



Hundreds Honor Emil Rossi at 139th Annual Dinner

More than 300 guests turned out October 23rd for the Onondaga County Bar Association’s Annual Dinner honoring 2014 Distinguished Lawyer Emil M. Rossi. The event was held at Traditions at the Links, at Erie Village in East Syracuse.

Dinner chair Anne Burak Dotzler welcomed the evening’s attendees and introduced special guests Glenn Lau-Kee, President of the New York State Bar Association; Nicholas DeMartino, President of OCBA; and Fr. Dennis Hayes, chaplain with the Onondaga County Sheriff’s Department who delivered the Invocation.

Mr. Rossi was introduced by Onondaga County Court Judge Joseph Fahey and retired U.S. Magistrate Judge George Lowe, who shared why they believed the Distinguished Lawyer Committee made an inspired choice in selecting him.

Emil received his Bachelor of Arts Degree in English from LeMoyne College, a Masters Degree in English Literature from Syracuse University, and his Juris Doctor from the Syracuse University College of Law. He served as a Law Associate with the firm of Curtis, Mallet-Prevost, Colt &

Mosle, LLP in New York City, as an Assistant District Attorney with the Onondaga County District Attorney’s Office, and as a Special Assistant Attorney General with the Office of the Special Prosecutor for Health and Social Services.

Over the past 30 years, Emil has maintained a highly respected and successful private litigation practice in state and federal court. Over this time, he has handled numerous high profile cases throughout New York State. He has also served as an Adjunct Professor at the Syracuse University College of Law since 1975.

Nick DeMartino said, “Emil personifies everything that is good and decent about our profession. He practices with great skill, intelligence, grace, charm, dignity, honor and professionalism. Above all, he is a true gentleman.”

Many sponsors provided their support to this year’s Annual Dinner, which enabled the dinner committee to supplement the program with after-dinner dancing to live music provided by the band “The Party Nuts,” special desserts and other touches. Anne Dotzler recognized the evening’s sponsors including Hiscock & Barclay LLP,

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IMPORTANT MESSAGE TO OUR MEMBERS

The OCBA offices are moving effective Monday, December 1st. | We will have no phone service on Wednesday, November 26th. The office will remain open until 3:00 p.m. We are closed for Thanksgiving & Friday, November 28th.

We’ll be open for business at our new offices at the CNY Philanthropy Center, 431 E. Fayette St. on Monday, December 1st. All of our phone numbers and email addresses will remain the same | The VLP offices & staff will remain at the State Tower Building.



Hundreds Honor Emil Rossi at 139th Annual Dinner

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Platinum sponsor; Friends of Judge Brian DeJoseph as a Silver sponsor; Blitman & King, Action Reporting and Christopherson Land Surveying as Bronze sponsors; and Ellen Weinstein and the Jeff DeRoberts Law Firm as supporters.

After dinner, Nick offered an update on OCBA activities and recognized the many members of the Judiciary who attended the dinner:

United States Circuit Court Judge and 2009 Ruger Centennial Award recipient, Rosemary Pooler.

New York State Appellate Court Judges Hon. Edward D. Carni, Hon. John Centra and Hon. Brian DeJoseph.

United States Federal Court Judges, Hon. Norman A. Mordue, Hon. Mae D'Agostino and Hon. Frederick J. Scullin, Jr.

United States Magistrate Judges, Hon. David Peebles and Hon. Therese Wiley Dancks.

Retired United States Magistrate Judges Hon. George Lowe and Hon. Gus DiBianco.

Onondaga County Supreme Court Justices Deborah Karalunas, James Murphy, Anthony Paris and Kevin Young.

Onondaga County Court Judges Joseph Fahey and Thomas J. Miller.

Syracuse City Court Judges Kate Rosenthal and Karen Uplinger.

New York State Court of Claims Judge Nicholas V. Midey Jr.

Town and Villages Justices Stephen Poli, David Bruffett, Jim Hughes and Anthony LaValle.

Administrative Law Judge John Lischak.

Mr. Rossi received special recognitions that evening, including a Proclamation from Onondaga County Executive Joannie Mahoney, who named the twenty-third day of October, two thousand fourteen to be "Emil M. Rossi Recognition Day."

A citation offered jointly by New York State Assembly members Al Stirpe and Bill Magnarelli concluded with this paragraph:

"Resolved, that as duly elected members of the State Assembly of New York, we commend and recognize the dedicated service given to the community of Syracuse by Emil M. Rossi, in which we have an outstanding individual, one that is worthy of the esteem of both the community and great State of New York."

Finally, Emil was given a letter received from New York State Governor Andrew Cuomo congratulating him on this distinctive honor.

Many thanks to the Annual Dinner committee for their hard work and for making the dinner a memorable event.

Members of the committee include Anne Dotzler, Betsy Barker, Gioia Gensini, Hon. Deborah Karalunas, Karen Hawkins, Romana Lavalas, Wendy Reese and Jean Marie Westlake.

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139th Annual Dinner | Pictorial Revue



Fourth Department Family Court Case Notes

By Sara Langan | Law Clerk to Hon. Julie A. Cecile, Family Court Judge

CHILD CUSTODY

Attorney for the Child, Substitution for Child's Judgment and Preservation of Issues on Appeal

Eastman v Eastman, 118 AD3d 1342 [4th Dept, June 13, 2014]

Attorney for the Child properly substituted her judgment for that of the child where the record supports a finding that the child, who was seven years old at the conclusion of the hearing and functioned at a kindergarten level, lacked the capacity for knowing, voluntary and considered judgment. Further, Mother's contention that AFC's substitution of judgment for child's judgment was not proper was not preserved for review because she did not move to remove the AFC.

