Nassau Lawyer

THE JOURNAL OF THE NASSAU COUNTY BAR ASSOCIATION

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OF NOTE

NCBA Member Benefit – I.D. Card Photo
Obtain your photo for court identification cards at NCBA Tech Center. Cost $10.
May 5, 6, & 7 • 9 a.m.-4 p.m.

EVENTS

LAW DAY
Thursday, April 30, 2015
5:30 p.m. at Domus
Reservation Required • *See Insert*

116th NCBA ANNUAL DINNER DANCE
Saturday, May 9, 2015 • 6:30 p.m.
Long Island Marriott, Uniondale
RSVP Special Events
(516) 747-4070 x226
See Insert and page 6 for Information

NCBA and NAL INSTALLATION OF OFFICERS
Tuesday, June 2, 2015 • 6 p.m.
at Domus
Watch mail for invitation

NCBA DOMUS OPEN GOLF OUTING
Eisenhower "The Red"
Monday, June 22, 2015
Registration 12pm • Shotgun Start 1pm
Golf and BBQ - $195pp
Special Price - Foursome $700
BBQ Only - $75pp 5:30pm at the Carltun
Call Perri Boodram for Details
(516) 747-4070 x226

WHAT'S INSIDE

UPCOMING PUBLICATIONS COMMITTEE MEETINGS

– OPEN TO ALL NCBA MEMBERS –

Thurs., May 14 • Thurs., June 11
12:45 at Domus

Law Day to Celebrate 800th Anniversary of the Magna Carta

Jon Probstein, Brenda Hayden and Health & Welfare Council to Receive Awards

By Valerie Zurblis

Perhaps more than any other document in human history, the Magna Carta has come to embody a simple but enduring truth: No one, no matter how powerful, is above the law.

In the eight centuries that have elapsed since the Magna Carta was sealed in 1215, it has taken root as an international symbol of the rule of law and as an inspiration for many basic rights Americans hold dear today, including due process, habeas corpus, trial by jury, and the right to travel.

All attorneys are invited to rededicate themselves to advancing the principle of the rule of law here and abroad at this year's Law Day celebration, "Magna Carta: Symbol of Freedom Under the Law," to be held Thursday, April 30, 2015, 5:30-8 p.m. at Nassau County Bar Association headquarters in Mineola. Reservations are just $55, but are required by April 24 to guarantee a seat at this popular event (see enclosed flyer for details.)

This year's keynote speaker is Long Islander Martin Tankleff, who at 17 years old, was convicted of killing his parents and sentenced to prison. After serving 17 years in prison, he was exonerated of the crime. His experience is a dramatic illustration of the need for due process of law, a basic right first articulated in the Magna Carta.

Each year on Law Day, NCBA also recognizes three outstanding examples of service. The Liberty Bell Award will be presented to the Health and Welfare Council of Long Island, a not-for-profit health and human services planning and advocacy umbrella organization. Jon Michael Probstein, a long-time dedicated volunteer at NCBA's clinics, Nassau/Suffolk Law Services Volunteer Lawyers Project, and The Safe Center LI, will be honored with The Thomas Maligno Pro Bono Attorney of the Year. Finally, the Peter T. Affatato Court Employees of the Year Award

Liberty Bell Award

The Health & Welfare Council of Long Island

Thomas Maligno Pro Bono of the Year Award

Jon Probstein

The Peter T. Affatato Court Employee of the Year Award

Brenda Hayden

See LAW DAY, Page 20

MAY IS MEMBERSHIP MONTH

Try It, You'll Like It!

Bar Opens its Doors to Potential New Members

By Marc Gann and Geoffrey Prime

Once again, May 2015 is Membership Month at the Nassau County Bar Association. For readers who are non-members, take a look at what the NCBA has to offer in May and consider joining now to take advantage of all of the benefits of membership. May is a unique month in which non-members get a sneak peek inside the Association. Current members as well can take advantage of some once-a-year opportunities.

Committee Meetings Open to All Attorneys

Once again, we're demonstrating the value of NCBA membership by opening up all NCBA committee meetings to non-members in the month of May. Our committees are truly the lifeblood of our Association. They are one of our more important benefits to NCBA membership. Committees are where the work of the Association gets done, where attorneys exchange ideas, learn about changes in the law in their practice areas, earn CLEs, and network with peers.

NCBA has more than 50 working committees on a variety of practice areas, from Adoption Law to Workers Compensation and everything in between. Many of these committees are holding meetings in the month of May, and you're invited to participate. You can find a full list of May's scheduled committee meetings on page 14.

Celebrating the Magna Carta

There are plenty of other special events

See MEMBERSHIP, Page 6

For NCBA Members
Notice of
Nassau County Bar Association
Annual Meeting
May 12, 2015 ● 7 p.m.
Domus

Proxy statement can be found on the insert in this issue of the Nassau Lawyer. In addition to the election of Nassau County Bar Association officers, directors, Nominating Committee members and Nassau Academy of Law officers, amendments to the Nassau County Bar Association By-Laws will be voted upon.

A complete set of the By-Laws, including the proposed amendments, can be found on the Nassau County Bar Association website at www.nassaubar.org. Copies will be available at the reception desk at the home of the Association or by mail upon request.

Richard D. Collins
Secretary

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New York Cracks Down on Consumer Debt Collections

In response to a growing trend of abusive and harassing debt collection activity towards consumers, the New York Department of Financial Services ("DFS") recently enacted new regulations against such practices by third-party debt collectors and debt buyers. Most of these regulations, which can be found at 23 NYCRR § 1.1-1.6, went into effect on March 3, 2015, while others that relate to debt information to be provided in initial disclosures and substantiation of consumer debts, go into effect on August 3, 2015.

Jeff Morgenstern

The new DFS regulations go beyond the scope of the Federal Fair Debt Collections Practices Act ("FDCPA"). Also, these regulations are on the heels of separate rules enacted last year which became effective October 1, 2014, dealing with applications for default judgments in consumer credit cases.

2014 Rules in Effect on Applying for Default Judgment

As evidence of the added scrutiny that debt collectors and debt buyers are under, New York has adopted new rules with respect to obtaining default judgments in consumer credit cases. This legislative action is in response to a growing trend of default judgments being sought based on documents that were either erroneous or incomplete, but which were routinely entered as a virtual "slam-dunk" against consumers, many of whom were defenseless or unsophisticated.

The new rules, which can be found at 22 NYCRR Parts 202, 208, 210 and 212, and which took effect on October 1, 2014 (except as noted below), require:

a) creditors to provide detailed affidavits to support the application with sufficient proof based on personal knowledge;

b) applications to have information about the original credit agreement, documented accounting during each phase in the debt's chain of ownership and documentation that identifies the defendant as the correct debtor. (This rule takes effect on July 1, 2015, relating to all debts purchased by debt buyers before Oct 1, 2014.);

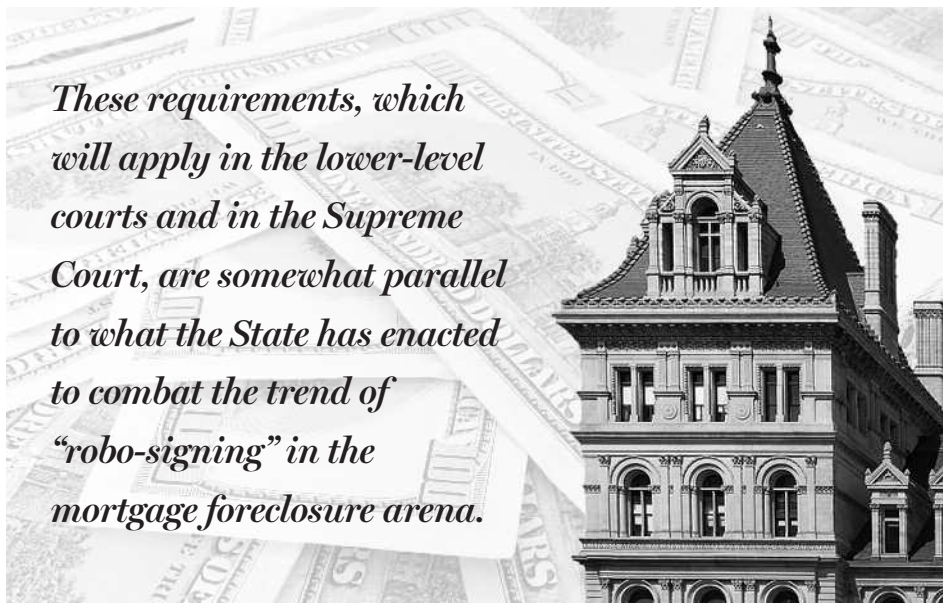
c) the creditor's attorney to affirm that the Statute of Limitations has not expired; and

d) a new form of verification of the efforts made to notify the debtor of the impending default.

These requirements, which will apply in the lower-level courts and in the Supreme Court, are somewhat parallel to what the State has enacted to combat the trend of "robo-signing" in the mortgage foreclosure arena. The requirements place a heavy burden on creditors and debt buyers, who must establish the complete chain of title of a delinquent account, and maintain accurate records of consumer credit transactions. It remains to be seen what effect this will all have on the economics of the "debt buying" industry, as it may serve to discourage such activity for fear of not being able to effectively collect on delinquent accounts.

DFS Regulations Effective March 3, 2015

Time-Barred Claims If the debt collector knows or has reason to know that enforcement of the debt is barred by the Statute of Limitations, it must



make certain disclosures to the consumer before collecting the debt. In essence, the disclosures give notice that it is believed that the statute has run, the consumer does not have to admit to owing the debt, promise to pay it, or waive the statute. Further, the consumer is notified that a suit to collect on the debt violates the FDCPA; and that acknowledging or promising to pay the debt may revive the statute. Debt collectors must also set up "reasonable procedures" to monitor the Statute of Limitations on debts they are pursuing.

Confirmation of Settlement The debt collector must provide the consumer with written confirmation of a payment plan or agreement reached within five days and a quarterly accounting of payments made in installments. Once payments are completed, the consumer must be given written confirmation of satisfaction of the debt within twenty days.

E-Mail Communications Debt collectors can only e-mail consumers if the consumer voluntarily consents in writing to same and provides an e-mail address for that purpose, as long as the e-mail address is not provided or owned by the consumer's employer.

Regulations Taking Effect August 3, 2015

Initial Disclosures Upon the debt collector's initial communication with the consumer or within five (5) days thereafter, in addition to disclosures required by the FDCPA, consumers must be given written notice that:

a) debt collectors are prohibited from conducting abusive or deceptive practices to collect debts;

b) if the debt collector has "charged off" the account, the name of the original creditor and the breakdown of the amount of the debt, and

c) certain types of income are exempt from satisfaction of a debt.

See COLLECTIONS, Page 17

Non-Immigrant Employment Visas: Options and Opportunities

Many people come to the United States on non-immigrant employment visas every year. These allow a U.S. company to employ a foreign worker on a temporary basis. There are many types of employment visas available. The two types of visas that will be discussed here are H–1B visas and L–1 visas.[1] More specifically, this article will focus on why the spouse of an L–1 employee (L–2 Visa) can acquire Employment Authorization (EAD) very easily, while the spouse of an H–1B employee (H–4 Visa), can only acquire an EAD under very limited circumstances.

H–1B Visa

H–1B visa is a non-immigrant visa that allows a U.S. company to employ a foreign worker on a temporary basis.[2] The worker must perform services in a specialty occupation.[3] 8 USC Section 1184(i)(2) defines Specialty occupation as "theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States."[4]

There is a limit on the number of H–1B visas allocated by the United States Citizenship and Immigration Services (USCIS) every year. For a person with a bachelor's degree the USCIS allocates 65,000 visas. However, out of the 65,000 visas, 6,800 visas are reserved for Chile and Singapore Citizens under certain Free Trade Agreements between these countries and the United States. Therefore, only 58,200 new H–1B visas are available every year.[5]

For a person who possesses a Master's degree or higher from a U.S. university, the limit is 20,000 petitions. This means the first 20,000 petitions, filed for a beneficiary who has obtained a U.S. master's degree or higher, are exempted. Once the 20,000 cap is reached any petition filed for beneficiaries, with a U.S. Master's degree or higher, will count against the regular cap.[6]

An H–1B employee can only stay in the United States for six years.[7] There are two ways for employees to stay beyond the six year limit:[8]

One, the American Competitiveness in the Twenty-First Century Act (AC21), allows H–1B employees who are unable to file for an Adjustment of Status (because of per-county limits) and have an approved I-140 Petition, to extend their stay beyond the six years cap until their adjustment of status application has been adjudicated (approved or denied). In this case, the H–1B employee can extend their stay in three-year increments.[9]

Two, according to AC21, an H–1B employee, who has filed an I-140 Petition or an application for adjustment of status at least 365 days before filing the labor certification application or EB immigrant petition, can extend their H–1B status in one-year increments.[10]

Rajat Shankar

L–1 Visa

L–1 visa is a non-immigrant visa that allows multinational organizations, operating both in the U.S. and abroad, to transfer certain employees from its foreign office to an office based in the United States. The employee must have worked for a subsidiary, parent, affiliate or branch office of the U.S. Company outside the U.S. for at least one year out of the last three years. The L–1 visa is further divided into subcategories: L1A and L1B.[11]

The L1A visa is reserved for a Manager or Executive of the company. L1B is reserved for a person who has a Specialized Knowledge in their field of work.[12]

Unlike the H–1B, the L–1 category does not have a quota or cap. Furthermore, L1A employees are granted the visa for seven years and L1B workers are granted the visa for five years.[13]

People on L–1 Visa can extend their visa, similar to that of H–1B, under limited circumstances.

Work Authorization for L–2 and H–4 Visas

Spouses of H–1B employees are given a dependent status called H–4 visa. Similarly, spouses of L–1 Visas are given a dependent status called L–2.

People on L–2 automatically get an EAD card upon the approval/arrival of an L–1 Visa.[14] However, this is not the case for people on H–4.

Until recently, people on H–4 visas could not get an EAD until their adjustment of status application (I-485) was filed. This is a problem because each country has only a certain number of petitions that can be approved at any given year. It is not unusual for people from countries like China and India to wait seven or eight years before their I-485 application becomes current. All the while people on H–4 visas are not allowed to work, even though they are

See VISAs, Page 15

THE JOURNEY

FROM THE PRESIDENT

John P. McEntee

In a profession where ambition is as common as traffic on the Long Island Expressway, Lyndon Johnson stood apart. Entering the United States Senate from Texas in 1949, he muscled his way to Senate Majority Leader by 1955. In 1956, he sought the Democratic nomination for President. Defeated soundly, he was confronted with a powerful reality. As a product of a Confederate state he could not muster support in the North, which viewed him as an opponent of civil rights. The view was not unfounded, as Johnson had regularly teamed with fellow Senators from the South to frustrate efforts at civil rights legislation.

Stung by the defeat, Johnson sought to transform his image. He engineered the passage of the first civil rights legislation since Reconstruction, the Civil Rights Act of 1957. It was a modest piece of legislation, as provisions banning segregation in places of public accommodation were stripped from the bill. Its passage in the face of stiff Southern opposition, though, was a testament to Johnson's parliamentary skills and was expected to soften at least some Northern opposition to his renewed candidacy in 1960.

Leading up to 1960, Johnson was firmly in control of the Senate and expected to be anointed the Democratic nominee for President. While Johnson was running the Senate, though, his fellow Senator, John F. Kennedy, whom Johnson considered a privileged lightweight, was laying the foundation for his campaign for President.

Kennedy, who won the nomination, offered Johnson the position of Vice President at the 1960 Democratic convention in Los Angeles. Some say he did so as a courtesy, expecting Johnson to decline. Others say Kennedy wanted Johnson on the ticket, asserting Kennedy knew he had to carry the South to win the general election, and that he could only carry the South with Johnson. Despite Robert Kennedy's furtive efforts to convince Johnson to decline, Johnson accepted, and the convention delegates quickly blessed this marriage of convenience. Johnson went on to campaign tirelessly throughout the South, giving implicit reassurances that the liberal Senator from Massachusetts would not, if elected, disturb the "southern way of life."

Soon after the general election, Johnson found himself frozen out of any involvement in the Kennedy administration. Some of the estrangement was due to clumsy efforts by Johnson to carve out power in the administration. Some of it was due to Johnson's lack of support for Kennedy's quarantine strategy during the Cuban missile crisis. And, some of it was class-based. Johnson, born poor in the West Hills of Texas and a graduate of Southwest Texas State Teachers College, was looked down upon by Kennedy's Ivy League staffers, who referred to Johnson derisively as "Rufus Cornpone."

