ONONDAGA COUNTY BAR ASSOCIATION
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CNY Philanthropy Center | 431 East Fayette St. | Syracuse, NY 13202 | Phone: 315-471-2667

OCBA Announces Ruger Award Winner Hon. Langston McKinney and Distinguished Lawyer Honoree John P. Sindoni

We are extremely pleased to announce that the OCBA will be honoring Ret. City Court Judge Langston McKinney and John Sindoni, at our 140th Annual Dinner on Thursday, Oct. 15, 2015. This year the event will return to Downtown Syracuse and will take place at the OnCenter. Please plan to join us in celebrating our honorees.

OCBA created the William C. Ruger Award during OCBA's Centennial in 1975. Named after the first president of the OCBA who later served as Chief Judge of the New York State Court of Appeals, the Ruger Award is given to a Judge and is "reserved for recognition of singularly outstanding achievement in devotion to the principles of our system of justice." Since the creation of this award, only seven jurists have been its recipients. **Judge Langston C. McKinney** will be the eighth recipient.

Appointed in 1986 to the Syracuse City Court bench, Judge McKinney was the first African-American to serve as a City Court Judge. The following year he was elected to a full ten-year term and was re-elected to a second ten-year term in 1997. He presided on the City Court Bench until he retired on December 31, 2010. Prior to becoming a judge, he formed the first African-American owned law firm in Syracuse, with attorneys Henry Melchor, Esq. and Hurclee Maye, Esq. Prior to going into private practice, Judge McKinney represented low income clients at Onondaga Neighborhood Legal Services and the Frank H. Hiscock Legal Aid Society.

During his 24 years of distinguished service on the Syracuse City Court bench, Judge Langston McKinney worked tirelessly inside and outside the courtroom to make justice a reality. He developed the Syracuse Community Treatment Court to provide treatment to defendant drug abusers facing nonviolent crimes as an alternative to jail. He advocated towards the achievement of more minority representation on city juries. He regularly devoted countless hours working with neighborhood groups, schools, churches, civic and charitable organizations, and public service agencies in their efforts to make Syracuse a better and safer place to live. Judge McKinney has served on the boards of directors of the Boys & Girls Club; the Samaritan Center; the Boy Scouts of America; the Syracuse Community Health Center; the Onondaga County Bar Association; the Criminal Justice Section of the New York State Bar Association and the Everson Museum. He is a charter member of the New York State Association of Drug Treatment Court Professionals. He has also served as a member of the Syracuse Inter-religious Council, and on the Vestry Board of Grace Episcopal Church. Indeed, in 2011, Judge McKinney was honored by the New York Civil Liberties Union's Central New York Chapter for consistently acting in accordance with his own statement: "Justice is not contained to the courtroom. Justice is a community effort."

John P. Sindoni, Esq. joined Hiscock & Barclay, LLP, now Barclay Damon, immediately after graduating from Cornell Law School in 1971. John has been a long time member of the New York State Bar Association and the Onondaga County Bar Association and a strong supporter of both organizations during his 44-year legal career. John was nominated for consideration for this award by his law partner and mentee Heather Sunser. Heather said, "When I think of what it takes to be a successful lawyer in this demanding field, John is the first attorney who comes to mind. He exhibits great interpersonal skills, logical thinking and analytical thinking and excellent writing and public speaking ability. As a transactional lawyer, John's ability to think in a creative way and to find reasonable solutions when unique problems arise is invaluable to his clients. Every day working with John is like a new lesson in how to master these critical legal skills. John's knowledge, vision and leadership have had a huge impact on my career and the careers of many attorneys in the Central New York legal community. I have been very fortunate to work with John these last 14 years and hope to work with him for much longer."

John chaired his law firm's real estate practice area for more than 20 years and has managed a large group of attorneys, paralegals and legal assistants over his distinguished career. John has shared his time, knowledge and skills generously over the years serving in leadership positions on boards and committees for Catholic Charities, Christian Brothers Academy, the OCC Board of Trustees, the College of Holy Cross, Franciscans in Collaborative Ministries, Christopher Community, the Eldercare Foundation, the Samaritan Center and OnPoint for College to name a few. John has also served and chaired many CLE panels and has been a frequent lecturer regarding mortgage foreclosures, real estate title and practical real estate skills. John has taken on pro bono matters, is always quick to agree to take a call from another lawyer in the community to answer a question on a real estate issue, and write a recommendation for college or give rides to college students returning to Syracuse as part of his work with OnPoint for College.

UPCOMING EVENTS:

Law on the Loggia	Tuesday | July 7
Trial Lawyers Reception	Thursday | July 16
Spousal Maintenance | CLE	Thursday | July 23

From the President:

Dear Friends,

While most of us are enjoying the beginning of summer with the Fourth of July holiday and plans for relaxing vacations with family and friends, the volunteers at the Onondaga County Bar Association aren't slowing down one bit. The summer is an active time for planning at the Bar Association, as we begin gearing up for a busy fall season and continue to offer many programs during the next few months.

