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## GATEWAY TO MANALAPAN

*Peter V. McArthur, Esq.*

On January 25, 2007 through the guidance and leadership of Azrak & Associates, the Manalapan Township Planning Board voted to approve the application for the construction of a new modernized bank facility located in Manalapan. The firm successfully argued that the development would replace a dilapidated mixed office residential building, eliminate a dangerous driveway from Route 9 and would alleviate the current environmental concerns that are associated

with the property. In addition, the Board lauded the removal of two unsightly billboards, one of the Townships stated goals for the beautification of the Route 9 Corridor as it winds its way through the Township.

Azrak & Associates had previously obtained the approval for a bank facility in Freehold Township last summer.

Whether you want to put a fence in your backyard or want to develop a

commercial piece of land with complex traffic, drainage, environmental or planning issues Azrak & Associates has successfully represented developers and opponents to development for many years throughout the State of New Jersey and can be counted upon to assemble the appropriate team of experts to meet your development needs.

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## NEW JERSEY ANNOUNCES A NEW CAUSE OF ACTION FOR DIVORCE

*Matthew H. Rudd, Esq. & Fredric F. Azrak, Esq.*

The decision to dissolve a marriage is never an easy one. Once that decision is made the individual must commence the divorce process by filing a Complaint with the Superior Court. The causes of action for a divorce are set forth in our statutes. Deciding on which cause of action to file for can be a tough decision as well. A person may file a Complaint alleging fault or no-fault.

A new law has been enacted which may make that decision a little easier. Effective January 20, 2007 the above statute was amended to establish a new cause of action for a divorce in New Jersey. The cause of action is called "irreconcilable differences." In order to establish "irreconcilable differences" the litigant must show the existence of "irreconcilable differences" which have caused the breakdown of the marriage for a period of six months and which make it appear that the marriage should be dissolved and that there is no reasonable prospect of reconciliation." N.J.S.A. 2A:34-2(i).

This new development will have a substantial impact on divorce in New Jersey. Previously, in order to obtain a no-fault divorce the law required people live separate and apart for 18 months. Many people did not want to wait that long. In order to avoid the 18-month waiting period, the individual seeking the divorce would have to file for a fault divorce. The most common fault cause of action is extreme mental cruelty. In order to establish a cause of action for extreme mental cruelty one was forced to specify the specific acts of cruelty in the divorce complaint. Many people were hesitant to file on the above ground because they did not want to air their "dirty laundry". Thus, the enactment of "irreconcilable differences" will remove some of the hostility associated with divorce.

In addition to "irreconcilable differences", no-fault and extreme mental cruelty there are a number of other ways one can obtain a divorce in the State of New Jersey.

The first cause of action is adultery. The statute does not set

forth what acts specifically constitute adultery. However, throughout the years the case law has provided examples of acts that would constitute adultery. For instance, a person may be guilty of adultery if he or she has intercourse with another individual. A person is also guilty of adultery if they rape another person. These are just a few of the examples of cases where a person can be guilty of adultery. One does not need the adultery to be corroborated because it also can be proven by circumstantial evidence. The Plaintiff must show the Defendant accused has the inclination to commit adultery and had the opportunity for adultery. Often times people will hire a private investigator to obtain the above evidence.

The second cause of action for obtaining a divorce is willful and continued desertion for the term of 12 or more months. According to the statute this can be established by proving that the parties have ceased to cohabit as man and wife.

One may also obtain a divorce in cases where the Defendant has become addicted to drugs or alcohol for a period of 12 or more months preceding the filing of the Complaint. A divorce may also be granted in cases where a person has been institutionalized for mental illness or imprisoned for a specific time period. The final category wherein a person may obtain a divorce in New Jersey is deviant sexual conduct, performed by the defendant without the consent of the plaintiff.

As you can see, of all the causes of action, pleading "irreconcilable differences" is, the easiest and the least, painful for all of the parties involved. Prior to "irreconcilable differences" being enacted as stated above most people would seek to obtain a divorce on the grounds of extreme mental cruelty. However, this was often hard on the families due to the fact that you had to cite specific examples of cruelty.

In our next newsletter we will discuss "Custody – How to protect your rights for your children's welfare."

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## WHEN SOMEONE OWES YOUR BUSINESS MONEY

*Matthew H. Rudd, Esq.*

THERE ARE SEVERAL factors and pieces of information that the collection professional should review in determining the financial success of a collection matter. A careful analysis can help decide if this will be a profitable decision.

