

PROCEEDING PRO SE

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Prosecution Blackmail

Don't tolerate it! *Part 3 of a Series*

A recently reported example of this despicable practice consisted of a 75-year-old retired New Jersey school teacher, Paul Gallo, being arrested, handcuffed and locked up by the Bergen County Police when he picked up his package at the post office of dehydroepiandrosterone -- a perfectly legal medication. The charge was that he "*purposely possessed a controlled dangerous substance, namely, Dehydroepiandrosterone, a schedule III narcotic, a violation of N.J.S. 2C:35-10a(1).*" Did the police apologize for this after they found out they were wrong and he had to hire an attorney? Of course not! As the newsletter Health & Healing stated: "*These actions of the New Jersey State Police are akin to those of the police in some banana republic, or even worse . . .*" Why? Not because of the arrest and the stupid mistake - but the attempted cover-up and the prosecuting attorney's position that the state would not block expunging the arrest -- if Mr. Gallo would promise not to sue the state.

This is yet another example of *prosecution blackmail* resulting from the lack of victims having reasonable individual means to hold government and its employees responsible for their acts. This is by officials who are sworn to protect the public-- but sadly and uniquely in NJ the level of sovereign immunity is far too excessive. The net result is a state where individual rights are more akin to Iran, Iraq and China than the other 49 states. NJ local and state government performance is very poor and very expensive in part because of excessive immunity and a definition of "probable cause" so broad -- that its virtually impossible for a citizen to obtain redress for wrongs committed in the name of the state or one of its agencies. Strong court or legislative remedies are long overdue.

APSA is dedicated to trying to clean up this mess -- so if something happens -- **please contact us at once.** We have both

members and attorneys able and willing to assist the victim.

Our Mission: Helping You!

By Carl R. Frederick, President APSA

The two basic parts to the mission are:

1) To help persons with their individual financial and legal problems by providing the information and assistance to guide them through it so that a more just resolution may be obtained without the spending of megabucks. More than half the time this will entail less than \$100 in fees to one of the attorneys we have under contract to help our members for \$60 per hour.

2) To try and effect judicial, legislative and other reforms or changes so as to be more responsive to people's problems. Often: time, changes in economics, and other factors combine with laws and rules to produce unforeseen and very unjust results for which changes and modifications are needed. To this end officers of APSA are in contact and meet with bar association personnel, judges, legislative persons and others.

The vision is to grow so that every part of the U.S.A. has a local chapter less than 60 minutes travel time for anybody needing assistance. This is important because many laws and rules are locally specific in form. All officers of APSA are unpaid volunteers and thus each and every one of you is very important in recruiting other members and helping out. Only with a large membership can we adequately accomplish the goals. It takes a lot of members, at \$20 dues per year, to maintain the high quality level combination of appropriate and current information provided since most sets of law books or CDs cost about \$1,000 each per year -- in addition to the cost of all the other resource materials.

The Lawyer's Corner

Sexual Harassment In The Workplace

By: Fred S. Scampato, Esq. (ALA)

According to recent articles in the New Jersey Law Journal cases involving sexual harassment are on the rise. Increasing numbers of people are asserting their rights in *(Continued on page 2 column 1- Lawyer's)*

Answering or Filing A: Complaint; Motion And Finding Relevant Law.

The importance of timely and properly answering all legal letters, notices and court papers cannot be overstated. To properly do so, one needs to obtain early information and guidance, - organize the materials and put them in draft form long before the deadline. That way they may be properly reviewed and edited before submission to one of our ALA's (Approved Legal Advisor -- attorney) for final review and editing. For example: in just one area alone, defense of collection actions, members who have followed the recommended procedure have resolved their problems with neutral credit report results and for less than 50 cents on the dollar!

In filing a complaint, or bringing a third-party complaint when answering a complaint served upon you, it is extremely important that: 1) a qualified attorney reviews it, and 2) you take his advice so as to avoid or greatly minimize your exposure from bringing a frivolous claim.

