



Queens County Bar Association Participates in ABA Bar Leadership Institute



ABA President Stephen N. Zack of Miami, FL, Arthur Terranova, Executive Director of QCBA, Richard M. Gutierrez, President-Elect of QCBA and President-Elect Wm T. (Bill) Robinson III of Florence, KY.

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

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

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

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

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

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

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

Estate Tax Update What You Need To Know

BY ANN MARGARET CARROZZA



Ann Margaret Carrozza

You have undoubtedly heard that the estate tax threshold has been raised to \$5.0 million. This means that everyone can bequeath up to that amount with no federal tax. If you currently have less than \$5.0 million, there are still some things you need to know:

SUMMARY OF RECENT CHANGES

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

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

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

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

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

CREDIT SHELTER TRUST PLANNING

Couples with assets in excess of \$1.0 million should consider implementing credit shelter

Continued on Page 4



INSIDE THIS ISSUE

QCBA Attends ABA Leadership Institute	1	President's Message	3
Estate Tax Update	1	Impact of Two Court Decisions on Parking Violations Bureau	3
Editor's Message: Book Review - Commercial Litigation in NYS Courts . 2		Culture Corner	10
		Report From The Speaker's Bureau . .	10

THE DOCKET . . .

being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th St., Jamaica, New York. More information and any changes will be made available to members via written notice and brochures. Questions? Please call (718) 291-4500.

PLEASE NOTE:

The Queens Bar Association has been certified by the NYS Continuing Legal Education Board as an Accredited Legal Education Provider in the State of New York.

2011 Winter CLE Seminar & Event Listing**May 2011**

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

June 2011

CLE Dates Being Finalized

September 2011

Monday, September 5	Labor Day, Office Closed
Monday, September 12	Annual Golf Outing

CLE Dates to be Announced

Elder	Juvenile Justice
Lawyer's Assistance	Surrogate's Court, Estates & Trusts

CLE Dates to be Announced

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EDITOR'S MESSAGE

BY PAUL E. KERSON

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

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

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

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

Of particular interest to the General Practitioner are chapters on the investigation of the case and case evaluation.

The chapter on case evaluation is particularly enlightening. It was written by Alan I. Raylesberg, Esq., a Queens native, of the firm of Chadbourne & Park LLP.

In this chapter, Alan details exactly when one should take a case and when one

should not. He gives specific recommendations as to exactly how to analyze a case.

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

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



Paul E. Kerson

Continued On Page 6

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of the
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PRESIDENT'S MESSAGE

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

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

At this year's event, on April 11th, our honoree attendees included judiciary from the Appellate Term, Supreme, Criminal, Family, Civil, and Surrogate Courts, as well as many past presidents and 14 members who celebrated their 50th anniversary of legal practice. (That

adds up to an impressive 700 years of legal practice!). Three of our past presidents, **Michael Dikman, George J. Nashak, Jr., and Edward H. Rosenthal**, were double honorees, due their jubilarian status, and **Samuel B. Freed**, Chair of the Real Estate Committee, received a Special Academy Award for his dedication and service to the QCBA.

Our thanks to all of you who attended and made this evening such a success! And very special thanks go to our guest speaker, **Vincent E. Doyle** of Buffalo, New York, who is President Elect of the New York State Bar Association.

QCBA also congratulates The Honorable **Jeremy Weinstein**, Administrative Judge of Supreme Court,



Chanwoo Lee

Civil Term, who was honored at the Jewish Lawyers Guild's annual dinner on March 31, 2011. And we extend a warm "welcome back" — and look forward to working with — two esteemed Criminal Court Judges: The Honorable **Michael Yavinsky**, and the Honorable **John Zoll**.

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

Please mark your calendars for these upcoming **CLE programs**:

Tuesday, May 10 - Bankruptcy Seminar
Thursday, May 12 - Small Claims Arbitrator Training

Tuesday, May 17 - No Fault Update 2011

Finally, QCBA's One Hundred Thirty-Fourth Annual **Dinner and Installation of Officers and Managers of the Queens County Bar Association** will be held at the Terrace on the Park, Flushing Meadows Park, on May 5, 2011. This will be an historic event, as **Richard M. Gutierrez** will be installed as the first Hispanic attorney to serve as President of the QCBA.

I look forward to celebrating with all of you, and to congratulating Richie as he takes his oath of office.

Warm best wishes.

