WESTCHESTER LAWYER

WCBA

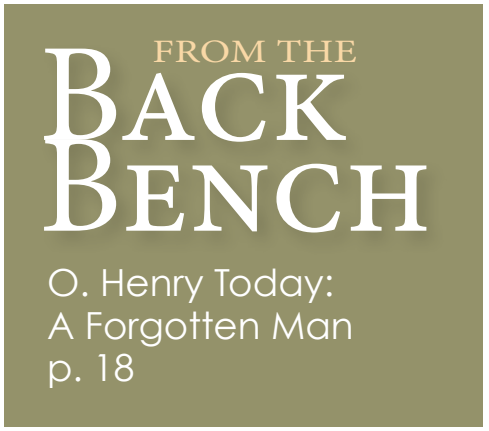
THE WESTCHESTER COUNTY BAR ASSOCIATION'S MONTHLY MAGAZINE | APRIL 2020 | VOL. 7 | NO. 4

Coronavirus: How the WCBA is Meeting the Challenge

At the time this issue went to press on March 15, 2020, there were still many unknowns factors related to the Coronavirus and its effect on our events and CLEs.

For information regarding how we will stay connected during this challenging time see p. 1.

Inside ...



WESTCHESTER
LAWYER
THE WESTCHESTER COUNTY BAR ASSOCIATION'S MONTHLY MAGAZINE

Published by the
Westchester County Bar Association
4 Westchester Park Drive, Suite 155
White Plains, NY 10604
Tel.: 914.761.3707 | Fax: 914.761.9402
Email: info@wcbany.org | www.wcbany.org

IN THIS ISSUE...

FEATURES

DEPARTMENTS

From the President

Honorable Linda S. Jamieson

Our Trip Together Around the Sun

Coronavirus: Meeting the Challenge

This issue of *Westchester Lawyer* headed to our printer on March 15, 2020. By the time we were ready to finish the printing process, COVID-19 had gone from a distant problem to our hometown crisis.

The WCBA is working hard to reschedule as many of our events as possible whether that means waiting until later this year for an in-person CLE or moving to an online platform to present events now. Our Annual Banquet is now rescheduled to September 30, 2020, but stay tuned online for more information on the swearing-in of our new officers and directors; we are planning for a livestream event.

In the coming weeks, we plan to offer live and recorded CLEs. We have added a news feature to the website (Resources/The Latest News) where we are housing any procedural updates from the court as well as other information we hope is helpful to our members.

Please visit our website at www.wcbany.org and follow us on social media for updates. Thank you for continuing to be a part of the WCBA.

Now, more than ever, our members are our strength!

366 days… 52 weeks… 12 months... that will be the measure of our trip around the sun, with me as President of this great bar association.

Indeed, this particular year will always be of great significance to me, as I have had the wonderful honor and privilege to serve as your president. I met many of you I had not known before, renewed and strengthened existing relationships and was presented with the opportunity to have our Association recalibrate its path as we move deeper into the 21st Century.

Before extending my thanks to many who have made this year so special, and space does not permit me to list them all, I'd like to start by thanking my family for being so understanding of the additional time away from them this past year required.

Next I want to thank my fellow members of the judiciary, especially Administrative Judge Kathie Davidson, for their individual and collective support of me during this year.

Of course, I would not have been able to perform the duties as president without the incredible and ever-present support of the amazing staff of the Westchester County Bar Association. Executive Director Isabel Dichiara, Fern Richter, Brittney Moore, Roni Brumberger and Mary Ellen McCourt, your collective talent and dedication make our everyday operations move smoothly and efficiently. Thank you all!

Our Board of Directors provided me with the strength and support to put into place the initiatives we've been able to start as well as those that will come to be under future presidential administrations. Thank you all for your dedication, intelligence and compassion.

I am happy to note that this year we have partnered with the Elisabeth Haub School of Law at Pace University, expanding our CLE programming and providing a student member to our Board of Directors. Through our partnership we have learned writings from the law school and its faculty, in the new "Pace Page," featured in our monthly magazine. I thank Dean Anderson for his commitment to having students engage early on with our association, allowing soon to be admitted attorneys to be better equipped to enter the workplace.

We have also expanded our social and charitable ventures. I'd like to thank Jim Hyer, Vice President and Kelly Welch, Past President, Co-Chairs of our Public Service Committee, for the formation of the "Battling Barristers" and for bringing the issue of breast cancer awareness to the forefront of our association's concerns. Additionally,

(continued on page 2)

FROM THE PRESIDENT

(continued from page 1)

I would like to thank our Treasurer, Andrew Schriever and Mark Sheridan, ADR Committee Chair, for all their support during this year. Particularly, aiding the Westchester County Bar Association and the Court with the creation, updating and implementation of ADR (Presumptive Mediation) within the Commercial Division. Also, Stephanie Burns, our Past President, thank you for all the precise editing of our publications. Your dedication and talent are unsurpassed.

Rest assured that our Bar Association will continue to thrive under the new leadership of Incoming President Wendy Marie Weathers and Incoming President Elect Jim Hyer. I extend thanks to Richard S. Vecchio, our Immediate Past President, and Wendy, whose judgment and advice helped me with decisions I made throughout this past year. I look forward to supporting and working with Wendy during her presidency.

The end of a President's term in our Association does not mark the end of involvement and, of course, I will remain a resource for the officers and directors that follow me.

I can't help but continue to remind you all, as the 2020 presidential election nears, the role of our profession could not be more in the spotlight. The rule of law is the principal upon which our country has thrived for the 244 years since thirteen colonies banded together and strove towards a more perfect union, and that rule of law, as followed by each and all of you as attorneys and judges alike, must be protected at all costs so that our children and their children will have the protections that the rule of law is meant to provide.

NEW DATE! Annual Banquet September 30, 2020

I look forward to seeing all of you at our Annual Banquet now scheduled for September 30, 2020, at Brae Burn Country Club, when Wendy Marie Weathers will be formally sworn in and I will join the illustrious ranks of our Past Presidents and of course, receive the President's Medal. I always love jewelry! We will also honor our members who have served our profession for 50 years: Jessica Bacal, Jay Carlisle, John Cullen, Richard G. Fontana, Hon. David Klein, Hon. Gerald M. Klein, Robert L. Rattet, Michael Rickman and Stephen J. Schwartz. We will also present the award for Outstanding Mentor to Sherry Levin Wallach, and Outstanding New Lawyer to Lauren Enea and Nicholas Palisades.

Thank you for this most wonderful orbit around the sun. As always, I can be reached for concerns and suggestions by email at President@wcbany.org.

Using Article 81 Guardianship to Protect Spouses from Devastating Health Care Costs

By Kathleen A. Redalieu, Esq.

Article 81 of New York's Mental Hygiene Law empowers the supreme court, after a hearing, to appoint a guardian to manage the personal and/or financial affairs of a person who, due to incapacity or functional limitations, cannot manage on their own.

However, Guardianship Orders are not one size fits all. Guardianship Orders must impose the least restrictive means and be specifically tailored to meet the needs of the incapacitated person after considering factors such as existing advanced directives and other available resources. In such a case, a court might appoint a guardian with powers that are limited to property financial management. And with increasing regularity, courts have appointed guardians with an even narrower scope: to effectuate a Medicaid plan.

