



WESTCHESTER COUNTY BAR ASSOCIATION NEWSLETTER

May 2005

Honorable Dennis W. Archer to be Featured Speaker at WCBA's 107th Annual Banquet

The WCBA is pleased to announce that the the Hon. Dennis W. Archer, Past President of the Amercian Bar Association, will be the featured speaker at our **107th Annual Banquet** which will take place on **Wednesday, May 18, 2005** at the Westchester Marriott in Tarrytown. This year, by popular request, the open bar reception has been extended and begins at 6:00 p.m., and dinner will be served at 7:30 p.m. We pledge to keep the speeches short and adjourn by 9:00 p.m.!



*Honorable
Dennis W. Archer*

We are very fortunate to have Judge Archer as our speaker and look forward to his remarks on the role of a bar association and the importance of bar membership. In addition to his best known function as President of the ABA during 2003-2004, Judge Archer also served as Mayor of Detroit from 1994-2001, as Associate Justice of the Michigan Supreme Court from 1986-1990, as a Michigan State Delegate from 1990-1996, and as a Member of the ABA House of Delegates from 1979-1996. He is recognized as an outstanding trial lawyer and currently serves as Chairman of the Detroit law firm of Dickinson Wright, PLLC.

In addition to Judge Archer, honored guests at the Banquet will include the newly-elected Justices of the Supreme Court for the Ninth Judicial District, Hon. Lester B. Adler, Hon. William J. Giacomo, Hon. Joan B. Lefkowitz, Hon. Howard Miller, Hon. Bruce E. Tolbert, and Hon. Alfred J. Weiner, as well as Westchester County Court Judges Hon. Francis A. Nicolai and Hon. Gerald Loehr, and newly retired County Court Judges Hon. Fred L. Shapiro and Kenneth H. Lange. The WCBA also will honor our retiring President Hon. Sam D. Walker and welcome our newly-elected President John. S. Marwell and all of the other newly elected Board members during the Induction Ceremony which will be presided over by Hon. Janet DiFiore, Supervising Judge of the Criminal Court of the 9th Judicial District.

Invitations have been sent out so don't forget to respond! It will be a great night!

A President's Farewell Message

By Hon. Sam D. Walker



I thank my fellow members for allowing me this unique opportunity to serve my profession and my community. It has been a remarkable year. But now my term of office draws to a close. They say time passes by quickly when you are having fun and this year has certainly sped by. Has it all been fun? You would not believe me if I tried to suggest such a thing, but without a doubt, it has been full of challenge and opportunity. This has been an experience of a lifetime for me. I have met wonderful lawyers, I have worked hard to serve the public and to play my role in keeping the wheels of justice turning.

I am particularly grateful for the special honor bestowed upon me when I was elected your 60th President and the first person of color to hold such position. For me it was a significant accomplishment and it is my hope that this is just the beginning of a new era for our Bar Association. It is crucial that our leadership continue to strive to ensure diversity, a diversity that reflects the complexion and gender of those we serve. We must lead by example.

It is indisputable that my election and installation as President of the Westchester County Bar Association is a highlight of my legal career. Though significant, my pride in this accomplishment was not solely focused on the fact that I was the first person of color to be elected as president. I was certain then, as I am now, that my ascension was not merely due to my race but to my years of hard work and commitment to the Westchester County Bar Association.

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URGENT E-Mail Alert

ATTENTION MEMBERS! In order for you to have full access to our new Website, we need your e-mail address in our database! An e-mail address is necessary for you to register on-line for CLE, pay dues, join Sections, and to view the members only pages. Please send your e-mail address to **membership@wcbany.org**, or be prepared to enter it when you first use the website.