You'll read in this month's newsletter about our two honorees who will be recognized at the 140th Annual Dinner on October 15th. Plans are well under way for that event, and I'm pleased that we're able to bring it back downtown this year for the convenience of our guests and members. Many thanks to the Chair of the Distinguished Lawyer Committee, Gioia Gensini, and the committee members for their thoughtful and difficult decisions. If you'd like to help serve on the Annual Dinner committee, contact Peggy Walker at the Bar Association.

There are many other social networking events planned this month. The Trial Lawyers Section is hosting another of its mixers (open to all members) on July 16th at Benjamin's on Franklin, and the Diversity & Inclusion Committee is holding its first Reception for Summer Associates, Summer Interns and Externs, on July 29th in the Ballroom of the CNY Philanthropy Center. An invitation for that event will be out shortly, but we hope to make this an annual opportunity to welcome those law students spending the summer in our community, hoping to impress upon them that Onondaga County is a great place to practice their profession, and to make a home.

The Membership Committee met recently to brainstorm ways and discuss opportunities to provide more programs and networking events, targeted to specific member needs and interests. We're exploring ways to better communicate with members via Social Media; and the Membership Committee is beginning work on a member survey to get feedback from you. We look forward to your comments and suggestions to help us deliver more compelling information and programming.

While we know summers in Syracuse tend to fly by, we hope to see you at an upcoming Bar event – or just stop by the offices when you're in the area and say "Hello!" to your OCBA Staff.

Happy Summer.

Jean Marie

Regards,

Jean Marie Westlake | OCBA *President*

jeanmarie@defranciscolaw.com

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AN IMPORTANT MESSAGE: From the Onondaga County Surrogate's Court

Ellen S. Weinstein, Esq.

As Chief Clerk of the Onondaga County Surrogate's Court, I am extremely proud of the courteous, efficient, and professional service provided by court staff to the public and the Bar alike, notwithstanding being significantly understaffed.

It is no secret that the New York State Unified Court System is operating under great strain. Our court cannot help but be affected. Due to retirement, attrition, open positions going unfilled and other circumstances beyond our control, we find that our court will be more short-staffed over the course of the next six months than ever before. This does not mean the caliber of our work will change. We will continue to provide high quality, courteous service but the manner and time frame in which we will be able to turn around this quality work product will be impacted. While we pride ourselves on being responsive to telephone inquiries, we will no longer be able to respond to verbal search requests.

If you have questions, we invite you to visit our court's website at: www.nycourts.gov/courts/5jd/onondaga/surrogate

There you will find a wealth of useful information including, but not limited to, overviews of various proceedings brought before our court, forms, fees, and an access link to our online records search database. If you do not already have a records search account, you may apply for one using the application form also available through this site.

In light of an anticipated backlog, our clerks may not be readily available to meet with you personally, and there may be times when the front window will be closed except for the drop off of papers. Therefore, we strongly encourage the submission of papers by mail and/or courier.

Hard times call for difficult measures, but we want to assure you that our commitment to excellence has not diminished; we will continue to strive to do our best under the circumstances.

We appreciate and thank you for your patience and understanding.

UPCOMING CHANGES TO CLE FORMAT REQUIREMENTS AVAILABLE TO NEWLY ADMITTED ATTORNEYS

Recently adopted changes to formats allowed for completion of the newly admitted attorney CLE requirement, to become: **EFFECTIVE JANUARY 1, 2016.**

The New York State CLE Board has adopted the following changes, effective January 1, 2016, to the current requirement that newly admitted attorneys complete all of their CLE credits in the traditional live classroom setting or by fully interactive videoconference:

- **LAW PRACTICE MANAGEMENT** and Areas of **PROFESSIONAL PRACTICE** credit may be completed in **ANY APPROVED FORMAT**, including nonparticipatory formats, such as **ON-DEMAND AUDIO OR VIDEO, OR LIVE BROADCAST.**
- **ETHICS AND PROFESSIONALISM** credit may be completed in the traditional live classroom setting; by fully interactive videoconference; or by simultaneous transmission with synchronous interactivity, such as **WEBCONFERENCE**, or **TELECONFERENCE**, where questions are allowed during the program.
- There is **NO CHANGE** in the requirement for **SKILLS** credit, which must be completed in the traditional live classroom setting or by fully interactive videoconference.

The preceding announcement has been posted on the nycourts website. Further details concerning newly admitted attorneys with a prorated CLE requirement, or who are based in law offices outside of the United States, will be posted on our "Accredited Provider News" page in the next few days.

Thank you to those of you who shared your views on this issue; the Board found your comments very helpful.

