Stipulations of Settlement

By Jaclene D'Agostino

Parties to a litigation may stipulate with respect to most aspects of the action or proceeding in which they are involved. Indeed, it has long been established that parties may "shape the facts to be determined at trial"[1] and "chart their own procedural course through the courts"[2] by making any variety of agreements. Hence, through stipulations, parties may grant each other extensions of time to respond to pleadings or motions, waive procedural defects and, of course, settle their dispute. This article reviews the strict requirements for creating a valid and enforceable stipulation of settlement and the various issues that may arise with respect to such agreements.

Stipulations of settlement are favored by courts and will not be lightly cast aside.[3] Nevertheless, a stipulation of settlement that fails to comply with the statutory requirements under the New York Civil Practice Law & Rules (CPLR) is not enforceable—a fact that would likely surprise and dismay parties who relied upon counsel to implement a failsafe agreement. Accordingly, it is essential that attorneys ensure that stipulations to which their clients are parties fulfill the requisite statutory elements and meet any additional requirements that may arise based upon the particular circumstances of the case.

I. Statutory Requirements

Courts will not enforce a stipulation that does not comport with the provisions of CPLR 2104 or the prerequisites of a valid contract; i.e., a meeting of the minds, fair and adequate consideration and a manifestation of all the material terms of the agreement between the parties.[4] Specifically, CPLR 2104 provides that a stipulation must be made in one of the following manners: (1) between counsel in open court; (2) in a writing subscribed by the party or his attorney; or (3) reduced to the form of an order and entered.[5] Although these requirements appear rather straightforward on their face, New York case law is replete with instances in which parties have argued that one of the requirements was or was not met, placing the validity of a stipulation into question. Further, even if a stipulation complies with the necessary requirements, there are certain—albeit unusual—situations in which it may be cast aside.

"…made between counsel in open court"

Most disputes as to whether a stipulation is valid and enforceable turn on the question of what exactly constitutes "open court." The Court of Appeals has defined "open court" as "a judicial proceeding in a court, whether held in public or private, and whether held in the court house, or a courtroom, or any place else, so long as it is, in an institutional sense, a court convened, with or without a jury, to do judicial business."[6] Further, "the proceedings in open court would always have some formal entries, if only in the clerk's minutes, to memorialize the critical litigation events."[7]

There are two elements essential to find that parties entered into a stipulation in "open court." First, a judge must be present for the consummation of the stipulation,[8] and second, a court reporter must be in attendance to record and provide a stenographic transcription of the proceedings.[9] Absent one of these elements, the stipulation will not be deemed to have occurred in "open court," thus failing to satisfy the requirements of CPLR 2104. For example, the Court of Appeals has opined that a stipulation entered into in a judge's presence during a conference in chambers was not made in "open court,"[10] but where a court reporter was also present to accurately record the agreement made in the judge's chambers, the elements of "open court" were satisfied.[11] However, a stipulation entered into in the presence of a law clerk, rather than a judge, fails to meet the "open court" requirement, even if transcribed by a court reporter.[12] Surrogate's Court practitioners should note that a different result has been reached where a stipulation was made in the presence of a court-attorney referee.[13]

The absence of a stenographic transcript is not necessarily dispositive on the issue of "open court." In such situations, courts will analyze the format of the recording of the stipulation on a case-by-case basis. Stipulations made in the presence of a judge absent a transcript may be deemed made in "open court," "but only if the terms of settlement are clear and recorded in the court's minute book or otherwise 'entered during formal court proceedings.'"[14] The notes of a judge or a court attorney regarding the stipulation are generally insufficient to satisfy this requirement[15] because they are typically too informal, vague or inadequate to memorialize the terms of the stipulation.[16] Where the terms of the stipulation are adequately transcribed, there appears to be no requirement that the parties sign the transcript, unless the Domestic Relations Law governs the action or proceeding.[17] This, of course, is generally not the case for trusts and estates practitioners.

