NYCLA Joins with Other County Bar Associations in Lawsuits to Block City, Mayor from Overturning Current Indigent Defense System

On June 18, NYCLA joined with the Bronx, Kings, Richmond and Queens County Bar Associations in filing a civil action in New York State Supreme Court alleging that recent attempts by Mayor Michael Bloomberg, the City of New York and the Criminal Justice Coordinator (CJC) to overturn the City’s indigent defense system are unconstitutional under the New York and United States Constitutions. This action follows the bar associations’ filing of an Article 78 proceeding on June 2 to challenge the City’s unilateral overturning of the indigent defense system operated for more than 40 years through a joint plan among the City and County Bars. The Mayor’s unilateral action would mutate the bars’ voice. Institutionally and on behalf of the poor, the NYCLA Board and officers did not think we could allow that to happen. NYCLA is committed to doing everything in its power to improve funding for indigent defense and give meaning to the constitutional guarantee of effective assistance of counsel. (For more information about these actions, refer to the article below.)

Moreover, our task forces will continue examining such issues as judicial selection and access to justice for litigants in courts that affect the lives of New Yorkers, i.e., the Family Court, which NYCLA as a county bar association is especially well suited to study. We also support the independence of the judiciary involving such matters as the rules of judicial conduct and are exploring a rapid-response mechanism for addressing unfair attacks on the judiciary by the media.

Another priority is public education. It is essential that young people -- and adults -- learn about their rights and the role of the judicial system. NYCLA publishes the New York City Youth Law Manual used throughout New York City and we conduct seminars for high school students and teachers. We sponsor a high school essay contest and had speakers at 15 high schools during Law Week. NYCLA needs to do still more, in the schools and beyond, through public fora and other means of communication. That brings me to my final policy initiative: Professionalism. Looking ahead, I see a vital permanent role for our Ethics Institute and its Professionalism Task Force. NYCLA will be a major voice and resource for practicing lawyers on ethics issues through our upcoming Oxford University publication on the newly revised New York ethics rules, our extensive CLEs, our increasingly cutting-edge ethics committee opinions and our ethics hotline. But beyond the questions of do’s and don’ts under the Rules of Professional Conduct is the need for our members and our entire profession to act like true professionals, who approach legal problems, adversaries and others not only with competence but with courtesy, care and concern. There is more to being a lawyer than the billable hours and the bottom line. Our profession has focused so much on the bottom line that (See Message From J. Kobak Jr. on Page 12)

The indigent defense plan has allowed NYCLA to be a voice for the indigent. The Mayor’s unilateral action would mute that voice.

NYCLA President
James B. Kobak Jr.

If you have any questions or comments, please contact us at www.nycla.org.
Membership Event: Avoiding Nannygate

Learn the best practices for finding and keeping the best care for your loved ones. In this crash course for the attorney seeking to hire a nanny, learn how to search for and interview candidates; check background and references; hire and negotiate salary, benefits and file taxes; and how to keep your nanny and your family happy.

For information about New York State’s domestic workers bill, see the article below.

Speaker: Joan Friedman
Date: Tuesday, July 27 - 6:00 PM
Location: NYCLA Home of Law - 14 Vesey Street
FREE and open to NYCLA Members only (and their significant others)
RSVP: gelack@nycla.org (space is limited)

New Domestic Workers Bill: Well Intended, But Will It Help?

By Joan Friedman

If, as expected, a new reconciled domestic workers bill passes the New York State Assembly and Senate and is signed by Governor David A. Paterson, the Empire State will proudly claim the title of “first” in the nation to enact legislation offering protection to domestic workers. But while politicians applaud themselves and domestic workers celebrate, industry insiders suspect that the new law will have a minimal effect. History is our guide.

The fact is, New York City nannies have had official protection since 2003. That’s when the New York City Department of Consumer Affairs, as a result of local legislation and the urging of Domestic Workers United, issued a document entitled, “Domestic or Household Employee Statement of Employee Rights and Employer Responsibilities,” and required that all licensed agencies provide this information to their clients, both families and caregivers.

Like the State bill, this New York City document created the appearance of helping workers. It covered minimum wage, overtime, timely payment, time off, meals and lodging, notice, record keeping, social security, income taxes, workers’ compensation, disability insurance, unemployment insurance and no retaliation.

Was it effective? Well, certainly it provided a framework for families who were seeking to “do the right thing” by their in-home workers. But this document was regularly represented to be disseminated only by licensed agencies that, for the most part, were already advocating for their nannies. Agencies not licensed would continue to refer workers to jobs offering no benefits or benefits falling below the statutory guidelines. Talk about preaching to the choir!

And I haven’t even gotten to the legions of families who eschew agencies and seek nannies on their own, whether through the grapevine or online. To whom are they and will they be accountable - their own consciences? Hmm... It is hard to imagine that the Attorney General’s office or the Labor Department is staffed well enough to smoke them all out.

My point is, I doubt that the new law will be enforced. For that to happen, “victims” will need to come forward. And at the risk of generalizing, what is the likelihood that someone who may not speak English well, or is here illegally or who doesn’t have the skills to navigate the system will do that? Many of these victims are doing the best that they can under the circumstances and don’t want to rock the boat. After they lose the job they rat on, who will help them find a new position? Do they have the experience and skills to command a fair wage and benefits? The likely victims don’t have much recourse, which is why they are in the position they are in to begin with.

Politicians with serious concern for domestic workers might consider investing their time in more viable efforts: campaigning for more and better day care centers, providing opportunities and training for domestic workers to staff those centers, and encouraging further training and skills appropriate for working in a private home. Politicians should hold a public hearing on why child care is so undervalued and that even people who can afford good private care feel no guilt about paying less than minimum wage or “under the table.” They should support simplification of the tax laws to make it less formidable and less expensive for household employers to comply. And then, perhaps, we will all live happily ever after.

Ms. Friedman is co-owner of A CHOICE NANNY and has been consulting and problem solving with New York families for nearly 20 years. She is well acquainted with ongoing child care and elder care challenges that professionals face while developing their careers.

Substance Abuse Hotline

Attorneys, judges, law students and members of their immediate families can get confidential help with alcohol or substance-abuse problems 24 hours a day, seven days a week, by calling the toll-free hotline - 800-255-0569.

Directions to NYCLA

NYCLA is located at 14 Vesey Street between Broadway and Church Street, across the street from St. Paul’s Chapel.

By Subway: 2 or 3 to Park Place; A, C or E to Chambers Street; 4, 5 or M to Fulton Street.

By Bus: M103 to City Hall; M1 or M6 to Fulton Street.

Free Online Research for NYCLA Members

NYCLA members have FREE access and training for Lexis, Westlaw and Bloomberg Law in our Library.

NYCLA members now have FREE onsite access to Loislaw, Congressional Universe, State Capital Universe, LegalTrac and Indexmaster and scores of nonlegal databases.

Many NYCLA members qualify for offsite access to these databases as well.

Please contact Dan Jordan, director of Library Services, for more information at djordan@nycla.org or call 212-267-6646, ext. 201.

Member News

Hon. Margaret J. Finerty, NYCLA Board member and co-chair of the Task Force on Judicial Selection, has been elected a member-at-large of the New York State Bar Association’s Executive Committee, and Ann B. Lesk, immediate past president of NYCLA and a partner at Fried, Frank, Harris, Shriver & Jacobson LLP, has been elected a vice president from the 14th Judicial District.

Bruce A. Green, NYCLA Board member and member of the Ethics Institute, Justice Center and Task Force on Professionalism, as well as theCLE, Pro Bono and Professional Ethics Committees, who was formerly the Louis Stein Professor at Fordham University School of Law, now holds the Louis Stein Chair at the law school.

Save The Date

Tuesday, September 28, 2010 - 6:00 p.m.

NYCLA’s Public Service Awards Reception

NYCLA’s Public Service Awards reception recognizes lawyers in the public sector who have distinguished themselves as role models, innovators and problem solvers of complex legal issues. In addition, the Criminal Justice Public Service Fellowships, based on an essay competition, will be presented to two attorneys who practice criminal law in the public sector.

No Red Carpets... But Free Beer and Popcorn: Save September 1 for the Opening Night of NYCLA’s Film Festival

NYCLA’s Art Committee, in keeping with its mission to provide members with a forum in which to showcase their art, is organizing the Association’s First Annual Film Series. All members are invited to submit their work. Non-members’ work is welcome by invitation of a member.

Film Series Dates: First Wednesdays in the Fall 2010: September 1 (Wednesday before Labor Day), October 6, November 3 and December 1

This Year’s Participating Filmmakers to Date: Fred Baker (Assata aka Joanne Chesimard and Lenny Bruce Without Tears), Abby Disney and Eila Their (A Summer Rain)

Call For Entries Submission Due Date: Fill out the Entry Form (on page 11) and return it by July 30. Send entries to one of the Art Committee co-chairs: Isabel Abislaiman, 305 Broadway, 14th Floor, New York, NY 10007 or Monique Mulcare, Mayer Brown LLP, 1675 Broadway, New York, NY 10019-5820.