Fourth Department Family Court Case Notes

By Linda Gehron | *Supervising Attorney, Family Court Program, Frank H. Hiscock Legal Aid Society*

CHILD CUSTODY & VISITATION

Adjournment Request Properly Denied

Vanskiver v Clancy, 2015 NY Slip Op 03703 [4th Dept, May 1, 2015]
The Family Court did not abuse its discretion by denying the attorney's request for an adjournment and proceeding with the hearing in the mother's absence. The mother was aware of the hearing date, and her attorney's claim that she was unable to attend due to the winter weather was vague and unsupported by any detailed explanation or evidence from the mother.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-01-15/PDF/0543.pdf

Appeal, AFC Submission of New Evidence

Gunn v Gunn, 2015 NY Slip Op 05034 [4th Dept, June 12, 2015]
The AFC submitted new information on appeal that the father who was awarded sole custody by the Family Court had subsequently allowed the children to live with the mother in Maryland. In addition, the AFC and the mother alleged that the father's living arrangement had changed. The trial court took notice of these new allegations, stating that the record was no longer sufficient to determine the father's fitness and right to sole custody. The case was remanded for an expedited hearing.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-12-15/PDF/0736.1.pdf

Appeal Moot When Temporary Order Superseded

Matter of Rodriguez v Feldman, 2015 NY Slip Op 02663 [4th Dept, March 27, 2015] The grandmother's challenge to the Family Court's temporary order of physical custody issued mid-trial was rendered moot by entry of the final order of custody.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-27-15/PDF/1357.pdf.

Appeal Not Moot Upon Entry of Subsequent Order

Matter of Donegan v Torres, 2015 NY Slip Op 68953 [4th Dept, March 20, 2015]
While the mother's appeal of an order denying her request for custody was pending, a new proceeding was held and the paternal grandfather was awarded sole legal and physical custody of the subject child. In the first proceeding, the Family Court found that the mother's judgment was impaired to a degree that made her unfit to be a custodian of the child. Because this finding could have "enduring consequences" for the parties, the appeal was not considered moot.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-20-15/PDF/0213.pdf

Change of Circumstances Due To Domestic Violence

Schieble v Swantek, 2015 NY Slip Op 61766 [4th Dept, June 19, 2015]
The Family Court properly found there was a change in circumstances based upon incidents of domestic violence in the mother's household. However, a single incidence of domestic violence was not enough to change custody because the mother filed criminal charges against her abusive former boyfriend and obtained an order of protection.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-19-15/PDF/0748.pdf

Change of Circumstances With Informal Agreement

DeNise v DeNise, 2015 NY Slip Op 05043 [4th Dept, June 12, 2015]
The parties' prior informal custody agreement was a factor to be considered upon an original determination of custody, but the parent did not have to prove a substantial change of circumstances in support of a modification of the agreement.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-12-15/PDF/0749.pdf

Change of Circumstances, Hearing Required

Gelling v McNabb, 2015 NY Slip Op 02608 [4th Dept, March 27, 2015] The father made a sufficient evidentiary showing of a change in circumstances to require a hearing. The amended petition alleged that the prior order provided for "such and further visitation with the subject child as the parties may mutually agree," but that the respondent mother had refused the father all visitation with the child.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-27-15/PDF/0302.pdf

Change of Circumstances, No Hearing Required

Strachan v Gilliam, 2015 NY Slip Op 90314 [4th Dept, June 19, 2015]
A hearing is not automatically required whenever a parent files a petition seeking a modification of a custody or visitation order if the parent cannot make a sufficient evidentiary showing of a change in circumstances.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-19-15/PDF/0799.pdf

Change of Circumstances, Post-Petition Proof

Matter of Rodriguez v Feldman, 2015 NY Slip Op 02663 [4th Dept, March 27, 2015] The Family Court properly exercised its power, in the interest of justice to conform the petition to the evidence sua sponte with respect to post-petition conduct, establishing a significant change in circumstances.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-27-15/PDF/1357.pdf

Continued on page 6

New York State Office of Indigent Legal Services announces

Public Hearings on Eligibility for Assignment of Counsel

NOTICE: On March 11, 2015, a settlement agreement reached between the State of New York and a plaintiff class represented by the New York Civil Liberties Union in *Hurrell-Harring et al. v. State of New York* was approved by the Albany County Supreme Court. The agreement vests the New York State Office of Indigent Legal Services (ILS) with the responsibility of developing and issuing criteria and procedures to guide courts in counties located outside of New York City in determining whether a person is unable to afford counsel and eligible for mandated representation.

PURPOSE: ILS will conduct a series of public hearings to solicit the views of county officials, judges, institutional providers of representation, assigned counsel, current and former indigent legal services clients and other individuals, programs, organizations and stakeholders interested in assisting ILS in establishing criteria and procedures to guide courts when determining eligibility for mandated legal representation in criminal and family court proceedings. Interested participants should provide testimony regarding current and/or recommended guidelines, policies and practices relating to the following topics:

- The criteria for determining whether an individual is eligible for court appointed counsel which may include, but not be limited to, the ability to post bond, the actual cost of retaining private counsel, the income needed to meet reasonable living expenses of the applicant and any dependents or dependent parent or spouse, the severity of the case, the ownership of an automobile that may or may not be necessary for the applicant to maintain his/her employment, the receipt of public benefits, home or other property and non-liquid assets, and income including income and assets of family members, debts and financial obligations, employment and housing status, including residence in a correctional or mental health facility, the use of fixed poverty guidelines and any other criteria that may be included for consideration.
- The process and/or method for disseminating information regarding the criteria for determining eligibility.
- The process of reviewing, appealing and/or reconsidering eligibility determinations.
- The advantages and disadvantages of proposing uniform and comprehensive criteria and/or guidelines to determine eligibility.
- The need to preserve confidentiality of information submitted to determine eligibility.
- Any related social and economic benefits and/or consequences related to the impact of standardizing eligibility determinations.

