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LAWYERS' NEWS

Update

Attorney General Janet Reno agreed yesterday to a federal civil rights investigation into the 1991 racial violence in Brooklyn's Crown Heights neighborhood and the murder of a Jewish scholar. Ms. Reno made the decision after hearing pleas from lawmakers and Brooklyn District Attorney Charles J. Hynes, who came under fire more than a year ago when a jury acquitted the only defendant in the case. Mr. Hynes said at a news conference, "I've always believed a federal investigation and prosecution represents the best chance for justice in this case."

The Second Circuit Court of Appeals yesterday announced a new liberal theory of employer liability for a supervisor's sexual harassment of an employee in a ruling reinstating a former Columbia University student's harassment complaint. Employers are liable for abusive work environments if a supervisor "uses his actual or apparent authority to further the harassment," the court held in *Karibian v. Columbia University*, 93-7188. Complainants in such circumstances need not show an employer's failure to respond to a complaint or no reasonable avenue for complaints, it said.

The Oklahoma Court of Criminal Appeals abandoned a long-standing common law and ruled this week that murder charges may be

Excerpt From the Decision

"If the client refused to consent to [the lawyer's] request to disclose the truth, [the lawyer's] only remedy was to withdraw from the representation. This the defendant did not do. [He] not only proceeded with the closing, but submitted the opinion letter and continued to represent his client in this and other matters. [The lawyer's acts and omissions] were intended by him to assist his client to induce the plaintiff to advance the sum of \$4.4 million to his client's corporation."

Justice Charles E. Ramos



PHOTOGRAPH BY FAYE ELLMAN

Judge More Than Doubles Verdict Against Lawyer

BY FRANCES A. McMORRIS

A MANHATTAN JUDGE has set aside a \$2 million jury verdict and imposed a \$4.8 million judgment against a lawyer who was found to have concealed the true identity of a client who was seeking to buy the assets of the Wedtech Corp.

State Supreme Court Justice Charles E. Ramos found that the \$2 million verdict in *National Enterprises Corp. v. David Reback*, 91-CV-20416, was inconsistent with findings of fraud and reasonable reliance and was not supported by the record at trial. After the jury issued its verdict yesterday in the trial which began Jan. 11, Justice Ramos directed a judgment notwith-

standing the verdict against attorney David Reback.

Mr. Reback was charged with filing a fraudulent opinion letter in August 1987, in which he failed to reveal that there were lawsuits against his client, Abraham Srulowitz, who was applying to National Enterprises Corp. for a \$4.4 million loan. Mr. Srulowitz used an alias and was under indictment for arson and insurance fraud in the Eastern District of New York when he requested the loan. He planned to have his corporation, Five Oceans Realty Corp., use the loan in a mortgage transaction to buy the land, buildings, equipment and inventory of the Wedtech Corporation, the now defunct

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Withstand State Claim

BY CERISSE

THE WITHSTANDING plea of the defendant's mental state in the speedy-trial case of the wife late court has arson conviction woman.

The decision Friday.

Acting yesterday Davis, the Appellate Department, even though CPL §30.30, New York speedy-trial rule specifically includes an "insanity" events that stand anew, its omission must have been

The withdrawal responsible by or defect should as the withdrawal under CPL §30.30(1) vid Ross, written panel. Thus, the which the pronounce its real normally begin ment after an it ning again with drawn.

Ms. Davis has

The author is president of the Court Attorneys' Association of the City of New York.

Verdict Increased

Continued from page 1, column 4

military contractor. The Wedtech scandal cost former U.S. Congressman Mario Biaggi, of the Bronx, and former Bronx Borough President Stanley Simon, and many others their political careers and prison time.

In the five-page opinion, Justice Ramos noted that Mr. Reback testified during the trial "that prior to the transaction in question, he knew that the borrower, the client, was negotiating and closing the transaction in the name of an alias, Abraham Sobel." Mr. Reback also admitted that he never told National Enterprises of Mr. Srulowitz's "true identity, orally or in the opinion letter," thereby not disclosing the indictment.

In his defense, Mr. Reback said that he believed that information to be privileged and confidential and that the client wanted it to remain secret. However, Justice Ramos said that while he recognized that part of the code that requires a lawyer to safeguard his client's confidences, Mr. Reback's continued representation violated DR 7-102(A)(7) of the Code of Professional Responsibility which instructs attorneys not to advise or assist clients in illegal or fraudulent conduct.

"If the client refused to consent to his request to disclose the truth, his only remedy was to withdraw from the representation," Justice Ramos said, citing a 1990 opinion of the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York.

"This the defendant did not do," said Justice Ramos, who is a member of the bar group's ethics committee. Mr. Reback "not only proceeded with the closing, but submitted the opinion letter ... and continued to represent his client in this and other matters." The lawyer's acts were intended to assist his client in obtaining the \$4.4 million loan, the judge said. "This removes any doubt concerning the materiality of the representations."

