

1000 State Tower Building | 109 South Warren Street | Syracuse, NY 13202 | 315.471.2667

138th Annual Dinner Draws Over 400 to Honor Distinguished Lawyer John A. Cirando

The Onondaga County Bar Association held its Annual Dinner October 17 at Traditions at the Links at East Syracuse's Erie Village. A capacity crowd of over 400 enjoyed the networking and the opportunity to celebrate the profession while welcoming John A. Cirando as 2013's Distinguished Lawyer.

The evening began with a networking reception featuring the musical talents of the Bar Ripsters, setting the fun and festive mood that would continue throughout the evening.

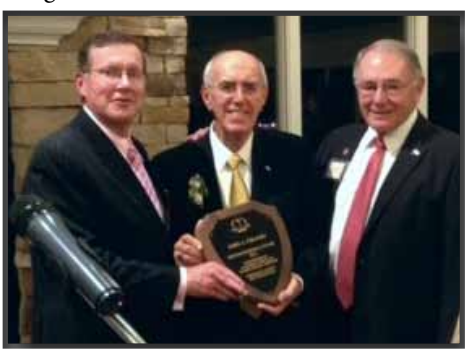
Our special guests for the evening included David Schraver, President of the New York State Bar Association, who offered greetings from the State Bar and congratulated our honoree; keynote speaker Kris Fischer, Editor-in-Chief of the New York Law Journal, who provided an interesting history of legal reporting past, present and future and talked about how technology is changing the way news is delivered and used by the legal profession; and Onondaga County District Attorney Hon. William Fitzpatrick, who provided a heart-felt and emotional introduction of his mentor, Mr. Cirando.

Guests were also honored by the attendance of more than 30 members of the Judiciary, including a table from the Appellate Division of the 4th Department.

Before the dinner, a musical tribute was offered by the Select Chorus of Christian Brothers Academy, Cirando's alma mater, while an Invocation from Father Michael Taylor, from Franciscan Church of the Assumption, included a charge to the New York Giants to win at home the following weekend. (The prayers worked.)

Citations and proclamations honoring Cirando were offered by Mayor Stephanie Miner and County Executive Joanie Mahoney; by Sen. John DeFrancisco; and by Assemblymen Albert Stirpe, Bill Magnarelli and Sam Roberts.

John's dedication and commitment to others extends beyond the legal community. For decades he served as pro bono Counsel for Vera House and the Asian Apostolate. He has been a contributing member of the Blind Men and Criers, Catholic Lawyers' Guild Diocese of Syracuse, Central New York Alumni Chapter of St. Bonaventure University, Knights of Columbus, New York Bar Foundation, Onondaga County Bar Association and many other bar associations. For OCBA, John was Editor of the Bar Reporter from 1972 to 1997 and he remains the Editor Emeritus.



Onondaga County DA Bill Fitzpatrick & Judge Mordue present award to John Cirando.

One of Cirando's greatest accomplishments is the work he has done to give law students and newly admitted attorneys their legal start. The list of attorneys who received their early training from John is impressive, an estimated 120 plus in total. At the dinner, Cirando was surprised when dinner chair Jean Marie Westlake asked anyone in the

room who had been mentored by him to stand – and dozens upon dozens of dinner guests stood up, to tremendous applause.

Cirando has been married for 46 years to the love of his life, the former Carolyn J. Lace. Together they have three daughters and four grandchildren. John and Carolyn's daughters were all in attendance at the dinner: Lisa Marie, an attorney with the law firm of Jones Day in New York City, Julie Lynn Piazza, a personal chef, and Jennifer Mary Cirando-Zulak, a contracts negotiator.

As Hon. David E. Peebles remarked of his former mentor and venerable friend, "John consistently has epitomized the level of dedication, professionalism, and civility to which all lawyers should aspire."

See more photos on page 10 ■

MISSION :

...to inspire excellence in the legal profession, to foster the fair administration of justice, to promote equal access to the legal system, and to serve and support our members.

UPCOMING EVENTS :

Mike O'Connor Estate Planning CLE	Wednesday November 20
NYSEF E-Filing CLE	Thursday December 5
OCBA Annual Holiday Reception	Wednesday December 18

From the President . . . a View from the Foundation

In this month during which we give thanks, I'm taking this opportunity to say "Thanks!" to those who have supported the works of the Onondaga County Bar Foundation in the past. But I'm also asking "Please?" – please consider the Foundation as you plan your year-end giving, especially as we have broadened our focus recently to help our profession's colleagues who find themselves in need of our collegial support.

The Foundation, the not-for-profit corporation established in 1975 affiliated with the Onondaga County Bar Association, lives by its motto: "To Give Honor and Do Good Works." The mission of the Onondaga County Bar Foundation has been traditionally to improve and promote:



Paul Mullin

- the administration of justice;
- service to the public and the legal community;
- equal access to the legal system for all;
- professional ethics and responsibility;
- legal research and education; and
- dissemination to the public of information about the legal system and the rule of law.

Worthy organizations offering programs aligned with these goals are invited to submit grant applications seeking financial assistance, which are considered by OCBF's Grant Committee and approved by the Board of Trustees.

However, in 2011, we added to our traditional mission: "to aid members of the legal profession in Onondaga County who may be ill, incapacitated, indigent or otherwise in need."

In support of that important mission, the Foundation continues to sponsor the local Lawyer Assistance Program, addressing problems including stress-related disorders and substance abuse, through free counseling. Anyone seeking help should call our local counseling provider at 451-3886 and simply indicate their Bar Association membership. All services are provided on a strictly confidential basis. The Foundation believes efforts to provide such assistance must and will continue.

The Foundation established a new grant application specifically for lawyers who find themselves in need of financial assistance. That form is available from the Bar Association offices and will soon be available as a download from the new Bar website, which features a dedicated Foundation page and ability to pledge online contributions to OCBF.

In addition to your annual contributions, the Foundation is funded by income from its endowment, bequests in memory of deceased lawyers and judges and revenues from annual special events like the Law Day program and the 50-Year Luncheon. In addition, the Bar Association Board of Directors makes ongoing contributions to the Foundation in memory of each local deceased lawyer and judge.

Please understand that your participation is vital to the continuing efforts of the Foundation and that your direct contribution to the Foundation at 1000 State Tower Building, Syracuse, New York 13202, is always welcome and appreciated. In the next few weeks, you will receive our year-end appeal in the mail. I hope you'll take that opportunity to lend your support to the Foundation, for which I will be more than pleased to say "Thanks!" once again.

