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# N.Y. Educ. Law § 3813: Monetary Demand Is an Essential Element of a Verified Claim

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NEW YORK EDUCATION LAW

*N.Y. Educ. Law § 3813: Monetary demand is an essential element of a verified claim.*

Section 3813 of the Education Law provides that no action or special proceeding may be maintained against a school district or board of education unless

> a written verified claim upon which such action or special proceeding is founded was presented to the governing body of said district within three months after the accrual of such claim. . . .

This statute unquestionably makes filing of a claim within the specified period a condition precedent to an action or special proceeding.[225] The recent case of *P.J. Panzeca, Inc. v. Board of Education, Union Free District No. 6*,[226] confirms this statutory interpretation.

In *Panzeca* an action was brought to recover damages from defendant Board of Education for alleged breach and wrongful termination of contract. Defendant moved to dismiss, on the ground that plaintiff had failed to comply with the notice-of-claim requirement of Education Law § 3813(1). Plaintiff had served the Board with an order to show cause in a prior action. The Court of Appeals, reversing the lower courts' denials of defendant's motion, held that papers served in another action do not suffice as notice. It reasoned that the "statute distinguishes between an action and the filing of a claim, and the filing is a precondition to the bringing of an action."[227] Additionally, it pointed out that even if the orders to show cause could satisfy the filing requirement, they were nonetheless defective, for plaintiff failed to include a monetary demand — "the critical element in a verified claim in a contract action."[228]

In light of the ends sought to be achieved by the notice requirement, *Panzeca* and its predecessors represent the most logical approach to interpreting the Education Law.[229] Clearly, it is advantageous to all

225 *See In re* Bd. of Educ., Union Free School Dist. No. 7 v. Heckler Elec. Co., 7 N.Y.2d 476, 166 N.E.2d 666, 199 N.Y.S. 649 (1960); Natoli v. Board of Educ. of City of Norwich, 277 App. Div. 915, 98 N.Y.S.2d 540 (per curiam), *appeal denied*, 277 App. Div. 1063, 100 N.Y.S.2d 1020 (3d Dept' 1950), *appeal denied*, 302 N.Y. 690, 98 N.E.2d 486, *aff'd*, 303 N.Y. 646, 101 N.E.2d 646 (1951); State v. Waverly Cent. School Dist., 53 Misc. 2d 843, 280 N.Y.S.2d 507 (County Ct. Tioga County 1966), *aff'd*, 28 App. Div. 628, 280 N.Y.S. 505 (3d Dep't 1967).

226 29 N.Y.2d 508, 272 N.E.2d 488, 323 N.Y.S.2d 978 (1971), *rev'g* 35 App. Div. 2d 1085, 318 N.Y.S.2d 282 (2d Dep't 1970).

227 *Id.* at 510, 272 N.E.2d at 489, 323 N.Y.S.2d at 980.

228 *Id.* at 509, 272 N.E.2d at 488, 323 N.Y.S.2d at 980.

229 *See, e.g.*, Newburgh Nursery, Inc. v. Board of Educ. of Cent. School Dist. No. 2, 41 Misc. 2d 997, 247 N.Y.S.2d 74 (Sup. Ct. Orange County 1964); *see also* 23 CARMODY-WAIT 2d, § 144:85, at 362 (1968).

parties and to the courts to provide a means by which unnecessary litigation might be avoided. In cases involving contracts, such as *Panzeca,* litigation might be prevented by a settlement based on an amount named in the plaintiff's claim; in cases involving torts, filing of a claim will, at the least, enable the defendant to investigate it while the facts are still fresh.[230]

### CRIMINAL CONTEMPT PROCEEDINGS

*Contempt: Judicial and criminal contempt convictions arising out of single episode not barred under double jeopardy prohibition.*

In *People v. Colombo*[231] the New York Court of Appeals has unanimously decided that a recent Supreme Court pronouncement does not alter the traditional view that successive contempt convictions under the Judiciary and Penal Laws are not within the ambit of the double jeopardy prohibition.

Granted immunity, defendant Colombo nevertheless refused to testify before a regular Kings County grand jury investigating the use of legitimate business enterprises as a cover for alleged criminal activities. A supreme court justice orderered the defendant to testify. Subsequently, he was adjudged in criminal contempt of court pursuant to section 750(A)(3) of the Judiciary Law[232] for his refusal to obey the supreme court order, and was sentenced to thirty-days imprisonment.

Thereafter, the grand jury indicted defendant for his refusal to testify in violation of section 600(6) of the former Penal Law.[233] His

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230 *See, e.g.,* Winbash v. City of Mt. Vernon, 306 N.Y. 327, 333, 118 N.E.2d 459, 462 (1954).

231 29 N.Y. 2d 1, 271 N.E.2d 694, 323 N.Y.S.2d 161 (1971).

232 A. A court of record has power to punish for a criminal contempt, a person guilty of any of the following acts, and no others:

. . . .

3. Willful disobedience to its lawful mandate.

N.Y. JUDICIARY LAW § 750(a)(3) (McKinney 1969).

233 The former section 600(6) provided:

A person who commits a contempt of court, of any one of the following kinds, is guilty of a misdemeanor:

. . . .

6. Contumacious and unlawful refusal to be sworn as a witness, or, after being sworn, to answer any legal and proper interrogatory. . . .

The present counterparts of the above provision are:

A person is guilty of criminal contempt when he engages in any of the following conduct:

. . . .

4. Contumacious and unlawful refusal to be sworn as a witness in any court proceeding except a refusal to give testimony before a grand jury, or after being sworn, to answer any legal and proper interrogatory. . . .

N.Y. PENAL LAW § 215.50(4) (McKinney Supp. 1970).

A person is guilty of criminal contempt of a grand jury where, after having been granted immunity, he refuses to be sworn as a witness before a grand jury, or who, after being sworn as such a witness, refuses to answer any legal and