

Friday, May 16, 1997

LETTERS

To the Editor

Assistants' Lapses Not Tolerated by Vacco

A recent article in the *Law Journal* discussed a report and recommendation by U.S. Magistrate Judge Theodore H. Katz in *McClain v. Lord*, 95 Civ. 4918 (SDNY), which recommended that a default judgment be entered against the defendant, and the decision by U.S. District Judge Peter K. Leisure to accept the recommendation. Judge Katz's report and recommendation cited failures by an Assistant Attorney General to meet deadlines and comply with court orders as the basis for the default (*NYLJ*, April 24).

The Attorney General does not tolerate employees' failure to meet court-ordered deadlines or noncompliance with the federal and local civil rules. Attorneys and managers in the Department of Law are expected to adhere to these requirements and to strive for the highest professional standards. The actions criticized by Judge Katz are totally unacceptable. In fact, the attorney assigned to *McClain* has been dismissed.

In addition, two of the "earlier decisions" Judge Katz cites concern missed filing dates and other failings that occurred before the current administration took office. The attorney assigned to those cases, a senior attorney in the competitive class of the State Civil Service, has also been dismissed, after arbitration, as a consequence of his failures. Meanwhile, one of those cases, *Waul v. Coughlin*, 93 Civ. 753 (SDNY), went to trial last month before a jury, which returned a verdict in our favor.

In a more recent case mentioned in the article, *Billups v. West*, 95 Civ. 1196 (SDNY), Magistrate Judge Henry Pitman vacated previously imposed sanctions as unduly harsh, saying that "although there may have been a technical failure to comply with a deadline, defendants did not display indifference to their obligations to the court" and that "the events that took place in this case were an aberration."

In *Trammell v. Greiner*, 95 Civ. 383 (SDNY), the other case cited by the *Law Journal*, the assistant has been counseled, and the case aggressively continued, resulting in a recent recommendation by Magistrate Judge Michael H. Dolinger for summary judgment in favor of the defendants.

These additional facts do not excuse the failures by assistants assigned to the cases. They do, however, make clear that the Attorney General does not accept, and will not tolerate, unprofessional or irresponsible conduct by members of the Department of Law.

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