

NIABA NEWS

Men and women sharing a common heritage in a chosen profession

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*Past president

A VERY SUCCESSFUL YEAR

By Josepha A. Sena, Jr., Esq. NIABA President

Happy New Year to all. As we look back on the past year, we can conclude that it was a very successful one. NIABA did a lot of traveling, including:

• Exciting meetings in New Orleans (January) and White Plains, NY (May for investiture of new officers)

Club (see photos on page 2)

- A very special CLE trip to
 Rome, Italy due in large part
 to the excellent work of Charles DiLorenzo with assistance from Florida-based Board members
 Paul Finizio and V alerio Spinaci (see article on pages 8-9)
- An excellent meeting in Naples, Florida this past month at the stunning Naples Beach and Golf

Additionally, we are presently completing plans for another wonderful meeting in Newport Beach, California at the elegant Island Hotel from May 19-22, 2016. We invite you to attend with us to make this another quality NIABA event.

The purpose of NIABA is to band together to promote Italian-Americans in the legal profession, to publish a law journal in conjunction with the Syracuse University School of Law (thanks to the wonderful work of Professor Robin Malloy), to offer a scholarship to a deserving law student, and to promote our common cultural heritage as Italian-Americans. We urge all who are interested to join us in this ongoing adventure.

Who knows what further exciting events await us? Auguri e bion'anno a tutti.

SCHOLARSHIP FUND DRIVE UNDERWAY

Over the years NIABA has joined with the Order Sons of Italy (OSIA) and the National Italian American Foundation (NIAF) in funding and granting annual scholarships to worthy Italian-American law students. Biographies of some of our prior scholarship

recipients are featured on the NIABA website.

With your assistance, NIABA will be able to continue this important program. We are asking members and friends to open their hearts and make a tax deductible contribution

to our Scholarship Fund. Any amount you can afford would be greatly appreciated.

As an added incentive for your support of the next generation of Italian-American attorneys, NIABA board member Judge

Continued on p. 6

INHERITANCE LAW IN ITALY

By Alessandro Palmigiano

The world is shrinking day by day, private property is no longer limited by the national borders, the economy has become global and it is now possible to buy goods everywhere in every moment: these are the reasons why international heritages (better: cross-border) are becoming increasingly widespread.

What makes the difference now, is the possibility and the freedom that each of us has – among travelling, moving and living in another country – also of dying miles away from where we have lived most of our life.

It is undoubtedly true that the idea of managing legal issues in a complete foreign environment appears unbearable to most of the people, especially in a moment of hurt: that is why we must be prepared, at least legally speaking. In this regard, Italian Americans have been dealing with this kind of issues for many years, now: even if they moved to U.S. they still have interests in Italy and consequently they need the proper assistance for taking care of these interests.

In the first place, we need to know that succession is the institution through which you transfer ownership, titles, debts and obligations as a result of the death of a person. In regards to this matter, civil law and common law systems move from opposite starting points but end up sharing similar issues.

Civil law recalls the ancient Roman Law, created to trans-

fer the entire inheritance, including debts and non-contractual responsibilities, to the heirs without intermediaries. Common law systems, instead, have created the "personal representative": he is responsible for paying the debts of the deceased, tracking down the

heirs and transferring their remaining assets, in respect for the wishes expressed in the testament of the deceased, if drafted. Beyond their differences, the so-called "executor" required by the Italian law is similar to the "personal representative". One notable difference, though, is that while the Italian executor has to behave following the diligence of the 'good father', the personal representative is asked to use 'punctilio of honor', the highest form of diligence in common law.

Two different executors are known in Italy: one appointed exclusively to administer the legacy lying and another appointed with the task of ensuring that the will of the deceased is executed properly, to pay off debts and represent the legacy lying in judgment. Both must arrange for explanatory report of their actions.

Again, the civil law's concepts such as "sharing reserved by law to some heirs "or "people who are entitled to law to a share of the inheritance", typically unknown to the common



law system, recall the ancient Roman tradition and the Christian worship of the family. The duty of transferring assets on behalf of those whom we gave life to, or to qualified relatives, is a sign of great empathy and family unity.

