NYSBA FALL 2002

Perspective

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

A Message from the Section Chair

Who has the time to read this? If you put it down to read later, you won't. Later, something urgent will demand your attention. It always does.

I often hear attorneys would like to be more involved in Bar Association activities, but don't have the time. Why not? What could be more important than taking an active role in your chosen profession? Meeting the needs of your employer and clients is one, and satisfying your family commitment is another. Are these two obligations so consuming that they leave no time for anything else? For many newly admitted lawyers the answer increasingly is yes, and more often than not it is work rather than family that's sucking up their time.

The problem occurs more often in New York City and other large cities where starting salaries and corresponding demands on time are significant. A colleague, who has since moved on to a solo practice, calls it the "golden handcuffs." Sure, you

(Continued on page 15)

What Is the Court of Claims?

By the Honorable Renée Forgensi Minarik and Colleen Clark

The Court of Claims. "Now is that small claims court?" "What exactly is the Court of Claims?" "I've practiced for 75 years and I don't believe I've ever set foot in the Court of Claims." These are all common responses to the question: "What is the Court of Claims?"

I. Introduction

The role of the Court of Claims within the New York State Unified Court System is the adjudication of actions seeking compensatory damages against the state of New York and certain governmental authorities.[1]

The Court was created by the Court of Claims Act (CCA), enacted in 1939 and continued in the current New York State Constitution (article VI, section 23) adopted in 1949. The Court was created for, and exists for, the purpose of adjudicating claims against the sovereign state of New York. The doctrine of sovereign immunity, carried over from English law, is that the sovereign cannot be sued in its own courts without its consent. This theory is based on the old ideology that the "king can do no wrong." From this history came one of the most distinguishing features of the Court of Claims, that all actions in this Court are heard in front of judges *only*, with no juries.

The seat of the Court is in Albany. All claims instituting suit must be filed with the Clerk of the Court of Claims in Albany, where all the Court's records are maintained.

II. Brief History

The Court of Claims evolved out of the Erie Canal Act of 1817. As part of the Act, the legislature directed the state canal commissioners to petition the Supreme Court for the appointment of disinterested appraisers to assess damages to the lands of private citizens resulting from canal construction.[2] This was the first general statute providing for the hearing and determination of private claims against the state of New York.

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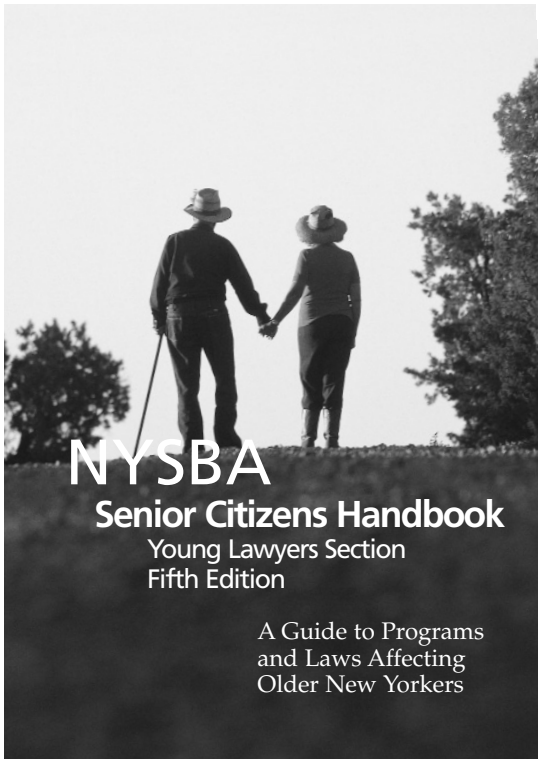
Inside

Discounted for YLS Members!



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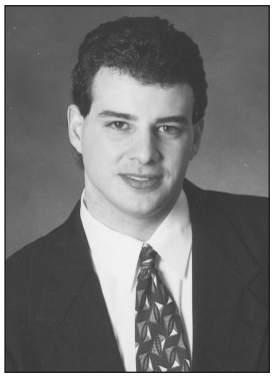
From the Editor's Desk

"If you would not be forgotten, as soon as you are dead and rotten, either write things worth reading, or do things worth the writing."

— Benjamin Franklin (1706-1790)



As many readers know, an ongoing topic of great interest (and even greater despair) among YLS members is that diabolical albatross known as law school loans. I encourage you to read through David Miranda's Chair's Message for an interesting take on this subject. Readers have also asked, "Okay, we all know astronomical student loans are the plague of young lawyers, so what's the YLS doing about it?" For those interested, take the time to read the summary report of recommendations from the Special Committee on Student Loan Assistance recently adopted by the State Bar House of Delegates. Several YLS members worked diligently on the committee and it appears their hard work has paid off. I have also heard that the ever popular ***SOUND OFF!*** column on this subject raised eyebrows and increased awareness among other sections of the bar, as YLS members vented their thoughts on this volatile topic—a true testament that YLS voices are being heard.

Another YLS topic which has garnered much attention in the past, and would make Ben Franklin proud, is the **U.S. Supreme Court Admissions Program.** I strongly encourage all YLS members who have not been admitted to the U.S. Supreme Court to join us for the program to be held in **Washington, D.C., on May 31 through June 2, 2003.** Having been before the Court twice for this event, once for admission and once as the movant, I cannot emphasize enough how memorable and awe-inspiring it is to stand in front of the Justices of the Supreme Court as your name is read into the roster of attorneys admitted to practice. During previous programs, YLS members had the opportunity to hear Justices announce decisions into the record and even had a Justice or two greet members afterward for pictures. As a co-sponsor of the event, I can state that we are attempting to get a "name speaker" for those fortunate enough to make the trip. You should be receiving an informational packet and registration form soon, but you must act fast as the event is limited to the first 50 applicants. If you have been admitted to practice for at least three years and are in good standing, there is no excuse to miss this valuable experience (and the opportunity to hang another fancy admission certificate on your wall)!

In other YLS opportunities, if you have an article you would like to see published that would be of interest to our Section, feel free to send it along. Back issues of *Perspective* can now be obtained off the State Bar Web site, which should give any prospective author a good idea of the type of articles sought. Of course, there is always the ***SOUND OFF!***

"I cannot emphasize enough how memorable and awe-inspiring it is to stand in front of the Justices of the Supreme Court as your name is read into the roster of attorneys admitted to practice."

column which is by far the most efficacious manner to get your opinion out to the legal masses. Besides the suggested ***SOUND OFF!*** topic, any other comments of interest or questions on submissions can be sent via e-mail to: jamesrizzo9@juno.com. **Please note that the deadline for all submissions (substantive articles, reviews, photos, *SOUND OFF!* responses, etc.) to the Spring 2003 issue is February 21, 2003**.

Lex Julia majestatis.

James S. Rizzo

"*Out of life's school of war*: What does not destroy me, makes me stronger."

—Friedrich Nietzsche (1844 – 1900)

SOUND OFF!

Young Lawyers Respond to the Question: "DO YOU THINK IT IS BENEFICIAL TO BECOME ACTIVELY INVOLVED IN STATE BAR ASSOCIATION ACTIVITIES? WHY? WHY NOT?"

"As a law student, it seems critical to become involved in State Bar activities. What better way to feel like a part of the legal community? For me, the State Bar News *and other publications lend perspective to what I am learning in law school and make me excited to practice law!"*

Bethany Schumann, Albany Law School

* * *

"I think it is beneficial, but who has time? The powers that be want all our lives spent at work rather than at developing the profession."

