

LEAVEWORTHY



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on Courts of Appellate Jurisdiction

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Presiding Justice Alan D. Scheinkman

by *Mark Diamond*



Alan D. Scheinkman, Presiding Justice of the Appellate Division for the Second Judicial Department, came to the job in 2018 with an extraordinary amount of ap-

pellate experience as an attorney and judge. What was unusual is that he did not sit as a judge on the appellate division before being appointed its presiding justice.

“There are advantages and disadvantages coming from the outside,” said Justice Scheinkman. “I came here with a fresh perspective and a lot of managerial experience. We hear at least twenty cases a day plus those on the submissions calendar. All judges sit on the bench and hear cases no less than every other week and often more. We also handle motions as well as attorney disciplinary and admission matters. This is a very demanding job. But our justices and staff are very collegial and work extremely hard. It is an honor to be here.”

Justice Scheinkman received his bachelor’s degree from George Washington

University in 1972 and law degree from St. John’s University School of Law in 1975, where he worked for Prof. David Siegel on his book, *New York Practice*.

Following his admission to the bar, the judge worked as a law clerk for Hon. Matthew Jasen at the Court of Appeals from 1975 to 1977. From 1977 to 1979, he was an associate at Marshall, Bratter, Greene, Allison & Tucker, and from 1979 to 1982, an associate at Golenblock & Barell, doing primarily commercial and matrimonial litigation.

His pace did not stop. From 1982 to 1983, he served as associate counsel for the New York State Temporary Commission on the Recodification of the Family Court Act. “In 1962 a constitutional revision created the Family Court. But Family Court was conceived of as more of a court of social welfare than a court of law,” he explained. “Following *Application of Gault* (387 U.S. 1) in which the Supreme Court held that children accused of juvenile delinquency were entitled to due process and counsel, the court was reconfigured to be a true court of law.”

From 1984 to 1990, Justice Scheinkman was in solo practice and taught at St. John’s Law School. Then, from 1990 to

Continued on page 2

Continued from page 1

1997, he joined forces to form Scheinkman, Fredman & Kosan, where he continued to do matrimonial and commercial litigation, but also a good amount of election and municipal law including municipal liability litigation. He continued to teach as an adjunct professor at Rutgers University for two years, then at Pace University School of Law until 1997. That year, he moved on to work as associate minority counsel for the New York State Senate. From 1998 to 2000, he served as Westchester County Attorney.

Then it was back to private practice. From 2001 to 2002, Justice Scheinkman was a partner at Epstein, Becker & Green, where he practiced health law and commercial litigation and was deeply involved with the county's spinoff of Westchester County Medical Center to become a private facility. From 2002 to 2006, he was a partner at DelBello, Donnellan, Weingarten, Tartaglia, Wise & Wiederkehr, where he did lots of article 78 land use appeals, as well as environmental, hospital, and major constitutional litigation involving New York's Eminent Domain Procedure Law in the federal district court and Second Circuit Court of Appeals.

Justice Scheinkman is married. His son is an attorney in commercial litigation at DavisPolk. His daughter died in December after a five year battle with breast cancer, during which she continued to work in marketing for the National Football League.

His judicial career began in 2006, when he was elected as a Justice for the Westchester County Supreme Court. There, he presided over the commercial division, residential mortgage foreclosures, and matrimonial trials. "The kids had finished with college. Although judicial salaries had been frozen for some time and were not as substantial as they are now, I could afford the pay cut in order to serve on the bench, which I had always wanted to do."

The judge served as Associate Justice for the Appellate Term for the Ninth and Tenth Judicial Districts from 2007 to 2009 and that year, became District Administrative Judge for the 9th Judicial District of New York, where he served until his appointment as presiding justice of the Second Department.

The biggest problem faced by the Court is its big backlog of cases. "Right now, we have 20 justices with two vacancies and a backlog of 3,000 cases, which is much less than what we had before," explained Justice Scheinkman. "We do 65 percent of the Appellate Division cases in New York covering half of the state's population.

"How do we handle this? We've instituted several methods in tandem to reduce this backlog. First of all, I sit on the bench hearing cases every other week. I want to interact with lawyers, not just sit behind a desk.

"E-filing began last year and that helps," the judge continued. "We now allow lawyers to use their laptops and other electronic devices for cases on the docket. I am very open to revisiting all court policies including a revision to our rules to give attorneys the right to ask to see a judge on a stay application instead of having to do it only on paper.

"Our retired justices settle about half of all not yet perfected civil cases through our Civil Appeals Management Program. Recently, we instituted a mandatory mediation program for perfected civil appeals. Special masters, consisting of attorneys and retired judges, settle about 20 percent of all perfected civil cases. Between both programs we have been able to reduce our backlog substantially.

