



# WESTCHESTER COUNTY BAR ASSOCIATION NEWSLETTER

www.wcbany.org

August 2011

## President's Message

BY CAROL L. VAN SCOYOC, ESQ.



### AMERICA'S NATIONAL PASTIME AND THE LEGAL SYSTEM — THE REAL “DOUBLE-HEADER”

On Friday, July 15<sup>th</sup>, the Real Property Section of the Westchester County Bar Association presented a CLE program at Citi Field entitled “Section 1031 Exchanges in the 21<sup>st</sup> Century: Regulatory Changes and Case Law Impact.” The program, sponsored by Citibank, offered three CLE credits at no charge to WCBA members, and featured as guest speaker David M. Gorenberg, Esq., a certified exchange specialist® and senior vice president-1031 Exchange Services, Citibank, N.A. The CLE presentation was followed by dinner in the stadium's empire suite. The highlight of the evening was a Mets v. Phillies game. Following the game, all attendees were dazzled by an amazing fireworks extravaganza!

On behalf of the WCBA, I wish to extend our gratitude to Citibank for sponsoring this exciting event and look forward to future programs. Many thanks to Donna Drumm, Esq., director of CLE for the the WCBA and Andrea Castro, Esq. and Denise Fecteau, Esq., co-chairs of the Real Property Section, for all their efforts in coordinating this event

As a life long fan of baseball, and a devotee of the New York Mets, attending the CLE

*(continued on page 2)*

Real Property Section  
CLE sponsored by  
Citibank at Citi Field  
a Home Run

## How to Prevent Family Conflicts in the Event of Incapacity

BY ANTHONY J. ENEA, ESQ.



Unfortunately in our litigious society, it has become commonplace for siblings, family members and friends to battle for control of the finances and care of their aging parents and loved ones. While the litigation may on its surface appear to be for the authority to make day to day financial and health

care decisions, sadly, often at the root of the litigation is inheritance and monetary control.

It is anticipated that litigation involving aging parents will rapidly grow in direct proportion to the aging population of the United States. The largest transfer of inter-generational wealth, estimated to be approximately 10 trillion dollars, will be transferred from the World War II generation to the “baby boomers”. The transfer of such a great amount of wealth will inherently generate additional conflicts and controversies.

Unfortunately, the victim in these controversies is often the family unit. I have witnessed first hand the bitterness, resentment and destruction of relationships among parents, siblings and loved ones. The effect is best described as a “family divorce,” the impact of which may be felt for generations.

Fortunately, there are steps that can be undertaken to minimize the risk of such controversies affecting families. As is often the case, it is imperative that the potential solutions be implemented well before the problems begin to manifest themselves.

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## President's Message

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at the spectacular Citi Field provided me the perfect forum to ponder the long and close relationship between America's national pastime and the law. This truth was driven home to me early in my legal career in a rather ironic but memorable manner. The first case I argued before the United States Court of Appeals for the Second Circuit as a young attorney for the County of Westchester involved a claim of reverse sex discrimination. It was brought by two male county employees against the County for failing to consider them for a promotion. The Court, in ruling against the county, resorted to baseball lingo and analogies in its decision by using terms such as "strike out" and "batter's box." See *Berl and Anderson v. County of Westchester*, 849 F.2d 712 (2d Cir. 1988).

It is fair to state that the game of baseball, by its very nature, is the most legalistic of sports and has affected nearly every significant area of the American legal system, and vice versa. Law helps us understand baseball and baseball helps us understand the law. As a further testament to this belief, Supreme Court Chief Justice John Roberts mentioned the national pastime during his confirmation hearings, stating that "[j]udges are like umpires. Umpires don't make the rules; they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role. Nobody ever went to a ball game to see the umpire." See Transcript of Opening Statement of Supreme Court Chief Justice Nominee Judge John Roberts on September 12, 2005.

There are a number of fascinating books capturing the unique bond between baseball and the law. One such book is *The Little White Book of Baseball Law*, published in 2009 by the American Bar Association, and authored by Professor John H. Minan, and Dean and Professor Kevin Cole, both from the University of San Diego School of Law. Professor Minan and Dean Cole proffer an examination of various legal issues baseball has presented in its approximately 150 years of existence. The book is divided into a "double-header" of eighteen chapters, or "innings," addressing virtually every major field of the law. Each chapter examines one of eighteen published legal opinions involving baseball, in state and federal courts, including the United States Supreme Court, identifying the official citation to the case and the subject matter, with such intriguing titles such as "Ticket Seller Scalps Police," "Fantasy Baseball and Reality,"

(continued on page 6)

## ENJOYING THE CITI FIELD CLE/BALL GAME TRIP




Debbie Knight, SVP Citibank and speaker David Gorenberg, SVP 1031 Exchange Services, Citibank, with Donna Drumm and Carol L. Van Scoyoc

Above right:  
Joseph Villanueva  
and  
Tejash Sanchala


Right: Ralph Nobile,  
Donna Drumm and  
Edward J. Mitchell





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## Revisiting ADR Within Domestic Relations

BY JOHN A. PAPPALARDO, ESQ.

