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Queens Bar Bulletin

Queens County Bar Association / 90-35 One Hundred Forty Eighth Street, Jamaica, NY 11435 / (718) 291-4500

Vol. 75 / No. 3 / December 2011

FAMILY LAW UPDATE - 2011

BY MICHAEL DIKMAN & DAVID DIKMAN

Last year (2010) we had several significant statutory enactments, discussed fully in last year's update. These included the long awaited "No Fault" Law (DRL § 170 [7]) favored by most legal groups addressing the subject, and a Temporary Maintenance Law (DRL § 236 B [5-a & 6-a]), which was criticized and objected to by most legal groups addressing that subject. Both took effect and were to apply to actions commenced on or after October 12, 2010. During the year 2011 there was only one momentous statutory development, discussed next, and one significant Court of Appeals decision, albeit not applicable to many cases. The 2010 statutes were too new for there to have been any Appellate Division guidelines or interpretations, although some Supreme Court decisions will be considered below.

David Dikman and Michael Dikman

THE "MARRIAGE EQUALITY ACT" and "ABILITY TO MARRY" LAW

Chapter 95 of the Laws of 2011, "The Marriage Equality Act," effective July 24, 2011, was intended to afford to same-sex couples the same access as others to "protections, responsibilities, rights, obligations and benefits of civil marriage." The law recognizes otherwise valid marriages, whether the parties are of the same or different sexes. All marriages are to be "treated equally in all respects under the law." This is the stated legislative intent, *whether or not* the act specifically changes prior provisions or laws that would preserve "any legal distinction between same-sex couples and different-sex couples with respect to marriage." Thus, any prior laws that utilize gender specific terms in connection with parties to a marriage are to be construed in a gender-neutral fashion to effectuate the intent of this law. Specifically, new sections 10-a and 10-b were added to the Domestic Relations Law.

§ 10-a merely re-states the general intent of the legislature set forth above, including the requirement to construe all otherwise conflicting provisions of law in a gender-neutral fashion.

§ 10-b exempted certain benevolent order or religious corporations, which are distinctly private, from the application of this law.

DRL § 13, relative to marriage licenses, was amended to preclude denial of a license because the parties are "of the same or a different sex." (When was a license last *denied* because the applicants were of a different sex?)

DRL § 11 (1) was amended by adding new ¶ 1-a, so as not to require most clergymen to perform marriage ceremonies for same-sex couples.

Chapter 96 of the Laws of 2011, subsequently passed in the legislature, but approved simultaneously and effective on the same date as Chapter 95 (July 24, 2011), amended the initial enactment by repealing the new DRL § 10-b (re: clergymen) and expanding it to religious entities and benevolent corporations, to include not only the performance of marriage ceremonies. Such entities or employees are also exempt from having to provide services, accommodations, facilities, goods or privileges in connection with any marriage, and can still discriminate re: employment, sales, admission or housing if calculated to promote religious principles.

Also, the new DRL § 11 (1) (1-a) was amended to add that refusal to solemnize any marriage will not only fail to create a civil claim, but also will not result in any state or local government actions or penalties against the clergyman or ministry.

The new law(s) clearly evidence an intent to have same-sex marriages treated the same as all others for all purposes under New York State Law (presumably in connection with divorce and other Family Law actions, and estates law as well). However, as time goes on we will

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Three Lawyers

BY FRITZ WEINSCHENK

Fritz Weinschenk

In 1932, there were 9,208 practicing lawyers in Germany, of whom about 5,000 were either Jewish or, in the perverted Nazi terminology, "non-Aryan" - persons either with Jewish ancestors or Jewish spouses. After his assumption of power in February, 1933, Hitler, whose fanatical hatred of lawyers in general culminated in his special fury against Jewish lawyers, instructed his puppet legislature to disbar all Jewish lawyers in April 1933. Although this measure could not be uniformly carried out due to the passive resistance of conservative elements in the judicial system, by November 1938, following the "Kristallnacht" progrom – the well-known burning of synagogues, destruction of Jewish businesses and arrest of thousands of Jews, all still practicing Jewish lawyers were disbarred without exception. Among the thousands who desperately tried to escape the Third Reich to any and all available safe havens were many hundreds of Jewish lawyers who had been deprived of their profession, their livelihood, and their future. Those who were lucky enough to escape survived, and almost all of those who stayed perished in the death camps.

Imagine, if you will, that your years of study, your ability to earn a living and raise a family, your standing in the community, and your devotion to the law and your clients were taken away from you overnight for no other reason than the faith into which you were born. Still, bare survival was better than death in a concentration camp.

In the middle and late thirties, New York had become a haven for European refugees of many callings: physicians, scientists, businessmen or artists whose skills were internationally uniform, were able to assimilate without too much difficulty.

Not so with lawyers. The vast differences between European civil and Anglo-Saxon common law, the status and practice of the legal profession, the totally different language, and the not exactly "open-arm" reception by the American legal establishment afraid of fresh competition in the depression years made it extremely difficult for European jurists to follow their profession in the new world. Many gave up and entered into career changes. Nevertheless,

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Recent Developments in our Appellate Courts

Richard Gutierrez, J. Gardiner Pieper and Spiros Tsimbinos at a seminar held on October 5, 2011 at QCBA. More photos on pages 6-7.

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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.

2012 Winter CLE Seminar & Event Listing

January 2012

Monday,	January 16	Martin Luther King, Jr. Day - Office Closed

February 2012

Monday,	February 13	Observation of Lincoln's Birthday - Office Closed
Monday,	February 20	President's Day - Office Closed
Tuesday,	February 21	Depositions-From the Plaintiff's and Defendant's Point of View

March 2012

Tuesday,	March 13	Commercial Leasing
Wednesday,	March 14	Basic Criminal Law - Pt 1
Wednesday,	March 21	Basic Criminal Law - Pt 2
Saturday,	March 31	ARTtorneys Art Show at Queens College 3:00-6:00 pm

April 2012

Friday,	April 6	Good Friday - Office Closed
Wednesday,	April 18	Equitable Distribution Update

May 2012

Thursday,	May 3	Annual Dinner & Installation of Officers
Thursday,	May 17	Matrimonial Law CLE

CLE Dates to be Announced

Elder Law
Insurance
Supreme Court & Torts Section

NEW MEMBERS

Daniela E. Bartolo
Maria Bradley
Daniel M. Branower
Kenisha Calliste
Brionna L. Denby
Akilah Folami
Priscilla Gabella
Carol Gardner
Benjamin Goldman
Emilio Gonzalez
Joseph Hendrie
Joseph E. Justiz
Modjgan Cohanim Lancman
Adam S. Meiskin
Stefanie Ann Miller
Anthony S. Park
Bashu Dev Phulara
Rakesh Rampertab
Spencer L. Reames
Tania Redman
Aigul E. Sarvarova
Michael D. Siff
Karine K. Wang

Need help with a case?
Involved with a matter in which you are unfamiliar?
Need some hearing/trial experience?