All genres will be accepted, including drama, comedy, documentary and animation. Legal subject preferred but not required.

For more information, contact the Art Committee co-chairs – Monique Mulcare at mmulcare@mayerbrown.com or Isabel Abislaiman at isabel@abislaiman.com.

Free Online Film Series Dates:
First Wednesdays in the Fall 2010: September 1 (Wednesday before Labor Day), October 6, November 3 and December 1

This Year’s Participating Filmmakers to Date: Fred Baker (Assata aka Joanne Chesimard and Lenny Bruce Without Tears), Abby Disney and Eila Their (A Summer Rain)
Please join your NYCLA colleagues and fellow members and contribute to the Second Century Fund and to the restoration and repair of the Home of Law.

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Plan for the Future: Remember NYCLA in Your Will

Gifts received through wills and estate plans are vital to the much-needed renovations and improvements underway at the landmarked Home of Law and to the success of NYCLA pro bono and educational programs and resources for lawyers, including: its Law Library and free access to information sources, discounted CLE programs, committees open to all members, professional ethics programs and hot-line resources, and activities for lawyers in transition.

A planned gift makes a lasting contribution to the future of the Home of Law and NYCLA’s services for lawyers and the public.

Please consider NYCLA in your will or estate plan.

For more information, please email the Foundation’s Executive Director, Marilyn J. Flood, at mflood@nycla.org or call her at 212-267-6646, ext. 222.


The first edition of NYCLA’s 2010 New York County Criminal Courts Manual, a valuable tool for any attorney practicing criminal law in Manhattan, has just been published. The 150-page Manual contains the fundamentals of criminal law in New York, including: the structure of the Criminal Court, commencement of action, arraignment practices in Criminal and Supreme Courts, plea and sentencing issues, pre-trial hearings, a step-by-step guide to Criminal Court trials, post-judgment issues and more. The Manual also has comprehensive directories listing judicial and non-judicial personnel. The members of NYCLA’s Criminal Justice Section produced the Manual, which costs $50 for NYCLA members and $100 for nonmembers, to assist criminal law practitioners of all experience levels in handling cases in New York County.

Proceeds from sales of the Manual will help defray the costs of the annual Public Service Fellowship Essay Contest run by the Criminal Justice Section. This contest awards at least a $2,000 stipend to one newly admitted prosecutor and one newly admitted institutional defense attorney who has at least $30,000 in educational debt.

The drafting of the first chapters began two years ago under the leadership of former Criminal Justice Section Chair Hon. Michael J. Yavinsky, and was completed with the help of many members of the Section under Co-Chairs Keith Schmidt and Rhonda Tomlinson. Former Section Chair Susan J. Walsh offered leadership and dedication to the completion of this project. Hon. Fern Fisher, Deputy Chief Administrative Judge, New York City Courts, and Justin Barry, counsel to Judge Fisher, provided statistical data for the Criminal Court of the City of New York. In addition, Barry Clarke, chief clerk, New York County Supreme Court, Criminal Term, and Michael DiMaggio, deputy chief clerk, Supreme Court, Criminal Term New York County, made corrections and notations.

Mr. Schmidt and Ms. Tomlinson would also like to acknowledge the members of the Criminal Justice Section who either drafted or edited large sections of the Manual: Marc Agnifilo, David Bowen, Andrew Eibel, David Fisher, Jane Fishery Byrivalsen, Cristina Garcia, Herman Kaufman, Richard Lawson, David Levine, Kenneth Levine, Hon. Robert Mandelbaum, Timothy Murray, Hon. Eileen Nadelson, Malvina Nathanson, Kevin O’Connell, Inna Reznik, Audrey Rooshe, Eugene Strupinsky, Sean Sullivan and Alison Wilkey.

To order a copy of the 2010 New York City Criminal Courts Manual, fill out the order form on page 11.

Ethics Hotline

July 1-15
Malvina Nathanson
212-608-6771
Questions to the Hotline are limited to an inquiring attorney’s prospective conduct. The Hotline does not answer questions regarding past conduct, the conduct of other attorneys, questions that are being litigated or before a disciplinary committee or ethics committee, or questions of law. This notation shall not be construed to contain all Hotline guidelines. For a full discussion of Ethics Hotline guidelines, please see “Guidelines on NYCLA’s Ethics Hotline,” September 2006, New York County Lawyer, Vol. 2, No. 7.

July 16 – 31
Iris Isaac
646-386-4676

August 1-15
Malvina Nathanson
212-608-6771

August 16-31
Nance Schick
212-619-1498

September 1-15
Joseph Vogel
212-997-7634

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Summer School at the CLE Institute

This summer, the CLE Institute will conduct two Bridge the Gap programs: Bridge the Gap 1: Tuesdays, July 20 and 27, 9:00 AM – 5:00 PM Bridge the Gap 2: Tuesdays, August 10 and 17, 9:00 AM – 5:00 PM

NOTE: Due to ongoing construction at the Home of Law, both programs will be held at the Bloomberg Headquarters, 731 Lexington Avenue between 58th and 59th Streets. A photo ID will be required for admission. Breakfast and lunch will be provided courtesy of Bloomberg for both programs. For program details, faculty, credit breakdown and more information, consult our website at www.nyccla.org.

Summer Video Replay Series

This summer, the CLE Institute is offering Video Replays of some of our most popular programs. Note: All Video Replays are deemed “Non-transitional,” so only “experienced attorneys” may qualify for MCLE credit in New York.


Video Replay: An Ethical Approach to Preparing or Coaching the Witness: Thursday, August 12, 5:30 – 8:00 PM; 2.5 MCLE Credits: 2.5 Ethics

Video Replay Marathon: Civil Trial Practice Institute: Wednesday and Thursday, July 28 and 29, August 4 and 5, 5:30 – 9:00 PM; 14.5 MCLE Credits: 3 Ethics, 6 Skills, 2 Law Practice Management, 3.5 Professional Practice

Video Replay Marathon: Criminal Trial Practice Institute: Mondays, August 2, 9, 16, 23, 5:30 – 9:00 PM; 15 MCLE Credits: 3 Ethics; 5 Skills; 5 Professional Practice; 2 Law Practice Management

CLE Institute Now an Accredited Provider of CLE in New Jersey

The CLE Institute of the New York County Lawyers' Association is approved for Accredited Service Provider Status in New Jersey by the Board of Continuing Legal Education. All lawyers holding a license to practice law in New Jersey are required to participate in mandatory continuing legal education programs, effective January 1, 2010. Attorneys must complete 24 credit hours every two years, including 4 ethics credits. Up to 12 of those credits may be by self study (audio, video, online, computer-based).

Many of the live CLE programs at NYCLA's CLE Institute qualify for MCLE credit in New Jersey and are so designated on this website at http://www.nyccla.org/index.cfm?section=CLE&p=New JerseyCLE. Attendees of these programs may request MCLE credit for either or both states. Attendees receiving New Jersey credit must sign their certificate of attendance at the end of the program.

Be sure to continually consult our website for an updated list of courses and program information.

Save the Date: This fall, the CLE Institute will conduct a full roster of CLE programs. Some of the highlights include: Bridge the Gap: 4 Evening Sessions Mondays, Sept. 13, 20 and 27 and Oct. 4; 5:30 – 9:00 PM

Attend all 4 sessions and receive 16 MCLE credits or mix and match the programs that most interest you.

Copyright and Fine Art

Tuesday, September 14, 6:00 – 9:00 PM; 3 MCLE Credits

Program Chair: Raymond Dowd, Dunnington Bartholow & Miller LLP

Handling Your First Appeal: Conquering the Details and Learning the Art of Advocacy

Monday September 20, 5:30 – 9:00 PM; 4 MCLE Credits

Faculty: William D. Buckley, Garbarini & Scher, P.C.

Program Chair: Kevin P. McMullen, Esq.

First Annual Business and Contract Law Institute

Friday, September 24, 9:00 – 5:00 PM; 7 MCLE Credits

Program Chair: Leo Genn, chair

NYCLA’s Real Property Section

Program Co-Sponsor: NYCLA’s Real Property Section

Race, Law and American Society: 2010 Lecture Series

Race, Law and the Constitution – September 16

Race, Law and Women’s Rights – October 19

Race, Law and Voting Rights – December 7

Faculty: Professor Gloria J. Browne-Marshall, Law and Policy Group

Professor Browne-Marshall will conduct a three-part lecture series addressing the issue of race and how it affects many aspects of our society. Attend all three lectures and earn 6 MCLE credits – or mix and match the programs that interest you most.

Be sure to check our website for a complete listing of September 2010 programs.

Please Note: Tuition Assistance is available for qualified attorneys for live programs offered by the CLE Institute. Check our website at www.nyccla.org for more details.

