Guardian & Elder Law: New Power of Attorney

BY JOHN R. DIETZ

Introduction: A New Power of Attorney Law is presently scheduled to go into effect on September 1, 2009. General Obligations Law (GOL) §5-1501 has been dramatically amended and revamped. Four sections were repealed; 12 sections amended, and 13 new sections added. The new law has many laudable goals such as reducing abuse by making the Agent more accountable and by changing the Principal’s responsibilities and duties.

This article briefly recounts the history of the Power of Attorney in New York, reviews a few of the salient provisions in the new law targeted to make the Agent more accountable, including the new Statutory Major Gift Rider, and discusses the new form.

History: The power of attorney is rooted in common law principles of agency. The power of attorney form evidences the writing of the relationship between a principal and agent. New York State’s power of attorney law emanated from the country’s experience in World War II and post World War II. Soldiers away from home and travelers abroad needed the power of attorney form which was in use at that time was often rejected by banks and financial institutions. A simple, inexpensive, statutorily-recognized, written document which would be widely accepted, was needed. New York’s statutory general power of attorney became law on March 21, 1948 (1948 NY Laws, Chapter 441, codified at NY General Business Law §422, as repealed by 1963 NY Laws Chapter 576, and recodified at NY General Obligations Law §5-1501).

The power of attorney statute and form have undergone several revisions since its statutory birth in 1948. Significantly, in 1975, the law was amended to provide for durability, a power of attorney which remains in effect, survives, the Principal’s mental incapacity. See: 1975 Laws of New York, NY General Obligations Law §5-1601. In 1988 a further revision allowed the principal to appoint an agent, who would assume responsibility at some future time, based on some future event. This was called a springing power of attorney. See 1988 Laws of New York, GOL §5-1602.

During the 1990’s the power of attorney continued to grow in popularity as a planning tool. The public was forewarned to plan for disability, and make use of the health care proxy, inter vivos trusts, and of course, the simple inexpensive power of attorney. The campaign was successful, perhaps too successful. The power of attorney was becoming an easy way for unscrupulous family members, friends, and others, to financially exploit and abuse the elderly and infirm. Public hearings were held in New York. As a result there were recommendations to reform the law and form. The main recommendations were two pronged: First, educate and inform the principal; Second, make the agent more accountable.

In 1994, and again in 1996, the power of attorney law and form were once again amended. The 1996 changes included: Allowing the Principal to list on one line all of the powers conferred on the Agent, instead of having to initial each power; Power to the Agent to make gifts to the Principal’s parents, spouse, children and other decedents in amounts not to exceed $10,000.00, the federal annual gift tax exclusion. The power to modify the form and make gifts of larger value to and individuals other than parents, spouse, children, and decedents, was provided for in the Garson case.

The new law has many laudable goals such as reducing abuse by making the Agent more accountable and by changing the Principal’s standard of care and accountability. The 1994 revisions sought to educate the Principal by providing for a notice or warning to the Principal in the form, and by changing the method in which the Principal delegated the powers to the Agent in the form. The Principal was required to affirmatively initial each power that was being conferred to the Agent in the form.

The revised form was difficult to use. Critics, especially advocates for the elderly and disabled, complained. In 1996 the law and form were once again amended. The 1996 changes included: Allowing the Principal to list on one line all of the powers conferred on the Agent, instead of having to initial each power; Power to the Agent to make gifts to the Principal’s parents, spouse, children and other decedents in amounts not to exceed $10,000.00, the federal annual gift tax exclusion. The power to modify the form and make gifts of larger value to and individuals other than parents, spouse, children, and decedents, was provided for in the Garson case.

Perspective on the New Power of Attorney: There is an inherent tension in the goals of most power of attorney laws. A form that is simple to use, widely available, and consumer-friendly, is a form that is subject to abuse. Even in 1948 the “drafters of the original power of attorney recognized that the simple device created a danger against which some safeguard should be provided since the consequences to the Principal who chooses a dishonest Agent increased as Agent’s power increases.” 2 The new Power of Attorney Law seeks to make the Agent more accountable and to deter, uncover and halt abuse. This is one perspective for reading, analyzing and understanding the new law and form.

Agent Accountability: While the old law is silent about the Agent’s responsibilities and duties, the new law identifies the Agent’s standard of care and makes it clear that the Agent is a fiduciary with a legal duty to act in the best interests of the Principal.

When a Guardian Ad Litem is Needed

In a Surrogate’s Court proceeding, a Guardian Ad Litem (GAL) is appointed by the Surrogate where a necessary party to a proceeding is under a disability and does not appear by a guardian, committee, or conservator. (SCPA 402 (2)). The Guardian Ad Litem will represent the interests of the incapacitated person within the context of the proceeding for which the Surrogate made the appointment. SCPA 103(40) defines a person under a disability as the following, to wit: infants, incompetents; incapacitated persons; unknown persons or persons whose whereabouts are unknown; prisoners whose failure to appear is due to their confinement in a penal institution.

The Surrogates treat the appointment of a guardian very seriously and often give careful consideration to whom the appointee should be. The Surrogates have the discretion of whom they shall designate. The Surrogates will usually consider, among other things, the type of matter, the complexity of the legal issues presented, the interest of the person under a disability, the size of the estate and the experience or particular skills or background of the attorney to be designated.

The Surrogate’s Court Procedure Act (SCPA) 403 also provides that a GAL can be appointed upon the nomination of an infant over the age of 14.

Notes From The State Bar Association
April 2009 Meeting
James J. Wynn Named NYSIF Executive Director
The Culture Corner
An Analysis Of The Motion
To Set Aside The Verdict: Subsection 2
About The Bench
Hon. Pam B. Jackman-Brown

This months topics are:
A new Power of Attorney Law
Serving As a Guardian Ad Litem in the Surrogate’s Court

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Dear Colleagues:

As this is our last Bulletin until the fall, it is time for me to acknowledge and thank those who help me make our Bulletin the huge success that it is.

I wish to thank our numerous contributors, our office staff, especially Janice Ruiz, whose help has proved invaluable.

I wish all our readers a happy and healthy summer.

Leslie S. Nizin

EDITOR’S MESSAGE

If you or someone you know is having a problem with alcohol, drugs or gambling, we can help.

To learn more, contact QCBA LAC for a confidential conversation.

Confidentiality is privileged and assured under Section 499 of the Judiciary Laws as amended by Chapter 327 of the laws of 1993.

Lawyers Assistance Committee
Confidential Helpline 718 307-7828

2009 SPRING CLE Seminar & Event Listing

May 2009

Thursday, May 14 Stress & Sanity in Your Everyday Practice
Tuesday, May 19 What Every Non Bankruptcy Attorney Needs to Know About Bankruptcy
Thursday, May 21 All You Might Want to Know About LLC’s

June 2009

Monday, June 8 Juvenile Justice Seminar
Friday, June 12 Hot Topics in Estates Practice 1:00-4:00 pm
Tuesday, June 30 Article 81/Guardianship Training (Laypersons Only) 2:30-5:00 pm

September 2009

Thursday, September 10 Annual Golf Outing at North Hills Country Club

CLE Dates to be Announced

Elder Law Real Property Law
Labor Law Taxation Law

NEW MEMBERS

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Jerry Christoforatos
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Queens Bar Bulletin

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2008-2009

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PRESIDENT’S MESSAGE

So much to do, so little time to do it. As the year of my presidency ends, I recognize the relevance of this thought. A significant weakness in the ability of our Bar Association to manage and implement long range strategies is the very short tenure of each administration. The year begins and before anyone barely becomes comfortable in, and truly knowledgeable about the range of issues and tasks before them, the president’s term ends. Of course, realistically speaking, anyone engaged actively in the practice of law, as is always the case with our Association presidents, is challenged enough to meet the demands of the presidency while continuing to manage the demands of their practice, so that serving more than a one year term becomes virtually impossible.