Call us at: **The Q.C.B.A. Mentor Committee's Mentor Volunteer Program for free assistance!! 718-291-4500 or email us at: info@qcba.org**

We answer questions for free.....
We offer assistance in practice and procedures.....
We allow you to second seat us or join us for a day to gain practical trial/courtroom/law office experience....
We cover all areas of practice.....

Who are we???

The QCBA Mentor Committee's Mentor Volunteer Program.
Contact us at 718-291-4500 or info@qcba.org.

Publisher:
Long Islander Newspapers, LLC. under the auspices of Queens County Bar Association. Queens Bar Bulletin is published monthly from October to May.
Advertising Offices:
Long Islander Newspapers,
149 Main Street, Huntington,
New York (631) 427-7000

Send letters and editorial copy to:
Queens Bar Bulletin, 90-35 148th Street,
Jamaica, New York 11435

Editor's Note: Articles appearing in the Queens Bar Bulletin represent the views of the respective authors and do not necessarily carry the endorsement of the Association, the Board of Managers, or the Editorial Board of the Queens Bar Bulletin.

"Queens Bar Bulletin"
(USPS Number: 252-520) is published monthly except June, July, August and September by Long Islander Newspapers, LLC., 149 Main Street, Huntington, NY 11743, under the auspices of the Queens County Bar Association. Entered as periodical postage paid at the Post Office at Jamaica, New York and additional mailing offices under the Act of Congress. Postmaster send address changes to the Queens County Bar Association, 90-35 148th Street, Jamaica, NY 11435.

President's Message

I hope when you read this article you and your loved ones enjoyed a wonderful holiday season together.

Before we say goodbye to 2011, let me highlight the special events that occurred since my last message.

On November 28, 2011, the Honorable Rudolph E. Greco, Jr. was installed as a Justice of the Supreme Court, Queens County. On behalf of the QCBA, I congratulate you on this tremendous accomplishment.

A little more than a week later, on December 6, 2011, I had the pleasure to speak at the installation of Justice Ira Margulis. Again, on behalf of the QCBA, congratulations on this wonderful accomplishment.

Collectively, your elevation to Supreme Court is a recognition of your ability, dedication and commitment to the citizens of Queens County that justice will be fairly administered in your court rooms. Good Luck and may God bless you both, as you embark on the next phase of your legal career

From the solemnity of the installation of Justice Greco and Justice Margulis, the festivities of December continued.

On December 15, 2011 the QCBA cosponsored the Annual Holiday Party at the Douglaston Manor. It was well attended and lots of fun. In my unbiased opinion, it was probably one of the best, if not the best holiday bash I have ever attended. About 265 people attended and the night was filled with good food, laughter, music and dancing.

Richard Michael Gutierrez

Make sure you save the date for the next year's holiday party. Again it will be held at the Douglaston Manor, on December 6, 2012.

I want to thank all the members of the Holiday Party committee for making this event a truly memorable one. Your hard work and commitment is greatly appreciated. In particular, I want to acknowledge George E. Nicholas, Jay M. Abrahams and Diana Christine Gianturco for their efforts in making the evening a success.

As we say farewell to 2011 and welcome the New Year, I want to give you a preview of some changes to expect in 2012 and an update on the imposition of penalties and interest for the late filing of the Real Property Transfer Tax Return, upon referees.

Beginning in January 2012, unless there are some last minute problems, there will be a fourth matrimonial part. This bullet part will be assigned trial ready cases from existing parts. The exact location of this bullet part and the Judge who will preside over it, has not been determined yet.

In addition, Referee Elizabeth Anderson will continue to try matrimonial cases and Referee Elizabeth Yablon will be assigned some matters as well. Also every effort will be made to schedule preliminary conferences in a shorter time frame than presently exists.

I want to thank Justice Jeremy Weinstein for meeting with members of the Board of Managers, listening to the problems family court practitioners are experiencing in the matrimonial forum and addressing their concerns swiftly.

Furthermore, at this meeting a variety of other matters affecting matrimonial practice were discussed with Justice Weinstein and he agreed to try and resolve them.

Since May 2011, referees appointed by the court to conduct foreclosure sales have been receiving letters from the New York City Department of Finance, demanding from them the payment of penalties and interest for the late filing of Real Property Transfer Tax Returns.

Although, none of these referees caused the delay in the filing of the transfer tax return, their involvement in the transfer of the property, obligates them as grantors to pay interest and penalties.

Under section 11-2102 of the Administrative Code, referees are charged with paying the Real Property Transfer Tax (RPTT) after a property, over which the referee has been given responsibility, is transferred. Section 11-2015 of the Administrative Code requires the grantor which includes referees, to file a return within 30 days after the delivery of the deed by the referee. Failure to file a return will result in interest and penalties being imposed.

Fortunately, the QCBA and other city bar associations were able to convince the Department of Finance, to suspend enforcement of penalties and interest previously charged to referees in 2011.

However the fight is not over. As of January 1, 2012, referees will be responsible for the payment of any penalties and interest imposed for the late filing of tax returns, unless the Department of Finance reconsiders its position or the law is changed.

I strongly suggest that all court appointed referees contact their local legislator and seek their assistance in changing the law.

Finally, I wish everyone a healthy, happy and prosperous New Year.

Richard M. Gutierrez
President

Tower of Babble

BY BARRY SEIDEL

Barry Seidel

I've asked the questions at many depositions. I approach this with purpose, trying to obtain information, clarify the facts, finding out what happened and what did not happen. It's a challenge, bordering on fun. However, taking a deposition through an interpreter is not as much fun.

I have asked questions through interpreters in Spanish, French, Italian, Russian, Greek, Polish, Chinese (Mandarin, Cantonese, Fukanese, Taiwanese), Japanese, Portuguese, Hindi, Urdu, Bengali, Arabic, Hebrew, Creole, Tagalog (a Filipino dialect), and ASL (American Sign Language). I never had German, either because German's all speak English or they don't have too many car accidents. I never took a deposition with a Yiddish interpreter, but I did see one used in court (Brooklyn, of course). Depositions with interpreters share common problems. Here are a few:

1. Some questions do not interpret well. In a car accident case, many lawyers like to start with this question "Did there come a time when the vehicle you were driving came into contact with another vehicle". Lawyers like this question because it establishes certain things.....there WAS an accident, with CONTACT, this witness was there, and there was another vehicle involved. However, through an interpreter it causes more problems than it solves. It's compound, confusing, and doesn't translate well. I asked five different Spanish interpreters to translate this question, so I could listen to it with my high school Spanish background. They interpreted the question five different ways. One thing about this question IT'S consistent. When you ask a Spanish speaking witness, through an interpreter, the question "Did there come a time when the vehicle you were driving came into contact with another vehicle", the answer is always the same....."QUE???"

So you have the interpreter ask the question again, and the witness says "The accident happened at 7 o'clock." or "You mean was I in an accident?" or "QUE??????"