This type of review should be made when the debtor is not responding to requests to voluntarily make payment arrangements, or if the debtor fails to respond positively to a collection letter that meets Federal Fair Debt Collection Practices Act scrutiny (see sidebar).

Why are these factors necessary? First, the home address is necessary to effect service of the summons and complaint upon the debtor/defendant. Depending on the state and the amount in controversy, service will be perfected by certified and regular mail, or personal service by a process server or court officer.

Second, there is no point incurring the costs and spending the time to seek and obtain a judgment unless there is significant likelihood of post judgment collection. To this end three areas must be investigated:

If the debtor owns real estate, the Courts provide mechanisms to mechanisms to "docket" the judgment as a lien on real estate in that state deeded under the name of the debtor. The judgment sits as a priority lien on real estate owned by the debtor in front of future judgments or mortgage liens. As a result, a debtor must satisfy a judgment lien before refinancing or selling property.

Determining where a debtor banks is the simplest way to begin to collect on a judgment. The court has a mechanism using a "writ" to instruct a court officer to "levy" (freeze) a sum of money in the debtor's account. With proof of the levy and with notice to the debtor and bank, the lawyer files papers with the court seeking an order. The order actually orders the bank to turn over the funds levied to the law firm or sheriff, thus commencing to satisfy the debt or pay it in full.

Determining the debtor's place of employment creates the opportunity for a wage garnishment. With notice to the debtor and the debtor's employer, an order can be obtained requiring the employer to pay into court a percentage (say 10 percent) of a debtor's weekly gross salary, less service fees. This creates a stream of funds to begin paying down the debt/judgment.

In all post judgment cases, courts impose interest that accrues until the judgment is satisfied. Post judgment collection practice using sheriff sales of property rarely is economically feasible I large volume legal collection practices.

Everyone wants to minimize litigation. Depending on the nature of debt, the debtor may have few or many well-founded defenses that can turn the collection case into a litigated case.

For example, credit debt should be the least onerous because there is no defense pertaining to quality of goods or services. On the other hand, services/good clients run the risk of a dispute over quality and consideration issues.

Whomever the client, the collection professional must be mindful of two factors:

The Statute of Limitations requires an aggrieved party to bring its civil suit within a certain amount of time from the date the grievance began, or forever be precluded from seeking relief. Determine when the client was first owed money by the debtor. The lawyer must file the suit before the Statute of Limitation time period expires, or relief through the courts is lost. The lawyer should advise as to the length of this time period. Depending on the state and the subject matter of the debt, most contract disputes last two to six years.

A business record of the debt is essential. The Federal Truth in Lending Act sets out very specific language and guidelines for credit debt. Whatever the nature of the debt, the business record must stand strong against complaints from debtor's claims of inaccuracy as to description, credits, costs and interest. Where an application or contract memorialize the relationship between the parties, it too must stand up to scrutiny.

It is really helpful to the lawyer when the client can produce documents, when and if the lawyer needs them, within a 30-day time period to comply with the defendant's discovery requests, an arbitration or court hearing. Sometimes, a witness to interpret or put the documents into evidence is necessary. This is of course an expense and inconvenience that must be evaluated relative to the value of the debt in question.

Azrak & Associates, L.L.C. has successfully completed collections for clients for over 32 years.

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## WANDERINGS OF A TRIAL LAWYER

*John A. Snowdon, Jr., Esq.*

In thinking about writing this column, I thought the best place to start is by explaining what a trial lawyer is. First of all, there really are not a lot of trial lawyers around. Most lawyers like to envision themselves as Perry Mason, doing weekly battle with D.A. Hamilton Burger, who, with his evil looking sidekick, Lt. Tragg, insist week after week on trying to convict the wrong defendant of some despicable crime. They can see themselves subjecting witnesses to a withering cross-examination until finally the true malefactor breaks down and confesses on the stand, while Burger, with a stunned look on his face, slinks off to find a new innocent person to put on trial the next week. Few lawyers though can actually do it.

The truth is, of course, that many lawyers go through their entire careers without ever knowing where the courthouse is. As a defense

attorney and former Chief Assistant Prosecutor with over 500 trials under my belt, needless to say, it was always a welcome thing to find your opponent to be a "trial lawyer" without any trials on his resume. Like many professions, in trial law, experience is the name of the game.