How to blend the need and benefits of adopting long term strategies to the reality of brief terms of office is a quandary worthy of attention.

The only solution currently available would be either an informal understanding leading to close cooperation between an outgoing and incoming president, or some more semi-formal arrangement through the adoption of a multi-year “issues list” by the Board of Directors to which incoming presidents would be directed, or perhaps by the Nominations Committee.

My suggestions for long term strategy would be the areas I sought to emphasize during my term: membership development and alleviating the burdens on the small firms and solo practitioners.

Membership development is self explanatory. It must be based on extending services to attorneys that are of value to them in their personal and professional lives. We serve this purpose best by making it known that our Association is indeed available to each and every member to meet those needs. We encourage members to respond to, requests or complaints that can often alleviate some of the stress associated with our profession. Our officers, board members, committee chairs and staff are all easily identifiable (see documentary Bar Directory) and each is readily accessible.

In the matter of small farms and rural portraits which represent the vast majority of our membership, it must be a united effort by all committees to identify areas for improvement. A solid beginning was established this year by initiating joint discussion between our Queens Administrative Judge’s office, Office of Court Administration and our Association and by identifying areas for future improvement. It is now incumbent upon future administrations to pursue this issue so crucial to the interests of so many of our members.

Finally, what has gratified me perhaps most of all is that issue that was barely on our radar screen when I was inducted – meeting the foreclosure crisis in Queens County. Congress has been designated the “pilot project” for a proposed foreclosure program by the Office of Court Administration, the response by the bar to its Association’s “call to arms” was nothing short of extraordinary. For that I thank all of you that responded, and demonstrated through that response that the finest tradition of our profession is alive and well among the practicing bar of Queens County. No small thanks must go to Mark Weliky and to the Queens Volunteer Lawyers Project for all their work and effort in organizing and administering our efforts in this area.

Finally, words are difficult to find to express my thanks to the staff of our Association - small, but so able and energetic - without whom a anything a president or administration might seek to accomplish would indeed come to naught - and which is truly the “glue” that brings some sense of continuity to our Bar by seamlessly binding one administration to the next. Thank you Arthur, Janice, Sasha, Shakes, Roger.

To everyone, you thank for this honor, and I look forward to contributing in some way into the future.

______________________________ Continued On Page 13

An Analysis of the Motion to Set Aside the Verdict: Subsection 2

BY ANDREW J. SCHATKIN

This article will consider the ground set forth in subsection 2 of CPL Sec. 330.30. That section contains and sets forth three grounds and bases to set aside a Criminal Conviction.

Those three grounds are as follows:

A ground appearing in the record, which if raised upon appeal from the Judgment of Conviction would result in a reversal or modification of that Judgment by the Appeals Court; That during the trial there occurred, out of the presence of the Court, improper conduct by a juror or another person in relation to a juror, which could have affected a substantial right of the defendant; That new evidence has been discovered since the trial, which could not have been produced by the defendant at the trial, even with due diligence on his part, and which is of such a character as to create a probability that if the evidence had been received at trial, the verdict would be more favorable to the defendant.

This article will consider, more specifically, the proper interpretation of the language in Subsection (2), which references, as a basis for setting aside the verdict, conduct by a juror, of an improper character, which could have affected a substantial right of the defendant, during the trial, outside of the presence of the court.

There is a general rule that the trial court is invested, with discretion, with respect to this specific matter and issue. People v. McNally

However, the Appellate Division First Department ruled that the summary denial of a Motion to Set Aside a Verdict of guilty of Criminal Possession of a Controlled Substance in the 2nd Degree on the ground of misconduct during jury deliberations, was an appropriate exercise of discretion. The Court stated that the Motion papers contained only conclusory allegations that the incident in question constituted improper influence on the jury verdict and the dropping of the bag of candy could not reasonably have been determinative of the ultimate issue in case, as to whether the defendant criminally possessed the bag of candy, which is of such a character as to create a substantial risk of prejudice to the rights of the defendant.

Another general rule interpreting this particular statutory language concerns, which concerns itself with proper, or improper, juror conduct, is the standard of review.

In general, one may say, that the standard of review as to a juror’s alleged misconduct is that it must create a substantial risk of prejudice to the rights of the defendant, in some way. Thus, in People v. Costello, the Appellate Division Second Department held that the trial judge was vested with broad discretion in ruling on the issue of juror conduct which has the intent to sell, and upon which issue the People offered overwhelming evidence.

Again, in People v. Costello, the Appellate Division Second Department held that the trial judge was vested with broad discretion in ruling on the issue of juror conduct which has the intent to sell, and upon which issue the People offered overwhelming evidence.

In People v. Costello, the Appellate Division Second Department held that the defendant was entitled to have the jury’s final verdict set aside as a remedy for the improper manner in which the Judicial function in telling the jurors, who had been directed to cease deliberation for the day, that their verdict finding the defendant not guilty on all counts would not be reported to the court that night. The jurors were sequestered overnight, and rather than reporting the same verdict in the morning, those who had had the deliberation the previous day and later reported their verdict that differed from their unreported verdict of the previous evening.

People v. Flores1 also restates this rule.

In Flores, the Appellate Division Second Department held that the court officer improperly usurped the trial court’s function by permitting the jury to believe that it could allow one of their members to translate a letter, written in Spanish, which injected non-record evidence into the calculus of judgment, which the defendant could not test or refute by a cross-examination, thus warranting a new trial.

There is a rule concerning discussions or conversations among jurors which concerns itself with the rights of the defendant. Thus, in People v. Durling, the Court of Appeals held that it would not be improper for a juror to engage in experimentation, investigation, and calculation that necessarily relied on facts outside the record and beyond the understanding of the average juror. Jurors are not, however, the court stated, required to check their life experiences at the courtroom door.

On the other hand, People v. Kelly18, the Appellate Division First Department held that jurors may conduct a jury room crime reenactment or demonstration, provided it involves no more than the juror’s application of everyday experiences, perceptions, and common sense to the evidence.

There is varying law concerning juror’s experimentation. Thus, in People v. Santi19, the Court of Appeals held that it would be improper for a juror to engage in experimentation, investigation, and calculation that necessarily relied on facts outside the record and beyond the understanding of the average juror. Jurors are not, however, the court stated, required to check their life experiences at the courtroom door.

In the same way, in People v. Rivera6, the Appellate Division Second Department held, fashioning almost the exact rule as stated in Manzelli, that generally a showing of prejudice to a substantial right, proof of juror misconduct does not entitle a defendant to a new trial, even if that juror’s conduct rises to the adherently prejudicial level at which reversal is automatically required.

There are a number of sub-rules interpreting this particular, discrete rule. Thus, in People v. Rivera, the Court of Appeals held that a juror who, by the way of knowledge as to the cause is not a ground for this Motion.8

There is a general rule that a verdict rendered by a juror containing some persons, who should have been excluded for technical reasons, is not void. This rule is extended to where a verdict is rendered by the presence of a juror, who was disqualified because of prior jury service.