Interestingly, New York's federal courts seem to interpret "open court" more liberally than the state courts when following the provisions of CPLR 2104. This was illustrated in *Pretzel Time, Inc. v. Pretzel International, Inc.*,[18] where a stipulation of settlement was upheld as an "open court" agreement despite being transcribed during a scheduled deposition in the absence of a judge. The Southern District explained its interpretation of the "open court" requirement of CPLR 2104 as follows:

> [T]he "open court" provision does not require that the settlement actually take place in a courtroom before a judge. Rather, settlements undertaken with less formality but with similar indicia of reliability have been held to meet this provision…. The importance of the "open court" requirement is to ensure that there are some formal entries…to memorialize the critical litigation events.[19]

Thus, the Southern District placed less emphasis on the presence of the judge at the time of the agreement and instead relied upon the formal transcription of events. The *Pretzel Time* decision went on to cite similar cases where stipulations were transcribed by court reporters at scheduled depositions, such as the federal decision in *Penn Columbia Corp v. Cemco Resources. Inc*.[20] and New York County Civil Court case *Hub Press v. Sun-Ray Lighting*.[21] Significantly, there was no judge present for the agreement made in either of those cases.

In *Hub Press*, the court's rationale for deciding that the subject stipulation had been made in "open court" was based on the fact that the examination at which the agreement had been made "was scheduled pursuant to statute and under the aegis of the court."[22] Accordingly, the court explained, "[e]ither party was free to obtain court rulings during the examination or to appropriately move the court regarding the conduct of the examination including a request that the court actually monitor the examination."[23] Still, it is only the federal courts that have relied upon *Hub Press* in recent years, which indicates that the more stringent decisions by the higher state courts will likely govern this issue.

Further, although certain federal courts, such as the Southern District in *Pretzel Time*, have cited to CPLR 2104 as the statute relevant to stipulations, the district courts are currently divided as to whether it is at all applicable in the federal forum. As the *Pretzel Time* decision indicates, many New York district courts enforce settlement agreements that do not comply with the state rule.[24]

Although some practitioners may view the strict requirements of the "open court" threshold imposed by the New York State courts as overly technical, the requirements do have a significant purpose. Aside from eliminating disputes regarding the essential terms of an agreement, these requirements serve "a cautionary function by tending to ensure that acceptance is considered and deliberate."[25]

"…in a writing subscribed by him or his attorney or reduced to the form of an order and entered"

It is only in cases where a stipulation is not in a writing subscribed by the party or his attorney, or reduced to the form of an order and entered, that one must consider whether it was suitably made in "open court" in accordance with the statute. One might assume that satisfying the requirement of a subscribed writing is a black and white question that would not generate litigation, but as is the case with any legal issue, there are always some gray areas.

Consider the Court of Appeals' decision in *Bonnette v. Long Island College Hospital, et al.*,[26] where the parties reached an oral, out-of-court settlement of a medical malpractice case against a doctor and hospital, but the hospital required that the agreement be formally finalized in writing. The hospital sent the requisite forms to the plaintiff with a cover letter stating, "enclosed are copies of closing documents required to effectuate [the] settlement."[27] The plaintiff signed and returned only one of the forms.

Months later, the hospital informed the plaintiff that it did not consider any settlement to exist because the agreement had not been finalized as required by CPLR 2104, even though it conceded that an oral agreement had been made. The plaintiff sought to enforce the settlement, relying on the hospital's letter forwarding the settlement documents as a writing sufficient to satisfy the statute. The Court of Appeals rejected this position, opining that the letter failed to comply with the statute because it did not incorporate all material terms of the settlement. The court similarly rejected the plaintiff's arguments of substantial compliance and equitable estoppel based upon partial performance, stating that "[i]f there are rare occasions when these doctrines can permit enforcement of a settlement agreement where the literal terms of CPLR 2104 are not satisfied (a question which we do not decide), this is not one of them."[28]

In some cases, a stipulation will be enforced on equitable grounds despite its failure to satisfy the statutory requirements. The decision in *Regolodo v. Neighborhood Partnership Housing Development Fund Co., Inc.*,[29] illustrates one such situation.

In *Regolodo*, equitable estoppel was invoked to enforce a stipulation that failed to meet the technical requirements of CPLR 2104. There, the defendants' counsel had made an offer of settlement during a telephone

call with plaintiffs' counsel, and the offer was accepted, also by phone. Thereafter, the defendants acknowledged plaintiffs' acceptance by an e-mail to plaintiffs' counsel. The plaintiffs subsequently obtained the consent of the New York State Insurance Fund to the settlement, and its agreement to accept approximately one-half of the worker's compensation lien that it had held against the injured plaintiff, in reliance upon the existence of a settlement.

