ONONDAGA COUNTY BAR ASSOCIATION
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OCBA Remembers 2008 Distinguished Lawyer & Women's Rights Champion Karen DeCrow


2006 | Women's Bar Picnic

2009 | National Women's Hall of Fame


2009 | Four of the "Onondaga Five"

Remarks from Hon. Deborah Karalunas | 2008 Annual Dinner

In her own words, Karen's ultimate vision was "a world where the gender of a baby will have little or no relevance to future pursuits or pleasures." Karen was born in 1937 in Chicago, Illinois. She attended Chicago's public schools and graduated from Northwestern University's Medill School of Journalism. After graduating from Medill, Karen began her literary career as a fashion and resort editor for Golf Digest. For the next decade, Karen worked as a writer and editor and became active in the women's movement. In 1969, Karen returned to school, enrolling in Syracuse University College of Law. That same year, Karen ran as the first female candidate for Mayor of the City of Syracuse. In 1972, Karen graduated from the College of Law, the only female to graduate with her class.

Karen has devoted her adult life to promoting gender equality and protecting civil liberties. In the 1960s Karen became active in the National Organization for Women (NOW). She served as President of its Syracuse Chapter and in 1974 Karen won a hotly contested election to become National president of NOW. Under Karen's leadership, women gained equal access to all male Ivy league schools, NASA, the United States military academies and various public accommodations (including NYC's famous McSorley's bar). Also, through Karen's efforts, the EEOC expanded its investigations to include sex discrimination, legislation was passed to prohibit pregnancy discrimination and to mandate parental leave, and the three major television networks included women and minorities in front of and behind cameras. When Barbara Walters was hired as an anchor by ABC, she sent Karen a thank you letter. Drawing from her journalism background, Karen also worked with traditional women's magazines to encourage them to show women in more enlightened roles and to inspire women to have and value careers. Through litigation, Karen promoted gender equality by securing diaper changing facilities at airports for men, developing non-sexist curricula in schools, and securing the right of females to participate on an equal basis in school and club athletics.

Karen has also had the pleasure of meeting the first US female astronaut and the first Russian female cosmonaut, and she was a guest at the White House of Presidents Ford, Carter and Clinton.

Karen has lectured extensively on a variety of topics including gender equality, feminism, civil rights and father's rights. Her lectures have taken her to places as distant as Finland, Moscow, Greece and Japan. In Moscow, Karen spoke on "Feminism Around the World." She picked that topic after being placed on house arrest at her Moscow hotel because she refused to modify her intended speech to include praise of the Soviet Union's treatment of women. Never sedentary, while in Greece to give a speech entitled "Women's Liberation Means Mens," Karen took time to help organize a group of female midwives who were paid substantially less than their male counterparts.

Karen also has written extensively. Her articles have been published

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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 2014 EVENTS:

Young & Trial Lawyers Reception	Thursday | July 17
Annual Dan Mathews Golf Tournement	Thursday | August 14
Annual 50 Year Luncheon	Thursday | September 11

From the President: A Midterm Report

When I took office in January, I had hoped in some small and meaningful way to continue on with and complement all of the fine work of my predecessors. With those as my baseline goals, I wanted to help the bar become more "user friendly," create a greater sense of inclusion for all members of our local practice, and create more avenues for members and new members to participate in the OCBA.

At the mid-term of 2014, I believe the OCBA has made great strides toward achieving those goals.

I begin this "mid-term report" by first commending the OCBA Board of Directors and the OCBA staff, including OCBA Executive Director Jeff Unaitis, for their exceptional work. I have found our current board to be highly engaged, professional, dedicated and forward thinking. Jeff and the OCBA staff are energetic, hardworking and imaginative. These qualities have made my job as OCBA President for the first six months much easier.

In February, the OCBA created a Young Lawyer's Section and a Trial Lawyer's Section.

In April, the Young Lawyer's Section, along with the CNY Women's Bar Association, hosted a reception at the Bull & Bear Pub in Hanover Square. The reception was attended by over 60 people. As a result of that reception, the Young Lawyer's Section, co-chaired by Eamon Kelleher from Hon. Albert Stirpe's Office, and Michelle Billington from Bond, Schoeneck & King, held its first organizational meeting in June. At their second meeting, which I attended on June 26, they had already established an organizational structure, and were in the process of creating subcommittees which will be charged with the responsibilities of organizing social and professional events.

On July 17, the Trial Lawyer's Section, co-chaired by Aaron Ryder from Bottar Leone, and Maureen Maney from Hancock Estabrook, will be hosting their inaugural reception at Benjamin's on Franklin in Armory Square from 5:00 – 7:00 p.m. All are welcome and there is no cost. Most importantly, there will be no speeches. A special thank you goes to OCBA Board member Hon. James Murphy for organizing this event.

I will be asking both of these sections to use their events and resources as a means to welcome law students, particularly those who attend Syracuse University College of Law, to the OCBA, given that the OCBA has also recently created a new Law School Section.

If you have not yet visited the new OCBA website, please go to www.onbar.org. Thanks to OCBA board member John McCann, Jeff Unaitis and OCBA staff member Chele Stirpe, the web site is much more "user friendly," much more colorful and artistic, and contains much more information than the former site. I also note that you can now renew your OCBA membership and pay your OCBA dues through this site as well.

On July 2, the OCBA's Diversity and Inclusion Task Force will hold its first meeting. I have invited a number of individuals to serve on this task force with the goal of establishing the framework for a Diversity and Inclusion Committee within the OCBA. It will be our goal to present a proposal for the creation of an OCBA Diversity and Inclusion Committee to the Board of Directors at its September meeting. I will keep you updated on our progress.

In April, the OCBA created an Ad Hoc Committee to address the recent amendments to Part 118 of the Rules of the Chief Administrative Judge requiring attorneys to report their voluntary pro bono service as well as voluntary financial contributions to organizations providing civil legal services. This hard working committee drafted a letter to NYSBA President David Schraver, representing the consensus of the OCBA membership in opposing the reporting mandates. Our letter was made part of the documentation provided to members of the NYSBA House of Delegates at its June meeting in Cooperstown. The statewide debate continues. I will keep you updated on this issue as well.

Lastly, Law Day continues to get bigger and better. Thanks to Anne Dotzler and her Law Day Committee, Law "Day" has now become an "event" in Onondaga County. Law Day now includes the High School Mock Trial Competition, Career Day, and a live high school debate, in addition to the tours of the Criminal Courts Building, County Courthouse and Federal Courthouse, the morning awards ceremony and noon time luncheon.

So far, so good. I welcome your input, your thoughts and your suggestions. I truly want the OCBA to be an organization of inclusion. If there is something that you would like to see the OCBA doing that we are not, please let me know.

Thank you for being a part of the OCBA. Thank you for your continued support of the OCBA. Thank you for what you do for our profession.

Nicholas J. DeMartino | OCBA *President*

PROPER CASE MANAGEMENT PRACTICES IN TOWN AND VILLAGE COURTS

Hon. James P. Murphy | Fifth District Coordinating Judge | Town and Village Courts

As Supervising Judge of the Town and Village Courts in Onondaga County, I recently had the opportunity to meet and discuss with the District Attorney's Office proper case management practices that balance the prosecutorial obligation of the District Attorney with the ethical obligations of the individual Town and Village Judges.

Below is a recent Memo that I sent to all Town and Village Judges within Onondaga County, the District Attorney and the Assigned Counsel Program that details the permissible options and suggested best practices for the individual Judges to follow. I hope this is helpful.

M E M O R A N D U M

TO: Town and Village Court Justices, Onondaga County

DATE: June 24, 2014

RE: Meeting with the Onondaga County District Attorney's Office

We recently had a meeting with representatives of the Onondaga County District Attorney's office seeking our guidance on case management in some justice court operations. As you know, the District Attorney staff expends considerable resources and effort in an attempt to fulfill their constitutional obligation to prosecute criminal actions. Obviously, they cannot do so unless they are aware that a criminal action has been commenced. Interestingly, the advances of technology have not necessarily helped assure they get prompt notice of the commencement of an action because the nineteen or so police agencies servicing our communities have different hardware and software capabilities and compatibilities. In order to be sure the District Attorney's Office knows of the commencement of each criminal action or offense, they are intending to ask for confirming information from the individual courts that they will then compare to the police agencies filing so as to be sure not to miss anything. The specific information to be requested is essentially a calendar/report that shows the name of the case/defendant, the DR Number assigned to the case, the date of arrest and the charges pending. Aware of the sensitive ethical issues surrounding any non-statutory request for information to an individual court, the District Attorney sought our input.

