THE SARATOGA COUNTY BAR ASSOCIATION

Serving the Interests of Justice

LAW NOTES

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

TIMOTHY J. HIGGINS, ESQ.

EXAM BY NON-PHYSICIAN PERMITTED UNDER CPLR § 3121

Hayes v. Bette & Cring, LLC
(Lynch, J., 1/7/16)

The plaintiff's suit for damages under Labor Law § 240 included a claim of future lost wages and reduced earning capacity. Supreme Court (Reynolds Fitzgerald, J., Broome Co.) denied the defendant's motion to compel plaintiff to submit to an examination by a vocational rehabilitation expert. Exams by a "designated physician" are permitted under CPLR § 3121, but in the Third Department (Mooney v. Osowiecky, 1995) a vocational rehabilitation assessment by defendants was not permitted (unless plaintiff planned to offer similar proof at trial). Directing that Mooney should no longer be followed, the Appellate Division reversed the trial court and ordered the vocational rehab exam; concluding that the broad scope of disclosure envisioned by the CPLR and favored by the Court of Appeals should be controlling and "the circumstances of a case may allow such a demand even in the absence of express statutory authority".

MUSIC FESTIVAL INJURY SUITE SURVIVES

Bynum v. Keber (Rose, J., 1/7/16)

Plaintiff's daughter suffered significant injuries after ingesting a harmful substance at the Camp Bisco music festival, which drew some 26,000 attendees in 2011. Claiming the defendant promoters knew or should have known of the widespread presence and use of illegal drugs at the festival, plaintiff further alleged defendants failed to provide adequate onsite emergency medical services as required of a "mass gathering permitee". Supreme Court (Versaci, J., Schenectady Co.) denied defendants' motion to dismiss for failure to state a cause of action and the Third Department affirmed, except as to the plaintiff's fraud cause of action which could not survive since there was no proof that a material misrepresentation was made directly to plaintiff or her daughter. In a separate opinion, the Appellate Division reversed the trial court and dismissed plaintiff's claims against the Town of Duanesburg and Schenectady County; shielded by governmental immunity in the absence of a special duty owed to Bynum.

MORAL DUTY V. LEGAL DUTY

Daily v. Tops Markets, LLC
(Lahtinen, J., 12/17/15)

Plaintiff's decedent, after consuming alcohol and drugs with several companions, passed out and appeared to have trouble breathing. His companions placed the unconscious decedent in his own car, then drove the vehicle to the defendant's parking lot, after which they reportedly told Tops' employees that someone in the parking lot needed emergency medical attention. The companions then left the market on foot; employees of the market took no action; and the decedent died allegedly of the combined effects of intoxication and hypothermia. Supreme Court (O'Shea, J., Chemung Co.) granted defendant's motion to dismiss and the Third Department affirmed. As decedent was not a Tops customer, and his presence (and that of his companions) on the defendant's property was not related to the market's business, "notwithstanding a moral obligation, Tops was not under an affirmative legal duty to assist decedent".

VICARIOUS LIABILITY

Taylor v. The Point at Saranac Lake, Inc.
(Rose, J., 1/14/16)

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TORTS AND CIVIL PRACTICE, CONTINUED...

Plaintiff's husband was killed and she was hurt when their snowmobile, crossing a public roadway that intersected a trail, was struck by a car. The snowmobile tour was arranged through the defendant resort (where the couple was staying) but operated by a third-party which supplied the snow machines and a tour guide. The summary judgment motion of the defendant owners and operators of the resort was denied by Supreme Court (Ellis, J., Franklin Co.) and affirmed in part by the Third Department. Plaintiff's vicarious liability claim against the resort, premised on an ostensible agency relationship between the resort and the tour guide, survived, with the Appellate Division concluding that the resort's website and promotional materials "create a question of fact as to whether plaintiff could have reasonably believed that" the tour company had the authority to act as the agent of the resort.

LABOR LAW §§ 240, 241

Hebbard v. United Health Services Hospitals, Inc.
(Lahtinen, J., 1/14/16)

Plaintiff was part of a work crew repairing the defendant's parking garage and was injured when a stack of scaffold frames (disassembled after being used earlier in the project) tipped onto him when he attempted to move one. His Section 240 claim was dismissed by Supreme Court (Reynolds Fitzgerald, J., Broome Co.) which was affirmed by the Third Department; noting that the plaintiff and the frames were on the same level and as such he was not exposed to the "extraordinary elevation risks envisioned" by the statute. The Appellate Division also agreed that plaintiff's Section 241(6) claim was viable, as it relied on Industrial Code Rule 23-2.1, a specific safety provision directing that all such "building materials shall be stored in a safe and orderly manner".

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."

Feilen v. Christman
(Lahtinen, J., 1/14/16)

Plaintiff fell off the roof (which he had just replaced) of the defendant's house, part of which was used for defendant's bed-and-breakfast business. His Labor Law suit against defendant and her company was dismissed by Supreme Court (Mott, J., Ulster Co.) which found the defendant was entitled to the statutory exemption from liability given to "owners of one and two-family dwellings who contract for but do not direct or control the work" of the person hired. Noting that partial use of a home for commercial purposes doesn't automatically destroy the exemption, the Third Department affirmed dismissal, concluding that the while the house had a "mixed use", the roof replacement done by the plaintiff was designed to preserve the integrity of the home "and primarily benefitted [Christman's] clearly residential use of the premises".

SUMMARY JUDGMENT TO PASSENGER WITH IMPAIRED DRIVER

Norris v. Menard
(Egan, J., 1/14/16)

Plaintiff was seriously injured, including an above-the-elbow amputation of his right arm, when the van in which he was a passenger ran off a snow-covered road, slid down an embankment and struck two trees. The defendant driver, who had been in the plaintiff's company for the preceding seven hours at various locations including an ice fishing tournament and a bar, ultimately plead guilty to imprudent speed and driving with ability impaired by drugs. Reversing Supreme Court (Ellis, J., Clinton Co.), the Third Department granted summary judgment on liability to plaintiff, finding that defendant "failed to offer a nonnegligent explanation for the accident, allege that plaintiff contributed in any way to the accident" or otherwise raise any triable issue of fact on liability.

BONUS OPINION: COURT OF APPEALS EXPANDS SCOPE OF THIRD PARTY LIABILITY/DUTY OF CARE

Davis v. South Nassau Communities Hospital
(Fahey, J., 12/16/15)

Staff at the defendant hospital gave a patient IV medications without warning the patient that the drugs might impair her ability to safely drive a car. The patient (a non-party in this action) thereafter caused an accident with a bus operated by the injured plaintiff. While noting that any "expansion of duty is a power to be exercised cautiously", the Court of Appeals concluded that the hospital had a duty (to the plaintiff; as a third party) to warn the patient of the dangers associated with the medications administered to her. A key consideration in duty analysis, per the Court, is meeting the changing needs of society; quoting Judge Cardozo 100 years ago in MacPherson v. Buick Motor Co.; that "the principle that the danger must be imminent does not change, but the things subject to the

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LAND USE LAW & SEQRA UPDATE

LIBBY CORENO, ESQ.

EXPANSION OF PRE-EXISTING NON-CONFORMNG USE: USE VARIANCE PROOF

Joseph Nemeth v. Village of Hancock Zoning Board of Appeals, 2015 NY Slip Op 75132(U) (3d Dep't 2015):

Residential homeowners bought properties adjacent to a manufacturing business that has been in existence since 1971. In 1983, zoning was first introduced which zoned the area residential and rendered the existing manufacturing business on site as a pre-existing non-conforming use. In 2001, the manufacturing company built an 800 sq. ft. by 1000 sq. ft. addition for manufacturing purposes which, in a prior decision, the Third Department had ruled was an unlawful expansion of the use. The business then applied to the ZBA for a use variance after the court issued an injunction prohibiting the use of the addition. In order to succeed, the applicant was required to show that "the land cannot yield a reasonable return if used as it then exists or for any other purpose allowed in the zone." In reversing the ZBA's grant of the use variances, the court found insufficient proof that the property could not yield a reasonable return if used as a presently existing nonconforming use, i.e., as a manufacturing facility without use of the addition for manufacturing purposes. Moreover, even if the applicant had demonstrated no reasonable return without the addition, it has the additional burden of demonstrating that it could not realize a reasonable return of any other use in the zone – which it wholly failed to do.

SHORT-TERM RENTALS UNDER EXISTING ZONING

Matter of Fruchter v. Zoning Board of Appeals of the Town of Hurley, 133 AD3d 1174 (3d Dep't 2015)

A homeowner was engaging short term rentals (think Airbnb) and was cited by the enforcement officer for running either an illegal B&B or an illegal hotel. The issue was one of pure legal interpretation for the ZBA and no deference was given to the ZBA's findings following its hearing. Here, the Third Department found that the zoning code must be strictly construed against the municipality and, because the owner's activities fit neither of the B&B nor the hotel definitions listed in the code, the ZBA interpretation was reversed. The court noted that the rise in the "sharing economy" has left many municipalities behind the curve when it comes to short term rentals, but code amendments are going to be necessary. Even then, however, local zoning may be tested as to the ability to regulate the industry. Refer to the recent NYS Multiple Dwelling Law changes which limit the renting out of a Class A dwelling for periods shorter than 30 days.

TELECOMMUNICATIONS ACT VS. LOCAL SPECIAL USE PERMIT REGULATIONS

Orange County-County of Poughkeepsie Ltd Partnership v. Town of East Fishkill, 2015 U.S. App LEXIS 19548 (2d Cir. 2015):

Verizon Wireless was seeking to place a wireless telecommunications tower in the Town of East Fishkill which required a special use permit from the Town. Under the federal Telecommunications Act (47 USC §332(c)(7)(B)), local municipalities may regulate the placement of towers but cannot wholesale prohibit telecommunication services. In order to demonstrate that a municipality has unlawfully prohibited a telecommunication facility, the applicant must show "(1) a significant gap in wireless service exists; and (2) the propose facility is the least intrusive means available to close that gap." Here, the Town attempted to take the position that its gap was not 'significant' and therefore denied the special use permit. However, the finding was contrary to radio frequency analysis, propagation maps, and other data which indicated the significance of the gap. Moreover, the applicant submitted topographic maps of all the sites it had considered for placement of the facility and the only site suitable was the premises at issue in the application. Summary judgment was granted under the TCA and the Town was directed to issue the permit to Verizon.

