HMYLAW

Hamburger, Maxson, Yaffe & McNally, LLP

August 14, 2018

Original Content

- **Sending A Child To College This Fall?**
- **No First Names for Law Firms**
- **Discrimination Suit Over Denial of Public Housing's Rental Dismissed**

Sending A Child To College This Fall?

During this time of year, parents of college students are inundated with advice, along with checklists of items needed for college. But one of the most important items is frequently overlooked: a Health Care Proxy. A Health Care Proxy is a legal document which names an agent to make health care decisions if the adult patient cannot communicate his or her wishes. The proxy also authorizes the agent to receive confidential information under the Health Insurance Portability and Accountability Act ("HIPAA"). HIPAA, which kicks in when your child turns 18, requires medical personnel to keep health information confidential unless the physician deems it in the best interest of the patient to disclose the information. More often than not, medical professionals come down on the side of patient privacy.

"But I'm his mother, what do you mean you can't tell me over the phone?" If your child has not signed a Health Care Proxy naming you as agent, you may be denied access to your child's medical information and may be prevented from weighing in on decisions regarding treatment.

Before you send your child off to college, contact our office (631.694.2400) to schedule an appointment, and we will work with you and your child to have the document prepared and signed in a single visit.

No First Names for Law Firms

Why is it that we expect our pizza parlors to have friendly "just folks" names like "Little Vincent's" and our law firms to have solid, sober and impressive names like "Sullivan & Cromwell"? Why don't we see more pizza parlors called "Mutual of Omaha Pizza" and more law firms called "Ben & Jerry's Law Firm"?

Recently, the New York State Bar Association Committee on Professional Ethics told an inquiring attorney, in a matter of first impression, that the use of a first name as the sole name of a law firm was prohibited. The Committee recognized that no rule of professional ethics, on its face, required this result, but nonetheless reasoned that there exists an "understanding that a law firm's name consists of surnames of lawyers who either practice there or once did" and that "customary usage teaches that the public in general and the legal profession in particular expect that the name of a law firm reflects the surnames of lawyers currently or formerly associated with the firm." According to the Committee, use of a lawyer's first name, not followed by the lawyer's surname, constituted an impermissible "trade name." N.Y.S. Bar Ass'n. Comm. Of Prof. Ethics Op. 1152 (2018).

It may surprise us to think that our first names are trade names but, in the context of naming a law firm, that is the rule in New York. It will be interesting to see if other states reach the same ethical conclusion, which seems driven by a sense of preserving the dignity of the legal profession. So far, only in New York has a lawyer sought to jettison a surname and hang up a shingle proclaiming that he practices, say as, "Larry Law."

Discrimination Suit Over Denial of Public Housing's Rental Dismissed

In *Byrd v. Rochester Housing Auth.*, a federal Court recently granted summary judgment to the Rochester Housing Authority, dismissing the plaintiff's complaint for an alleged violation of the Fair Housing Act (FHA), in which she claimed that after her request to be placed on a waiting list for public housing, the Rochester Housing Authority manager refused to rent to her for discriminatory reasons.

According to the Court, the FHA "prohibits discrimination across a spectrum of

housing-related activities, including the provision of brokerage services, real estate transactions, and housing sales and rentals."

The Court explained that "claims of housing discrimination are evaluated under the burden-shifting framework articulated by the Supreme Court in *McDonnell Douglas Corp. v. Green*." The elements of a *prima facie* case of housing discrimination were itemized by the Court as follows: "(1) the plaintiff is a member of a protected class; (2) the plaintiff sought and was qualified to rent or purchase the housing; (3) the defendant denied the plaintiff the opportunity to rent or purchase the housing; and (4) the housing opportunity remained available to other renters or purchasers. 'Once a plaintiff has established a prima facie case of discrimination, the burden shifts to the defendant to assert a legitimate, nondiscriminatory rationale for the challenged decision.' 'If the defendant makes such a showing, the burden shifts back to the plaintiff to demonstrate that discrimination was the real reason for the defendant's action.' Importantly, 'although the McDonnell Douglas presumption shifts the burden of production to the defendant, the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.'"

Applying this McDonnell Douglas standard, the Court found the plaintiff had failed to show that a reasonable jury could find unlawful discrimination to be the real reason her rental application was rejected. Learning of a prior landlord's judgment against the plaintiff for non-payment of rent, the Housing Authority had given plaintiff "the benefit of the doubt" on her claim the judgment would be vacated, and extended her administrative appeal deadlines so that she could submit proof of vacatur. Because she failed to provide such proof, the Housing Authority upheld its denial of her rental application. "Under the burden-shifting framework applicable to FHA claims, 'the ultimate burden rests with the plaintiff to offer evidence sufficient to support a reasonable inference that prohibited…discrimination occurred." No such inference is reasonable on the present record. In light of all of the evidence the Court has reviewed, Plaintiff has failed to show that a reasonable jury could conclude that unlawful discrimination was the real reason her rental application was rejected." Thus, the plaintiff did not show the Housing Authorities legitimate reason for denying her rental application was a pretext for discrimination.