THE SARATOGA COUNTY BAR ASSOCIATION

Serving the Interests of Justice

LAW NOTES

LAW NOTES VOL. IX, ISSUE V SEPTEMBER OCTOBER 2015

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PRESIDENT'S MESSAGE

Bar associations from around the country have seen the shifts and changes in law practice life brought about by technological advances, an ever-growing global community, and an increasing demand on life outside of the office. On a local level, the Saratoga County Bar Association has also seen these changes first-hand, where attorneys have less and less time to leave the office in order to mingle and mix with their colleagues so as to foster the "fellowship" called for in our mission statement. In the 104th year of the Saratoga County Bar Association, our leadership team is focused on offering opportunities to our membership which maximize the confluence of the life and practice, while remaining mindful of the limited time available to attorneys.

First, we are focused on accessible, relevant and timely information. The SCBA has a robust group of standing and ad-hoc committees geared towards bringing the members up-to-date information about the changing legal landscape, as well as promoting collegiality and integrity. From the Public Relations Committee to Statutory Law and Rules Committee to the Lawyer's Assistance Committee, the volunteer chairs and committee members collectively seek to meet goals of the SCBA: to cultivate the art of jurisprudence, to promote advancement in the law, to facilitate the administration of justice, and to promote the highest standards of integrity, honor and courtesy in the legal profession. Members of the SCBA receive weekly emails concerning local, state and national topics which are of interest to our attorneys. Larger pieces of legal news and updates appear here in Law Notes which can be accessed by the membership on our website.

Second, we are making our interface with the community more accessible over the internet. The SCBA Board of Directors will undertake the updating and modernizing of our website in order to make participation as a member much easier. Our new website will provide the ability to pay dues online, reserve a spot and pay for an event with one click, as well as post available employment positions. Our Website and Social Media Committee has created a LinkedIn and Facebook page for the SCBA which will also keep our members up to date.

Finally, this year's Officers (myself, Matthew R. Coseo, Joseph C. Berger and Nancy Scioc-chetti) are committed to providing fun, flexible and meaningful events for our members and non-members to foster the "spirit of fellowship" so needed in our hectic, busy lives. We have begun our first-ever Welcome Committee for all new members and those interested in becoming members. If you are new to the practice of law, new to Saratoga, or new to the SCBA, call me and I will be sure to have a member of our team meet you and introduce you at our next event. There are less opportunities than ever for lawyers to meet fellow practitioners, judges and government officials. Come and join us at our signature events this year and look for other mixers offered throughout the year – we would love to see you.

In fellowship,

Libby

M. Elizabeth Coreno, Esq., President
Saratoga County Bar Association

TORTS AND CIVIL PRACTICE: SELECTED CASES FROM THE APPELLATE DIVISION, 3RD DEPARTMENT

TIMOTHY J. HIGGINS, ESQ.

A CASE OF FIRST IMPRESSION: SUPREME COURT JURY MAY CONSIDER LIBILITY OF THE STATE FOR PLAINTIFF'S DAMAGES

Artibee v. Home Place Corp.
(McCarthy, J., 8/13/15)

CPLR Article 16 modifies the common-law theory of "joint and several liability", providing relief from non-economic loss awards for defendants found to be 50% or less liable for plaintiff's damages. However, § 1601(1) does not address whether the State of New York's proportionate share of liability should be considered in calculating a defendant's liability in a Supreme Court action (where the State cannot be sued because of the exclusive jurisdiction of the Court of Claims). Here, plaintiff claimed she was hurt while driving on a state highway when a branch, from a tree on defendant's property, fell and struck her vehicle. Plaintiff did sue the State in the Court of Claims, but upon trial against the property owner Supreme Court (Krogmann, J., Warren Co.) denied the defendant's application for a charge that would allow the jury to consider apportionment of fault to the State. The Third Department found that ruling erroneous. Considering the question for the first time, the Court determined that equity requires that the named defendant receive the benefit of Article 16, and "as a policy matter, prohibiting a jury from apportioning fault would seem to penalize a defendant for failing to implead a party that, as a matter of law, it cannot implead".

Timothy J. Higgins is a partner at Lemire, Johnson & Higgins, LLC in Malta, New York. His litigation practice includes all types of personal injury and wrongful death litigation, including representation of persons hurt in automobile and workplace (construction site) accidents, and medical malpractice. Mr. Higgins also represents and litigates on behalf of employers and municipalities in matters involving claims of employment discrimination and civil rights violations.

Prior to joining the firm, Mr. Higgins was a partner with Powers & Santola, LLP, in Albany, where he had worked since graduating from law school. Before beginning his legal studies and career, Mr. Higgins worked for ten years as a news reporter and sports broadcaster at WGY 810 AM in Schenectady as well as radio stations in Saratoga Springs and Glens Falls.

Mr. Higgins is regularly called upon by various bar associations and groups to lecture to other lawyers, on topics ranging from "The Basics of Civil Practice" to "Discovery for Experienced Litigators" to "The Art of Trial Advocacy: Demonstrative Evidence for Television Generation Jurors."

ACTIONS AGAINST NYS IN COURT OF CLAIMS

Sommer v. State of New York
(Lynch, J., 8/6/15)

Court of Claims Act § 11(b) requires a Notice of Intention to File a Claim against the State to set forth, among other things, the "place where such claim arose". This claimant's Notice alleged that he was hurt when he slipped and fell on ice on a sidewalk "on the campus of the State University of New York at Oneonta". The Court of Claims (Schaewe, J.) granted defendant's motion to dismiss the claim for failing to set forth an adequate description of where the incident occurred. The Third Department affirmed, on a different ground, but agreed that while "absolute exactness" is not required, the claimant's "generalized description of the location at which (he) fell was insufficient to permit defendant to investigate its liability" upon receipt of the Notice of Intention.

Long v. State of New York
(McCarthy, J., 7/23/15)

Claimant was hurt in a fall in the parking lot of a State-owned ski resort, and testified at trial that the fall happened when her foot struck the edge of a crevice in the pavement (which she identified in a photo that was entered into evidence). Defendant's proof included the deposition testimony of a ski patrol first-responder who testified that claimant was found on the ground in an area of dirt – not the paved parking lot – and that she did not report that her fall was caused by unevenness in the pavement. The Court of Claims (Collins, J.) found for the defendant and the Third Department affirmed, deferring to the Court's credibility assessment of claimant which failed to carry her burden of establishing proximate cause.

Evans v. State of New York
(Lynch, J., 7/23/15)

While the State has a duty to maintain its roads in a reasonably safe condition, it is also afforded a qualified immunity from liability arising out of a highway planning decision if it was the result of "a deliberative decision-making process". The Court of Claims invoked such immunity in finding for the State after trial of the claim by a Warren County deputy sheriff who hurt his back in a patrol car accident (in 2009) in a sinkhole on State Route 8 in the Town of Horicon. Claimant alleged a culvert carrying water underneath the highway was too small and should have been replaced; its inadequacy proven by four road washouts prior to 2006, after which the culvert was placed on a DOT "program for replacement". Affirming the defense verdict, the Third Department cited to evidence that "funding priorities" delayed the eventual (2010) replacement of the culvert,

(Continued on page 8)

THE BEAN COUNTER

MICHAEL FRIEDMAN, ESQ.