LIMITATION ON THE "62-DAY RULE" FOR SUBDIVISION

Matter of Lucente v. Terwilliger, 46 Misc. 3d 1217(A) (Sup. Ct. Tompkins Co., 2015):

The applicant owns 48 acres of land in the Town of Ithaca

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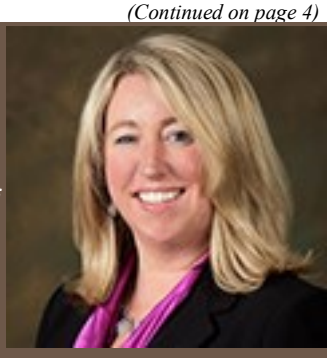

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LAND USE LAW & SEQRA UPDATE, CON'T

(Continued from page 3)

and applied to subdivide the land into 47 residential lots, 2 lots to be given to Cornell University and one lot to be given to the Town of Ithaca to become part of the Town park. In 2006, the Planning Board granted preliminary subdivision approval and, in September of 2007, the applicant applied for final subdivision approval. On that same day, the Town Board enacted a moratorium on all subdivision approvals and prohibited the applicant's development of its property which was extended until 2009. Once the Planning Board could act once again, it noted two differences between the preliminary plat and the final; namely the storm water run-off plan had changed due to new NYSDEC regulations required a SEQRA review before approval. As such, the applicant submitted a revised Long Environmental Assessment Form (EAF) but the Planning Board took no action for final subdivision approval. In 2014 (5 years after the end of the moratoria), counsel for the applicant demanded that the Town issue the certificate of approval pursuant to Town Law 276(8) due to the failure of the Planning Board to approve the subdivision within 62 days. In ruling in favor of the Town's refusal to issue the certificate, the Court noted that Town Law 276(8) contemplates the completion of SEQRA prior to the running of the 62 days under the statute.

BINDING EFFECT OF SEQRA DETERMINATIONS ON OTHER LAND USE DECISIONS

Troy Sand & Gravel Co. v. Town of Nassau, 125 A.D.3d 1170 (3d Dep't 2015):

In 2003, Troy Sand & Gravel applied for a mining permit from NYSDEC which acted a lead agency under the SEQRA review for all permits related to the quarry operation (special use permit and site plan). Following a positive declaration and the preparation of an environmental impact statement, NYSDEC prepared a findings statement which was unsuccessfully challenged by the Town. The Town then attempted to reopen the environmental record and conduct its own assessment under SEQRA and the gravel company sought a declaration that Town was bound by all determinations made in the NYSDEC SEQRA review and it was not entitled to retain a professional consultant for the purpose of reviewing any environmental issue already determined in the SEQRA process. While the Town was permitted to make findings related to standards and criteria necessary to make a determination on the special use permit, it is without authority to gather additional environmental impact information beyond that in fully developed record from DEC's SEQRA review.

RLUIPA PREVENTS VILLAGE'S LIMITATION OF PROPERTY USE TO JEWISH HOLIDAYS

Matter of Septimus v. Board of Zoning Appeals for the Incorporated Village of Lawrence, 2015 NY Misc LEXIS 4641(Sup. Ct. Nassau Co., 2015):

Bais Medrash operates a synagogue in the Village of Lawrence which is subject to significant restrictions including no vehicular traffic on Friday nights and Saturday and no use of the premises during week expect on Jewish holy days. After a number of years of operating, Bais Medrash applied to raze a structure on one of the lots, slight expand the synagogue and build a parking lot. The BZA decided to grant the relief and rescinded the covenants against use of the synagogue during weekdays for a trial one year period. Several of the neighbors opposed the relief granted and sought to appeal the BZA's decision. After the court addressed the issues raised by the petitioners, it specifically noted that religious organizations in NY are entitled to special treatment related to land use and zoning. Moreover, the covenants previously imposed directly restricted the free exercise of religion in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) which provides that "no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly unless the government can demonstrate that the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest."

ZONING PRE-EMPTION OF LAKES OWNED BY NYS IN ITS SOVEREIGN CAPACITY

Matter of Plattsburgh Boat Basin Inc. v. City of Plattsburgh, 2015 NY Slip Op 25350 (Sup. Ct. Clinton Co., 2015):

In 2013, the City of Plattsburgh adopted a local law to regulate the placement of moorings within Lake Champlain. The petitioners are a local marina located on the shore of Lake Champlain and within the City limits. The petitioners sought to invalidate on the local law on several grounds and, most notably, that the law was in violation of the NYS Navigation Law which restricts municipalities from regulating the anchoring or mooring of vessels in lakes which NYS hold title to in its sovereign capacity. As it so happens, Lake Champlain is one of those lakes and therefore the City's mooring must be vacated as exceeding its authority under the Navigation Law.

THE SHELL GAME

MICHAEL FRIEDMAN, ESQ.

"Charity is no part of the legislative duty of the government."
- James Madison

In a footnote to the 2016 Budget Request of the Judiciary, Chief Administrative Judge Lawrence K. Marks wrote: "There is also the currently unknown cost of a salary adjustment for judges that will be recommended by the Commission on Legislative, Judicial and Executive Compensation, to take effect on April 1, 2016. The recommendations of the Commission with respect to judicial compensation are due by December 31, 2015, and therefore the cost of the recommended adjustment is not now known and is not included in this request. If necessary, the Judiciary will submit a supplemental budget request to cover the cost of the April 2016 salary adjustment." OK, so the $2.13 billion Judiciary Budget request for 2016, the largest per capita in the United States of America, might be a tad short of the actual cost, and Judge Marks just doesn't know how much that would be.

Or does he? A fortnight after he released his proposed budget and nine days before the Commission issued its report, Judge Marks told the press, "This commission is finally compensating judges for the intolerable 13-year period in which judges didn't receive a single cost of living adjustment." Maybe he knew something we didn't know. After all, the Commission adopted his recommendations virtually verbatim. Here's the thing. Under the law, whatever the Commission says about pay raises takes effect automatically on April Fools' Day unless the Legislature says otherwise.

According to their report, the increase will cost just "19 one-thousandths of one percent (0.019%) of the overall state budget." A mere bagatelle. They estimated the increase to be $26.5 million in the first year. Judge Marks wrote in his undated submission to the Commission, "A judicial pay adjustment of 16.7%, as urged herein to establish parity with the federal judiciary, would cost the State approximately $35.56 million annually. Adoption of the Judiciary's proposal to reform certain pay disparities (see section V) would add approximately $3 million annually." Their source for that? They don't say. Sure, they footnote virtually everything else, but not that claim. But let's just assume the Commission and Judge Marks are correct in their estimates, putting aside that there will be another 45% increase ($38.56 million versus $26.5 million) in 2018, that would make our 2016 judicial budget about $2.156 Billion and would make the judicial budget increase over 2015 $74.1 million. This increase is more than 50% higher than Judge Marks told the Legislature in the "proposed" 2016 budget. And just what does one get for $2.156 Billion? Among other things, the yearly exports of Aruba or how much Magic Johnson and some investors paid for the Los Angeles Dodgers.

This neat trick gives our legislators the ability to deny voting for any tax increase while massively increasing the Judicial Budget. Just so long as Judge Marks says, "I don't know how much more this will cost," and the Commission tells us, "we think it will cost $26.2 million," then who is the wiser?

How did we get here? That is hilarious. The Commission on Legislative, Judicial and Executive Compensation has its final report and an "Appendix" from Judge Marks that has all kinds of backup data. The Appendix does not describe the final increase, but it certainly gives lots of statistics in its 258 pages of gobbledygook. For example, did you know that in 2011, New York State's trial judges ranked 11th highest out of 50 states in salary? By 2015 according to the National Center for State Courts, we were 8th on the hit parade. So, how do you justify a stupefying $35+ million per annum pay increase? You "adjust for cost of living" whatever that means. It brings our judges down to 47th place, although doesn't cost of living include the taxes New York imposes in part based on the Judicial budget? This is the same kind of junk science that caused the Office of Court Administration to brag that for every dollar of the $100 million we pay charities and not-for-profits for civil legal services, our economy gets $9 in return. If we just gave them $2.15 billion, we'd all live like kings, eh? To justify the increase, Judge Marks in his Appendix compares our judges to, among others, top partner salaries in New York City (minimum $455 per hour, thank you very much), the head of

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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

Every once in a while I need to remind myself of who my audience is and write a piece on the law (as opposed to my musings purely about the politics of immigration). So, here we go.

In the wake of the tragic events in both Paris and San Bernardino, Donald Trump raised the rhetoric, proposing not only to deport 11 million undocumented immigrants, but to also ban Muslims from entering the United States. In the first television advertisement of his campaign, the narrator of Mr. Trump's ad states that Mr. Trump is "calling for a temporary shutdown of Muslims entering the United States, until we can figure out what's going on." [1] (This verbiage was somewhat of a back-peddling from his earlier remarks for a "total and complete shutdown" of Muslims entering the United States.) New Jersey Governor Chris Christie also has a plan to bar Syrian refugees for the sake of national security.

In my opinion, and I am sure there are some of you who would disagree with me, Mr. Trump's plan is un-American, inflammatory, and frankly stupid. But is a ban on Muslims entering the United States legal? Maybe, but I think the courts would have a field day with it.

Right out of the gate, most constitutional scholars loudly stated that a ban on Muslims from entering the United States would discriminate against a class of people based on their religion (not to mention to punish an entire class of people who have done nothing wrong). Certainly such a ban would violate constitutional guarantees of "due process of law" and "equal protection" for Muslim-Americans.

But what about those who are not U.S. citizens?

I don't think anyone would argue that the United States, as a sovereign nation, has the authority to decide who may enter the country, and the conditions for entry by those who seek it. Most of this power lies with Congress, in its "plenary" power to control admission to the United States, how long a noncitizen is able to stay, and under what circumstances.

