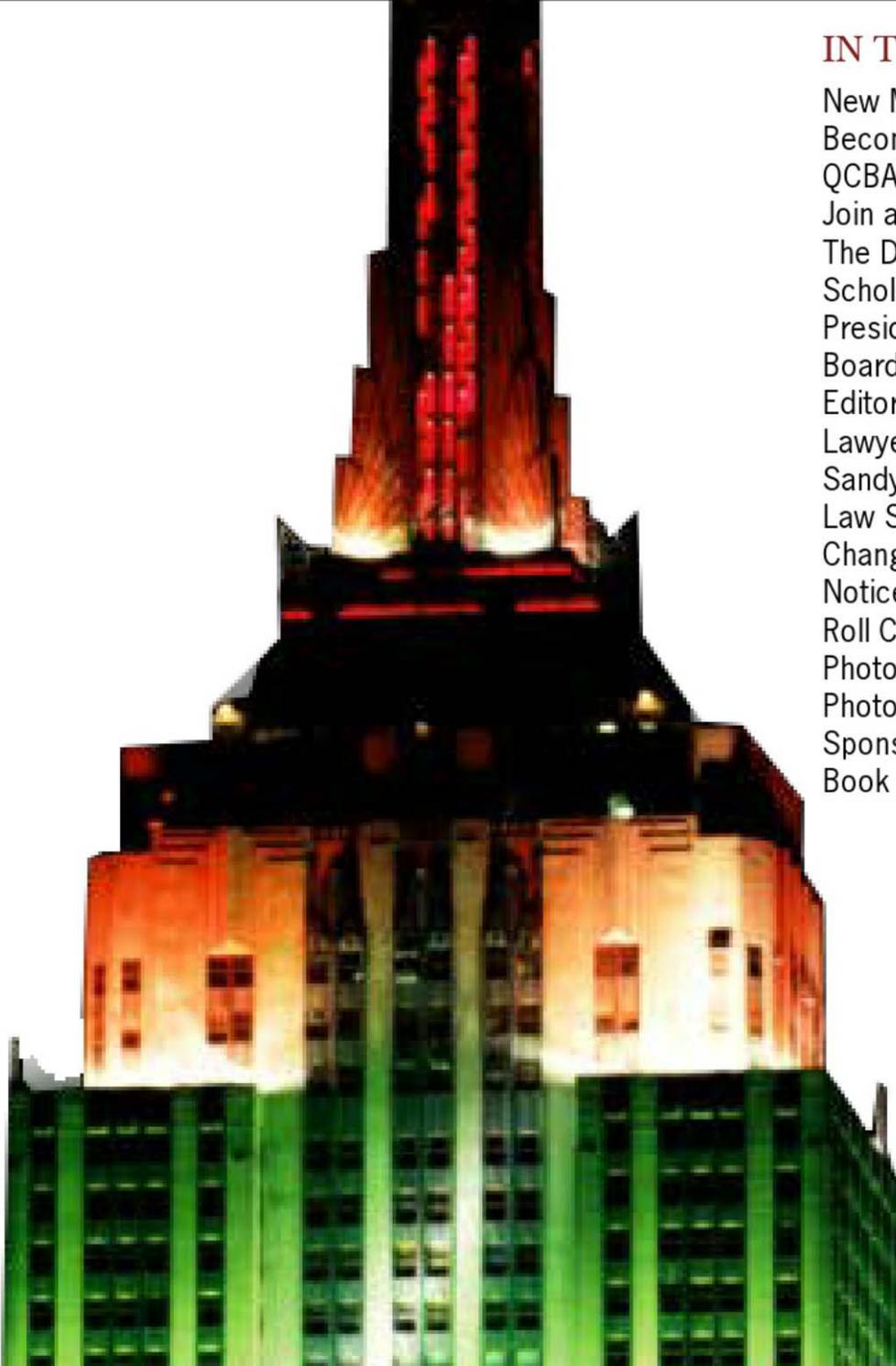


QCBA

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NEW MEMBERS

Oluwatosin Ademuwagun
Zoe Alexiou
Roman Aminov
Daniel J. Auriemma
Jeannine M. Baer
Cynthia Caballero
Christopher R. Cabanillas
Janice Castro
Jamie L. Cooper
Marguerite D. Cordice
Oksana Davydova
John Diffley
Clyde J. Eisman
Ann M. Ferrara
Jordan Fried
Matthew Funk
Marisa C. Galvez
James Gavin
Henry M. Graham
Luisa A. Gutierrez
Hedva Donna Haviv
Michael Ivanciu
Ethan A. Kobre
Claudia Lanzetta
Joon Lee

Nikon Limberis
Margaret Lin
Xioalin Liu
Andrea Long
Ricardo Lozano
Xiaoyong Luan
Rubaiyat Mahboob
Michael A. Mauro
Christopher P. McDonnell
Nataly S. McKinney
Christopher Newton
John Clay O'Hara
Aggeliki Pantelios
Mark A. Panzavecchia
Brian Ramkissoon
John A. Scarpa
Geoffrey Schotter
Kerry-Ann P. Scott
Huidi Shu
Ronny Solomon
Michael J. Spevak
Qin Tao
Bernard J. Tordesillas
Michael Vanunu

NECROLOGY

Cedric Lockett
Arnold H. Ragano
Tammy J. Scotti
Edward Vesel

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

December 2013

Thurs., Dec. 12Holiday Party at
 Douglaston Manor
 Reservation

Wed., Dec. 25 Christmas Day - Office Closed



REGISTER TODAY! >>
 Simply click on the underlined
 registration links

January 2014

Wed., Jan. 1 New Year' Day - Office Closed

Tues., Jan 14 CLE Internet Marketing
 & Credibility Branding
 Members / Non Members

Wed., Jan. 15 Young Lawyers, Law Students &
 Membership Get Together
 Registration

Mon., Jan. 20 Marting Luther King Jr. Day
 Office Closed

Wed., Jan. 29 CLE Hitler's Seed Money &
 The Legal Struggle To Get It Back
 Members | Non Members

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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 5pm -6pm: Coffee, Cake & Cookies
 6pm -8pm: Live Seminar

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On October 22, 2013 we held our **15th annual Appellate Practice Seminar** which was again a great success thanks to the efforts of the Chair of the Appellate Practice Committee, Spiros Tsimbinos. There was an attendance of approximately 240 attorneys and jurists and we were honored to have present the newest appointee to the Court of Appeals, Judge Sheila Abdus-Salaam and our fellow Queens County Bar member the Hon. Randall Eng, presiding Justice of the Appellate Division, Second Department, both of whom addressed those in attendance.

In addition to that seminar, we also held continuing legal education courses on several other legal issues including a two part advanced Criminal Law seminar and a start up nuts and bolts course for young lawyers on opening and handling a private practice. I want to thank the moderators who have helped to put these programs together as well as the many speakers who have given their time to come and lecture at the Bar Association. These programs provide our members with the necessary updated information on the law which we all need to practice and perform our work effectively.

Aside from the educational courses, we are hoping to relax from the tensions of practice when we hold our **annual Holiday Party on December 12th**. Once again we will be holding the party at the Douglaston Manor and I hope to see many of you there that evening. On the social networking and, the **Young Lawyers Committee is hosting a party on January 15th** for young lawyers and law students which will be held at the Bar Association. This will be a combined get together with the Membership Committee, QVLP, and the Young Lawyers Committee of the New York State Bar Association and is another effort to make the Bar Association a welcomed place for newly admitted and soon to be admitted attorneys who will be the life blood of the future of the Bar Association.

Once again I urge you to become active with the Bar Association, be active and learn, network and have fun. Happy New Year.

Joseph F. DeFelice

President

Joe F. DeFelice is an attorney in private practice in Kew Gardens, NY handling Criminal, Immigration and Appellate matters. Email jdefel4@gmail.com or visit www.defelicelaw.com.



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Vice President - Paul E. Kerson
Secretary - Gregory J. Brown
Treasurer - Jennifer M. Gilroy-Ruiz



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Dec. 7, 1941 v. Sept. 11, 2001 What is the Correct Government Response?

Dec. 7, 1941 was the Day "that shall live in infamy" in the words of President Franklin D. Roosevelt. The Government of Japan's Air Force had attacked the U.S. Naval Base at Pearl Harbor adjacent to Honolulu, Hawaii.

Congress declared war on Japan the next day. See 55 Stat. 795 (1942). On Feb. 19, 1942, President Roosevelt issued Executive Order # 9066, which permitted U.S. Military Commanders to exclude from "military areas" such persons as may commit espionage or sabotage against the United States.

On Feb. 20, 1942, the Secretary of War designated "the entire Pacific coast" as the Western Defense Command and assigned General J.L. Dewitt as Military Commander. On March 24, 1942, General Dewitt issued Public Proclamation #3, limiting the movements of "all alien Japanese, all alien Germans, all alien Italians and all persons of Japanese ancestry" from most of the Western Defense Command.

On May 3, 1942, Public Proclamation #4 was issued directing the evacuation of all persons of Japanese ancestry (whether U.S. Citizens or not, and not persons of German or Italian ancestry) from their homes to "relocation centers" much further inland.