2010 Attorneys’ Guide To Civil Practice In The New York County Supreme Court

The Attorneys’ Guide to Civil Practice in the New York County Supreme Court is a valuable tool for all lawyers practicing on the civil side in Manhattan. Produced by the Committee on the Supreme Court, it is a concise resource for details about judges, court personnel and procedures in the Supreme Court. Highlights include: Commencing a Lawsuit, Assignments and Case Processing under the CCJP, Motion Practice, Back Offices and major County Clerk Operations, including Entry of Judgments, Commercial Division, Judges and Staff, and much more! View Table of Contents at www.nyccla.org.

TO ORDER: Complete the form below and mail it with your check payable to NYCLA to: NYCLA Guide, 14 Vesey Street, New York, NY 10007. Contact Alanna Gluck at 212-267-6646, ext. 209 or agluck@nycla.org for more information.

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APPEARANCES IN

QUEENS COUNTY

E-mail: DianaInQueens@aol.com
FEATURED INTERNET SITE

Old Fulton New York Post Cards (www.fultonhistory.com) was founded in 2003 by Thomas Tryniski as a free source of historical information about the City of Fulton in Oswego County. Mr. Tryniski, a retired director of Administration and Computer Systems for Harland Controls, used Wicks and Wilson scanners to digitize newspaper microfilm obtained from the New York State Library and other sources, and has also placed scanners to digitize newspaper microfilm from the 1800s to the mid-20th century and other historic documents on the site. Genealogy buffs can use the photograph albums, burial and church records from the 1800s to the mid-20th century and other historic documents on the site. The webmaster recently added old newsreel footage. The site contains approximately 1.5 million scanned newspaper pages that include many from the New York City area, for example, the Brooklyn Daily Eagle (1841-1955), The New York Sun (1843-1945), The New York Times (1852-1921), The Whitestone New York Herald (1878-1932), The New York Clipper (1853-1924) and some out-of-state newspapers. There are many ways to search the newspapers, even if you have spelling problems, because they can be searched phonetically. Boolean searching that allows the use of terms and connectors is available and the most relevant results are displayed first. Because only the page that has the requested text is displayed, searches must be repeated to locate other pages in a newspaper. There is no search engine on the site for anything but newspapers but there are indices for some of the site’s historic materials. Mr. Tryniski has posted his email address on the site and will chat with users who need his help.

NEW EDITIONS


NEW TITLE

Select Legal Topics: Civil, Criminal, Federal, Evidentiary, Procedural and Labor, by Andrew J. Schatkin. Mr. Schatkin, who has been practicing law since 1978, earned a JD from Villanova Law School, certificate in international law from The Hague and diploma from the International Institute on Human Rights in Strasbourg, France. The book, intended for attorneys, judges, legal assistants and law students, is a collection of (See Library Notes on Page 13)

To make suggestions about book purchases, please contact Anna Smallen or Dan Jordan by email at annalallen@nycla.org or djordan@nycla.org or by phone at 212-267-6646, ext. 204.

PUBLIC POLICY DEVELOPMENTS

June 7, 2010 – NYCLA sent letters to Senator Carl Levin, chair, Armed Services Committee, and Senator John McCain, ranking member, Armed Services Committee, opposing Section 1037 of the proposed National Defense Authorization Act for 2011, which calls for special requirements for the investigation of lawyers representing Guantanamo detainees.

June 18, 2010 – NYCLA joined with the Bronx, Kings, Richmond and Queens County Bar Associations in filing a civil action in New York State Supreme Court alleging that recent attempts by Mayor Michael Bloomberg, the City of New York and the Criminal Justice Coordinator to overturn the City’s indigent defense system are unconstitutional under the New York and United States Constitutions. This action follows the bar associations’ filing of an Article 78 proceeding on June 2 to challenge the City’s unilateral overturning of the indigent defense system operated for more than 40 years through a joint plan among the City and County Bars. (For more information, please refer to the front-page article.)

To read reports, letters, amicus briefs, testimonies, comments and other documents related to NYCLA’s public policy initiatives, visit www.nycla.org and click on News & Publications.

NYCLA HOLDS MONTHLY DRAWING FOR FREE, LIVE THREE-CREDIT CLE COURSE

Congratulations to Robert D. Balin, Esq. of Davis Wright Tremaine LLP. Mr. Balin’s name was selected from those members who paid their first dues invoice in full by May 27, 2010.

Members who pay their initial annual invoice in full by the drawing date are automatically entered in the drawing. One member is selected each month. For information about the drawing, call Andrew Segal at 212-267-6646, ext. 208.

Providing Consultation to Attorneys & the Courts on Psycho-legal Matters

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- Civil Cases: Competency Issues, Head Trauma, Sexual Harassment, Discrimination, Immigration, & Post-Traumatic Stress Disorders

The New York Center for Neuropsychology & Forensic Behavioral Science

Dr. N.G. Berrill, Director

26 Court Street, Suite 912, Brooklyn, NY 11242
718-237-2127

45 North Station Plaza, Suite 404, Great Neck, NY 11021
516-504-0018

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By Malvina Nathanson

NYCLA Celebrates Law Week

Each year, NYCLA’s Law-Related Education Committee coordinates volunteer lawyers in visiting New York City high schools during “Law Week,” and with this year’s theme of “Law in the 21st Century:

Enduring Traditions and Emerging Challenges,” the topics discussed were Internet Law, Criminal Law and Careers in the Law. I spent an hour with an 11th-grade class (of about 12 students) at Brooklyn’s Cobble Hill High School for American Studies, talking about criminal law and the criminal justice system. The teacher had recommended that instead of giving a lecture, I answer students’ questions, and she told me in advance that there were five topics they wanted to hear about: (1) the right of minors in the criminal justice system, (2) raids, (3) witness-protection programs, (4) sentencing guidelines and (5) the Rockefeller drug laws (certainly an eclectic list!).

The time went by quickly—we had barely finished the first three topics when the bell sounded. Along the way, there were some additional questions—one student wanted to know what happened if a girl got an order of protection against her brother. They also wanted to talk about wrongful convictions—how could they happen and how could they be upset. The students were lively and interested, asked sensible questions and were surprisingly knowledgeable about current events.

At the suggestion of the teacher, I had arrived early, so I sat in on the tail end of a class of 9th graders who were preparing for a moot court trial. They were learning about different types of evidence (eyewitness, hearsey, expert, etc.). I didn’t participate, but I was able to clarify a few points for the teacher privately. The entire experience was a lot of fun and certainly made me a little more optimistic about our system of public education. I encourage everyone to take advantage of this opportunity next year.

Ms. Nathanson, a solo practitioner in New York City, is secretary of NYCLA’s Professional Ethics Committee.

The (Property) Bonds of Matrimony That Can’t Be Broken

By Richard A. Klass, Esq.

Two sisters and their respective husbands decided to purchase a two-family house in the Bronx in 1995. At the closing, they took title to the property, reflect-ed on the deed, as follows: “Gilberto Hernandez and Consolacion Hernandez, his wife … and Erlinda Que and Elpidio Rodriguez, her husband.”

Erlinda executed her last will and testament, in which she devised her “half share and interest in the real property” to her sister, Consolacion, and her husband, Elpidio, in equal shares. In December 2000, Erlinda passed away, survived by her husband, Elpidio.

For a long time after Erlinda’s death, Elpidio and his deceased wife’s sister continued to maintain the house. At some point, he remarried and wanted to sell it and move. And when they all couldn’t agree on how to accomplish this, Elpidio initiated a “partition and sale” action. In this type of lawsuit, the parties ask a judge to order the property sold at auction.

The deceased’s sister and her husband, along with the nominated executor under the will, claimed that ownership of the Bronx property passed under Erlinda’s last will and testament. Therefore, they claimed that half of Erlinda’s quarter share went to Consolacion (or one eighth of the total interest in the property), and half of Erlinda’s quarter share went to Elpidio. By their claim, Elpidio would be entitled to only 37.5 percent of the house. Elpidio felt that, as Erlinda’s husband, he should get more.

Tenancy by the entirety:

One of the “perks” of being married is that real property deeded to a husband and wife creates a “tenancy by the entirety,” under New York’s Estates Powers and Trusts Law (EPTL) Section 6-2.2(b). Pursuant to EPTL 6-2.2(b), “a disposition of real property to a husband and wife creates a tenancy by the entirety.”

(See The Bonds Of Matrimony on Page 13)
Meet the Chairs

Hon. Joan Madden
Justice, Supreme Court, Civil Branch, New York County
Co-Chair, Judicial Section

Justice Joan Madden is assigned to an IAS Part in New York County, where she presides over arraignments, hearings and trials. She has participated in numerous mock trials and CLE programs for the Association of Trial Lawyers of America and New York State Trial Lawyers Association and has been a panelist at judicial forums on asbestos litigation.