Paul. V. Mullin, OCBF President

A handwritten signature in dark ink, appearing to read "Paul V. Mullin". The signature is fluid and cursive, written in a professional style.

PART 137 | ATTORNEY CLIENT FEE DISPUTE COMMITTEE Recognizes Volunteer Arbitrators | Provides Program Update

Thomas E. Myers, Chair

The Part 137 Attorney Client Fee Dispute Committee held an Arbitrator Appreciation luncheon meeting October 23, 2013 at the Bar Association office. OCBA President Nancy Pontius and Fifth Judicial District CEO Michael Klein thanked the 20 volunteer arbitrators present for their ongoing service. In response, Paul Newman, led the volunteer arbitrators in thanking Peggy Walker of the bar staff and Valerie James of the Fifth District Administrative Office for their many years of work in communicating with attorneys, clients, and volunteer arbitrators involved in resolving fee disputes.

Valerie James presented a summary of case statistics for 2012 and for 2013 to date. During 2012, 23 new cases meriting fee arbitration were filed; 19 of those cases arose in Onondaga County; 3 cases in Oneida County; and 1 case in Herkimer County. Also during 2012, 19 fee dispute cases were completed; 13 of those cases were completed with arbitration awards. During 2013 to date, 25 new cases meriting arbitration hearings have been filed; 18 of those cases arose in Onondaga County; 4 in Oneida County; 2 in Jefferson County; and 1 in Oswego County. 25 cases have been resolved during 2013 to date.

The majority of cases filed in 2012 and in 2013 involve representations in matrimonial and/or Family Court matters. Other subject areas generating recent fee disputes are business disputes, commercial matters, other civil litigation and real property matters. In addition to the 48 new petitions received in 2012 and 2013, Valerie James stated that the Fifth Judicial District Administrative Office, which handles intake and screening of new cases, received many additional petitions, letters, or inquiries from disgruntled clients on matters, which did not meet the criteria for fee arbitration and were referred elsewhere.

Also, during the October 23 meeting, volunteer arbitrators exchanged information about their experiences and ideas on how to manage Fee Arbitration Hearings. In response to one

arbitration experience, Michael Klein noted that his office would assign a translator in an appropriate case. Mark Wasmund reported on his ongoing meetings with Peggy Walker and Valerie James to streamline and reduce to writing their internal case management procedures concerning assignment of arbitrators, scheduling of hearings, filing and service of final awards, etc. One point of emphasis is that both single arbitrators and panel chairs



must promptly complete and return final arbitration awards to Peggy Walker

at the bar office, and not to Valerie James at the Fifth District Office. Arbitrator delay in submitting a final award, and arbitrator delivery of a final award to the wrong office, have generated some process complaints from parties.

Also emphasized were the confidentiality obligations of all volunteer arbitrators, staff and other individuals

involved. These confidentiality obligations are set forth in both the Part 137 Rules and in the new, OCA grant-contract extending this program to March 21, 2016. Similarly, volunteer arbitrators were advised to shred all papers relating to a fee dispute after completion of their involvement or to return all such papers to Peggy Walker at the bar office for shredding.

Lastly, Sally Curran, Executive Director of the Onondaga County Volunteer Lawyers Project, noted that some unrepresented clients, who are successful in fee arbitration, do not know what to do to enforce an award thereafter. Sally asked for an attorney volunteer to assist her in preparing a set of forms for unrepresented clients to use, either pro se or with pro bono representation, in pursuing CPLR Article 75 enforcement proceedings after a favorable arbitration award.

If anyone is willing to assist Sally with this undertaking, please contact her directly at 579-2576.

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OCBA SALUTES ITS SUSTAINERS

by Nancy L. Pontius, OCBA President

The Onondaga County Bar Association and its leadership is pleased to recognize and honor our 2013 Sustaining Members and express our profound gratitude for their generosity.

Our Sustainers' commitment to the Bar Association and its programs has helped enable us to expand our offerings to both our members and our community. OCBA has been able to implement improvements in the administration of the Lawyer Referral Service that are benefitting both LRS participants and our community. We have also offered significantly more CLE programs (including the no-cost Criminal Law series), held the first-ever Law Day Career Fair attracting more than 20 exhibitors and hundreds of students, and expanded the offering from the Volunteer Lawyers Project – now a stand-alone organization – which led to OCBA being recognized with the ABA's distinguished Harrison Tweed Award for its commitment to pro bono programs.

Our 2014 membership campaign for current and prospective OCBA members will begin later this month. We ask all of our members to please consider joining this distinguished roster of supporters by becoming Sustaining Members so that OCBA can continue providing our members with the programs and services you have come to expect from us, work to strengthen our profession and justice system, and be of service to our community. The Sustainer membership is \$295 (\$100 more than the general membership). OCBA will be reaching out to those of you who are employed by firms that cover your annual membership dues and encouraging you to personally add the \$100 difference to join our list of Sustainers.

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John B. Vita Esq.
Ellen S. Weinstein Esq.
Jean Marie Westlake Esq.
James M. Williams Esq.
Bruce E. Wood Esq.
Kimberly M. Zimmer Esq.

thank you thank you thank you

“HOW TO MISAPPROPRIATE CLIENTS’ FUNDS”

Fifth Judicial District Attorney Grievance Committee

Appellate Division, Fourth Department

by Anthony J. Gigliotti, Principal Counsel*

If you handle closings, beware! When was the last time you dispersed the proceeds of a real estate sale at the closing? You may be innocently misappropriating client funds. The improper custodial care of client funds continues to be the most scrupulously investigated matter by disciplinary committees throughout the state. Consequently, the elements of misappropriation and conversion of client’s funds justifies periodic review.

The ethics rules which set forth the fiduciary duties of attorneys when entrusted with the possession of the funds of others are found in section 1.15 of the Rules of Professional Conduct (RPC). Subsection “(a)” of the Rule specifically prohibits the misappropriation of funds entrusted to the lawyer incident to his or her practice of law. In spite of the Rule’s black letter prohibition, lawyers frequently misappropriate clients’ funds without realizing it. How does this happen? Let’s examine a “hypothetical” residential real estate closing.

Assume that on May 1st the balance of lawyer Brown’s Key Bank attorney trust account was \$60,000, in funds entrusted to him by various clients. At a real estate closing later that same day, Brown, representing the seller, accepted a certified check issued by Bank of America (BOA) for \$50,000 as sale proceeds. Brown then issued several checks to settle the seller’s obligations, including a check for the net remainder of the \$50,000 payable to the seller. Immediately following the closing, Brown deposited the BOA check into his attorney trust account to “cover” all of the checks he issued at the closing.

