BSR&B

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From all of us at Blustein, Shapiro, Rich & Barone, LLP:

Thank You to everyone who came out on July 8 to give us such an incredible welcome as we officially opened the doors to our second location, this one in the heart of Warwick at 21 Oakland Avenue.

Roughly 200 people from across Orange County braved the 90-degree heat to celebrate with us during our outdoor cocktail reception, open house, and ribbon cutting ceremony on the lawn of the Warwick office building.

Warwick Valley Chamber of Commerce Executive Director Michael Johndrow acted as our Master of Ceremonies, and helped bring Warwick Mayor Michael Newhard, Warwick Town Supervisor Michael Sweeton, and Orange County Partnership Business Attraction Director Bill Fioravanti to the podium as they each officially welcomed our firm to the Warwick Valley region.

Other public officials in attendance included former Congresswoman Nan Hayworth, Orange County Executive Steve Neuhaus, Orange County Sheriff Carl DuBois, Town of Deerpark Supervisor Karl Brabenec, Warwick Village Trustee Barry Cheney, Orange County Community Foundation President Karen VanHouten Minogue, and Pine Bush Chamber of Commerce Executive Director Ellen Quimby.

Thank you all for coming!

We'd like to offer a special thank you to the Warwick Valley High School Chamber Strings "On the Go", who shared their extraordinary talent with our guests. We're also grateful to Dana Distributors' Patrick English and friend John Muller, who both provided enough beverages to keep everyone alive and happy in the heat, and Villa Venezia owner Franco Fidanza and his team, who served an incredible spread of food.

We're looking forward to making ourselves available to handle all of Warwick's legal needs. And with BSR&B Partner Jay Myrow and Jeanine Wadeson, our newest associate, manning the ship, we're confident that this will be a wonderful fit!

Thanks again,

Michael Blustein
BSR&B Managing Partner

YOU HAVE THE RIGHT TO REMAIN SILENT

(PART 1 OF 3)

By Marcello A. Cirigliano, J.D.
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You are driving home after a wonderful evening with your family at your favorite restaurant, where you enjoyed two glasses of wine during dinner. Suddenly, in the rearview mirror appears the emergency lights of the New York State Police. Once you've pulled over, the state trooper approaches your driver's side window and asks for your license and registration. The trooper then asks you where you are coming from, where you are going, and whether you have had anything to drink. Soon thereafter, the trooper asks you to step out of your car; he wants to "ask you a few questions" and "have you do a few tests."

How should I answer the trooper's questions?

In my experience as a defense attorney and a prosecutor, the attitude of the driver goes a long way. Always be polite to the trooper, even if you feel that he or she is not being professional. However, there is a difference between being polite and volunteering information to every question that is posed to you.

It would be prudent to be honest about from where you are coming, and where you are going. The trooper's "investigation" starts when they first see your car, although you may not know how long the trooper has been following you. If you have passengers in your car, the trooper is likely to ask them the same questions to corroborate your statement. While there is not anything wrong with driving back to your house from a restaurant, any inconsistencies in these stories could unnecessarily lead to a further investigation.

While it is never advisable to lie, you do not need to admit to the trooper whether you have had anything to drink. If you tell the trooper that you have not had anything to drink, or you state that you are "respectfully not answering anymore questions", your answers or statements in response to the trooper's questions will be recorded in his log if there is an arrest. Also included on the arrest paperwork, the police always list that they detected an odor of an alcoholic beverage. However, once in court, the strength of that odor cannot be smelled by a judge or a jury, and therefore can only be corroborated by the statements and other evidence you provided.

What are my Miranda Warnings?

Miranda warnings contain the rights that are required to be read to a person who is about to be questioned, **and** is in police custody. Among these warnings is your right to remain silent and your right to have an attorney present during the questioning. However, it is well established law that a traffic stop is a "limited seizure of the person of each occupant of the vehicle." *People v. Banks, 85 NY2d 558 (1995).* If you are temporarily detained pursuant to a typical traffic stop, you are not considered to be in custody for the purposes of Miranda. *Pennsylvania v. Bruder, 488 U.S. 9 (1988).* Accordingly, any statements that you make during the traffic stop, and prior to an arrest, are admissible, even if you haven't been advised of your Miranda Warnings. *People v. Alls, 83 NY2d 94 (1993).*

Remember, you always have a right to remain silent! Even if you haven't been advised of your rights, they still exist. An acceptable response to the trooper may be to politely decline to answer any more questions. However, while you don't have to answer any of the troopers questions, you do have to comply with their orders, such as providing your license and registration and stepping out of the vehicle when asked to do so.