"We have also instituted mandatory reporting to the Court when a case has been settled in fact or in principal. For example, a case that the parties have agreed to settle but which has not been settled because settlement funds have not been paid yet is considered a settled case for reporting purposes. The Court must be notified of anything that will result in the end of a case. This is vital. The judges and staff work very hard in analyzing each case in detail, work that is wasted if the case has been resolved. This is so crucial that we may impose sanctions for failure to do so."

Another way the Court is reducing its backlog is by establishing a special foreclosure calendar. "Foreclosure cases comprise about one third of all our cases," explains the judge. "We have 1,000 filed foreclosure appeals. For a long time, foreclosure law was unsettled but now it is pretty much settled. Our special panels of justices work hard to consider these cases and issue decisions."

Despite its tremendous workload, the Second Department took a bit of time to celebrate the 80th anniversary of its courthouse. In attendance were Court of Appeals Chief Judge Janet DiFiore, as well as many Second Department luminaries including Hon. Albert Rosenblatt and Hon. Joseph Bellacosa, as well as past presiding justices Hon. Gail Prudenti, Hon. Guy James Mangano, and Hon. Randall Eng.

"It cost \$1.25 million to construct the building. At the time, Presiding Justice Edward Lazansky asked for

\$105,000 for furniture. Although a judge's desk cost \$450 and chair \$240, Justice Lazansky argued that it would ultimately cost more to buy cheaper furniture." Justice Scheinkman smiled. "We're still using the same furniture. I guess he was right."

The judge continues to serve as co-chair of the Judicial Task Force to review Article 6 of the New York State constitution, a group established to study and recommend changes to the judiciary laws through the legislative process.

"There are about 25,000 words in the constitution covering the state judiciary," noted the judge. "We have 13 major trial courts. It is an elaborate and

Byzantine system. Standardization should be a goal among the courts. This could mean court mergers and the creation of a fifth Appellate Division, which would take on some of work currently performed by the Second Department."

If all this were not enough, the judge continues to write the practice commentaries on domestic relations law for *McKinney's Consolidated Laws of New York Annotated*. He serves on the Association of Supreme Court Justices Committee on Pattern Jury Instructions – Civil, as well as other court and bar association committees.

Certainly, a life devoted to the law, the public service, and to our profession.



Presiding Justice Rolando Acosta

by Mark Diamond



Rolando T. Acosta is Presiding Justice of the Appellate Division for the First Judicial Department. He could have been a major league baseball player. Or he could have been a victim of the Balaguer regime, a repressive autocracy that resulted in over 10,000 people killed in civil unrest.

The Dominican Republic is the most visited destination in the Caribbean and one of the fastest-growing economies in the Americas. It was not always thus.

Like so many others who have fled economic and political disaster, in 1969, at age 14, Rolando Acosta and his parents, brother, and four sisters immigrated from the Caribbean island to the United States. It was the first decision that changed his life.

“We were part of an exodus of people looking for a better life,” says the judge. “It’s a journey that continues today.”

Moving to the south Bronx, his folks worked 70-hour weeks in the Manhattan garment district. In 1972, Justice Acosta, then 16 years old, enrolled at DeWitt Clinton High School where he studied English as a second language. Four years later, he graduated fourth in a class of over 1000 students.

The judge entered Columbia College, where he continued his high school baseball career, earning Columbia’s season and career wins records and being twice named Pitcher of the Year in the intercollegiate league. He was inducted into the Columbia University Athletic Hall of Fame in 2008.

It was his dad who talked him out of playing ball for a living when graduating high school, because of its vicissitudes. It was his girlfriend, Vasthi Reyes, who talked him out of playing ball when graduating college, convincing him to attend law school instead. Those were the second and third decisions that changed his life. Judge Acosta graduated Columbia School of Law with honors in 1982, the first one in his family to attend college and receive an advanced degree. Then, in 1980, he married Vasthi.

The judge’s first job as an attorney was with The Legal Aid Society in The Bronx. It was a debt repaid, for

while Acosta was in high school, his dad lost his job. The family faced eviction. It was the Bronx Legal Aid Society that saved them.

At Legal Aid, he rose to the level of attorney-in-charge of the civil trial office and director of government and community affairs. Then, in 1989, Mayor Ed Koch appointed him to serve as first deputy commissioner for law enforcement at the New York City Commission on Human Rights. The Commission’s mandate is to investigate and prosecute discrimination and bias-related crimes throughout the city. With a budget of \$1.5 million, rising to \$8 million and then \$15 million under Mayor David Dinkins, the commission includes over 100 lawyers and investigators.

In 1997, Justice Acosta returned to the Legal Aid Society, where he served as attorney-in-charge of Brooklyn’s redoubtable civil office. Later that year, he ran for civil court judge in New York County and won handily. In 2002, he was designated to serve as acting Supreme Court Justice and spearheaded the creation of the Harlem Community Justice Center, which was organized to dispense justice in housing and juvenile delinquency cases in a forward thinking and humane manner.

“Helping to create this court from scratch was one of the most fulfilling things I have ever done,” says the judge.

