



ONONDAGA COUNTY BAR ASSOCIATION BAR REPORTER

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

Hon. Langston McKinney: Hawk or Dove?

CHELE STIRPE

It's fascinating that a sequence of seemingly unrelated historical events could culminate in Judge Langston McKinney's being presented with the Onondaga County Bar Association's prestigious Ruger Award. It's also ironic that the professional success of such a kindhearted, temperate and peaceable individual as Judge McKinney is inextricably linked in no small part to:

the Civil War, World War I, World War II, the Cold War, the Vietnam Conflict, the War on Poverty and the War on Drugs

Notwithstanding these connections, Judge McKinney vehemently asserts that he is no warmongering hawk. Indeed, he holds a deep-seated belief that disfavors any resort to force and violence as a means of resolving disputes. He does admit, however, that each of these particular human conflicts produced a specific and readily identifiable circumstance which was instrumental in enabling him to earn our respect and admiration.

If you try, you can connect these events to his award. This will be made simpler by referencing his biographical information in last month's Bar Reporter (linked [HERE](#)) to what follows.

Take, for example, the Civil War.

Most of Judge McKinney's earliest American ancestors were enslaved Africans who only gained their freedom from slavery as a result of this bloody domestic conflict. Those ancestors became the parents, grandparents and great-grandparents of scores of proud black people (especially in Florida) who struggled to become first-class citizens in a culture where racial inequality, Jim Crow laws and segregation would flourish well into the Twentieth Century. With each new generation striving onward and upward, these forbearers strengthened their resolve to remain always mindful of the need to recognize injustice - racial and otherwise - and to work diligently to eradicate injustice from their lives and from the lives of their descendants.

Judge McKinney, having been born in 1944, was fortunate to have spent a significant portion of his formative years in the company of a number of these stalwart maternal and paternal elders; and it was from them that he became familiar with first-hand accounts of the momentous struggles and sacrifices they endured in order to secure the blessings of freedom. It was also from them that he developed a sense of the character traits that were necessary if he were to succeed at any endeavor, even sometimes against all odds.



None of those elders were lawyers.

It would take the occurrence of WWI, WWII, the Cold War, and the Vietnam Conflict to produce the family's first lawyer.

Take, for another example, The Cold War.

Langston McKinney began his preparation for college in 1960 when the US government, embarrassed by the USSR's launch of Sputnik in October of 1957 and seeking to gain an edge in the "Space Race," tapped into the previously-ignored pool of talented African American high school students for participation in the National Science Foundation Summer Internship Program.

Langston graduated from Howard University in 1965 with a degree in Chemistry, and was recruited to become the first black scientist in the Research and Development

Division at Carrier Corporation in Syracuse

Take, for another example, the Vietnam Conflict.

Langston McKinney was inducted into the US Army in April 1966. He entered Law School at Syracuse University College of Law upon his discharge in 1968, using the GI Bill to pay in part for his law school education. As a first year law student he co-founded the SU chapter of the Law Students Civil Rights Research Council and spent a summer internship in the Southern civil rights movement. Langston was also instrumental in implementing the law college's first course in poverty law, helping to establish an internship program in which students could earn credit for serving as legal representatives for poor people. It would take the **War on Poverty** for him to become a seasoned lawyer, securing rights for those poor people.

Langston McKinney began his career working for Onondaga Legal Services (ONLS) in 1969; and he went to work for the Hiscock Legal Aid Society in 1973.

It would take the **War on Drugs** for Judge McKinney to reach his stride. In 1995, the Judge established New York's fourth Drug Treatment Court.

Can you see how the winds of war might blow favorably, even for a dove?

More recently, though retired from the bench, Judge McKinney remains singularly devoted to the principals of our justice system. His efforts to enhance the rule of law and equality for all have been tireless. He was instrumental in the founding the William Herbert Johnson Bar Association of CNY, the very first African American Bar Association in Onondaga County. He worked with a focus group to create the OCBA's Diversity and Inclusion Committee. He has worked closely with the Law Week Committee to reach the youth in our community and to teach them about the positive changes they can make by utilizing the rule of law. He is a mentor to many lawyers, teaching them how they can apply their knowledge and positions as lawyers to enrich the world, starting in their own communities.

UPCOMING EVENTS:

50 Year Luncheon Drumlins	Sept 10
Pursuing Your Passion Tim Green	Sept 17
Defenses in Criminal Cases Judge Brunetti	Sept 25
Annual Dinner OnCenter	Oct 15



From the President:

Dear Friends,

Welcome to August ... where did the summer go?

If you were at the OCBA offices this summer, you noticed a great deal of activity. I've previously mentioned the many CLE programs, networking receptions and other events that were held the past few months.

You'll read in this newsletter about our most-recent one: the "Welcome to Syracuse" event hosted by our Diversity & Inclusion Committee, for summer associates and interns. I'd like to thank the members of that committee, judges Langston McKinney and Deborah Karalunas and our distinguished panelists for making that first-time event a great success. It was good to see

so many young attorneys and law students discovering why they should make Central New York their professional and personal homes.

Our Annual Dinner Committee, chaired by OCBA Vice President Jim Williams, is hard at work planning that October 15th event. I had the very satisfying opportunity to contact our two honorees, Judge McKinney and John Sindoni, to notify them of their selections and share with them our excitement at having the chance to recognize them for their longstanding commitment to our legal community. Please put that Dinner on your calendars now, and watch for your invitations after Labor Day.

Our Membership Committee has met twice this summer, and is putting the finishing touches on an OCBA membership survey that will soon be shared with you. They're planning on a special, one-day "coffee hour" downtown on August 26th, to distribute that survey, but will also make it available electronically (for those of you who don't work downtown frequently) and will include it in next month's Bar Reporter newsletter. The Membership Committee is eager to hear from you, and to provide feedback to the Board and Association committees on how best to serve your needs with programs that remain relevant and useful to you in your practice. It's a brief survey, so please take the few moments it will take to complete and return that to us when you receive it.

Finally, I'd like to congratulate our friends at the Volunteer Lawyers Project of Onondaga County, Legal Services of Central New York and the Legal Aid Society of Mid-New York, on last month's move to their new shared location on S. Warren St. This was a significant project, requiring much planning and coordination but ultimately creating a location that will allow these important organizations to better serve our community. That means the last vestige of OCBA has now departed the State Tower Building – our home for nearly 40 years.

Enjoy the rest of your summer and I look forward to seeing you at a future OCBA event.

Regards,

Jean Marie Westlake | OCBA *President*

jeanmarie@defranciscolaw.com

Telephone: (315) 479-9000

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EVIDENTIARY ISSUES: WITNESS INTERRUPTED



Hon. John J. Brunetti

Lawyers conducting direct examinations must be wary of a trap that may easily befall them.

Assume that the primary witness is on the stand undergoing direct examination. Whether it be the injured party in a pedestrian-auto case or the injured party in an assault case, there comes a point in time when the direct examiner gets to the core segment of direct examination—i.e., the segment where civil or criminal liability is partially, if not fully established. During that core segment, when the witness is engaging in a permissible narrative describing the unfolding of events, experience shows that words may emanate from the direct examiner's mouth such as **"Let me stop you right there, was the knife in his left hand or his right hand?"** or **"Let me stop you right there, could you see the license plate of the car as it drove toward you?"** The result: witness interrupted.

