

## Tips on how you can make your law practice 'greener'

The "green" movement is everywhere. Suddenly, everyone is becoming a bit more environmentally conscious. How can lawyers contribute to the green movement by making their practices more environmentally friendly? The key may be in the 3 Rs: Reduce, Reuse, and Recycle.

### Reduce

The first R, reduce, is the most powerful because it stops waste before it happens. The easiest reductions for lawyers to make are those involving paper and use of unnecessary energy.

### Paper

Lawyers can be more mindful of the supplies used in the office, how they are being used and whether they are neces-

sary in the first place – particularly paper. Some law firms are still creating paper-based "chrons" for each of their attorneys – copies of every document generated by the attorney in chronological order. This is a colossal waste of paper, particularly when documents can be searched by date in almost every computer system.

Keep it digital – in many circumstances, paper is not necessary at all. Not only are electronic files more environmentally friendly, but using electronic, rather than paper-based, data allows several people to view the file at once and prevents someone from removing the file from the office. Electronic data also reduces the need for storage space.

Don't fall prey to "Post-it-itis." Enter tasks directly onto the calendar or tickler

list and forgo the Post-it note. Archive emails as part of the electronic file by saving the copy to a file instead of printing it. If necessary, you can save an additional electronic copy of the email in your email system in a client folder as well. Invoice clients electronically and pay bills on-line.

Use e-fax rather than paper fax – the fax will arrive in your email inbox as an attachment which can be copied to the client's electronic file. Send faxes directly from your computer, rather than printing and then faxing documents.

Save even more storage space by returning original documents and files to



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clients at the end of the case, creating electronic files for archiving and eliminating the paper files. Request large files (such as medical records) on disk wherever possible, and send documents on disk – you will save paper, copying costs and postage.

Do not leave legal pads in file folders with only two or three pages of notes. Rip out and file the notes and re-use the rest of the legal pad. Eliminate unnecessary pages before printing. Do not create multiple copies of the same document within a file or multiple copies for multiple attorneys in the office. Even where a

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## 'Green' hospitals may be worth the investment, inside and out

The Leadership in Energy and Environmental Design (LEED) Green Building Rating System is a voluntary, consensus-based certification issued by the U.S. Green Building Council. In order to obtain a LEED certification, a building must meet standards in five key areas: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality.

The current zeitgeist of both energy independence and desire to save money makes the consideration of LEED certification of hospitals very appealing. LEED certified facilities use less energy, and thus decrease operating costs. Furthermore, there have been important studies suggesting that the improvement of indoor environmental quality as a result of green building significantly decreases incidents of hospital-acquired infection, hence it decreases the extra costs associated with these infections.

### Energy Savings

According to the Health Care Energy Project, an initiative by the American Society of Healthcare Engineers, health care facilities consume nearly twice the annual energy of an average commercial office building. According to the United States Green Building Council, 91% of hospitals reported higher energy costs from 2005 to 2006, and more than 50% cited double-digit increases.

According to a 2003 report to California's Sustainable Building Task Force, while LEED certification and green building will increase the initial cost of design and construction of a building by 2-3% of the overall cost of the project, it is likely that the extra expenditure will be recouped through energy savings of about 10 times the original investment. While these estimates are for green buildings generally, there are several case studies specific to hospitals citing over 40% increases in energy efficiency compared to non-green buildings. One example is The Center For Discovery in Harris, New York, an independent living facility for the elderly and learning center for disabled children, completed in March of 2003. The energy model for the Center predicted that it would be 24% more efficient than a sim-

ply code-compliant building, and would realize an energy savings of \$19,225 per year. In fact, as of now, according to publications, it is 28% more efficient than it would have been without green design. In addition, the Carrier Clinic, at 281-bed psychiatric hospital and detoxification clinic in Belle Mead, New Jersey, recently signed a power purchase agreement with Enxco, a California renewable energy company, to build, own, and maintain a complex of solar panels to power the hospital. It is estimated that the solar panels will supply 50% of the health system's energy, cutting in half the electric bills that reach as high as \$85,000 in the winter.

