NYCLA's Fee-Dispute Program: Part 137

Gerald Lebovits
What do these four people have in common: Vanessa Leggett, Judith Miller, Jim Taricani, and Josh Wolf? They are the poster children for the Free Flow of Information Act. They are reporters whose imprisonment was made possible by the lack of a clear and consistent Federal rule governing reporters’ privileges.

Vanessa Leggett, writing a book on a notorious murder case, served 168 days for failing to turn over notes of interviews with persons connected with the murder to a Federal grand jury. Judith Miller, of course, spent 85 days in jail for refusing to testify to a Federal grand jury investigating the source of the leak that identified Valerie Plame as a covert CIA agent. Jim Taricani, a reporter for WJAR in Providence, RI, was sentenced to 226 days in jail for contempt for failing to comply with a subpoena issued by a Federal grand jury seeking all footage that he shot of protests of the G-8 meeting in San Francisco. Finally, Josh Wolf served 3982 days in jail for refusing to testify to a Federal grand jury investigating the source of the leak that identified Jimmy Carter as a member of the Nuclear Non-Proliferation Treaty Review Conference.

In February, the Free Flow of Information Act was introduced in the House of Representatives by Reps. Rick Boucher (D-VA), Mike Pence (R-IN) and 37 co-sponsors, and in the Senate by Sens. Arlen Specter (R-PA), Charles Schumer (D-NY), Richard Lugar (R-IN) and Lindsey Graham (R-SC). The bill is substantially the same as one that passed the House of Representatives by an overwhelming 398:21 vote in 2008. Its Senate companion was defeated 53:41 on a cloture vote, and President Bush had threatened to veto it if passed.

In contrast, President Obama and Attorney General Holder have both expressed support for the bill, so it appears that it has a chance for passage as that rarest of all things in Washington: a bill with truly bipartisan support. Its enactment would be a first bipartisan step toward the legislation needed to prevent the second part of the second verse of the Star-Spangled Banner from becoming a reality.

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By Hon. Gerald Lebovits

Conflicts between attorneys and their clients harm the legal profession and the public. Among the organized bar’s most difficult yet important challenges is to resolve conflict — and to do so effectively, fairly and quickly. Whether the bar can rise to that challenge or succumb to it affects not merely attorneys but also the administration of justice. Because many attorney-client conflicts involve fees, the bar must help solve them.

The bar received the New York State court system’s strong endorsement favoring self-regulation of attorney-client conflicts when the courts gave local bar associations the mandate to resolve attorney-client fee disputes. In May 2001, then-Chief Administrative Judge (and now Chief Judge) Jonathan Lippman and the Administrative Board of the Courts promulgated the statewide Fee Dispute Resolution Program, codified as Part 137, Title 22, of the New York Codes, Rules and Regulations.1 Part 137 places the adjudication of fee disputes into the hands of bar associations before the attorney may sue. The client elects whether to use Part 137. The attorney’s participation is mandatory.

The fee-dispute program’s goal is set out in section 137.0: “to provide for the informal and expeditious resolution of fee disputes between attorneys and clients through arbitration and mediation.” The statewide Part 137 program is modeled on the First Judicial Department’s well-established and once-voluntary fee-dispute arbitration and mediation program — the Joint Committee on Fee Disputes and Conciliation. The Joint Committee, administered by the New York County Lawyers’ Association (NYCLA), is a joint project of NYCLA, the New York City Bar Association and the Bronx County Bar Association.

The Joint Committee encourages mediation. When arbitration is required, the arbitrator or panel of arbitrators will determine the reasonableness of fees for professional services, including costs. The attorney has the burden to prove that the fee is reasonable. The arbitration award becomes final and binding if neither party seeks a trial de novo in Civil or Supreme Court within 30 days.2 The new Rules of Professional Conduct,3 which the courts approved on December 16, 2008 and which became effective on April 1, 2009, strengthen the Joint Committee’s jurisdiction. Rule 1.5(f) provides that “[w]here applicable, that they notified their clients of their right to participate in fee arbitration or that Part 137 does not cover the dispute.