- Chanwoo Lee

Impact of Two Court Decisions on Parking Violations Bureau

BY DENNIS BOSHACK¹

The New York City Parking Violations Bureau reportedly adjudicated over 3.2 million parking tickets in fiscal year 2010, and about 2.8 million last year.² According to two recent Supreme Court, New York County, decisions—Matter of Meyers Van Lines Inc. v City of New York Dept. of Fin. Parking Violations Bur. (Nov 10, 2009, Index No. 106783/2008) and Matter of Dong Sic Ko v City of New York Dept. of Fin. Parking Violations Bur., 28 Misc 3d 603 (May 12, 2010)—PVB violated VTL 242, by making payment a prerequisite for taking an appeal, and 238 (2), by using mailing as process service. The author handled both cases. This article focuses on PVB's nine-month failure to follow Meyers and on PVB's continuing failure to follow Ko, and suggests PVB's failure to follow them lacks merit.

Meyers

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

"No appeal shall be permitted unless the fines and penalties assessed by the

Hearing Examiner are paid, or the respondent shall have posted a cash or recognized surety company bond in the full amount of the final determination appealed from."

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

In Meyers the second decretal paragraph of the judgment declares PVB rule 19 RCNY 39-12 (b) (3) is unenforceable:

"ADJUDGED AND DECLARED that Respondent's rule, RCNY 39-12 (b) (3), which requires payment of the fines in full prior to the taking of an appeal, is unenforceable inasmuch as it exceeds the requirements of VTL 242(5)."⁴

PVB took an appeal from Meyers, with a notice of appeal dated November 19, 2009. On August 27, 2010, PVB withdrew its



Dennis Boshack

appeal, and on or about that date ceased enforcing 19 RCNY 39-12 (b) (3).⁵

CPLR 5519 (a) (1) imposes an automatic enforcement stay during a government appeal, but that stay will not apply to declaratory provisions of a judgment, which do not direct performance of an act in the future but rather are self-executing and effective immediately upon promulgation of the judgment; however, that lack of application is not free from doubt in the First Department.⁶

Ko

According to Ko, PVB mailed Mr. Ko a parking summons. The summons, by "Drive Off" and similar language, indicates his vehicle drove off before the summons was served. Mr. Ko moved to dismiss the summons for lack of personal jurisdiction. He denied he had been properly served under VTL 238 (2)⁷, in that the summons had neither been handed to him, nor placed on his car.

Administrative Law Judge Linda Hirsch denied the motion upon a hearing, found him guilty of the charged violation, and fined him \$115, which he later paid. The PVB appeals board affirmed ALJ Hirsch's

decision. Mr. Ko brought an Article 78 proceeding, seeking to annul the appeals board decision and have the summons dismissed for lack of personal jurisdiction.

After Mr. Ko would not accept PVB's offer to settle his Article 78 by dismissing the summons and refunding the fine, Chief ALJ Mary Gotsopoulos remanded the matter of Mr. Ko's summons to ALJ Diane Pine, who dismissed the summons, stating the dismissal was "in the interests of justice in connection with Article 78 settlement negotiations."⁸ Then, alleging PVB had dismissed the summons and begun the process for reimbursement of the \$115 fine to Mr. Ko⁹, PVB moved to dismiss Mr. Ko's Article 78 proceeding as moot.

Eventually, after denying that motion, Supreme Court vacated PVB's dismissal of Mr. Ko's summons, concluding the dismissal exceeded PVB's statutory authority, was in violation of lawful procedure, was arbitrary and capricious, and had no factual basis. Among its findings concerning statutory authority, the court stated (at 607) the VTL did not "empower ALJ [Gotsopoulos] to unilaterally remand a matter to ALJ Pine so that the PVB could dismiss the violation and render this Article 78 proceeding moot."¹⁰

Supreme Court granted Mr. Ko's petition,

Continued On Page 8

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Estate Tax Update 2011: What You Need To Know

Continued From Page 1 — trusts as part of their estate planning. This will prevent the loss of the New York State tax exemption for the first spouse to die. Just because each spouse has a \$1.0 million credit does not mean that the credits automatically combine to shelter the entire estate up to \$2.0 million.

If, for example, a couple has a combined estate of \$1.5 million and they have simple Wills leaving everything to the surviving spouse and the remainder to children, a bad tax consequence will ensue. This is because the unlimited marital deduction prevents the imposition of tax on transfers between spouses. Without any tax liability on the first death, there is no opportunity to utilize the first credit. It, in essence, dies with the first decedent. Upon the death of the second spouse, her estate can only apply her \$1.0 million New York State credit. The result in this example is that \$500,000 will be subject to New York State estate tax.

