



ROCKLAND COUNTY BAR ASSOCIATION

BOARD OF DIRECTORS

Glenn W. Kelleher

President

Lynne S. Hilowitz

President Elect

Keith J. Cornell

Vice President

Lawrence Codispoti

Treasurer

Alan E. Goldstein

Secretary

Sandria P. Garvin

Executive Director

Directors:

Stephen B. Lowe

Alan G. Rosenblatt

Patrick T. Burke

Robert D. Fenster

Cassandra Bilotta

Larry Gantt

Robert B. Marcus

Ira S. Schoeps

Shelley A. Forde

Larry J. Schwartz

James J. Freeman, Jr.

Elizabeth A. Haas

Martin S. Butcher

RCBA NewsBrief

Volume 3

March 2010

Each month the Employment Committee of the Rockland County Bar Association will endeavor to bring matters of interest to the general bar in an article in the newsletter. This month's article is written by

Kevin M. Doherty, Esq., Greenwald Doherty LLP

A common misconception is that commissioned sales employees are not entitled to overtime. Actually, most commissioned sales personnel fall into the cracks between overtime exemptions under the Fair Labor Standards Act. While limited exemptions exist for commissioned employees (including that for outside salespersons), most employers treat all commissioned employees as exempt. This can lead to substantial liability.

Essentially, employees who do not conduct traditional "door to door" sales, but who make sales from their employer's place of business, or who work from one or more fixed locations (e.g. from a home office) making sales calls or e-mail solicitations, are not considered to be exempt outside sales employees. In trying to have these inside sales employees qualify as exempt, employers must be able to fit them within a traditional white collar overtime exemption. Unfortunately, salespeople rarely have the job duties necessary to fit into any of these exemptions. A recent Second Circuit case, *Reiseck v. Universal Communications of Miami, Inc.*, reaffirmed how difficult it is for employers to claim an exemption for their inside sales staff.

The Plaintiff-appellant in that case had been the Regional Sales Director for a magazine publisher. Her job was to generate revenue by selling advertising space, and she was paid a salary plus commissions. Reiseck sued her employer on several grounds, including an overtime claim under the FLSA. The District Court granted summary judgment for her employer on all claims, including the overtime claim, finding that Reiseck was an exempt administrative employee under the FLSA. On appeal, the Second Circuit vacated the overtime holding and remanded. In doing so, the Court looked at the criteria for the administrative exemption.

Regulations at 29 CFR Part 541 set forth the criteria for an exempt administrative employee:

- Paid on a salary or fee basis at a rate of at least \$455 per week
- Primary duty is office work directly related to management or general business operations
- Exercises discretion and independent judgment with regard to matters of significance

Reiseck cleared the first hurdle—her salary exceeded the minimum threshold. However, the Second Circuit never reached the third criteria (discretion and independent judgment) because it found that her primary duty was not related to management or general business operations.

¹See e.g., 29 C.F.R. 779.411- 414

²U.S. Department of Labor, Wage and Hour Division Fact Sheet # 17F; 29 C.F.R 541.500

³531 F.3d 101 (2d Cir. 2010)

⁴29 U.S.C. §213(a)(1)

Reiseck's primary duty was to sell, and employees whose job is selling are ordinarily not eligible for the administrative exemption. In the court's opinion, selling is not administration—though marketing may be. The court looked to interpretive rules propounded by the DOL and found a seeming contradiction in their treatment of selling. One rule distinguished administrative operations from "sales work"—. However, another interpretive rule stated that administration includes "promoting sales." To reconcile these rules, the court distinguished "sales work" from "promoting sales," following the lead of the Third Circuit in the 1991 case of *Martin v. Cooper Electric Supply Co.* The Third Circuit had concluded that sales promotion is "marketing activity" aimed at "promoting (i.e. increasing, developing, facilitating, and/or maintaining) customer sales generally." According to the Third Circuit, sales promotion increases customer awareness of the company and its product and may help increase revenue, but is not making specific sales to individual customers.

Under this logic, marketing staff could be considered exempt administrative employees if they otherwise meet the tests.

Continued on Page 2.....

Inside This Issue

Page 1-2

Article of Interest
by Kevin M. Doherty, Esq.

~

Writing Tip of the Month
by Susan Cooper, Esq.

~

General Dinner Meeting

Page 3

Mock Trial Schedule

~

Board of Directors
Nomination

Page 4-5

CLE Calendar

~

Nominations for Awards

Page 6-7

Commercial Litigation
Issues of Interest
by Paul Savad, Esq.

~

Classifieds

Page 8-9

THE STING
Submitted by
Ronald A. Phillips, Esq.

Page 10

CLE Registration

We welcome your articles.

****All articles submitted will be reviewed by the Executive Committee for approval****

However, someone whose job is to actually make sales is not engaging in administratively exempt duties. Furthermore, while Reiseck performed some administrative functions that were incidental to her job, those administrative functions were not the primary duty at which she spent most of her time. This made her ineligible for the administrative employee exemption.