Counsel: D.J. & J.A. Cirando, Esqs., Syracuse (Elizabeth DeV. Moeller of counsel), for Mother; Scolaro, Fetter, Grizanti, McGough & King, P.C., Syracuse (Amy B. Egittion of counsel), for Father; Susan A. Sovie, Attorney for the Child, Watertown.

Relocation in Initial Custody Proceedings

Quistorf v Levesque, 117 AD3d 1456 [4th Dept, May 2, 2014]

The factors set forth in *Matter of Tropea v. Tropea*, 87 N.Y.2d 727 (1996), need not be strictly applied in making an initial custody determination. The proposed relocation is but one factor among many in an initial custody determination, and although relocation arguably has a negative impact on the children's relationship with one parent, relocation is not a proper basis upon which to award primary physical custody, because the children will need to travel between the parties' two residences, regardless of which parent is awarded primary physical residency.

Counsel: Trotto Law Firm, P.C., Rochester (Jonathan C. Trotto of counsel), for Father; Karen Smith Callanan, Rochester, for Mother; Matthew J. Fero, Attorney for the Children, Rochester.

Sufficient Showing of Change in Circumstances for Modification Based on Facts Occurring Before Prior Custody Order

Frisbie v Stone, 118 AD3d 1471, 1471 72 [4th Dept, June 20, 2014]

Although Father's negative conduct occurred before the prior custody order was entered, such conduct was not known by Mother or the Court when the prior order was entered upon stipulation. Therefore, Mother's "newfound awareness of the Father's prior conduct" constitutes a sufficient change in circumstances to modify the Father's visitation rights. Further, it was not an abuse of discretion to terminate the Father's visitation rights "until further order" of Family Court, where there were Acompelling reasons and substantial evidence showing@ that continued visitation with the Father would be detrimental to the child=s best interest.

Counsel: Jeannie D. Michalski, Conflict Defender, Geneseo (P. Adam Militello of counsel), for Father; John M. Lockhart, Geneseo, for Mother; Andrew F. Emborsky, Attorney for the Child, Lima.

Sufficient Showing of Change in Circumstances for Modification Interference with Other Parent's Relationship with Child

Cheney v Cheney, 118 AD3d 1358 [4th Dept, June 13, 2014]

Where the Mother repeatedly took away a child's cell phone, thereby preventing Father from communicating with the child by telephone and causing the child distress, Father had sufficiently demonstrate a change in circumstances to modify custody.

Counsel: Lovallo & Williams, Buffalo (Timothy R. Lovallo of counsel), for Mother; Joseph Cheney, petitioner respondent pro se; Pamela Thibodeau, Attorney for the Child, Williamsville.

Sufficient Showing of Change in Circumstances for Modification in Only One of Two Cross-Petitions

Jones v Laird, 119 AD3d 1434 [4th Dept, July 11, 2014] lv to appeal denied, 2014 NY Slip Op 87282 [Ct App Oct. 23, 2014].

Father's petition for modification of custody was properly dismissed for failing to demonstrate a change in circumstances sufficient to modify the existing custody order by awarding him custody, but Mother made a sufficient showing of changed circumstances for purposes of modifying the visitation schedule based on, inter alia, the parties' inability to reach an

agreement regarding certain aspects of the children's visitation schedule, the Mother's work schedule, the fact that the Mother's former boyfriend was no longer providing childcare for the children in her home where the Friday afternoon exchanges occurred, and the extra time required to get the children prepared for an upcoming week of school on Sunday evening.

Counsel: Kathleen P. Reardon, Rochester, for Father; Davison Law Office PLLC, Canandaigua (Mary P. Davison of counsel), for Mother; Robert L. Gosper, Attorney for the Children, Canandaigua.

CHILD PROTECTIVE PROCEEDINGS

Absence of Child Protective Proceeding Regarding Non-Respondent Parent Does Not Prevent Placement in Foster Care

In re Dashaun G., 117 AD3d 1526 [4th Dept, May 9, 2014] lv to appeal dismissed, 24 NY3d 951 [2014]

Shortly after his birth, the child was placed with a child protective agency pursuant to a neglect proceeding against only Mother. Family Court adjudicated the child to be neglected by Mother and issued an order placing the child with Father under the agency's supervision. When the placement with Father deteriorated, the agency and Father reached an agreement on the record at a permanency hearing to impose additional conditions with which he agreed and was required to comply. Upon Father=s failure to comply with such agreement, the Family Court issued an order returning the child to foster care. On appeal, Father contended that the Family Court abridged his fundamental parental rights and violated his right to equal protection by removing the child from placement with him without requiring the child protection agency to commence a neglect proceeding. The Fourth Department affirmed the removal, stating that Father was subject to the supervision of agency and, when he violated the supervision order, the agency was entitled to seek removal of the child by way of revocation of the order of supervision.

Counsel: Timothy P. Donaher, Public Defender, Rochester (Janet C. Somes of counsel), for Father; Merideth Smith, County Attorney, Rochester (Carol L. Eisenman of counsel), for Monroe County Department of Human Services; Tanya J. Conley, Attorney for the Children, Rochester.

Failure to Provide Parent with Notice and Opportunity to Respond to Motion for Attorney's Withdrawal Requires Reversal

In re Joslyn U., 2014 NY Slip Op 06701 [4th Dept, Oct. 3, 2014]

Adjudication of neglect reversed where Family Court permitted Mother's counsel to withdraw and proceeded in her absence. Attorney did not make written motion to withdraw, and only sent Mother letter six days before the hearing stating she might withdraw if Mother did not appear, thereby depriving Mother of notice and opportunity to respond.