This type of power can be most useful for a married couple when one spouse becomes incapacitated and is in a nursing home. It is frequently the case that the incapacitated spouse never executed a Power of Attorney or, more specifically, did not execute a Power of Attorney with the Statutory Gift Rider empowering their agent to transfer assets in order to implement a Medicaid plan.[1]

In the case where the incapacitated person never executed a valid Power of Attorney or a Power of Attorney with sufficient gifting authority for their agent to engage in Medicaid planning, it is still possible to preserve assets and prevent financial devastation to the well spouse.

The Medicaid plan in this instance would utilize a strategy known as "spousal refusal" to qualify the incapacitated spouse for Medicaid. This strategy requires the transfer of all assets from the alleged incapacitated spouse ("AIP"), to the community spouse or the well spouse.

In New York, spouses are required to provide support to each other. As a result, the assets of both spouses would normally be considered in determining whether the alleged incapacitated spouse (in this case, the AIP) will qualify for Medicaid coverage. However, under Section 366(3) of the New York Social Services Law, if the well spouse refuses to make his or her assets available to the AIP, then the local Departments of Social Services must determine eligibility for Medicaid based upon the assets of the AIP alone.[2] Additionally, under Medicaid law, spouses are able to gift assets to each other without any imposition of a penalty period or period of ineligibility for Medicaid coverage for nursing home care. This ability for spouses to transfer assets to each other penalty-free, combined with the well spouse's ability to refuse to make his or her assets available to the AIP or the institutionalized spouse, allows for the AIP to become eligible for Medicaid coverage of nursing home care once all of his or her assets are transferred to the refusing well spouse.

In order for this strategy to be implemented, the well spouse must first petition the Guardianship court seeking the specific power and express authorization for appointment of a guardian to transfer any and all assets of the AIP to the well spouse. Where possible, the length of the marriage should be emphasized together with the need to protect the AIP's assets and marital assets from being depleted by the AIP's medical costs and the need to protect the AIP's spouse from financial devastation.

After the Guardianship petition is filed, the AIP is eligible to receive Medicaid through what is referred to as "Conditional Eligibility". Under Medicaid rules, the AIP's assets become unavailable to the AIP for Medicaid purposes upon the filing of the petition. However, once a Temporary Guardianship Order or a Commission appointing a guardian issues, the AIP's assets will no longer be considered unavailable under Medicaid rules. Uninterrupted Medicaid eligibility will be in jeopardy unless the AIP's assets are deemed transferred, *nunc pro tunc*, to the date of the filing of the Petition.

Nunc pro tunc relief is critical to this Medicaid plan because, without it, the moment that the community spouse receives authority as guardian to collect the AIP's assets, whether through a Temporary Order of the Court or a full Commission, the AIP will become ineligible for Medicaid until the assets are actually retitled to the community spouse. The power of *nunc pro tunc* relief is that the effective date of those transfers will be deemed to be retroactive to the filing of the Petition and thus would preserve continuous Medicaid eligibility for the AIP

The request for *nunc pro tunc* relief for Medicaid planning purposes was considered by the Court in *The Matter of Watson*, 9 Misc. 3d 560, 800 N.Y.S.2d 388 (Sup. Ct. Monroe Cty. 2005). In *Watson*, the Court approved an application to transfer the incapacitated person's funds retroactive to the date of the application for appointment of a

guardian for Medicaid planning and, in doing so, acknowledged that there was no dispute as to the court's ability to approve such transfers retroactively for Medicaid planning purposes. New York's Supreme Court has permitted expansion of those powers to allow for transfers to be deemed effective, *nunc pro tunc*, as of the date of the filing of the Petition or the execution of the Order to Show Cause. See *In re M.L.*, 24 Misc.3d 1036, 879 N.Y.S.2d 919 (Sup. Ct. Bronx Cty. 2009). Some courts have even permitted expansion of the Guardian's powers to allow for asset transfers to date back, *nunc pro tunc*, to the date of incapacity, well before the filing of any Guardianship petition. *See, e.g., In re New York City Health and Hospitals Corp.*, 20 Misc.3d 1111(A), 867 N.Y.S.2d 376 (Sup. Ct. Queens Cty. 2008).

The reality of asset transfers, both of a real and personal nature, is that they take time. Cooperative boards, in particular, are very slow to act and financial institutions can be glacially slow in their review of transfer requests. If the Court does not grant *nunc pro tunc* relief, there will be a significant period of Medicaid ineligibility for the AIP that could last for months. The cost of this care can easily exceed $15,000 per month.

In conclusion, it may appear to the spouse of an incapacitated person that dissipation of assets and potential financial devastation is inevitable, even after a lifetime of planning and saving. These well spouses need to be made aware that Guardianship can be used for the specific purpose of obtaining Medicaid planning power for an incapacitated spouse as described in this article. Implementing this strategy can be life changing to the well spouse and his/her family.

Endnotes

1 New York's Power of Attorney (POA) in the General Obligations Law statute has been in effect since 1964. The statute, however, was amended in 2009, with further amendments in 2010. The final amendments to the statute took effect as of September 12, 2010. The most notable change under the amended statute is that the traditional powers of the agent have been separated from the ability to make gifts. As a result, the amended statute introduced a Statutory Short Form Power of Attorney and a Statutory Gift Rider. The Statutory Gift Rider is a stand alone document that, when read together with the Power of Attorney, comprises one document. The power to gift in the Statutory Gift Rider is further broken down into the power to gift to others and the power to gift to oneself.

2 It is important to note that as a condition to obtaining Medicaid coverage, the AIP must assign his or her right to spousal support to the local Department of Social Services.

Kathleen A. Redalieu, Esq., is a partner at Hollis Laidlaw & Simon P.C. located in Mount Kisco, New York. Kathleen focuses her practice on Article 81 Guardianship, Elder Law, Medicaid and Estate planning. Ms. Redalieu is a co-chair of the Westchester County Bar Association's Guardianship Committee; Board Member of the Westchester Women's Bar Association's Foundation; and a member of the New York State Bar Association Elder Law Section, Westchester County Bar Association, Westchester Women's Bar Association and Northern Westchester Bar Association.

Pace University's Elisabeth Haub School of Law Now Offers a Part-Time Flex Program

Pace University's Elisabeth Haub School of Law now offers a part-time flex program, making the Law School more accessible to working professionals and others.

The new scheduling option allows part-time law students to take all of their required classes on Tuesday and Thursday evenings, as well as on Saturday mornings, as they pursue their J.D. degrees at the Law School campus in White Plains, NY.

"By now offering required courses on evenings and weekends, we are expanding access to legal education and providing rigorous academics and training to those who are working professionals or have other daytime responsibilities," said Dean Horace Anderson.

For more information visit: https://law.pace.edu/admissions-aid/flex-jd-scheduling-option.

Hon. Mark C. Dillon is a Justice at the Appellate Division, Second Department, an Adjunct Professor of New York Practice at Fordham Law School, and an author of CPLR Practice Commentaries in McKinney's.

THE PRACTICE PAGE

By Hon. Mark C. Dillon

Days When Serving Process Is Forbidden

Section 11 of New York General Business Law ("GBL § 11") instructs that service of civil process of any kind is prohibited on Sundays. Service made on Sunday in violation of the statute is void (*Foster v. Piasecki,* 259 A.D.2d 804, 805 [3d Dep't 1999]). The statute has existed since 1965 (L.1965, c. 1031, § 45), consistent with local "blue laws" that were in effect at the time. The statute's obvious purpose is to provide rest for both process servers and defendants on the Lord's Day. The statute is not an unconstitutional establishment of religion, nor does it violate the equal protection clauses of the federal and state constitutions (*Fine v. Commissioner of Dep't of Consumer Affairs*, 168 A.D.2d 285 [1st Dep't 1990], *appeal dismissed* 77 N.Y.2d 873 [1991]).