Before becoming a judge, Justice Madden served as a supervising and trial attorney at the Criminal Defense Division of The Legal Aid Society. As a supervisor, she assisted in training and guiding new attorneys and continued to personally represent clients in Supreme Court in the most serious trials. She is a graduate of Fordham University School of Law.

Section Plans

The Judicial Section plans to continue to explore and report on issues of significance to the judiciary and the Association. To this end, several committees have been established to address the mandatory retirement age for most, if not all, judges; in light of the Gilpatrick decision, issues related to administrative and disciplinary actions; and allegations made that a judge has been untimely in disposing of matters pending before him or her; pay parity with federal judges; and judicial sabbaticals. The Section plans to continue to work with the Task Forces on Judicial Selection and Judicial Independence and to support increasing the length of the term for Housing Court Judges, and looks forward to cases related to the New York State Judicial Council, which Chief Judge Jonathan Lippman has proposed as a statewide advisory board with regard to the administration of the state trial courts.

Joel M. Sciасcia
General Counsel, Pavarini McGovern;
Co-Chair, Construction Law Committee

Joel M. Sciасcia, general counsel at Pavarini McGovern, a construction-management company, handles civil litigation and alternate resolution proceedings. He oversees and works with outside legal counsel on various legal matters, reviews RFPs and prequalification packages and reviews, negotiates and drafts construction-management agreements with owners and subcontract agreements with trade contractors. He also advises and works with project executives and project managers to resolve trade contractor negotiations and disputes, and oversees insurance and bond risk-management personnel.

Mr. Sciасcia is a member of the Advisory Board of the Greater New York Construction User Council and an adjunct professor at Polytechnic Institute of New York University. He is the recipient of the Archibald R. Murray Public Service Award and Habitat for Humanity’s Student Leadership Award. Mr. Sciасcia is a graduate of Fordham University School of Law.

Ariel Weinstock
Associate, Katsky Korins LLP;
Co-Chair, Construction Law Committee

Ariel Weinstock joined the real estate department of Katsky Korins LLP in 2007 with a practice focusing on real estate and construction matters. Since joining the firm, Mr. Weinstock has been involved in drafting and negotiating construction agreements, including AIA-based construction documents, for both national and local clients on significant construction projects. He has also been involved in numerous real estate transactions, including commercial leases, sales, acquisitions and financings. He is the secretary of the New York State Bar Association’s Construction Law Committee and has lectured at NYSBA CLE programs. Mr. Weinstock is a graduate of Brooklyn Law School.

Committee Plans

“Our committee is planning a summer CLE about construction insurance issues,” said Mr. Sciасcia. “We are also planning to co-sponsor a CLE with the Real Property Section on real estate development. In addition,” he noted, “we plan to reinstitute an annual committee dinner, which, of course, will be open to all.”

Naomi Werne
(retired)
Vice Chair, Civil Rights and Liberties Committee

Naomi Werne specialized primarily in criminal law with an emphasis on appellate litigation. She served as an Assistant District Attorney in Queens County between 1982 and 1991 and, in 1985, was appointed chief of the Special Proceedings Bureau, which handled extraditions and civil forfeiture cases. She is the niece of Benjamin Werne, a well-known lawyer and author. Ms. Werne owes a tremendous debt of gratitude to her late parents, Dr. Jacob Werne and Dr. Irene Garrow Werne, both pathologists and pioneers in S.I.D. (sudden infant death syndrome, a/k/a crib death) research, for their encouragement and support of her education. Her late mother was the first person to recommend that she consider a career in law. Her hobbies include attending off-Broadway theatre and jazz clubs and reading mystery novels. Ms. Werne is a graduate of Brooklyn Law School.

Committee Plans

Ms. Werne first served on the Civil Rights and Liberties Committee as a legislative liaison and works with Committee Chair Louis Crespo in continuing the Committee’s tradition of sponsoring and co-sponsoring innovative projects and programs, and reviewing legislation and matters affecting New Yorkers’ civil rights and liberties.

Meet the Chairs

We are continuing our series of profiling newly appointed committee and section chairs, co-chairs and vice chairs. Here are profiles of four new committee and section chairs and co-chairs.

TIP #1: Email proof and assurance of court-admissible records

Most disputes hinge on “what went and what and when.” Standard email is used industry wide to record correspondence; however, proof of delivery is a consequence, if receipt is denied or content authenticity is challenged, the reality is that many send a copy by fax, mail and/or courier.

The usual proof is on the envelope with the use of standard email for critical correspondence, certain emails are not aware of the common myths and misconceptions related to email. Those who understand these issues and continue to use standard email for critical correspondence are those who are familiar with email evidence issues around who said what to whom and when, by email – issues solved with the use of RPost Registered Email® services.

1. Myth Regarding Bounce Notice: I did not get a bounce notice, so I know the email got there. Reality: Most recipient servers turn off bounce notices due to abuse by spammers. Therefore, receiving no bounce notice certainly DOES NOT mean email ‘delivery.’

2. Myth Regarding Internal vs. Internet Email: I copied myself, got the copy – so I know it was delivered. Reality: Internal email within an organization does not prove the email got to the Internet and certainly does not prove delivery.

3. Myth Regarding Read Receipts: I requested a read receipt so I will know when they got the email. Reality: Read receipts are little value. They are single text files that can be easily forged and tell nothing about content received. The recipient can easily opt not to return the receipt.

4. Myth Regarding Evidentiary Value of Printed Email: I copy my assistant and he/she prints a copy for the file. Reality: A printed email can easily be denied admission into evidence if a savvy lawyer simply challenges content authenticity and/or time of sending.

(See Tips For Lawyers on Page 14)
Recent Events

Past Presidents Gather at NYCLA’s Annual Meeting


Law-Related Education Committee Hosts High School Essay Contest Awards Ceremony

On May 19, NYCLA’s Law-Related Education Committee, chaired by Hon. Richard Lee Price, held an awards ceremony for its annual New York City High School Essay Contest. The Committee received 150 entries from 13 high schools on the topic of internet privacy and ten high school students received honors based on the essays they wrote. Pictured (from left to right) were: Sidney Baumgarten, vice chair, Law-Related Education Committee, NYCLA President Ann B. Lesk, several of the winners and, at the far right, Carolyn Ligh, vice president and branch manager of TD Bank, a co-sponsor of the awards program. (The first-place essay appears on page 15.)

Matrimonial Law Section Honors Matrimonial Judges

NYCLA’s Matrimonial Law Section held its annual cocktail party at the Seaman’s Institute on June 15, honoring the three most recently appointed matrimonial judges. From left to right were: Matrimonial Section Co-Chair Rhonda E. Ores posing with current and former honorees: Hon. Deborah Kaplan, Supreme Court, Civil Branch, New York County; Hon. Ellen B. Gesmer, Supreme Court, Civil Branch, New York County; Hon. Jacqueline W. Silbermann (ret.), former Administrative Judge, Supreme Court, Civil Branch, New York County; Hon. Matthew F. Cooper, Supreme Court, New York County and Deputy Administrative Judge for Matrimonial Matters for the State of New York, now of counsel at Blank Rome LLP; along with Section Co-Chair Frederic P. Schneider; Reception Chair Charlotte Silversmith, dinner co-chair; Hon. Judith S. Kaye, former Chief Judge; and Rachel Siskind, Section secretary and member of the dinner committee. (Not pictured: Law and Literature Committee Co-Chair Alan L. Fell; Professor Gordon-Reed’s book The Hemingses of Monticello: An American Family also won the 2008 National Book Award for General Nonfiction. Most recently, on February 25, 2010, she was awarded the National Humanities Medal by President Barack Obama.)

Matrimonial Judges

NYCLA’s Matrimonial Law Section honored the three most recently appointed matrimonial judges at its annual cocktail party. From left to right were: Rhonda E. Ores with current and former honorees: Deborah Kaplan, Ellen Gesmer, Jacqueline Silbermann, Matthew Cooper, and others.

Civil Court Practice Section Hosts Award Dinner

NYCLA’s Civil Court Practice Section held its annual award dinner at the New York Athletic Club on June 14, honoring Hon. Jonathan Lippman (standing, in the center), Chief Judge of the State of New York; Hon. Sherry Klein Heitler (to the right of Judge Lippman), Administrative Judge, First Judicial District; Ernie Belzaguy, Esq. (retired) (seated, far left); First Deputy Chief Clerk, New York City Civil Court, Citywide Administration; and Joseph Gebbia (retired) (seated, third from left), Deputy Chief Clerk, New York City Civil Court, Small Claims. Hon. Fern A. Fisher (seated, second from left), Deputy Chief Administrative Judge for New York City Courts, presented the awards. Also pictured were (standing, from left to right): Robert Silversmith, dinner co-chair; Hon. Judith S. Kaye, former Chief Judge; and Rachel Siskind, Section secretary and member of the dinner committee. Seated (far right) was Hon. David B. Cohen, Section co-chair. (Not pictured: Jeffrey A. Helewitz, Section co-chair, and Adrian Zuckerman, dinner co-chair)

Membership Events

Membership Event: “Setting Up Your Solo/Small-Firm Practice”

NYCLA’s membership event, “Setting Up Your Solo/Small-Firm Practice,” took place on May 26 in the Home of Law’s second-floor Lounge. Speaker Stephen Furnari, Esq. (pictured), CEO of Law Firm Suites, led a discussion on how to turn your office rent into referral revenue and how to build relationships with your suitemates.