As in *Bonnette*, the defendants conceded the facts surrounding the agreement but argued that it was not enforceable because it failed to meet the requirements of CPLR 2104. The court disagreed, explaining that "where there is no dispute between the parties as to the terms of the agreement, the courts will refuse to permit the use of [CPLR 2104] against a party who has been misled or deceived by the oral agreement to his detriment or who has relied upon it."[30] Applying the foregoing rationale, the court opined that the agreement and all of its material terms had been "clear, final and definite"[31] and that the plaintiffs had relied upon those terms to negotiate a compromise with the New York State Insurance Fund over its lien on the settlement proceeds. Accordingly, the settlement agreement was upheld despite its failure to meet the statutory requirements.

Regolodo raises another pertinent issue that has arisen in more recent cases as a result of our increasingly technologically based society—the validity of stipulating via e-mail. Although it was not the basis for the enforceability of the stipulation in *Regolodo*, e-mail has been relied upon as the sole subscribed writing in seeking conformity with CPLR 2104. Hence, in *Williamson v. Delsener*,[32] the First Department upheld a settlement agreement, opining that e-mails exchanged between counsel in which their names appeared at the end constituted signed writings pursuant to statute. Similarly, in *Brighton Investment, Ltd. v. Har-Zvi*,[33] the Appellate Division explained that "an exchange of emails may constitute an enforceable contract, even if a party subsequently fails to sign implementing documents, when the communications are sufficiently clear and concrete to establish such an intent."[34] Accordingly, modern courts have largely accepted e-mails as writings sufficient to satisfy CPLR 2104.

II. Vacating Stipulations of Settlement

Although stipulations are generally favored by courts, parties may be relieved of the consequences of such an agreement if it appears that the stipulation was entered into inadvisedly or that it would be inequitable to hold the parties to its terms.[35] However, "only where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident, will a party be relieved of the consequences of a stipulation made during litigation."[36] Even if a stipulation is voidable on one of these bases, a party who accepts the benefit of a stipulation will not be relieved of its consequences, as he will be deemed to have ratified the agreement.[37] Similarly, if a party is present when his attorney is stipulating on his behalf, and he remains silent, his silence will usually be deemed a ratification.[38] The passage of a considerable length of time before challenging an agreement may, in certain circumstances, amount to ratification.[39]

Consider *Weissman v. Weissman*,[40] where the parties in a divorce action, each represented by counsel, entered into a stipulation of settlement in open court. About a year later, the defendant moved to enter a judgment of divorce incorporating by reference the terms of the agreement. The plaintiff opposed the motion and cross-moved to vacate the stipulation on the grounds that it was only an outline of an agreement and that she lacked the mental capacity to understand and agree to its terms. She further argued that the agreement should be set aside as unfair, unconscionable and a product of overreaching. Dismissing the plaintiff's claims, the court held that the plaintiff failed to carry her burden of demonstrating that she was unable to understand and agree to the terms of the stipulation. Moreover, the court added that the plaintiff had ratified the stipulation by accepting the benefits of the agreement for more than a year.

A stipulation may also be set aside where agreed upon by an attorney who lacked the authority to stipulate on behalf of the client. However, it is often difficult for a client to prove that the attorney did in fact lack authority; a client may be bound by a stipulation that was signed by his attorney even where it exceeds the attorney's actual authority, if the attorney had the apparent authority to enter into the agreement.[41]

In making such a determination, courts analyze the attorney-client relationship as one of agent and principal. As explained by the Court of Appeals, "essential to the creation of apparent authority are words or conduct of the principal, communicated to a third party, that give rise to the appearance and belief that the agent possesses authority to enter into a transaction."[42] In other words, only the client's own statements or conduct can give rise to the reasonable belief that his attorney has the authority to act on his behalf; "the agent cannot by his own acts imbue himself with apparent authority."[43]

It has also been recognized that "the existence of 'apparent authority, depends upon a factual showing that the third party relied upon the misrepresentation of the agent because of some misleading conduct on the part of the principal—not the agent."[44] However, "[a] party who relies on the authority of an attorney to compromise an action in his client's absence deals with such an attorney at his own peril."[45] When a question of fact exists as to whether an attorney had authority

to act on behalf of his client, an evidentiary hearing is required.[46]

The landmark case addressing the issue of an attorney's authority to enter into a stipulation of settlement is *Hallock v. State*.[47] There, the attorneys for the parties entered into a stipulation of settlement on the record at a pre-trial conference on the scheduled trial date. The plaintiffs later moved to vacate, alleging that their attorney had no authority to enter into the agreement. The Court of Appeals upheld the stipulation as valid and enforceable because (1) the attorney had represented the plaintiffs throughout the case and participated in prior settlement negotiations and (2) the rules of the court required attorneys to have authority to enter into binding settlements at pre-trial conferences.[48]