* * *

"It is beneficial to become actively involved in State Bar activities. As a sole practitioner, it is easy to feel cut off from the rest of the legal community. There's always opposing counsel, but they don't give me that warm-fuzzy feeling that I like. I'm pretty much out there on my own most of the time. Days spent in court, at closings, rainmaking and doing firm administrative work can be enough to make me feel like I'm just part of a grind, but bar activities make me realize, 'Oh, that's right, I'm a lawyer!'"

Gino Agostinelli, Rochester, New York

* * *

"Of course young lawyers should be actively involved in Bar Association activities! What a wonderful chance for us to exchange ideas, aspirations, concerns and dreams with our peers of the great New York State Bar. We all know that being a young lawyer comes with its trials and tribulations. But it is so much easier to bravely overcome all obstacles we all face with the help of other young lawyers who've been there, done that and lived to achieve great deeds in our chosen profession. I'm blessed to practice with bright, dedicated young lawyers in the Navy JAG Corps, and it's wonderful how much we continuously learn from one another each day by sharing our ideas and experiences, blunders and triumphs. Being actively involved in Bar Association activities empowers us all to take such collective, combined learning to the next level, to the benefit of ourselves, our clients, and the practice of law itself."

LT Vince Parrett
U.S. Navy JAG Corps
parrettvi@jag.navy.mil
New York University School of Law '98

* * *

"I think it is very beneficial to get involved. The Bar Association provides a great network of people to share ideas with, and great business contacts. As a young attorney, one of the things that senior partners are emphasizing is the ability to network with people to eventually bring in business. It is never too early to build a network, and what greater place to start than the NYSBA."

* * *

"Yes. This profession can be extremely alienating by its nature . . . Most young lawyers are constantly confronted by adversaries, much older and more experienced, who may not act very graciously when protecting their clients' interests. By participating in a less adversarial arena, these same people typically act in a more socially acceptable manner and there is also opportunity to "vent" to others who share similar experiences. Many judges also participate, so attorneys can interact with the judiciary and get some feedback, etc. Lastly, it is not necessary to stay for the entire duration of the event to get some benefits."

* * *

"It's important to participate in different Bar Association committees, etc., especially for a junior associate, where the committees and activities may be your best opportunity to explore areas that you're interested in for a long time."

* * *

"As of late, I see more attorneys, both young and old, getting myopic in their practice of law. This, in turn, constricts exposure to members of the bar and other areas of practice that any attorney would know.

I have a cousin who is a corporate attorney in New York City. We were talking about some estate case and he was embarrassed to tell me he did not know how to draft a will. Being an attorney carries a responsibility that exceeds bringing home a paycheck. It means getting out there and representing our profession in a positive light. This can be achieved more effectively by active participation in our Bar Association.

Active participation provides enlightenment on many different levels and leads to more exposure to fellow attorneys, and in general, the world:

1. *You are able to compare yourself with the other attorneys who are active in the Association*. *Comparison aids in self-image composition, as well as an additional form of continuing legal education; i.e., "Say, did you hear that so-and-so just got appointed to such-and-such," and, "That new law barring Realtors from making money is sure top-notch, ay skippy."*

2. *You control the formation of the structure and focus of the profession*; *i.e., when I was on the Technology Committee, we designed and implemented the Web site. Additionally, we selected the computers for the Association office.*

(Continued on page 18)

Tired of Long Hours, Law School Debt, 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. Each issue a primary topic is 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.). Your name, location and/or law school information is encouraged, but 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:**

DO YOU THINK LAW SCHOOL PREPARED YOU WELL FOR THE BAR EXAM AND THE PRACTICE OF LAW?

WHY? WHY NOT?

Please send all comments to *Perspective's* Editor-in-Chief via e-mail at: jamesrizzo9@juno.com. Due to format constraints, all comments should be brief (40-60 words maximum, i.e., generally what can be written in about five minutes). *Perspective* reserves the right to edit responses and the right not to publish responses considered inappropriate.

We look forward to hearing from you!

TECHNOTALK
Federal Courts Review Domain Name Arbitration Proceedings

By David P. Miranda

Since the Uniform Dispute Resolution Process (UDRP) was implemented by the Internet Corporation for Assigned Names and Numbers (ICANN) in December 1999, thousands of trademark holders have used the process as a quick, efficient method of recovering domain names which are identical or confusingly similar to their trademarks. A review of the UDRP decisions to date reveals a success rate in favor of trademark holders in approximately 75 percent of the cases commenced. The rules were designed to protect trademark owners from "cybersquatters" who register domain names, that are identical or confusingly similar to trademarks, with the intent of selling the domain names back to the trademark owners at a profit or otherwise using the domain names in bad faith. Trademark owners have been so successful in recovering domain names through the UDRP that domain name registrants are claiming that the process encourages reverse domain name hijacking, whereby trademark owners abusively assert their trademark rights to strip domain names from rightful owners.

Under the UDRP, an unsuccessful domain name registrant has ten business days from the date of the UDRP panel's decision to file a court action. If such an action is filed, the domain name registrar is prevented from implementing transfer of the domain name to the trademark holder until the dispute has been resolved between the parties, the court dismisses the lawsuit or rules against the domain name registrant on the merits.

In recent months, two separate federal courts have ruled in favor of domain name registrants, reversing the UDRP panel's decision to transfer a domain name to the trademark owner. In *Sallen v. Corinthians*, the First Circuit Court of Appeals reversed a Massachusetts district court ruling that had affirmed the transfer of the domain name to the trademark owner. Sallen is the owner of the Internet domain name corinthians.com. A UDRP proceeding was brought before the World Intellectual Property Organization (WIPO) by the owner of the name "Corinthiao," the Portuguese equivalent of Corinthians, a popular Brazilian soccer team. Sallen, after unsuccessfully defending his registration before the UDRP, filed a complaint in federal court seeking a declaration that his use of corinthians.com was not unlawful. Sallen relied, in part, upon the recently enacted Anticybersquatting Protection Act (ACPA), which provides:

> A domain name registrant whose domain name has been suspended, disabled, or transferred under a policy described under clause (ii)(II) may, upon notice to the mark owner, file a civil action to establish that the registration or use of the domain name by such registrant is not unlawful under this chapter. The court may grant injunctive relief to the domain name registrant, including the reactivation of the domain name or transfer of the domain name to the domain name registrant. 15 U.S.C. § 1114(2)(d).

The trademark owner argued that the federal courts do not have jurisdiction to revisit the issue of whether the domain name registrant is a cybersquatter, and the federal courts lack jurisdiction over this suit, in particular under the ACPA, because the trademark owner of Corinthians disclaimed any intent to commence a federal lawsuit and thus, there is no case or controversy with respect to the domain name. The Massachusetts district court agreed, dismissing Sallen's complaint on the grounds that no actual controversy existed between the parties, under the ACPA.

"Under the UDRP, an unsuccessful domain name registrant has ten business days from the date of the UDRP panel's decision to file a court action."

The First Circuit Court of Appeals reversed, holding that although the trademark owner stated that it has no intent to sue Sallen under the ACPA regarding corinthians.com, there is indeed a controversy between the parties since Sallen asserts that he has the rights to the domain name and the trademark owner asserts that it has exclusive rights. The court noted that the ICANN UDRP policy contemplates the possibility of proceedings in fed-

eral court and, specifically states that federal courts are not bound by the outcome of the ICANN administrative proceedings. A judicial decision that a party is not a cybersquatter pursuant to the ACPA and that a party has a right to use a domain name will negate a UDRP arbitration ruling that a party is a cybersquatter. A federal court's interpretation of the ACPA supercedes a WIPO panel's interpretation of the UDRP because WIPO does not create new law—it applies existing law.