The Fifth Amendment of the U.S. Constitution provides that no person shall be "deprived of life, liberty, or property, without due process of law."[2] The "due process" clause does not "acknowledge...any distinction between citizens and resident aliens."[3] This protection extends to U.S. citizens and noncitizens alike, provided that they have sufficient ties to the United States.[4] So, noncitizen Muslims who are presently in the United States would seem to be protected. Those outside the United States, perhaps not so much.

What about the "equal protection" clause in the Fourteenth Amendment? The Fourteenth Amendment forbids the states from denying any person "equal protection" under the law. In 1886, the Supreme Court held that the "equal protection" clause is "universal in [its] application, to all persons within the territorial jurisdiction [of the United States], without regard to differences of ... nationality."[5] More recently, in 1954, the Supreme Court held that this guarantee of equal protection is implicit in the Fifth Amendment's "due process" clause.[6]

So, the Fifth Amendment limits the federal government, and the Fourteenth Amendment limits the states. Again, it would seem that noncitizen Muslims who are in the United States are generally entitled the same protection under the law as U.S. citizens. But those outside the United States, that's much less clear.

What about other grounds? Some constitutional scholars have argued Mr. Trump's ban on Muslims would violate the First Amendment's "establishment" clause. That provision forbids Congress from establishing an official religion. The argument goes that Mr. Trump's policy would essentially require that the federal government make a determination as to who is really Muslim in order to know who to exclude from our borders, and that the "establishment" clause prevents the government from making these types of decisions.

If Congress were ever to take such a drastic step, and the issue thereafter reached the courts, it would be interesting to see what would then happen. The courts are required to apply "strict scrutiny" to all government actions that tend to discriminate on the basis of a "suspect class" (e.g., race) or upon a fundamental right (e.g., religion). Because strict scrutiny would apply, the courts will presume that such a law is unconstitutional, and the burden will then be on the government to provide a "strong basis in evidence" that shows the law achieves a "compelling" national interest and that the law is "narrowly tailored" to accomplish that goal.

Surely protecting against terrorism is a compelling national interest, but would such a law be the least restrictive means in order to do so? I'm not convinced.

One of the most famous Muslims (perhaps in the world) recently said of Mr. Trump's inflammatory remarks, "True Muslims know that the ruthless violence of so called Islamic Jihadists goes against the very tenets of our religion." Going on, this individual said that he believes "that our political leaders should use their position to bring understanding about the religion of Islam and clarify that these misguided murderers have perverted people's views on what Islam really is." Who was that? Muhammad Ali (a/k/a Cassius Clay). I could not agree more. Instead of Congress passing legislation to prevent Muslims from entering the United States, we should simply

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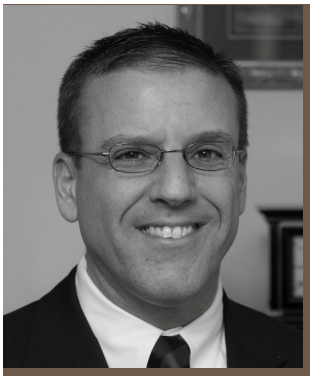


David W. Meyers, who joined his father at Meyers and Meyers, LLP in 1997 after a decade as an executive assistant to United States Senator Alfonse M. D'Amato, focuses primarily on family- and business-related immigration matters, commercial litigation, residential and commercial real estate transactions,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

EMPLOYMENT LITIGATION UPDATE

SCOTT PETERSON, ESQ.

CHANGES TO NEW YORK HUMAN RIGHTS LAW

On January 19, 2016, various laws that were part of the Women's Equality agenda in New York went into effect. Below are some highlights:

- Reasonable accommodations for pregnancy-related conditions (this is significant and is not currently required under federal law (absent a disability));
- Prohibition of sexual harassment applies to all employers regardless of size (used to require four or more employees);
- Attorneys' fees recoverable in sex discrimination lawsuits;
- Prohibits discrimination based upon "familial status" (i.e., having kids);
- Vague language giving employers excessive discretion is removed from New York's Equal Pay law (previously it was relatively easy for an employer to come up with a reason for paying women less than men performing equal work);
- 300% damages available for willful violations of the Equal Pay law;
- Employers cannot prohibit employees from talking about salary information.

EMPLOYMENT RELATIONSHIP

In re Exotic Island Enterprises
(3rd Dept. 1/14/16)

The issue of whether someone who performs services is an employee or independent contractor is often unclear, and can have a significant financial impact on a business.

At issue in Exotic Island Enterprises was the classification of exotic dancer employees for the purpose of unemployment insurance. The NYS Department of Labor investigated the company and determined that exotic dancers were employees for the purpose of unemployment insurance requirements. The company owners appealed, and the Third Department Affirmed, finding that the dancers were employees, rather than independent contractors.

The Court noted that the primary consideration in whether an "employment" relationship exists for the purpose of unemployment insurance is whether the employer "exercised control over the results produced or the means used to achieve the results."

Factually, the Court noted that testimony confirmed that the venues "attracted new dancers" by advertising in trade publications and newspapers, determined appropriate schedules and exercised final discretion as to whether a dancer was sufficiently "fit" to perform. The venues set pricing, created nightly schedules and provided the stage and supporting equipment allowing the dancers to perform. Perhaps most tellingly, the accountant for the businesses testified that they carried workers' compensation insurance coverage for the dancers. Consequently, the Court determined that the decision by the DOL was supported by substantial evidence. Affirmed.

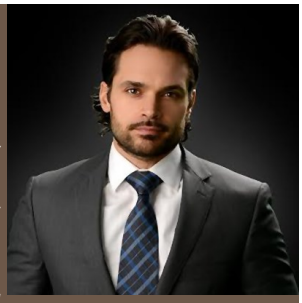
HOSTILE WORK ENVIRONMENT

Dotel v. Walmart Stores, Inc.
(2nd Cir. 1/24/16).

Plaintiff, a former Walmart employee, brought suit against the company alleging sex discrimination, hostile work environment, retaliation and intentional infliction of emotional distress. Her claims were dismissed by the District Court, and on appeal the Second Circuit affirmed.

The Court noted that while the plaintiff alleged that her supervisor engaged in daily abusive insults and verbal harassment of the Plaintiff and her female co-workers, there was no evidence to actually support this claim. Among other things the court considered complaints that Plaintiff had made contemporaneously with the alleged misconduct, none of which mentioned gender based comments by her supervisor.

Plaintiff likewise alleged that her supervisor stated that "women are good for nothing", however the Court determined that this statement, in isolation, was not "sufficiently severe or pervasive to alter the conditions of [Plaintiff's] employment and create an abusive working environment." Once again the "stray comment" defense leads to an award of summary judgment.



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.

ANIMAL LAW UPDATE

JONATHAN G. SCHOPF, ESQ.

As you may know, I have been writing this article for some time for the Albany County Bar Association and I look forward to more frequent publication in our Saratoga County Bar Newsletter. Since a large portion of my "animal law" practice has spun into representing non-profit organizations of all types I will also be devoting a portion of this article to updates in the non-profit legal world to add some breadth to the information provided.

NY GOVERNOR VETOES NONPROFIT-ONLY WORKPLACE VIOLENCE MANDATE

New York Governor Cuomo vetoed a bill that would have imposed costly workplace violence assessments and mitigation programs on nonprofits. He did so on the grounds that the bill was vague and improperly singled out nonprofit contractors for the new burden that did not apply equally to for-profit contractors. Earlier this year, the New York Senate and Assembly passed the measure, which would have defined as "public employer" any nonprofit that receives at least 50 percent of its budget from municipal, state, or federal sources. Affected nonprofits would have been liable for assessments, training, and physical/managerial alterations to prevent third-party workplace violence instances on their premises in the same manner as required at government facilities.

Jonathan Schopf is a solo practitioner in Clifton Park, New York and is a graduate of Albany Law School. Mr. Schopf is the Past-President of the Rensselaer County Bar Association. His primary practice involves advising municipal, institutional and business clients in tax certiorari litigation. He also advises traditional business and non-profit clients in day-to-day transactional matters including real estate and corporate management. Mr. Schopf represents such clients at trial in both state and federal courts as both plaintiff and defendant in litigation involving tax certiorari, insurance coverage, commercial transactions, and general litigation.

A frequent lecturer on legal issues related to animals, he maintains a niche practice in the field of animal law. In this unique boutique practice area, Mr. Schopf advises clients who operate animal related businesses such as farms, kennels, veterinary, animal service and not-for-profits animal rescues as to legal issues which are unique to their business.

He is admitted to practice in all courts in the State of New York, the Commonwealth of Pennsylvania, the United States District Court for the Northern District of New York, the United States Court of Appeals for the Second Circuit and the Supreme Court of the United States. He has litigated numerous cases to verdict in courts throughout New York.

ADDITIONAL INFORMATION NOW REQUIRED TO BE DISTRIBUTED BY PET DEALERS

Additional information now required to be distributed by pet dealers.

If you represent any pet dealers, be aware that last month Gov. Cuomo signed into law a bill that will require pet dealers to provide consumers with instructions on how to care for small animals when purchasing hamsters, chinchillas, guinea pigs, gerbils, rabbits, mice, rats and other creatures.

The bill requires the pet seller to file a copy of its instruction manual annually with the state Department of Agriculture and Markets and this will most likely be on the Department's checklist for inspection compliance.

The bill will take effect in 90 days, and according to Assemblywoman Linda Rosenthal (D- Manhattan) said that another benefit is that it will "reduce the number of devastated children who must deal with the preventable death of their beloved animal simply because of improper care."

FLORIDA COURT STRIKES DOWN "DANGEROUS DOG" STATUTE AS UNCONSTITUTIONAL

In a much anticipated (at least to those of us that try these types of cases) December 14, 2015 decision and order[1], a Florida judge has found that Florida's version of NYS Agriculture and Markets §123, so called, "Dangerous Dog" statute is unconstitutional.

