

Queens County Bar Association • Vol 79, No 9 • April/May 2014

QCBA

BULLETIN



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IN THIS ISSUE

New Members	2
Necrology	2
Become a Member	2
QCBA Video	2
Join a Committee	2
The Docket	3
President's Message	4
Board Listing	5
Editor's Note	6
Lawyers Assistance	6
Summary Discharge of Mechanics' Liens ..	9
Trials and Tribulations	10
5 Marketing tips for Law Firms	13
Scholarship Fund	13
Photo Gallery	14
Photo Gallery	15
Sponsors & Discount Programs	16



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Gregory Klubok	Rachel Vincent
Janelle Lewis	Jahanne Camille Williams
Erin Lloyd	Melanie Williams
Lauren Lombardo	
Hayley Miskiewicz	

NECROLOGY

Norman Basner
Joshua A. Rednor

-
- [Become a Member Today / QCBA Video](#)
 - [Member Discount Programs](#)
 - [Join a Committee](#)

April 2014

Mon., April 7 Judiciary, Past Presidents & Golden
..... Jubilarian Night
Wed., April 16 CLE Equitable Distribution Update
..... Members / Non Members
Frid., April 18 Good Friday - Office Closed
Wed., April 23 Criminal Law Update V
Wed., April 30 Law Day Table at Civil Court Bldg
..... (Volunteers Needed)

June 2014

Thurs., June 26 ... Free Cancer Screening in front of
..... Civil Court

May 2014

Thurs., May 1 Annual Dinner & Installation of
..... Officers
Thurs., May 8 Ethics & Professionalism Seminar
Tues., May 13 Construction Law Seminar
Wed., May 21 .. QVLP Foreclosure Training Seminar
Thurs., May 22 CPLR & Evidence Update
Mon., May 26 Memorial Day - Office Closed
Wed., May 28 Immigration Seminar
Thurs., May 29 Lawyers Assistance Committee
..... Seminar

QCBA is certified by the NYS Continuing Legal Education Board as an Accredited Legal Education Provider in NY. Meeting and programs are held at Bar Association Building, 90-35 148th St., Jamaica, NY. Changes are posted at www.QCBA.org.

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PRESIDENT'S MESSAGE *by Joseph F. DeFelice*

This will be my final President's message as my term in office will conclude May 31. I want to take this moment to acknowledge our Board of Managers and Committee persons who have been a part of making all our events and CLE seminars a great success.

In the June Bulletin, you will hear from our incoming president, Joseph Carola, who has cooperated and worked with me throughout this year and helped me with various projects. I am thankful to our former president, Joseph Risi, who helped me tremendously with my transition and with developing our new desktop and mobile websites. Of course, much credit for assisting me through the year belongs to our Executive Director, Arthur Terranova, who helped me every step of the way. I'd also like to say thank you to our office staff who worked efficiently to get all the mailings and materials out to our members.

Personally, when I was a young lawyer opening a practice in Queens, I really never dreamed that I would become President of the County Bar Association. No one in my family had ever even gone to college, let alone law school. So I need to thank our former Executive Director, Fred Brue, who recruited me to join the Bar Association, as well as Leslie Nizin and now retired attorney, Stephen Singer, for inspiring me to become involved with the Board of Managers.

It has been a busy and interesting year, as well as fun. I have met and worked with some terrific people and have really appreciated the opportunity I was given to serve and represent this great Bar Association. In looking back, we have accomplished several things but I believe that on the top of the list of accomplishments was the remodeling of our Association (Yes, it was expensive but necessary and worth it) and the strides we made in attracting young lawyers and law students into our Association. In this regard, I need to give a final thanks to Katarzyna Wilinska, a cochair of the Young Lawyers Committee. With her enthusiastic help we were able to recruit nearly 200 young lawyers and law students to our Bar Association.

It has been a wonderful year for me. I urge everyone to participate and be active in the Bar Association. I promise you, at the end of the day you'll have fun.

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of the QUEENS COUNTY BAR ASSOCIATION



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EDITOR'S NOTE *By Paul E. Kerson*

New stringent safeguards to uphold the integrity of our profession against a policy of blatant U.S. Government interference...

Once upon a time, in a democratic country called the United States, in a State called New York, there were seven people in one's life one could count on to keep secrets: spouse, attorney, medical professional, clergy member, psychologist, social worker and rape crisis counselor. Library records were also to be kept confidential.