The checks issued by lawyer Brown were successfully negotiated by their recipients. However, at the time the checks were issued the only funds actually on deposit in Brown’s attorney trust account were those of other clients. The seller was anxious to utilize the proceeds to complete his purchase of another residence and Brown made two assumptions. First, the BOA check deposit would replenish his account balance before any of the checks were negotiated. Also, the balance in his attorney trust account was sufficient to cover the checks he just issued. Brown may have also been reassured by examining his account’s electronic record after making the deposit of the BOA check, reflecting a balance increased by \$50,000.

In fact, Brown’s conduct risked the misappropriation the funds of those other clients actually on deposit to expedite the seller’s real estate transaction. What Brown should have known is that the additional funds were only “provisionally credited,” subject to BOA’s receipt and electronic transfer of the \$50,000 to his Key Bank account. Only after the funds were “collected” could Brown have ethically issued checks against the \$50,000.

What if, at the time of the closing, Brown’s attorney trust account balance was only \$600, and delay occurred in “collecting” the funds from BOA, the payor bank? What if the check was duly returned by BOA as counterfeit? The checks issued by Brown would then be dishonored, a mandatory report of the incident would be made by the bank, and a disciplinary investigation would be commenced. Such investigations examine all transactions within the past 6 months to assure complete compliance with the fiduciary rules spelled out in the Rules of Professional Conduct.

To avoid such risks, how long should Brown have waited before issuing checks to disburse funds deposited by check into an attorney trust account? The short answer is when Key Bank, the collecting bank, receives final settlement from BOA, the payor bank. A more precise answer may be found in the following quote from a 2011 Court of Appeals decision:

“The UCC prescribes the duties the various banks owe to a depositor. A collecting bank must use ordinary care in presenting a check or sending a check for presentment, sending notice of dishonor or nonpayment or returning a check, and settling the check when the collecting bank receives final settlement from the payor bank (see UCC 4-202[1]. A collecting bank has until midnight of the next banking day (its “midnight deadline” (UCC 4-104[h]) to take the above actions when receiving a check, notice of dishonor or final settlement of the check (see UCC 40202[2]). In other words, whenever a collecting bank receives a check from a depositor or notice or settlement from the payor bank it must act on it by midnight of the next banking day.” Greenberg, Trager & Herbst, LLP. V. HSBC Bank USA, et al., 17 NY 3rd 565, 10/13/2011.

Those who use attorney trust accounts, and who also vowed never to read the UCC after law school, would do well to learn more about the foregoing “midnight deadline.” Reading the full text of the Greenberg case would also be “good medicine” for resisting the demands of buyers, sellers and real estate agents to cut corners at real estate closings. If, as in law school, the mere mention of the UCC is making you drowsy, here’s the quote from the Greenberg case that should keep you awake:

“The UCC is clear that, until there is a final settlement of the check, the risk of loss lies with the depositor. (see *Hanna v. First Natl. Bank of Rochester*, 87 NY 2d at 119, 637)”

Citing UCC 4-213(1), the Greenberg Court articulates four alternative actions by the payor bank which constitutes “final settlement” of a deposited check. In simple terms, the case law, the UCC, and the Rules of Professional Conduct instruct you to avoid the unintended misappropriation clients’ funds by exercising patience and waiting until funds are actually collected by your bank before disbursing them from an attorney trust account. If, in doubt, call your bank and ensure that the deposited funds have been **COLLECTED**.

**Anthony J. Gigliotti has been counsel to the Fifth District Attorney Grievance Committee in Syracuse, New York since 1996, and regularly lectures lawyers and law students on legal ethics and the disciplinary process.*

ATTORNEY SPOTLIGHT

Thomas C. Buckel, Jr. | Profession meets Passion, Ideals & Purpose



BR: *Where do you work?*

TB: Legal Services of Central New York, Inc.

BR: *Describe your background.*

TB: Since graduating from the University of Virginia Law School and after a 32-year career in private practice, I recently shifted my work to match passion, ideals and purpose with profession by accepting an offer from Legal Services of Central New York to lead an effort to expand access to justice in four (4) high poverty, high need regions in central New York.

BR: *What type of law do you practice?*

TB: Trials, appeals, arbitrations and mediations-- previously in business and commercial matters, now in “essentials of life” matters for people in need.

BR: *What do you enjoy most about your practice?*

TB: I love my new role and my new colleagues at Legal Services. The lawyers and staff all want to make a lasting, positive, perhaps radical difference in their communities. They care deeply about the people they serve and the ideals of justice. And their sense of purpose and compassion is infectious. It’s wonderful to work in an organization grounded in an ambition to make community, life and the justice system meaningfully wholer, fairer, better.

BR: *What has played the most important role in getting you to where you are today?*

TB: The key experience leading to my decision to leap from the security of a law firm partnership to the uncertain world of civil legal aid was my work as a County Legislator representing parts of our community that bore some of the highest rates of poverty, crime and largest refugee populations. I engaged with the daily struggles of my constituents to survive and improve their lives, their families’ lives and the safety of their neighborhoods. This experience occurred in the depth of the recent recession, when a narrow band of privileged people prospered, as overwhelming numbers of people in my district and throughout our region struggled to survive, and fell further behind.

BR: *What has been the biggest obstacle that you have had to overcome?*

TB: Adjusting to daily business and legal life without the “bells and whistles” of technology, resources and support of a large law firm is challenging. I also adjusted to dealing with sophisticated, often powerful business and individual clients who knew what they wanted and were willing to pay to achieve their goals, to serving unsophisticated, often troubled people, who don’t know what they want and feel powerless.

BR: *If you could give one piece of advice to newly admitted attorneys, what would it be?*

TB: It’s possible to earn not just money, but the stuff money can’t buy: trust, fidelity, passion, dedication, love, fulfillment, and a searing sense of meaning, through the practice of law. And regardless of whether you work in public or private practice, you will be a better lawyer if you are deeply engaged in the community and in the lives of its people, especially those in need.

Tom is a graduate of Canisius College (B.A.) and the University of Virginia School of Law (J.D.). He has experience prosecuting and defending commercial litigations in federal and state courts.

