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Kenneth Vercammen & Associates

A Law Office with Experienced Attorneys for Your New Jersey Legal Needs

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NJ Laws Email Newsletter E393

Greetings Kenneth Vercammen,

A special thanks goes out to the over 100 attendees of Kenneth Vercammens St. Patricks Day Party which was held at Bar A in Belmar on March 16, 2012. Stay tuned for details on Kenneth Vercammens Annual Summer Blast which will also be held at Bar A!

1. US Supreme Court rules Lab Report Not Admissible in DWI Case. *Bullcoming v New Mexico* 131 S. Ct. 2705 (2011)

The Sixth Amendments Confrontation Clause gives the accused [in all criminal prosecutions, . . . the right . . . to be confronted with the witnesses against him. In *Crawford v. Washington*, 541 U. S. 36, 59, this Court held that the Clause permits admission of [testimonial statements of witnesses absent from trial . . . only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine. Later, in *Melendez-Diaz v. Massachusetts*, 557 U. S. ____, the Court declined to create a forensic evidence exception to *Crawford*, holding that a forensic laboratory report, created specifically to serve as evidence in a criminal proceeding, ranked as testimonial for Confrontation Clause purposes. Absent stipulation, the Court ruled, the prosecution may not introduce such a report without offering a live witness competent to testify to the truth of the reports statements.

The Confrontation Clause, the opinion concludes, does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made in order to prove a fact at a criminal trial, through the in-court testimony of an analyst who did not sign the certification or personally perform or observe the performance of the test reported in the certification. The accuseds right is to be confronted with the analyst who made the certification, unless that analyst is unavailable at trial, and the accused had an opportunity, pretrial, to cross-examine that particular scientist.

Short video: <http://www.youtube.com/watch?v=L4narMtN7es>

More law videos at the NJ LawsTube:
<http://www.youtube.com/user/kvercammen/videos>

2. Proposal would make Possession of Small Amount of Pot a Civil Offense

A bill introduced in Trenton would decriminalize and ease the penalties for simple possession of marijuana. Current New Jersey law makes possession of 50 grams or less of the drug a disorderly persons offense. The bill, A-4252, would subject possessors of 15 grams or less of marijuana to civil penalties only, collected by the municipality where the offense takes place. The proposed penalties are \$150 for a first violation, \$200 for a second and \$500 for a third or subsequent one. The measure also would amend N.J.S.A. 2B:12-17 to establish the new offenses as subject to municipal court jurisdiction.

Source: NJLJ Daily Briefing

3. Contesting a Will Can Be Extremely Difficult

FOR POTENTIAL CLIENTS TO CONTACT US DURING NON-BUSINESS HOURS, PLEASE FILL OUT THE FORM.

Name:

Cell Phone:

E-Mail Address

If You Do Not Include a Complete E-Mail Address, Verizon will not Forward Your Contact Form to the Law Office.

Details of the Case

Agree

By typing " agree" into the box you are confirming that you wish to send your information to the Law Office of Kenneth Vercammen



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Kenneth Vercammen was the Middlesex County Bar Municipal Court Attorney of the Year

When a will is contested, it usually means that one or more family members feel they have been unfairly cut out or shortchanged. According to Bizactions, the process varies from state to state and it must be done within certain time limits or the opportunity is lost.

Court Upheld Will that Cut Out Relatives

A Rhode Island court upheld a woman's will that ignored her nieces and nephews and left most of her assets to a home caregiver she only knew for 18 months. Her relatives sought to invalidate the will alleging a lack of testamentary capacity and undue influence.

Facts of the case. Ann Marie Picillo was already frail and receiving in-home hospice care when she changed her will, according to court documents. She contacted an attorney, Richard Walsh, who represented her in a variety of matters over 18 years and asked him to come to her home. However, Walsh was unable to execute a new will that day. Picillo was anxious to complete her will and summoned another attorney. The second attorney decided against preparing the will citing concerns about testamentary capacity, as well as the possible undue influence. Walsh, her original attorney, then came to the home and met privately with Picillo. Although previous drafts of her will created charitable trusts for animals, Picillo told the attorney her wishes had changed. She now wanted to leave her the bulk of her assets to her employee-caregiver, Cristina Castellanos.

The two women met when Picillo was hospitalized and Castellanos was a nursing assistant. After hiring her, Picillo moved the caregiver and her sons to an apartment she owned, sent the children to camp, bought them a dog and spent time with the family. Picillo suffered from several conditions including rheumatoid arthritis. She was immobile, emaciated, had one leg amputated, and was prescribed morphine for pain. Several witnesses testified that Picillo raved about her relationship with Castellanos. Without her care, Picillo told Walsh, she would certainly be in a nursing home -- which she vehemently opposed. Her feelings for Castellanos were in contrast to the animosity Picillo expressed for her nieces and nephews. Both attorneys testified Picillo wanted them out of her will. While the reasons for the negative feelings were not clear, the court found two incidents enlightening. The first was when a nephew living with Picillo wouldn't feed her in the mornings. The second was when a niece left her alone for a weekend without food, sitting in her own waste. After Picillo met with Walsh, he quickly executed a new will. She died 10 days later. The court found Walsh's testimony credible, pointing to his long relationship with Picillo, his 24 years of experience practicing law, and the fact he completed more than 200 wills. The court stated there was a true and caring relationship between the caregiver and Picillo, that she had testamentary capacity and there was no undue influence. Her will is a reflection of the relationships she built during her lifetime, the court added and the relationships she most appreciated as her demise became inevitable. (*Estate of Picillo*, R.I. Superior Court, KP2007-1217, 4/26/11)