Sales is, as a profession, the proverbial “big tent”: there are many ways to sell, and many jobs that constitute sales positions. However, the FLSA’s sales exemptions are narrowly drawn and take in only limited specific subclasses of sales representatives. Arguably, as more and more business is transacted by Internet, email, and otherwise, those sales exemptions are relevant to an increasingly small percentage of employees engaged in selling. At the same time, if an employee’s primary responsibility is to sell, their ability to meet the tests under other exemptions is limited. The end result is that the majority of sales staff, including all the many telesales, telemarketing, and cold calling personnel, will be non-exempt employees eligible for overtime, even though they are often being paid in whole or in part by commission.

⁵29 C.F.R. §541.205(a)

⁶29 C.F.R. §541.205(b)

⁷940 F.3d 896, 905 (3d Cir. 1991)

Writing Tip of the Month

by Susan Cooper, Esq.

Stay above the fray.

Your adversary has just written a scathing set of court papers that impugn your integrity and turn your client into Attila the Hun reincarnate. Your ears feel red hot and you’re in full battle mode – ready with all the clever and deadly barbs you can muster to sling back.

Familiar? Unfortunately, mudslinging papers are more common than any of us care to encounter. The papers are shrill and are based on the increasingly popular belief that if you scream something loud enough and often enough, it becomes true.

Well, take care not to fall into the mud pit right alongside your adversary. You may lose your credibility with the court, not only in this one case, but for future cases as well.

Step back and re-read the papers as though you are the judge’s law clerk, who will likely try to read past the inflammatory hyperbole and look for a fact or legal principle that might justify the relief sought. If you find one, focus your papers on demolishing the real factual and legal underpinnings of the argument, and not on all of the distracting smoke.

Then, go ahead and devote a section at the end of your argument and/or your client’s affidavit, where you respond to the inflammatory, untrue accusations that distort the record and are not truly relevant, but must not stand unrefuted.

Susan Cooper, Esq., has provided legal research and writing services to the Rockland Bar for over 25 years. She can be reached at SusanCooperEsq@gmail.com.

GENERAL DINNER MEETING

TO FAMILIARIZE OUR MEMBERSHIP WITH MANDATORY E-FILING

Our Speakers:

Hon. Michael V. Cocco,ma,
Deputy Chief Administrative Judge,
Courts Outside New York City
Paul Piperato, Rockland County Clerk

Thursday, March 25, 2010

6:30 p.m. Dinner

(Beer and Wine will be served with dinner)

La Terrazza, 291 South Main Street, New City

\$35 per person in ADVANCE
\$45 at the door, \$65 Kosher Meal
RSVP BY MARCH 18, 2010

*This dinner is brought to you at a reduced
cost by the generous sponsorship of*
Hudson Valley Bank

Matthew G. Kiernan Named Clerk of the Appellate Division for the Second Judicial Department

Presiding Justice A. Gail Prudenti of the Supreme Court, Appellate Division, Second Judicial Department, announced the appointment of Matthew G. Kiernan as Clerk of the Court. The appointment was made with the unanimous approval of the Associate Justices of the Court. In his new role, Mr. Kiernan will hold the highest ranking non-judicial position in the Appellate Division. He replaces James Edward Pelzer, who is retiring after ten years as Clerk of the Court and 39 years of service to the New York court system. Justice Prudenti added, “The Appellate Division owes a tremendous debt of gratitude to James Edward Pelzer for his loyal and dedicated service to the Court over the last 39 years. Mr. Kiernan’s appointment is effective on or about April 30, 2010.

2010 Mock Trials Begin

Our annual Mock Trials are well underway with 5 High Schools competing this year: Albertus Magnus, Clarkstown South, Nyack, Ramapo and Spring Valley. This year's fact pattern involves securities fraud and conspiracy to commit securities fraud.

We are very grateful for the assistance of our judiciary and Association members in making the Mock Trials a success. The following are those who have volunteered their time and expertise to preside over the trials and making these afternoons a pleasant and stimulating experience for all concerned.

Hon. Robert Berliner
Hon. Charles Apotheker
Hon. Howard Gerber
Hon. Anthony Benedict

Hon. Laura Weiss
Jeffrey Adams, Esq.
Larry Codispoti, Esq.
Brian Condon, Esq.

Alan Goldstein, Esq.
Edward Kallen, Esq.
Amy Littman, Esq.

Special thanks to our members who volunteered to be attorney advisors to the teams – for all the evenings you spent with the teams, giving them advice, helping them present the case, rehearsing the witnesses and most of all, your encouragement and praise. Our attorney advisors are:

Brian Quinn for Albertus Magnus
Duncan Lee for Nyack

Terrence Cortelli for Clarkstown South
Sandra Grannum for Ramapo

And thank you to our liaisons who make sure the trials run smoothly, they are:

Leslie Ashby

Valerie Crown

Gary Eisenberg

Sandy Garvin

Toni Gonzalez

Mirella Miranda

Jeffrey Schonbrun

We invite you to stop by and see one of our Mock Trials. The dedication of these high school students is exemplary. All trials are open to the public. The following Mock trials will be held in March. All trials in Supreme Court begin at 3:30 p.m. (the Justice Court trial begins at 4:00 p.m.) and last about 2 hours.

