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Equal Protection

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It appears that New York law is consistent with federal law regarding this issue. In *Georgia v. McCollum*,²⁰⁹ the United States Supreme Court held that a juror's Fourteenth Amendment right to equal protection was violated when the defendants purposefully discriminated based on the juror's race during their use of peremptory challenges in the jury selection.²¹⁰ Based on the foregoing, it appears that both under New York law and federal law a criminal defendant must follow the same procedures that a prosecutor would utilize with respect to the use of peremptory challenges in the selection of jury panels.

SUPREME COURT

NEW YORK COUNTY

*Pierre v. New York City Health & Hospitals Corp.*²¹¹
(printed December 28, 1994)

The attorney plaintiffs argued that New York's Judiciary Law section 474-a²¹² violated the separation of powers doctrine, as well as their due process rights and equal protection rights under

is the prosecutor who can invoke a claim on the behalf of the excluded jurors. "[A]s a representative of the community, the District Attorney has a direct interest in protecting its citizens and therefore a substantial relationship with the excluded jurors. Moreover, as the jurors are not parties to the litigation . . . the State should be able to vindicate their rights." *Id.* at 654, 554 N.E.2d at 1244, 555 N.Y.S.2d at 656.

209. 112 S. Ct. 2348 (1992). Prior to jury selection, three white defendants accused of beating two African-Americans expressed that "the circumstances of their case gave them the right to exclude African-American citizens from participating as jurors in the trial." *Id.* at 2351.

210. *Id.* at 2359. In *McCollum*, the supreme court held, for essentially the same reasons as did the New York Court of Appeals in *Kern*, that a defendant's peremptory challenges were to be considered "state action" when under the review of the Equal Protection Clause and that the state had standing to raise the claim on behalf of the jurors. *Id.* at 2355-57.

211. N.Y. L.J., Dec. 28, 1994, at 25 (Sup. Ct. New York County 1994).

212. N.Y. JUD. LAW § 474-a (McKinney 1986).

the Federal²¹³ and State Constitutions.²¹⁴ Plaintiffs sought an order declaring Judiciary Law section 474-a unconstitutional and challenged the constitutionality of the contingency fee schedule, which provides for descending percentages of the award in medical malpractice cases as its amount increases.²¹⁵ On the separation of powers issue, the court held that the doctrine was not violated because the Legislature has the authority to enact legislation governing attorneys' compensation.²¹⁶ Further, the court found that the challenged statute was "reasonably related to the goal of reducing medical malpractice costs and insurance premiums," and thus held that there was no due process violation.²¹⁷ Finally, the court concluded that Judiciary Law section 474-a did not violate the constitutional guarantee of equal protection under the law.²¹⁸

This medical malpractice case was brought on behalf of Magati Pierre, an infant who allegedly suffered an arm injury during birth in March 1990.²¹⁹ Judiciary Law section 474-a sets limits on the amount of compensation an attorney may receive under a contingency fee arrangement.²²⁰ The statute allows for lower

213. U.S. CONST. art. III, § 1, cl. 2. This provision provides in pertinent part: "[J]udicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority" *Id.*; U.S. CONST. amend. XIV, § 1. This provision provides in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law" *Id.*; U.S. CONST. amend. XIV, § 1. This provision also provides in pertinent part: "No state shall enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

214. N.Y. CONST. art. I, § 6. This provision provides in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." *Id.*; N.Y. CONST. art. I, § 11. This provision provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

215. *Pierre*, N.Y. L.J., Dec. 28, 1994, at 25.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. N.Y. JUD. LAW § 474-a (McKinney 1986). Section 474-a provides in pertinent part:

percentages for an attorney as the amount awarded to the plaintiff increases.²²¹ Plaintiffs' challenged the statute as medical malpractice attorneys who were affected by the statute at issue, not because they were attempting to "alter the fee relationship between [the] plaintiffs" and themselves.²²² The attorneys argued that the statute was unconstitutional because it violated the separation of powers doctrine and denied attorneys due process and equal protection under the law.²²³