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Westchester County Bar Association NEWSLETTER

Published monthly by the WCBA
300 Hamilton Avenue, Suite 301
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ADVERTISING RATES

Display Ads:	Size	Members	Non-members
Standard Business Card	(2" h x 3.5" w)	\$75.00	\$130.00
Quarter Page	(4.5" h x 3.5" w)	\$175.00	\$250.00
Half Page Horizontal	(4.5" h x 7.5" w)	\$350.00	\$500.00
Half Page Vertical	(10" h x 3.5" w)	\$350.00	\$500.00
Full Page	(10" h x 7.5" w)	\$700.00	\$1000.00

Classified Ad Listings:

Up to 5 lines	\$50.00	\$ 75.00
Up to 10 lines	\$75.00	\$100.00
Over 10 lines	\$8.00 per line	\$ 10.00

DEADLINE FOR ALL ADS is the 10th of the month prior to publication.

We accept ads in the following formats: Word, Word Perfect, Microsoft Publisher, Adobe Illustrator, Adobe PageMaker, PhotoShop, InDesign, or as a JPG, TIFF, EPS, or PDF file. A hard copy proof of the ad is REQUIRED in order to ensure the accuracy of the electronic file. Please include the fonts and any images or art work when submitting electronically. Proofs will be sent and **approval presumed if not OKd within 24 hours.** Fax 914.761.9402, e-mail **editor@wcbany.org**.

NYSBA REJECTS SAME SEX MARRIAGE AS THE ONLY ALTERNATIVE AND ENDORSES RIGHTS OF SAME SEX COUPLES

The New York State Bar Association (NYSBA) has called for the State Legislature to enact legislation to confer the same rights on same sex couples as are currently granted to heterosexual married couples. NYSBA did not endorse same sex marriage *per se*, but its statement left it to the Legislature to determine whether these rights should be in the form of a statute creating a domestic partnership registry, a civil union statute, or an amendment to the statutory definition of a marriage to include same sex couples.

The action by the NYSBA was taken at a meeting of its House of Delegates on April 2, 2005, where a series of votes in the House defeated various alternate proposals. The vote approving this resolution was 120 delegates in favor and 40 opposed.

Other alternatives that were defeated in favor of the call for legislative action included postponing action until after the New York State Court of Appeals decides current litigation involving same sex marriage, a proposal that NYSBA not adopt any recommendation as to the rights of same sex couples, and a proposal that the Bar Association endorse same sex marriage. A proposal by the Elder Law Section that would have affirmed NYSBA's commitment to treat all persons equally regardless of sexual orientation, but not recommending a specific remedy, was defeated as well.

The vote by the House was taken in response to a report prepared by a NYSBA special committee chaired by Richard Whiteman and NYSBA past president A. Thomas Levin. The lengthy report reviewed the present legal treatment of same sex couples, the history of the law of marriage, and constitutional questions raised by same sex marriage. The special committee split as to the policy that the Bar Association should adopt on same sex marriages. The report of the special committee will be transmitted to the legislature, together with Bar Association recommendations.

The debate in the House that preceded the votes took nearly three hours. Among the reasons set forth by those who spoke in favor of the action that NYSBA eventually accepted were equal protection as guaranteed by the United States Constitution, that equal treatment would be a natural development of the law and social conditions, and that it continues the commitment of the Bar Association to civil rights and diversity. Those who spoke against the position stated that these are social and not legal issues for which attorneys have no special insight, and they cited the potential of alienating Bar Association members.

Five of six Westchester County Bar Association delegates were present for the vote and all five voted against

the proposal that finally was adopted. Delegates from the Ninth Judicial District, some of whom are also WCBA members, were split on the issue. Westchester County Bar Association President, Hon. Sam Walker, abstained from the vote. ■

WCBA Members Responded...

When the WCBA recently sent a mailing to the general membership inviting comments on the issue, slightly more than three percent of the membership responded and a majority of the three percent indicated a preference for the position that whether the legislature should grant formal legal status to same sex couples is a question of social policy as to which the NYSBA should not make a recommendation; overall, the small percentage of the WCBA membership that responded would prefer to leave matters of this nature to the appropriate governmental officials and entities to determine the appropriate policies. ■

WORBY GRONER EDELMAN

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Significant Personal Injury And Medical Malpractice Matters