2. Sometimes witnesses want an interpreter, but they actually speak English pretty well. If they understand your question they answer in English. If they don't understand the question, or, if they don't like the question, they wait for the interpreter. I don't let witnesses do this. It's all or nothing. Either no interpreter or I want the interpreter to do a literal translation of every question and answer. No alternating allowed.

3. A related problem is when you ask a detailed question, the interpreter interprets it, the witness gives a long response in Urdu, and the interpreter translates it as "Yes". Sitting there, you know the interpreter and the witness have had a dialogue about the question, and the interpreter has decided to "paraphrase" an answer. If this happens, I state on the record what has just occurred, then ask the reporter to read back my question and ask the interpreter to do a literal interpretation of the question and answer. If they don't do it, I advise opposing counsel that if this is not corrected I am busting the deposition. It has happened.

4. Sometimes the interpreter is just not great at the particular language. They may have the credentials to do both Mandarin and Cantonese, but they are native to Mandarin and have learned Cantonese. What do you do when they just don't know the word? You see them struggling and they don't know how to say "windshield wiper" in Cantonese. So they try some combination of words like "car glass cleaner" and the witness says the Cantonese equivalent of "Que?" Then the interpreter tries the Mandarin word for windshield wiper, and now the witness is mad at the interpreter and says nothing. Finally, the interpreter translates your question in Cantonese, but when he comes to "windshield wiper" he says "windshield wiper", and the witness says "Ohhhh, "windshield wiper"....and answers the question.

5. Sometimes, when questioning an English speaking witness, you want to call in an interpreter who speaks "Stupidese", but that is a topic for another day.

EDITOR'S NOTE

E-Bulletin Board

BY PAUL E. KERSON

E-mail has taken over our lives and our law practices. Clients want to send you e-mails and attachments all the time, sometimes every day, or even more than once a day. You could easily spend your whole day, each day, responding.

Is this practicing law?

Fundamental to the practice of law is the promise of confidentiality. The client comes in to reveal the most intimate and private details of the dispute with his or her sibling, business partner or spouse. The client often has numerous crimes to reveal – tax evasion, immigration fraud, two sets of business records, false business records, non-existent business records, unlawful gun possession and the like.

Paul E. Kerson

If you send and receive 25 e-mails a day, that comes to 125 e-mails in a five day work week. This is a conservative estimate. In a 50 week work year, this comes to 6,250 e-mails a year.

What are the odds that every one of these 6,250 e-mails went to the right place? What are the odds that no one forwarded at least one of these e-mails to the wrong place?

What happens when a client's revealing e-mail and attachments go to an adversary?

The odds are 100% that a mistake will be made at least once a year, and probably more often than that.

What are the devastating consequences if a client's most private revelations wind up in the hands of an adversary?

How does a good lawyer avoid the complete mess that e-mail has created in a proud profession that previously at least tried to keep every client's confidences?

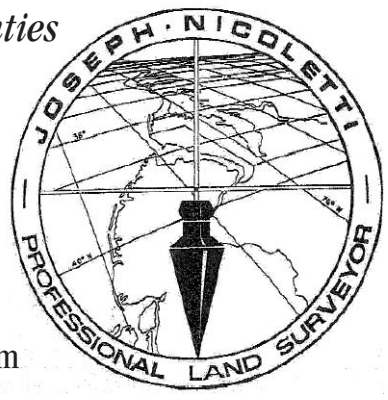
Solution: Think of e-mail as e-bulletin board. If you would be comfortable posting a proposed e-mail on the bulletin board at the entrance to the Courthouse, by all means use e-mail. For Bar Association notices, CLE courses, court dates, and appointment confirmations, e-mail is a wonderful invention.

But if there is anything private at all in the proposed e-mail, use fax, or FedEx or U.S. Mail instead. Case strategy, financial information and drafts that contain sensitive information (such as trade secrets) all must be kept off the Courthouse bulletin board, and thus off e-mail.

The nonsensical disclaimers that appear on some lawyers' e-mails are exactly that – nonsense. If an e-mail falls into the wrong hands, no disclaimer will stop the profound embarrassment that comes from the client's most private information winding up in a place where the client can be substantially harmed.

Explain all this to the client on Day #1, when you first meet them. If they say they don't care because they use e-mail all the time, be even more careful in your dealings with them. This means they will forward any e-mail advice you give them to someone else who may use said advice under different facts and circumstances calling for very different advice. And guess who will be held responsible under these circumstances?

Special Hint – It will not be the client, Microsoft, Google, Yahoo or AOL.



The Bobbit Case Revival

Arnold H. Ragano

Somnolent he lay in drowsy state
In reveries ensconced;
Suspicious not as to his fate
In bestial fury then she pounced.

His consort with a cutting blade
Struck with fiendish gleam in eye;
By this coup for womankind she laid
a baleful precedent we must decry.

The spurting blood seemed like a flood;
The victim screamed with pain,
The stump remained, it was a dud,
But soon was crowned with fame

Before this gory foul event
Michelangelo's David excelled in name;
This ignominious blow had rent
Famed David's claim to eternal fame.

The news heralded throughout the earth
Struck a tuneful chord in women's hearts.
Signaling a lusty new rebirth
Of female strength in macho parts.

She flung the appendage in disdain
Into the countryside.
What of the victim's abject pain?
His loss of virile pride?

Safe not we mortal men can sleep
Near venomous vengeful wives who creep
And excise men's pride without aside
And cause them thus to weep.

Arnold H. Ragano, Esq.

Law Office Anecdotes

Bob Sparrow

To a busy law office
Where cases widely range,
Comes a variety of clients
Some normal, many strange.

And every so often
I'm impelled to make note
of the intriguing, bizarre,
Or amusing anecdote.

She settled across my desk
Appearing pleasingly plump -
But to take on her case,
My practice would be in a slump.

Her luggage was lost
By the airline - a disgrace -
And she plaintively asked me,
"Do I have a SOOT-CASE?"

The next client seen
Was a sad one, indeed:
He'd shot his wife's lover
Now, how should be plead?

"What's his condition?" asked I,
"You shot him up close."
"He's not dead," he lamented,
"He's only CROMATOSE!"

Then, torts did raise
It's litigious head -
This rear - ended lady
Fresh from hospital bed -

Before signing a retainer
She wanted my assurance
That I was expert at handling
"COLLUSION INSURANCE."

But, best of all
Was the self-styled "lawyer"
Who wanted to sue
His former employer.

He's studied the law books -
Knew of venue and extradition -
But betrayed himself when he asked,
"Has this Court JEWISHDICTION?"

Robert E. Sparrow, Esq.

Three Lawyers

Continued From Page 1

quite a number successfully overcame all these obstacles and gained admission to the Bar.