"Money frees you from doing things you dislike. Since I dislike doing nearly everything, money is handy."
- Groucho Marx

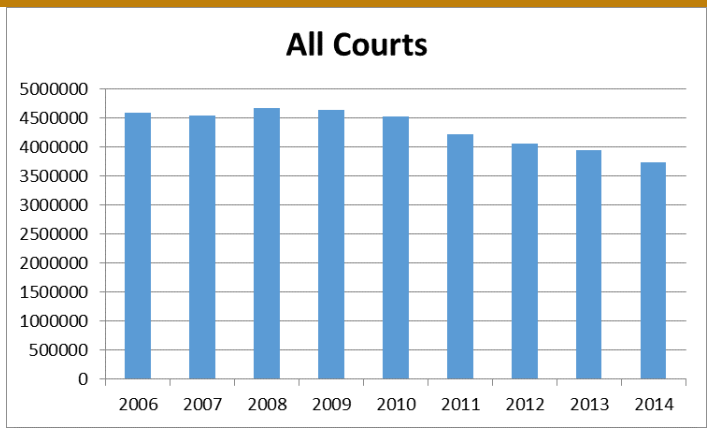
"It's clearly a budget. It's got a lot of numbers in it."
- George W. Bush

In the opening lines of his 2015 State of the Judiciary address Chief Judge Jonathan Lippman said, "Access to justice is the defining principle of our court system. It manifests itself in so many diverse ways in over four million civil, criminal, and family proceedings in court houses across New York State." This was good news to me as I had lamented for years the decreased filings in New York State during Judge Lippman's tenure which demonstrated the inability of people to resolve disputes in our overly complex, costly court system. After all, on January 1, 2015 we swore in 25 new Family Court Judges at a cost of $1 million per judge per year in spite of statistics showing a decline in the Family Court filings by nearly 7% over five years. Albany County's filings had declined by 21% from 2009 until 2013, but we received a fourth judge. In Schenectady County the decline was 17% and they received a third judge. So, bravo. Finally Judge Lippman's defining legacy of access to justice had shown progress, and I owed him and the Unified Court System an apology for my misgivings. After all, the costs, filing fees and the Byzantine structure of the court system seemed to make it far more difficult to access justice in New York at any level.

As in previous years, I requested the figures. After all, if Judge Lippman made his remarks on February 17, 2015, the Office of Court Administration certainly had the 2014 numbers from the OCA bean counters. The title of his State of the Judiciary speech was, "Access to Justice: Making the Ideal a Reality." That sounded good to me. By July 22, Judge Lippman had created a Permanent Commission on Access to Justice "to make the courts accessible and navigable to all – regardless of income." His Task Force on Access to Justice had, according to Judge Lippman, become "recognized as a national model."

Unfortunately, unlike prior years, the numbers were not available. It was pointed out to me that such statistics are not available until May or early June as a general rule, so I waited. Then I was told they would be available in late June or early July. Then perhaps July or early August. Early on, I was able to find out that the Albany County Family Court filings for 2014 had significantly declined from 15,242 in 2013 to 13,794 or 9%. That meant with our new Family Court judge and that $1 million per year, each Albany County Family Court judge now handles 2,352 fewer cases per year than in 2009, a decline of 60%. Nice. Finally, on August 27, a half a year after Judge Lippman's speech, the numbers were provided. Four million? Not exactly. Off by more than a quarter million filings, but who cares now anyway? The legislature already gave several billion dollars to the judiciary in its "Road to Recovery budget" so we're all good now, right?

Want to see what this really looks like?



See that 4 million line up there? We haven't seen that since 2012. By 2007, Judge Lippman was the longest serving Chief Administrative Judge in state history. In 2009, he became the Chief Judge of the Court of Appeals. In his first State of the Judiciary address in 2010 he said, "the 2010 State of the Judiciary report will focus on how current caseload pressures are increasing the burdens and challenges our judges face on a daily

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Michael Friedman has been practicing law for over 30 years and has maintained a private practice since 1981. He is the recipient of numerous awards such as the Distinguished Service Award from the Legal Aid Society of Northeastern New York, the Albany County Bar Association President's award, the Albany County Bar Association Pro Bono Award, and the New York State Bar Association President's Pro Bono Service Attorney Award. Mr. Friedman is the author of numerous articles on matrimonial practice including The Case for Parental Access Guidelines in New York and the Case for Joint Custody in New York for the New York State Bar Association's Family Law Review, Pensions and Retirement Plans: Valuation Strategies for the New York Domestic Relations Reporter and a monthly matrimonial article for the Albany County Bar Association.

Mr. Friedman has served as President of the Albany County Bar Association and was a member of the House of Delegates of the New York State Bar Association. He practices before all local Family and Supreme Courts and has argued numerous matrimonial cases in the Appellate Division, Third Department and New York's highest court, The Court of Appeals. He has been a frequent judge for the Dominick L. Gabrielli National Family Law Moot Court Competition. He is also a frequent lecturer and writer for the New York State Bar Association Family Law Section's Continuing Legal Education programs.

INSIGHT INTO IMMIGRATION

IMMIGRATION NEWS FROM MEYERS & MEYERS, LLP

Last week I received a call from a potential client who was telling me about an interesting deal that he was putting together for a well-known company based in New York that could be a perfect project for an EB-5 Regional Center. That is, if it fits the criteria.

As you will recall from an earlier article which I wrote, the EB-5 program was created when Congress enacted the Immigration Act of 1990 ("IMMACT90"). In creating this program, Congress' intent was to stimulate the U.S. economy by giving foreign entrepreneurs the opportunity to permanently live and work in the United States after they invested (with a couple of exceptions) in a new commercial enterprise and created ten (10) new jobs (again, with a couple of exceptions). Thereafter, in 1993, Congress created the Immigrant Investor Pilot Program (commonly known as the EB-5 Regional Center Program) to increase interest in the EB-5 investor visa program.

You will also recall that last Spring, I reported that U.S. Citizenship and Immigration Services ("USCIS") had approved an application for an EB-5 Regional Center in the Capital Region which was facilitated by the Center for Economic Growth ("CEG") and Prime Regional Center, LLC, an affiliate of Prime Companies. The Regional Center is in an area of Upstate New York that includes eight counties surrounding and including the Capital Region, as well as specific counties in the Southern Tier, Mohawk Valley and Central New York.

As a reminder, "Regional Centers" are designated by USCIS based on public or private proposals for promoting economic growth. A Regional Center is defined as any economic entity, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment. This was and is a big deal for the Capital Region.

So my first thought when this potential client called should have been, let me call some folks that I know at Prime Regional Center, LLC to see if this project would be an acceptable project for their Regional Center. Unfortunately, that was not my first thought. That is, I had to tell this potential client that he and his extremely anxious client would need to sit tight until at least September 30, 2015, and perhaps later, to see if Congress reauthorizes the EB-5 Regional Center Program.

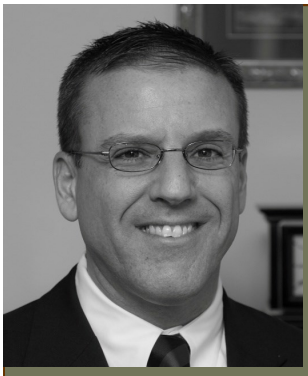
That's right, the EB-5 Regional Center Program is only temporary, and it will sunset on September 30, 2015 unless Congress reauthorizes it. Imagine that ... a program whose primary purposes are to stimulate foreign investment in the United States and create jobs is temporary.

Given its proven success, why is it temporary? As a result of the 2008 economic crash, EB-5 has become a mainstream capital funding tool for economic development. EB-5 money has been part of the capital stack of large scale development projects in many major cities across the United States, including New York, Washington D.C., Los Angeles, Miami, Las Vegas, and more. And in doing so, it's also created jobs. The numbers bear this out.

In the government's 2014 fiscal year, USCIS approved 5,115 investor visa petitions. This represents about $2.5 billion in foreign investment into the United States. From 2008-2014, USCIS approved 17,000 investor visa petitions. That's about $12 billion of capital investment into the United States.

In addition to all this capital investment, the EB-5 program has also created full-time jobs. According to a February 2014 study by the Brookings-Rockefeller Project on State and Metropolitan Innovation, the EB-5 program has been credited with creating over 85,000 full-time jobs since 1990. And according to our government's FY2013 data, the EB-5 program has helped to create an estimated 30,000 jobs in the United States.

So again I ask, why is a program that has created thousands of jobs for U.S. workers and has infused billions and billions of new capital into our economy temporary? Your guess is as good as mine. Foreign investors and business leaders across the nation are crossing their fingers as we approach the program's September 30th sunset date, hoping that Congress makes the right decision to reauthorize a program that continues to bring an abundance of new capital investment into the United States and creates full-time jobs for U.S. workers.



David W. Meyers, who joined his father at Meyers and Meyers, LLP in 1997 after a decade as an executive assistant to United States Senator Alfonse M. D'Amato, focuses primarily on family- and business-related immigration matters, commercial litigation, residential and commercial real estate transactions, trusts and estates, and general and appellate practice.

EMPLOYMENT LITIGATION UPDATE

SCOTT PETERSON, ESQ.