If the client consented in advance to arbitrate the fee dispute, the Joint Committee permits the attorney to file a request for arbitration and serve it on the client. A client’s advance consent to arbitrate allows the attorney to compel arbitration.

The Joint Committee applies Part 137 to fee disputes in which the attorney-client relationship began after January 1, 2002; the representation concerns a civil matter; the attorney is admitted in New York; a material portion of the services was rendered in New York or Bronx Counties or the attorney maintains an office in those counties; and the amount in dispute is between $1,000 and $50,000, although the Joint Committee may hear disputes for less than $1,000 and more than $50,000 if the parties consent to arbitration.

The Joint Committee does not apply Part 137 if there are substantial legal questions; if allegations of misconduct or malpractice arise; if there are issues of dam-

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ages; if a rule, statute or court sets the fee; if no attorney services have been rendered for more than two years; or if the request for arbitration is made by a person other than the client or the client's representative.

NYCLA’s Part 137 program, by far the state’s largest, is currently chaired by Michael C. Lang. Like Daniel M. Weitz, co-counsel to the Attorney-Client Fee Dispute Resolution Program Board of Governors and the state court system’s Alternate Dispute Resolution (ADR) coordinator, and former Joint Committee Chair Simeon H. Baum, Mr. Lang is an adjunct law professor at the Cardozo School of Law’s Kukin Program for Conflict Resolution. NYCLA’s Heidi Leibowitz is the Part 137 program administrator. She is supervised by Lois Davis, NYCLA’s director of Pro Bono Programs and the former Part 137 program administrator.

The statistics tell the scope of the program. The Joint Committee closed 235 cases in 2008. Serving on the Joint Committee’s arbitration and mediation panels are 148 attorneys and 35 non-attorneys. Service is voluntary and requires attendance at an all-day training session.

At NYCLA’s most recent session, held in December, trainees received a comprehensive packet of materials and were treated to lectures by Lela Porter Love and Lester Brickman, two distinguished ADR professors from Cardozo.

The next training program will take place at NYCLA in fall 2009 or winter 2010. In the meantime, NYCLA is hosting two events as part of its Practice of Law series. On June 11, Martin L. Feinberg, another former Joint Committee chair, and Ms. Leibowitz will speak on “What Every Lawyer Needs to Know about the Part 137 Fee Dispute Resolution Program.” On June 25, NYCLA will offer another related program: “Litigating Your Fee Dispute.” The NYCLA-administered Joint Committee on Fee Disputes and Conciliation is a working committee designed to resolve attorney-client conflict through pro bono dedication under the highest ideals of the legal profession and the organized bar: safeguarding client wellbeing, assuring public welfare and promoting the due administration of justice through honest and rigorous self-regulation.

Judge Lebovits, a New York County Housing Court judge and St. John’s University School of Law adjunct professor, chaired the First Department’s Joint Committee on Fee Disputes and Conciliation from 1999-2001.


5 http://www.nycourts.gov/admin/feedispute.

Chamber Orchestra of New York’s “Spring to Antiquity” Concert

NYCLA members are invited to attend the “Spring to Antiquity” concert on Friday, April 24 at 8:00 PM at the Church of St. Jean Baptiste on Lexington Avenue and 76th Street. Tickets under this offer are $20 (normally $30).

To take advantage of the 30 percent discount, register as a student/senior at www.ticketweb.com/3/sale/SaleEventDetail?dispatch=loadSelectionData&eventid=591294 or mail a check to Chamber Orchestra of New York, 305 East 63rd Street, Suite 4K, New York, NY 10065. Tickets will be held at the door.

Program
Respighi, Ancient Airs & Dances
No. 1
Stravinsky, Pulcinella Suite
Mozart, Symphony No. 40

If you have any questions, please contact Salvatore Di Vittorio at 646-642-8441 or email info@chamberorchestraofnewyork.org.