From the Selected Works of Hon. Gerald Lebovits

September, 2009

Preparing for Trial: A Guide for the Novice

Gerald Lebovits
New Pres Committed to Helping Attorneys

New committees, networking opportunities, and more

By Laura Lane

The Suffolk County Bar Association’s new president, Ilene S. Cooper, is brilliant, bold, and beautiful. Unequivocally driven to perfecting her vision for the bar, she will no doubt be an extraordinarily effective leader who will bring the association to greater heights. Ms. Cooper, a partner at Farrell Fritz, P.C., where she concentrates in the field of trusts and estates, has many plans for the SCBA, many of which she has already set in motion.

“I am trying to afford our members with information in terms of what the bar can provide for them and greater services so they will realize that the bar is not just for socializing, but a place to facilitate and enhance their careers,” Ms. Cooper said. “Times are tough for people.”

Ms. Cooper has already planned two free “meet, greet and mingle” events for members at Wolffer Estate Vineyard on Sept. 22 and at Blackstone Steakhouse on Oct. 26. She hopes the cocktail parties will help lift attorneys’ spirits, encourage camaraderie, and enable members to meet new colleagues. Ms. Cooper is also encouraging members to bring nonmembers along, hoping that they will become interested in joining the bar.

She believes that providing networking opportunities will encourage members to share ideas, discuss the issues important to their community, and the impact these issues are having on the legal community in Suffolk County. Ms. Cooper also plans to provide discounted benefits and half price events throughout the year.

“These events and others can enhance member networking and community outreach. Members can get out and enhance their reputation and meet people,” she explained.

Her new committees, created to address the current challenges in the legal community, as well as raise the bar at the SCBA, have garnered much interest and support from members.

The community outreach committee will provide networking and referral opportunities as well as non-profit events and community service opportunities. A calendar of events will appear in the Suffolk Lawyer each month opposite the Among Us page as well as on the SCBA Website.

“I am fortunate because I work for a very large firm, and opportunities come to me through our marketing department,” Ms. Cooper said. “These membership benefits will also help attorneys find ways to afford benefits such as health insurance and malpractice insurance.”

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Sir Richard May Seminar At The Hague
International Law and International Courts discussed

By Denis Hurley

America’s prospect for peace and prosperity in the years ahead hinges on a number of factors, with open lines of international communication, I believe, being near the top of the list. The effectiveness of such dialogue, whether entailing business transactions or communications among national leaders endeavoring to resolve matters of global concern, is enhanced to the extent it occurs within the framework of international law. As a result, I signed on immediately upon being afforded an opportunity by the International Judicial Academy (“IJA”) to attend the Fourth Sir Richard May Seminar on International Law and International Courts (the “Seminar”) held at The Hague in the Netherlands from September 21st to the 26th, 2008.

We were shepherded through the week primarily by Dr. James G. Apple, the Chairman of the Board, president, and founding director of the IJA. Given Dr. Apple’s role with the IJA, former position as Chief of the Inter-Judicial Affairs Office of the Federal Judicial Center, and his extensive experience as a lecturer and writer in the field of international law, he was well equipped to enrich the seminar experience for us, as he did by

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Pro Bono Divorce - Suffolk County Style

By Janet M. Philips

The Suffolk Lawyer publishes articles periodically honoring attorneys, a part of whose practices consist of the voluntary representation of indigent clients. While this is certainly a worthwhile pursuit, there is a segment of the attorney population that has consistently gone unnoticed in this regard. That is, the matrimonial lawyer who is hired by a client who pays the retainer by borrowing or depleting his or her savings. After the retainer is exhausted, either because of the complexity of the case, the legal maneuvers of the other spouse, or simply the protracted meanderings of the legal system, that client is left mid-litigation, without any other resources to tap to pay the attorney. It is true that the most expedient and logi-
cal thing for the attorney to do at that point is to move to be relieved from further representation of the client. When the client’s outstanding bills get impossibly high, that is an option. But far more prevalent is the case where the attorney continues to represent the client with whom he or she has formed a working relationship and who deserves to be seen through the litigation with the effective assistance of counsel. Very often there is little or no likelihood of recovery of the attorney’s fee at the end of the case.

This type of client is usually employed or owns some assets, and therefore does not qualify for low-cost or free legal services. Much has been made lately of the authority of the courts to award attorney’s fees to the non-monied spouse pendente lite, but as a practical matter, unless the other spouse has vastly greater income and assets, the non-monied spouse is going to be out of luck.