Counsel: D.J. & J.A. Cirando, Esqs., Syracuse (Elizabeth Dev. Moeller of Counsel), for Mother; Lesley C. Germanow, Mexico, for Oswego County Department of Social Services; John W. Spring, Jr., Attorney for the Child, Phoenix; Stephanie N. Davis, Attorney for the Child, Oswego; Pamela A. Munson, Attorney for the Children, Fulton.

Preservation of Issues on Appeal

In re Joseph E.K., 118 AD3d 1324 [4th Dept, June 13, 2014]

Mother must move to vacate or withdraw her admission of neglect in a child protective proceedings in order to preserve a challenge to the voluntariness of her admission on appeal.

Counsel: David J. Farrugia, Public Defender, Lockport (Mary Jean Bowman of counsel), for Mother; Abraham J. Platt, Lockport, for Niagara County Department of Social Services; Mary Anne Connell, Attorney for the Child, Buffalo

Right of Confrontation

In re Lylylly M.G., 2014 WL 4942305 [4th Dept October 3, 2014]

In child protective proceedings to determine whether Stepfather sexually abused his stepdaughter and derivatively neglected his other stepchildren, the Family Court properly balanced the respective interests of the parties

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OCBA Launches Diversity and Inclusion Initiative at Reception

Nearly 40 OCBA members and guests attended a reception in the Ballroom at the CNY Philanthropy Center – OCBA’s new home – on November 19th to officially recognize and celebrate the launch of the Association’s new Diversity and Inclusion Committee.

As reported previously, a special Task Force met over the summer to create this Committee, whose mission is to lead and guide the OCBA to create and foster a legal community wherein the same opportunities for growth, development and advancement are open to all; members are equally valued for their individual unique talents, skills, and contributions to the community; individual differences are celebrated and embraced; diverse discourse is



valued and encouraged; and equal and full participation enhances and enriches the quality of legal services and administration of justice.

Task Force member Angela Winfield, Esq., of Hiscock & Barclay, LLP, offered remarks on behalf of the Committee. She began by sharing the definition of diversity and inclusion penned by legal industry diversity and inclusion consultant Verna Meyers-“Diversity is being invited to the party. Inclusion is being asked to dance.”

Angela then delved deeper into this analogy, sharing an eye-opening and thought-provoking experience from her own legal practice that demonstrated the unfortunate and unintended consequences of not having a proactive venue for discussing and dealing with issues of diversity and inclusion in the legal profession. Through her personal story, she provided guests with the opportunity to view diversity and inclusion through a new perspective and to better understand how diversity and inclusion benefits the profession as a whole.

“When we are engaged in the practice of law, most of us are after the same thing- we are playing our role in the pursuit of justice,” she said. “To do that effectively, and to the highest level, we have to be leaders on all fronts. We have to break down and resolve issues that

get in the way, we have to grapple with barriers to justice.”

Angela explained that it was her hope and intention that the newly formed Committee on Diversity and Inclusion will be the venue for having these important conversations and doing this work. She shared that the initiatives of the Committee would include not only pipeline work to encourage youth to enter the profession, but initiatives that will directly benefit and have a more immediate impact for attorneys currently in the profession. Angela concluded by inviting all members to get involved and to continue the conversation.

Nick DeMartino, OCBA President, added, “I’m extremely proud of the hard work and commitment of our Task Force in creating the OCBA Diversity & Inclusion Committee. In creating this committee, the Task Force defined substantive goals and objectives to further its mission. Through its anticipated partnership with area schools, universities, business and law firms, the committee will assist in opening professional avenues for attorneys and aspiring attorneys where perhaps none had existed in the past.”

The reception was generously supported with a sponsorship grant from Hiscock & Barclay, LLP.

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Anyone **interested** in joining the Committee should contact our Membership Coordinator **Peggy Walker** for more information at **315-579-2582**.



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JUDICIARY INTERPRETERS IN QUASI-LEGAL ENVIRONMENTS

The following article is the opinion of Susana Carman, a registered per diem NYS Spanish court interpreter.

Interpreting from a foreign language into English requires significant attention and for that reason, there are a number of legal and practical issues that should be considered when hiring interpreters.

By virtue of the role judiciary interpreters play in the administration of justice, the interpreter is an officer of the court, and this role is not strictly limited to in-court proceedings, since interpretation may also take place in proceedings outside of the courtroom. Judiciary interpreters also work outside of the courtroom in other legal or quasi-legal settings such as attorney-client interviews, prosecutor and victim or witness interviews, proffer sessions with prosecutors, Grand Jury proceedings, or law enforcement interviews and interrogations. In addition, they may interpret for court support personnel or other justice services (probation and parole interviews; administrative hearings; depositions; immigration hearings; and worker's compensation hearings). These interviews may take place in a variety of settings, i.e., the hallway of a courthouse, a holding area, a jail, a prison, a police station, a prosecutor's office, someone's home, or a defense attorney's office. An interpreter is necessary to enable all parties involved in the process to communicate effectively with one another and carry out their respective duties.

Legal interpretation and translation is an important and specialized field requiring training, education, experience

and knowledge. Judiciary interpreters must have skills to interpret in the three modes of interpretation accurately, faithfully, exactly and impartially. Constitutional issues may be at stake in proceedings or activities that have a bearing or impact on the legal process. An adverse impact can not only affect the non-English speaker's equal access, due process rights, life and liberty, but can also affect the court's ability to administer justice, the attorney's effectiveness, law enforcement's investigations, the prosecution, or even a victim's life. The interpreter in a legal setting is viewed as a neutral party regardless of who pays for the service and his or her role is to assist all parties in the administration of justice, and the interpreter's loyalty is by definition to the legal process per se.