In June, 1963, Kennedy transmitted to Congress a bill providing for broad civil rights protections. As of November, 1963, the bill was stalled in the Senate, with the Chair of the Judiciary Committee, Mississippi Senator James Eastland, content to let it languish in his Committee indefinitely. At the same time, speculation abounded that Johnson would be replaced on the ticket for the 1964 presidential election. That speculation died in Dallas on November 22, 1963 with three shots from a $19.95 mail-order carbine. On that fateful day, many assumed that all hope for the passage of effective civil rights legislation had also died.

Upon assuming the Presidency, Johnson, to the surprise of many and the consternation of others, would not let the legislation languish. In the months to come, Johnson engineered a bypassing of the Judiciary Committee, maneuvered the bill onto the Senate floor, and overcame a 54-day filibuster, resulting in the passage of the Civil Rights Act of 1964. The Act was revolutionary, barring discrimination based on race, color, religion, and national origin in hotels, motels, restaurants, and theaters.

None of this, of course, occurred in a vacuum. Leading up to and during 1964 and 1965 there were demonstrations in the South and elsewhere protesting racial discrimination. In January, 1965, the Reverend Martin Luther King and others led demonstrations in Selma, Alabama for the passage of federal voting rights legislation.

On March 7, 1965, a protest march from Selma to the Alabama capital of Montgomery began, with protestors headed out from Selma on a bridge named for Edmund Pettus, a Confederate General, Grand Dragon of the Alabama Klu Klux Klan, and United States Senator. It was there that the protestors, peaceful and unarmed, were attacked by Alabama State Troopers with tear gas and billy clubs, in an incident known as Bloody Sunday.

On March 15, 1965, Johnson addressed a joint session of Congress, urging it to pass the expansive voting rights legislation he was introducing. He stated, "At times history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama." He then noted:

> This was the first nation in the history of the world to be founded with a purpose. The great phrases of that purpose still sound in every American heart, North and South: 'All men are created equal' – 'government by consent of the governed' – 'give me liberty or give me death.' Well, those are not just clever words, or those are not just empty theories. In their name Americans have fought and died for two centuries, and tonight around the world they stand there as guardians of our liberty, risking their lives.
>
> Those words are a promise to every citizen that he shall share in the dignity of man. This dignity cannot be found in a man's possessions; it cannot be found in his power, or in his position. It really rests on his right to be treated as a man equal in opportunity to all others. It says that he shall share in freedom, he shall choose his leaders, educate his children, and provide for his family according to his ability and his merits as a human being.

The bill Johnson introduced was signed into law on August 6, 1965. The Voting Rights Act of 1965 was sweeping in its scope, prohibiting state and local governments from imposing any law or requirement resulting in discrimination against minority voters. But it was just a step, albeit a very important one, on the long road to equality, as Johnson noted in his March 15 address to Congress:

> But even if we pass this bill, the battle will not be over. What happened in Selma is part of a far larger movement which reaches into every section and State of America. It is the effort of American Negroes to secure for themselves the full blessings of American life. Their cause must be our cause, too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice.
>
> And we shall overcome.
>
> As a man whose roots go deeply into Southern soil I know how agonizing racial feelings are. I know how difficult it is to reshape the attitudes and the structure of our society. But a century has passed, more than a hundred years, since the Negro was freed. And he is not fully free tonight. *** A century has passed, more than a hundred years, since equality was promised. And yet the Negro is not equal. A century has passed since the day of promise. And the promise is unkept.
>
> The time of justice has now come. I tell you that I believe sincerely that no force can hold it back. It is right in the eyes of man and God that it should come. And when it does, I think that day will brighten the lives of every American.

With these words, Johnson recognized the legislation was neither a complete solution for racial discrimination nor a crowning achievement for his Presidency. And yet, Johnson's words mark an important journey. The journey, though, was not just of protestors crossing a bridge on the Alabama River on their way to Montgomery, Alabama. It was also a journey of a man, a complicated man who, despite his deep Southern roots, would grow to become a most unlikely yet remarkably effective proponent of equal civil rights for all Americans.

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The Cost of Doing Business with a Difficult Client

What would business be like without difficult clients? It is the norm that most clients are difficult in some way but the term "difficult" could mean many things to the practitioner. In reality, the line in the sand comes when you are spending more time on a particular person and making less money.

Sometimes, as a business owner or managing partner, you have to make the decision that it simply isn't worth it for you, your employees or your firm to work with these difficult clients. The difficult client may have issues that can be resolved, and of course you want the business, but if you are unable to please them or if their high maintenance related problems are a constant, the cost of doing business with them may simply outweigh any value. The price you ultimately pay in the end is your time and reputation. If you define your firm's goal and client profile clearly, learn to say know no and to let go and you could avoid the headaches that come with a difficult client.

Leslie H. Tayne

Law practices are really public service businesses. Today more than ever, you want happy clients, as an internet review is only a click away. In the old days, an unhappy client simply walked away, or maybe filed a grievance, but today the damage can be far greater than time to write a response. Early on the courting stage, a difficult client can tip their hand that they will need a lot from you. If you miss those signs and you end up with this difficult client, know what you are dealing with and how to manage them effectively.

The "Difficult-to-Manage" Potential Client

The client comes in after working with several other professionals or firms who "didn't do right" by them. If you don't say "no," you might be one of them too. Before retaining you or hiring your firm they demand far more attention than is necessary. They will call often with "one more question" and even show up to talk about their needs; they are simply needy and require heavy handholding. Set the limits. Early on we want the client to know we're there for them but cell phone calls late at night are not necessary for most matters. Such a client might simply drop a paper bag on the conference room table with unopened letters/documents or has incomplete information. They really have no idea what's going on with their situation. This client will then tell you that you never informed them of certain things because they will also not open your letters.

See CLIENT, Page 16

Second Circuit Upholds New York's Mandatory Vaccination Requirement

Disneyland is best known for its M's: Mickey, Minnie and – now – Measles. A recent outbreak of measles, a highly contagious viral infection, has been traced to the world-famous theme park in southern California.[1] In 2014, the Centers for Disease Control found that there had been 644 reported cases of measles in 27 states, the highest number in nearly 15 years.[2]

Although vaccinations had nearly "eradicated" measles in the United States by 2000, the refusal of many parents to vaccinate their children in recent years has led to an increasing number of cases of the disease.[3] However, some states, including New York, have laws that require children to be vaccinated in order to attend public schools. With few exceptions, New York's Public Health Law § 2164 requires students in public schools to be immunized against vaccine-preventable diseases or risk exclusion from school.

Brendan Barnes

Recently, the Court of Appeals for the Second Circuit dismissed the latest constitutional challenge to § 2164. Section 2164 requires all public school students to be immunized against vaccine-preventable diseases, such as measles and polio.[4] However, § 2164 also allows parents to apply for an exemption to these requirements if they hold genuine and sincere religious beliefs against vaccination.[5] In addition to §2164, the court examined 10 NYCRR § 66-1.10,[6] a regulation that allows a school to exclude unvaccinated children during an outbreak of vaccine-preventable disease.

Phillips: The Due Process Argument

In *Phillips v. City of New York*,[7] two sets of plaintiffs challenged the above state laws. The first set of plaintiffs brought a challenge to the regulation after their children, who were not vaccinated, had been excluded from the New York City public school system when another child in the school had been diagnosed with chicken pox. The other plaintiff sought a preliminary injunction when the City declined to enroll her unvaccinated daughter in its schools.[8] Both cases were consolidated in federal district court.[9]

The plaintiffs, who were all Catholic, argued that the state immunization laws violated, among other things, their rights under the First Amendment's Free Exercise Clause and the Fourteenth Amendment's Due Process Clause and Equal Protection Clause.[10] After the district court granted defendants' motion to dismiss in its entirety, plaintiffs appealed to the Second Circuit.

In a per curiam opinion issued just two days after the case was argued, the Second Circuit affirmed the district court's dismissal of plaintiffs' claims.[11] The Second Circuit found that New York's immunization laws did not impinge upon plaintiffs' due process, equal protection, or free exercise

See VACCINATION, Page 17

MEMBERSHIP ...

Continued From Page 1

planned in May besides committee meetings. May 1 is Law Day, and this year we are commemorating the 800th anniversary of the Magna Carta. Our annual awards dinner will take place April 30, featuring speaker Martin Tankleff who, after 17 years of imprisonment for the murder of his parents, was exonerated of the crime. His experience is a dramatic illustration of the need for due process of law, a basic right promulgated in the U.S. Constitution and first articulated in the Magna Carta of 1215.

In addition, we will present our prestigious Liberty Bell Award to the Health and Welfare Council of Long Island, and honor Jon Michael Probstein with the Thomas Maligno Pro Bono Attorney of the Year award. Nassau County District Court Clerk Brenda Hayden will receive the Peter T. Affatato Court Employees of the Year Award. For reservations, use the flyer enclosed in this issue of the Nassau Lawyer, or download a form at nassaubar.org.

Honoring Practice Milestones

Each May at our Annual Dinner Dance, we recognize NCBA members who have reached 50, 60 and 70 year milestones since their admission to the Bar. This year, we are proud to honor more than 60 seasoned practitioners on May 9 at the Long Island Marriott in Uniondale. The Honorable A. Gail Prudenti, Chief Administrative Judge for New York State, will receive the Distinguished Service Medallion, the highest honor presented by NCBA. Tickets are still available, so don't miss the highlight of Long Island's legal social calendar.

Volunteer Recognition

We regularly recognize the many members who take the time to give back to the community. One of these events is the Student Mentor Luncheon. On May 21, the dining room at Domus is filled with middle school students who have come to the Bar to thank the many attorneys who volunteered to serve as positive role models and mentors for them throughout the school year. In their own words, these young adults movingly give tribute to the attorneys who have changed their lives by demonstrating the many opportunities available to them.

Come by for Lunch

One of the more unique benefits at NCBA is that we have our own caterer and a fantastic facility to share a meal with colleagues, judges and clients. Garden City Caterers offers lunch weekdays at Domus. It's conveniently located, the food is great, and it's another chance to network with colleagues and see what's happening at the Association.

Exclusive Savings if You Join Now

This year, NCBA is offering special incentives to members and non-members. An attorney who joins now (or is rejoining after a lapse of membership) can immediately receive all the benefits of membership for just $80 for the remainder of this fiscal year, provided the attorney also prepays for the 2015-16 membership year. Just fill out the short form inserted in this issue, and send it in to begin to take advantage of membership all year round.

For more information on the value of membership in the Nassau County Bar Association, check out this issue of the Nassau Lawyer or visit the website, www.nassaubar.org. If you have the time, stop in the Membership Department at the Bar a few blocks from the courts at the corner of 15th and West Streets in Mineola, confidently located across the street from the Nassau County Police Headquarters and behind the Nassau County Executive Building.

On May 6, Nassau County Bar Association tables will be set up in all 4 courthouses with additional information to make it easier for you to join this prestigious organization. We will be there to answer all your questions, or you can always call the Bar at 516-747-4070.

Looking forward to meeting you in May!

Marc Gann and Geoffrey Prime are co-chairs of the NCBA Association Membership Committee.

Questions, concerns, ideas?

Association Membership Committee Co-Chairs Marc Gann and Geoffrey Prime welcome your calls.
Contact Marc at
Collins McDonald & Gann
138 Mineola Blvd., Mineola
516-294-0300, mgann@cmgesq.com
and Geoffrey at Prime & O'Brien
1000 Franklin Avenue
Suite 201, Garden City
516-877-2055
Gprimepobt@verizon.net

DID YOU KNOW?

NCBA Members can now place county wide legal notices in the Nassau Lawyer.

Legal notices in Nassau Lawyer can only refer to:
LLCs • LLPs • Liquor Licenses • Private Foundations

ALL notices including Bankruptcies & Foreclosures can also be placed in *Long Island Business News.*

To place an ad contact:
legalnotice@libn.com
or 631-737-1700

Civility in Negotiations: A Tactical Advantage

Civility is, and should be, a core negotiation issue. The degree to which one employs ordinary civility in negotiations often has a marked positive effect on the bottom line result. It also can make life more pleasant, even in fundamentally adversarial situations, a circumstance essentially the norm for business litigators and transactional lawyers.

David J. Abeshouse

A straightforward negative example is the opposing counsel who – instead of working together to resolve a dispute or problem in customized, mutually acceptable fashion – prematurely blurts out, "I'll see you in court." This knee-jerk reaction usually fails as a negotiation tactic.

First, it reflects a lack of analytic forethought and a predilection toward emotional outburst, two aspects that make him or her a less than formidable adversary. It is an inadvisable way to wear one's heart on one's sleeve.

Second, it essentially obliterates the possibility of counsel working together for the mutual benefit of the clients, who likely could achieve through a tailored settlement a result far better for both sides than any court would order by applying the law to the facts. Because the vast majority of business litigations settle before trial – most place the figure north of 95% – it is a fair bet that the parties ultimately will resolve the matter through some sort of settlement negotiations. So why not try that sooner rather than later? Even if an initial attempt at resolution does not resolve the matter entirely, it may narrow the issues or set the stage for later successful negotiations.

Third, over time, counsel who reacts in this manner will develop a reputation as a loose cannon, and a temperamental, petulant, unprofessional person to whom others would not refer clients. Opposing counsel often serve as a good referral source for future business because they have seen firsthand what the lawyer can do in the real-life trenches. The uncivil lawyer will not enjoy this business stream. To the extent that his or her own client learns of the reaction, the client may become dissatisfied with a lawyer she sees as out of control, putting the lawyer's own emotional needs ahead of the client's best interests in the case.

Lawyers should keep in mind the following elements of professionalism in all negotiations and business dealings.

Legal Rights Set The Floor

The lawyer generally has no independent legal obligation to engage in a particular settlement negotiation. But possession of a legal right does not mean one must exercise it, and absence of an obligation does not mean one cannot fulfill it. Counsel must act in the interest of the client, and should be ready to stretch beyond basic legal rights and obligations to benefit the client.

Civil creativity trumps myopic inflexibility. Rigid adherence to one side's perception of what is legally mandated behooves no one if the goal is to achieve a negotiated, mutually beneficial result. And that often should be the goal, even if the client initially does not fully realize it (think of the client who at the outset says he wants to win "at all costs, as a matter of principle," and several months later complains about the cost and delay inherent in doing so). In the previous millennium, New York's Unified Court System set out Standards of Civility governing behavior of the legal profession.[1] Again, this sort of pronouncement should be viewed as the baseline or starting point.

Prevent Venting

One should not lose one's temper; rather, lose the anger, yelling, and foul language. Although "venting" sometimes improves the mood of the "venter," it rarely works to his or her advantage in negotiations.

Yes, occasionally it may tend to intimidate; however, the same result likely could be achieved in those instances without the expletive-laden, high-decibel diatribe. Most often, it will cause a diminution in credibility and respect. And that is a price not worth paying for the occasional negotiation advantage it arguably might afford.

Indeed, a prompt apology for an emotional outburst might gain more ground toward creating a good working relationship and achieving the negotiated goal than perpetuating the emotionalism might.

Make Common Courtesy and Civility A Matter of Routine

Courtesy and civility should be a part of the natural way of dealing with others. Its effectiveness will be patent, both in terms of ultimate results and quality of life.

Although there are times when the need for some more forceful language and volume may be indicated, this should be the exception rather than the rule. That makes it more impactful. And by refusing to respond in kind when someone personally offends by words or actions, one avoids descending to their level, and that in itself is a laudable goal.

Even the matter of responding to e-mails and telephone voicemail messages encompasses these tenets of common courtesy and civility; prompt and rational response encourages similar reciprocal treatment. The more the enlightened use of these means of conducting legal and business negotiations, the more likely these ways will spread. How much better things would be if this became the usual mode for the majority. As the national grapevine buzz about increasing incivility among counsel grows to a more perceptible hum, the time is ripe to prevent it from

See NEGOTIATIONS, Page 16

IN BRIEF

Member Activities

Terrence L. Tarver of the law firm, Sullivan Papain Block McGrath & Cannavo, P.C., has been chosen by the National Academy of Personal Injury Attorneys, Inc. as a 2015 recipient of the Top 10 Under 40 Award for the state of New York.

