NYSBA FALL 2000

# Perspective

A publication of the Young Lawyers Section
of the New York State Bar Association

## A Message from the Section Chair

It is my pleasure to be writing to you as the new Chair of the Section. My goal for this year is to continue to enhance the Section's mission to be a bridge to the profession and the New York State Bar Association. I would like to see our members increase their utilization of Section and Bar Association programs. The Section and Association can be a tremendous resource as you begin your new career.

When I first started out, I accepted a position in a small firm in Binghamton. The firm picked up the fees to join the NYSBA, so I did. But I must admit, I didn't do much with my membership that first year.

After the excitement of passing the bar exam and getting settled that first year had worn off, I realized that I still had a lot to learn about the actual practice of law. My firm's practice was predominately in labor and employment law and they encouraged me to attend CLE seminars presented by the NYSBA. I probably attended a half a dozen seminars over the next couple of years. The seminars were great, and

(Continued on page 20)

## Leaving the Paper Chase Behind (or How to Turn Your Law Practice into a Digital One)

By Scott M. Bishop

If you are like me, your desk and office are so swamped with paper that it looks like Syracuse in the wintertime. In fact, in the brief time that I've gone solo I've added several bookshelves and have rearranged my furniture a number of times so that I can accommodate the sheer volume of it all.

However, I've got a plan to combat this blizzard of white. And no, it's not a shredder. But first, I have an admission to make. There's no such thing as a paperless law office. Every attorney over the course of their career will do their part in supporting the U. S. logging industry. For example, I routinely go through one laser printer toner cartridge every six months. This translates into roughly 10,000 pages every year. Bear in mind that this figure does not include the hundreds of pages of cases, law review and treatise articles that I copy on my weekly visits to the library. Nor am I including in this figure copies of letters and documents that must be sent to various parties or the copies of articles that I send to my clients and other persons.

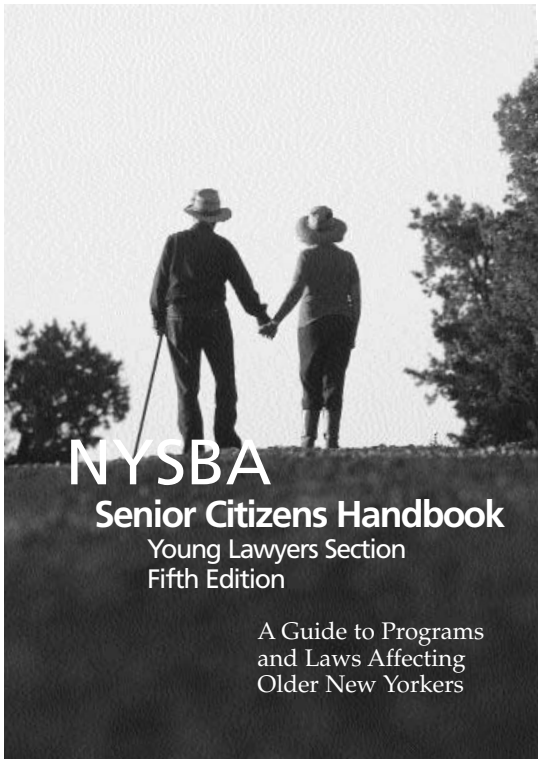
But I've got a plan to combat these white-out conditions. I have a plan because I believe that there are affirmative strategies an attorney can use that will help minimize the endless scraps of paper, the post-its that are strewn about our desks like ticker tape, and the Klingon-esque redundancy we build into our offices just in case we lose our original copy.

Yes, I've got a plan. Although my plan utilizes a desktop computer as

(Continued on page 22)

## Inside

# Discounted for YLS Members!




## The Expanded 5th Edition of the Senior Citizens Handbook is Now Available.

## Order Your Copy Today!

Orders are being accepted for the 5th Edition of the Senior Citizens Handbook, produced by the New York State Bar Association Young Lawyers Section (YLS). The publication price is $10.00/copy, but members of the Young Lawyers Section will receive a 20% discount, making the price of your copy $8.00.

To order the Senior Citizens Handbook, please fill out the order form and return it to the address listed below. Telephone requests will not be accepted. Thank you.

### Order Form

NYSBA Member ID (must be included to receive discount) _____

Name _____

Address _____

City _____ State _____ Zip _____

| Quantity | Description | Unit Price | Subtotal |
|---|---|---|---|
| _____ | Senior Citizens Handbook | ~~$10.00~~/copy **$8.00**<br>8% Sales Tax | _____<br>_____ |
| | | TOTAL AMT. DUE | |

**Mail to: Senior Citizens Handbook, NYSBA, One Elk Street, Albany, N.Y. 12207**

# From the Editor's Desk

*"I don't care to belong to a club that accepts people like me as members."*
**—Groucho Marx**

I thought the above quote was appropriate to begin this column as it reminded me of several conversations I have had with fellow young lawyers from across the state. As I subtly try to solicit articles from these people, I almost always find myself asking if someone is a member of the Young Lawyers Section. If the response is negative, I usually end up rattling off a laundry list of advantages to joining the YLS, something I have rarely done for any organization. By nature, I have never been a "joiner" of groups as I tend to be rather skeptical and cynical about such things. However, I will dare to say that the Young Lawyers Section is probably one of the easiest and most accessible sections of the state bar and offers numerous benefits to those involved.

One such program which I strongly encourage Section members to take part in is the United State Supreme Court Admissions program, which is scheduled to take place in Washington, D.C. on June 4, 2001. If you have been admitted to the bar for at least three years (and submit the requisite application materials and rather nominal fee), you will be eligible to participate in this program. Having been sworn in before the Justices of the U.S. Supreme Court in 1999, I can attest that it is a humbling experience which will leave an indelible impression. I will never forget walking into the distinguished Court and, by pure chance, being seated in the front row, only feet away from the Justices, enabling me to make eye contact with each. Besides getting to hear the Justices announce decisions into the record (and I have heard that sometimes dissents are read rather hotly), in years past, new admittees have been able to personally meet and take pictures with the Justices. The trip will also allow some time for sightseeing in the D.C. area. I managed to have my own "celebrity" experience as I walked around the White House at the same time President Clinton's dog "Buddy" was out for his exercise. Surprisingly, the security allowed the friendly dog up to the gate for visitors to pet and take pictures.

Besides the unforgettable experience of standing before the Justices of the Supreme Court, one obtains special privileges upon admission. Of course, being admitted allows you to argue before the Court, should you be fortunate enough to have such a case. However, membership also allows you to sit in a reserved section of the courtroom to observe arguments of the Court, to use the public areas of the extensive Supreme Court library and further allows you to request a special tour of the Court facilities for your family or friends. More information will be sent to Section members about this exciting program early in 2001. Please be sure to note the deadlines to submit your application as the time restrictions are rather strict.

Another valuable program not to be missed is the Young Lawyers Section CLE event to be held at the State Bar's Annual Meeting in New York City on January 24, 2001, at 9:00 a.m. The event will feature Distinguished-Professor of Law David D. Siegel, a renowned writer, speaker and experton all matters involving New York's Civil Practice Law and Rules. In the past this event has proven very popular to all members of the bar and this year should be no exception.

Please do not hesitate to contact the YLS officers or myself for more details on the wide range of services and programs the Section offers and/or how to get more involved with the Section.

In other matters, I am very pleased with the responses to ***SOUND OFF!!!*** which begins on page 4 in this issue. Almost everyone who responded thanked me for the opportunity to vent their opinion. Because this was such an emotional topic, very few people kept to the word limit (30–60 words maximum), but I found the responses so interesting that I refused to edit them down. For future ***SOUND OFF!!!*** responses I merely request that one keep in mind the Shakespearean maxim: "Brevity is the soul of wit." Thank you to all of those who contributed to this issue.

The topic I have chosen for next issue's ***SOUND OFF!!!*** (responses to be printed in the Spring 2001 issue of *Perspective*) is whether lawyers in their first five years of practice should be forced to perform mandatory pro bono services. I believe this is another volatile and important subject which will continue to be debated in the years to come. Please also feel free to submit any other subject matter you feel would be of interest to young lawyers. More details of ***SOUND OFF!!!*** can be found in the ad on page 7 in this issue. Please send all comments via e-mail to: jamesrizzo9 @juno.com. Please note that the deadline for all submissions (substantive articles, reviews, ***SOUND OFF!!!*** responses, etc.) to the Spring issue of *Perspective* is February 1, 2001.

I hope you enjoy this issue of *Perspective*. Your comments, suggestions and contributions are always welcome. *Talis interpretatio semper fienda est, ut evitetur absurdum et inconveniens, et ne judicium sit illusorium.*

**James S. Rizzo**

# *SOUND OFF!!!*

## Young Lawyers Respond to the Question: *"Do You Feel You Have Paid Too Much for Law School?"*

*"Absolutely. Law school tuition is absurd. If you don't come from a rich family where Daddy can pay tuition and living expenses for you, you have to mortgage your future in order to pay for law school. I graduated from a top-30 law school two years ago, and my loans total over $120,000. And having a good salary isn't the answer when you have to pay over $1,100 a month in loans, and will be doing so for the next 30 years."*

* * *

*"Shouldn't law schools have the decency to wait until their grads have paid off their student loans before they start soliciting them for donations?"*

* * *

*"I assumed an enormous debt burden just so professors could attempt to ridicule me in front of a room full of my peers all in an attempt to radically alter the way I view the world. Well, it didn't work because I still think that Mrs. Palsgraf really got screwed!!! I would've paid double, however, to actually understand the Rule Against Perpetuities!"*

* * *

*"When you compare the price of law school to the price of luxury cars and SUVs these days, law school was a bargain."*

* * *

*"I went to law school full of ideals of working for the people and improving the world. I hated those that did it for the money. After one year of working for the government in a very fulfilling position, I am nearly broke, with over half of my monthly salary going to pay my law school loans. I am leaving for a private job that simply pays more."*

* * *

*"Paid too much for law school? Nah. $150K isn't too high a price to pay for an education that leads its students down a garden path of jurisprudence and toxic torts and then dumps its graduates into an impossibly dense hierarchy of a job market, offering incongruous wages and low quality of life. No! It isn't too high a price to pay for 20% unemployment rates and the word "second-rate" stamped on your forehead every time a prospective employer reminds you that you didn't go to a top school or finish at the top of your class. You were just smart enough to coast through school and then squeak by the Bar. But your Ivy League counterpart, well he's gotta have more to offer than you . . . NO! It's not too high a price to pay for a congenital fear of calculus and a career counseling program at your college (and at home) that pawns off law school as the generic alternative to everything else—as if it was a free three years to figure out what you want to do with your life (and that third year is a real gem—let me tell ya). So in response to your ridiculous question: No! For what this great hallowed education bought me (bad job and loan consolidation), it was a veritable drop in the bucket!"*

* * *

*"Did I pay too much for law school? I should think so, and maybe it is because currently my take home monthly pay is about $2,000 after tax. Hopefully, when my income improves in the near future, I might conclude that $20,000/year tuition is worth it after all."*

* * *

*"I did not pay too much for law school. I was graduated from the University of Virginia School of Law in 1999 as an in-state student, which means my tuition never went over $14,000 per year. Meantime, my income went from $29,000 as a Richmond, Virginia, legal assistant to $110,000 as a Washington, D.C. lawyer, and I like my job, my firm, and my new D.C. house (which I could never have afforded on a lesser salary) and my life. Sounds like a good deal to me."*

* * *

*"I absolutely believe I paid too much for law school. And I'm still paying."*

* * *

*"I love the law, but after attending a private N.Y. law school, I am $80,000 in debt and can't afford to practice in the area where I feel I could truly make a difference because they have no loan forgiveness program for public interest work! They were very stingy with scholarships/grants and when I took summer courses, I literally collected the bottles and cans from 3Ls taking an on-campus bar review course to pay for my living expenses!! Now they call me soliciting donations—FAT CHANCE!!!"*

* * *

*"As a 54-year old contracts expert who graduated from law school in '98 with $52K in tuition debt and a teenager going into college, I must say that the tuition was a mortgage on my family's future, and the pay-off hedged on an 11-year return (in my case) in the form of a much higher income. I am now fully equipped for a second career, once I can be spared from what remains of my parenting responsibilities. I am now faced with either securing a much better paying job as an attorney or building my own practice. Whichever way it goes, I feel fulfilled."*