A companion statute is GBL § 13, which provides that service cannot be made on Saturdays upon any person who keeps Saturday as a holy time. A violation of that statute is a misdemeanor. The statute is protective of religiously observant Jews. Service made in violation of the statute is void (*JPMorgan Chase Bank, Nat'l Ass'n v. Lilker*, 153 A.D.3d 1243, 1244 [2d Dep't 2017]). However, mere service upon a Jewish defendant is not void unless two specific requirements are met. First, the recipient of the process must actually use and observe Saturday as a no-work holy time. Second, the process server's choice of serving on Saturday must be motivated by malice (GBL § 13; *Signature Bank N.A. v. Koschitzki*, 57 Misc.3d 495 [Sup. Ct., Kings Co., 2017]). The religiously-prohibited service includes not only personal service, but other methods of service as well. If process is made on Saturday upon a person of suitable age and discretion under CPLR § 308(2), the statute may be violated if the timing was malicious (*accord Garner v. Doggie Love L.L.C.*, 2011 WL 197729 [Sup. Ct., N.Y. Co., Jan 13, 2011]). Similarly, if service is effected by the "nail and mail" method under CPLR § 308(4), and affixation occurs on Saturday, the statute is violated (*JPMorgan Chase Bank, Nat'l Ass'n v. Lilker*, 153 A.D.3d at 1245). Any service that is invalidated under GBL §§ 11 or 13 represents a failure to obtain personal jurisdiction over the defendant, meaning that the plaintiff is not entitled to re-commence a second action beyond the statute of limitations within the six-month grace extension of CPLR § 205(a).

Cases involving alleged violations of GBL § 13 involve whether the defendant is truly observant, and even more frequently, whether the service was timed with religious malice. Malice necessarily speaks to the process server's state of mind. It may be established by reasonable inferences drawn from the facts, such as Saturday service upon an outwardly Orthodox or Hasidic person. It exists when the process server actually knew that the person being served was observant (*Hirsch v. Ben Zvi*, 184 Misc.2d 946, 948 [N.Y. Civ. Ct., Kings Co., 2000]). In *Hirsch*, where service was effected on a Saturday that also happened to be Sukkot, the religious observance of plaintiff's counsel was imputed to the process server in finding malice and invalidating the process (*Id.*, at 948). Service of process will withstand challenge when the defendant, while Jewish, is not shown to observe Saturday as a holy day (*Chase Manhattan Bank, N.A. v. Powell*, 111 Misc.2d 1011 [Sup. Ct., Nassau Co., 1971]), or when the element of malice is lacking (*Hudson City Savings Bank, FSB v. Schoenfeld,* 172 A.D.3d 692, 693 [2d Dep't 2019]; *Matter of Kushner*, 200 A.D.2d 1, 2 [1st Dep't 1994]).

The service of mere notices, such as a contractual notice under a lease, does not violate the prohibitions of GBL §§ 11 and 13 (*Glenball, Ltd. v. TLY Coney, LLC*, 57 A.D.3d 843, 874 N.Y.S.2d 128 [2d Dep't 2008]).

GBL §§ 11 and 13 do not prohibit service of process on national holidays, nor service upon observers of religious holidays that fall on weekdays, or in the case of Christians, on Saturdays. Thus, service of process on a non-Sunday Christmas is valid, whereas service on an Easter, which is always on a Sunday, is not. Statutorily, Passover, Yom Kippur and other high Jewish holidays are apparently fair game for service of process when they do not fall on a weekend. The reader might notice the statutory inconsistencies.

On Whose Authority?

The following question came in to our hotline through a case: "I have a customer with an insurance policy. The owner of a sister company (I believe) of the named insured has called and asked to be added to the same insurance policy as an additional named insured, but I do not have, and have not yet requested, authority from my customer. Can I process that policy change request?"

We represented a wholesale broker[1] in a similar scenario, where the retail broker[2] attempted to process such a policy change request. In that case, the retail broker's attorney claimed that the person making the request to the retail broker had apparent authority to do so, allowing the retail broker to pass the request along to the wholesale broker. However, in that case, the person making the request was *not* (1) the owner of a sister company, just a company *very* similarly named, (2) an express or implied agent of the named insured (i.e. actual authority), and (3) that person did not have apparent authority to act on behalf of the named insured.

Actual authority is founded in agency. It exists when an agent has the power "to do an act or to conduct a transaction on account of the principal which, with respect to the principal, he is privileged to do because of the principal's manifestation to him."[3] An actual agent has authority: express and/or implied. Express authority is "authority distinctly, plainly expressed, orally or in writing.[4]" Implied authority exists "when verbal or other acts by a principal reasonably give the appearance of authority to the agent."[5] The general rule in New York with regard to implied authority is that "an agent employed to do an act is deemed authorized to do it in the manner in which business entrusted to him is usually done."[6]

Apparent authority is founded upon principles of equity and has nothing to do with Agency.[7] "Apparent authority is 'entirely distinct from authority, either express or implied,' and arises from the 'written or spoken words or any other conduct of the principal which, reasonably interpreted, causes [a] third person to believe that the principal consents to have [an] act done on his behalf by the person purporting to act for him.'"[8] Apparent authority does not turn on the representations made by a principal to his agent, but rather on whether the representations made by the principal to a third party created the appearance of authority.[9] The apparent authority for which the principal may be held liable must be traceable to him; it cannot be established by the unauthorized acts, representations or conduct of the agent.[10] The *sine qua non* of apparent authority is that the principals have communicated to a third party, through its words or conduct, that the agent had the authority to act.[11]

In these situations, the broker typically needs more information than provided in the context for the question, and more importantly, approval from their actual customer to go forward with the proposed activity.

Endnotes

1 *I.e.*, the broker with the more direct relationship with the insurance company.

2 *I.e.*, the broker with the more direct relationship with the insured.

3 *Minskoff v. American Exp. Travel Related Servs. Co.*, 98 F.3d 703, 708 (2d Cir. 1996), quoting Restatement (Second) of Agency § 7 cmt. a (1958); *Dover Limited v. A.B. Watley, Inc.*, 423 F. Supp.2d 303 (S.D.N.Y. 2006); see, *Chubb & Son, Inc. v. Consoli*, 283 A.D.2d 297 (1st Dep't 2001); see also, New York Jurisprudence (Second) Agency and Independent Contractors § 290.

4 *Nationwide Life Ins. Co. v. Hearst/ABC-Viacom Entm't Servs.*, 1996 WL 263008 (S.D.N.Y. May 17, 1996).

5 *99 Commercial St., Inc. v. Goldberg*, 811 F.Supp. 900 (S.D.N.Y. 1993).

6 *Songbird Jet Ltd., Inc. v. Amax, Inc.*, 581 F.Supp. 912 (S.D.N.Y. 1984).

7 *See Rothschild v. Title Guar. & Trust Co.*, 204 N.Y. 458 (1912).

8 *Minskoff v. American Exp. Travel Related Servs. Co.*, 98 F.3d 703, 708 (2d Cir. 1996) (citations omitted), quoting Restatement (Second) of Agency § 8 cmt. a, § 27 (1958).

9 *See Chemical Bank v. Affiliated FM Ins. Co.*, 169 F.3d 121 (2d Cir. 1999); *Prop. Advisory Group, Inc. v. Bevona*, 718 F. Supp. 209, 211 (S.D.N.Y. 1989); *General Motors Acceptance Corp. v. Finnegan*, 156 Misc.2d 253, 255 (Orange Cty. Sup. Ct. 1992); *Bank of America, NA v. Teranova Insurance Company Limited*, 2005 WL1560577 (S.D.N.Y. 2005), Restatement (Second) of Agency § 27, cmt. a (1958).

