Association, the Queens County Women’s Bar Association also continues to flourish.

The many participants in the discussion regarding a new home for the Queens County Family Court failed to achieve a long term solution for the children serviced by the Queens County Family Court. In the end, the President of the Women’s Bar, did go along with the “piecemeal and disjointed” solution which the President of the Queens County Bar Association spoke against.18 In 1964, Mrs. Zelman said in December, 1964, “we are looking for a way to meet... the immediate needs of Family Court... not for some new monumental building in the far distant future.”19

Ultimately the Parsons Boulevard library came to be the new Family Court site — the library vacated about 1966.20

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Continued on page 11
Arts and Entertainment

Are We Nuts?

Strange as it seems, I must confess.
There’s a certain excitement,
When living with stress.

Although it’s a challenge
To function, without intention.
Such a lifestyle adds
A special dimension.

Most people prefer
The serene and mundane,
But some have a need
For an existence insane.

To run - to achieve -
At a pace most frenetic,
Leaving sitting and loafing
To those less energetic.

Jury’s Out

Alas said the foreman
It’s time to decide,
That lawyer was sharp
And very wise

Oh yes pronounced another
So intuitive was he,
And kind can’t you see?
His cause seemed so just
That is what I surely see

A third juror spoke up
And she declared,
Oh yes, I saw sincerity
In that lawyer’s eyes,
A man you can trust
So clear to me

Alas said another
I am confused,
Which way should we turn?
Should the vote be yes?
Or should it be no?

Outside paced the lawyer
In the empty hallway so dim,
Walking up and down
And round and around

Irrevocable or not?

To watch, in amusement,
Those indulging in leisure,
While action and pressure
Is their ultimate pleasure.

Again, it’s strange,
That we successfully thrive,
But an occasional Gelius
Helps us to survive!

Profile of: Randall Eng

Continued from page 1

ners in the Homicide Bureau of the Queens County District Attorney’s Office and trial partners again in the Supreme Court Trial Bureau, working the same Part before Supreme Court Justice Nicholas Ferraro in the late-70’s. The life of Randall T. Eng has been a tapestry of diligence, perseverance and opportunity. Justice Eng had the powerful infantile influence of hopes and dreams for a better life and a bonding with the Asian-American community, but personally, he had a desire to forge a career path for himself encompassing all communities and cultures. Justice Eng’s ‘roots’ are in Queens and he has served from judicial benches in administrative chambers for decades in the venerable and esteemed courthouses of the complex web of cultures that is the Borough of Queens. Judge Eng’s career has also been a role model for progress in civil rights through merit and prejudice, a champion of education, and possessed of sonorous, diligent, patriotic, innovative, a mustang, Justice Eng has served on the Board of Directors of St. John’s University School of Law since the mid-1990’s. He also taught Criminal Law as an Adjunct Professor to first-year law students at St. John’s. He was recognized by the Armed Forces Alumni and Student Chapter of St. John’s Law School Alumni Association with their Distinguished Veteran Alumni Award in 2010 and he was honored by the Asia Pacific American Law Students Association (APALSA) of St. John’s Law School, in January, 2012.

In summary, the newly-appointed Presiding Justice of the Appellate Division, Second Department, Hon. Randall T. Eng is well grounded in both courtroom procedure and practice and court administration and this author believes you will find Presiding Justice Eng to be capable, personable, diligent, patriotic, innovative, a champion of education, and possessed of encyclopedic knowledge on a vast catalog of topics pertaining to the court system as well as many other areas.

About the Author: Tom Principe is a Partner at Kramer, Dillof, Livingston & Moore in Manhattan, is a former Assistant District Attorney in Queens County (1973-79), and a member of the Queens County Bar Association since 1974 where he currently serves on the Judiciary Committee.

Reformation

If statutory relief is unavailable, one may petition the Court for reformation. The Power of the Surrogate’s Court to reform a trust rests in the Court’s inherent equitable powers. In the case of a drafting error or change in circumstances, the Court will attempt to ascertain and then effectuate the intent of the Settlor.

Conclusion

Trust Settlers and drafters who do not wish for trust terms to be later amended need to create documents that are both unambiguous and flexible. This will reduce the likelihood of a need to interpret and/or modify trust terms later.