NYCLA Kicks Off 18th Annual Lunch with a Judge Series

Summer associates and judicial interns (pictured at left) attended the first installment of NYCLA’s 18th Annual Lunch with a Judge Series on June 10 at St. John’s University Conference Center. Hon. Doris Ling-Cohan (above, center), Supreme Court, New York State, spoke on “The Road Not Taken: Career Paths.” Also on the panel were NYCLA President James B. Kobak Jr. (to the right of Judge Ling-Cohan) and Brett Ward (to the left of Judge Ling-Cohan), co-chair of NYCLA’s Young Lawyers’ Section.

Members Watch the First of a Three-Game Sweep

NYCLA members watched the New York Mets’ 8-0 victory over the Phillies on May 25. Members who took advantage of this benefit paid no convenience charges (valued up to 20 percent off) on the tickets. The Membership Department offers discounted tickets to sporting and cultural events to members throughout the year.
New Board Members Inducted at NYCLA’s Annual Meeting

NYCLA inducted 11 members to the Board at the Annual Meeting on May 27 and their profiles are below. At the June 10 Board meeting, NYCLA President James B. Kobak Jr. announced the special one-year appointments of Vilai Beleckas Hayes, partner, Hughes Hubbard & Reed LLP; Hon. George Bumby Smith, partner, Chadbourne & Parke LLP, former Associate Judge, New York Court of Appeals; and Lewis Tesser, former Judge, Tesser, Ryan & Rochman, LLP. There were two elections to the Board to fill vacancies — Madeleine Giancanti Cag, associate, Gregory P. Joseph Law Offices, and Jeffrey A. Helewitz, associate court attorney, New York State Supreme Court, Law Department. Their profiles will appear in the September issue of New York State Lawyer.

The speeches given by Mr. Kobak, outgoing President Ann B. Rask, and Past President Norman L. Reimer at the Annual Meeting are on NYCLA’s website. Visit www.nycla.org and click on News & Publications and then on Speeches.

Scott M. Berman
Partner, Friedman Kaplan Seider & Adelman LLP
Scott M. Berman, a partner at Friedman Kaplan Seider & Adelman LLP, represents large institutional investors, funds of funds, investment advisors and wealthy individuals in securities and fraud litigations involving hedge funds and their auditors, administrators, prime brokers and other professionals. He also represents hedge fund investors in bankruptcy and receivership proceedings. Mr. Berman has litigated numerous bankruptcy matters on behalf of institutional investors, equity holders and debtors. He is a former chair of the Federal Courts Committee and current member of the NYCLA Foundation Board and Task Force on Judicial Selection. Mr. Berman is a frequent lecturer on federal practice at programs sponsored by NYCLA and the New York State Bar Association. He is an adjunct professor of New York University School of Law.

Janiece Brown
Spitzmueller Supervising Attorney, New York City Department of Housing Preservation & Development
Janiece Brown is a Spitzmueller, supervising attorney for the Special Litigation Unit at the New York City Department of Housing Preservation and Development (DHPD), responsible for litigating high-profile and complex cases of significant financial, procedural and policy consequences. Her previous experience includes serving as a senior staff attorney at DHPD, litigating lead-paint hazard cases in Housing Court, court attorney in Family Court and special education suspension hearing officer in the New York City Department of Education. Ms. Spitzmueller served as an exchange member of Community Board 1-Manhattan, where she examined the environmental and recovery issues associated with the collapse of the World Trade Center. She served as co-chair of the NYCLA & the Law Committee and is a member of several other NYCLA committees, including the Audit, Communications, Diversity and the Legal Profession, Committee on Committees and Nominations Committees. In addition, Ms. Spitzmueller is a member of the Metropolitan Bar Association’s Bar Discipline Committee.

Collin D. Bull
Law Offices of Collin D. Bull
A solo practitioner, Collin D. Bull, handles antitrust, commercial litigation, complex financial fraud matters, professional liability, international litigation and business torts. A former chair of NYCLA’s Antitrust and Trade Regulation Committee, Mr. Bull is a member of the New York City Bar and American Bar Association, where he is a member of its Antitrust and Litigation Sections. He is a former member of the New York City Court’s Guidelines Board. Mr. Bull has been an arbitrator at the New York County Small Claims Court since 1997 and an arbitrator of the NYC’s Fee Dispute Program since 2007. He is a magna cum laude graduate of University of Michigan Law School, where he was a member of the Order of the Coif.

Sylvia E. Di Pietro
Law Offices of Sylvia E. Di Pietro
Sylvia E. Di Pietro’s law practice provides a full range of services in the areas of Article 81 Guardianship advocacy and petitions and contested matters, as well as trusts and estates. She also handles the representation of authors, agencies and publishers in contract negotiations and litigation involving internet copyright infringement. In addition, her practice handles the negotiation and drafting of risk-management contracts in the entertainment industry. She is a member of the NYCLA’s Board, vice chair and immediate past chair of NYCLA’s Estates, Trusts and Surrogate’s Court Practice Section and a member of the Elder Law Section, Elderly & Disabled, Estate Litigation and Pre-Mortem Probate Committees. A former vice president, recording secretary and board member of the New York Women’s Bar Association, Ms. Di Pietro was a delegate to the Network of Bar Leaders and Women’s Bar Association of the State of New York. Prior to entering law, she was an official court reporter in the Supreme Courts of Queens and Kings Counties. She is a graduate of Brooklyn Law School, where she received the Distinguished Achievement Award in the Art and Science of Trial Advocacy from the International Academy of Trial Lawyers.

Hon. Betty Weinberg Ellerin
Senior Counsel, Alyson & Bird President, Appellate Division, First Department
Hon. Betty Weinberg Ellerin retired from the bench in 2005 after serving as a justice of the Appellate Division, First Department for over 20 years. She was the first woman appointed to the bench, in 1985, and was the first woman appointed Presiding Justice, in 1999. A past president of the National Association of Women Judges and former Chair of the New York Women’s Bar Association, Justice Ellerin is the longtime chair of the New York State Judicial Council on Women in the Courts and vice chair of the New York State Court System’s legislatively mandated Advisory Committee on Judicial Ethics and the Appellate Division, First Department’s Committee on Character and Fitness. She co-chairs NYCLA’s Task Force on Judicial Independence and is a member of the Working Group on Judicial Conduct Rules and the Task Force on Family Court and a delegate to the NYBBA’s House of Delegates. Justice Ellerin chairs the New York State Bar Association’s Committee on Courts of Appellate Jurisdiction and is a member of the Statewide Advisory Committee on Civil Practice. She is an officer and member of the Board of the Women’s Bar Association of the State of New York and Judges and Lawyers Breast Cancer Alert. Among the awards she has received are the ABA Commission on Women in the Profession’s Margaret Brent Women Lawyers of Achievement Award, Women’s Bar of the State of New York Founders Award, Association of Trial Lawyers of the City of New York’s Harlan Fiske Stone Award, NYCLA’s Edith I. Spivack Award and New York State Bar Association’s Ruth Shapiro Award. In 2004, the Women’s Bar Association of the State of New York established the Betty Weinberg Ellerin Mentoring Award in her leadership and inspiration to women in the legal profession. She is a graduate of New York University School of Law and a trustee associate of the University.

Dyan M. Finguerra-Du Charme
Senior Counsel, White & Case LLP
Dyan M. Finguerra-Du Charme’s practice at White & Case LLP, focuses her practice on complex commercial litigation with an emphasis on intellectual property litigation, including trademark, trade dress, patent, copyright and trade secret claims. She has litigated cases involving a variety of industries, including pharmaceuticals, consumer products, biotechnology, power equipment, computer software, financial services and e-commerce. Ms. Finguerra-Du Charme has deep client relationships and is a member of the Network of Bar Leaders and Women’s Bar Association of New York and the Women’s Intellectual Property Law Association’s Internet Committee, International Trademark Association’s Enforcement Committee and New York City Bar’s Women in the Profession Committee. She lectures at CLE programs and writes articles for law-related publications, including the New York Law Journal and New York Intellectual Property Law Association’s Bulletin.