In 1942, 112,000 persons of Japanese descent resided in California, Washington State and Oregon. 62% were American citizens. They were compelled by the Federal Government to sell their homes and businesses at a loss and were forcibly removed to Government "relocation centers" (read prison camps) in Wyoming, Utah, Idaho and Colorado, where they were not permitted to leave until World War II was over in 1945. See http://en.wikipedia.org/wiki/Japanese_American_internment, page 1 of 26.

These folks received a three year prison sentence, without trial, for doing absolutely nothing.

The U.S. Supreme Court thought this was a perfectly fine idea.

In *Korematsu v. U.S.*, 323 U.S. 214, 65 S.Ct. 193 (1944), the Court held:

"It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can..."

We uphold the exclusion order as of the time it was made and when petitioner violated it...In so doing we are not unmindful of the hardships imposed by it upon a large group of American citizens...

But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier.

Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direct emergency and peril, is inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger." See 323 U.S. at 216, 219-220.

Read more at qcba.org »

The writer is a Past President of the Queens County Criminal Courts Bar Association, a past Acting Village Justice of the Ardsley, Westchester County, Village Court, and our current QCBA Vice President and Editor of this publication.



President Franklin D. Roosevelt said "that shall live in infamy," on the day the Government of Japan's Air Force attacked the U.S. Naval Base at Pearl Harbor.

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SANDY VOLUNTEERS RECEIVE MAYOR'S AWARDS



**Charlie Giudice, is a staff attorney with the Queens Volunteer Lawyers Project, Inc.*

QVLP Nominates 5 of 6 Award Recipients. Five QVLP volunteers have received citywide recognition for their volunteer efforts in response to Superstorm Sandy.

Theresa K. Mohan, a senior regional counsel at IBM, Ali Arain, a litigation associate with Jenner & Block, Steven Ben Gordon, a solo practitioner focusing on landlord-tenant matters, and David A. Shapiro and Lisa A. D'Agostino, partners at Zelenitz, Shapiro & D'Agostino, P.C.,

received letters of commendation signed by New York City Mayor Michael R. Bloomberg.

The awards were presented at the annual Access to Justice Pro Bono Awards Presentation and Reception, held at the New York County Lawyers Association on October 24. David B. Goldin, administrative justice coordinator for the office of the mayor, presented the awards. All of the volunteers, Goldin said, told him that they were just doing what needed to be done.

Mohan, a native of Belle Harbor, was one of the first attorneys to mobilize the legal community in the aftermath of Superstorm Sandy. For many months she was an important component of the relief effort by recruiting volunteer lawyers and organizing legal assistance clinics throughout the Rockaways and Broad Channel.

For Mohan, it was her second mayoral commendation for service to her city. In the 1980s, while working as a lifeguard at Rockaway Beach, she pulled a struggling swimmer from the ocean. Then-Mayor Edward I. Koch commended her heroics.

Arain, after weeks of volunteering in the tent clinics, put together a team of attorneys at his firm to take on FEMA appeals for Rockaway homeowners. The expertise and resources he and his volunteers offered in this area of law were invaluable to QVLP's relief efforts.

Shapiro and D'Agostino, with their backgrounds in insurance and landlord-tenant litigation, were able to provide in depth advice to homeowners struggling with these issues. They accepted several cases for full-scope representation in court on a pro bono basis.

Many tenants in smaller apartment houses or 2-family homes were being subjected to wrongful evictions. Gordon, an experienced landlord tenant litigator, was someone who stepped forward every time QVLP needed a pro bono volunteer for one of these cases. He also gave valuable advice to Sandy clinic visitors and QVLP staff.

Gordon's representation secured reasonable settlements for several pro bono clients, several dismissals and necessary repairs for one client's apartment. "People were going through a horrific tragedy," Gordon said. "It felt good to be able to help."

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Applying for coverage is quick and easy. Members of the Queens County Bar Association can download a Request Form at www.qcba.org/life today. Please call Bollinger Insurance at 1-800-952-4050 to speak to a representative. Providing this protection to your family could be one of the most important things you ever do for them.

*Accelerated Death Benefits: Receipt of accelerated death benefits may effect eligibility for public assistance programs and may be taxable. There is no administrative fee to accelerate death benefits. The accelerated amount is not discounted.

The Queens County Bar Association Member Term Life Plan is issued by The Prudential Insurance Company of America, 751 Broad Street, Newark, NJ 07102. Contract Series 83500. The Prudential Insurance Company of America issues the insurance and is authorized to conduct business in all states, the District of Columbia, Guam, Puerto Rico and the United States Virgin Islands. Principal offices are 751 Broad Street, Newark, NJ 07102. (973) 802-6000. The Plan Agent is Bollinger Insurance, 400 Market St., Suite 450, Philadelphia, PA 19106, 1-800-952-4050. Prudential, the Prudential logo and the Rock symbol are service marks of Prudential Financial, Inc. and its related entities, registered in many jurisdictions worldwide. Group Contract Series Contract number 83500.



The Rules of Professional Conduct: A Judicial Externship Perspective *How Do the Rules of Professional Conduct Apply to a Law Student?*

A judicial externship gives a law student an opportunity to observe and participate in a wide variety of court proceedings as well as provide a platform for learning and developing a system of professional ethics before entering the work force as a licensed attorney. Judges use interns in many ways and usually assign tasks that are similar to those that their law clerks perform. Part of these duties include conducting legal research, preparing research memoranda for the judge, writing rough drafts of orders and opinions, attending preliminary hearings, talking with attorneys, and attending trial proceedings. All of these tasks require ethical considerations. Being directly responsible for these assignments can provide a law student with meaningful lessons for developing professional conduct as an attorney and address ethical and professional issues that may arise. Therefore, issues relating to ethics and professionalism should apply to law students because although they are not working as licensed attorneys in an official capacity, they are taking on the role of such and should learn and apply the ethical responsibilities and obligations that come with that role. These responsibilities should be conveyed, implemented, and reinforced by the supervising attorney through the Rules of Professional Conduct.

The New York Rules of Professional Conduct (“New York Rules”, “Rule”, “Rules”) are similar to the American Bar Association (“ABA”) Model Rules of Professional Conduct in that both are categorized by duties owed to the client, the court, and the profession, and disciplinary action for rule-violation. Duties to the client include confidentiality (Rule 1.6), avoiding conflicts of interest (Rule 1.6 - 1.12), being competent (Rule 1.1), diligence and effectively assisting the client (Rule 1.3), avoiding commingling (Rule 1.15), self-dealing and fee splitting (Rule 7.2), and withdrawing from representation (Rule 1.16). Rule 3.3 defines the duties to the court which include disclosing legal decisions of adverse authority, proper courtroom demeanor, and disclosing perjurious intentions of a client.

Duties to the profession embrace a vital area that may have an impact on an intern’s work in the court: lawyer misconduct and reporting such professional misconduct (Rule 8.3, 8.4). Duties to the profession also include legal advertising standard (Rule 7.1), voluntary pro bono services (Rule 6.1), honesty in the Bar admission process (Rule 8.1), and involvement in legal services organizations (Rule 6.3). There are a few rules related to legal interns that overlap with the duties owed to the client, court, and profession, which may also have an impact on an intern’s work in the court. They are lawyer’s responsibility for a nonlawyers’ conduct (Rule 5.3), trial publicity (Rule 3.6), confidentiality (Rule 1.6), and unauthorized practice of law (Rule 5.5).

Read more at qcba.org »



Changing Your Name in New York:

A Guide for Attorneys and the Self-Represented — Part II

By Gerald Lebovits and Taneem Kabir

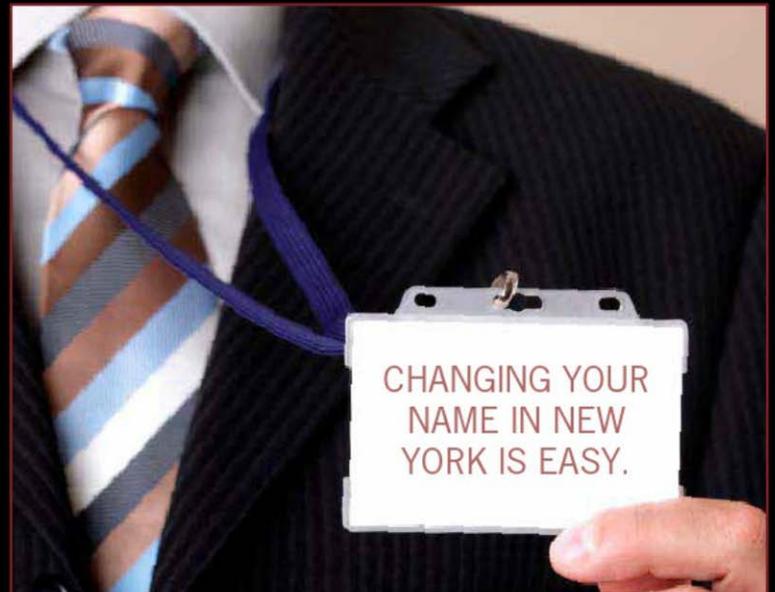
In this second part of our three-part article on New York's name-change laws, we discuss how to change someone else's name and what you must prove to change a name.

C. Name Change on Another's Behalf

Name changing on behalf of another usually requires that individual's consent. If you are a family member trying to change the name of an adult family member (age 18 or older), follow the steps set forth in the "General Requirements" section below and, in addition, obtain that adult's written consent.