10 *Ford v. Unity Hospital*, 32 N.Y.2d 464, 472 (1973).

11 *See e.g., Standard Funding v. Lewitt*, 89 N.Y.2d 546, 551 (1997); *Dover Limited v. A.B. Watley, Inc.*, 423 F.Supp.2d 303 (S.D.N.Y. 2006).

Michael E. Kremen, Esq., handles insurance defense lawsuits at Brooks, Berne & Herndon PLLC. Michael can be reached at michael.kremen@lawbbh.com.

James C. Keidel, Esq., is the founding and managing partner of Keidel, Weldon & Cunningham, LLP, with offices in New York, New Jersey, Connecticut, Pennsylvania, Rhode Island, Vermont and Florida. Prior to that, James was the managing partner of its predecessor firm, Lustig & Brown, LLP. James can be reached at jkeidel@kwcllp.com.

PACE STUDENT PROFILE

Vanessa Cabrera Deleon

1L, Elisabeth Haub School of Law at Pace University

What brought you to law school?

I grew up in the South Bronx and for most of my childhood lived in public housing. Seeing the kinds of systemic issues depriving members of my community, I knew that there had to be something more than what I observed daily – drug violence, sexual misconduct, and gang fights. Early on, I understood that certain policies--related to education and criminal law--contributed to some of the struggles faced by members in my community. I always knew I wanted to help change these policies for my community and that law school could be the gateway to do that.

Why did you choose Haub Law and the FLEX part-time schedule option in particular?

I was attracted to Haub Law because of the school's distinguished faculty members who are not only scholars of the law, but are also on the ground practicing in their respective fields. Just as important, I chose Haub Law because of the location and its flexible part-time schedule option, which fit perfectly with my schedule. I am a full-time employee at the Bronx District Attorney's Office and my line of work, although very rewarding, is very demanding. Also, Haub Law is centrally located — I have a very convenient commute from work to the school. The campus is beautiful, I find it has a very calming effect. Attending Haub Law is something to look forward to despite long hours at work.

What was your background prior to law school?

For over six years, I worked for an immigration law firm where I worked on cases involving individuals facing deportation and seeking relief such as Political Asylum, Cancellation of Removal, or a U Nonimmigrant Visa. Now, at the Bronx District Attorney's Office, I am assigned to the Child Abuse & Sex Crimes Division. At the DA's office, under the supervision of prosecutors and our division chief, I work on cases that stem from allegations of sexual misconduct against children and adults, in addition to child fatalities.

What are your goals after graduating?

I would like to become an Assistant District Attorney at the Bronx District Attorney's Office. As a member of the Bronx community, I understand the importance of equal representation and having advocates that resemble the demographics of the community and that a person's behavior may be a manifestation of the hurdles and obstacles that they themselves have experienced.

To learn more about Haub Law's Flex JD Scheduling Option please visit: https://law.pace.edu/admissions-aid/flex-jd-scheduling-option.

About the Elisabeth Haub School of Law at Pace University:

Pace University's Elisabeth Haub School of Law (Pace Law) offers J.D. and Masters of Law degrees in both Environmental and International Law, as well as a Doctor of Juridical Science (SJD) in Environmental Law. The school, housed on the University's campus in White Plains, NY, opened its doors in 1976 and has over 8,500 alumni around the world. The school maintains a unique philosophy and approach to legal education that strikes an important balance between practice and theory.

The Elisabeth Haub School of Law at Pace University launched its Environmental Law Program in 1978; it has long been ranked among the world's leading university programs. Pace's doctoral graduates teach environmental law at universities around the world. Pace's J.D. alumni are prominent in environmental law firms, agencies and non-profit organizations across the U.S. and abroad. In 2016, the Law School received a transformational gift from the family of Elisabeth Haub, in recognition of its outstanding environmental law programs. For more information visit http://law.pace.edu.

WHAT'S NEW IN 2020 FOR BANKRUPTCY: Discharge of Student Loans?!

By Julie Cvek Curley
Chair, WCBA Bankruptcy & Creditors' Rights Committee

The Bankruptcy & Creditors' Rights Committee held its first CLE program of the year on February 6, 2020. Thank you to the speakers: Mark Tulis, Marianne O'Toole, Brian Ryniker, and Dawn Kirby for their time and contribution to the program. The program was well attended, and the panel speakers were engaging and spirited with their content. For those who missed the program, here are the highlights:

Discharge of Student Loans

On January 7, 2020, Chief Bankruptcy Judge Cecelia G. Morris, S.D.N.Y. issued a decision discharging student loans! A first in a very VERY long time. In *Rosenberg v. N.Y. State Higher Education Services Corp.* (S.D.N.Y. Adv. No. 18-9023), Chief Judge Morris discharged the debtor's student loans and vigorously pushed back on the "myth" that it is "impossible" to discharge student loans under the standard set forth in *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987), noting that the cases following *Brunner* "have become a quasi-standard of mythic proportions so much so that most people (bankruptcy professionals as well as lay individuals) believe it impossible to discharge student loans." Chief Judge Morris' decision in Rosenberg doesn't change the standard for the discharge of student loans, it changes the interpretation of the case law determining dischargeabilty of these loans. The Court found that the debtor met the 3-prong test of "undue hardship" set forth in *Brunner*:

1. If forced to repay the loans, the debtor could not maintain a "minimal" standard of living. Relying on income listed on the debtor's means test and the IRS standards for living expenses, the Court determined that the debtor could not both pay his ordinary living expenses and the loan repayment.
2. Do additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period? In the *Rosenberg* case, since the loan was accelerated and the entire amount was due, the Court found that since the debtor was presently unable to pay the entire $300,000+ due, this prong was satisfied.
3. Did the debtor make good faith efforts to repay the loan? The Court found this satisfied by finding that the debtor missed a few payments over many years, made payments even when his account was in forbearance, and actively communicated with the loan servicer.

The takeaway from the *Rosenberg* decision is that the facts and circumstances of the debtor and the loan are crucial in determining the dischargeability of student loans.

Chief Judge Morris' decision in *Rosenberg* is currently under appeal and it is expected that this case, and other similar cases across the country, will make their way to the Supreme Court soon. Stay tuned!

Student Loan Modification Program

A mere 3 weeks after the *Rosenberg* decision, Chief Judge Morris signed General Order M-536 adopting the Student Loan Mediation Before Litigation Program Procedures (the "SLM Program"), which became effective January 27, 2020. The SLM Program creates a forum for debtors and lenders to discuss consensual repayment options for any Student Loan. The SLM Program facilitates two different types of Student Loan negotiations: (1) requests for Student Loan Repayment Option relief, such as a loan modification, and (2) requests for the resolution of disputes over the dischargeability of a Student Loan debt. SLM parties may request SLM with respect to either type of negotiation by filing and serving such a request. The goal of SLM is to ensure communication and the exchange of information in an efficient and transparent manner and to encourage the parties to finalize a feasible and beneficial agreement under the administrative oversight of the United States Bankruptcy Court for the Southern District of New York.