Witness interruption is not good lawyering. The only person it benefits is the direct examiner. S/he doesn't have to make the effort to remember what topic to return to once the core segment has been completed. Witness interruption frustrates jurors in their attempt to follow the chronology of events that comprise the core segment. More important, witness interruption makes

it difficult for the witness, usually one who has never testified in a jury trial, to complete the most important part of his/her testimony. Finally, witness interruption deprives the a lawyer of the opportunity to prove the same thing twice! Permit me to explain.

Good lawyers successfully fight the natural tendency to get something clarified or amplified immediately rather than take the time and effort to make a written or verbal note to go back to that topic when the core segment testimony has been completed. Good lawyers wait until the witness has described the entire event before handling a demonstrative exhibit with the witness such as a photo for mark-up. Good lawyers realize the added benefit of successfully fighting the urge to interrupt: By allowing the witness to complete the core segment of his or her testimony, and returning to the topics already covered for amplification and/or clarification, counsel is proving the same facts twice. For example, counsel may ask a question like, "You told us earlier that the car was coming at you, were you able to see the license plate?" or "You told us that the wheels were in the crosswalk when you were struck, I'm handing you Exhibit "1", already received in evidence. Please place an "X" in the area which depicts your location at the time you were struck." Oh, I forgot the most important point. **Another reason to avoid witness interruption is to avoid annoying the judge!**

See page 15 for upcoming CLE "Defenses in Criminal Cases" with Judge Brunetti.

OCBA LAWYER CHAT RECEIVES PEB AWARD

Partners for Education & Business (PEB) held its Annual Awards Event on June 10th at LeMoyne College. Many awards were presented to recognize achievement in preparing youth for their college and career futures. Dr. Jill Berkowicz, of SUNY New Paltz, gave an informative presentation about STEM (Science Technology Engineering Math), based on her new book "The STEM Shift - A Guide for Leaders," which she co-authored with Dr. Ann Myers of The Sage Colleges.

Larisa Kondrya delivered an inspiring presentation to students, sharing her story as a seven-year-old immigrant from the Ukraine, to participating in job shadows coordinated by PEB that helped to put her on the path to an engineering degree at Syracuse University, and ultimately a position in civil engineering at the C&S Companies. Her message: **You must have ambition and persistence to be successful.**

OCBA's Diversity and Inclusion (D&I) committee received its award for the "Lawyer Chat" program. The objectives of the D&I committee include community outreach, the creation of a leadership development program and the creation of mentoring programs. Its members are a group of attorneys who are very dedicated about achieving the committee's mission: To create

and foster a legal community wherein the same opportunities for growth, development and advancement are open to all; diverse discourse is valued and encouraged; and equal and full participation enhances and enriches the quality of legal services and administration of justice.



OCBA D&I Committee members (l. to r.) Renato Smith and Anne Dotzler accepting the award from PEB Board President John Spina.

The "Lawyer Chat" initiative gives interested high school students the opportunity to talk one-on-one with a lawyer to discuss topics such as Pre-Law activities in school; undergraduate degrees/courses; how to pay for law school; areas of law that fall within their passion, impacting their community as a lawyer; starting their own firm, etc. Several D&I committee members brought the program to Fowler High School this April during Law Day Career Fair, as part of the partnership between OCBA and PEB.

OCBA Diversity & Inclusion Committee

members include:

Angela Winfield, Jim Williams, Anne Burak Dotzler, Eric Galvez, Lanessa Owens, Gordon Cuffy, Crystal Doody, Sally Curran, Nancy Pontius, Renato Smith, Romana Lavalas, Jameli Tanui, Hon. Langston McKinney, Nick DeMartino, Paula C. Johnson, Jean Marie Westlake, Jeff Unaitis, Melanie Cuevas-Rodriguez and Laura Harshbarger.

Court of Appeals & Fourth Department Civil Practice Case Notes

Contributors from Barclay Damon, LLP



COMMERCIAL LITIGATION

Sarah E. Fenster, Esq.
and

Aubrey A. Roman, Esq.

Oral Representations Prior to Formation of a Contract

Violet Realty, Inc. v. Gerster Sales & Service, Inc.,



2015 Slip Op 03641 (4th Dep't May 1, 2015) Plaintiff and Defendant entered into a contract whereby defendant sold a new boiler to plaintiff and installed it at a commercial property that was owned by the plaintiff. After installation, plaintiff determined that the boiler was not producing the energy savings it expected and, therefore, it ceased making payments under the contract. Plaintiff, alleging that a term of the parties contract was that the boiler would produce energy savings, commenced this action, alleging fraudulent inducement, breach of warranty, and breach of contract. The lower court denied defendant's cross motion for summary judgment on the claim for breach of contract. The Appellate Division reversed, finding that defendant established the existence of a valid contract which did not contain a term guaranteeing energy savings. Accordingly, since defendant established that plaintiff failed to pay the balance due on the contract, defendant established a prima facie case for breach of contract.

Court May Consider Evidentiary Material to Decide CPLR 3211 Motion to Dismiss

Gerrish v. State University of New York at Buffalo, et al., 2015 Slip Op 05324 (4th Dep't June 19, 2015) Plaintiff filed a breach of contract action against State University of New York at Buffalo, three individual professors, and three institutional foundations. The individual professor defendants and institutional foundation defendants moved to dismiss for failure to state a cause of action. The Supreme Court granted defendants' motion and dismissed the complaint as against them. Plaintiff alleges that the Supreme Court erred in granting the motion to dismiss by assuming facts outside the record. The Appellate Division affirmed the Supreme Court's decision and reiterated the criteria for a motion to dismiss pursuant to CPLR 3211, which is to determine whether the proponent of the pleading has a cause of action, not whether he has stated a cause of action. Therefore, the Court may consider affidavits and other evidentiary material in deciding a motion to dismiss for failure to state a cause of action. The evidentiary material provided by the individual professors and institutional foundations shows that there was no contract between the plaintiff and these defendants, which could form the basis of a breach of contract cause of action. Accordingly, the Supreme Court properly granted the defendants' motion to dismiss.

Waiver of a Contract Right through Abandonment

Estate of David J. Kingston v. Kingston Farms Partnership, et al., 2015 Slip Op 05807 (4th Dep't July 2, 2015) Decedent and Defendants were partners pursuant to a partnership agreement. The partnership agreement called for the partners to conduct an annual meeting in March to determine the value of the business, and it also stated that if the most recent valuation of the business was more than 18 months old at the time of a partner's death, the value would be determined by the business's accountant. The partners never held the March valuation meeting, and, instead, met annually in December, when the business was valued in relation to a line-of-credit. Plaintiff commenced an action for specific performance to enforce the valuation provisions requiring the accountant to value the business, and for breach of contract. The lower court granted the portion of plaintiff's motion for summary judgment on the specific performance cause of action. The Appellate Division reversed, finding that there was a question of fact as to whether the March meeting requirement in the partnership agreement was modified through the parties' actual performance and course of conduct. The Appellate Division stated that waiver of a contract right through abandonment may be established by the parties' affirmative conduct. Whether a contract right is modified, waived, or abandoned is a question of fact.