Thomas Telesca, Of Counsel to Ruskin Moscou Faltischek, P.C., has been elected president of the Board of Directors of the Riverhead Foundation for Marine Research and Preservation, a not for profit organization that operates the New York State Marine Mammal and Sea Turtle Rescue Program.

Marian C. Rice

On April 18, 2015, **Thomas J. Killeen**, a partner in the corporate law department at Farrell Fritz, P.C. will receive the Community Champion, Friend and Advocate Award at the Crohn's and Colitis Foundation of America's Laugh 'til It Stops Hurting. **Patricia C. Marcin**, a partner at the Firm concentrating her practice in estate and tax planning, was recently appointed to a three year term as Vice Chair of the Long Island Community Foundation's (LICF) board of advisors. **Heather P. Harrison**, counsel in the Firm's commercial litigation department focusing in labor and employment law, will receive The Queens Courier's "Top Women in Business" award.

The partners of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf, LLP are pleased to announce the promotions of **Moriah Adamo** to the position of partner and **Melanie Wiener** as the Director of the firm's Nursing Home Litigation department. **Jill Goffer** has joined the Firm as an Associate in the Matrimonial and Family Law department.

Alan B. Hodish, a solo practitioner in Garden City, was recently presented with the "Whitey Henrickson" Lifetime Achieve-ment Award by the Long Island Metropolitan Lacrosse Foundation at their 30th Annual Hall of Fame Induction Ceremony for his service, among others, as a teacher and the head lacrosse coach at Hempstead High School and the Hempstead Community during the 70s and 80s.

To commemorate the milestone of its 25 year anniversary, Collins, McDonald & Gann, the Mineola-based criminal defense law firm founded in 1990 by former Nassau County Assistant District Attorneys **Rick Collins**, **Bob McDonald** and **Marc Gann**, has launched a philanthropic campaign to help the firm "give back" to the local Long Island community. The campaign – "CMG's 25 for 25" – is a commitment by the firm to host, sponsor or attend 25 charitable events during its anniversary year.

On February 10, 2015, **Chris Coschignano**, a partner at Sahn Ward Coschignano & Baker, PLLC and Councilman, Town of Oyster Bay, was the recipient of the Keith Romaine Elected Official of the Year Award from the Touro Law Alumni Association as part of its Public Interest Law Organization Awards Ceremony.

Rivkin Radler LLP, has announced that **Dennis J. Wiley**, who focuses his practice in the areas of estate planning and administration and Surrogate's Court litigation, has joined the Firm in the Trusts & Estates Practice Group.

Richard K. Zuckerman of Lamb & Barnosky, LLP has been selected as one of Corporate LiveWire's Global Annual Awards 2015 winner in the category of Labor and Employment

Karen Tenenbaum of the Melville tax law firm, Tenenbaum Law, P.C., has been recognized by Super Lawyers as one of the "Top Women Attorneys in New York." Ms. Tenenbaum, who has also been selected as one of Long Island's Top Rated Lawyers of 2015, recently spoke with Yvonne Cort of the Firm at the New York State Society of Certified Public Accountants, Suffolk Chapter, Annual Taxation Conference on the topic of "The Latest Residency Audit Rules: What You Need to Know." Ms. Tenenbaum and Ms. Cort were joined by Brad Polizzano in presenting a program on "Coping with Tax Levies, NYS Warrants and IRS Liens" for the National Conference of CPA Practitioners, Westchester/Rockland County Chapter.

Christopher D. Warren has joined the Commercial Litigation group at Davidoff Hutcher & Citron as an associate based in the Long Island Office.

Brian Andrew Tully, Founder of Tully & Winkelman, P.C., has announced the release of "How to Plan for Aging Parents 2015" which may be downloaded free of charge from its website, http://estateplanning-elderlaw.com/download-guide-plan-for-aging-parents.php. The guidebook contains the latest figures from Medicaid and explains what adult children of elderly parents need to do to make sure their loved ones are taken care of, while ensuring their financial health at the same time.

Barket Marion Epstein & Kearon, LLP, with offices in Garden City and Manhattan, is pleased to announce that **Brendan M. Ahern** joined the law firm as an associate focusing his practice in the DWI/Vehicular Crimes and Criminal Defense groups.

The Nassau Lawyer welcomes submissions to the IN BRIEF column announcing news, events and recent accomplishments of its members. Due to space limitations, submissions may be edited for length and content.

The In Brief column is compiled by Marian C. Rice, a partner at the Garden City law firm L'Abbate Balkan Colavita & Contini, LLP where she chairs the Attorney Professional Liability Practice Group. In addition to representing attorneys for nearly 35 years, Ms. Rice is a past President of NCBA.

PLEASE E-MAIL YOUR SUBMISSIONS TO nassaulawyer@nassaubar.org with subject line: IN BRIEF

COMMITTEE REPORTS

See page 14 for Committee Meeting Schedule

Commercial Litigation

Meeting Date 2/24/15
Chair: Kevin Schlosser

Guest speakers for the meeting included Honorable Charles Ramos, Justice of the Supreme Court of the State of New York, New York County, Commercial Division, and the Honorable Timothy Driscoll, Justice of the Supreme Court of the State of New York, Nassau County, Commercial Division. Justice Ramos, the longest-tenured Commercial Division judge in the State of New York, having been assigned to that division in 1996, discussed his latest activities in the Commercial Division, recent experiences and insight concerning commercial litigation, as well as his views on resolving discovery disputes through afternoon telephones calls to Chambers, his disposition of substantive motions through decisions from the bench, settlement practices and his preference for hard copy exhibits (rather than electronic exhibits) at trial. Justices Driscoll and Ramos also enlightened our members on how they handle complex commercial non-jury trials, with unique procedural rules for the presentation and management of testimony and evidence.

Michael J. Langer

Condemnation Law & Tax Certiorari

Meeting Date 2/27/2015
Chair: John Terrana

Committee members discussed multiple issues, including the status of tax refunds being paid by Nassau County, various issues related to assessment challenges, the Nassau County Department of Assessment website and Nassau County's new Annual Survey of Income and Expense (ASIE) law. The next meeting is scheduled for Tuesday, March 31, 2015 at 12:30 p.m. at NCBA.

Environmental Law

Meeting Date 3/10/15
Chair: Kenneth Robinson

Frank Piccininni of SterlingRisk presented information about a new environmental risk insurance product. The policy is designed for clients who own or manage a portfolio of residential or commercial real estate and want coverage in the event of an environmental claim, and is manuscripted for each insured.

Labor & Employment Law

Meeting Date 3/10/15
Chair: Jeffrey Schlossberg

Guest speaker Christopher Marlborough, Esq, delivered a presentation entitled "Who's the Boss? Joint Employer Coverage and Wage/Hour Cases," addressing numerous issues, including contractor/subcontractor and franchisor/franchisee matters, staffing agencies, linking related entities or corporate executives, and U.S. Supreme Court and Second Circuit decisions. Committee members also held a discussion regarding various events under the auspices of We Care, including Day at the Races, Mets baseball games, the end-of-the-year gala and nominations for the Lawrence Solotoff Recognition Award. The next meeting is scheduled for April 14, 2015.

Michael J. Langer, an associate in the Law Offices of Kenneth J. Weinstein, is a former law clerk in the United States Court of Appeals for the Second Circuit, and a former Deputy County Attorney in the Office of the Nassau County Attorney. Mr. Langer's practice focuses on matrimonial and family law, criminal defense and general civil litigation.

The Common-Law Public Documents Exception to the Hearsay Rule

At the time of trial, a personal injury practitioner may rely on various evidentiary methods to have copies of documents admitted in evidence to prove his or her prima facie case without having to subpoena a records custodian to court to testify. A frequent method utilized is the business records exception to the hearsay rule found in CPLR 4518. This article, however, will focus on an exception to the hearsay rule that is not as prevalent, the common-law public documents exception.

In some cases, a personal injury practitioner may seek to admit in evidence a governmental agency report or memorandum, and in order to accomplish this, the common law public documents exception to the hearsay rule can be helpful, although as demonstrated below, it can be quite burdensome to comply with all the prerequisites.

The Public Documents Hearsay Exception in Practice

The common-law public documents exception to the hearsay rule states that "when a public officer is required or authorized, by statute or nature of the duty of the office, to keep records or to make reports of acts or transactions occurring in the course of the official duty, the records or reports are admissible in evidence."[1]

Terrence L. Tarver

Vincent C. Alexander explains the justification behind this exception in his practice commentaries to McKinney's CPLR 4520, noting that "[t]he common law exception for public records is justified by the presumed reliability inherent in the recording of events by public employees acting in the regular course of public duty. Public employees make records pursuant to the sanction of public duty and have no motive to falsify."[2]

An example of the use of the common-law public documents exception to get a report admitted in evidence in a personal injury case includes *Kozlowski v. City of Amsterdam*.[3] *Kozolwski* was a wrongful death action where Plaintiff's decedent had committed suicide in jail using his socks. Plaintiff made allegations of negligent supervision, and at trial, sought to enter a copy of a report of the Medical Review Commission of the State Commission of Corrections, which concluded defendant violated 9 NYCRR § 7504.1 as they failed to maintain constant supervision of the decedent under the circumstances. Although the trial court denied admission of the report, the Third Department reversed, holding said report was admissible pursuant to the common-law public documents exception to the hearsay rule.[4]

The Second Department case of *Martin v. Ford Motor Co.* is further illustrative.[5] In *Martin*, Plaintiff sued Defendant contending that when he shifted gears of his 1990 Lincoln, the throttle control malfunctioned, and stuck in an open position, thereby causing the vehicle to accelerate forward.[6] The Second Department held that a copy of a 1989 report prepared by the National Highway Traffic & Safety Administration pertaining to studies of sudden acceleration was admissible under the aforesaid exception.[7]

While the scope of this article is limited only to the common-law public documents exception to the hearsay rule, it should be noted that said exception does have a statutory companion, which is found in CPLR 4520. However, the common-law public documents exception is not only broader in scope than CPLR 4520, but also it has not been superseded by it.[8]

Authenticating Public Documents: A Two-Step Process

While a public document that meets the common-law public documents exception to the hearsay rule is admissible without testimony of the official who made it, its authenticity, nonetheless, must still be proven.[9] Even though authentication of certain public records may be accomplished by certification as provided in CPLR 4518(c), it still is a two-step process.[10] This process involves CPLR 4540(a) and (b) or CPLR 4540 (a) and (c), depending upon jurisdiction.[11]

"If the document is attested as correct by the official or deputy having legal custody of it, then it becomes *prima facie* evidence of such record."[12] A proper attestation, however, includes three things: a comparison of the copy with the original, a statement of the accuracy of the copy, and compliance with one of the three allowable methods of certification pursuant to CPLR 4540(b).[13]

Addressing the necessary language of an attestation, the New York City Criminal Court in *People v. Watson* explained that it "is similar in import to the language of comparison found in common-law exemplifications and sworn copies.."[14] Further, it held that there was not any particular language under CPLR 4518(c) or CPLR 4540 that an attestation was required to have, save for the language regarding a comparison and accuracy.

As for those allowable methods under CPLR 4540(b), entitled, "Certificate of officer of the state," they are as follows:

1. "Where the copy is attested by an officer of the state, it shall be accompanied by a certificate signed by, or with a facsimile of the signature of, the clerk of court having legal custody of the record, and, [sic] except where the copy is used in the same court or before one of its officers, with the seal of the court affixed; or

2. [S]igned by, or with a facsimile of the signature of, the officer having legal custody of the original, or his deputy or clerk, with his official seal affixed; or

3. [S]igned by, or with a facsimile of the signature of, the presiding officer, secretary or clerk of the public body or board and except where it is certified by the clerk or secretary of either house of the legislature, with the seal of the body or board affixed; and

4. If the certificate is made by a county clerk, the county seal shall be affixed."[15]

When CPLR 4540(b) cannot be utilized, such as when the records sought to be authenticated are in another juris-

See RULE, Page 15

Young Lawyer of the Month

Michael H. Ricca

By Michael P. Bassett, Jr.

The Young Lawyers Committee (YLC) of the Nassau County Bar Association is pleased to highlight the achievements of Michael H. Ricca, Esq.

In 2013, Mr. Ricca founded The Law Offices of Michael H. Ricca, located in Garden City. As a solo practioner, Mr. Ricca represents clients in a plethora of legal proceedings at the state, federal, and appellate levels. He focuses on criminal defense and traffic matters, as well as personal injury and residential real estate transactions.

Mr. Ricca graduated from Binghamton University in 2005 with a BA in Political Science with a dual concentration in politics and law, where he was a Dean's List recipient for multiple semesters. In 2008, he received his MBA from Adelphi University, where he specialized in management and human resources. While at Adelphi University, Mr. Ricca was a member of Delta Mu Delta, the National Honor Society in Business Administration.

Mr. Ricca earned his Juris Doctorate from Touro College Jacob D. Fuchsberg Law Center in 2012 where his studies focused on criminal law. While at Touro, he was a Law Library Research Assistant where he worked with the Director of the Law Library and reference staff. Mr. Ricca was a Dean's List recipient for multiple semesters throughout law school and he received the CALI Award in Academic Excellence for his participation in the Criminal Law Externship. During law school and after graduation as a pro bono attorney, Mr. Ricca worked with the Federal Defenders of New York (Central Islip), to vigorously defend persons charged with federal crimes who cannot afford to hire an attorney.

Mr. Ricca is admitted to practice law in the State of New York and the United States District Court for the Eastern and Southern Districts of New York.

He is an active and contributing member of the Nassau County Bar Association, including the Young Lawyers Committee. He is also a member of the Federal Bar Council, New York State Bar Association, and The National Association of Criminal Defense Attorneys.

The YLC congratulates Mr. Ricca on his accomplishments and contributions to the community and wishes him continued success in his endeavors.

Michael P. Bassett, Jr. is an associate at Collins, McDonald & Gann, P.C. in Mineola.

Pro Bono Attorney of the Month

Jon Press

By GREG T. FISHKIN

This month, the Nassau County Bar Association is proud to honor Jon Press as the Pro Bono Attorney of the Month for his unwavering commitment to the Mortgage Foreclosure/Superstorm Sandy Project.

Mr. Press graduated from Benjamin N. Cardozo School of Law and was admitted to practice in New York and New Jersey in 1989. After a lengthy break from the law pursuing entrepreneurial endeavors and consulting, he decided to return to practice and began volunteering for NCBA, both at sessions of Mandatory Settlement Conferences in Nassau Supreme Court as well as at NCBA's twice-monthly Mortgage Foreclosure/Superstorm Sandy Clinics.

All new volunteers to the program get started by observing other attorneys in order to ensure they are comfortable with the substance as well as the various resources available to us. Mr. Press rapidly and impressively emerged as someone we could depend on to provide excellent consultations to homeowners dealing with Mortgage Foreclosure and Bankruptcy issues, and he has developed a strong understanding of the advanced issues surrounding securitized mortgages. Mr. Press has also developed into someone that other new volunteers have thanked us for the opportunity to observe, because of his ability to combine his expertise with personality and compassion for those dealing with the toughest of circumstances.

As Mr. Press became increasingly involved in building his practice, as well as covering appearances for other attorneys in Foreclosure Settlement Conferences and for creditors meetings in Bankruptcy Court, he was not deterred from giving back, as he has not missed a single Clinic in over a year. He also continues to appear consistently as the "volunteer attorney for the day" in Nassau Supreme Court's Mandatory Settlement Conference Part. His dedication has made him one of the most reliable volunteers in the project.

Mr. Press has earned a stellar reputation not only from the homeowners and fellow volunteers, but also across the chorus of Plaintiff's counsel and Court staff who have specifically made a point to let us know what a pleasure it has been to work alongside him.

Mr. Press has donated countless hours to Pro Bono work through the Nassau County Bar Association and has been willing to help out on late notice, in bad weather, and under every other condition that might deter someone from helping out for a day. For his steadfast devotion to helping those in despair, we acknowledge him as our Pro Bono Attorney of the Month.

Greg T. Fishkin, Esq. is the NCBA Sandy Relief/Settlement Conference Coordinator. Attorneys interested in volunteering for the Mortgage Foreclosure Project or have any questions can call Greg T. Fishkin at the Nassau County Bar Association (516)747-4070 or e-mail him at gfishkin@nassaubar.org.