Thus, People v. Khaleel, the New York State Court of Appeals held that the defendant was entitled to have the jury’s final verdict set aside as a remedy for the improper manner in which the Judicial function in telling the jurors, who had been directed to cease deliberation for the day, that their verdict finding the defendant not guilty on all counts would not be reported to the court that night. The jurors were sequestered overnight, and rather than reporting the same verdict in the morning, those who had had the deliberation the previous day and later reported their verdict that differed from their unreported verdict of the previous evening.

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About The Bench...

Hon. Pam B. Jackman-Brown

BY MERYL L. KOVIT

What’s the difference between a Burger King employee and a Family Court Judge? In the case of the Hon. Pam B. Jackman-Brown, a former employee of Burger King and a new member of the Bench in the Queens County Family Court, the answer is approximately two decades.

The Judge is a self described “adventur-er,” and her spirit of adventure has taken her from her birth and childhood in the nation of Guyana to Brownsville, Brooklyn, and Jamaica, Queens, U.S.A., law school and the Bench. She happily shared her appreciation for having acquired her first courtroom with windows, and even a railroad that can be seen from those windows, because they both help reinforce her spirit of adventure. She sees her new position as a “nice challenge” and an opportunity to learn about the Family Court.

For Judge Jackman-Brown Family Court is her latest adventure. She chose this adventure despite the warnings of colleagues and friends that the Family Court caseload was tremendous, the problems presented by the Court’s litigants overwhelming and, scarcest of all, the warning that Family Court was depressing. Never one to pass up any opportunity to experience something new, Judge Jackman-Brown listened to her colleagues and then volunteered after her election to join the Family Court Bench after stepping down from her position as Supervising Judge of the Housing Part of New York County Civil Court.

Judge Jackman-Brown’s initial verdict is that Family Court is not depressing, in fact it is fascinating. She is enjoying the Court and its litigants because for an adventurer every minute of the day in Family Court is an adventure. She gets to see everything in her courtroom. She’s doing international law on some custody disputes and she gets to see every cultural background and the issues that can go with each special culture – and the great part is the adventure comes to her, she doesn’t have to travel to see the world.

Mind you, the Judge is a big advocate of travel. Her computer wallpaper is a fabulous picture of the Judge on a camel in Egypt. She has also been to Tahiti, taken a European tour and she has seen most of the Caribbean Islands. She wants to visit the Great Islands and West Africa – ultimately she wants to see the entire world by going to every continent and every country (having every continent and every country come to her courtroom is nice, but she wants more). The Judge has also traveled back to Guyana many times to visit her extended family there.

The Judge has plans underway to travel to Seoul, Korea in 2010 for the International Women Judges Conference. The last International Women Judges Conference was in Panama and was attended by Judges Jackman-Brown. The conference provided her the opportunity to meet women from all over the world – she met women from places she had never heard of – places in little African countries and Asia. Her fellow attendees included women who sat on judicial benches in the rural areas of these continents. The Judge learned first hand about many important current political issues around the world, including violence against women, and children’s issues including adoption.

These conferences afforded the Judge the ability to gain experience in issues common throughout the world and to see how these issues play out against a backdrop of rural areas where women are still trying to break glass ceilings amidst corrupt government systems. She met many women in Chief Judge positions world wide – and even in rural areas -- which this New York City Judge finds absolutely amazing.

The Judge’s personal life adventure began when she left Guyana on her own as a teenager to “seek a better way of life.” Judge Jackman-Brown recalled traveling in the cold winter from her family apartment in Brownsville, Brooklyn, to work the early morning shift at Burger King. She remembered the city bus driver who got her to her early morning shift on his route always waited for her and made her feel she was an important member of his 5:00 a.m. bus route. After the web driver got to know her as a regular on his route, he would wait for her at the bus stop which allowed her to wait for the bus in the warmth of her apartment and head out the door as soon as she saw the bus come down her block. The bus driver would wait a few minutes for her on many occasions. The Judge acknowledged the bus driver as one of a few angels who have watched over her in her life.

After the Judge acquired her GED, she studied at the Borough of Manhattan Community College (BMCC) while flipping burgers at Burger King. Actually, she worked the register on the early morning shift before her BMCC classes returned to flip burgers for the lunch hour -- and then returned to school in the evening.

The Judge did the BMCC, a two year school, on the two and a half year plan because she just needed time to figure out what to do with her life. She had given thought to being a doctor as a child, but her family’s said technical school would take too long and so she considered teaching. Math and history were always her strongest subjects and she considered teaching, but none of those areas helped her decide what she was thinking about doing.

During her final year at John Jay College of Criminal Justice the Judge worked with the New York City Department of Mental Health and the trial retaliation.

The Assistant Commissioner, Paul J. Cooper, gave her a gift that year -- a copy of Black’s Law Dictionary -- and told her that she had to apply for law school, and, as they say, the rest is history.

The Judge says she has “no background in Family Court,” but her background speaks otherwise. While in law school she mediated PINS proceedings (young Person in Need of Supervision, Article Three of the Family Court Act) at the Children’s Aid Society. She has also taken Matrimonial Mediation training and sees mediation as an important mechanism that can be used to resolve many cases that really don’t need to be seen by a Judge.

Her first position as an attorney was at the Legal Aid Society where she did felony and misdemeanor jury trials. Her supervisor at the Legal Aid Society is now the Hon. John M. Hunt, a long time veteran Queens Family Court Judge.

While working at Legal Aid, Judge Jackman-Brown was invited by three Judges to be their law clerk. In 1989 she chose to become law clerk to Judge Yvonne Lewis, Kings County Civil and Supreme Courts, and acquired exposure to both the criminal and civil matters which Judge Lewis handled. Judge Jackman-Brown says the most important thing she learned from Judge Lewis was judicial demeanor – which says Judge Lewis excelled at representing the best judicial demeanor, great people skills and was very patient. If demeanor is best learned by watching, then Judge Jackman-Brown’s new law clerk in Queens Family Court, Denetrar Thompson, Esq., is in a great spot for learning all about Judge Yvonne Lewis’ judicial demeanor.

Judge Jackman-Brown was appointed as a New York City Housing Court Judge in 1998 and was appointed the Supervising Judge of New York County Housing Court (Brownsville) in 1998. The Judge’s personal life adventure began when she left Guyana on her own as a teenager to “seek a better way of life.” Judge Jackman-Brown recalls traveling in the cold winter from her family apartment in Brownsville, Brooklyn, to work the early morning shift at Burger King. She remembered the city bus driver who got her to her early morning shift on his route always waited for her and made her feel she was an important member of his 5:00 a.m. bus route. After the web driver got to know her as a regular on his route, he would wait for her at the bus stop which allowed her to wait for the bus in the warmth of her apartment and head out the door as soon as she saw the bus come down her block. The bus driver would wait a few minutes for her on many occasions. The Judge acknowledged the bus driver as one of a few angels who have watched over her in her life.

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The Assistant Commissioner, Paul J. Cooper, gave her a gift that year -- a copy of Black’s Law
BY STEVEN WIMPFHEIMER

In Albany, April is not Springtime. It is cold and rainy. As an aside, for those of you who may miss this quarterly missive, I have been trying to find my January report, but have been unable to locate it on my various computer discs. Anyone still interested can contact me and I’ll send them a copy of the approved minutes.