RECENT RESULTS OF NOTE

- \$9.26 Million*: **Med Mal** - Infant neurological injury
- \$9.65 Million*: **Med Mal** - Death from negligent treatment of hematologic disorder
- \$2.3 Million: **Med Mal** - Resulting in 2 years pain & suffering
- \$1.67 Million: **Med Mal** - Negligent treatment of infection
- \$1.3 Million: **Med Mal** - negligent gall bladder surgery
- \$4.2 Million*: **Labor Law** - Wrongful death; 55 Year old carpenter working "off books"
- \$1.45 Million: **Auto** - Half-inch leg shortening
- \$1.17 Million: **Auto** - Leg fractures to teacher
- \$4.2 Million: **Neg. Security** - Verdict solely for 20 minutes pain & suffering

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BAR LEADER MEETING

By Hon. J. Radley Herold

On March 21, 2005, Bar Association leaders from the metropolitan area and Long Island met with the Officers and Board members of the Westchester County Bar Association at the Willett House in Port Chester, New York, to discuss the proposed changes to the Rules of the Chief Administrator of the Courts made in recommendations by the Commission to Promote Public Confidence in Judicial Elections. The Commission, appointed by Chief Judge Judith S. Kaye, proposed rules addressing, among other things, the establishment of judicial qualifications commissions.

WCBA Vice President Hon. Adam Seiden chaired the meeting which was opened with comments by Michael Sweeney, Esq., counsel to the Commission. The Commission addressed questions raised within an elected judiciary system and not those of an appointed judiciary.

The Commission polled 1000 registered voters and found that a high percentage of them did not know that State Supreme Court Justices are elected. The poll further revealed that there is concern for the independence of the judiciary because of factors including campaign contributions and low voter participation in judicial elections because voters do not have enough information about the candidates.

Low overall voter turnout, the nature of the campaign activity in judicial races, and the lack of diversity on the bench leading minority populations to believe that they would not get a "fair shake" in court also were raised as issues of concern.

The Commission recommended the establishment of an "Independent Judicial Elections Qualifications Commission" in each of the judicial districts to review the

"The Commission recommended the establishment of an "Independent Judicial Elections Qualifications Commission" in each of the judicial districts to review the qualifications of candidates for election..."

qualifications of candidates for election to the Supreme, County, Surrogate, Family, New York City Civil, District and City courts. As recommended, each commission would have fifteen members, some of whom would be appointed by the Governor and some by legislative leaders, the Chief Judge, the Presiding Justice of the applicable Appellate Division, the President

of the New York State Bar Association, and four local bar associations within the specific judicial district and designated by the Presiding Justice of the local Appellate Division. The Commission would issue a rating, after interviewing each candidate, indicating whether each is "qualified" for judicial office. There would be no further ranking within the term "qualified."

Hon. Sam D. Walker, WCBA President, pointed out that no matter what methodology was used, the objective

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was to have qualified people on the ballot. Susan Kluewer, Esq., Nassau County Bar Association President, asked why the local bar associations, having greater familiarity with the local candidates, and having a better impact than the more bureaucratic and removed District Commission, could not be designated as the screening body and assisted by the Commission?

Albert W. Cornachio, Esq., representing the Columbian Lawyers Association, asked why there could not be state-wide standards, yet keeping the local bar associations for the purpose of screening candidates. Julie Kattan, Esq., representing the New Rochelle Bar Association, expressed the concern that if a candidate were found "qualified" by the Commission system, he or she might not even bother to go to the County Bar Association screening committee. Judge Walker responded that if the standards for the local ratings were very different from each other, the candidates would still come to the local bar association screening committees.