Throughout his career, Tom has been actively committed to public service, including a youthful candidacy for Congress in 1984, service on the Onondaga County Legislature from 2008 through 2011, and service on numerous community Boards and causes, especially for people in need. He currently serves as a Trustee of SUNY Environment Science and Forestry College, the Le Moyne College Board of Regents, and is a member of the Guiding Coalition in the Circles Out of Poverty campaign. Tom is a member of state and local bar associations and frequently lectures before community, legal and business groups.

Tom’s wife, Mary Vossler, is director of Management and Budget for the City of Syracuse. Their daughter Elizabeth, Georgetown University School of Law ’13, is an associate attorney in the NYC office of Cahill, Gordon & Reindel LLP. Daughter Anne, Fordham University ’13, is currently a Fulbright Scholar in Vietnam. Their son John, attends Syracuse University.

ENVIRONMENTAL LAW SECTION TO HOST MEETING AT ONONDAGA LAKE CLEANUP VISITORS CENTER NOVEMBER 21



Environmental Law Section Chair Tim Lambrecht, of Brown & Palumbo, PLLC, has arranged a Section Meeting this month open to **ALL OCBA** members at the Onondaga Lake Cleanup Visitors Center.

That meeting and presentation will be held Thursday, November 21 from 4:00 to 6:00 p.m. at the Center. The Center, designed and built by Honeywell, is adjacent to I-690 along the southwest shoreline of Onondaga Lake. The Visitor Center's deck and floor are made out of reclaimed lumber from the Syracuse Chilled Plow Company and the West Bingham School, both buildings that were more than a century old.

Attendees will be given a guided tour highlighting the New York State Department of Environmental Conservation's (DEC) cleanup plan, progress to date, the re-establishment of wetlands, and extensive habitat enhancements.

Craig Milburn, Managing Partner with Brown and Sanford Consulting and Program Manager for Honeywell's community outreach and community participation program, will offer a

presentation

featuring maps, videos, slides, live camera feeds, and a display of the real-time operations. The typical tour takes just over an hour, allowing time for questions and answers. Milburn, who has

hosted more than 4,000 visitors at the Center, says he'll cover the full gamut including progress and estimated completion.

Call the Bar Association offices at 471-2667 if you're interested in attending this presentation – even if you're not an Environmental Law Section member!

To access the Visitors Center: From points west, take I-690 East to Exit 17, turn left onto State Fair Boulevard, take the first left passing under I-690, drive straight toward the Lake and follow signs to the Onondaga Lake Visitors Center. From the east, take I-690 West to Exit 7, turn right at the off-ramp and follow signs to the Visitor Center.

For more information on the project and its progress, visit www.lakecleanup.com.

NYSBA Mock Trial Competition Returns to Onondaga County in 2014

Jeffrey A. Unaitis, *OCBA Executive Director*

Plans are already under way for the local rounds of the 2014 Onondaga County Mock Trial competition, hosted and organized by the Onondaga County Bar Association.

The success of this annual program depends not only on the area schools whose coaches devote many hours to prepare their dedicated student teams, but also on the local lawyers and judges who volunteer their time to serve as legal advisors to those teams and as the judges for each of the rounds.

Once again, the Bar Association is recruiting volunteers. At least one high school – Fayetteville-Manlius – has already indicated the need for a volunteer advisor, and up to 20 judges will be required to staff the competitive rounds.

Thanks to these volunteers who judged the 2013 competition and the Regional Championship, which returned to Syracuse in late-April after many years:

Craig M. Atlas, Esq.
Hon. Vanessa L. Bogan
Tamara Capone, Esq.

Gordon Cuffy, Esq.
Hon. Therese Wiley Dancks
Nicholas J. DeMartino, Esq.
Hon. Stephen Dougherty
Hon. James Hughes
Hon. Deborah H. Karalunas
Brandon R. King, Esq.
Karen Kukla, Esq.
Travis Lewin, Esq.
Hon. Ted Limpert
Hon. James Murphy
Daniel Pautz, Esq.
Ben Rabin, Esq.
Samuel Tamburo, Esq.
Larry H. Vozzo, Esq.

If you're interested in volunteering for the 2014 Mock Trial competition, please contact Jeff Unaitis, OCBA Executive Director, at 579-2581 or JUnaitis@onbar.org.

Northern District Case Notes



By Mike Langan, *Law Clerk to Hon. Glenn T. Suddaby, USDJ*

Bankruptcy

Atl. Sea Pride, Inc. v. McCarthy, 13-CV-0670(LEK) (10/15/13) – appeal by creditor-appellant from decision of bankruptcy court granting trustee-appellee’s motion for summary judgment, contending that judgment was based on falsehoods that creditor-appellant now seeks to correct; affirming decision of bankruptcy court, declining to permit creditor-appellant to withdraw or amend its admissions even if it has met both the merits and prejudice prerequisites of a motion pursuant to Fed. R. Civ. P. 36(b).

Disability Discrimination

McInerney v. Rensselaer Polytechnic Inst., 05-CV-1267(DNH) (10/11/13) – action by graduate student, who suffered permanent brain damage from bacterial brain infection, against university, alleging violations of ADA and Rehabilitation Act; dismissing Plaintiff’s claims in their entirety following bench trial; finding that (1) student’s taking only one break during doctoral candidacy exam was not failure by university to provide reasonable accommodation, (2) department head’s not relaying to examiners student’s explanation did not violate ADA, (3) university’s not scheduling second opportunity to take exam was not disability discrimination, (4) university’s not providing tutor was not a failure to accommodate; (5) university’s not assisting student in finding advisor did not violate ADA and Rehabilitation Act; and (6) university’s not changing status to active did not violate ADA and Rehabilitation Act.

Employment Discrimination

Hua Lin v. New York State Dept. of Labor, 11-CV-1186(GLS) (10/23/13) – action by Senior Employment Security Clerk at U.S. Department of Labor’s Unemployment Insurance Telephone Claim Center, asserting claims of discrimination based on race and national origin, under Title VII of the Civil Rights Act and Section 296 of the New York Executive Law; granting Defendants’ motion for summary judgment.

Visitation

In the Matter of Alazaya I.B., 2013 WL 5396460 (4th Dept., Sept. 27, 2013). Although the appeal was dismissed as moot, the Fourth Department emphasized that it was error for the Family Court to delegate its authority to modify future visitation to the child protective agency, the counselors for the subject children, or the Attorney for the Child (see also *In re Leah S.*, 61 AD3d 1402 [4th Dept. 2009] [holding that it was error to include language stating that visitation shall occur only if the child protective agency deems it appropriate]; *Battista v Battista*, 294 AD2d 941 [4th Dept. 2002] [it is error for the order to require supervised visitation with a mental health professional “for a period of time that supervision may be required”]).