March 2, 2010 *Clarkstown South v. Spring Valley* held at the Supreme Court, 1 South Main Street, New City.

March 3, 2010 *Ramapo v. Nyack* held at the Supreme Court, 1 South Main Street, New City.

March 10, 2010 *Albertus Magnus v. Clarkstown South* held at the Supreme Court, 1 South Main Street, New City.

March 16, 2010 *Spring Valley v. Nyack* at the Supreme Court, 1 South Main Street, New City.

March 16, 2010 *Albertus Magnus v. Ramapo* held at the Supreme Court, 1 South Main Street, New City.

March 23, 2010 *Nyack v. Clarkstown South.* held at the Supreme Court, 1 South Main Street, New City.

March 24, 2010 *Ramapo v. Spring Valley* held at the Supreme Court, 1 South Main Street, New City.

March 25, 2010 *Spring Valley v. Albertus Magnus* held at the Clarkstown Justice Court, 20 Maple Avenue, New City.

The final will be on April 8, 2010, held at the Supreme Court, 1 South Main Street, New City.

NOMINATIONS TO THE BOARD OF DIRECTORS

Members are encouraged to submit their names or the names of other members, as candidates to fill position on the Board of Directors of the Rockland County Bar Association.

The term will begin on July 1, 2010.

Please submit your nominations in writing to:

Stephen B. Lowe, Esq.,
c/o Rockland County Bar Association
337 North Main Street, Suite 1
New City, N.Y. 10956

Facsimiles (845) 634-1055 and e-mail sandy@rocklandbar.org are also accepted.

Responses are required by March 30, 2010



Ellen O'Hara Woods
 Attorney at Law
 Is pleased to announce the
 relocation
 of her office to
 96 South Broadway-Suite 303
 Nyack, NY 10960
 P/F# 845-358-5383

**LEGAL RESEARCH AND
 WRITING**

Trial and Appellate Courts

Cost Effective

Motions • Memoranda • Briefs • Oral Argument

SUSAN COOPER, ESQ.

(f/k/a Susan Corcoran)

845-304-2969

SusanCooperEsq@gmail.com

Satisfying attorneys and their
 clients for over 25 years

*"Her services are invaluable in my busy
 commercial litigation practice. I recommend her
 without reservation."*

- Paul Savad, Esq.-



Matthew Eli Weiner
 February 11, 2010
 7 LBS 4 OZ

Proud Parents

Shep & Jordana Weiner

Big Brother

Benjamin

Proud GrandParents

Stanley & Ellen Weiner

CLE CALENDAR

Wednesday, March 10, 2010

CLE: Marriage, Divorce and Taxes

Time: 12:00 p.m.– 2:00 p.m. (Registration @ 11:30 a.m.)

Lunch

Level: Transitional/Non-Transitional

Cost: \$50.00 in advance; \$75 at the door; \$85 non-members
 \$20 paralegals and students

Place: **LaTerrazza, 291 South Main Street, New City**

Credits: 2 (1.5 Professional Practice; .5 Ethics)

Tuesday, March 23, 2010

CLE: Elder Law Update

Time: 6:00 p.m.– 9:00 p.m. (Registration @ 5:30 p.m.)

Light Dinner

Level: Transitional/Non-Transitional

Cost: \$75.00 in advance; \$85 at the door; \$95 non-members
 \$30 paralegals and students

Place: **Good Samaritan Hospital Auditorium, Suffern**

Credits: 3 (2.5 Professional Practice; .5 Ethics)

This seminar is sponsored by The Promenade Senior Living

Credit is not given for partial attendance.

LAW BOOKS FOR SALE

NY Supp 1-300 (complete set)

NYS2d Volumes 1-614

McKinney's Session Laws:

1954-1978, 1980-1983, 1986-1994

Various other sets

To request complete list:

P#(845) 354-3900 F# (845) 354-0521

Michael Zall

Attorney

Two Yorkshire Drive

Suffern, New York 10901

PATENTS

TRADEMARKS

COPYRIGHTS

Tel# (845) 357-6800

Fax# (845) 357-4616

www.Mike@Zall-Law.com

(718) 875-5199

FAX: (718) 855-6866

(845) 639-7586

Fcomposto@metro-global.net

Metroglobal Arbitration & Mediation Services, Inc.