WITH JUDITH E. MURPHY AND KRISTEN L. WOODFORD

Agreements settling matrimonial disputes through mediation have suffered scrutiny for being non-compliant with New York State Domestic Relations Law. The first part of this article, which was published in the July newsletter, provided a general overview of the mediation process, detailing the how it is initiated and who is involved: the mediators, counsel, and the parties. The aim of the first part of this article was to illustrate how mediation is successfully based on the matrimonial knowledge and domestic relations experience of the professionals involved.

The second part of this article addresses mediation from a more substantive standpoint. Attention is focused on Rules 3, 6, 8, 10, 11, and 12 as set out in the matrimonial mediation program through the local

rules of court for the Ninth Judicial District, supreme and county courts, matrimonial part. Specifically, this article discusses the ways in which these rules not only enforce party agreements, but make the mediation process itself, in these difficult economic times, a remarkably efficient vehicle to enable a couple to dissolve their marriage more cost efficiently.

### MEDIATION FEES: RULE 8 AND RULE 6

In general, there are no fees attached to the matrimonial mediation program. Instead, under Rule 8, parties who are referred to mediation are required to compensate the mediator for any services rendered after the initial, free 90-minute session and “for time spent reviewing materials submitted.”

Overall, under Rule 8, fees must be paid in advance of any session that takes place, with the parties signing a fee agreement “before commencing any sessions for which compensation is required.” As far as rates are concerned, referred mediators, under Rule 8, may not charge in excess of \$300 per hour. Any fee arrangement arrived at within this limitation must be put in writing and “include the ratio at which the fee will be divided between the parties.”

For their part, mediators “are encouraged to work on a sliding scale [and] to take into account the parties’ financial circumstances.” Indeed, Rule 6 aims to make the mediation process affordable, as it notes that if parties “wish to go to Mediation but cannot afford it, the Coordinator can assist [those who] qualify . . . to find a Mediator who may take their case for a reduced fee.”

### CONFIDENTIALITY IN MEDIATION: RULE 10, RULE 11, AND RULE 12

In terms of substantive issues related to mediation, the rules of the matrimonial mediation program set out various parameters. One very important parameter—as stated in Rule 10—is that “all oral, written, or other communications made during the course of the

(continued on page 7)

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## SAVE THE DATES NEED 2011 UPDATES FOR FLING

### End of Summer Fling!



**@ Pier Restaurant & Tiki Bar  
Rye Playland  
Wednesday, August 24, 2011  
6:00pm**



**No registration. No admission charge. Just show up.**

Join the WCBA for a late Summer Fling. We are getting together to celebrate the end one of the hottest summers on record at Westchester's hottest new restaurant – Pier Restaurant & Tiki Bar in Playland, Rye. Enjoy the sights and sounds of the South Pacific islands while sipping your favorite margarita, pina colada or daiquiri. Catch up with your colleagues and friends while enjoying the cool breezes off the Sound.

Come early for dinner. Stay late for the spectacular fireworks display. Park in the Playland Parking Lot - \$5 per car.



### Westchester County Bar Foundation First Annual Fundraiser

**Wednesday, Oct. 5, 2011  
6:00 pm–8:00 pm**

**Coveleigh Club,  
459 Stuyvesant Ave., Milton Point, Rye, NY**

The foundation's first annual fundraiser will include a cocktail reception and silent auction. Profits will go to support the public fellowship program.



*The New Lawyers Section  
presents the annual:*

### Meet the Judges Event

### CORRECTION

**After we went to press  
the date for  
MEET THE JUDGES  
had to be changed.**

**A new date will be  
forthcoming.**

**Please check our website for  
the new date.**

**We apologize for any  
inconvenience.**

### DO YOU HAVE AN IDEA FOR AN INTERESTING FEATURE ARTICLE?

We are always looking for timely and pertinent articles of interest to our readers.

If you would like your work to be considered please email a letter of intent or a finished article in Word format to [editor@wcbany.org](mailto:editor@wcbany.org).

Finished articles should be about 800-1200 words.



# WCBA'S 2ND ANNUAL DIVERSITY BBQ & BLUES NETWORKING EVENT

was held again at the Bayou Restaurant in Mount Vernon, on June 22nd. It was another very successful celebration of networking, renewing business acquaintances and forging new contacts. The evening was co-sponsored with Westchester Black Bar Association, Westchester Women's Bar Association and the American Hispanic Business & Prof. Assoc. of Westchester.