Forms are available: http://www.nysb.uscourts.gov/student-loan-mediation-litigation-program

The Small Business Reorganization Act of 2019 ("SBRA")

SBRA was signed into law on August 23, 2019 and became effective on February 19, 2020. The SBRA creates a new subchapter V of Chapter 11 which is meant to streamline and reduce the prohibitive costs of reorganizing a debtor with no more than $2,725,625 in secured and unsecured debt. The SBRA is available to both businesses and individuals, but not for a single asset real estate entity.

Some new requirements:

- SRBA requires a status conference within the first 60 days of the Petition

(continued on page 17)

Updates in Workers' Compensation Law

By Michael Catallo, Esq.

Over the course of the last year there have been several changes to the New York Workers' Compensation landscape that impact how attorneys and claimants pursue claims.

One of the most pressing issues currently being litigated aggressively is whether a claimant can receive a schedule loss of use award to an extremity if the claim is also established for a classifiable condition like a back or neck injury. The Appellate Division has attempted to clarify the issue in its findings in *Taher v. Yiota Taxi, Inc.*, 162 A.D. 3d 1288 (3d Dep't 2018), which found that a claimant is entitled to a schedule loss of use award when no initial award is made on a non-schedule permanent partial disability classification.

Nonetheless, the Workers' Compensation Board has inconsistently applied the higher court's ruling, resulting in frustration in the lack of clarity on this issue. In an October 2019 bulletin, the Board issued Subject Number 046-1211 that permits a schedule loss of use award stipulation attachment allowing parties to agree to a schedule loss of use award even in cases that include a classifiable injury. This is a significant development that allows the parties to work around the inconsistent findings by the Board regarding the application of *Taher* and its progeny.

An additional change to be aware of relates to the weekly caps for claimants with a permanent partial disability on or after April 9, 2017. Claimant attorneys need to be cognizant of the recent implantation of the weekly cap rules for claims at permanency. Insurance carriers are entitled to a credit beyond the first 130 weeks of paid temporary disability for injuries sustained on or after April 9, 2017. The Workers' Compensation Board issued Subject Number 046-936, which creates a safety net for claimants by extending the period of temporary disability beyond 130 weeks after the Board makes a determination that the claimant has not yet reached maximum medical improvement.

The first application of this subject number became effective October of 2019. Claimant attorneys need to secure medical documentation, if appropriate, that asserts the claimant has not yet reached maximum medical improvement, in order to preserve the full weekly benefits post classification.

The issue of medical marijuana has also become a hot topic in the realm of workers' compensation recently. The Workers' Compensation Board will authorize and direct carriers to pay for medical marijuana if:

- Certification written by medical provider who is registered with the Department of Health to prescribe medical marijuana
- Provider is Workers' Compensation Board authorized
- Medical marijuana is for established site of injury or condition
- The usage is consistent with Public Health Law § 3360(7)
- The usage is consistent with the medical treatment guidelines

Michael J. Catallo, Esq., is a senior attorney at Rella & Associates, P.C. Michael has practiced law for over eight years. He has earned a reputation for aggressive litigation on behalf of injured workers in the field of New York Workers' Compensation, New York State and New York City disability pensions, and General Municipal Law 207(a) and (c). He was recognized as a "Rising Star" in the field of Workers Compensation in 2017, 2018, and 2019 for New York State Super Lawyers.

Highlights from the ABA House of Delegates Midyear Meeting 2020

By Hon. Adam Seiden

The 2020 Midyear meeting of the American Bar Association House of Delegates was held on February 17, 2020 in Austin, Texas. I was honored to represent our Association at the meeting. Thirty-six (36) proposals were brought before the House. Of those proposals, one was withdrawn for later consideration and four (4) were passed on the consent calendar.

The most debated and discussed proposal (number 115) was submitted by the ABA Center for Innovation and the Standing Committee on Delivery of Legal Services. In its final form, which was passed by a large margin, the proposal called for all jurisdictions to "consider adoption of regulatory approaches" to address the access to civil justice crisis in the United States. The proposal was significantly revised and amended before presentation to the house for consideration.

The changes to the proposal were brought about primarily through the work of the New York State Delegation. Most importantly, the amended proposal added the following language:

> "FURTHER RESOLVED, that nothing in this Resolution should be construed as recommending any changes to any of the ABA Model Rules of Professional Conduct, including rule 5.4, as they relate to non-lawyer ownership of law firms, the unauthorized practice of law or any other subject."

The way the proposal was originally drafted, it was not clear whether the American Bar Association was abandoning its prior positions against non-lawyer ownership of law firms and against the unauthorized practice of law. I have written to you many times on this subject. The organized bar has gone from attacking the provision of legal services to the public by non-lawyers as the unauthorized practice of law, to tacitly accepting it and trying to regulate it. The original proposal 115 could have opened the door further to having non-lawyers—who are not bound by the ethical or practice rules an attorney is bound to—providing legal services to the public without review or control by an admitted attorney. The result could have been harmful to the hundreds of thousands of people who need quality legal services and the thousands of lawyers who are not only looking for business, but also trained and ethically vetted before admission.

I believe a better answer to this problem is to develop methods by which attorneys can provide quality legal services less expensively rather than authorizing non-lawyers to provide the services. Surely, use of technological advances (e-filing in the lower courts, removal of time-consuming Court appearances and summary trials with remote testimony) can be used to reduce the cost of a practicing lawyer's involvement in "smaller" cases.

I believe the vigilance of the NYS Delegation, led by NYSBA President Hank Greenberg, saved the day. We have to move quickly to submit proposals that maintain attorney leadership in providing legal services to the public. Legal Zoom and their investment bankers and academia are not waiting around and simply collecting data (as the organized bar seems to be doing). They are proceeding with ever new methods that increasingly attempt to cut the lawyer out of the picture. For

example, the University of Arizona has started a program to train "licensed legal advocates" to provide legal advice to the public on civil matters stemming from domestic abuse. People will go to school for two years, be certified and then provide advice on all sorts of domestic abuse issues, such as landlord and tenant, orders of protection in Family Court, divorce and consumer protection.

It seems to me that the organized bar is moving too slowly on this issue and letting non-lawyers proceed as they wish. We sometimes forget that we are organizations that not only protect the public, but also help lawyers.

Finally, you should be aware of proposal 117, which deals with one of the current immigration issues. It was submitted by the ABA Commission on Immigration and urged the Federal Government to maintain an asylum system which affords asylum seekers due process and full and fair adjudication of their claims that complies with United States and International Law.

Recently, the United States has administratively created policies which direct that asylum seekers remain in Mexico pending adjudication of their claims, imposed limits on the number of individuals processed at each port of entry, prevented applications by seekers who did not apply for asylum protection in countries they have passed through on their way to the United States and transferred asylum seekers from the United States to other countries to apply for asylum there instead of in the United States. These actions seem contrary to several international agreements/treaties to which the United States is a party:

A 1967 Protocol relating to the Status of Refugees.

B 1951 Convention Relating to the Status of Refugees.

C Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

These treaties basically state that a seeker of asylum shall not be expelled or extradited if he would be in danger of torture, or where his life or freedom would be in jeopardy. These treaties and their dictates were subsequently codified into the Statutory Law of the United States. Further, our law (8 USC §1362) clearly states that such non-citizens who are making claims for humanitarian protection are entitled to due process proceedings, including the right to counsel. There is something seriously wrong about the United States violating its own statutes, and treaties to which we are parties by administrative fiat.

Should you want further information about these or any other issues, please do not hesitate to contact me or go to the ABA website. Once again, it was a privilege to represent our Association at the meeting.