In another recent case, a New York federal district court not only reversed a UDRP panel decision, but imposed sanctions against a trademark owner for its continued pursuit of the domain name. Trademark owner Cello Holdings, L.L.C., sought an injunction in federal court seeking transfer of the domain name cello.com registered to Storey in 1997. Prior to trial, Cello Holdings notified the court that the case had been settled and the court issued an order discontinuing the case, with prejudice. Cello then filed an arbitration proceeding under ICANN's UDRP arbitration process. The domain registrant argued that the dismissal with prejudice of the prior lawsuit barred Cello from bringing the same claim under the UDRP. The arbitration panel rejected Storey's *res judicata* argument and directed Storey to transfer the registration of the domain name cello.com. Following the arbitration decision, Storey filed a declaratory judgment action before the U.S. District Court in the Southern District of New York seeking to prevent enforcement of the UDRP decision based upon Cello's prior action having been dismissed with prejudice. Cello sought an order confirming the arbitration award.

"These two cases provide new hope for domain name registrants who feel that they have been improperly stripped of their domain names by a UDRP arbitration panel decision."

The district court, in determining motions for summary judgment, held that because the dismissal in the first action was with prejudice, Cello was precluded from initiating new proceedings to seek relief based on the same causes of action that were or could have been asserted in the first action. It found that the claims asserted by Cello in the UDRP arbitration proceedings were identical to the claims that were discontinued, and Cello was barred from reasserting such claims. The court rejected Cello's argument that Storey's participation in the arbitration process waived his res judicata defense.

The court also imposed Rule 11 sanctions against Cello for making unwarranted factual and legal arguments. The court found that Cello incorrectly argued that Storey failed to object to the jurisdiction of the UDRP arbitrator, when in fact Storey had argued that the arbitration panel was barred from hearing the dispute based upon the prior dismissal with prejudice. Cello also contended that the arbitration decision was final and binding. The court held that this was not true based upon express provisions to the contrary in the UDRP. The court also held that "Cello acted to harass Storey and to cause both unnecessary delay and needless increase in the cost of litigation and that a reasonably competent attorney would have known that the dismissal with prejudice of the first action would have barred future claims based upon the same causes of action."

These two cases provide new hope for domain name registrants who feel that they have been improperly stripped of their domain names by a UDRP arbitration panel decision. The UDRP proceeding is designed as a quick and efficient means of recovering a domain name and hence does not provide for the type of extensive factual discovery and depositions that are often necessary to properly determine trademark infringement issues. The federal courts' willingness to exert authority over such proceedings offers domain holders a second opportunity to retain ownership of their domain name registrations.

David P. Miranda is a Partner in the Intellectual Property Law firm of Heslin Rothenberg Farley & Mesiti P.C. of Albany, New York, and is Chair of the Young Lawyers Section. He can be reached at dpm@hrfmlaw.com.

This article was originally published in the ABA Intellectual Property Law Newsletter, *Spring 2002, Vol. 20, No. 3, and is reprinted with permission.*

"Lawful: *adj.,* Compatible with the will of a judge having jurisdiction."

—Ambrose Bierce, The Devil's Dictionary

Report and Recommendations of the Special Committee on Student Loan Assistance for the Public Interest

By Gregory J. Amoroso

The Special Committee was appointed in 2001 to review the impact of law school indebtedness on the ability of government and public service employers to attract qualified attorneys to undertake careers in public service. The committee proposed a New York State Loan Repayment Assistance Pilot Program as follows:

1. NYSBA would create a not-for-profit corporation, which will solicit gifts, grants and donations from private sources to fund the Program;
2. Applicants must be employed to work at least 35 hours per week in New York State in a law-related position by any of the following entities:
   A. A New York State agency, a New York State local government agency or the New York office of a federal agency;
   B. An organization providing civil, criminal or child welfare/juvenile justice legal services to underserved or disadvantaged people in New York State; or
   C. A similar organization to the above.

Applicants would be required to have an adjusted gross income at or below the following amounts:

*First Year:	$40,000
*Second Year:	$45,000
*Third through Fifth Year:	$50,000
*Fifth through Tenth Year:	$60,000

(For applicants who live in the New York City metropolitan area, the salary limitation for each category would be increased by $10,000).

The goal would be to have sufficient funds to allow annual awards ranging from $4,000 to $7,000. The awards would be forgiven based on years of qualifying employment.

The New York State House of Delegates approved the report on June 22, 2002. The Young Lawyers Section spoke at the meeting in favor of the report. The Special Committee is now taking steps to implement the program.

Gregory J. Amoroso recently became an Associate at the law firm of Hester, Saunders, Kahler & Locke, L.L.P., in Utica, New York. He had previously served as Corporation Counsel for the City of Rome, New York, and is Chair-Elect to the Young Lawyers Section.

REQUEST FOR ARTICLES

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

Please send to:
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E-mail: jamesrizzo9@juno.com

Articles can be sent as e-mail attachments to the address above, or submitted on a 3 1/2" 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.

The Importance of Having a Mentor

By Rajen Akalu

In many respects finding a mentor is like finding a job; there's no formula, but when you meet the right person or you're in the right position, something magical occurs. I contacted my mentor through the Internet. We spoke on the phone, met in person and have been in contact ever since. She's wonderful. I have often thought of her as the legal profession's answer to Superwoman!

Having a mentor has provided me with a sense of perspective. I quickly realized how much of a novice I really am. At the same time, I have been imbued with a sense of confidence at being able to relate to someone with considerably more expertise than myself.

It is not a relationship that can be forced or contrived. You have to be chosen and then commit to developing yourself professionally. This is not unlike deciding to become a lawyer in the first place. It is worthwhile to point out that the word vocation has its etymological root in the Latin *vocare*, "to call."

Your mentor can assist you in avoiding the pitfalls of legal practice, can provide encouragement when you are at a low ebb, and can point you in the right direction. While such relationships are rare, I think that there are certain factors that can create the conditions needed to find a great mentor. The first is to be genuinely interested in the person. Lawyers are trained to spot self-interest, so it is important to be sincerely interested in who the person is as well as what he or she does. The second is to appreciate that person for taking the time to assist you, and the third is to follow their advice and use your own judgment when deciding to act.

In many ways my mentor has restored my faith in the system. She demystified the role of law firm partners, taught me what to expect and what is expected of me. In return, I try to reciprocate as best I can. She is certainly someone for whom I would gladly go the extra mile, but I think the real source of satisfaction for her is the knowledge that she is coining the next generation of lawyers with her imprimatur. This invariably becomes a currency that is priceless.

"In many respects finding a mentor is like finding a job; there's no formula, but when you meet the right person or you're in the right position, something magical occurs."

Rajen Akalu currently works for the Centre for Innovation Law and Policy at the University of Toronto. He is a member of the Commercial and Federal Litigation Section and Internet and Litigation Committee.

"Dissent is not sacred; the right to dissent is."