SUBMISSIONS AND TESTIMONY: The New York State Office of Indigent Legal Services Panel will consider both oral testimony and written submissions. Persons interested in presenting oral testimony or making a written submission, or both, are asked to follow the procedures and deadlines described below.

Submission of Written Testimony: Any person wishing to submit written testimony only must do so by August 26, 2015. Written testimony should be submitted to ILS at the contact information below.

Requests to Provide Oral Testimony: Because of the limited number of hearings scheduled, the Panel will accept requests to present oral testimony in advance, and will then notify individuals of the proposed date, time and duration scheduled for their testimony. If you are interested in testifying at a hearing, please forward your request via email to publichearings@ils.ny.gov no later than 7 days in advance of the hearing at which you propose to testify. Proposed testimony should be no more than 10 minutes in length.

If requesting an invitation to provide oral testimony, please provide the following information:

1. Identify yourself and your affiliation if applicable (and if you are requesting an invitation for someone else to testify, that individual's name and affiliation);
2. Attach either a prepared written statement or a brief description of the topics you wish to address at the hearing; and
3. Indicate at which of the hearing(s) the testimony is proposed to be given.

If requesting to give oral testimony, please indicate if you will need special accommodations (e.g. Americans with Disabilities Act or language access assistance) in order to testify.

NAME, ADDRESS AND AGENCY CONTACT: All written submissions and requests to testify should be forwarded to the New York State Office of Indigent Legal Services at the following addresses.

By Email: publichearings@ils.ny.gov, or

By Mail: Attention: Ms. Tammeka Freeman
Executive Assistant
New York State Office of Indigent Legal Services
80 S. Swan St., 29th Floor
Albany, NY 12210

For further information regarding the settlement please visit the New York State Office of Indigent Legal Services' website at https://www.ils.ny.gov/node/88.

DATE, TIME AND LOCATION: The New York State Office of Indigent Legal Services will conduct one hearing in each of the following judicial districts (i.e., located outside of the New York City area). The hearings will take place as follows:

3rd Judicial District
Thursday July 16, 2015, 11am
Albany County Courthouse
16 Eagle St., Courtroom 427
Albany NY 12207

4th Judicial District
Wednesday August 26, 2015, 11am
Essex County Courthouse Supreme Courtroom
7559 Court St.
Elizabethtown NY 12932

5th Judicial District
Thursday July 9, 2015, 11am
Onondaga County Courthouse, Room 400
401 Montgomery St.
Syracuse NY 13202

6th Judicial District
Thursday August 20, 2015, 11am
Broome County Courthouse
92 Court Street, Room 202,
Binghamton NY 13902

7th Judicial District
Thursday August 6, 2015, 11am
Hall of Justice
99 Exchange Blvd. Courtroom #303
Rochester NY 14614

8th Judicial District
Thursday July 30, 2015, 11am
Ceremonial Courtroom, Old County Hall
92 Franklin St.
Buffalo NY 14202

9th Judicial District
Thursday July 23, 2015, 11am
Richard J. Daronco Westchester County Courthouse Ceremonial Courtroom #200
111 Martin Luther King Jr. Blvd
White Plains NY 10601

10th Judicial District
Wednesday August 12, 2015, 11am
John P. Cohalan, Jr. Courthouse Courtroom S -24
400 Carleton Ave.
Central Islip NY 11722

Family Court Case Notes

From page 4

Change of Circumstances, Sufficiency of Proof

Higgins v Higgins, 2015 NY Slip Op 03692 [4th Dept, May 1, 2015] The father established the required change in circumstances by showing that the mother's residence had become a "harried and chaotic environment" that did not provide the children with the focused attention and structure needed.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-01-15/PDF/0523.pdf

Mehta v Franklin, 2015 NY Slip Op X03719 [4th Dept, May 1, 2015] The Family Court properly determined there was a change of circumstances based upon the continued deterioration of the parties' relationship.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-01-15/PDF/0592.pdf

Voorhees v Talerico, 2015 NY Slip Op 03968 [4th Dept, May 8, 2015] The father presented evidence showing that the conditions in the mother's residence were unsanitary and unsafe for the child, who had also been exposed to instances of sexual abuse while under the mother's supervision. This evidence was sufficient to establish a change of circumstances.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-08-15/PDF/0419.pdf