He was elected as Supreme Court Justice in 2002 and in January, 2008, appointed to the bench of the Appellate Division, First Department, by Gov. Eliot Spitzer. On top of that, in 2010, he was appointed as a member of the New York State Commission on Judicial Conduct.

In May, 2017, a fourth decision changed his life. Justice Acosta was appointed by Gov. Andrew Cuomo to serve as Presiding Justice of the appellate court.

What are his goals for the Court?

“The courthouse was built in 1900. It is one of the most beautiful public buildings in the city,” notes the judge. “Our goal is to preserve the elegance of the court while modernizing and bringing people closer to it.

“In the past couple of years, the Court has instituted live streaming of oral arguments and e-filing of commercial appeals. Within the next two years, we anticipate expanding e-filing to all case types. We have implemented joint practice rules for the four departments of the appellate division, and we have upgraded to new computer servers and will soon be launching a sophisticated case management system to keep track of all First

Department cases. This latter goal is critical: In 2018, for example, our Court, with only 17 judges, handled more than 3,100 appeals.

“These changes are allowing us to provide speedy justice. We ended 2018 with only 36 pending cases. Except in unusual cases, oral argument is scheduled during the same term in which a litigant perfects his or her appeal, and decisions are issued, on average, within four to five weeks of oral argument.”

In addition to his service on the bench, Justice Acosta has been critical in the development of the Washington Heights/Inwood social service infrastructure. This includes founding The Latino Commission on AIDS in 1990 to promote HIV education and develop model prevention programs, as well as serving as legal adviser to the founding members of Alianza Dominicana, a community development organization that partners with youth, families, and public and private institutions to revitalize economically distressed neighborhoods.

He served as treasurer and chairperson of the policy committee of the Hispanic Federation, a premier Latino nonprofit membership organization that works with over 100 Latino grassroots nonprofits throughout the East Coast and in Puerto Rico to support Hispanic families and strengthen Latino institutions. He was

a founding board member of the Upper Manhattan Empowerment Zone, an organization with a budget of over 300 million mostly federal dollars that works to revitalize communities in Upper Manhattan through job creation, corporate alliances, strategic investments, and small business assistance. He has served on its executive committee and as chair of its human capital development committee. If that were not enough, he helped create the Dominican Bar Association.

Justice Acosta is still married to Vasthi, the woman who talked him out of becoming a wealthy and famous baseball player. She serves as executive director of Amber Charter School, which was founded in 2000 as the first Latino-led charter school in New York State. Their son, Lucas, lives in Washington, D.C. and works as director of broadcast media for the Democratic National Committee. Their daughter, Zila, is a fourth year associate at Debevoise & Plimpton.

It is a life well lived, the outcome of a decision that his folks made in 1969 in their children’s best interest. A decision about which his father, now 97 years old, despite his and his wife’s many years of burden, can now look back on and smile, with gratitude to a good country, with pride for his son.

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Pat Wood: Our Friend and Colleague

By Cheryl Korman and Tim Murphy

On May 2, 2019 in Albany, the CCAJ held its last formal meeting with Pat Wood as our liaison to NYSBA. Pat retired from NYSBA in June after many years of dedicated service to the organization.

At our Albany meeting, we presented Pat with a plaque and a cake to celebrate her great work for the CCAJ. Pat is one of those people you meet in the law who personifies all the qualities you want in a colleague and administrative employee: dedication, thoroughness, patience, smartness and pleasantness.

Among other things, Pat would organize and help prepare the agenda for our meetings, consult on NYSBA protocol and internal workings of the organization, consult on implementing potential policy initiatives for the CCAJ, organize conference calls for subcommittees, communicate with and update the Committee on important events and provide us critical feedback on running this Committee. The CCAJ could not operate without people as dedicated as Pat.

Pat will be greatly missed as a colleague, but we are both happy to say that our friendship will not end here.

We'll miss you

A reminder to our readers: Your contributions of ideas and articles for this semi-annual publication are welcome. Please send your submissions to CTSAPP@nysba.org.

STATED PURPOSE

COMMITTEE ON COURTS OF APPELLATE JURISDICTION

Formed: June 1, 1968

The Committee on Courts of Appellate Jurisdiction shall be charged with the duty to observe and consider the administration of justice in the courts of appellate jurisdiction and it shall make recommendations to the Committee on judicial administration for the improvement thereof.

ARE YOU ARGUING AN APPEAL BEFORE THE APPELLATE DIVISION OR COURT OF APPEALS?

If you answered “yes,” consider participating in the **Courts of Appellate Jurisdiction Committee’s Moot Court Program**. This program—available at no cost to members of the NYSBA—offers any attorney who is arguing a case before the Appellate Division or the Court of Appeals to apply and request that the Program “moot” his or her argument before a panel of experienced appellate attorneys and former judges. Following the “moot,” the panel will provide the attorney with feedback and suggestions.

For more information on the CCAJ Moot Court Program, go to www.nysba.org/CCAJ.

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