NCBA New Members

We welcome the following new members

Attorneys

Michael J An

Isha Atassi *Fragomen, del Rey, Bernsen & Loewy, LLP*

Janet DeLuca

Kathleen Fioretti *Richard T. Lau and Associates*

Adam W. Schneid *Most and Schneid, P.C.*

Ellen B. Tobin

Students

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Sean McLeod

AnnDi Panagiotou

Natasha Patel

In Memoriam

Alfred Reinharz

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Shayne, Dachs, Sauer & Dachs, LLP • Mineola

The Rights of Animals

Part 1
Mon • April 20, 2015 • 4 p.m.
or Tues • April 21, 2015 • 1 p.m.
or Sun • April 26, 2015 • 7 a.m.

Part 2
Mon • April 27, 2015 • 4 p.m.
or Tues • April 28, 2015 • 1 p.m.
or Sun • May 3, 2015 • 7 a.m.

Resolving Attorney Fee Disputes

Part 1
Mon • May 4, 2015 • 4 p.m.
or Tues • May 5, 2015 • 1 p.m.
or Sun • May 10, 2015 • 7 a.m.

Part 2
Mon • May 11, 2015 • 4 p.m.
or Tues • May 12, 2015 • 1 p.m.
or Sun • May 17, 2015 • 7 a.m.

You can earn CLE by listening to (or purchasing Cd's) of any or all of the following shows. Check with the Nassau Academy of Law for the details (516)747-4464 or www.nassaubar.org

on 90.3 FM radio or voicestream over the internet at www.ncc.edu/whpc
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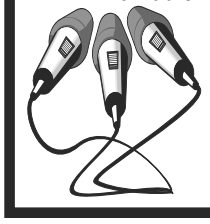

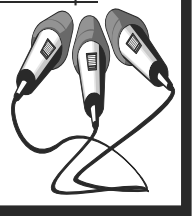

NCBA Sustaining Members 2014 - 2015

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Using ADR to Resolve Internal Corporate Disputes

Internal corporate disputes arise in many different contexts, including deadlock among directors or shareholders, family business succession planning and exit strategies, and disputes among owners who can no longer work together. Litigation that ensues can drag on for years causing distraction and expense. The lawsuit takes its toll on the business and its relationships, and the finances of the parties and the company, as well on the inter-personal relationships among individuals. The toxicity of internal disputes can cause a company to lose vital intellectual and working capital, and lead to loss of its competitive edge. The festering dispute can cause the company to implode.

Erica B. Garay

Alternative Dispute Resolution (ADR) can be the solution to address the issues facing the parties. There are two primary ADR options that can be used at early stages of these disputes to salvage relationships and the Company.

Mediation

Mediation is a process by which a trained, neutral mediator helps the parties find a resolution of the disputes at hand. Mediation gives all the stakeholders a seat at the table and allows them to vent and an opportunity to be heard (and to listen) so that a dialogue may ensue. The mediation could result in, for example, a new shareholders' agreement with new governance provisions, a buy-out of an interest, a separation of interests or assets, or a succession plan.

These results are possible because trained mediators know how to help the parties find common ground and give all parties a voice and permit a dialogue. For example, the mediation can help the business-founder explain his succession plan and allow others (perhaps his children) to have input and an opportunity to be heard on what their needs, wants, and interests are.

A mediator can help parties because he or she "has no dog in this fight" and can see the parties' needs, wants, desires and interests from a neutral vantage point. A mediator is trained to help the parties solve their problems and to find creative solutions, as well as to breaking an impasse. The mediation setting permits parties to focus on their common interests and to find common ground and, thus, a solution.

Mediation can be utilized even if there is no formal dispute, litigation or arbitration. Its informal process allows all interested parties to have a voice. Creative solutions can be found through this dialogue that focuses on concerns and solutions.

For example, if there is to be a buy-out of an interest or a separation of interests, the parties can agree on the mechanism to value a business or an interest and the timeline for a purchase or separation. If governance matters are at issue, then the mediation can be used to address voting rights, the terms of a buy-sell, or negotiation of other provisions to be contained in an operating or shareholders' agreement.

While "majority rules" is "the rule" in the absence of another provision on voting or authority, this can result in a deadlock among the voters. Issues about governance also arise when the number of owners changes, but the agreement's provisions have not been amended. Owners often fail to change governance provisions when another owner comes on board. Suddenly, it is easy for two of the three to gang up on the one who is the "outsider," as the "majority rules" provision is satisfied and unanimity is no longer required.

Mediation is a simple way to negotiate new governance provisions to protect a minority from either being frozen out or steam-rolled over. The parties could agree at a mediation about what actions require unanimity or a super-majority. Further, the parties could address, with the mediator's assistance, what powers each officer, member, or manager (of an LLC) will have or who has the right to work at the company or whether a particular owner muse provide services.

Mediation will offer the parties the opportunity to fashion a result or remedy that may not be available in litigation to a judge (or to an arbitrator), such as a buy-out or separation of interests or a re-writing of the parties' agreement. For this reason, mediation should be considered at any time in the parties' dispute. Because the mediator is a neutral, and not representing any party, there is no conflict of interest issue raised in using a mediator to assist the parties in drafting a corporate document.

Mediators are trained both in conflict resolution as well as breaking impasses. This training helps mediators create a "safe" environment in which the parties can find common ground (with the mediator's aid) so as to salvage both relationships and the business. These attributes are even more important in closely held and family-owned businesses to ensure that the toxicity that may be present in the boardroom does not migrate into the dining room.

Mediation gives the parties an opportunity to have control over the outcome that they would not have in a lawsuit or arbitration where the judge or arbitrator is making the final determination. Mediation is available at any time during the parties' dispute *i.e.*, before, during or even after the litigation or arbitration. It is an important tool to be used by litigation, corporate, and other transactional lawyers.

See ADR, Page 15

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OPENING STATEMENTS

With the NCBA Plaintiff's Roundtable & Defendant's Roundtable Committees

2 Credits
Professional Practice or Skills

Wednesday, May 6, 2015
5:30 - 7:30 p.m.

FOR THE PLAINTIFF
Christopher T. McGrath, Esq.
Sullivan Papain Block McGrath & Cannavo P.C., New York

FOR THE DEFENDANT
William Croutier, Jr., Esq.
Hammill, O'Brien, Croutier, Dempsey, Pender & Koehler, PC, Syosset

MODERATOR
Terrence Tarver, Esq., Chair
NCBA Plaintiff's Roundtable Committee

ASKED AND ANSWERED OBJECTIONS PART 2

With the NCBA Young Lawyers Committee

2 Credits
Professional Practice or Skills

Thursday, May 7, 2015
6:00 - 8:00 p.m.

PANELISTS
Hon. Andrew M. Engel
District Court, Nassau

Mary Ann Aiello, Esq.
Garden City

Michael DiFalco, Esq.
Mary Ann Aiello PC, Garden City

Andrea M. Brodie, Esq., Chair, NCBA Young Lawyers Committee

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ETHICAL MANAGEMENT OF A LAW FIRM

With the NCBA Lawyer Assistance Program; General/Solo/Small Practice and Ethics Committees

3 Credits Ethics

Tuesday, April 28, 2015
5:30 - 8:30 PM

SPEAKERS
James P. Joseph, Esq.
Joseph Law Group PC, Garden City

Marian C. Rice, Esq.
NCBA Past President
William T. McCaffrey, Esq.
L'Abbate Balkin et al LLP, Garden City

Deborah E. Kaminetzky, Esq.
Kaminetzky & Associates, PC, Cedarhurst

Chris G. McDonough, Esq.
McDonough & McDonough LLP
Garden City

MODERATOR
M. Kathryn Meng, Esq.
Mineola

EMPLOYMENT LAW ESSENTIALS

LEAVES OF ABSENCE, DISCRIMINATION AND WAGE/HOUR OBLIGATIONS

Presented by the NCBA Labor & Employment Committee

3 Credits
Areas of Professional Practice

Wednesday, April 29, 2015
5:30 - 8:30 p.m.

Jeffrey M. Schlossberg, Esq.
Jackson Lewis, P.C., Melville

Christopher Marlborough, Esq.
The Marlborough Law Firm, P.C., Melville

Rick Ostrove, Esq.
Leeds Brown Law, P.C., Carle Place

L. Susan Slavin, Esq.
Nassau Academy of Law Advisory Board

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2 Credits in Ethics

NUTS AND BOLTS OF GRIEVANCE

FROM INITIAL COMPLAINT TO FINAL DISPOSITION

With the NCBA Ethics and Grievance Committees

Monday, May 11, 2015 • 5:30 –7:30 PM

This program will focus on (i) the pitfalls of legal practice that often lead to grievances, and how to avoid these pitfalls, (ii) the anatomy and procedure of the grievance process (what is the intake process, how is it processed, what are the relevant authorities and rules, what steps need to be taken by the attorney, what are the client's rights, steps to take in order to minimize exposure), and (iii) what are the outcomes and ability to appeal determinations.

SPEAKERS AND PANEL MEMBERS

Hon. Peter B. Skelos
Associate Justice, Appellate Division
Second Judicial Department

Mitchell T. Borkowsky, Esq.
Deputy Chief Counsel, Grievance Committee 10th Judicial District

Matthew K. Flanagan, Esq.
Catalano, Gallardo & Petropoulos LLP, Jericho

Mary Rita Wallace, Esq.
Chair, NCBA Grievance Committee

Omid Zareh, Esq.
Chair, NCBA Ethics Committee

DEFENSE OF FOREIGN NATIONAL MINORS IN REMOVAL PROCEEDINGS

With NCBA Immigration Law and Family Law Committees

3 Credits
Professional Practice

Tuesday, April 21, 2015
5:30 - 8:30 p.m.

Hon. Patricia Rohan
Immigration Judge
Adult and Juvenile Dockets

Mollie Isaacson
Deputy Director, New York Asylum Office

Professor Theodore Liebmann
Clinical Professor of Law and Director of Clinical Programs, Hofstra University

Linda G. Nanos, Esq., Co-Chair
NCBA Immigration Law Committee

MODERATOR
Howard R. Brill, Esq., Co-Chair
NCBA Immigration Law Committee

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EMERGING ISSUES IN SURROGATE'S COURT PROCEEDINGS

Presented by the NCBA Surrogate's Court Estates and Trusts Committee

3 Credits
Areas of Professional Practice

Monday, May 4, 2015
5:30 - 8:30 p.m.

Kathryn C. Cole, Esq.
Robert M. Harper, Esq.
Farrell Fritz, P.C., Uniondale

Hon. Renee R. Roth
Former Surrogate of New York County
McLaughlin & Stern LLP, NY

Jill Choate Beier, Esq.
Assistant Professor
Marymount Manhattan College

Steven R. Finkelstein, Esq.
Finkelstein & Virga, P.C., New York

MODERATORS
Lori A. Sullivan, Esq.
John P. Graffeo, Esq.
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NCBA Surrogate's Court Estates and Trusts Committee

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NASSAU ACADEMY OF LAW AND AMERICAN HEART ASSOCIATION PRESENT

ANNUAL TRUSTS & ESTATES CONFERENCE

Monday, May 4, 8 -11 a.m.
Continental Breakfast 8-8:30 a.m.
At NCBA

Issues related to estate planning and taxation.
Judge Edward McCarty III
Nassau County Surrogate's Court

Jonathan G. Blattmachr, Esq.
ILS Management LLC, New York

Dr. Bruce Rutkin, Interventional Cardiologist, North Shore LIJ

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or contact Alison Sewell, 212.878.5961 Alison.Sewell@heart.org

DEAN'S HOUR

WHAT TO KNOW BEFORE YOU GO!

ESTATE PLANNING UPDATE 2015

Monday, May 11, 2015
12:30 - 2 p.m.

1 Credit
Professional Practice

SPEAKER
Carmela T. Montesano, Esq.
Meyer, Suozzi, English & Klein, PC
Garden City

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April 29	Employment Law Essentials	3.0			3	$115	$155	$0	~
May 4	Emerging Issues in Surrogate's Court	3.0			3	$115	$155	$0	~
May 6	Opening Statements	2.0			2	$80	$115	$0	~
May 7	Asked and Answered: Objections Part II	2.0			2	$80	$115	$0	~
May 11	What to Know Before You Go…Estate Update	1.0			1	$30	$40	$0	
May 11	Nuts and Bolts of Grievance			2.0	2	$80	$115	$0	~
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	Traffic School: Nassau/Suffolk Traffic Violations	1.0			1	40/55	75/80	DH031815
	Wild Legal Ride….Nassau's DWI Car Forfeiture	1.0			1	40/55	75/80	DH111314
Ethics	Ethics Quiz Show			2.0	2	75/95	110/130	5QUIZ0124
	Government Ethics in New York			1.0	1	40/55	75/80	DH091814
Elder Law	Uniform Guardianship Act..Article 83	2.0			2	75/95	110/130	4GUARD1203
Estate/Trust	An Evening with the Surrogates	2.0			2	75/95	110/130	4SURROGAT1105
General	New York CPLR Update 2015	2.5		0.5	3	115/130	150/175	5CPLR0304
Insurance	Insurance Law Update 2014	2.5		1.0	3.5	115/130	150/175	4INS0617
L/T	Landlord/Tenant (Bridge-the-Gap)	2.0			2	75/95	110/130	5LAND0124
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VIEW from the BENCH

Facebook v. New York County District Attorney

Searches, Discovery and the Social Media

By Hon. Arthur M. Diamond

Author's Note: The Rules of the Chief Judge governing judicial conduct (22 NYCRR §100.3(8) prevent jurists from making public comment about a pending or impending proceeding in any court within the US. While this matter is pending before the Appellate Division, First Department this column will take no position on the merits of either side of the litigation. My purpose here is solely to inform readers about the legal issues, in particular, the discovery and evidence issues involved in the case. I do not maintain a Facebook account.

The discovery and admissibility of social media have been important topics this past year in both civil and criminal litigation. The discovery and inspection under New York Law[1] of Facebook user accounts has become a particularly fertile area for use in cross examination in cases where claimed injuries allegedly prevent individuals from engaging in activities they could normally do prior to their accident or illness. Information contained in Facebook accounts may show people in photos, videos and diary entries contrary to their claims.

In civil cases it has become common for defendants to seek authorizations from Facebook users almost across the board. It has been our practice that where the authorization is not provided voluntarily a demand for access to the account must be met by a showing that such relevant evidence actually exists in the account; that is that the demand is not a mere 'fishing expedition' in which the movant hopes that something incriminating will turn up.

In criminal cases, however, the government has the use of a powerful tool, the court obtained search warrant with which to gain access to the user accounts. Criminal Procedure Law 690.10 (4) states that personal property is subject to seizure pursuant to a search warrant if there is reasonable cause to believe that it "Constitutes evidence or tends to demonstrate that an offense was committed in this state …" The application must contain allegations of fact supporting such a statement and "Such allegations of fact may be based upon personal knowledge of the applicant or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief are stated. The applicant may also submit depositions of other persons containing allegations of fact supporting or tending to support those contained in the application."[2]

With this background, this column will discuss the ongoing litigation known as *In Re 381 Search Warrants Directed to Facebook, Inc.* Supreme Court Index #30207/13. In this case, the New York County (Manhattan) District Attorney, as part of an investigation into alleged fraudulently obtained disability payments, served Facebook with 381 search warrants for the contents of individual customer accounts. The warrants sought all communication, data, and information contained in the Facebook accounts. The government served the warrants on July 24, 2013. Facebook immediately asked for the scope to be narrowed and the District Attorney refused. On August 20, 2013 Facebook moved to quash, arguing that the search warrants were overbroad and lacking in particularity, as well as challenging the notice provisions that is the non-disclosure order that prevented Facebook from informing its clients of the search warrant. The government opposed the request and the court (J. Jackson) denied the application in its September 17, 2013 order. Facebook then moved for a stay pending appeal in the First Department. An interim stay was issued September 23, 2013 but a full stay was subsequently denied on November 19, 2013 at which time Facebook, under threat of contempt by the District Attorney, complied with the warrant. Facebook appealed and while that appeal was pending the government, on January 6 and February 25, 2014, handed up two indictments charging 62 of the 381 Facebook users with violations of the law. Parts of the government's case were established with photographs showing the individuals engaged in activity inconsistent with the claimed disabilities. At the time of the writing

See VIEW FROM THE BENCH, Page 19

NCBA Committee Meeting Calendar • April 15-May 28, 2015

Questions? Contact Stephanie Pagano (516) 747-4070 spagano@nassaubar.org

Please Note: *Committee Meetings are for NCBA Members. Dates and times are subject to change.*

WEDNESDAY, APRIL 15

Alternative Dispute Resolution
8:00 a.m.
Elizabeth Donlon

Criminal Court Law & Procedure
12:30 p.m.
Brian Griffin

Construction Law 12:30 p.m.
Vincent Pallaci

Matrimonial Law 5:30 p.m.
John P. DiMascio, Jr.