HOSTILE WORK ENVIRONMENT/DAMAGES

Renn. County Sheriff's Dept. v. NYS DHR, 131 AD3d 777 (3d Dept. 8/2015) ("Seabury")

Complainant Seabury was an employee of the Rensselaer County Sheriff's Dept. who, in 2010 filed a complaint with the NYS Division of Human Rights alleging, among other things, that she was subjected to severe sexual harassment by her male coworkers. Following a hearing an Administrative Law Judge ("ALJ") awarded Seabury some $750,000 in economic and non-economic damages. The economic damages were thereafter reduced by the Commissioner of the NYSDHR to $315,000. The Sheriff's Dept. subsequently brought an action to annul the recommendations of the ALJ as adopted by the Commissioner.

The Court observed that in reviewing determinations by the Commissioner its purview is "extremely narrow", and the focus is limited to determining whether based on the evidence presented the Commissioner's finding was rational. After considering the extensive proof of severe harassment suffered by Seabury – which included numerous complaints to her supervisor who allegedly responded "boys will be boys" in what is becoming a common fact pattern – the Court found that there was a rational basis for the determination that but for Seabury's gender she would not have suffered the harassment that she described, and that the conduct sufficiently altered the terms and conditions of her employment so as to create an "abusive work environment."

In considering Seabury's damages, the Court initially elected not to reduce her non-economic award of $300,000, finding that such an amount was "reasonably related to the wrongdoing, supported by substantial evidence and comparable to awards for similar injuries."

WORKERS' COMPENSATION REDUCTION

The Court next considered whether the Commissioner had correctly offset Seabury's award of past and future lost wages based upon past and future workers' compensation benefits. In considering this offset the Court observed that Workers' Compensation Law 29(1) provides a third party paying benefits for the same injury giving rise to the legal action a statutory lien against the recovery. To permit a reduction based upon the benefits, in light of the already established statutory lien, would effectively result in a "double debit" to the plaintiff, which is clearly an unfair result. Consequently, the Court found that the Commissioner erred in reducing Seabury's award for past and future lost wages in the amount of a purported Workers' Compensation lien.

PLEADING STANDARDS AND MOTIONS TO DISMISS

Dawson v. NYC Transit Auth., 2nd Cir. 9/16/15

Plaintiff, an employee of the NYCTA, brought an action alleging that he had been discriminated against by his employer on the basis of a disability (epilepsy) when it denied his request for a "title restoration" to his former position of train operator. The District Court dismissed the action on a 12(b)(6) motion on the basis that Plaintiff had 1) failed to adequately allege an adverse employment action; and 2) had pled insufficient facts to present an inference of discriminatory motive.

The Second Circuit initially considered the standard to be applied to pleadings in disability discrimination cases (primarily under the Americans with Disabilities Act ("ADA")). In so doing the court viewed the case in the context of the prevailing standard that in the complaint the plaintiff must allege that Plaintiff is a member of a protected class, was qualified, suffered an adverse employment action and "has at least minimal support for the proposition that the employer was motivated by discriminatory intent." With this standard in mind the court first looked to whether Plaintiff had properly alleged an adverse employment action.

ADVERSE EMPLOYMENT ACTION

The Court observed that in order to qualify as an "adverse employment action," the employee must allege that the employer's action was "materially adverse" with respect to the "terms and conditions of employment."

In dismissing the matter, the District Court determined that Plaintiff had failed to plead an adverse employment action because the denial of reinstatement was actually a "collateral attack" on a prior employment decision – the decision to remove him as a train operator in the first place. The Second Circuit disagreed, finding that Plaintiff was in fact not attempting to challenge the original removal, but instead was challenging the

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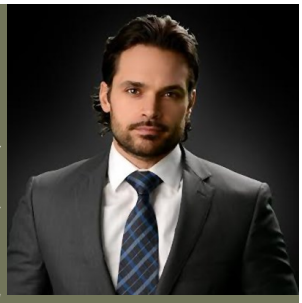

Scott Peterson is the founding partner at D'Orazio Peterson, which was opened to provide representation to individuals in employment and serious injury matters.

Mr. Peterson received his law degree from Albany Law School, where he served as a Managing Editor on the Albany Law Journal of Science and Technology. Prior to opening his firm, he worked for two Albany- based law firms, where he focused his practice on litigation in the areas of construction, malpractice, employment and serious injury.

Mr. Peterson has represented clients in State and Federal courts throughout New York State, has been published in several publications including the New York Law Journal, and has frequently provided commentary for local and national media outlets. He currently serves on the Executive Committee of the New York State Bar Association Trial Lawyers Section.

MATRIMONIAL AND FAMILY LAW UPDATE

LAURA M. HOFFMAN, ESQ.

THE NEW SPOUSAL MAINTENANCE LEGISLATION A SYNOPSIS

On September 25, 2015, Governor Cuomo signed new legislation which drastically changes the spousal maintenance landscape for practitioners. The biggest change is the creation of a formula and advisory schedule for determining the amount and duration of post-divorce maintenance. This is the legislature's latest effort to create uniformity and predictability in fixing monetary awards. First, there was the Child Support Standards Act (CSSA), enacted in 1989 which set a formula for determining child support. In 2010 there were the temporary maintenance guidelines. Now, for the first time, there are formulas to guide the court in determining maintenance awards post-divorce.

The Temporary Maintenance provisions are effective October 25, 2015 with the Post-Divorce Maintenance provisions effective January 23, 2015. Both statutes apply only to actions commenced on or after their respective effective dates.

What follows is an outline of the modifications to provide matrimonial practitioners a quick overview.

TEMPORARY AND POST-DIVORCE MAINTENANCE

The great majority of the new provisions apply to both temporary and post-divorce maintenance. Thus, to save space, the two will be discussed together with differences highlighted.

Right to Opt-Out Preserved. DRL §236(B)(5-a)(a)/DRL §236 (B)(6)(a): preserves the parties' right to opt-out of the statute's mandatory formulas.

Ms. Hoffman limits her practice to contested divorce and family law matters. This includes a wide array of legal issues ranging from domestic violence, custody and child support, to post judgment actions. She is well-versed in business valuations, enhanced earnings, distribution of professional degrees and other matters surrounding property distribution. Her goal is to combine the facts as the client presents them with the law as she knows it to achieve the client's objectives. She also works diligently to resolve matters before court intervention is necessary. When this is not possible, she is prepared to take the case to trial and has significant trial experience.

Ms. Hoffman received her Juris Doctor with Honors from Syracuse College of Law in 2005. There, she was awarded the Excellent Achievement in the Study of Trial Practice award by the College of Law, as well as bestowed a Certificate of Specialization in Family Law & Social Policy. She began her practice in this field as a Student Attorney in the Children's Rights and Family Clinic representing clients in court even before graduation.

Definitions. DRL §236(B)(1)(a), changes the word "recipient" to "payee", creating uniformity throughout the statute.

"Income", per DRL §236(B)(5-a)(b)(4)/§236(B)(6)(b)(3), is defined as income pursuant to the CSSA without subtracting maintenance actually paid or to be paid to a spouse to the instant action. With respect to post-divorce maintenance, the definition of income per DRL §236(B)(6)(b)(3)(b), also includes "income from income-producing property distributed or to be distributed."

"Income cap" reduces the amount of the payor's income to which the formulas apply from $543,000.00 to $175,000.00.

The Formulas. Pursuant to DRL §236(B)(5-a)(c)/§236(B)(6)(c), there are two (2) formulas for determining maintenance. The first is applicable to cases where child support will be paid for children of the marriage and where the maintenance payor is also the non-custodial parent. The second is applicable to cases where child support will not be paid for children of the marriage, or where child support will be paid, but the maintenance payor is the custodial parent. Both computations apply the formula only up to $175,000.00 of the payor's income.

Where the Maintenance Payor is the Non-Custodial Parent [DRL §236(B)(5-a)(c)(1)/§236(B)(6)(c)(1)].

1. Where child support will be paid for children of the marriage and where the payor is also the non-custodial parent pursuant to the CSSA:
    a. Subtract 25% of the payee's income from 20% of the payor's income.
    b. Multiply the sum of the payor's income and the payee's income by 40%.
    c. Subtract the payee's income from the result.
    d. The lower of the two amounts will be the guidelines amount, except that, if the amount is less than or equal to zero, the guidelines amount shall be zero.
    e. Maintenance shall be calculated prior to child support because the amount of maintenance shall be subtracted from the payor's income and added to the payee's income as part of the calculation of the child support obligation.