Back to the report, the weather inside the Fort Orange Club, where we have our usual pre-meeting dinner was warm and cozy. Conducive to meeting old friends and making new ones. Just as our President-Elect, Guy R. Vitacco, Jr., or the State Bar Association Treasurer, Seymour W. James.

The following morning the meeting started bright and early (maybe not so bright, but certainly early) at 8:30 A.M.

After the usual housekeeping and reading the minutes, Seymour James gave the Treasurer’s Report. As usual the State Bar is in the black, notwithstanding that its investment portfolio took a beating of almost half a million dollars.

The next order of business was the election of delegates to the State Bar’s Nominating Committee. The delegates from Queens are Arthur Terranova, Steve Wimpfheimer, with Catherine Lamouisco being the alternate delegate.

The President reported:

For a fee of $30,000.00 the Bar Association produced and distributed radio public service announcements which were worth about $700,000.00. This year the public service announcements covered the areas of climate change, equal justice for all and information on foreclosure (not on how to go into foreclosure, but to reverse, about 200 signed up).

Bernice Leber testified in the Senate in favor of Jonathan Lippman, our new Chief Judge.

A task force on Wrongful Convictions was formed and issued its report at the meeting.

She formed a Committee to issue a report on the prisoners held in Guantanamo Bay and was pleased that the President (Obama, not Leber) announced that Guantanamo would be closed.

She further reported on efforts to bring more diversity to the selection of candidates to the Courts.

The Bar Association is seeking ways to help lawyers in transition, especially those that are unemployed because of the current economy. In this regard the Bar Association’s web site has a Blog for lawyers looking for help in updating their resume or interviewing, etc.

On the legislative front she had meetings with the Governor’s Counsel and various State and Federal Legislators on issues such as legal funding for the poor and the Rockefeller Drug laws. Partially as a result of the Bar Association’s lobbying efforts the funds for civil legal services for the poor were restored to the current budget and the proposed fee increases for filing Court documents were defeated. Thank you Ron Kennedy (the Bar Association’s legislative liaison staff person and an honorary member of the Queens County Bar).

Following the President’s report there was a presentation to the Syracuse University Trial Advocacy Team for their sterilizing showing in the National Trial Advocacy Program. Congratulations to the Orange. I guess their law school produces a better product than their basketball program, or for that matter their football program.

The Special Committee Free for Solo and Small Practices Committee reported on the problems that we face and what the Bar Association is doing or proposing to do for us, such as CLE programs devoted to the solo and small practitioner, establishing an Internet and web site for us, offering advice on money management, networking, time management, communications with the Court and anything else we might need. The OCA report on Solo and Small Firms just came out and will be reported to the Bar at the June meeting in Cooperstown.

The Task Force on Wrongful Convictions issued its Report which was Cautiously adopted. It is huge and I suggest that anyone who is interested should read it online. We don’t need to destroy a forest for each bound report.

I slept through the next report which concerned a proposed Code of Ethics for Administrative Law Judges.

The most interesting debate was the report on Global Warming. The only issue was whether the State Bar should adopt the report or accept it with Thanks. The real issue was whether the Bar Association should be involved in a matter of policy, which does not directly affect lawyers or the law. It was decided that this issue was important enough and there was enough scientific data that we should adopt it and allow the Association to lobby for it (the conclusions reached, not global warming).

A report on privacy was discussed.

The Task Force on Courthouses delivered its award for the best and worst courthouse in the State. The winners for the best courthouses were the Erie and Chautauqua Family courts and Kings Supreme Criminal Court. The winners for the worst were Albany Supreme and Richmond County Family court.

The President of the Nassau Bar objected claiming that Nassau Family Court was so bad that it could not even be mentioned as the worst, but was in a category all by itself.

I really wasn’t interested in the rest of the reports, I was hungry, it was late and I left.

Steven Wimpfheimer

Notes from the State Bar Association
April 2009 Meeting

James J. Wrynn Named
NYSIF Executive Director

The New York State Insurance Fund Board of Commissioners has announced the appointment of James J. Wrynn as NYSIF Executive Director.

A partner in the law firm of MacKay, Wrynn & Brady, LLP, with offices in Douglaston, Queens, New York and Hoboken, New Jersey, Mr. Wrynn’s appointment was approved unanimously by the board at its monthly meeting on April 22, 2009, and became effective the same day.

Mr. Wrynn is admitted to the federal and state courts in New York and New Jersey and the Supreme Court of the United States. His law firm specializes in the areas of civil litigation and appellate practice with an emphasis on insurance law. He has designations as both an Associate in Risk Management (ARM) and Associate in Captive Insurance (ACI).

Mr. Wrynn has an extensive legal background in insurance, counseling agents, brokers, risk retention groups and insurance companies in most lines of insurance and excess insurance, reinsurance, self-insurance and captive insurance. His experience includes knowledge of insurance accounting and tax issues affecting entities doing business both on and offshore.

“I look forward to serving the New York State Insurance Fund,” Mr. Wrynn said. “I want to thank Governor David Paterson and the Board of Commissioners for the confidence they have placed in me to guide such an important organization and an experienced staff, for the opportunity to further the mission of being the leading provider of workers’ compensation and disability benefits insurance in New York State.”

Mr. Wrynn began his legal career in 1982 in the Manhattan office of the law firm of Flanigan & Associates. He has litigated hundreds of cases as a trial attorney in the areas of life insurance, accident and health, property and casualty, general liability, construction, property damage, business insurance, fidelity, reinsurance, and personal injury defense.

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This month’s column is devoted primarily to theater – great theater at inexpensive prices. So take a look for a significant other or an entire family and have a wonderful time without rupturing the family budget. In his book ACTING: MAKE IT YOUR BUSINESS (BACKSTAGE BOOKS (RANDOM HOUSE) 2008 PAPERBACK), noted casting director and agent PAUL RUSSELL describes the economics of theater, film, and TV for both consumer, producer, and actors in today’s crushing economic times. Lawyers are hurting for clients, even in prestigious large law firms, and they have to rely on a steady diet that have, trying to get them to pay is a challenge. So everyone is forced to make rough decisions on how to use whatever “spare” time they have that month. This month this devotion is to making your decisions wise and allowing you some very entertaining times out of your home without you having to rely on a steady diet of watching reruns on Cable’s TV Land or vintage films on Turner Classic Movies.

While everyone is raving at the new Broadway production of The Norman Conquests and the Off-Broadway hit The Tale of the Allergist’s Wife, not enough attention is paid to wonderful entertainment offered in Los Angeles, California, and Orlando, Florida. The Pearl Theatre Company is delighted to present its 12th Annual Black Box Festival, in picturesque Park Slope, Brooklyn, will be presenting Tennessee Williams’ VIEUX CARRÉ under the direction of renowned actor-director Austin Pendleton.

The highly regarded GALLERY PLAYERS, located at 199 1st Street in a building that was once a bungalow, is presenting THE BOY-CHICK AFFAIR. Written by AMY LOWN, who has already distinguished herself by her writing and acting in “Tony and Tina’s Wedding” and “Grandma Sylvia’s Funeral,” THE BOY-CHICK AFFAIR received rave reviews by The New York Times and other distinguished newspapers and critics. Several of the plays presented in June by the Gallery Players will involve the direction of talented actors who are permanent members of the Resident Acting Company of The PEARL THEATRE and whose names are familiar to New York playwrights. That Festival occurs, and continues through June, 2009, with several new plays presented, and they are not to be missed.