Ann Margaret Carrozza is a member of the Queens County Bar Association and a practicing elder law and estate planning attorney.

1. NY does not currently have a gift tax
3. The federal estate tax threshold as of January 2013 is currently scheduled to be $1.0 million with a top federal estate tax rate of 55%. This is on top of state estate tax with a partial deduction for state estate taxes paid.
4. I.R.C. § 2036(a)
5. I.R.C. § 2036(a)
6. E.P.T.L. § 7-1.9(a).
Question #1 - Is bonus awarded after the commencement of an action for divorce subject to equitable distribution?

Answer: No, the court found that the bonus was compensation for future services. Ropiecki v. Ropiecki 2012 NY Slip Op 2475 (2nd Dept.).

Question #2 - Maintenance is retroactive to the commencement date, does payer spouse receive a credit for voluntary payments made on behalf of emancipated children of the parties?

Answer: No, the court found that the payments made on behalf of emancipated children were not provided for in the parties' stipulation of settlement, which was incorporated in and survived their judgment of divorce. Ayrovainen v. Ayrovainen 942 NYS2d 187 (2nd Dept., 2012).

Question #3 - When a judgment does not accurately incorporate the provisions of a stipulation of settlement, is the preferred remedy (1) to move in the trial court to resettle or vacate the judgment or (2) an appeal?

Answer: Move in the trial court to resettle or vacate the judgment. Ayrovainen v. Ayrovainen 942 NYS2d 187 (2nd Dept., 2012).

Question #4 - The parties stipulation of settlement, which was incorporated in and survived their judgment of divorce, did not provide for a reduction in child support after one of their two children became emancipated. Was it proper for the Family Court to refuse to reduce the payer’s child support obligation after one of the parties’ children became emancipated?


Question #5 - Is it possible for a parent who has custodial rights to a child to be guilty of kidnapping that child?


Question #6 - May the trial court order the payer spouse to cover the payee spouse with health insurance beyond the period for which it was awarded maintenance?


Question #7 - May the court order a spouse to provide health insurance for his or her spouse, if maintenance is not awarded?

Answer: No, Caso v. Caso 205 A.D. 2d 866; 613 N.Y.S.2d 456 (3d Dept, 1994) and DRL §236 (B) (8) (a).

Question #8 - Should the payer parent’s Family Court petition to terminate his child support obligation be dismissed, because the parties’ stipulation of settlement in their divorce action provided that he would not bring on any application to modify his child support obligation?


Question #9 - Is a rent controlled apartment property distributable for purposes of equitable distribution?

Answer: No, Cudar v. Cudar 2012 NY Slip Op 4965 (2nd Dept.)

Question #10 - Does the Supreme Court have the authority to decide which party in a matrimonial action is entitled to possess nondistributable property (i.e. a rent controlled apartment)?

Answer: Yes, Cudar v. Cudar 2012 NY Slip Op 4965 (2nd Dept.)

Fifty Years of Family Court

Continued from 9

but the Family Court never moved in until sometime in the 1970’s. Eventually there would be a “monumental building” to house the Queens County Family Court. The monument would require the intervention of another woman and the continuation of the telling of the Dickens’ Tale, referenced by Martha Zelman, Esq. Mr. Dickens would leave his readers wondering why and wanting to know more.

Next: the 1970’s, more trials, more tribulations...

Editor’s Note: Meryl Kovit regularly practices before the Family Court. She wants to thank Briana Hart and Julia Gonikman, Stony Brook University students, for their help in researching this article.

1. www.bristol45diner.com, October 5, 2012
2. www.wikipedia.org/Father Knows Best, October 5, 2012
4. id.
5. id.
6. id.
8. id.
9. id.
10. id.
11. id.
12. id.
13. id.
14. id.
16. May Use Library For Family Court, Long Island Daily Press, December 4, 1964
17. Beary v. Queens County Bar Ass’n, 25 Misc.2d 794, 207 N.Y.S.2d 324, see also Beary v. Queens County Bar Ass’n, 28 Misc.2d 448, 209 N.Y.S.2d 893 (1960)
18. Ask 1 complex, supra.
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