Hon. Adam Seiden is the WCBA delegate to the American Bar Association. He is a past president of the Westchester County Bar Association, is currently and has been since 1995 Associate Judge of the Mount Vernon City Court and is in private practice in Mount Vernon, NY.

member Spotlight

Isabel Dichiara

In this feature, Tejash V. Sanchala, interviews WCBA members about their experiences and insights. Tejash is a former WCBA Board Member and Employment Law Committee Co-Chair.

Tejash can be reached at: tejash@sanchalalaw.com

In this month's spotlight, we are changing things up and learning more about WCBA's passionate and dynamic Executive Director.

Tejash: When did you join as Executive Director of the WCBA?

Isabel: December 2017

Tejash: Where did you work prior to joining the WCBA?

Isabel: I've spent most of my career in healthcare and with non-profit organizations in communications, marketing & fundraising, including a community theater and Westchester Medical Center.

Tejash: How did you become dedicated to working for community organizations?

Isabel: When I was in film school, I ended up serving as a producer for my classmates' productions. It gave me a variety of practical skills including organizing people, event planning, even budgeting. After school I looked at trying to break into the media industry but ended up with my first nonprofit job with the American Cancer Society while I was living in North Carolina.

Tejash: What is one of your favorite success stories at the WCBA?

Isabel: I really enjoy watching our members make connections that help them professionally. We have watched several of our younger attorneys network at WCBA events and use those opportunities to advance their careers.

Tejash: Who was one of your mentors?

Isabel: My former boss at Westchester Medical Center Kara Bennorth has definitely been an influence on me. She was a hardworking and driven professional who also had a family at home. She was, and continues to be, a great professional resource. I have been told that I "collect" people because they could end up helping me or I could possibly help them. I like to think that is the benefit of having been a good colleague throughout my career.

Tejash: If you were not in your current profession, what would you be doing?

Isabel: There's a joke in my family that certain among us are actually spies because of their work-based travel schedules. So maybe something related to covert operations that would play to some of my strengths like contingency planning. Either that or directing Hollywood blockbusters for Marvel.

Tejash: What might people be surprised to learn about you?

Isabel: At heart, I am a fairly introverted person. I prefer quiet downtime when I am away from work and tend to be more of a homebody. I

have also run a marathon and participated in a polar plunge (both while wearing a tutu). I can, and frequently do, sew clothing for myself and my kids (and occasionally my husband).

Tejash: What do you splurge on?

Isabel: I do like to buy boots, not always the most practical boots either. I do also love to buy fabric and have been known to save space in my luggage when I travel just in case I find a fabric store.

Tejash: What is the best hour of your day?

Isabel: First thing in the morning when I make my trip to the gym at 5 am. I get some time to myself to organize and plan my day. I also actually enjoy my commuting time for exactly the same reason.

Tejash: What are some of your favorite movies?

Isabel: As a former film student, I love movies especially when I have a chance to watch something other than my boys' choices. Some old favorites include "The Searchers" and "M". I am a fan of action movies and can't let a holiday season pass without the traditional watching of "Die Hard". I do also like some of the movies my kids really enjoy like "Frozen" and "Moana" even though we have watched them enough that everyone knows the dialogue.

Tejash: What is your favorite meal?

Isabel: Green curry tofu— the spicier the better. It was a favorite when I was expecting my older son and I would frequently drive to Swadee by myself at lunch to enjoy it. I also do love trekking to Bloomingdale's for frozen yogurt (plus a walk through the shoe department).

Tejash: What are some of your favorite vacation trips?

Isabel: Before my boys were born, my husband and I took an amazing trip to Hawaii. It was really a fascinatingly different culture from New York, especially the change of pace. We were also quite frequent travellers to Disney including running several of their half marathons over the years. With my boys, just about anything can be an adventure but we took a fabulous week in Myrtle Beach last year. The kids were fascinated by the ocean and have already offered their advice on what hotel they want to stay at this year.

Tejash: What is one of your favorite things to do in Westchester?

Isabel: I live in Dutchess County so I spend more of my time closer to home. When we do come to Westchester, we like the Greenburgh Nature Center and some of the outdoor spaces such as Kensico Dam. We have also been known to meet friends who live in the New York CIty for seasonal events as well.

ANNUAL SPONSORS 2020

SILVER SPONSORS

BodnarMilone LLP
Cuddy & Feder LLP
Kurzman Eisenberg Corbin & Lever, LLP
LachtmanCohen P.C.
Meagher & Clarke, PLLC
Yankwitt LLP

BRONZE SPONSORS

McCarthy Fingar LLP
Sterling National Bank
Thomson Reuters

CORPORATE PARTNERS 2020

Bank OZK
Grassi & Co.
Sterling National Bank
Quontic Bank

*For information about our **Sponsorship Programs** please contact:* ExecutiveDirector@wcbany.org.

At the Courthouse . . .

PLEASE NOTE: *Lunch with the Judges* and *Meditation for Lawyers* have been suspended.

Please visit www.wcbany.org for updates and online program offerings.

LUNCH with the JUDGES

Sponsored by LACHTMANCOHEN P.C.

A **FREE** series presented by WCBA's New Lawyers Section, Westchester Women's Bar Association and the New York State Trial Lawyers Association

Wednesday, April 8, 2020 | 12:30 pm

Join us for the *Lunch with the Judges* series featuring the Hon. Linda S. Jamieson and this month's special guest the Hon. Walter Rivera, Court of Claims, Acting Supreme Court Justice.

Hon. Linda S. Jamieson
WCBA President
NYS Supreme Court

All are invited! A unique opportunity to have lunch with Judge Jamieson and her guest in a casual setting with no formal agenda!

Westchester County Courthouse
111 Dr. Martin Luther King Jr. Blvd.
Room 103, White Plains, NY

To register go to www.wcbany.org/events and follow the prompts.

MEDITATION *for lawyers*

WCBA's Lawyer Assistance Committee presents a

FREE ONGOING WELLNESS SERIES

WEDNESDAYS | 12:30 pm–1:00 pm

Westchester County Courthouse
Attorney Lounge/Front Room
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York

Information: Ben Felcher-Leavitt, Esq.
benleavitt@leavittlegal.com

BANKRUPTCY

(continued from page 10)

Date. The debtor must file a report at least 14 days before the conference disclosing its efforts to attain a consensual plan of reorganization

- Subchapter V Trustee whose role will be to account for all property received, examine proofs of claim and object to improper filings, to oppose the debtor's discharge, if advisable, to furnish information concerning the estate if requested by a party in interest, and to make a final report and account of the administration of the estate.
- The debtor must file a Plan within 90 days of the Petition Date. The period may be extended if "attributable to circumstances for which the debtor should not justly be held accountable.
- Only the debtor may file a Plan.
- No committee will be appointed under Subchapter V unless the court for cause orders otherwise.
- No disclosure statement is required unless the court for cause orders otherwise. A Plan shall include a brief history of the business operation of the debtor, a liquidation analysis and projections with respect to the ability of the debtor to make payments under the proposed Plan of reorganization.
- No Absolute Priority Rule: Owners of a company that is not paying its creditors in full may now retain their interest even when an impaired class does not vote to accept the Plan.
- Modified Cramdown Rules: If all impaired classes do not vote to accept the Plan, the court may confirm the Plan so long as it does not discriminate unfairly and is "fair and equitable".

Other important changes effecting all bankruptcies and preference claims

- The $10,000 threshold is increased to $25,000 for actions that must be commenced in the jurisdiction where the defendant is located, not in the jurisdiction where the debtor's case is filed.
- There is now a due diligence requirement which requires the preference plaintiff to have undertaken "reasonable due diligence in the circumstances of the case" and "taking into account a party's known or reasonably knowable affirmative defenses".