The \$4.8 million award was based on a deficiency judgment that National Enterprises obtained against Mr. Srulowitz in February 1991 and with interest could rise as high as \$6 million, explained the plaintiff's lawyer, Leonard Benowich of Zivyak, Klein & Liss. Alan M. Simon of Spring Valley, N.Y., represented Mr. Reback and his law firm, Reback & Potash of Mount Vernon.

relieved from their duties to the client. Inquiring counsel, too, by withdrawing from the firm, does not at once relieve himself of professional responsibility to the client. Not directly on point but instructive on the measure of that residual obligation is the mandate of Disciplinary Rule 2-110(A)(2), governing withdrawal from professional legal employment; it provides, in pertinent part:

... a lawyer shall not withdraw from employment until the lawyer has taken steps to the extent reasonably practicable to avoid foreseeable prejudice to the right of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled and complying with applicable laws and rules.

The measure of inquiring counsel's residual obligation to take steps to avoid prejudice to the client and to the client's ongoing case may be dependent in part on the relationship of the client, the firm and inquiring counsel at the time of inquiring counsel's departure from the firm. If, for example, the client originally contacted the firm or another partner or associate in the firm for professional legal services, and the firm's assignment of inquiring counsel to the matter and inquiring counsel's services in the matter were incidental to the relationship of the client with the firm itself or the originating attorney, then — absent any reasonable expectation to the contrary on the part of the client, in which case the client should have been apprised by the firm — inquiring counsel's departure from the firm and cessation of individual responsibility for the matter and the availability of other counsel in the firm to attend to the client's matter could produce no requirement that inquiring counsel contact the client. Inquiring counsel, not being the

his departure from the former firm, and (ii) the client's interests are being prejudiced thereby, inquiring counsel should then communicate with the client. To the extent needed to insure competent and prompt and continuing professional legal attention to the client's matter, inquiring counsel should inform the client of the client's rights with respect to continuing with present counsel or switching to new counsel, including — where not otherwise prohibited — inquiring counsel. However, such communications are limited under Disciplinary Rule 2-102(A)(2), thus:

A professional announcement card stating new or changed associations or address, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm ...

This Committee has advised that although subject to statutes and court rules, such communication is further limited to advertising counsel's new association and availability. In so stating, this Committee cautioned:

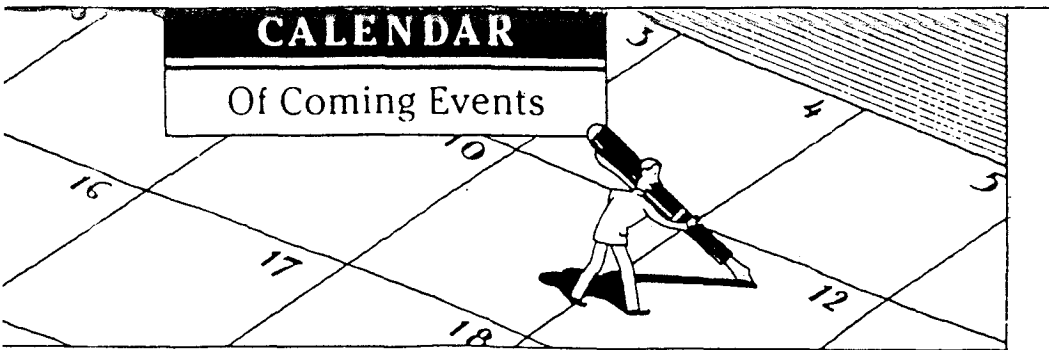
A more difficult question arises with respect to the inquiry as to whether the attorney may, unsolicited, advise his former "clients" that they may take their matters from present counsel (inquiring counsel's former employer) and transfer them to inquiring counsel or to others. DR 2-104(A) prohibits acceptance of employment resulting from unsolicited advice to an individual to obtain counsel or take legal action ... Nassau County Opinion #30/88.

But this Committee qualified Nassau County Opinion #30/88 by stating:

Each attorney may, of course, advise the clients of his availability to continue representing them, so long as this is done in accordance with the Code and applicable Court Rules. See Nassau County Opinion #30-88. Nassau County Opinion #27/90.

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New York Women's Bar Association
Career options forum, 6 p.m., 100 Church Street, 6th Floor. For information: 889-7873.
Brooklyn Women's Bar

9:30 a.m., 810 Seventh Avenue. For information: 765-5700.
Legal Aid Society
Training on "The Jiggetts Preliminary Relief System: Obtaining Rent Arrears Above the Shelter Maximum" 1:30 p.m., New York County

of the City rounds of competition.