In contrast, we find the idea of liberal Common Law to transfer assets only to heirs designated by the testator.

Until the two legal systems have not been in contact they have not faced legal problems in this regard. Now, their relationships are our challenge. The first step is the choice of of the applicable law. Under the Law n.218 / 1995 we determine what the jurisdiction to apply is, in cases of international heritage. The general principle requires the national law of the deceased must govern that succession mortis causa at the time of his death. The jurisdiction to apply is the Italian one every time that the sequence is opened in Italy or when the assets of the legacy are in Italy.

That said, another critical

aspect to keep in mind is that the Italian law describes three kinds of wills: holograph, public, and secret.

The first must be entirely handwritten by the testator, dated and signed in by him. No witnesses are required. This is without any doubt the easiest and cheapest form of testament but it is also the one that more than the others cause litigation. It also puts to the testator the problem related to its custody during his life. The public one has to comply with some formalities, a notary draws it up with the presence of at least two witnesses and the testator signs it in.

The secret testament is drawn up by the testator or by a third party in compliance with certain rules. It is drafted and signed in by the testator, and delivered in a sealed envelope to a notary with the presence of witnesses.

The division of the inheritance is probably the more frequent reason for litigation, thus it is really important to show up with a valid and effective will.

NIABA VISITS THE OTHER NAPLES (IN FLORIDA)

At its most recent meeting, held January 8-10 in Naples, FL, the NIABA Board of Directors discussed several important matters. The Board unanimously endorsed a 2016 Scholarship drive. There will be several ways to contribute to the NIABA scholarship fund. For every donation of \$500 or more a donor will receive a gift generously donated by Judge Paul Victor of New York – his home

made specialty "Paulie Hots" peppers and a set of measuring spoons. In addition, Judge Victor will match \$100 of each \$500 donation. Donors can choose a lapel pin or coffee mug with the NIABA logo for a donation of any amount. Make a donation in memory of a deceased loved one or in honor of a colleague or family member.

The Board also discussed various methods to increase membership according to a plan devised by the Roadmap Committee. Under this plan, membership has shown a steady trend upward, over 25% in the past year and half alone. Efforts to work with local Italian American Bar Associations, as well as international groups, were investigated.

The Board's next meeting will be held in Newport Beach, CA on May 19-22, in conjunction with the Orange County Italian American Bar Association and the Los Angeles Italian American Bar Association. All are welcome to attend!















WELCOME NEW NIABA MEMBERS

Welcome to the following members, who joined NIABA between May 1, 2015 and January 6, 2016.

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MEMBER NEWS

R. James Amaro with the Amaro Law Firm has opened a new primary headquarters office in Houston, TX. Amaro was invited to serve on the National Advisory Board of the Association of Plaintiff Interstate Trucking Lawyers of America and was selected again for the honors of Texas Super Lawyers – Rising Star, and the National Trial Lawyers – Top 40 Under 40. He was also inducted as a Diplomat with the National Trial Lawyers.

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Scholarships, continued from page 1

Recent NIABA scholarship recipients.



Paul A. Victor has donated his "Paulie Hots" special blend of hot powered pepper (and custom measuring spoons) to be given to each of the first 10 members who contribute \$500 or more to the Scholarship Fund. You can read more about <u>Paulie Hots</u> and the health benefits of <u>capsaicin</u>.

In addition, Judge Victor has agreed to match \$100 of each \$500 or larger donation! Let's make sure we take full advantage of this generous offer.

Donors of any size will also receive their choice of either a NIABA coffee mug or a lapel pin.



At the time of publication of this newsletter, we were one-third of the way to our goal of \$10,000. Open your heart and your wallet. Make a <u>donation</u> in honor or in memory of someone who had an impact on your career as an attorney. If you have a special event or recognition coming up, consider requesting that contributions be made to the fund in leu of gifts.



<u>Donate online</u> now with a credit card, or drop a check in the mail to the address

below. NIABA needs your help to maintain this worthy program. The support resulting from your generosity will provide long term rewards to the individual scholarship recipients and to our community at large.