THURSDAY, APRIL 16

Education Law 12:30 p.m.
Douglas Libby

Civil Rights 12:30 p.m.
Jason Starr

Publications 12:45 p.m.
Christopher DelliCarpini

MONDAY, APRIL 20

Domus Open 12:45 p.m.
Daniel Russo

TUESDAY, APRIL 21

Veterans & Military Law
12:30 p.m.
Edward Cunningham

Commercial Litigation
12: 30 p.m.
Kevin Schlosser

Surrogates Court Estates & Trusts
5:30 p.m.
John Graffeo/Lori Sullivan

Plaintiff's Round Table 6:00 p.m.
Terrence Tarver

WEDNESDAY, APRIL 22

Attorney/Accountants
12:30 p.m.
Neil Cohen

THURSDAY, APRIL 23

Senior Attorneys 12:30 p.m.
Charles E. Lapp, III

Elder Law Social Services & Health Advocacy
12:30 p.m.
Moriah Adamo/Paul Hyl

Young Lawyers 6:30 p.m.
Andrea Brodie

FIRDAY, APRIL 24

Sports Entertainment Media Law
12:30 p.m.
Ross Schiller

TUESDAY, APRIL 28

District Court 12:30 p.m.
Mitchell Hirsch

WEDNESDAY, APRIL 29

Appellate Practice 12:30 p.m.
Richard Langone

Real Property Law 5:30 p.m.
Kevin McDonough/Mary Mongioi

MAY IS MEMBERSHIP MONTH: COMMITTEE MEETINGS IN MAY OPEN TO ALL ATTORNEYS

TUESDAY, MAY 5

Ethics 5:30 p.m.
Omid Zareh

THURSDAY, MAY 7

Hospital & Health Law
8:30 a.m.
Geoffrey Kaiser/Kevin Mulry

Community Relations & Public Education
12:45 p.m.
Adam D'Antonio

TUESDAY, MAY 12

Corporation Banking & Securities Law
8:30 a.m.
Michael J. Weiner

Women In The Law 12:30 p.m.
Barbara Ann Gervase/Amy Hsu

Enivronmental Law 12:30 p.m.
Kenneth L. Robinson

Labor & Employment Law
12:30 p.m.
Jeffrey Schlossberg
Avrohom Gefen, Esq., Vishnick McGovern Milizio LLP will present: The Impact of Plaintiff's Bankruptcy on Employment Law Cases: Plaintiff's and Defense Perspectives

WEDNESDAY, MAY 13

Alternative Dispute Resolution
12:30 p.m
Elizabeth Donlon

Criminal Court Law & Procedure
12:30 p.m.
Brian Griffin

Associaton Membership
12:45 p.m.
Marc C. Gann/ Geoffrey N. Prime

Matrimonial Law 5:30 p.m.
John P. DiMascio, Jr.

THURSDAY, MAY 14

Technology and Practice Management
8:00 a.m.
John P. Whiteman, III

General/Solo/Small Firm Practice
12:30 p.m.
Gary Port

Publications 12:45 p.m.
Chris DelliCarpini

FRIDAY, MAY 15

Sports, Entertainment & Media Law
12:30 p.m.
Ross Schiller

TUESDAY, MAY 19

Veterans & Military Law
12:30 p.m.
Edward Cunningham

Plaintiff's Round Table 6:00 p.m.
Terrence Tarver

Elder Law, Social Services & Health Advocacy 6:00 p.m.
Moriah Adamo/Paul Hyl

WEDNESDAY, MAY 20

Construction Law 12:30 p.m.
Vincent Pallaci

Attorney/Accountant 12:30 p.m.
Neil Cohen

Surrogates Court Estates & Trusts 5:30 p.m.
John Graffeo/Lori Sullivan

THURSDAY, MAY 21

Civil Rights 12:30 p.m.
Jason Starr

Young Lawyers 6:30 p.m.
Andrea Brodie

TUESDAY, MAY 26

Commercial Litigation
12:30 p.m.
Kevin Schlosser

WEDNESDAY, MAY 27

Appellate Practice 12:30 p.m.
Richard Langone

Education Law 12:30 p.m.
Douglas E. Libby, Lena Ackerman, Esq., Associate General Counsel, New York State United Teachers will present:Teacher Tenure, Testing and Student Outcomes: The Storm Rages On. Optional CLE credit will be available

Real Property Law 5:30 p.m.
Kevin McDonough/Mary Mongioi
Andrew Lieb, Esq. of Lieb at Law, P.C. will present an overview and update on recent significant changes in real estate law.

THURSDAY, MAY 28

Senior Attorneys 12:30 p.m.
Charles E. Lapp, III

** Committee Chairs and Co-Chairs denoted in Italic.*

VISAs ...

Continued From Page 3

fully qualified to do so.

On February 24, 2015, the USCIS finally allowed certain H–4 beneficiaries to acquire their EAD. Eligible individual include H–4 dependent spouses of H–1B workers who:

• Are the principal beneficiaries of an approved I-140, Immigrant Petition for Alien Worker; or

• Have been granted H–1B status under Sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 as amended by the 21st Century Department of Justice Appropriations Authorization Act. The Act permits H–1B nonimmigrants seeking lawful permanent residence to work and remain in the United States beyond the six-year limit on their H–1B status.[15]

The USCIS estimates that this new regulation will allow as many as 179,600 people to work in the first year alone. In the following years, the USCIS estimates that 55,000 people will be able to acquire their EAD.[16]

Although this announcement alleviates certain restrictions for individuals on H–4, it still does not address the bigger issue. The person on H–4 still has a long wait time since they first arrive into the United States and they can begin working legally in the United States. It is not unusual for an H–4 person to wait six or seven years before either of the two above mentioned requirements are met.

Allowing H–4 individuals to work as soon as their spouses received their H–1B visa has many benefits. Not only are H–4 individuals highly qualified workers themselves, allowing them to work increases the chances of the people staying in the United States. This in turn is much better for the economy as a whole.

Then it begs the question, why is the United States passing up such a great opportunity not to allow highly qualified workers to enter into the workforce? Some might argue that allowing H–4 workers to enter into the workforce will take away jobs of native U.S. workers. However, as mentioned before, many of the H–4 workers are highly qualified themselves. It is no surprise that the United States is lacking jobs in Science, Technology, Engineering, and Math (STEM) fields.[17] Allowing the H–4 workers to work will fill the gap that is needed in the STEM workforce. It is possible to make the same argument about L–2 workers: "allowing L–2 workers will diminish work for native U.S. workers." However, such an argument does not hold in their context.

The main reason for this distinction between L–2 workers and H–4 workers comes down to politics. Many of these multi-national companies are multi-million and sometimes multi-billion dollar companies. With so much money at stake these companies have huge lobbying powers. In addition, it is hard to argue against the fact that having these multi-national companies conduct business within the United States is good for the U.S. economy.

On the other hand, companies who wanted to bring workers on H–1B visa were not a factor until very recently. It has only been in the last twenty years or so that H–1B workers became a factor in Immigration, while L visa has always been a big factor. For this reason, it is no surprise that the Immigration regulations cater to the L Visa.

Immigration reform is not simply about illegal Immigration. The reform must also encompass legal immigration. Allowing H–4 workers to acquire an EAD will bridge the gap in the U.S. workforce and will usher in a new economic growth that can rival that of the dot-com economic growth seen in the 90s.

Rajat Shankar is an attorney who practices Immigration at Shankar & Associates, PC, and is the current chair of the Nassau County Bar Association Immigration Committee.

1. 8 USC § 1101(a)(15)(H)(i)(b) and 8 USC 1101(a)(15)(L).
2. 8 USC § 1101(a)(15)(H)(i)(b).
3. 8 USC § 1101(a)(15)(H)(i)(b).
4. 8 USC § 1184(i)(2).
5. 8 USC § 1184(g)(1)(A).
6. 8 USC § 1184(g)(5)(C).
7. INA § 214(g)(4).
8. AC21, Pub L. No.106 – 313.
9. AC21, Pub L. No.106 – 313.
10. AC21, Pub L. No.106 – 313.
11. 8 USC § 1101(a)(15)(L).
12. 8 USC § 1184(c)(2).
13. 8 USC § 1184(c)(2).
14. 8 CFR 274a.12.
15. https://www.federalregister.gov/articles/2015/02/25/2015-04042/employment-authorization-for-certain-H–4-dependent-spouses?utm_campaign=pi+subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.
16. http://www.uscis.gov/news/dhs-extends-eligibility-employment-authorization-certain-H–4-dependent-spouses-H–1b-nonimmigrants-seeking-employment-based-lawfuL–permanent-residence.
17. http://www.forbes.com/sites/forbesleadershipforum/2012/07/09/america-desperately-needs-more-stem-students-heres-how-to-get-them/.

RULE ...

Continued From Page 9

diction, a practitioner must turn to the even more oppressive requirements of CPLR 4540(c). Simply stated, CPLR 4540(c) essentially requires a certification of the certification.

Under this provision, the signature and seal of the attesting official will not be sufficient; instead, the attesting official's certification must be accompanied by a certificate from another authorized person, and the certificate must have and/or state the following:

1. The official seal affixed;

2. That the signature of the attestor of the certification is believed to be genuine; and

3. That the attestor of the certification has legal custody of the records in question.[16]

The other authorized person certifying the attesting official's certification can be either of the following:

1. A judge of a court of record of the district or political subdivision in which the record is kept with the seal of the court affixed; or

2. Any public officer having a seal of office and having official duties in that district or political subdivision with respect to the subject matter of the record with such officer's seal affixed.[17]

Admissible – But Not *Prima Facie* Evidence?

Amazingly, if the documents sought to be admitted in evidence are only admitted pursuant to the common-law public documents exception to the hearsay rule, then "they will not be prima facie [sic] evidence of the facts contained in them, but merely some evidence which the trier of facts is free to disbelieve even though the adverse party offers no evidence on the point."[18]

Consider that for a moment. A jury, upon whim or whatever suits its fancy, is entirely within its right to completely disregard the evidence introduced, and opposing counsel does not even have to offer evidence on the topic. Thus, all of the practitioner's hard work and due diligence may be for naught.

Given all this, a practitioner is encouraged to avail him or herself to other methods of authentication, if at all possible, such as through a notice to admit under CPLR 3123 or even a stipulation. Moreover, using other exceptions to the hearsay rule to have his or her documents admitted in evidence, such as via the ancient documents exception, may be much easier and more beneficial.[19]

Obviously, not all documents are old enough for a practitioner to take advantage of the ancient documents exception. Therefore, the frequently utilized business records exception to the hearsay rule in CPLR 4518 can be another fantastic option. The business records exception cites to Sections 2306 and 2307 of the CPLR. CPLR 2306 covers medical records of a department or bureau of a municipal corporation or of the state, and CPLR 2307 pertains to items of a library, department, or bureau of a municipal corporation or of a state. More importantly, if the documents are admissible pursuant to CPLR 4518, then they "are prima facie [sic] evidence of the facts contained" in them.[20]

Conclusion

Although the common-law public documents exception to the hearsay rule can be yet another arrow in the quiver of a personal injury attorney, the song and dance required by same using CPLR 4540 just to have a document admitted in evidence is onerous, especially in light of the fact that the jury is free to disbelieve the information contained within it. Accordingly, a personal injury practitioner should attempt to avoid it, using it only as a last resort, and if it is believed that the exception will be called upon, then it is best to permit oneself ample time prior to the commencement of trial to execute the mandated prerequisites.

Terrence L. Tarver is an Associate at the law firm of Sullivan Papain Block McGrath & Cannavo P.C. He concentrates on personal injury litigation.

1. *Miriam Osborn Mem. Home Assn. v. Assessor of City of Rye*, 9 Misc.3d 1019, 1027 (Sup. Ct., Westchester Co. 2005), citing Prince, Richardson on Evidence § 8-1101, at 688 [Farrell 11th ed]; *People v. Hudson*, 237 A.D.2d 943 (4th Dept. 1997); *see also Richards v. Robin*, 178 A.D. 535, 539 (1st Dept. 1917) (citations omitted).
2. Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of N.Y., CPLR C4520:2 (citations omitted).
3. 111 A.D.2d 476 (3d Dept. 1985).
4. *Id.* at 478.
5. 36 A.D.3d 867 (2d Dept. 2007).
6. *Martin v. Ford Motor Co.*, 2004 WL 5916909 (Sup. Ct., Queens Co. 2004).
7. Martin, 36 A.D.3d at 867. *See also Martin, supra* n.4
8. *Consolidated Midland Corp. v. Columbia Pharmaceutical Corp.*, 42 A.D.2d 601 (2d Dept. 1973). *See also Flury v. Edwards*, 14 N.Y.2d 334 (1964); CPLR 4543 ("[n]othing in this article prevents the proof of a fact ... by any method authorized ... by the rules of evidence at Common-Law").
9. *Brown v. SMR Gateway 1, LLC*, 22 Misc.3d 1139(A) (Sup. Ct., Kings Co. 2009)(citing *People v. Garneau*, 120 A.D.2d 112, 166 (4th Dept. 1976)); *Sangiacomo v. State*, 13 Misc.3d 1246(A) (Ct. Cl. 2006).
10. *Brown*, 22 Misc.3d at 3; *Miriam*, 9 Misc.3d at 1029; *People v. Baker*, 183 Misc.2d 650, 653 (Cty. Ct., Oneida Co. 2000).
11. *Miriam*, 9 Misc.3d at 1029; *Brown*, 22 Misc.3d at 3. This assumes the document is not an original and is a copy.
12. *Brown*, 22 Misc.3d at 3, citing CPLR 4540(a).
13. *Id. See also Miriam, supra* n. 6; *Baker*, *supra* n.10.
14. 167 Misc.2d 441 (N.Y. Crim. Ct. 1995)(citing Richardson on Evidence (10th ed), §§ 649-650).
15. CPLR 4540(b).
16. CPLR 4540(c).
17. *Id.*
18. *Consolidated Midland Corp.*, 42 A.D.2d at 601 (citations omitted); *Martin*, 36 A.D.3d at 867.
19. *See Essig v. 5670 58th Street Holding Corp.*, 50 A.D.3d 948, 949 (2d Dept. 2008)(restating ancient documents rule).
20. CPLR 4518.

ADR ...

Continued From Page 11

Arbitration

Many shareholder agreements and operating agreements contain some form of arbitration clause. Most parties and lawyers look at these clauses as a last-minute way to resolve a dispute that has crystallized – in other words, instead of filing suit in court, a plaintiff will file a demand for arbitration. However, few parties or their lawyers realize that the arbitration clause can be used earlier in the process once there is a dispute concerning or arising under an alleged breach of the agreement or concerning the meaning of a provision thereof, or a dispute among the board of directors, shareholders or members.

An arbitrator takes his or her jurisdiction from the parties' agreement to arbitrate, that is, the wording of the arbitration clause. Of course, the parties can always make a "new" agreement to submit a particular dispute or issue for determination by an arbitrator. Unlike a mediator, an arbitrator is a neutral who determines the issue submitted (rather than assisting the parties to find their own result).

A typical arbitration clause can be invoked early in the course of a dispute, for example, when a deadlock occurs among the directors (if a vote is required) or if there is a dispute as to whether a particular party or officer has the power to undertake a particular action (such as firing another shareholder). A simple demand for arbitration can "tee up" the dispute for a very quick resolution by the arbitrator.

For example, if there are two directors of a real estate development company who cannot agree on whether the company should develop a property as a hotel or a condominium, an arbitrator could determine this dispute. The parties can even ask the arbitration tribunal that they are using to find an arbitrator who has experience in the subject area or in their industry. Each side would then present his "case" as to why the company should take a particular course of action, and the arbitrator (sitting, in essence, as the deciding, tie-breaking vote), would determine the issue. In this way, the parties' relationship can be salvaged, along with the company. Of course, at any time during this arbitration, the parties could seek the services of a mediator to help them resolve the dispute.