The court found that the plaintiffs' separation of powers claim was unfounded and that the "legislative prerogative to enact the statute at issue [did] not violate the doctrine of separation of powers."²²⁴ The attorneys argued that the Legislature, by enacting a law that regulates attorneys, infringed upon the authority of the Judiciary to regulate the profession.²²⁵ The court agreed with the New York Court of Appeals ruling in *Forti v. New York State Ethics Commission*,²²⁶ which declared that the Legislature, as well as the Judiciary, "may regulate the practice of law."²²⁷ This court also looked to the appellate division's

[T]he term "contingent fee" shall mean any attorney's fee in any claim or action for medical, dental or podiatric malpractice, whether determined by judgment or settlement, which is dependent in whole or in part upon the success of the prosecution by the attorney of such claim or action, or which is to consist of a percentage of any recovery, or a sum equal to a percentage of any recovery, in such claim or action.

Id.

221. *Pierre*, N.Y. L.J., Dec. 28, 1994, at 25.

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. 75 N.Y.2d 596, 554 N.E.2d 876, 555 N.Y.S.2d 235 (1990). Plaintiffs, former state employees, brought action arguing that the Ethics in Government Act, a broad reform measure enacted to "enhance public trust and confidence in our governmental institutions" was unconstitutional. *Id.* at 607, 554 N.E.2d at 877, 555 N.Y.S.2d at 236. The court affirmed the lower court's holding that the statute did not violate equal protection, due process, or separation of powers. *Id.* at 617, 554 N.E.2d at 886, 555 N.Y.S.2d at 245.

227. *Id.* at 615, 554 N.E.2d at 884-85, 555 N.Y.S.2d at 243-44.

ruling in *Forti*.²²⁸ In finding baseless plaintiff's claim that the law at issue intrudes upon the Judiciary's authority over the conduct of attorneys, the third department explained that the "Legislature has traditionally regulated various aspects of attorneys' conduct, and there is no reason to question this authority now."²²⁹ Therefore, the *Pierre* court held that the Legislature had authority to enact legislation governing attorneys' compensation, and that Judiciary Law section 747-a did not violate the separation of powers doctrine.

Addressing the due process claim, the court concluded that it was not within its scope of review to determine whether the scheme set forth in Judiciary Law section 474-a was good or bad; "whether it [was] based on sound economic theory [or] the best means to achieve the desired result were matters for the judgement of the Legislature."²³⁰ When a statute has been challenged as violating due process of law, the court of appeals has "consistently asked the question whether there is some fair, just and reasonable connection between it and the promotion of the health, comfort, safety and welfare of the society."²³¹ Thus, in determining that the challenged statute was reasonably related to a permissible goal, the court concluded that the statute was not violative of the attorneys' due process rights.²³²

The court in *Pierre* used a low level, two-part inquiry to determine the statute's constitutionality under due process: "[F]irst, was the Legislature acting in pursuit of permissible State objectives? Second, if so, were the means adopted in the statute reasonably related to accomplishing those objectives?"²³³

In response to the first inquiry, the court found that the purpose of Judiciary Law section 474-a was to control the cost of medical

228. *Forti v. New York State Ethics Comm'n*, 147 A.D.2d 269, 542 N.Y.S.2d 992 (1989), *aff'd*, 75 N.Y.2d 596, 554 N.E.2d 876, 555 N.Y.S.2d 235 (1990).

229. *Id.* at 278-79, 542 N.Y.S.2d at 997 (finding in favor of defendant in the absence of any successful constitutional challenge).

230. *Pierre*, N.Y. L.J., Dec. 28, 1994 at 25.

231. *Id.* (quoting *Chicago, Burlington and Quincy R.R. Co. v. McGuire*, 219 U.S. 549, 569 (1911)).