Likewise, if you are the parent of a child and are trying to change that child's name, you must follow the "General Requirements" below and obtain the other parent's or step-parent's written consent and also the child's written consent if the child is 14-17 years old. If the child is 13 or under, the child need not consent in writing.

The court will deny your name-change petition for a child if the name change does not substantially promote the child's best interests. This "substantial best interest" standard requires the court to consider an entire slew of factors, including the child's age, maturity, and sense of identity, as well as the effect of proposed name change on the child's relationship with either parent and the child's susceptibility to ridicule by peers.



Read more at qcba.org »

NOTICE OF NOMINATING COMMITTEE MEETINGS

by Gregory J. Brown, Secretary

Please take notice that those members who wish to be considered for nomination as Officers or Members of the Board of Managers of the Queens County Bar Association should submit written requests and resumes highlighting your activities in the Association prior to January 17, 2014.

Tentative meetings pursuant to the by-laws have been scheduled by the Nominating Committee on January 22, 2014 and finally on January 29, 2014. Said meetings are scheduled for 5:00 P.M. in the Board of Managers Room - in the Headquarters Building, 90-35 148th Street, Jamaica, N.Y.

At those meetings you may present the names of the persons whom you desire to have considered by the Nominating Committee for nomination to offices to be filled at the Annual Meeting. Hearings will be held at those times for that purpose pursuant to the by-laws.

Please submit your requests in writing to the attention of the:

Nominating Committee
Queens County Bar Association
90-35 148 Street
Jamaica, N.Y. 11435

The Annual Election of Officers and Managers will be held on March 7, 2014. The newly elected Officers and Managers will assume their duties on June 1, 2014. Dated: December 3, 2013, Jamaica, NY



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The Following Attorneys Were Disbarred By Order Of The Appellate Division, Second Judicial Department [Click here to read full description](#)

Gerard M. Tanella, a suspended attorney (1/9/13)
Michael Sprei, a suspended attorney (1/30/13)
David M. Green (2/6/13)
Christopher George Lazarou (2/6/13)
David Allen Linn (2/6/13)
Neal H. Sultzer (3/6/13)
Robert Michael Ibrahim (3/13/13)
Deborah K. Rice, admitted as Deborah Karen Gerstein (4/10/13)
Daniel J. Fox, admitted as Daniel James Fox (4/24/13)



Diana Szochet

The Following Attorneys Were Suspended By Order Of The Appellate Division, Second Judicial Department

Anthony C. Donofrio (1/9/13)
Robert A. Macedonio, admitted as Robert Anthony Macedonio, a disbarred attorney (1/9/13)
Kenneth J. Gellerman (1/23/13)
Raghubir K. Gupta, a disbarred attorney (3/8/13)
Joell Barnett, admitted as Joell Carol Barnett (3/12/13)
James G. Carroll (3/13/13)
Efrain Ramos, Jr. (3/13/13)
Richard J. Zimmerman (3/27/13)
Alexander Herman (4/1/13)
Michael Levitis, a suspended attorney (4/10/13)
Yana Schindler (4/17/13)
Derek P. McDowell (4/26/13)
Neal Stuart Spector (5/13/13)
Keith D. Erlington, admitted as Keith Dalton Erlington (5/17/13)
Anthony C. D'Onofrio (5/22/13)

The Following Attorneys Were Publicly Censured By Order Of The Appellate Division, Second Judicial Department

James N. Hulme, admitted as James Norton Hulme (1/9/13)
Robert B. Armstrong, admitted as Robert Britton Armstrong (3/13/13)
Marvin Blakely (4/24/13)

The Following Suspended, Disbarred Or Voluntarily Resigned Attorneys Were Reinstated As Attorneys And Counselors-At-Law By Order Of The Appellate Division, Second Judicial Department

Barry R. Feerst, admitted as Barry Roy Feerst (1/9/13)
William F. Rothman, admitted as William Frederick Rothmans (1/9/13)
Andrew Bryant Livernois (1/10/13 [effective 2/4/13])
Jeffrey Bettan (1/23/13)
Christopher T. Maffia (1/23/13)
Shea Elizabeth Fitzekam (1/23/13)
Diana M. Vargas, admitted as Diana Monica Vargas (1/23/13 [effective 2/4/13])
Virginia R. Iaquina-Snigur (3/13/13)
Kevin B. Dwyer (3/27/13)
Scott B. Feiden, admitted as Scott Bruce Feiden, a suspended attorney (4/24/13)
Patricia M. Cavanaugh, admitted as Patricia Marie Cavanaugh, a suspended attorney (5/29/13)

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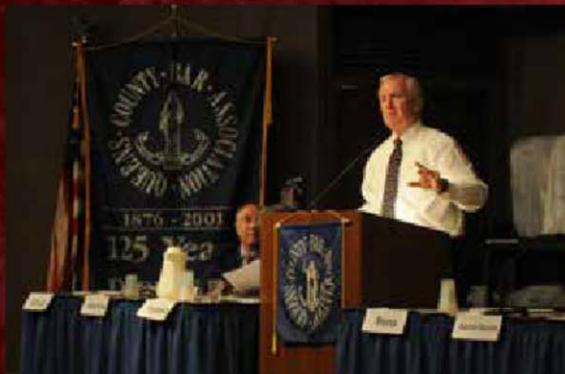
QCBA President / Joe DeFelice, Hon. Randall Eng, Hon. Sheila Abdus-Salaam, Spiros Tsimbinos and J. Gardiner Pieper



Guest Speaker-Newly Elected Court of Appeals Judge Hon. Sheila Abdus-Salaam



Hon. Jeffrey Lebowitz, Joseph Risi and Joseph DeFelice



J. Gardiner Pieper discussing civil cases from the NY Court of Appeals



James Pagano and Ann Marie Barbagallo



Former QCBA President Chanwool Lee, Hon. Sheila Abdus-Salaam and Supreme Court Justice Marguerite Grays



Michael Pyrrros, Peter Lane, Joseph DeFelice, Hon. Sheila Abdus-Salaam, Spiros Tsimbinos, Bernard Vishnick and Ann Marie Barbagallo



NY Court of Appeals Judge Sheila Abdus-Salaam and Spiros Tsimbinos



Paul Shechtman discussing criminal cases from the NY Court of Appeals



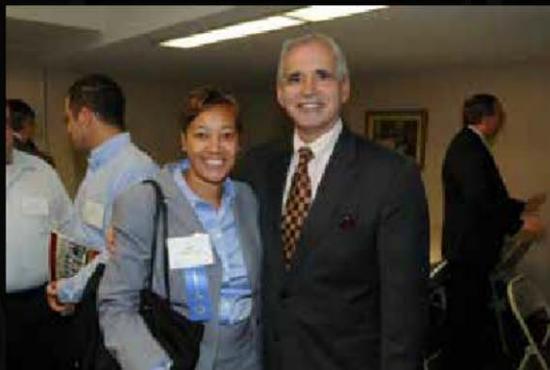
Presiding Justice, Appellate Division, 2nd Dept, Hon. Randall Eng giving an update on the status of the Appellate Division.



Shawn Clauther, Dominic Villoni, Hon. Seymour Boyers, Hon. Charles Lopresto, Richard Lazarus and Lawrence Litwack



Wallace Leinhardt, Hon. Stephen Knopf, Hon. Randall Eng and Hon. Allen Beldock



Zenith Taylor and Hon. George Heymann

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Book Nook....



Reading at QCBA – For Fun?

By Mark Weliky

In addition to the law library and tech center on the second floor at QCBA, we now have the “Book Nook.” Faced with an alcove that had been used for a pay phone, we were in a bit of a quandary of how to use this space. To the rescue came a QCBA member who donated a bunch of mysteries and suspense novels, in hard and soft-cover. These books are available for members to take for their reading pleasure (i.e. “free”). If you want to leave a book in exchange, you may but it is not required. Authors you will currently find in the nook include; James Patterson, Harlan Coben, Nelson DeMille, Brad Meltzer, Catherine Coulter and John Connolly.