As a result, dedicated practitioners who do not qualify, strictly speaking, as pro bono lawyers, find themselves in that position, de facto. Some of these cases drag on for months or years, but the attorneys who stand by their clients have little to no expectation of ever being paid for hundreds of hours of labor. Without expecting either

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Preparing For Trial

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whether to request disclosure, file pretrial motions, or limit the admissibility of evidence in limine.

It is critical to know by making a chart listing both sides’ claims and defenses, burdens of proof, and evidence necessary to satisfy each side’s burden. Include references to motions or procedural resources to improve your case. Anticipate your opponents’ strategy by putting yourself in their shoes. Assess your strengths and weaknesses and develop an effective case theory. Be ready to adapt and reassess when you get new information.

Create an effective case theory

Trying to tell a story — a more compelling story than your opponent’s. The case theory is a logical, telling story of your client’s version of events. The goal is to connect facts and law to convince your audience to grant the relief you seek. Develop your theory with the facts, evidence, and the best arguments, themes, and presentation to strengthen your case and attack your opponent’s version.

Be comfortable when you tell your story. You must believe it. You are delivering the story of the way things happened. Use a simple and chronological structure, filled with determinative facts. Be brief.

Your story will be persuasive if it is consistent with the credible evidence, your audience’s perception of how life works, and what is just. Developing an effective theory depends on knowing your audience.

Know your audience

Every audience has values and beliefs. It will judge your story through the prism of personal biases. When developing your theory, recognize your ideal audience. Your ideal audience consists of those with values and beliefs similar to your client’s. Remember this when selecting arbitrators and jurors or when deciding to seek a bench trial. Your judge is also your audience. Learn about your judge to make your case.

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Your audience will make up its mind early. First impression is key. Your audience will interpret later information to conform to and justify its first impressions. Your first appearance, your opening statement, your first argument, could be your best and strongest. Use simple and clear language to grasp attention. No legalese; no cop talk; no hostile language or attitude toward the court or opposing counsel. Avoid bombastic and adversarial rhetoric. Use voice changes, gestures, and visual aids to emphasize and dramatize.

Your audience will have limited attention spans. Capture your audience by making your presentation concise, repetitive, and thematic. Themes are memorable because they are emotionally convincing. Use themes as a high-school student would do. Use a blank jury chart in your trial notebook. Make notes to decide which jurors to challenge peremptorily and for cause.

Preparing for trial

To prepare for trial, we recommend skimming any of these eight books:


Conclusion

The efforts in anticipating a trial will be manifold but the results are rewarding. With experience, you will internalize the process and prepare most effectively.

Note: Gerald Lebovits is a judge of the New York City Civil Court, Housing Part, in Manhattan and an adjunct professor at St. John’s University School of Law. Lucero Ramirez Hidalgo, of the New York and Mexican bars, received a Licenciado en Derecha (J.D.) in 2004 from the Instituto Tecnologico Autonomo de Mexico and an LL.M. in 2007 from Columbia Law School, where she was a Harlan Fiske Stone Scholar.

Protecting Tenant’s Rights at Foreclosure

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owner and the public housing agency for the occupied unit.” Therefore, the Section 8 lease generally survives the foreclosure. However, the act does allow a successor in interest to terminate the lease if the owner will occupy the unit as a primary residence and has provided the tenant with the afore- said 90 Day Notice to Vacate. The “Terrorists at Foreclosure Act” was passed to address a specific national crisis but still leaves questions unanswered. For example, there is no provision to protect a tenant or purchase payment nor is there a specific provision (other than a statement that the landlord must comply with the lease terms) addressing tenants’ rights if essential services such as heat or electricity are not provided. It is anticipated however, that many of these concerns will be addressed in the future. In fact,HUD has stated that they have reviewed the act and provided a phone number on their website to contact FHA’s resource center for clarification on their position as to how it relates to the act.

While tenants occupying premises in foreclosure may still face numerous obstacles and may ultimately be forced to leave, the Protecting Tenants at Foreclosure Act provides new protections and clarity. It allows most tenants a minimum of 90 days to remain in their home and clarifies Section 8 tenants’ rights and obligations in regards to a successor in interest to the premises. It also provides practitioners with new weapons to fight an eviction.

Note: Peter J. Goodman, Esq. is a sole practitioner specializing in real estate and litigation. He has offices in Melville and Garden City.