Except for very small dollar amounts in small claims courts and parking tickets, we recommend one have ready access to, or own a PC, a copy of the court rules for the jurisdiction, the specific laws that apply; and obtain appropriate information and guidance. *(continued on page 2 column 3 - Answering)*

ALA's Across the USA

We provide our members attorneys who we call Approved Legal Advisors. In various states we are adding ALA's who help members for \$60 per hour. We are committed to providing ALA's in areas where 12 or more members organize into a chapter.

From the Bench

A coming attraction in which a number of dedicated judges will present their viewpoint and useful information for our members.

(Continued for page 1 column 2 - Lawyer's)

the workplace and taking a stand against abusive and hostile work environments. However, for every one person who stands up and fights for his or her rights, there are dozens more who are too frightened to do anything, and even more people who do not know what to do. Someone once said knowledge is power. This axiom also holds true in dealing with the issue of sexual harassment. Once you know what to do, you stop being a helpless victim and become someone who can retake control of their life. The first part of this three-part article will attempt to dispel some of the darkness surrounding this issue by answering the following questions: 1) What is sexual harassment? 2) When are you protected under the law against sexual harassment? and 3) What can you do when you find yourself being sexually harassed?

What is sexual harassment? New Jersey recognizes two types of sexual harassment (as do a number of other jurisdictions).

The first is "*quid pro quo*" sexual harassment. This generally involves situations where a supervisor or manager requests sexual favors from a subordinate employee. In return for this sexual favor, the manager will provide job security or career advancement. Rejection of the manager's sexual advances will likely lead to resentment, anger, abuse and often unlawful dismissal of the individual's employment. An example of this type of harassment would be when a manager makes it plain to an administrative aid that he/she would be in a position to advance that person's career if the administrative aid would be willing to give him back rubs or foot massages in a hotel room. Then the administrative aid says no, and is later demoted because he/she refused to go to the hotel with the manager.

The second type of sexual harassment is called a *hostile or offensive work environment situation*. Hostile environment sexual harassment generally involves managers or co-employees who continuously and seriously use sexual conduct to harass individuals. As a result of this harassment, a reasonable person of the same sex would believe that the

individual's work performance is adversely affected or an intimidating offensive or abusive working environment is created. An example of this second type of harassment is as follows: A co-worker uses vulgar language of a sexual nature whenever the individual sees that co-worker in the workplace. The co-worker also tells the person sexual jokes and makes sexually derogatory comments to the individual. This type of conduct occurs when the level is severe and not casual or trivial. The conduct is also pervasive and not one or two isolated situations over a period of several years.

When is the individual protected by Law?

The New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq., prohibits sexual harassment against men and women who are heterosexual, homosexual, or bisexual by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation N.J.S.A. 10:5-5(hh). While everyone is potentially protected against harassment, not all harassment violates the law. Harassment violates the law only when it is conduct which would not have occurred but for the employee's gender. Thus, if a supervisor is equally crude and vulgar to all employees, regardless of their sex, an employee cannot claim that he/she was being sexually harassed.

What can one do if sexually harassed?

Obtain your company's employee manual and find out what procedures you have at your disposal to deal with the situation internally. Employee manuals usually tell you whom to file a grievance with. They also generally provide for a confidential investigation that the company will undertake on your behalf. If your company does not have such a manual, tell your company's personnel manager and your supervisor about the situation. If your supervisor is one of the individuals who is harassing you, then go to his/her superior to discuss the situation. When you inform these individuals about the situation, make sure to place your grievance in writing and keep a copy for yourself. In addition to providing your employer with notice of the quid pro quo or hostile work environment harassment, it is important to document every discussion you have (such as using a diary). It is imperative to contact a knowledgeable attorney or the American Pro Se Association immediately. The APSA, can help you organize and edit

your grievance and arrange for a qualified attorney to review the matter for \$60 per hour.