* * *

*"I am in my mid-30s and have been out of law school since 1995. For my first 4 years out of law school, I lived like a pauper while struggling to pay back student loans in the six figures—lots of Kraft macaroni and cheese, no vacations, etc. If it wasn't for a wonderful and generous boyfriend that I had at the time, I would not have had a social life to speak of. I am finally at the point now where, if I don't do anything stupid or extravagant, I can lead a fairly normal existence and pay all my bills on time. I often wonder if I had to do it all over again if I would have done things differently (gone to school part-time at night while work-*

*ing during the day; applied to public, inexpensive law schools). I would not recommend to anyone else that they take on as much in student loan debt as I did."*

* * *

*"I didn't pay too much because I went to a state law school. Although a degree from my school is not as marketable as a degree from Harvard, Yale, etc., it is "worth as much" as degrees from schools charging double the tuition."*

* * *

*"The measurement of my success is my commitment on that particular project, and once I am committed to go for the gold, I am ready to pay with gold, sacrifices and hard work. If I were to find out, investigate and test for myself each one of all the concepts I learned and training I got in law school, my entire lifetime will have not been enough. All that wisdom and coaching of many, many generations of lawyers were passed to me in a few years by my law school educators. What I got out of law school was priceless and once I understood that, paying for law school never was and never will be too much."*

* * *

*"I feel I paid too much for law school. I also feel that prospective lawyers should try to cut costs by attending law schools with very reasonable fees regardless of the popular opinion which suggests that one must attend a recognized and expensive law school. I have first-hand experience that it really does not matter which law school you attend. The bottom line in getting a job is networking and who you know. It has been very difficult for me and a host of others to pay off our school loans. This is due to the fact that I have yet to secure a permanent legal position. I regret having gone to law school, especially an expensive one, which has yet to make a difference in securing employment. I wish there was a way out. God help me and us all."*

* * *

*"I have government loans that have over 8.5% interest rates. If the government offers an incentive to have its citizens become better educated, they should not be trying to make a profit off of us. The 'tax break' we supposedly get for paying student loan interest is a joke. It only lasts three years, and I'm over the allowed deduction after making three payments. And next year I'll be phased out because I'll be getting married, and I'll be over the income limit. There's that marriage penalty again. Making a huge monthly loan payment becomes more painful when it's purely with after-tax money. If the government wanted to give us an honest break, it should at least allow us to pay our loans with pre-tax income."*

* * *

*"I do believe law school was too expensive, but then again, it is comparable to other graduate programs. A viable solution in my opinion is to lower interest rates for educational loans across the board. The interest rate for about 50% of my law school loans is 9.75%. As an attorney working in city government, I believe that it would be a good idea to have lower interest rates, a sizable tax deduction or some other type of 'credit' provided. It is difficult enough surviving on a low salary—but having so much of that low salary go towards interest is a heartache."*

* * *

*"My knee-jerk reaction to this question is a resounding yes; however, it is more complicated than it seems. A law school education is wonderful and may be worth the tuition. But is it worth the loans? Perhaps I would not feel as overwhelmed by my debt if the salaries were more in line with the fantasies sold by law schools prior to admission. The truth is hidden from applicants, and they are allowed to believe, as I did, that I would come out making at least $20,000 more than I actually did. I live in New York City, and when I graduated in 1996, there were job offers as low as $27,000. Many graduates were unable to find jobs at all, but the loan company comes knocking on your door regardless. While the word is that the job market has turned around, the unfortunate reality is that the schools keep admitting scores of misled people who incur staggering debt and then graduate only to find that their starting salary is less than what they might have made without a law degree. And then the profession collectively laments the disillusionment among young lawyers and their flight from the practice of law. Is it any wonder that a group of people who achieved a supposed societal ideal at such extraordinary cost feel betrayed and bitter to learn that they will be sorely underpaid while society continues to hate lawyers and believe they are all paid six figures? This plague of law school debt is one of the keys, in my opinion, to understanding the so-called malaise pervading young lawyers."*

* * *

*"Since I've only been out of law school for a short period of time, get back to me on that question in a couple of years. I believe the true measure of my decision to go to law school will make itself apparent in my life and career once I've been out of law school for seven or eight years."*

* * *

*"Having attended a state law school in New York, I'd have to say that law school almost doesn't come any cheaper. What I wanted was a law school education, an education that would prepare me for any career I chose. What I got was three years of student discounts, and a law career. There was almost nothing that I liked about law school, but I consider it part of the prix fixe of being a lawyer, along with the costs of the bar exam, books, CLE, and martinis."*

* * *

*"People often characterize lawyers as money-hungry and without a conscience. This lawyer is money-hungry because he has that conscience. Not all lawyers are greedy. Most law schools are, and at least in this case, they are the very reason that the reformers that the public looks for cannot exist. If law schools truly believe they are performing a civic*

*duty by training attorneys, they must strive to make it economically feasible for those attorneys to fulfill this mandate."*

* * *

*"I went to the University of Missouri and received a bargain compared to my Ivy League peers, especially those who, despite the outrageous tuition, still cannot spell (no offense). My Midwestern public education prepared me for the New York and Missouri bar exams, AND I'll be debt-free within five years of graduating."*

* * *

*"What's the difference between a mortgage payment and a law school loan payment?*

*—A tangible asset"*

* * *

*"When I found out that the library wasn't open all night, especially during finals, that professors were making large sums of money off of the photocopy packets the school was selling for their courses, when I saw the huge screen TV in the lounge, I realized I paid far too much for law school. Where and what did my money actually go for? Yes, I have a degree, but I am also paying $6 a day in interest on my law school loans. Call me crazy but there is something wrong here."*

* * *

*"I do not feel law school is cost prohibitive. However, I do feel that law schools recklessly accept too many students thereby flooding the profession and driving down salaries such that repayment of student loans, in a timely manner, is impossible, causing tremendous debt and unforgiving interest accrual to become a way of life, for life."*

* * *

*"YES! YES! YES! Law school was a very valuable experience for a variety of reasons—but not over a $100,000 worth of valuable. For the past five years, I have been a slave to my law school loans. I work at a law firm so that I can afford to pay off my debt but I would rather work elsewhere. And, I have never heard adequate justification for the high cost. I think they charge more because they think we will be able to afford the debt once we get law firm jobs."*

* * *

*"I know my law school made money on the law students while they were losing money on other graduate programs. It is not fair."*

* * *

*"I was lucky enough to attend a state law school and get a good quality education for a dirt-cheap cost. If employers snub me for that reason alone, their loss. My not being knee-deep in student loan debt relieves me from a lot of job-seeking stress!"*

* * *

*"Absolutely. It's the nightmare—"we go to law school because we can't calculate"—come true. The fact is: unless you graduate from a top school, or from the top of your class if it's not a top school, plus you are willing to be abused by toiling 12 to 14 hours a day without weekends or holidays, chances are that you have to defer your student loans. Let's fact it: a 23-year-old college graduate with a Computer Science or an Engineering degree can start out with a $40,000 salary, and usually jumps to $60,000 within two years. An MBA, who pays less tuition and spends usually two extra years at school, is paid way more than a lawyer. The stock options and sign on bonus they get are just further insults to our injury. I understand that money is not everything. But how many of us are truly happy with what we do and our quality of life? When I told one of my colleagues that I was happy with my work, I was amazed to hear him say that I was the only happy lawyer that he knew. I think law schools should alert all applicants of the potential financial burden at the time of their application. If only I knew that most law school graduates have to work at least ten years before they can pay off their student loans, I would have second thoughts about going to law school at all."*

* * *

## Young Lawyers *SOUND OFF!!!* on Other Topics of Interest

*"I graduated in '96 with lots of ideals and aspirations. Unfortunately reality has taught me a very tough lesson. One of my clients came to me with a hypothetical question. I informed him that the act he described would be illegal and therefore was impossible. I had no reason to believe that he would pursue these ventures on his own or with others. Now I may be persecuted for his illegal acts under the idea of "Conscious Avoidance." I am being told that I should have known what he was doing, but I neglected to do my duty and inquire of my client if he was involved in illegal activity. How can this be possible? Am I a lawyer or a babysitter? Nowhere in law school did anyone tell me that I would be held accountable for the actions of my clients. Be very careful as to the clients you agree to represent . . . they may be your last if this theory is held up."*

* * *

*"On lawyers? I have mixed feelings. Why don't they acknowledge my greetings when I greet them at the court house? It bewilders me coming from a common law country (Nigeria) and a former British colony where lawyers relate as brothers and sisters. Anywise, I will continue to say hi. After all, it doesn't hurt."*

* * *

*"I realize I am far from perfect, but it amazes me how often some supposedly 'more experienced' lawyers get away with procedural errors, neglect of cases/clients, and missed court-imposed deadlines without any sanction or rebuke from the courts. What's the point of having sanctions if they are never used?"*

* * *

**Tired of Long Hours, CLE Requirements, or Maybe You Just Want to Congratulate a Colleague on a Recent Accomplishment?**

**If So, Then It Is Time for You to . . .**

# *SOUND OFF!!!*

*Perspective* is proud to offer a chance for our Section members to anonymously express their opinions, complaints and/or other assorted commentary on any number of subjects affecting young lawyers today. The way it works is simple. Each issue a primary topic will be given for readers to comment on (see below). However, submissions are strongly encouraged on any other recent topic of interest (controversial local, state or federal laws being considered, a new regulation affecting young attorneys, law school/bar exam/law firm war stories, an attorney or program you'd like to congratulate or publicize, etc.). Names and contact information will only be published if the author requests it. All responses will be published in the next issue of *Perspective*.

***SOUND OFF!!! Would Like Your Response to the Following Question:***

## SHOULD LAWYERS IN THEIR FIRST FIVE YEARS OF PRACTICE BE FORCED TO PERFORM MANDATORY PRO BONO SERVICES?

All comments should be brief (30–60 words) and should be sent to *Perspective*'s Editor-in-Chief via email at: jamesrizzo9@juno.com. *Perspective* reserves the right to edit responses and the right not to publish responses considered inappropriate.

We look forward to hearing from you!

# Tips for Appearing Before Local Land Use Boards

By Gregory J. Amoroso

As a municipal attorney for the past six years, I have had the opportunity to act as counsel to both a Planning Board and a Zoning Board of Appeals. In my experience, attorneys who represent clients before these local land use boards are sometimes unprepared, confused, argumentative and unfamiliar with local procedures.

I can suggest a few tips to guide young lawyers towards effective representation of an applicant before a local land use board.

1. **Know the Law.** In order to persuade the board to grant your client's request, it is imperative that you know the standard of review that will eventually be applied by the board. In other words, do your homework! I have seen attorneys advocate for a variance or a permit without knowing what factors the Board will look to during its deliberation. You should review state law first, including any relevant environmental laws, but also be sure to review any pertinent local laws or ordinances. Local codes can often be found at the municipal clerk's office or the public library.

2. **Observe a Meeting of the Board.** Local land use boards do not always have codified rules of procedure. By observing a meeting, you can learn their local rules and customs. Does the Board allow continuing open discussion of a matter, or does the applicant have only one chance to plead his or her case? Is there one particular board member who asks most of the questions? Are there extra documents that the Board will want to review, even though they might not be required by law? Setting up an informal meeting with the local Zoning officer or Planning official may also lend additional insight into how the Board will react to an appeal. You should learn all this information beforehand, if possible.

3. **Be Prepared to Plead Your Case.** You should treat your appearance as an oral advocacy situation. Board members are often volunteers and work long nights; you need to impress and interest them. Also, be sure to address all required elements for your application. If there are three factors that must be met for a variance, give the board factual evidence to establish each of the factors.

4. **Do Not Argue with the Board or Their Attorney.** This might sound like common sense, but I have experienced it on several occasions. If you disagree with the Board's interpretation of either the facts or the law, explain your point of view, but do not become condescending, angry or frustrated. It will not serve your purposes to be disagreeable with either the board or their counsel.