I myself, a teenager at the time, was fortunate in reaching the United States with my family in 1935. I completed high school and college in New York and served in the U.S. Army during World War II, seeing action both in Europe and the Pacific. After spending four years among the ruins of a defeated Germany as a special agent of the U.S. Counter Intelligence Corps chasing Nazis, East German spies and war criminals, I returned and studied law under the G.I. Bill. After my admission to the New York Bar in 1953 I soon became active in organizations dealing with the consequences of the Holocaust. As the youngest among the aging members of the "American Association of European Jurists", an organization composed of German-speaking refugee lawyers, judges and law professors, I – not even a former European jurist, but tolerated as a sort of trainee – became the coffee-bringer, minute-keeper, correspondence secretary, and all-around gofer to the organization, which held regular meetings in the Sheridan Plaza Hotel on Seventh Avenue, discussing vital legal issues such as ongoing legislation planned in the new Germany seeking to alleviate the suffering of Holocaust survivors and the restoration of stolen property. I listened to the words of my elders with avid interest.

A considerable number of those refugee jurists who were able to bridge the gap became not only successful, but outstanding. The list includes, just as an example, Albert Ehrenzweig, who became a famous authority on the Conflict of laws at Harvard, Hans J. Frank, of the law firm of Fried Frank Harris & Shriver, who came to represent important German industries, Rudolf Schlesinger, who taught comparative law at Cornell, Stefan Riesenfeld, a noted authority on international law, and many others.

In the course of time I met quite a number of the older generation, now all but gone. However, as fate would have it, out of the many names and faces there are three to whom I became closer.

Physicians do not often form lasting relationships with the thousands of patients and hundreds of colleagues they meet – and pass. Lawyers are somewhat more prone to form closer relationships with long-time clients and fellow lawyers. For the most part, however, professionals and those who need them are "ships that pass in the night."

For reasons I can only guess at, the friendship between those three and myself, all of them ten or more years older, became a staple of my daily life.

Curt C. Silberman, tall, gregarious and invariably friendly and cheerful, was born in Wuerzburg, a small town not far from Frankfurt, on May 28, 1908. He achieved his doctorate in 1931. After his "disbarment" he fled to the United States in 1938 and settled in New Jersey, studied common law at Rutgers University and was admitted to the New Jersey Bar in 1948. Soon, Jewish refugees in New Jersey who needed help with their claims against Germany as well as German commercial enterprises which sought to establish themselves in New Jersey invariably ended at his doorstep. His manners, his keen intelligence, and his understanding of people soon established him as a prominent member of the New Jersey Bar.

Then there was Ernest C. Stiefel, or, anglicized, Steefel. A remarkable man, not tall, but imposing, he was born in Mannheim on October 29, 1907. He earned his German doctorate at an unusually early age. In 1936 he fled from Germany to France, where he obtained a law degree from the University of Paris and became an "avocet." When the Germans overran France, he managed to flee to England, where he became a member of the Middle Temple in London. He finally made his way to New York, where, (in the words of his executor), all his degrees and qualifications served him to become a dishwasher. After study at New York Law School, he was admitted to the New York Bar in 1944. He was a rare jurist: admitted in four jurisdictions. After his admission his rise was meteoric. He joined the world-famous Coudert Brothers firm, (later it became Baker and McKenzie). After the war, through his re-established German connections, he acted as a valued rainmaker as well as a specialist for the firm's European clients. He published a number of books and articles in both German and English and became not only an advisor to the U.S. government, but also a leader in the cause of Holocaust survivors.

The last but not least of the trio was Otto Walter, born on July 12, 1907 in the small town of Hof, in upper Bavaria. Otto had become a member of the bar of Munich, but fled to the USA in 1936. Like most other refugees, he struggled hard, eking out a living as a bookkeeper and accountant, filling out tax returns and restitution claims for his fellow refugees, all the while studying law and American accounting practices. He became a certified public accountant after 1945 and passed the New York Bar in 1955. From then on, like the other two , his rise was steep: he became a sought-out expert on international taxation, wrote treatises and articles, both in German and English, on vital taxation and legal topics, and joined with younger lawyers to form the law firm of Walter, Conston, Shurtman, and Partners, whose growth in the sixties, seventies and eighties was phenomenal. He, too, was deeply involved in helping Jewish survivors of Nazi –persecution.

I had '"lunch" with Ernst Stiefel about once a month in his office in the palatial 42nd Street Suite of the Coudert firm. For these "lunches" I was asked to bring tongue sandwiches with pickles from a deli on Sixth Avenue, around the corner from my own office. Otto Walter frequently invited me for lunch at a Chinese place around the corner from the Walter Conston Office on 32nd Street and Park Avenue South. Both Otto and Ernest were hotly competitive and –knowing of my friendship with the other – skillfully used me as "informer." Thus, Ernest would ask me "innocently:" "Walter must have an enormous overhead," while Otto commented:" Stiefel must be getting all his German law books free of charge from his client, that XYZ Publisher…" searching for assent or dissent in my facial expression. I met Curt Silverman regularly at the meetings of the "American Federation of Jews from Central Europe," an important voice of the German-speaking émigré community of which he was a long-time president, and to which I ultimately became his successor. He also introduced me to the "Council of Jews from Germany" an international organization which held a seat on the board of the Conference on Jewish Material Claims against Germany, to which I became and still am a member of the board and finally counsel.

Ernest and Curt always spoke German to me, Otto never. When Ernest obtained the title of "professor" from New York Law School, Otto did not rest until he, too, was endowed with that title. (The "Professor"

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PHOTO CORNER

Recent Developments in our Appellate Courts October 5, 2011

Attendees at Recent Significant Decisions from our Highest Appellate Courts.

Dominic Villoni, Hon. Robert Nahman, George Nashak and Hon. Allen Beldock.

Hon. Bill Erlbaum, Hon. Leslie Leach, Richard Gutierrez, Hon. Dan Lewis and Hon. George Heymann.

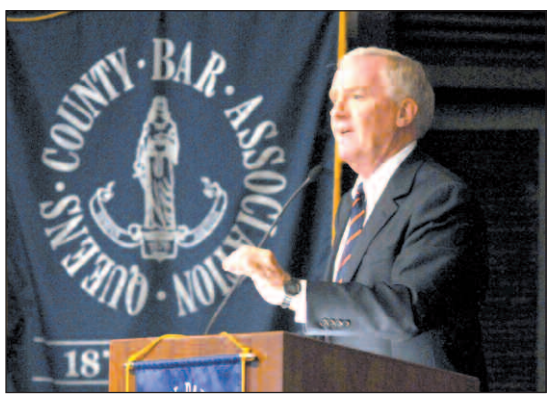
Hon. Leslie Leach and David Cohen.

Hon. Seymour Boyers, Hon. Joseph Golia and George Nashak.

Hon. Joseph Golia, Hon. Bernice Siegal and Hon. James Golia.

Hon. Seymour Boyers, Spiros Tsimbinos and Jerome Plotner.

Jay Abrahams, Hon. George Heymann, Mona Haas and Michael Mongelli.



J. Gardiner Pieper speaking about Civil cases from the NY Court of Appeals.

Members at end of lecture.