In order to avoid this result, the Wills or Revocable Trusts should contain credit shelter trusts which can operate as follows: husband and wife leave everything to each other with the exception of whatever amount the surviving spouse chooses to disclaim into the credit shelter trust of the first decedent. The survivor has nine months to execute the disclaimer.

There are several different ways to fund the credit shelter trust. I believe that the

“disclaimer” method described above is the most flexible. The family has the luxury of waiting until the first death to make a good decision based upon the survivor’s age, health, expenses, as well as the estate tax laws at that future point in time.

PROPERTY SUBJECT TO TAX

Nearly all assets owned by a decedent or over which he or she retained some control are included in the estate tax base. Just because an asset passes outside of probate does not mean that it passes free of tax.

Death benefits payable through life insurance, IRAs, 401Ks, bank accounts with beneficiary designations and brokerage accounts with “transfer on death” designations will all be taxed to the decedent who owned the asset as of his or her death.

RECOMMENDATIONS

It is very important to have your estate planning documents reviewed periodically. I advise my clients to come in every two years or so, to make sure that we are all on the same page.

If your estate is currently less than \$1.0 million, you need not be concerned about state or federal estate taxes at this time. The possibility of future long term care needs, on the other hand, may cause you to con-

sider creating a trust or taking other steps to protect your assets.

If your estate is between \$1.0 and \$5.0 million, you will still need to implement New York State estate tax planning. This planning may include credit shelter trusts as well as an insurance trust to prevent the policy death benefit from being taxed. Remember that life insurance grows income tax free. It does not pass estate tax free unless it is owned by someone or something (a trust) other than the decedent.

If your estate is in excess of \$5.0 million, now is a great time to plan! In addition to the increased estate tax exemption, the lifetime federal gift tax exemption has also been raised to \$5.0 million. This gives us an unprecedented opportunity to push some assets out of one’s taxable estate at today’s low asset valuations. These gifts should not, however, be made directly to children or grandchildren to avoid exposing the assets to their potential liabilities (divorces) or mismanagement. Instead, the assets or fractional shares thereof, can be transferred into a family trust. An added benefit is that all of the post-transfer growth and appreciation will occur free of any future transfer taxes.

Ann Margaret Carrozza is a practicing Elder Law and Estate Planning Attorney who also served as a New York State Assemblywoman. During her fourteen (14) year tenure in the legislature, she authored dozens of bills designed to pro-

tect seniors against consumer fraud and to expand access to quality long term care.

Ann Margaret Carrozza is an executive member of the N.Y.S. Bar Association, Elder Law section, the National Academy of Elder Law Attorneys, the Queens County Bar Association, and is a member of the Long Island Alzheimer’s Foundation legal advisory board. She serves as estate planning and elder law counsel to numerous organizations. She is rated as preeminent by Martindale-Hubbell.

Ann Margaret Carrozza received her Juris Doctor from Hofstra University School of Law where she served on Law Review and was on the Dean’s List.

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

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

Continued From Page 2

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

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

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

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

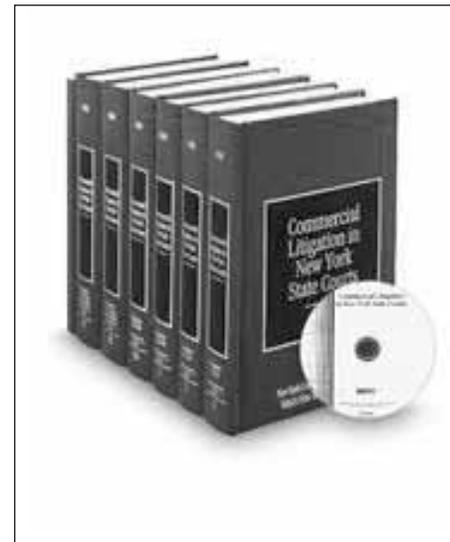
Exactly how to pursue an appeal to the Court of Appeals is addressed by retired Court of Appeals Judge George Bundy Smith. And how about avoiding litigation itself? This treatise gives chapters on these questions and on crisis management, streamlining litigation, litigation management and litigation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

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

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

This treatise is remarkably up-to-date. There is a chapter on e-commerce and information technology litigation.

Judge Victoria A. Graffeo of the New York State Court of Appeals adds a chapter on CPLR Article 78 litigation.



Commercial Real Estate litigation is addressed by Justice Alan D. Scheinkman of the Westchester County Supreme Court. Justice Scheinkman's co-authors are attorneys Vincent J. Syracuse, David A. Pellegrino, Paul D. Sarkozi and Lance Croffoot-Suede.