—Thurman Arnold, American Lawyer (1891 – 1969)

Young Lawyers Section News and Events

The **YLS Spring 2002 Meeting** was held at Bolton Landing, New York, on April 26–28, 2002. Topics included: Hot Issues in Employment Law, Practical and Legal Consequences of Employee Complaints, Constitutional Issues in Public Sector Labor Relations and Recent Developments Under the National Labor Relations Act. Former YLS Chair Scott B. Anglehart was Program Chair. YLS Executive Committee Summer Meetings were held on various dates in June 2002, where action plans were set for the coming year.

The **YLS Fall 2002 Meeting,** in conjunction with the Municipal Law Section, was held in Corning, New York, on September 20–22, 2002. Topics included: Litigation of Construction Claims, Labor Arbitration, How to Evaluate a Claim, Flow Control, Lead Paint, Municipal Ethics, Land Use, SEQRA, Open Meetings Law and Public Works Liability Claims. YLS speakers included Andrew Brick, Rotterdam Town Attorney; Christopher Langlois of Girvin & Ferlazzo, P.C. in Albany; Darrin B. Derosia, Corporation Counsel of the City of Cohoes; and James S. Rizzo, Corporation Counsel for the City of Rome. YLS Chair-Elect Gregory J. Amoroso was Program Chair. Members were also treated to a glass-blowing exhibition and dinner at the Corning Museum of Glass, in addition to a tour and wine-tasting event at the unique Bully Hill wineries.

In upcoming events, do not miss our **Annual Meeting program** to be held on **January 22, 2003,** in New York City. In addition to the **Distinguished Professor of Law David Siegel's "CPLR Update,"** the program will include **"A View from the Jury Box,"** covering such topics as: How a Jury Views Attorneys, Tips on Jury Selection, and Effective Trial Advocacy. There will also be a one-hour program entitled "**10 Hot Topics in an Hour**" with 10 five-minute presentations on various areas of law. You should further be on the lookout for registration materials regarding the **U.S. Supreme Court Admissions Program** to take place in **Washington, D.C., May 31–June 2, 2003,** which will be held in conjunction with the **YLS Spring 2003 Meeting.**

In the special events category, the **NYSBA Law Student Council** co-sponsored two recent events in an effort to familiarize students with the benefits of NYSBA membership. The first was a joint luncheon held by Albany Law School's Government Law Center and Science & Technology Law Center for incoming students, where they were given an opportunity to join NYSBA. The second was at the University of Buffalo Law School's 5th Annual Career Info Fair. A representative from the Young Lawyers Section informally met with students to discuss practice specialties and settings and to field questions.

NYSBA's Young Lawyers Section also recently co-sponsored speaker Katy Schubert's program, **"Interviewing: An Insider's Perspective,"** presented at Albany Law School. Schubert lent great advice to third-year law students gearing-up for on-campus interviews. Also, on November 16, 2002, the YLS sponsored a dinner at the Fort Schuyler Club in Utica followed by the **Utica Symphony Classics Concert** at the Stanley Performing Arts Center. Watch for your ***Electronically In Touch*** e-mail/fax newsletter for more up to date information on YLS activities and upcoming district events near you.

The YLS also has two award-winning publications, the ***Mentor Directory*** and the ***5th Edition Senior Citizens Handbook***. Both publications received honors from the American Bar Association for comprehensive efforts in public service and service to the profession. The Mentor Program can now be conveniently accessed online at www.nysba.org/ylsmentor. Another useful YLS publication is ***Pitfalls of Practice,*** which is a guide for new attorneys on common mistakes to

YLS members enjoyed dinner at the Corning Glass Factory during the Joint Young Lawyers Section/Municipal Law Section Fall Meeting. Members of both Sections had the opportunity to network and share information regarding the Sections—a huge incentive for the YLS in co-sponsoring programs with other substantive Sections.

Pictured in the photo on the left are (l-r): Justina Cintron, YLS Web site editor; Patty Salkin, member of the Municipal Law Section Executive Committee; Trudy Menard, a member of both the Municipal Law and Young Lawyers Sections; and Scott Anglehart, YLS past chair. Having an equally enjoyable time in the photo on the right are (l-r): Robert Galley, Jr., YLS 8th District Representative; Jim Rizzo, *Perspective* Editor; and YLS Chair, David Miranda.

avoid in various fields of law. Further, for those with a penchant for ghostwriting, YLS offers ***On the Case***, a one-page legal summary (written in layman's terms) intended to be used by media outlets on a specific area of law. There has been great interest in this volunteer program in its first year of development.

Other activities of the Section include committees on Bridge the Gap and Gateway Programs, Design and Update of the YLS Web page, Increase and Participation of Women and Minorities, Law Student Involvement and Public Service. Also check out the State Bar's newly revamped Web site at www.nysba.org and follow the links to the Young Lawyers Section.

Should you have any suggestions, improvements or additions to the site, please feel free to convey your thoughts. Also, do not hesitate to express your interest in any Executive Committee, Alternate or Liaison positions which may currently be vacant. If further information is needed, feel free to contact any of the Section officers listed on the back page of this newsletter.

Lawyer Assistance Program Can Help Attorneys with Alcoholism and Substance Abuse Problems

Alcoholism and substance abuse are problems that can afflict any member of the bar at any time. Indeed, the percentage of lawyers and judges suffering from alcoholism and drug addiction is significantly greater than the general population. Because of the pervasiveness of the problem in the profession and the devastation suffered not only by the alcoholic or addict but also by their family members, partners and clients, the Bar Association formed the Committee on Lawyer Alcoholism and Drug Addiction in 1978. To help the Committee address the problem, the Lawyer Assistance Program (LAP), headed by Ray Lopez, was created in 1990. Under Ray's direction, the State Bar program is on the cutting edge of alcoholism and drug addiction education, intervention, treatment and is nationally respected as one of the leading programs in the field. Despite the great success of the program, over 5,000 referrals in twelve years, there are thousands of lawyers and judges who do not know about the program and what it can do for them. Recently, Patricia K. Bucklin, Executive Director of the New York State Bar Association, asked all Section and Committee Chairs to tell their members about the Committee and what it can do for any of their members who are struggling with alcohol or substance abuse problems.

Currently there are 68 Committee members and a vast network of volunteers. Most are attorneys and judges of Supreme Court, County Court, Family Court, and Civil Court. The Committee is aided by professional counselors, like Ray Lopez in Albany, and Eileen Travis in New York City, and many others serving local bar associations.

The primary functions of the Committee, with Ray Lopez's guidance and direction, are twofold: 1) to assist attorneys, judges, and law school students and their families who are suffering from alcoholism, drug abuse, depression and stress-related issues through abuse interventions and planning, sobriety monitoring for appellate courts and disciplinary committees, and participation in treatment programs and twelve-step groups with attorneys on a local level; and 2) to educate the profession as a whole to detect the warning signs by participation in presentations at law schools, judiciary conferences, disciplinary committees and bar association committees on a statewide and local basis.

One year ago, Chief Justice Judith S. Kaye formed the Lawyer Assistance Trust to study the problems of alcoholism and substance abuse in the legal profession and to provide assistance to groups addressing these problems. Eight of the Committee's 68 members serve as Trustees.

Information on outreach concerning attorneys' personal problems with alcohol and drug abuse and possible grants for efforts related to attorney wellness, in the areas of substance abuse, stress management and depression is available to all NYSBA Sections and Committees. Committee members would welcome the opportunity to speak at Committee or Section events regarding stress management issues, substance abuse, alcoholism and depression among attorneys.

All services provided by the LAP or Committee members are confidential and protected by Section 499 of the Judiciary Law.