Photos by Walter Karling

PHOTO CORNER

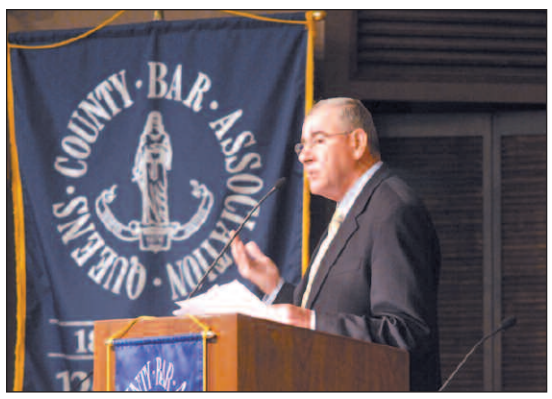
Recent Developments in our Appellate Courts October 5, 2011

Moderator Spiros Tsimbinos introducing Mr. Pieper.

Participant asking Mr. Pieper a question.

President Gutierrez, Mark Weliky and Greg Brown.

Paul Shechtman speaking about Criminal cases from the NY Court of Appeals.



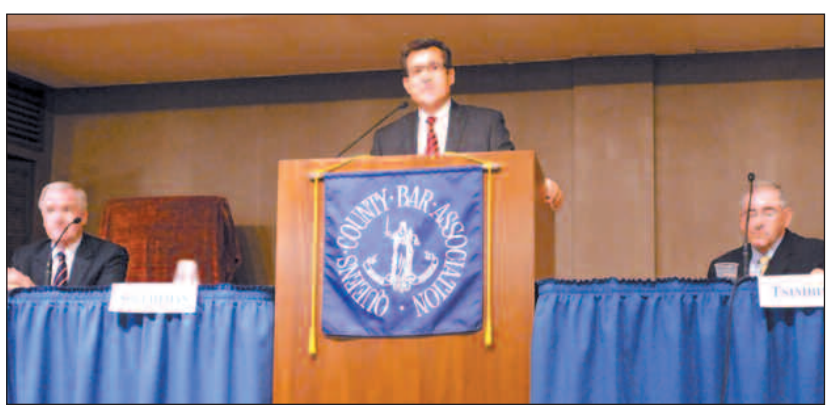
Spiros Tsimbinos speaking about recent developments in the US Supreme Court..

Members of the Brandeis Association.

Susan Beberfall, Peter Lane and Ed Schachter.

Steven Mahler asking Mr. Shechtman a question.

Richard Gutierrez, Greg Brown and Arthur Terranova.



President Richard Gutierrez addressing the members.

Photos by Walter Karling

Family Law Update

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have to deal with the problems related to Federal Law, which is not so liberal. For example, how will pension administrators and judges react, when presented with Qualified Relations Orders, distributing pensions governed by Federal Law between same-sex married persons, if not recognized as legally married under Federal Law? Joint tax returns for same-sex married couples? Health insurance coverage for same-sex marriage families, where the Federal Government is the employer? These and numerous other questions will require judicial answers over the next several years. We'll be waiting and watching. Now back to our judicial rulings in 2011.

To be sure, there were a number of lower court decisions relative to the No Fault and Temporary Maintenance statutes. We will discuss them, and the differences in approaches, in general, but will not go into detailed recitations of the facts and holdings for two reasons. First, the cases, particularly regarding temporary maintenance, are very "fact intensive," and it will be hard to find two cases presenting precisely the same facts, relative to the parties' incomes, assets, needs, ages, health, marriage duration, number and ages of children, type of residence, or whether the parties are still together, among others. Second, in view of the vastly varying fact patterns and the substantial number of matrimonial judges making decisions throughout the State, the value of any one Supreme Court decision, as a precedent, will be minimal, since not binding upon judges of co-ordinate be minimal, jurisdiction. By next year we should have some guidance from the Appellate Division. Until then, we will discuss a few of the issues with which we and the Courts will have to deal.

In connection with the "No Fault Law," the first question that arose was whether or not a defendant, in an action commenced on fault grounds prior to October 12, 2010, was able to commence a new action thereafter, under the No Fault Law. Judge Palmieri, in Nassau County, discussed this in HEINZ v. HEINZ, 920 N.Y.S. 2d 870, as early as February 16, 2011. Going back to similar questions adjudicated after the passage of the "Equitable Distribution Law," when Defendants sought to commence new actions, availing themselves of the new law, he concluded that those holdings were authoritative, that counterclaims were merely permissive, and that there appeared no sufficient reason to deprive a defendant of the right to commence a separate action. This and other decisions suggest that either party could seek to utilize the new statute by means of the commencement of a new action. In a number of cases Plaintiff's, who still had the statutory right to discontinue their actions without court permission, did just that, both to take advantage of the "No Fault" Law and in some cases, of the Temporary Maintenance Law as well. In our opinion these permissive decisions are well reasoned and will be upheld on appeal.

The next issue was whether or not one is entitled to present a defense against a No Fault complaint, in which the Plaintiff has made the sworn statement, required by the statute, that the relationship "has broken down irretrievably for a period of at least six months." If one party so swears, is that the end of it? Can the defendant say: "No, it has not broken down irretrievably for 6 months" and be entitled to a trial? Judge Falanga, in Nassau County, among other judges, ruled that the statute permitted a divorce solely upon the *subjective* allegation of one party. No summary judgment was granted (in A.C. v. D.R. and D.R.C. v. A.C., 927 N.Y.S. 2d 496) since the statute precludes same until all ancillary issues are decided. But he did opine that there is no statutory defense to this ground, a position also taken by one or two other judges to date. We do not fully agree with that analysis. There are no statutory defenses to allegations of cruel and inhuman treatment, either. But that has never meant a defendant could not defend and say the allegations are untrue. Granted, cruelty was never sufficiently proven by mere subjective conclusion. But here we do have a statute, requiring a specific allegation. It seems to us that a defendant (however slim his chances) should have the right to say "The allegation is untrue." Suppose, for example, defending against the allegation that the relationship was irretrievably broken for six months, the defendant produced proof that one month before commencement the parties were in marriage counseling and both expressed the belief that the marriage could be salvaged and that they both wanted to work toward that end. If that proof were believed, shouldn't the divorce be denied? Wouldn't that mean that the allegation could not support dissolution because it was untrue?

Admittedly, this is an extreme case - and six months later another action could be based upon the same allegation. But conceptually, a defendant should be entitled to assert a defense. This will very rarely happen, since there is so little to be gained from this tactic except in rare cases - and might well result in a counsel fee award against the defendant, if the defense were found to be merely dilatory, frivolous or without merit. Lower court decisions have gone both ways as to whether a trial will be granted on this issue. As indicated above, in A.C. v. D.R., supra, Judge Falanga held that the defendant had no right to challenge Plaintiff's declaration that the marriage was irretrievably broken. In Monroe County, in PALERMO v. PALERMO (15824/10 - discussed on page one of the October 27, 2011 Law Journal) Judge Dollinger also ruled that the defendant had no right to contest such a declaration. Decisions holding that due process required that the defendant be given an opportunity to contest the validity of the grounds include STRACK v. STRACK (916 N.Y.S. 2d 759, Essex County, Judge Muller; Law Journal Oct. 12, 2011) and SCHIFFER v SCHIFFER, 930 N.Y.S. 2d 827 (Supreme Court, Dutchess County). We agree that in the rare case a defense is alleged, due process of law requires that the defense must be heard and a trial conducted. But again, that does not mean and we do not expect that any but a very few will elect this route or meet with much success.