Unlike interpretation in other settings, legal interpretation requires a firm grasp of legal vocabulary, and the operation of the United States and New York legal systems. Effective legal interpretation also often requires experience and knowledge translating various colloquial terms or slang, and some familiarity with regional differences in languages. Judiciary interpreters also need to be able to transcend education and class differences between themselves and the speaker. These are some of the skills required for legal interpretation, and reasons why there has been a serious push for consistent and professional standards for persons who will interpret in legal proceedings, in and out of the courtroom.

Many attorneys and some judges, however, still allow a person whose qualifications and credentials are untested and unendorsed by an official entity to perform the role of

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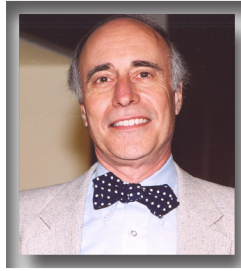
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What Constitutes a Law Office?

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

Until very recently my advice to any lawyer who wanted to practice from a “virtual” law office has been that it is OK, but only if the P.O. Box is equipped with very small furniture. The presumption that a law practice in New York requires the maintenance of some form of a physical address in New York is based upon both statutory law and ethics rules. Former Disciplinary Rule 2-101(k), now Rule 7(h), requires the inclusion of a lawyer’s principal law office address in all advertisements. The ethics rule presumes the existence of a physical office as required by Judiciary Law §470. The statute allows for the practice of law in New York by any person residing out-of-state who is admitted to practice in New York and maintains an office for the transaction of law business within New York.



Of greatest significance is the ruling by the United States District Court, for the Northern District of New York, in the case of Schoenefeld v. New York, No. 1-09-CV-0504 (N.D.N.Y., Sept. 7, 2011) The federal court held that the application of Judiciary Law §470 to enforce a physical office requirement unconstitutionally discriminates against nonresident attorneys by violating the privileges and immunities clause of the U.S. Constitution. On appeal, the United States Second Circuit Court of

Appeals, in April 2014, referred the following question to the New York Court of Appeals: What are the minimum requirements necessary to satisfy the requirements of Judiciary Law §470, which has been interpreted as mandating that a nonresident attorney maintain an “office for the transaction of law business” within the State of New York? Once New York’s highest court certifies the scope of the New York statute, the Court of Appeals will affirm, modify, or reverse the Schoenefeld ruling.

As of this writing, no further decisions have been made by either court. However, on September 29, 2014, the NYSBA/CPE weighed in with advisory Opinion 1025, modifying Opinions 756 and 954. The bar advisors concluded that to the extent that lawyers remain obligated to include their principal law office addresses in advertisements, the requirement may be satisfied by inclusion of the internet address of a virtual office. With more than a fair degree of restraint, the bar advisors conceded that the “attorney must have an office that meets the minimum requirements of Judiciary Law §470,” and expressed no opinion as to what that statute requires.

The imminent opinions of the state and federal appeals courts, as well as inevitable changes brought about by technology, will materially effect the future office requirements for the practice of law in New York. Until then, hang on to that tiny office furniture.

Two past advisory opinions from the New York State Bar Association’s Committee on Professional Ethics, (NYSBA/CPE), reinforced the notion of a physical office requirement. Opinion 756 concluded that the phrase “office address” in the foregoing ethics rules required a physical address for the practice of law in New York. In 2013, Opinion 964 noted that the advertising rules adopted by the Appellate Divisions in 2007 modified the term “office address” in DR 2-101(k) to read “principal law office address.” The NYSBA/CPE thereby concluded that rule drafters meant to impose a disclosure requirement of the address of an office where the lawyers were present and available for contact, and where personal service or delivery of legal papers could be effected. Does that mean that a lawyer cannot practice in New York from an undisclosed home office with an email address, cell phone, and P.O. Box?

Two developments may soon change the law business landscape from more physical to more virtual.

Trial Lawyers Section Continues Recruiting Members & Planning 2015

The newly reenergized Trial Lawyers Section, co-chaired by Aaron Ryder and Maureen Maney, held its second networking reception on November 13th at Benjamin’s on Franklin, while the season’s first snowfall blanketed the Armory Square neighborhood.

Nearly 50 guests, including many members of the local Judiciary, enjoyed this opportunity to meet and mingle thanks to the generosity of event sponsor **LegalMed** and its local rep, **June Datena**.

The Section will be compiling a list of all who attended the two receptions held in the past five months and use that as the basis for notifying members and planning events for the coming year, including Continuing Legal Education programs in the area of litigation and trial advocacy. To be added to the roster, contact Membership Coordinator Peggy Walker at pwalker@onbar.org.



Fourth Department Case Notes

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and reasonably concluded that the stepdaughter would suffer emotional trauma if compelled to testify in the Stepfather's presence. Although the Family Court did not have before it an affidavit attesting to the harm the stepdaughter could suffer if she were compelled to testify in open court. Further, because the Stepfather's counsel was permitted to be present while the child testified and was also given the right to cross examine her, the Stepfather's constitutional rights were not violated by his exclusion from the courtroom.

Counsel: D.J. & J.A. Cirando, Esqs., Syracuse (Elizabeth deV. Moeller of Counsel), for Stepfather; Gordon J. Cuffy, County Attorney, Syracuse (Polly E. Johnson of Counsel), for Onondaga County Department of Social Services; Francis I. Walter, Attorney for the Children, Syracuse

Termination of Parental Rights, Concurrent Planning

In re Anastasia S., 2014 NY Slip Op 06715 [4th Dept Oct. 3, 2014]

The fact that the child protective caseworker contemplated adoption as an eventual outcome for the children shortly after they were removed from Father's home does not preclude a finding that the agency made the requisite diligent efforts to strengthen Father's relationship with his children, because the agency is permitted to evaluate and plan for other potential future goals where reunification with a parent is unlikely and simultaneously considering adoption and working with a parent is not necessarily inappropriate.