### Health Benefits

Hospital-acquired infections lead to significant increases in expenses. According to a 2005 memorandum by then Assemblyman Pete Grannis (now the Commissioner of the New York State Department of Environmental Conservation) to Speaker Sheldon Silver, just "limiting" hospital-acquired infections would save "anywhere between \$100 and \$200 million in state and local Medicaid expenses per year." The Center for Disease Control (CDC) concluded that hospital-acquired infections result in nearly \$5 billion in additional costs per year. Other estimates from GREEN-GUARD, an organization that certifies products and materials as "low-emitting" of volatile organic compounds, cite as much as \$11 billion in additional costs per year. In addition, the CDC found that nearly two million patients annually contract an infection while in the hospital, and that nearly 88,000 die every year as a result.

The quality of indoor air in general is a tenet of LEED. The importance of air quality in a hospital, however, is of even greater concern due to the increased health risks potentially created in a hospital as a result of adverse air quality. The air in a hospital differs from that in other types of buildings for the following reasons: 1) the increased presence of microbes, viruses, and bacteria associated with illness; 2) the controlled ventilation environment, including temperature, humidity, and air change; 3) the volume and diversity of people entering and

leaving – i.e., patients, visitors, staff. An article in the July 1998 issue of HPAC (heating, piping, and air conditioning) Engineering included a review of hospital mechanical systems. The study concluded that many respiratory pathogens have actually adapted to the conditions of the hospital and are transported throughout the building through airflow movement. According to the study, one third of the approximately 88,000 deaths per year is preventable.

Green Building Council released a report showing that LEED buildings were healthier for occupants. Their review of more than 600 studies of the effects of hospital design on patient well-being found evidence of reduced infection to those being treated at facilities built with green construction. Specifically, green building enhances patient health by improving air quality through the use of high efficiency particulate air (HEPA)

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## HOSPITALS ...

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filters. In addition, the location of air supply diffusers, location of air intake, laminar (streamlined airflow in which the entire body of air within a designated space moves with uniform velocity in one direction along parallel flow lines) as compared with non-laminar air flow in rooms, and appropriate insulation of ventilation systems from construction activities, all have an impact on infection rates.

In 2003, The Centre for Health Design, a not-for-profit organization, conducted a study illustrating the link between the physical environment of a hospital – including indoor air environment – and patient outcomes. Significantly, the study found the following:

- 1) Patient falls significantly declined;
- 2) Medication errors by staff fell

30% in two-patient rooms that allocated more space for their medication rooms;

3) The rate of hospital-acquired infections decreased by 11% in new patient pavilions due to the introduction of single-patient rooms.

### Conclusion

Even though there is an increased initial investment required in green building of hospitals of approximately 6-7% of the total building cost for LEED certification according to the United States Green Building Council, it seems that ultimately the investment will yield a valuable return by saving energy costs and contributing to the increased health of patients and reduction of infections acquired while in the hospital

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## COMMITTEE OF THE MONTH

### Matrimonial Law

*Elena Karabatos, Chair  
Lee Rosenberg, Vice Chair and  
John P. DiMascio, Jr., Vice Chair*

The Matrimonial Law Committee is anticipating an exciting year, as it hopes to present many educational programs that focus on practical, real-life issues affecting matrimonial practitioners on a regular basis.

At the meeting held on September 9, 2009, the committee hosted Supreme Court Justices as guest speakers: Hon. Anthony F. Marano, Administrative Judge of the Courts of Nassau County, Hon. H. Patrick Leis, III, District Administrative Judge, Suffolk County, Hon. Robert A. Ross, Supervising Judge of the Matrimonial Part of Nassau County, and Hon. Marion T. McNulty, Supervising Judge of the Matrimonial Part of Suffolk County. At the upcoming meeting scheduled for Wednesday, October 14, 2009, Hon.



**Michael J. Langer**

Alan D. Scheinkman will speak regarding current trends in matrimonial law, and Willard H. DaSilva, Esq., will be honored for 60 years of dedicated practice to matrimonial law.

For current and potential members: the committee encourages involvement and participation as much as possible. Towards the end of each meeting, a member of the committee will be invited to speak before the committee and comment on an interesting recent decision, which presents a fantastic opportunity in many respects for that individual and for the other members.

To join the Matrimonial Law Committee, contact Nancy Fennell at 747-4070, ext.217.

**Michael J. Langer**, an associate in the Law Offices of Kenneth J. Weinstein, is a former law clerk in the United States Court of Appeals for the Second Circuit, and a former Deputy County Attorney in the Office of the Nassau County Attorney. Mr. Langer's practice focuses on matrimonial and family law, criminal defense and general civil litigation.