You are there to celebrate the Bar Mitzvah of Harry S. Boychick, who shocks his hopelessly and incredibly dysfunctional family by delivering his Hafhorah portion in Gangsta rap style. While Moses might frown at the modern spin, audiences in Los Angeles, California, and Orlando, Florida have laughed non-stop at the antics of this borscht Bar Mitzvah affair. Critics in those cities gave the BOY-CHICK AFFAIR rave reviews, so don’t miss this sharply written and funny show. Not only is the NYC production of the show to begin in July, but productions of the show will begin also this year in Las Vegas, Nevada, and elsewhere in Florida. Considering the size of New York’s Jewish population, THE BOY-CHICK AFFAIR’s New York City production at the Times Square Arts Center in the heart of Times Square, is likely to enjoy a long, long run. Mazel Tov! I am not aware that the Yiddish or Hebrew language has any equivalent for “Break a Leg” since actors adhere to superstitiously to not wishing “Good L., k!” - so I’ll say it the Hebrew/Yiddish begins “Mazel Tov” or the German “Toy, Toy, Toy!”

Two shows have completed their run but deserve special attention. THE PEARL THEATRE’s production of TARTUFFE and the Off-Broadway play “HOMESCHOOL ROUND” by lawyer ARMEN PANDOLA. Finally, I have recommendations for the latest summer reading, two excellent books by DR. PAUL DU QUENOY and Noted Casting Director- ACTOR AUSTIN PENDLETON. Ron Hellman and the Outstanding Fortune Company present THE TALE OF THE ALLERGIST’S WIFE at the Queens Theatre in the Park Studio Theatre.

The Tale of the Allergist’s Wife is a play by Charles Busch that was a Tony Award nominee for Best Play. In his first play written for a mainstream audience, he explores the Upper West Side milieu of aspiring intellectual and middle-aged upper class matron Marjorie Taub, who lives comfortably with her doctor husband,8 and an expensive furnished condo near Zabar’s and spends her days and evenings pursuing culture at various museums and the theatre. Her ongoing effort to improve her mind and sharpen her wits brings with the illusion she will never be more than mediocre, a feeling enhanced by her elderly mother’s constant complaints about her shortcomings and her husband’s altruistic dedication to serving the needs of the homeless. Following an emotional outburst in a Disney Store resulting in considerable breakage, Marjorie retires to the safety of her home to wallow in a mid-life crisis. Unexpectedly invading her depression is flamboyant childhood friend Lee who, much like The Man Who Came to Dinner, becomes entrenched in the Taub household as a seemingly permanent guest, not only drawing Marjorie out of her dark mood, but also affecting her marriage.

The original Manhattan Theatre Club production opened on February 29, 2000 at the Ethel Barrymore Theatre. After 25 previews, it opened on November 2, 2000 at the Ethel Barrymore Theatre, winning rave reviews. The production has been critically praised. Roni Hellman’s Off-Broadway production of the original cast, directed by Lynne Meadow, included Lavin as Marjorie, Tony Roberts as Ira, and Michele Lee as Lee. Later in the run, Lavin was replaced first by Valerie Harper and then by Rhea Perlman.

Ron Hellman’s Outstanding Fortune Company (“OFC”) revives the play under the direction of Nick Brennan. The play runs at the Queens Theatre in the park on May 8, 9, 15, and 16 at 8 P.M. and on Sunday afternoon May 10 and 17 at 3 PM. There is free parking at the theatre. The number 7 train, alternatively, stops at Mets/Willets Point where Shuttle trolleys make frequent rounds to the theater before and after performances. The last production by OFC of OUR LADY OF GOOD STREET produced in June, 2008, was beautifully done by a gifted ensemble. Unfortunately, that production did not receive the acclaim and attention that it deserved. Perhaps it was the result of my combined complaints with Mr. Hellman is that he fails to use sufficient means to publicize some of his excellently chosen and well-cast plays. Last year’s season was as a TALE OF THE ALLERGIST’S WIFE.

The Pearl Theatre Company is a small, non-profit company which has received rave reviews by The New York Times and other distinguished newspapers and critics. The Pearl Theatre Company is dedicated to providing a challenging, stimulating and entertaining season of plays that are diverse in style and subject matter. The Pearl Theatre Company is a small, non-profit company which has received rave reviews by The New York Times and other distinguished newspapers and critics. The Pearl Theatre Company is dedicated to providing a challenging, stimulating and entertaining season of plays that are diverse in style and subject matter.
The Culture Corner

The Pearl Theatre Company is offering Thursday Talk Post-Performance Discussions which give audiences the opportunity to participate in intimate talk-backs led by published scholars and experts within their fields. Thursday Talks during Vieux Carré will take place following the performances on June 2, 2009 and June 9, 2009.

Directions: The company performs at Theatre 80, 80 St. Mark’s Place at 1st Avenue. The Pearl can be reached by taking the R/W train to 8th Street, 6 train to Astor Place, L train to First Avenue, or the F train to Second Avenue. Take the M5 to 9th Street or the M8 to First Avenue.

THE BOYCHICK AFFAIR: THE BAR MITZVAH OF HARRY S. BOYCHICK

The New York City production of AMY LORD’s hilarious comedy THE BOYCHICK AFFAIR begins its Off Broadway run at The Times Square Arts Center (formerly Laugh Factory) at 669 Eighth Avenue, on 24th Avenue between 42nd and 43rd Street, a few feet away from the Duane Reade store located at the NW corner of West 24th Street, in the heart of Times Square. The $75 ticket price includes dinner; $60 for seniors and students. There are only two performances per week on Saturday evening and on Sunday afternoon. After all, when else would you book a catering hall? Are you a bis mishugah [‘a little crazy’]?

AMY LORD is one of those creative geniuses whose gifts have been blessed with audience successes in recent lifetime. Like her other hilarious interactive theater projects, THE BOYCHICK AFFAIR is likely to be a favorite among New York’s audience. And you don’t have to be Jewish to enjoy the hilarity or understand what is going on!

If you are an absolute purist devotee of Judaism and do not believe that the holy Shema prayer should be delivered in gangsta rap fashion or that the Bar Mitzvah should be presided by a recon-structed Robin hood who is gay and pregnant, THE BOYCHICK AFFAIR will only aggravate you. Everyone else should come on to Times Square to enjoy the antics of one of the most incredible dysfunctional families in the history of the theatre. The bar Mitzvah boy’s parents are divorced. The Bar Mitzvah boy’s father, Aaron Boychick, a grandiose and egocentric theater owner magnate verging on bankruptcy, has failed to pay the catering bill for the bar Mitzvah and arrives late to the affair to face his hungry guests.

The day is saved by a Mexican family friend who brings Mexican food like chicken quesadillas to the party [thank goodness no shrimp or ham]. The family includes an adopted Ethiopian son who is flamboyantly gay. Father Aaron brings his girlfriend Penelope, a Christian Bible-flamboyantly gay. Father Aaron brings his girlfriend Penelope, a Christian Bible-flavored star of the show. And his one son, a flamboyantly gay shepherd named Seth Soloway. InHALE by Victoria T. Jose, Seth Soloway. Directed by Justine Campbell-Elliott. DISTASTEFULLY YOURS by Denis M. Mcdonald. Directed by Robin Leslie Brown. BEAUTIFUL WORLD by Kevin Christopher Snipes. Directed by Seth Soloway. INHALE by Victoria T. Jose.