THE DENTIST

by Joseph F DeFelice

*I have a dentist now
can't you see?
She's the best
yes sireee!
Oh she's so sweet
and kind to me
she cleans my teeth
just look and see,
my smile is great
as great can be*

*But alas,
one day I had a cavity
a cavity for her to see,
she had a device
to use on me
a drill you see,
it buzzed and buzzed
as she drilled my tooth,
it wasn't fun as I am sure you see,
but she made it painless
all for me,
she filled my tooth
it looks so good
my smile looks great again
as great can be,
but no more candy now for me*



Robert E. Sparrow

THE COURTROOM LAWYER'S FATE

By Robert E. Sparrow

*The day begins,
Leave the starting gate,
Head for the office
Through traffic, navigate*

*After gulping breakfast
(Must watch the weight)
And grabbing a swift peck
From a preoccupied mate*

*Answer a call,
Try to dictate,
Keep your cool,
Don't get into a state!*

*Straighten your plaque
Preserved in laminate,
Then rush to court
Fearing you're late...*

*From part to part
You hurriedly rotate,
And your tardy clients
You tenderly berate*

*While you humor His Honor,
His wrath you placate
For you know it's only
A quirk - his trait,*

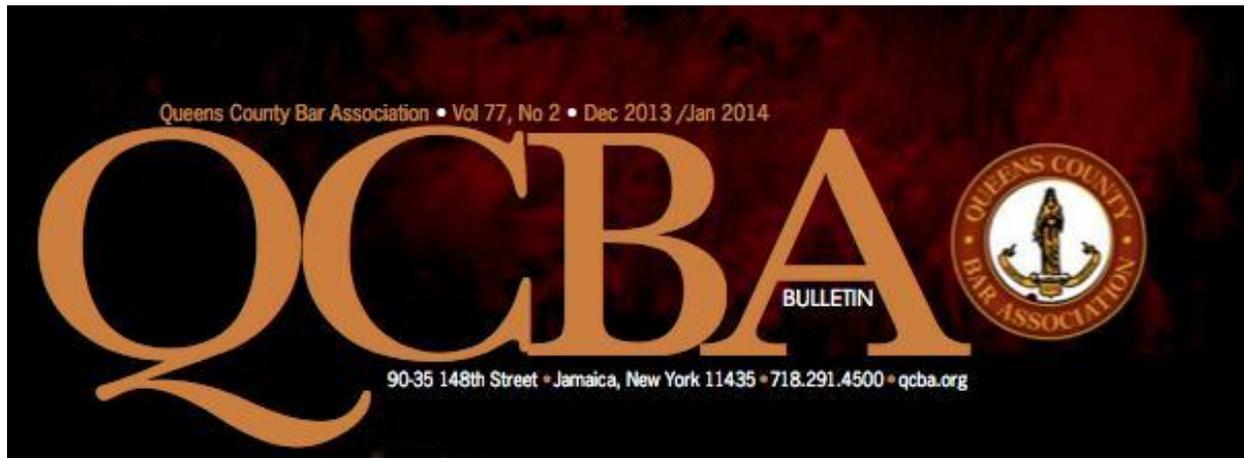
*He really means well
Probably something he ate,
And you know, with time,
His ire will abate.*



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ORGANIZED 1876



Dec. 7, 1941 v. Sept. 11, 2001 What is the Correct Government Response?

By Paul E. Kerson

Dec. 7, 1941 was the Day “that shall live in infamy” in the words of President Franklin D. Roosevelt. The Government of Japan’s Air Force had attacked the U.S. Naval Base at Pearl Harbor adjacent to Honolulu, Hawaii.

Congress declared war on Japan the next day. See 55 Stat. 795 (1942).

On Feb. 19, 1942, President Roosevelt issued Executive Order # 9066, which permitted U.S. Military Commanders to exclude from “military areas” such persons as may commit espionage or sabotage against the United States.

On Feb. 20, 1942, the Secretary of War designated “the entire Pacific coast” as the Western Defense Command and assigned General J.L. Dewitt as Military Commander. On March 24, 1942, General Dewitt issued Public Proclamation #3, limiting the movements of “all alien Japanese, all alien Germans, all alien Italians and all person of Japanese ancestry” from most of the Western Defense Command.

On May 3, 1942, Public Proclamation #4 was issued directing the evacuation of all persons of Japanese ancestry (whether U.S. Citizens or not, and not persons of German or Italian ancestry) from their homes to “relocation centers” much further inland.

In 1942, 112,000 persons of Japanese descent resided in California, Washington State and Oregon. 62% were American citizens. They were compelled by the Federal Government to sell their homes and businesses at a loss and were forcibly removed to Government “relocation centers” (read prison camps) in Wyoming, Utah, Idaho and Colorado, where they were not permitted to leave until World War II was over in 1945. See http://en.wikipedia.org/wiki/Japanese_American_internment, page 1 of 26.

These folks received a three year prison sentence, without trial, for doing absolutely nothing.

The U.S. Supreme Court thought this was a perfectly fine idea.

In *Korematsu v. U.S.*, 323 U.S. 214, 65 S.Ct. 193 (1944), the Court held:

“It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can...

We uphold the exclusion order as of the time it was made and when petitioner violated it...In so doing we are not unmindful of the hardships imposed by it upon a large group of American citizens...

But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier.

Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direct emergency and peril, is inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.” See 323 U.S. at 216, 219-220.

In *Hirabayashi v. U.S.*, 320 U.S. 81, 63 S.Ct. 1375 (1943), another case involving imprisonment of Americans of Japanese ancestry, the U.S. Supreme Court described the imminent danger threatening the United States in 1942:

“The actions taken must be appraised in light of the conditions with which the President and Congress were confronted in the early months of 1942...On Dec. 7, 1941, the Japanese air forces had attacked the United States Naval Base at Pearl Harbor without warning, at the very hour when Japanese diplomatic representatives were conducting negotiations with our State Department ostensibly for the peaceful settlement of differences between the two countries.

Simultaneously, or nearly so, the Japanese attacked Malaysia, Hong Kong, the Phillipines and Wake and Midway Islands. On the following day, their army invaded Thailand. Shortly afterwards they sank two British battleships. On Dec. 13th, Guam was taken. On Dec. 24th and 25th they captured Wake Island and occupied Hong Kong. On Jan. 2, 1942, Manila fell, and on Feb. 10th, Singapore, Britain’s great naval base in the East, was taken.

On Feb. 27th the battle of the Java Sea resulted in an disastrous defeat for the United Nations. By the 9th of March Japanese forces had established control over the Netherlands East Indies; Rangoon and Burma were occupied; Bataan and Corregidor were under attack.” See 323 U.S. at 93-94.

Did this military assault by Japan against the world justify the three year imprisonment, without trial, of 110,000 Japanese-Americans?

In 1980, 38 years late, the U.S. Congress established a Commission to study this question. In 1988, the Congress concluded that this wrongful imprisonment was not justified. The Civil Liberties Act of 1988 was passed, providing for a \$20,000 payment to each surviving Japanese-American detainee, a total of \$1.2 billion.

In 1992, Congress passed the Civil Liberties Act Amendments of 1992, providing for an additional \$400 million to complete these payments to the 82,210 Japanese-Americans and their heirs. On the 50th Anniversary of the Pearl Harbor attack, Dec. 7, 1991, President George H.W. Bush said:

“In remembering, it is important to come to grips with the past. No nation can fully understand itself or find its place in the world if it does not look with clear eyes at all the glories and disgraces of its past. We in the United States acknowledge such an injustice in our history. The internment of Americans of Japanese ancestry was a great injustice, and it will never be repeated.” See Wikipedia entry cited above at page 16. (emphasis added).

Nearly 60 years later, we were attacked again, on Sept. 11, 2001. This time, it was not an attack by a nation-state. Instead, a non-governmental organization (NGO) attacked us using our own civilian airliners. The World Trade Center in New York and the Pentagon in Virginia were hit, costing thousands of lives. The World Trade Center fell, and an additional airplane crashed in Pennsylvania.

And then a curious thing happened. WE MADE THE EXACT MISTAKE AGAIN THAT THE FIRST PRESIDENT BUSH WARNED US NOT TO REPEAT.

Of course, now that we are in the 21st century, we did not make the same mistake in the same way. We wisely did not imprison Arab-Americans only. No, this time, we imprisoned the most personal information about each and every one of ourselves.

Apparently, when we weren't paying close attention, the U.S. Government hired 854,000 people and gave them Top Secret Security Clearances. Every e-mail and telephone call metadata (numbers and time of call) is grist for their mill. Gigantic secure buildings have been constructed in Maryland and Virginia to house this operation. (This number of “top secret” employees is 1.5 times the population of Washington, DC Itself.)

Every day, 1.7 BILLION e-mails, telephone calls and other communications are intercepted. Our current national intelligence operation was described by one official as “...a zombie, it keeps on living.” See Top Secret America – A Washington Post Investigation, July 19, 20, and 21, 2010, Dec. 4, 2010 <http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-be...> page 5 of 7 of July 19, 2010.

The benefit from all this imprisonment of our most personal information is approximately the same benefit we got from imprisoning our fellow American citizens of Japanese descent, that is, zero:

“Beyond redundancy, secrecy within the intelligence world hampers effectiveness in other ways, say defense and intelligence officers. For the Defense Department, the root of this problem goes

back to an ultra-secret group of programs for which access is extremely limited and monitored by specially trained security officers...

These are Special Access Programs – or SAPs – and the Pentagon’s list of code names for them runs 300 pages...’There’s only one entity in the entire universe that has visibility on all SAPs – that’s G-d,’ said James R. Clapper, Undersecretary of Defense for Intelligence... See Wikipedia entry above, page 6 of 7 of July 19, 2010.

It is probably much too late and too difficult to un-build an 854,000 Person Top Secret Federal Government bureaucracy. And who knows, maybe they might uncover a “terrorist” plot this way. (I rather suspect that undercover government agents who speak Arabic based in Arabic countries would do a much better job than an “analyst” reading e-mail in a “secure” office building in Baltimore, but then again, I am not running things, am I).

There appears to be no record of any Japanese spies arrested in the internment camps of 1942. I suspect our 854,000 tax supported e-mail readers of 2013 will yield the same result, zero.

(If a potential terrorist knows we are reading all e-mail and monitoring all telephone calls, he just might decide to communicate with his fellow terrorists in a different way. Or did they not think of this in Washington? Just asking. Does anyone ask questions in Washington?)