Franchise

Lowery Bros. Infiniti, Inc. v. Infiniti Div., Nissan N. Am.,

Inc., 13-CV-1258(TJM) (10/23/13) – action asserting claims of breach of contract, violation of New York Franchised Motor Vehicle Dealer Act, violation of Automobile Dealer’s Day in Court Act, and tortious interference with existing business relations; granting Plaintiff’s motion to stay proceeding terminate motor vehicle dealer’s franchise pursuant to Section 463(e)(1) of the New York Vehicle and Traffic Law; denying Plaintiff’s motion to seal the case; and denying without prejudice Defendant’s motion for expedited discovery.

Gambling

Town of Verona (Oneida Cnty.) v. Cuomo, 13-CV-1100(LEK) (10/30/13) – hybrid proceeding pursuant to Article 78 of the New York CPLR for declaratory judgment, asserting violations of federal and state constitution, arising from Defendants’ enactment of Upstate New York Gaming Economic Development Act of 2013; granting Plaintiffs’ motion to remand for lack of subject-matter jurisdiction due to lack of standing under Article III of the federal constitution.

Housing Discrimination

Rodriguez v. Village Green Realty, Inc., 11-CV-1068(TJM) (10/10/13) – action by tenant-parents of child diagnosed with epilepsy and pervasive developmental disorder, against real estate brokerage agency and licensed real estate broker, asserting violations of Fair Housing Act, arising from communications and actions by real estate broker during proposed sale of real property; granting in part, and denying in part, Defendants’ motion for summary judgment, dismissing all claims except of the retaliation claim under 42 U.S.C. § 3617; and granting in part, and denying in part, Plaintiffs’ cross-motion for summary judgment, finding that Defendant Village Green Realty, Inc., is vicariously liable for actions of Defendant Blanca Aponte.

Intellectual Property

Vaughan Co. v. Global Bio-Fuels Tech., LLC, 112-CV-1292(DNH) (10/23/13) – action asserting four patent infringement claims pursuant to 35 U.S.C. § 271 and five state law claims for misappropriation of trade secrets, unfair competition, tortious interference with business relationships, conversion, and breach of fiduciary duty; granting in part, and denying in part, Plaintiff’s motion to dismiss certain of Defendants’ counterclaims and to strike certain of their defenses; denying Defendants’ cross-motion for judgment on pleadings; granting in part, and denying in part, Defendants’ motion for leave to file second amended answer and counterclaims.

Jurisdiction

Albany Int’l Corp. v. Yamauchi Corp., 13-CV-0257(DNH) (10/22/13) – action by manufacturer against competitor and

Continued on page 11

Redesigned Website and YouTube Page Will Offer New Ways to Look at OCBA

Jeffrey A. Unaitis, OCBA Executive Director

For those members who want an OCBA website offering more and better features, including the ability to register on-line for CLEs or any Bar Association event and activity, or a way for the general public to request the services of an attorney who participates in the Lawyer Referral Service – you don't have long to wait.

OCBA began a revision of its website over the summer, and enlisted the services of local web designer Brian Hoke of Bentley Hoke. The new website (pictured here) will offer a streamlined and organized approach to accessing OCBA content, including current and past issues of the Bar Reporter newsletter and other news items; links to useful reference sites; detailed CLE information including on-line registration and payment; and a summary of the expanding programs offered by the Volunteer Lawyers Project.

A dedicated Onondaga County Bar Foundation page features grant application forms and an ability to make on-line donations; a Lawyer Referral Service page for the general public

will allow them to complete a form to request the services of one of our LRS panelists; and among other highlights, the Oral History videos currently being produced by our Senior Lawyers Section will be available for streaming, and members can read the OCBA history and access other resources.

Members will receive an email when the new website launches inviting them to explore its features.

OCBA YouTube Page

Additionally, the Oral History videos mentioned above are also now available for viewing on OCBA's dedicated YouTube video page. The two completed videos highlighting the careers and achievements of the Hon. Stewart F. Hancock, Jr. and Karen DeCrow can be seen by visiting www.YouTube.com, and searching for "Onondaga County Bar Association" in the search field at the top of the home screen. Additional videos and content will be added to this YouTube page and linked to the new website as they become available.



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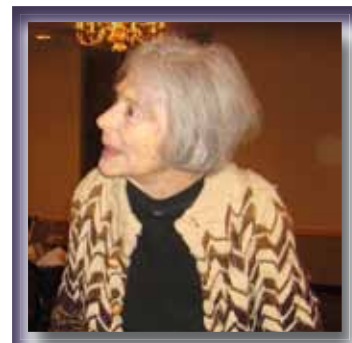


DeCrow Speaks at Induction Weekend at National Women's Hall of Fame

Karen DeCrow – who herself was inducted into the National Women's Hall of Fame in Seneca Falls, NY in 2009 – spoke at last month's Induction Weekend ceremony which added Nancy Pelosi, Kate Millett and Bunny Sandler to the 247 current honorees in the Hall of Fame.

DeCrow participated in a program, "Come Talk With Great Women," which attracted a crowd of 300 to hear DeCrow and others on the panel including Lilly Ledbetter.

DeCrow – the subject of the OCBA Senior Lawyers Section's most recent Oral History video (viewable on OCBA's YouTube page) – was published in last October's NYSBA Journal (October, 2012) with an article entitled "Trials in Opera: The Portrayal of Lawyers and the Legal Profession." That article was inspired by a program that U.S. Supreme Court Justice Ruth Bader Ginsburg gave at the Glimmerglass Festival in Cooperstown in August, 2012.



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Northern District Case Notes

... continued from page 8

its sales representative, alleging that Defendants violated its patents on various design aspects of shoe press belts used to remove excess water during paper manufacturing process, and seeking a declaration that competitor's patents on similar technology were invalid and unenforceable; granting Defendants' motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2); denying Defendants' motion to transfer venue pursuant to 28 U.S.C. § 1404(a); and denying Plaintiff's request for leave to conduct jurisdictional discovery.

Negligence

Jones v. Lynch Schwab, PLLC, 11-CV-0616(GLS) (9/30/13) – action for legal malpractice, arising from representation in underlying personal-injury action, alleging that lawyer failed to investigate conditions of site of slip-and-fall accident, failed to obtain witness statements, failed to obtain previous incident reports, and failed to obtain services of qualified expert to render opinion concerning the alleged condition which was the proximate cause of Plaintiff's injuries; granting Defendants' motion for summary judgment, because Plaintiff cannot prove that, but for Defendants' negligence, she would have prevailed in underlying personal injury action (in that she cannot establish that a dangerous condition caused her to fall).