For more information about the Committee, to arrange for a presentation by Committee members or for a confidential referral of an attorney who you believe has a problem with alcohol, substance abuse, stress management or depression, contact the Lawyer Assistance Program at 1-800-255-0569.

ETHICS MATTERS
Cooperative Business Arrangements Between Lawyers and Nonlegal Service Providers in the State of New York

By Mark S. Ochs

On November 1, 2001, New York became the first state to address the regulation of the multidisciplinary practice of law (MDP). Briefly, the new rules are as follows:

- DR 1-106 sets forth the conditions under which disciplinary rules apply to lawyers or law firms who provide nonlegal services to clients.
- DR 1-107 discusses the importance and necessity of preserving the core values of the legal profession.
- DR 1-107 imposes specific limitations on contractual relationships between lawyers and nonlawyers for the provision of nonlegal services.
- 22 N.Y.C.R.R. part 1205 requires that lawyers provide clients with a "Statement of Client's Rights In Cooperative Business Arrangements."

Multidisciplinary Practice Versus Cooperative Business Arrangements

Pure MDP as proposed in a number of jurisdictions envisions a single business entity providing "one-stop shopping" to clients. Fees and profits generated by the MDP are shared between lawyers and nonlawyers.

This big-box concept could include lawyers, accountants, insurance agents or brokers, title abstractors, policy issuers, and investment and securities professionals. Depending on the type of practice, it might also include social workers, private investigators and medical experts, as well as chemical, geological and environmental experts. The benefit of such an arrangement would be that all of a client's varied needs could be addressed by one entity, thereby providing continuity of services and potential cost savings due to the avoidance of overlapping or duplicative work.

This prototype was not adopted in New York primarily because such a practice would likely blur the attorney/client relationship and the attorney's responsibilities to the client. It could lead to accounting and investment firms acquiring legal firms in order to add a legal component to the services they currently offer to their clients. Major ethical areas that could be affected by this form of MDP include:

1. Professional independence of judgment;
2. Confidentiality and attorney/client privilege;
3. Conflicts of interest;
4. Unauthorized practice of law by nonattorneys;
5. Decrease in pro bono activities;
6. Setting of legal fees by nonattorneys;
7. Interstate practice; and
8. Escrow responsibilities.

Cooperative Business Arrangements—The New York Rules

New York's amendments and rules allow attorneys to enter into a cooperative business arrangement (CBA) under limited circumstances.

DR 1-106, entitled "Responsibilities Regarding Nonlegal Services," is not limited in its application to CBAs but encompasses business arrangements and situations which existed before the enactment of DR 1-107.

Under DR 1-106, where a lawyer provides nonlegal services that are not distinct from legal services being provided, the lawyer is subject to the disciplinary rules with respect to the legal *and* nonlegal services.

Where a lawyer provides nonlegal services that are distinct from legal services being provided, the lawyer is subject to the disciplinary rules with respect to the nonlegal services, if the client could reasonably believe that those services were the subject of an attorney/client relationship.

A lawyer affiliated with an entity providing nonlegal services is subject to the disciplinary rules with respect to nonlegal services if the person receiving the services could reasonably believe that those services are the subject of an attorney/client relationship. A presumption exists that the person receiving nonlegal services believes the services to be the subject of an attorney/client relationship *unless* the lawyer advises in writing that the services are not legal services and that the protection of an attorney/client relationship does not exist with respect to those services, or if the interest of the lawyer in the entity providing the services is *de minimis*.

DR 1-106 concludes with the provision that a lawyer affiliated with an entity providing nonlegal services shall not permit a nonlawyer to direct or regulate the professional judgment of the lawyer in rendering legal services or cause the lawyer to compromise his or her duties with respect to confidences and secrets of a client.

DR 1-107, entitled "Contractual Relationships Between Lawyers and Nonlegal Professionals," reaffirms the principle that the practice of law has an essential tradition of complete independence and uncompromised loyalty to those it services. These are core values of the profession. A lawyer must remain responsible for his or her own independent professional judgment, maintain the confidences and secrets of clients, preserve funds of clients and third parties in his or her control, and otherwise comply with legal and ethical principles.

DR 1-107 states that multidisciplinary practice between lawyers and nonlawyers is incompatible with the core values of the legal profession and a strict division between services provided by lawyers and by nonlawyers is essential to protect those values. With those caveats, the rule goes on to permit a contractual relationship between a lawyer and a nonlegal professional for the purpose of offering to the public, on a systematic and continuing basis, legal services performed by the lawyer, as well as other nonlegal professional services, provided that:

1. The nonlegal profession is included in a list jointly established and maintained by the Appellate Divisions;
2. The nonlegal professional does not have an ownership or investment interest in, or managerial or supervisory right over, the practice of law. It may not share legal fees and there may not be an exchange of a monetary or other tangible benefit for giving or receiving a referral; and
3. The existence of the contractual relationship is disclosed by the lawyer to any client before the client is referred to the nonlegal professional service firm, or to any client of the nonlegal professional service firm before that client receives legal services from the lawyer, and the client has given informed written consent and has been provided with a copy of the "Statement of Client's Rights In Cooperative Business Arrangements."

To qualify as a nonlegal profession, the profession must require a bachelor's degree or its equivalent from an accredited college or university, or an equivalent combination of educational credit from such a college or university and work experience; it must be licensed by an agency of the state of New York or the United States government; and under penalty of suspension or revocation of license the professional must adhere to a code of ethical conduct that is reasonably comparable to that of the legal profession.

"A lawyer must remain responsible for his or her own independent professional judgment, maintain the confidences and secrets of clients, preserve funds of clients and third parties in his or her control, and otherwise comply with legal and ethical principles."

DR 1-107 does not apply to relationships consisting solely of nonexclusive reciprocal referral agreements or understandings between a lawyer and a nonlegal professional.

While the lawyer and nonlegal service provider may not share fees, they may allocate costs and expenses, provided the allocation reasonably reflects the costs and expenses incurred by each.

Approved Professions[1]

The following nonlegal professions have been approved for CBAs:

- Architecture
- Certified Public Accountancy
- Professional Engineering
- Land Surveying
- Certified Social Work.

Statement of Client's Rights in Cooperative Business Arrangements

22 N.Y.C.R.R. part 1205 defines a "cooperative business arrangement" and sets forth the requirements for the statement of client's rights that must be given to clients. A "cooperative business arrangement" is a contractual relationship between a lawyer and a nonlegal professional for the purpose of offering to the public, on a systematic and continuing basis, legal services performed by the lawyer, as well as other nonlegal professional services.

Prior to the commencement of legal representation of a client referred by a nonlegal service provider or prior to the referral of an existing client to a nonlegal service provider, a lawyer must provide the client with a statement of client's rights. The statement needs to contain the specific language set forth in 22 N.Y.C.R.R. part 1205.4 and has to be signed by the client. This document informs the client that the lawyer has entered into a contractual relationship with a nonlegal professional which may include the sharing of costs and expenses and which may substantially affect the client's rights.

The lawyer assures the client that the CBA may not diminish the client's right to independent profes-

"Activity is the only road to knowledge."

—George Bernard Shaw

sional judgment and undivided loyalty, uncompromised by conflicts of interest. Any confidences and secrets imparted by a client to a lawyer are protected by the attorney/client privilege and without the separate written consent of the client may not be disclosed by the lawyer as part of a referral to a nonlegal service provider.