*Evelyn Miller,  
Jerold R. Ruderman,  
Jeanette Redmond,  
Lonya Gilbert, Jerrie Epps,  
and Alan Dillon*



*Hon. Emmett Murphy and  
Hon. Alan D. Scheinkman*



*Linda Alloco  
and Jeanette  
Redmond*



*Michelle Ifill and Monica ShawRedmond*



*Lonya Gilbert, Dolores Gebhardt, Stephanie Melowsky,  
Jacqueline Hattar, and Jerrie Epps*



*Hon. Alan Seiden,  
Jacqueline Warner,  
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Roger Rice,  
Lisa Solomon,  
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*Leticia Arzu and Eileen Gong*



*Chuck Newman, Anthony J. Enea and  
Kathy Gorup*



*Ellen Shapiro and Hon. Susan Kettner*

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We are pleased to announce that David A. Menken has joined McCarthy Fingar LLP as a partner in our Corporate & General Business, Intellectual Property, Commercial Finance and Real Estate Transactions groups. With over 25 years of experience, Mr. Menken is our newest addition, servicing clients in Westchester and the Hudson Valley Region and around the globe, particularly in India and Western Europe.

Mr. Menken offers legal expertise in a number of capacities, including business transactions, mergers and acquisitions, and various intellectual property and information technology matters, including trade secret protection.

Beyond the legal services of Mr. Menken, McCarthy Fingar also offers legal counsel in the areas of Matrimonial & Family Law, Collaborative Law, Appellate Practice, Charitable Giving, Exempt Organizations, Mediation & Arbitration, Personal Injury & Medical Malpractice, Legal Malpractice, Trusts & Estates, Taxation, Business Litigation and Surrogate's Court Litigation.



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## President's Message

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"The Supreme Court 'Balks' at Changing the Anti-trust Exemption," "Ballpark Legal Warfare," "Stadium Liability for Spectator Injuries," "Hey, Beerman," "Up for Grabs" and "Former MLB Players Argue Reverse Discrimination." At the end of each chapter, there is a section called "Umpire's Ruling," that highlights and explains a salient legal issue of the game, employing concise, "user friendly" terminology. For example, the segments provide explanations to such questions as: What is the "Curt Flood Act"? What are the rules for "balks"? Who is liable for injuries on and off the field, and on the way to the hospital? When is a catch a legal "catch?"

*The Little White Book of Baseball Law* demonstrates how the national pastime has interacted with many different legal fields, including sales, intellectual property (trademark, patent, and copyright law), real property (such as disputes over balls launched into the stands), antitrust, labor law, medical malpractice, torts and liability, the First Amendment, Title VII discrimination claims, civil rights complaints for the excessive use of force during arrests in the bleachers, breach of contract, criminal law, and taxation, and how these legal fields have impacted the game of baseball.

As of press time, a mistrial was declared in the Roger Clemens federal perjury trial after prosecutors introduced inadmissible evidence in the second day of testimony. The case was brought as a result of his appearance before a Congressional committee in 2008 where he testified that he had never taken performance-enhancing drugs during his playing days. Whether Clemens can be or will be retried is anyone's guess. The Clemens matter reminds us that the realms of baseball and the law are still intersecting in the continuing fallout from baseball's steroids era, a period marked by pervasive (how pervasive remains to be seen) use of anabolic steroids, human growth hormone, and other performance-enhancing drugs — empowering certain players to embark upon a relentless pursuit of the records and milestones that the game holds sacrosanct. As noted in 2007 the Mitchell Report, the legal ramifications of the steroids era, inside and outside of baseball, continue to cast their shadows.

During the month of August, the bar association will be sponsoring a number of CLE programs (*see* page 8) and networking events, including the always popular **End of Summer Fling** on August 24<sup>th</sup> (*see* Sections & Committees on page 4). For the latest information on all of our events check out the Calendar on our website.

## Divorce Mediation

*(continued from page 3)*

[m]ediation by any party, Mediator or any other person present [is] immune from disclosure in any present or future judicial or administrative proceeding.” Likewise, “all information generated in or in connection with the [m]ediation—including memoranda, work product or case files of a Mediator—shall remain confidential and not be subject to disclosure.”

Nothing about the substance of mediation, such as the weaknesses or strengths of the parties’ cases or the relative willingness of the parties to discuss settlement proposals, can be revealed to the referring justice, court-attorney referee, or any other person by the mediator or any party or attorney. Nor will any party or attorney reveal the outcome of the mediation process to the referring justice or any court personnel, including court attorney-referees—unless both sides agree to disclosure.