As you all know, in recognition of the public's fundamental right to know, Section 255-b of the New York Judiciary Law mandates that "[a] docket-book, kept by a clerk of a court, must be kept open, during the business hours fixed by law, for search and examination by any person." That same rationale is reflected in Uniform Justice Court Act Section 2019-a which directs that "[t]he records and dockets of the court except as otherwise provided by law shall be at reasonable times open for inspection to the public...." Consequently, it is clear that the District Attorney could send a representative to the court and obtain the information requested by inspecting the Court's docket. In order to conserve their staff hours and the very precious time of your clerks in accommodating such an inspection, they have asked us to explore any other available alternatives that would constitute a better use of taxpayer dollars.

We have reviewed the existing Judicial Ethics Opinions for guidance and assistance and, fortunately, this issue has been fully and recently addressed. There are a number of opinions that reinforce the fundamental principle that any sharing of information cannot benefit only the District Attorney as it could compromise the essential independence of the Judiciary, erode the public's confidence in the court's integrity

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Remembering Karen DeCrow

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in various newspapers and magazines including the NY Times, the LA Times, the Washington Post, USA Today, the National Law Journal, the Chicago Sun-Times, Penthouse, Vogue, the New Times and the Syracuse Post Standard. In addition, Karen has written or co-written several books including: The Young Woman's Guide to Liberation and Sexist Justice.

Karen received many awards including the Ralph Kharas Award for Distinguished Service in Civil Liberties, Governor Pataki's New York State Woman of Achievement Award, and Northwestern University's Service to Society Award, to name a few.

Relevant to all of us here tonight, in the late 1970s Karen sent a memorandum to "women lawyers and legal workers" inviting them to a reception stating: "[w]hat better way to start the summer than for all of us to talk eat chicken salad, plot and who knows what." From that meeting, "the who knows what" was the birth of the Onondaga Five. It is the Onondaga Five which challenged the Onondaga County Bar Association's practice of holding its Board and committee meetings at the then exclusionary University Club. That same year, the Onondaga Five put together a slate of women to run for the OCBA Board of Directors which then boasted all men. Turnout for the election was standing room only. Although the women were unsuccessful that year, the following year a few women were included on the slate. A few years later, M. Catherine Richardson became the first female president of OCBA. Karen herself has served as a director of the OCBA, and as a director, officer or committee chair of many other bar associations and organizations including the CNYWBA, the NYSBA, WBASNY and the ACLU.

On March 17, 2000, the Syracuse Post Standard quoted Karen as saying, "I take utter joy in using the laws in the year 2000 that I helped get drafted 25 years ago." Wherever we look we see Karen's accomplishments: we need only open the newspaper, turn on the television, peruse a magazine, survey our places of employment, walk through classrooms and on the athletic fields, or look into space. Ms. DeCrow's accomplishments surround us. Dr. Robert Seidenberg said it best: "Feminism is one of the great contributions Ms. DeCrow has given to the world." And the good news, Karen promises that she is not yet "hanging up her combat boots."

In closing, through all the good work Karen has done to promote gender equality, she has remained a warm, kind, caring and compassionate individual. She always findS time to be a good friend.

Hon. Karen Uplinger | Memories of Karen

The first memories I have of really getting to know Karen began at the founding of the Women's Bar Association. Of course, I knew who she was previously, but I didn't know her. We had brown bag lunch meetings at the old community room of the Marine Midland Bank Building. My first impression was that she was different from what I expected. Knowing Karen was to know that she was gracious & welcoming to all whom she encountered - whether it was the attorney on the opposite side of the case or someone she had just met. Originally the idea was to form a women in law group to include paralegals, not a bar association. That of course changed when Karen met Joan Ellenbogan from the New York City Women's Bar. We then met at the Genesee Inn to form our association and elect officers. Karen was the most nurturing person. She declined to be elected president of what became the CNYWBA and did not hold that office until a number of years later. Instead, with Karen's encouragement, Bea Krupkin was elected president and I was elected vice president.

At that time, the road was not easy for women attorneys who had been admitted in the mid seventies and were anxious to contribute to the profession and to advance in the practice of law. In Syracuse, there was only one midsized firm with a woman partner, none in the larger firms, and very few women in the ranks of associates. The Onondaga County Bar Association was the same. No women on the board, and few on committees. Many meetings were held at the University Club, and sometimes in rooms where women were prohibited. Bonnie Levy tried to attend one such meeting in the mens card room and was promptly kicked out of the club. The men on the committee did nothing to support her and continued their meeting. That was the catalyst for the formation of "The Onondaga Five". Minna Buck, not yet a judge, Lois Kriesberg, Christine Scofield and I met with Karen at her home on a Saturday morning to strategize on how to address these issues. Karen led us to the decision to run a slate of officers and candidates for the Bar Board that fall. Through her organizing we got petitions signed to run against the slate. We also insisted on attending Bar Board meetings during the fall as observers. When the Bar got wind of what we were doing they put Beverly Michaels on their slate. I have never seen so many people at a Bar association meeting for the election of officers. We did not win. However Beverly was elected. In January I was appointed to fill a vacancy on the Board, and the spell was broken. This led to women on the judiciary committee which screened for judges. Karen later served on the OCBA Board

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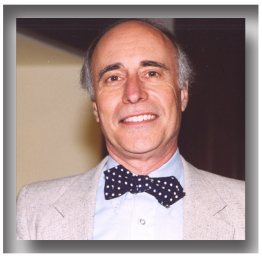
I'm Not Getting Paid, What Can I Do?

Anthony J. Gigliotti, Esq. | Principal Counsel | Fifth Judicial District Attorney Grievance Committee



Lawyers periodically face a common dilemma which is as old as the profession: not getting paid. Unfortunately, concerns about non-payment sometimes evoke reactions inconsistent with the lawyer's ethical responsibilities. The most common responses to non-payment of fees is work stoppage, followed by termination of the lawyer-client relationship and subsequent collection efforts. Compliance with the following ethical requirements imposed by the Rules of Professional Conduct may reduce the instances of non-payment and will avoid the additional inconvenience of a grievance investigation.

Take the case of the retained client in a domestic relations case[1] who fails to pay or to replenish a retainer. Rule 1.5(d)(5)(ii) prohibits an arrangement for, charging, or collecting any fee without a fully executed retainer agreement. Attorneys have been denied fees by courts which view the execution of retainer agreements as a condition precedent to an attorney's right to collect fees for work performed. Hunt v. Hunt, 273 AD 2d 875 (4'th Department, 2000)

The Court rule, found at 22 N.Y.C.R.R. § 1400.3, sets forth a list of provisions which must be included in all such domestic relations retainer agreements. One such requirement is the lawyer's agreement to issue itemized billing statements to the client at least every 60 days. Periodic billing is a good practice for all types of engagements. Routine billing informs the client of the work, or lack thereof, performed by the lawyer. Such notifications may also satisfy the requirement of Rule 1.4(a)(3) that the client be kept reasonably informed about the status of the legal matter. Periodic billing will also identify non-payment problems before too many uncompensated legal service hours are expended.

Rule 1.5(b) requires the lawyer to communicate to all clients the scope of the representation and the basis or rate of fee and expenses for which the client will be responsible. Such terms must be in writing where required by statute or court rule. Therefore, contingency fee matters, and all other engagements requiring payment of fees of $3,000 or more require such written confirmation of the foregoing terms of employment. Given the evolution of fee cases involving domestic relations matters, it is highly likely that we will begin to see decisions by judges and arbitrators denying fees to lawyers who fail to memorialize such fee engagements in writing.

As a reaction to unpaid legal fees, work stoppage alone may violate Rule 1.3(a). As long as a lawyer client relationship continues, the lawyer must act with reasonable diligence and promptness in representing the client. The Rule does not condition a lawyer's ethical obligations to a client on the receipt of compensation. However, a lawyer who is unwilling or unable to proceed without adequate compensation may usually withdraw from representing the non-paying client. Rule 1.16 sets forth the lawyer's obligation in terminating employment. In all cases, withdrawal must be accomplished without "material adverse effect." The procedural status of the legal matter is one of the key factors to be considered in avoiding "material adverse effect."

Termination of legal employment before any litigation is commenced, or in a non-litigated matter, may normally be accomplished with written notice, or other means provided for in a retainer agreement.

Withdrawal from a matter in litigation may be accomplished by filing a fully executed substitution of counsel notice with the court. In the absence of substitute counsel, an attorney of record must normally seek leave of the court to withdraw, on notice to the client. In such instances a lawyer must not withdraw from employment before such permission is secured. See: Rule 1.16(d)

Courts may not grant an attorney's request for leave to withdraw, especially in the later stages of the case. By the time a judge has ordered that a judgment be entered, it is too late to stop working on the non-paying client's behalf. It has been held by the Appellate Division, Fourth Department, that as an officer of the court, a lawyer must perform the ministerial duty of judgement preparation and entry when so ordered. Matter of Kennedy v. Macaluso, 86 A.D.2d 775, 448 N.Y.S.2d 276 (4th Dept. 1982), aff'd, 56 N.Y.2d 630, 450 N.Y.S.2d 479 (1982); NYSBA Ethics Op. 212 (1971).