142 JORALEMON STREET
 BROOKLYN, NY 11201

FRANK A. COMPOSTO

www.metro-global.net

President

**GRIEVANCE
 DISCIPLINARY LAW
 (914) 682-0037**

**RICHARD E. GRAYSON
 ATTORNEY AT LAW**

202 MAMARONECK AVE
 THIRD FLOOR
 WHITE PLAINS, NEW YORK 10601

www.richardgraysonesq.com

NOMINATIONS FOR AWARDS

We have a membership of many outstanding attorneys. Each year we recognize those that are nominated by their peers. If you would like to nominate someone for one or more of our awards, please fill out this form and fax (634-1055) or e-mail sandy@rocklandbar.org Final decisions are made by our Board of Trustees comprising of all past presidents of the Rockland County Bar Association.

THE LIBERTY BELL AWARD *This award is presented on Law Day to a member of our community for outstanding service in promoting a better understanding or respect for the Constitution, the Bill of Rights and our institutions of government. Generally this award is usually given to a non-lawyer*

I wish to Nominate:

THE STERNS AWARD *Given in the memory of member who has made significant contributions to both the Bar Association and the People of Rockland County over the year – service above self on behalf of the association. This award is presented at the General Dinner Meeting in June.*

I wish to Nominate:

THE LIFETIME ACHIEVEMENT AWARD *Presented to an individual for exemplary achievements as an attorney or judge over a career. This award is presented at the Annual Dinner.*

I wish to Nominate:

THE BALSAMO AWARD *This award is presented at the June General Dinner Meeting in memory of Joseph Balsamo, Esq., to a RCBA member who has gained significant respect from the members of the Bar and the public for his personal and professional contributions to both, while maintaining the highest form of integrity and professionalism while advocating for each.*

I wish to Nominate:

**When you need a true expert, call
Appraisal Approaches.**

Your clients need solid, meticulous documentation that provides an accurate determination of property value. You can rely on Appraisal Approaches for the utmost in professionalism, credibility, and expertise.

Please give me a call at (914) 329-6191 if I can help you and your clients. I look forward to speaking with you soon.

**Fernando Gonzalez
NYS Certified Appraiser
45000049390
Appraisal Approaches
(914) 329-6191**

Fernando@appraisalapproaches.com

Philip C Roventini PC

A Certified Public Accounting Firm

**Corporate, Personal
Estate and Fiduciary
Tax Preparation**

Accountings for Estates and Guardianships

**IRS and State Audit and
Collection Problems
Amended Returns, Quickbooks**

Serving the Legal Community since 1981

**246 N Main St
New City, NY 10956
845 634-5400**

Roventini – A Name You Can Trust

COMMERCIAL LITIGATION ISSUES OF INTEREST

*Submitted by Paul Savad, Esq., Chair, Commercial and Corporate Law Committee;
Joseph Churgin, Esq., and Susan Cooper, Esq., of SAVAD CHURGIN, Attorneys at Law*

Your client was hired by a general contractor who was hired by a tenant to do construction for the tenant's leased commercial premises. Upon completion of the work, your client submitted invoices to the general contractor for the work he performed as a subcontractor, but your client was not paid by the general contractor or by the tenant. Your client filed a notice of mechanics' lien against the real property within the statutory eight-month period for filing, and you commenced an action to foreclose the lien. The owner of the property claims that he did not consent to the work, and that he paid the general contractor in full before the subcontractor filed his notice of mechanics' lien. Will you defeat the owner's motion for summary judgment discharging the lien?

The answer is no.

In *Kaback Enterprises, Inc. v. Austin Brothers, Inc.*, 12/3/2009 N.Y.L.J. 28 (col. 1) (Sup. Ct. N. Y. Co.), Kaback was hired by Austin, a general contractor, to perform renovation work in two office suites at 250 West 57th Street, New York, New York. Kaback worked at the site from November of 2004 until March of 2005. Months later, in November of 2005, Kaback, who had not been paid, filed a mechanics' lien. Kaback then sued to foreclose the lien.

Austin defaulted, but the owner of the property, 250 West, moved for summary judgment demonstrating that Austin had been paid in full before Kaback filed its lien, and that it did not consent to the work, which it didn't even know about. The owner submitted an affidavit from the property manager of the sub-tenant on whose behalf the work was performed, attaching documentation showing that Austin was paid in full before the lien was filed.

In opposition to the motion, Kaback submitted an affidavit from its president establishing the extent of the work that had been performed and that all of the work was completed and invoiced well prior to the filing of the mechanics' lien.

The Court vacated the lien, citing Lien Law § 3, which requires consent of the owner or its agent for the work performed, and § 4, providing that the lien cannot be greater than the amount owed and unpaid at the time the notice of lien is filed.

The court also explained that a subcontractor's lien rests upon the theory of subrogation, and is restricted to whatever is due and unpaid when the lien is filed, citing *Central Val. Concrete Corp. v. Montgomery Ward & Co.*, 34 A.D.2d 860 (3d Dep't. 1970), and *Clief v. Van Vechter* 130 N.Y. 571, 577 (1892).