Where No Child Support or Maintenance Payor is Custodial Parent [DRL§236(B)(5-a)(c)(2)/§236(B)(6)(c)(2)].

1. Where child support will not be paid for children of the marriage, or where child support will be paid for children of the marriage but the payor is the custodial parent pursuant to the CSSA:
    a. Subtract 20% of the payee's income from 30% of the payor's income.
    b. Multiply the sum of the payor's income and the payee's income by 40%.
    c. Subtract the payee's income from the result.
    d. The lower of the two amounts will be the guidelines amount, except that, if the amount is less than or equal to zero, the guideline amount of

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TRUCKING AND TRANSPORTATION LAW

BRIAN D. CARR, ESQ.

There has been no shortage of criticism of the Federal Motor Carrier Safety Administration's ("FMCSA") Compliance, Safety, Accountability ("CSA") program which was launched in late 2010. Experience has shown that much of the program has benefits. However, aspects of the program have grown substantially problematic. One of those problematic aspects of the program is the ability of the public to view (and, by extension, the ability of plaintiff's lawyers to utilize) motor carrier CSA Safety Management System ("SMS") scores.

Efforts have been underway for some time to remove those scores from public view. The goal of the CSA program is ultimately to improve safety and prevent property damage, injuries, and fatalities arising out accidents involving commercial motor vehicle carriers. Obviously, this is a laudable goal, and one which the industry supports. However, whether the current framework of the program actually achieves those goals is open for debate.

In a report issued by the United States Government Accountability Office ("GAO") in 2014 entitled Federal Motor Carrier Safety: Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers, the GAO determined that "many SMS scores do not represent an accurate or precise safety assessment for a [commercial motor vehicle carrier]." GAO-14-114 at page 16. In its report, the GAO further determined that the safety scores are in fact unreliable predictors of subsequent crash performance. There has been widespread industry criticism leveled against the SMS to the extent that its statistical methodology is inherently flawed, and results in the misrepresentation of commercial motor vehicle carrier's safety performance, and perceived risk.

There has been widespread concern in the industry, some of which is now being borne out by experiences on the ground, that the public availability of such data can have significant adverse consequences on carriers with scores deemed problematic. It is undeniable that a score that unfairly characterizes an otherwise safe and responsible motor carrier as being more likely to be involved in a crash will have a significant detrimental impact for that carrier. Those consequences can include an inability to secure insurance or financing, disqualification from contracts with shippers and brokers, as well as attempts to use such data against carriers in litigation.

The American Trucking Association has continued in its efforts to press for commonsense changes to the CSA program and scoring system, most recently by seeking to remove from the scoring program crashes that were not caused by the motor carrier or its driver. Under the current system, all crashes are included in the CSA scoring, thereby including accidents which were not caused by the carrier.

Concurrent with industry efforts to achieve commonsense changes, legislative efforts are also underway to address these concerns and revise the system. Representative Lou Barletta (R-PA) has filed the "Safer Trucks and Buses Act of 2015" in the House of Representatives. The purpose of the proposed legislation would be to, among other things, remove CSA rankings and SMS scores from public view. Representative Barletta's proposed legislation would prohibit utilizing data from a crash in which the motor carrier was not at fault, and use only that data which is "determined to be predictive of motor carrier crashes" in the scoring system. H.R. 1371, 114th Cong. (2015). Representative Barletta is not alone in his efforts in this regard, and he has been joined by Senator John Thune (R-S.D.) and Senator Deb Fischer (R-Neb), both of whom have expressed interest in reform and have been critical of the CSA program.

The use of such public data in the course of litigation can present significant problems in the course of defending a commercial motor vehicle carrier. As those of us who regularly represent and defend the trucking industry know, a common theme presented by plaintiffs' lawyers in such cases is that the trucking industry is solely motivated by profit, and in pursuit of that goal it cuts corners, hires inexperienced or unqualified drivers, operates the commercial motor vehicles recklessly, and employs substandard inspection and maintenance practices. Unfortunately, plaintiffs' lawyers have been given a potential tool for supporting such claims in the form of CSA scores that are publicly available.

Until there is definitive legislative action to address these very real concerns over the public availability of such scores, motor carriers will continue to be faced with potential adverse consequences arising out of misunderstanding and misuse of CSA scores which are derived from flawed data gathering methodologies.

Brian D. Carr is a Director at Carter Conboy joining the firm in 2006. Mr. Carr handles a range of civil litigation matters primarily involving the defense of transportation, product liability, professional malpractice, premises liability, and personal injury liability claims. He has been involved in numerous complex litigation cases and is an experienced litigator in state and federal courts at both the trial and appellate levels.

In addition to his law degree, Mr. Carr holds a master's degree in business administration, and is a licensed commercial pilot with instrument and multi-engine ratings. Mr. Carr regularly protects the interests of businesses, retailers, contractors, manufacturers, and small and large trucking and transportation industry clients in the federal and state courts of New York, as well as in arbitrations, administrative hearings, and before state and federal agencies. Mr. Carr is also an Aircraft Owners and Pilots Association Panel Attorney providing representation and consultation in various aviation related matters.

TORTS AND CIVIL PRACTICE, CONTINUED...

(Continued from page 2)

and that qualified immunity attached "because defendant's plan was deliberative and adequate".

LANDLORD LIABLE FOR TENANT'S DANGEROUS DOG?

Rodgers v. Horizons at Monticello, LLP
(Devine, J., 7/16/15)

Generally, a New York landlord may be liable for injuries inflicted by a tenant's dog if the property owner has actual or constructive notice of the animal's "dangerous propensities" and maintains sufficient control over the premises to require removal or confinement of the dog. Here, the infant plaintiff was injured while attending a Halloween party at the defendant's apartment complex, and the property owner made a third-party claim for contribution against the tenant/owners of the pit bull that bit the child. Supreme Court (Meddaugh, J., Sullivan Co.) denied the landlord's motion for summary judgment which the Third Department affirmed, given plaintiff's evidence (in the form of affidavits by other residents of the complex) that, among other things, one neighbor was attacked by the dog but escaped injury because the animal was muzzled, and that residents had "repeatedly complained" to the site manager about the dog's aggressive behavior.

SCHOOL LIABILITY FOR STUDENT-ON-STUDENT ASSAULT

LaValley v. Northeastern Clinton Central School Dist.
(Rose, J., 7/16/15)

Plaintiff's son was attacked by a fellow 9th grade student in the school cafeteria in close proximity to a teacher who was not aware (as was the defendant school district) that the attacking student had previously assaulted the victim and had threatened further violence about a month prior to the incident at issue. School liability for student-on-student inflicted injuries requires plaintiff to show the district had actual or constructive notice of the conduct such that it could have been reasonably anticipated. Supreme Court (Muller, J., Clinton Co.) found a question of fact existed as to such proof and denied defendant's motion for summary judgment which the Third Department affirmed, noting testimony by the high school principal that plaintiff had told him about the history of conflict between the two students and that he had addressed the issue with the attacking student before the cafeteria incident.