Even when withdrawal is otherwise permitted or required, upon termination of representation, a lawyer must take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client, including giving reasonable notice to the client, allowing time for employment of other counsel, and delivering to the client all papers and property to which the client is entitled. Assuming that non-payment of earned fees is the basis for withdrawal the lawyer may assert a retaining lien on the client's file and other client property in the lawyer's possession. See: Rule 1.16(e).

Lawyers assigned to represent clients in Criminal or Family Court also encounter non-payment problems. Assigned lawyers may be compelled to expend hours meeting their ethical obligations which go uncompensated by program administrators looking to save costs. The realities of delayed voucher processing and compensation shortfalls should be seriously considered before a lawyer joins an assigned counsel panel. As in retained cases, the failure to be compensated for all work performed does not

[1] Domestic Relations matters include every kind of claim, action, or proceeding, or preliminary to the filing of a claim, action or proceeding for divorce, separation, annulment, custody, visitation, maintenance, child support, or alimony in Supreme Court or Family Court or any court of appellate jurisdiction. 22 NYCRR §1400.1.

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Onondaga County Bar Foundation
ANNUAL 50-YEAR LUNCHEON

Save the Date

September 11 | Drumlins Country Club

This year's honorees include: Robert F. Baldwin Jr., William L. Bergan, Rosemary E. Bucci, Jon K. Holcombe, Robert G. Liegel, Hon. Frederick J. Scullin Jr., Lawrence J. Young, and Howard J. Woronov.

If you know of anyone else who should be honored for reaching the 50-year mark, please contact: Peggy Walker at (315) 579-2582

Case Management Practices in Town and Village Courts

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and impartiality and create an unacceptable appearance of impropriety. See Opinions 09-94; 07-115; and 09-38.

Joint Opinion 07-185, 08-68, 08-77 is instructive and compelling on the issues presented in the District Attorney's request. The Committee, recognizing the open-docket requirements of Uniform Justice Court Act Section 2019-a, determined "that visiting a courthouse and searching a court's records should [not] be the only means by which to obtain information about the court's business." The Committee properly reiterated that no court should prepare, maintain, and/or produce any information solely for the benefit of anyone: not the police, the District Attorney, an individual, a litigant or the media. However, importantly, the Committee went on to say:

> "that **does not** preclude a judge from sharing - with members of the public, the press, and the parties who appear in the court - information that the judge compiles for his/her own use and to facilitate court operations. In fact, **to do so may be the best use of the limited resources available to justice courts.** Otherwise, much or most of a court clerk's time, or the time of a judge who serves in those courts without a court clerk, could be taken up with facilitating access to court records." (Emphasis added.)

The final decision of the Committee in Joint Opinion 07-185, 08-68, 08-77 was that a town justice

> "**may share copies of a posted calendar of scheduled cases and posted or otherwise publically available documents** addressing case dispositions (subject to all applicable statutory provisions concerning confidential information or sealed records), as requested by the District Attorney, the Public Defender, the media, other interested persons, and members of the general public. Such calendars should not, however, include any defendants' addresses or dates of birth (citation omitted)." (Emphasis added.)

Nothing requires the court to distribute any such calendar or other publicly available documents. *See also* Opinion 09-94.

Now, six years later, with standard case management software, the information is available with the stroke of a key. In fact, the case management software has been created and formatted to allow for such calendars or reports to be easily generated for the individual judge so as to assist in fulfilling his or her obligation to dispose of all judicial matters promptly, efficiently and fairly (see 22 NYCRR 100.3[B][7]. It seems obvious that best case management practices necessarily require a court to know what cases have been commenced before it in the preceding 30 or 60 days, let alone know of all cases pending before it at any particular time. We have confirmed with Terry Wolfe at SEI that such a document/report is readily available and we have attached instructions as to accessing such a calendar through SEI.

It is our understanding that the Assistant District Attorney assigned to your court will periodically make a specific request to you for the calendar/information they believe is necessary for their calendar control. It will be up to each of you to decide how you wish to proceed, given the clear statutory requirements of UJCA Section 2019-a. It is important to remember that any information you make available to the District Attorney should be made available to any other requesting person, party, attorney or entity. You should post such a calendar in a public area in your court. We intend to publicize the contents of this letter with the Assigned Counsel Program and the Onondaga County Bar Association so that everyone understands the ethical issues and limitations involved. We believe that access to this type of information enhances the transparency of the courts and thus the public's understanding of the judicial system and is important in maintaining the public's confidence in the justice system.

In conjunction with this effort, we suggest that you review your records for cases that have been pending in your court for more than six months. If you find older cases that are not currently scheduled for disposition or other proceedings, you should take action. You may find it appropriate to calendar those cases for an appearance by defense counsel and the defendant at a time when the Assistant District Attorney assigned to your court is scheduled to be present.

Please feel free to call me (560-3549) or Judge Gideon (251-

12th Annual Elder Law Fair Great Success

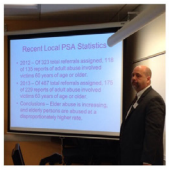
The 2014 Elder Law Fair, which was held on May 22nd at Onondaga Community College in the new Academic II building, was a huge success with over 300 attendees and presenters attending. Twenty-four seminars on legal issues of interest to older adults and their families were presented. The event was kicked off with a keynote speech by Dr. Eric Kingson, a professor of the School of Social Work at Syracuse University David B. Falk College, who discussed the historical significance of how social security has worked for all generations. The Volunteer Lawyers Project of Onondaga County sponsored a pro-bono Talk To A Lawyer Clinic throughout the day, during which fifteen volunteer attorneys provided free consultations to 33 clients.

This year's Elder Law Fair focused on the legal issues surrounding important life issues such as: the Affordable Care Act, women's retirement reality, estate planning, long-term care payment

options, under 65 health care issues, catastrophic care, health insurance options, grandparents' rights, health care proxies and living wills, consumer protection, reverse mortgages, bankruptcy, protective services for elderly and vulnerable adults, protecting your privacy and LGBT legal concerns.

Thank you to everyone who donated their time to make the Fair 2014 a tremendous success.

Special thanks to our sponsors and committee members: Estate Planning Council of CNY, M & T Bank; Fidelis; Hancock Estabrook, Onondaga County Office for Aging, Empower Federal Credit Union; Bond, Schoeneck & King, Costello, Cooney & Fearon, Mackenzie Hughes, Richard Murphy Insurance Concepts, Wells Fargo, Alzheimer's Association, Lehr Land Surveyors, AARP & AARP Onondaga County Chapter #243, Hiscock Legal Aid Society, Legal Aid Society of Mid-New York, Legal Services of Central New York, Volunteer Lawyers Project, Onondaga County Department of Social Services, Onondaga County Bar Foundation, and Syracuse School District Parent University.



Special thanks to our presenters and Talk to a Lawyer Volunteers: Jennifer Alfieri, Cora Alsante, Elaine Amory, William Armbruster, Dennis Baldwin, Luke Beata, Thomas Burgess, Chris Cadin, Mary Anne Cody, Mary Coyne, Richard Downs, Susan Esce, Kathy Faber-Langendoen, Aaron Frishman, Susan Griffith, Kevin Grossman, Hon. Michael Hanuszczak, David Hayes, Mary John, Maureen Kieffer, Mary King, Emilee Lawson Hatch, Ami Longstreet, Judith Malkin, Anthony Marrone, Julia Martin, Frederick S. Marty, Maureen McGlynn, Jillian McGuire, Julie Morse, Richard Murphy, Cynthia Nappa, Michael O'Neill, Paul Newman, Bill Pease, Wendy Reese, Anne Ruffer, Joanne Spoto-Decker, Cynthia Stevenson, Susan Suben, Shadia Tadros, Morgan Thurston, Mary Traynor, Brian VanBenscoten, and Steve Wood.

Two Emerging Sections Announce Co-Chairs

The Onondaga County Bar Association has recently announced co-chairs for two sections. Maureen Maney and Aaron Ryder are leading the new Trial Lawyers Section, while Michelle Billington and Eamon Kelleher are bringing new ideas and energy to the re-launch of OCBA's Young Lawyers Section. The two sections are jointly hosting a kick-off networking event at Benjamin's on Franklin on Thursday, July 17 (see ad on page 15).

Maureen E. Maney is a partner at Hancock Estabrook, LLP. Her practice concentrates on civil litigation at the trial and appellate levels and she has represented hospitals, religious organizations, financial institutions, the transportation industry, corporations and individuals in a wide variety of matters. Maureen also has extensive experience with guardianship proceedings under Article 81 of the Mental Hygiene Law. She is a graduate of Le Moyne College and Albany Law School of Union University, where she was a Managing Editor of the Albany Law Journal of Science and Technology, a member of the Justinian Honor Society, the Order of Barristers, and was the recipient of the Dominick Gabrielli Award for Appellate Advocacy. Maureen is admitted to practice in New York and the United States District Court for the Northern and Western Districts of New York. She is active in several professional associations, most recently serving as President of the Women's Bar Association of the State of New York (WBASNY). She also serves on the Board of Directors for the Ronald McDonald Charities of Central New York and is a past member of the North Area YMCA Board of Managers and the Junior League of Syracuse. Maureen is a recipient of the Central New York "40 Under 40" award and was named a "Rising Star" in 2013 by the New York Law Journal.