The final issue, already raised, is whether a "No Fault Divorce" can be defeated by reason of the application of a six year statute of limitations. The judge in PALERMO, supra, answered that question in the negative. Here, too, we will have to await appellate rulings before a definitive answer will be available.

We now turn to the Temporary Maintenance statute, which has resulted in a number of lower court published decisions. One of the major objections to the law, prior to passage, was that maintenance was not and should not be subjected to a "guidelines" or formula determination, because of the varied fact patterns that pervade these cases. The statute gives the court the right (as does the "CSSA") to deviate from the guideline amount *IF* found to be unjust or inappropriate upon a consideration of a plethora of specified factors (19 of them). Our experience was that few judges were willing to go through that exercise in connection with child support awards, particularly in cases where the combined income was below the statutory cap. There were not too many cases, excluding very high income cases, where judges deviated from the results easily reached by using their calculators.

But the myriad of different, relevant facts in each case, and the application of a "reality test" (actually computing what disposable income will be left for each spouse upon application of the guidelines) have convinced a number of judges that the temporary maintenance guidelines did, in fact, result in unjust or inappropriate awards, which they refused to make. More and more cases continue to be reported, where the judges are "deviating," and in different ways and upon different analyses. The result is that although it is taking the judges far more time to construct their decisions, they are as disparate and unpredictable as they were before the statute became effective. The statute has been criticized inasmuch as the application of the guidelines, based upon an automatic, mathematical calculation, basically creates a shift in resources, rather than the prior goal of tiding over the more needy party.

Judge Sunshine published his decision in SCOTT M. v. ILONA M., 915 N.Y.S. 2d 834 as early as January 27, 2011, and after a lengthy discussion of the law and its provisions and the various calculations he felt obliged to make, he concluded that the presumptive (guideline) amount would be unjust and inappropriate and deviated from and awarded about two thirds of the guideline amount.

Other decisions in which the judges found the application of the "presumptive amount" to be unjust or inappropriate, and made awards which deviated from it include A.C. v. D.R. and D.R.C. v. A.C., supra, C.K. v. M.K., 923 N.Y.S. 2d 817 (Rockland County) and J.V. v. G.V., Law Journal, September 19, 2011, Nassau County Index No. 202926/10. In S.B. v. G.B., Law Journal, September 19, 2011, New York County Index No. 314737/10 the Court elected not to make any award on the $307,859 of the husband's income that exceeded the $500,000 cap. In Queens County Judge Jackman Brown decided VALENTIN v. VALENTIN on July 7, 2011 in a yet unpublished decision in which she found the temporary maintenance "presumptive amount" was unjust or inappropriate and deviated from it, primarily by reason of the marital residence carrying charges the husband had agreed to pay.

There were also published cases in which the temporary maintenance was awarded without deviation, including MARGARET A. v. SHAWN B., 921 N.Y.S. 2d 476 (Westchester County), J.H. v. W.H., (Kings County, March 18, 2011, 2011 WL 1158653) and JILL G. v. JEFFREY G., Law Journal, March 28, 2011 (Nassau County). In S.C. v. J.R.C., 31 Misc. 3d 1,239 (Nassau County) Judge Maron did not deviate from the temporary maintenance guidelines, but he did do so in connection with the child support, deducting from income the amount the husband was directed to pay for the marital residence carrying charges.

The deviations resulted from various factors, including whether and to what extent child support was involved, what payments (e.g. marital residence carrying charges or educations expenses) were voluntarily being made, and a realization that the guideline amount would not permit the so-called "monied spouse" to meet his own needs (or even *be* the monied spouse if the presumptive amount was ordered). In one court the judge deducted home carrying charges from the payor's income, before making the required calculations.

In the statute the N.Y.S. Law Revision Commission was directed to:

1) Review and assess the economic consequences of divorce on parties;
2) Review the maintenance laws and their administration to determine their impact on post marital economic disparities and the laws' effectiveness in achieving the state's goals; and
3) Recommend legislation deemed necessary to achieve those goals.

A preliminary report to the Legislature & Governor was to be made no later than nine months from the effective date and a final report by December 31, 2011. The Law Revision Commission did render an interim report, dated May 11, 2011. This report went into great detail regarding the provisions of the law, the background of the legislation, various concern and sister state experience with similar laws. But there were no recommendations whatsoever. This update is being prepared in advance of the final report, due December 31, 2011. In simple language, this law, which was initially supposed to apply maintenance awards at the end of the case, was recognized to be so questionable that it was made to apply only to temporary maintenance, with the Law Revision to weigh in on provisions to be considered for final maintenance awards. that much had to be enacted as a political reality, if No Fault was to become law. The implementation of this statute does not really seem to achieve the goal of more uniformity or predictability. Rather, the differences among judges may be more in the nature of how carefully they are willing to analyze each case and "do the math" and write pages upon pages of "factor" considerations, than one judge being inclined to higher or lower awards than the other.

While predictability and uniformity are admirable goals, we still believe the number and extent of the many factors that impact upon maintenance wards (whether specified in the statute or not) require that the judges be permitted to continue to use their discretion and not be bogged down with artificial formulae. We recognize that there is little or no chance that this law will be scuttled. But hopefully, the Law Revision Commission will come up with some recommendations to allow the courts to make more expeditious, realistic and appropriate awards. Stay tuned!

COMMODITY FUTURES TRADING COMMISSION v. WALSH, et.al., 17 N.Y. 3d 162, 927 N.Y.S. 2d 821 (Ct. of Appeals 6/23/11). The first named Defendant and his wife had been divorced, a 2006 settlement agreement having been incorporated, which survived a 2007 judgment of divorce. Almost two years later the named Plaintiff agency charged the husband with various fraudulent conduct under the Commodity and Securities Exchange Acts. The agency was also trying to recover funds from his wife, claiming she received proceeds of the fraud in her settlement. The United States Court of Appeals certified two questions for our State's Court of Appeals: (1) "Does 'marital property' within the meaning of the New York DRL § 236 include the proceeds of fraud?" (2) "Does a spouse pay 'fair consideration' according to the terms of the New York Debtor & Creditor Law § 272 when she relinquishes in good faith a claim to the proceeds of fraud?" Our court was also asked to expand on or reformulate these questions as deemed appropriate. Arguments were

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MARITAL QUIZ

BY GEORGE J. NASHAK JR.*

Question #1 - Does the Family Court Act provide for an award of durational maintenance?

Your answer -

Question #2 - If the Supreme Court does not grant a divorce, may it award durational maintenance?