New York guarantees this to every one of our citizens, residents and visitors alike in Civil Practice Law and Rules (CPLR) Sections 4502, 4503, 4504, 4505, 4507, 4508, 4509 and 4510. These statutes are a bulwark of freedom. It means a person can unburden himself or herself and not fear prosecution, embarrassment or intimidation. These statutes are a key factor in the physical and mental health of our people.

Washington, DC has the same attorney-client privilege set forth in the DC Rules of Professional Conduct, Rule 1.6. Now comes something called the "National Security Agency," a Federal Government entity paid for with our tax dollars that has clearly been designed to make us feel as insecure as possible.

The Feb. 15, 2014 edition of The New York Times reported the following article by reporters James Risen and Laura Poitras, "Spying by N.S.A. Ally Entangled U.S. Law Firm". It seems that the Australian counterpart of the NSA, the Australian Signals Directorate (ASD), told SUSLOC (the Special US Liaison Office Canberra of the NSA) that it had intercepted communications between the Indonesian Government and its American law firm, Mayer Brown of Chicago, Ill.

It seems that the Indonesian Government is involved in a trade dispute with the US Government over trade in cigarettes and shrimp. At the World Trade Organization (WTO) in Geneva, Switzerland, the Indonesian Government is protesting a US Government ban on the sale of imported Indonesian clove cigarettes. The US Government, in turn, is protesting that Indonesia is selling shrimp at below-market prices. Indonesia retained the Washington, DC office of Mayer, Brown to represent its interests adverse to those of the US Government at the WTO.



Attorney-Client Privilege... new stringent safeguards to uphold the integrity of our profession against a policy of blatant U.S. Government interference.

The Times interviewed Duane Layton, Esq. and Matthew McConkey, Esq. of the Washington office of Mayer Brown. Neither had any concrete evidence that they had been spied on by the Australian ASD or the US NSA. However, upon being informed that this was the case by The Times, Mr. Layton said, "I always wonder if someone is listening, because you would have to be an idiot not to wonder in this day and age."

The Times found out about the US Government's blatant violation of the DC Rules of Professional Conduct, Rule 1.6 and New York CPLR Section 4503 because of the allegedly "unlawful" revelations of Edward Snowden, a former NSA contractor. Snowden made a lot of NSA material public, and is now a "fugitive".

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EDITOR'S NOTE *By Paul E. Kerson*

So, the wise lawyer who wishes to uphold the integrity of our profession against an apparent policy of blatant US Government interference must now adopt the following stringent safeguards:

1. Do not discuss any sensitive matter with any client over the telephone or by fax.
2. Do not put any confidential client information in any e-mail whatsoever.
3. Use sealed US Mail whenever a few days waiting time is permissible. (It almost always is. There is very little we do that absolutely must be delivered today. The rush for immediacy is because people have been reduced to the level of infants by "technology". It is still a felony for any Government agent or anyone at all to open U.S. Mail not addressed to them. See 18 U.S. Code Sec. 1708).
4. If the confidential communication must be there immediately, hire a messenger service you can trust.
5. If the confidential communication must be there tomorrow, use US Mail Next Day Delivery, Federal Express, UPS or other sealed overnight carrier.
6. Best of all, when discussing anything sensitive, have the client come into your office and close the door.

These measures must be taken at once. The Law Itself will not help us. The Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008 (FAA) permits the Federal Government to acquire "foreign" intelligence information by authorizing surveillance of individuals who are not "U.S. persons" who are reasonably believed to be "outside the U.S." See 50 U.S. Code Sec. 1881a.

But what happens when such surveillance picks up attorney-client communications from inside the U.S. by American lawyers? The U.S. Supreme Court ruled 5-4 that this is perfectly okay. See *Clapper v. Amnesty International*, 133 S.Ct. 1138 (2013). In *Clapper*, the U.S. Supreme Court reversed the U.S. Court of Appeals, 2nd Circuit, here in New York. See 638 F. 3d 118 (2d Cir. 2011).

Our Second Circuit gave us some hope:

"The plaintiffs' uncontroverted testimony that they fear their sensitive electronic communications being monitored and they have taken costly measures to avoid being monitored – because we deem that fear and those actions to be reasonable under the circumstances of this case – establishes injuries in fact that we find are causally linked to the allegedly unconstitutional FAA. We therefore find that plaintiffs have standing to challenge the constitutionality of the FAA in federal court." See 638 F. 3d at 150.