Make checks payable to NIABA and mail them to: 2020 Pennsylvania Ave., NW PMB 932 Washington, DC 20006

Former NIABA Board member **Peter Balistreri** was named Italian of the Year by the Wisconsin Chapter of the Justinian Society of Lawyers.

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Antonietta Brancaccio Balzano has opened a practice specializing in immigration law, especially focused on immigrants coming from Italy. The firm has three offices in Florida and one in Salerno, Italy.



Joseph F DeFelice has been appointed a member of the House of Delegates of the American Bar Association, as a representative for the Queens County Bar Association in New York.

NIABA Board Secretary **Fran Donnarumma** was featured in *We the Italians* magazine. The interview is also available on the publication's <u>website</u>.



Domenick Giovanni Lazzara accepted a position as the American Bar Association, Young Lawyers Division's 2015-2016 vice-chair of the Tort Trial and Insurance Practice Committee.

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Butzel Long attorney and shareholder **Clara DeMatteis Mager** has been named a 2015 honoree for Michigan Women in the Law by *Michigan Lawyers Weekly*.

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Danielle Piccirillo Medaglia has formed Danielle Medaglia Real Estate Law, specializing in commercial leasing in New York. Medaglia also works with private clients as a Legal Career Consultant.

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At the biennial convention of Delta Theta Law Fraternity International, **Paul V. Nuccio** was elected Associate Justice of the Supreme Court of the law fraternity.

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Frank Oliverio has opened a law firm in Morgantown, WV. His focus will be real estate and property law.

Send your news to NIABA Administrator Dana Robb at <u>dana@</u> <u>barefoot-marketing.com</u>. We will use items as space permits.

Affiliate Highlights



NIABA President Joe Sena was one of the keynote speakers at a recent Los Angeles IALA general dinner meeting. Approximately 100 people were in attendance in the Casa Italiana to hear him talk about what it means to be an Italian-American in 2015. Pictured left to right are: Marianna Gatto (Executive Director of the Italian American Museum of Los Angeles, IALA President and NIABA Member David DiJulio, President Sena, professional singer Maria Elena Infantino, and actress Doris Roberts.

Orange County (Lex Romana / IALOC), CA

Overall, the Italian American Lawyers of Orange County – Lex Romana has enjoyed a resurgence over the past few years. Our membership is approaching 100 members, while it was below 50 only two years ago. We continue to hold our monthly meetings at local Italian restaurants, including Antonello, Onotria, il Barone, and Maggianos.

In addition to these venues, IALOC also visited the White House in Anaheim, which is owned by **Sir Bruno Serato**.

Chef Serato runs a charity called Catarina's Club that focuses on feeding needy children in the Orange County area who live in motels/hotels because their families can't afford to rent apartments. During our monthly meeting at the White House, IALOC heard about Catarina's Club and many members graciously donated to Chef Bruno's cause.

In January, we will hold our installation dinner and wine tasting, featuring wines made by IALOC's treasurer **Joe Ferrucci**'s father. We are

beginning to offer free / low cost networking events in place of our monthly dinner meetings. IALOC is excited for hosting NIABA in May 2016 for their meeting.

Dominic Rainone, IALOC's Vice President, was interviewed for a program on RAI, *Radiotelevision Italian S.p.A.* His segment will air numerous times. His interview included discussion of IALOC, its mission, our community involvement, the Italian presence in California, and the impact of IALOC on his legal career.

San Francisco / Bay Area (IABA), CA

We had a meeting in November on the peninsula, the western side of the Bay Area. It was a very well attended event that included a bocce competition followed by a dinner, raffle, and Italian songs sing-along.

On December 4, 2015 we had our annual Judges' Holiday Luncheon. We honored a now-retired judge who served many years on San Francisco Superior Court. This too was a very well attended event.

Italian American Bar Association of Michigan (IABAM)

Its 25th Annual Justinian Night, honoring the state's Italian American members of the bench, was held in June at the Tre Monti Restaurant in Troy. An award was presented to the year's honoree, Michigan Supreme Court Justice David F. Viviano.