Default Finding & Attorney Withdrawal Improper

Bretzinger v Hatcher, 2015 NY Slip Op 81110 [4th Dept, June 19, 2015] The mother appeared by telephone from Texas upon her motion to dismiss the father's petition to modify their custody order and suspend her visits. She indicated she would not be financially able to appear personally for a hearing set for later that month. The trial court disconnected the call, found the mother in default, relieved her attorney and denied her motion to dismiss. The Court reversed, finding that the Family Court abused its discretion by granting the motion of the mother's attorney to withdraw without notice to her. The request to withdraw was considered ineffective and the order denying the mother's motion to dismiss the father's petition was improperly entered as a default order.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-19-15/PDF/0842.1.pdf

Majuk v Carbone, 2015 NY Slip Op 04981 [4th Dept, June 12, 2015] The mother asserted that the father had no standing to appeal because he defaulted in the hearing by failing to appear. However, the record reflected that the father's attorney appeared on his behalf. The Court recognized his right to appeal because a party who is represented at a scheduled court appearance by an attorney has not failed to appear.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-12-15/PDF/0618.pdf

Domestic Violence Disallows Joint Custody

Jacobson v Wilkinson, 2015 NY Slip Op X03635 [4th Dept, May 1, 2015] When domestic violence is alleged, the Court must consider its effect upon the best interests of the child pursuant to DRL § 240 [1]. The evidence of the father's acts of domestic violence demonstrated that he possessed a character [that] is ill-suited to the difficult task of providing his young child with moral and intellectual guidance. An award of joint custody was reversed and the mother was granted sole legal and primary physical custody, with visitation to the father. However, the mother was not allowed to relocate.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-01-15/PDF/0325.pdf

Electronic Expert Testimony Allowed

Matter of Rodriguez v Feldman, 2015 NY Slip Op 02663 [4th Dept, March 27, 2015] The Court properly exercised its discretion by allowing the telephonic testimony of an expert witness who resided in the state where the child was located, pursuant to Domestic Relations Law § 75-j [2].

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-27-15/PDF/1357.pdf

Extraordinary Circumstances Proven

Hayward v Wilson, 2015 NY Slip Op 03974 [4th Dept, May 8, 2015] The Court agreed that extraordinary circumstances were proven and upheld an award of custody to a friend of the father's family. The friend had originally taken custody of the child by the father's agreement in July 2008. In 2009, the father sought custody of the children, but his petition was dismissed for failure to prosecute. He made no further efforts to regain custody until April 2013, when he filed again. While the children were in the friend's custody, the father only sporadically visited and when he did, he behaved inappropriately. The father admitted that he did not know the children's birth dates, ages, or grade levels at school.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-08-15/PDF/0471.pdf

Extraordinary Circumstances Not Proven

Matter of Suarez v Williams, 2015 NY Slip Op 02293 [4th Dept, March 20, 2015] DRL § 72 (2) (b) does not ease a grandparent's burden of showing extraordinary circumstances. An order granting them custody was reversed. Bennett v Jeffreys cases decided after the enactment of DRL § 72 (2) (b) remain good law. The Court reiterated that a fit parent cannot be displaced because someone else can do a better job, as long as the parent has not forfeited his or her rights by surrender, abandonment, unfitness, persisting neglect or other

Continued on page 7

Family Court Case Notes From page 6

extraordinary circumstance. Given proof of the mother's consistent contact with the child, petitioners' constant communication with her and their reliance on her permission to make decisions, she retained custody.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-20-15/PDF/0212.pdf

False CPS Reports Required Supervised Visitation

Matter of Ordona v Cothern, 2015 NY Slip Op 02652 [4th Dept, March 27, 2015] The Court found a sound and substantial basis for the trial court to conclude that the mother filed false CPS reports regarding the father and repeatedly violated prior court orders regarding visitation. Such actions by the mother constituted a concerted effort to interfere with the father's contact with the child and raised a strong inference that the mother was unfit. Supervised visits were required.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-27-15/PDF/0417.pdf

Grandparent Visitation Award Proper

Richardson v Ludwig, 2015 NY Slip Op 02653 [4th Dept, March 27, 2015] The grandmother had standing to seek visitation pursuant to Domestic Relations Law § 72 (1), having established that conditions existed in which "equity would see fit to intervene". The Family Court award of a minimum of six hours of visitation one weekend day per month with two of the subject grandchildren was in the children's best interests.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-27-15/PDF/1357.pdf

Interference With Parent's Contact a Deciding Factor

Lamay v Staves, 2015 NY Slip Op 03981 [4th Dept, May 8, 2015] A concerted effort by one parent to interfere with the other's contact with the child was "so inimical to the best interests of the child . . . as to, per se, raise a strong probability that [the interfering parent] is unfit to act as custodial parent". When no other factor strongly favors either party, an award of sole custody to the other party is justified.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-08-15/PDF/0493.pdf

Prerequisites For Modification Of a Custody Order

Matter of Ordonez v Sothern, 2015 NY Slip Op 02652 [4th Dept, March 27, 2015] Visitation provisions in a Family Court order that delegated authority to a supervising agency to determine the duration of the mother's visitation with the subject children; required her to show substantial compliance with the recommendations of drug and alcohol evaluations, mental health evaluations; and required her participation in a parenting skills training program as prerequisites for a modification of visitation were vacated. The Court substituted a provision directing that the mother comply with those conditions as a component of supervised visitation.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-27-15/PDF/0417.pdf

Sua Sponte Order Terminating Visitation Reversed

Majuk v Carbone, 2015 NY Slip Op 04981 [4th Dept, June 12, 2015] The father appealed from an order that sua sponte directed he was to have no further contact or visitation with the child. The Court concluded that the Family Court erred in making an order that was neither requested by the parties, nor by the Attorney for the Child.