LACK OF PROXIMATE CAUSE SINKS LOW-SPEED CAR CRASH CLAIM

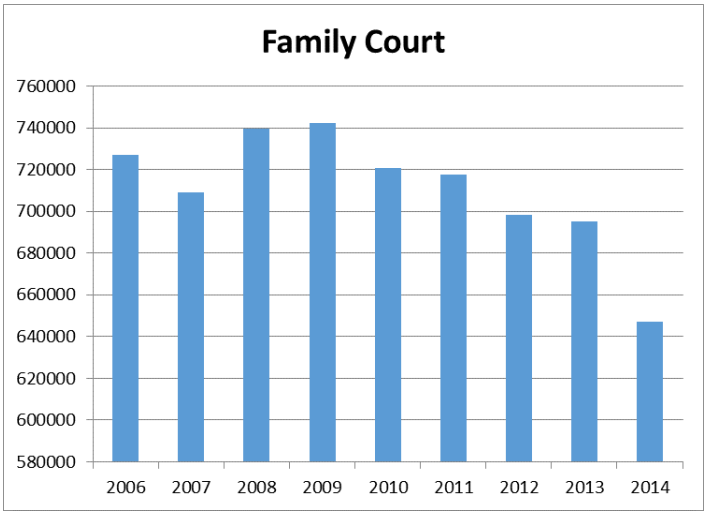
Molesky v. Marra
(Lahtinen, J., 7/16/15)

Supreme Court (Zwack, J., Albany Co.) granted the defendants' motion for summary judgment dismissing the plaintiff's auto accident injury claim upon finding insufficient proof of proximate cause. After the low-speed, rear-end crash, which did not damage plaintiff's vehicle, the parties exchanged insurance information without intervention by police or the need to call an ambulance. After suit was filed, discovery revealed that both plaintiffs had various pre-existing medical conditions and that both had received disability retirements about 5 years before the accident. One plaintiff had back surgery four months after the accident but in affirming summary judgment, the Third Department noted that the treating surgeon's affidavit "failed to sufficiently and objectively distinguish the purported recent injury from the prior injury or adequately indicate that the accident exacerbated a preexisting condition".

BEAN COUNTERS, CONTINUED...

(Continued from page 3)

basis; the steps we are taking to continue to meet our constitutional responsibility to deliver justice in each and every case; the efforts we are making to respond to the State's financial crisis." For the 2015-2016 fiscal year, he requested and the Judiciary received an additional $51 million from the prior year. That kept New York State as the most expensive judiciary per capita in the world. Congratulations. As for that $25 million needed for the 25 new family court judges, statewide there were 95,000 fewer filings in Family Court in 2014 than when Judge Lippman became Chief Judge. Here's what those statistics look like:



Now, I'm not saying that the court system delayed getting these statistics to the public for half a year just to insure that it could implore the legislature to cough up a couple of billion dollars from the taxpayers. That wouldn't be right, would it? I'm sure that it was just an unintentional mistake or bad math to tell us that they preside over 4 million proceedings each year. It's just that the "defining principle of our court system" should be based on some semblance of reality, shouldn't it? Well, maybe not.

Post Scriptum: Remember last month when the Office of Court Administration's "spokesperson" called a Supreme Court candidate's comments on needing a sitting Supreme Court justice in St. Lawrence County "premature and somewhat irresponsible"? I wrote that such comments were improper or at least the appearance of impropriety by the court system. I said it may well influence the Third Department or perhaps the Court of Appeals in pending appeals by that candidate or people on her behalf. If nothing else, it just didn't seem right. No sooner was the ink dry on those thoughts than the Third Department decided Matter of Mattice v. Hammond.[i] This Election Law case was decided at trial by Acting Supreme Court Justice Patrick McGill allowing the Conservative designating petitions to the Judicial Convention to decide which Supreme Court candidate will get the all-important 4th Judicial District Conservative line. Presto chango the Third Department reversed and on the same day also decided another 4th Judicial District Conservative Party convention petition.[ii] Both cases now potentially set up a decision by the rest of the Court of Appeals. Irresponsible indeed. What a world.

Feliz día de la Independencia Mexicana!

[i]Case 52174 decided August 20, 2015.
[ii]Matter of Canary v. New York State Board of Elections.

MATRIMONIAL UPDATE, CONTINUED

(Continued from page 6)

maintenance shall be zero.

e. If child support will be paid for children of the marriage but the payor is the custodial parent pursuant to the CSSA, maintenance shall be calculated prior to child support because the amount of maintenance shall be subtracted from the payor's income and added to the payee's income pursuant as part of the calculation of the child support obligation.

Income Above the Cap. – DRL §236(B)(5-a)(d)/§236(B)(6)(d) directs that additional maintenance for income above the cap is discretionary with the court considering a list of statutory factors. As before, the court must set forth the factors it considered and the reasons for its decision and may not be waived by the parties.

Self-Support Reserve. Where the guideline amount would reduce the payor's income below the self-support reserve, the guideline amount shall be "the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no maintenance is awarded."

Duration. *Temporary Maintenance*: DRL §236(B)(5-a)(f) authorizes the court to order temporary maintenance for a specific duration that may be shorter than the duration of the litigation, taking into consideration the duration of the marriage. However, temporary maintenance must terminate no later than the issuance of the judgment of divorce or death of either party, whichever occurs first.

Post-Divorce Maintenance: DRL §236(B)(6)(f). The court has discretion in determining the duration of post-divorce maintenance. The statute provides an "advisory" schedule: For marriages of 0 to 15 years, 15%-30% of the length of the marriage; for 15 to 20 years, 30%-40%; for more than 20 years, 35%-50%. Whether or not the court utilizes the schedule, it must consider the statute's enumerated factors as well as the anticipated retirement assets, benefits and retirement eligibility. If this is not ascertainable at the time of the decision, the actual retirement of the payor, with resulting diminution of income, shall be a basis for modification.

Deviations from the Formula. The standard for deviation

(Continued on page 10)

EMPLOYMENT UPDATE, CONTINUED

(Continued from page 5)

refusal to reconsider him for eligibility given subsequent developments in his medical condition. This distinction, in the eyes of the Court, was clearly sufficient to raise an inference of an adverse employment action.

Inference of Discrimination

In dismissing the Plaintiff's case the District Court additionally found that Plaintiff had failed to plead sufficient facts to give rise to an inference that the alleged adverse action occurred because of his disability. The Second Circuit observed that the burden facing plaintiffs is minimal, and in doing so counseled district courts that they would "do well to remember this exceedingly low burden that discrimination plaintiffs face even after they have survived a motion to dismiss." In this case the Defendant had previously admitted that Plaintiff's condition rendered him medically unqualified to perform the work associated with the position. As a result, "to infer that Defendant's earlier inaction on Plaintiff's request for reclassification is unrelated to its subsequent assessment of his disability, as the District Court did, is to make an unreasonable inference in Defendant's favor, which is inappropriate on a motion to dismiss."

Reversed and remanded.

Like Us on Facebook!

The Saratoga County Bar Association now has a Facebook page and a LinkedIn group! Please like our Facebook page and request to join the LinkedIn group. The LinkedIn group is for members only to start discussions, post job opportunities, etc.

MATRIMONIAL UPDATE, CONTINUED

(Continued from page 9)

from the formula is the same as under the CSSA, i.e., a finding that the result is either unjust or inappropriate. As before, the court must have a basis for its findings based upon one or more of the statutory factors. Only one of the factors is new, "the termination of a child support award during the pendency of the temporary maintenance award when the calculation of temporary maintenance was based upon child support being awarded and which resulted in a maintenance award lower than it would have been had child support not been awarded."

With respect to post-divorce maintenance, there are two additional factors. They are: (1) the equitable distribution of marital property and the income or imputed income on the assets so distributed; and (2) the contributions and services of the payee as a spouse, parent, wage earner and homemaker to the career of the other party. DRL§236(B)(6)(e)(1)(m), (n).

Defaults/Non-Disclosure. DRL §236(B)(5-a)(j)/§236(B)(6)(i) provides: When a payor has defaulted and/or the court otherwise has insufficient evidence to determine income, the court shall order maintenance based upon the needs of the payee or the standard of living of the parties, whichever is greater. Further, the order may be retroactively modified upward without a showing of change in circumstances upon a showing of newly discovered evidence.

Modification of Orders/Agreements. DRL §236(B)(5-a)(k), (l)/§236(B)(6)(k), (l): The enactment of this legislation does not constitute a change in circumstances warranting modification of any agreement or court order existing prior to the effective date. Further, even if there is a basis to modify a pre-existing order or agreement, independent of the new legislation, then the computational formula, over-the-cap provisions and deviation factors do not apply per DRL §236(B)(6)(m), (n). It should be noted this provision does not say the durational advisory provisions do not apply. Therefore, it can certainly be argued that they should. In addition, the retirement of the payor may serve as a basis for modification where it results in a substantial change in financial circumstances. §236(B)(9)(b)(1).

Allocation of Family Expenses. DRL §236(B)(5-a)(m). In determining temporary maintenance, the court shall consider and allocate the responsibilities of the respective spouses for the family's expenses during the pendency of the litigation.