In general, the only information from mediation sessions that can be disclosed relates to: (1) attendance of the parties and their counsel, which is reported to the referring justice or court attorney-referee; (2) specific individual communications for which the parties waive nondisclosure; (3) signed negotiated agreements, which are submitted to the court for review; (4) credible threats of serious and imminent harm, which are reported to the appropriate authorities

and/or the potential victim; and (5) communications related to allegations of child abuse or neglect, which are required to be disclosed pursuant to Social Services Law § 413.

In terms of child abuse and neglect, under Rule 11, if an allegation of such “is made by any party during [m]ediation, the Mediator will safely stop the mediation process . . . [and] report to the referring Justice or Court attorney-referee.”

Likewise, if an allegation of domestic violence is made during mediation, under Rule 12, the mediator will “safely stop the mediation process, meet with each party individually where appropriate to learn as much as possible about the circumstances, and consult with the Coordinator [for the Mediation Program]. . . as to whether to resume the process.” Allegations relevant to domestic violence, however, are never disclosed to the referring justice or court attorney-referee, as the coordinator “will give victims information regarding their rights in the form prescribed in Family Court Act § 812(5).”

The aforementioned ruled should be strictly adhered, even by a privately retained mediator.

### THE OUTCOME OF MEDIATION: RULE 3

Within five business days of the conclusion of the mediation, which occurs—under Rule 3—“whenever after the initial session one party, both parties, or the Mediator decides that the process has ended,” the

*(continued on page 11)*

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**Tuesday, September 13, 2011****The Municipal Law Section presents****Development Rights in Uncertain Economic Times**

<b>Speakers</b>	Michael Zarin Esq., and Daniel Richmond Esq., of Zarin & Steinmetz, Attorneys at Law
<b>Location</b>	Vintage Bar & Restaurant 171 Main St., White Plains, NY
<b>Time</b>	12:30 pm–1:00 pm Registration and Lunch 1 pm–2 pm Presentation
<b>Price</b>	Includes Lunch & CLE \$35 Members/\$45 Non-members
<b>CLE</b>	1 credit Professional Practice
<b>To Register</b>	See “Registration Box” on page 9

<b>Price</b>	Includes Dinner/Cash Bar/CLE <b>Early Bird until Sept. 13</b> \$70 Members/\$80 Non-Members <b>After Sept. 13</b> \$80 Members/\$90 Non-Members
<b>CLE</b>	2 (1 Ethics/1 Professional Practice)
<b>To Register</b>	See “Registration Box” on page 9

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**Wednesday, September 21, 2011****The Trusts and Estates Section presents****Everything You Wanted To Know About Turnover Proceedings in the Surrogate's Court**

<b>Panelists</b>	Frank W. Streng, and Gail M. Boggio Esqs. from McCarthy Fingar, LLP Additional speakers: TBD
<b>Location</b>	Wells Fargo 50 Main Street, White Plains, 5th Fl
<b>Time</b>	5:30 pm– 6:00 pm Registration and Light Refreshments 6:00 pm–8:00 pm CLE Presentation
<b>Price</b>	\$30 Members/\$40 Non-members
<b>CLE</b>	2 credits Professional Practice
<b>To Register</b>	See “Registration Box” on page 9

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**Tuesday, September 20, 2011****The Family & Domestic Relations Law Section presents  
Forensic Chemical Dependency Evaluations & Types  
& Efficacy of Different Drug Testing Methods**

<b>Speakers</b>	Raymond Griffin, PhD., CASAC The Greenwich Center Additional speakers: TBD
<b>Location</b>	TBD
<b>Time</b>	5:30 pm–6:00 pm Registration and Dinner 6:00 pm–8:00 pm CLE Presentation

**CLE and EVENT ORDER FORM**

Please register in advance whenever possible. Registration later than 12 pm 24 hours PRIOR to the CLE will incur a \$10 late fee and applicants will be seated and provided written materials ONLY if space permits.

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Copies of the WCBA CLE Rules and Procedures and the Hardship Policy may be obtained by emailing cle@wcbany.org or calling 914/761-3707 ext. 19. Your knowledge of the CLE rules and procedures is presumed when you register for a CLE. If you have paid for a program in advance and circumstances require cancellation, full credit will be applied to a future program, provided written notification (by mail/fax/email) is received by the WCBA at least 1 business day in advance of the program.