Use of Non-Party Affidavits in Support of Motion for Summary Judgment

Covell v. Slocum, 2015 Slip Op 06069 (4th Dep't July 10, 2015)

Plaintiff commenced a personal injury action against defendant seeking to recover damages for injuries she sustained after she was struck by a vehicle operated by defendant. Defendant moved for summary judgment, which plaintiff opposed. The lower court granted defendant's motion and dismissed plaintiff's complaint. Plaintiff appealed, arguing that the lower court should have considered a non-party affidavit she submitted in opposition to defendant's motion, which created a triable issue of fact. On appeal, defendant argued that the affidavit should not be considered because plaintiff failed to disclose the affiant as a witness and/or the statement the affiant claimed the defendant made immediately after the accident in response to defendant's discovery demands. The Appellate Division rejected this argument finding that there was no evidence that the plaintiff willfully withheld the information and found that the affidavit created a triable issue of fact, reinstating the complaint. After reinstating the complaint, the Appellate Division afforded defendant additional rights of discovery with regards to this newly disclosed witness.

LABOR AND EMPLOYMENT

Ross M. Greenky, Esq.

Human Rights Law – Discrimination Based on Prior Convictions

Matter of Dempsey v. New York City Dept. of Educ., 2015 NY Slip Op 04028 (May 12, 2015) Petitioner, a school bus driver employed by a private bus company, commenced an Article 78 proceeding alleging that the New York City Department of Education ("DOE")s



Continued on page 6

APPEALS

Civil, Criminal, Administrative
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John A.

CIRANDO
Attorney at Law

Suite 101
M&T Bank Building
101 South Salina Street
Syracuse, New York 13202

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THE VIEW FROM UP NORTH: MEET TIM GREEN

Barclay Damon LLC (Lawyer, Novelist, TV Host, Ex-NFL Player)

BY STEVE DYKSTRA | Re-printed with permission from "Above the Law" | www.abovethelaw.com



As you daydream in your office about dumping the wonderful practice of law, let's do a little quiz. The save-you-from-the-practice fairy waves her magic wand and presents you with three amazing choices to escape the billable hour:

- A. Play Linebacker in the NFL;
- B. Bestselling author; or
- C. Television host of a syndicated entertainment show.

Pretty good choices, huh?

Meet lawyer Tim Green. He's all three. That's right, he played linebacker and defensive end for the Atlanta Falcons. He's a television personality who once hosted *A Current Affair*. And, he's written thirty books, including some terrific thrillers. For those of you saying, oh sure, he's an ex-NFL player, they get everything handed to them — I can promise it's not the case with Tim. I've read his thrillers, *The Fourth Perimeter* and *The Fifth Angel*, and I can vouch that Tim is a gifted writer. He earned his impressive book sales through hard work and a natural writing talent that he refined through a lot more hard work.

Several years ago, Tim stopped writing thrillers and switched to sports-themed novels for 8-to-12-year-olds. That's the genre on which he currently focuses his writing energies.

Most amazingly, with all that on his résumé, Tim still practices law.

What up with that?

Because I'm an inherently curious fellow, I had to find out, so I spoke to Tim. Here is a lightly edited recap of our conversation:

Steve Dykstra: Your website says you had two dreams as a kid: to play in the NFL and to become a bestselling author. You must feel pretty blessed.

Tim Green: I do feel blessed. I had a lot of coaches and mentors who helped me.

SD: Playing football and writing books don't generally go hand in hand. What do you think was going on in your head as a youngster that you had those two dreams?

TG: Those were my passions. I loved sports, football especially. I was good at it. I had a mean streak that found an outlet on the field and helped me be a better person off the field. As much as I loved football, I was deeply passionate about reading. I didn't know this then, but I do now, that when people read it's weightlifting for the brain. It makes you more mentally acute. It makes us more compassionate and understanding. That's a big component to happiness and success.

SD: Most lawyers I know are trying to escape the practice of law. You've been an NFL player, a television host, a bestselling author. Why do you still practice law? What do you love about it?

TG: There was a time when I first started writing when I first retired from the NFL, I thought it was great — I would just sit around and write books. But, I found that I enjoyed life more the busier I was. I really liked writing. But, I didn't enjoy it as much when writing was the only thing I was doing. That's when I got into a rainmaker role with a law firm [Barclay Damon].

I had a high profile and it helped open doors for me. I enjoyed that. I enjoy people. I enjoy problem solving. And the question, how can we as a law firm become valuable to the client?

My law practice is interesting because I am focused on client

development and client services. My role is to go get clients and to integrate other lawyers into the matters and then provide oversight and quality control so that I am a conduit between the client and the firm. It takes a lot of time. I am always available.

When a client has an issue, I answer those calls. I problem solve and troubleshoot. That fits my personality.

SD: How did you manage to play football and go to law school at the same time? [Ed. note: Tim attended Syracuse Law during the NFL offseason.]

TG: To get to the [NFL], if you're getting your degree at school and you're a serious student, you're really working hard and long hours. When I got to the NFL and had my first offseason, I kind of squandered it. I partied a lot. I felt like I wasted a lot of time.

I kind of looked around to figure out what I could do to make myself marketable when I left the NFL. I decided to go to law school. It really wasn't hard at all to go to law school and do my work outs [to stay in shape for the NFL season].

SD: How do you find the time to do everything you do?

TG: I am busy. I enjoy it. I enjoy working for the law firm. I enjoy writing. I enjoy speaking.

SD: Why the switch to youth fiction? You're a very talented thriller writer.

TG: Thank you. You know, it was just circumstance. I was going along as a thriller writer. Then all of a sudden, Harper Collins asked if I would write a kids book. I had a lot of fun writing it. The first one hit the bestseller list. All of sudden, I found in that space that I'm having a lot of success and a lot of fun.

When you go on tour for an adult book, it's okay. But, it's nothing like going into a gym with five hundred kids and they're yelling your name. A lot of people have asked me if I'm going to write thrillers again. I say, maybe. I don't know. I feel like I found a place that I enjoy.

Here are my takeaways from chatting with Tim:

1. Man, is he busy.
2. He chases his passions and he does what he wants with his life. He doesn't let convention stand in his way.
3. He'd be an easy guy to hate (NFL, author, TV host; jeez!) except he's so nice, patient, and accommodating. I finished our conversation thinking, what a terrific guy. Candid admission: I have a man-crush on him. If my wife would let me, I'd date him.
4. You and I will never be Tim Green.
5. But, we can certainly chase our dreams with the same kind of passion and dedication Tim does. Did I mention he's married with five kids? Married, five kids, practices law, writes, speaks, works in television. If he can do all that, there's no excuse for you and me not to chase our dreams, right?

For those of you who have sports-loving tweens, Tim's next novel, *Kid Owner*, will be in bookstores in October. It's the story of a 12-year-old boy who inherits the Dallas Cowboys (now valued by Forbes at \$3.2 billion).

That's the View From Up North. Hope you have a dream-chasing week.