I recall a case where an elderly attorney, who had spent most of his career doing house closings, felt compelled for some reason to defend a client accused of selling drugs. He put his client on the stand to testify that she actually hadn't been selling drugs, but had been giving them away to friends, failing to understand that under New Jersey law, even sharing drugs is distribution with the same penalties as for selling. Unlike Perry Mason, it was one of the few times I ever heard a defendant confess on the stand, albeit unwittingly!

The moral is, when you need a trial attorney, you need a trial attorney. When you go into court either because someone has wronged you or has, erroneously of course, claimed you were the wrongdoer, you are going into a gladiatorial arena, make no mistake about it. You don't know if you are going to do battle with Gorilla Monsoon or Pee Wee Herman. You need a gladiator to fight for you. It's like getting a urologist to do your eye operation. He probably knows a little something about eyes, and maybe can muddle through, but after all, it's your eyes!

All the attorneys at Azrak & Associates are trial attorneys with experience with State, Federal and Appellate Courts.

Next time, how does a trial lawyer get to be one?



# AZRAK & ASSOCIATES L.L.C.

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*Azrak & Associates, L.L.C. attorneys have over 125 combined years of experience in general practice. We are continually adding professionals and staff to meet our clients legal needs. Call for a consultation and evaluation of any legal matter.*

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## WISHES FOR THE NEW YEAR

**Fredric F. Azrak, Esq**

Azrak & Associates, L.L.C. wish our clients a wonderful holiday season. Please look forward to our upcoming issues. We will be updating you on numerous changes in the law and more articles of interest.

## AZRAK & ASSOCIATES IS PLEASED TO ANNOUNCE.....

AZRAK & ASSOCIATES, L.L.C. is pleased to announce our continued expansion and introduction of our newest professionals:

**JAMEST. GIBBONS, MATTHEW H. RUDD**

We have provided a short biography of their careers.

### JAMES T. GIBBONS

James T. Gibbons was born in Newark, New Jersey. He received his primary education in public and parochial schools in Montclair, Princeton and Lawrence Township, New Jersey as well as Easton, Maryland.

He graduated from Colgate University in 1972, with a B.A. in Economics. In 1975, he received his Juris Doctorate from the University of Baltimore School of Law. He is licensed to practice law in the municipal, State and Federal Courts in New Jersey.

During the 1975-1976 Court term he served as Law Clerk to the Honorable David D. Furman, J.S.C (Chancery Division). Thereafter, he became associated with and ultimately a partner in a firm practicing corporate law where he was the lead attorney in land use, administrative matters and handled major transactional

matters, financing and refinancing, including E.D.A. financing; matrimonial and litigation in all courts.

Throughout his career, he has maintained a broad general practice business.

In 2000, he became General Counsel to Cargo Logistics, Inc., a family of companies, where he provided legal advice to a multi-million dollar logistics and warehousing company, servicing various U.S. government agencies, including the I.R.S., the D.O.D and Homeland Security (Customs).

He is the father of two daughters.

### MATTHEW H. RUDD

Matthew H. Rudd is licensed in New Jersey since 1985. He resides with his wife and two sons in Oakland, New Jersey. For the last nine years he has practiced general law with a specialty in collection law. He lectures for the Institute for Continuing Legal Education on the Fair Debt Collections Practices Act.

He has a Bachelor of Arts degree in English Literature from Muhlenberg College in Allentown, Pennsylvania, graduating in 1978 and earned his Juris Doctorate from Oklahoma City Uni-

versity in 1984. After graduating from law school he clerked for the Honorable John A. Marzulli in Essex County Superior Court Civil Part. Thereafter, he served as an Essex County Assistant Prosecutor from 1985-1987.

Until the fall of 1998 he maintained a general law practice in Englewood Cliffs, New Jersey. During that time he was involved in many areas of the law, including real estate, civil and criminal litigation and matrimonial and municipal land use matters.

Active in Oakland Government, he served as a member of the Zoning Board of Adjustment for four years and on the town's Planning Board for four years.

Commencing in the fall of 1998, he concentrated his practice in consumer collection litigation.

Elected chairman of the Special Civil Part Committee for the State Bar Association providing input during the Court rule changes in 2000. Starting in 2000 he volunteered his time to ICLE providing lectures throughout the state on debt collection and FD CPA compliance, and as part of the required course for attorneys.