The client is warned that the protections afforded by the attorney/client privilege may not carry over to dealings between the client and a nonlegal service provider, and information that would constitute a confidence or secret, if imparted by the client to a lawyer, may not be so protected when disclosed to a nonlegal service provider. In fact, under some circumstances, the nonlegal service provider may be required by statute or a code of ethics to make disclosure to a government agency.

The lawyer's obligation to preserve and safeguard client funds in his or her possession is reaffirmed and the client is advised of the right to consult with an independent lawyer or other third party before signing the statement.

Ethical considerations make some additional points worth noting. The exemption under DR 1-106 is not absolute and an attorney may still be subject to discipline where the conduct does not arise out of an attorney/client relationship. For example, attorneys may be disciplined for illegal, dishonest or deceptive acts unrelated to the practice of law. (EC 1-12).

EC 1-16 points out that in referring a client to a nonlegal professional, the attorney should verify the competence of that professional and that the referral is reasonably necessary. On the allocation of expenses, EC 1-14 provides that these costs should be shared on an arm's-length basis. For conflicts purposes, EC 1-18 suggests the lawyer treat the parties to a CBA as members of a single law firm to determine if problems exist.

Changes to Canon 2 allow a lawyer to advertise legal and nonlegal education, nonlegal services provided, the existence of a CBA and the services provided by it. However, a law firm name may not include a nonattorney or nonlegal entity. DR 2-103, which prohibits solicitation, carves out an exemption for referrals in the context of a CBA, provided it does not include consideration or the sharing of legal fees.

These rules do not give lawyers carte blanche to enter into CBAs with whomever they choose regardless of the consequences. There are numerous disciplinary rules that can come into play in the context of a CBA, including the following:

- DR 1-102(A)(2)—circumventing a disciplinary rule through actions of another.
- DR 1-104(C)—supervising the work of nonlawyers.
- DR 1-104(D)—responsibility for the conduct of a nonlawyer employed or retained by or associated with the lawyer.
- DR 2-101—publicity and advertising.
- DR 2-102—professional notices, letterheads, and signs.
- DR 2-103(A)—solicitation of professional employment.
- DR 2-103(B)—compensation for recommending employment.
- DR 3-101—aiding the unauthorized practice of law.
- DR 3-102—dividing legal fees with a nonlawyer.
- DR 3-103—forming a partnership with a nonlawyer.
- DR 4-101—preservation of confidences and secrets of a client.
- DR 5-101—conflict of interest–lawyer's own interest.
- DR 5-104—transactions between lawyer and client.
- DR 5-107—avoiding influence by others than the client.
- DR 7-101—failing to seek the lawful objectives of the client.
- DR 9-102—safeguarding client funds.

In addition, there are a legion of New York State Bar Association ethics opinions which find impermissible conflicts where attorneys engage in or attempt to engage in the practice of multiple professions. These opinions are still valid.[2]

Conclusion

Within the limited confines of DR 1-107, attorneys may enter into cooperative business arrangements. In doing so, they cannot lose sight of their responsibility to maintain independent professional judgment and uncompromised loyalty to their clients.

Endnotes

1. 22 N.Y.C.R.R. pt. 1205, app. A.
2. *See, e.g.*, NYSBA Ops. 752 & 753.

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.

"Curiosity is one of the permanent and certain characteristics of a vigorous intellect."

—Samuel Johnson

A Message from the Section Chair

(Continued from page 1)

have a good job with an impressive salary, but you remain shackled to your desk. The worst thing about it is that it is of your own choosing. Why would an otherwise intelligent individual place themselves in such a position? Didn't you become a lawyer because you wanted to make a difference, or help people, or accomplish other laudable goals? What evil beast diverted you from your intended path? Ironically, it is the very institution that provided you with the opportunity to be a lawyer.

Your law school is the beast. Over the last 20 years the cost of attending law school has increased 570 percent. Assuming you aged at an equal rate and were 18 years old in 1982, you would now be 102. Not a scientific analogy, but interesting to think about. Law school graduates are entering the job market today with debt burdens approaching, and in some cases exceeding, $100,000. Armed with loan payments that exceed the mortgage on a starter home, many graduates are forced to seek the highest-paying job opportunities without consideration of quality of life issues. Some top city firms pay first-year associates annual salaries in excess of $100,000. Naturally, in return they demand that attorneys "earn their keep" with billable hour requirements in excess of 2,500 hours. That doesn't leave much time for Bar Association activities.

"Over the last 20 years the cost of attending law school has increased 570 percent."

Sadly, attorneys landing such jobs are the fortunate ones. An equal number of graduates earn less than a third of that often-reported top rate. Many young attorneys work just as hard for less money, just to pay their loans and meet expenses.

Why must a legal education cost so much? Are professors today 5.7 times better than they were 20 years ago? Isn't new technology supposed to make things more efficient, not less?

Where is this money going? Law schools can get this kind of money because students are "enabled" by loan programs that perpetuate this spiraling increase in the cost of obtaining the cherished degree. Upon graduation, the beautiful carriage that carried them through law school has turned into a pumpkin called student loans that encumber them for up to thirty years. We must seek ways to prevent law school costs from continuing their spiral out of control.

Despite these difficulties I am impressed by the level of commitment we have from members of our Section. The motto of the NYSBA is "Do The Public Good"; however, many Section members find that their involvement is also doing them some good. The YLS provides its members with opportunities to enhance their practice and lawyering skills, gain from the experiences of similarly situated attorneys and be reminded that they don't just have jobs as lawyers, but are part of an honorable profession. There is also the ability to develop a network of hard-working, ambitious attorneys like yourself who are always willing to assist a colleague.

So "break the shackles"—get involved in the YLS.

David P. Miranda

2003 New York State Bar Association

Annual Meeting

January 21-25, 2003
New York Marriott Marquis

YOUNG LAWYERS SECTION MEETING

Wednesday, January 22, 2003

What Is the Court of Claims?

(Continued from page 1)

From the Erie Canal Act of 1817 until 1939, the "hearing and determination" of claims brought against the state expanded to allow many different claims to be brought. In 1949, the Court of Claims achieved constitutional status by vote of the people. The Court of Claims has evolved from a group of appraisers assembled to hear appropriation cases to today's Court where a variety of claims are heard and are brought on virtually any grounds against the state.[3]

III. Structure of the Court

The New York State Court of Claims is divided into eight districts:[4] Albany, Binghamton, Buffalo, New York City, Rochester, Syracuse, Utica and White Plains. The Court of Claims follows regional "residencies" used by the New York State Department of Transportation, and does *not* follow the judicial districts used by the rest of the New York State Unified Court System.[5]

The Court currently consists of twenty-two judgeships,[6] as well as additional judges appointed pursuant to subsections (b), (d) and (e) of CCA § 2(2) who sit as acting Supreme Court justices.[7] Court of Claims judges are statewide judges who can hear cases in any part of the state. They are appointed by the Governor, and subject to confirmation by the Senate and serve for nine-year terms.[8] After nine years, the judges are reappointed, except in unusual circumstances. Judges may remain on the bench until age 70, at which time they must retire. The Governor designates one judge as presiding judge for his/her term.[9] The current Presiding Judge is Susan Phillips Read, whom Governor George Pataki designated on June 2, 1999.

IV. Operation of the Court

The practice in the Court of Claims is wholly statutory and is controlled by the New York State Court of Claims Act and the Uniform Rules for the Court of Claims, and where the Act and the Rules are silent, by the CPLR.