5. **Deal with Neighborhood Disputes Beforehand**. In my experience, a primary factor that a board will consider when reviewing an applicant's request is the objection of neighbors. If there will be a group of neighbors opposed to your client's proposal, try to mediate with them beforehand. Speaking with neighbors may also educate you as to the history of past problems with the property which you or your client may not have been aware. At the very least, you will have a more thorough understanding of their position, and be in a better position to counter it at the board meeting.

My overall advice would be to take the matter seriously. You should treat an appearance before a local land use board as you would treat a court appearance. Be prepared, know both the facts and the law and advocate zealously!

***"I cannot give you the formula for success but I can give you the formula for failure—which is: Try to please everybody."***

**— Herbert Bayard Swope, American journalist (1882-1958)**

**Greg Amoroso has been the Corporation Counsel for the City of Rome, New York since 1996. He represents the NYSBA's Young Lawyers Section as the liaison to the Municipal Law Section and as a delegate to the House of Delegates. He was also the subject of a feature story in the February 25, 2000 edition of the *New York Law Journal*.**

# TECHNOTALK
# New Laws Provide Defenses to Online Legal Liability

By David P. Miranda

Businesses engaged in e-commerce and other Internet activities are increasingly subject to claims and lawsuits for posting materials considered defamatory or infringing upon another's copyright or trademark rights. The explosion of activity on the Internet has caused a flurry of lawsuits seeking damages for harm caused by online activities. In an attempt to stem the tide of litigation, which some fear may hinder the development of e-commerce, new laws have been passed providing defenses to Internet service providers (ISPs) and others operating online. These new laws have been applied in some recent court decisions that are instructive as to the legal defenses available to online claims.

Because the Internet offers the opportunity to reach millions of users, statements about individuals or businesses that may be viewed as defamatory are not uncommon. Often the author of a defamatory statement online may be unknown or using an alias. The anonymity of online statements has caused lawsuits to be commenced not just against the author of a defamatory statement but also against the ISP, Web site host or owner of the site where the defamatory comments appear. Congress, fearing that requiring an ISP or Web site host to monitor and make a determination regarding the accuracy of each and every message posted on its system would provide a chilling effect on free speech and shut the Internet down, included as part of the Communications Decency Act of 1996 a provision that exempts an online "interactive computer service" from liability as a publisher or speaker of defamatory content. The Communications Decency Act has been utilized successfully by Internet service providers such as America Online when defending lawsuits regarding comments that appear on one of its many chat rooms or bulletin board services. The law can also be used by Web site hosts and owners if they come within the statutory definition of an interactive computer service.

Recently, New York's Court of Appeals was asked to determine whether Prodigy, an Internet service provider, could be held liable for defamation as a result of threatening and sexually explicit e-mail passing through its system. The Court of Appeals, in its first major ruling regarding Internet liability, stated that the Internet service provider's role in transmitting e-mail is similar to that of a telephone company transmitting a phone call, and is not expected to monitor the content of its subscribers' conversations. The court dismissed the claim against Prodigy holding that it, like a telephone company, is merely a conduit and not a publisher of the e-mail transmitted through its system by a third party.

Internet service providers and Web site hosts have also been subject to lawsuits for copyright and trademark infringement occurring on their systems. Intellectual property violations online are rampant and an aggrieved party will often find they have insufficient information regarding the infringing party or the infringer has little or no recoverable assets. Intellectual property owners will often seek recovery against the ISP or Web site host where the copyrighted materials and trademark wrongfully appear. It can be difficult, if not impossible, for an ISP or web host with thousands of customers to monitor the content of each of its customer pages for potential copyright or trademark infringement. In 1998, Congress passed the Digital Millennium Copyright Act (DMCA) providing a defense to ISPs for contributory copyright infringement based upon the conduct of their customers or other third parties. However, the limitations on liability for copyright infringement apply only if the service provider has designated an agent to receive notification of claimed infringement with the U.S. Copyright Office and has also adopted and implemented a policy to terminate subscribers who are repeat copyright infringers.

The safe harbor provisions of the DMCA were recently raised by Napster in the lawsuit brought against it by the recording industry. Napster offers free online software enabling Internet users to locate and share MP3 music files on the Internet, conduct considered infringing by the recording industry. A federal court refused to allow Napster to use the DMCA defense because Napster did not adopt the required written policy until two months *after* the filing of the lawsuit. In addition, the court found Napster merely blocked the password of an alleged infringing user, but did nothing to prevent the same user from submitting a new password and using the Napster service again.

Because the Digital Millennium Copyright Act and other laws regarding online liability are relatively new, many are not familiar with the procedures that need to be completed in order to properly invoke the defenses in litigation. The Prodigy and Napster cases serve as reminders to online services and other e-commerce businesses to review and update their policies and procedures so that available defenses can be utilized if defamation or infringement claims arise.

**David P. Miranda, Miranda@techvalleylaw.com, is a partner with Rowley, Forrest, O'Donnell & Beaumont, P.C. in Albany, N.Y., online at www.rowleyforrest.com. Mr. Miranda represents Internet and e-commerce businesses and is the Editor-in-Chief of the *Internet Guide for New York Lawyers* published by the New York State Bar Association.**
**This article first appeared in the *Capital District Business Review* and is reprinted with permission from the publisher.**

# Young Lawyers Section News and Events

By James S. Rizzo

The **2000 Mentor Directory,** a valuable resource to help young lawyers with questions that arise in your daily practice, was released to Section members in the Spring of 2000. The Section also published the 5th Edition of the **Senior Citizens Handbook** which is currently available to the public throughout New York State. Both publications are "hot ticket" items and are a great example of the quality services the YLS provides both to young lawyers and the public. If you are interested in working for either publication, please contact one of the Section officers for further details.

The Young Lawyers Section provided an MCLE course in conjunction with the New York County Lawyers Association (NYCLA) in New York City on May 19, 2000. The program, entitled *Managing Your Practice, Managing Your Life*, was designed to assist all young lawyers and newly admitted attorneys with issues affecting their practice and life. The program topics included *Legal Resources on the Internet*, presented by Alison Alifano, the NYCLA Director of Library Resources, *Ethics for Young Lawyers*, by Sarah Diane McShea, Esq., and *Being Successful and Staying Sane: Stress Management for Lawyers*, presented by Carol R. de Fritsch, Esq., and Eileen Travis, Director, Lawyer Assistance Program, ABCNY. Attendees received 2 MCLE credit hours of Skills, 1 credit hour of Ethics and 1 credit hour toward the Practice Management requirement. A networking reception followed the event. As the Young Lawyers Section offers many opportunities to participate and speak at MCLE programs, please do not hesitate to contact the Section for more information if you are interested.

***See what happens when you age out of the YLS? John Szekeres, a former member of the YLS Executive Committee, who aged out of the Section in June, brought a little humor to the Section Leadership Training Workshop when he addressed the new members and reported on his successes in presenting district events in New York City.***

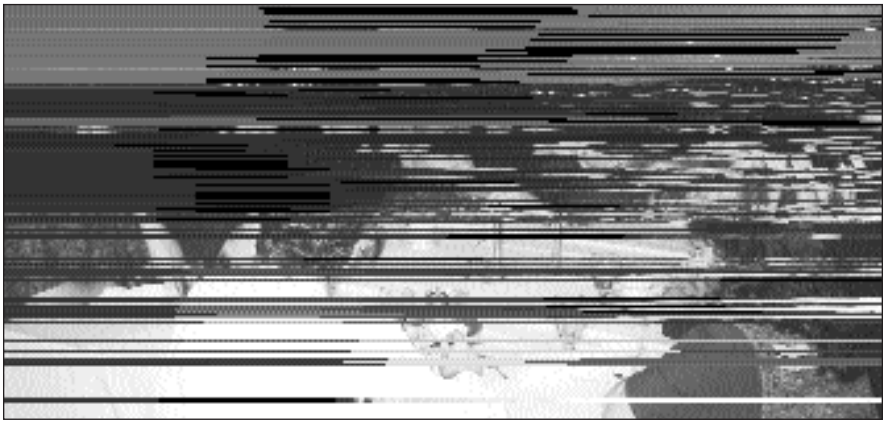
***Meet the new members of the Executive Committee! New members on hand for the Section Leadership Training Workshop held in July at the Cornell University Statler Hotel are (from left): James Fauci, 4th District Representative; Gregory Matalon, Tax Section Liaison; Kimberly Strauchon Verner, Elder Law Section Liaison; Scott Kossove, Trial Lawyers Section Liaison; Maria Woods, Health Law Section Liaison; and, Robert Gallagher, Jr., 8th District Representative.***

The Young Lawyers Executive Committee also held a leadership training meeting at the Statler Hotel, Cornell University in Ithaca, New York the weekend of July 28–29, 2000. The meeting proved valuable in charting the course of the Section and in orienting new and existing members of the Section to the work of the Executive Committee. After the training sessions, members attended a wine tasting and tour of the Standing Stone Vineyard in Lodi, New York and later took an informal midnight tour of the picturesque Cornell campus, ending at the infamous "hot truck."

Watch for your "*In Touch*" fax newsletter for more information on upcoming district events near you and for vacancies on the YLS Executive Committee. Please also check out our Web site located at http://www.nysba.org/sections/young.

# Burning the Candles Long into the Evening

Pictured on this page, members of the 2000-2001 Executive Committee worked long into the evening at their Summer meeting discussing the YLS's agenda for the new Section year.



# Mark Your Calendars!!!

**January 24, 2001—**
Young Lawyers Section CLE event featuring Distinguished Professor of Law David Siegel as part of the NYSBA's Annual Meeting in New York City.

**June 4, 2001—**
Young Lawyers Section sponsors applicants for admission before the United States Supreme Court in Washington, D.C.

# ETHICS MATTERS
# Handling of Escrow Funds by Attorneys: Investigation by Grievance Committee

By Mark S. Ochs

The Spring 2000 edition of *Perspective* contained an article entitled "Ethical Obligations of Attorneys Handling Escrow Funds." As noted in that article, the safeguarding of escrow funds is one of the most important obligations an attorney has. The proper handling of these funds and attention to record keeping requirements makes sound business sense and will help the practitioner avoid ethical problems.

This article deals with grievance committee investigations relating to an attorney's escrow account, the audit process and the consequences of escrow irregularities.

### Commencement

Most investigations that result in an audit of an attorney's escrow account do not begin with a complaint that the attorney has misappropriated funds. Rather, they begin with a complaint that the attorney is neglecting the client's case or is not responding to inquiries.

An investigation will be commenced and an audit is likely to occur when a notice is received in accordance with the Dishonored Check Reporting Rule.[1] Upon receipt of the notice, the grievance committee will direct the attorney to provide escrow account records and an accounting for the preceding six-month period.

### Production of Records

Escrow account records must be made available to a grievance committee at the attorney's New York office and are to be produced in response to a notice or subpoena duces tecum.[2] An attorney who does not maintain required records,[3] or who does not produce them as directed, shall be subject to a disciplinary proceeding.[4] All account records produced by the attorney remain confidential except for the particular proceeding. The failure to produce these records may result in suspension from the practice of law until such time as the attorney complies.[5]

Where the required records have not been maintained, the attorney may have to secure microfiched records from the bank. This can be an expensive proposition.

### What Records Must Be Maintained

For a period of seven years attorneys must maintain:

> A record of all deposits and withdrawals identifying the date, source and description of each deposit, and date, payee and purpose of each withdrawal or disbursement.
>
> A record for escrow accounts, showing the source of all funds deposited, the names of all persons for whom the funds are held, the amount of such funds, the description and amounts and the names of all persons to whom such funds were disbursed.[6]
>
> All checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips.

The record-keeping requirements apply to all accounts associated with the attorney's practice, not just escrow accounts. Other non-banking documents which correspond with the attorney's account activities relating to the representation of clients must also be retained.[7] Records of all financial transactions must be accurate and are to be made at or near the time of the events recorded.

## Audit Process

### Records

When an audit is commenced, the attorney is directed to produce bank statements, canceled checks, deposit slips, and ledgers. Initially the time period may only be six months. However, depending on what the audit discloses, the period requested could be broadened to cover a number of years.

The audit is not limited to a specific client but includes all account activity. Since the records remain confidential, an attorney cannot decline to provide account records by arguing they contain transactions on behalf of clients unrelated to the complaint which gave rise to the audit.