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

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

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

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

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

Diana C. Gianturco

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Impact of Two Court Decisions on Parking Violations Bureau

Continued From Page 3

dismissed the summons, and vacated the fine, holding PVB lacked personal jurisdiction over Mr. Ko. Ko, at 608-609, states:

“[N]o provision is made in the Vehicle and Traffic Law for service of a summons by mail. Moreover, no exception is included in VTL §238(2) for vehicle operators who ‘drive off’ before a summons may be completed and properly served. The statute clearly provides that service may be completed only by one of two means—by personal delivery or by affixing the summons to the car.” The Ko decision was not appealed.

PVB

PVB has not failed to comply with Meyers or Ko vis-a-vis the discrete summonses involved in those cases. However, PVB did not apply Meyers and is not applying Ko to similar cases not having litigation. Until about Aug. 27, 2010, despite Ahl and Meyers, PVB continued to enforce its pay-to-appeal rule, namely, 19 RCNY 39-12 (b) (3), by denying appeals to people convicted of parking or red-light camera violations¹¹ who do not comply with that rule.¹²

PVB does not openly reject Ko; however, on June 22, 2010, PVB’s Chief ALJ e-mailed PVB’s ALJs a memorandum to her from the Legal Affairs Division of the NYC Department of Finance.¹³ That one-page memorandum, which cites no authority, states:

“While the Ko decision may be relied upon by other judges, it is not binding precedent unless and until an Appellate

Court rules similarly.”

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

“In the Ko case, no such record was developed regarding the circumstances of the drive off.”¹⁴

The memorandum is saying that driving off to evade process may estop the motorist from challenging the lack of process service. PVB does not mail parking summonses.¹⁵ PVB mails statutory prejudgment notices, which are not parking summonses¹⁶, may be mailed only after service of process has been completed and the time for responding to the summons has expired¹⁷, and do not purport to be summonses. The Ko decision, before rejecting mailing as process service, stated PVB mailed Mr. Ko a parking summons¹⁸; however, no summons was mailed. In the Ko case PVB claimed notices of the summons were mailed.¹⁹ The Ko record contained no evidence or claim an original or copy of the summons was mailed.

Even assuming PVB mails the motorist a parking summons and has authority to do so²⁰, the estoppel referred to in the memorandum will not support refusing to follow Ko (service by mail not permitted even in

drive off cases), not even if an ALJ finds the motorist drove off to evade process. There can be no such estoppel without fraud or misrepresentation by defendant.²¹ Since under the applicable statute process service may be accomplished only by personal delivery or by affixing the summons to the vehicle,²² driving off cannot mislead a process server into reasonably believing the statute authorizes process service by mailing. Therefore, driving off to evade process will not estop a motorist from denying mailing is process service.²³ “[I]t is the instinct of our jurisprudence to extend court principles to administrative or quasi-judicial hearings insofar as they may be adapted to such procedures.”²⁴

Meyers and Ko serve to collaterally estop PVB, as well as those in privity with PVB,²⁵ from re-litigating the issues of fact or law,²⁶ they necessarily decided against PVB,²⁷ even if the party invoking collateral estoppel were not a party in Meyers or Ko,²⁸ the tribunals or causes of action were different,²⁹ or PVB’s appeal in Meyers were pending.³⁰

With Meyers and Ko involving governmental operations, “on the granting of any relief to the petitioners comparable relief would adequately flow to others similarly situated under principles of stare decisis.”³¹ Judges have an institutional obligation to respect stare decisis and abide by that doctrine.³² Stare decisis contributes practicality to the decision-making process, stability to the law, and legitimacy to decisions.³³ It teaches that a point of law decided by a court will, in subsequent cases presenting the same legal problem, generally be followed³⁴ in the same court or in other courts of equal or lower rank.³⁵

PVB issues typically evade court review. Most PVB respondents, who appear pro se, are unaware of those issues, and the small sums in controversy in their individual cases (though huge cumulatively) make suing PVB unaffordable or impractical for them. For those who do take PVB to court, PVB may be able to get their cases dismissed as moot by dismissing tickets and refunding fines and penalties after the onset of litigation,³⁶ without even paying court costs or disbursements though court fees alone may far exceed the amount of the fines and penalties refunded by PVB. When motorists do win Supreme Court decisions against PVB, PVB will comply with those decisions, but, as with Meyers and Ko, may refuse to apply those decisions to similar cases not having litigation.