Since the subcontractor did not file its lien until after the general contractor was paid in full, the subcontractor's lien was invalid, whether or not the owner had consented to the work performed.

The Lesson?

In order to preserve the right to file a notice of mechanics' lien against real property, a contractor who is hired by a tenant to perform leasehold improvements, or a subcontractor who is hired by the tenant's general contractor to perform leasehold improvements, needs to have the property owner consent to the work performed in writing. A subcontractor needs to file its lien before the general contractor receives payment.

MEETINGS

Surrogate's Court and Estate Planning Committee Meeting:

3/22/10, 5:15 p.m. @ Bar Association Office, 337 N. Main St, New City

Condo & Co-op Committee Meeting:

3/24/10, 5:30 p.m. @ Law Office of Alden B. Smith, 216 Congers Rd, New City

Commercial & Corporate Law Committee Meeting:

4/12/10, 5:45 p.m. @ Law Office of Paul Savad, 55 Old Turnpike Road, Ste 209, Nanuet

OFFICE SPACE

Chestnut Ridge Large office w/ secretarial carrel in prestigious law office (14 lawyers), kitchen, three conference rooms/library. Avail. 7/1/09 @\$980/mo. DSL available. Call (845) 356-2570 for more info.

Chestnut Ridge Two furnished offices and secretary stations available. Conference room, kitchen and private restrooms. Cable available. AC/heat included., parking. Contact Bob @ (845) 356-6778 or cell (201) 259-2471

Garnerville Huge office located on Route 202 with or without services, furniture and secretarial space. Includes utilities and use of reception area and conference room. Call Rolf @ (845) 942-4200

Hackensack 3 blocks to Bergen Courthouse. Local practitioners have fully furnished NJ office avail to share with 2 other attorneys; includes use of conference room, reception area, kitchenette and 2 bathrooms. \$750/month. Call Paul @ (201) 343-4666 or e-mail crossexam@aol.com.

Nanuet Four professional Office spaces available (250 sq ft.) in professional office building. Reception & waiting area, kitchen, conf. Room, \$600 per room. Utilities incl.. Call 845-624-9251 or veronica.gojcaj@gmail.com information.

Nanuet Office for rent, furnished, with phone system and services. Call: Paul Savad, Esq. at (845) 624-3820 ext 1 or paul@savadlaw.com

Nanuet Law Office at 55 Old Nyack Tpke, has (2) offices for rent with waiting area, use of library, conference room as well as ample parking available. For additional info call (845) 624-0100

New City Office available, 254 S. Main St, access to all office equipment/conference room and kitchen. Call Doreen at (845) 634-3775

New City Offices available on South Main Street. Semi furnished, utilities included. Shared secretarial space, reception room, conference room and copier, Call (845) 638-3902/639-3470

New City Main Street, 3 conference rooms, law library, p/t receptionist, furniture available, utilities, 24 hour access, 2 kitchens, copiers, scanners. Call Lynn 639-1415

New City 4 Offices available. Furnished, reception and conference room. Call Keith @ (845) 634-7701

New City Nice bright office, sublet at a reasonable price. Good parking & walking distance to all courts. Call (845) 638-0660

Orangeburg Orangeburg law firm has several attractive window offices available, 108-120 sq. ft each. Adjacent reception/support area also available. Shared conference room, copy machine, amenities. Close to Palisades Parkway and NJ. Contact Christina @ (845) 589-9300 or CO@workplaceattorneys.com

Stony Point Office space available. Shared secretarial space, conference room and copier. Please call (845) 942-2222. Possible overflow work.

SITUATIONS AVAILABLE

Paralegal Per diem, possible full time. Must be familiar with PERM and Work Visas. Call the Association @ (845) 634-2149.

Secretary/clerical/paralegal needed for busy, congenial law firm in Suffern. E-mail resume to esq2131@gmail.com

SITUATIONS WANTED

Attorney Experienced Family Law Attorney, relocating from Maryland, licensed in NY and the UK, seeking entry level position in a small friendly law firm in Rockland. Call Leslie for resume (845) 634-2149 or 410-671-4212

Accountant 10 Years experience-Full Service Accounting Firm, services provided, but are limited to: A/R, A/P, bank reconciliations, payroll, monthly financial statements, income tax returns, both personal and business. Please contact ljfaccounting@yahoo.com

Administrative Assistant Available for evening work, per diem or part-time: typing, phones, WordPerfect, Word, dictation. E-mail Sondra327@aol.com for resume. Call (845) 634-2149

Bookkeeper Experienced full charge bookkeeper seeking part time employment in Rockland. All phases of bookkeeping including general ledger, quickbooks, payroll, multiple bank accounts, timeslips, word, excel and real estate closing statements. Cell# (845) 507-3138 or (845) 354-8666

Legal Secretary Experienced and efficient, 10+ years of experience. Seeking full time employment with Rockland County firm. Knowledge of Microsoft Word, WordPerfect & Windows. Call Leslie @ (845) 634-2149

Legal Secretary Experienced and efficient, 20+ years of experience seeking work, heavy phone contact w/ attorneys, clients and title companies, document prep and extensive estate matters. Call Barbara @ (845) 356-1597

Self-Employed Legal Secretary/Paralegal Working From Home Office 20 Years experience: Personal Injury (plaintiff/defense) Med Mal, Mat Law & General Law. Micro Cassette & Standard Cassette Transcribers; Express Scribe for digital files. Turnaround: 24-48 hrs. All work performed w/ strict confidentiality and your files never leave your office. Call Marietta Forte (845) 634-1149 or wordprocl@juno.com.