See OCBA CLE with TIM GREEN on 9/17 | Form on Page 11

Civil Practice Case Notes

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denial of his application for certification as a school bus driver based on his convictions was arbitrary and capricious and thereby violated the Correction Law § 752 and § 753, the Executive Law § 296(15), and the New York City Administrative Code § 8-107(10). Petitioner alleged that the DOE unlawfully discriminated against him because of his prior criminal offenses. Petitioner argued that the DOE failed to review anything other than petitioner's conviction record, such as his certificate of relief from civil disabilities and his 15 years as a school bus driver without accident.

The Court of Appeals affirmed the Appellate Division's determination that the DOE's denial of petitioner's application was rationally based, not arbitrary and capricious, and did not violate the Correction Law § 752 and § 753, the Executive Law § 296(15), or the New York City Administrative Code § 8-107(10). The court reasoned that petitioner produced no evidence that the DOE failed to consider the information petitioner provided on his relevant employment history. Further, petitioner's certificate of relief from disabilities provides a presumption of rehabilitation, but it does not establish an entitlement to a license or employment. The court reasoned that the DOE had adequately considered the factors set out in Correction Law § 753. Petitioner's convictions directly affected "his fitness or ability" to be a school bus driver because (1) his felony convictions were for possession and attempted sale of drugs; (2) he would supervise school children alone; and (3) he was of mature age, not a youth, at the time of his more recent offenses.

Human Rights Law - Discrimination Based on Sex/Pregnancy

Matter of Mambretti v. New York State Div. of Human Rights, 2015 NY Slip Op 05384 (4th Dep't June 19, 2015) Petitioner, a counselor formerly employed by Williamsville Central School District, commenced an Article 78 proceeding to annul the New York State Division of Human Rights' ("NYSHDR") determination that there was no probable cause to believe that the District discriminated against petitioner based on her sex/pregnancy. Petitioner alleged that that the District violated Executive Law § 296 when it declined to renew her employment contract as a part-time counselor at the end of the 2011-2012 school year shortly after learning that she was pregnant. Petitioner filed a complaint with the NYSHDR, which the NYSHDR dismissed without a hearing. The Supreme Court annulled the NYSHDR's determination and remanded the matter for a hearing.

The Appellate Division affirmed the Supreme Court's annulment because the NYSHDR's determination "was not rationally based upon the evidence presented." The District relied on *Roslyn Union Free Sch. Dist. v State Div. of Human Rights*, 72 A.D.2d 808, 421 N.Y.S.2d 915 (2d Dept. 1979) in arguing that it decided not to renew petitioner's employment contract "because of her unavailability and its concern for continuity of counseling services for its students." However, the court declined to follow any holding in *Roslyn* that states an employer does not discriminate by deciding not to hire an individual because she is pregnant. The court reasoned that petitioner was only unavailable to work because of her pregnancy. Therefore, the court held that discrimination could be inferred from the record.



ENVIRONMENTAL/MUNICIPAL LAW
Thomas J. Paul, Esq.

General Permit for Municipal Separate Storm Sewer Systems Upheld

Natural Res. Def. Council, Inc. v. NY Dep't of Env'tl. Conservation, 2015 NY Slip Op 48 (Ct App May 5, 2015) NRDC brought a hybrid Article 78/ declaratory judgment action challenging the validity

of the New York State Department of Environmental Conservation's ("DEC") Municipal Separate Storm Sewer System ("MS4") General Permit ("General Permit"). The DEC, pursuant to its delegated authority under the Clean Water Act and the Environmental Conservation Law, adopted the MS4 General Permit in 2010 as an alternative to an individual State Pollutant Discharge Elimination System ("SPDES") permit for MS4s serving a population of less than 10,000. Coverage under the General

Permit requires submission of a complete Notice of Intent ("NOI") to DEC. NRDC argued that the General Permit creates an "impermissible self-regulatory system" in violation of the Clean Water Act, whereby DEC merely reviews an NOI for completeness without sufficient public input or ability to request a hearing. The Court of Appeals, while recognizing a Federal Circuit split regarding the validity of federal regulations on which the General Permit is modeled, ruled that DEC had complied with the Clean Water Act and federal regulations, as they currently stand, as well as the State Environmental Conservation Law. Based on the current state of the law and regulations, with which the Court agreed DEC was bound to comply, the court concluded that an NOI is not equivalent to an individual SPDES permit application requiring full public review and hearings. Rather, the Court stated that the General Permit had already been subject to the "full panoply" of public review procedures when it was issued by DEC in 2010. At that time, the Court wrote, DEC determined that an NOI completeness determination was a sufficient level of technical review for compliance with the General Permit requirements and that the General Permit's public participation requirements were adequate. In a 46-page dissenting opinion, Justice Rivera concluded that DEC's General Permit process failed to provide for adequate technical review or public participation in violation of the Clean Water Act.

Implied Dedication of Parkland and the Public Trust Doctrine

Matter of Glick v. Rose Harvey, & Co., 2015 NY Slip Op 107 (Ct App June 30, 2015) Petitioners appealed the Appellate Division's decision holding that four parcels in New York City were not impliedly dedicated as public parkland and therefore were not constrained from alienation by the public trust doctrine. The parcels, which were mapped as streets by the City, consist of open space that had been available to and used by the public for many years subject to agreements between the Department of Transportation and the Department of Parks and Recreation. In 2012, the New York City Council approved plans by New York University to expand its campus. The plans called for the temporary, and in some cases,

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or email: miked@washingstpartners.com.

CASA Seeks Members for Advisory Committee

The mission of the Onondaga Court Appointed Special Advocates (CASA) program is to speak for the best interests of abused and neglected children in court.

Through a collaborative approach, the Onondaga CASA program promotes and supports quality volunteer representation for children in the courts and advocates for a network of resources to provide each child with a safe, permanent and nurturing home.



The Onondaga CASA program began in 1996 following informal discussion and interest in the CASA model on the part of Family Court judges, attorneys for children and public and private agencies. A local CASA Steering Committee was formed to evaluate and develop a local CASA program. Through the concerted efforts of the Center for Community Alternatives and the Committee, the Onondaga CASA was developed and funded by the National CASA organization. Onondaga CASA is a program of the Center for Community Alternatives (CCA), a private, not-for-profit organization whose purpose is the development of community-based programs to help youth and adults live productive and safe lives.

The role of a CASA advocate

CASA volunteers are assigned to an abuse or neglect case by a judge. They conduct thorough research on the background of the case, reviewing documents, interviewing everyone involved, including the child. They make reports to the court, providing the judge with information that will help him or her make an informed decision. CASA volunteers can be instrumental in assuring that a child or family receives services which the court has ordered - things like substance counseling or special education testing. During the life of a case, a CASA volunteer monitors the child's situation to make sure she or he remains safe and obtains a permanent home.

Background of the CASA Program

In 1976, Superior Court Judge David Soukup of Seattle, Washington, sought to ensure he was getting all the facts on children in court, and that the long-term welfare of each child was being represented. He came up with an idea that would change America's judicial procedure and the lives of thousands of children: the Court Appointed Special Advocates (CASA), a program that recruits and trains volunteer community advocates to step into courtrooms on behalf of the children. This unique concept was implemented in Seattle as a pilot program in January 1977. Today, there are more than 900 local CASA programs nationwide.