The WCBA Judiciary Committee, under its new rules, intends to interview and rate candidates for judicial positions as early as possible in the process and make those ratings known to both the public and the political leaders. It is intended that this publication will take place before the political parties make their own determinations as to who their nominees will be. ■

Attention - Attorneys:

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and the Trusts & Estates Section of the
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Wednesday - Sept. 21, 2005; and
Wednesday - Dec. 7, 2005
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- Time:** **Arrival/Check-In:** 11:15 am - 12:00 pm
CLE Program: 12:00 pm - 2:00 pm
- Cost:** Free of Charge - with Refreshments
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Mark Your Calendars

LAW DAY, Wednesday, May 4th
at 2:00 p.m. Westchester
County Courthouse Jury Assembly Room

WCBA Memorial Service,
Wednesday, May 11th
10:00 a.m. Westchester County Courthouse
Joseph F. Gagliardi Courtroom 800

This year's Service, led by WCBA member Ralph Nobile, Esq., will honor deceased members Hon. Joseph J. Amato, Marvin A. Cooper, Esq., Hon. Jesse M. Eisen, Gerald Goldfeder, Esq., Ronald H. Goldsand, Esq., Sheldon M. Goodman, Esq., Steven C. Greene, Esq. Edward H. Miller, Esq., Richard A. Ross, Esq., Hon. Eugene L. Scancarelli, Hon. Allan Jerome Scheffler, Leonard Shabasson, Esq., Leo A. Sweeney, Esq., and Richard C. Thompson, Esq.

WALK THE WALK, Sunday, May 15th



Walk with WCBA members and many others to raise money for the Maria Fareri Children's Hospital at Westchester Medical Center. Contact Joseph P.

Villanueva, Esq. at joseph@villanuevalaw.com

107th Annual Banquet, Wednesday, May 18th
6:00 pm Westchester Marriott, Tarrytown, NY

Joseph F. Gagliardi Award for Excellence
Wednesday, May 25th 4:00 p.m.
Westchester County Courthouse
Joseph F. Gagliardi Courtroom 800

WCBA Annual
Golf Outing,
Monday, July 25th
Whippoowill Golf Club



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WCBA CLE CALENDAR OF EVENTS

Unless otherwise indicated, approved New York CLE credit types for each seminar will be determined as seminar materials are prepared. If you have any questions please call (914) 761-3707 ext. 13. (T) indicates program which qualifies as Transitional for newly admitted attorneys.

MAY 4, WED.

FAMILY LAW SECTION

Chair: Neil Fredman, Esq.

Program Chairs: Neil Kozek, Esq. and Mitchell Cohen, Esq.

Topic: “Still More Issues in Matrimonial Practice” (T)

Speaker: Hon. James A. Montagnino

Place: Whitby Castle

330 Boston Post Rd., Rye, NY

Time: 5:30 p.m. – 8:00 p.m.

Price: \$ 75.00 Mem./ \$90.00 Non-Mem.

Sponsor: Hudson Valley Bank

1 Credit of Ethics (Includes Supper)

ALSO: Update from the Miller Matrimonial

Commission: A View From the Top – given by

Hon. Sondra Miller

AND: A Toast to the Honorable Fred Shapiro, thanking him for the many years of service to the Matrimonial Bar.

MAY. 13, FRI.

REAL PROPERTY SECTION

Chair: Ira S. Goldenberg, Esq.

Topic: “Westchester County Clerk Spano Presents:

Public Information Through Innovative Technology” (T)

Speaker: Leonard N. Spano, Westchester County Clerk

Place: Laguna Restaurant

189 East Post Rd., White Plains

Time: 8:00 a.m. – 9:00 a.m.

Price: \$20.00 Mem./ \$35.00 Non-Mem.

Sponsor: Sleepy Hollow Bank

1 Credit of Law Practice Management (Includes Hot Breakfast)

MAY 23, MON.

ELDER LAW COMMITTEE

Chairs: Anthony J. Enea, Esq. & Antonia J. Martinez, Esq.

Topic: “Common Mistakes Made by the Elder Law Attorney” (T)

Speakers: Deepankar Mukerji, Esq., Westchester County Dept. of Social Services and Howard S. Krooks, Esq.

Place: Laguna Restaurant

189 East Post Rd., White Plains

Time: 8:00 a.m. – 10:00 a.m.

Price: \$25.00 Mem./ \$35.00 Non-Mem.

Sponsor: Choose Home Care

2 Credits of Professional Practice (Includes Hot Breakfast)

JUNE 6, MON.

TRUSTS AND ESTATES SECTION

Chair: Gary E. Bashian, Esq.