Paralegal seeking part-time/full-time position w/ Rockland County Law Firm. Call Thomas @ (845) 608-2965 or thomasjfallon@mail.com for resume. Also acquiring Notary.

Paralegal seeking part-time position (2:00-5:00 p.m., everyday or when needed) Call Elaine @ (845) 664-7265

Paralegal Accomplished paralegal with experience specializing in Complex Litigation, Real Estate matters, Matrimonial/Family Law and Personal Injury matters as well as expert independent management matters is seeking full/part time position with local Law Firm. Call Lynn @ (845) 634-1753 or laub@optonline.net

Internship Rutgers Law student with varied work experience including an internship with the Rockland District Attorney's Office is currently seeking summer internship with a Rockland County Law Firm. Call (845) 642-6814 or nhasting@pegasus.rutgers.edu

ATTENTION CLASSIFIED ADVERTISERS

YOU MUST CONTACT THE ASSOCIATION @ (845) 634-2149 NO LATER THAN THE 25TH OF EACH MONTH IF YOU WANT YOUR AD TO APPEAR IN THE FOLLOWING MONTHS ISSUE. IF WE DO NOT HEAR FROM YOU YOUR AD WILL BE REMOVED.

IF YOU HAVE RENTED YOUR SPACE, MOVED OR HAVE FOUND EMPLOYMENT PLEASE CONTACT THE ASSOCIATION @ 845-634-2149 SO WE MAY REMOVE YOUR AD

CALL THE ASSOCIATION FOR ADVERTISING RATES 845-634-2149

The Sting: Your Name, Esq. (And your escrow account)!

Think that attorneys are too smart to fall for email schemes designed to get money? Current statistics would indicate otherwise. The week that this firm was approached, 40 firms in total throughout the United States were targeted; 22 firms actually paid out huge sums of money. Indeed, hundreds of thousand of dollars each. At this point, I hope I have peaked your interest. So far, matrimonial firms and personal injury firms have been the targets. So how does this work?

Most firms these days have an internet site designed to help them get business. Most have a “contact us” link in the hopes that the firm will get business just like we would with telephone communications. This firm receives many such inquiries. On one particular week, we received the following message through our website: McCormack & Phillips Contact Us Web Site Message

Name: *Ms. Barbara Williams*. Email Address: *barbara.williams199@gmail.com*

State: *DID NOT RESPOND*. Zip Code: *DID NOT RESPOND*

Phone Number: *DID NOT RESPOND*. Contact Method *E□mail*

Message: *Dear Counsel,*

I was Mrs. Barbra Santos now Ms. Barbara Williams. I am from England based in Hong Kong . I was married to an American for eight years and we both stayed happily here in Hong Kong after some time he started acting funny. He sometimes traveled away for two years without coming back he also started seeing other women. After I got tired of his behavior I filed for divorce which he consented the divorce procedure was completed in England because that is where we got married. He agreed to pay \$650,000.00 but since then he has failed to make the payment he is now based in your region with his new family. I will like to hire the services of your honorable law firm to claim my compensation money.

Please kindly get back to me and let me know if you will be able to represent me over there as he is based over there. I will be looking forward to hear from you. Best regards, Ms Barbara Williams

Read disclaimer: *yes*

Sounds like a good case. Of course, the collection of what might be found to be “ at least in part, one “for support” within the meaning of CPLR 5301 (b)” required research, and certainly can be enforced (see **DOWNES V. YUEN**, 298 A.D.2d 177, 748 N.Y.S.2d 131). It can also be enforced under a contingency retainer in that the payment of the fee is not contingent upon the securing of a divorce or upon the amount of maintenance, support, equitable distribution, or any property settlement. We responded by email that we would like to talk to her about her case. We received a followup email that indicated that telephone communication was impossible. It is set forth below:

Attn , Thank you very much for the response to my request .I am however deaf and would not be able to communicate via phone. My ex husband whom I am talking about is a millionaire, he lives in New York and deals in Gold and Diamond, his name is Alfred Santos he has remarried. I used to have a luxurious live with him till our marital problems started with his infidelity. He would have paid . I wonder why he has chosen not to pay. So I would please like for your honorable law firm to assist me get the money paid into your account by him and I will give you a certain percentage to serve as my retainership fee. Please could you do this for me and I will be very grateful to you. You should please send me the necessary documents to sign to this effect. When I get a response from you I will give you his email address so that you can contact him informing him that I have employed your services to receive the divorce alimony of he ought to pay me. I am willing to give you a good percentage of the funds so long as you represent me on contingency. Awaiting your response. Best Regards Ms. Barbra Williams

Naturally, we requested the documents from her divorce proceedings. They were supplied by email. They included the following: DOCUMENTS...Note the seal on the documents; very impressive!