Counsel: Erickson Webb Scolton & Hajdu, Lakewood (Lyle T. Hajdu of Counsel), for Father; Stephen J. Riley, Olean, for the Cattaraugus County Department of Social Services; Mary Anne Connell, Attorney for the Children, Buffalo.

CHILD SUPPORT

Fugitive Disentitlement Theory

Shehatou v Louka, 118 AD3d 1357 [4th Dept, June 13, 2014]

In child support proceedings concerning Father's willful violation of a support order, the Family Court properly determined that the fugitive disentitlement theory barred Father's application to vacate the determination of willfulness and his commitment to six months of incarceration. FatherCa California resident who is the subject of an arrest warrant in New York, but who refuses to returnCwas attempting to evade the law while simultaneously seeking its protection. Further, the fugitive disentitlement doctrine also applied to the appeal because Father willfully made himself unavailable to obey the mandate of the court in the event of an affirmance. The appeal was dismissed with leave to Father to move to reinstate it on the condition that he post an undertaking with the court in the amount of \$25,000, i.e., the amount of child support respondent owed at the time the court determined that he willfully violated the prior support order.

Counsel: Dibble & Miller, P.C., Rochester (Craig D. Chartier of counsel), for Father; Alderman and Alderman, Syracuse (Edward B. Alderman of counsel), for Mother; Susan Basile Janowski, Attorney for the Children, Liverpool.

DID YOU KNOW ...

OCBA receives calls every week from clients who are trying to locate documents or files once held by their attorneys, after that attorney has moved, stopped practicing or passed away.

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JUVENILE DELINQUENCY

Sufficiency of the Evidence

Shannon F. v Onondaga County Attorney, 2014 NY Slip Op 06751 [4th Dept Oct. 3, 2014]

Evidence was sufficient to determine that the Respondent committed an act which if committed by an adult would constitute the crime of Forcible Touching. Noting that issues of credibility are primarily questions to be determined by the trier of fact, the Fourth Department found that the Family Court properly credited the testimony of the two principal witnesses and that the Family Court's questioning of witnesses was proper. The Respondent's claim of ineffective assistance of counsel was rejected, as was his challenge to the disposition of probation.

Counsel: Susan B. Marris, Attorney for the Child, Manlius, For Respondent; Gordon J. Cuffy, County Attorney, Syracuse (Polly E. Johnson of Counsel), for Onondaga County Attorney.

SPOUSAL SUPPORT

Termination

Anderson v Anderson, 120 AD3d 1559 [4th Dept, Sept. 26, 2014]

Despite the clear and unambiguous intent of a divorce settlement agreement to provide a substitute source of monetary support for Wife, through her employment as a consultant to Husband's business, when Wife opened a business in direct competition with Husband's business, Wife breached her duty of loyalty to her employer, thereby permitting Husband to terminate the consultation fees and the employment relationship, because the reason Husband agreed to employ Wife does not change the fact that the agreement established an employment relationship with corresponding rights and obligations for both parties.

Counsel: Connors & Vilardo, LLP, Buffalo (Lawrence J. Vilardo of Counsel), for Husband; Hiscock & Barclay, LLP, Buffalo (Joseph M. Finnerty of Counsel), for Wife.

LEGAL BRIEFS BRIEFS BRIEFS LEGAL

Hiscock & Barclay Attorneys Named 2014 Super Lawyers and Rising Stars

Hiscock & Barclay, LLP announces that 34 attorneys from the firm have been featured in the 2014 Super Lawyers for New York and Massachusetts, including five who have been singled out as New York Rising Stars. Selection to the list is the result of a rigorous review process that includes peer recognition and professional development. The Hiscock & Barclay attorneys represent a diverse range of practice areas across the firm.

Of Hiscock & Barclay's attorneys featured as Super Lawyers, ten are located in Syracuse



Robert A. Barrer



Richard R. Capozza



J. Eric Charlton



Marcy Robinson Dembs



Timothy J. DeMore



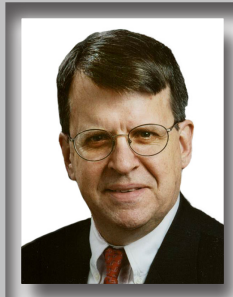
Jon P. Devendorf



John P. Langan



Michael A. Oropallo

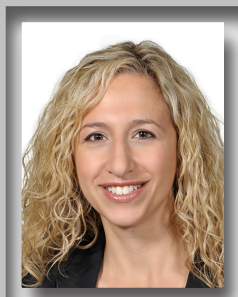


Alan R. Peterman



Michael J. Sciotti

RISING STARS



Emanuela D'Ambrogio



Jason S. Nardiello



Heather L. Sunser



Angela C. Winfield



Surrogate's Notice to Bar | Important December 15 Deadline

Ava S. Raphael | Surrogate

Ellen S. Weinstein, Esq. | Chief Clerk
Tel: (315) 671-2108 Fax: (315) 671-1162

Members of the bar are reminded as the end of the year approaches that there are **deadlines for filing of documents** with the Onondaga County Surrogate's Court.