ADR is a creative tool that can be used in many different ways to resolve internal corporate disputes. The transactional lawyer can "save the day" by recommending ADR as a mechanism to address a client's business dispute.

Erica B. Garay, Esq., is a member of Meyer, Suozzi, English & Klein, P.C. in its Garden City and New York City offices, and Chair of its Alternative Dispute Resolution Practice Group. Ms. Garay is an arbitrator, mediator and a commercial litigator, handling complex matters, including corporate dissolutions, non-competes, and disputes among business owners. She serves on the American Arbitration Association roster of neutrals for commercial and complex litigation and can be reached at egaray@msek.com.

NEGOTIATIONS ...

Continued From Page 7

becoming a more prevalent roar.

The Consequences of Incivility

These simple principles gel and indeed crystallize from the perspective of those serving as neutral arbitrators and mediators, situated between the disputing sides. In the course of conducting preliminary and evidentiary hearings in commercial arbitration cases (as an alternative to court), the arbitrator renders decisions and awards that have binding and enforceable legal effect, particularly when converted into court judgments. The less civil party in a dispute often appears merely to be endeavoring to overcompensate for unfavorable facts or law, whereas the more civil party in a dispute often feels no need to descend into incivility, perhaps founded upon enjoying the stronger case. Indeed, obstreperous counsel thus inadvertently acknowledges implicitly that he or she likely has a less than wholly legitimate case on the facts and/or law, not something a lawyer seeks to communicate to the one who is judging the case and will issue the final determination.

Similarly, the uncivil lawyer representing a party in mediation makes it far less likely that his client will achieve a favorable resolution through settlement because, among other things, he is inadvertently communicating the message that he may have the weaker case, and is alienating the parties with whom he ostensibly seeks to reach voluntary accommodation. Most people do not wish to reward that sort of behavior with granting him success in his efforts. Moreover, any sophisticated client can sense when her counsel is substituting bluster and bravado for intellect, strategy, and finesse, and it becomes far less likely that she will hire him again to represent her.

Why do some lawyers persist with these less-than-civil tactics? The answer to that question may be better suited to a journal of psychiatry than one of law.

David J. Abeshouse is a solo business ADR litigator, arbitrator, mediator, writer, speaker, past Chair of the Nassau Bar ADR Law Committee, and past Adjunct Professor of ADR Law at St. John's University Law School. He is a Fellow of the College of Commercial Arbitrators (CCA), a member of the National Academy of Distinguished Neutrals (NADN), and included on the "SuperLawyers" list for ADR Law. He can be reached at his Uniondale office through his website: www.BizLawNY.com

1. https://www.nycourts.gov/press/old_keep/stnds.shtml

CLIENT ...

Continued From Page 5

If you encounter this type of client: Do yourself a favor early on and just say "no." This type of client will likely be unsatisfied and untrusting with your services and eventually won't pay.

The "Time-Suck" Client

This client expects an unreasonable completion date for your service; or becomes upset when their requests are not answered immediately. This client demands that you personally get back to them and doesn't understand why you can't perform miracles. Such clients are never satisfied when receiving the agreed upon product or service, or expect more than what was contractually obligated and tell you they "didn't know it would be like this." Ultimately what they want is a discount in your fees. This client refuses to pay, consistently makes late payments or bounces payments, or simply does not follow instructions but claims it is an error on your end.

If you encounter this type of client: You need to have a discussion to explain your practice's policies and procedures. While he or she as the client is important, they need to understand that others in your firm will be helping them besides yourself, that you'll get back to them within a certain time and that they need to follow the rules. These clients are often unreasonable and will threaten to make complaints because they are "not happy." Putting too much time into clients like this drains your resources and will stress you out since you feel you are doing the best possible job for them but they are never satisfied … You simply can't understand why they are unhappy. It's as if you extinguished their burning barn and saved all of the animals but they want to know why you couldn't get the smoke smell out. With this client, it's best to limit your exposure and cut them loose.

The Bottom Line

Trying to work with a difficult client for too long will make it all seem not worth it. Your staff may get abused in the process which creates other internal issues. Even worse, is that everyone is consumed with this one client's needs that you won't be able to bill for. These perpetually unhappy clients, regardless of how well they're treated and how much you disclose to them about the process and procedures, will be a drain on your business' morale and time. Constant calls, redundant questions, and demeaning attitudes are costly and hit your bottom line.

You are taken away from running your practice to deal with, and to help staff deal with, the client. Not to mention the bottom line, you'll be worrying if you'll be paid in the end or find yourself in a fee dispute. The reality is for practitioners these days, the fee dispute process is less traumatic than online complaints to review sites. Negative reviews online are probably the worst end result of difficult clients, since it's next to impossible in having those comments withdrawn.

These people are unworkable and you need to lose them fast. They also perpetuate negative energy in your business and if you value what you've built, cut them loose. You may not be able to prevent them from leaving a review, but trying to solve all their problems and terminating them as amicably as possible may deter them from leaving a bad review or, at least, soften the blow. Make sure to keep good records of the details of the work you have done and your relationship so you are able to dispute any falsities they may say about you and your business.

When To Say No

It's also important to remember that it is ok to decline a client before taking them on. As much as you want the business, if you sense a relationship will not be mutually beneficial, do yourself a favor and decline to take them on as a client before the relationship begins. Offer other options like a referral from the local Bar Association or not for profit agency or a law school clinic.

> ***These perpetually unhappy clients, regardless of how well they're treated and how much you disclose to them about the process and procedures, will be a drain on your business' morale and time.***

It's always important to weigh a client's case's worth against their difficult behavior. Clients are demanding and we are used to that, but these scenarios are the outside the box and scope of what we as practitioners should tolerate. Do your firm and yourself the favor and just say "no thank you." We all know that saying no to a case hurts but it is less painful if you do it early on.

That Heart-to-Heart: Firing a Client

Well the difficult client has infiltrated, now what? Firing a client may sound strange especially since you work for them, but sometimes you need to have a simple conversation about how you think that you need to part ways. Call or meet them in person and say something along the lines that you have given their matter a lot of thought and you believe you have done the best you can for them but you think their needs are better served elsewhere. To avoid animosity, consider offering to give something back, in the term of money or letting them out of a retainer. Once you fire them and they are gone you'll feel better and be able to shift your focus to more important projects and clients that will make you money. If your goal is to build your businesses and bring in more clients, difficult, unmanageable and unreasonable clients will have the opposite effect.

In the end, difficult clients are what we signed up for when we took the oath. However, there are some that are simply outside the scope of being reasonably difficult and to those we say, good luck and no thank you.

Leslie H. Tayne, Esq. is the founder and director of Tayne Law Group, P.C. one of the few New York State practices whose sole concentration is consumer debt resolution. Since its establishment in 2001 as a debt relief law firm in Melville, Tayne Law Group, P.C. has expanded into Manhattan as well as Westchester County's White Plains and Mount Kisco. Her firm regularly assists thousands of individuals and businesses with the management and resolution of their unsecured debts. Tayne is also the author of the book Life & Debt: A Fresh Approach to Achieving Financial Wellness.

VACCINATION ...

Continued From Page 5

rights.[12]

In dismissing plaintiffs' substantive due process claim, the court relied upon the century-old United States Supreme Court case of *Jacobson v. Commonwealth of Massachusetts*,[13] which held that a state's power to protect the public health and safety superseded the individual "liberty secured by the Constitution."[14] In *Jacobson*, the Massachusetts legislature had passed a law allowing any city or town board of health to require its inhabitants to be vaccinated against smallpox.[15] Any adult who failed to be vaccinated would have had to pay a five dollar fine.[16] When a city required its inhabitants to be vaccinated during an outbreak of smallpox in 1902, Henning Jacobson refused to be vaccinated, claiming that vaccines could cause "serious and permanent injury."[17] The court disagreed, finding that an individual's personal liberty could not overcome legislation passed in good faith to protect the public health.[18] In *Phillips*, the Second Circuit adopted this line of reasoning, concluding that "[p]laintiffs' substantive due process challenge to the mandatory vaccination regime is therefore no more compelling than Jacobson's was more than a century ago."[19]

Caviezel: The Free Exercise Argument

Phillips is not the first instance where the Second Circuit has upheld New York's school immunization laws against a due process challenge. In *Caviezel v. Great Neck Public Schools*, the Second Circuit dismissed a challenge to the same provision of the Public Health Law that requires children to be vaccinated before enrolling in public schools.[20] The court, for reasons substantially similar to those in *Phillips*, affirmed the dismissal of a parent's claim that § 2164 violated her due process rights.[21]

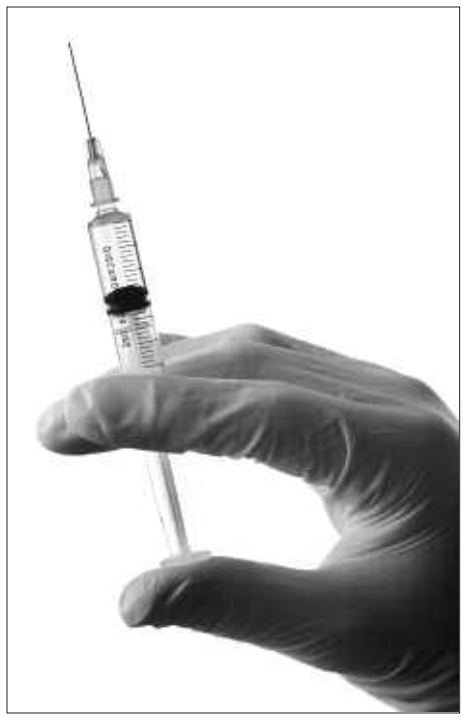
The Second Circuit also relied on Supreme Court precedent to deny plaintiffs' free exercise claim.[22] After acknowledging that *Jacobson* did not apply directly to the free exercise issue, the court looked to the Supreme Court's decisions in *Prince v. Massachusetts* and *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*.[23] In *Prince*, the Supreme Court opined that "[t]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death."[24] In *Lukumi*, the Supreme Court held that a neutral law of general applicability would not be subject to strict scrutiny even if the law had "the incidental effect of burdening a particular religious practice."[25]

Applying these precedents, the Second Circuit found that "mandatory vaccination as a condition for admission to school does not violate the Free Exercise Clause."[26] Since New York could have required all children to be vaccinated in order to enroll in public school, the court held that "New York law goes beyond what the Constitution requires by allowing an exemption for parents with genuine and sincere religious beliefs."[27] This exemption meant that the challenged laws were "clearly constitutional."[28] Finally, the court dismissed plaintiffs' equal protection claims because plaintiffs had failed to establish that they, as Catholics, had been treated differently than parents of other faiths.[29] Finding that plaintiffs had failed to establish that either of the challenged laws violated the Constitution, the Second Circuit affirmed the dismissal of plaintiffs' claims.

A Century of Challenges to Vaccination Requirements

As *Jacobson* shows, challenges to mandatory immunization laws are not a recent phenomenon. In fact, New York courts have entertained such challenges for over a century. In 1904, the Court of Appeals in *Viemeister v. White*[30] dismissed a challenge to a provision of the Public Health Law that barred unvaccinated students from public schools.[31] In *Viemeister*, although there had not been any outbreak of disease, an unvaccinated child was excluded from a public school pursuant to the Public Health Law.[32] In challenging the statute, the plaintiff's arguments mirror the arguments put forth over one hundred years later by the plaintiffs in *Phillips*.

The *Viemeister* plaintiff claimed that "vaccination does not tend to prevent smallpox, but tends to bring about other disease, and that it does much harm with no good."[33] Similarly, the Court of Appeals "conceded that some laymen, both learned and unlearned, and some physicians of great skill and repute, do not believe that vaccination is a preventive of [disease]."[34] However, the court concluded that, although some authorities disputed the effectiveness of vaccination, that disagreement was "not controlling" because the legislature, not the courts, had the power to balance scientific evidence in promulgating laws.[35] The Court of Appeals ultimately held that the mandatory vaccination law was a "reasonable and proper exercise



of the police power."[36]

In the 110 years between the *Viemeister* case and *Phillips*, state and federal courts in New York have repeatedly upheld or indicated approval of laws requiring children to be vaccinated before they can be enrolled in public schools.[37] While the scientific and medical issues regarding vaccines have remained subject to dispute over the past century, the courts have remained consistent in their approach. Judges have attempted to refrain from making scientific judgments about the efficacy of vaccinations and have remained deferential to prior judicial precedent and the judgment of the legislature in their approaches to public health laws. Considering such deference, it is highly unlikely that a court will overturn the state laws that require public school students to be vaccinated. Accordingly, the best avenue for success on a challenge to mandatory school vaccination laws seems to lie not in an appeal to the courts, but with the Legislature.

While the recent Disneyland measles outbreak may help shape the public debate on school immunization laws, the judicial reaction to further challenges will likely remain the same – even if it were Mickey Mouse himself bringing the challenge.

Brendan Barnes is an associate attorney with Frazer & Feldman LLP, located in Garden City, practicing in education, labor, and municipal law. Brendan also serves as a Senior Fellow for Health Law and Policy at Hofstra University School of Law.

1. Tamar Lewin, Father of Boy With Leukemia Asks California School Officials to Bar Unvaccinated Students, N.Y. Times (Jan. 28, 2015), http://www.nytimes.com/2015/01/29/us/father-of-boy-with-leukemia-asks-california-school-officials-to-bar-unvaccinated-students.html.
2. *Id.*
3. Measles Outbreak Casts Spotlight on Anti-Vaccine Movement, N.Y. TIMES (Jan. 22, 2015), http://www.nytimes.com/aponline/2015/01/22/us/ap-us-measles-california.html.
4. N.Y. Pub. Health Law § 2164 (7) (a) (McKinney 2014).
5. N.Y. Pub. Health Law § 2164 (9).
6. 10 N.Y.C.R.R. § 66-1.10 (a) (2014).
7. 775 F.3d 538 (2d Cir. 2015).
8. While Section 2164(9) permits exemptions from the immunization requirement for genuine and sincere religious beliefs, the Department of Education had found that the plaintiff objected to vaccinations based on health reasons rather than a religious basis. *See Phillips*, 775 F.3d at 544 n. 6.
9. *Id.* at 542
10. *Id.*
11. *Id.* at 540.
12. *Id.*
13. 197 U.S. 11 (1905).
14. *Id.* at 25-26. The Supreme Court reaffirmed Jacobson in 1922. *See also Zucht v. King*, 260 U.S. 174, 176 (1922) ("[I]t is within the police power of a state to provide for compulsory vaccination").
15. *Jacobson*, 197 U.S. at 12.
16. *Id.*
17. *Id.* at 36. The Jacobson plaintiff claimed that a significant number of medical professionals "attach[ed] little or no value to vaccination as a means of preventing the spread of smallpox [and] th[ought] that vaccination causes other diseases of the body." *Id.* at 30. He also claimed that "the operation occasionally resulted in death; that it was impossible to tell in any particular case what the results of vaccination would be or whether it would injure the health or result in death." *Id.* at 36. The Supreme Court refused to overturn the Massachusetts law, finding that the task of balancing medical evidence was entrusted to the legislature, not "a court or jury." *Jacobson*, 197 U.S. at 30.
18. *Id.* at 37-38.
19. *Phillips*, 775 F.3d at 542.
20. 500 Fed. App'x 16 (2d Cir. 2012).
21. *Id.* at 18-20.
22. The court affirmed the district court's finding that the plaintiff who challenged the validity of section 2164 did not hold genuine and sincere religious beliefs against immunization. Phillips, 775 F.3d at 544 n. 6.
23. *Id.* at 543.
24. 321 U.S. 158, 166-67 (1944).
25. 508 U.S. 520, 531 (1993).
26. *Phillips*, 775 F.3d at 543.
27. *Id.*
28. *Id.*
29. *Id.* at 543-44.
30. 179 N.Y. 235 (1904).
31. *Id.* at 242.
32. *Id.* at 237.
33. *Id.* at 239; *see also* endnote 17, *supra.*
34. *Viemeister*, 179 N.Y. at 239. The plaintiffs in *Phillips* similarly argued that "a growing body of scientific evidence demonstrates that vaccines cause more harm to society than good." *Phillips*, 775 F.3d at 542.
35. *Viemeister*, 179 N.Y. at 241.
36. *Id.*
37. *See, e.g., Caviezel*, 500 Fed. App'x at 16; *Turner v. Liverpool Cent. Sch.*, 186 F.Supp.2d 187 (N.D.N.Y. 2002); *McCartney v. Austin*, 31 A.D.2d 370 (3d Dept. 1969); *In re Elwell*, 55 Misc.2d 252 (Fam. Ct., Dutchess Co. 1967); *Pierce v. Bd. of Educ.*, 219 N.Y.S.2d 519 (Sup Ct., Oswego Co. 1961); *In re Whitmore*, 47 N.Y.S.2d 143 (Dom. Rel. Ct., Kings Co. 1944); *People v. Ekerold*, 211 N.Y. 386 (1914).