Let me say that I am considered paranoid by most people; just ask my partner. However, just because I am paranoid doesn't mean that they are not really out to get me. In this particular instance, they were. We offered her two retainer arrangements to collect the money. The first was an hourly retainer utilizing our usual retainer and usual hourly amount. We also offered her a contingency retainer of 25%. A sane person would not have elected a contingency in light of the email sent to our alleged client by her husband. The ex-husband's email read as follows: *Hi Barbara, I got your email and I didn't tell anyone anything about you please, don't start. I don't want any more problems and I don't have time, please, request the info for payment and I will arrange the payment in certified funds (check), addressed only to your attorney. Just to let you know I'm not running away and i don't have anything to do with you but your attorney . Good luck., Alfred Santos*

In light of the fact that it appeared that the ex-husband was going to pay without litigation, I sent the following email:

Dear Barbara: I don't know how sincere your ex-husband is, but if he is, I don't think you will need our services. Please keep me advised if you will need our services, or if he pays which will indicate that the matter is certainly concluded. He appears to be afraid of an attorney getting involved. Good luck. Ron

An additional hint that things weren't legitimate could be gleaned from an email directly from the ex-husband who stated he wanted to pay through our firm (see email below). This caused additional warning bells to ring. Collection appeared to be almost too easy. On a contingency retainer, we would make over \$10,000.00 per hour; impossible! How could we be so lucky? I also requested that my IT professional trace the email addresses to see if they were real. He did; they were real. There really was a company named “consultants.com”, the husband's alleged firm. The email from the ex-husband read: *Hi Ron I got your email address from my ex wife Ms Barbara and i deceide to contact you concerning the divorce settlement that am suppose to pay her. I would have paid her but because of the current economic melt down i could not, i never knew she could go to the extend of employing an attorney. Please i want to avoid litigation and make a part payment i will like to request for your payment information for me to send a check to you i will like for you to send me how you want the check to be addressed. I am out of town now, i responded to her emails when i read in last email that she has contacted an attorney. Please i want to settle out of court. Thanks Alfred*

Continued on Page 9.....

The email below was sent to the client, but she still insisted that she was electing a contingency retainer; she sent the following email:

Attn Ron, Thanks for the response i will go with 25% of recovery, please send the necessary document to that effect for me to sign to us proceed. I am very happy for the update you got from my ex husband I really appreciate greatly. Thanks for your assistance once more. Barbara

My God! Did the goose that lays the golden eggs just walk into our office? This was just too good to be true! And so it ultimately proved to be. She signed the retainer on which I included an acknowledgment; again, I was looking for some proof that all this was real. She had previously sent a copy of her passport in that I had wanted proof that she was the person she represented she was, the person referred to in the judgment of divorce. I received a copy of her passport, a copy of which is attached below: PASSPORT Within a few days, I received a check for \$351,100.00 on a Metlife account. The cover letter and check are attached below: CHECK & COVER LETTER..The cover letter was curious in that it was not on "letterhead" from Metlife. I called the telephone number on the check and a woman answered "Metlife". I indicated that I was suspicious about a check which arrived without a Metlife cover letter and asked her to verify that the check was good. She asked for the check number, and a few seconds later, she told me the payee name (our firm) and the amount. This too made me suspicious in that this information is not readily given out these days by makers of checks. Nonetheless, the check was deposited. I had no intentions of sending money without first receiving the original signed documents (retainer, client's rights statement, and authorization to release funds) which had been sent to the client, and until the bank verified that the check was indeed good (not just that it had apparently cleared). After all, I am paranoid. Happily for the firm, I didn't have to go through these final steps in that I received a call from the Postal Inspector's office and was informed that the check was counterfeit and this was a recent scam aimed directly at attorneys. The inspector advised me that each week, they learned who checks were sent to (I couldn't find out how they get this information) and the inspector's office contacts the firms to advise them that the checks are bogus. I was advised that this week, the week I received the telephone call, the inspector was contacting 40 firms and at least 22 had already paid out the money! In a subsequent conversation with the inspector the following week, I learned that the very morning I called, she had notified an attorney in another state that the check that the attorney had received as part of the scam was counterfeit, only to be screamed at that she didn't believe the postal inspector, that the inspector didn't know what she was talking about, and that she was going to report her for being a fraud. Obviously, this attorney had already paid out the money.