The facts were undisputed. On June 4, 2015 the defendant's dog "Padi" bit a small child on the ear. This injury required emergency room care, including stiches. As a result Padi was seized by Animal Control. A mere 14 days later, Animal Control issued a final notice of violation of the Florida Statute at issue. That statute mandates the destruction of Padi upon mere proof that the bite caused by Padi resulted in a severe injury as defined in the statute. The defendant invoked his right to an administrative hearing to argue that sole issue. Some procedural steps were then taken by the parties to bring the issue before the court of whether or not the statutory irrelevance or unavailability of affirmative defenses such as provocation of the animal rendered the statute unconstitutional.

The court found the statue unconstitutional in that it vested unfettered discretion in the administrative enforcement of the statute and violated the defendant's due process rights under the Fourteenth Amendment as it relates to the taking of the defendant's property. Padi was released to his owner without further proceedings.

FBI WILL NOW TRACK ANIMAL CRUELTY CASES

Beginning in January 2016 the FBI will track animal cruelty cases nationwide as the bureau does with other major areas of criminality. Prior to this change animal cases fell under "other"

(Continued on page 11)

TRUSTS & ESTATES/ELDER LAW UPDATE

DAVID A. KUBIKIAN, ESQ.

EPTL ARTICLE 8

Estate of Chamberlin (3rd Dept., 1/7/2016)

In an EPTL Article 8 proceeding to remove investment restrictions of a decedent's will, the Appellate Court overturned a Washington County order which denied the removal of investment restrictions. The Decedent's Last Will & Testament provided for several charitable bequests including sizable bequests to three local churches. The Decedent's Last Will & Testament stated that these bequests would be held by the recipients, in trust, and invested in only federally insured bank accounts and/or government bonds with the resulting income used for maintenance of church property. As you would expect in this economy, the bond and bank yields ain't what they used to be. There was little to no income from the investments, arguably frustrating the purpose of the bequests. The Petition was denied in Surrogate's Court due to a failure to show an unforeseen change in circumstances, a standard that common-law equitable deviation cases have required. Statutorily speaking however, and in particular in the case of charitable trusts, proving an unforeseen change is not required. Citing EPTL 8-1.1(c) directly, the Appellate Division determined that circumstances (the lowering of interest rates) had changed rendering the investment restrictions in the Will impracticable to comply with its purpose, that is, to generate funds to assist in church maintenance. The change that the Petitioners requested, and which the Court ordered, allows for a modification in the investing restrictions so that investments can be made pursuant to The Prudent Investor Act (EPTL 11-2.3).

DUE EXECUTION, CAPACITY, INFLUENCE AND FRAUD

Will of Isabelle Moses-Pisacano
(Nassau Cty, 2013-374799A)

This case is not particularly interesting in terms of its facts however it provides practitioners with a succinct summary of the burdens of proving lack of due execution, lack of testamentary capacity, undue influence and fraud (i.e. the four horsemen of estate administration litigation), as well as the burdens of a movant seeking summary judgment dismissing those claims. The facts are basic. The two sole distributees of the Decedent's estate (her two sons) respectively serve as proponent and objectant of Mom's will. The will disinherited the objectant entirely with the proponent being named executor and receiving an inheritance. The Decedent's will specifically disinherited the objectant. A will nine years earlier did the same. The execution was supervised by counsel and all of the witnesses attested that the decedent was of sound mind. In short, the proponent met all of his obligations and the objectant failed his. The objectant was not for a loss of words in his papers however providing the court with 75 non-sworn paragraphs claiming everything from the will being a "sham" to it containing "ghost written gobbledy-gook" which is quite impressive, in particular if you use it for a triple-word score. No, the objectant's papers were neither affidavits nor sworn and for that reason alone, the Court notes it could and should have granted proponent's motion for summary judgment. The Court was nice enough to mention it would grant the motion because the objectant did not meet any of his burdens as well.

EXCESSIVE LEGAL FEES

Estate of Ziegart (Bronx County, 2013-2391/A)

In an uncontested proceeding to judicially settle the account of executor where the residuary beneficiaries are four charitable organizations, the Bronx Surrogate's Court reduced that portion of legal fees attributable to the sale of real property which it determined to be excessive and unwarranted. Surrogate's Court has the authority, *sua sponte*, to determine counsel fees regardless of whether objections have been filed in the accounting proceeding. Here, counsel for the executor provided the Court with two affirmations of legal services. The first, dealing with all non-real estate work, totaling $16,351.84, was approved by the Court in full. The second, dealing entirely with the sale of decedent's cooperative apartment contained 39.5 hours billed at an hourly rate of $295.00. In total, the legal cost of the real estate piece was $11,917. The Court, in evaluating the actual billing entries, found that over 19 hours of billed time consisted of actions that were executor functions such as checking on and clearing out the apartment. The attorney fee was accordingly reduced by $5,708.25.

Mr. Kubikian joined the Herzog Law Firm as a senior associate in 2015. He concentrates his practice in the areas of Estate Planning, Medicaid Planning, Estate Administration, Matrimonial Law and Guardianships.

David graduated from New York Law School with a Masters of Law in Taxation in 2010. He obtained his J.D. from Brooklyn Law School in 2005 with a concentration in Trusts & Estates and Tax Law. He graduated from Hofstra University in 2002 with a Bachelor's Degree in Finance.

David is very involved in the community and teaches continuing education classes on matrimonial law, estate planning, administration and litigation in both the Saratoga Springs and Shenendehowa School Districts.

David is a member of the New York State Bar Association, Elder Law and Trust & Estates sections, the Saratoga County Bar Association, the Armenian Bar Association, the Malta Chapter of BNI, the Malta Business Professionals Association, the Southern Saratoga Chamber of Commerce, and the Estate Planning Council of Northeast New York.

MATRIMONIAL AND FAMILY LAW UPDATE

KEVIN L. O'BRIEN, ESQ.

THE VALUATION FICTION OF PROFESSIONAL PRACTICES—PART 1

Professional practices suffer a multitude of valuation maladies when considered for equitable distribution purposes in a matrimonial action. Assuming proper valuation dates have been set, an assessment of a closely-held professional enterprise, law for example, is rife with subjectivity.[1] Part of the problem is that the attorney cannot sell his license or his degree, and he has significant ethical and legal disclosure problems.[2]

There are a number of methods used in valuing a closely-held professional practice. The most common in New York is the income approach.[3] Simply stated, the income approach values the present value of future benefit expectation. The future earnings are risk-assessed to give the "investor" the appropriate rate of return to reflect the risk of investment and the resulting rate of return subject to a capitalization rate.[4] If a practice has a history of income, this will be heavily relied upon, but the courts retain immense discretion to accept, reject or modify a valuation appraisal. In theory, this method is relatively easy to apply. One of the most challenging aspects of valuing a professional practice is determining the good will of the business and the personal goodwill associated with the practitioner, in other words financial "value."[5] Interestingly, there is no specific definition of goodwill as to a business. Simply, it is intangible.[6] The term "good will" is generally defined as: "that intangible asset arising as a result of name, reputation, customer loyalty, location, products, and similar factors not separately identified". One commentator has defined it as the soul of a business.[7] Naturally, confusion reigns, subjectivity rears its ugly head, and evaluators span the horizon as to their emphasis of what goodwill means in a particular case.[8]

An important distinction must be made between business and personal goodwill. Although difficult, goodwill is much easier to define with a business because of its existence, past earnings, customer loyalty, stability, and general reputation.[9] In a commodity such as Maxwell House Coffee, the concept is apparent. It has market presence, it provides a product consumers want, it has historical sales, instant name recognition, and a good reputation. Perhaps the most important component of a business is its reputation in assessing its goodwill. Likewise, if you are a sole practitioner in the legal profession, your reputation for excellence should provide a competitive edge in the market place. Since a rational purchaser of services wants to maximize the value of the bargain he or she receives,[10] the professional in turn should become more successful,[11] as referrals should increase. In other words, nothing breeds success like success. In the context of divorce, this generally means money per equitable distribution.[12]

Thus, the purpose in valuing a professional practice is to garner an opinion as to what its potential future earnings will provide the owner. Unlike Maxwell House Coffee, which is publically traded on the stock exchange and its value determinable via its stock price, no such medium exists for a professional practice. Any value it has would be the price it is sold at in a fair market exchange. In a divorce, the mechanisms of the market to determine a fair and equitable price are absent.[13]

There is no one way to value a professional practice. Although speculation abounds, any reasonable approach based upon Rev. Rul. 59-60 would probably be acceptable to most courts.[14] What is critical, however, in determining "goodwill" is the selection of the proper discount rate and the derivation of the appropriate capitalization rate (cap rate).[15] A proper valuation is meaningless without the proper rate of return based upon its risk to the investor. Assuming the evaluator has taken into account the age of the business, the skill of the professional, and the other variables necessary to determine its value, business goodwill must be teased out of the mix. One commentator has called this the most difficult problem in the entire valuation process.

If a capitalization of excess earnings method is used, the basic analysis continues. First, the income stream must be carefully defined. Thus, if the doctor's Porsche is being paid as a company expense, out it goes and the earnings returned to the business.[16] This process is called normalization. Once they are properly adjusted, earnings are historically reviewed for the last one to five year period. Obviously, then, the greater the earnings history, the higher the probability for better future earnings probability. Reasonable compensation for the practitioner is calculated and then removed from the earnings.

(Continued on page 15)

Mr. O'Brien limits his practice to matrimonial matters, including all aspects of family law. His experience has encompassed litigation and meeting client needs from St. Lawrence County to Suffolk County. The Office's client base extends to all parts of New York, other states, as well foreign countries. His proficiency, however, extends beyond the boundaries of the courtroom. The basics matter. Client courtesy, timely returned telephone calls, and realistic case assessments and costs, are fundamental to those in the midst of a family crisis. Clients should expect to hear sound legal advice based upon the specifics of their situation, not simply what they want to hear, or what their friends tell them. The resulting trust established between attorney and client forms the basis of a team approach toward reaching the client's objectives. These may be litigated or negotiated. No matter what the approach, Mr. O'Brien will aggressively pursue either to advance the client's goal.