Buy Tickets Online at www.galleryplayers.com or call (212) 352-3101. THE PEARL THEATRE'S MAGNIFICENT PRODUCTION OF MOLIERE’S TARTUFFE

The Pearl Theatre enjoys a well-earned reputation for sparing no expense in costume design. This production of Tartuffe, directed brilliantly by GUS KAICKONEN, was no exception. Since I am knowledgeable with the play, I particularly enjoyed the choice of Richard Wilbur’s translation. ‘The entire cast was outstanding, and it borders on the criminal to single out some players, when there was not even a weak link in the chain of commanding performances. Nevertheless, with apologies given to those I have excluded since everyone was gifted, I particularly enjoyed DOMINIC CUSKERN as Cleante, ROBIN LESTER BROWN as Dorine, RACHEL BOTCHAN as Elmire, SEAN McNALL as Damis, BRADFORD COVER as Tartuffe, TJ EDWARDS as Orgon, and KILA PACKETT as Lauret, loyal servant to the scoundrel Tartuffe.'
James J. Wrynn
Named NYSIF
Executive Director
Continued From Page 5

wrynn at st. John’s university college of business administration and st. John’s university school of law.
Mr. Wrynn resides in Douglaston with his wife, Maura, an elementary school teacher. They have three children: Kate, a graduate student at the International University School of Law; and Kevin, a junior at St. Francis Prep High School.
Mr. Wrynn would like to thank Governor David A. Paterson and the New York State Insurance Fund Board of Commissioners for the confidence and trust they have placed in him to serve as executive director and would also like to specifically recognize the work of Deputy Executive Directors Thomas Gleason and Shirley Stark, who have diligently performed the duties of executive director following the resignation of the Fund’s prior executive director.
NYSIF is a non-profit agency of the State of New York that was created as part of the Workers’ Compensation Law of 1914. NYSIF is a competitive insurance carrier that sells workers’ compensation and disability benefits insurance to any employer doing business in New York State.
Approximately 185,000 employers hold NYSIF workers’ compensation policies (approximately 37 percent of the market), while more than 61,000 have active disability benefits policies.

About The Bench...
Hon. Pam B. Jackman-Brown
Continued From Page 4

“main focus is how to help.”
Another challenge for the Judge are the time constraints of her busy calendar. She is finding that many of the issues raised require time to “air out.” She is initiating a system in her Part -- where she hears custody, visitation and family offense proceedings -- to put litigants requiring more of her time on her afternoon calendar.
The Judge stays busy outside of Court with her involvement as a Board member of the Macon B. Allen Bar Association and the Queens County Women’s Bar Association. She also likes to garden and create flower arrangements and has scat- tered her chambers with much evidence of her green thumb. She is close with her mother, whom she refers to as the family “matriarch,” and speaks with her mother and her siblings on a daily basis.
Now that Judge Jackman-Brown has joined the Family Court Bench, Judge Judy is no longer the only Family Court Judge to have her picture plastered all over the New York City mass transit system.

MacKAY, WRYNN & BRADY, LLP
Attorneys and Counselors at Law
CONGRATULATIONS JIM!
It is with great honor and pride that we at MacKAY, WRYNN & BRADY congratulate our very own James J. Wrynn on his recent appointment as the Executive Director of the New York State Insurance Fund.
Jim received the appointment from Governor David A. Paterson and was unanimously approved by the New York State Insurance Fund’s Board of Commissioners.
While we will certainly miss Jim during his leave of absence from the firm, we could not think of a more qualified individual to run New York’s largest workers’ compensation insurance company - which is made up of approximately 2,600 employees, with over 185,000 employers holding workers compensation policies and more than 61,000 active disabilities benefits policies.
With Jim’s history of integrity, hard work and knowledge we know that the NYSIF will greatly benefit from his leadership and direction.

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RIVERHEADPERDIEM.COM
Peter R. McGreevy, Esq.
Geri C. Henle, Esq.
The Following Attorneys Were Disbarred By Order Of The Appellate Division, Second Judicial Department:

Martin N. Kroll, admitted as Martin Neil Kroll (March 3, 2009)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he improperly borrowed monies from his escrow account for personal purposes. The funds were subsequently restored, with interest, to the affected client.

Louis Haddad (March 10, 2009)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he misused his attorney escrow account by commingling, writing checks to cash, and making other improper withdrawals.

The Following Attorneys Were Suspended From The Practice of Law By Order Of The Appellate Division, Second Judicial Department:

Rene G. Garcia (February 24, 2009)

Following a disciplinary hearing, the respondent was found guilty of converting to his own use funds entrusted to him as a fiduciary, incident to his practice of law, on behalf of clients Maria Arevalo, Maribel Paz, Ronnie Recai, Catherine Doyle, and John Maloney; failing to safeguard funds entrusted to him as a fiduciary, incident to his practice of law, on behalf of client Juan Torrico; paying himself legal fees for two personal injury matters before depositing the corresponding settlement checks into his attorney escrow account; engaging in a pattern and practice of failing to promptly pay his clients the shares of the personal injury settlements to which they were entitled; failing to maintain required bookkeeping records for his attorney trust account; and engaging in a pattern of failing to file Closing Statements with the Office of Court Administration. He was suspended from the practice of law for a period of one year, commencing March 24, 2009, upon consideration of multiple mitigating factors including an absence of venality and accounting errors caused by the improper delegation of accounting responsibilities to his brother, who suffers from a psychiatric disorder that prevented him from focusing on his duties.

Benjamin Katz, admitted as Benjamin Zev Katz (February 24, 2009)

By decision and order on motion of the Appellate Division, Second Judicial Department dated December 19, 2006, the respondent was immediately suspended from the practice of law pursuant to 22 NYCRR §691.13(c), based on his claimed medical disability. By decision and order on motion dated July 18, 2007, the suspension based upon the respondent’s claimed medical disability was vacated. Following a disciplinary hearing, the respondent was found guilty of violating his fiduciary obligations by failing to maintain and preserve client funds entrusted to him in escrow and engaging in conduct adversely reflecting on his fitness to practice law based upon the foregoing. He was suspended from the practice of law for a period of five years, commencing March 24, 2009.

Barnett R. Rogers (February 24, 2009)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based upon his failure to comply with the lawful demands of the Grievance Committee for the Ninth Judicial District as well as other uncontroverted evidence of his professional misconduct.

Mark Crutchfield admitted as Mark Edward Crutchfield (March 11, 2009)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based upon his persistent pattern of failing to cooperate with the Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts.

Matthew A. Marino Admitted as Matthew Adam Marino (March 12, 2009)

The respondent pleaded guilty in the United States District Court for the Southern District of New York to a one count Information charging him with Misprision of a Felony, in violation of 18 USC §4. On the Appellate Division’s own motion, the respondent was immediately suspended from the practice of law as a result of his plea to a serious crime, pending further proceedings, pursuant to Judiciary Law §90(4)(f).

The Following Suspended Attorney Was Reinstated To The Practice of Law:

Maureen Abato, Admitted as Maureen A. (March 11, 2009)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based upon his persistent pattern of failing to cooperate with the Grievance Committee for the Ninth Judicial District as well as other uncontroverted evidence of his professional misconduct.

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The Business Bank
Judiciary Night,
Tuesday, April 21, 2009

Bernie Vishnick, Hon. Diccia Pineda-Kirwan and Hon. Joseph Golia

Chanwoo Lee, Hon. Denis Butler, Howard Stave and Guy Vitacco, Jr.