Aaron Ryder is an attorney with Bottar Leone, PLLC. With more than a decade of litigation experience, Aaron's practice is limited to the prosecution and trial of complex personal injury claims. His practice focuses upon the pursuit of claims for significant losses stemming from medical malpractice (e.g., traumatic brain/nerve injuries, surgical errors, spinal injuries, localized and systemic infections, and misdiagnosis), products liability (e.g., design defects, manufacturing defects and improper warnings), wrongful death, motor vehicle accidents, and construction and/or workplace accidents. His settlements and jury verdicts have earned him a lifetime membership in the Million Dollar Advocates Forum®. Aaron also presents continuing legal education courses, most recently speaking as part of the presenting panel for a presentation on Plaintiff's Personal Injury from Start to Finish: Personal Injury Settlements. Prior to joining Bottar Leone, PLLC, he began his litigation career as an associate with the Syracuse office of Hiscock & Barclay, LLP, and as a senior litigation associate with the Syracuse office of Bond, Schoeneck & King, PLLC. As an attorney with two of Central New York's largest law firms, Aaron represented both plaintiffs and defendants in a wide array of complex legal matters, including business litigation and personal injury claims. A graduate of Albany Law School of Union University (2002), he was inducted into the Order of the Barristers, a national honor society that recognizes excellence in oral advocacy. Aaron graduated from the State University of New York at Potsdam (1996). He is admitted to practice law in the State of New York before all State and local Courts as well as the United States District Courts for the Northern, Southern, Eastern and Western Districts. Aaron was born and raised in Skaneateles, New York and resides in Camillus with his family.

Michelle R. Billington is an associate at Bond, Schoeneck & King in its Environmental and Energy Practice Group. Michelle deals with various state and federal environmental compliance issues, including matters concerning hazardous substances, solid waste, mining and invasive species. Michelle also works on cases of environmental contamination and matters involving state and federal environmental permits. Prior to joining Bond, Michelle worked as a law clerk for the U.S. Attorney's Office for the Northern District of New York and as a student attorney for the Elder Law Clinic at the Syracuse University College of Law. Michelle graduated from the Syracuse University College of Law, summa cum laude, in May 2013. While at SU, she also served as the Business Editor of the Syracuse Law Review and as the student representative for the New York State Bar Association.

Eamon Kelleher is a graduate of Cornell University and earned his J.D. from the University at Buffalo Law School in 2013. Currently, he serves as counsel and district director to New York State Assemblyman Albert A. Stirpe, Jr., representative for the 127th assembly district. Prior to his role with the assemblyman, Eamon worked with the Onondaga County Bar Association's Volunteer Lawyers Project (VLP) as a staff attorney. There, he represented low-income city tenants in summary eviction proceedings and assisted underserved individuals through the VLP's family law and pro se divorce clinics. Today, Eamon continues to contribute pro bono work to the VLP.

Family Law Section Update

Chair | Robert J. Jenkins, Esq.

OCBA's Family Law Section met in May to discuss the proposed bills in the New York State Assembly and Senate concerning post-divorce maintenance. The meeting was well attended and several viewpoints were detailed. A vote was held and a letter was drafted setting forth our Section's response to the proposed bills. With the help of OCBA President Nick DeMartino, the OCBA Board of Directors, Executive Director Jeff Unaitis, and staff Peggy Walker and Chele Stirpe, the Section's letter was sent to members of both houses of the State Legislature.

A subsequent meeting was held with Assemblyman Bill Magnarelli and attended by attorneys Alan Burstein, T. Kevin Fahey and the chair. Mr. Magnarelli sent a letter to the Judiciary Chair of the Assembly setting forth our concerns. We also had meaningful and helpful assistance from Sen. John DeFrancisco, Sen. Dave Valesky, Assemblyman Al Stirpe and Assemblyman Sam Roberts.

Thanks also go to Judges Martha Walsh Hood and Martha Mulroy for their support, assistance and counsel. It is difficult to assess the impact of our actions but we know we were heard by our local legislators and that they voiced our concerns in their respective Houses. We also know that the bills, even as amended, had substantial flaws and that happily neither bill reached the floor this session for a vote. This is what we had wanted, so that the bills can be analyzed more carefully. We will keep you posted.

We also held our second annual Ethics Hour with Anthony Gigliotti, Principal Counsel for the Fifth District Grievance Committee. His advice is always helpful and clear. Our great thanks to Tony.

OCBA Paralegals Committee

Contributors | OCBA Paralegals Executive Committee

June Paralegals Luncheon Meeting

The June Paralegals Luncheon Meeting was held Thursday, June 12, 2014 at Spaghetti Warehouse. Jennifer L. Rosenberg, Esq. presented on Attorney for the Child (no longer referred to as Law Guardian in order to distinguish the "guardian" as an attorney and not a case worker).

Ms. Rosenberg practices in numerous areas of the law, but the majority of her practice focuses on Criminal Defense and Family Law. She is a member of the New York State Attorney for the Child program and has represented children in multiple counties and in Federal Court. She discussed her role as Attorney for the Child and told stories related to her involvement in each of the following types of cases: Juvenile Delinquency; Persons In Need of Supervision; Paternity; Custody; Child Protection (aka Neglect of Abuse); Adoption; Termination of Parental Rights; Support; Family Offense; Name Change; and Appeals. Clearly, Ms. Rosenberg's job does not end when she leaves the office.

Jennifer Rosenberg grew up in Camillus, New York. She graduated from the University of Massachusetts at Amherst and received her Juris Doctor from Syracuse University. She was admitted to the Virginia State Bar in 2002 and the New York State Bar in 2005. She is also admitted to practice in the Northern District of New York Federal Court and the Federal Appellate Division of the Fourth Circuit.

This was our last luncheon meeting until September 11 2014. Enjoy your summer!!

Forthcoming Luncheon Programs

The Executive Committee will be working diligently over the summer to finalize plans for future luncheon programs. If you have ideas for topics of interest to the Paralegals Group, please contact anyone on the Executive Committee:

Kathrine Cook	**kathrinecook0@gmail.com**
Cindy Wade	**cewade@twcny.rr.com**
Christie Van Duzer	**cvanduzer@wnylc.com**
Ranette Releford	**ranettereleford@gmail.com**
Faye Williams	**frwilliams@twcny.rr.com**
Jean Swanger	**jswanger@gilbertilaw.com**
Karen Hawkins	**khawkins@gilbertilaw.com**

The Executive Committee Could Use Your Help

The next Paralegals Executive Committee ("EC") meeting is scheduled for September 3, 2014 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 GSHS offices 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.

Job Bank

Are you an employer with a job that needs to be filled? Our FREE Listserv can help! Just email Paralegals Committee Chair, Kathrine Cook, at kathrinecook0@gmail.com to have your job provided to OCBA Paralegal members. Members are added when 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. Employers and/or Paralegals can email Kathrine should they have any questions.

Supreme Court Justices Announce Summary Judgment Motion Uniform Time Period

The Onondaga County Supreme Court Justices, with the approval of Hon. James Tormey, Administrative Judge, Fifth Judicial District, recently announced the establishment of a uniform time period in which to make a motion for summary judgment pursuant to CPLR §3212(a) with respect to civil actions commenced in the County.

Going forward, summary judgment motions are to be made no later than sixty (60) days after the filing of the Note of Issue.

Young Lawyers Section

Co-Chair | Michelle Billington, Esq.

The newly established Executive Board for the Young Lawyers Section met on June 6 and June 26, 2014 to discuss potential events for the upcoming year. The leadership plans to host events like tailgates, bowling, trivia teams, and more, with an eye toward building connections and camaraderie among Onondaga County's young lawyers. The Section will also continue to participate in the Onondaga County Bar Association's Law Day and sponsor various CLEs and other talks. All members of the Bar Association can find out about the Section's fun new events through its new Facebook, Twitter, and LinkedIn pages. The Section's first event, co-sponsored by the Trial Lawyers Section, will be July 17, 2014 at Benjamin's on Franklin, Syracuse, NY, from 5:00 pm to 7:00 pm and all are welcome to attend.

The Young Lawyers Section is open to any attorney in Onondaga County who has been practicing for less than ten years and is always accepting new members. The next regular meeting will be held at noon on July 24, 2014 at the Bar Association's office in the State Tower Building, Syracuse, NY. If you have any questions or would like additional information about the Section or its events, please contact Michelle Billington at mbillington@bsk.com or Éamon Kelleher at kellehere@assembly.state.ny.us.