The audit may require the production of operating and personal accounts if the tracking of deposits and withdrawals reveals the involvement of these accounts.

### Analysis

Once the records are received, an in-depth analysis is undertaken. This entails the posting of all transactions to a ledger. Minimum client balances are determined for particular dates, which are compared, in total, to actual account balances. A negative balance is not required to establish a conversion of clients' funds.

The attorney must be able to establish that on any given day, all funds which should be held on

behalf of clients were on deposit in the account. If the minimum client balance exceeds the actual account balance, a prima facie case of conversion is established. The ability to pay a particular client is not sufficient and is commonly characterized as "taking from Peter to pay Paul."[8]

**Deficiencies** looked for in the audit include whether:

1. Clients' funds have not been deposited in the escrow account;
2. Checks have been issued against insufficient funds;[9]
3. The attorney utilized overdraft privileges on the escrow account;
4. Funds of one client were used to pay expenses of another client;
5. Funds have been improperly transferred between accounts (check kiting);[10] and
6. Unauthorized wire transfers have occurred.[11]

Commonly discovered errors include:

1. Commingling of the attorney's personal funds in the escrow account;
2. Writing of checks to cash;
3. Failure to produce or maintain records;[12]
4. Failure to maintain proper and accurate records;[13]
5. Improper signatories;
6. Improperly titled accounts;
7. Failure to maintain or utilize an IOLA account;
8. Issuing payment before the corresponding deposit has cleared;
9. Failure to maintain the account in accordance with the Dishonored Check Reporting Rule;
10. Unnecessary delay in the release of funds to the party entitled to receive them; and
11. Improper endorsement of a check made payable, in whole or in part, to the client.[14]

Where the audit presents uncontroverted evidence of conversion, the grievance committee may seek the attorney's immediate suspension pending conclusion of a disciplinary proceeding.[15]

## Consequences of Escrow Irregularities

If an investigation reveals minor escrow account irregularities which are primarily bookkeeping in nature, the outcome may be a confidential educational or disciplinary letter. However, where the conduct involves conversion, significant commingling or other serious misconduct, the probable result will be a disciplinary proceeding.

The misappropriation of escrow funds by an attorney can warrant a disciplinary proceeding even though the conduct may not support a charge of grand larceny under the Penal Law. There are two reasons for this. First, the burden of proof in a disciplinary proceeding is a fair preponderance of the evidence, not guilt beyond a reasonable doubt.[16]

Secondly, although venal intent may be relevant in determining sanction, it is not a required element of a charge of misconduct under DR 9-102. In fact, unknowing misappropriation can result in a disciplinary sanction. Courts have consistently treated the misappropriation of funds by an attorney as a serious matter, even where there was no venal intent. Any unauthorized use of client funds, regardless of motive, is unacceptable behavior for an attorney.[17]

All attorneys who are signatories on an escrow account are responsible for the activity in that account. Where funds are converted by an attorney in a law firm, the failure to oversee or review the firm's books and bookkeeping practices exposes an otherwise innocent partner to discipline.[18]

Although an attorney cannot be disciplined solely for asserting the privilege against self-incrimination, the failure to refute uncontroverted evidence of serious escrow violations will likely result in significant discipline.[19] The assertion of this privilege cannot be used as a shield against production of bank records.[20] A refusal to provide information or documentation in a disciplinary investigation which supports a finding of misconduct but which cannot lead to criminal prosecution may constitute a failure to cooperate with the grievance committee's investigation.[21]

## Other Attorney Activity With Escrow Ramifications

An attorney may be disciplined for the improper handling of funds even though an escrow account is not involved. Such cases involve fiduciary responsibilities similar to those attendant to escrow accounts.

Attorneys have been disciplined for improperly handling funds in estates,[22] and while serving as escrow agent,[23] financial agent,[24] court-appointed receiver,[25] guardian ad litem, conservator or committee,[26] foreclosure referee,[27] power of attorney,[28] trustee,[29] or bankruptcy trustee.[30]

## Conclusion

Knowledge of the rules and obligations which come with the establishment and use of an escrow account is essential to an attorney's practice of law. These duties should not be assigned to non-attorneys or complied with on a sporadic basis. While sound escrow account practices will not generate income or enhance the attorney's ability to

attract new clients, the failure to do so can result in a costly effort to verify that the account is properly maintained or in the worst case scenario may jeopardize the attorney's future.

## Endnotes

1. 22 N.Y.C.R.R. 1300.
2. DR 9-102(I).
3. DR 9-102(D).
4. DR 9-102(J).
5. *In re Nagoda*, 238 A.D.2d 667, 656 N.Y.S.2d 694 (3d Dep't 1997); *In re Roberts*, 224 A.D.2d 801, 637 N.Y.S.2d 944 (3d Dep't 1996).
6. *In re Siddiqi*, 231 A.D.2d 150 (2d Dep't 1997).
7. DR 9-102(D).
8. *In re Field*, 200 A.D.2d 205, 613 N.Y.S.2d 922 (2d Dep't 1994).
9. *In re Raphael*, 216 A.D.2d 788, 628 N.Y.S.2d 846 (3d Dep't 1995); *In re Pantoja*, 200 A.D.2d 110, 613 N.Y.S.2d 387 (1st Dep't 1994).
10. *In re Sanders,* 152 A.D.2d 163, 547 N.Y.S.2d 797 (4th Dep't. 1989).
11. *In re Rapoport*, 229 A.D.2d 1, 652 N.Y.S.2d 607 (1st Dep't 1997).
12. *In re Rabine,* 253 A.D.2d 144, 687 N.Y.S.2d 654 (2d Dep't 1999).
13. *In re Rosenberg*, 192 A.D.2d 871, 596 N.Y.S.2d 564 (3d Dep't 1993).
14. *In re Dean*, 147 A.D.2d 133, 541 N.Y.S.2d 555 (2d Dep't l989).
15. 22 N.Y.C.R.R. §§ 603.4(e)(1), 691.4(l), 806.4(f), 1022.19(f)(2).
16. *In re Capoccia*, 59 N.Y.2d 549 (1983).
17. *In re Harp*, 173 A.D.2d 957 (3d Dep't 1991); *In re Greenfield*, 152 A.D.2d 165 (1st Dep't 1989); *In re Weisberg*, 149 A.D.2d 58 (1st Dep't 1989); *In re Morrison*, 137 A.D.2d 70, 73 (1st Dep't 1988).
18. *In re Glazer*, 264 A.D.2d 19, ___ N.Y.S.2d ___, (2d Dep't 2000); *In re Ponzini*, 259 A.D.2d 142, 694 N.Y.S.2d 127 (2d Dep't 1999), *reargument granted*, 268 A.D.2d 478 (2d Dep't 2000); *In re Maroney*, 259 A.D.2d 206, 694 N.Y.S.2d 431 (2d Dep't 1999); *In re Spencer*, 259 A.D.2d 218, 694 N.Y.S.2d 426 (2d Dep't 1999), *reargument granted,* 268 A.D.2d 481 (2d Dep't 2000); *In re Falanga,* 180 A.D.2d 83, 583 N.Y.S.2d 472 (2d Dep't 1992).
19. *Spevack v. Klein*, 385 U.S. 511 (1967); *In re Kaye*, 194 A.D.2d 99, 604 N.Y.S.2d l17 (1st Dep't 1993).
20. *Zuckerman v. Greason,* 20 N.Y.2d 430, 438 (1967); *Shapiro v. United States*, 335 U.S. 1 (1948).
21. *In re Darden*, 240 A.D.2d 844, 658 N.Y.S.2d 718 (3d Dep't 1997); *In re Teig*, 235 A.D.2d 626, 651 N.Y.S.2d 728 (3d Dep't 1997).
22. *In re Prunis*, 250 A.D.2d 155, 680 N.Y.S.2d 505 (1st Dep't 1998).
23. *In re Van De Loo*, 240 A.D.2d 940, 659 N.Y.S.2d 899 (3d Dep't 1997); *In re Hahn*, 195 A.D.2d 105, 606 N.Y.S.2d 933 (4th Dep't 1993).
24. *In re Perlow*, 97 A.D.2d 492, 468 N.Y.S.2d 13 (2d Dep't 1983).
25. *In re Charles*, 208 A.D.2d 271, 623 N.Y.S.2d 924 (2d Dep't 1995).
26. *In re McCormick*, 219 A.D.2d 230, 634 N.Y.S.2d 731 (2d Dep't 1995).
27. *In re Parker*, 180 A.D.2d 106, 584 N.Y.S.2d 126 (2d Dep't 1992).
28. *In re Contino*, 205 A.D.2d 1, 617 N.Y.S.2d 105 (4th Dep't 1994).
29. *In re Mulderig*, 182 A.D.2d 85, 586 N.Y.S.2d 827 (2d Dep't 1992).
30. *In re Dussault,* 215 A.D.2d 843, 626 N.Y.S.2d 319 (3d Dep't 1995).

**Mark S. Ochs is the Past President of the New York State Association of Disciplinary Attorneys and is a frequent lecturer at State Bar events. He has been the Chief Attorney for the Committee on Professional Standards since 1990.**

## Request for Articles

*Perspective* welcomes the submission of substantive articles, humor, artwork, photographs, anecdotes, book and movie reviews, ***SOUND OFF!!!*** responses and quotes of timely interest to our Section, in addition to comments and suggestions for future issues.

Please send to:

James S. Rizzo
Office of the Corporation Counsel for the City of Rome
City Hall, 198 North Washington Street
Rome, New York 13440
Phone: (315) 339-7670 • Fax: (315) 339-7788
Email: jamesrizzo9@juno.com

*Articles should be submitted on a 3½" floppy disk, preferably in Microsoft Word format, along with a double-spaced, printed original, biographical information and a photograph (if desired). Please note that any articles previously published in another forum will need written permission from that publisher before they can be reprinted in* Perspective.

# Book Briefs

By Michelle Levine

## *TRANSFORMING PRACTICES: Finding Joy and Satisfaction in the Legal Life*

By Steven Keeva. An ABA Journal Book, Published by Contemporary Books, 218 pages.

This book is not for everyone, and yet everyone should read it. It is easy to imagine scores of attorneys dismissing Mr. Keeva's remarkable contribution as too "new age" or "touchy-feely" for them. What a missed opportunity. *Transforming Practices* should be required reading for law students and made part of the mandatory continuing legal education of every admitted attorney.

Just as law school has three years, the book has three main parts. The education you will receive is vastly different, however. The insights available in this book are arguably more useful in daily practice than any lesson taught in school. In Part I, Mr. Keeva examines the legal profession as it currently exists and explores what it is missing. Citing depressing statistics about the dissatisfaction of both law students and practicing attorneys, Mr. Keeva identifies seven types of separation that plague lawyers and prevent them from finding joy and fulfillment in their careers. He introduces the themes of integrating your heart and mind, finding balance, and becoming a whole person.

Part II of the book illustrates seven different types of spiritual practices. Each chapter in this part tells the stories of real attorneys who are employing various techniques to infuse their practices with more meaning. Some utilize meditation and yoga to focus their energies; others pursue mindfulness and truly being present in each moment to revitalize their awareness. The attorneys in these chapters are trying to replace arguing and winning with listening and healing. Aside from being inspirational examples of how to practice more meaningfully, these chapters are full of suggestions, exercises, and resources that allow the reader to immediately incorporate the ideas presented into their lives.

Part III explores a variety of ways to reshape the profession. Several more attorneys are introduced who have chosen to abandon traditional practices for more integrative approaches. The chapters in this part also highlight mediation, alternative ways of providing services to clients, and examples of innovative courses being offered at law schools that focus on retaining one's values and finding a place for them in one's professional life. Lawyers are encouraged to open a dialogue, release the profession's collective pent-up emotion, and confront all of the issues raised in the book.

In Part III, Mr. Keeva also devotes a chapter to "The New Client" suggesting that there are ongoing changes in the people seeking legal services. It is proposed that clients are receptive to a more holistic approach to lawyering, which offers attorneys the opportunity to practice that way. This is one aspect of the book that seems questionable. Despite all the cheery testimonials about lawyers taking a new attitude toward their work and their clients being responsive to it and embracing their own spirituality, one wonders how common such experiences truly are.