Jeffrey M. Kimmel
Kimmel & Bavaro, LLP
Jeffrey M. Kimmel is a partner in the Manhattan firm of Salenger, Sack, Kimmel & Bavaro. He is a proven, experienced trial attorney and actively manages his firm’s medical malpractice department. Mr. Kimmel has earned the highest ranking among attor-
Condos and Co-ops with SRO/Class B Units on Certificate of Occupancy May Be Flagged for Anti-Harassment Requirement

By Alyssa D. Sandman

Condominium and cooperative boards should review their building’s certificate of occupancy (C/O) for a record of Class B or rooming units prior to giving owners or shareholders consent to seek work permits from the Department of Buildings (DOB). Boards should also do so prior to pulling DOB permits for work in common areas. Common areas are those units on the C/O, regardless of whether they actually exist, may prevent or delay the issuance of work permits or may cause the placement of a “Stop Work Order” where permits have already been issued.

The New York City Construction Code prohibits the issuance of work permits for single-room occupancy (SRO) multiple dwellings unless the applicant provides a single-room occupancy (SRO) multiple dwelling. The SRO multiple dwelling was instituted as a tenant protection to ensure that the owner of an SRO multiple dwelling did not further its proposed conversion to create Class A apartments. In other cases, the SRO units still exist and are occupied by post-conversion tenants or are used for nonresidential purposes such as storage. Regardless of whether the rooms still exist or how they are now used, a record of SRO units on the C/O may cause the building to fall within the definition of an SRO multiple dwelling, thereby triggering the requirement of a CONH before work permits can be issued by DOB.

While the CONH requirement for condos and co-ops was apparently strictly enforced by DOB in the past, several condo/co-op boards have recently sought assistance from my firm, Belkin Burden Wenig & Goldman, LLP, in situations where DOB has refused to issue work permits to owners or has issued a Stop Work Order in the middle of construction due to the existence of SRO units on the C/O. In these scenarios, my firm has assisted the boards with obtaining a CONH so that work may proceed. Where the SRO units no longer exist, we have helped the boards amend the C/Os to accurately reflect the building’s true configuration so that the CONH requirement is not triggered in the future.

The inability of a condo owner or co-op shareholder to obtain work permits for his or her unit due to the CONH requirement may subject the board to liability for failure to anticipate and address this issue. Further, the reconfiguration or elimination of SRO units, or any unit, without the proper approval from DOB may constitute a use “inconsistent with the existing certificate” under the Building Code, which poses a serious risk that New York City’s NYC Construction Code that is immediately deemed hazardous and may result in a penalty of up to $25,000.

NYCLA Indigent Defense

(Continued From Page 1)

City reaches an agreement with the County Bars that preserves indigent defendants’ access to adequate legal counsel.

Article 78 Proceeding

The Article 78 proceeding filed on June 2 by the County Bars seeks an order preventing the City from disturbing the status quo—the indigent defense plan that currently combines criminal defense attorneys from The Legal Aid Society of New York, alternate institutional legal service providers and private attorneys from the Assigned Counsel Panels. According to the court petition, in the wake of the U.S. Supreme Court’s landmark 1963 decision in Gideon v. Wainwright, the State of New York enacted County Law Article 18-B in order to provide indigent defense attorneys to the constitutional guarantee of effective assistance of counsel.

The Article 18-B plan requires all counties in New York to implement a system that provides criminal defense attorneys to the indigent utilizing one of four options: (1) an office of the public defender, (2) a private legal aid society organized and operated for the provision of indigent legal counsel, (3) a panel of private attorneys formed and any occurs to a plan to reverse the local bar associations and approved by the state administrator, or (4) counsel furnished in accordance with a plan containing a combination of any of options (1) through (3). Since 1965, the City has satisfied its obligations under Article 18-B through a combined system of The Legal Aid Society of New York, alternate institutional legal service providers, and a plan proposed by the County Bars (and the Association of the Bar of the City of New York) and approved by the state administrator.

According to NYCLA President James B. Kobak Jr., “The indigent defense plan that has allowed NYCLA to be a voice the City from disturbing the status quo— the indigent defense plan current combines criminal defense attorneys from The Legal Aid Society of New York, alternate institutional legal service providers and private attorneys from the Assigned Counsel Panels. According to the court petition, in the wake of the U.S. Supreme Court’s landmark 1963 decision in Gideon v. Wainwright, the State of New York enacted County Law Article 18-B in order to provide indigent defense attorneys to the constitutional guarantee of effective assistance of counsel.”

Back in February and March of 2010 - without input or agreement from the County Bars - the Mayor and the CJC took steps toward implementing a system for indigent defense. The Article 78 proceeding contends that these actions violate Article 18-B and other state law because they do not comply with the four allowed options for the City’s indigent defense plan, and they otherwise exceed the Mayor’s and CJC’s executive powers. The Mayor’s proposed plan would also marginalize the County Bars’ core and statutory role in ensuring all New York residents receive fair legal representation when accused of a crime. Instead of relying on the plan and given the County Bars’ input, a plan that the Mayor did not implement. He did not cooperate with the County Bars in 1965, the Mayor now seeks to sidestep all definitions of the four allowed options for the City’s indigent defense plan, and he otherwise exceed the Mayor’s and CJC’s executive powers. The Mayor’s proposed plan would also marginalize the County Bars’ core and statutory role in ensuring all New York residents receive fair legal representation when accused of a crime. Instead of relying on the plan and given the County Bars’ input, a plan that the Mayor did not implement.

NYCLA continues to provide updates to members regarding further developments on this important issue in its bi-monthly newsletter and on the homepage of its website, at www.nycla.org, which has copies of the filings made on June 2 and June 18.

NYCLA’s Centennial Book:

Brethren and Sisters of the Bar

Brethren and Sisters of the Bar: A Centennial History of the New York County Lawyers’ Association, written by Edwin David Robertson, NYCLA’s 54th president (2006-2007) and a partner at Cadwalader, Wickersham & Taft LLP, is published by Fordham University Press and NYCLA. The book recounts the Association’s rich and engaging history in its 432 pages, complete with illustrations. It costs $24.95 for NYCLA members and $34.95 for nonmembers. To order a copy, go to www.nycla.org or purchase a copy at NYCLA’s Library. The book recounts the Association’s rich and engaging history in its 432 pages, complete with illustrations. It costs $24.95 for NYCLA members; $34.95 for nonmembers.
Keep Your Workday Sanity: Make the Most of Your Time

By Joelle Jay, Ph.D.

With all the recent layoffs and the unemployments rate hovering around the double-digit mark, those who are still employed face a tough dilemma. On the one hand, they’re grateful for their job, but on the other hand, their workload may have become too much for one person to bear. In fact, many people are now doing the work of two or even three people. They have more responsibility than ever before and they feel that there’s no way they can keep up. Their mantra has become, “There’s simply never enough time.”

Whether the issue is that you have too much to do, too little help, too daunting a task or all of the above, you can feel like there’s no way to keep up. Without some kind of a plan for your time, you can feel stretched to the point of insanity. Fortunately, you can start to take control by learning to maximize your time.

Manage Versus Maximize

In order to thrive in today’s work environment, you need to change the way you look at time. The key is to learn not just to manage your time, but to maximize it.

Traditionally, time management is about getting more done in the time blocks within your calendar. In fact, if you look up the word “managing,” you’ll see terms, such as “to deal with,” “to cope” and “to wield.” These words suggest a limited way of looking at time— that it’s something to control. "To deal with," "to cope" and "to wield." These words suggest a limited way of looking at time— that it’s something to control.

The problem is that even if you master the art of time management, you can still find yourself overwhelmed. Your calendar may be a masterpiece of organization and you may feel stretched to the point of insanity. Fortunately, you can start to take control by learning to maximize your time.

You spend your days sacrificing your sanity for a nearly crossed off-to-do list. You have a more powerful option. Instead of just managing your time as if it’s working against you, you can maximize it and have time work for you.

Maximizing your time is about getting the most out of your time so you can do more with less. Literally, the term “maximizing” means “to make as big as possible,” “to make the most of” and “to find maximum value in something.” When you maximize your time, in addition to accomplishing daily tasks, you’re making space for the things that matter most— your goals, priorities and the bigger vision of success for you and your organization.

To keep up in today’s world and still have a meaningful professional and personal life, you need to maximize your time. Following are three time-maximizing techniques that can help.

Strategy #1: Go to the Calendar

“Going to the calendar” is a great strategy for making the most of your time. You stop taking every email, phone call, meeting and problem as it comes up and instead you start scheduling things in a way that makes sense. Going to the calendar means literally opening up your calendar, turning on the PDA, getting out your schedule and physically putting into place a written, concrete plan to use every hour in the most productive way.

The key to making this work is to start with a blank calendar and address the tasks, projects or activities that matter most to you first, before you take those calls and emails. Ask yourself, “What’s the best use of my time?” and “Where am I going to get maximum value?” Schedule those things first. Then you can see where the other tasks can go in your calendar. You may find that not everything can fit…and that’s okay. If you’re focusing on what matters most, the secondary items can usually slide. Either you’ll realize they are just “busy work” that doesn’t really need to be done or you’ll suddenly see shortcuts to the tasks that you did not realize before.