Lawyer Referral Service Recognizes Milestone: Spotlights Meggesto, Crossett and Valerino For Panel Success

Through the first five months of 2014, the nearly 70 panelists currently participating in OCBA's Lawyer Referral Service saw client fees resulting from those referrals totaling nearly a quarter-million dollars. That's based on the 10% fee payments they have returned to OCBA/LRS, which support the staffing and promotion of this valuable marketing and business-generating service.

One local law firm which takes great advantage of LRS to ensure a steady stream of clients is Meggesto, Crossett and Valerino, LLP, which currently has eight attorneys enrolled as panelists who receive pre-screened and experience-directed referrals.

OCBA's LRS staffers Maggie James and Delores Hnat state that the MCV law's attorneys are consistently timely with the return of their required monthly status reports, are prompt with the resulting fee payments when a case is closed, and remain committed to providing timely responses to callers forwarded to the firm.

mcv law
Your Needs. Your Rights. Your Life.

According to William W. Crossett IV, "Meggesto, Crossett and Valerino values the work of the OCBA. Its Lawyer Referral Service is an important part of delivering legal assistance to those in need, and while often a referral call does not result in an attorney taking the case, it does serve the purpose of affording an individual a brief opportunity to discuss their situation with an attorney when otherwise they would not have such access. Of course, at other times those calls offer MCV law a client that we would not otherwise have and we appreciate the resulting business that those referrals generate."

LRS applauds the following MCV law attorneys for their participation and support of the service: James A Meggesto, William W Crossett IV, Gary J Valerino, Kimberly A Slimbaugh, Heather R LaDieu, Iman Abraham, Christopher M Stringham and Bethany Arliss.

LEGAL BRIEFS BRIEFS BRIEFS LEGAL

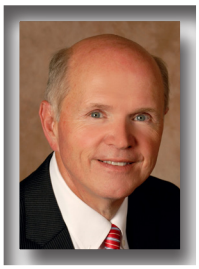
Victor L. Prial Joins Smith Sovik

Smith Sovik Kendrick & Sugnet is pleased to announce that Victor L. Prial, Esq. has joined the firm as an Associate. Prial graduated from Syracuse University College of Law (J.D. 2004) and State University of NY College at Fredonia (B.A. magna cum laude, 1999).

Prior to joining Smith Sovik, Prial worked as an Associate in a Syracuse law firm where he maintained a wide-ranging litigation practice representing clients in real estate, service, manufacturing, financial, construction and technology industries. Before relocating to Syracuse, Prial was an Associate at Hunton & Williams LLP in New York City where he handled complex commercial litigation including business litigation, product liability, employment, consumer protection and antitrust matters. He also served as a Judicial Clerk to The Honorable Constance Baker Motley of the U.S. District Court for the Southern District of New York.

At Smith Sovik, his practice focuses on personal injury, products liability, toxic tort, premises liability, Labor Law and medical and professional malpractice claims.

Steven A. Paquette Elected President Of JDRF



Steven A. Paquette has been elected President of the Central NY Chapter of JDRF (Juvenile Diabetes Research Foundation). He has served on the JDRF Board of Directors for 4 years, and previously served as Vice President of the Board. Steve is a member at Bousquet Holstein PLLC, and focuses his practice on Matrimonial and Family Law. He is a Certified Fellow of the American Academy of Matrimonial Lawyers, and also serves on the Board of Directors for the Central New York Collaborative Law Professionals.

JDRF is the leading global organization funding type 1 diabetes (T1D) research. JDRF's goal is to progressively remove the impact of T1D from people's lives until we achieve a world without T1D. The Central NY Chapter serves 16 counties. The JDRF Annual Walk to Cure Diabetes will be held at Long Branch Park in Liverpool on Saturday, September 27th. Bousquet Holstein is a 2014 Corporate Level sponsor of JDRF-CNY Chapter, and served as the 2013 Corporate Host Sponsor of the Walk for the Cure.

Court of Appeals & Fourth Department Civil Practice Case Notes

Contributors from Hiscock & Barclay, LLP
Thomas A. Carnrike, Esq. | Municipal & Real Property | Alan R. Peterman Esq. | Torts
Jason C. Halpin, Esq. | Commercial Litigation | Anne Burak Dotzler, Esq. | Labor and Employment

COURT OF APPEALS

Real Property Tax Certiorari – Sufficiency of Appraisal

Board of Managers of French Oaks Condominium v. Town of Amherst, 2014 N.Y. Slip Op. 02971 (May 1, 2014). The owner of a residential complex in the Town of Amherst, New York, brought a Real Property Tax Law Article 7 proceeding challenging its tax assessment. At trial, both parties relied primarily upon the income capitalization methodology to establish fair market value. In determining the capitalization rate, petitioner's appraiser derived the net operating income of certain allegedly comparable properties from "forecast financials," but failed to either specify the sources of his figures or provide the documentation he relied upon. The Town's motion to dismiss was denied at the trial court and appellate level, but granted by the Court of Appeals. The Court held that the taxpayer failed to establish a *prima facie* case by substantial evidence, primarily because petitioner's appraiser admitted he relied upon information derived from his personal, but unverifiable knowledge. That is, there was no confirmable data in his report to support his analysis. Thus, the Court found petitioner's "proposed capitalization rate [was not supported] with objective data necessary to substantiate the component calculation" pursuant to the requirements of Court Rule 202.59(g)(2).

Torts – Plaintiff's Obligation to Produce Medical Reports under 22 NYCRR 202.17(b)(1)

Hamilton v. Miller, 2014 N.Y. LEXIS 1368 (Jun. 12, 2014). In *Hamilton*, the Court of Appeals was presented with a Fourth Department decision which held that a plaintiff had to produce, prior to the defenses' medical examinations, medical reports detailing a diagnosis of each injury alleged to have been sustained by the plaintiff and causally relating those injuries to the alleged negligence by defendants. Plaintiff commenced an action against defendants alleging that he had been exposed to lead-based paint in rental units owned by defendants and had suffered injuries as a result. He then served a "boilerplate" Bill of Particulars alleging 35 different injuries. Defendants served medical examination notices pursuant to CPLR 3121 and requested copies of "reports of any physicians who have treated or examined the plaintiff." Plaintiff disclosed certain medical records demonstrating that he had lead poisoning and educational records showing that he also had academic problems. None of the records, however, substantiated the 35 injuries alleged by plaintiff nor did they causally relate the alleged injuries to lead-based paint. Defendants moved to compel plaintiff to comply with 22 NYCRR 202.17(b)(1) and produce medical reports detailing a diagnosis of the injuries allegedly caused by exposure to lead-based paint or be precluded from introducing proof of those injuries at trial. Plaintiff cross-moved for a protective order. The Supreme Court granted defendants' motion and denied plaintiff's cross-motion. The Fourth Department affirmed. On appeal, the Court of Appeals reversed.

The Court found that compliance with the requirements of 22 NYCRR 202.17(b)(1) was straightforward in most cases, but that the instant case was more complicated in that it appeared that plaintiff had never been diagnosed or treated for the alleged injuries. The Court agreed with plaintiff's argument that 22 NYCRR 202.17(b)(1) did not require a plaintiff to hire a medical provider to examine the plaintiff and create a report solely for the purpose of the litigation – finding that requiring a plaintiff to retain a medical provider purely to satisfy 22 NYCRR 202.17(b)(1) could make it prohibitively expensive for some plaintiffs to bring legitimate personal injury actions. The Court, however, did not agree with plaintiff's argument that he only needed to turn over those medical records that existed, holding that a plaintiff could not avoid the required disclosure simply because the medical professional had not created a report that complied with the requirements on 22 NYCRR 202.17(b)(1). The Court held that if the reports did not contain the information required by the rule, then the plaintiff had to have the medical providers draft reports setting forth the required information. If that was not possible, the plaintiff had to move for a protective order explaining why plaintiff could not comply with the rule.

The Court then concluded that the Supreme Court had exceeded its discretion by requiring plaintiff to provide medical evidence of each alleged injury or face preclusion, but then concluded that plaintiff should amend his boilerplate Bill of Particulars to reflect the injuries actually sustained. The Court also concluded that the Supreme Court granted relief beyond that required by 22 NYCRR 202.17(1)(b) by requiring plaintiff to produce reports causally relating his injuries to lead-based paint exposure, finding that there was no requirement in the rule that the medical provider relate plaintiff's injuries to defendants' negligence. The Court held that causation was more appropriately dealt with during the expert discovery phase, and should plaintiff fail to produce such evidence, defendant could move for, and obtain, summary judgment.

New York State and New York City Human Rights Law – Employer's Obligation To Engage In Interactive Process

Jacobsen v. New York City Health & Hospitals Corp., As an accommodation, plaintiff requested to be transferred to a position in HHC's central office, which he had previously held with HHC, and that he be provided a respirator to wear to minimize dust exposure when required to visit construction sites. HHC denied the transfer request and placed plaintiff on involuntary medical leave for six months, reasoning that his position required him to be present at construction sites. During his leave, plaintiff's doctor provided HHC a note opining that plaintiff would "never be medically cleared to fully perform the essential functions of his duties because it was imperative to his health that he not be further exposed to

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Civil Practice Case Notes

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any type of environmental dust." HHC terminated plaintiff's position at the end of the leave.