At the risk of sounding cynical, it seems just as likely that clients are not interested in awareness and balance and are certainly not interested in their attorneys making those things a priority. Reminding a client that there is more to life than his contract dispute and suggesting the exploration of solutions designed to heal rather than harm may translate to that client as the attorney not being committed to the client and his case. At the very least, it demands new skills from the attorney, albeit some of the very same skills that *Transforming Practices* encourages the bar to hone, including truly listening to clients and refraining from making any judgments about them or their cases.

Another drawback to the book is that much of it seems geared to more experienced practitioners who have more autonomy and freedom than members of this section do in choosing who their clients are and how to run their offices. Of course, young lawyers who are solo practitioners or practice in small firms can easily implement the ideas presented if they so choose. That is not to say that every attorney could not benefit from reading this book, as well as any of the items in the extensive bibliography. After all, at its core, the book is about personal growth and that is a laudable goal that everyone can pursue regardless of their practice environment.

It is also worth noting that there is a companion Web site to this book at www.transformingpractices.com,

which is yet another treasure trove of articles, interviews, exercises, and resource information for those attorneys interested in taking Mr. Keeva's challenge to transform themselves and their practices. Both the book and the Web site are full of practical and immediately useful information providing real tools to anyone searching for fresh ideas and a roadmap for transformation.

In many ways, it struck me as ironic to read a book touting the benefits of reconnecting to one's inner life and attesting to lawyers actually doing so when the profession seems so focused on external things like salary wars and billing quotas. As the bar puzzles over the riddle of associate retention and throws more money than ever at young associates, perhaps more lasting answers should be sought in books such as *Transforming Practices*.

Skyrocketing salaries, casual attire, and spa treatments are obviously not solving the problems facing the bar. These are superficial remedies for profound issues. The yearning for deeper answers is palpable. It is necessary to devote the time and energy to searching what is left of each of our souls, keeping in mind a quote included in the book, "Ten percent of a lawyer's soul dies for every 100 billable hours worked in excess of 1,500 per year." Reading *Transforming Practices* is a wonderful and highly recommended starting place for the sorely needed introspection by every member of this venerable profession.

**Michelle Levine is an associate at Peluso & Touger, a firm in Manhattan, where she practices in the areas of civil litigation and criminal defense.**

# Tips for Assessing and Initiating an Employment Discrimination Claim

By Catherine Creighton

This article is not meant to survey the law of employment discrimination, but to provide some practical advice on assessing a potential case, the mechanisms for bringing an action and in what forum, and some limited discussion on discovery.

If you are a plaintiff's attorney, before you invest your time and money (and your clients') in bringing an employment discrimination action, you must carefully assess your claim. The only way to properly do this is by conducting a prelitigation investigation.

The most important step in practicing employment discrimination begins with the initial case evaluation. By far, the majority of calls from potential clients involving claims of employment discrimination are not meritorious. There is a strong difference between what is fair in the workplace and what is illegal and, if illegal, being able to prove it.

In New York, we begin with the fact that employees are employed at the will of their employers and that employers owe their employees no duty of good faith or fair dealing. Employees may be terminated by their employers for a good reason, a bad reason or no reason. In any employment discrimination case, the burden rests on the plaintiff to articulate a specific discriminatory reason for the employment action.

Due to the substantial expense of litigation, counsel must ensure, as much as possible, that a case will survive the discovery process and summary judgment. This can be done by investing a substantial amount of time in prelitigation investigation and evaluation of a potential case.

Ask the client to prepare a chronology of the events for you to review prior to your initial interview with the client. Also, ask the client to prepare a list of potential co-workers, customers and clients who may be able to corroborate plaintiff's claims, and what information specifically such witnesses may possess.

It is essential that you contact potential witnesses prior to beginning an action on plaintiff's behalf. For example, if a client claims that she was terminated due to sex discrimination, and the employer contends that the employee was terminated due to customer complaints, attempt to contact the customers to verify the employer's reason for the discharge. Finally, be sure to get full information on the client's personal background. If there are any skeletons in the closet, you will want to have that information up front and not hear it for the first time at plaintiff's deposition.

Part of your prelitigation investigation includes exploring damages. Discuss carefully with your client potential damages. In a discrimination action you may seek: Economic Damages (front pay, back pay); Emotional or Compensatory Damages; and Punitive Damages (but only in a federal action and as limited by the Civil Rights Act of 1991). In order to collect substantial compensatory damages the Second Circuit has often required some medical support that the plaintiff has suffered emotional distress damages. Thus, the best proof is from a treating physician, psychologist or therapist. Also, a third-party witness, such as a spouse, who can testify as to emotional distress damages, is helpful. Make sure you question your client on his or her history of emotional illness or treatment.

A plaintiff in a federal court action is entitled to attorney's fees if he or she prevails. **Attorney's fees are not recoverable under New York State Human Rights Law.**

Once you determine that you wish to bring an employment discrimination action on behalf of a client, you should first exhaust your administrative procedures. Before bringing a federal court action alleging employment discrimination, an aggrieved person must file a timely charge of discrimination with the Equal Employment Opportunity Commission (EEOC). A charge must be filed with the EEOC **within 300 days** of the alleged discriminatory event. There must be at least one act of discrimination that occurred within the 300-day period, and the illegal act occurs when the employee is given final notice that the adverse act will occur, not when the actual event happens. In order to bring an action under Title VII, ADEA or ADA, the employer must employ 15 or more employees.

If a charge has been filed with the EEOC and pending for more than 180 days (or 60 days if an age discrimination charge) without a determination, the charging party may request a Notice of Right to Sue letter. Once a Notice of Right to Sue letter has been received by the charging party (either by request or because the EEOC has completed its investigation), a Complaint must be filed with the court within 90 days or the action is time barred.

The New York State Division of Human Rights has jurisdiction over claims filed against employers who employ four or more employees, and when the alleged discriminatory practice involves race, color, creed, sex, age, national origin, disability,

marital status, arrest records and convictions. A Complaint must be filed with the Division within one year from the date of the alleged unlawful discriminatory practice.

Pursuant to a worksharing agreement between the New York State Division of Human Rights and the EEOC, the agencies have designated each other as their agent for the purpose of receiving and drafting charges. Both the Division and EEOC will process all Title VII, ADEA and ADA charges they originally receive.

Once a Notice of Right to Sue letter has been received, plaintiff may bring a discrimination action in any federal judicial district court where the alleged unlawful acts were committed, or where respondent has its principal office. The action must be brought within 90 days from the date the Notice of Right to Sue letter has been received. Generally, the defendants must have been named in the administrative charge.

A plaintiff may bring directly a State Court action for discrimination under New York State Executive Law § 296, without first going through an administrative process. This may be a last option where the time limits have been exceeded in bringing an administrative charge. Note that attorney's fees are not available.

If you are defending employment discrimination cases, you should also begin your investigative process immediately after being served with an administrative charge or lawsuit.

First, investigate whether there is insurance to cover the claim. Determine whether the insurance company has a duty to defend and/or a duty to indemnify. A duty to defend arises if there is any possibility that a covered claim may be proven. A disparate treatment claim is not covered because it is an intentional act, but look to all other causes of action to see if they are covered.

As soon as an employer receives notice of a claim for employment discrimination, it should begin evaluating the case *before* the Answer is due. The employer's attorney should obtain all relevant documents from the client. Obtain the plaintiff's entire personnel record. Review the records of all other employees named in the Complaint. Seek records immediate supervisors may have kept, attendance records, evaluations, statistical breakdown of the work force, any employer policy or handbooks and records regarding the dissemination of same. Interview witnesses, both supervisors and non-supervisory employees.

If you wish to protect attorney work product, conduct the interview yourself and take your own notes. In some instances, it may be more appropriate to have employees sign sworn statements. If individuals are named in the Complaint as defendants, it is important to let them know that you are representing the employer, until such a time as the employer determines that it may represent the individual defendants as well.

At the time that you must answer the Complaint, you may decide on several options. You may wish to remove the case to federal court if it is not already there, or you may wish to file a motion to dismiss the case if, for example, it is clearly time barred.

Most often you will simply answer the Complaint. You should assert all affirmative defenses including, where appropriate, statute of limitations, failure to exhaust administrative remedies, failure to state a claim and failure to mitigate damages.

Once the Complaint has been answered, the parties may begin the discovery process. You want to be sure that you have a discovery "plan" so that you can use your time most efficiently.

Rule 26(a) of the Federal Rules of Civil Procedure sets forth six methods by which parties may obtain discovery: (1) initial disclosures; (2) depositions upon oral examination or written questions; (3) written interrogatories; (4) production of documents; (5) physical and mental examinations; and (6) requests for admissions.

A plaintiff is often not in possession of the same information as the employer is and will need to conduct more extensive discovery such as taking a number of depositions, and making requests for employer records and files. Due to limited time (usually six months from the scheduling conference), plaintiffs should begin discovery as soon as possible.

Employers should seek to collect immediately all relevant information and documents and should speak with all those persons involved in making the personnel decision plaintiff is objecting to, as well as to all coworkers involved. Defense counsel should visit the worksite and speak with all employees involved in plaintiff's allegations. Speaking with those employees involved in the allegations will give defense counsel the opportunity to determine who may be an effective witness.

A plaintiff should serve written interrogatories in the initial stages of discovery. In order to avoid having an employer refuse to answer interrogatories based on grounds that they are overbroad or unduly burdensome, ask as focused questions as possible. Your intent is to have the employer pinned down on giving its reasons for its personnel action, to avoid shifting defenses later.

The employer's attorney may not wish to serve specific interrogatories, but should save such questioning for plaintiff's deposition. Because plaintiff's attorney will answer the interrogatories, defense

counsel may be unwittingly helping plaintiff prepare for the oral deposition by asking for detailed responses to questions such as "describe all ways in which you believe the employer subjected you to employment discrimination." You will want to save such questions for plaintiff's deposition.

A plaintiff's requests for documents should be made early in the litigation so that they can be used in preparing properly for depositions. You will certainly wish to ask for all employee handbooks, policies, manuals, plaintiff's application for employment, plaintiff's entire personnel file including all evaluations, and any other documents relating to plaintiff, the personnel files of employees similarly situated to plaintiff, documents showing the supervisory structure of the employer, documents relating to the make-up of the employer's workforce including, where applicable, sex, race, age, etc., of the workforce, and any documents regarding past charges/suits of employment discrimination. Of course, depending on your suit other documents may be relevant and should be requested at the outset of litigation. When asserting a claim for punitive damages, a plaintiff may be entitled to the employer's financial status information.

Defense counsel will want to ask plaintiff for any information relating to his or her employment, any journals, diaries, writings or recordings, any information regarding mitigation of damages and any medical documentation or information showing damages.

Once plaintiff has received documents and responses to interrogatories, counsel will need to take the oral depositions of those persons who took the employment action against plaintiff which is at issue. Taking depositions is expensive and careful consideration and preparation should go into each deposition.

For both sides, the deposition of the plaintiff is a crucial part of the discovery process. The plaintiff should be prepared extremely well and ready to answer questions as to what specific facts, circumstances or actions on the part of the employer plaintiff believes were discriminatory. The plaintiff must be able to articulate the emotional distress, both physical and mental, that plaintiff suffers. The plaintiff should be told to answer only questions asked and as simply and directly as possible. It never helps if a plaintiff believes he is more clever than the attorney questioning him!

Defense counsel will want to know as much as possible about the plaintiff and his or her allegations going into plaintiff's deposition. As noted above, it is essential that a thorough internal investigation be conducted by counsel. Areas explored during the deposition should include plaintiff's education, criminal history, work history, family background, the allegations of the Complaint, mitigation of damages and medical treatment.

As stated at the outset, this article only touches on some practical tips in assessing and beginning a claim of employment discrimination. For attorneys just beginning to practice in this area, a mentor may be your greatest asset.