For more information or to become a volunteer contact:

Onondaga CASA | Center for Community Alternatives
115 East Jefferson Street, Suite 300
Syracuse, New York 13202
(315) 422-5638 ext. 223
E-mail - ktastrom@communityalternatives.org
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Civil Practice Case Notes

from page 6

permanent use of the parcels. Petitioners sought an injunction blocking the expansion on the basis that the parcels were dedicated public parkland that required approval by the State Legislature before it could be alienated pursuant to the public trust doctrine. The Court of Appeals, affirming the Appellate Division, ruled that petitioners had failed to establish that the City's actions were an "unequivocal manifestation of an intent to dedicate the parcels as permanent parkland." According to the Court, the terms of the permit, memorandum of understanding, and lease/license applicable to the various parcels demonstrated that the management of the parcels by the Department of Parks and Recreation was understood to be temporary and provisional. The City had also previously refused to de-map the parcels as streets or officially dedicate them as parkland.

SEQRA Compliance

Matter of Dawley, et al. v. Whitetail 414, LLC, 2015 NY Slip Op 00089 (4th Dept. July 10, 2015) Petitioners filed an Article 78 action challenging the negative declaration under the State Environmental Quality Review Act ("SEQRA") of the Town of Tyre Town Board for the construction of the proposed Lago Resort and Casino. Special counsel for the Town prepared an attachment after the Town Board's decision to explain the rationale for the negative declaration. The attachment was never formally approved or adopted as part of the Town's negative declaration. The Appellate Division, reversing the trial court, held that the Town had failed to provide a "reasoned elaboration" in writing of its decision as required by 6 NYCRR Part 617.7(b)(4). The Court rejected the respondents' position that the Court should review the entire record for the rationale behind the Town's decision. In a concurring opinion, Justices Carni and DeJoseph wrote that a hearing transcript, in certain circumstances not present here, may satisfy the SEQRA "reasoned elaboration" requirement. Justice Valentino, in a dissenting opinion, wrote that the hearing transcript satisfied SEQRA, as it contained much of the same information as the attachment that was subsequently prepared and referenced in the majority opinion.

PERSONAL INJURY/TORTS

Alan R. Peterman, Esq.



Court of Appeals Reaffirms That Dog Owners Cannot Be Held Liable Under Ordinary Negligence Theory

Doerr v. Goldsmith, No. 31, 2015 N.Y. Slip. Op. 02801 (Apr. 2, 2015). In Doerr, the Court of Appeals reaffirmed New York's long-standing principle that

dog owners cannot be held liable under an ordinary negligence theory. In doing so, the Court refused to extend a 2013 holding by the Court of Appeals allowing a negligence claim to be pursued against a farmer, who allegedly allowed a cow to negligently stray from his property.

In Doerr, the plaintiff was riding on his bicycle when he collided with defendant's dog, who was running across the road to meet defendant in response to defendant's call. Plaintiff sought to hold defendant liable on theory that the defendant had negligently allowed the dog to cross in front of him, as opposed to any "vicious propensity" on the part of the dog. In October 2013, the Appellate Division, First Department, denied summary judgment to the dog owner, following the then recently-decided Court of Appeals' decision in *Hastings v. Sauve*, 21 N.Y.3d 122 (2013). In *Hastings*, the Court of Appeals permitted a negligence claim to proceed against an owner of a farm animal which had been allowed to stray from the property where it had been kept.

On appeal in Doerr, the Court of Appeals declined to extend the holding in *Hastings* to dog owners. The Court of Appeals distinguished dogs from farm animals (those defined as "domestic animals" under Agriculture and Markets Law § 108(7)). While a plaintiff can pursue a common law negligence theory against the owner of a farm animal for allowing the animal to stray from its property, that theory is not to be extended to dog owners. Consequently, the Court of Appeals reversed the First Department and granted summary judgment in favor of the defendant.

Farmer Not Liable For Death of Person Attempting To Assist Escaped Calf

Hain v. Jamison, 2015 N.Y. Slip Op. 06074 (4th Dep't, July 10, 2015). In Hain, the issue was whether a farmer could be held liable for the death of a person who was struck by a car while attempting to assist an animal that had wandered off from the farmer's farm. Plaintiff's decedent had stopped her vehicle because a newly born calf that escaped from a farm owned by defendant had wandered on or near the road. Decedent exited her vehicle to assist the calf. Both the decedent and the calf were in the northbound lane when they were struck by the co-defendants' vehicle. Plaintiff contended that the defendant farmer was negligent in allowing the calf to escape from its farm, and that such negligence was a proximate cause of decedent's death. The defendant farmer moved for summary judgment. The trial court denied the motion.

On appeal, the Fourth Department acknowledged that "a landowner or the owner of an animal may be liable under ordinary tort-law principles when a farm animal . . . is negligently allowed to stray from the property on which the animal is kept" citing *Hastings v. Suave*, 21 N.Y.3d 122 (2013). The court then stated that "liability may not be imposed upon a party who merely furnishes the condition or occasion for the occurrence of the event but is not one of its causes" citing *Eli v. Pierce*, 302 A.D.2d 489 (2d Dep't) appeal denied 100 N.Y.2d 505 (2003). The Court held that any negligence on the farmer's part merely created the opportunity for the decedent to be standing in the roadway, noting that nothing in the record showed that the calf's presence in the roadway blocked the decedent's ability to travel in the southbound lane. The Fourth Department reversed the decision of the court below and granted summary judgment to the farmer. Justice Whalen dissented, finding that the foreseeability of the accident created by the calf escaping the farm was a question of fact for the jury.

Plaintiff's Attempt To Apply CPLR 214-c To Negligent Inspection of Septic System Fails

Clendenin v. Town of Milo, 2015 N.Y. App. Div. 4983, 2015 N.Y. Slip Op. 04976 (4th Dep't, June 12, 2015). CPLR 214-c provides that the three-year period in which an action to recover damages for personal injury or property caused by exposure to a substance commences upon discovery of the injury. In Clendenin, plaintiffs had purchased a home from the defendants and subsequently discovered that it had a defective septic system. Plaintiffs sued the Yates County Soil and Water Conservation District for negligently inspecting the system on May, 4, 2009 and issuing a certificate of inspection. Plaintiffs also sued the town of Milo for negligently issuing a Certificate of Occupancy when the house was built in 1998, alleging that the septic system was defective when it was installed. Plaintiffs sued to recover the cost of a replacement septic system. The Supreme Court granted the Conservation District and Town's motion for summary judgment based on statute of limitations grounds.

On appeal, the Plaintiffs argued that the action was timely because it was brought within three years of the date that they discovered the septic system was defective. The Fourth Department affirmed the decision of the Supreme Court holding that Plaintiffs were seeking to recover the cost of the new septic system, not for any property damage. CPLR 214-c did not apply. The Court also held that CPLR 214-c was applicable only to toxic torts and this was not a toxic tort case. The action, therefore, was time barred.