Mr. Scampato is a partner with the Law firm of Eichen, Scampato & Gantner in Edison, NJ. Tel: 908-777-0100 Fax: 908-985-8992.

Need Typing Service & Have a Fax Modem?

Contact Sue Allen at 313-461-9262 or Fax her at 313-461-6066.

(Continued from page 1, Col. 3 - Answering)

All court papers follow a format which starts with the caption page. That is a page in which the name, address and phone number of the person filing the paper is at the left hand top with the parties listed below and the court docket number and nature of the papers indicated. We have samples of the various formats for anybody needing an example.

Only a qualified attorney in the appropriate jurisdiction can provide specifics on what to include in a complaint. However, answering a complaint is relatively simple. Remember, you must answer a complaint in time or you will lose by default.

Usually you can type the caption on your PC or word processor, similar in form, to how your adversary typed his complaint.

Answering a complaint involves 3 parts:

The first part is your sequential answer to each numbered allegation and generally your answers should be: a) Admits; b) Denies; c) Admits in part only; or d) Defendant is without sufficient information and leaves Plaintiff to his proof. Option d) is often best because you have not committed yourself or given any gifts or new information to your adversary. Be careful! In some courts, such as NJ equity court (Chancery), abuse of (d) can backfire.

The second part of your answer should list your affirmative defenses. These defenses claim legal rights for you that even if you did a certain thing, by law, you are not liable. Number and list each on separate lines. Here is a list of affirmative defenses, which you should put in sentence form as *Defendant claims the defense of Fraud*: 1) latches, 2) *Pari Delicto*, 3) unclean hands, 4) failure to state a claim, 5) violation of statute, 6) failure to name all necessary parties, 7) insufficiency or defect of service, 8) lack of jurisdiction, 9) accord and satisfaction, 10) fraud, 11) statute of limitations and/or other time limitations, 12)

bad faith acts of omissions and/or negligence, 13) failure to comply with applicable regulations, 14) failure to comply with applicable state or federal law; 15) estoppel or collateral estoppel; 16) arbitration and award; 16) avoidable consequences -- apportionment of damages; 17) bankruptcy discharge; 18) comity; 19) charitable immunity; 20) choice of law; 21) comparative negligence; 22) duress; 23) election of remedies; 24) entire controversy doctrine; 25) equitable estoppel; 26) federal preemption; 27) *Res judicata*; 28) set-off; 29) usury; 30) waiver; 31) breach of warranty or implied merchantability and 32) (continued on page 3 col. 1 - **Answering**)

(continued from page 2 col. 3 - **Answering**) any special affirmative defense applicable to the particular subject and jurisdiction - such as: a) banking regulation number, b) motor vehicle no fault tort provision number, or c) probable cause.

The third part consists of your claims against others. Assuming you have a basis for a counterclaim or third-party claim, now is the time to make it. If you do not make your claim as part of your answer to the complaint, you may forfeit it.

After drafting your answer in the best shape possible, print it out in double or triple space and take it to an attorney for edit. Then retype and serve and file as per the rules for the particular court.

Filing and Answering a Motion:

A motion is the format for asking the court to do something. To file a motion one needs a minimum of four elements: 1) Notice of Motion; 2) Certification (or certificate) of Service; 3) Affidavit or certification of facts and 4) Form of the Proposed Order for the judge to sign. Additionally, two other items often are required: 5) Exhibits and 6) Some motions require a Legal Brief to be filed. In rare instances, such as appellate papers, a more detailed specific format and order of papers, including transcripts may be required

depending upon the court. Motions may be decided either on the papers or on oral arguments. Often one needs to file the proper papers and arguments on time in order to be allowed to make oral arguments on the *return date*. Motions generally deal more with points of law than fact sensitive issues but most courts give judges wide discretion. Often what should be a clear win for the *pro se* party is a loss on the specific motion (but not the case). The reasons for this are not fair but include the generally poor quality of many *pro se* papers so that many judges have become programmed to discount the value of every *pro se*'s legal arguments vs. that of an attorney.