Following the rationale of *Hallock*, the Second Department recently rejected a motion to vacate alleging that an attorney lacked authority to enter into a settlement agreement. In *Wil Can (USA) Group, Inc. v. Shen Zhang*,[49] the attorneys for both sides had met in private sessions with a mediator in the presence of their respective clients in an attempt to settle the action. A settlement was ultimately reached, memorialized in writing and signed by the mediator and the attorneys for the parties. The plaintiff later moved to enforce the agreement, and the defendants cross-moved to vacate. Relying upon the attorney's longtime involvement in the litigation and representation of the defendants in prior settlement discussions, the court affirmed the order granting the motion to enforce the agreement.[50]

Contrast this result with *Koss Co-Graphics, Inc. v. Cohen*,[51] where the Second Department reversed an order of the Supreme Court denying the defendant's motion to vacate a stipulation of settlement. There, the Appellate Division held that counsel for the defendant lacked the apparent authority to settle the matter, predicating its determination on the facts that "the defendant vigorously defended the proceeding on the merits from the start,"[52] there had not been any previous settlement negotiations and the defendant promptly moved to vacate the stipulation upon being advised of its attorney's actions.

Practitioners should be especially cautious in this respect. Although an attorney may believe he has the authority to stipulate on his client's behalf, if a client contests that authority and the court upholds the stipulation based upon apparent authority, a legal malpractice action could ensue. Therefore, where possible, it is recommended that the attorney insist that the client be present when a settlement is being placed on the record in open court, so that the client can allocute as to his or her knowledgeable and voluntary consent to the settlement.

It should be noted that courts are divided with respect to who has the burden of proving that a party's attorney lacked authority to act on a client's behalf. Although some decisions have appeared to place the burden on the party seeking to enforce the action,[53] other cases have placed the burden on the party disaffirming it.[54]

Another basis upon which a stipulation may be vacated is if necessary parties are not notified or fail to consent to the terms of a stipulation.[55] In many instances, infants or individuals under another disability are among the necessary parties, but in such scenarios, the creation of an enforceable stipulation of settlement is substantially more complex.

III. Infants as Parties to Stipulations

Generally, where an infant or someone under another disability is a necessary party to an action, it is the parent or guardian of the property who represents the individual in that action. CPLR 1201 provides that if the disabled individual has no such guardian, then the court will appoint a guardian-ad-litem to represent his interests.[56] It is the parent or guardian who will have the authority to enter into a stipulation of settlement on behalf of the incapacitated individual, but he or she must seek court approval of the agreement by motion pursuant to CPLR 1207 prior to its becoming enforceable.

The corresponding procedure in Surrogate Court is very similar. Under New York Surrogate's Court Procedure Act 315 (SCPA), a competent adult party who has a similar economic interest to another necessary party who suffers from a disability (i.e., an infant) may represent the other party by virtual representation.[57] However, the statute restricts virtual representation to court proceedings and informal accounts, and thus it does not apply with respect to a typical out-of-court settlement. Instead, where an individual under a disability is a necessary party to a settlement agreement that falls outside of SCPA 315(8), the parties must file a compromise proceeding pursuant to SCPA 2106.

Although SCPA 2106 and CPLR 1207 provide means by which necessary parties under a disability can be bound by a settlement, these statutes create additional hurdles to creating enforceable stipulations. For example, the proposed agreement may be rejected by the guardian-ad-litem, his or her appointment may result in the filing of objections or the court may not find the agreement to be "just and reasonable."[58]

IV. Conclusion

Although the stringent requirements of CPLR 2104 must be satisfied for a stipulation of settlement to be valid and enforceable, what exactly constitutes compliance with the statute is constantly subject to interpretation. The foregoing case law demonstrates the more recent interpretations to date and provides some reassurance that principles of equity, such as ratification

and estoppel, may serve to enforce settlement agreements in the rare but appropriate case.