¹Dennis Boshnack is an attorney in New York. He is the attorney of record for the petitioners in the Meyers and Ko Article 78 proceedings discussed in this article, and is a former PVB Administrative Law Judge. The views in this article are his own. This article updates

and expands his article published in the New York Law Journal on September 1, 2010.

² See Mayor’s Management Report Fiscal 2010, at 182 (September 2010).

³ VTL 242 (3) states: “A party aggrieved by the final determination of a Hearing Examiner may obtain a review thereof by serving, either personally in writing or by certified or registered mail, return receipt requested, upon the bureau, within thirty days of entry of such final determination, a notice of appeal setting forth the reasons why the final determination should be reversed or modified.”

⁴ VTL 242 (5) states: “The service of a notice of appeal shall not stay the enforcement of a judgment upon the determination appealed from unless the appellant shall have posted a bond in the amount of such determination, at the time of, or before the service of such notice of appeal unless the enforcement of such judgment shall have been stayed by the appeals board.”

⁵ VTL 242, which makes 19 RCNY 39-12 (b) (3) unenforceable (Meyers; see Ahl v Howard, 12 Misc 3d 870, supra), applies to parking violations and red-light camera violations alike (VTL 235 [1], 242, 1111-a [h]; NYC Admin Code 19-210[f]).

⁶ See All Am. Crane Serv. Inc. v Oman, M-3228, Index No. 108032/08, filed on June 26, 2008 (1st Dept 2008) (discussed in Siegel, McKinney’s Cons Laws of NY, Book 7B, CPLR C5519:2, 2010 Pocket Part, at 177-178); Matter of Pokoik v Department of Health Servs. of County of Suffolk, 220 AD2d 13 (2d Dept 1996); Matter of Pickerell v Town of Huntington, 219 AD2d 24 (2d Dept 1996); Schwartz v New York City Housing Auth., 219 AD2d 47 (2d Dept 1996); State of New York v Town of Haverstraw, 219 AD2d 64 (2d Dept 1996); Ocasio v City of New York, 13 Misc 3d 161 (Sup Ct, Bx County 2006); McLaughlin v Hernandez, 4 Misc 3d 964, 969 n.3 (Sup Ct, NY County 2004).

⁷ VTL 238 (2) states: “A notice of violation shall be served personally upon the operator of a motor vehicle who is present at the time of service . . . [or] if the operator is not present, by affixing such notice to said vehicle in a conspicuous place.”

⁸ Ko at 607.

⁹ Mar 26, 2009, Georges affirmation in support of cross-motion to dismiss petition, at ¶¶ 25, 27, 30.

¹⁰ Does a tribunal prejudice the administration of justice by dismissing a parking violation to moot an Article 78 proceeding against the tribunal?

¹¹ VTL 242, which makes 19 RCNY 39-12 (b) (3) unenforceable (Meyers; see Ahl v Howard, 12 Misc 3d 870, supra), applies to parking violations and red-light camera violations alike (VTL 235 [1], 242, 1111-a [h]; NYC Admin Code 19-210[f]).

¹² While no longer enforcing its pay-to-appeal rule, PVB continues to inform the public, “You must pay the full amount imposed at the hearing before you will be allowed to appeal the hearing decision” (NYC Dept of Finance, Application for Appeal, at 2, available at <http://www.nyc.gov/html/dof/html/pdf/adjudication/pvo-0100.pdf> [accessed Oct. 12, 2010]; see 19 RCNY 39-12 (b) (3); NYC Dept of Finance, Appealing a Hearing Decision, http://www.nyc.gov/html/dof/html/parking/park_tickets_appeal.shtml [accessed Oct. 12, 2010]; id., Appeal a Red Light Camera Notice of Liability Hearing, http://www.nyc.gov/html/dof/html/parking/park_red_light_appeal.shtml [accessed Oct. 12, 2010]; id., Red Light Violation Monitoring Program - Notice of Appeal, at 2, available at <http://www.nyc.gov/html/dof/html/pdf/redappel.pdf> [accessed Oct. 12, 2010].

¹³ Memorandum from Beth Goldman, General Counsel, and Ellen Young, Director, Parking Division,

Continued On Page 9

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Both Sutphin and Queens,
And the battle to prevail
(Of course only by acceptable means)

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

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

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

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

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

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

I miss our Judges
Queens has a good bench
How often I'd comment
"That Judge is a mensch!"

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

Robert E. Sparrow
March, 2011



Robert Sparrow

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Impact of Two Court Decisions On Parking Violations Bureau

Continued From Page 8

to Chief ALJ Mary Gotsopoulos, dated June 22, 2010, re: Article 78 Decision by Justice Alice Schlesinger-Ko Case.