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REFERRALS WELCOME

Legal Services & Volunteer Lawyers Project News

NEW LOCATION AT FINANCIAL PLAZA

Legal Services of Central New York (LSCNY), Legal Aid Society of Mid-New York (LASMNY), and Volunteer Lawyers Project of Onondaga County (VLP) recently moved to their newly renovated offices on the third floor at 221 South Warren Street. "This move culminates years of planning among these three non-profit legal services providers enabling them to collaborate on numerous projects to further their missions of providing free legal services to low-income people," said Michael Balanoff, Director of Development and Communications at LSCNY.



Among the numerous projects they will coordinate is the establishment and utilization of a Legal Education Center which will enable them to expand their pro bono programs with state-of-the-art technology. Syracuse has the highest concentration of people living below the poverty level in the country (33.6%). Thus, the need for legal education to help indigent people is greater than ever. "This will be a perfect setting for VLP and LASMNY to expand their cadre of volunteer lawyers to assist them in helping meet an ever-growing need for their services," said Dennis Kaufman, Executive Director of LSCNY.

14TH ANNUAL DAN MATHEWS GOLF OUTING

The Volunteer Lawyers Project of Onondaga County, Inc. (OnVLP) and the Onondaga County Bar Foundation (OCBF) are excited to announce, the 14th Annual Daniel F. Mathews, Jr. Memorial Golf Outing on Thursday, August 13, 2015 at the Pompey Club. This day of camaraderie and fun competition ends with a delicious steak barbeque that you simply do not want to miss!

The proceeds from this event go directly to support the important missions of OnVLP and OCBF. With the help of the Golf Tournament, OnVLP is expanding access to justice by identifying and meeting the unmet civil legal services needs of low income people through increasing the pro bono participation of the legal community. OCBF has continued to help members of the legal community who are in need through its expanded mission "to aid members of the legal profession in Onondaga County who may be ill, incapacitated, indigent or otherwise in need, and/ or their dependents who are in need as a result of the member's illness, incapacity, indigence or death."

If you are interested in participating or sponsoring the event, Look for our sign-up form on page 10 or contact Deborah O'Shea at (315) 579-2577 or via email at doshea@onvlp.org.

Your contribution is tax deductible and payable to the Volunteer Lawyers Project of Onondaga County, Inc., Suite 320, 221 South Warren St., Syracuse, New York 13202.

JUSTICE WALK/RUN: SEPTEMBER 2, 2015

Hiscock Legal Aid Society (HLAS) and the Volunteer Lawyers Project of Onondaga County (OnVLP) are proud to join together for the first ever "Justice Walk/Run."

The event will take place on Wednesday, September 2, 2015 at 5:30 PM at Willow Bay Shelter, Onondaga Lake Park. Justice Walk/Run seeks to highlight the many different ways legal service providers in Central New York like HLAS and OnVLP serve the community. Funds raised through the event will support the work of OnVLP and HLAS in the "CNY Immigration Collaborative." This project helps immigrants seek immigration relief that will grant them lawful status and allow them to work, attend college, and become full participants in our community.

Open to all ages. Registration is available online at: <https://www.firstgiving.com/hiscock/justicewalkrun>.

JOIN US FOR THE FUN!

JUSTICE WALK/RUN
WALK.RUN.PROMOTE JUSTICE FOR ALL.
PROCEEDS BENEFIT A JOINT IMMIGRATION PROJECT TO SUPPORT IMMIGRANT AND REFUGEE FAMILIES IN OUR COMMUNITY.
WEDNESDAY, SEPTEMBER 2ND, 2015
5K START TIME-5:30PM
WILLOW BAY SHELTER
ONONDAGA LAKE PARK
\$25/PARTICIPANT
REGISTRATION:
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HISCOCK LEGAL AID SOCIETY
VOLUNTEER LAWYERS PROJECT OF ONONDAGA COUNTY, INC.

LAST CHANCE!!

17th Annual Dan Mathews Golf Outing

THURSDAY, AUGUST 13, 2015 | POMPEY COUNTRY CLUB



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

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Players Names:

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4:30 – 5:30 pm | Reception Immediately Following

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OCBA D&I Committee Holds First Annual Welcome Reception For Summer Interns & Associates

The OCBA's Diversity & Inclusion (D&I) Committee hosted its first "Welcome Reception" for new lawyers and summer associates, interns and externs spending their time in Central New York this summer.

That panel discussion, followed by a networking reception, was held at the CNY Philanthropy Center on July 29th. The event was supported by Q Law, the William Herbert Johnson Bar Association and the Central New York Women's Bar Association.

More than 40 guests attended. Retired Syracuse City Court Judge Langston McKinney offered welcoming comments, followed by a panel discussion moderated by Supreme Court Justice Deborah Karalunas. Participating panelists included Sally Curran, Esq. Volunteer Lawyers Project; Kristy Frame, Esq. Bond Schoeneck & King; Romana Lavalas, Esq. ADA Onondaga County; Renato Smith, Esq. Barclay Damon; Jim Williams, Esq. Legal Services of Central New York (LSCNY); and Juanita Perez Williams, Esq. Regional Director, NYS Department of Labor.

Panelists offered their thoughts and opinions on Central New York as a place to practice law and to live, and shared suggestions for students and young lawyers on how best to begin their professional lives through networking, mentoring and becoming actively involved in their community.

"The diverse panel of speakers gave specific examples of how race, gender, sexual orientation and other issues of inclusion have impacted their careers in a way that is not often discussed," said D&I Committee member Crystal Doody. Doody, an LSCNY Staff Attorney added, "The speakers were open and comfortable sharing personal thoughts and provided advice during the panel and after in group and one-on-one conversations. Students left knowing that the panel is the beginning of a much longer conversation to which they have been invited to participate."

SU College of Law Student Gabriela Girona said, "As an aspiring attorney who identifies as a minority in several ways, it is crucial to be aware of and interact with established attorneys in Central New York that have faced similar obstacles and other social side-effects associated with being Latino, LGBTQ, and female. The event was an inspiring and interesting way to network for someone looking to stay in the area and the panel boasted an impressive array of attorneys from several areas of legal practice."

The Diversity & Inclusion Committee plans to make this an annual, early-summer event.

Special thanks to Barclay Damon, LLP and Bond, Schoeneck & King, PLLC, for their sponsorship support for the reception.



BAR BOARDS:

Litigation Attorney – Costello Cooney & Fearon PLLC

Costello Cooney & Fearon PLLC is seeking a litigation attorney with a minimum of five years experience for its Syracuse, NY office. Strong research and writing skills are required. Insurance Defense experience preferred. Must be self-motivated with organizational skills. Competitive compensation and benefits package. Qualified candidates should submit resume via email to mdf@ccf-law.com or via mail to Costello, Cooney & Fearon, PLLC, 500 Plum Street, STE 300, Syracuse, NY 13204-1401 Attention: Michael D. Foti

Experienced Litigation Associate/Onondaga County

Firm with growing national practice is seeking an experienced Litigation Associate. Candidate must have commercial litigation experience in NYS courts and be able to assume existing caseload. Five or more years of experience preferred. This position can be full-time or part-time, available immediately and perfect for an attorney re-entering practice. Salary is commensurate with experience. Send resume and writing sample to PO Box 622, Brewerton, NY 13029.