OCBA Paralegals Committee

Contributors | Kathrine Cook and Karen Hawkins

October Paralegals Luncheon Meeting

During our luncheon meeting on October 10th, Tim Crisafulli, Esq. from Crisafulli Gorman, P.C., shared with the Paralegals Committee all aspects of Medicaid Planning. Tim was witty and charming and added humor to his financial calculations. The handout Tim provided was detailed and helpful in explaining the calculations. All who attended enjoyed his informative and humorous presentation



Tim Crisafulli, Esq.

November Paralegals Luncheon Meeting

Our next luncheon meeting will be Thursday, November 14, 2013, 12:00-1:00PM, at Spaghetti Warehouse, 689 North Clinton Street. Loren Cunningham from Vera House will be our guest speaker. She will present information on the valuable programs and services provided by Vera House and will advise how paralegals can participate in a volunteer capacity.

The cost for lunch is \$11 for members and \$12 for non-members. Invite your bosses, co-workers and friends to attend our luncheons! Our luncheons are not restricted to Paralegals. Reservation deadline is noon the day before the luncheon. Please RSVP by e-mailing or calling Jean Swanger at jswanger@gilbertilaw.com or 442-0174. E-mails are preferred. Please keep in mind that your reservation is binding unless you cancel on or before the reservation deadline.

We welcome donations of items from Vera House's baby items wish list (baby bottles; baby wipes; baby lotion/wash/shampoo; diaper rash cream; medicine spoons; infant/toddler utensils; infant/toddler plates and sippy cups). Please note: items must be new. Please bring them with you to the November luncheon and we will present them to our guest speaker, Loren Cunningham.

We will also have a collection basket available at the registration table during our November and December luncheons for cash donations to be used for purchasing items for our "adopted" family during the Holiday season. Thank you in advance for your support!

Save the Date!

Please join us for our annual Holiday luncheon on Thursday, December 12th where the program will be FUN! FUN! FUN! We'll enjoy good food and the camaraderie of our colleagues and some very lucky people will be the recipients of the many door prizes that will be available.

Executive Committee Meetings

The next Paralegals Executive Committee ("EC") meeting is scheduled for November 6th. The meetings are held the first Wednesday of each month except July and August beginning at noon at Gilberti Stinziano Heintz & Smith, P.C., 555 East Genesee Street, Syracuse, NY 13202 (parking is available in front of the building on East Genesee Street, at the rear of the building at 510 East Fayette Street, and the parking lot between the office and Hamilton

White House). EC Chair Kathrine Cook extends an invitation to paralegals who would like to find out more about serving on the Executive Committee. If you are interested in attending the EC meetings to share your ideas for upcoming programs and ways to better serve the paralegal members, please contact Kathrine Cook at kathrinecook0@gmail.com. The EC could really use your help!

Empire State Alliance of Paralegal Associations, Inc.

The next ESAPA meeting will be held March 22, 2014, in Rochester, NY. Place and time to be determined. If you are interested in being involved in this State wide organization, please contact kathrinecook0@gmail.com. Being involved in this State wide organization, please contact kathrinecook0@gmail.com.

Job Bank

Are you an employer with a job that needs to be filled? The Listserv can help! This service is free to employers and could help you fill your next position. Employers can email Paralegals Committee Chair, Kathrine Cook, at kathrinecook0@gmail.com to have their job provided to OCBA Paralegal members via the Listserv. The Listserv is open to all OCBA Paralegal members (including student members) as a benefit of paid OCBA membership. Members are added to the Listserv when membership dues are paid each year. Job openings are submitted to the Listserv and members receive notification via e-mail. Paralegals should contact Peggy Walker at the OCBA offices (471-2667) to confirm current membership or to join the OCBA. Peggy and Kathrine work together to ensure Paralegal members are added to the Listserv. Employers and/or Paralegals can email Kathrine should they have any questions.



OCBA Paralegals Committee 2013 Holiday Luncheon

Everyone is welcome to attend this special event!

Join us for our annual Holiday Luncheon at the Spaghetti Warehouse on Thursday, December 12th, 12:00 – 2:00 p.m. Spaghetti Warehouse is located at 689 North Clinton Street, Syracuse. The cost of the luncheon is \$20 per person. As in the past, we have adopted a P.E.A.C.E. family and will be collecting donations for them*. We will also have several door prizes and lots of fun, fun, fun! Our special Holiday menu:

Spaghetti & Meatballs
15 Layer Lasagna
Four Cheese Manicotti
Fettuccini Alfredo
Pesto Spaghetti Basilica
Grilled Chicken Caesar Salad
Sourdough Bread
Dessert

*If you or your organization would like to donate money or gift items for our adopted P.E.A.C.E. family, please contact Kathrine at kathrinecook0@gmail.com or Karen at khawkins@gilbertilaw.com.



Lowé Honored by NYSBA for Support of Access to Justice and Pro Bono

George H. Lowe, Retired U.S. Magistrate Judge, was honored by the New York State Bar Association on October 18th in a ceremony recognizing judges who support access to justice initiatives and pro bono. At the ceremony, Judge Lowe received special recognition from the Honorable Jonathan Lippman, Chief Judge of the New York State Courts, for his service on the Chief Judge's Task Force to Expand Access to Civil Legal Services.

Judge Lowe has been an exemplary leader of the legal community throughout his career, having served as President of the Onondaga County Bar Association, Chair of the Fifth Judicial District's Committee on Character and Fitness, an Officer and Director of Legal Services of Central New York, a Director of the Onondaga County Bar Foundation, former Chair of the Onondaga County Bar Association's Pro Bono Practices Committee, an Officer and Trustee of the Federal Court Bar Association for the Northern District, a founding member of the State Bar Association's Senior Lawyers Section, and the NYSBA's President's Committee on Access to Justice, which he has co-chaired since 2007.

On a local level, Judge Lowe is a founding Director of the Volunteer Lawyers Project of Onondaga County, Inc., the new legal entity for the pro bono arm of the Onondaga County Bar Association, where he serves on the Executive Committee and is chair of the Development Committee.

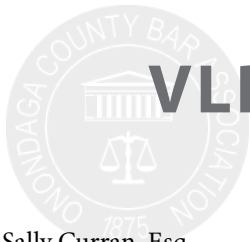
We are proud of Judge Lowe's many accomplishments and join in saluting him for his ongoing commitment to access to justice initiatives and pro bono.