The expected natural manner, which means to spouses, children and other blood relatives. If a will is changed shortly before death to give everything to a neighbor or a new acquaintance, family members are likely to mount a challenge. However, it can be extremely difficult to successfully contest a will. Courts are reluctant to interfere with the wishes of deceased individuals and require substantial evidence to overturn a will. The goal of courts is to determine testators' true intentions. (For an example of one case in which a court upheld a will executed 10 days before a woman died, see the right-hand box.) Here are the basic reasons a will can be contested:

1. Undue Influence. Was the decedent pressured or influenced during the drafting of the will by someone in a position to benefit from it?

One way this might be proved is with the existence of an earlier will that was significantly different.

For example, a father signs a will naming his daughter and his son as equal beneficiaries of his estate. He gives copies to both children. Ten years later, the father becomes ill and moves in with his daughter. She restricts her brother from seeing him. A short time later, the father dies and the brother finds out that the will was secretly rewritten with all assets going to his sister. He challenges the will on the grounds that his father was unduly influenced and the prior will should be reinstated. The brother claims he was prevented from seeing his father. However, the sister argues that she took care of the father and the brother ignored him. That is her understanding of why the father changed his will.

2. Lack of Capacity. Was the decedent mentally able to understand what he or she was signing? Could the person identify his or her assets and their value? Did he or she know the family members?

Challenges can occur when individuals are sick, weak, and heavily medicated. But merely being in failing health is not enough to successfully contest a will. Courts look at the facts and circumstances to determine if a person was mentally competent. Even someone with Alzheimers disease can be shown to be in a lucid state at the moment a will was executed.

To show capacity, medical records are important. In some cases, a letter is secured from a doctor at the time a will is executed stating that the person signing a will is mentally competent. Additional witnesses (more than legally necessary) can be present at the signing of the will to provide further evidence that the testator had the necessary capacity.

3. Improper Execution. Was the will signed? Was the signature a forgery? Was there fraud involved? Were the required number of disinterested witnesses in the room when the will was signed? Were the required questions asked in front of the witnesses?

A will can be contested if it is not properly executed. In fact, a court may determine on its own that a will is invalid and not acceptable for probate if formalities were not complied with, including the lack of an affidavit of attesting witnesses. Having an attorney supervise a will provides the presumption that a will was properly executed.

Ways to Help Minimize the Chance of a Will Contest

If you are concerned there may be a dispute over your estate someday, proper drafting and execution of the will can go a long way toward making sure your wishes are ultimately carried out. In addition, you may be able to move assets into a trust or vehicles that pass outside of a will, such as a revocable living trust. You may also want to:

Insert a no contest or in terrorem provision into your will that states that if any named beneficiary in contests or seeks to invalidate it because of undue influence or lack of capacity, the person will be disinherited (although this depends on the laws of the state).

Consult with your attorney about specific, proactive steps you should take to ensure your wishes are carried out.

Source: <http://www.bizactions.com/n.cfm/page/e100/key/194991651G2286J3007507P31P3439T1/>

4. Community Events in April

April 14 Edison Elks Installation

April 25 ICLE Nuts and Bolts of Elder Law - NJ Law Center

Charity Running races:

April 21 Runapoloza Jersey Shore Relay For Special Olympics 5,4,3,2,1 teams 26 miles, 9am From Seaside Hts To Asbury Park 732-681-9464 free beer! If you cant run, you can volunteer or pay to go to party

April 22 Stomp the Monster 5K Marlboro, NJ. The USAT-certified 5K goes off at 10:30. The event includes a festival featuring beer, food and fun after the race

April 28 Lake Como 5k 10:00 free food and reduced price drinks Bar A after race

April 28 Hugs for Brady 6pm

April 29 Franklin Food Bank 62 mile & 40-mile bike 62 Mile Metric Century - 7:30 AM, \$45.00 40 Mile 6 Towns of Franklin - http://www.franklinfoodbank.org/events/registra_tour.htm

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GO

Meet with an experienced Attorney to handle your important legal needs.
Please call the office to schedule a confidential "in Office" consultation.
Attorneys are not permitted to provide legal advice by email.