Topic: “Estate Planning For The Small to Mid-Size

Estate: To Credit Shelter or Not to Credit Shelter:

Renunciation” (DISCLAIMER) Trusts; Gift Giving

Powers in Powers of Attorney; Health Care Proxies;

Living Wills; and General Medicaid Rules” (T)

Speakers: Susan S. Brown, Esq., Howard S. Krooks, Esq.,

Lisa Newfield, Esq., Karen Walsh, Esq.

Place: Bank of New York, 4th Fl. Boardroom

123 Main St., White Plains, NY

Time: 5:00 p.m. – 7:00 p.m.

Price: \$35.00 Mem./ \$50.00 Non-Mem

Sponsor: Bank of New York

2 Credits of Professional Practice (Includes Supper)

JUNE 8, WED.

ADULT GUARDIAN SECTION

Chairs: Patricia Bave-Planell, Esq. and

Allison Guthrie Fischer, Esq.

Topic “Creative Advocacy in an Article 81 Proceeding – Come Ask the Experts” (T)

Speakers: Neil T. Rimsky, Esq., Ron Fatoullah, Esq.

Place: Berkeley College, 3rd Floor Theater Room

99 Church St., White Plains, NY

Time: 4:00 p.m. – 6:30 p.m.

Price: \$25.00 Mem./ \$35.00 Non-Mem

Sponsor: Hudson Valley Bank

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.5 Credits of Ethics (Includes Light Supper)

JUNE 13, MON.

TRUSTS AND ESTATES SECTION

Chair: Gary E. Bashian, Esq.

Topic: “Trusts and Estates Litigation: SCPA 1404

Depositions; Preliminary Letters; Waiver of Attorney

Client Privilege; Dead Man’s Statute; Confidential

Relationships and Burdens of Proof and Going

Forward”

Speakers: Joseph M. Accetta, Esq. and Gary E. Bashian, Esq.

Place: 360 Hamilton Ave., Theater Room

White Plains, NY

Time: 5:00 p.m. – 7:15 p.m.

Price: \$35.00 Mem./ \$50.00 Non-Mem

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**JUNE 16, THUR.
CONSTRUCTION LAW COMMITTEE
& REAL PROPERTY SECTION**

Chairs: Thomas Welby, Esq., Ira Goldenberg, Esq.
Topic: "Construction Contracts for Single Family Homes: 4 Different Views" (T)
Speakers: Roger C. Crawford, Esq., James P. Blose, Esq., Michael E. Greenblatt, Esq., + one other
Place: Dooley Mac's Publick House
 179 Mamaroneck Ave., White Plains
Time: 12:00 p.m. – 2:30 p.m.
Price: \$35.00 Mem./ \$50.00 Non-Mem.
Sponsor: Hudson Abstract Services
 2 Credits of Skills (Includes Buffet Lunch)

**JUNE 20, MON.
ELDER LAW COMMITTEE**

Chairs: Anthony J. Enea, Esq, Antonia J. Martinez, Esq.
Topic: "Use of Annuities in Medicaid Planning"(T)
Speakers: Antonia J. Martinez, Esq. and Lynn Selby, Financial Representative, Northwestern Mutual.
Place: Atria Riverdale
 3718-3726 Henry Hudson Pkwy., Riverdale, NY
 For directions contact Vicki 718.432.2448
Time: 8:00 a.m. – 10:00 a.m.
Price: \$25.00 Mem./ \$35.00 Non-Mem
Sponsor: Atria Riverdale
 2 Credits of Professional Practice

**JUNE 22, WED.
REAL PROPERTY SECTION
AND BANKRUPTCY COMMITTEE**

Chairs: Ira S. Goldenberg, Esq., Sidney Turner, Esq.
Topic: "Tax Consequences of the Sale of Residential Real Estate"(T)
Speakers: Joel Miller, Esq.
Place: Vintage Restaurant
 171 Main St., White Plains
Time: 12:30 p.m. – 2:00 p.m.
Price: \$25.00 Mem./ \$35.00 Non-Mem
 1 Credit of Professional Practice