TORTS AND CIVIL PRACTICE, CONTINUED...

(Continued from page 2)

principle do change. They are whatever the needs of life in a developing civilization require them to be".

THE SHELL GAME, CONTINUED...

(Continued from page 5)

the Boy Scouts of America ($442,900), the Attorney General of Guam ($105,286) and Sheldon Silver ($121,000 plus mesothelioma fees). Presto chango, our judges deserve the moolah. Who doesn't?

By 2018, absent a cost of living increase or an increase in federal judicial salaries, a New York State Supreme Judge will be paid $203,100 per year plus health insurance and retirement. According to the Bureau of Labor Statistics, the mean annual salary of a lawyer in the Albany-Schenectady-Troy area is $113,070. Glens Falls? $75,200. Wonder what it would be if "adjusted for cost of living"? Underpaid, indeed.

In 2011, a Supreme Court or a Court of Claims Judge in New York was paid $136,700 plus benefits. By my calculation, in seven years they will receive a minimum increase of over 48%, not adjusted for inflation, of course.

The Commission's report is addressed to Governor Cuomo, the Speaker of the Assembly, the Senate Majority leader and Judge Lippman, none of whom need do anything and the recommendation goes into effect. Aside from Judge Lippman, do any of them really care? Having devised the system of never voting on this recommendation and putting in place its inclusion in our budget like it or not, I doubt it. All they have to do is ignore the report and its skewed information and you all pay the price. "Did I vote for that? Certainly not." The Legislature just put the process together so they could deny fleecing the public, and besides, even if they read the report and Judge Marks' recommendations and appendix, they'd have no idea how the final annual cost was calculated. Sometimes it's better to live in a fiscally responsible Golden State, although it is tough to beat the climate in Albany.

ANIMAL CASE LAW UPDATE, CONTINUED...

(Continued from page 8)

in a catch all category with other less serious crimes. The cases will be uploaded by local law enforcement and will be placed into one of four categories: animal neglect, organized abuse (dog fighting rings for example), torture and animal sex abuse.

TENNESSEE CREATES STATEWIDE ANIMAL ABUSE REGISTRY

Tennessee has a brand new Animal Abuse Registry on a state website that will list the names and addresses of anyone convicted of animal abuse. Legislation requiring similar registries closer to us is being proposed in Pennsylvania and in Erie County, NY.

SEAWORLD SUES OVER ORCA BREEDING BAN IN CALIFORNIA

SeaWorld Entertainment is suing the California Coastal Commission over a ban on breeding killer whales at its San Diego theme park. The ban was part of the commission's approval of a permit in October to allow the embattled theme park chain to expand its killer whale exhibit. SeaWorld announced a week later it would fight the ruling.

The theme park argued the commission doesn't have jurisdiction over the welfare of animals and being unable to breed killer whales in captivity would inevitably end the killer whale shows, a victory the park is unwilling to concede to animal rights activists.

"The coastal commission has neither the legal jurisdiction nor, accordingly, the expertise, to dictate the care, feeding or breeding of animals held solely in captivity under human care," the suit stated.

Called the Blue World Project, the proposal would replace the park's current 1.7 million-gallon killer whale facility with a 450,000 pool and 5.2-million gallon tank. SeaWorld's CEO Joel Manby told investors the Blue World project could be postponed indefinitely due to the commission's ruling and to declining attendance at its theme parks since the 2013 documentary Blackfish accused SeaWorld of animal abuse.

[1]Manatee County v. Gartenberg, Case No. 2015-CA-003844, 12th Judicial Circuit (Manatee County, FL).

PRESS RELEASES

CARTER CONBOY
ATTORNEYS AND COUNSELORS AT LAW

EDWARD M. CONNELL AND JONATHAN E. HANSEN ELECTED TO COUNSEL

Edward Connell, Esq.

Carter Conboy is pleased to announce that two of the firm's senior associates have been promoted. Edward M. Connell and Jonathan E. Hansen have been elected as Counsel at the firm effective January 1, 2016.

Edward M. Connell joined Carter Conboy in 2006. As Counsel, Mr. Connell will continue to deliver his creative and strategic experience to his clients, including mortgage lenders and servicers, business owners, collection firms, and other creditors in the collection of debts and recovery of loan collateral in matters involving creditors' rights, bankruptcy, commercial litigation and residential and commercial real property transactions. Mr. Connell is a 2000 graduate of Albany Law School. He is a member of Saratoga Springs Preservation Foundation.

Jonathan E. Hansen joined Carter Conboy in 2009. Mr. Hansen is an experienced litigator who will continue to represent his clients, including individuals, retailers, contractors, and the professions, in matters involving personal and premises liability, motor vehicle accidents, construction and labor law, and environmental law. He is a 2007 magna cum laude graduate of Albany Law School. Mr. Hansen is on the Board of Directors and is Board Secretary of Albany Pro Musica.

Jon Hansen, Esq.

"We are extremely proud to promote Ed and Jon to counsel," said Michael J. Catalfimo, Managing Director and Chief Operating Officer at Carter Conboy. "Their promotions reflect our deep appreciation for the hard work, commitment and outstanding accomplishments that have made each of them a valuable asset to their clients, colleagues and the firm. We look forward to their continued success."

MACKENZIE C. MONACO AND ADAM H. COOPER ELECTED SHAREHOLDERS

M. Monaco, Esq.

Carter Conboy is pleased to announce that attorneys Mackenzie C. Monaco and Adam H. Cooper have been elected Shareholders of the firm effective January 1, 2016.

"Mackenzie and Adam have each demonstrated outstanding leadership, superior professional skills in their practice areas and a commitment to providing excellent client service," said Michael J. Catalfimo, Managing Director and Chief Operating Officer at Carter Conboy. "We are extremely proud of their many accomplishments and delighted to welcome them as Shareholders of the Firm."

Adam H. Cooper is a litigation attorney who represents healthcare professionals, nursing homes and assisted living facilities, as well as pharmacies, commercial retailers, industrial manufacturers, food producers and processors in claims related to medical malpractice, product liability, food law and liability, professional liability, and personal and premises liability. He is a Martindale-Hubbell AV™ Preeminent rated attorney and a named SuperLawyer®. He is past-president of the Defense Research Institute of Northeastern, New York, past-president of the Federation of Bar Associations for the Fourth Judicial District, and co-chair of Leadership Tech Valley.

Adam Cooper, Esq.

Mackenzie C. Monaco is a litigation attorney who represents individuals, contractors, commercial retailers, and healthcare professionals and facilities, in claims related to construction, environmental law, product liability, personal and premises liability, and professional liability, as well as representing clients with trusts and estates matters. Ms. Monaco is a named SuperLawyer®. She is a member of the Committee on Character and Fitness for the Appellate Division, Third Judicial Department and is the President of the Capital District Trial Lawyers Association.

ABOUT CARTER CONBOY

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PRESS RELEASES

E. STEWART JONES HACKER MURPHY LAW FIRM PROMOTES THREE TO PARTNER

TROY – The E. Stewart Jones Hacker Murphy Law Firm is proud to announce the promotion of three attorneys to the position of partner. Ryan M. Finn, Thomas J. Higgs and James C. Knox each boast successful careers spanning diverse areas of litigation. "This is an important piece of our continued growth at E. Stewart Jones Hacker Murphy," said James E. Hacker, Managing Partner. "Ryan, Thomas and James have been integral to our success, and these new roles illustrate just how valuable they are to our firm."

Ryan Finn, Esq.

Having developed a reputation as one of the more creative and effective attorneys in Upstate New York, Ryan Finn delivers the highest level of personal service to his clients. Mr. Finn has been honored as a Top 10 Personal Injury Attorney Under the age of 40 in New York State. Mr. Finn has also been consistently honored as a Super Lawyer in the fields of Labor and Employment; Business Litigation; and Personal Injury. Mr. Finn is a graduate of Albany Law School, where he was the Salutatorian of his class, and Siena College.

Thomas J. Higgs is a civil litigator with extensive experience in complex business litigation who has achieved successful results for his clients in both Federal and State Courts. Mr. Higgs also focuses on personal injury litigation and appellate work having argued before the Appellate Division, Third and Second Departments, and the United States Court of Appeals for the Second Circuit. In 2015, Mr. Higgs was

T. Higgs, Esq.

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ABOUT E. STEWART JONES HACKER MURPHY: THE JANUARY 2015 MERGER OF THE E. STEWART JONES AND HACKER MURPHY LAW FIRMS CREATED AN ENTITY WITH A COMBINED 134-YEAR TRACK RECORD OF SUCCESS IN THE UPSTATE NEW YORK LEGAL COMMUNITY. WITH OFFICES IN ALBANY, TROY, LATHAM AND SARATOGA SPRINGS, THE FIRM'S 15 ATTORNEYS OFFER UNPARALLELED LEGAL COUNSEL IN THE AREAS OF COMMERCIAL LITIGATION, PROPERTY TAX DISPUTE, CRIMINAL DEFENSE AND PERSONAL INJURY LAW. FOR MORE INFORMATION, VISIT WWW.JONESHACKER.COM.

ATTORNEY PAUL PELAGALLI JOINS O'CONNELL AND ARONOWITZ

ALBANY, NY (01/19/16) -- Albany law firm O'Connell and Aronowitz announced that attorney Paul Pelagalli has joined the 90-year old firm as Of Counsel. Pelagalli brings significant litigation, family and criminal law experience to O'Connell and Aronowitz and will be based in the firm's Saratoga office. Formerly in solo practice in Saratoga County, Pelagalli focused on litigation as well as matrimonial and family law, municipal representation including environmental issues, and commercial litigation.

An Assistant District Attorney in Saratoga County since 2011, Paul was responsible for prosecution of vehicle and traffic and penal law violations. He was Assistant County Attorney from 2001-2010 serving as Attorney for the Foster Care Unit of the Department of Social Services, and also Assistant Public Defender from 1995-2001.

Deputy Town Attorney for Clifton Park since 1992, Paul was also Counsel to the town's Planning Board representing the Town in various matters including zoning, planning, legislation, tax certiorari proceedings and contractual agreements.