**Catherine Creighton is a partner in the firm Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria LLP, located in Buffalo, N.Y. She specializes in representing labor unions and individuals in employment discrimination claims. Ms. Creighton is also an adjunct professor for Cornell University, School of Industrial and Labor Relations Buffalo Labor Studies Program. Ms. Creighton and her colleagues received an award from ACORN for her work on drafting and passing Living Wage Legislation in Buffalo, N.Y.**

***"It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, and comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows the great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."***

**— President Theodore Roosevelt**
**Citizenship in a Republic; Speech Delivered at Sorbonne, Paris, April 23, 1910**

## A Message from the Section Chair

*(Continued from page 1)*

inexpensive. They featured experienced practitioners from across the state and provided me with some excellent resource materials at a very reasonable cost.

About the same time as I started attending the CLE programs, a local colleague invited me to attend a Young Lawyers Section meeting being held in Binghamton. I went and met attorneys from across the state in a number of different practice settings and fields. An opening was available, and I was appointed to a position on the Executive Committee. I have served in various capacities ever since.

My experience with the Young Lawyers Section has been extremely rewarding, both personally and professionally. I have developed personal relationships with attorneys from across the state who I probably would never have met otherwise. Some I see regularly, while others only infrequently. Regardless of how often we meet, there is always the alumni connection back to the Section. One program which we will be pursuing this year is in the hopes of fostering these types of networking opportunities. We plan to hold at least one event in each judicial district to allow our members to get to know each other better both personally and professionally.

In addition to CLE and networking opportunities, the Section offers other practice enhancement programs, such as the Mentor Directory. When I was in law school, I clerked for a solo practitioner. He used to say that one of the best research tools you could have is a telephone. He said that in three calls or less, he could get the answer to any problem or at least know the major issues and where to find the answers. My experience has verified his tip. I can't tell you how many times the connections I've made through the Section have allowed me to either save research time or provided me with a referral for a client in need. A few years ago, the Young Lawyers Section started a mentoring program for our members along the same lines.

Every year we publish a mentor directory that is organized both geographically and by practice areas. The process is simple. The new attorney locates an experienced attorney from the Mentor Directory, fills out a short form, and faxes it to this mentor. After giving the mentor an appropriate amount of time to receive the fax, the new attorney then telephones the mentor and can pick his or her brain for approximately 15 minutes. It's that simple! The program is a great benefit, particularly for those attorneys practicing in small- to medium-size firms and a benefit exclusive to Young Lawyers Section members.

Besides the Mentor Directory, a number of years ago, the Section produced a publication called "Pitfalls of Practice." The book was designed to provide helpful tips for addressing thorny issues that are often encountered by new attorneys. It contained 20 chapters addressing a wide variety of substantive and practice topics. I would like to see the Section produce an updated second edition. If you have any topic ideas or would like to take an active role in updating the work, please let me know.

For new attorneys, the Section is a wonderful asset which will help you transition into the career and help you build your practice. Association and Section membership provides quality, low-cost CLE opportunities, informative newsletters and publications, networking opportunities, and assistance in keeping up with the ever-changing legal environment, from new technology to new competition from would-be legal providers. There are a number of opportunities for active Section participation. If you're interested in becoming involved or have any ideas on improving our programs, please don't hesitate to contact me.

**Scott Anglehart**

***"There is an accuracy that defeats itself by the over-emphasis of details. . . . The picture cannot be painted if the significant and the insignificant are given equal prominence. One must know how to select."***

**— Benjamin N. Cardozo,**
**U.S. Supreme Court Justice, Law and Literature**
**(1870-1938)**

# Can Those Who Write Articles for Your Section Newsletter Get MCLE Credit? How Do They Do So? What About Editors of Newsletters?

Under New York's Mandatory CLE Rule, MCLE credits may be earned for legal research-based writing, directed to an attorney audience. This might take the form of an article for a periodical, such as your Section's newsletter. The applicable portion of the MCLE Rule, at Part 1500.22(h), says:

> Credit may be earned for legal research-based writing upon application to the CLE Board, provided the activity (i) produced material published or to be published in the form of an article, chapter or book written, in whole or in substantial part, by the applicant, and (ii) contributed substantially to the continuing legal education of the applicant and other attorneys. Authorship of articles for general circulation, newspapers or magazines directed to a nonlawyer audience does not qualify for CLE credit. Allocation of credit of jointly authored publications should be divided between or among the joint authors to reflect the proportional effort devoted to the research and writing of the publication.

Further explanation of this portion of the Rule is provided in the Regulations and Guidelines which pertain to the Rule. At Section 3.c.9 of those Regulations and Guidelines, one finds the specific criteria and procedure for earning credits for writing. In brief, they are as follows:

- the writing must be legal research-based
- the writing must be such that it contributes substantially to the continuing legal education of the author and other attorneys
- it must be published or accepted for publication

  it must have been written in whole or in substantial part by the applicant
- one credit is given for each hour of research or writing, up to a maximum of 12 credits
- only a maximum or 12 credit hours may be earned for writing in any one reporting cycle
- articles written for general circulation, newspapers and magazines directed at a nonlawyer audience don't qualify for credit
- only writings published or accepted for publication after January 1, 1998 can be used to earn credits
- credits (a maximum of 12) can be earned for updates and revisions of materials previously granted credit within any one reporting cycle
- **NO CREDIT CAN BE EARNED FOR EDITING SUCH WRITINGS** (this has particular relevance to Editors of Section newsletters)
- allocation of credit for jointly authored publications shall be divided between or among the joint authors to reflect the proportional effort devoted to the research or writing of the publication
- only attorneys admitted more than 24 months may earn credits for writing

In order to receive credit, the applicant must send a copy of the writing to the New York State Continuing Legal Education Board (hereafter, Board), 25 Beaver Street, 11th floor, NYC, NY 10004. A cover letter should be sent with the materials, and should include the following supporting documentation indicating:

- the legal research-based writing has been published or has been accepted for publication (after Jan. 1, 1998)
- how the writing substantially contributed to the continuing legal education of the author and other attorneys
- the time spent on research or writing
- a calculation of New York CLE credits earned and a breakdown of categories of credit (for the senior bar—those beyond the first 24 months of admission—there are two categories of credit: (1) ethics and professionalism; and (2) everything else (skills, practice management and traditional areas of practice)

After review of the correspondence and materials, the Board will notify the applicant by first class mail of its decision and the number of credits earned. Copies of the MCLE Rules and the Regulations and Guidelines can be downloaded from the Unified Court System web site (http://www.courts.state.ny.us/mcle.htm) or obtained by calling the New York State Continuing Legal Education Board at (212) 428-2105 (for calls outside of New York City, toll-free at 1-877-NYS-4CLE). Questions about MCLE requirements may also be directed to the Board by e-mail at: CLE@courts.state.ny.us.

## Leaving the Paper Chase Behind (or How to Turn Your Law Practice into a Digital One)

*(Continued from page 1)*

my digital office's central command center, my plan for a digital office can easily be implemented with a laptop—in fact, depending upon the user, there may be several advantages to using laptops. The other necessary hardware components which will round out your war room include a laser printer, a read-write CD-ROM drive, and a scanner.

First, a note about computers. Think speed, and not necessarily storage capacity. Unfortunately, too many people fall for the myth that the larger the hard drive, the better the computer. This just isn't necessarily the case. Oftentimes a computer that has a smaller hard drive operates at a faster speed by virtue that the smaller hard drive *runs* at a faster speed than a larger capacity computer. Besides, if you get a good read-write CD-ROM drive, the size of your hard drive becomes of diminished importance.

Suffice to say, you should not skimp on your computer because it is at the heart of your work day. Just like you would not consider driving a compact car into Manhattan every day, so too you should not settle for anything less than a quality luxury computer for your daily grind. Besides hard drive considerations, you should take into account other elements that make up the computer such as: how much memory it has, the quality of its graphics card, the monitor, and its co-processor. Whatever you purchase, make certain you get something reasonably new that will last a good five years before you have to begin thinking of upgrading it.

I mention a laser printer, not because it provides any crucial function to my scheme, but because so many solo practitioners I know get sucked into buying the cheaper inkjet printers. Unless you plan to write client letters and court papers in a bright magenta hue, you are best advised to purchase a laser printer. You should not have a problem finding a fast, durable laser printer with an output of 1200 dpi for several hundred dollars more than an inkjet.

There are a number of reasons why a laser printer is the only printer of choice for an attorney. First, an attorney's primary mode of communication is the written word. In order to make a good impression—and, sometimes, your only impression—it is imperative to communicate through the highest quality printing available. As good as inkjets have become over the years, no one will ever mistake its quality for a laser printer's. Second, the cost of printing a page on a laser printer is substantially less than a page coming out of an inkjet printer. Sometimes the savings can be as much as 70 percent. And third, laser printers are just plain faster. When you are printing the text of a 300-page piece of legislation that you just downloaded off the Internet, an inkjet printer will probably have you up all night, whereas a good laser printer can do it in under 30 minutes.

A vital weapon in the war against paper is the read-*write* CD-ROM drive. I say vital because it is your primary weapon against the "white-out" conditions you face every day. I emphasize read-*write* because not all CD-ROM drives will write information to the disc. Some CD-ROM drives are limited to only reading information.

What function does the CD-ROM drive fulfill? The storage of information. Some CD-ROMs can hold 650 MB of information. And since CDs are rarely sold separately, but rather 10 or 20 in a box, you could store the entire U.S. Library of Congress for under 50 dollars. When you purchase a read-write CD-ROM drive you instantly have a virtually unlimited amount of storage capacity.

Don't understand? Purchase a scanner. Once you do, you'll begin to realize the full power of your read-write CD-ROM drive. A scanner will take a letter, a contract, or any written text and convert it into a readable, usable text file or image file. What does this mean? Well, for starters you can free up that filing cabinet drawer that you use to keep all those Xeroxed magazine articles that you send to your clients. Instead, scan the articles and store them in a different location—a CD. When you need it you can either print a copy out or send it to your client via e-mail. What else can you do? You can build your own law library. Scan your motions and briefs. Scan the forms you use on a regular basis, too. If you are feeling really bold, you might consider building a basic, searchable database by using a database program that you can buy at the store. They are fairly easy to use and you should be able to build it in a matter of a few weekends.

Once you are ready to put your client files into storage, you can scan

***"I always turn to the sports page first. The sports page records people's accomplishments; the front page nothing but man's failure."***

**— Earl Warren, former Chief Justice of the U.S. Supreme Court (1891-1974)**

the contents of them onto a CD. This way, if you have to search for something at a later date, there's no need to search your physical archives. Instead, you can search computer files. A word of caution. Don't start throwing out paper just yet. Remember to check the ethics rules to verify what you must keep, i.e., legal documents, and for how long. However, so long as you develop an organized system for saving client files in a digital format, searching a compact disc is a lot easier than searching a room full of boxes.

What kind of scanner should you buy? I recommend purchasing one that has an auto document feeder—Hewlett Packard® sells one that can accommodate 25 pages at a time. In this way, not only will you be able to scan magazine articles but you will be able to scan a whole stack of papers at one time as well as use your scanner as a copy machine in a pinch, too.

But this is just the tip of the iceberg. Depending upon the type of practice you have, there are loads of software programs that could be very useful in accessing information faster. Besides the tried and true word processor, consider whether a spreadsheet, document assembly, case management or billing program could help automate your day. Too, consider the many devices and gadgets that are out on the market. Might these have the capability of assisting you in organizing and accessing information faster?

Just remember one thing, when crossing the digital divide a lawyer is only restricted by his or her own creativity.

**Scott M. Bishop maintains a law office in White Plains, NY, where he practices Internet and Technology law. You can reach him at 914.682.6866 or at smbishop@bishoplaw.com**

# Immediate Openings! Delegates to the American Bar Association Young Lawyer Division Assembly

The Young Lawyer Division Assembly is the principal policy-making body of the American Bar Association's Young Lawyer Division. The Assembly normally convenes twice a year at the ABA's Annual and Midyear Meetings and it is composed of delegates from across the nation. The Young Lawyers Section of the New York State Bar Association may appoint representative delegates to this Assembly. Future meetings will be held in San Diego, Chicago, Philadelphia and Washington, D.C.