Am I required to get out of the car upon request?

When you are asked to step out of your car, you must comply. The trooper will generally ask you to walk to the area between the rear of your car and in front of the trooper car. The purpose of this request is to observe your coordination. The trooper watches to see how you get out of the car, if you stumble, if you walk in a straight line, or if use the car for balance. When you are behind your car, the trooper may again ask you questions about from where you are coming from, where you are going, and how much you have had to drink. While this may seem redundant, they are looking to see if your story has changed, or if you will admit to drinking. **Do not forget, you have a right to remain silent, and you can politely say that you do not wish to answer any more questions.**

If the trooper has determined it necessary, they will tell you that they are going to ask to you to do a few tests, "before they let you go home." They are not doing you a favor. These tests are called Field Sobriety Tests, and they are used to determine whether a driver is intoxicated.

*I will further explain the Field Sobriety Tests in Part 2 of this series. Until then, remember **You Have the Right to Remain Silent**.*

BSR&B Estate Planning Stays Ahead of the Curve

The BSR&B Estate Planning team is committed to continuing education to stay informed about emerging Estate Planning trends.

Most recently, Partner Richard Shapiro and Associate Attorney Austin DuBois attended the 2014 Planning for the Generations Symposium in Denver, CO. This annual 3-day symposium is one of the premier educational events for estate planning and elder law professionals. Attendees heard from industry thought leaders on topics including: business planning, estate planning, special needs planning, elder law, and wealth transfer planning.

"We look forward to this symposium every year," Mr. DuBois said. "The knowledge we acquire allows us to better serve our existing and future clients."

WILL CONTESTS: RECENT CASES OF INTEREST

By Rita G. Rich, J.D.
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Here is my commentary on three interesting recent decisions in New York State that involved will contests:

1. In Re Griffin – In this case, David and his wife, Rongquing, entered into a separation agreement in 2009, with each spouse represented by counsel. They agreed that their marital residence would be sold and that the net proceeds of sale would be divided equally between them. David died in 2010. The home had not been sold, and they were not yet divorced.

David's executrix and Rongquing agreed that upon closing the sale of the house, Rongquing would receive one half of the net proceeds. The other half was to be held in trust until an agreement or a court order. At that time, another issue arose: Rongquing became aware of (and took from the home) what she believed were marital assets. She claimed that David did not disclose them prior to the separation agreement. She wanted her fair share and asked that the separation agreement be invalidated.

The Monroe County Surrogate's Court found that the separation agreement was valid. Rongquing was bound by it, based upon the fact that there had been full discovery by the parties, and both had waived any further disclosure. She was not entitled to any of his assets that she believed were marital assets.

However, with respect to the marital home, which they still held as husband and wife at the time of his death, **Rongquing was awarded the entire net proceeds of the sale**. *In re Griffin*, 33 Misc.3d 1203(A), 2011 WL 4537065 (N.Y. Sur.).

2. In Re Estate of Buchting – Arthur died in August 2011, and was survived by his wife of 20-plus years, Barbel, as well as his children from a previous marriage. Barbel petitioned Green County Surrogate's Court to admit Arthur's April 2011 will to probate. The children objected, based on claims that their father lacked testamentary capacity, was unduly influenced by Barbel, and that the will was legally insufficient because it was not "duly executed."

Due execution of a will is established by testimony of the supervising attorney and the witnesses. In this case, **both witnesses invoked their 5th amendment rights against self-incrimination**. They refused to testify. Nonetheless, the Surrogate admitted the will to probate, finding that due execution was proven by the testimony of the attorney who drafted the will and supervised its execution. The Surrogate also dismissed the children's objections to probate based on their claim that their father lacked testamentary capacity and was unduly influenced.

On appeal, the Appellate Division reversed and sent the matter back to Surrogate's Court for additional proceedings so that the children would have an opportunity to continue their challenge of the will by further discovery. It is my understanding from one of the attorneys in this matter that there are motions pending on both sides, discovery has not been completed, and no one is willing to negotiate a settlement. *In re Estate of Buchting*, 111 A.D.3d 1114, 975 N.Y.S.2d 794 (3d Dept. 2013).