On December 12th, IABAM'S Annual Winter Gala was held at the Grosse Pointe Yacht Club in Grosse Pointe Farms with over 200 in attendance. It was another very successful member social event. (See photo below: Three of IABAM's past presidents -- Laurie Orlando, Clara DeMatteis Mager, and Carol Ann Martinelli.)



New Italian Law Journal Begins Publication

The Italian Law Journal, a new biannual journal in English which aims at promoting the criticism of Italian legal culture and at fostering international academic debate among scholars of different traditions, was launched this summer.

The journal focuses mainly, although not exclusively, on themes of legal theory, European law, comparative and international law, with a view to reconsidering the constitutional identity of Italian law and its institutions.

The journal is taking its first steps under the scientific patronage of SISDiC (the Italian Society of Civil Legal Scholars) and of SIRD (the Italian Society of Comparative Legal Scholars). The Advisory Board includes scholars coming from a number of

different countries who have in common an interest in Italian Law.

To view the first two issues, or for details concerning the features required for eligible submissions and deadlines, visit the website.

THERE'S NO PLACE LIKE ROME FOR CLE

By Paul Finizio, *NIABA*Executive Vice President and Charles DiLorenzo, *NIABA*Treasurer

On October 20-22, 2015 NIABA hosted a CLE program in Rome, Italy. The program included five prominent Rome attorneys in specialized fields and a Notaio from Rome. Twenty-five NIABA members from the U.S. attendeded, as well as 17 Rome attorneys.

The success of the program was the quality of the lecturers and handout materials, and the genuine immediate rapport among the U.S. attorneys and their Rome counterparts. The educational value of the program was the true reward for the participants.

Here are some highlights from our presenters:

Avv. Marco De Fazio

Parties involved in an auto accident are presumed to each be 50% responsible for the accident unless proof is provided to the contrary. Only witnesses named in the police report may give testimony. A trial in all civil matters is before a judge with no jury. The judge decides the sharing of responsibility for the accident and determines the awards, including economic loss for dependent family members.

Avv. Marco Mazzeschi

If you plan to visit Italy for less than 90 days, no visa is required. If you wish to stay longer as a visitor, you must apply in the U.S. at a local Italian consulate for an elective residence visa and must prove that you have annual unearned income of \$30,000. If you intend to work in Italy, you must apply for an employer sponsored visa or unsponsored visa. With the employer sponsored visa, the worker must prove existence of employment contract to work at a specific project. The maximum stay is four years; and the worker remains an employee of the sending employer. The unsponsored visa is restricted by a quota. The worker must prove a contract with an Italian company with at least 20,000 euros annual compensation to work in a specific field. There are many thousand applications each year for each field;

and the quota for each field is determined annually by the government based upon demand for workers in each field.

Avv. Alessandro Varrenti Business is conducted either as an S.R.L for a smaller business (like a U.S. LLC) without any issued stock, or as an S.P.A. for a larger business (like a U.S. corporation) which requires 10,000 euros as minimum capital and the publication of names of the Directors. With the S.P.A., Board of Directors meetings generally approve all decisions already made by the principal officers before the meeting. Ownership of stock permits a shareholder to call for a shareholders meeting, but the majority of voting shares prevail.













Avv. Donald J, Carroll and Avv. Christine Marciasini

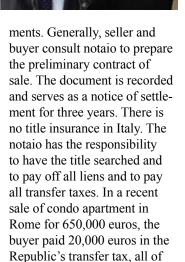
At the death of a resident of Italy with or without a will, there is a forced share which must be left to spouse, children, parents, or siblings. Generally two-thirds of the estate must pass to the spouse, but if a child or children also survive, the spouse is entitled to one-third share and the child or children are entitled to onethird share. A client who is a U.S. citizen should prepare only one will to dispose of worldwide assets. The estate tax of Italy is 4-8% depending on the relationship between the decedent and the beneficiary. But each beneficiary must file his/her own estate tax return and pay the tax on his/her property. Failing to do so with real property will create a lien



which will interfere with a later sale.