The case was remanded for further proceedings.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-12-15/PDF/0618.pdf

UCCJEA, No Jurisdiction

Bretzinger v Hatche, 2015 NY Slip Op 81110 [4th Dept, June 19, 2015]

Petitioner father was in the military and had the right to designate the primary residence of the child by an order of custody issued by a Texas court. He relocated with the child to New York, where he was stationed. Respondent mother had visitation with the child pursuant to the order, and the father was to pay for the transportation of the child three times per year. The father filed in New York to suspend the mother's visitation rights. The mother moved to dismiss the petition, but the motion was denied. The Court found that the Family Court erred by denying her motion to dismiss the petition, because Texas had exclusive, continuing jurisdiction pursuant to DRL § 76-a at the time of the filing, and the father's allegations were insufficient for the trial court to exercise temporary emergency jurisdiction pursuant to DRL § 76-c. In addition, the Family Court did not "immediately" communicate with the Texas court, as required by section 76-c (4) and it erred by requiring the mother to seek an order from that court given it was the father's burden under DRL§ 76-c [3]). Even though the Court acquired jurisdiction later, when four months after the filing it communicated with the Texas court and jurisdiction was declined under DRL § 76-b [1]), when the trial court issued its order denying the mother's motion to dismiss, it did not have temporary emergency jurisdiction and had not complied with the requirements of section 76-c. On appeal, the mother's motion to dismiss was granted.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-19-15/PDF/0842.1.pdf

Untreated Mental Illness Results In Finding of Unfitness

Matter of Donegan v Torres, 2015 NY Slip Op 68953 [4th Dept, March 20, 2015] The Court found sufficient evidence to support of an award of custody to the petitioner and supervised visitation for the mother, on the basis that the mother was not fit. She suffered from bipolar disorder and schizophrenia with psychosis, and her mental health hospitalization required her relatives to travel to Puerto Rico to prevent the child from being placed. She discontinued her

Continued on page 8

From page 7

treatment and continued to reside with a man who had pleaded guilty to a charge resulting from an allegation that he sexually abused their oldest daughter. He was the subject of an indicated CPS report for inadequate guardianship because he had attempted to touch his youngest daughter.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-20-15/PDF/0213.pdf

Willful Violation of Custody Order Found

Matter of DeJesus v Haymes, 2015 NY Slip Op 02287 [4th Dept, March 20, 2015] The mother presented evidence that the children did not want to visit the father because they were afraid of him due to fist fights with his girlfriend, physical aggression toward them and his drug use. She claimed her violation of the order was not willful because she was justified in not subjecting the children to this environment. The father presented evidence that, after conducting an investigation, DSS found his home to be safe. The father testified that the alleged illegal drug in his home was actually flavored tobacco from the smoke shop he owned, and that the domestic violence to which the mother referred was a single incident in 2009 during which he had an argument with his girlfriend. Given the conflicting nature of the evidence, whether or not the mother's violation was willful came down to a credibility determination.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-20-15/PDF/0189.pdf

CHILD PROTECTION

Appeal, Neglect Finding on Consent Not Reviewable

Matter of Martha S. and Mary S., 2015 NY Slip Op 02615 [4th Dept, March 27, 2015] The mother's challenge to the underlying neglect finding was not reviewable on appeal because her admission to neglect resulted in an order upon the consent of the parties. Because the mother never moved to vacate the neglect finding or to withdraw her consent, her claim that her consent was not knowing, voluntary and intelligent was not reviewable.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-27-15/PDF/0327.pdf

Derivative Neglect Found Based Upon Aggravated DWI

Matter of Aijianna L., 2015 NY Slip Op 66855 [4th Dept, March 20, 2015] The evidence demonstrated that the child did not attend a single day of school during the 2011-2012 and 2012-2013 school years. Family Court reasonably concluded that the mental condition of the child was therefore in imminent danger of becoming impaired. The mother failed to demonstrate that the child was attending school or was receiving the required instruction in another place. No reasonable justification for the absences was proven.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-20-15/PDF/0191.pdf

Facilitating Drug Use a Basis For Neglect

Crystiana M., 2015 NY Slip Op 05037 [4th Dept, June 12, 2015] Respondent grandmother contended that Family Court erred in finding she neglected her granddaughter. The evidence established that the grandmother knew the mother was addicted to opiates and that the grandmother either illegally purchased suboxone for the mother or provided the mother with money, knowing that the mother was going to use that money to buy suboxone herself. During this same time period, the respondent grandmother, who had informal custody of the child, allowed the mother to provide care for the child. The finding that she neglected her grandchildren was affirmed.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-12-15/PDF/0742.pdf