Endnotes

1. *Nishman v. DeMarco,* 76 A.D.2d 360, 368-369, 430 N.Y.S.2d 339, 346 (2d Dep't 1980).
2. *Stevenson v. News Syndicate*, 302 N.Y. 81, 87, 96 N.E.2d 187 (1950).
3. *Hallock v. State of New York,* 64 N.Y.2d 224, 485 N.Y.S.2d 510 (1984); *Peralta v. All Weather Tire Sales & Serv., Inc.,* 58 A.D.3d 833, 873 N.Y.S.2d 130 (2d Dep't 2009); *Perrino v. Bimasco, Inc.,* 234 A.D.2d 281, 61 N.Y.S.2d 53 (2d Dep't 1996), citing *Galasso v. Galasso,* 35 N.Y.2d 319, 361 N.Y.S.2d 871 (1974).
4. *See Hevesi v. Pataki,* 169 Misc. 2d 467, 474, 643 N.Y.S.2d 895 (Sup. Ct., N.Y. Co. 1996).
5. N.Y. Civil Practice Law & Rules 2104 (CPLR).
6. *In re Dolgin Eldert Corp.*, 31 N.Y.2d 1, 4-5, 334 N.Y.S.2d 833 (1972).
7. *Id.*
8. *See Diarassouba v. Urban*, 71 A.D.3d 51, 55, 892 N.Y.S.2d 410, 414 (2d Dep't 2009), citing *Kushner v. Mollin*, 144 A.D.2d 649, 535 N.Y.S.2d 41 (2d Dep't 1988).
9. *In re Dolgin Eldert Corp.*, 31 N.Y.2d 1, 4-5, 334 N.Y.S.2d 833 (1972).
10. *Id.*
11. *Sontag v. Sontag*, 114 A.D.2d 892, 495 N.Y.S.2d 65 (2d Dep't 1985).
12. *See Conlon v. Concord Pool Ltd.*, 170 A.D.2d 754, 565 N.Y.S.2d 860 (3d Dep't 1991).
13. *See In re Winer*, N.Y.L.J., Sept. 15, 1995, p. 30, (Sur. Ct., N.Y. Co.).
14. *Bergassi, LLC v. Ikon Solutions, Inc.*, 21 Misc. 3d 1133(A), 875 N.Y.S.2d 818 (N.Y.C. Ct., 2008), quoting *Neiman v. Springer*, 89 A.D.2d 922, 453 N.Y.S.2d 771 (2d Dep't 1982); *see also Popovic v. New York City Health and Hospitals Corp.*, 180 A.D.2d 493, 579 N.Y.S.2d 39 (1st Dep't 1992).
15. *See Rivers v. Genesis Holding LLC*, 11 Misc. 3d 647, 649, 812 N.Y.S.2d 301, 303 (Sup. Ct., N.Y. Co. 2006), relying on *In re Estate of Janis*, 210 A.D.2d 101, 620 N.Y.S.2d 342 (1st Dep't 1994); *Berkeley Realty, LLC v. Hicks*, 7 Misc. 3d 130(A), 801 N.Y.S.2d 230 (Sup. Ct., Appellate Term, 9th and 10th Judicial Districts 2005).
16. *See Errico v. Davidoff*, 170 Misc. 2d 378, 382, 647 N.Y.S.2d 382 (Civ. Ct., Kings Co. 1998); *Zambrana v. Memnon*, 181 A.D.2d 730, 581 N.Y.S.2d 83 (2d Dep't 1992).
17. *See, e.g., Trapani v. Trapani*, 147 Misc. 2d 447, 556 N.Y.S.2d 210 (Sup. Ct., Kings Co. 1990).
18. 2000 WL 1510077 (S.D.N.Y. 2000).
19. *Id.*
20. 1990 WL 6555 (S.D.N.Y. 1990).
21. 100 Misc. 2d 1055, 420 N.Y.S.2d 443 (N.Y. Civ. Ct., 1979).
22. *Id.* at 1057.
23. *Id.*
24. *See e.g.*, *Figueroa v. City of New York*, 2011 U.S. Dist. LEXIS 9433 (S.D.N.Y. 2011); *Winston v. Mediafare Entertainment Corp.*, 777 F.2d 78 (E.D.N.Y. 2006).
25. *Tocker v. City of New York*, 22 A.D.3d 311, 311, 802 N.Y.S.2d 147 (1st Dep't 2005).
26. 3 N.Y.3d 281, 785 N.Y.S.2d 738 (2004).
27. *Id.* at 284.
28. *Id.* at 285.
29. 25 Misc. 3d 1229(A), 906 N.Y.S.2d 775 (Sup. Ct., Kings Co. 2009).