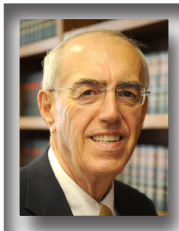
All matters requiring a signed order or decree before the end of 2014, whether for estate tax, income tax, or any other

reason (including judicial settlement proceedings, petitions for discharge and petitions for advanced commissions on account) need to be filed on or before December 15, 2014. All matters on citation, where a decree is being sought prior to year end, must be filed with sufficient lead time to allow for process and the scheduling of a return date before **December 15, 2014**.

LEGAL BRIEFS BRIEFS BRIEFS LEGAL

Cirando in Top 5 Percent of Upstate New York Attorneys

John A. Cirando, a Syracuse attorney, has been included as one of the top 5 percent of outstanding attorneys in Upstate New York in the 2014 Edition of New York Super Lawyers. Cirando concentrates his practice on appellate advocacy.



Hancock Estabrook Managing Partner Janet Callahan Leads Panel at Meeting of International Law Firms



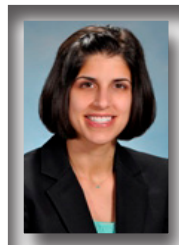
Janet Callahan, Managing Partner of the Syracuse-based law firm of Hancock Estabrook, LLP, recently moderated a panel for ALFA International at its 2014 Annual Business Meeting in Pasadena, California. The panel's discussion focused on key law firm management issues, including hiring and business development. Ms. Callahan's panelists consisted of law firm managing partners from across the United States.

ALFA International is a global network of independent business focused law firms. The ALFA organization is comprised of 145 member firms with 85 members in the United States and 60 members in Latin and South America, Canada, Mexico, Europe, Africa, Australia/New Zealand, and throughout Asia. Hancock Estabrook is the exclusive member firm for Central New York.

Attorneys Receive 40 Under Forty Award

The 40 Under Forty Awards event is presented by TERACAI, Cxtec & Business Journal News Network. BizEventz is the producer of the event, a division of the Business Journal News Network.

Danielle Mikalajunas Fogel Partner with the Sugarman Law Firm, LLP, was recently named as one of the 2014 40 Under Forty winners. Danielle was chosen based on her business accomplishments, community involvement, and leadership role in Central New York. She will be presented with the award at the luncheon in November.



Emilee Lawson Hatch | Bousquet Holstein is proud to announce that Emilee Lawson Hatch, an Associate Attorney at the firm, has been awarded the CNY Business Journal 40 Under Forty Award.

Emilee focuses her practice on working with clients on Trusts and Estates matters, Not-for-Profit Organizations, and legal matters concerning LGBT and Non-Traditional Families. She is a graduate of University of Miami School of Law, Syracuse University College of Law and Metropolitan State College of Denver.

Her business, community, and volunteer activities include:

VLP 2014 Distinguished Service Pro Bono Award; Board Member at the Central New York Women's Bar Association; OCBA Board Member; NYSBA, Elder Law and Trusts & Estates Sections; Board Member at The Newland Center for Adult Learning and Literacy; Legal Clinic Attorney Volunteer at the "Say Yes to Education" Legal Clinics; Volunteer at the Vera House Legal Clinic; Volunteer at the

Surrogate's Court Legal Clinic and the Crouse and Upstate Hospital Legal Clinic and Board Member at Child Care Solutions, Inc.



Aaron D. Frishman | Bond, Schoeneck & King PLLC is pleased to announce Aaron D. Frishman was honored on November 19, 2014, as one of Central New York's "40 Under Forty". Aaron practices in all areas of trusts and estates and elder law matters. He has lectured to individuals and at state bar associations on numerous estate planning and elder law issues and has been published nationally by the National Academy of Elder Law Attorneys (NAELA). He recently became a member of the Public Benefits Panel of the NYSBA Elder Law Section.

Anthony A. Marrone II | Menter, Rudin & Trivelpiece, P.C. is pleased to announce that Anthony A. Marrone II was recently named as one of the winners of Syracuse's 40 Under Forty 2014 Winners. Mr. Marrone is a member of the firm's Continuing Care Service and Estate & Elder Law Planning practice groups. With offices in Syracuse and Watertown, he focuses his practice on Medicaid planning, estate planning, planning for the elderly and disabled, as well as estate and trust administration. He also handles litigation, family business and succession planning, corporate formation, commercial real estate and economic development. Mr. Marrone currently represents various continuing care providers for the aging throughout Upstate New York, and governmental agencies on Medicaid and asset recovery matters.



Mary Snyder | AVP, Associate General Counsel, SRC, Inc. Mary's energy and enthusiasm for leading others and making a positive impact is apparent to all who have the pleasure to work with her. She guides SRC, Inc. on important legal issues. She is detail-oriented, knowledgeable on many subjects, and a great communicator. She is a high achiever (the youngest executive at SRC) and has helped SRC advance in many areas. Her

drive and dedication is obvious and as she continues to excel with new challenges, she has become a role model and influencer of positive improvements at SRC and in the community.

Mary's business and community activities include:

National Contracts Management Association; New York State Bar Association; Association of Corporate Counsel; OCBA; VLP Pro Bono Service Committee; SRC Diversity & Inclusion Council; Central New York Women's Bar Association; OCBA Talk to a Lawyer program; Say Yes Talk to a Lawyer program.

Costello, Cooney and Fearon, PLLC announces Special Counsel in Labor and Employment Group

James F. Barna | Has joined the firm as Special Counsel in the Labor and Employment practice group. Mr. Barna has focused his practice on labor and employment law for eighteen years. During that time, he has handled employment disputes in 22 states, and the District of Columbia.