The ABA offers a national platform to exchange ideas, discuss ethics, and explore important legal issues. The Assembly receives reports and acts upon resolutions and other matters presented to it both by YLD committees and other entities. In the past, issues debated have included: amendments to the Model Rules of Professional Conduct; the enactment of uniform state laws regarding elder abuse; the enactment of federal legislation to eliminate unnecessary legal and functional barriers to electronic commerce; guidelines for multi-disciplinary practice; government spending on basic research and clinical trials to find a cure for breast cancer; and recommendations concerning biological evidence in criminal prosecutions.

For those interested, the position offers an opportunity for involvement in the American Bar Association without requiring a long-term commitment or additional work. A master list will be compiled of those individuals interested in serving as a delegate and those individuals will be polled prior to each meeting as to whether they can serve as a delegate for that particular meeting. Delegates will not be required to participate in floor debates or prepare written materials for the meetings.

All delegates must have their principal office in New York State, must be a member of the New York State Bar Association Young Lawyers Section or a county bar association, must be a member of the American Bar Association Young Lawyers Division, and must be registered for the meeting they will be attending as a delegate. If you are interested in this unique and exciting opportunity, please contact Barbara Samel at (518) 435-9990, or via e-mail at bsamel@localnet.com.

# The Young Lawyers Section Welcomes New Section Members!

Samantha Abeysekera
Adewole Agbayewa
Nitza A. Agrait
Cadmus Aholu
T. Sarah Akinshola
Salvatore J. Alesia
Andrew S. Alitowski
Virginia Allan
Blair J. Allen
Danny L. Allen
Elizabeth M. Altman
James G. Amalfitano
Timothy W. Andrews
Jennifer D. Antolini
Daria C. Apter
Angelica Aquino-Gonzalez
Jacqueline E. Arcella
Kim Arestad
Steven E. Armstrong
Reid E. Arstark
Craig A. Artel
Joseph J. Asterita
Elizabeth J. Aston
Benjamin Autovino
Shlomo Aviezer
John Henry A. Ayanbadejo
Lila Ayers
Ruth Baez
Sandy Baggett
Robert F. Bahrampour
Darci J. Bailey
Mirsade Bajraktarevic
Roberto Barbosa
Mirari M. Barriola
Troy A. Barsky
Andrew M. Behrman
Howard L. Beigelman
Mary L. Bejarano
Llinet Beltre
Arik Ben-Ezra
Amy Shalimar Bennett
Robert D. Benton
Stephanie M. Berger
Daniel A. Bernstein
Tiffany Bianchi
Alexandre Bibitchev
Erik Bierbauer
Michael S. Bigin
Norman D. Bishara
Gregory A. Blackman
Jeffrey Bogen
Andrew W. Bokar
Mark A. Boltz
Joyce A. Brown
Marc W. Brown
Mark S. Brown
Frank A. Bruno
Natalie P. Bruzzese
Pamela I. Budin
Maritza C. Buitrago
Micah Jay Burch
Ann M. Burdick
Alafair S. Burke
Michael J. Burke
Gerard A. Cabrera
Myrna Cadet
Michael J. Callaghan
Jeffrey W. Cameron
Brant B. Campbell
Jay C. Campbell
Sharon M. Carberry
Dennis M. Cariello
John P. Carlin
James P. Carlon
Shaun L. Carr
Megan F. Carroll
Carrie Anne Cavallo
Scott M. Cech
Elzbieta B. Celinski
Michele Cerezo-Natal
Eric B. Chalif
Langdon C. Chapman
Erica Sherfen Cheng
Coleen Chin
Phoebe Hui-Ying Chiu
Huntae Cho
Elaine H. Y. Chong
Hans Tor Christensen
David V. Christopherson
Daniel Chu
Lilin M. Ciccarone
Matthew S. Clifford
J. Christopher Clifton
Merima Cobaj
Amy C. Cococcia
Didi Aidit Cohen
Sherri N. Cohen
Victoria Cohen
Christopher J. Coiro
Myra Coleman
Heidi C. Constantine
Kimberly Lynn Cook
Cynthia Corsiglia
Robert M. Cronk
Amy J. Cross
Melissa M. Cross
Anne M. Cunningham
Bridget T. Cusack
Leslie Ann Danon
Eslanda A. Dasher
Jeannine M. Davanzo
Michael K. Davis
Sona De
Erik M. De Paula
Guillaume H. DeSampigny
Stephen L. De Vore
Rachelle DeGregory
Lisa M. DeRose
Beth Ann DeSanto
Paulette DeTiberiis
Frederick G. Dean
Serge Debrye
Elizabeth Deleon
Harry C. Demiris
Todd A. Denys
Rebecca R. Dew
Dean J. DiPilato
Colin J. Diamond
Meryl Diamond
Zlata Dikaya
Keenan T. Dmyterko
Sharon Dolovich
James R. Domzalski
Alexandria E. Don Angelo
Kelly M. Donovan
Rosemary Dooley
Jennifer K. Dorrer
Sarah E. Downie
Arthur T. Doyle
Jordan M. Dressler
Brian K. Duck
Phillip C. Duncker
Raymond A. Dunn
Christopher J. Dunnigan
Kimberly E. Dvorchak
Denise C. Dyce
Evan H. Echenthal
Jason M. Edelstein
Terry L. Eder Kaufman
Jennifer L. Edlind
Bradley K. Edmister
Nwakego N. Eduzor
Lamiaa E. Elfar
Keith R. Eng
Sagit Amit Evan
Robert D. Falck
Janis E. Fallon
Leonidas Fampritsis
Fedra F. Fateh
James A. Fauci
Karlyne Fequiere
Mario E. Ferazzoli
Patrick Ferland
Timothy M. Fesenmyer
Andrea Fitz
Cecelia M. Fitzgerald
William P. Fitzgerald
Adam J. Foltz
Renard C. Francois
Anyanate Fred-Horsfall
Robin Persky Freimann
Marisa Moscheni Friedrich
Timothy G. Gallagher
Toby Gammill
Gila Garber
Paula E. Garfinkle
Robert L. Garner
Mark Gatto
George M. Gensler
Robert E. Geyer
Dionne R. Gill
Laurie Giordano
Daniel C. Glazer
David R. Gledhill
Aaron A. Goach
Meena Goel-De
Lauren Goldberg
Stuart R. Goldfarb
Adam Laurence Goldman
Adi K. Goldstein
Russell S. Goldstein
Tracy Lee Gonos
Jeffrey L. Goodman
D. James Gounelas
Myrna Graf
Sadia Nell Graham
Christopher Neil Gray
John Hopkins Graziadei
Brian J. Green
Kevin A. Green
Michelle A. Greenberg-Kobrin
Denise E. Grey
Anne E. Griffith
Armine Grigyan
Ronald Grinblat
Heidi Grissett
Tracy L. Groves
Matthew P. Grupp
John M. Guerriero
Adriana Del Pilar Guzman-Rouselle
Jill M. Guzzetti
Jacqueline Haberer
Erich L. Hahn
Sian O'Malley Hahn
Shahin Haj-Momenian
David Hale
Constantine D. Haloulos
Jason P. W. Halperin
Rachel Chazin Halperin
Jyotin R. Hamid
Jonathan C. Hamilton
Stacey A. Hamilton
Hadar Hannes
Takeyoshi Harada
Samaa A. F. Haridi
Matthew P. Harper
Tomasita L. Harrison
James A. Harrod
Karriem M. Hassan
Richard D. Hayes
Deborah E. Heine
Thomas J. Henry
Brian R. Henzel
William A. Herbert
Shannon Anne Herron
Mirta S. Hess
Justin C. Hewitt
Steven B. Heymann
Malika S. Hinkson
Gwinett E. Ho-sang
Karen M. Hoffman
Karen J. Hogan
Nelson Holzner
Stephanie K. Hoos
Sharon Ting Huang
Kimberly Hunt
Michael D. Hynes
R. Evon Idahosa
Clara Colette Ingen-Housz
Constantine Intzeyiannis
Christopher R. Invidiata
James Irving
Hope Itzkowitz
Lorraine Izzo
Janene D. Jackson
Rachel E. Jackson
Brad M. Jacobs
Christopher Lee Javens
Ryan T. Jenny
Heather Lynn Jensen
Kalyn J. Johnson
Suzette Jones-Bey
Evelyn D. Jose
Suzanne L. Joyce
Tracy Kachur
Susan Kalicharan
Farzana S. Kanji
Gary L. Kaplan
Wendy Lang Kaplowitz
Arshad Karim
Omar Karim
Steven R. Kartzinel
Ned Kassman
Sim Kituuka Katende
Dimitrios Katsantonis
Jeremy A. Kaufman
Robert L. Kemp
Baruch D. Kfia
Ronald Khabbaz
Fauzia S. Khan
Younggyoon Kim
Alyson R. G. King
Susan R. Klein
Matthew W. Knecht
Stefan Koch
Leonard M. Kohen
Adams R. Kokas
Seth F. Kornbluth
Kimberly Kostun
Rie Kotokawa
Michael J. Kozoriz
P. Jason Kroft