Joining George Lowe for his award presentation (from l. to r.) Mark Houston, a law student; George Lowe; Hon. Victoria Graffeo, Senior Associate Judge of the Court of Appeals; and NYSBA President-Elect David Miranda.

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NOTICES OF CLAIM AND STATUTE OF LIMITATIONS			
Entity	Notice of Claim	Personal Injury	Wrongful Death
City with population less than 1 million people	90 days – GML 50-e	1 year and 90 days from date of event – GML 50-i	2 years – EPTL 5-4.1
County	90 days – County Law 52; GML 50-e	1 year and 90 days – County Law 51; GML 50-i	2 years – County Law 52; GML 50-i
SIDNEY P. COMINSKY TRIAL LAWYERS Syracuse, New York Telephone: (315) 475-3425 Fax: (315) 475-2932 Email: cominskypc@aol.com			
New York State Dormitory Authority	90 days – P.A.L. 1691; GML 50-e	1 year and 90 days – P.A.L. 1691(1)	2 years – P.A.L. 1691, 2981
State of New York and New York State Thruway Authority	All Ct. Claims – 90 days to file notice of intention to make claim – Ct. Claims 10. P.A.L. 361(b)	90 days, if notice of intention to make a claim is served w/in 90 days, a claim must be served within 2 years – Ct. Claims 10	90 days, if notice of intention to make a claim is served w/i 90 days, a claim must be served within 2 years after date of death – Ct. Claims 10
Onondaga County Water Authority	90 days – GML 50-e; P.A.L. 1169(1)	1 year and 90 days – GML50-i	2 years – P.A.L. 2981
General Personal Injury Action		3 Years – CPLR 214(5)	2 Years – EPTL 5-4.1(1)
Personal Injury Action for Medical, Dental or Podiatric Malpractice		Within 2 ½ years of the act, omission or failure complained of, or last treatment where there is continuous treatment for the same illness, injury or condition. Foreign object in the body, one year of the date of discovery – CPLR 214-a.	2 years – EPTL 5-4.1(1)
Certain Other Actions		3 years from discovery of the injuries caused by exposure – CPLR 214-c	2 years – CPLR 214-d; EPTL 5-4.1(1)
Actions for Malpractice Other Than Medical, Dental or Podiatric		3 years – CPLR 214(6). The legal malpractice statute runs from when the mistake is made, not when it is discovered, but may be extended by continuous representation.	2 years – CPTL 5-4.1(1)



VLP FAMILY LAW TRAINING PAYS OFF WITH EARLY PROGRAM SUCCESS

Sally Curran, Esq.
VLP Legal Director

The new VLP Family Court Clinic, which began on October 9th, is off to an incredibly strong start. In the first 4 weeks, 18 low-income clients with family court matters were assisted by four volunteer attorneys and three law students intake assistants with two attorneys serving as mentors. The client numbers in these first weeks demonstrate the great need for this clinic, and with 44 attorneys and 9 law students having signed up to volunteer, we look forward to expanding the hours of the program soon.


The clinic, which is open from 12 p.m. to 3 p.m. on Wednesdays, is housed in Room 116 of the Onondaga County Courthouse. At the clinic, a trained volunteer lawyer help clients prepare petitions and motions in custody and child support matters. The volunteer lawyers do not represent those who use the clinic in court. There is no charge for the services provided at the clinic. No appointment is necessary to use the clinic and clients are seen on a drop-in basis.


TO VOLUNTEER PLEASE CALL | 315.579.2576



NYS Unified Court System
Fifth Judicial District
 &
Onondaga County
National Adoption Day
Celebration

The Oncenter, Onondaga County
 800 South State Street
 Friday, November 22, 2013
 Doors Open 8:30 A.M.
 Ceremony to begin 9:30 A.M.
OPEN TO THE PUBLIC






Is someone on your case?

If you're trying to balance work and family, the New York State Bar Association's Lawyer Assistance Program can help. We understand the competition, constant stress and high expectations you face as a lawyer. Dealing with these demands and other issues can be overwhelming, which can lead to substance abuse and depression. NYSBA's Lawyer Assistance Program offers free, confidential support because sometimes the most difficult trials lie outside the court. All LAP services are confidential and protected under Section 499 of the Judiciary Law.



NEW YORK STATE BAR ASSOCIATION
 Lawyer Assistance Program
 1.800.255.0569 lap@nysba.org

LEGAL BRIEFS

Real Property Law Section

The Residential Contract Committee of the Real Property Law Section is requesting comments in connection with proposed revisions to the residential contract of sale. Anyone who has comments or suggestions to improve the form of the contract, or to address an issue or concern through the residential contract form, is urged to contact a subcommittee member with their comment or suggestion. Hugh Gregg, gregg_law_cny@yahoo.com; Gil Hoffman, ghoffman@bhlawpllc.com; Mike Hrab, mike.hrab@ctt.com; Dick Sargent, rhsargent@1888law4life.com; and Barb Walzer, bwalzer.law@gmail.com.

Menter, Rudin & Trivelpiece, P.C.

... is pleased to announce that Jane G. Kuppermann has joined the firm's Litigation and Personal Injury practice Groups. Ms. Kuppermann represents injured clients in litigation, arbitration and mediation in State and Federal Court and also handles Social Security Disability appeals for claimants. She is a graduate of SU College of law and has over twenty years' experience representing individuals, corporations and insurance companies in civil litigation matters.

Seeking Will

This is a request for information about a last will and testament for **Charles Gregory Forbes**, a former client of attorney John Yuhas. We are trying to ascertain where the files for any wills from Mr. Yuhas' office have gone to. If you have any information about this please contact his brother, **Vincent Forbes 361.853.4063**.



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In Memoriam

John S. Kenny
October 9, 2013

Please advise OCBA of any attorneys we may have missed



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·Radiological Reviews

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with extensive litigation experience available for independent contracting assignments in state/federal court matters (e.g., draft/critique/revise pleadings, motion papers, discovery requests; appeals; Workers' Compensation depositions). Please contact Nancy at (315)-656-2341 or email Fedclerk375@aol.com.

Part Time Front Desk Help
Small law firm in Cicero New York looking for front desk person for part time employment. Duties would include answering phones, scheduling appointments, drafting letters, and other office duties. Approximately 15 to 20 hours to begin but possible additional hours depending on office need. Please fax resume to 315-698-8829. Please include pay requirements & any other relevant information.