232. *Id.*

233. *Id.*

malpractice insurance and the number of medical malpractice lawsuits.²³⁴ Although there were several purposes, the court did not find it necessary to discern them from each other to determine primacy. The court, in reliance on the Supreme Court case *McGinnis v. Royster*,²³⁵ was not concerned with the statute's primary purpose. Courts are not authorized to pick and choose among legitimate legislative aims to determine which is primary.²³⁶ Rather, it need only be determined that a legitimate state interest is being advanced.²³⁷ Once the state purpose for upholding a statute is found to be legitimate, the Supreme Court held that it is not necessary to determine its primacy.²³⁸ The court in *Pierre* went one step further to state that "a court may even hypothesize the motivations of the State Legislature to discern any conceivable legitimate objective promotes by the provision under attack."²³⁹

Since the first inquiry was satisfied, the court then considered whether section 474-a was reasonably related to the policy objectives sought to be accomplished. The court drew a relationship between the right to obtain competent counsel²⁴⁰ and an attorney's compensation.²⁴¹ The court reasoned that "in an effort to take some incentive out of attempting to win supposedly unreasonably high awards,"²⁴² the Legislature was justified in enacting a rule to limit contingent fees.²⁴³ Thus, the Legislature's

234. *Id.* (citing the memorandum of State Executive Department).

235. 410 U.S. 263 (1973).

236. *Id.* at 276.

237. *Id.*

238. *Id.* The Court refused to discard a clear and legitimate purpose merely because the court below perceived another to be primary. *Id.* at 277.

239. *Pierre*, N.Y. L.J., Dec. 28, 1994, at 25 (citing *Weinberger v. Salfi*, 422 U.S. 749, 780 (1975)). This step was not necessary in *Pierre*.

240. See *Gair v. Peck*, 6 N.Y.2d 97, 103, 160 N.E.2d 43, 46, 188 N.Y.S.2d 491, 494-95 (1959), *cert denied*, 361 U.S. 374 (1960) (noting that "contingent fees are generally allowed in the United States because of their practical value in enabling a poor man with a meritorious cause of action to obtain competent counsel").

241. *Pierre*, N.Y. L.J., Dec. 28, 1994, at 25.

242. *Id.*

243. *Id.*

scheme to help the medical malpractice system by decreasing an attorney's profit on higher awards, regardless of whether it was the best means to achieve the desired goal, was reasonably related to such a goal and, thus, not violative of the attorneys' due process rights.²⁴⁴

Relying on the New York Court of Appeal's decision in *Trump v. Chu*,²⁴⁵ the court turned its discussion to equal protection principles. The appellate division focused on whether Judiciary Law section 474-a discriminated against medical malpractice attorneys as a class compared to other attorneys who are permitted to collect a 33 1/3 percent contingency fee in tort cases, thus denying the malpractice attorney's their rights to equal protection under the laws.²⁴⁶ Furthermore, the court noted that if the legislation was social or economic, the scope of review should be confined to a rational relation analysis, as long as the legislation does not use a suspect class or impinge upon a fundamental right.²⁴⁷ Since medical malpractice attorneys are not a suspect class and the limit on fees does not impinge on a fundamental right,²⁴⁸ Judiciary Law section 474-a "must be upheld if the challenged classification is rationally related to a legitimate state purpose."²⁴⁹ Applying this test, the appellate division found that even though there may seem to be unfairness in regulating contingency fees of "tort plaintiff attorneys who specialize in medical malpractice" and other tort attorneys not specializing in that field, there was a rational relationship between the classification and the state's objective.²⁵⁰ The court

244. *Id.*

245. 65 N.Y.2d 20, 478 N.E.2d 971, 489 N.Y.S.2d 455 (1985).

246. *Pierre*, N.Y. L.J., Dec. 28, 1994, at 25.

247. *Pierre*, N.Y. L.J., Dec. 28, 1994 at 25 (citing *Trump*, 65 N.Y.2d at 25, 478 N.E.2d at 46, 188 N.Y.S.2d at 495).

248. *Id.*

249. *Trump*, 65 N.Y.2d at 25, 478 N.E.2d at 46, 188 N.Y.S.2d at 495. See *Montgomery v. Daniels*, 38 N.Y.2d 41, 59, 340 N.E.2d 444, 455, 378 N.Y.S.2d 1, 16 (1975) (rejecting plaintiff's argument in support of the strict scrutiny test and choosing instead rational basis test for upholding the constitutionality of New York's no-fault insurance law as reasonably related to the promotion of public welfare).