***"I know of no method to secure the repeal of bad or obnoxious laws so effective as their stringent execution."***

**— President Ulysses S. Grant (1822-1885)**

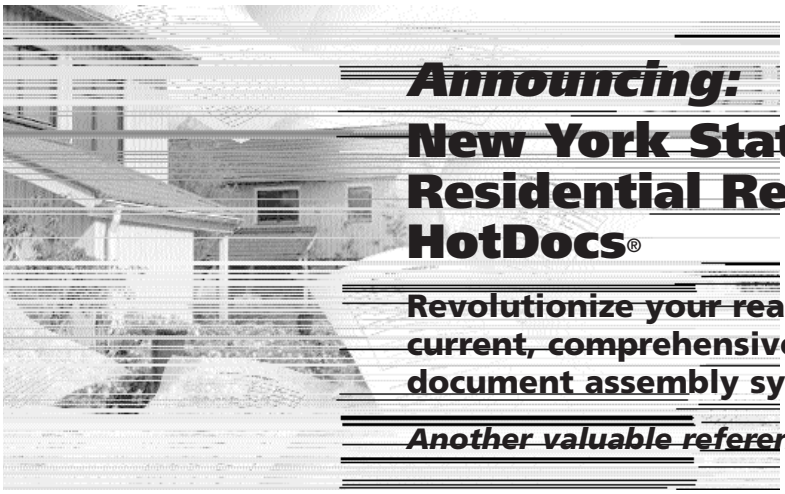
Thomas P. Krzeminski
Kevin P. Kuehner
Robert J. Kurre
Shinji Kusakabe
Dwight Kwa
Zanna Lantzman
Gregory B. Lare
Seth Lebowitz
Anita J. Lee
Benjamin Lee
Mary Jane Lee
Moonlake L. Lee
Susan L. Lee
Victor Lee
Wei Foong Lee
Stacy B. Lefkowitz
Andrew M. Leong
Barbara A. Leonhauser
Andrew B. Levy
Olga M. Lewnes
Gregory B. Linkh
Giuseppina R. Lita
Helen Livanios
Alana Brett Liveson
Tristan C. Loanzon
Dana M. Loiacono
Emmanuel Lubin
Christopher Luhr
Henry Lung
Sheri N. Luscoe
Ethan M. Lyle
Katherine A. Lynch
David Ma
John M. MacInnes
Mark D. Mako
Frank Maldari
Daniel C. Mandell
Laura N. Mankin
Daniel J. Mannix
Sandra L. Manthe
Jackson Marcelin
Rebecca H. Marek
Karen M. Markey
Mindy L. Marranca
Andrew S. Marshall
Craig S. Marshall
Maria V. Martin
Gregory Laurence Matalon
Eileen T. Matauic
Nancy A. Matos
Beatrice Encalada Mayol
Sigal McCarley
Kent E. McCarthy
Richard H. McCarthy
Victoria McCool
Meghan McCurdy
Christopher McDonald
James A. McDonald
Jennifer McDonnell
Rudolph M. D. McGann
Sheila E. McGrath
Robert P. McGraw
Thomas A. McGuire
George D. McHugh
Alice Fyfe McMath
Lori Ann McNeely
Laura Haldeman McNeill
Gregory McPhee
Kimberly Jane Mcgraw
Stacey Meadow
Brian C. Meagher
Virginia Medina
Brendan S. Mee
Aseem V. Mehta
Paul Meier
Robert P. Meier
Arthur P. Melendres
Stacey Blythe Menaker
Catherine M. Mennenga
Dana R. Metes
Jonathan Meyers
Gabriel S. Miller
Robert C. Miller
Kristyna S. Mills
Lois A. Milne
Marshall Mintz
Maggie Miqueo
Marc P. Misthal
Kate B. Mitchell
Albert D. Mitzner
Amisha Mody
Mark E. Monaghan
Joanne B. Moon
Rocco G. Morano
Joseph W. Morledge
Katharine J. Mueller
Lorraine T. Mullings
Antonio Pasquariello
Katrina Patterson
Aram J. Pehlivanian
Sandramarie M. Pemburn
Ana J. Pena-Wallace
Luis F. Peral
Anna P. Pereira
Jonathan E. Peri
Carl M. Perri
Lawrence D. Piergrossi
Fosca F. Piomelli
Lara Kimberly Pitaro
Anne Sabra Plumer
Kelly J. Poff
Susanne Portale
Dawn M. Portney
Daniel Posnick
Clifton M. Prabhu
Caroline Marie-Luise Presber
Andrew Proto
Silke Rabbow
Stephen T. Raff
Otto D. Rafuse
Anne M. Rago
Robert D. Ralls
Melissa J. Ralph
Anna E. Salek
Mark W. Saltzburg
Mark A. Samuel
Peter B. Sanchez
Melinda M. Sarafa
Hideyasu Sasaki
Jason M. Satsky
Laurie Sayevich-Horz
Danielle Scarano
Cindy M. Schmitt
Patricia Schneider
Tracy Jeanette Schneider
Jeffrey R. Schoen
Elizabeth M. Schubert
Marc B. Schuley
Beth Ann Schultz
Kimberly Horton Schultz
Michael Schunck
Nicole Lee Schwarz
Walter Keating Scott
Tania F. Seaburg
Kimberly Lynn Segall
Jonathan N. Seliger
Stephen Semian
Kinda Serafi
Rupal Shah
Ross G. Shank
Suzanne K. Taylor
Todd B. Terry
Charlene R. Thompson
Pia K. Thompson
Yael Tilajef
Patrick Timlin
Denise M. Tomasini
Christine M. Tomczak
Mark D. Torche
Catherine Torres
Thomas M. Trace
Joseph Treff
Richard A. Tsai
John N. Ubani
Jobst H. Upmeier
Aleksandr Vakarev
Estela M. Valdez
Howard R. Vargas
Dawn M. Velez
Kenneth R. Vennera
Kimberly Strauchon Verner
Elizabeth T. Vilarin
Dennis Vinokurov
Elizabeth Anne Virgin
Stephanie N. Voses
Lisa N. Wall
Cheryl M. Wallace
Darren S. Walsh
Nancy N. Wang
Donna L. Wanser
Richard L. Weber
Randall C. Weichbrodt
Eric D. Weinstock
Joseph M. Wentland
Mary Beth Werner
Jonathan P. Whalen
William R. White
Peter J. Wiazowski
Alicia Francine Williams
Allison C. Williams
Eliot D. Williams
Sarah E. Williams
Lisa M. Willson
Marci B Wilson
Maxine Wilson
James P. Wiseman
Carolyn M. Wolpert
Albert Wong
Ha Kung Wong
Lillian Wong
Shannon E. Woods
Mark M. Woznicki
Lulu Wu
Kristin Wynne
Joan Xie
Faye A. Yelardy
Tiffany D. Yonker
Shiqing Yue
Ni Zhu
Bozena Ziedalski
Joshua A. Zielinski
Derryl Zimmerman
Kip S. Zimmerman
Robert Mayer Zimmerman
Sharon A. Zink

***"The law that will work is merely the summing up in legislative form of the moral judgment that the community has already reached."***

**— President Woodrow Wilson (1856-1924)**

David P. Murgio
Jessica A. Murzyn
Sakeena Naqvi
Kevin M. Nasca
Shawn T. Nash
Patrick Wade Neal
Daniel B. Nelson
Michael Nertney
Amy Lynn Neuhardt
Tamala E. Newbold
Michael J. Newman
Brian J. Newquist
Peter Nicolas
Brian Nolan
Melissa F. Nook
Jocelyn Normand
Angela C. Nwadiogbu
Michael J. O'Brien
Kerry A. O'Connor
Margaret C. O'Dowd
Chang Seok Oh
Karen M. Ortiz
Daren M. Orzechowski
Christopher L. Padurano
Amanda N. Palmer
Ju-hsin Pan
Adam S. Paris
Ellen J. Park
D. David Parr
Edward Pascavage
Debbie-Ann Ralston
Leticia M. Ramirez
Elizabeth S. Rand
Steven M. Ratner
Thomas A. Rayski
Adam Reed
Natalie L. Reeves
Andrea Lynn Reinke
Joan A. Reyes
Scott E. Reynolds
Scott L. Reynolds
Aubrey E. Riccardi
Stacey-Ann Richards
Paul A. Robbins
Richard R. Rodgers
Antonia Rodriguez
Kelly Rodriguez
Lara E. Romansic
Patricia M. Rondon
Paul P. Rooney
Tali Rosen
Neil Marshall Rosenhouse
Patrick J. Roth
Debra Silverman Rothschild
Stella J. Rozanski
Molly M. Rush
Edmund J. Russell
Jeffrey P. Rust
Gerard N. Saggese
Anita K. Sharma
Elizabeth B. Shea
Michelle L. Shelton
Susan C. Shelton
Robert Hisashi Shiroishi
Victoria Shtainer
Hernan Slemenson
Timur Slonim
Jonathan Springer
Shernette Ava Lorraine Stafford
Susanne C. Stark
John Stebe
Erich John Stegich
David Stein
Hillary R. Stein
Bari Allison Steinholz
Jenny L. Stewart
Serena M. Stonick
Jeffrey E. Storch
Sarah K. Stover
Robert A. Strent
Thomas J. Stringer
Jeffrey V. Stripto
Linda G. Swann
Julian Charles Swearengin
Samera F. Syeda
Symone E. Sylvester
Kecia M. Taitt
Gregory Tan

# NYSBA**CLE** Publications



## *Announcing:*

# New York State Bar Association's Residential Real Estate Forms on HotDocs®

**Revolutionize your real estate practice with our current, comprehensive and easy-to-use automated document assembly system.**

***Another valuable reference by practitioners for practitioners***

## The Quick and Easy Way to Draft Residential Real Estate Forms

Discover how easy it is to electronically produce 200 different residential real estate forms—for both downstate and upstate transactions—by using **New York State Bar Association's Residential Real Estate Forms on HotDocs**.® Quickly prepare clean, crisp, ready-to-file deeds, contracts of sale, clauses for numerous contingencies, various riders, escrow documents and closing agreements for traditional house sales, as well as for sales of cooperative and condominium units.


Here are some of the ways **New York State Bar Association's Residential Real Estate Forms on HotDocs**® will make you and your staff more efficient:

- ***Increase Accuracy and Eliminate Repetitive Typing*** — Enter case-specific information once and it is automatically inserted throughout the form where that information is required.
- ***Smart Formatting*** — Calculations are performed automatically and intelligently. All pronouns and verbs are grammatically correct, paragraphs properly numbered — to make everything complete and accurate in a fraction of the time it used to take.
- ***Save Information*** — After completing a form, save the data you enter into an "answer file" and use it to automatically complete other forms.
- ***Easy-to-Use*** — Dates and other information can be viewed through pop-up calendars and tables. A "Find" feature allows you to locate any of the forms you need quickly and easily.
- ***Current*** — Includes the 2000 revisions to the NYSBA Residential Contract of Sale, approved by ABCNY, NYCLA and NYSLTA!
- ***Comprehensive*** — Includes brokerage contracts; checklists; contracts of sale; contract addenda/riders; forms relating to contracts of sale; notes and mortgages; forms relating to loans, notes and mortgages; deeds; closing statements and forms; state and local tax forms.

**$400***
(single-user)

**$340***
(NY State Bar member, single-user)

*Plus $35 for sales tax, shipping and handling. Prices subject to change without notice.

*Editor & Commentator:*
***Karl B. Holtzschue***
*Member of the Executive Committee of the Real Property Section of the NYSBA and Co-chair of the Section's Title and Transfer Committee.*

**To Order by Mail**, send a check or money order to: CLE Registrar's Office, New York State Bar Association, One Elk St., Albany, NY 12207*
* Please specify shipping address (no P.O. box) and telephone number

**To Order by Telephone,** call **1-800-582-2452** (Albany & surrounding areas 518-463-3724) and charge your order to American Express, Discover, MasterCard or Visa. Be certain to specify the title and product number.

Source Code: CL1210
12/2000

**New York State Bar Association**

# Publication of Articles

*Perspective* welcomes the submission of articles of general interest to the Young Lawyers Section. Authors should submit a 3½" floppy disk (preferably in Microsoft Word format) and one double-spaced, printed hard copy. Articles should be submitted to the editor listed below who most closely fits the subject matter you are writing on. Unless stated to the contrary, all published articles represent the viewpoint of the author and should not be regarded as representing the views of the Young Lawyers Section or substantive approval of the contents therein. *Please note that any articles which have already been published in another forum will need the written consent of that publisher before they can be reprinted in* Perspective.

## EDITORIAL BOARD

*Editor-in-Chief:*

**Substantive Articles (any topic), Photographs, Artwork, Humor, Quotes, *SOUND OFF!!!* Responses, Anecdotes, etc.**
James S. Rizzo, Esq.
Office of the Corporation Counsel for the City of Rome
City Hall, 198 North Washington Street
Rome, New York 13440
Phone: (315) 339-7670
Fax: (315) 339-7788
Email: jamesrizzo9@juno.com

*Co-Editors:*

**Substantive Articles (any topic)**
Robert Emmett Gallagher, Jr., Esq.
Hiscock & Barclay, LLP
Key Bank Towers at Key Center
50 Fountain Plaza, Suite 301
Buffalo, New York 14202-2291
Phone: (716) 856-0911, ext.: 213
Fax: (716) 846-1217
Email: rgallagh@hiscockbarclay.com

**Quality of Life/Ethics Articles**
Scott M. Bishop, Esq.
Law Office of Scott Bishop
Fifty Main Street
Suite 1000
White Plains, New York 10606
Phone: (914) 682-6866
Email: smbishop@bishoplaw.com

**Book Reviews/Women & Minority Issues**
Michelle Levine, Esq.
Peluso & Touger
70 Lafayette Street
New York, New York 10013
Phone: (212) 608-1234
Fax: (212) 513-1989

**Pro Bono Issues/Substantive Articles**
Jennifer C. Ruppel, Esq.
Coughlin & Gerhart, LLP
20 Hawley Street
P.O. Box 2039
Binghamton, New York 13902-2039
Phone: (607) 723-9511
Fax: (607) 723-1530
Email: jruppel@cglawllp.com

***"New opinions are always suspected, and usually opposed, without any other reason but because they are not already common."***

**— John Locke, English philosopher (1632-1704)**

# PERSPECTIVE

**Editor-in-Chief**
James S. Rizzo
198 N. Washington Street
Rome, NY 13440

## Section Officers

**Chair**
Scott B. Anglehart
20 Hawley Street
P.O. Box 2039
Binghamton, NY 13902

**Chairperson-Elect**
Barbara J. Samel
39 Lawnridge Avenue
Albany, NY 12208

**Treasurer**
David P. Miranda
20 Corporate Woods Boulevard
Albany, NY 12211

**Secretary**
Philip J. Capell
300 Marcus Avenue
Suite 1E9
Lake Success, NY 11042

This newsletter is published for members of the Young Lawyers Section of the New York State Bar Association. Members receive the newsletter free of charge. The views expressed in articles in this newsletter represent only the viewpoint of the authors and not necessarily the view of the Section.

We reserve the right to reject any advertisement. The New York State Bar Association is not responsible for typographical or other errors in advertisements.





ISSN 0743-6475




Young Lawyers Section
New York State Bar Association
One Elk Street
Albany, NY 12207-1002


**ADDRESS SERVICE REQUESTED**


NON-PROFIT
U.S. POSTAGE
**PAID**
ALBANY, N.Y.
PERMIT NO. 155