Remember, just as you can control your time, you can also control your calendar. Don’t let it control you.

Strategy #2: The 5 Ds

Whenver your time is being eaten up by stacks of emails, paper, voicemail messages or just stacks and stacks of work, the 5 Ds work especially well. You will drastically cut the time you need to get through the stack and you can then get to the other high-impact activities that make the best use of your time. The 5 Ds stand for:

Do It: Stop pushing around a task and do it now. Use this for any task that takes 15 minutes or less.

Delegate It: There are some things that do not require your response. Just because someone sent you the message/document/suggestion doesn’t mean you have to reply. If an item doesn’t advance a relationship or achieve an important goal, get rid of it.

Delegate It: As often as possible, pass a task on to someone else who can handle the job. They don’t have to do it better than you; they don’t even have to do it as fast. They probably won’t. But unless it’s a top priority or specific result that you and only you can deliver, you’re not the right person to do it. Pass it on.

Decide On It: No more moving items from one stack to another, telling yourself, “I’ll get back to that.” Will you attend the meeting or won’t you? Will you agree to that request or won’t you? Make a decision.

Move on.

Date It: Choose when you will give big-ticket items your undivided time and attention. Figure out how much time you need and block it out in your schedule. You can forget about it until then.

The 5 Ds will save you time and potentially a lot of it. Before you fill up that time with more meaningless tasks, give some thought to the most powerful way you can use the time you save.

Strategy #3: Project 123

When you feel like many big activities are crowding you out, you can become overwhelmed and not know where to start. After all, it’s so much easier to tinker in the minutiae than to tackle the most important tasks. The danger is that most of the important things never get done. Unfortunately, too many people today don’t take the time to choose what to spend their time on. They’re simply answering fire alarms all day or taking things on a “first come, first served” basis.

To help you manage your sanity and maximize your time, you need to determine what the priority is. So sit back and identify Project One, Two and Three. Choose one project or one action item to tackle that will allow you to make the biggest impact with your time. Keep sight of which project you’ll grant top priority and give it the best of your time. Then you can turn to the rest.

Time IS on Your Side

(See Keep Your Workday Sanity on Page 12)

Just Published


The first edition of the 2010 New York County Criminal Courts Manual is a valuable tool for any attorney practicing criminal law in Manhattan. The 150-page Manual contains the fundamentals of criminal law in New York, including: the structure of the Criminal Court, commencement of action, arraignment practices in Criminal and Supreme Courts, plea and sentencing issues, post-trial hearings, a step-by-step guide to Criminal Court trials, post-judgment issues and more. The Manual also contains comprehensive directories listing judicial and non-judicial personnel. The members of the New York County Lawyers’ Association’s (NYCLA) Criminal Justice Section produced the Manual to assist criminal law practitioners of all experience levels in handling cases in New York County. To view the Table of Contents, go to www.nycla.org.

COST: $50 for members; $100 for nonmembers

Complete the order form below and fax it with credit card information to: 212-406-9252 or mail it with your check made payable to NYCLA or credit card information to: NYCLA - Criminal Courts Manual, 14 Vesey Street, New York, NY 10007.

Number of copies @ $50/NYCLA member rate
NYCLA ID Number: __________________________

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Name: ____________________________________

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Exp. date __________ Check enclosed □
that is where we are: right at the bottom of every opinion poll or survey measuring the public's respect for occupations. This is where we are: right at the bottom of every opinion poll or survey measuring the public's respect for occupations. This is where we are: right at the bottom of every opinion poll or survey measuring the public's respect for occupations.

**Message From J. Kobak Jr.**

(Continued From Page 11)

that is where we are: right at the bottom of every opinion poll or survey measuring the public's respect for occupations. NYCLA’s system of open committee membership and many of our fora and events have always served to promote the values of professionalism in informal ways. This year, we launched an experimental mentoring program with a CLE component that I hope to expand.

During my presidency, I envision creating opportunities for NYCLA and the profession to remake and renew ourselves. I know I will have many challenges as your 57th president. But I know I have a secret weapon -- a bar association full of people with talent, dedication and good will.

This Message is an excerpt from Mr. Kobak’s acceptance speech delivered on May 27 when he became NYCLA’s 57th president. To read the full text of Mr. Kobak’s Message, visit www.nycla.org and click on News & Publications and then on Speeches.

**FREE TO NYCLA MEMBERS**

**LOCATION:** NYCLA Home of Law, 14 Vesey Street (between Church Street and Broadway)

**TIME:** 6:00-8:00 PM

**REGISTRATION:** Circle dates of all programs you wish to attend and fax: 212-406-9252 or email: agluck@nycla.org.

**FREE TO NYCLA MEMBERS**

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The Bonds of Matrimony
(Continued From Page 6)

ates in them a tenancy by the entirety, unless expressly declared to be a joint tenancy or a tenancy in common.” (See Bartholomew v. Marshall, 257 AD 1080 [1939]; see also Taranto, Practice Commentaries, McKinney’s Consolidated Laws of New York, Book 17B, EPTL 6-2.2.) This form of ownership, among other things, prevents creditors of one spouse from forcing the sale of the house and easily transfers title to one spouse upon the death of the other. The exception to this rule about a tenancy by the entirety is if the deed expressly declares it to be a joint tenancy or tenancy in common (where each spouse owns a divisible share).

 Commons, the deed to a husband and wife will indicate that they are married, with language such as “A and B, as husband and wife” or “A and B, his wife” or “A and B, her husband.” This form of ownership, by statute, cannot be altered or changed without the mutual consent of the spouses or a divorce. Obviously, the ownership of a house by spouses as a tenancy by the entirety gives comfort that one spouse cannot sell his/her interest in the property without the other spouse’s consent. Only in limited circumstances, such as a divorce proceeding or bankruptcy case, can a court force the disposition of a house owned by the spouses in this form without their consent.

Granting of Summary Judgment: The term “summary judgment” means that there are no issues of fact that necessitate a trial before a judge or jury. Summary judgment cannot be granted unless it clearly appears that there are no genuine issues of material fact to be determined and no evidence which will support the opposing party’s case. The moving party must present proof (in admissible form) that supports the request and demonstrates that the matter may be decided on the law alone. It can then be said that the movant has established his “prima facie” case (meaning “at first sight”). See Alvarez v. Prospect Hospital, 68 NY2d 320 [1986]; Friends of Animals, Inc. v. Associated Fur Mfrs., Inc., 46 NY2d 1065 [1979]. Then, the other side to the litigation must present the judge with proof that there are genuine fact issues and that the matter cannot be determined without a trial. See Zuckerman v. City of New York, 49 NY2d 557 [1980]. Summary judgment is a drastic remedy, which requires that the party opposing the motion be accorded every favorable inference and issues of credibility may not be determined on the motion but must await the trial. See Gluck & Dolleck, Inc. v. Tri- City Corp., 22 NY2d 439 [1968]. The papers submitted to the court on the motion for summary judgment should be scrutinized in a light most favorable to the party opposing the motion. See F. Garofalo Electric Co. v. New York University, 300 AD2d 186 [2002]. Many readers will understand that judges deny summary judgment motions in most cases because they want to give litigants their day in court and the facts are not always the facts.

In the probate proceeding in Bronx County’s Surrogate’s Court, Eliopoulos asked the Surrogate to grant him “summary judgment” on his claim that he is entitled to Erlinda’s entire interest in the house. The exhibit A, proof offered by Eliopoulos, that he was entitled to Erlinda’s whole share, was the deed itself. There was no express declaration in the deed that it had been conveyed or transferred to Eliopoulos and Erlinda as anything other than husband and wife. In granting summary judgment to Eliopoulos, in In the Estate of Erlinda Que, Decreased [Surrogate’s Court, Bronx County, February 25, 2010], Surrogate Holzman determined that, despite the language of Erlinda’s last will and testament granting her sister a half share of her interest in the house, Eliopoulos should be declared the full owner of half or 50 percent of the whole house. Specifically, Surrogate Holzman held that: ‘A tenancy by the entirety is different from both a tenancy in common and a joint tenancy in that it ‘remains intact’ and cannot be divided without the consent of both parties’ for as long as the marriage remains legally intact,” with both parties continuing ‘to be seized of the whole, and the death of one merely results in the defeasance of the deceased spouse’s coextensive interest in the property.’ (V.R.W. Inc. v. Klein, 68 NY2d 560 [1986].)” Accordingly, by operation of law, the death of Erlinda, one of the spouses, resulted in that spouse/tenant no longer having an interest in the property, with Eliopoulos, as the surviving spouse, now owning her share as well as his own. Surrogate Holzman recognized the long-standing rule that where a tenancy by the entirety cannot be effectuated by the unilateral last will of one of the spouses alone.” (Matter of Strong, 171 Misc. 445 [1939]).