30. *Id.* at *2, relying on *Smith v. Lefrak Organization, Inc.*, 142 A.D.2d 725, 531 N.Y.S.2d 305 (2d Dep't 1988).
31. *Id.* at *3.
32. 59 A.D.3d 291, 874 N.Y.S.2d 41 (1st Dep't 2009).
33. 88 A.D.3d 1220, 932 N.Y.S.2d 214 (3d Dep't 2011).
34. *Id.* at 1222.
35. *See Genesis Holding LLC v. Watson*, 5 Misc. 3d 127(A), 798 N.Y.S.2d 709 (App. Term, 1st Dep't 2004).
36. *Hallock v. State of New York*, 64 N.Y.2d 224, 485 N.Y.S.2d 510, relying on *Estate of Frutiger*, 29 N.Y.2d 143, 324 N.Y.S.2d 36 (1971).
37. *See Weissman v. Weissman*, 42 A.D.3d 448, 839 N.Y.S.2d 798 (2d Dep't 2007).
38. *See 1420 Concourse Corp. v. Cruise*, 175 A.D.2d 747, 573 N.Y.S.2d 669 (1st Dep't 1990).
39. *Bouloy v. Peters,* 262 A.D.2d 209, 692 N.Y.S.2d 329 (1st Dep't 1999); *Suncoast Capital Corp. v. Global Intellicom Inc.,* 280 A.D.2d 281, 719 N.Y.S.2d 652 (1st Dep't 2001).
40. *Id.*
41. *Wil Can (USA) Group, Inc. v. Shen Zhang*, 73 A.D.3d 1166, 903 N.Y.S.2d 429 (2d Dep't 2010).
42. *Hallock v. State*, 64 N.Y.2d 224, 485 N.Y.S.2d 510 (1984).
43. *Melstein v. Schmid*, 116 A.D.2d 632, 497 N.Y.S.2d 482 (2d Dep't 1986).
44. *Cornwell v. NRT NY LLC*, 31 Misc. 3d 1209(A) (Sup. Ct., N.Y. Co. 2011), relying upon *Hallock v. State*, 64 N.Y.2d 224, 485 N.Y.S.2d 510 (1984).
45. *Slavin v. Polyak*, 99 A.D.2d 466, 470 N.Y.S.2d 38 (2d Dep't 1984); *see also Feuerstein v. Feuerstein,* 72 A.D.2d 546 (2d Dep't 1979).
46. *See Suslow v. Rush,* 161 A.D.2d 235, 554 N.Y.S.2d 620 (1st Dep't 1990); *In re Sosinksy*, 9 Misc. 3d 1113(A), 808 N.Y.S.2d 920 (Sur. Ct., Nassau Co. 2005).
47. *Hallock v. State*, 64 N.Y.2d 224, 485 N.Y.S.2d 510 (1984).
48. *See* 22 NYCRR § 202.26[e]; *cf.* 22 NYCRR § 202.12.[b].
49. 73 A.D.3d 1166, 903 N.Y.S.2d 429 (2d Dep't 2010).
50. *See also Suncoast Capital Corp. v. Global Intellicom, Inc.*, 280 A.D.2d 281, 719 N.Y.S.2d 652 (1st Dep't 2001).
51. 166 A.D.2d 649, 561 N.Y.S.2d 76 (2d Dep't 1990).
52. *Koss Co-Graphics*, 166 A.D. 2d at 650, 561 N.Y.S. 2d at 76.
53. *See Ford v. Unity Hospital*, 32 N.Y.2d 464, 472-473, 346 N.Y.S.2d 238 (1973); *In re Estate of Lagin*, N.Y.L.J., April 12, 2006 p. 20 (Sur. Ct., Nassau Co.).
54. *Hallock v. State*, 64 N.Y.2d 224, 485 N.Y.S.2d 510 (1984); *Allison v. Allison*, 41 A.D.3d 519, 838 N.Y.S.2d 168 (2d Dep't 2007).
55. *See Estate of Drake*, 278 A.D.2d 929, 718 N.Y.S.2d 767 (4th Dep't 2000); *Estate of Mohamed*, N.Y.L.J., Feb. 18, 1999, page 28, col. 4, (Sur. Ct., Bronx Co.); *Sohn v. Kong*, N.Y.L.J., Dec. 22, 1993, page 25, col. 2 (Civ. Ct., Bronx Co.).
56. CPLR 1201.
57. N.Y. Surrogate's Court Procedure Act 315 (SCPA).
58. SCPA 2106.

Jaclene D'Agostino is an associate at Farrell Fritz, P.C. in Uniondale, New York, concentrating in estate litigation. She is a Vice Chair of the Newsletter and Publications Committee.