Onondaga County Judicial Election Results

NEW YORK STATE SUPREME COURT

BALLOTS: 72,839
 John V Centra (REP, CON, IND) 51,744 ✓
 Anthony J Paris (REP, CON, IND) 51,024 ✓

SYRACUSE CITY COURT

BALLOTS: 16,288
 Mary Anne Doherty (DEM, WOR) 10,425 ✓
 Romana A Lavalas (REP, CON, IND) 4,671

TOWN JUSTICE CAMILLUS

BALLOTS: 5,281
 Stephen L Poli (REP, CON, IND) 4,345 ✓

TOWN JUSTICE DEWITT

BALLOTS: 5,533
 Robert L Jokl Jr (REP, CON, IND) 3,833 ✓

TOWN JUSTICE FABIUS

BALLOTS: 508
 Denise L Johnson (REP, CON, IND) 412 ✓

TOWN JUSTICE GEDDES

BALLOTS: 3,715
 David L Reed (DEM) 863
 David J Magnarelli (DEM) 1,376
 Daniel F Mathews III (REP, CON, IND) 2,481 ✓
 John D Kinsella (REP, CON, IND) 2,208 ✓

TOWN JUSTICE LAFAYETTE

BALLOTS: 958
 Adrian W Shute (REP, CON) 770 ✓

TOWN JUSTICE LYSANDER

BALLOTS: 3,241
 Michael M Bryant (REP, CON, IND) 2,600 ✓

TOWN JUSTICE MANLIUS

BALLOTS: 5,773
 Robert P O'Leary (REP, CON, IND) 4,492 ✓

TOWN JUSTICE ONONDAGA

BALLOTS: 4,068
 J Craig Kerr (REP, CON, IND) 3,227 ✓

TOWN JUSTICE SALINA

BALLOTS: 5,615
 Aaron F Arnold (DEM, WOR) 2,248
 Andrew N Piraino (REP, CON, IND) 3,203 ✓

TOWN JUSTICE TULLY

BALLOTS: 607
 Gary R Malone (REP, CON, IND) 502 ✓

TOWN JUSTICE VAN BUREN

BALLOTS: 1,860
 Edward G Van Der Water (REP, CON, IND) 1,533 ✓

Board of Elections results as of November 7, 2013

FROM THE EDITORIAL BOARD

To advertise in the Bar Reporter, call the Onondaga County Bar Association at 315.471.2667 or check our website at www.onbar.org.

Letters to the Editor: The Editorial Board accepts letters or comments for publication concerning issues presented in each edition or other issues related to the legal community. Submissions should be limited to a few paragraphs and mailed to OCBA, Attention Bar Reporter. or Email info1@onbar.org.

John A. Cirando, Editor Emeritus

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OCBA HOSTS EXTREMELY WELL RECEIVED CLE ON SUCCESSFUL STRATEGIES FOR WINNING COMMERCIAL CASES

John G. Powers, Esq., *Hancock Estabrook*

The Bar Association hosted a continuing legal education (CLE) program on October 10th titled "Advice From the Experts: Successful Strategies for Winning Commercial Cases in New York Courts" at the SUNY Oswego Metro Center located at the Atrium in Downtown Syracuse. The program was moderated by Robert L. Haig, Esq., editor of the well-known six-volume treatise titled Commercial Litigation in New York State Courts. The program audience was also honored to hear from two distinguished judicial panelists, Presiding Justice Henry J. Scudder of the Fourth Department of the New York State Appellate Division and Justice Deborah H. Karalunas of the Supreme Court Commercial Division, Onondaga County.

The CLE consisted of a moderator-led, interactive series of panel discussions concerning key practice issues that can occur throughout the course of commercial litigation, including case assessment, pleadings, discovery and depositions, motions, settlement negotiations, jury selection, trial and appeal. The program progressed sequentially through these issues, with multiple panels of experienced local commercial litigators providing tips and "best practices" on a variety of commonly reoccurring issues. The



John Powers

audience also benefited from the participation of several in-house counsel from major corporations on the panels, who provided the client's perspective on many of the issues being discussed.

The program was extremely well-attended and, based on the feedback provided by the audience, fully accomplished its goal of providing insightful and practical advice to practitioners regarding all phases of a typical commercial litigation. Attendees' comments included: "Best program I've been to yet"; "Very good format & wonderful panelists"; and "[the program] was "excellent for material & duration." The program chairs were George H. Lowe of Bond Schoeneck & King PLLC, John L. Murad, Jr. of Hancock Estabrook, LLP and Robert L. Haig of Kelley Drye & Warren LLP. The Bar Association also hosted an informal reception immediately following the program to honor Justice Scudder.

John Powers coordinates the Veterans' Clinic for the Volunteer Lawyers Project.

UPCOMING CONTINUING LEGAL EDUCATION

MICHAEL E. O'CONNOR, ESQ.

WILLS & ESTATE PLANNING | 12:00 - 2:00 p.m.

MCLE 0.5 Ethics | 0.5 Skills | 1.0 Professional Practice

Wednesday | November 20th | Druce Education Center | Member \$40 | Paralegal \$30 | Agency, Lifetime \$0 | Non-Member \$60

JEFFREY CARUCCI, Statewide Coordinator For Electronic Filing

It is anticipated that Hon. A. Gail Prudenti, Chief Administrative Judge, will soon be signing an order authorizing mandatory e-filing for all types of cases except CPLR Article 70 proceedings (habeas corpus), CPLR Article 78 proceedings, Election Law proceedings, foreclosure actions, matrimonial actions, Mental Hygiene Law matters, and proceedings under RPTL Section 730 (Small Claims Assessment Review).

NYSEF E-FILING | 12:00 - 2:00 p.m. | Room 400 | Onondaga County Courthouse

401 Montgomery Street | MCLE 2.0 Professional Practice

Thursday | December 5th | No Fee Required | Pre-Registration is Necessary Due to Space Limits

Attendee(s) _____ Phone _____

Firm _____ Email _____

Seminar _____ Fee _____ Seminar _____ Fee _____

Address _____

Check Enclosed Will bring Check to CLE CC Card# _____ Exp. _____

ONONDAGA COUNTY BAR ASSOCIATION | 1000 State Tower Building | 109 S. Warren St. Syracuse, NY 13202-1860 | Attention: Chele Stirpe

Phone: 315.579.2578 | **Email:** cstirpe@onbar.org | **Fax:** 315.471-0705 | visit us on the web at www.onbar.org