COLLECTIONS ...

Continued From Page 3

Note that the "exempt" sources of income are the traditional items found in the "Notice to Judgment Debtors" provided for in CPLR § 5222-e.

Substantiation of Consumer Debts If the consumer disputes the validity of a charged-off debt, the debt collector must inform the consumer that he can request substantiation of the debt (unless it was already provided) or instruct the consumer on how to make such a written request. In addition, substantiation must be provided within sixty days of receipt of a request and collection activity must cease during that period.

The rules also outline what documents are required for "substantiation," including the judgment or signed contract, the charge-off account statement, the complete chain of title of the account showing all assignees, and records reflecting any prior settlement. Finally, once substantiation is requested, the debt collector must retain the request and all documents it provided in response until the debt is discharged, sold, or transferred.

New Burdens and Protections The new regulations are certain to create additional burdens on debt collectors and debt buyers, especially with respect to retrieving records on charged-off accounts from the original creditors.

Consumers and their counsel are urged to take advantage of the protections of the new regulations when confronted with aggressive debt collectors or debt buyers. Consumers should be advised to:

a) insist upon proof of the identity of the debt collector and debt buyer and their capacity to collect on the account before agreeing to pay any money, so as to avoid the potential of double exposure;

b) dispute the validity of any debt that seems questionable and request that the basis of the debt be substantiated (this is particularly important in today's world where identity theft is rampant);

c) question whether the Statute of Limitations on collection of the debt has run or is about to run before agreeing to pay any money, to avoid being pressured into paying back claims that are time-barred;

d) insist that any settlement agreement be in writing and verify where payments are to go, and how they are to be applied; and

e) upon full payment, make sure that the settlement is reported to the major credit reporting agencies.

Jeff Morgenstern, Esq. maintains an office in Carle Place, where he concentrates in bankruptcy, creditors' rights, commercial and real estate transactions and litigation.

Dressed to a Tea
A Day at the Races
Co-Chairs:
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20th Annual Golf and Tennis Classic
Monday, July 27, 2015

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Perri Boodram (516)747-4070 ext. 226 or Ken Marten (516)747-5800

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VIEW FROM THE BENCH ...

Continued From Page 14

of this column, six cases remain pending.

Facebook's appeal was heard by the First Department on December 11, 2014 and I attended the argument. Facebook was represented by Thomas H. Dupree of Gibson, Crutcher, Dunn and the New York County District Attorney's office was represented by Brian Rosenberg. There were three issues raised by the Facebook appeal: 1) is the order denying the motion to quash an appealable order? 2) Does Facebook have standing to challenge the warrants? And 3) were the warrants overbroad in scope as to violate the Fourth Amendment? The trial court answered all three in the negative.

Facebook is an online social network service that has over one billion registered users. It is common that its users share public and private information which includes photos, videos and personal information of literally every category. Each user has the ability to control who they share what information with. The search warrants sought information covering 24 different categories- virtually every piece of information contained in each account. In their brief Facebook argued first that the denial of their motion to quash is an appealable order

because the denial of the motion to quash a subpoena is a civil rather than criminal order even when part of a criminal investigation. Looking to the substance rather than the form, Facebook argued at the appeal that the court should consider that an order to produce documents pursuant to the Stored Communications Act (hereinafter referred to as the "SCA")[3] as really the same as a subpoena *duces tecum*. Therefore Facebook claims that this order is appealable as of right pursuant to CPLR § 5701(a) just as any other final order. Facebook also argued that it is well established in our law that a third party may appeal orders directing it to produce documents for use in a criminal investigation, citing *People v. Marin*.[4]

As to standing, Facebook argues that the SCA expressly grants service providers like Facebook the right to move to quash warrants issued pursuant to the Act. Facebook claims it has plainly suffered injury in fact from the burden of having to compile the information sought as well as being subject to a gag order which prevented it from advising its users about the warrant. It also argued that it has third party standing to assert the constitutional rights of its users whose private information has been seized by the government without notice.

Finally Facebook argues that the "bulk warrants" violate the Fourth Amendment because they believe the warrants are overly broad. According to Facebook, the warrants are all identical in scope demanding information from 24 different categories of user information without any identifying connection between the information and alleged criminal activity. The 93 page affidavit of the investigator submitted as the basis of the search warrant remains under seal.

The government moved to dismiss Facebook's appeal on several procedural grounds. It reiterated the arguments it made at the trial level and argued first that the issuance of a search warrant is not an appealable order, citing *[Matter of Newsday v. Morgenthau];*[5] *People v. Reynolds*,[6] and the specific language of the SCA.[7] According to the District Attorney, there are three types of requests for account information that service providers can receive under the SCA: an administrative subpoena, a court order, or a warrant – all with a different standard of proof required for each. An SCA warrant, like all search warrants, issue only when the People make a showing of probable cause, clearly a higher standard than that required for obtaining a court order. Simply put, they argue, a warrant is a warrant and an order is an order and Facebook cannot confuse the two. The District Attorney's brief that Facebook has no case law, federal or state, that supports its position on the "appealability" issue. Further, the plain language of the SCA, allows for a service provider to promptly move to quash or modify a court obtained disclosure order... "If the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider." The government therefore argued that a warrant is specifically NOT mentioned as one subject to challenge and even if it were, the only grounds for doing so would be if the provider alleges that compliance would be an undue burden and that is not what Facebook alleged here. The government next argued that Facebook is not the aggrieved party and therefore has no standing to appeal. And finally, the government also raised the issue of "mootness" that is, it makes no sense to argue about whether or not Facebook should be required to comply with the warrant because it has already chosen to do so and because it has already notified all of its account users of the existence of the warrants. Facebook maintains that it complied with the warrants only after being forced to do so by the denial of its request for a stay pending appeal and that it was threatened with contempt by the government after the permanent stay was denied. Facebook states that its compliance was not 'voluntary.' Facebook also argued that the non-disclosure ("gag") order which continued through the time of the appeal was illegal. Therefore Facebook contends that the facts herein presented qualified as an exception to the mootness doctrine *i.e.* when there is a likelihood of repetition of the issue either between the parties or members of the public; there is involved a phenomenon typically evading review; and a showing of significant or important questions not previously passed upon, citing *Matter of Hearst Corp. v. Clyne*.[8] Facebook maintains that each of these three factors is satisfied with regards to its appeal in this case. Specifically, as to the likelihood of repetition of the issues involved Facebook states that the number of law enforcement requests directed at third party service providers for electronically stored information is increasing every year and those providers are challenging these requests more frequently than ever making the issues here likely to repeat in the near future. Facebook alleges that if the courts do not make an exception to the mootness rule in a case like this there will be no Fourth

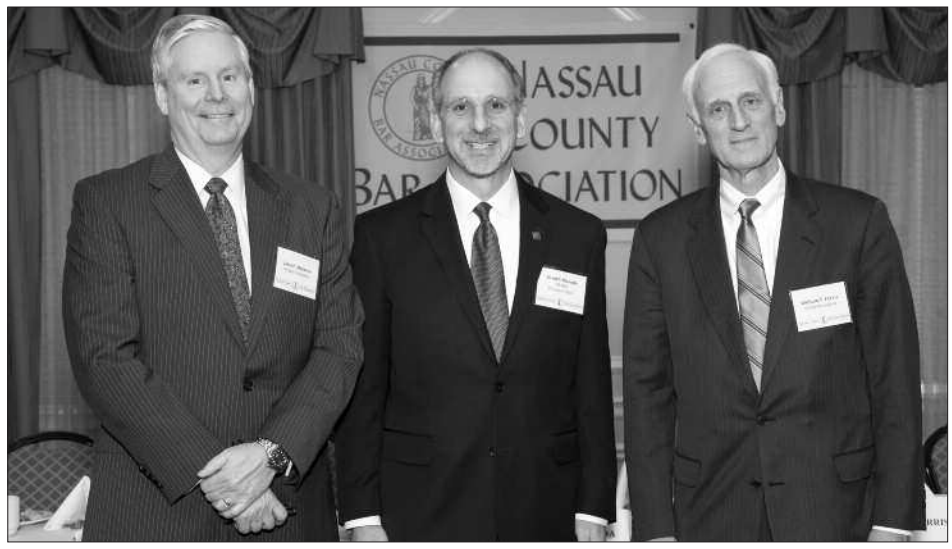
See VIEW FROM THE BENCH, Page 22

ASSOCIATION NEWS

Lawyer Assistance Program (LAP) Reaches Out to St. John's Law Students

First year law students learned more about the assistance available through LAP - Lawyer Assistance Program - at a full day wellness seminar at St. John's University School of Law, organized by Susan Deith, a member of NCBA's LAP Committee. Three sessions were held throughout the day. Participants included (from left) Jon Michael Probstein, Adrienne Hausch, Susan Deith and LAP Committee Vice Chair Mark Goidell. LAP provides free confidential assistance to attorneys, judges, law students and graduates, and their family members, who have problems relating to alcohol, drugs, gambling, depression, and other emotional and behavior issues that affect well-being and professional conduct. Anyone concerned about their own issues or those of a colleague can always make a confidential call, 24/7, to the Free LAP Confidential Hotline, 1-888-408-6222. Confidentiality is completely protected under Section 499 of the Judiciary Law (as amended by Chapter 327 of the Laws of 1993).

Nassau-Suffolk Bar Annual Joint Meeting



LEADING THE CHARGE FOR THE LEGAL PROFESSION: Nassau County Bar Association President John P. McEntee welcomes New York State Bar Association President-Elect David P. Miranda and Suffolk County Bar Association President William T. Ferris at the annual Long Island joint bar meeting held March 17 at NCBA. (Photo by Hector Herrera)

The Columbian Lawyers Association (CLA) of Nassau County recently celebrated Venetian Carnevale at their monthly meeting. (l-r) Al Petraglia, President of CLA, Maureen Dougherty, Hon. Frank A. Gullota, Jr., Rina M. Capicotto, Secretary of CLA and Hon. Anthony W. Paradiso.

LAW DAY ...

Continued From Page 1

will be presented to Brenda Hayden, Court Clerk in the Landlord/Tenant Part of Nassau District Court.

Liberty Bell Honors

The Liberty Bell Award recognizes non-lawyers who have strengthened the American system of freedom under law by heightening public awareness, understanding and respect for the law.

Founded in 1947, The Health & Welfare Council of Long Island is a not-for-profit health and human services planning and advocacy organization serving as the umbrella for agencies serving Long Island's vulnerable and financially disadvantaged individuals and families. The Council helps Long Islanders enroll in public health insurance and the Supplemental Nutrition Assistance Program, educates the public about important tax credits and free tax preparation services, assists high school seniors with college financial aid applications, and facilitates Long Island Voluntary Organizations Active in Disaster.

Pro Bono Attorney of the Year

The Thomas Maligno Pro Bono Attorney of the Year Award recognizes an NCBA member for selfless commitment to the furtherance of the most noble traditions of the organized bar. The award is named for Thomas Maligno, former Executive Director of the Nassau/Suffolk Law Services Committee and the founding manager of its pro bono effort, Volunteer Lawyers Project, an NCBA-supported program that helps maximize the quantity and quality of pro bono assistance provided for Nassau's low-income community.

This year's honoree, Jon Michael Probstein, wears many hats. He is a successful attorney who assists people and businesses in all civil matters, dedicated father of twins Michael and Megan, and, as Jon Avner, a professional actor who continues to work in stage, screen and television roles. He is also a dedicated volunteer who freely donates his legal time and talents to help those most in need.

Probstein works on matrimonial cases and helps renters by defending evictions for the county's low-income community through the Volunteer Lawyers Project. He is a regular at NCBA's monthly Mortgage Foreclosure Legal Consultation Clinics, where he has helped dozens of Nassau homeowners navigate their way through the foreclosure process; and he counsels at NCBA's monthly Senior Citizen clinics. He is an active member of NCBA's Lawyer Assistance Program Committee and volunteers at The Safe Center LI.

After earning his degree from St. John's Law School, Jon worked at several firms in Manhattan and eventually opened his own office in New York and Los Angeles. Currently, he lives in Levittown and practices primarily on Long Island.

Court Employee of the Year

The Peter T. Affatato Court Employee of the Year Award, named after the NCBA Past President, recognizes a non-judicial employee of any court in Nassau County who exhibits professional dedication to the court system and to its efficient operation, and is exceptionally helpful and courteous to other court personnel, members of the bar, and the people served by the court system.

Brenda Hayden, the Court Clerk in the Landlord/Tenant Court, calmly and efficiently handles a daily calendar averaging 60 cases and an annual calendar of more than 7,000 cases, most of them contested and often contentious. She juggles the court's calendar to accommodate all attorneys who need to conference with the judge while making sure that all cases, adjournments and trials are put on the record.

Hayden is especially helpful with first-time litigants, referring them to the Volunteer Lawyers Project. Many of these litigants are pro se and struggling to either evict non-paying tenants or retain their housing. She also gladly assists the volunteer lawyers with petitions and other court papers that most clients fail to bring with them to court.

Law Day is open to NCBA members, non-members and the public. To make reservations, please contact Caryle Katz, 516-747-4070, ckatz@nassaubar.org.

Toast To DOMUS

Many of our members do not often have the opportunity to hear the inspiring words of their colleagues as they make the toast to Domus; therefore, as the 85th anniversary of the dedication approaches, we will share some of these moving Toasts to Domus. The toast reprinted here was given at the March 2015 Board of Directors meeting by Brian Davis, Board Member.

At a recent swearing in of young lawyers in Florida, they were advised by the speaker to "be 'lawyer-centric' – meaning to work with your fellow bar members and the court; get involved; stay involved; but most important, have fun. If you can't enjoy being a lawyer, then why do it?"

In a stress ridden profession, it's often difficult to find enjoyment. We are very fortunate in Nassau County to have our Bar Association centered here, in our home away from home; a refuge of sorts, where we can shed the veneer we have to put on for clients and their expectations; where we can work together as friends and supporters, not as adversaries; and where we can work for a greater good.

This is our home where many of our hearts are. Here where we gain satisfaction helping the community at large through "We Care" and its charitable efforts; and, even more important, where, through our Lawyers Assistance Program, we can assist our brethren through their difficulties, their darkest times; this home can be their beacon of light.

To this home which houses a thriving community of lawyers who do find fun and satisfaction in our profession, I offer this toast – to Domus.

– Brian Davis,
NCBA Board of Directors Meeting,
March 10, 2015

Answering the Call of the Legal Profession

300 Attorneys, 26 Law Firms Recognized for Distinguished Volunteer Service

By Valerie Zurblis

Every year, hundreds of NCBA members provide pro bono legal services, consultations and referrals helping thousands of Nassau residents in crisis. A volunteer attorney may provide reassurance to distressed homeowners afraid of losing their homes to foreclosure, or represent clients in court to avoid eviction. Another may take on a long-term matrimonial case for a victim of domestic abuse, or help a struggling couple decide when it's time to file for bankruptcy and how to go about it. When disaster strikes – as Superstorm Sandy did in 2012 – NCBA volunteer attorneys can be found on the front lines, giving hands-on legal assistance to begin the process of getting life back to normal.

Whatever the challenge, when people are desperate and don't know where to go, NCBA volunteer attorneys never hesitate to answer the call. These attorneys can be counted on to deliver competent legal assistance, and provide access to justice to all, without regard for the ability to pay.

On April 1, the Nassau County Bar Association, The Safe Center LI and Nassau/Suffolk Law Services hosted the First Annual Access to Justice Pro Bono Recognition Reception. They honored more than 300 volunteer attorneys and 26 law firms that provided distinguished volunteer service for the community in the past year. All honorees are listed on the back page of the Nassau Lawyer.