Jurisdiction

To achieve jurisdiction over the state, one must serve and file a claim—not a notice of claim, the more common appellation used for claims against municipalities under the General Municipal Law. A claim is analogous to a summons and complaint in Supreme Court practice. The claim must be filed with the Clerk of the Court in Albany and served on the Attorney General. Service requirements may differ where the defendant is any entity other than the state of New York.[10]

The requirements of Court of Claims Act §§ 10 and 11 for timeliness and proper service are jurisdictional prerequisites to bringing an action in the Court of Claims and are strictly construed.[11] Court of Claims Act § 11(a) requires that service upon the Attorney General be accomplished by personal service or by certified mail, return receipt requested. The use of ordinary mail, or any other form of delivery other than personal service or certified mail, return receipt requested, is insufficient to achieve jurisdiction over the state; and the failure to achieve jurisdiction is a defect which the Court cannot ignore and one which ultimately will result in the dismissal of a claim.[12]

Claims

Claims need to be filed with the Clerk in Albany. Filing of a claim may be achieved by any means, such as regular mail, personal delivery or fax.[13] The document is considered served or filed when it is received, not when it is mailed.[14] There is a filing fee of $50 which must accompany all claims, unless an application for waiver or reduction of the fee is submitted.[15] The governing Act, Rules and various forms necessary for filing a claim, motion, and more are available on the Court's Web site at www.nyscourtofclaims.state.ny.us in the link labeled "Practice."[16] The Court of Claims Act can be found in McKinney's and the Uniform Court of Claims Rules can be found at 22 N.Y.C.R.R. part 206.

A claim need only be a simple, verified statement of the facts upon which it was based.[17] The state is required to answer, almost like in any other court,[18] with the exception of appropriation claims, where all allegations are deemed denied.[19] The state may include a counterclaim in its answer, to which the claimant must reply.[20] If the state wishes to raise any jurisdictional defenses regarding the failure of claimant to comply with the time limitations set forth in section 10 of the Court of Claims Act or the manner of service requirements set forth in section 11(a) of the Court of Claims Act, they must do so with particularity either in the answer or in a pre-answer dismissal motion; otherwise these defenses are deemed waived.[21]

After a claim is filed, the claimant's attorney (or claimant *pro se*) receives an acknowledgment letter from the Clerk advising the date on which the claim was filed and to which judge it has been assigned. Claims are assigned based on the district in which the claim accrued. A preliminary conference is ordered as soon as feasible, but usually no later than six months after assignment.[22]

Amendment of Pleadings

The pleadings may be amended in accordance with CPLR 3025,[23] except a party may amend a pleading once without leave of court within 40 days after its service, or at any time before the period for responding to it expires, or within 40 days after service of a pleading responding to it.[24] Note, an amendment to cure a jurisdictional defect is not allowed;[25] the remedy would likely be the remedial late claim provisions of section 10(6).

Time Limitations

The Court of Claims Act has very specific time limitations which differ depending on the type of the claim being pursued.[26] For example, in

claims of unintentional torts committed by state officers or employees, the claimant has ninety (90) days[27] after accrual of the cause of action to serve and file a claim, unless the claimant serves a Notice of Intention to file a claim, in which case the time limit is extended until two years after the accrual of the cause of action.[28] The tolls and extensions available in the CPLR generally may not be invoked to extend the statutory period for filing a claim. For example, under CPLR § 210(a), if someone is entitled to commence an action, but dies before the time limit in which the action must be commenced, the action may be commenced within one year after the date of the death of the potential claimant. This CPLR provision has no application in the Court of Claims.[29] The only exception to these rules exists when a claimant is under legal disability. In those cases, the claim may be presented within two years after the disability has been removed. Further, if a person under legal disability (infancy or insanity) dies, the disability is considered removed by death and the claim may be presented by the personal representative within two years of the date of death.[30] As strict as the rules appear to be, an attorney can avert a major problem by applying to the Court for permission to file a late claim.

A potential claimant who fails to file his or her claim or Notice of Intention with the Clerk and/or fails to serve the Attorney General in the allotted time period, may petition the Court for permission to file a late claim. The Court's decision to permit a late-filed claim is discretionary. Court of Claims Act § 10(6) sets forth six factors to aid the Court in determining whether to grant a motion for permission to file a late claim. They are: 1) whether the delay in filing the claim was excusable; 2) whether the state had notice of the essential facts constituting the claim; 3) whether the state had an opportunity to investigate the circumstances underlying the claim; 4) whether the claim appears to be meritorious; 5) whether the failure to file or serve upon the Attorney General a timely claim or to serve upon the Attorney General a Notice of Intention resulted in substantial prejudice to the state; and 6) whether the claimant has any other available remedy. Motions to permit a late-filed claim must address the relevance of all six enumerated factors.[31]

V. Conclusion

The Court of Claims is a court that has evolved over time to meet the needs of the citizens of the state of New York. It is a separate tribunal set up to provide a forum to compensate parties injured by the sovereign state of New York. Every year this Court awards millions of dollars to such injured parties.[32] It is important for every attorney who sets foot in the Court of Claims to understand its rules and procedures in order to successfully represent his or her client, be it the state or a citizen.

Endnotes

1. State entities over which the Court of Claims has jurisdiction include: the Department of Transportation, the Department of Corrections, the State Police, the New York State Thruway Authority, the City University of New York, the Olympic Regional Development Authority and the New York State Power Authority (appropriations claims only). For ease of reference, this article will utilize the term "state" interchangeably with defendant.
2. 1817 N.Y. Laws, ch. 262.
3. See John J. McNamara, *The Court of Claims: Its Development and Present Role in the Unified Court System,* XL St. John's L. Rev. 1 (1965), for a more in-depth look at the history of the Court.
4. N.Y. Comp. Codes, R. & Regs. tit. 22, § 206.4 (hereinafter "N.Y.C.R.R.")
5. The New York State Unified Court System is divided into four departments and twelve judicial districts.
6. Court of Claims Act § 2(2)(a) (hereinafter "CCA").
7. Judges appointed pursuant to these paragraphs sit in civil and criminal terms throughout the state.
8. CCA § 2(3).
9. CCA § 2(6).
10. *Dreger v. New York State Thruway Auth.*, 81 N.Y.2d 721, 609 N.E.2d 111 (1992).
11. *Byrne v. State of New York*, 104 A.D.2d 782 (1984), *lv. denied* 64 N.Y.2d 607 (1985).
12. Assuming that such defense(s) are timely preserved with particularity (section 11 (c)).
13. CCA § 11-a; Uniform Rules for the Court of Claims § 206.5-a (hereinafter "Uniform Rules").
14. CCA § 11(a)(i).
15. Uniform Rules § 206.5-b.
16. This site also contains a searchable database of Court of Claims decisions filed since March 2000.
17. CCA § 11(b).
18. The legislature in its largesse and limited waiver of sovereign immunity gives the defendant **40** days to serve and file its answer. Uniform Rules § 206.7(a).
19. Uniform Rules § 206.7(a).
20. Uniform Rules § 206.7(a) notes that **all** responsive pleadings shall be made within 40 days of service of the pleading to which it responds.
21. CCA § 11(c).
22. Uniform Rules § 206.10(a).
23. Uniform Rules § 206.7(b).
24. *But see Martin v. State of New York,* 185 Misc. 2d 799, 713 N.Y.S.2d 831 (Ct. Cl. 2000).
25. *Grande v. State of New York,* 160 Misc. 2d 383, 609 N.Y.S.2d 512 (Ct. Cl. 1994); *Cobin v. State*, 234 A.D.2d 498, 651 N.Y.S.2d 202 (1996).
26. CCA § 8-b and 10.
27. Be sure to take notice that 90 days means 90 days, not 3 months.
28. CCA § 10(3).
29. CCA § 10(2), with respect to wrongful deaths.
30. CCA § 10(5); *Lichtenstein v. State of New York,* 93 N.Y.2d 911, 712 N.E.2d 1218 (1999).
31. *Bay Terrace Coop. Section IV v. New York State Employees' Retirement Sys. Policemen's and Firemen's Retirement Sys.*, 55 N.Y.2d 979 (1982).
32. In 2001, the Court of Claims awarded $34,255,934.49. State of New York Court of Claims Annual Report, 2001, p. 14.