3. In Re Estate of Lewis – Robyn and James resided in, and were divorced in the State of Texas in 2007. At that time they owned property in Texas and New York. James was awarded the Texas home and Robyn was awarded the New York residence. Robyn then moved to the New York residence, and lived there until her death in March 2010. Shortly thereafter, Robyn's parents applied for, and were issued letters of administration of Robyn's estate, inasmuch as they did not find a will to probate.

In December 2010, James' father, apparently learning of Robyn's death from an internet search, filed a petition to probate Robyn's 1996 will in his possession. He also filed a petition for the renunciation of Robyn's parents' appointment as administrators of Robyn's modest estate consisting mainly of the New York home, which had been in Robyn's family for several generations.

Robyn's 1996 will appointed her then-husband, James, as executor and beneficiary of her property. In the event James pre-deceased Robyn, then she named James' father as the alternate executor and beneficiary. Because the divorce had by law automatically revoked James' inheritance and appointment as executor, his father, next in line, claimed to be the beneficiary and nominated executor under the 1996 will.

Robyn's family contended that Robyn executed another will in 2007, but it was lost. Robyn's former neighbor testified that she not only saw Robyn's 2007 will, along with an attorney's cover letter, but she also recalled that Robyn's property would be left to Robyn's family and that Robyn's mother was named executrix. She couldn't remember much more about the documents. The neighbor actually had possession of the documents for a time, at Robyn's request, but before the neighbor moved away, she returned them to Robyn.

The Jefferson County, N.Y., Surrogate admitted Robyn's 1996 will to probate after considering both New York and Texas law. Although the court surmised that Robyn intended to change her will so that her relatives would benefit, the Surrogate did not find sufficient evidence to recognize the lost 2007 will, despite the credible neighbor.

On appeal, the decision was affirmed. James' father (or really ex-husband, James) won. Note, however, that one Appellate Division Justice wrote an eloquent 13-page dissenting opinion. He concluded that admitting the 1996 will was unjust and inequitable, and defeated the purpose and spirit of New York's Estates Powers and Trusts Law. *In re Estate of Lewis*, 114 A.D.3d 203, 78 N.Y.S.2d 527 (4th Dept. 2014).

In conclusion, these cases are indeed interesting, but they also **underscore the importance of detail and attention to every aspect of estate planning. Competent legal representation, as well as advice, is mandatory**.

U.S. SUPREME COURT RULES: INHERITED IRA'S NOT PROTECTED AGAINST BENEFICIARY'S CREDITORS

By Richard J. Shapiro, J.D.
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In a 9-0 opinion issued June 12, 2014, **the U.S. Supreme Court ruled that an inherited IRA is not an exempt asset for purposes of the federal Bankruptcy Code** (11 U. S. C. §522(b)(3)(C)). The court held that a traditional or Roth IRA is exempt from bankruptcy because, under the statute, a true retirement fund is intended to provide the account owner with a source of funds for sustenance "to provide for their basic needs during their retirement years."

In contrast, the Court ruled that an inherited IRA has a number of characteristics that differentiate it from a traditional IRA, particularly the requirement that withdrawals from an inherited IRA must begin no later than the year after the original account owner's death, "no matter how far [the inheriting beneficiary] is from retirement."

For the past couple of years we have been recommending to our clients with large retirement accounts (i.e., in excess of $250,000) that they consider using a "stand-alone retirement trust" as a beneficiary of their retirement accounts, rather than having children or other beneficiaries inherit the IRA in their own names. One reason for that recommendation has been out of concern as to how accessible the IRA might be for the creditors of those who will inherit a decedent's retirement account. After this recent Supreme Court decision, our concern has proven to be justified, and the use of stand-alone retirement trusts will be more important than ever.

FREE EDUCATIONAL WORKSHOPS:

Estate Plans That Work™

Tuesday, Aug. 19, 2014
3:00 p.m. to 6:00 p.m.

Thursday, Sept. 18, 2014
3:00 p.m. to 6:00 p.m.

We'll explain little-known pitfalls and the best methods to protect your loved ones' inheritance after you're gone.

The above workshops will be held at the
BSR&B Education Center (1st floor)
10 Matthews Street, Goshen, NY

To register for a workshop, call Kim at 291-0011 x242, or email receptionist@mid-hudsonlaw.com.

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Warwick
Ribbon Cutting & Open House
July 8th, 2014

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