¹⁴ While the memorandum may be suggesting otherwise, "the burden of proving jurisdiction is upon the party asserting it" (*Green Point Sav. Bank v. Taylor*, 92 AD2d 910, 910 [2d Dept 1983]).

¹⁵ PVB mails the front of the summons in response to a request for a summons copy.

¹⁶ *Ko* at 609. For example, parking summons may be issued by only designated officers (VTL 237 [9]), must be sworn to or affirmed (VTL 237 [9]), and must identify the plate designation, plate type, registration expiration date, make or model, and body type of the vehicle, or indicate that that information was not available (*Matter of Ryder Truck Rental v. Parking Violations Bur. of Transp. Admin. of City of N.Y.*, 62 NY2d 667 [1984]; *Matter of Wheels, Inc. v. Parking Violations Bur. of Dept. of Transp. of City of N.Y.*, 80 NY2d 1014 [1992]; VTL 238 [2], [2-a]). The statutory notices PVB mails (see VTL 235 [2] [a] [2], 241 [2]) do not meet any of those summons requirements, except as to plate designation and plate type.

¹⁷ *Ko* at 609; see VTL 235 (2) (a) (2), 241 (2).

¹⁸ *Ko* at 604, 608.

¹⁹ *Ko*, 2009 NYSlip Op 32804(U), n.2 & accompanying text; Verified Answer dated January 25, 2010, at ¶¶ 81, 92, 121.

²⁰ PVB's powers and duties (VTL 237) include hearing and determining charges of parking violations (VTL 237 [1]), entering and enforcing judgments, without court proceedings (VTL 237 [5]), and adopting rules and regulations that are not inconsistent with any applicable provision of law to carry out the purposes of VTL article 2-B, Adjudication of Parking Infractions (VTL 237 [3]), but do not appear to include issuing those charges (see VTL 237 [9]; NYC Charter 2903 [a] [14]) or serving parking summonses. An administrative agency has only those powers conferred by statute (*Abiele Contr. v. New York City School Constr. Auth.*, 91 NY2d 1, 10 [1997]; *Foy v. Schechter*, 1 NY2d 604, 612 [1956]; see *Finkelman v. Transportation Admin. Parking Violations Bur. of City of N.Y.*, 69 AD2d 806, 808 [2d Dept 1979] [PVB appeals board's decision violating lawful procedure "void as illegal ab initio"]), together with those powers required by necessary implication (*Matter of Beer Garden v. New York State*

Liq. Auth., 79 NY2d 266, 276[1992]).

²¹ See *Feinstein v. Bergner*, 48 NY2d 234 (1979); *Spath v. Zack*, 36 AD3d 410 (1st Dept 2007).

²² *Ko* at 28 Misc 3d 608-609; see VTL 235 (1), (2) (first paragraph), (2) (a) (1), 238 (2).

²³ Cf. *Feinstein* 48 NY2d 234, *supra*; *Spath v. Zack*, 36 AD3d 410, *supra*; *Guido v. Kovachev*, 125 AD2d 221 (1st Dept 1986) (process service falling short of statutory requirements, notwithstanding that defendant knowingly avoided process while having duty to submit to process service).

²⁴ *Matter of Jason B. v. Novello*, 12 NY3d 107, 113 (2009).

²⁵ See *Gramatan Home Invs. Corp. v. Lopez*, 46 NY2d 481, 486 (1979).

²⁶ See *id.* at 485.

²⁷ See *Kaufman v. Lilly & Co.*, 65 NY2d 449, 455-456 (1985).

²⁸ See *Gilberg v. Barbieri*, 53 NY2d 285, 291 (1981).

²⁹ See *Parker v. Blauvelt Fire Co.*, 93 N.Y.2d 343 (1999).

³⁰ See *Samhammer v. Home Mut Ins.*, 120 AD2d 59, 64 (3d Dept 1986); *Siegel*, NY Prac § 444, at 752 (4th Ed). But compare *Northern Oil Co. v. Socony Mobile Oil Co.*, 368 F.2d 384, 387-388 (2d Cir 1966) (denying collateral-estoppel effect to order still under appeal, where execution of that order was automatically stayed by statute pending the time for filing and after filing the notice of appeal).

³¹ *Matter of Rivera v. Trimarco*, 36 NY 2d 747 (1975). But compare *Matter of Jewish Home & Infirmary of Rochester v. Commissioner of N.Y. State Dept. of Health*, 84 NY2d 252, 270 (1994) (dissenting opinion) (CPLR 5519 [a] [1] stay).