Your answer -

Question #3 - The Appellate Division Second Department has adopted a liberal policy with respect to vacating defaults in matrimonial actions. Is it still incumbent upon a defendant to demonstrate a reasonable excuse and the existence of a meritorious defense?

Your answer -

Question #4 - May the Family Court modify a maintenance provision in a separation agreement, if the parties were never divorced?

Your answer -

Question #5 - Would your answer to Question 4 change, if the separation agreement provided that: "while this agreement will resolve these issues for the present time, the Wife shall not be foreclosed from seeking additional maintenance in negotiations with the Husband, or failing such negotiations, then filing in a court of appropriate jurisdiction for a modification of the present provisions concerning the payment of maintenance. Any application by the Wife shall be treated as a 'de novo' application to the court, since it is not possible to set future maintenance at this time because it is impossible to forecast the Wife's needs or the Husband's income/earning capacity"?

Your answer -

Question # 6 - The parties' stipulation of settlement was incorporated but did not merge into the parties' judgment of divorce, May the court entertain a motion to modify the stipulation of settlement?

George J. Nashak, Jr.

Your Answer -

Question #7 - May the court suspend child support payments where the noncustodial parent's access to the child has been unjustifiably frustrated by the custodial parent?

Your answer -

Questions #8 - If a judgment of divorce and stipulation of settlement are silent as to sharing the cost of private secondary education, should the court treat the application for the payor spouse to share said costs as a modification or a de nova determination?

Your answer -

Question #9 - A stipulation of settlement, which was incorporated into a judgment of divorce but did not merge, is silent with respect to educational expenses. Mother seeks modification to have father share the educational costs. Should the court apply "unjust and unreasonable" threshold?

Your answer -

Question #10 - Can the original owner of property obtained by the husband by fraud, recoup their value from an innocent spouse who held them, or assets derived from them, as a result of divorce proceeding where the wife in good faith and without knowledge of the fraud gave fair consideration for the transferred property?

Your answer -

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

ANSWERS APPEAR ON PAGE 10

Family Law Update

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made by the wife, that she became a good faith purchaser for value of the subject property and by the Agencies that money derived from the proceeds of security fraud were not part of the marital estate and could not be retained under the DRL. After a discussion of the language and intent of the EDL, the various statutory factors and its provision for the parties to agree to opt out of court decided property distribution, the court emphasized the concept that "upon dissolution of the marriage there should be a winding up of the parties' economic affairs and a severance of their economic ties by an equitable distribution of the marital assets." The bottom line holding was that "***the proceeds of fraud can constitute marital property as defined in DRL § 236***." However, the recipient (wife in this case) must be innocent and unknowing as to the ill-gotten assets. The court cited older law for the proposition that "money obtained by fraud or felony cannot be followed by the true owner into the hands of one who has received it *bona fide* and for a valuable consideration in due course of business." The interest in the finality of business transactions, at the root of that concept, was re-stated in this decision and also related to the "matrimonial realm." The goal of finality, from the point of view of the innocent spouse, won out over the interests of defrauded individuals. That brought the court to the second question: Was there fair consideration, as argued by the wife, as to whom there was no evidence she knew of her husband's illegal conduct or in any way colluded with him. After a full discussion of the term "fair consideration" as used in the Debtor and Creditor Law, it was stated that aside from relinquishing rights to other, untainted assets, such things as a waiver of maintenance, inheritance rights or aspects of the transferor's child support obligations may also constitute fair consideration. Also, possibly, child custody or visitation concessions can be a valuable form of consideration. The Court reiterated prior law to the effect that "transfers made pursuant to a valid separation agreement incorporated into a divorce decree are presumed to have been made for fair consideration." Even though, in case at bar, the Federal Court had held that the marital estate consisted almost entirely of the proceeds of the fraud, our Court held that there are other valid forms of consideration. It therefore reformulated the certified question to read: "Is a determination that a spouse paid 'fair consideration' according to the terms of the New York Debtor and Creditor Law § 272 precluded, as a matter of law, where part or all of the marital estate consists of the proceeds of fraud?" As to that, they answered the question in the ***negative***.

The Court still left the question of whether or not the wife gave fair consideration under the facts of the case for final determination by the Federal Courts, but noted various rights she waived in the settlement, strongly suggesting this wife should be left alone. However, it is clear that such a result is only endorsed when the transferee spouse was not aware of and did not participate in the fraud, did not in any way evidence bad faith and where fair consideration was given. The direct quote, summarizing the entire decision is: "***we believe that an innocent spouse who received possession of tainted property in good faith and gave fair consideration for it should prevail over the claims of the original owner or owners consistent with this State's strong public policy of ensuring finality in divorce proceedings***."

Marital Quiz

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ANSWERS TO MARITAL QUIZ ON PAGE 9

Question #1 - Does the Family Court Act provide for an award of durational maintenance?

Answer: No, *Levy v. Levy* 2009 NY Slip Op 6809 (2nd Department).

Question #2 - If the Supreme Court does not grant a divorce, may it award durational maintenance?

Answer: No, *Levy v. Levy* 2009 NY Slip Op 6809 (2nd Department). If the action for divorce is dismissed, there is no longer a matrimonial action pending and the defendant's application for maintenance is properly viewed as one for spousal support under Family Court Act §412 rather than under the provisions of DRL §236 (B).

Question #3 - The Appellate Division Second Department has adopted a liberal policy with respect to vacating defaults in matrimonial actions. Is it still incumbent upon a defendant to demonstrate a reasonable excuse and the existence of a meritorious defense?

Answer: Yes, *Cuzzo v. Cuzzo*, 2009 NY Slip Op 6794 (2nd Dept.)

Question #4 - May the Family Court modify a maintenance provision in a separation agreement, if the parties were never divorced?

Answer: No, unless the petitioner is likely to become in need of public assistance or care. *Matter of Johna M.S. v. Russell E.S.* 10 N.Y.3d 364; 889 N.E.2d 471; 859 N.Y.S. 2d 594 (Ct. of Appeals 2008)

Question #5 - Would your answer to Question 4 change, if the separation agreement provided that: "while this agreement will resolve these issues for the present time, the Wife shall not be foreclosed from seeking additional maintenance in negotiations with the Husband, or failing such negotiations, then filing in a court of appropriate jurisdiction for a modification of the present provisions concerning the payment of maintenance. Any application by the Wife shall be treated as a 'de novo' application to the court, since it is not possible to set future maintenance at this time because it is impossible to forecast the Wife's needs or the Husband's income/earning capacity"?

Answer: No, the Family Court is a court of limited jurisdiction that cannot exercise powers beyond those granted to it by statute. *Matter of Johna M.S. v. Russell E.S.* 10 N.Y.3d 364; 889 N.E.2d 471; 859 N.Y.S. 2d 594 (Ct. of Appeals 2008)

Question # 6 - The parties' stipulation of settlement was incorporated but did not merge into the parties' judgment of divorce, May the court entertain a motion to modify the stipulation of settlement?