Paul Pelagalli, Esq.

"We are pleased to welcome Paul Pelagalli and add his wealth of knowledge and experience to our firm," said Jeffrey J. Sherrin, President of O'Connell and Aronowitz. "Our firm has made a strong

O'CONNELL AND ARONOWITZ IS ONE OF THE CAPITAL DISTRICT'S LARGEST AND MOST DIVERSE LAW FIRMS. WITH 38 ATTORNEYS AND OFFICES IN ALBANY, LATHAM, NEW YORK CITY, PLATTSBURGH AND SARATOGA SPRINGS, THE FIRM PROVIDES A BROAD RANGE OF LEGAL SERVICES TO BUSINESSES AND INDIVIDUALS THROUGHOUT THE STATE. FOR MORE INFORMATION, PLEASE CONTACT JEFFREY J. SHERRIN (JSHERRIN@OALAW.COM) OR BY PHONE AT (518) 462-5601. MR. PELAGALLI (PPELAGALLI@OALAW.COM) CAN BE REACHED IN OUR SARATOGA OFFICE (518) 584-5205. VISIT US

IMMIGRATION, CONTINUED...

(Continued from page 6)

tone down the inflammatory rhetoric and educate ourselves as to what's really going on here. Pure politics. Just a thought.

[1]The narrator goes on to say that Mr. Trump will "stop illegal immigration by building a wall on our southern border that Mexico will pay for." I'll save my commentary on this one for another day.

[2]U.S. Const. amend. V.

[3]Kwong Hai Chew v. Colding, 344 U.S. 590, 598 n.5 (1953).

[4]See Verdugo-Urquidez v. United States, 494 U.S. 259, 270-71 (1990) ("[A]liens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."). However, aliens who are outside the United States are generally not afforded this constitutional protection. Id. at 269 ("[W]e have rejected the claim that aliens are entitled to Fifth Amendment rights outside the sovereign territory of the United States.") But see Ibrahim v. Department of Homeland Security, 669 F.3d 983, 997 (9th Cir. 2012) (an alien not currently in the country, but who had been lawfully present in the United States for four years before departing the country and who was latter prevented from returning, had established a "significant voluntary connection" to the United States sufficient to assert claims under both the First and Fifth Amendments).

[5]Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886).

[6]Bolling v. Sharpe, 347 U.S. 497 (1954).

JONES, HACKER, MURPHY, CONTINUED...

(Continued from page 13)

selected by his peers as an Upstate New York Super Lawyer. Mr. Higgs is a graduate of Albany Law School, where he was a member of Law Review and served as the research assistant to the late David D. Siegel, and Colgate University.

James C. Knox, Esq.

An accomplished litigator, James C. Knox has earned a reputation of excellence. Although his practice is focused on personal injury litigation and criminal defense, Mr. Knox has an active appellate practice, having argued before the Appellate Division, Third Department, the New York State Court of Appeals and the United States Court of Appeals for the Second Circuit. Mr. Knox has been recognized as a "Rising Star" by Super Lawyers every year since 2013, an honor bestowed upon just 2.5% of attorneys in New York State. A graduate of Lewis & Clark Law School, Mr. Knox achieves top results for his clients in State and Federal Courts and is well known for the personal dedication he invests in each client and every case.

The appointment of these three new partners ushers in the next chapter for the prestigious E. Stewart Jones Hacker Murphy Law firm. The firm continues to be committed to growing and continuing to serve its clients across New York State.

O'CONNELL & ARONOWITZ, CONTINUED...

(Continued from page 13)

commitment to Saratoga County and adding Paul Pelagalli to our Saratoga legal team greatly enhances our ability to provide a full range of services to Saratoga businesses and residents."

Giving back to the legal community, Paul serves on the Committees on Character and Fitness for the Third and Fourth Judicial Districts of the Appellate Division, Third Department, the final step for candidates prior admission to New York State Bar. Paul is a graduate of Albany Law School and also holds an M.S. in Criminal Justice from University at Albany. He is a member of the New York State Bar Association, New York State Trial Lawyers Association, Saratoga County Bar Association, and Capital District Trial Lawyers Association.

MATRIMONIAL UPDATE, CONTINUED...

(Continued from page 10)

This provides a financial yardstick as to what it would cost to replace the practitioner's services. Excess earnings are then calculated and deemed to exist if the practitioner is receiving more financial compensation than his counterpart.[17] This is the area wherefrom goodwill emerges. This may appear simple, but it is not.[18]

[1]Donna Tumminio, Note, Breaking Down Business Valuation: The Use of Court-Appointed Business Appraisers in Divorce Actions, 44 Fam. Ct. Rev. 623, 625 (2006).

[2]For purposes of avoiding technical accounting issues that are somewhat collateral to this paper, assumptions are being made that proper discovery has been had and each side has acted in good faith regarding disclosure to the expert. It is also assumed the business has historical earnings to review, that proper normalization has occurred, tax impacting is reasonable, etc.

[3]Rev. Rul. 68-609, 1968-2 C.B. 327; Rev. Rul. 65-193, 1965-2 C.B. 370; Rev. Rul. 77-287, 1977-2 C.B. 319; Rev. Rul. 80-213, 1980-2 C.B. 101; Rev. Rul.83-120, 1983-2 C.B. 170; Rev. Rul. 93-12, 1993 C.B. 202; Rev. Rul. 81-253, 1981-2 C.B. 187; Rev. Rul. 98-34, 1998-2 C.B. 118; as more fully set forth in Patrice Leigh Ferguson & John E. Camp, Valuation Basics and Beyond: Tackling Areas of Controversy, 35 Fam. L.Q. at 346-347; this area is an alphabet soup of terms and definitions foreign to most outside of accounting. Therefore, *see* Fishman, *et al.*, Guild to Business Valuations (Practitioners Pub. Co., 2002); S.P. Pratt, What is Value, Defining the Terms in the Valuation of a Business, 17 FAM. ADVOC. 28 (1995); more limited methods are asset-based approach, market approach, excess earnings approach, capitalization of dividends, discounted future cash flows, and rule of thumb. John R. Johnson, Valuation Issues, 32 PLI/NY at 394.

[4]Capitalization rate is defined as "any divisor used to convert anticipated benefits into Value." Patrice Leigh Ferguson & John E. Camp, Valuation Basics and Beyond, supra at 312; John R. Johnson, Valuation Issues, 32 PLI/NY at 396-397; although a strong proponent of O'Brien, Johnson also notes that not only is the process subject, and speculative, but applying the correct capitalization rate is the most important, and the most speculative of all, akin to an art form; Id. at 423. Has equity come down to a roll of the dice to see who gets it right?

[5]Harriet N. Cohen & Patricia Hennessey, Valuation of Property in Marital Dissolutions, 23 Fam. L.Q. 339- 340 (1989).

[6]John R. Johnson, Valuation Issues, 32 PLI/NY at 378.

[7]Richard E. Poley, Valuing Business Goodwill in a Divorce, 26 COLO. LAW. 53, 53 (1997).

[8]Laurence J. Cutler & Samuel V. Schoonmaker, IV, Division and Valuation of Speculative Assets: Reasoned Adjudication or Courthouse Confusion?, 15 J. AM. ACAD. MATRIM. LAW. 257 (1998).

[9]John R. Johnson, Valuation Issues, 32 PLI/NY at 378-379; *see* Rev. Rul. 59-60, 1 C.B. 237, which states factors that contribute to the existence of intangible value: "(1) prestige and renown of the business; (2) ownership of a brand or trade name; and (3) a record of successful operation over a prolonged period in a particular locality."

[10]S. Nasar, A Beautiful Mind, 104-120 (1998); Nash's theory of maximization stated succinctly: (μ1-BATNA1)□(μ2-BATNA2).

[11]This assumption is based upon an economic model that consumers act rationally when they purchase goods and services. *See* Yablon, The Meaning Of Probability Judgments: An Essay On The Use And Misuse Of Behavioral Economics, 2004 U. ILL. L. REV. 899, 902, 953-955 (2001).

[12]Donna Laikind, The Psychology of Money in Marriage, 5 N.Y. FAM. L. 1 (2004).

[13]Shannon Pratt, *et al*, Valuing Small Businesses and Professional Practices, 212 (3d. Ed. 1998); Jessica K. Gartland, Valuation of Professional Practices, 35 NYSBA FAM. L. REV. 4, 5 (2003).

[14]John R. Johnson, Valuation Issues, supra at 401, 423.

[15]Randall B. Wilhite, The Effect of Goodwill in Determining the Value of a Business in a Divorce, 35 FAM. L.Q. 351, 372 (2001).

[16]Id.; Method of choice by many New York Courts. *See,* Lew v. Lew, 289 A.D.2d 538 (2d Dept. 2001); I represented the doctor. Naturally, he never told me about this until I reviewed the preliminary draft of the valuation. The vehicle cost in excess of $120,000.00 and was being written off as an expense to the tune of several thousand per month. Among other things, the family groceries were always going though the business; Shannon Pratt, *et al*, Valuing Small Businesses and Professional Practices, at 214-227; *see also*, Nehorayoff v. Nehorayoff, 108 Misc. 2d 311, 316-320 (Sup. Ct., Nassau County, 1981); Shannon Pratt Valuing A Business And The Analysis And Appraisal OF Closely Held Companies, 28, 57-58 (1981).

[17]Shannon Pratt, *et al*, Valuing Small Businesses and Professional Practices, at 220-227

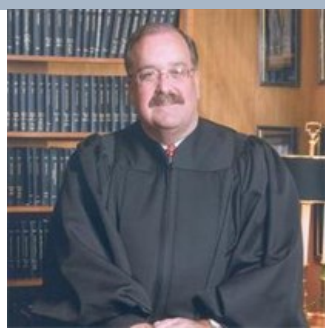
[18]Alan S. Zipp, Divorce Valuation of Business Interests: A Capitalization of Earnings Approach, 23 FAM. L.Q. 89, 92-93 1989); Alicia Brokars Kelly, Sharing a Piece of the Future Post-Divorce: Toward a More Equitable Distribution of Professional Goodwill, 51 RUTGERS L.REV. 569, 620 (1999).