³² *People v. Damiano*, 87 NY2d 477, 489 (1996) (concurring opinion).

³³ *Id.* at 488-489.

³⁴ *Id.* at 488.

³⁵ *State v. Mellenberger*, 95 P.2d 709, 719-720 (Oregon 1939).

³⁶ *Matter of Silverstein v. Appeals Bd. of Parking Violations Bur.*, 100 AD2d 778 (1st Dept 1984). But see *Matter of Walker v. New York City*, N.Y. L.J., Sep 24, 1996, at 22, col 4 (Sup Ct, NY County 1996), affirmed, 262 AD2d 151 (1st Dept 1999); *Matter of Heisler v. Atlas*, 69 Misc 2d 911, 912 (Sup Ct, NY County 1972). See generally *Matter of Melinda D. [Claudia F.]*, 31 AD3d 24 (2d Dept 2006) (exception to mootness doctrine).

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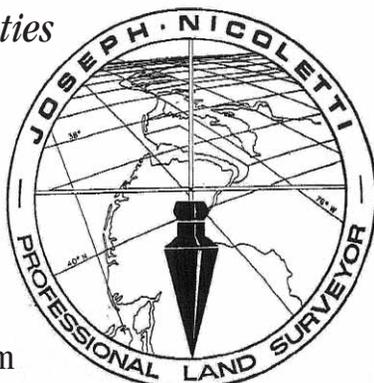
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THE CULTURE CORNER



THE 92ND STREET Y PRESENTED
THE NYC DEBUT OF IGUDESMAN & JOO

BY HOWARD L. WIEDER

Many years ago, I watched Victor Borge perform on television shows, his act combining classical music and hilarious comedy. Following in Borge's great tradition, two master musicians-performers-comedians have delighted millions of people around the globe with their zaniness combining greatness at classical music all mixed into non-stop comedians. The team of **IGUDESMAN & JOO**, consisting of **ALEKSEY IGUDESMAN** and **HYUNG KI JOO** made their NYC debut at the 92nd Street Y with their wonderful show "A LITTLE NIGHTMARE MUSIC."

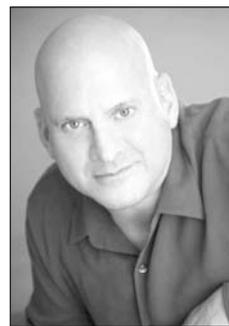
The show was delightful. It was, in fact, my best night in a theater during the 2011 year. The comedy was smart, sweeping, and rollicking. The show at the 92nd Street Y had been sold out for weeks before the March 30 performance. The performance ran for 2 hours, with one 15-minute intermission, and there was not a single moment that I was bored. They received a standing ovation, and they generously indulged the eager audience with encores of their magical comedic merriment.

Based on the standing room only crowd and the recep-

tion that **IGUDESMAN & JOO** received, I am sure that they can pack the Stern Auditorium of Carnegie Hall.

IGUDESMAN & JOO are two classical musicians who have taken the world by storm with their unique and hilarious theatrical shows, which combine comedy with classical music and popular culture. Their clips on www.YouTube.com, to date, have gathered over 20 million hits. I urge you to go to www.youtube.com to see some of their performances. Equally comfortable performing in classical concert halls or in stadiums of 18,000 people, **IGUDESMAN & JOO**'s dream is to make classical music accessible to a wider and younger audience. I & J made their debut in 2004 with their first groundbreaking show, "A LITTLE NIGHTMARE MUSIC." Since then, they have performed with major symphony orchestras around the world and at some of the world's most renowned stages and festivals.

For more information on Igudesman & Joo, visit their website at www.igudesmanandjoo.com. The biographies of **ALEKSEY IGUDESMAN** and **HYUNG KI JOO**, found at www.igudesmanandjoo.com will also keep you laughing. They plan to return to the New York City area in July, according to their web site.



Howard L. Wieder

THE FLEA THEATER INVITES YOU TO THE WORLD PREMIERE OF FUTURE ANXIETY

"**FUTURE ANXIETY**," written by Laurel Haines and directed by Jim Simpson, starring The Bats, the resident acting company of **THE FLEA**. Performances run April 15 May 26 at The Flea (41 White Street between Church and Broadway in Tribeca).

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

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

DuBoff (sound), David Prittie (graphics), Kate Sinclair Foster (props) and Michelle Kelleher (stage manager).