But in the meantime, until this foolishness is dismantled (which may be never), we must protect ourselves from ourselves, and \$20,000 apiece won’t do it. We need Amendment 4.5.

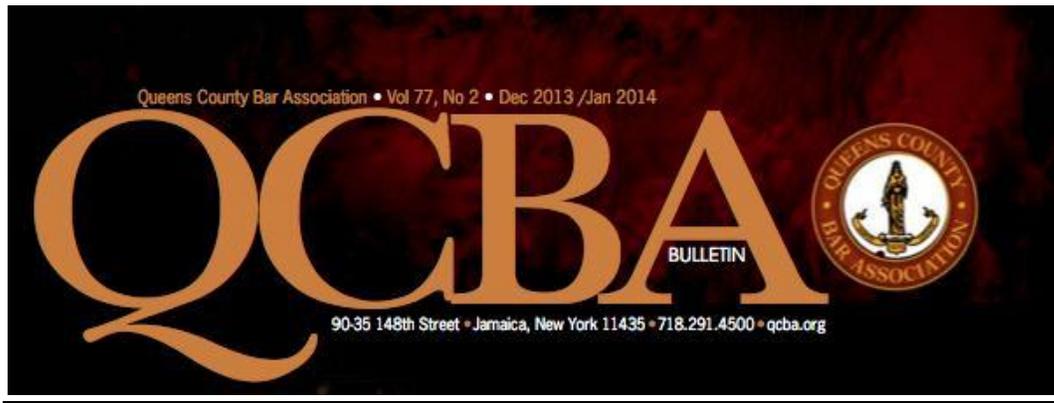
The existing 4th Amendment to the U.S. Constitution prohibits warrantless searches of “persons, houses, papers and effects.” This is no longer sufficient to carry out the Founders’ Intention to Create a Free Society.

We must enact Amendment 4.5 to protect ourselves from our 854,000 fellow Citizens who spend their workdays reading our e-mails and telephone call metadata:

“No publicly or privately stored electronic information of any kind may be used in any local, state or federal criminal prosecution without a court-ordered subpoena or warrant signed by hand in ink by a local, state or federal judge of competent jurisdiction after careful consideration.”

In 1988 and 1991, our Leadership publicly apologized for imprisoning our Japanese-American neighbors. Today, in 2013, our Leadership must publicly apologize to all of us for wrongfully imprisoning our most personal information for no legitimate public purpose.

They must pass Amendment 4.5 to protect all of us, and themselves, from the very same over-reaction in 2001 that we suffered from in 1942. “Those who do not learn from the past are doomed to repeat it.” To date, that is us.



The Rules of Professional Conduct: A Judicial Externship Perspective How Do the Rules of Professional Conduct Apply to a Law Student?

By Dina Quondamatteo, Hofstra Law School

A judicial externship gives a law student an opportunity to observe and participate in a wide variety of court proceedings as well as provide a platform for learning and developing a system of professional ethics before entering the work force as a licensed attorney. Judges use interns in many ways and usually assign tasks that are similar to those that their law clerks perform. Part of these duties include conducting legal research, preparing research memoranda for the judge, writing rough drafts of orders and opinions, attending preliminary hearings, talking with attorneys, and attending trial proceedings. All of these tasks require ethical considerations. Being directly responsible for these assignments can provide a law student with meaningful lessons for developing professional conduct as an attorney and address ethical and professional issues that may arise. Therefore, issues relating to ethics and professionalism should apply to law students because although they are not working as licensed attorneys in an official capacity, they are taking on the role of such and should learn and apply the ethical responsibilities and obligations that come with that role. These responsibilities should be conveyed, implemented, and reinforced by the supervising attorney through the Rules of Professional Conduct.

The New York Rules of Professional Conduct (“New York Rules”, “Rule”, “Rules”) are similar to the American Bar Association (“ABA”) Model Rules of Professional Conduct in that both are categorized by duties owed to the client, the court, and the profession, and disciplinary action for rule-violation. Duties to the client include confidentiality (Rule 1.6), avoiding conflicts of interest (Rule 1.6 –

1.12), being competent (Rule 1.1), diligence and effectively assisting the client (Rule 1.3), avoiding commingling (Rule 1.15), self-dealing and fee splitting (Rule 7.2), and withdrawing from representation (Rule 1.16). Rule 3.3 defines the duties to the court which include disclosing legal decisions of adverse authority, proper courtroom demeanor, and disclosing perjurious intentions of a client. Duties to the profession embrace a vital area that may have an impact on an intern's work in the court: lawyer misconduct and reporting such professional misconduct (Rule 8.3, 8.4). Duties to the profession also include legal advertising standard (Rule 7.1), voluntary pro bono services (Rule 6.1), honesty in the Bar admission process (Rule 8.1), and involvement in legal services organizations (Rule 6.3). There are a few rules related to legal interns that overlap with the duties owed to the client, court, and profession, which may also have an impact on an intern's work in the court. They are lawyer's responsibility for a nonlawyers' conduct (Rule 5.3), trial publicity (Rule 3.6), confidentiality (Rule 1.6), and unauthorized practice of law (Rule 5.5).

According to Rule 5.3 of the New York Rules of Professional Conduct and the ABA Model Rules of Professional Conduct, a lawyer is responsible for the ethical behavior of non-lawyers who work in his law firm or practice. Regarding placement as an intern within the court, the law clerk must ensure that the intern's conduct is "compatible with the professional obligations" of being a lawyer. If the law clerk observes the intern engaging in unprofessional conduct or learns that unprofessional conduct has occurred, the law clerk, in his capacity as "supervising attorney," must take appropriate corrective action. For example, if an intern attends a social event or goes out for a few drinks and begins telling people about the details of confidential court matters, the law clerk that included the intern in these affairs can be disciplined for violating the ethical obligation of Rule 3.6, "refraining from making extrajudicial statements that should not be publically communicated." Even though the law clerk did not make these statements, the unethical conduct of the intern is projected onto the law clerk. One could say that the law clerk is "vicariously liable" for the conduct of an extern. Moreover, under New York Rule 5.3.8, if the supervising attorney "knowingly fail[s] to supervise" an intern, he can also be disciplined for violating the ethical responsibility for the conduct of the intern. This rule in particular could have a strong impact on an intern's work because they would not receive the guidance or feedback needed in making decisions which could lead to potential ethical dilemmas. Supervision from the law clerk and school faculty is key in helping law students not only make challenging decisions and to comply with ethical standards, but also to offer practical guidance, critique, and encouragement as they experience, develop, and shape the foundation of their own professional and ethical structure as future attorneys.

Working as an intern for the court raises several questions regarding the Rules of Professional Conduct. First, do the ethical rules bind students even though they are not yet admitted to the bar? In other words, are law students in subordinate lawyer roles guided by Rule 5.2? If so, does Rule 5.5, Unauthorized Practice of Law, apply? To illustrate, in the case *In re Wilkinson*, an attorney was sanctioned for violating Louisiana Rules of Professional Conduct for failing to supervise an unlicensed law student employed in his office. 805 So. 2d 142 (La. Jan. 15, 2002). The Court held that the attorney was responsible for the incorrect legal advice given to his client by the unlicensed law student even though the attorney was not directly responsible for the misinformation. *Id.* at 146. The Court further found that “A lawyer cannot delegate his professional responsibility to a law student employed in his office . . . The student in all his work must act as agent for the lawyer employing him, who must supervise his work and be responsible for his good conduct.” *Id.* at 147. Second, what if a law student suspects a violation of the Rules which raise significant questions as to the judge or law clerk’s honesty, work ethic, trustworthiness as per Rule 8.4, Misconduct? Does the law student report to the school’s supervising professor? If the student confides in the supervising professor, who happens to be a licensed attorney, is legal advice being offered? Does Rule 1.6, Confidentiality of Information, kick in exempting him or her from reporting the misconduct as per Rule 8.3, Reporting Professional Misconduct? Finally, would there be a conflict of interest if the student appears in front of the judge they interned for as an attorney in the future? How would the student inquire about this potential ethical predicament? The Rules do not cover all bases, which in my opinion, is the reason why they are known as self-governing rules.



Changing Your Name in New York: A Guide for Attorneys and the Self-Represented —

Part II

By Gerald Lebovits and Taneem Kabir

Gerald Lebovits is a New York City Civil Court judge and an adjunct professor at Columbia, Fordham, and NYU law schools. Taneem Kabir, an associate attorney at DeToffol & Associates, is admitted to practice in New Jersey and before the United States Patent and Trademark Office. For their research help on all three parts of this article, the authors thank law students Aviva S. Kravitz and Todd M. Neuhaus from Cardozo School of Law and Natalie J. Puzio, an undergraduate at Villanova University.

In this second part of our three-part article on New York’s name-change laws, we discuss how to change someone else’s name and what you must prove to change a name.

Name Change on Another’s Behalf. Name changing on behalf of another usually requires that individual’s consent.

If you are a family member trying to change the name of an adult family member (age 18 or older), follow the steps set forth in the “General Requirements” section below and, in addition, obtain that adult’s written consent. Likewise, if you are the parent of a child and are trying to change that child’s name, you must follow the “General Requirements” below and obtain the other parent’s or step-parent’s written consent and also the child’s written consent if the child is 14-17 years old. If the child is 13 or under, the child need not consent in writing.