SAVE THE DATE

The Federation of Bar Associations of the 4th Judicial District is pleased to announce that we have scheduled our Annual Meeting/CLE which will again be held in Montreal. This year's Meeting and CLE will take place April 29-30TH, 2016, and will include a half day CLE program with various speakers and topics, including Professor Pat Connors, Professor Mike Hutter, and Monica Duffy, Chief Attorney for the Committee on Professional Standards. Please mark your calendars so as not to miss this Event!

Further details, along with the Registration Form and Agenda, will be forthcoming.

In Memoriam: Hon. J. Timothy Breen



It is with great sadness that we report the death of the Hon. J. Timothy Breen. Judge Breen's many years of service to the Warren County Family Court, to our Association and to the community at large are exemplary. He will be greatly missed.

QUEENSBURY-Honorable J. Timothy Breen, 67, born on July 12, 1948, died on Wednesday, January 20, 2016 at Glens Falls Hospital after a courageous fight with Acute Myeloid Leukemia.

He was the son of the late John Timothy Breen and Mary Finn Breen; grandson of the late Jeremiah David Breen and Julia Buckley Breen; Daniel J. Finn Esq. and Nellie Cunningham Finn.

The Judge served proudly as the President of the Class of 1966 at Saint Mary's Academy and looked forward to his 50th reunion in September. He received his Bachelor of Arts Degree with Departmental Honors from Le Moyne College in Syracuse, in 1970 and his Juris Doctor Degree from Union University; Albany Law School and was admitted to practice before the courts of the State of New York; the Federal Courts of the Northern District of New York and the United States Supreme Court.

Judge Breen commenced his legal career with the firm of Little and O'Connor and was one of the first appointed Support Magistrates in 1995 by the Office of Court Administration. He thereupon was appointed by Governor George Pataki in June of 1999 as Warren County Family Court Judge and ran for two subsequent terms to become the longest sitting Family Court Judge in Warren County history.

The Judge was appointed in 2002 to serve as acting Supreme Court Justice who presided over matrimonial and divorce actions.

He was honorably discharged from the US Army Reserve having served for six years.

Tim belonged to many organizations including the NYS Bar Association; Warren County Bar Association; NYS Family Court Judicial Association, where he served as a delegate to the 4th Judicial District. He proudly served as a trustee of the Hyde Collection; Director of the Conkling Center; Director of the Glen at Highland Meadows; and was a member of the Chapman Historical Museum; the Fort House Museum; and the Feeder Canal Alliance. Beside his parents he was predeceased also by his brother, Daniel Patrick Breen. He is survived by his husband, Michael D. Gleason; his sisters, Johanna (Joseph) Bak and Mary Ellen (Frederick) Field. Also survived by two nephews, Jeffrey David (Karyn) Bak and Todd Timothy (Sera) Oliver, ESQ; two nieces, Amy (Thomas) McCurry and Carolyn (James) Bossinas; also sisters-in-law Nancy (Paul) Groenwegen, Linda (Paul) Michaud and Elaine Gleason (Colin) Dermody. He leaves a great many friends and will be remembered as a gracious host and an avid gardener.

Interment will take place at St. Mary's Cemetery in the spring.

The family wishes to thank Dana Farber, Brigham and Women's Hospital of Boston and the staff of the Glens Falls Hospital for their kindness and care. Contributions in Tim's memory may be made to St. Mary's /St. Alphonsus School, 10-12 Church St., Glens Falls, NY 12801 or The Hyde Collection, 161 Warren Street, Glens Falls, NY 12801.

In Memoriam: James H. Glavin, III, Esq.

James H. Glavin III, a lifelong resident of Waterford and practicing lawyer for over half a century, died Saturday, January 2, 2016, at his residence. He is survived by A. Rita Chandellier Glavin, his wife of 52 years. A graduate of Waterford High School, he was a cum laude graduate of Villanova University and received his juris doctorate from Albany Law School. Upon his admission to the Bar he enlisted in the U.S. Air Force where he served as assistant staff judge advocate for three years with the 839th Air Division of the Tactical Air Command based in Tennessee. Assigned as military judicial officer, he was primarily involved in investigations and court martial trials. He also handled matters in aviation accidents in the mid-South. In 1959, he was the judge advocate assigned to investigate a mid-air collision of a B-52 Bomber and a tanker aerially refueling the bomber over Kentucky. The same year he was assigned to an unusual accident involving a C-130 transport. He often referred to his time in the Air Force as his formative legal experience. When his active duty was complete, he served in the Air Force Reserve and was designated by the judge advocate general as regional representative. Upon his honorable discharge from the Air Force, he forewent opportunities in large law firms in Nashville, Albany, New York City and Binghamton to return to his home town of Waterford where he joined his father in the Glavin & Glavin Law office in Waterford. His wife, Rita, later joined them in their law practice. He was admitted to the Bar of the U.S. Supreme Court, and was a member of the New York State, Albany, Saratoga and Rensselaer County Bar Associations. He served as chairman for the New York State Bar Association's Administrative Law Practice Committee. He was also a member of many professional associations, including the American Trial Lawyers, New York State Trial Lawyers, American Hospitals, National Academy of Elder Law Attorneys, Transportation Lawyers and the Federal Bar Association of the Northern District of New York. In 2008 he was honored by the federal judges of the Northern District of New York for his performance. He was a member of the Association of Former Intelligence Officers and the Air Force Association. He served as chairman of Key Bank's regional board and served for over two decades on the board of Bellevue Women's Hospital. He was a trustee and lector of St. Mary of the Assumption Church in Waterford for over 40 years, and a

(Continued on page 17)

PRESS RELEASES

DANIEL W. COFFEY TAKES LEADERSHIP OF THE ALBANY COUNTY BAR ASSOCIATION

Albany, NY…the Albany County Bar Association (ACBA) held its Annual Meeting and Swearing In Ceremony at the Albany County Courthouse Tuesday, January 12, 2016. Daniel W. Coffey, a founding partner at Bowitch & Coffey, LCC, was officially sworn-in as President, a role that he will hold for one year. Coffey is a trial attorney with over 20-years experience in courts ranging from NYS Supreme Court, the Court of Claims, the Appellate Division and the Court of Appeals, among many local city courts. He has litigated numerous cases to verdict in local, state and federal courts throughout New York State as well as Vermont and New Hampshire District Courts. His primary areas of practice are: insurance first-party, third-party and subrogation with additional practice in the areas of insurance agency E&O, commercial litigation, environmental litigation and municipal/zoning/planning law.

"I've been a member of the Albany County Bar Association (ACBA) since the early 1990s, shortly after I began practicing law in downtown Albany," said Coffey. "Immediately brought into the fold by the membership community, I assisted in organizing the first Law Day Run in 1994 and I have been an active participant ever since. The ACBA membership has afforded me the opportunity to interact and socialize with fellow Albany County lawyers and judges, while at the same time, give back to our community and improve the image of attorneys by taking pro-bono clients. It has been my personal experience that the cost of membership (less than one billable hour) has unlimited benefits and value for my firm, my career and my personal pursuits."

A graduate of Georgetown Law, Coffey is an active member of the Albany County Bar Association, the Defense Research Institute of NENY, Capital District Trial Lawyers Association, New York State Bar Association, National Association of Subrogation Professionals (NASP), International Association of Arson Investigators (IAA), to name just a few.

He is the Chairman of the Bethlehem Zoning Board of Appeals (2010 – Present) and a Bethlehem Youth Court volunteer. Coffey is also a versed speaker and author.

The Officers sworn-in were:

- President-Elect: James E. Hacker of E. Stewart Jones Hacker Murphy, LLP
- Vice-President: Hon. Christina L. Ryba, NYS Supreme Court

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IN MEMORIAM: J. GLAVIN, III, CONTINUED

(Continued from page 16)

longtime board member of the St. Mary's School. He served as an attorney for the Town of Waterford and for over 45 years as counsel for the Waterford Water Commissioners. He was a Fourth Degree Knight of Waterford Council 237 of the Knights of Columbus. He was former president and an over 50-year member of the Waterford Lions Club. In 1989, he was recognized as a Patroon of the Village of Waterford. A lifelong Democrat, he was chairman of the Saratoga County Democratic Committee, chairman of the Fourth Judicial District of the Democratic Party for the State of New York for over 25 years, and he served on the Judicial Selection Committee of the State Democratic Party. He is predeceased by his father, Judge James H. Glavin Jr.; his mother, Elizabeth Gibbons Glavin; and a sister, Mary Evelyn Glavin. In addition to his wife, he is survived by their four children, Helene Elizabeth Clinton, James Chandellier Glavin, Rita Marie Glavin and James Henry Glavin IV; and his four grandchildren, Joseph, Patrick and Caroline Clinton and Maria Glavin. Those who wish may make memorial contributions to St. Mary of the Assumption Church Restoration Fund in care of the Philip J. Brendese Funeral Home, 133 Broad St., Waterford, NY 12188.

CLASSIFIEDS

SEEKING ASSISTANT COUNTY ATTORNEY

The Warren County Attorney seeks to appoint an Assistant County Attorney whose responsibilities include case management, prosecution and defense of civil actions and proceedings brought by and behalf of Warren County. The Assistant County Attorney may also be responsible for drafting and reviewing contracts on behalf of the County as well as providing advice and counsel to various County departments. The successful candidate is appointed by the County Attorney and serves at his discretion. The Assistant County Attorney must be a resident of Warren County at the time of appointment. MINIMUM QUALIFICATIONS: Admission to the Bar in the State of New York and two years of full time paid experience as a practicing attorney handling litigation matters before the Courts of the State of New York. SALARY : $70,000 plus full benefits CANDIDATES SHOULD SEND COMPLETED WARREN COUNTY APPLICATION, RESUME AND LETTER OF INTENT TO: Warren County Attorney's Office 1340 State Route 9 Lake George, New York

(Continued on page 19)

ALBANY COUNTY BAR , CONTINUED

(Continued from page 17)

- Treasurer: Daniel J. Hurteau of Nixon Peabody
- Secretary: Michael P. McDermott of O'Connell & Aronowitz
- Immediate Past President: Janet M. Silver of Hinman Straub, P.C.