250. *Pierre*, N.Y. L.J., Dec. 28, 1994, at 25.

explained that, in taking "reasonable steps to protect or improve the health care system, . . . the distinction drawn between medical malpractice plaintiff attorneys and other tort plaintiff attorneys in section 474-a is rationally related to the legitimate state purpose of improving the health care system."²⁵¹ By recognizing a rational relationship, the court held that the challenged statute did not violate the plaintiff's equal protection rights.²⁵²

State and federal case law provide that the test of whether legislation violates due process, when no fundamental right is involved, is whether the legislature was acting in pursuit of permissible state objectives and, if so, whether the means adopted were reasonably related to the accomplishment of those objectives.²⁵³ Likewise, the Equal Protection Clauses of the State and Federal Constitutions also provide for similar protection with respect to non-suspect classifications. The United States Supreme Court uses the same standard of review in cases not involving a suspect class or a fundamental right, such as *Pierre*.²⁵⁴ The *Pierre* court, however, chose to rely on a New York Court of Appeals case to make the same analysis the United States Supreme Court would have made.²⁵⁵

In conclusion, New York and federal case law are in accord on what is required to meet the test of whether a regulation is violative of due process. Moreover, as the law currently stands, there seems to be no notable difference between an equal protection analysis under the Federal Constitution and the New

251. *Id.*

252. *Id.*

253. *Montgomery v. Daniels*, 38 N.Y.2d 41, 54, 340 N.E.2d 444, 452, 378 N.Y.S.2d 1, 12 (1975). *See West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 391 (1937) (stating that as long as there is a reasonable relation between the challenged regulation and the goal it promotes, and it is adopted in the interests of the community, it is due process of law).

254. *See Reed v. Reed*, 404 U.S. 71, 75 (stating that "[a] classification 'must rest on some ground of difference having fair and substantial relation to the object of legislation, so that all persons similarly circumstanced shall be treated alike.'" (quoting *Royster Guano Co. v. Virginia*, 253 U.S. 412 (1920))).

255. *Pierre*, N.Y. L.J., Dec. 28, 1994, at 25.

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EQUAL PROTECTION

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York State Constitution when no suspect class or fundamental right is at issue.

SURROGATES COURT

NEW YORK COUNTY

*In re Petri*²⁵⁶

(printed April 4, 1994)

Respondent, Dean Mitchell, a surviving partner in a gay relationship, alleged that his constitutional rights under the United States²⁵⁷ and New York State²⁵⁸ Constitutions had been violated, in that section 1001(1)(a) of the New York Surrogate's Court Procedure Act [hereinafter SCPA]²⁵⁹ and section 4-1.1 of the New York Estates, Powers and Trusts Law [hereinafter EPTL],²⁶⁰ precluded him from inheriting his partner's estate.²⁶¹ The court held that the respondent did not fall within the statutory

256. N.Y. L.J., Apr. 4, 1994, at 29 (Sur. Ct. New York County).

257. U.S. CONST. amend. XIV, § 1. The Federal Equal Protection Clause provides in pertinent part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

258. N.Y. CONST. art. I, § 11. Article 1, section 11 provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

259 N.Y. SURR. CT. PROC. ACT § 1001(1)(a) (McKinney 1981 & Supp. 1994). Section 1001(1)(a) provides in pertinent part: "Letters of administration must be granted to the persons who are distributees of an intestate and who are eligible and qualify, in the following order: (a) the surviving spouse . . ." *Id.*

260. N.Y. EST. POWERS & TRUSTS LAW § 4-1.1 (McKinney 1981 & Supp. 1994). Section 4-1.1 provides in pertinent part:

The property of a decedent not disposed of by will shall be distributed as provided in this section . . . (a) If a decedent is survived by: (1) A spouse and issue, fifty thousand dollars and *one-half* of the residue to the spouse, and the balance thereof to the issue *by representation*.

Id. (emphasis added).

261. *Petri*, N.Y. L.J., Apr. 4, 1994, at 29.