Opening for Estate & Trust Attorney at Melvin & Melvin, PLLC

Mid-size Syracuse law firm has opening for an attorney in upstate New York with 2-5 years' experience in the area of estate and trust practice. Please send response to hiringpartner@melvinlaw.com.

The Lawyers' Assistance Project Of Onondaga County

What is the Lawyers' Assistance Project?

The Lawyers' Assistance Project of Onondaga County is a confidential service providing information, referrals, access to professional counseling and peer support.

What Kind of Assistance is Available?

You are entitled to a confidential telephone consultation, free counseling sessions with a professional counselor, and participation in peer support groups.

What Can I Expect When I Call for an Appointment?

You will talk to an intake coordinator who may refer you to an experienced counselor. Family Services Associates serves as the Project's counseling agency.

Is Contact with the Lawyers' Assistance Project Confidential?

YES. You can discuss the issue of confidentiality with the intake coordinator or counselor.

Why Was the Project Set Up?

The Project was established to assist lawyers who have problems with alcohol, drugs, stress, anxiety, depression, gambling and other personal problems.

Who May Call?

Attorneys, judges and law students in Onondaga County and these other neighboring counties: Oswego, Jefferson, Lewis, Herkimer,



Oneida, Cortland, Cayuga and Madison counties.

For more information contact:

The New York State Bar Association Lawyer Assistance Program-- (800) 255-0569

Family Services Associates-- (315) 451-2161

Onondaga County Bar Association

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

“PRACTICAL GUIDE TO ATTORNEY TRUST ACCOUNTS”

The OCBA website [RESOURCES PAGE](#) now links to a newly revised copy of “A Practical Guide to Attorney Trust Accounts and Recordkeeping,” published and updated by the New York Lawyers' Fund for Client Protection.

This revised version of A Practical Guide is offered as a public service for the bar of New York, law-office staffs, and law students. It is intended as a plain-English guide to current court rules, statutes and bar association ethics opinions on the subject of attorney trust accounts and law office recordkeeping.

The brochure provides a summary of the applicable rules and standards when a lawyer holds client money and escrow funds. It is not a substitute for the black-letter provisions of the New York Rules of Professional Conduct or court rules in each of the four judicial departments in the State.

Among the questions answered are:

- What are a lawyer's ethical obligations regarding client funds?
- What is an attorney trust account?
- What is the purpose of an attorney trust account?
- Should interest-bearing accounts be used?
- What is IOLA?
- How should large trust deposits be handled?
- May a lawyer retain the interest on an attorney trust account?
- What happens if a trust account check bounces?

- Are there special banking rules for down payments?
- Where are advance legal fees deposited?
- How are unclaimed client funds handled?
- What accounting books are required?
- What bookkeeping records must be maintained?
- What losses are covered by the Lawyers' Fund?

For more information on the Lawyers' Fund for Client Protection, and other valuable documents and links, visit <http://nylawfund.org/>.

We hope you find A Practical Guide to be informative and helpful in your practice.

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.

If you know where your files will go after you're gone, Contact Membership Coordinator:

**Peggy Walker at 579-2582
or email pwalker@onbar.org**



Annual 50-Year Luncheon

Thursday, September 10

11:45 am Registration | 12:15 pm Luncheon

Join your colleagues at the Bar Foundation's Annual Event

Drumlins Country Club

800 Nottingham Rd, Syracuse, NY 13224

Celebrate this milestone and applaud those in our community for their decades of practice, service and commitment.

This year's honorees include:

Dennis R. Baldwin
Donald P. Colella
Hon. George H. Lowe
Joel N. Melnicoff

Dennis G. O'Hara
Roy Sanders
C. Daniel Shulman

Michael D. Stern
Carter H. Strickland
Paul A. Trivelpiece
Samuel B. Vavonese

If you know of any other attorneys who will be celebrating their 50th year in the practice of law, please call the Bar Office at 315-579-2582, so we may add them to the list.

\$30 per person made payable to the Onondaga County Bar Foundation | **Tables of 10 available for \$300**
To register for this special event, please complete the following form

Name _____ Phone _____

Firm _____ Email _____

Number Attending: _____ Select Entree: _____ Chicken Breast Milanaise or _____ Vegetable Lasagna

Please accept my additional donation in honor of the Class of 1965 in the amount of \$ _____

Please return this flyer with payment to:

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431 East Fayette St.
Syracuse, NY | 13202

We will also accept reservations online at www.onbar.org | by phone: 579-2582 | via e-mail: pwalker@onbar.org
Registration deadline is **Monday, Sept. 4, 2015**. Ticket sales at the door will be limited.



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Defenses in Criminal Cases

1.5 MCLE Professional Practice

Friday, September 25

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12:30 – 1:45 pm.



Member \$30 | Paralegal \$20 | Non-Member \$40

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This seminar will cover defenses that are complete versus mitigating, ordinary versus affirmative, element-based defenses, excuse-based defenses, crime-specific defenses, justification-based defenses, defenses based upon the actor's belief, defenses that may or may not also be grounds for dismissal, defenses relating to criminal liability for the conduct of another, the alibi defense, alibi notice and psychiatric evidence notice, intoxication, and diminished capacity.

Under NYS rules this CLE has been APPROVED for both Newly Admitted and Experienced Attorneys
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DEFENSES IN CRIMINAL CASES | Friday, September 25

Member \$30 | Paralegal \$20 | Lifetime \$0 | Legal Services Member \$0 | Non-Member \$40

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LEGAL BRIEFS BRIEFS BRIEFS LEGAL

As of July 1st, 2015 Secure Pass can now be done online at <https://iapps.courts.state.ny.us/securepass/SignInPage>

- ID Cards will now remain valid for 5 years
- Cost for ID Cards will increase to \$50.00
- Online renewals will use current photo on file
- Online renewals will require only a single courthouse visit to pick-up the new ID Card and verify identity
- Note: Attorneys applying for their first Secure Pass ID Card MUST continue to use the paper form and submit in person and pick-up in person.



Julia Martin Elected Board President Of Central NY Women's Bar Association

Bousquet Holstein PLLC is pleased to announce that Julia J. Martin, Esq. has been elected President of the Board of Directors of the Central New York Women's Bar Association (CNYWBA) for 2015-16. Julia served as Treasurer of the organization for the year prior to her recent election.

Julia focuses her practice at Bousquet Holstein on a broad variety of issues related to tax, economic development tax incentives (including Brownfield Tax Credits), estate planning, and employee benefits/ERISA. In addition, Julia utilizes her knowledge and skills in those areas to provide expertise in matters impacting the LGBT community and Non-Traditional Families. She is a graduate of Syracuse University College of Law, and Syracuse University. Julia and her family reside in the City of Syracuse.

The mission of the Central New York Women's Bar Association is to promote the advancement of the status of women in society and of women in the legal profession; to promote the fair and equal administration of justice; and to act as a unified voice for its members with respect to issues of statewide, national and international significance to women generally and to women attorneys in particular.