The Honorable Renée Forgensi Minarik is a Judge at the New York State Court of Claims. Judge Minarik has previously served as County Legislator, Regional Director of the Department of Environmental Conservation, Assistant Attorney General and Assistant Counsel to the New York State Wetlands Appeals Board. She is a member of the New York State Bar Association and is Vice-Chair of the Municipal Law Section. She is also a member of the National Association of Women Judges.

Colleen Clark is a third-year law student at Boston University School of Law.

SOUND OFF!
"DO YOU THINK IT IS BENEFICIAL TO BECOME ACTIVELY INVOLVED IN STATE BAR ASSOCIATION ACTIVITIES? WHY? WHY NOT?"

(Continued from page 4)

3. *The social events kick ass*; *i.e., eating food and drinking beverages with other attorneys at, say, a golf outing, is pleasurable, and listening to a string quartet at the Annual Association Meeting during hors d'oeuvres while chatting it up with a judge is better than wings at your bar (unless it really is YOUR bar . . . no, even if it is your bar).*

4. *You get to hear from the thousands of attorneys who voice an opinion.* *With participation, by osmosis alone, you hear fellow attorney opinions on matters because it is part of the job. These are opinions that, without participation, an attorney would not hear at all; i.e., "Why in the name of what is considered holy did you vote to strike down an endorsement for multiple-disciplinary practices?"; and, "Boy, I wish we could draft an alliance with other bar associations across the nation to ban public positions by bar associations."*

(It is now 7 minutes and I am stopping)."

* * *

"I think it is beneficial for young lawyers to get involved in the Bar Association because it provides an opportunity to meet people who are going through the same situation you are or who have already overcome those same issues. Unfortunately, we as lawyers feel that our problems are unique to our situation, but the truth is that the same difficulties occur over and over again and it is great to have people to go to for advice."

* * *

"I think that it is beneficial to become actively involved in State Bar Association activities. However, most lawyers find themselves faced with the difficulty of trying to make time in their busy schedules to become active in those activities. While large firms might encourage participation in various state bar associations, most mid- to small-sized firms either discourage it or are oblivious to it entirely. This makes for a disproportionate number of large-firm lawyers existing in those associations—something which can dangerously slant the associations' points of view."

* * *

"The State Bar's activities are beneficial to all but, specifically, to those young attorneys who are of minority groups, due to the accessibility these functions provide to senior attorneys of well-established firms. Young attorneys are provided with social forums where they can interact with and gain some knowledge from people who have achieved some measure of success in their chosen specialties. I have made many contacts with many renowned attorneys who have served as encouraging, motivating and enlightening sources of information in the legal field. Unfortunately, many minorities are not exposed to attorneys of this caliber and are not regularly in contact with other attorneys who could really be helpful in any given discipline. These functions are indispensable; please keep providing them. I can only speak for myself but I have benefited greatly."

Arelia M. Taveras, Esq.

* * *

"For young lawyers wishing to pursue legal careers, it is beneficial to become involved in State Bar Association activities, given the excellent networking opportunities they provide. However, many young lawyers today are uncertain as to whether they will remain in the field of law. For these young attorneys, the benefits of involvement in State Bar Association activities are unlikely to outweigh the costs (time, expense, etc.). Also, those young lawyers who are exceptionally busy (e.g., litigators!) will find no time for such activities."

* * *

"I think it is highly beneficial to become involved in State Bar Association activities. Many lawyers end up working in very specialized fields, and it's crucial to keep up with new developments in different areas of law, in addition to one's own. To that end, State Bar Association activities, as well as publications, are key. It is also beneficial to meet other lawyers of the bar, at events, conferences, seminars, and the like, to gain insights into different perspectives.

I started my legal career at a law firm in New York's financial district, working in the field of commercial and bankruptcy litigation. I am now at the U.N. War Crimes Tribunal in The Hague, as the associate legal officer to an appeals judge. I really look forward to the NYSBA monthly mailings to keep in touch with developments in the law across the Atlantic."

* * *

"I think it depends on your reasons for joining. If you want to be involved, make changes, make meaningful contacts within your profession and hopefully make friendships that will last a lifetime, then you should join. However, if it seems that you are always complaining and trying to tear down instead of build up, then maybe you should reconsider . . ."

* * *

"Yes , I think it's important to be active in NYSBA but it's a two-way street—I feel that NYSBA needs to reach out more to newly admitted attorneys, and young attorneys at a community level.

On a personal note—I attended my sister's admission ceremony in Syracuse this last year and there was no representative from NYSBA there to greet them. I think it is important for our Web site to be more detailed and for our newsletter to not be the responsibility of one person to do, but for possibly NYSBA as

a whole to assist us with and publish a newsletter similar to the ABA's Young Lawyer *or for us to be included in a regular column of the NYSBA magazine so we are more out there—so young lawyers want to be a part of our group. I think it is key to host more events with our local bar, whether it be social or as a mentor at a community level. Networking and jobs should be a real focus for NYSBA in terms of reaching out to young lawyers and providing more incentives to young lawyers—ex.: membership rates—because they are with NYSBA when it's free, but for many it's an extra expense not worth keeping after that when they are dealing with student loans, car payments, etc.*

At the same time, it is important for us as young lawyers to seek out NYSBA and the YLS Section to assist them in their projects because it benefits all young lawyers to do so—so that we can become more of a voice in our profession—because we are the next generation and it is up to us to uphold or improve the image of the legal profession."

Betsey Snyder
Legal Aid of Mid New York
University at Buffalo School of Law
graduate

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 YLS Chair David Miranda at (518) 452-5600; fax: (518) 452-5579; or e-mail: dpm@hrfmlaw.com.

"The greater the number of laws and enactments, the more thieves and robbers there will be."

—Lao-tzu, Chinese Philosopher (*circa* 604 – 531 B.C.)

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"Nothing astonishes men so much as common sense and plain dealing."

—Ralph Waldo Emerson (1803 – 1882)

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"There is something better . . . that a man can give than his life . . . that is to stand against purposes that are difficult to stand against."

—Woodrow Wilson

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"He that would govern others, first should be master of himself."

—Philip Massinger

MARK YOUR CALENDARS

Wednesday, January 22, 2003	Young Lawyers Section Annual Meeting	New York Marriot Marquis
Friday, January 24, 2003	Young Lawyers Section "Bridging the Gap 2003"	New York Marriot Marquis
May 31–June 2, 2003	U.S. Supreme Court Admissions Program	Washington, D.C.

PERSPECTIVE

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ISSN 0743-6475

NYSBA
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Albany, NY 12207-1002

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