In 2002, Mr. Barna was Associate Counsel and Coauthor of the victorious Merits Brief on the



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OCBA Paralegals Committee

Contributors | OCBA Paralegals Executive Committee

On October 9, 2014 during the monthly Paralegals Committee luncheon, Linda J. Magnifico presented on her role as a Senior Case Technician (Legal Assistant) to an Administrative Law Judge in the Social Security Administration Office of Disability Adjudication and Review. Linda advised that her position provides her various opportunities to help people which she thoroughly enjoys. Her current expertise is based in federal administrative law which governs activities of administrative agencies of government. Linda undergoes constant training because of continual changes to rules and regulations relative to disability claims. She spoke about the different types of disability cases that she handles. She also handles non-disability cases regarding overpayments to disability applicants. Linda performs post hearing work and advised that it generally takes a year or more from the time of application for disability until the time a decision is rendered.



Linda joined the Social Security Administration Office of Disability Adjudication and Review as a Senior Case Technician in 2010. Prior to that she worked as a paralegal/legal assistant with two local firms in the area of trusts and estates, and two New Jersey firms in the area of foreclosure.

Forthcoming Monthly Luncheon Programs

The OCBA Paralegals Committee monthly luncheon meetings will be held at The Spaghetti Warehouse, 12:00-1:00PM on the following dates:

December 11, 2014 – Don't miss our Holiday Luncheon! In addition to the customary presentation of door prizes, we will be incorporating games, raffles and a 50/50 raffle. A special prize will be given to the person who brings the most guests. We are seeking donations for the purchase of items from the wish lists of our adopted P.E.A.C.E., Inc. and Military families. Please contact the Executive Committee members listed below regarding donations.

January 8, 2015 – Jean Swanger and Karen Hawkins, Paralegals with the firm of Gilberti Stinziano Heintz & Smith, P.C. will present on their paralegal duties in the area of Environmental Law.

Please invite your bosses, legal administrators and co-workers. These luncheon meetings are not restricted to just Paralegals Committee members.

The cost for lunch is \$11 for members and \$12 for non-members. **Reservation deadline is 4:00 pm 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.

Stay tuned for further information regarding upcoming luncheons. Information regarding our speakers will be sent via email, Bar blasts, and can be found on the new OCBA website under the Paralegals Section. We plan to provide some interesting speakers. **If you have suggestions for guest speakers or presentation topics**, please do not hesitate to contact any member of the Executive Committee.

Kathrine Cook
Cynthia Wade
Christie Van Duzer
Ranette Releford

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ranettereleford@gmail.com

Faye Williams frwilliams2@gmail.com
Jean Swanger jswanger@gilbertilaw.com
Karen Hawkins khawkins@gilbertilaw.com

Paralegal of the Month Program

The Executive Committee would like to institute a "Paralegal of the Month" program and is seeking nominations for selection beginning January 2015. More information to follow.

Looking for Ideas

What information would you like to see on the Paralegals Section of the Onondaga County Bar Association's website? Please email Karen Hawkins at khawkins@gilbertilaw.com with your suggestions. Thanks!

ESAPA is moving forward!

The Annual Spring Meeting will be held in Buffalo on Saturday, April 25, 2015, from 9:30am to 5:30pm. All member paralegals are welcome to attend the meeting. Your Onondaga County Bar Association Paralegal Committee (OCBAPC) is a member of ESAPA, so that includes you. The meeting will be hosted by the Western New York Paralegal Association (WNYPA). We will keep you updated each month with reminders and any additional information concerning this meeting. If you didn't make the Fall meeting, make it your business to come with us to this Spring meeting in April of 2015. We need your input. You have a

voice!

To learn more about ESAPA visit our website at www.empirestateparalegals.org

Highlights of our Fall Meeting

The ESAPA Fall Meeting was held at the Nixon Peabody Law Firm in Albany, the weekend of September 20th. They have a beautiful office facility that is environmentally green.

Throughout the meeting, ESAPA discussed high impact items such as the Limited License Legal Technician (LLLT) Program in Washington State and how it would impact Judge Lippman's Task Force to Expand Access to Civil Legal Services in New York. ESAPA also discussed the possibility of a statewide paralegal conference for the Spring of 2016.

At the end of the two-day meeting, some charitable frivolity ensued with the hosts of the meeting, the Capital District Paralegal Association (CDPA), being challenged to do the ALS "Ice Bucket Challenge". They, in turn, forwarded the challenge to the ESAPA members. Our very own Katherine Cook, Chair of our local Paralegal Committee (OCBAPC), took the "Ice Bucket Challenge", as well as the President of ESAPA, Deborah Wilcox Mabry from Rochester's own Nixon Peabody offices. They both braved the frigid challenge for the noble cause. Brrrrrrrr!

The Executive Committee Could Use Your Help

The next Paralegals Executive Committee ("EC") meeting is scheduled for December 3, 2014 beginning at noon at Gilberti Stinziano Heintz & Smith, P.C., 555 East Genesee Street, (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



Deborah Wilcox Mabry, of Nixon Peabody

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LEGAL BRIEFS BRIEFS BRIEFS LEGAL

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United States Supreme Court in *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81 (2002), the first Family and Medical Leave Act case heard by the Supreme Court.

Mr. Barna attended Syracuse University and Stony Brook University. He is a graduate of the Washington University School of Law in St. Louis, Missouri.

Thomas E. Taylor To Chair Upstate Medical University Search Committee



Thomas E. Taylor | a member of the law firm Bousquet Holstein PLLC, has been asked to Chair the search for a new President for Upstate Medical University. SUNY Upstate Medical University in Syracuse is the only academic medical center in Central New York. It is also the region's largest employer with 9,460 employees. Tom Taylor has served on the Upstate Medical University Council for 4 years and is currently the Interim Chair of the Council.