Avv. Raimondo Zagami, Notaio

In Italy there are 250,000 attorneys and 6,000 notaie. The scope of work and functions are different. A notaio studies two years more than an attorney. Attorneys may appear in Court anywhere in Italy. Notaio may consult with clients only within his/her designated municipal area but may handle real estate transactions anywhere in Italy so long as the parties consult in his/her office. The notaio is an agent of the Republic and is responsible for the substantive legality of the documents which he/she prepares. The notaio can be fined for failure to address all of the legal requirements for docu-



Avv. Micael Montinari

and 50% of notaio's fee

If you have a claim, you may serve a timely notice of intention to sue upon the defendant, which will extend the statute of limitations for its full term.

many city assessments, 50% of

the broker's 8% commission,

When you have litigation, attorneys are not allowed to examine witnesses. They are permitted to suggest questions to the judge, who decides to ask the question if appropriate. All proofs must be submitted at the time of filing the complaint. Discovery is permitted by questions and/or demands limited to specific events or documents. Generally, three briefs must be submitted at various stages before trial. The trial is usually three days separated by several months. Ultimately the judge will assign the costs and legal fees of both parties against the losing party. The period of right of appeal is ten years. There are few reversals.

Our program at the Hotel Leonardo Da Vince in the Prati section created a forum for evenings of meet-and-greet, which permitted many attorneys from Rome to meet and exchange cards with NIABA's U.S. members. Avv. Antonio Conte, Consigliere dell'Ordine and a Member of Italian Parliament, offered his welcome to all participants. A special dinner was arranged thanks to Avv. Valerio Spinaci of Florida and Rome. NIABA Members were invited by Avv. Massimiliano Tommassiello for drinks at the law offices of his firm, Picozzi e Morigi, on Via dei Condotti.

Special thanks are deserving to Avv. Marco De Fazi, who arranged for more than 25 attorneys from Rome to meet the U.S. attorneys in the evenings. Many expressed their interest in joining NIABA.

NIABA Board member Claire Ambrosio pre-approved the program of six lectures for CLE credits by a sponsor for the State of California. Such CLE credits are recognized by reciprocity by Florida, New York, and many other states.

Notes from the NIABA Office

NIABA Digest Available
Online or in Print

Volume 23 of *THE DIGEST* law journal, published by NIABA and edited at the Syracuse University College of Law, is available in two formats:

 A PDF that can be read online or printed is posted on our website and can be download at no cost to members who are logged in.

 A bound hard copy can be purchased on <u>Amazon.com</u> for \$20.90.

Articles in this issue include:

- Supernatural and the Law (Il Soprannaturale e Il Diritto)
- Class Actions in Italy: A Farewell to America
- Eclipsing the Web: Online Data Protection and Liability of Search Engines in the *Google Spain* Case
- International Taxation: The Issue of Tax Evasion by Corporations
- A Journey Through Italy's Overcrowded Prisons

Euros Accepted

NIABA is now able to accept checks in euros for dues payments and scholarship fund donations. We hope this will add convenience to some of our overseas members.

Can We Refer You?

Is your profile up-to-date on the NIABA <u>website</u>? If not, you may be missing valuable referrals! Members of the public use the Lawyer Search function, and sometimes contact us directly, looking for attorneys. The more information available in your profile, the more likely they will choose you for their legal needs.

Here are just a few of the referrals we've given recently:

- Italian speaking attorney in Pennyslvania
- Washington DC attorney needed by the Italian Trade Commission
- Personal injury attorney in Italy for a client in Rochester, NY
- San Diego member for a probate issue
- Connecticut contact looking for an immigration attorney
- Real estate attorney in Italy for a client in New York.

Don't miss valuable opportunities like these. Login and update your profile now.

Member Logo Available

It's easy to show your NIABA affiliation on your firm's

website or marketing materials. Contact the NIABA office and we will send you a file that is suitable



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GRAZIE TO NIABA'S SUPPORTERS

Our special thanks to those members who are supporting NIABA beyond their regular membership dues.