Plaintiff then commenced an action against HHC alleging that HHC failed to reasonably accommodate his disability in violation of the New York State and City Human Rights Laws. The trial court granted HHC's motion for summary judgment, finding that there was no reasonable accommodation that HHC could have provided to the plaintiff, because his own medical evidence led to the conclusion that the plaintiff could not perform the duties of assistant health facilities planner. The Appellate Division, First Department upheld the trial court's determination, holding that HHC had established that the plaintiff could not, even with a reasonable accommodation, perform the essential functions of his job. On appeal, the Court of Appeals reversed. The Court held that both the New York State and New York City Human Rights Laws generally preclude summary judgment in favor of an employer where the employer has failed to demonstrate that it responded to a disabled employee's request for a particular accommodation by engaging in a good-faith interactive process regarding the feasibility of that accommodation.

The Taylor Law – Employer-Owned Vehicle For Transport To And From Work Held A Mandatory Subject Of Bargaining

In the Matter of Town of Islip v. New York State Public Employment Relations Board, No. 95, 2014 N.Y. Slip Op. 4043 (Jun. 5, 2014). Petitioner Town of Islip commenced an Article 78 proceeding challenging the determination of Respondent New York State Employment Relations Board (PERB) that the Town violated Civil Service Law § 209-a(1)(d) when it unilaterally discontinued the practice of permanently assigning Town-owned vehicles to certain employees belonging to collective bargaining units represented by Local 237-International Brotherhood of Teamsters. Upon transfer from Supreme Court pursuant to CPLR 7804(g), the Appellate Division, Second Department found that the substantial evidence supported PERB's determination and confirmed PERB's order that the Town restore the vehicle assignments for commutation between home and work to those unit members who previously enjoyed the benefit before it was discontinued by the Town.

On appeal, the Court of Appeals affirmed in part, finding that PERB's determination was based on substantial evidence and held that the Town engaged in an improper practice when it unilaterally discontinued the permanent assignment of "take home" vehicles to employees who enjoyed this benefit before the Town adopted and implemented the 2008 fleet/vehicle policy. The Court reasoned that PERB reasonably applied its precedent that employee use of an employer-owned vehicle for transportation to and from work is an economic benefit and a mandatorily negotiable term and condition of employment under the Public Employee's Fair Employment Act (a.k.a. the Taylor Law) that may not be unilaterally discontinued by the public employer. The Court, however, modified the lower court's order relating to PERB's remedial order, finding that the order requiring the Town to restore the vehicle assignments for commutation between home and work to unit members who previously enjoyed the benefit was "unduly burdensome" and did not "further the goal of reaching a fair negotiated result." The Court reasoned that a PERB injunction was not sought to preserve the *status quo ante*, and the Town had already sold some or all of the cars formerly permanently assigned to unit employees at issue.

FOURTH DEPARTMENT APPELLATE DIVISION

Municipal Law – Denial of Special Use Permit Extension

In re Allegany Wind LLC v. Planning Bd. of Town of Allegany, 2115 A.D.3d 1268 (4th Dep't 2014). Petitioner obtained special use permit and site plan approval for construction of a 29-turbine wind farm in the Town of Allegany in July 2011, conditioned that it would expire if construction was not commenced within one year of approval. As a result of delays due in part to commencement of a lawsuit by a citizens' group and a question of whether federal tax credits would be available, petitioner obtained one extension of this deadline. In the interim, petitioner notified the Planning Board that it would be using an alternate turbine model than the one contemplated at the time of the original approval. When a second request for an extension was denied, petitioner commenced an Article 78

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proceeding challenging the denial as arbitrary and capricious. The petition was dismissed by the trial court, and that dismissal was upheld by the Fourth Department. The Fourth Department, noting that it was premised on a valid change of circumstance – as the original approval went into significant detail on the type of turbine to be used. The use of alternate equipment, which had potentially different noise and visual impacts, was a valid basis for the Planning Board to use its discretion to deny the extension. The specificity regarding equipment in the original approval, and petitioner's change in that equipment was a sufficient change in circumstances to justify the denial

Torts Liability for Negligence Absent a "Special Relationship."

Angona v. City of Syracuse, Docket No. CA 13-01664 (4th Dep't Jun. 13, 2014). The Fourth Department in *Angona* affirmed the grant of summary judgment to the City of Syracuse in an action arising out of claimed negligence in the provision of emergency medical services. Plaintiff was a firefighter who was out of work on medical leave for an unrelated issue when he suffered a massive heart attack in a local bar. The City's Fire Department, which provided emergency medical services in response to 911 calls, was dispatched. While at the scene, a portable defibrillator and the electrode pads being used to attend to plaintiff allegedly malfunctioned. By the time a connection to a second defibrillator was made, it is alleged that plaintiff suffered severe brain damage. A lawsuit was brought against the City as well as the manufacturer and distributors of the defibrillator and pads.

Following discovery, the City moved for summary judgment based upon the governmental function doctrine. In the first of its two successful summary judgment motions granted by the Supreme Court, all claims relating to the equipment were dismissed upon the determination that the claimed negligent acts (failure to inspect equipment and properly supply the rescue truck) were "ministerial" in nature and there was no showing of the required special relationship between the plaintiff and the City. The second summary judgment motion successfully disposed of the medical treatment claim based upon the decision from the New York Court of Appeals in *Applewhite v. Accuhealth, Inc.*, 21 N.Y.3d 420, 427 28 (2013), holding that these claims were not proprietary and were subject to normal negligence rules. In the absence of a special relationship (and none could be established because the unconscious plaintiff could not justifiably rely upon any representations from the first responders), municipal liability could not attach.

The Fourth Department affirmed in all respects, finding that all of plaintiff's claims were based on the City's exercise of a governmental function and that plaintiff had to demonstrate a special relationship – i.e., "the duty breached must be more than that owed to the public generally." Plaintiff argued that the City owed a special duty to him by virtue of his status as an off-duty firefighter. The Fourth Department rejected that argument and held that the City could not be found liable to plaintiff. The decision reaffirms the principle that, in the absence of a special relationship between the injured party and the municipality, there is no liability for the claimed negligent performance of governmental functions

Liability for Storm Water Flooding – Design v. Maintenance

Gilberti v. Town of Spafford, 2014 N.Y. Slip Op. 3382 (4th Dep't May 9, 2014). In Gilberti, the Fourth Department again considered issues of municipal immunity: plaintiff's claim was that the Town was negligent in the design, installation, construction, and maintenance of a storm sewer in the vicinity of plaintiff's house resulting in the flooding of plaintiff's residence. The Town moved for summary judgment, arguing that the Town was immune from liability for negligence with respect to the storm sewer. The Supreme Court granted the Town's motion in part and denied the motion in part.

On appeal, the Fourth Department reviewed the principles of municipal immunity citing *Applewhite v. Accuhealth, Inc.* 21 N.Y.3d 420, holding that when a municipality acted in a proprietary role "i.e., when its activities essentially substitute for or supplement traditionally private enterprises," ordinary rules of negligence applied. If the municipality acted in a governmental capacity, "i.e., when its acts are undertaken for the protection and safety of the public pursuant to the general police power," the court must undertake a separate inquiry to determine whether the municipality owes a special duty to the plaintiff. If the plaintiff fails to prove such a special duty, the municipality is immune from liability. Even if the plaintiff proved such a special duty, the municipality would not be liable if it proves that the alleged negligent act or omission involved the exercise of discretionary authority. The court held that the issue before it was whether the Town's alleged negligence stems from a proprietary function or a governmental function. The court then broke down plaintiff's claims into discrete functions, finding that two of plaintiff's claims were properly characterized as design issues and that, because plaintiff did not even attempt to allege any special relationship, the Town could not be found liable for any negligence in those claims. The court, however, found that plaintiff's remaining three claims were based on negligent maintenance – a proprietary function. As such, plaintiff's claims were actionable. The Town argued that it was entitled to dismissal of those claims because it was, in fact, not negligent. The court refused to consider that argument, however, because the Town had not moved for summary judgment on that affirmative defense below.

Liability Under Vehicle & Traffic Law Section 1103(b)

Gawron v. Town of Cheektowaga, 984 N.Y.S.2d 715 (4th Dep't 2014). Section 1103(b) of the Vehicle and Traffic Law exempts all municipal vehicles and persons actually working on a highway from the provisions of the Vehicle and Traffic Law (except driving while intoxicated provisions). The issue in *Gawron*, was whether Section 1103(b) applied to a Town employee who, on his own volition, was attempting to clear water and debris from a roadway and, as a result, crossed into the oncoming lane and into plaintiff's vehicle. Plaintiff brought an action against the Town and the driver alleging negligent, careless, reckless, and unlawful conduct on the part of defendants. Defendants moved for summary judgment, arguing that Section 1103(b) barred plaintiff's claim. The Supreme Court denied the motion.