Without Prejudice to Post-Divorce Maintenance Award. DRL §236(B)(5-a)(n). The temporary maintenance order shall not prejudice the rights of either party regarding a post-divorce maintenance award.

ENHANCED EARNING CAPACITY

Last but not least, DRL §236(B)(6)(d)(7) removes a spouse's future earning capacity from being considered a presently distributable marital asset, thus overturning the holding in O'Brien v. O'Brien (66 N.Y.2d 576 [1985]). However, the statute specifically directs the court to "consider the direct or indirect contributions to the development during the marriage of the enhanced earning capacity of the other spouse" when determining equitable distribution. This potentially opens the door for continued "battles of the experts" as the value of the enhanced earnings and the spouse's direct or indirect contributions thereto are to be considered by the court when fashioning an equitable distribution award. As a result, a practitioner representing the non-titled spouse would be wise to consider continuing to obtain expert testimony as to the value of the enhanced earning capacity, at least until it is known whether the courts will accept this argument.

PRESS RELEASES

CARTER CONBOY
ATTORNEYS AND COUNSELORS AT LAW

CARTER CONBOY RECEIVES NUMEROUS "BEST OF" PROFESSIONAL RECOGNITIONS

Carter Conboy is pleased to announce that several of its lawyers have recently received honors from both Best Lawyers® in America and Super Lawyers® for 2015 and 2016.

Five Carter Conboy lawyers have been named as Best Lawyers in America® for 2016 in multiple practice areas:

- Appellate Practice: James A. Resila
- Commercial Litigation: Edward D. Laird, Jr.
- Insurance Law: James C. Blackmore
- Medical Malpractice Law (Defendants): John T. Maloney; Edward D. Laird, Jr.
- Personal Injury Litigation: Edward D. Laird, Jr.; William D. Yoquinto
- Product Liability Litigation (Defendants): John T. Maloney; James A. Resila
- Professional Liability Litigation (Defendants): John T. Maloney
- Real Estate Law: James C. Blackmore

Additionally, John T. Maloney and William D. Yoquinto were distinguished with "Lawyer of the Year" recognition by Best Lawyers® for the metropolitan area of Albany, NY in the practice areas Medical Malpractice Defense and Personal Injury Defense, respectively. Only a single lawyer in each practice area is honored as the "Lawyer of the Year," making this accolade particularly significant. Mr. Maloney and Mr. Yoquinto were selected based on exceptional recognition received during their peer-review assessments. Receiving this designation reflects the high level of respect these lawyers have earned among other leading lawyers in our communities, for their abilities, professionalism and integrity.

John T. Maloney is a director and litigator at Carter Conboy. He concentrates his legal practice on the defense of medical malpractice and professional malpractice claims, product liability, and commercial litigation in State and Federal courts throughout New York. Mr. Maloney regularly represents physicians and other professionals before State Administrative agencies and licensing boards including the State of New York Department of Health Office of Professional Misconduct (OPMC). Mr. Maloney is a distinguished Fellow of the American College of Trial Lawyers and was also named the 2014 "Lawyer of the Year" by Best Lawyers in America® in the category of Product Liability defense. He can be reached at jmaloney@carterconboy.com or (518) 465-3484.

William D. Yoquinto is a managing director at Carter Conboy. Mr. Yoquinto focuses his practice on all phases of defense, including trials and appeals, in matters relating to medical malpractice, product liability, pharmaceuticals, professional licensing, and other liability claims. He has successfully defended lawsuits on behalf of product manufacturers, pharmacies, physicians, and hospitals in various medical specialties including obstetrics, cardiology, emergency care, general surgery, radiology, orthopedics, and critical care, among others. His representation of professionals has also included successful license defense before the State of New York Department of Health's Office of Professional Medical Conduct (OPMC) and the New York State Department of Education's Office of the Professions. He can be reached at wyoquinto@carterconboy.com or (518) 465-3484.

Lastly, Super Lawyers® has selected thirteen Carter Conboy attorneys for inclusion in its Upstate New York Super Lawyers® list for 2015. Each year, no more than five percent of the lawyers in the state are selected by the research team at Super Lawyers® to receive this honor, and Carter Conboy is proud to have thirteen of its attorneys named to this distinguished group of attorneys. The Carter Conboy attorneys, honored across six practice areas, as Super Lawyers® and Rising Stars* for 2015 are:

John T. Maloney – Medical Malpractice Defense
Edward D. Laird, Jr. – Product Liability Defense
James A. Resila – Civil Litigation Defense
Michael J. Murphy – Employment Litigation Defense
William D. Yoquinto – Medical Malpractice Defense
William J. Decaire – Civil Litigation Defense
Adam H. Cooper – Medical Malpractice Defense
John H. Pennock – Personal Injury Defense
Mackenzie C. Monaco* – Medical Malpractice Defense
Brian D. Carr* – Civil Litigation Defense
Jonathan E. Hansen* – Personal Injury Defense
William C. Firth* – Civil Litigation Defense
Steven J. Auletta* – Medical Malpractice Defense

(Continued on page 12)

PRESS RELEASES

CARTER CONBOY
ATTORNEYS AND COUNSELORS AT LAW

(Continued from page 11)

Since it was first published in 1983, Best Lawyers® has become universally regarded as the definitive guide to legal excellence. Best Lawyers® is based on an exhaustive peer-review survey. Over 79,000 leading attorneys are eligible to vote, and more than 6.2 million votes have been received to date on the legal abilities of other lawyers in their practice areas. Corporate Counsel Magazine has called Best Lawyers® "the most respected referral list of attorneys in practice."

Super Lawyers®, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, resulting in a credible, comprehensive and diverse listing of exceptional attorneys limited to the top 5% of attorneys in each state or region.

WILCENSKI & PLEAT PLLC
ATTORNEYS AT LAW

WILCENSKI, PLEAT & DEZIK HONORED BY NEW YORK STATE SUPER LAWYERS

Super Lawyers 2015

Attorney Edward V. Wilcenski has been named to the New York Super Lawyers list as one of the top Elder Law Attorneys in New York State for 2015. Super Lawyers selects no more than 5% of the lawyers in New York State for this designation. This is the fifth year Ed has received this honor.

Tara Pleat and Ed Wilcenski

Attorneys Tara Anne Pleat and Michael D. Dezik have been named to the New York Super Lawyers Rising Star list as two of the top Elder Law attorneys in New York State under the age of 40 for the year 2015. Super Lawyers selects no more than 2.5% of the lawyers in New York State for this designation. This is the third consecutive year that Tara has received this honor and the second consecutive year for Michael.

Mike Dezik

Super Lawyers, a Thompson Reuters business, is a rating service of outstanding attorneys for more than 70 practice areas who have received a high degree of peer recognition and professional achievement. The annual selections are made using a rigorous multi-phased process that includes a statewide survey of lawyers, independent research evaluation of candidates, and peer review by practice area.

PRESS RELEASES

Iseman, Cunningham, Riester & Hyde, LLP
ATTORNEYS AND COUNSELORS AT LAW

Cordell Cordell
A Domestic Litigation Firm
A Partner Men Can Count On.®

CAMBRIDGE RESIDENT NAMED SUPER LAWYER

Robert H. Iseman

Robert H. Iseman, founding partner of Iseman, Cunningham, Riester & Hyde LLP, has been named a 2015 Super Lawyer.

Mr. Iseman was recognized for his health care, business litigation and corporate practice.

Super Lawyers, part of Thomson Reuters, is a research-driven, peer influenced rating service of lawyers who have attained a high degree of peer recognition and professional achievement. Super Lawyers brings visibility to those attorneys who exhibit excellence among more than 70 practice areas.

Iseman, Cunningham, Riester & Hyde LLP, a law firm with offices in Albany, Poughkeepsie and Millbrook, New York, has extensive experience in litigated and transactional matters and represents clients in many industries, including health care; insurance; financial; professional liability; construction; retail; municipal; nonprofit and real estate. As experienced counselors, negotiators and litigators, the firm's attorneys advise clients on complex transactions and disputes; bond financings; securities claims; tax planning; creditors' rights including workouts and bankruptcy; professional licensing, and labor and employment, including collective bargaining negotiations. The firm is a member of the International Society of Primerus Law Firms.