The Board of Directors sworn-in were:

- Douglas R. Kemp of the NYS Attorney General's Office
- Matthew P. Barry of McNamee, Lochner, Titus & Williams, P.C.
- Hon. Ryan T. Donovan of Harris, Conway & Donovan, PLLC
- Elizabeth J. Grogan of Wilson, Elser, Moskobitz, Edlerman & Dicker, LLP
- William T. Little, Jr. of Teresi & Little, PLLC
- Lisa R. Harris, Senior Counsel, New York State Senate Majority Conference

Founded in 1900, ACBA has more than 1,100 members, making it one of the largest and most active upstate bar associations in the state. The purpose of ACBA is to promote professional collegiality among the bench and bar; facilitate public service and access to justice for all; offer programs, benefits and services to enhance the skills of its members; and to provide legal services throughout the Capital Region for those in need both inside and out of the courtroom. Learn more | albanycountybar.com

DONNELLAN & KNUSSMAN IS PARTICIPATING IN THE SARATOGA COUNTY CHAMBER OF COMMERCE LEAP OF KINDNESS DAY ON FEBRUARY 29 BY COLLECTING NON-PERISHABLE FOOD ITEMS FOR A LOCAL FOOD PANTRY THROUGHOUT THE MONTH OF FEBRUARY. WE INVITE YOU TO JOIN US BY DROPPING OFF CANNED GOODS OR OTHER NON-PERISHABLES AT OUR OFFICE LOCATED IN THE MALTA PROFESSIONAL BUILDING AT 658 MALTA AVENUE SUITE 201, MALTA. ON FEBRUARY 29 WE WILL DELIVER THE COLLECTED FOOD TO THE EOC FOOD PANTRY ON BATH STREET IN BALLSTON SPA.

FEBRUARY SCBA DINNER

February 25, 2016
The Wishing Well Restaurant
745 Saratoga Road, Gansevoort
6:00 p.m. - Social Hour with Hors d'oeuvres
7:00 p.m. - Dinner

PASSED HORS D'OEUVRES
Pigs in a Blanket, mustard
Boneless Panko Crusted Chicken Bites, spicy aioli
Fried Pickles, horseradish cream
Smoked Salmon Toast

Assorted cheeses, seasonal vegetables
Salad
Cream of Mushroom Soup

ENTRÉE
Center Cut New York Strip Steak, onions and peppers
Blackened Faroe Islands Salmon, dill cucumber relish
Sautéed Chicken Piccata, capers, lemon
Winter Vegetable Risotto

DESSERT
Raspberry Pie

$38 per person

Please make your reservations by Monday, February 22 by calling 280-1974 or via e-mail: pclute@saratogacountybar.org

SCBA CALENDAR OF EVENTS

February 25, 2016 - Thursday
Bar Dinner at The Wishing Well, Wilton

March 31, 2016 - Thursday
TRIVIA NIGHT - Vapor Night Club

April 20, 2016 - Wednesday
Board of Directors Meeting - Third Floor, City Hall, Saratoga Springs

May 2, 2016 - Monday
Law Day Luncheon @ The Canfield Casino

June 2, 2016 - Thursday (TBA)
Installation Dinner - TBD

CLASSIFIEDS

(Continued from page 17)

12845 Warren County is an EOE/AA employer Applications are being accepted until February 5, 2016 Applications may be obtained at: www.warrencountyny.gov/civilservice

SEEKING LAW OFFICE ADMINISTRATIVE PROFESSIONAL

Experienced Law Office Administrative Professional needed for small law firm. Minimum of 3 years of experience required. Work involves basic office administration, reception, secretarial, and clerical functions, document preparation, and client billing. The ideal candidate will be flexible, possess excellent organizational skills as well as good people, phone and computer/typing skills, and an ability to prioritize tasks. Knowledge of law office billing systems and software is a must. Salary dependent upon experience. Please email resume and salary requirements to attorney3910@yahoo.com.

LEGAL SECRETARY/PARALEGAL POSITION AVAILABLE

General practice legal secretary/paralegal position responsibilities and requirements include: answering phones, excellent client contact skills, scheduling and maintaining detailed electronic calendars, proficiency with Microsoft Office/Outlook, drafting documents, preparing and assembling litigation papers, client billing and other attorney support.

Pay is based upon experience. Please email cover letter, resume and references to: seekingparalegal12866@gmail.com.

OFFICE SPACE AVAILABLE

Attractive, quiet, partially furnished private office with skylight and file storage area. The office opens to a common room with waiting area, reception, separate conference room, kitchenette and two other offices. Conference room is furnished, furnished secretarial area and waiting area. Filing space included. Vaulted ceiling, bright, classy working environment. Perfect for an attorney, accountant, writer or other professional or small business. This floor is also occupied by two attorneys part time and is located on the upper level of an attractive 5000 sq. ft. professional building in which 11 other small businesses are located. Tenants also include 5 psychotherapists, 2 masseuses, a radiology practice, a chiropractor and two energy workers. We are 7/10 mile from Broadway, on Route 29 (Washington Street), three blocks from Saratoga Hospital. Excellent off-street parking. Avoid the summer traffic and join us. Yours for $625 a month, utilities included. Will share equipment, copier, etc. Wi -Fi available for nominal monthly fee. This space is dog friendly. Contact: Sarah B. Foulke, Esq., MBA, 229 Washington Street, Saratoga Springs, NY 12866, (518) 583-0523 (office), (518) 583-0783 (facsimile), Sarah@foulkeattorney.com

SEEKING LEGAL SECRETARY/ASSISTANT

Immediate opening for experienced legal secretary/assistant in growing matrimonial/ family law firm located in Malta, NY. Must be detail-oriented, organized and able to multi-task. Excellent writing and computer skills required. Contact is: freestone@dklawfirmny.com

SEEKING COMMERICAL LITIGATION ASSOCIATE

McGlinchey Stafford, a nationally-recognized business and consumer financial services defense law firm, seeks a staff associate with prior complex commercial litigation experience to join our Albany office. The ideal candidate will have 2 to 4 years of experience handling real estate litigation, banking litigation and/or consumer finance litigation, including contested mortgage foreclosure litigation. Significant experience making court appearances, attending hearings, and arguing motions is required. Candidates should have superior academic credentials, strong analytical and writing skills are required. Admission to the New York bar is required for consideration. Compensation commensurate with experience; full benefits included.

Please apply through our online application located at https://virecruit.mcglinchey.com/viRecruitSelfApply/ReDefault.aspx?FilterREID=2&FilterJobCategoryID=3

If you have any questions about the application process, please contact Margeaux Feore, Lateral Recruiting Coordinator, at mfeore@mcglinchey.com

The Adirondack Women's Bar Association

cordially invites you to the seventh annual

Go Red for Women Fundraiser

Wednesday, February 24, 2016

6:00 - 8:00 P.M

Jacob and Anthony's Restaurant
38 High Rock Avenue, Saratoga Springs

$20 if payment made in advance
$25 at the door

RSVP to Kara Lais
518-745-1400
KIL@fmbf-law.com

Event sponsorships available
Contact Francine Vero - 518-701-2733 or fvero@harrisbeach.com
Sponsorship deadline is February 17, 2016

Highlights Include:

Silent Auction

Raffle

Guest Speaker Marcie Fraser of Time Warner Cable Healthy Living

Hot and Cold Appetizers

This event is cash bar

Platinum Sponsors
Cardiology Associates of Schenectady
Mohawk Honda

Gold Sponsors
Merrill Lynch—Brad Wagner

Bronze Sponsors
A Plus Process Service, Inc.
Chicago Title/Fidelity National Title
Harris Beach PLLC
The Law Office of Peter H. Barry
National Long-Term Care Brokers, LLC

Silent Auction and Raffle items generously donated by:

Spartan Fitness and Athletics
Gold Tiger Tattoo
Legends Café
The Crowne Grill
Samantha Nass Floral Design
Saratoga Botanical
Fitness Artist
Saratoga Smiles
Mary Martin Salon
K Plastic Surgery
Wine Baskets

THE CAPITAL REGION

ITALIAN AMERICAN BAR ASSOCIATION

ANNUAL DINNER

Thursday, March 10, 2016

Cocktails 6:00 PM
Dinner 7:00 PM

Rotterdam Elks Lodge
1152 Curry Rd, Schenectady, NY 12306

Presentation of
The Hon. Anthony V. Cardona Award

Make your reservations now for our Annual Dinner -- often referred to as "Judge Caruso's Dinner." If you have attended this event in the past, you know that it is a night to remember. If you have not attended, you have surely been deprived. Judge Caruso plans and orchestrates a spectacular feast for our membership, friends and guests.

For those who enjoy the kitchen, you will again have the opportunity to work with Judge Caruso in preparing and setting up this event. To volunteer, speak with Lesia (285-8415) in Judge Caruso's chambers.

Members:	$50
Non-Members:	$60
Students:	$30

Please make checks payable to the Italian American Bar Association and mail to:

Frank Tedeschi, Esq.
254 No. Alandale Avenue
Schenectady, New York 12306

RSVP

Italianamericanbar@gmail.com
or
Hon. Vito Caruso
518-285-8415
vcaruso@courts.state.ny.us

Directions to the Elks: NYS Thruway Exit 25 to Curry Road (Rt. 7 West). Follow Curry Road to 1152 Curry Road.

The Fun Continues… Don't Miss It!

Please send in your 2016 dues ($50.00) for the

Capital Region Italian American Bar Association

"Men and Women Sharing a Common Heritage and Chosen Profession"

Please detach and return with your check payable to "IABA"
Remit to:
Frank Tedeschi, Esq., 254 N. Alandale Ave., Schenectady, NY 12306

Name: _____
Address: _____
_____
Phone: _____
*Email: _____

Give us your feedback!
What events would you like to attend / rather not attend this year?
How would you like to get involved? We want your Comments!

_____
_____
_____
_____
_____

*Most correspondence is sent via email – please provide yours!