Non Respondent Parent Participation in Fact-Finding

Matter of Cyle J.F., 2015 NY Slip Op 03653 [4th Dept, May 1, 2015] The claim that the non respondent mother's participation in the fact-finding hearing deprived the father of his due process rights was not preserved for appeal and was considered harmless given the other evidence of neglect.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-01-15/PDF/0444.pdf

Order of Protection, Duration Limited

Matter of Ishanellys O., 2015 NY Slip Op 04956 [4th Dept, June 13, 2015] The Family Court erred in entering an order of protection preventing the respondent from having unsupervised visits with his biological children before September 11, 2027, the date his youngest biological child turned 18. FCA § 1056 (1) prohibits the issuance of an order of protection that exceeds the duration of any other dispositional order in the case. The dispositional order placed the respondent under the supervision of petitioner until September 26, 2014.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-12-15/PDF/0468.pdf

FAMILY OFFENSE

Aggravated Harassment 2nd Finding Dismissed Appeal Not Moot

Fisher v Hofert, 2015 NY Slip Op 02334 [4th Dept, March 20, 2015] Respondent father appealed from an order of protection entered upon a finding that he committed the family offense of aggravated harassment 2nd against petitioner. Although the order of protection

Continued on page 9

FULL SERVICE CHILD SUPPORT CLINIC CALLS FOR VOLUNTEERS

Attention Attorneys Interested In Full Service Representation And Family Law:

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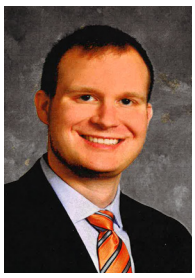

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For more information, please contact Staff **Attorney Andrew Eastham at (315) 703-6614 or aeastham@wnylc.com.**

Family Court Case Notes

From page 8

had expired, the enduring consequences of the order of protection rendered the appeal not moot. Furthermore, because the Court of Appeals had determined that Penal Law § 240.30 (1), which proscribes communications made "in a manner likely to cause annoyance or alarm," to be unconstitutionally vague and overbroad, (see People v Golb, 23 NY3d 455, 467, rearg denied 24 NY3d 932), the statute cannot serve as the basis for a family offense. The Family Court's finding was reversed and dismissed.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-20-15/PDF/0301.pdf

Indicated Report of Maltreatment, Scope of Review

Pitts v NYS OCFS, 2015 NY Slip Op 03689 [4th Dept, May 1, 2015] Although a report of child maltreatment must be established by a fair preponderance of the evidence, upon an administrative expungement hearing, the review is limited to whether the determination was supported by substantial evidence in the record. Hearsay evidence of maltreatment may be sufficient to support this determination. Upon review, it is not within the Court's discretion to weigh conflicting testimony or substitute its own judgment for that of the administrative finder of fact.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-01-15/PDF/0519.pdf

Permanency Hearing, Order of Return Reversed

Matter of Carson W., 2015 NY Slip Op 03993 [4th Dept, May 8, 2015] Although the respondents had complied with court-ordered services, the Court reversed the Family Court's decision to return the child upon a hearing under FCA § 1089 [d]. The Court reasoned that, even though the respondents had made limited admissions during the fact-finding, unless they could explain the circumstances which led to their one child's death and the other child's fracture, they could not "effectively address the underlying parenting problems". The Court concluded that the respondents' willingness to "vaguely accept responsibility" was not enough to support a determination that the child's best interests were served by returning him.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-08-15/PDF/0545.pdf

Removal, Dispositional Order Renders Challenge Moot

Matter of Martha S. and Mary S., 2015 NY Slip Op 02615 [4th Dept, March 27, 2015] The mother's challenge to the Family Court's removal of the children from her home pending a final order of disposition was rendered moot by the trial court's subsequent dispositional order.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-27-15/PDF/0327.pdf

CHILD SUPPORT

Appeal of Commitment Order

Perez v Johnson, 2015 NY Slip Op 03870 [4th Dept, May 8, 2015] The appeal was dismissed because respondent appealed only from the order of commitment and not from the magistrate's order finding that he willfully violated the child support order.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-19-15/PDF/0719.pdf

Modification, Sufficiency of Proof

Perez v Johnson, 2015 NY Slip Op 03870 [4th Dept, May 8, 2015] The father was denied a downward modification of his child support obligation because he failed to demonstrate a substantial change in circumstances that would justify the modification. He did not present sufficient evidence establishing that he diligently sought re-employment equal to his former employment.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-08-15/PDF/0446.pdf

Public Assistance Receipt Effects Credit for Expenses

Soldato v Benson, 2015 NY Slip Op 04007 [4th Dept, May 8, 2015] The joint physical custodian of the subject children with the higher income was obligated to pay child support. While his children were recipients of public assistance, he was precluded from obtaining a reduction of his support based upon expenses incurred while they were in his custody.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-08-15/PDF/0594.pdf

JUVENILE DELINQUENCY

Least Restrictive Disposition

In the Matter of Jacob A.T., 2015 NY Slip Op 02658 [4th Dept, March 27, 2015] The Court abused its discretion by placing the respondent with DSS for one year following a finding that the respondent committed