Dave Adler, Hon. Martin Ritholtz, Hon. Steven Fisher, and Jim Pieret

Dominic Villoni, Hon. Joseph Risi, Howard Stave, and Ted Gorycki

Hon. Augustus Agate, Bert Herman and Hon. Valerie Brathwaite Nelson

Hon. Diccia Pineda-Kirwan, Susan Beberfall, Maria Bradley and Steve Orlow

Greg Brown, Wally Leinheardt and Hon. Peter Kelly

Helmut Borchert, Steve Orlow, Hon. Charles LoPresto and Hon. Jeremy Weinstein

Hon. Cheree Buggs, Liz Forgione and Hon. Bernice Siegal

Hon. Darrell Gavrin, Hon. Seymour Boyers and Hon. Richard Brown


Photos by Walter Karling
PHOTO CORNER

Judiciary Night,
Tuesday, April 21, 2009

Tim Roountree, Martha Taylor and Hon. Kenneth Holder

Tony Mascolo, Mark Weikly and Gary DiLeonardo

Len Livote, Bernie Vishnick, Jay Abrahams and Tom Principe

Hon. Martin Ritholtz with Stephen Singer, recipient of the Academy of Law Award


Hon. Fran Lubow, Hon. Carmen Velasquez and Hon. Phyllis Orlikoff Flug


Hon. Marguerite Grays, Hon. Janice Taylor and Hon. Valerie Brathwaite Nelson

Scott Kaufman, Hon. Rudy Greco and David Adler

Jeff Boyar and Hon. Evelyn Braun

Jim Pieret, Ed Rosenthal, Hon. Maureen Healy and John Dietz

Joe Carola, Steve Orlow and Hon. Ann Pfau

Hon. Phyllis Orlikoff Flug, Hon. Allen Beldock and John Gemelli


Photos by Walter Karling
There are millions of reasons to do Pro Bono.
(Here are two.)

Each year, in communities across New York State, indigent people face more than three million civil legal matters without assistance. Women seek protection from an abusive spouse...children are denied public benefits...families are faced with losing their homes – all without the benefit of legal counsel. They need help. We need volunteers.

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An Analysis of the Motion to Set Aside the Verdict: Subsection 2
Continued From Page 3

Rodriguez21, the New York State Court of Appeals held that the jury verdict, convicting the defendant of Criminal Sale of a Controlled Substance, would not be automatically set aside on the ground that the juror, during Voir Dire, intentionally concealed his acquaintance with the county prosecutor, who was not involved in the prosecution of the defendant’s case.

On the other hand, in People v. Ceppi22, the Appellate Division Fourth Department held that the county court was required to set aside a grand larceny verdict, on the ground of jury misconduct, where the juror, during Voir Dire, that he was not familiar with the club, which the victim was charged of theft of, but in fact, the juror was a former member of that same club.

In general, it may be said, also, that the juror’s acquaintance with the defendant is not a basis for granting this Motion. Thus, in People v. O’Brien23, the Appellate Division Second Department held that the juror’s failure to disclose, during jury Voir Dire, that she knew the defendant did not require a reversal of the jury’s verdict, since the juror revealed sufficient evidence, during Voir Dire, to allow the defendant to recall the juror’s identity at that time, but he chose not to challenge her. In any event, in fact, actually requested that she be restored to the jury panel under “Batson”, after the People had used a Peremptory Challenge to remove her.24

In general, a jury verdict cannot be impeached by probes into the jury’s deliberative process. People v. Maragh25. Also, in People v. Rodriguez26, the New York State Court of Appeals stated that examination of the jury’s deliberative process to assess claims of improper jury influence must be performed, for inquiry into such process with a purpose of impeaching a verdict should not be undertaken, except in extraordinary circumstances.27

There is varying case law as to whether a juror’s use of extraneous information can constitute improper conduct. Thus, in People v. Brown28, the New York State Court of Appeals held that “improper influence” includes well intentioned jury conduct, which tends to put the jury in possession of information not introduced at trial. People v. Saunders29, the trial court held that the cumulative effect of four acts of juror misconduct, which involved outside influences and extraneous material, led to the conclusion that the verdict was affected by outside influences and extraneous material.30

There is a rule as to where a juror does not disclose misconduct. This is a ground for the granting of this Motion.31

There are a number of cases concerning the matter of alcohol and drug use by jurors. For example, in People v. Brandon32, the trial court held that the consumption of alcohol by a juror during deliberations, in prosecution on multiple counts of Petty Larceny, was not presumptively prejudicial. The Brandon Court went on to state that the jurors’ alleged use of alcohol during deliberations was not an “outside influence” on the jury, and the juror’s testimony with respect thereto was inadmissible.33

There is varying law concerning juror’s experimentation, as well as law concerning the use of alcohol and drugs by jurors. There are a number of cases concerning the same, and concerning the juror’s use of extraneous information such as can constitute improper conduct, and a rule where a juror does independent research. There is a case law concerning the use of alcohol and drugs by jurors, and a rule about jurors reporting defendant’s bad conduct or prior convictions to other jurors. There are sub-rules concerning juror access to law books and concerning the juror’s use of news reports. There is a sub-rule concerning juror note-taking, and there is a general rule concerning where jurors show overt prejudice or bias. Finally, there is a rule concerning separation of the jury as the ground for the granting of this Motion.

It is hoped that this article will provide some sort of guide to the practitioner through this detailed and somewhat complex field of improper juror conduct under Subsection Rule (2) of Sec. 330.30 of the Criminal Procedure Law.

ENDNOTES

1 The case law cited in this article has its source in the annotations of McKinley’s Consolidated Laws, Sec. 330.30, Volume 11A, West Publishing Company.

2 At any time after rendition of a verdict of guilty, and before sentence, the court may, upon motion of the defendant, set aside or modify the verdict or any part thereof upon the following grounds:

**Please note:** The endnotes contain legal references and citations, which are essential for understanding the context and applicability of the legal principles discussed in the main text. These endnotes are typically used by legal professionals and scholars to verify the sources of information and to cite the specific provisions of law that are relevant to the discussion. They are not transcribed here due to their length and complexity, but the reader is encouraged to consult these sources for a thorough understanding of the legal framework and case law referenced in the main text.
CUSKERN was masterful in his clear diction as Cleante, the brother-in-law to the head of the household. DOMINIC CUSKERN’s Cleante was the unparalleled and splendidly eloquent voice of reason.

ROBIN LESLIE BROWN is one of the foremost veterans of New York theater, but unfortunately does not now have the name recognition of film celebrities as Julia Roberts or Angelina Jolie. Ms. BROWN is a gifted and extraordinary actress. Her portrayal of Dorine, the dutiful housekeeper, is completely loyal to her family and sees through the pretense and hypocrisy of Tartuffe, through the penetrating, humorous, and, in short, wonderful light of the theatre.

ROBERTO FRONTALI as Germont in a film version of Verdi’s opera has been widely heralded as one of the best reads of any baritone. His character is a fascinating one. His voice is rich and expressive, and he brings a sense of power and mystery to every role he plays. This was no exception in his portrayal of Germont.

LANNA JOFFREY as Cavaradossi is one of the more memorable performances of the season. She brings a sense of depth and emotion to her role that is truly astounding. Her voice is pure and beautiful, and she delivers every note with precision and accuracy.

ARMEN PANDOLA as the jester Rigoletto is another standout performance. His voice is powerful and resonant, and he brings a sense of humor and humanity to his role. He is a trueexample of an actor who is able to bring his own interpretation to the stage.