SAVE THE DATE

**JUNE 23, THU.
TAX CERTIORARI AND
CONDEMNATION LAW COMMITTEE**

Topic: "Recent Legislative Initiatives and the Proposed Creation of a Commercial Assessment Ratio"
 Dinner CLE program

**JUNE 24, FRI.
CORPORATE & COMMERCIAL LAW COMMITTEE**

Topic: "CitiConnects/Westchester Connects: Government Grants, Incentives and Other Assistance"
 Lunch CLE program

Please register in advance when possible. Registrations later than 3 p.m. of the business day PRIOR to the seminar , or TWO days prior to a breakfast meeting, will incur a \$10 late fee and will be seated and provided written materials ONLY if space is available.

oo

**Westchester County Bar Association
Continuing Legal Education Registration Form**
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A copy of the WCBA CLE Rules and Procedures may be obtained by e-maling cle@wcbany.org or calling 914/761-3707 ext. 13. Your knowledge of the CLE rules and procedures is presumed when you register for a CLE.

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MOCK TRIAL WINNERS ANNOUNCED



For the second year in a row, Blind Brook High School has won the Annual Mock Trial Competition, defeating John Jay High School's excellent second place team. The unanimous three judge panel consisting of Surrogate Judge Anthony A. Scarpino, County Court Judge and WCBA President Sam D. Walker, and Mock Trial Chair Robert Redis, awarded Blind Brook the win, and a plaque will be awarded to the team at Law Day on May 4th.

The WCBA would like to thank all those who have participated in this event to make it such a huge success. We especially want to extend our gratitude to Aaron Banks who coordinated this year's extremely organized and outstanding competition.



And the winner is... Blind Brook High School.

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Are You The Next Terri Schiavo?

By Anthony J. Enea, Esq.

The unfortunate and sad events surrounding Terri Schiavo have, in recent weeks, focused national attention upon the importance of executing a properly drafted Advance Directive (DNR, etc.). In my opinion, the Schiavo case is not typical of the innumerable end-of-life decisions made on a daily basis. The events clearly drive home the importance of having documentary proof of your wishes relevant to life supporting treatments and end of life decisions. Having said that, I am quite cognizant of the fact that, as attorneys, we are often the last to heed our own advice.

The purpose of this article is not to comment on the Schiavo case, but to provide you with a basic understanding of Living Wills, Health Care Proxies, DNRs and some relevant case law. For starters, in a case involving the Westchester County Medical Center, the New York Court of Appeals established a "clear and convincing evidence" standard for cases concerning the refusal or termination of life supporting treatments. *Matter of Westchester County Medical Center on Behalf of O'Connor*, 72 N.Y. 2d 517, 534. NYS 2d 866, 531 N.E. 2d 607(1988). In the *O'Connor* case, the Court of Appeals held that, in the absence of documentary proof, testimony as to a person's prior statements as to life supporting treatments would be the only other admissible form of evidence. In *O'Connor*, the Court held that a Living Will would satisfy the "clear and convinc-

ing evidence" test if it was executed prior to incapacity. In another case, the Westchester County Supreme Court ordered the Wartburg Health Care Center to disconnect life support because there existed a Living Will clearly indicating the patient's intent as to life support. *Matter of May v. The Wartburg Health Care Center*, N.Y.L.J. 5/8/97 34 Col. 4 Sup. Ct. Westchester (1997).

Unlike a Health Care Proxy, there is no New York statutory authority recognizing a Living Will. A Living Will unlike a Health Care Proxy, does not allow you to legally designate an agent to make health care decisions but, as is illustrated by the *O'Connor* and *May* cases, a Living Will can be the documentary proof sufficient to demonstrate "clear and convincing evidence" as to the wishes of an individual. A Living Will is simply a written statement of one's wishes concerning the duration and types of life supporting treatments one may, or may not, want. For example, a Living Will could state your wish not to be placed on a feeding tube, ventilator or any other type of life support. It can also serve as a valuable means to support the decisions made by the agent under a Health Care Proxy when the Proxy does not contain specific directives of decisions of life supporting treatments. It is important, however, to insure that the terms of the Health Care Proxy do not conflict with the terms of the Living Will. Any inconsistency could be used by the medical facility as a reason for not honoring either document. The Living Will should be signed, dated and witnessed by two individuals.