Continued on page 10

From page 7

petit larceny. The evidence at the dispositional hearing and in the probation report established that respondent's home environment was "toxic" and that he suffered from mental health issues that required treatment. However, the evidence also established that:
1) The respondent had recently been staying with a family friend who had known him since birth; 2) The friend had petitioned for his custody; and 3) There had been no new arrests since he lived with the friend. Both the family friend and the woman with whom he lived testified at the dispositional hearing that they could help with respondent's supervision. The woman managed a residential home. The Court found that the Family Court erred in failing to consider the least restrictive available in fashioning an appropriate dispositional order and ordered a new hearing.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-27-15/PDF/0428.pdf

Admission Allocution Insufficient

Matter of Johnathan B.M., 2015 NY Slip Op 05018 [4th Dept, June 12, 2015] Family Court Act § 321.3 (1) prohibits the Family Court from consenting to the entry of an admission unless it has determined, through an allocution of the respondent and his or her parent, that respondent is aware of all possible dispositional alternatives. The statute's requirements cannot be waived. The respondent's admission was defective because the Court failed to ascertain that respondent and his parents were aware of all possible dispositional alternatives such as the possibilities of a conditional discharge or an extension of placement. Because the period of placement had already expired, the petition was dismissed.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-12-15/PDF/0697.pdf

PATERNITY

Acknowledgment of Paternity Not Res Judicata

Matter of Frost v Wisniewski, 2015 NY Slip Op 02238 [4th Dept, March 20, 2015] The dismissal of a paternity petition that sought to vacate an a acknowledgment of paternity on the grounds of res judicata was reversed. Under circumstances where the petitioner had been the child's full-time caregiver and provider for several years and the respondent who had signed the acknowledgment of paternity ten years earlier now recognized the petitioner to the biological father following a DNA test, it was in the child's best interests to permit a hearing on the merits of the petitioner's request to be declared the biological father.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-20-15/PDF/0189.pdf

PERSONS IN NEED OF SUPERVISION

Agency's Contempt Finding Reversed

Matter of Andrew B., 2015 NY Slip Op 03999 [4th Dept, May 8, 2015] The Monroe County Department of Human Services had been ordered by the Family Court not to discharge the respondent from foster care without the permission of the Family Court. The child subsequently threatened his foster parent and the police, resulting in an arrest and incarceration. When he was released from jail, the agency placed him in an emergency homeless shelter, claiming that it was not possible to locate a foster home or group home to accept him. The agency filed to terminate placement, and the respondent moved for a contempt finding. The Family Court found the agency to be in contempt of court by placing the child in an emergency shelter outside of foster care. The Court found that the respondent had proven that:

1) A lawful judicial order expressing an unequivocal mandate was in effect ; 2) The agency had knowledge of the order; 3) The mandate was disobeyed by the agency; and

4) The respondent was prejudiced by the agency's conduct. However, the Court reversed the Family Court's finding of contempt because the agency raised a "valid defense" when its asserted its inability to comply with the order.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/03-20-15/PDF/0189.pdf

TERMINATION OF PARENTAL RIGHTS & ADOPTION

Child Support, Non Payment Evidence of Abandonment

Matter of Makia R.J., 2015 NY Slip Op 04020 [4th Dept, May 8, 2015] The Court found that the Family Court properly determined respondent was a mere notice father whose consent was not required for an adoption of the subject children, regardless of whether he visited the child monthly or regularly communicated with the child. Because it was undisputed that he paid only $99.99 in child support since July 2003, and nothing between 2006-2012, the respondent was deemed to be a notice father only.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-08-15/PDF/0620.pdf

Due Process, Judicial Questioning of Witnesses

Matter of Emily A., 2015 NY Slip Op 04972 [4th Dept, June 12, 2015] The mother claimed that she was denied due process and a fair trial because Family Court took the "role of a prosecutor" and showed "bias against her". The Court disagreed, stating that a "trial court has broad authority to control the Courtroom, rule on the admission of evidence, elicit and clarify testimony, expedite the proceedings and to admonish counsel and witnesses when necessary". The Court concluded that the trial judge did not abuse or exceed his authority to question witnesses or to elicit and clarify testimony. The judge's actions to "protect the welfare of the child" did not result in a denial of due process.

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/06-12-15/PDF/0566.pdf

Grandparent, No Superior Right to Custody After TPR

Matter of Lundyn S., 2015 NY Slip Op 03702 [4th Dept, May 1, 2015] In the context of a dispositional hearing after a termination of parental rights, a nonparent relative of the child does not have a greater right to custody than the child's foster parents or a prospective adoptive parent selected by the county. The fact that the child's grandmother would be a good caretaker did not justify a removal of the child from "the only home she has ever known and from a family with whom she had bonded".

http://www.nycourts.gov/courts/ad4/Clerk/Decisions/2015/05-01-15/PDF/0542.pdf

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Executive Director, Jeff Unaitis-- (315) 579-2581

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