## Thursday, October 20, 2011

### The Tax Law Section presents

#### Collaborative Divorce: The Use of Financial Planning and Valuation Experts, and Tax Consequences

<b>Speakers</b>	Stephen G. Gordon Esq. Edward Heben CPA, Partner: Valuation & Forensic Services, Citrin Cooperman & Company, LLP David Bruckman, JD, MS Tax, Managing Director Citrin Cooperman Wealth Management, LLP
<b>Location</b>	Westchester Hills Golf Club 401 Ridgeway, White Plains, NY
<b>Time</b>	7:30 am–8:00 am Registration and Breakfast 8:00 am–10:00 am CLE Presentation
<b>Price</b>	Includes Breakfast & CLE \$30 Members/\$40 Non-members
<b>CLE</b>	2 credits Professional Practice
<b>Audience</b>	Collaboratively-trained attorneys and those who wish to learn about collaborative divorce and dispute resolution
<b>To Register</b>	See “Registration Box” on this page

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## Tuesday, October 25, 2011

### The Construction Law Committee presents

#### Unique Requirements of Contracts with Federal Money

<b>Speakers</b>	William D. Guernier VP, The Kenrich Group LLC
<b>Location</b>	The Brazen Fox 175 Mamaroneck Ave. White Plains, NY
<b>Time</b>	5:30 pm–6:00 pm Registration and Light Refreshments 6:00 pm–8:00 pm CLE Presentation
<b>Price</b>	Includes Dinner & CLE <b>Early Bird until Oct. 18</b> \$50 Members/\$65 Non-Members <b>After Oct. 18</b> \$60 Members/\$75 Non-Members
<b>CLE</b>	2 credits Professional Practice
<b>Audience</b>	Attorneys, architects, contractors, sub-contractors, suppliers and engineers
<b>To Register</b>	See “Registration Box” on this page

#### HOW TO REGISTER FOR CLEs and EVENTS

**WEBSITE:** Go to [www.wcbany.org](http://www.wcbany.org)

Select Calendar and Select CLE title of interest

**EMAIL:** Fill out the form below and email to: [cle@wcbany.org](mailto:cle@wcbany.org)  
(Omit credit card information for security purposes and we will contact you.)

**FAX:** Fill out the form below and Fax to: (914) 761-9402

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## CONGRATULATIONS TO THE DEL VECCHIOS



Giada Eva Del Vecchio was born to Kate and Michael Del Vecchio on June 21, 2011 at 6:18 am. Beautiful Giada was 7 lbs, 4 oz and 19.5 inches long. Michael Del Vecchio is an associate attorney at Worby Groner Edelman, LLP, and Vice Chair of the New Lawyers Section of the WCBA.

## DAVID A. MENKEN, ESQ. JOINS MCCARTHY FINGAR



David A. Menken has joined McCarthy Fingar LLP as a partner. Mr. Menken, who has more than 25 years of experience and expertise in corporate law and intellectual property, will serve in the firm's Corporate & General Business, Commercial Finance, Intellectual Property and Real Estate Transactions groups.



## LESTER STEINMAN, ESQ., JOINS WORMSER, KIELY, GALEF & JACOBS AS PARTNER

Mr. Steinman, previously director of a legal research center at Pace University and counsel to Wormser, will join the firm's municipal and land use practice. Since 1987, Mr. Steinman has served as counsel to the Westchester Municipal Officials Association.

## RON BIERMAN, ESQ., JOINS DORF LAW FIRM




The Dorf Law Firm, LLP is pleased to announce that Rod Biermann, Esq. has joined the firm as an associate in the litigation practice group. Since 2007, Biermann has been an associate in the Litigation and Employment Departments at McLaughlin & Stern LLP in New York, NY. His practice there focused on federal and state trial and appellate litigation in the commercial, employment, constitutional and civil rights contexts.



## CHARLES A. GOLDBERGER APPOINTED TO BOARD OF LEGAL SERVICES OF THE HUDSON VALLEY

Charles A. Goldberger, is a partner at the law firm of McCullough, Goldberger & Staudt, LLP in White Plains. His practice concentrates on commercial litigation, personal injury litigation, commercial arbitration, probate & estates, and Surrogate's Court litigation. He has also served as an arbitrator, primarily under the auspices of the American Arbitration Association, and has resolved more than 100 real estate, commercial and construction disputes. He is also a member of Pace Law School's Board of Visitors.



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## NETWORKING ON TROPICAL TIME



Flanked by Trinidad steel drum players are The Dorf Law Firm, LLP partners, Daniel R. Alcott, Jon A. Dorf and Jonathan B. Nelson.

Sunny skies, cool breezes, a gorgeous setting overlooking the water, plus plenty of island drinks and tasty tropical dishes made partygoers happy at The Dorf Law Firm's annual Caribbean bash held on June 30th at Orienta Beach Club in Mamaroneck, NY. With over 100 in attendance, the great lawn was filled with clients, colleagues and friends, many in their most colorful Hawaii shirts, mixing and mingling with the sounds of Caribbean steel drums in the background.

This is the third in a series of successful bashes to kick off the summer season, and in addition to a great networking opportunity for guests from all over the tri-state area, it is a great way for the firm to say "thank you" to its attendees for their friendship and for relying on The Dorf Law Firm as their legal counsel and trusted advisor.