The Metropolitan Opera has once again put on a stunning production of Verdi’s opera. The sets and costumes are exquisite, and the orchestra is impeccable. The cast is top-notch, and each member brings their own unique interpretation to the role.

Russell’s book is a must-read for any aspiring actor. He brings a sense of realism and truth to his writing, and it is clear that he has seen and heard from many of the industry’s best. His book is a valuable resource for any actor looking to succeed in the tough and competitive world of theater.
Serving as a Guardian Ad Litem in the Court

Continued From Page 1--

fourteen. A nomination of this type is made by a petition by the infant or the parent of the infant at any time. Said petition must be made by the petitioner at least two days prior to the return date of the underlying proceeding. (SCPA 403). The nominated attorney, petitioner and the infant must all submit affidavits stating, among other things, that there is a conflict with said infant and the petitioner or the attorney nominated is not a potential adversary interest, the Court will appoint its own guardian ad litem. Said affidavits must also explain the circumstances of the nomination. Said appointment is made by an order containing the following: Attorney or the petitioner has influenced the infant as to the nomination. (SCPA 403 [1][b], Surrogate’s Court Rules 207.13). These circumstances can very rarely be met and the nomination by an infant is hardly ever exercised leaving the appointment of the guardian ad litem in the discretion of the Surrogate.

A Guardian Ad Litem is not needed or the Court may dispense with the requirement of the GAL when there is an uncontested probate proceeding and such person will represent the infant to the Court in their intestate state. Also, in an accounting proceeding where said incapacitated person receives a specific devise, devise or general legacy of a stated sum of money or one removed from the appointment list; a person convicted of certain crimes. Appointees must also be aware that Part 36 of the rules restrict the receipt of any compensation for the services rendered (SCPA 403).[b]).

Any court in the State of New York. A Guardian Ad Litem is not needed or the Court may dispense with the requirement of the GAL when there is an uncontested probate proceeding and such person will represent the infant to the Court in their intestate state. Also, in an accounting proceeding where said incapacitated person receives a specific devise, devise or general legacy of a stated sum of money or one removed from the appointment list; a person convicted of certain crimes. Appointees must also be aware that Part 36 of the rules restrict the receipt of any compensation for the services rendered (SCPA 403).[b]).

An Analysis of the Motion to Set Aside the Subsection 2

Continued From Page 13

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Duties of the Guardian

Good practice is for a guardian ad litem to file a Notice of Appearance on behalf of their wards. The guardian ad litem should then attend all court appearances in the ward’s interest. The guardian ad litem should then take all legal steps to protect his ward’s interest. In summary, the guardian ad litem should advocate for the rights of their wards. If the ward was a private client. This may include filing objections in an accounting proceeding; demanding an Examination of the Accounts under SCPA 1404 and the filing of probate objections; initiating proceedings; and negotiating settlements where appropriate. It is important to note that the guardian ad litem should act in the best interest of his ward even if the guardian ad litem’s actions do not coincide with the wishes of the ward. (SCPA 403). The guardian ad litem should file a cogent, detailed report. The report should state the basis for their actions and how the proceeding affects that interest. The reports of the guardian ad litem should also include recommendations regarding the relief requested. Attached to the report should also be a detailed affirmation of Services so that the Surrogate can fix a fee in the decree.

Editor’s Note: Scott G. Kaufman is a partner in the firm Crawford & Kaufman, P.C. in Queens. He also serves as a Vice-Chair of our Surrogate’s Court, Trusts and Estates committee.
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Guardian & Elder Law: New Power Of Attorney

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responsibility to the Principal. The Agent will be subject to liability for conduct or omissions which violate the fiduciary duty, GOL §5-1505.

The standard of care in the Agent in dealing with the property of the principal, according to GOL §5-1505 (1), is the "standard of care that would be observed by a prudent person dealing with property of another.

The Agent has a fiduciary duty, GOL §5-1501 (2). The fiduciary duty includes the following obligations:

1. To act according to any instructions from the principal or, where there are no instructions, in the best interest (See also Matter of Ferrara, Ct. Of Appeals—NY3d 244, 2006) of the principal, and to avoid conflicts of interest.

2. To keep the principal's property separate from any other property owned or controlled by the agent.

3. Not to transfer the principal's property to himself or herself without specific written authorization.

4. To keep a record of all receipts, disbursements, and transactions entered into by the agent on behalf of the principal, and to make such records and power of attorney available at the request of the principal.

The Agent also has a duty to furnish a copy of the documents to: (a) the principal, when requested, to certain individuals, government agencies, and court appointees; (b) a monitor, co-agent or successor agent acting on behalf of the principal, the government entity, or official thereof, investigating a report that the principal may be in need of protective or other services, or to investigat-

3. Not to transfer the principal's property to himself or herself without specific written authorization.

4. To keep a record of all receipts, disbursements, and transactions entered into by the agent on behalf of the principal.

5. To remove the agent upon the grounds that the agent has violated, or is unfit, unable, or unwilling to perform, the fiduciary duties under the power of attorney.

Not all of the purposes for commencing a special proceeding are: to compel the agent to produce a copy of the power of attorney and records of all receipts, disbursements, and actions entered into by the agent on behalf of a principal; to determine whether the power of attorney is valid; to determine whether the principal had capacity at the time the power of attorney was executed; and to determine whether the power of attorney was procured through duress, fraud or undue influence;

Third parties acting and relying on the power of attorney must act according to the principal's best interest.

The New Power of Attorney Form

The New Power of Attorney Form

The new form mirrors the current form, provides for reimbursement of the principal for any losses suffered, and for any principal. The new form requires that the agent sign and acknowledge the power of attorney. Before signing, however, the Agent must act according to the principal's best interest.

The Power of Attorney continues until revocation or death, §16. The principal must sign and acknowledge the document at §m. The new form requires that the agent sign and acknowledge the power of attorney. Before signing, however, the Agent must act according to the principal's best interest.

Third parties acting and relying on the power of attorney must act according to the principal's best interest.
reminded of his duties, responsibilities, and liabilities in §n “Important Information For The Agent.” This is a brand new section. The agent is reminded that he must act in accordance with the instructions of the principal. That he is a fiduciary and as such must avoid conflicts of interest, keep the principal’s property separate and apart from one’s own assets, keep records, nor otherwise personally benefit from the principal’s assets. The agent is warned that if it is found that he has violated the law or acted outside the authority granted, he may be liable under the law for such violation.

The Principal may authorize an agent to make gifts, but only by making use of the optional “New York State Statutory Gifts Rider”. The new law provides a sample rider. The rider provides for limited gifts to the principal’s spouse, children, and more remote descendants, and parents, not to exceed, for each, the annual federal gift tax exclusion amount. If the principal wants to make gifts in excess of the annual exclusion there is a modification section. The principal may also authorize the agent to make self gifts. The rider must be signed and acknowledged by the principal, and signed by two witnesses.

Summary: While the New Power of Attorney Law has many goals, it is clear that one of its primary goals was to deter, uncover and halt abuse by the Agent. The new law already has many critics. There are complaints of yet another new form. Most are dubious that a form alone can change the widespread financial abuse of the elderly and vulnerable. For now we can only wait and see, and guide our clients in the use of the new form and law.

John R. Dietz is a Past President of the Queens County Bar Association and the Chairperson of the QCBA Elderly and Disabled Committee.

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