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Memorial Service for Miner (N.Y. Law Journal)

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NEWS IN BRIEF

Attorney, Fiance Charged In Painkiller Scheme

A New York City lawyer and her physician assistant fiance have been charged in a prescription painkiller scheme. Attorney Perri Weissman, 26, and Eric Schein, 27, were arrested on June 18 in their Manhattan apartment. Special Narcotics Prosecutor Bridget Brennan alleges that over a 16-month period the pair filled 163 prescriptions for Percocet in their own names for more than 13,000 pills. The two face a combined 66 counts related to 25 of those prescriptions, including conspiracy, criminal sale of a prescription for a controlled substance, criminal possession of a controlled substance, forgery and criminal possession of a controlled substance.

Schein is accused of stealing prescription pads while working at Mount Sinai Medical School and elsewhere. Some of the prescriptions were filled at pharmacies near the couple's Upper East Side home. Authorities say Weissman had worked as an in-house lawyer for Duane Reade/Walgreens drug store chain before being fired in February. Part of her job was to review subpoenas from Brennan's office.

Schein and Weissman pleaded not guilty yesterday at their arraignments before Manhattan Acting Supreme Court Justice Michael Sonberg. They are represented by Steven Gaiman. Bail for Weissman was set at \$20,000 cash/bond while bail for Schein was set at \$40,000 cash/bond. They both posted bond with a New Jersey house belonging to Schein's parents as collateral, according to a spokeswoman for the special prosecutor. The maximum sentence on the top charge is nine years.

Court of Appeals for the Second Circuit opposing an appeal of Judge Jones ruling by Republican congressional leaders.

In *Windsor v. United States*, 10-cv-08435, Judge Jones held that Section 3 of the act, defining marriage solely as the union between one man and one woman, violates the U.S. Constitution's equal protection clause (NYLJ, June 7). Notice of Appeal by the Bipartisan Legal Advisory Group of the U.S. House of Representatives was filed June 8. The case at the circuit is *Windsor v. United States*, 12-2435.

—Mark Hamblett

Memorial Service for Miner

A memorial service for Second Circuit Judge Roger Miner will be held today at 1 p.m. at the Second Circuit at 500 Pearl St. Miner, 77, died on Feb. 17 of heart-related problems at his home in Hudson. He assumed senior status in 1997, was appointed to the circuit in 1985 by President Ronald Reagan, who also had appointed him to the Northern District bench in Albany.

Bill to Amend Constitution On Judge Retirements Stalls

The state Legislature was expected to end its session yesterday without taking up a proposed constitutional amendment that would have increased the retirement age for Court of Appeals judges, permitted Supreme Court justices to serve as certificated jurists until age 80 and allowed judges of other trial courts to serve until 76. Currently, Court of Appeals judges must retire at the end of the year in which they turn 70. An amendment proposed by Chief Judge Jonathan Lippman would increase the mandatory

Attorney, Client Are Sanctioned For Filing Frivolous Claims

BY MARK HAMBLETT

AN ATTORNEY and his client who repeatedly sued a health care company have been sanctioned for filing frivolous claims.

Southern District Judge Denise Cote said attorney Anthony Bentley and plaintiff Jennie Rosario must pay the attorney fees for Oxford Health Plans and its bill collector.

"Sanctions are appropriate in this case because Bentley has repeatedly made frivolous and unsupported filings in this action and in prior actions on behalf of the plaintiff against Oxford," Cote said in *Rosario v. Receivable Managements Services*, 11 Civ. 8720.

Bentley, the judge said, began in 2010 by filing a seven-word complaint in New York City Civil Court that stated "1. Breach of Contract; 2. Violation of NYGBL §349" and sought \$16,102. The

core allegation was that Oxford deprived Rosario of six "dividend" checks totaling \$150 by mailing checks to Rosario that expired after six months.

Bentley then filed notice of removal, a tool normally reserved for defendants, Cote said. And he filed in the Northern District, despite the fact that removal is proper only in the federal district where the original state action was brought.

The case was remanded back to state court and, on Oct. 12, 2010, Oxford removed the case to the Southern District and then moved to dismiss.

"In opposing the motion to dismiss, Bentley argued, inter alia, that he did not need to comply with federal pleading standards because state procedural law trumps federal procedural law in federal court," Cote said.

The action was dismissed without prejudice and Bentley filed a second action on May 22, 2011, in Manhattan Supreme Court seeking \$30,000, stating the nature of the action was "Pursuant to Order of the Hon. Jed S. Rakoff, U.S.D.J. dated 12/9/2010" and that the relief sought was "1. Accounting; 2) Class Action."

However, Cote said, Rakoff, the district judge assigned to *Rosario I*, never ordered the

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Online

➤ The Southern District decision is posted at nylj.com.

Solo Is Accused of Stealing Settlement Funds, Forging Check

BY ANDREW KESHNER

A MANHATTAN SOLO attorney who has handled several high-profile cases has been indicted for allegedly stealing more than \$100,000 from client settlement funds and forging a check to obtain more than



arrested at his Queens home earlier in the day.

"It's his intent to challenge each of these charges," said Jackson's attorney, Michael Hardy, who is general counsel and executive vice president of National Action Network, which was founded by the Reverend Al Sharpton.

U.S. SUPREME COURT

Indecency Finding Is Overturned On Narrow Grounds

BY MARCIA COYLE AND TONY MAURO

WASHINGTON

THE U.S. SUPREME Court unanimously threw out fines and sanctions yesterday against broadcasters who violated the Federal Communications Commission policy regulating curse words and nudity on broadcast television.

But the justices declined to follow the U.S. Court of Appeals for the Second Circuit and issue a broad ruling on the constitutionality of the FCC indecency policy. Instead, the court concluded only that broadcasters could not have known in advance that fleeting obscenities uttered during awards programs and a brief display of nudity on an episode of ABC's *NYPD Blue* could give rise to sanctions. ABC and 45 affiliates were hit with proposed fines totaling nearly \$1.24 million.

The narrow ruling in *FCC v. Fox*, 10-1293, was one of four opinions issued by the court. After

yesterday's rulings, five cases remain, including health care and life without parole for juvenile murders. The court will return on June 25 and may schedule an additional decision day that week.

In the world of appellate practice, yesterday was a big day for Carter Phillips, Sidley Austin's co-chairman and veteran advocate, who won two cases—following on the heels of a win on June 18 in an Indian contracts case. Phillips has argued 76 times before the high court, more than any lawyer now in private practice.

"I don't think I have ever won three in a week before, but it feels very good," Phillips said.

The FCC decision marks the second, and probably not the last, time the court has scrutinized the commission's broad-

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Justice Kennedy