## CONSTITUTION ...

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unconstitutional because it is in direct conflict with our prior precedent.<sup>14</sup>

The situation presents more than just an inquiry into the viability of the two statutes. At issue is whether the State Judiciary, in general, and the Court of Appeals in particular, remains a co-ordinate and equal branch of government. If the State Legislature can by statute supersede the Court of Appeals' interpretations of the State Constitution, then the Judiciary has become a subservient branch of government, not an equal one.

In 1803, *Marbury v. Madison*,<sup>15</sup> definitively established the Judiciary as a co-equal branch of government by holding that an act of Congress will not be enforced by the courts if it violates the federal constitution. *Marbury* enunciated the principle that it is "emphatically the province and duty of the judicial department to say what the law is."<sup>16</sup>

Building on this statement in *Marbury*, the Supreme Court has not hesitated to strike down as unconstitutional numerous federal statutes. At the same time, the Supreme Court has acknowledged the authority of Congress to "modify or set aside any judicially created rules of evidence or procedure that are not required by the

Constitution."<sup>17</sup>

The issue in *Dickerson* was whether *Miranda* had announced a constitutional rule. Finding that *Miranda* did in fact announce a constitutional rule, the Supreme Court struck down Congress' attempt to supersede the constitutional rule legislatively.

There is no doubt that in *Catu* and its' progeny, the Court of Appeals announced a State Constitutional rule since the Court specifically invoked the State constitution's due process clause. This constitutional rule was re-emphasized in *Boyd*. The issue then becomes whether the Legislature may by statute supersede the Court of Appeals' state constitutional decisions as it clearly attempted with P.L. § 70.85 and Corr. Law § 601-d.

To allow the State Legislature the power to supersede the Court of Appeals' constitutional rulings by statute, as opposed to constitutional amendment, gives the Legislature "a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits."<sup>18</sup>

Indeed, as *Marbury* noted: The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The dis-

inction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if actions prohibited and acts allowed, are of equal obligation.<sup>19</sup>

Given the recent and highly publicized dysfunction in the Legislature, this observation is all the more compelling.

All of which is not to say that the statutes in question are irretrievably lost. By amending the statutes to require the consent of the defendant as well as the prosecutor, there would be no constitutional difficulty. A defendant, in order to obtain a favorable disposition, may always waive a constitutional right provided the waiver is knowing, voluntary and intelligent. Such an amendment would avoid further confrontation between the Legislature and the Judiciary and would ensure the finality so greatly desired in criminal jurisprudence.

While it remains to be seen whether PL §70.85 and Correction Law § 701-d survive constitutional scrutiny, some practical concerns remain.

First is the necessity of understanding the range of PRS terms. In *Boyd*, neither the prosecutor nor defense counsel, at the plea allocation or sentencing pointed out to the court that while a period of PRS was mandatory, its length was not. Because the defendant was not a prior felony offender the

sentencing court had discretion to impose a PRS between 2.5 and 5 years.

Second, defense counsel should be prepared, at the pre-pleading stage, to negotiate with the prosecutor the length of the PRS (where a range is available) as well as the length of incarceration.

Careful review of all the applicable statutes in a criminal (or for that matter civil) case will avoid unnecessary constitutional confrontations.

**Dominic J. Sichenzia**, serving the legal community for more than 30 years at the trial and appellate level, including breach of contract, partnership disputes, contested estate, legal and medical malpractice. He is a former Director of the Bar Association, former Chair of the Ethics Committee and currently serves as Mediation Coordinator for the NCBA Grievance Committee. His office is located at One Old Country Road, suite 390, Carle Place, NY, 516-739-1937.

1. 12 N.Y.3d 390 (2009)
2. 4 N.Y.3d 242 (2005)
3. 7 N.Y.3d 744 (2006)
4. 86 N.Y.2d 397 (1995)
5. Art I § 6
6. 51 A.D.3d 325 (2008)
7. 51 A.D.3d at 327
8. 51 A.D.3d at 330
9. Sen. Nozzolia, S 8174, Rep. Aubry, A11764
10. 530 U.S. 428 (2000)
11. 384 U.S. 436 (1966)
12. 530 U.S. 428, 437-438
13. 12 N.Y.3d 390 at 394
14. 12 N.Y.3d 390 at 398
15. 5 U.S. 137
16. 5 U.S. 137 at 177
17. *Dickerson*, supra at 437
18. *Marbury* at 178
19. *Id.* at 176-177

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