The problem is that the check appears to clear before the maker bank reports that the check is actually a counterfeit. When the check is reported as a counterfeit, the alleged maker bank gets to rescind the transaction and demand that the money be returned. The attorney would then have to make good on the check to their bank, or worse yet, to other client's if the bank just charges the check back from the escrow account. I don't believe any attorneys have fraud insurance, and therefore, the attorney is on the hook for the money. In some instances, some attorneys may write a check on their escrow account which has more than enough money to cover the payout. They will have serious problems with the ethics committee.

With regard to personal injury attorneys, I was advised by the postal inspector that the scam goes something like this: The client says that they have an award from a personal injury lawsuit. The client claims that she lives in Hong Kong, and that Metlife won't transfer the money directly to a Hong Kong bank. The company that was required to pay the award was the JOM Freight Company. The scam is identical once the attorney puts the money through the attorney's escrow account.

They would appear to be using the attorney's contact information on websites to find new "marks". We have recently received 4 copies of the following contact information: Zip Code: *DID NOT RESPOND*..Phone Number: *DID NOT RESPOND*..Contact Method *Email*

Message: *Dear Counsel, My name is Mima Oshiro. I am a contacting your firm in regards to a divorce settlement with my ex husband Kuan Oshiro who resides in your jurisdiction. I am currently on assignment in Japan. We had an out of court agreement(Collaborative Law Agreement) for him to pay \$448,450.00 plus legal fees. He has only paid me \$44,000 since .I am hereby seeking your firm to assistance in collecting the balance from him. He has agreed already to pay me the balance but it is my belief that a Law firm like yours is needed to help me collect payment from my ex husband or litigate this matter if he fails to pay as promised. Your's truly, Mima Oshiro, 17/F, One Kowloon, 1 Wang Yuen Street, Kowloon Bay, Hong Kong.*

Read disclaimer:

yes

The postal inspector has also advised me that he believes that some of the largest firms don't bother to report the scam to avoid the publicity associated with being "taken". He indicated that he talked to an associate at a very large law firm who advised that she received the case from a senior partner. As an associate receiving a case to work on from a senior partner, it would be most unusual to go back and tell him that she believed it to be a scam.

There is a warning posted on the FBI's website dated 1/21/10 about new scams directed at law firms, but this is apparently not getting out to attorneys. I can only suggest that attorneys be a lot more careful; it really does pay to be a little paranoid. In the event that this article saves your firm from a disaster, please drop me a line. It is always good to know that the articles written for the Bar Association help someone.

Submitted by
Ronald A. Phillips

SAVE THE DATE
LAW DAY
FRIDAY, APRIL 30, 2010
9:30 A.M.
JURY ASSEMBLY ROOM, 2ND FLOOR
ROCKLAND COUNTY COURTHOUSE



US POSTAGE
NON-PROFIT ORG
PAID
MONSEY, NY
PERMIT NO. 5683

ATTENTION ALL MEMBERS

**DURING THE WINTER MONTHS IT IS VERY
IMPORTANT TO KNOW BEFORE YOU GO.**
LOG ON TO :
www.rocklandbar.org
OR CALL THE OFFICE @ 845-634-2149



Name(s) _____ Updated E-mail _____

Credit is not given for partial attendance.

Make sure your blue evaluation forms are completed and turned in to CLE Coordinator to receive your certificate.

- | | | |
|--------------------------|---|---------------------------------------|
| <input type="checkbox"/> | Marriage, Divorce & Taxes - March 10, 2010 | 12:00 p.m.— 2:00 p.m. \$ 50.00 |
| <input type="checkbox"/> | Elder Law - March 23, 2010 | 6:00 p.m.— 9:00 p.m. \$ 75.00 |

If you pre-pay but are unable to attend the seminar you will be refunded the full amount only upon advance notice (3:00 P.M. the day of the seminar) of your non attendance.

***Kosher Meals are dependant on the delivery service available from the caterer. All kosher meals must be ordered in advance and require an extra charge of \$10.00. Call the Association to place an order for a kosher meal. Please give us at least one weeks notice.*

****Hardship Policy****

THE ROCKLAND COUNTY BAR ASSOCIATION WILL WAIVE THE CLE SEMINAR FEE FOR AN INDIVIDUAL WITH APPROPRIATE PROOF OF HARDSHIP. PROOF MUST BE SUBMITTED ONE WEEK PRIOR TO SEMINAR. PLEASE CALL THE ASSOCIATION 845-634-2149 FOR MORE INFORMATION

GUARDIAN AND FIDUCIARY TRAINING

The NYS Office of Court Administration of Guardian and Fiduciary Services is updating its website for the current year. The website, which can be found at www.courts.state.ny.us includes information about upcoming training to meet the requirements for appointments for Part 36 fiduciaries throughout the state. Specifically, information can be found about certified training for Article 81 Guardians; Guardians Ad Litem; Law Guardians for children; Court Evaluators; Attorneys for alleged incapacitated persons; Court Examiners; Supplemental Needs Trustees; Receivers; and Referees.