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NIABA Brochures

An electronic version (PDF) of the NIABA membership brochure is available on our website. We encourage you to share the brochure with anyone who might be interested in joining NIABA. For hard copies to distribute to your colleagues or group, please contact the NIABA office.

Reaching Out to Law Students

NIABA membership is free for law students and firstyear attorneys. If you know of groups or events that we should reach out to, please contact the NIABA <u>office</u> and we will mail brochures to the organization you recommend.

How to Contact Us

NIABA Administrator Dana Robb can be reached at 414-750-4404 or <u>dana@</u> barefoot-marketing.com.

CAN A FOREIGN ATTORNEY DEFEND IN ITALY?

By Nicola Canestrini

Italian legislation allows European lawyers to practice their legal profession in Italy under their existing original titles in two ways, on permanent basis or for a single

Practising in Italy on a permanent basis (directive 98/5/EC)

The European attorney at law who is "established" in Italy under certain conditions can acquire the Italian title "avvocato": this condition was standardised from the Italian law (decreto legislativo 02/02/96 n.96) and is equivalent to the European guideline 98/5/EC (please see infra).

In order to gain the Italian title "avvocato" (attorney at law), foreign lawyers must either take an aptitude test or have worked consistently and wholly for at least three years as a resident lawyer in Italian.

In such cases, after the completion of the required time period or meeting the demands of the aptitude test, the applicant is considered to have met the requirements for their full integration.

2. Single case defense (directive 77/249 EEC)

Furthermore, there is even the chance for EU Lawyers to be involved in one case only together with an italian lawyer, having previously made a written communication to the Court which has to authorize the defense (it. law 31/82 which recalls art. 5 directive 77/249/EEC: "for the pursuit of activities relating to the representation of a client in legal proceedings, a Member State may require to be introduced, in accordance with local rules or customs, to the presiding judge and, where appropriate, to the President of the relevant Bar in the host Member State AND to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary,

be answerable to that authority, or with an "avoué" or "procuratore" practising before it"); said directive is texted online. Thus it is necessary to address a request to the Court (see sample below).

Request pursuant to Law 31/1982 Practising as attorney in Italy in case... Court of...

I, the undesigned	, born in	, citizen of		
the United States, adm				
firm based in	_ and subject to the	e Bar,		
respectfully communic				
attorney of defendant	in case fil	le in		
union with,	appointed lawyer, fi	ixing my domicile		
for present proceeding	at the fir	m located in		
I declare, under my res	sponsibility, to be w	illing to observe		
in the exercise of my professional duties every law and				
regulation, even belon	ging to ethic standar	rds pointed out		
by Italian bars, declari	ng also to not be in	any cause of		
incompatibility as set	forth by art. 5 l. 31/1	1982 and having		
never been condemned	d in criminal, admin	istrative or		
professional trials, being in my full capacity to exercise al				
attorney and excluding any compromise of my status.				
I attach copy of my ad	mission and the cop	y of my lawyers ID		
card.				
Respectfully,				
signature				

A LETTER OF THANKS

The NIABA office recently received the following letter, along with a donation to the scholarship fund. The letter writer is a student member of NIABA who was given free attendance at our CLE program in Rome in October.

To the NIABA Organization,

I would first like to extend my gratitude for welcoming me to attend the CLE in Rome this year. It was an honor to attend and to meet more NIABA members, as well as reconnect with those I have already had the pleasure of meeting. As a law student, it was quite a privilege to be able to connect with fellow Italian lawyers who are doing amazing work throughout the country. The CLE itself was an absolute joy to attend. The lectures were cutting edge and on highly relevant topics.

I look forward to further involvement with NIABA in the future. I am so lucky to have found this organization; keeping in connection with my Italian heritage is of the utmost of importance to me. Thank you for the wonderful opportunity. As a law student with modest means, I would like to extend my gratitude with a token of my appreciation. Thank you all again for the unforgettable experience!

Sincerely Yours, Victoria Wagnerman



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You can also apply online at www.niaba.org

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□ Adoption	☐ Divorce	☐ Litigation	☐ Retired
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