Finding the Relevant Law:

Finding the relevant and legal point at issue. This is very difficult for someone to do well without training and experience. Worse yet is that with the exception of relevant legal libraries and trained law librarians a *pro se* will be misled by well meaning public librarians. Even those public libraries that have law books often have budgets that are too limited to subscribe to the currently needed law materials. Rules and case law changes are constant. Thus, a 1992 rules of evidence book in NJ is worthless given New Jersey's total change to a series similar (but different) from the Federal Rules of Evidence. We recommend you get an experienced *pro se* who knows how to do this to assist you and either use an APSA resource center or go to a well equipped and competently staffed law library. Then have a qualified ALA or other appropriate attorney review all the motion papers and your case law and arguments before you file the motion or opposition papers. Two other explicit points to remember: 1) It is the legal point at issue -- not "the case seems similar to your own" and 2) The court is generally not bound by a decision made in another state as contrasted to case law in the relevant jurisdiction.

Serving and Answering of Complaints and Motions Must be According to the Rules.

It is important to read the court rules. If the rule says a person in a given state must be served in person or in a certain other specific manner -- you need to make sure you have complied with the rule or your action or defense may be dismissed and you will lose by default. The moving and answering papers must be served or answered in the time and by a recognized method.

Alternate Dispute Resolution

By Carl R. Frederick

In many instances if you have the opportunity to elect - or the other party is willing to submit to mediation or arbitration - it is generally going to be to your best interest as a *pro se*. For one thing it will take a lot less time and technical legal knowledge to pursue the matter and the less formal and relaxed court rules will usually tend to reduce the disadvantage of the less skilled party. Arbitration comes in both binding and none binding arrangements -- sometimes it is court imposed (to try and dispose of cases more quickly and efficiently than they would be by a full court trial). In family law matters, such as divorce and child custody, its almost always a much better route to take for both parties. Often that will also be the case in simple physical damage motor vehicle claims and landlord tenant disputes.

One exception to this is if you have a relatively weak defense in a collection matter as the defendant -- then you definitely *do not want alternate dispute resolution*. The reason is simple economics -- collection attorneys work on a percent of what they eventually collect -- not by the hour. Most people fail to fight them and they generally collect by default judgment. However it is not economic for a collection attorney to eat up his time in a prolonged legal battle with multiple party joinder, extensive discovery and numerous motions with oral arguments for

Membership Application (Not Open to Attorney's and Judges) - (Photocopies Encouraged) January - March 1996

Mail to: American Pro Se Association 1441 Prospect Avenue Plainfield, NJ 07060

First Name: _____ MI: _____ Last Name: _____
 EMPLOYER: _____ Employer Tel: (_____-_____-_____
 Employer Add: _____ City: _____ State: _____ Zip: _____
 Employer Fax: (_____-_____-_____) Type of Employment: _____
 Home Add: _____ City: _____ State: _____ Zip: _____
 Home Tel: (_____-_____-_____) Home Fax: (_____-_____-_____

\$20 check for annual dues attached I have a 386 PC or above I would like to volunteer

which he has to go to court. If the collection attorney is not very bright you may have a year or more of intensive paperwork and oral argument motions. If he is sharp he will quickly agree to take 30% to 50% and spend his time more (Continued on Page 4 Col. 1 - **Alternate**)

(Continued from Page 3 Col. 3 - **Alternate**) profitably executing default judgments on all those who failed to file the appropriate answering papers to force a compromise.

California Law - The Internet & Our Resource Center

We have a fair number of CA residents who have become members -- yet they remain substantially scattered and have not evolved into chapters thus far. In an effort to better serve those individuals in the interim we have added a substantial amount of CA legal reference materials -- about equal to that for NJ about 17 months ago. We do this for all other states in transition prior to formation of viable chapters to provide local service. The other way we provide broad area coverage is by way of our evolving Internet site whose address is: <http://soho.ios.com/~legalhp>.