The court will deny your name-change petition for a child if the name change does not substantially promote the child’s best interests.¹ This “substantial best interest” standard requires the court to consider an entire slew of factors, including the child’s age, maturity, and sense of identity, as well as the effect of proposed name change on the child’s relationship with either parent and the child’s susceptibility to ridicule by peers.²

In *Matter of Kobra*, for example, the court denied the parents’ petition for leave to change their nine-year-old daughter’s name because doing so at that “influential pre-teen stage of her personal and social development” when it was “crucial for her to have stability and to maintain a strong sense of self-

identity” would make the girl’s life “absolutely miserable and unreasonably vulnerable to all kinds of probing questions, embarrassment, ridicule, and humiliation” from her peers. 2

If the child is 13-years-old or younger, you do not need the child’s written consent, but you must meet the General Requirements and “substantial best interests of the child” requirement. The court may deny the name you have chosen for your child if you do not properly notify the other parent of the proposed name change. If the non-petitioning parent does not consent to the child’s name change, moreover, the name-change court may consider the withholding of consent as an important factor. 3

Regarding the substantial best-interests standard, changing a 12-year-old child’s last name from that of the natural father to that of a stepfather is in the child’s best interests if the natural father has not seen or financially and emotionally supported the child for many years or if that child’s last name, being different from other step-siblings, causes the child confusion and embarrassment. 4

New York State law offers several ways to satisfy the requirement that the petitioning parent must properly notify the non-petitioning parent of a petition for leave to assume a new name for a child 17 or under. If the other parent lives in New York State, you, as the petitioning parent, must serve the other parent with the child’s name-change petition using a neutral process server.⁵

If the other parent lives outside New York State, you must send that parent notice by registered mail to a last known address.⁶ If you cannot find the other parent’s address after diligent investigation, the court will decide how to give appropriate notice to that parent. 7

If a parent successfully petitions to change the parent’s surname, any minor child of that parent may informally assume the changed surname,⁸ and that parent may register the child for school under the new surname. But unless parental custody rights have been terminated, a noncustodial parent may secure an injunction to prevent the child from using the new surname.⁹

In *Galanter v. Galanter*, the parties had minor children together.¹⁰ The children resided with their mother. After the father learned that the children were using another last name at school, he quickly filed for injunctive relief (which the court called an “application” and a “petition”) in Supreme Court for an order directing the mother to continue using his last name for the children and to cease and desist from imposing upon the children any other last name. The court ultimately granted his injunction, finding that the mother was not candid about imposing another last name upon the children and that the names invaded and defeated the father’s rights.

If the other parent is properly served with the child’s name-change petition but refuses to consent to it, this process becomes contested. The court will set a date and time for a formal hearing in which you and the nonpetitioning parent must appear and at which you will make your respective arguments about changing the child’s name; witnesses must testify under oath. The court will use as the standard what will substantially promote the child’s best interest.¹¹ It would be wise to seek the help of a competent attorney to represent you at this hearing.

An applicant such as a domestic-violence victim whose personal safety would be jeopardized by publishing the proposed new name may ask the court under Civil Rights Law § 64-a(1) to waive the newspaper publication of the parent’s name change or the child’s name change. If the court finds that your safety or your child’s safety would be jeopardized, the court under Civil Rights Law § 64-a(2) may also immediately seal the records of the current name, the changed name, the residential and business addresses of yourself and the child, all telephone numbers, and any other information

contained in any court pleading or paper.¹² Once these pieces of information are sealed, they can be unsealed only by court order for good cause shown or at your request.¹³

For example, in *Matter of Doe*, the mother successfully petitioned to change her name and her infant child's name without notice to the biological father and without obtaining his consent. According to the Civil Court, New York County, the father had threatened to kill them, and therefore notifying him would have jeopardized both the mother's and child's personal safety.¹⁴

You are also excused from notifying a spouse serving a life sentence about your child's name change. That spouse is "civilly" dead and not "living" within the meaning of Civil Rights Law § 62 and therefore has no right to object or to be heard.

If you are a parent of an adult child who suffers from a mental disability, you may petition to change your adult child's name only if your adult child cannot demonstrate an ability to make that decision on his or her own. In *Matter of Individual with a Disability for Leave to Change Her Name*, an applicant with a mental disability successfully petitioned to change her name without input from her family or guardian ad litem. The court was satisfied with her ability to make that decision on her own because she was living as independent a life as possible for a person with her disabilities.¹⁵ The applicant attended school, participated in a work program, handled her own money, maintained her own bank account, and took public transportation without being accompanied.

III. General Requirements: What You Must Prove

Under Civil Rights Law § 60-65, all name-change applicants petitioning a New York State court must submit the following:

- (1) proof of birth information;
- (2) criminal records disclosure information;
- (3) financial status disclosure information;
- (4) reason for changing a name;
- (5) the petitioner's signature;
- (6) whether the petitioner has been convicted of a crime or adjudicated a bankrupt;
- (7) whether any judgments, liens of record, or actions are pending against the petitioner; if so, the petitioner must sufficiently describe these judgments, liens, and actions in the name-change petition for the court to identify the matter referred to;
- (8) whether the petitioner owes any child support or spousal support (called "maintenance" in New York and "alimony" in many other jurisdictions); if so, the petitioner must also disclose in the name change petition (a) whether these child or spousal support obligations have been satisfied or are current; (b) how much child support or spousal maintenance is outstanding at the time of the name-change petition filing; (c) which court issued the order that obligates the petitioner to pay the child or spousal support; and (d) in which county the child-support collections unit is located.¹⁶

The judge reviewing the petition has the discretion to accept or reject these documents as proof. To submit your birth information, you must present with your name-change petition an original or certified copy of your birth certificate. To get a certified copy of your birth certificate if you were born in New York City, go to www.nyc.gov/html/doh/home.html. If you were born outside New York City, go to www.health.ny.gov/vital_records/birth.htm. If you were born outside New York State, you must submit a certified copy of your birth certificate, baptismal certificate, passport, or other legal documents showing the date and place of your birth.¹⁷

If you are a petitioner with a criminal record, you must disclose in your name-change petition the details of that record. You can do this by clearly identifying in your petition the nature of your crime(s), the date the conviction(s) were entered, and the name of the court(s) that convicted you. If you are on probation or parole or are serving a sentence as an inmate in a correctional facility for committing various violent felonies,¹⁸ you may petition for a name change,¹⁹ but you are required to notify the district attorney's office and courthouses of each county in which you have been convicted when and where the petition will be presented.²⁰ If you have completed your jail sentence, you should contact the court you are petitioning to find out whether you are required to provide a copy of your Certificate of Incarceration or Certificate of Disposition if you have served a felony sentence.²¹

To disclose your financial status, keep in mind that if you have declared bankruptcy and a court has found you bankrupt, or if any pending judgments, liens, or civil actions are pending against you, you must provide specific details.²² You should contact the court you are petitioning to find out what is necessary, but more is always better so that the judge may make a reasoned decision and so that you will not be accused of withholding information. If you are responsible for child support or spousal maintenance, you must also provide the details listed above in item #8.

To fulfill the affidavit requirement, you must affirm on the "Verification" page of your name-change petition that your petition is true and that if a child's name is being changed, there is no reasonable objection by anyone, such as the other parent or a guardian, who might reasonably object to the child's name change and that the child's name change will substantially promote the child's best interests.²³ The following is an example of a verification:

Todd Neuhaus, being duly sworn, deposes and says: I am the petitioner in the above-mentioned proceeding. I have read the petition and know the contents to be true to my own knowledge, except to those matters alleged on information and belief, and as to those matters I believe them to be true.

To satisfy the signature requirement, you must sign your name-change petition with your current name before a notary public and pay the appropriate notarization fee, if any.²⁴

To explain your reason for changing your name, you may put forward any honest explanation you wish to give, but the court, as we explain below in greater detail, has the discretion to deny your name-change petition if your proposed name will cause fraud, confusion, or offense to common decency and good taste.²⁵

The third part of our three-part article on New York's name change laws will conclude with where to file, in which court to file, and what happens after you file name-change petitions as well as publication requirements. Look for it in the next issue of the Queens Bar Bulletin.

1 See Matter of Eberhardt, 83 A.D.3d 116, 121, 920 N.Y.S.2d 216, 219-20 (2d Dep't 2011) ("Civil Rights Law § 63 authorizes an infant's name change if there is no reasonable objection to the proposed name, and the interests of the infant will be substantially promoted by the change.") □

2 Matter of Kobra (Hossain), 37 Misc. 3d 1216(A), 961 N.Y.S.2d 358, 2012 N.Y. Slip Op. 52061(U), *5 (Civ. Ct. Kings County 2012).

3 See Matter of Petras, 123 Misc. 2d 665, 671, 475 N.Y.S.2d 198, 203 (Civ. Ct. Queens County 1984) ("[A]n incarcerated parent should have the right to have his consent, or withholding of consent, carefully considered as an important factor by any court considering a change of name application.") □

4 See Matter of Robinson, 74 Misc. 2d 63, 64, 66, 344 N.Y.S. 2d 147, 148-50 (Civ. Ct. N.Y. County 1972).

5 N.Y. Civ. Rights Law § 62, available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec61>

(last visited Jun. 17, 2013).

