

### UPCOMING EVENTS

David Gresen, CPA/ABV/CFF, CFE will be one of the speakers on Friday November 1, 2013 for the New York State Bar Association at the Melville Marriott Long Island. The topic is: "Matrimonial Trial Institute IV: A Mock Financial Trial." To learn more about this event [CLICK HERE](#)

### SEPARATE PROPERTY CASES OF INTEREST

**TENORE v. TENORE (Appellate Division - Second Department)** - Defendant-husband appeals the decision of the Supreme Court which granted the plaintiff-wife to a qualified domestic relations order assigning \$14,673 of defendant's retirement account to her.

Appellate Court affirms the decision of the Supreme Court, holding that where a party fails to trace the monies claimed as separate property, a court may treat it as marital property. Here, the defendant failed to meet his burden of demonstrating that certain of the retirement funds used to calculate the QDRO were premarital.

[LINK TO DECISION](#)

**ZUFALL v. ZUFALL (Appellate Division - Fourth Department)** - Defendant-husband appeals a decision of the Supreme Court claiming that it erred in awarding the plaintiff-wife half of the funds in his deferred compensation account by improperly presuming that all of the funds in the account accumulated during the marriage. He further contends that the matter should be remitted to the Supreme Court for a determination of the marital and separate property portions of the account.

Appellate Court affirms the decision of the Supreme Court and holds that all property, unless clearly separate, is presumed to be marital property, with the burden resting on the titled spouse to rebut this presumption. As the defendant did not offer any evidence establishing the amounts contributed to the deferred compensation account before or during the marriage, he failed to meet his burden.

[LINK TO DECISION](#)

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## **COMPUTER FORENSIC & eDISCOVERY ARTICLES OF INTEREST**

**MYSPACE PHOTOS AS IMPEACHMENT EVIDENCE** - "In a case involving claims of self-defense, the Trial Court excluded photos of the victim from MySpace holding a gun and wearing gang colors. Three prosecution witnesses claimed they had never seen the victim with a gun before. The Trial Court excluded the MySpace photos on the grounds the three photos were prejudicial. The Court of Appeals reversed. The photos should have been admitted as impeachment evidence to contradict the testimony of the prosecution witnesses."

[LINK TO ARTICLE](#)

**PROPORTIONALITY, TEXT MESSAGES AND SMARTPHONES ON APPEAL** - "Applying the principle of proportionality to preservation of electronically stored information (ESI) is gaining traction, as witnessed by recent court opinions, thought leadership and even proposed amendments to the Federal Rules of Civil Procedure. Sometimes application of this principle results in the denial of spoliation sanctions even where a failure to preserve has been established. However, precedential appellate decisions in e-discovery are still rare. In addition, opinions addressing technologies communications such as texting and hardware such as mobile devices have been addressed by very few cases. The recent appellate opinion in *PTSI, Inc. v. Haley et. al.* is a rare e-discovery case because it is an appellate decision that involves texting, smartphones and the principle of proportionality as applied to preservation."

[LINK TO ARTICLE](#)

**ENFORCEMENT OF THE NEW HIPAA RULE TO INCLUDE DATA STORAGE AND (POTENTIALLY) EDISCOVERY SERVICE PROVIDERS** - "Enforcement of the new Health Insurance Portability and Accountability Act (HIPAA) omnibus rule will begin soon on September 23, 2013. The new rule broadens the HIPAA's Privacy and Security Rules to include not only 'covered entities' -- health care providers, health plans and health care clearinghouses -- and their 'business associates,' but subcontractors of business associates, as well. The new rule modifies 'business associates' to include anyone who "creates, receives, maintains, or transmits' protected health information [PHI] on behalf of a covered entity." This includes data storage companies and potentially eDiscovery service providers."

[LINK TO ARTICLE](#)

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