On appeal, the Fourth Department, in a 3-2 decision, held that Section 1103(b) barred plaintiff's negligence cause of action. The court found that Section 1103(b) applied even though the road involved was a service road because the road was open to the public and maintained by the Town. Plaintiff argued that Section 1103(b) did not apply because the Town employee was not performing his assigned work. The Town employee's normal duties did not include clearing roads (he was a maintenance janitor), and the Town employee had not been directed to clear the road, but had decided to do so while returning from lunch to his work location. The court found that "the statute exempts 'all [municipal] vehicles actually engaged in work on the highway . . . from the rules of the road.'" The statute did not state that the work had to be assigned work. The reckless disregard standard of care set forth in Section 1103(b) applied. The court did find that there were questions of fact as to whether the Town employee's conduct rose to that level of misconduct and denied the Town's motion to dismiss those causes of action.

The dissent argued that Section 1103(b), as a statute in derogation of common law, had to be strictly construed. Citing the limitations on the coverage of Vehicle and Traffic Law Section 1104, which applies to first responders, that the reckless standard applied only when the responder was involved in emergency operations, the dissent argued that the Legislature could not have intended to provide greater protection to Town employees than what was provided to first responders. Given the facts of this case – that the Town employee was not assigned to clear the road, that the Town employee attempted to use a snowplow to clear water and debris from the road, and that the employee was actually terminated for the conduct – the dissent argued that the application of Section 1103(b) extended the coverage of Section 1103(b) far beyond the scope intended by the Legislature. The dissent would have applied a normal negligence standard.

Void Mechanic's Lien

Fiberglass Fabricators, Inc. v. C.O. Falter Construction Corp, 2014 N.Y. Slip Op. 3377 (4th Dep't May 9, 2014). Plaintiff filed a mechanic's lien based on defendant's refusal to pay plaintiff's final invoice. After defendant secured a bond to discharge the lien, plaintiff commenced an action

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Trial Lawyers | Young Lawyers
INAUGURAL RECEPTION

Please Join Us

Thursday, July17th
5:00 – 7:00 pm

RSVP | OCBA
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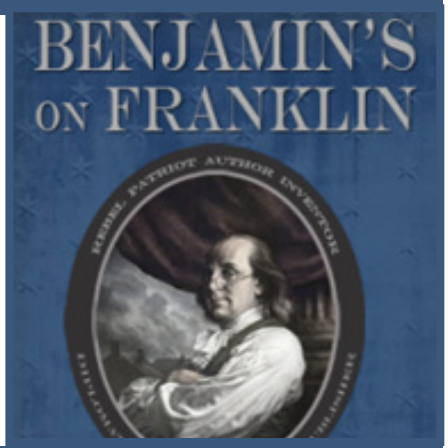

314 S. Franklin St. Syracuse, NY 13202

Remembering Karen DeCrow

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as a member. Years later we were awarded the WBASNY Founders Award for our efforts, an award I proudly display in my office to this day.

One of the most pleasurable periods I spent with Karen was the time prior to and including her installation in the National Women's Hall of Fame in Seneca Falls. She delighted in all of the festivities at the Clarence Hotel the night before and at the ceremony. We had arranged for a large number of people to attend, and for Barbara Burnett to come all the way from Arkansas to surprise Karen. Karen appreciated her friends. Karen always wrote thank you notes, or sent copies of things she saw in the paper, and sometimes would give little gifts just for the fun of it- a book, a stuffed toy. To know that she received the recognition she so deserved at the NWHF, and to see her delight in the event was a great pleasure to the rest of us.

Karen loved opera, and music in general. I would always see her at the local chamber music concerts. Two summers ago, she helped organize an event with Justice Ginsberg in conjunction with the Glimmer Glass Opera in Cooperstown. Karen had been there many times before with her friends. This time Eileen Buholtz, Barbara Walzer and I drove her to Cooperstown, went to Justice Ginsberg's speech, had lunch and pictured with Justice Ginsberg at the Otesaga and attended the performance of Aida at the Glimmer Glass. We picked Karen up early in the morning and headed down the back roads through Cazenovia where we stopped for coffee at McDonald's. Karen claimed never to have been to a McDonald's before. Listening to her stories and her humor on the trip down and back that day made the trip. Though she wasn't a great driver, she was a back seat driver on many occasions. (On the trip she related the story of having been stopped by a trooper who thought she might have had too much to drink all because she was driving too slowly on the road near her home).

She was a brilliant lawyer who didn't know how to take care of a traffic ticket. And we loved her.

BAR BOARDS:

Lemery Greisler Seeks Associate Attorney

Lemery Greisler LLC seeks an Associate Attorney with 3-5 years real estate and/or commercial transaction experience to work in its Albany office. Qualified candidates must be admitted to the New York bar and have a strong desire to make the Capital District home and become part of the community. Email cover letter and resume to Ms. Karin Burch: KBurch@lemerygreisler.com.

Newly Renovated Office Space Prime Courthouse Location

Recently renovated individual office space available, including receptionist, copier, fax and phone lines, in the Monroe Building located directly across from the Courthouse. Additional space is also available up to 5,000 square feet. Please contact Kris at 479-6445.

Civil Practice Case Notes

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alleging, *inter alia*, breach of contract, and seeking foreclosure of its lien. Defendant asserted counterclaims seeking, *inter alia*, a declaration that the lien is void based upon plaintiff's willful exaggeration of the amount for which it claimed a lien. Following a bench trial, the Supreme Court, *inter alia*, dismissed plaintiff's complaint and discharged and declared null and void the mechanic's lien. In affirming this decision, the Fourth Department held that the Supreme Court applied the proper standard in evaluating the appropriateness of the lien – i.e., whether plaintiff intentionally and deliberately exaggerated the amount of the lien, and properly considered more than just the discrepancy between the amount of the lien and the amount actually due to plaintiff in reaching its decision.

Pleading Conversion

Hillcrest Homes, LLC v. Albion Mobile Homes, Inc., et al., 984 N.Y.S.2d 755 (4th Dep't May 2, 2014). Plaintiff purchased a manufactured home from a tenant of defendants' manufactured home park on September 28, 2009. The tenant had a month-to-month lease with defendants. Plaintiff sought to remove the manufactured home in November and December 2009 but, before it could do so, was instructed to leave by defendants because plaintiff had not paid the storage fees or the refundable security deposit. Plaintiff commenced an action for, *inter alia*, conversion and violations of Real Property Law § 233. The Supreme Court granted defendants' motion to dismiss the complaint for failure to state a cause of action. With respect to the conversion claim, the Supreme Court dismissed on the ground that there was no showing that defendants took ownership of the manufactured home or obtained any benefit from the unit remaining on the property. The Fourth Department reversed with regard to this claim, holding that plaintiff's allegation that defendants interfered with plaintiff's right to possess the property was sufficient to state a cause of action for conversion.

Piercing the Corporate Veil

A&M Global Management Corp. v. Northtown Urology Associates, P.C., et al., 115 A.D.3d 1283 (4th Dep't Mar. 28, 2014). Northtown Urology Associates, P.C. was owned by Roehmholdt and Sosnowski. Sosnowski elected to leave the practice. Roehmholdt subsequently accepted a position with another urology practice. Northtown vacated the premises it leased from plaintiff and ceased paying rent. Plaintiff commenced an action seeking damages for, *inter alia*, Northtown's alleged breach of its lease. Plaintiff sought to hold Roehmholdt and Sosnowski personally liable for the breach by attempting to pierce Northtown's corporate veil. The Supreme Court awarded plaintiff money damages against Roehmholdt pursuant to the veil piercing theory, and dismissed the complaint against Sosnowski. The Fourth Department affirmed because the record established that Roehmholdt made no effort to continue the Northtown business, chose not to "cash out" Sosnowski from Northtown, wrote to Northtown's clients and took them as his own, used approximately $80,000 in Northtown funds to satisfy a line of credit for which he was personally liable and which may have encumbered Northtown's accounts receivable, issued a check for approximately $1,800 to himself for "Northtown . . . expenses," and paid for the collection of Northtown's accounts receivable.

USERRA Rights

Wright v. City of Jamestown, et al., CA 13-01728, 2014 N.Y. Slip Op. 4615 (4th Dep't June 20, 2014). Plaintiff, a police officer employed by defendant City of Jamestown Police Department and a member of the U.S. Army Reserves, commenced an action alleging that defendants City and Police Department discriminated against him based on his status as a member of the reserves in violation of the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. §§ 4301, *et seq*. In support of his claim, plaintiff alleged that defendants violated USERRA by prorating his vacation and annual compensatory time pay based on the amount of time he actually worked in the prior year without counting the time during which he was merely affiliated with defendants during his absences from work due to his reserve duty. Defendants were subsequently denied summary judgment, and plaintiff was granted partial summary judgment on his claim relating to vacation and compensatory time pay.