Affiliated with the State University of New York, Upstate Medical University's mission is to improve the health of the community through education, biomedical research and health care. Upstate focuses on the most prevalent human diseases, including cancer, diabetes, heart disease, nervous system disorders, vision, and

infectious diseases. The quest for treatments and cures is built upon expertise in structural, molecular and systems biology.

The Law Office Of Douglas H. Zamelis has moved

Douglas H. Zamelis, Esq. has moved his primary office to Springfield Center in Otsego County. Doug will continue to accept consults and referrals involving environmental, land use and municipal law matters.

Doug's new contact information is:

7629A State Highway 80
Cooperstown, New York 13326
Tel: (315) 858-6002
Email: dzamelis@windstream.net

NOTICE: Regarding the Files of Ronald J. Pelligra

THE ORIGINAL WILLS and remaining estate planning files prepared and held for safekeeping by the late **RONALD J. PELLIGRA** will be retained by Deborah DiNiro-Pelligra, c/o Tracy Wilcox at the Cherundolo Law Firm until January 1, 2015. If you or your client want to pick up your or your client's original will before that date, please contact Tracy Wilcox at 476-2191 to arrange for a pickup.

After January 1, 2015, any remaining original wills, will be transferred to and stored by Mackenzie Hughes, LLP, attention, Ami S. Longstreet, Esq., who can be reached at 315-233-8263.

Paralegals Committee

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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.

ATTORNEY ASSOCIATE POSITION

Sole practitioner with **40 yrs. exp in Skaneateles, NY** has position for attorney with minimum three yrs experience in private practice. Practice areas are general business, real estate, estate planning/estate administration. Salary TBD.

The associate position would lead to **early partnership**. David Loftus, 1583 East Genesee St., Skaneateles, NY 13152.

david@davidloftuslaw.com

FROM THE EDITORIAL BOARD

To advertise in the Bar Reporter, call the Onondaga County Bar Association at 315.579.2578.

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 cstirpe@onbar.org.

John A. Cirando, Editor Emeritus

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JUDICIARY INTERPRETERS IN QUASI-LEGAL ENVIRONMENTS

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speaking for a party, a witness and the attorneys. This may be out of ignorance, for convenience, because of cost, or because of the lack of certified interpreters in the immediate area. There is a generalized misconception that self-professed interpreters, those who have a bilingual background, or any service provider contracted by a language agency can be deemed qualified as an interpreter or translator. It is also possible that some interpretation agencies hired by counsel for civil litigation willfully subcontract non-certified interpreters, using the argument that they have their own screening process for interpreters, but that argument has no weight or relevance in legal or quasi legal settings.

If an attorney does not speak the source language of his or her client, the attorney is not likely to be able to easily determine whether the interpreter is fairly and accurately interpreting the discussion with the client, and the potential consequences of miscommunication and lack of communication on either side are serious. If a breakdown occurs, the extent or location of the breakdown may not be known, leaving the expensive and frustrating task of retracing steps with the client. These are some of the issues that counsel must confront in the decision about whom to engage to interpret for clients.

The preferred method of insuring the competency of a judiciary interpreter is by State or Federal certification. These certifications are obtained by a rigorous examination that tests both oral and written fluency in both English and the source language and it means that an interpreter has been tested by a clearly defined method and has demonstrated a minimum threshold of competence. Furthermore, NYS State has developed a Code of Ethics and Standards of Professional Conduct and Ethical Behavior that the judiciary interpreter is expected to follow to protect the legal interests of the parties for whom the interpreting services are performed, in accordance to the Canons of Professional Responsibility.

When attorneys decide to use non-certified interpreters, they are risking their cases to be challenged or dismissed and poor interpretation may cause injustices. One recent example is found in the decision made in June by the Indiana Supreme Court in *Victor Ponce v. Indiana*, a 5-0 opinion, where Justice Rucker writes "Audits of interpreted court proceedings in several states have revealed that untested and untrained 'interpreters' often deliver inaccurate, incomplete information to both the person with limited English proficiency and the trier of fact. Certification Program. Therefore, simply providing 'any' interpreter upon request is insufficient. A failure to accommodate persons with [language] disabilities will often have the same practical effect as outright exclusion[.]" *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (discussing claim made by paraplegics that state denied them access to the courts). Thus, it is imperative to ensure accurate interpretation throughout the proceedings lest we run the risk of diminishing our system of justice by infringing upon the defendant's rights of due process. It is with this background that we turn to the facts of this case. * * *.." (italics mine). That is why standards, training, and certification are so crucial. The competence of the interpreters used in each phase of the case will significantly impact both the attorney's relationship with his or her client, and the results of the case.

In light of the recent settlement between the New York Civil Liberties Union and the State of New York regarding the Public Defense program, things need to improve drastically. One of the major provisions included in the settlement is the dedication of additional state resources to ensure that indigent defense programs have the resources they need to hire sufficient lawyers, investigators, support staff and interpreters to "ensure that all poor criminal defendants have lawyers with the time and support necessary to vigorously represent the defendant."

This goal should not be only applied for indigent defendants. Both assigned and retained attorneys should remember that it is in the best interest of their clients to verify an interpreter's credentials before the start of any proceeding and to refuse to go forward unless the interpreter holds a State or Federal certification. Furthermore, in depositions, the record should reflect the qualifications of the interpreter, by means of voir dire, prior to the administration of the interpreter's oath.

The issue now becomes, where to find a language specific judiciary interpreter to communicate with my client? The State of New York has developed testing for around 22 languages other than Spanish and you can contact the Office of the 5th Judicial District at @ 315-671-2111 where they can provide you with the name and contact information of judiciary interpreters in their database.

References:

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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