Sadly, the U.S. Supreme Court took this hope away 5-4. What did Mayer Brown do? The whole world now knows they allowed their most sensitive attorney-client communications to be monitored by the Federal Government. This is not exactly good for business. Well, a firm of that size is not without resources. Two days after *The Times* broke this story of Federal Government trampling on the attorney-client privilege, Mayer Brown had this to say in the Feb. 17, 2014 edition of *The Chicago Tribune*:

"Mayer Brown takes data protection and privacy very seriously, and we invest significant resources to keep client information secure." (See Kim Geiger, "Chicago-based law firm responds to report of NSA spying". *The Chicago Tribune*, Feb. 17, 2014)

We in Queens County, New York have the most international clientele in the world. People reside in our county who were born in virtually every other country. And many have significant dealings in the "old country," all 196 of them (unless Taiwan does not count, in which case there are 195). They come to Queens County because we at Sutphin Boulevard (the Capital of the Universe) provide them with outstanding legal representation for whatever dispute they might find themselves in (among other reasons, but surely it is not the scenery).

U.S. Supreme Court to the contrary notwithstanding, we must redouble our efforts to live by and enforce CPLR Sec. 4503, the Attorney-Client privilege. Please follow what we should now call Duane Layton's 6 Rules for the Protection of the Attorney-Client Privilege listed above. After all, as the first attorney whose confidential communications were revealed as hacked by the Federal Image Is It Work Street Work City, Work State Work ZIP T Work Phone F Work Fax Phone Work Email Work URL Government, we are all well advised to follow his assessment of the condition we are now in due to Government abuse of "technology": "I always wonder if someone is listening, because you would have to be an idiot not to wonder in this day and age."



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Summary Discharge of Mechanics' Liens *By Thomas J. Rossi*

Introduction

A mechanic's lien is a powerful tool for workers, contractors and material suppliers who have monetary claims for work performed or materials supplied to improve real property. Mechanics' liens are powerful, because the lien is a cloud on title which can cause great difficulties for owners, and because mechanics' liens are inexpensive to file, yet difficult to discharge summarily. Basically, unless a lien is invalid on its face because the notice of lien itself does not contain the information required by New York State Lien Law Section 9, or is filed late, it cannot be discharged without litigating the underlying claim.

Most owners, or contractors whose subcontractors have filed liens, will argue to their counsel that the amount claimed to be due is not owed at all, or the amount claimed is highly exaggerated. Therefore, they argue, the lien is invalid and should be easily and summarily dismissed. Usually, their cry is that the contractor or subcontractor did not finish its work, did not perform its work in a timely and workmanlike manner, or the amount allegedly due is for extra work that is not extra work at all, but rather part of the base contract.

Unfortunately, those arguments do not entitle the lienee to a summary discharge of the mechanic's lien. These are questions of ultimate entitlement that require a decision on the merits of the claim, before the validity of the lien can be determined. This presents a difficult problem for the owner who invariably wishes to discharge the lien as soon as possible because of an impending sale or mortgaging of the property, and to contractors who are typically contractually required to remove any lien filed by subcontractors. It also impacts commercial tenants whose leases invariably require the discharge of mechanics' liens arising from work in the tenant's space.

The purpose of this article is to provide some suggestions for dealing with mechanics' liens when representing owners, general contractors, or leasees. We will deal only with private improvement liens which effect title to real property and not public improvement liens, which attach to the government appropriation for the improvement.

Bonding the Lien

The most commonly used means to discharge a mechanic's lien is to "bond it off" with a surety bond. In effect, the security for any judgment in favor of the lienor is shifted from the real property to the bond. This is a statutory right available to all. (Lien Law Section 19(4))

A bond in a sum equal to 110% of the lien must be filed with the County Clerk on notice to the lienor, who has, in limited instances, 10 days to object to the sufficiency of the bond. If no objection is filed, the lien is deemed discharged without further action or proceeding. (Lien Law Section 19(4)(a))

The difficulty that many face is the prospect of procuring the bond itself.