On appeal, the Fourth Department held that the trial court erred in granting plaintiff's cross-motion for partial summary judgment. The Fourth Department held that plaintiff failed to establish as a matter of law that vacation and compensatory time is awarded annually based solely on seniority, as opposed to being earned based on the amount of time actually worked in a given year. The court noted that the relevant collective bargaining agreements provide that the amount of vacation time to which an employee is entitled in a given year is based on his or her length of continuous service, and based on USERRA, the length of continuous service must include any period of time in which an employee is on active military duty. However, the court reasoned that plaintiff's theory of the case would require defendants to provide full vacation benefits to a returning service person if he or she worked no more than one week in each year. The court held that "[t]his result is so sharply inconsistent with the common conception of a vacation as a reward for and respite from a lengthy period of labor that the statute should be applied only where it clearly appears that vacations were intended to accrue automatically as a function of continued association with [defendants]." Therefore, it could not be concluded as a matter of law on the record that vacation and compensatory time accrue automatically based solely on plaintiff's continued association with defendants. The court also held that the lower court erred in denying that part of defendants' motion for summary judgment dismissing the retaliation cause of action because plaintiff did not establish that he was subject to a materially adverse action.

Article 78 – Determination To Suspend Correction Officer's Employment Was Neither Arbitrary Nor Capricious

Matter of Thompson v. Jefferson County Sherriff John P. Burns, et al, CA 13-01873, 2014 N.Y. Slip Op. 4297 (4th Dep't Jun. 13, 2014). Petitioner commenced an Article 78 proceeding seeking to annul a determination that he violated three departmental rules under the Sheriff's Office's Uniform Code of Conduct and suspending him for 45 days without pay from his employment as a corrections officer in the Sheriff's Office of respondent Jefferson County. In particular, petitioner was charged with "unbecoming conduct," "consorting with persons of ill repute," and having a "knowing [] . . . connect[ion]" with a "subversive organization" after he voluntarily attended a social event hosted and/or sponsored by the Hells Angels Motorcycle Club while he was off-duty. The lower court confirmed the determination in part, granted the portion of the Petition seeking to vacate the finding of guilt in charge three, and remitted the matter to respondents to determine whether the penalty should be adjusted as a result.

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Civil Practice Case Notes

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On appeal, the Fourth Department concluded that the determination should be confirmed in its entirety and that the petition should be dismissed. Applying the rational basis standard of review he court first noted that the proper standard of review was whether there was a rational basis for the determination or whether it is arbitrary and capricious – not whether the determination is supported by substantial evidence, because the hearing was mandated by a collective bargaining agreement and not required by statute or law. The court then held that, regardless of the standard applied, both the determination of guilt and the penalty imposed are subject to judicial review. The court concluded that the determination with respect to the three disciplinary charges was neither arbitrary nor capricious and that there was a rational basis for such determination. The court further held that the penalty was not "so disproportionate to the offense as to be shocking to one's sense of fairness" because, as a law enforcement officer with over 20 years of experience as a correction officer, petitioner should have known that his participation in a Hells Angels-sponsored event would raise an appearance of impropriety.

Breach of Contract/Declaratory Judgment – Health Insurance Benefits To Retirees Under Collective Bargaining Agreement

Non-Instruction Administrators and Supervisors Retirees Ass'n v. School District of City of Niagara Falls CA 13-01512, 2014 N.Y. Slip Op. 4299 (4th Dep't Jun. 13, 2014). Plaintiffs, 18 retired employees of defendant School District of City of Niagara Falls, and their retirees association commenced a breach of contract/declaratory judgment action seeking, *inter alia*, a declaration that, after retirement, they were entitled to the health insurance benefits provided in the collective bargaining agreement ("CBA") in effect at the time they retired. The lower court granted the District's motion to dismiss the complaint. On appeal, the Fourth Department held that the lower court properly held that the plaintiffs were not entitled to judgment in their favor, but that the court erred in dismissing the declaratory judgment cause of action rather than declaring the rights of the parties. As such, the court reinstated plaintiffs' declaratory judgment cause of action, and declared that they were not entitled to the health insurance coverage provided in the CBA in effect at the time each individual plaintiff retired. Instead, the court held that the language of the CBA, that "[t]he coverage so provided shall be the same type that the employee would have had if he/she had continued employment . . . ," meant that, upon retirement, a retiree will receive health insurance coverage of the same type received by active employees over the years based on rising health care costs and successive collective bargaining agreements

Not Getting Paid

From page 5

the failure to be compensated for all work performed does not relieve assigned lawyers from acting with reasonable diligence and promptness while representing clients.

Rule 1.5(f) requires attorneys to resolve fee disputes by arbitration at the election of the client, pursuant to the fee arbitration program established by the Chief Administrator of the Courts. An attorney who fails to participate in fee arbitration after being notified of the proceeding will be referred to a disciplinary committee for investigation. Fee disputes over charges for criminal defense services are exempt from mandatory fee arbitration. Also exempt are disputed fees less than $1,000 or more than $50,000. All lawyers should familiarize themselves with the rigorous notice provisions and other mandatory arbitration rules. Failure to properly notify clients of the remedies available through the fee dispute program may be cause for dismissal of compensation claims for unpaid civil legal services. See: 22 N.Y.C.R.R. Part 137.

If the client does not initiate the fee arbitration process within 30 days of receipt of the required notifications, the attorney is free to pursue all other civil remedies to collect unpaid legal fees. When no attorney's services have been rendered for more than 2 years the mandatory fee dispute rules also do not apply. Rule 1.6(b)(5)(ii) allows an attorney to reveal or use confidential information to the extent that the lawyer reasonably believes is necessary to establish or collect a fee.

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August 14th Dan Mathews Golf Outing

The Volunteer Lawyers Project (OnVLP) is excited to announce, its 13th Annual Daniel F. Mathews, Jr. Memorial Golf Outing on Thursday, August 14, 2014 at the Pompey Club, sponsored by Geddes Federal Savings. The Outing consistently proves to be a day of camaraderie and fun competition which ends with a delicious steak barbeque that you simply do not want to miss! We welcome new and past players to join us in play this year.

Last year OnVLP teamed up with the Onondaga County Bar Foundation (OCBF) for this event and through the generosity of the sponsors and players, raised eleven thousand dollars. The golf outing committee has a goal in 2014 of enticing 100 players to tee off on the beautiful greens of the Pompey Club for this important fundraising effort.

The proceeds from this event go directly to support the important missions of OnVLP and OCBF. With the help of the Golf Tournament, OnVLP is expanding access to justice by identifying and meeting the unmet civil legal services needs of low income people through increasing the pro bono participation of the legal community. In the last year, OnVLP closed 1,838 cases, benefiting over 4,300 people through the volunteer efforts of 345 attorneys who donated over 2,200 hours of their time, a record high for our organization. OCBF has continued to help members of the legal community through its expanded mission "to aid members of the legal profession in Onondaga County who may be ill, incapacitated, indigent or otherwise in need, and/ or their dependents who are in need as a result of the member's illness, incapacity, indigence or death."

We would like to invite you and your firm to consider a tax deductible sponsorship package, an offer to sign up a foursome for this year's event. We also welcome donations of door prizes for our special games throughout the day of the outing.

If you are interested in playing, please contact Deb O'Shea at (315) 579-2577 or via email at vlp@onbar.org. Your contribution is tax deductible and payable to the Volunteer Lawyers Project of Onondaga County, Inc., Hope to see you on the course!

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OCBF

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13th Annual Dan Mathews Golf Outing Agenda

11:30 am	Registration & Lunch
12:45 pm	18 Hole **Shotgun Start**
11:30 am	Player Round-Up
5:30 pm	**Dinner & Prizes**
$125	Lunch, 18 holes, cart & Famous Steak Bake
$90	New Attorneys
$40	Famous Steak Bake only

The mission of the Volunteer Lawyers Project of Onondaga County, Inc. (OnVLP) is to expand access to justice by identifying and meeting the unmet civil legal services needs of low income people through increasing the pro bono participation of the legal community.

Last year, VLP:
Closed 1,838 cases benefiting over 4,300 people through the volunteer efforts of 345 attorneys who donated over 2,200 hours of their time.

This Golf Outing is our largest private fundraiser – proceeds allow VLP to continue to recruit, train and supervise volunteers and coordinate legal clinics to serve the poor. Proceeds benefit both OnVLP and OCBF.

The Onondaga County Bar Foundation (OCBF) recently added to its mission, "to aid members of the legal profession in Onondaga County who may be ill, incapacitated, indigent or otherwise in need, and/or their dependents who are in need as a result of the member's illness, incapacity, indigence or death."

13th Annual Daniel F. Mathews, Jr. Golf Outing
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