Unlike a Living Will, a Health Care Proxy is a statutorily

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recognized Advance Directive pursuant to *Public Health Law §2980 et seq.*. A Health Care Proxy is a document that allows an adult to appoint a proxy/agent to make health care decisions when one is unable to make the decisions. In the Health Care Proxy, one can articulate his or her wishes about whether or not life supporting treatments are wanted, which specific types of treatments are wanted or not, and even the duration of the treatments. Although the Health Care Proxy applies to all types of medical care, it is necessary that the patient's wishes be specifically known by the proxy/agent, or specifically stated in the document, before the agent will be permitted to withhold feeding or have the feeding tubes removed.

In essence, one can specify the exact same requests relevant to life supporting treatments in a Health Care Proxy as in a Living Will, while having the added feature of specifically appointing a proxy/agent to make the decisions for you. In my opinion, the Health Care Proxy should be the document of first choice. Under present law, only one proxy/agent at a time can be appointed because there is no statutory authority for multiple agents to act. An alternate may also be, and should be, selected. The signature of two witnesses is also required. It is advisable that the witnesses not be the named agent/proxy or alternate, and that they not be family members.

As a result of the enactment of HIPAA (The Health Insurance Portability and Accountability Act), a Health Care Proxy should contain specific language in compliance with HIPAA authorizing the proxy/agent to obtain the medical and clinical records of the principal.

A Do Not Resuscitate Order (DNR), like a Health Care Proxy, is a statutorily created Advance Directive pursuant to *Public Health Law §2960 et seq.*. Unfortunately, a discussion of legislative history and the technicalities of "institutional" and "non-institutional" DNRs is more appropriate for a much more comprehensive article than this. Simply stated, the DNR statute allows one's agent to enforce his or her written wish not to receive CardioPulmonary Resuscitation (CPR). However, the agent appointed cannot make the decision to withhold CPR until the patient's physician determines that the individual lacks capacity to make the decision. A second physician must confirm the finding of incapacity. DNR orders are issued by the physician utilizing a form prepared by the New York State Department of Health. The order is normally prepared by the physician at the request of the patient, and signed and dated by both the physician and patient. Only one witness is required. Normally, clients who have had a history of chronic illnesses request DNR's. However, it is not necessary that one be terminally ill to have a DNR.

In conclusion, it is doubtful that a scenario like Terri Schiavo's would occur if one had executed a Health Care Proxy and/or a Living Will. Putting one's wishes regarding life supporting treatments in writing is imperative. Sample forms of a Living Will and Health Care Proxies can be found at the New State Bar Association website at www.nysba.org. Furthermore, as attorneys, we must be cognizant of the reality that it is highly doubtful that Congress would ever convene on a Sunday night to enact legislation to save the life of an attorney. ■

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But I would be remiss if I did not leave you with this thought: as lawyers and caretakers of the Constitution, we have an obligation and commitment to assure that it does not take another 106 years to elect the next president of color. The responsibility is ours as members of this great Association to reach out to lawyers of all genders, orientation and races, to welcome them as members and to promote them into leadership positions within the organization.

As I look back, I began my term of office with a zealous desire to encourage the growth of a more inclusive membership. I believed that our organization has the potential of becoming the type of association where lawyers, regardless of nationality, ethnicity, gender and orientation would find scholarship, support, respite and encouragement for their diverse views, interests, and professional concerns. Perhaps, during the course of the year, other issues and topics of concern to our membership took the forefront, but my enthusiasm for a Westchester County Bar whose membership reflects and speaks for our multicultural population has never waned. As I reach the close of my term, I continue to trust that the Association will embrace the goal of inclusion and diversity, and I am certain that my successor will deem this to be of similar importance. You, the members, are committed and fair minded professionals and I know you will support this necessary work. To ignore the needs of our pluralistic profession and society would be a rejection of all our progressive measures.