CORDELL & CORDELL ATTORNEY ASA NEFF NAMED NEW YORK RISING STAR

Super Lawyers Magazine Only Recognizes 2.5% Of New YORK Attorneys

Cordell & Cordell New York divorce attorney Michelle Ferreri was named a Rising Star in the 2015 Upstate New York Rising Stars list for family law attorneys by Super Lawyers, a Thomson Reuters business.

Mr. Neff, who is an Associate Attorney in the Albany office of Cordell & Cordell, was selected to be on the list for the first time. He earned his Juris Doctor from Albany Law School and received his bachelor's degree from the State University of New York at Albany.

Each year, no more than 2.5 percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor.

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement.

The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area.

Lawyers are asked to nominate the best attorneys who are 40 years old or under, or who have been practicing for 10 years or less, and who they have personally observed in action.

The Super Lawyers lists are published nationwide in Super Lawyers Magazines and in leading city and regional magazines and newspapers across the country. For more information about Super Lawyers, visit SuperLawyers.com.

IN MEMORIUM

OBITUARY FOR MICHAEL R. DORMIN, SON OF SCBA MEMBERS, JOHN AND ANN SULLIVAN DORMIN

Michael R. Dormin, 21, passed away on Sunday, October 18, 2015 after battling complications related to his recovery from leukemia.

Michael was born on September 28, 1994 and lived in Pearl River, NY before his family relocated to Saratoga Springs in 2004. Michael graduated from Saratoga Springs High School in 2012 and went on to the University of Iowa, where he studied mechanical engineering for two years before his diagnosis on June 3, 2014. Michael loved music and played many instruments. He loved cars, skateboarding, power lifting and his favorite past time was snowboarding at Gore Mountain.

Survivors include his parents John and Ann Sullivan Dormin; his loving sister Elizabeth; longtime girlfriend Kayla Miller; grandparents William and Patricia Dormin and grandfather Roland Sullivan along with many uncles, aunts, and cousins. He is predeceased by his grandmother Barbara Sullivan.

Relatives and friends may call from 4 to 8pm Friday, Oct. 23, 2015 at the William J. Burke & Sons/Bussing & Cunniff Funeral Homes, 628 North Broadway, Saratoga Springs (584-5373).

His wonderful spirit and joy will be celebrated with a Mass of Christian Burial at 10am Saturday, Oct. 24, 2015 at The Church of St. Peter, 241 Broadway by Rev. Thomas H. Chevaliar, pastor. Burial will follow at St. Peter's Cemetery, West Ave.

Memorial donations can be made in Michael's memory to the Ronald McDonald House Charity in New York (rmhnewyork.org).

Online remembrances may be made at www.burkefuneralhome.com.

PRESS RELEASES

TOWNE, RYAN & PARTNERS, P.C.
ATTORNEYS AT LAW

Attorney James T. Towne, Jr. to Receive Legal Project Champion Award, Serve on Organization's Advisory Board

When Attorney James T. Towne, Jr., Principal and Vice President of Towne, Ryan & Partners, P.C., first approached The Legal Project's Executive Director Lisa Frisch about his concerns about the difficulties surrounding legal assistance in rural communities – he found a kindred spirit.

James T. Towne

The Legal Project, a not-for-profit organization whose mission is to make the law more accessible to those in need-especially to victims of domestic violence, was in the very beginning stages of developing a Civil Legal Outreach Center. The Center is envisioned to establish relationships with public libraries and other community centers across the greater Capital Region to provide those living in rural areas, those without transportation and those who have physical challenges a convenient location to readily access legal advice and support services. When completed, the Center will utilize state-of-the-art technology to remotely connect those individuals with attorneys for private, "face-to-face" legal consultations, allowing them to resolve their civil legal concerns more quickly and with fewer obstacles. The Outreach Center will vastly expand The Legal Project's services' footprint.

In the following months after his initial conversation with Lisa, Jim committed himself to backing the organization's endeavor through ideas, his time and essential funding to make the Outreach Center a reality.

"The challenges facing many rural domestic violence victims in accessing legal support services is exacerbated by the limited number of attorneys practicing in rural areas, coupled with limited or non-existent public transportation," said Mr. Towne. "Hopefully, through the Outreach Center, the excellent legal support services provided by The Legal Project will be made readily available to remote legal services consumers through enhanced technology."

In recognition of his guidance and dedication to this project, Jim has been honored with the prestigious Legal Project Champion Award, which he will receive at the Pro Bono Awards Luncheon on October 14th at the Century House in Latham. The annual award is given to individuals throughout the Capital District who have made a tremendous difference in supporting the work of The Legal Project and promoting the organization's mission.

"Jim was chosen to be recognized for The Legal Project Champion Award because of his leadership and on-going guidance in the development of this vital project, which will impact many people who otherwise would have difficulty accessing critical civil legal help in our communities," said Ms. Frisch.

To continue propelling this project and future projects for the organization, Jim has additionally agreed to serve as a member of The Legal Project's Advisory Board. The Advisory Board, which consists of leaders in the Capital Region's legal community who share in the mission of the organization, work together with the Board of Directors and the Executive Director on significant projects and planning for The Legal Project's programs and fundraising activities.

"Technology is perhaps the best way to reach those in critical need of access to legal advice concerning their rights and responsibilities," said Towne. "This gift will hopefully provide the groundwork for an effective platform for many years to come."

About The Legal Project

Founded in 1995 by the Capital District Women's Bar Association, The Legal Project is a private, not-for-profit organization that provides a variety of free and low cost legal services to the working poor, victims of domestic violence and other underserved individuals. To learn more about the organization or to donate, visit www.legalproject.org.

Three Principals from Towne, Ryan & Partners, P.C. Recognized on Upstate New York Super Lawyers List

Towne, Ryan & Partners, P.C., the largest New York State certified Women Business Enterprise (WBE) law firm in Upstate New York, is proud to announce that Principals Claudia A. Ryan, Susan F. Bartkowski and James T. Towne, Jr. have been selected to the 2015 New York Super Lawyers list as top attorneys in Upstate New York.

Mr. Towne (Business Litigation) has appeared annually on the Upstate New York Super Lawyers list since 2007; Ms. Ryan (Employment & Labor) and Ms. Bartkowski (Franchise and Dealership) have appeared annually on the list since 2010.

(Continued on page 15)

ABOUT TOWNE, RYAN & PARTNERS, P.C.

ESTABLISHED IN 2009, TOWNE, RYAN & PARTNERS, P.C. IS A CERTIFIED WBE BY THE STATE OF NEW YORK, THE LARGEST LAW FIRM IN UPSTATE NEW YORK TO HOLD THIS CERTIFICATION. A FULL-SERVICE LAW FIRM WITH OFFICES CONVENIENTLY LOCATED IN ALBANY, SARATOGA SPRINGS, POUGHKEEPSIE, COBLESKILL, BURNT HILLS AND BENNINGTON, VT., THE FIRM'S PRACTICE AREAS COVER BOTH TRANSACTIONAL AND LITIGATION WORK ACROSS A BROAD RANGE OF LEGAL FIELDS INCLUDING MUNICIPAL LAW, REPRESENTATION OF AUTO DEALERS, CORPORATE AND COMMERCIAL LAW, INSURANCE DEFENSE, REAL ESTATE, EMPLOYER DEFENSE, EQUINE, RACING AND GAMING LAW AND MANY RELATED FIELDS. FOR MORE INFORMATION, VISIT WWW.TOWNELAW.COM OR CALL 518-452-1800.

PRESS RELEASES

Young / Sommer LLC ATTORNEYS AT LAW

YOUNG/SOMMER LLC LAWYERS HIGHLY RANKED IN PUBLICATIONS

Young/Sommer LLC is proud and pleased to announce it was again recognized by Chambers USA as a leading law firm in the environmental law practice area. The firm is listed as one of the top nine Environmental firms in New York. It is the twelfth consecutive year that Young/Sommer has placed among the top ten New York State Environmental firms in the legal guide. The Chambers USA listing states that Young/Sommer is a "[b]outique practice representing clients in an impressive range of environmental law work" who "regularly advises on permitting, brownfield redevelopment, and chemical and petroleum storage compliance matters."