## Divorce Mediation

*(continued from page 7)*

mediator sends a report ('Report of the Neutral') to the coordinator and counsel for the parties, stating: (1) the date of the initial session and whether each party and counsel appeared ... ; (2) the dates of any subsequent scheduled sessions ... ; and (3) whether the parties reached partial, complete, or no agreement on the issues."

While parties sometimes return to court from mediation because they cannot come to an agreement, many settle their disputes and refer their settlements over to their attorneys for review, if done properly. Overall, agreements arrived at through mediation are not easily overturned, as they are upheld under contract law principles. Case law in New York states that where the provisions of a contract entered into through mediation are clear and unambiguous, and where the intent of the parties can be gleaned from the four corners of the document, a court will uphold the agreement and interpret it in accordance with its plain and ordinary meaning to the exclusion of any extrinsic evidence varying its terms. In the matrimonial context, the only proviso in this respect is that separation agreements entered into via mediation are subject to heightened scrutiny

because of the fiduciary relationship between spouses.

Though the mediation process has encountered some setbacks in the production of agreements that are arguably inequitable or in violation of public policy and statutory/case law due to the failure of having clear, explicit language to illustrate that deviation and/or waiver of standards set out in New York State Domestic Relations Law was made with the full and educated consent of the respective party and/or parties, the topical knowledge and experience of matrimonial trial attorneys who serve as mediators should unequivocally eliminate this concern and create positive mediation experiences. As the first part of this article illustrated, the actors involved in mediation must be knowledgeable and experienced in matrimonial matters. Parties and counsel are always free to go to a mediator of their choice privately, and frequently do, outside of the mediation program and its parameters.

---

*John A. Pappalardo is a partner in the law firm of Farber, Pappalardo & Carbonari. He has been an active matrimonial litigator for 25 years and supervises a seven-member matrimonial department. John also has a private matrimonial mediation practice, is certified in matrimonial collaborative law, sits as a matrimonial arbitrator and is New York State Certified as an attorney representing children.*

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# WCBA's 2011 GOLF OUTING a Great Success!



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*Carol L Van Scoyoc and Donna Drumm*



From all accounts—weather, location, food, and finances—the Golf Outing was a success. For the second year the outing was held at the beautiful Sleepy Hollow Country Club in Scarborough, NY. A typical July day—sunny and hot, with an occasional breeze off the Hudson River—fueled a happy camaraderie on the part of all participants.

Over 150 of our members from the bench, law firms, sole practitioners, affiliate members from banks, title companies, and their guests competed for awards and prizes and then enjoyed a sumptuous cocktail reception and dinner.

Thanks to our members the popular 50/50 raffle netted more than \$1800.00 in donations. Our sponsors were generous — 17 sponsors donated more than 20 items worth over \$8,000 in total. The sponsors fully participated in playing and socializing. Our sign sponsor, Bruce Correnti, of Hall of Fame Reporting, Inc., won the putting contest, beating out Irene Sandford by a narrow margin. Both Irene and Bruce holed 20 foot putts, and in the run off Bruce scored closest to the hole. For photos and a complete list of all the award winners see pp. 12-15. (Check out our website over the next week or so, we plan to have a gallery of photos from the event mounted there soon.)

Cocktails, delicious hors d'oeuvres and buffet dinner, as well as the awards ceremony were held in the comfort of the air-conditioned dining room, with an outside patio for those who chose to enjoy the early evening Hudson River views.

George Sirignano graciously chaired the event again this year and coordinated two formats of play—Scramble and Stroke. This allows for both novice or more experienced players to select the game they are most comfortable playing. President Carol L. Van Scoyoc thanked the organizers for their hard work and expressed her appreciation to all who attended for their enthusiasm and support of the bar association. The evening ended on a fun note when President Van Scoyoc and Donna Drumm, WCBA's director of CLE and legal publications, teamed up to pick and call out the winning tickets for the door prizes.

Sleepy Hollow Country Club was a draw for many of the return golfers from last year (about 75% returned!) as well as those new to the club who had not had an opportunity to play on the course. Hailed as one of the "100 most prestigious clubs" it has gorgeous views of the Hudson River, and world renowned course design. The elegant architecture of the club house harkens back to the days of the Vanderbilts, whose family members were previous owners.

Hellos and Good-byes: The WCBA staff welcomed back former WCBA staff member, Marsha White, two weeks before the event, after the departure of Kadedra Onabanjo. Thanks Marsha for so seamlessly picking up where Kadedra left off!