I must also take this opportunity to congratulate our newly elected officers and I look forward to working with them in my capacity as Immediate Past President and Chair of the Nominating Committee. I would also like to thank the Board of Directors for its support, and, more particularly, the members of the Executive Committee who have expended an enormous amount of time on behalf of this Association. Your efforts are a true example of volunteerism.


To lead an organization such as ours requires a dedicated and committed support staff. The Westchester County Bar Association has been extremely fortunate to have Amy Patterson as our Executive Director. Amy continues to be the backbone of our Association. On behalf of the membership I would like to express sincere thanks to Amy and to her support staff for the marvelous job that they have done to fulfilling our commitment to those we serve.

Finally, I must comment on something that has struck me over the past year, which is the extent to which our profession has changed. I always envisioned the law as

a tool for positive social change and, in particular, the role of law in remedying injustices of the past. I rarely viewed our profession as a purely business endeavor. But it became clear that times have truly changed. As we chart our future course, the fundamental awareness of "the business of law" must be of major concern in our roster of priorities.

It is equally important that we develop a retention policy that is based upon tolerance for each of our particular points of view. We have over 2000 perspectives on the various issues facing our profession and each is as important as the next. We must demonstrate that as an Association, we are deeply committed to creating an environment where different views and opinions can flourish. There has to be a genuine willingness to accept and evolve rather than to pursue political correctness. Then and only then will we be able to recruit and retain new lawyers from across the board and particularly those who historically have felt excluded from participation.

In all it has been a satisfying year for me. At times it was very challenging. Being a sitting judge and not having the requisite time and resources available was often difficult. But my commitment to the Bar and to the service we provide to the lawyers of this County has prevailed. I have no regrets. Thanks again for the valuable life lessons gained by the experience and thanks again for allowing me to serve as your President. ■



Welcome New Members!

WCBA would like to welcome new attorney members: Jacqueline Bardini, Esq., of Tarrytown, Nathan Belofsky, Esq., of Scarsdale, Michael Davis, Esq., of White Plains, Thomas East, Esq., of Scarsdale, Peter Ashley Erwin, Esq., of Cornwall, Erica Feynman, Esq., of Harrison, Michelle H. Frank, Esq., of Scarsdale, Karen Grottalio, Esq., of New York City, Erin Noelle Guven, Esq., of White Plains, Michael R. Herman, Esq., of Scarsdale, Jacqueline M. James, Esq., of New York City, Hugh Janow, Esq., of Scarsdale, Shelby J. Novak, Esq., of Carmel, Mark S. Paige, Esq., of New City, Charles D. Wood, Esq., of Yonkers.

We also would like to welcome new affiliate members: Mr. Ben Blumberg, of White Plains, Mr. Garrett Cronin, of Elmsford, Mr. Clifford Goldfarb, of White Plains, Mr. James A. Jenkins, of Chappaqua, Mr. Daniel W. Menza, of Cedarfalls.

WCBA extends another welcome to our new student members: Mr. Robert Eugene Burk of Brookfield, Ms. Nicole Feit, of White Plains, Mr. Omar Nasar, of White Plains, Ms. Jennifer Reinke, of White Plains, Ms. Debra L. Scott, of Harrison, Ms. Jessica Adina Steinberg, of White Plains, Mr. Joseph Vinciguerra of White Plains.

Welcome to the WCBA! We look forward to seeing you soon at CLE and other events!

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Now we'd like to ask: are you involved in any sort of "outreach" in area schools? Would you be interested in becoming more involved? Would you be interested in doing some "OUTREACH"? The WCBA feels that our young people deserve our time and our energy, and we are considering establishing or becoming involved with additional "outreach", or "lawyer in the classroom" activities.

We are aware that there are many members of our Westchester County Bar who are now contributing time and are involved in various activities within the schools.

Building upon the success of our High School Mock Trial competition, we would like to know —

- what are members are doing, and
- see if we can lend assistance to those who are already involved.

We would also like to hear from any members who would be interested in contributing their expertise and their time to more educational outreach.

Please contact:

Mr. Aaron Banks at:

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