Upcoming Events

Stay tuned for the upcoming events of the Bankruptcy & Creditors Rights' Committee:

1. The Annual Judge's Roundtable will be held this Spring – date and location to be determined.
2. Committee meeting to be held in March to discuss open co-chair position and any other topic you want! Make sure that you are a member of the WCBA and a member of the Bankruptcy Committee (it's free!) to get all the notices.
3. Israel 2020 New York Lawyer's Tour from Aug 29 – Sept 8. Limited spots available! Contact David Babel for more info 718-881-7964

Julie Cvek Curley, Esq., is a partner of the law firm Kirby Aisner & Curley LLP and focuses her practice on Corporate and Consumer Bankruptcy. She currently chairs the Bankruptcy and Creditors' Rights Committee and sits on the WCBA's Executive Committee.

FROM THE BACK BENCH

BY RICHARD M. GARDELLA, ESQ.
Editor-in-Chief
WCBA Past President

Richard M. Gardella, Esq., is counsel to Bertine, Hufnagel, Headley, Zeltner, Drummond & Dohn LLP. He is a past president of the Westchester County Bar Association and the Westchester County Bar Foundation, the editor-in-chief of this *Magazine*, and a former WCBA delegate to the American Bar Association and the New York State Bar Association.

One hundred twenty-two years ago this month, William Sydney Porter, a former bank employee, was sentenced to serve five years in an Ohio federal penitentiary for misappropriation of bank funds in the amount of $854.08.

While it is not entirely clear that he deserved that sentence or that he really was guilty of criminal wrongdoing, his sentence serving proved to be a major turning point in his life.

Licensed as a pharmacist, Porter helped pass prison time as a hospital assistant at the penitentiary, but that employment was not the source of the 36-year-old's transformation and future life role.

Porter's varied and wide life experience before his prison stay, augmented by his jail experience, filled the attic of his mind with a host of colorful characters, story lines and descriptive power. A former newspaper man and news weekly publisher, he turned his skill with the pen into his life focus. That transformation and focus set the jail inmate on a new life path, leading him to write in earnest, ending years of dabbling with his writing and cartooning skill. That new concentration over the short span of life remaining to him led him to become one of America's most prolific and famous short story writers.

In an attempt to hide his prison inmate status, he wrote under a number of pseudonyms and used an outside friend to get his work to publishers. All told he wrote 14 published short stories while serving time.

His prison work routine was described this way by a guard:

> After most of his work was finished, he would begin to write … He … would often work for two hours continuously without rising. He seemed oblivious to the world of sleeping convicts about him, hearing not even the occasional sigh or groan from the beds which were stretched before him in the hospital ward or the tramp of passing guards. After he had written for perhaps two hours, he would rise, make a round of the hospital, and then come back to his work again.[1]

In 1901 Porter was released from prison on good behavior after serving three years. In the next year he moved to New York City where his short story career took off under his final and best-known writing pseudonym—O. Henry.[2] Altogether he went on to write 301 published short stories under the O. Henry pen name.

This artistic culmination of Porter's life makes one wonder if Divine inspiration plays a part in such creativity. Certainly, his early life struggles combined with his limited education suggest the touch of providence.

Born in Greensboro, North Carolina, on September 11, 1862, the boy who became O. Henry was shipped off with his brother to live with his paternal grandmother and an aunt three years later. His mother's death led to the move. Porter attended a private school run by his aunt Lina, who he later credited with fostering his literary interest.

In 1877 at the age of 15, Porter left school for good to work as an apprentice at his uncle's pharmacy becoming licensed to practice pharmacy three years later. The next year suffering early stages of tuberculosis, Porter moved to Texas where he first worked on a cattle and sheep ranch for two years. At the ranch, he began writing amusing letters and drawing cartoons.

In 1884, he moved to Austin, Texas, where he met his future wife, Athol Estes. They were married three years later. Working as a draftsman in the Texas Land Office, he loses his first born, a son, to infant death. In 1889, a healthy daughter is born, but Athol's condition is weakened.

In 1891, O. Henry leaves the Land Office to take a job at the First National Bank of Austin. Three years later, Porter acquires a printing press and creates a humor weekly called The Rolling Stone.

Early success disappears after Porter's satire steps on too many toes leading to the weekly's death.[3]

In December of 1894, a bank audit reveals a shortage in his accounts. No state prosecution resulted after Porter's father-in-law offers to repay the shortage, but a federal grand jury is given the case. It does not indict.

With his wife's health in decline, the future short story writer moves to Houston where he takes a job as a reporter, columnist and a sometime cartoonist at the Houston Post.

Federal authorities persist in their effort to prosecute Porter and in February 1896 he is arrested again. On his way to Austin to face trial, he switches trains and flees to New Orleans. Several weeks later, he escapes to Honduras. The following year he returns to Texas to be at his wife's death bed. Before she dies in July, she urged him to develop as a writer.

In December of 1897 his first story, the *Miracle of Lava Canyon*, is published. Two months later, the trial which convicted him leading to his prison sentence begins, ironically launching him on his final and storied career path.[4]

After writing under the O. Henry name for several magazines, in December of 1903 he begins writing a story a week for the Sunday New York *World*, a schedule that extends to February 1906. That year also sees the publication of the second collection of his stories under the title *The Four Million*. It is drawn from his New York experience. His first collection published two years before under the title *Cabbages and Kings*, dealt mainly with his Honduras days. A third collection published in 1907 as *The Heart of the West* relied on his life in the Texas Southwest. Six more volumes of his stories are published before his death on June 5, 1910. A combination of the effects of tuberculosis, diabetes and alcohol end his life. Three more collections of his work are published in the decade following his death.

Despite his popularity back then and the publication proof of that popularity, he reportedly died poor.

O. Henry Today: A Forgotten Man

O. Henry's immense popularity in the first decade of the 20th century did not last long.

He came under criticism for the sentimentality of such stories as The Gift of the Magi and The Last Leaf, two favorites here. His trick or snapper endings also were too cute for some critics. And of course, his writings were unmistakably period pieces, requiring footnotes to explain some of the dated references. Lastly, long novels in the twenties and thirties, which told the story inside characters more than the stories around them became the vogue for readers, pushing the short story aside.

The criticism of O. Henry soon disappeared replaced by silent disinterest. It is not hard to find an otherwise literate person today who does not know the O. Henry name. Ironically, the interest in O. Henry has not faded to the same extent in Russia. In the land that produced Gogol, Dostoevsky and Tolstoy a master storyteller apparently is still appreciated.

Porter himself was not satisfied with his writing and apparently hoped to expand his art into novels. Unfortunately, his limited life did not give him the chance for artistic expansion. That's a pity.

One of O. Henry's short stories hints at the pain and pressure of the writing career he crafted for himself in the last ten years of his life. In *Confessions of a Humorist*, he pens a character much like himself where life is taken over by the drive to create -- a drive that relied on his daily experience and events to feed his humorous stories.

After initial success, the story's main character reports:

> "… After five or six months the spontaneity seemed to depart from my humor. Quips and droll sayings no longer fell carelessly from my lips. I was sometimes hard run for material. I found myself listening to catch available ideas from the conversations of my friends. Sometimes I chewed my pencil and gazed at the wallpaper for hours trying to build up some gay little bubble of unstudied fun."

Nothing was exempt from the humorist's need to plunder his life and surroundings for material. In the process, he becomes an unpleasant person, shunned by his own children. He only finds relief and a happy life when he abandons his writing to work as an assistant at a funeral home.