6 Id.

7 Id.

8 N.Y. Civ. Rights Law § 64, available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec64> (last visited July 17, 2013).

9 Karen Hogan, Starting Over: Legal Name Change, Pace Law — Pace Battered Woman's Justice Ctr., Vol. 1, Issue 1 (1998), <http://law.pace.edu/starting-over-legal-name-change> (last visited July 17, 2013).

10 Galanter v. Galanter, 133 N.Y.S.2d 266, 267-68 (Sup. Ct. Kings County 1954).

11 N.Y. Civ. Rights Law § 63 available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec63> (last visited Jun. 17, 2013); See Matter of DeJesus, 44 Misc. 2d 833, 834, 254 N.Y.S.2d 23, 24 (Civ. Ct. N.Y. County 1964) (“Change of name of minors should be approved or disapproved solely on the basis of the best interest of the minor.”); Matter of Wing, 4 Misc. 2d 840, 841, 157 N.Y.S.2d 333, 335 (Civ. Ct. N.Y. County 1956).

12 N.Y. Civ. Rights Law § 64-a, available at

<http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec61> (last visited July 17, 2013).

13 Id.

14 Matter of Doe, 3 Misc. 3d 648, 649-55, 773 N.Y.S.2d 215, 216-20 (Civ. Ct. N.Y. County 2003).

15 Matter of Individual with a Disability for Leave to Change Her Name, 195 Misc. 2d 497, 498, 760 N.Y.S. 2d 293, 294 (Civ. Ct. Richmond County 2003).

16 N.Y. Civ. Rights Law § 61, available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec61> (last visited July 17, 2013).

17 N.Y. St. Unified Ct. Sys., N.Y. Civ. Ct., Name Changes,

courts.state.ny.us/courts/nyc/civil/namechanges.shtml (last visited July 17, 2013).

18 Id. The additional notice requirement applies if you have been convicted of a “violent felony” defined in N.Y. Penal Law § 70.02, a felony defined in N.Y. Penal Law Article 125, or any of the following Penal Law sections: 130.25, 130.30, 130.40, 130.45, 135.10, 135.25, 230.30(2), 230.32, 230.05, 230.06, 255.25, 255.26, and 255.27.

19 Matter of Washington, 216 A.D.2d 781, 781, 628 N.Y.S.2d 837, 837-38 (3d Dep't 1995).

20 N.Y. Civ. Rights Law § 62 available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec62> (last visited July 17, 2013).

21 N.Y. Courts, Self-Help Ctr., Procedures for Adult Name Change Petition,

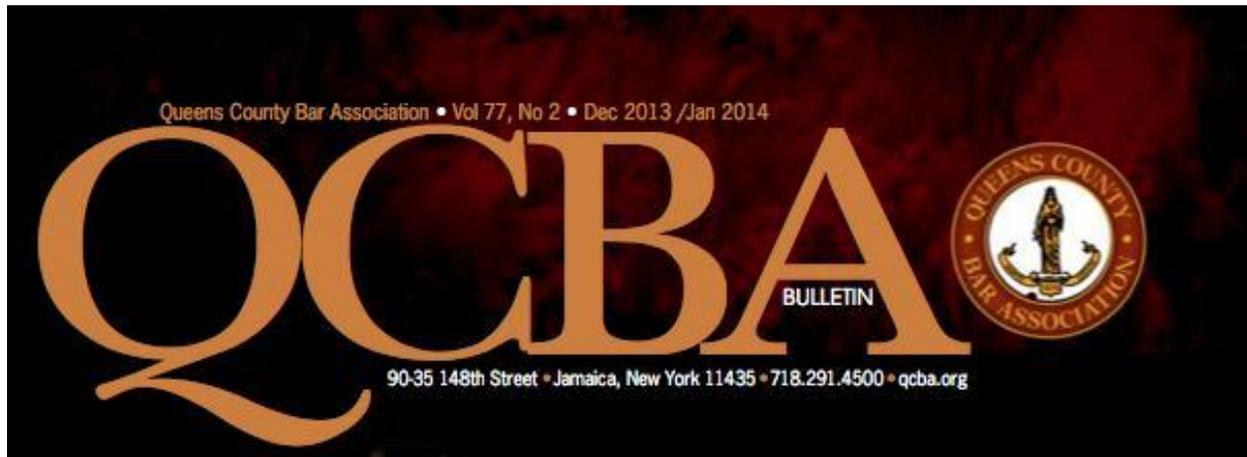
http://www.nycourts.gov/courts/6jd/forms/SRForms/name_change-adultproced.pdf (last visited July 17, 2013).

22 Id.

23 N.Y. Civ. Rights Law § 63, available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec63> (last visited July 17, 2013).

24 Sylvia Rivera Law Project, How to Legally Change Your Name in New York City, 2013, <http://srlp.org/resources/namechange/> (last visited July 17, 2013).

25 See supra note 3 from Part I of this article, at 314-15 & 332-34 for a more detailed discussion about the case law surrounding the requirement against fraud, confusion, and indecency.



Roll Call

by Diana Szochet

The Following Attorneys Were Disbarred By Order Of The Appellate Division, Second Judicial Department:

Gerard M. Tanella, a suspended attorney (January 9, 2013)

Following a disciplinary hearing, the respondent was found guilty of, inter alia, breaching his fiduciary duty; failing to safeguard funds entrusted to him as a fiduciary allowing one or more non-attorneys to exercise control over his law practice; giving false and/or misleading testimony and written answers to the Grievance Committee; engaging in conduct involving dishonesty, deceit, fraud, and/or misrepresentation, which adversely reflects on his fitness to practice law; undertaking representation in a matter that he knew or should have known he was incompetent to handle; neglecting a legal matter entrusted to him; and engaging in conduct prejudicial to the administration of justice, which reflects adversely on his fitness to practice law. Previously, the respondent was suspended from the practice of law by order of the Appellate Division, Second Department dated May 12, 2011, upon a finding that he posed an immediate threat to the public interest based upon his substantial admissions under oath and other uncontroverted evidence of professional misconduct.

Michael Sprei, a suspended attorney (January 30, 2013)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he converted funds entrusted to him as a fiduciary. Previously, the respondent was suspended from the practice of law by order of the Appellate Division, Second Department dated January 6, 2012, upon a finding that he was guilty of serious professional misconduct immediately threatening the public interest based upon his substantial admissions under oath and other uncontroverted evidence of serious professional misconduct.

David M. Green (February 6, 2013)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he induced a client to mortgage certain real

property and give him the proceeds of that mortgage, under false pretenses, after which he misappropriated same, and that he arranged for another mortgage to be placed on the client's property, without the client's knowledge or consent, and misappropriated the proceeds of that mortgage as well.

Christopher George Lazarou (February 6, 2013)

By orders of the Supreme Court of Georgia dated September 19, 2005, and the Supreme Judicial Court for Suffolk County, Massachusetts, entered July 24, 2008, the respondent was disbarred in Georgia and Massachusetts, respectively. Upon the application of the Grievance Committee pursuant to 22 NYCRR 691.3, to reciprocally discipline the respondent in New York, the respondent was disbarred.

David Allen Linn, (February 6, 2013)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against pending charges that he failed to preserve funds in his escrow account; failed to remit said funds to his client; failed to handle an appeal entrusted to him for which he was paid a retainer; misled the client concerning the appeal on numerous occasions; failed to obtain the balance of settlement funds due to a client; and failed to cooperate with the Grievance Committee. The respondent further acknowledged that he would not be able to successfully defend himself on the merits against additional allegations that he converted funds from multiple real estate transactions.

Neal H. Sultzer (March 6, 2013)

The respondent tendered a resignation in which he admitted that he could not successfully defend himself on the merits against pending charges that he engaged in professional misconduct by participating in real estate transactions on behalf of a client when he knew the client was engaging in illegal or fraudulent conduct.

Robert Michael Ibrahim (March 13, 2013)

On January 11, 2012, the respondent pleaded guilty in the Supreme Court, Suffolk County, to eight counts of residential mortgage fraud in the second degree, a class C felony in violation of Penal Law Section 190.65(1)(b). Pursuant to Judiciary Law Section 90(4), the respondent was automatically disbarred effective January 11, 2012, based upon his conviction of a felony.

Deborah K. Rice, admitted as Deborah Karen Gerstein (April 10, 2013)

On or about March 26, 2009, the respondent pleaded guilty in the United District Court for the Eastern District of Pennsylvania, to two counts of mail fraud, in violation of 18 USC 1341, and one count of wire fraud, in violation of 18 USC 1343, both federal felonies. By order dated April 29, 2010, the Supreme Court of Florida disbarred the respondent, effective January 11, 2010. By Opinion dated March 1, 2010, the Supreme Court of Georgia accepted the respondent's voluntary surrender of her license to practice law, which was tantamount to disbarment under Georgia State Bar Rule 4-110(f). Both disciplinary actions were predicated upon the respondent's federal conviction. Upon the Grievance Committee's application pursuant to 22 NYCRR 691.3 to impose reciprocal discipline, the respondent was disbarred in New York, effective immediately.