Book, Software & Video Reviews:

Barclays NJ Administrative Code: This is a fine product -- at least for the sections we have in our resource center -- titles 1, 11 and 14. The price of each is reasonable and Barclays' telephone number is 800-888-3600. (Note: In NJ the Office of Administrative Law is NOT part of the NJ court system -- but part of the administration and significantly biased in favor of the regulatory agencies. -- Appeal your action to NJ Superior Court after you lose)

ICLE: - New Jersey Institute for Continuing Legal Education seminars and books. They produce hundreds of seminars a year and have many publications. Most of the materials and seminars we have purchased are quite good -- and a number are truly outstanding. Certainly the performance by the Honorable Steven A. Stripp, United States Bankruptcy Judge, for District of NJ (Trenton) at the ICLE Seminar on Bankruptcy Practice was among those that were outstanding. The ICLE Telephone number is 908-214-8500.

Michie's Law On Disc - January 1996 NJ1:

This is a super product with easy to use windows search options making it easy for a novice to find the **on point** case law and to largely accomplish the equivalent of "Shepardizing" the case law. Additionally the current version provides the NJ Federal Case Law and the NJ Constitution and Statutes. From that standpoint it represents a large portion of a NJ law library. The price is more reasonable than the traditional pricing of the case law by its competitor -- but at about \$114 per month its still too high to achieve the kind of volume it could. Hey, Michie -- Look at Microsoft! Try about \$395 a year and get all the local libraries, paralegals, pro se chapters and attorneys and others. Michie Butterworth can be reached at 800-446-3410.

NJ Office of Administration of the Courts Pro Se Video Series:

The four we have been provided by the Administration do an excellent job of presenting information and procedures for pro se litigants in an easy to understand and follow manner. They are available for viewing in our Resource Center.

Nolo's Pocket Guide to California Law:

This also comes in an expanded software version -- we have both. It truly is amazing how complete, easy to read, understand and find CA law in only 194 pages including a good index. If you reside or do business in CA you should have your own copy. Nolo Press 800-992-6656 -- and a real steal at \$10.95.

Rules Governing The Courts of the State of New Jersey:

Despite its very long title this version of the court rules with comments and annotations by judge Sylvia B. Pressler and published by Gann Law Books is the runaway winner. Of the many state court rule books we have -- and we automatically buy the state court rule book when we reach six members in any state -- at best Arizona is a very distant second. Its impossible to adequately

state the value of the book's layout, indexing, references and annotations -- only that every other state should have a publisher produce something half as good. It makes easy the finding of a starting point for case cites for motions and briefs. If you are involved in litigation in NJ you must have it. Gann's phone number is 201-268-1200 -- and its priced appropriately at \$57.

United States Code to January 1994 (published October 1995):

Published by the US Government -- this is a fairly good windows search CD-ROM legal product at a very good price and can be obtained from either the US Government or CD Publishers who also publish the companion two CD-ROM set of CFR's that go with the code. The retail price of the code is under \$99 but the CFRs are somewhat pricey at about \$600 for the complete set once a year -- more if updated during the year.

West's California Codes - Civil Code -- 1996 Compact Edition:

If you reside in CA this is an excellent legal reference book at a reasonable price and a companion to a series of similar books including California Code of Civil Procedure and a series that includes volumes on commercial code to vehicle code. West Publishing's telephone number is 800-328-9352. Unfortunately West has a system of not publishing the price on the book so we do not have the exact price.

Bits & Notes:

The March meeting will be held at 7:30 p.m. on Tuesday March 12, 1996 at 1441 Prospect Avenue; Plainfield, NJ 07060. 908-753-4516.

Help! Please call 908-753-4514 to volunteer.

Did You Know? The average American

American Pro Se Association
1441 Prospect Avenue
Plainfield, NJ 07060

has a 4.5 times greater chance of a legal or credit problem than needing their car towed. If you are not a member of APSA join now -- the \$20 annual dues could save you thousands!