LAUREL HAINES's play *The Dialogues*, about the public's obsession with Princess Diana, has been produced in the U.S., Canada, Great Britain, and South Africa, and is published in *Women Playwrights: The Best Plays of 2003* (Smith and Kraus) and *Best Women's Monologues for the Millennium* (Applause Books). **FUTURE ANXIETY** was a finalist for the National New Play Network's Smith Prize. She has written book and lyrics for musicals

including *Stones of Wisdom*, a puppet musical for young people commissioned by First Stage Children's Theater in Milwaukee, WI, and *Beach Wars*, co authored by Nan Hoffman and Howard Pfeifer and presented at the Stages Festival 2006 in Chicago. Other plays include *Gun* in the Funnies (staged reading in Kitchen Dog Theatre's New Works Festival 2009), *Raw Footage* (Arizoni Award, Best Original Script 2000), and *Potatoes and Radio City* (Collaboration Sketchbook 2004 and 2005). **LAUREL HAINES** is a member of the Dramatists Guild.

THE FLEA THEATER, under Artistic Director **JIM SIMPSON** and Producing Director **CAROL OSTROW**, is one of New York's leading off Broadway companies. Winner of a Special Drama Desk Award for outstanding achievement, Obie Awards and an Otto for political theater, **THE FLEA** has presented nearly 100 plays and numerous dance and live music performances since its inception in 1996. Past productions include the premieres of Anne Nelson's *The Guys*; six plays by A.R. Gurney (*Post Mortem*, *O Jerusalem*, *Screenplay*, *Mrs. Farnsworth*, *A Light Lunch*, and *Office Hours*); Mac Wellman's *Cellophane* and *Two September*; Roger Rosenblatt's *Ashley Montana Goes Ashore in the Caicos... or What am I Doing Here?* and *The Oldsmobiles*; Elizabeth Swados's *JABU* and *Kaspar Hauser*; Karen Finley's *Return of the Chocolate Smear Woman*; Adam Rapp's *Bingo with the Indians*; Will Eno's *Oh, The Humanity* and *Other Exclamations*; *Dawn* by Thomas Bradshaw; *The Great Recession*, Jonathan Reynolds' *Girls in Trouble*, *Bathsheba Doran's Parents' Evening*, and *American Sexy* by Trista Baldwin.

HOWARD L. WIEDER is the writer of both "THE CULTURE CORNER" and the "BOOKS AT THE BAR" columns, appearing regularly in **THE QUEENS BAR BULLETIN**, and is **JUSTICE CHARLES J. MARKEY'S PRINCIPAL LAW CLERK** in *Supreme Court, Queens County, Long Island City, New York*.

SPEAKER'S BUREAU COMMITTEE REPORT

The Honorable Supreme Court Justice Daniel Lewis spoke at the Ebenezer Baptist Church in Flushing on 02/13/2011. The Topic was Family Law. The address took place in celebration of Black History Month.

The speech was well received on "Individual Constitutional Rights and Legalities" in the area of Family Law. On the same celebration of Black History Month, the Honorable William M. Erlbaum, Supreme Court Justice, Queens County, addressed the meeting.

The Honorable Darrell L. Gavrin, Justice of the Supreme Court, Queens County, gave a speaking engagement at the Social Security office on Jamaica Avenue in Jamaica, New York.

The program was held in honor of "Women's Month." The attending members of the Social Security office were very grateful for Justice Gavrin's fine presentation and remarks on legal topics that were affecting the audience of Social Security workers, as well as other legal topics.

The Honorable Supreme Court Justice Duane Hart was the guest speaker at Career Day at Public Junior High School 8, located in Jamaica, New York, on December 17, 2010.

Justice Duane Hart did an exemplary job as the speaker at Junior High School 8's Career Day.

The Bar Association thanks these Judges for taking their valuable time to address these groups who are neighbors of the community near the Courthouse.

Respectfully submitted,

Guy R. Vitacco, Sr.
Chair of Speaker's Bureau



Guy R. Vitacco, Sr.

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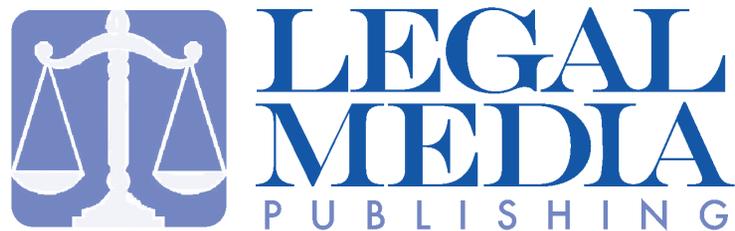
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