Answer: No, must bring a plenary action. *Reiter v. Reiter* 39 A.D. 3d 616; 835 N.Y.S.2d 240 (2nd Dept. 2008)

Question #7 - May the court suspend child support payments where the noncustodial parent's access to the child has been unjustifiably frustrated by the custodial parent?

Answer: Yes, where the custodial parent's actions rise to the level of deliberate frustration or active interference with the noncustodial parent's visitation rights. *Matter of Thompson v. Thompson* 2010 NY Slip Op 8120 (2nd Dept.)

Questions #8 - If a judgment of divorce and stipulation of settlement are silent as to sharing the cost of private secondary education, should the court treat the application for the payor spouse to share said costs as a modification or a de nova determination?

Answer: De novo, the standard to be used is found in the CSSA, pursuant to which a court may award educational expenses, if it determines that a private school education is appropriate for the child, "having regard for the circumstances of the case and of the respective parties and in the best interest of the child, as justice requires."*Durso v. Durso*, 68 A.D. 3d 1107; 893 N.Y.S.2d 81 (2nd Dept. 2009)

Question #9 - A stipulation of settlement, which was incorporated into a judgment of divorce but did not merge, is silent with respect to educational expenses. Mother seeks modification to have father share the educational costs. Should the court apply "unjust and unreasonable" threshold?

Answer: No, the court should apply the CSSA rule for awarding educational expenses. *Durso v. Durso* 68 A.D.3d 1107; 893 N.Y.S.2d 81 (2nd Dept. 2009)

Question #10 - Can the original owner of property obtained by the husband by fraud, recoup their value from an innocent spouse who held them, or assets derived from them, as a result of divorce proceeding where the wife in good faith and without knowledge of the fraud gave fair consideration for the transferred property?

Answer: No, *Commodity Futures Trading Commission v. Stephen Walsh, et al* 2011 NY Slip Op 5366 (Ct. Of Appeals)

CLARIFICATION: In the Marital Quiz which appeared in the October 2010 issue of the Queens Bar Bulletin, I cited an Appellate Division, Second Department case, *Matter of Jewett v. Monfoletto* 2010 NY Slip 2953. This case stood for the proposition that it is necessary to demonstrate an unanticipated and unreasonable change of circumstances in order to obtain an increase in child support, when modifying a separation or settlement agreement which was incorporated, but not merged, into a judgment of divorce. After that case was decided and after I wrote the Marital Quiz the law changed. DRL §236B(9)(b) and FCA§451 have been amended to a "substantial change of circumstances." the amendments only pertains to stipulations and settlement agreements executed after the effective date of the bill, October 13, 2010.

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Planning With Life Estates Under the New Law

BY: ANN-MARGARET CARROZZA, ESQ.

Background:

For many years, New Yorkers created Life Estates for purposes of protecting their homes from being lost to long term care expenses. The concept was simple. A new deed was created to reduce the parents' interests to 'lifetime ownership'. The 'remainder' or future interest was conveyed to children. The new deed reflected both the parents retained interests and the children's future interest. As long as this was done more than to five (5) years prior to a nursing home Medicaid application, the house was protected from nursing home claims. Upon the death of the parents, the house passed to the children 'by operation of law'. This gave families the benefits of avoiding probate, having the capital gains eliminated, while at the same time, escaping Medicaid estate recovery. This is because the NYS Medicaid program historically recovered only against the probate (with a will) or intestate (without a will) estates of Medicaid recipients. Anything passing 'by operation of law' to a surviving joint tenant, named beneficiary or life estate remainderman, escaped Medicaid recovery.

New Law:

The NYS Budget adopted on April 1, 2011 expanded Medicaid recovery beyond the probate and intestate estates. Pursuant to the new law's implementing regulations promulgated in September 2011, the Medicaid program has announced its intention to recover against previously exempt estate interests including retained life estates.

Many have raised constitutional and fairness objections to the law. I, among others, have argued that the new law should apply only to the newly created property interests. As of the date of this article, members of the Elder Law Section of the NYS Bar Association are actively pursuing a legal challenge to the new law. In the meantime, if an individual has a life estate, it is vitally important to evaluate current planning options. Depending upon one's age, health, marital status, and other factors, the life estate interest may be transferred to a properly drawn trust; to one's spouse; or to a 'caretaker child' (defined as a *child* who resided with you for at least two years).

For individuals already receiving nursing home Medicaid, the options are more limited: The remaindermen *(children)* may purchase the interest from parents, who may then engage in 'emergency Medicaid planning' thereby protecting up to one-half of the sale proceeds; or the family may decide to leave the life estate alone. This option requires no additional legal fees, will not result in the loss of STAR property tax exemptions and will not forfeit the elimination of capital gains at death (step-up in basis).

There is only one planning certainty as it relates to life estates. If you have not yet created one, - DON'T. A better option is a properly drawn Medicaid compliant trust.

Note: Ann Carrozza is a member of the Queens County Bar Association. She specializes in Elder Law and Estate Planning.

Three Lawyers

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title was important for German clients).

The question arises: how can all three of them – Nazi victims – accept German industrialists and businessmen as clients?

The tempting, simplistic answer to that question may be that the fees were too attractive to be disregarded. But, although this was undoubtedly a factor, it was neither a fair nor a complete answer.

By the time the Federal Republic of Germany was founded in 1953 and the three – like others who by then had become members of the American bar – were solidly established, the old-time German business elite, who had fawned the Nazis, had for the most part died or retired. In their place came a new, post-war generation of energetic young leaders who totally disavowed the deeds of their fathers. Older émigrés who had become American lawyers but who spoke their language and intimately knew their customs commanded the respect and admiration of these newcomers.

However, neither Curt nor Otto nor Ernest were naïve novices. They were deeply immersed in the German scene and knew exactly whom they could deal with and who had to be shunned. Furthermore, through their connections, they kept expertly abreast of developments in Germany.

Although all three were Jews, Otto and Ernest were not "religious," Curt was a religious "liberal" (as were most German Jews). He was president and Board member of an important congregation in New Jersey – partly for religious, partly for social reasons. The many restitution clients he got there were a profitable, as well as, socially valuable by-product. All three, however, were ardent Zionists.

Curt was married to a fellow refugee, while Otto married a charming and pretty Irish girl, the daughter of a New York cop. As far as I know, Ernest was married only once, but the marriage allegedly lasted only a few months. None of them had children.

Otto died in 2003, Ernest in 1997, and Curt in 2002. All three of them left important endowments to institutions of higher learning. Otto even provided sufficient funds to build a magnificent music building at Muskingum University in Ohio, the alma mater of the astronaut and Senator John Glenn.

Looking back, I can't be certain why the three picked me from their myriad contacts to become more than a casual acquaintance. Perhaps they saw in me the son they never had, perhaps my background reminded them of their own youth, or perhaps they just found me a good companion. I will never know the answer.

These men were not destined for "monuments in the park." However, they were by no means "ordinary men," either. The thousands of lives they touched for the better and the battles they fought against evil and depravity set their own monuments. They weathered the hurricanes of their time with immense courage and for-