Partners Dean Sommer and Kevin Young were also individually recognized in the Chambers USA listing. The publication quoted individuals referring to Dean Sommer as "a very bright and creative lawyer." Chambers further states that Mr. Sommer "is highly regarded for his litigation expertise." Kevin Young is recognized for his work as counsel to municipalities and corporations on the full range of state and federal environmental and land use issues who has "notable experience advising on brownfield and Superfund matters."

The Chambers USA rankings are based on in-depth confidential interviews with clients and lawyers, asking participants to rate firms on legal ability and client service. Chambers USA is published by Chambers and Partners, an international firm that produces directories of top lawyers in 175 countries, providing independent rankings and editorial commentary. Information on Chambers and Partners, and all the legal directories they publish, can be found at http://www.chambersandpartners.com.

Several Young/Sommer LLC attorneys were also selected to the 2015 Upstate New York Super Lawyers and 2015 Upstate New York Rising Stars lists, including Super Lawyers Kevin M. Young and Dean S. Sommer (for environmental law), Kenneth S. Ritzenberg (for schools and education law) and Stephen C. Prudente (for family law). Super Lawyers Rising Stars include James A. Muscato II (for environmental law), Joseph F. Castiglione (for environmental litigation) and Lauren L. Hunt (for family law).

ABOUT YOUNG/SOMMER LLC

YOUNG SOMMER WARD RITZENBERG BAKER & MOORE LLC IS A FULL SERVICE NEW YORK STATE LAW FIRM CONCENTRATING IN ENVIRONMENTAL, MUNICIPAL, LAND USE, ENERGY, COMMERCIAL LITIGATION, EDUCATION, LABOR AND FAMILY LAW. WITH OFFICES IN ALBANY, THE YOUNG/SOMMER LEGAL TEAM PROVIDES LEGAL SERVICES THROUGHOUT NEW YORK STATE. INFORMATION ON YOUNG/SOMMER CAN BE FOUND AT WWW.YOUNGSOMMER.COM.

TOWNE, RYAN, CONTINUED...

(Continued from page 14)

In addition to appearing on lists for their respective practice areas, Ms. Ryan was also named to the list of the "Top 25" Women Upstate New York Super Lawyers for the sixth consecutive year and Mr. Towne appeared on the "Top 25" Hudson Valley Lawyers list for the second consecutive year.

Super Lawyers, a Thomson Reuters publication, is a listing of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The recognition for this esteemed list, which is given to no more than five percent of the lawyers in the state, is a result of a multiphase process including a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area.

CLASSIFIEDS

SEEKING RESUMES FOR ADMINISTRATIVE ASSISTANT AND PARALEGAL POSITIONS

Litigation experience required, labor and employment law background preferred. Salary commensurate with experience. Resumes can be sent to: sburger@coopererving.com

SEEKING ATTORNEY WITH TOWN, CITY, VILLAGE OR COUNTY EXPERIENCE

Established four lawyer firm in Saratoga County seeking a motivated and personable NY admitted attorney with 2-5 years of town, city, village or county law experience.

General practice experience helpful and own clientele and local ties a plus. Of-counsel arrangements also considered. Excellent research and writing skills a must. Some court-room opportunities and a lot of client and community contact. Salary plus productivity and client development incentives with health, dental, retirement, vacation benefits available. Our practice provides a family-friendly atmosphere and a professionally-

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rewarding experience. Email resume and letter of interest to jamest@ctclawfirm.com and visit our website for more information about the firm.

SEEKING GENERAL PRACTICE ATTORNEY

We are a growing, Albany based, New York State certified Women Business Enterprise (WBE) law firm seeking a General Practice Attorney with 2-4 years of experience. Applicants must be able to assist clients with their legal needs through phone consultations, document review, legal research, and provide feedback to questions in all areas of the law. The ideal candidate will be detail oriented with strong organizational skills and the ability to prioritize projects and multitask. The candidate will be a self-starter with the ability to take direction and run with projects from inception to completion. Applicant should also have a strong background in research, writing and case management. Book of business a plus. If you are a team player interested in growing along with us, send your resume, cover letter and salary requirements to amanda.landi@townelaw.com. Why join us? Salary commensurate with experience, excellent benefits, 401K plan, great staff, convenient location and parking.

SUBMISSIONS NEEDED!

We are always looking to improve our newsletter for the benefit of our members. If you are an attorney who practices in the following areas of law, we would love to add you to our list of columnists:

Estate Planning
Criminal
Bankruptcy
Gaming
Entertainment
Healthcare
(all other areas of law that are not currently a part of this publication)

If you're interested in having an article or advertising in *Law Notes*, please contact:
Libby Coreno at
lcoreno@carterconboy.com
(518) 587-8112

Representing Victims of Domestic Violence In Family Court

Friday, December 11, 2015

The Legal Project

24 Aviation Road, #101, Albany NY 12205

Registration: 8:30 – 8:50 a.m.

Program: 8:50 a.m. – 4:00 p.m.

Sponsors:

The Domestic Violence Legal Training Coalition:
The Legal Project
Legal Aid Society of Northeastern New York
Albany Law School Domestic Violence Clinic

CLE: 6 1/2 Hours of Transitional CLE Credit including 1 1/2 hrs ethics

Program:

Dynamics of Domestic Violence: Alicia Borns, Director, Bureau of Victim and Family Resources, NYS Office for the Prevention of Domestic Violence

Family Offense Basics: Ellen Schell, Esq., NYS Office for the Prevention of Domestic Violence

Safety Planning: Wendi Gapczynski-Bekkering and LuAnn Santabarbara, YWCA of Schenectady

Custody and Visitation Overview: Susan Pattenaude, Esq., The Legal Project

Client Interviewing: Susan Pattenaude, Esq., The Legal Project

Registration and CLE Fees: Please register by December 2, 2015; SPACE IS LIMITED.
Registration priority will be given to attorneys willing to take pro bono cases.

- ❍ **Free**: Attorney willing to accept at least one pro bono case annually from The Legal Aid Society of Northeastern New York and The Legal Project.
  The Legal Project needs volunteers in Albany, Rensselaer, Schenectady and Saratoga counties. The Legal Aid Society needs volunteers in those counties, as well as Columbia, Greene, Clinton, Montgomery, Fulton, and Schoharie.
- ❍ **Free:** Active Private Attorney Involvement (PAI) Volunteer of the Legal Aid Society of Northeastern New York or Domestic Violence Legal Connection Panel Member of The Legal Project.
- ❍ **$140:** Attorney not wishing to provide pro bono representation
- ❍ **$70:** Lawyers for Children/18-B Assigned Counsel not wishing to provide pro bono representation
- ❍ **$70:** Paralegal or Legal Assistant ❍ **$20:** Domestic Violence Advocate

****Lunch provided at no additional cost — plan on staying with us for the entire day.****

Name: _____ Employer: _____

Address: _____ _____

Telephone: _____ Fax: _____ Email: _____

Mail Registration & Fee: To register, please e-mail Cheryl Dedes, cdedes@lasnny.org, the above information. For more information, please contact Michele Sleight at (518) 689-6322, or msleight@lasnny.org.

Financial Hardship Scholarships: Full & partial scholarships based upon financial need are available. For information on the guidelines and procedures for applying, call call Michele Sleight at (518) 689-6322. All requests are confidential.

This transitional continuing legal education course has been approved in accordance with the requirements of the Continuing Legal Education Board for a maximum of 6.5 credit hours, of which 1.5 credit hours can be applied towards the professional practice requirement, 2.5 credit hours can be applied towards the skills requirement, 1.5 credit hours can be applied towards the ethics requirement, and 1 hour can be applied towards the practice management requirement.

In honor of the 5 year anniversary of, and in appreciation of the volunteers who dedicate their time and talents to, the Adirondack Women's Bar Association's

LEGAL CLINIC TO AID SURVIVORS OF DOMESTIC VIOLENCE

Please join us on Tuesday, November 17, 2015 at Jack's American Bistro, 730 Upper Glen St., Queensbury, NY 12804

Cash Cocktail Hour at 5:30 P.M. and Buffet Dinner at 6:30 P.M.

$35 per person. RSVP by November 10, 2015. Please send payment to Jessica Vinson at Bartlett, Pontiff, Stewart and Rhodes, P.C., One Washington Street, Glens Falls, NY 12801

(518) 832-6444 jhv@bpsrlaw.com