We are collecting suggestions for next year from attendees and non-golfers alike. Please send your ideas to: [editor@wcbany.org](mailto:editor@wcbany.org)

***Congratulations! WCBA Annual Golf Outing awards winners have their pictures taken with Event Chair George Sirignano and President Carol L. Van Scoyoc***



*Men's Low Gross winner Russell Dekker*



*Women's Low Gross winner Audrey Schwabe*



*Men's Low Net winner David Selznick*



*Women's Low Net winner Stephanie Lary*



*1st Place Scramble winners Rick Krasner, Mike Weksel, Sander Koudijs, Andrew Mendelsohn*



*Women's Longest Drive winner Jill Owens*

*2nd Place Scramble winners William Mooney, Donald Derrico, and Jerold Ruderman*



*Closest to the Pin winner Ken Finger*



*Putting Contest winner Bruce Correnti*



**Official Results**  
**Sleepy Hollow Country Club**  
**Westchester County Bar Association**  
**2011 Golf Outing**

***Henry R. Barrett Jr. Memorial Trophy***

(Member: Low Gross)

Men - Russell Dekker - 80

Women - Audrey Schwabe - 94

***Jerome A. Peck Memorial Trophy***

(Member: Low Net)

Men - David Selznick - 71

Women - Stephanie Lary - 76

***Scramble, 1st Place - 59***

Sander Koudijs

Rick Krasner

Andrew Mendelsohn

Mike Weksel

***Scramble, 2nd Place - 67***

John Flannery

William Mooney

Donald Derrico

Jerold Ruderman

***Longest Drive - Hole #4***

Men - Brian Nurse

Women - Jill Owens

***Closest To The Pin - Hole #16***

Ken Finger - 13 inches

***Putting Contest***

Bruce Correnti

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## Family Conflict Prevention

(continued from page 1)

Some potential solutions are:

**(a) Execute a general durable power of attorney, with broad powers being given to the agent.**

If the general power of attorney is durable, its efficacy will continue even after the subsequent disability or incompetence of the principal. It is best to utilize a customized durable general power of attorney form which grants the agent the broadest powers to act on behalf of the principal, including, but not limited to the powers to engage in various types of Medicaid and estate planning.

In drafting a power of attorney with broad gifting powers it is imperative that one be cognizant of the complex execution requirements of the new *General Durable Power of Attorney* form which went into effect on September 1, 2009. The new form has a Statutory Major Gifts Rider which must be completed and executed if the agent will have the authority to gift or change the principal's interest in property. The new form in my opinion should not be executed without the assistance of legal counsel as a result of its many complexities.

*Selecting the agent:* The selection of the individual or individuals who will be the named agent(s) under the power of attorney is a decision of great importance. The individual selected must be someone in whom the principal has a great deal of trust and confidence. If the attorney-in-fact will have broad powers, including broad gifting powers, the principal should give serious consideration to the appointment of two attorneys-in-fact who will be required to act jointly. In spite of the potential administrative difficulties it may cause by requiring that two agents execute all documents, having at least two agents will create a system of checks and balances, and help reduce the likelihood of financial abuse, fraud and self dealing.

**(b) Execute a health care proxy.**

The individual selected in a health care proxy is permitted by New York law to make all health care decisions when the principal is no longer able to make these decisions. The health care proxy can specify which treatments and medical care one wishes and does not wish to have administered. Under New York

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law only one health care agent at a time can be designated in the health care proxy. (See *NYS Public Health Law §2981*.) The principal should take the time to tell his or her agent exactly what his or her wishes are with respect to medical care, and specifically end of life decisions, *e.g.* hydration and the use of ventilators and respirators. One should provide a copy of the health care proxy to his or her physician.

***(c) Execute a living will, wherein one is able to state his or her wishes not to be kept alive by extraordinary measures.***

While a living will is not statutorily recognized in New York, it is still additional written evidence of one's wish not to be kept alive by extraordinary measures.

***(d) Execute a Do Not Resuscitate Order ("DNR") which is a document executed by the individual and his or her physician.***

The DNR can explicitly specify the circumstance wherein an individual does not want to be resuscitated. I often recommend that the client keep a pocket DNR in his or her wallet and purse, and on the refrigerator and to provide copies to loved ones. It is especially helpful in cases where the client suffers from a chronic and persistent life threatening illness.

***(e) Execute a Burial Agent Designation Form wherein***

***you will be able to appoint an agent to dispose of your remains.***

In this form you will be also permitted to specify where you wish to be buried, any wishes regarding cremation and even the location of your wake and funeral. (See *Public Health Law §4201*.)

The execution of the aforesaid documents will go a long way in obviating the possibility of litigation regarding end of life and burial decisions.

The above referenced forms enable an individual to protect him or herself by enabling the individual to choose a family member or trusted friend to make financial and/or health related decisions if he or she is no longer able to do so.

However, if because of alleged financial, physical or emotional abuse it becomes necessary or inevitable that legal action be undertaken, in most instances, Article 81 of the Mental Hygiene Law for the appointment of a guardian will be the appropriate legal proceeding. Typical allegations that are made are that a physically or mentally incapacitated person is the victim of financial or physical abuse.