Mr. Klass maintains a law firm engaged in civil litigation at 16 Court Street, 29th Floor, Brooklyn, New York. If he can be reached at 718-COURTCST or RichKlass@courthouselaw.com with any questions.
5. Myth Regarding Email Archive Offerings: I save everything in my archive so I can prove what they received. Reality: Your archive gives you a record of what content you CLAIM to have sent, but not what was actually received and whether or when it was received. Importantly, if there is a dispute, how do you intend to present to the arbitrator, mediator or judicial officer that what you have produced is the authentic information – authentic Internet records associated with precise content and uniform times of sending and receiving? People often overlook the complexity of “packaging” one’s evidence for presentation to other parties.

6. Myth Regarding Email Delivery: When I click SEND, they get the email. Reality: Because not all business email is delivered, the “I didn’t get that email” excuse is often used - or overused - to avoid responsibility. As Ferris Research points out, “3 percent of non-bulk, business-to-business Internet email goes undelivered to its intended recipient,” making this a valid excuse.

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“RPost suggests a simple ‘3 Cs’ email policy that permits us to operate in a best-practices manner in terms of records management and e-discovery compliance,” comments Tim Davis, vice president of technology, The McIntyre Group. “With RPost’s Send Registered button placed next to the Send button in Outlook, users know that if the email is ‘Casual,’ then press ‘Send.’ If the email can commit the sender or our company or has a ‘consequence’ if receipt is denied or content is disputed, then our users know to click RPost’s ‘Send Registered’ button for legal and court-admissible proof of the email correspondence.”

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Tips For Lawyers (Continued From Page 7)

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Hon. Joseph Kevin McKay
Acting Justice, Supreme Court, Kings County
Hon. Joseph Kevin McKay. Acting Justice, Supreme Court, Kings County, was appointed in 2001. His 27 years of judicial experience include serving as a judge in the Criminal and Civil Courts; in addition, he was an adjunct associate professor at the John Jay College of Criminal Justice from 1998 to 2003. Prior to assuming his judicial post, Justice McKay was inspector general for New York City’s Department of Sanitation, a partner at Hays, St. John, Abramson & Heathron, panel chair and member of the New York City Arbitration Program and an assistant district attorney in New York County. Justice McKay is vice chair of the NYCLA Justice Center Advisory Board, a member of the Federal Courts Committee, Judicial Section and Task Force on Judicial Independence and a delegate to the NYSBA House of Delegates. He is also a member of the Brooklyn Bar Association, New York City Bar, New York University School of Law’s Center for Research in Crime and Justice Advisory Board, New York Methodist Hospital’s Board of Trustees and Long Island University School of Business’ Advisory Board. He is a graduate of New York University School of Law.

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Partner, Warner Partners, P.C.
Rita W. Warner, a partner at Warner Partners, P.C., has been an active matrimonial practitioner for more than 25 years. She has been with Warner Partners, P.C. (formerly known as Coble & Warner) since the firm’s founding in 1980. Ms. Warner has been involved at the trial-court level in a wide range of high-profile cases and handled on appeal matters of recognized and significant precedential value in the matrimonial field, and has appeared on television and radio on family law matters. Ms. Warner is a frequent lecturer and moderator at bar association forums and CLE programs. She is a member of the NYCLA Foundation Board, former co-chair of NYCLA’s Matrimonial Law Section and member of several other NYCLA committees, including the Family Court & Child Welfare, Nominations and Supreme Court Committee. Ms. Warner co-chairs the International Section of the New York State Bar Association’s (NYSBA) Matrimonial Committee and is a member of NYSBA’s Family Law Section. She is also on the board of the Women’s Rights Division of Human Rights Watch. Ms. Warner is a graduate of New York University School of Law.

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Stephen C. Lessard, an associate at Orrick, Herrington & Sutcliffe LLP, handles taxation of debt and equity offerings, collateralizations, reorganizations, cross-border transactions and municipal finance. He also has experience counseling nonprofit organizations on federal tax law and corporate governance. He is active in his former university and Recruiting Committees and has participated in numerous pro bono projects by providing tax advice to nonprofit organizations and writing appellate briefs for the New York County District Attorney. He chairs NYCLA’s Lesbian, Gay, Bisexual and Transgender Issues Committee and is a member of the New York State Bar Association’s Civil Rights Committee. He has published several articles on tax issues, one of which received the 2006 Bonnard Award for Legal Achievement. During a 20-year career with the U.S. Navy, Mr. Lessard served on ships and ashore as a surface warfare officer, and towards which he has received are the Meritorious Service Medal, Navy Commendation Medal and Navy Achievement Medal. Since 2005, he has volunteered as a counselor at Servicemembers’ Legal Defense Network. He is a graduate of Georgetown University Law Center, where he was a member of The Tax Lawyer journal staff, serving as an executive editor.

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In May, NYCLA’s Law-Related Education Committee, chaired by Hon. Richard Lee Price, held an awards ceremony for its annual New York City High School Essay Contest. Over 150 students from 13 high schools in New York City submitted essays on the topic of internet privacy. Aaron Shapiro of Queen’s Bayside High School was the first-place winner and received $500 for his winning essay. Below is Mr. Shapiro’s essay.

**Essay Topic:** Internet Privacy - Should adults, such as your teachers, parents, college admissions officers, potential employers or government officials have the right to read what you post on or send across the Internet to such social networking sites as Facebook, blogs or Twitter, or to websites or photo sites visited, or is this an invasion of your privacy?

**By Aaron Shapiro, Bayside High School**

The right to privacy as it relates to Internet activity is a momentous issue facing society today. Some users of the Internet wish to shield their identities while participating in frank discussions on sensitive topics. Others fulfill fantasies and harmlessly role play under the cover of a false identity in chat rooms. But there are problems with frauds and scam artists who elude law enforcement authorities through anonymous mailings and postings. Most recently, there was the “Facebook Fugitive,” a man who escaped from jail and would update his Facebook profile daily with information about his whereabouts. Other users are concerned about the proliferation of information on the Internet. Yet, in today’s day and age, the Internet serves as no more than a mere public bulletin board.

As millions of users subscribe to social networking sites, such as Facebook and Myspace, they are knowingly publicizing information about themselves that is only a few clicks away from any user wishing to access it. As Justice John Marshall Harlan of the United States Supreme Court wrote in a judicial dissent, “…there is a two-fold requirement, first, that a person has exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as ‘reasonable.” As any user of a social networking site knows, the first condition of this dissent cannot possibly be fulfilled. Users of such sites can access people’s profiles simply by browsing a database and the information posted is clearly displayed to anyone inclined to access it. While security features can be adjusted, limiting those who can view one’s profile, users are subject to agreeing to the privacy policy of the social networking site. These privacy policies advise the users that their profiles will be monitored by site administrators; therefore, there is a blatant void in privacy as to what is posted on one’s profile. The second condition, regarding society’s acceptance of the expectation of privacy, can also not be met on social networking sites. For instance, if email were to be compared to first-class mail and postings on the web, in contrast, were viewed as a postcard, there simply is no reasonable expectation of privacy for non-email postings. As the “plain view doctrine” authorizes warrantless searches under the Fourth Amendment, postings on the Internet are, in fact, in plain view. If an individual truly wished to have privacy, he or she would not willingly advertise private information to the “Internet-savvy” world.

Ultimately, it is the context in which the information is conveyed to the user that determines whether an expectation of privacy is established. The Court of Appeals for the Armed Forces, in United States v. Maxwell, determined that there should be a limited expectation of privacy in some emails. However, in this case, a concerned citizen had contacted law enforcement officials about obscene emails he was receiving from another individual. The citizen turned over the emails to agents and the agents later contacted America Online (AOL) for other files related to the individual who had sent the emails to the concerned citizen. The police conducted a search of AOL’s records instead of a search of a private home or computer. The Court held, in this instance, that there was a reasonable expectation of privacy in the AOL emails using analogies to traditional Fourth Amendment doctrine and comparing emails to first-class mail and telephone calls. The Court used AOL’s privacy policy as evidence to back up its reasoning since AOL’s stated policy was to only disclose subscribers’ emails if given a court order. It compared messages sent on AOL to the open Internet, which the Court said had a less secure system, but it recognized an expectation of privacy in AOL emails, even though it said, “implicit promises or contractual guarantees of privacy by commercial entities do not guarantee a constitutional expectation of privacy.” The Court then implied that it might not recognize a reasonable expectation of privacy when an email was “sent out to more and more subscribers” or sent to the public at large, as in a chat room or social networking site.

The Internet is clearly a public forum disseminating information. The case of United States v. Maxwell established that the context in which the information is disseminated determines whether or not there an expectation of privacy. Hence, as users of social networking sites publish personal information on what, in essence, are electronic bulletin boards, no reasonable expectation of privacy can be established. Consequently, anyone has the legitimate right to read the posted information.
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