Daniel J. Fox, admitted as Daniel James Fox (April 24, 2013)

The respondent tendered a resignation wherein he acknowledged that he could not successfully

defend himself on the merits against potential charges predicated upon his temporary suspension from the practice of law in New Jersey.

The Following Attorneys Were Suspended By Order Of The Appellate Division, Second Judicial Department:

Anthony C. Donofrio (January 9, 2013)

Following a disciplinary hearing, the respondent was found guilty of misappropriating and/or failing to preserve funds entrusted to him as a fiduciary. He was suspended from the practice of law for a period of two years, effective February 8, 2013, and continuing until the further order of the Court. By further decision and order of the Court dated March 22, 2013, the effective date of the respondent's suspension was adjourned until April 22, 2013, solely for the purpose of winding down his practice with respect to existing matters and clients.

Robert A. Macedonio, admitted as Robert Anthony Macedonio, a disbarred attorney (January 9, 2013)

By opinion and order of the Appellate, Second Department dated August 25, 2009, the respondent was disbarred based on his conviction of criminal possession of a controlled substance in the fifth degree, a class D felony in violation of Penal Law Section 220.06(5), and his name was struck from the roll of attorneys and counselors-at-law, effective December 9, 2008. On January 6, 2012, the Honorable James Hudson, County Suffolk County, pursuant to a negotiated plea, granted the respondent's motion to vacate his felony conviction and accepted in its place a plea to criminal possession of a controlled substance in the seventh degree, a class A misdemeanor in violation of Penal Law Section 220.03. In a decision and order of the Appellate Division dated April 23, 2012, the respondent's prior disbarment was vacated; the respondent was immediately suspended from the practice of law pursuant Judiciary Law Section 90(4) (f) as a result of his conviction of a serious crime; and a disciplinary proceeding was authorized. Following a hearing, the Appellate Division suspended the respondent from the practice of law for a period of two years, nunc pro tunc to December 9, 2008, and immediately reinstated him.

Kenneth J. Gellerman (January 23, 2013)

The respondent was suspended from the practice of law, pending further order of the Court, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based upon a pattern and practice of converting client funds, and a disciplinary proceeding was authorized.

Raghubir K. Gupta, a disbarred attorney (March 8, 2013)

Motion by the respondent to, inter alia, vacate an opinion and order of the Appellate Division, Second Judicial Department dated June 8, 2010, which struck his name from the roll of attorneys and counselors-at-law, as a result of his felony conviction on October 26, 2009, which conviction was vacated by an amended opinion of the Second Circuit Court of Appeals dated November 8, 2012 (see *United States v. Gupta*, 699 F3d 682). The respondent's motion was granted to the extent that the opinion and order dated June 8, 2010, which disbarred him, was vacated, and the Court, on its own motion, the respondent was immediately suspended from the practice of law based on the acts of professional misconduct underlying the criminal allegations, and a disciplinary proceeding was authorized.

Joell Barnett, admitted as Joell Carol Barnett (March 12, 2013)

On November 22, 2011, the respondent pleaded guilty in the United States District Court for the Southern District of New York (Buchwald, J.) to one count of conspiracy to commit wire fraud, in violation of 18 USC 1349, and one count of conspiracy to commit wire fraud and bank fraud, in violation of 18 USC 1349. The respondent was immediately suspended from the practice of law pursuant to Judiciary Law Section 90(4) (f), pending further order of the Appellate Division, as a result of her conviction of a serious crime, and a disciplinary proceeding was authorized.

James G. Carroll (March 13, 2013)

The respondent was immediately suspended from the practice of law, pending further order of the Court, based upon his substantial admissions under oath and other uncontroverted evidence of professional misconduct.

Efrain Ramos, Jr. (March 13, 2013)

The respondent was immediately suspended from the practice of law, pending further order of the Court, based upon his failure to cooperate with the Grievance Committee in its investigation of multiple complaints against him, and a disciplinary proceeding was authorized.

Richard J. Zimmerman (March 27, 2013)

Following a disciplinary hearing, the respondent was found guilty of failing to safeguard escrow funds entrusted to him as a fiduciary, incident to his practice of law; engaging in conduct involving deceit, dishonesty, and misrepresentation; failing to withdraw from representing a client in a transaction in which he knew that continued representation would cause him to engage in deceitful conduct; making false and/or misleading statements to the Grievance Committee; and failing to maintain ledger books or similar records of deposits into and withdrawals from his IOLA accounts. He was suspended from the practice of law for a period of two years, effective April 26, 2013, and continuing until further order of the Court.

Alexander Herman (April 1, 2013)

The respondent was suspended on a voluntary basis pursuant to 22 NYCRR 691.1(c) based on his contention that he suffers from a mental infirmity, until a determination is made by a qualified medical expert as to his capacity to practice law.

Michael Levitis, a suspended attorney (April 10, 2013)

On March 1, 2011, the respondent pleaded guilty in the United States District Court for the Eastern District of New York (Ross, J.) to one count of making a false statement, in violation of 18 USC 1001 (a) (2), a federal felony. By order of the Appellate Division, Second Department dated January 24, 2012 the respondent was immediately suspended from the practice of law pursuant to Judiciary Law Section 90(4) (f), pending further order of the Appellate Division, based upon his conviction of a serious crime. Following a disciplinary hearing, the respondent was suspended from the practice of law for a period of six months, nunc pro tunc to January 24, 2012, with leave to apply for reinstatement immediately.

Yana Schindler (April 17, 2013)

Following a disciplinary hearing, the respondent was found guilty of failing to safeguard escrow funds entrusted to her as a fiduciary, incident to her practice of law; failing to maintain a ledger book or similar record of deposits into and withdrawals from her attorney escrow account; knowingly making false and/or misleading statements to the Grievance Committee; improperly

conditioning the payment of funds, to which a third party was entitled, upon the withdrawal of the party's complaint to the Grievance Committee; failing to adequately supervise her paralegal; and improperly authorizing a non-attorney to be a signatory on her escrow account. She was suspended from the practice of law for a period of one year, effective May 17, 2013, and continuing until the further order of the Court.

Derek P. McDowell (April 26, 2013)

The respondent was immediately suspended, pending further proceedings, upon a finding that he posed an immediate threat to the public interest based upon his failure to cooperate with the lawful demands of the Grievance Committee.

Neal Stuart Spector (May 13, 2013)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he posed an immediate threat to the public interest based upon his failure to cooperate with the Grievance Committee.

Keith D. Erlington, admitted as Keith Dalton Erlington (May 17, 2003)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he posed an immediate threat to the public interest based upon his substantial admissions under oath and other uncontroverted evidence that he committed an act or acts of serious professional misconduct.

Anthony C. D'Onofrio (May 22, 2013)

Upon the respondent's motion to stay of much of the opinion and order of the Appellate Division dated January 9, 2013 as, inter alia, suspended him from the practice of law for a period of two years, pending determination of his appeal from the opinion and order to the Court of Appeals, the motion was denied as academic in light of the dismissal of the appeal, and the respondent's suspension from the practice of law was ordered to commence May 23, 2013, and to continue until further order of the Court.

The Following Attorneys Were Publicly Censured By Order Of The Appellate Division, Second Judicial Department:

James N. Hulme, admitted as James Norton Hulme (January 9, 2013)

Following a disciplinary hearing, the respondent was publicly censured upon a finding that he was guilty of engaging in conduct adversely reflecting on his fitness as a lawyer; conduct involving dishonesty, fraud, deceit, or misrepresentation; and conduct prejudicial to the administration of justice.

Robert B. Armstrong, admitted as Robert Britton Armstrong (March 13, 2013)

By Memorandum Order of the Disciplinary Board of the Virginia State Bar, entered June 21, 2010, the respondent was suspended from the practice of law in Virginia for a period of 30 days, as a result of his having pled "no contest" on December 3, 2008, to misdemeanor sexual assault. Upon the Grievance Committee's application pursuant to 22 NYCRR 6913 to impose reciprocal discipline, the respondent was publicly censured in New York.

Marvin Blakely (April 24, 2013)

Upon the Grievance Committee's application for reciprocal discipline pursuant to 22 NYCRR

691.3, the respondent was publicly censured in New York based upon his having been reprimanded in New Jersey by order of the New Jersey Supreme Court dated January 25, 2012.

The Following Suspended, Disbarred Or Voluntarily Resigned Attorneys Were Reinstated As Attorneys And Counselors-At-Law By Order Of The Appellate Division, Second Judicial Department:

Barry R. Feerst, admitted as Barry Roy Feerst (January 9, 2013)

William F. Rothman, admitted as William Frederick Rothman (January 9, 2013)

Andrew Bryant Livernois (January 10, 2013 [effective February 4, 2013])

Jeffrey Bettan (January 23, 2013)

Christopher T. Maffia (January 23, 2013)

Shea Elizabeth Fitzekam (January 23, 2013)

Diana M. Vargas, admitted as Diana Monica Vargas (January 23, 2013 [effective February 4, 2013])

Virginia R. Iaquinta-Snigur (March 13, 2013)

Kevin B. Dwyer (March 27, 2013)

Scott B. Feiden, admitted as Scott Bruce Feiden, a suspended attorney (April 24, 2013)

Patricia M. Cavanaugh, admitted as Patricia Marie Cavanaugh, a suspended attorney (May 29, 2013)

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