Since 1985, KENNETH VERCAMMEN has worked as a personal injury attorney, working for injury victims and their families. By taking a hard-hitting, aggressive approach toward the insurance companies, KENNETH VERCAMMEN and our co-counsel have consistently obtained outstanding results for many injured clients over the years I am proud to have worked on cases in various capacities, small and large. While obviously prior results cannot guarantee the outcome of future cases, I can guarantee that you case will receive the same degree of dedication and hard work that went into each of these prior cases.

In direct contrast to the hard-hitting approach we take toward the insurance companies is the "soft" approach we take toward our clients. I am proud of my compassionate staff as I am of the outstanding financial results they have achieved. For many years, I have watched them treat our clients with patience, dignity and respect. I would have it no other way.

Many years ago, I attended a seminar sponsored by the American Bar Association on Law Practice Management. This was to help insure that each of our clients is always treated like a person -- not a file! We recognize that you are innocent victims and that you have placed your trust in us. Please understand that we understand what you are going through. Feel comforted that we are here to help you.

If you retain KENNETH VERCAMMEN to represent you, we will give you the same advice we give each of our clients -- concentrate on your life, you family and your health. We will take care of everything else. Leave all of the work and worry about your legal rights to us. Trust us. Believe in us. Have faith in us as your attorneys. Understand that we will always do what we believe is best for you and your case. Helping you is our job. In fact, it is our only job -- guiding injury victims like you through one of the most difficult times of your lives, with care and concern -- while fighting aggressively to the limits of the law to obtain compensation and justice for each of you!

Print our Personal Injury Questionnaire on our Website, Fill it out and Fax back, so we can determine if we can help you obtain an injury settlement. We would welcome an opportunity to prove to you what we have proven to thousands of injured clients -- that you can feel comfortable and secure in the fact that KENNETH VERCAMMEN - Trial Attorney We Fight To Win.

When you have been injured in an accident or collision, you are worried about who is going to pay your medical bills, lost wages, and other damages. The last thing you want is to be taken advantage of by an insurance company. If you don't protect your rights, you may not be able to make a claim.

Insurance companies have attorneys and adjusters whose goal is to pay you as little as they can. You need a New Jersey personal injury lawyer to fight for you. I am dedicated to helping your recover as much money as possible under the law.

You need an attorney who will work hard to protect your rights, maximize your insurance settlement and minimize the hassles of dealing with the insurance companies. You need an experienced and aggressive New Jersey trial lawyer with PROVEN RESULTS who will fight for you. Having an experienced personal injury lawyer can make the difference between getting what you deserve and getting nothing.

Without the threat of a lawyer who is willing to go to trial and seek a big jury verdict, why would an insurance company pay you what your claim is really worth? Lawsuits can be expensive, and many people do not have the money to pursue their claim. In every case, I advance all costs associated with pursuing your case and I do not ask you for a penny until we recover from the other side.

I am an experienced aggressive trial lawyer and a 3rd degree Black Belt. I am not afraid to take your case to trial if that is what it takes to maximize the amount of money your recover for your personal injury. I offer one-on-one service, and I will not hand your case off to an inexperienced lawyer or a paralegal.

Reduce the stress of making a claim.

Personal injury accidents can turn your life upside down. Making a personal injury claim can be difficult and time consuming. Once I take your case, you can stop worrying about dealing with the insurance companies and focus on recovering from your injuries. I take care of all of the paperwork, phone calls, and negotiations, so you can get on with your life.

p.s. For those clients who are afraid or reluctant to go to Court, KENNETH VERCAMMEN also offers a special -- "For Settlement Only" -- program. This means that if we are unable to settle with the insurance company, we will not go any further -- unless you want us to. You have my personal assurance that there will be absolutely no pressure and no obligation.

We handle personal injury cases on a contingency fee basis.

This means:

YOU DON'T OWE ME A LEGAL FEE UNLESS I RECOVER MONEY FOR YOU.

Call our office to schedule a "confidential" appointment 732-572-0500

Kenneth A. Vercammen is the Managing Attorney at Kenneth Vercammen & Associates in Edison, NJ. He is a New Jersey trial

attorney has devoted a substantial portion of his professional time to the preparation and trial of litigated matters. He has appears in Courts throughout New Jersey each week on personal injury matters, Criminal /Municipal Court trials, and contested Probate hearings.

Mr. Vercammen has published over 125 legal articles in national and New Jersey publications on criminal, elder law, probate and litigation topics. He is a highly regarded lecturer on litigation issues for the American Bar Association, NJ ICLE, New Jersey State Bar Association and Middlesex County Bar Association. His articles have been published in noted publications included New Jersey Law Journal, ABA Law Practice Management Magazine, and New Jersey Lawyer. He is the Editor in Chief of the American Bar Association Tort and Insurance Committee Newsletter.

Admitted In NJ, US Supreme Court and Federal District Court.

**Contact the Law Office of
Kenneth Vercammen & Associates, P.C.
at 732-572-0500
for an appointment.**

The Law Office cannot provide legal advice or answer legal questions over the phone or by email. Please call the Law office and schedule a confidential "in office" consultation.

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