The petition in the Article 81 guardianship proceeding will seek to obtain control over the person and property of the alleged victim of abuse by seeking a determination that the person is an "incapacitated person" as defined by Article 81. The petition can also seek to void documents and contractual arrangements entered into by the alleged incapacitated person.

As part of an Article 81 proceeding the Courts have voided powers of attorney, health care proxies, trusts, and last wills and testaments executed by the incapacitated person and have also voided transfers of assets made by the incapacitated person.

From the above stated I believe it is sufficiently clear that taking appropriate steps to prevent clashes by family members of one's assets is imperative. However, if a clash is inevitable Article 81 of the Mental Hygiene Law will serve as a powerful vehicle to help rectify any wrongdoing.

---

*Anthony J. Enea, Esq. is a member of the firm of Enea, Scanlan & Sirignano, LLP of White Plains, NY, with offices in White Plains and Somers. Mr. Enea is the Chair Elect of the Elder Law Section of the New York State Bar Association.*



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BY RICHARD M. GARDELLA



At my 25<sup>th</sup> Williams College reunion in 1982, we were addressed by a classmate who was a former member of the Carter administration.

One hundred one years before, members of the Williams class of 1856 were primed to hear from a classmate who headed an earlier Washington administration. However, James Garfield, this country's 20<sup>th</sup> president and the only U.S. president to graduate from that Massachusetts liberal arts college, never made it to his 25<sup>th</sup>.

He was fatally wounded in Washington D.C., at the Baltimore and Potomac Railroad station at the present day intersection of Sixth Street, N.W., and Constitution Avenue before he could start his trip first to the New Jersey shore and eventually to his reunion. A mentally unhinged lawyer and office seeker, Charles Guiteau, shot the president twice at the station on July 2, 1881.

The president, a lawyer, scholar, longtime congressman and Civil War veteran, died of his wounds on September 19, 1881 at the Jersey shore where he was taken in hopes that better summer weather would inspire his recovery. The shore move failed as did other more innovative attempts to save him. Those

attempts included the first electronic metal detector devised by Alexander Graham Bell<sup>1</sup> and the first air conditioning. Confused by bed springs, Bell's device did not locate the mortal bullet near the President's liver. The air conditioning, which used ice, may have made Garfield more comfortable, but it didn't improve his condition.

Guiteau was hanged on June 30, 1882, just two days short of a year after his crime. The insanity defense raised by his lawyers failed to save him because of the overwhelming public desire for revenge.<sup>2</sup> Three unsuccessful attempts on his life were made while he was in custody.

Garfield was not the first leader assassinated in 1881. Less than three months before Garfield was wounded, Alexander II, arguably Russia's only reform Tsar, was crushed by the explosion of a package bomb in St. Petersburg. The Tsar, spared injury from the explosion of an earlier bomb because of the protective armor of his carriage, was mortally wounded by a second explosion on March 13<sup>th</sup> <sup>3</sup> when he got out of the carriage to see if anyone was injured by the first blast.

Not the result of an insane office seeker, the Tsar's death was the work of an egocentric radical group led by a woman that grandly called itself "The People's Will." The woman, Sophia Perovskaya, was among the five assassination conspirators hanged a month later.

*(continued on next page)*

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Would history have been different without those assassinations? In the case of Russia, Alexander II, who freed the serfs in 1861, offered more hope for the Russian people than the leaders who followed his death. While still an autocrat, Alexander II seemed about to provide a small measure of self government to the people before he died. The government sharing would have been limited, but it could have been a start. No such start could be expected from the brutal and physically huge Alexander III or his shallow and phlegmatic son, Nicholas II.

Garfield had a remarkable background for the top office. The last president to be born in a log cabin, he was an educator who rose to rank of major general in the Civil War. His appointment of William H. Robertson, the first president of the Westchester County Bar Association, as the collector of the Port of New York, kicked off a political battle that Garfield won after his death.<sup>4</sup> The fact that an office seeker was involved in his assassination, helped lead to major civil service reform under Garfield's successor, Chester Arthur, a surprise reformer.

It is hard to guess what kind of full presidency he may have had, but Garfield certainly offered the possibility of reform as did Alexander II. However, history is what it is and not the product of after-the-fact speculation. Garfield's Williams classmates did not get to hear him and Alexander II reform hopes were not realized.

## ENDNOTES

1. See *The President and the Lunatic*, an article in the Spring 2011 edition of *American Heritage* by Bruce Watson, which details the assassination and the trial of Guiteau.
2. *Ibid.* The Watson article deals with the insanity issue at some depth.
3. March 1, 1881 under the old style (Julian) calendar.
4. An excellent article by Judge Kenneth H. Lange on Robertson's career, including his involvement in national politics as a reformer appeared in the fall/winter 2008 edition of WCBA's *Westchester Bar Journal*.

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