MondayMonday

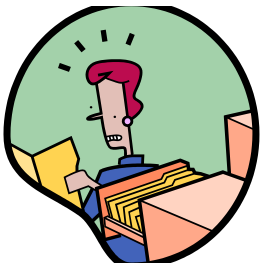
Two on the Aisle

November 11, 2013

Some of you might recall our comments in a prior issue regarding the angst created by dropping off the First Daughter at the bar exam site at the Javits Center (*MondayMonday* 8/5/13). We were slightly emotional then (big surprise there) and we are slightly emotional now too, but for different reasons. The First Daughter has now received that precious email that tells her she will be given the opportunity to join this thing of ours.

An email. How 21st Century polite. No longer will hopeful law graduates wait outside the New York Times building for the next morning's edition which would publicly tell the world (and Aunt Shirley) if they had passed the bar exam.

Together with a friend, we learned of the imminent publication (it was all word of mouth in those days, passed along from someone who worked in the composing room of the Albany Standard) and decided not to join the throngs at the Times. Instead, we headed to Grand Central Station and its cavernous Waiting Room where, quite apropos, we waited for a conveyance no less effective in moving us from here to there. When the bundles of papers



arrived, the newsie cut the metal wires and we each took a copy off the top. Wordlessly, we walk to opposite ends of a long row of wooden phone booths, entered as if in a confessional, and called our parents. We still remember the joyous shout of our mother's voice when we deadpanned that, perhaps, there would now be a lawyer in the family.

To all those whose passed, we welcome you; to those who did not, we will welcome you when you do. In either case, we grow by your success.

The practice of law is fraught with danger; it is not a job for the timorous, who, of course, need not apply. Imagine counsel in *Paul-Austin v. McPherson*, 2013 NY Slip Op 07161 (2d Dep't 11/6/13) who in opposing a threshold motion, submitted the affirmation of their doctor, who stated he was a "physician, duly licensed to practice medicine," but ended by signing with a moniker which began with "Dr." but ended with "D.C." Defendants (you can see this coming) pointed out in reply that Herr Doktor was actually a Chiropractor, a doctor, yes, but not the sort who can affirm under CPLR 2106. Having once reversed an order denying the motion for summary judgment (91 A.D.3d 924), the AppDiv now rules against plaintiff again, affirming the denial of a motion to renew (to include a new notarized affidavit.) There was no justification for not doing it right in the first place or the doctor not knowing precisely what kind of doctor he was.

Or how about *Turko v. Daffy's Inc.,* 2013 NY Slip Op 07166 (2d Dep't 11/6/13)? The parties stipulated to adjourn the motion for summary judgment so plaintiff could have more time to oppose. Rather than adjourning the application, however, the clerk marked it fully submitted and, without opposition, the court dismissed the action. That order of dismissal, however, was dated *after* the intended adjourned date. Unfortunately, plaintiff never filed her opposition papers by the adjourned date anyway or sought any extension of time in which to do so. Now the AppDiv affirms the denial of plaintiff's motion to vacate the default in responding to the motion. If only plaintiff had filed the opposition papers by the adjourned date, she would have a good excuse for not filing them by the original return date.

Kids, don't try this law stuff at home. Paper cuts can be fatal; trust us.