In real life, O. Henry never quit trying. His prolific output established him as a common man American original like Mark Twain before him and Will Rogers after him.[5]

Endnotes

1 *See Selected Stories of O. Henry,* introduction and notes by Victoria Blake, published by Barnes & Noble Books in 2003.

2 There are various stories concerning the O. Henry pen name's origin without convincing evidence as to its real origin.

3 There is no connection between the name of Porter's humor weekly and the similarly named rock group three quarters of a century later.

4 The federal court building where the trial was held was later named O. Henry Hall.

5 The introduction and notes to *The Selected Stories of O. Henry* by Victoria Blake were relied on here in preparing this column. Wikipedia was also consulted.

JOB OPPORTUNITIES

Employment Attorney: White Plains
Sapir Schragin LLP is seeking an associate with 2-4 years experience in employment law, representing employees and/or employers. Candidates should have litigation experience; strong writing, research, advocacy and time management skills; good communication skills; the ability to work independently and immediately step in and perform basic litigation and other tasks such as drafting letters and pleadings, motions and discovery demands. Candidate must be licensed to practice in New York. Please submit cover letter and resume to edevito@sapirschragin.com

Associate Attorney: White Plains
The law firm of Worby Vecchio Edelman LLP seeks an associate attorney with 5-10 years' experience. Responsibilities would include file management, depositions, court appearances, motion practice, and potentially trial work on mid-range valued cases. Our office is located in White Plains, across from the train station. Please fax resumes to 914-684-0326.

OFFICE SPACE

Downtown White Plains
Well known, prestigious White Plains litigation firm, in premier building at 235 Main Street, White Plains, NY, has two offices available for sublease: one large interior office (with natural light through high wall windows) can accommodate two professionals; and a corner windowed office with a spectacular view of central White Plains. Gorgeous suite, with plush carpeting, colorful walls, french windows and natural wood furniture in conference room. Prime location, walking distance to the courts and the train, in the heart of downtown White Plains, across from the City Center. Includes supply room with high capacity copier/fax machine/scanner, kitchen, wifi, digital telephone system and two conference rooms. One large enough to accommodate 30 people. In addition, we have overflow litigation work, available to the prospective sub-tenant, if qualified to do the work. Please contact Fatima Esteves, Gash & Associates, P.C. at (914) 328-8800 or e-mail Gary.Gashlaw@Gashlaw.com.

Downtown White Plains
Two offices, each with 2 oversized windows, overlooking downtown in refurbished suite with phone, reception, conference room, WiFi, walking distance to courts, restaurants and trains. Each office $1,000/month or best offer. Call 914-761-1133 or email info@alegrialaw.com.

Downtown White Plains: One Barker Ave., 2d Floor
10 x 15 office with two windows and views. Class A building, State of the art 4,000 square foot Luxury Suite with double glass entry doors and glass enclosed reception area. Very friendly environment of lawyers with separate practices. Short walk to courts, bus terminal and train. Wired for telephone, cable, Internet. $1,200.00 per month plus parking. Receptionists will greet your clients and guests. Large well-furnished conference room. Full kitchen with water cooler, microwave, refrigerator and sink, coffee and tea all FREE. Postage meter & copier at cost. Client and visitor parking on site. Call 914-997-0071 or email: michael@nylegalhelp.com

White Plains
Office space available in White Plains legal/tax firm suite: Large interior furnished office, secretary/paralegal space, use of medium size conference room and other office amenities; possible affiliation for seasoned estate planning attorney. Please fax inquiries to 914-597-7930.

White Plains
Office space available within elite litigation firm at 140 Grand Street. Access to kitchen, conference rooms and lounge are included. On-site parking is available. Fitness center, café and 24 hour security in the building. Two offices for rent at $1000/month each. One larger office at $1500/month.
For more information, please call Ilisa at (914) 686-1500 or email info@yankwitt.com.

WHITE PLAINS
Furnished office available at 399 Knollwood Road, 3rd floor. Bright, medium sized office with windows overlooking Rt. 287. Small, quiet employment-law law firm. Rent includes use of copier and postage machine, receptionist service, use of kitchen and conference room, private free parking lot, cafeteria, and free fitness center to tenants only. Easy access on and off 287. Contact edevito@sapirschragin.com.

ADVERTISING RATES

AD DEADLINE: 1st of the month prior to publication.
10% discount on three or more prepaid issues; 15% discount on one year prepaid.

DISPLAY ADS

Size	Dimensions		Member	Non/Member
Bus. Card H	2hx3½w"	b/w	$90	$115
Bus. Card H	2hx3½w"	4/C	$160	$200
Quarter Page	4hx3½w"	b/w	$210	$260
Quarter Page	4hx3½w"	4/C	$265	$330
Half Page H	4hx7½w"	b/w	$405	$500
Half Page H	4hx7½w"	4/C	$525	$650
Half Page V	9¾hx3½w"	b/w	$450	$560
Half Page V	9¾hx3½w"	4/C	$630	$785
Full Page	9¾hx7½w"	b/w	$815	$1025
Full Page	9¾hx7½w"	4/C	$1050	$1325

CLASSIFIED ADS

Magazine	Member	Non/Member
Up to 40 words	$65	$100
Up to 80 words	$95	$135

WEB & WEB/PRINT (MAGAZINE) COMBO

	web/print combo	web only
Up to 40 words (Member)	$100	$55
Up to 40 words (NonMember)	$140	$80
Up to 80 words (Member)	$140	$80
Up to 80 words (NonMember)	$180	$130

Contact: editor@wcbany.org (914) 761-3707, ext. 40, or download our **Media Kit** at www.wcbany.org.

Westchester County Bar Association
4 Westchester Park Drive, Suite 155
White Plains, NY 10604

Call for Submissions for the . . .

Westchester Bar Journal 2020

SUBMISSION DEADLINE: AUGUST 30, 2020

The editors of the Westchester Bar Journal (WBJ) encourage the submission of manuscripts for publication by our members!

It is the goal of the Bar Journal Committee to ensure that the *WBJ* remains a scholarly legal publication of the highest quality with informative and timely articles on diverse areas of law—both nationally and locally.

GUIDELINES: Articles should be between 1500-4000 words in length; submitted in Microsoft Word and be free from formatting such as page headers, footers or all caps. Articles should be accompanied by a brief biography and high resolution head shot of the author(s).

CITATIONS: Citations should be in accordance with the *Uniform System of Citation* published by The Harvard Law Review Association ("Blue Book"), and accuracy verified by the author.

REPRINT POLICY: Generally, we do not accept reprinted articles. An author who submits a previously published article MUST advise the WCBA of the prior publication name and issue date and obtain from the original publisher a written letter granting the WCBA permission to reprint the article.

COPYRIGHT: Material accepted for publication becomes the property of the Association. The Association may republish on the WCBA website, Westlaw, Lexis-Nexis or in other print or electronic publications.

SUBMISSION: **Deadline for submissions is August 30, 2020.** Please email manuscript, with "*Westchester Bar Journal* submission" in the subject line, to Roni@wcbany.org.

The editors reserve the right to accept or reject any manuscript and request changes when deemed necessary.

The *Westchester Bar Journal* is an annual publication of the Westchester County Bar Association and has been published since 1956.

To request more information please contact:

Roni Brumberger
Roni@wcbany.org
914-761-3707, ext. 40

Printed by Fort Orange Press, Albany, NY, on FSC certified paper with soy based inks.

PRINTED WITH SOY INK