"The premise of this recognition is to honor those attorneys and firms who place the highest priority on helping society and those less fortunate than us," said Access to Justice Committee Co-Chair Gregory Lisi, a partner in charge of the Labor & Employment Departments at Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana. "We, as a profession, have a duty to help those less fortunate try to obtain justice, and these firms understand and embrace this calling."

Steven Leventhal, NCBA Second Vice President and Access to Justice Committee Co-Chair, a partner at Leventhal, Cursio, Mullaney & Sliney, added, "The attorneys honored represent the best tradition of the legal profession – the tradition of service to the community. They make us all proud. This event is our way of saying thank you."

The NCBA Access to Justice Committee is a joint effort of the NCBA, The Safe Center LI and Nassau/Suffolk Law Services and other legal service providers, working together to coordinate legal services for the community, strengthen the core of volunteer attorneys through education and professional development, and provide information on free and reduced fee legal resources.

PRO BONO CHAMPIONS: Long Island attorneys representing the law firms, and non-legal service providers, who performed the most pro bono service in 2014: (front row: l to r) Elena Karabatos, Schlissel Ostrow Karabatos, PLLC; solo practitioners George Frooks, Janet Connolly and Jon Press; Ellen Birch, Realtime Reporting, Inc.; and, John DiMascio Jr., John P. DiMascio & Associates, LLP. (back row: l to r) Stephen Leventhal, NCBA Second Vice President and Access to Justice Committee Co-Chair; John P. McEntee, NCBA President; Charles Strain, Farrell Fritz, P.C.; James Ricca, Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP; Richard Walsh, Horing Welikson and Rosen; Craig Eisenberg, Ultimate Process Service; John DiMascio Sr., John P. DiMascio & Associates ; Alan Rutkin, Rivkin Radler, LLP; and, Greg Lisi, Access to Justice Committee Co-Chair. (Photo by Hector Herrera)

WORKING TOGETHER FOR ACCESS TO JUSTICE: (l to r) Gail Broder Katz, The Safe Center LI; Stephen Leventhal, NCBA Second Vice President and Access to Justice Committee Co-Chair; Gale Berg, NCBA Director of Pro Bono Attorney Activities; Lois Schwaeber, The Safe Center LI; Jeff Seigel and Susan Biller, Nassau/Suffolk Law Services; John P. McEntee, NCBA President; and, Greg Lisi, Access to Justice Committee Co-Chair. (Photo by Hector Herrera)

WANT TO GET INVOLVED?

The Access to Justice Committee has compiled a list of local non-profit organizations in need of legal pro bono services. Attorneys who would like to learn more about any opportunity should contact the organization directly.

Pro Bono Opportunities in Nassau County

Bankruptcy Clinics

These clinics are held every other month. Volunteer attorneys provide guidance to those considering bankruptcy, screening for referral to Pro Bono attorneys for filing of Chapter 7 petitions. This is a limited engagement, though participating attorneys may also be referred cases.

CONTACT: Nassau/Suffolk Law Services
Susan Biller, Esq.,
516-292-8100 sbiller@wnylc.com

Guardianships - Article 81 MHL proceedings - Attorneys must be part 36 eligible

Opportunities exist for the position of counsel to the Alleged Incapacitated Person (AIP) representing their interest in the court hearing; court evaluator who serves as an arm of the court and conducts an investigation reporting on the circumstances of the AIP as they relate to the facts alleged in the petition; and Guardian to the AIP if they are found to be incapacitated, requiring visiting the ward during the year at their home or in their facility and reporting annually on the ward's condition both personally and financially.

CONTACT: Nassau County Bar Association
516-747-4070

Federal Court – EDNY Long Island Courthouse

Opportunities exist to represent indigent litigants in pending litigation in the EDNY's Long Island Courthouse. Cases typically involve civil rights claims brought pursuant to Section 1983 or employment discrimination claims arising under the Title VII, the ADA and/or ADEA. Representation may be for the duration of the litigation or for a limited purpose such as mediation or for trial only. Pro bono counsel must join the Court's pro bono panel in order to be considered for appointment. The application can be found at: https://www.nyed.uscourts.gov/forms/ pro-bono-panel-application. Completed applications may be returned to Alyce Goodstein, Pro Se Staff Attorney, US District Court, EDNY, 100 Federal Plaza, Central Islip, NY 11722 or at alyce_goodstein@nyed.uscourts.gov.

CONTACT: Alyce Goodstein, Esq.
631-712-6060
alyce_goodstein@nyed.uscourts.gov

Landlord/Tenant Attorney-of-the-day Project

Volunteer attorneys provide legal assistance to low income residents at eviction proceedings and guidance with regard to other landlord-tenant issues.

CONTACT: Nassau/Suffolk Law Services
Roberta Scoll, Esq.,
516-292-8100 rscoll@wnylc.com

Mortgage Foreclosure/Sandy Recovery Joint Consultation Clinics

These Clinics run twice a month from 3-6 p.m. Attorneys perform 20-30 minute consults and provide legal guidance, including real estate, insurance, contractor and bankruptcy issues. This is a limited engagement and attorneys do not follow cases.

CONTACT: Nassau County Bar Association
Gale D. Berg, Esq.
516-747-4070 gberg@nassaubar.org

Mortgage Foreclosure Settlement Conferences

Conferences are held Mondays, Tuesdays and Wednesdays from 9:30 until noon at Supreme Court. Free legal advice is provided for anyone in Court without representation, and attorney volunteers join an NCBA staff member for each session. This is a limited engagement and attorneys do not follow cases.

CONTACT: Nassau County Bar Association
Gale D. Berg, Esq.
516-747-4070 gberg@nassaubar.org

The Safe Center LI

The Safe Center LI seeks volunteer attorneys to assist victims of domestic/dating abuse, elder abuse, andor rape/sexual assault with legal advocacy, consultations, and/or representation, with issues arising from the abuse.

CONTACT: The Safe Center LI
Lois Schwaeber, Esq., 516-465-4700

Senior Citizen Consultation Clinics

These Clinics run once a month and volunteers consult with senior citizens and offer legal guidance on elder issues. This is a limited engagement and attorneys do not follow cases.

CONTACT: Nassau County Bar Association
Demi Tsiopelas
516-747-4070, dtsiopelas@nassaubar.org

Student Mentoring Program

Volunteer attorneys mentor middle school aged children identified by education professionals as "at risk." Attorneys meet with children at 8 a.m. for 45 minutes, every other week.

CONTACT: Nassau County Bar Association
Demi Tsiopelas
516-747-4070, dtsiopelas@nassaubar.org

Volunteer Lawyers Project

The Project staff refers a variety of legal matters to private volunteer attorneys. The most common areas referred include matrimonial, landlord-tenant, personal injury and bankruptcy issues.

CONTACT: Nassau/Suffolk Law Services
Susan Biller, Esq.
516-292-8100 sbiller@wnylc.com

NCBA MOOT COURT COMPETITION

St. John's Law Team Takes First Place in Hon. Elaine Jackson Stack Moot Court XXXII

By Valerie Zurblis

It was a clean sweep for the St. John's University School of Law team of third-year students, winning the XXXII Hon. Elaine Jackson Stack Moot Court Competition, the annual two-day law school challenge sponsored by the Nassau Academy of Law.

In the final round held on March 25 in the Great Hall, St. John's students Garam Choe and Christen Giannaros out performed the competition from the Maurice A. Deane School of Law at Hofstra University.

Choe also took home the Justice Edward J. Hart Memorial Award for Best Oralist, named after the late litigation specialist and Justice of the Supreme Court, Appellate Division, Second Department. In addition, the St. John's team won the Eugene S. R. Pagano Best Brief Award.

Hon. Supreme Court Justice Timothy S. Driscoll presided as Chief Justice on the Moot Court Finals Bench. The distinguished panel of judges included Hon. Andrew M. Engel, Nassau District Court; Chandra M. Ortiz, Dean of the Nassau Academy of Law; Peter Mancuso, NCBA Immediate Past President; and, Dina Demosthenous, Court Law Clerk, Eastern District Court.

The Moot Court Finals Bench congratulates first place finisher St. John's Law School (from left): Peter Mancuso, NCBA Immediate Past President; Dina Demosthenous; Hon. Andrew M. Engel; St. John's Law School winners Garam Choe and Christen Giannaros; Chandra M. Ortiz, NAL Dean; and, Hon. Timothy S. Driscoll. (Photo by Hector Herrera)

The Eugene S. R. Pagano Best Brief Award was presented to St. John's students (center) Christen Giannaros and Garam Choe by (l) Hon. Andrew M. Engel and Eugene S. R. Pagano. (Photo by Hector Herrera)

Christine T. Quigley, a member of the Nassau Academy of Law and Mili Makhijani, NAL Assistant Dean and Chair of the Moot Court Competition, co-authored this year's problem, which considered two questions arising from a plaintiff's employment discrimination and retaliation claims alleged against her employer. The first issue raised was whether the "freely given" standard, generally applied under Federal Rule of Civil Procedure 15(a), should be applied to a post-judgement motion seeking leave to amend the pleadings. The second issue concerned whether an employee's working conditions may constitute an adverse employment action where the plaintiff requested and was granted a transfer.

A total of six student teams competed this year, representing CUNY School of Law, Maurice A. Deane School of Law at Hofstra University, Touro College Jacob D. Fuchsberg Law Center, and St. John's.

VIEW FROM THE BENCH ...

Continued From Page 19

Amendment challenges to similar government action because Facebook's individual users will most likely be unaware that their accounts have been seized and unless they are indicted they will have no legal means to contest the seizure. Finally, Facebook argues that there are serious constitutional questions of first impression here involving the relationship between service providers, their account holders and government access to them and Facebook contends these issues will certainly be repeated in the future and so the court should allow these issues to be appealed and decided on the merits.

The District Attorney in response argued that this exception to the mootness rule is a very narrow one and typically only is applied when the challenged action is too short in duration to be fully litigated prior to its end. (*Gannett Co. v. DePasquale*[9] and *Najjar v. Ashcroft*[10]) Under the facts here the government argues that this exception cannot apply especially to the non-disclosure order which was still in existence to some of the account users at the time of the appeal.

Note that that there are several other jurisdictions that are also grappling with cases of first impression involving the SCA within their judicial districts. In *US v. Davis*,[11] the government obtained certain cell phone site location information under the SCA via a court order, not a warrant. This defendant appealed the admissibility of those records on the grounds that under that section of the SCA,[12] there is no requirement of a showing of probable cause but rather only reasonable grounds to believe that the records are relevant and material to an ongoing criminal investigation, thereby violating his Fourth Amendment rights. The Eleventh Circuit (Southern Florida) Court of Appeals agreed with the defendant. However, a subsequent case from the District Court of Kansas, decided three months later in September 2014 held that such cell site information records were business records and was therefore not a search subject to the Fourth Amendment.[13] [US Dist Ct D. Kansas]).

It should be clear that as digital technology pervades every aspect of modern life, computers, tablets and cell phones have increasingly become the repository of, literally, the catalogue of our entire worlds. Because this information is now stored in a simple, easily accessible place the search of the contents of a Facebook account can easily amount to a general search of one's home and belongings. For this reason courts have correctly warned that "computer search warrants are the closest thing to general warrants we have confronted in the history of the republic."[14] In June 2014, the US Supreme Court ruled that police may not search the digital information contained on a cell phone of a person who has been arrested without first obtaining a search warrant.[15] Here, we have a court approved search warrant for stored digital information raising new issues before our courts.

These issues of standing, judicial review, mootness and the constitutional questions have the potential to make a lasting mark on the law of social media and electronic evidence. I look forward to the court's decision and future discussions of the issues. See you next column.

Hon. Arthur M. Diamond is a Supreme Court Justice in Mineola. He welcomes evidence questions & comments and can be reached at adiamond@courts.state. ny.us.

1. NY CPLR § 3101 [d].
2. CPLR § 690.35 (3) (c).
3. 18 USC 2703(d).
4. 86 A.D.2d 40 (2nd Dept. 1982).
5. 3 NY3d 651(2004).
6. 19 A.D.3d 107 (1st Dept. 2005).
7. 18 USC 2703.
8. 50 NY2d 707 (1980).
9. 443 US 368 (1979).
10. 273 F3d 1330 (11th Cir. 2001).
11. 754 F.3d 1205 (11th Cir 2014).
12. 18 USC 2703(d).
13. *US v. Banks, et al* 2014 WL 4594197.
14. *In re* application for search warrants 71 A. 3d 1158 (Sup. Ct. Vt. 2012).
15. *Riley v. California* 134 S. Ct. 2473 (2014).

The Volunteers Who Put Order in the Court

The Hon. Elaine Jackson Stack Moot Court Competition, coordinated by Nassau Academy of Law staff, Jennifer Groh, Director, Patti Anderson and Maureen Hymson, involves dozens of volunteer judges, brief scorers and timekeepers during the two-day event. We thank them for their participation.

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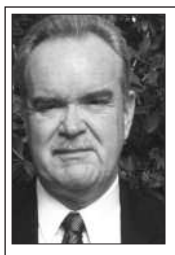

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Schlissel Ostrow Karabatos, PLLC

CHILD CUSTODY, DIVORCE, FAMILY

***Schlissel Ostrow Karabatos* (SOK) IS AN INNOVATIVE** matrimonial and family law firm with a reputation for handling the most complicated financial, valuation, and property distribution matters, as well as the most complex custody and support issues.

"WE'RE WILLING TO CHALLENGE WHAT PEOPLE think are established principles," notes managing partner Elena Karabatos. "When the law is undeveloped or still developing, this firm has never hesitated to try and make new law for the betterment of our clients."

INDEED, SOK HAS REGULARLY CHALLENGED CASE law to protect its clients' interests. SOK attorneys were among the first lawyers in the country to prevent a parent from smoking in the presence of her children, and they pioneered new law in the areas of settlement agreements and custody evaluations. The firm has also had considerable success in securing the rights of non-monied spouses to effective legal counsel.

"WE TAKE PRIDE IN BRINGING THE HIGHEST DEGREE of excellence, integrity, and creativity to the practice of matrimonial law," says partner Stephen W. Schlissel. "Although we have the depth and expertise to aggressively litigate the largest and most complex matters, we are also extraordinarily aware of the emotional component of family law; and because of that, we often take a more nuanced approach in order to deliver a superior result for the client in the long run."

THE ATTORNEYS OF SOK BEGIN EACH CASE BY evaluating the situation from a holistic perspective, taking into account the emotional components of the matter, the personalities of the clients, and the financial aspects of the case. And while the firm's attorneys are experienced trial lawyers, they regularly address issues by using alternative resolution methods, such as negotiation, mediation, arbitration, and collaborative law.

GIVEN THEIR EXPERTISE, IT SHOULD COME AS NO surprise that the firm's lawyers have garnered significant recognition from their peers. SOK is one of the few firms in the country with four Fellows of the American Academy of Matrimonial Lawyers and a Diplomate of the American College of Family Trial Lawyers, which limits membership to 100 attorneys across the country. The firm's name partners have also been selected for inclusion in *New York Super Lawyers* and *The Best Lawyers in America,* with Stephen W. Schlissel's having been named in every edition of both publications. In addition, Karabatos and Schlissel are named in Ten Leaders for Matrimonial and Divorce Law in Long Island, New York.

AS LEADERS OF THE BAR, THE FIRM'S LAWYERS HAVE achieved a number of honors in the family law field. Schlissel was a recipient of the 2013 Distinguished Service Medallion, the highest honor bestowed by the Nassau County Bar Association (NCBA); he has also been named to the Independent Judicial Election Qualifications Commission for the 10th Judicial District (Nassau & Suffolk Counties) and is a member of the Board of Governors of the New York State Attorney-Client Fee Dispute Resolution Board. Karabatos, meanwhile, serves as secretary of the NCBA and President of the New York Chapter of the American Academy of Matrimonial Lawyers (AAML). Retired partner Michael J. Ostrow has served as president of the NCBA, president of the AAML National, and chair of the Family Law Section of the New York State Bar Association (NYSBA).

BEYOND THE FIRM'S NAME PARTNERS, ATTORNEYS Joseph A. DeMarco and Lisa R. Schoenfeld have been named as *Super Lawyers Rising Stars,* and have been elected to AAML. Jennifer Rosenkrantz is vice chair of the NCBA's Matrimonial and Family Law Committee and is named in Ten Leaders, Matrimonial and Divorce Law, Long Island, New York – Age 45 & Under . Schoenfeld is also the past chair of the Young Lawyers Committee of the NYSBA.

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