[*Read Full Story »*](#)



Trials & Tribulations

The Conclusion

By Meryl L. Kovit

In memory of Terry Molloy, Esq, 1923-2013. This is the last in a series of articles on the Queens Family Court

At last, the conclusion to the history of the Family Court. It should be duly noted, as this final chapter is written in the year 2014, that the City of New York is now under the leadership of a Mayor who is a Charles Dickens fan. Mayor Bill De Blasio has repeatedly said that he sees 21st century New York City through the prism of “A Tale of Two Cities.”¹ I’ve told this story without pictures, even though in the year of the fiftieth anniversary of the Family Court, clearly photos are very readily available. I wanted to be true to Dickens he didn’t have easy access to photography in the mid 1800’s and so I chose to write this imposing the same constraint upon myself. Besides, I know, after more than a quarter century of practicing law in the Family Court, that a picture is not worth a thousand words, just as any regular in Family Court knows that blood is just not thicker than water. Family Court is a microcosm of our culture in any decade, in any century. The study of Family Court is the ultimate study of how our civilization is functioning and how we, as a society, treat people.

I’ve chosen to focus on the people whose actions resulted in the many changes in the Family Court, including the change that ultimately resulted in a “monumental building”² to house the Family Court, as it now exists, on Jamaica Avenue, in downtown Jamaica, New York.

One of the last people that needs to be recalled, to properly tell this story, is Claire Shulman, the Borough President of Queens County from 1986 until 2002.³

On May 31, 1995, Borough President Claire Shulman announced that the Queens Family Court would relocate from its Parsons Boulevard building to Jamaica Avenue and 153rd Street, the site at that time of a city-owned parking lot used by workers at the nearby Social Security Administration. The Daily News reported that the Borough President said the new facility should be built in two to three years.⁴ The Borough President proved, as she made this historic announcement, that she was well versed in her Family Court history as she declared that the “Family Court has been a disaster forever.”

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5 Tips to Improve Your Firm's Credibility Branding *By Catherine M. Zito*

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2. Reviews - Search engines favor five or more reviews. The best are Google Plus (through your Google Maps account or Yelp.) Law databases are supportive, but will not give you the same strength as Google or Yelp. Clients must post their review from their own computer, tablet or phone using their own IP address.

3. Keywords - To improve search engine rankings it's important to use the right focus keywords that quickly describe your firm or business in 2 or 3 words. When writing desktop, mobile or video copy, place your keywords in the first paragraph and try to make shorter sentences to improve readability. To further improve performance, try to avoid filtered stop words such as the, is, at, which, on and want.

4. Mobile - Today 70% of searches and buying decisions are being done from smartphones and tablets. Therefore, after your mobile website is developed place the redirect code in your desktop website. This insures a smartphone and tablet user will be instantly auto-redirected to your mobile friendly website.

5. Video - It's the #2 way people are searching for services and products today. A graphics only video is very affordable and can do the best job of getting your message across in less than two-minutes. Google owns YouTube, therefore a video can enhance your search engine ranking.

More questions? Ask Catherine at catherine@imageisit.net or call 813-486-2416.



PHOTO GALLERY *Stated Meeting on Labor Law, March 10, 2014.*
Photos by Photographer Walter Karling



Stephen D. Hans - head attorney of Stephen D. Hans & Associates, PC and Chairperson of the Labor Law Committee. (Moderator - Wage & Hour Compliance for Employers)



Joseph F. DeFelice - QCBA President, Karen P. Fernbach - National Labor Relations Board Regional Director for Region 2 Manhattan, Carmelo Grimaldi - Partner of Meltzer, Lippe Goldstein & Breitstone, LLP, Barry J. Peek - Member of the law firm Meyer, Suozzi, English & Klein, PC, Stephen D. Hans - Owner of Stephen D. Hans & Associates, PC.



Barry J. Peek with Meyer, Suozzi, English & Klein, PC. (Social Media & Employment Law)



PHOTO GALLERY *Stated Meeting on Labor Law, March 10, 2014.*
Photos by Photographer Walter Karling



Carmelo Grimaldi with the firm Meltzer, Lippe, Goldstein & Breitstone LLP (Employee vs. Independent Contractor - Misclassification of Workers)



Joyce Yearwood - Drury is the Regional Director of Sexual Harassment, NYS Division of Human Rights (NYS Division of Human Rights)



Karen P. Fernbach is the Regional Director of the National Labor Relations Board, Region 2 Manhattan (National Labor Relations Board)

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