Bousquet Holstein Attorneys Make Donation To The Healthy Families Initiative Of Onondaga County

As part of their annual community service project, the attorneys at Bousquet Holstein PLLC recently assembled and delivered over 100 tote bags of donated and purchased supplies to Healthy Families at the Onondaga County Health Department. The bags will be delivered by Public Health Nurses and Community Health Workers visiting new mothers at their homes. The bags contained Onesies®, sleep sacks, diapers, baby bottles, bibs, rattles and teethers, Similac, snacks, and sample sized personal hygiene products including shampoo, lotion, conditioner, mouthwash, beauty kits, shoe polish, soap, and more. In addition to the supplies purchased by Bousquet Holstein, supplies were also donated by Costco, Marietta Corporation, C&S Companies (tote bags), and Sam's Club.



Each summer, the attorneys at Bousquet Holstein gather for a community service project benefiting a charitable or community

organization that provides services for those in need. This effort is just one example of the firm's ongoing mission and commitment to support the communities in which our attorneys and staff live and work.

Healthy Families is an Onondaga County Health Department initiative promoting healthy pregnancies and healthy babies through community partnerships, community referrals, health education, case management, and home visitation. Healthy Families is supported by a team of nurses, community health workers, educators, parents, medical providers, and community agencies working towards improving the lives of women, children and families in Onondaga County. Their goal is to help moms have healthy babies and help families give their babies a healthy start!

For more information go to <http://www.onhealthyfamilies.com>

Two Attorneys Join Gale Gale & Hunt, LLC

Gale Gale & Hunt, LLC has added two new attorneys to its office, and is pleased to introduce Katherine A. Buckley and Nicole (Habek) Holland who joined the office as Associates. Both are 2014 law graduates and were admitted to practice in New York State earlier this year.

During her tenure at the Vermont Law School, Katherine "Katie" Buckley was named a Dean's Scholar and was elected to membership on the Vermont Law Review. She clerked for a Federal District Court Judge, District of Vermont and for the New York State Attorney General, Appeals and Opinions Division, prior to graduating magna cum laude from law school. She received her undergraduate degree from Clarkson with a major in Political Science.

Nicole Holland, a summa cum laude graduate of Northeastern University, majored in Psychology. She was elected co-president of the International Law Society while a student at William & Mary Law School and was named to the School's Journal of Women and the Law. She clerked for The Joint Commission on Health Care in Richmond, Virginia and was associated with the District Attorney's Office, Chemung County, prior to joining Gale Gale & Hunt.

Katie and Nicole will be working in the area of health law and malpractice litigation. Gale Gale & Hunt, LLC provides legal representation to medical facilities, companies and individuals in the areas of licensure, litigation, risk management, products liability and business structuring.

Attorney John J. Sierotnik Joins Mackenzie Hughes LLP

Mackenzie Hughes is pleased to announce the addition of John J. Sierotnik as a new attorney in the firm, where his practice areas will include business, litigation, and mergers and acquisitions.

John returns to Central New York after graduating magna cum laude from Notre Dame Law School, where he was honored as a Dean's Circle Fellow. While at Notre Dame, John received the Dean's Award for outstanding academic performance in Legal Writing II, Cyberlaw, Professional Responsibility, Evidence, Information Technology Law, Trusts and Estates, Taxation of Business Enterprises, and Real Estate Transactions, and was an editor for the Notre Dame Journal of Law, Ethics, and Public Policy. John also received a BA cum laude in



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politics from Catholic University.

“John’s background in information technology will be a tremendous resource for our clients who face ongoing challenges to keep information processing current and compliant.” Stephen T. Helmer, chair of the firm’s executive committee states, “We are thrilled John is bringing his expertise back to the Syracuse area and will be part of our Mackenzie team.”



Nicole Intschert Joins Menter, Rudin & Trivelpiece, PC

Menter, Rudin & Trivelpiece, P.C. is pleased to announce that Nicole K. Intschert has joined the firm. Ms. Intschert graduated magna cum laude from SUNY Buffalo Law School in 2013, after which she worked as a confidential law clerk at the New York State Supreme Court Appellate Division, Fourth Department. She is a member of the firm’s Commercial Transactions, Real Estate and Municipal Law

practice groups.

Gilbert M. Hoffman Appointed Co-Chair Of The Committee On Title And Transfer

Bousquet Holstein PLLC is pleased to announce that Gilbert M. Hoffman has been appointed Co-Chair of the Committee on Title and Transfer of the New York State Bar Association, Real Property Law Section.

Gil serves as Of Counsel for the firm in the areas of transactional real estate, title law, real estate development, financing, leasing, title and boundary disputes, easements and oil and gas leases. He chairs the Onondaga County Bar’s Real Property Law Section and also serves on the Executive Committee of the State Bar’s Real Property Law Section.



The general mission of the Committee on Title and Transfer is to educate the Bar regarding current and prospective developments that affect title to and transfer of real property; to monitor and recommend changes in law and regulations; to prepare reports, forms and proposed legislation on areas of interest for presentation to the Committee and the Section; to provide feedback to the legislature and the governor’s office on proposed legislation commenting on its potential impact on the Bar and the public; and to communicate the activities and viewpoints of the Committee to the Section and the Bar Association.

Hancock Estabrook Hires Ithaca Attorneys

Hancock Estabrook is pleased to welcome Elena Salerno Flash and Carrie J. Pollak, who will be based in Ithaca.



Ms. Flash provides advice and counsel to nonprofit organizations on all aspects of the corporate life cycle, including formation, tax, operation and dissolution issues. She has served as general counsel for hospitals, long term and continuing care facilities and other health care industry clients. Ms. Flash is also an experienced commercial real estate attorney.

Ms. Pollak focuses her practice on assisting charitable and other tax-exempt organizations on formation, regulatory, contracts, transactions, governance and employment issues. She provides the full spectrum of advice and counsel on wetlands mitigation, conservation and preservation matters. Ms. Pollak is also an experienced real estate attorney who has assisted developers with real estate syndication filings with the NYS Attorney General, such as homeowners associations.



“We are thrilled to add these successful and accomplished women to our team”, said Janet Callahan, Hancock Estabrook’s Managing Partner. “Our deep bench of attorneys and full-service practice will help Elena and Carrie better represent their clients, and the addition of these experienced Ithaca attorneys brings an added benefit to our clients as well.”

Part 137 - Disputes Where No Attorney’s Services Have Been Rendered For More Than Two Years

The Attorney-Client Fee Dispute Board of Governors has determined that the two year exception in the application of Part 137¹ should be strictly construed as a statutory time bar that cannot be waived even by agreement of the parties.

If a case is filed and it is clear upon the information submitted that no attorney’s services have been rendered for more than two years, program administrators should dismiss the case for lack of jurisdiction. If it is not clear upon the submission, the program administrator is instructed to assign an arbitrator, or panel where necessary, and schedule an expedited hearing to determine whether more than two years have passed since the last date of services.

New Location for Cambareri & Cambareri, LLP

Steve Cambareri, Esq., Dom Cambareri, Esq., Lucien A. Elliott, Esq. announce the relocation of their offices to:

217 Montgomery Street, Suite 100
Syracuse, NY 13202
(315) 426-1648
Fax: (315) 426-1676

NDNY FEDERAL COURT BAR ASSOCIATION OPENING FOR ADMINISTRATIVE DIRECTOR

- Responsible for organizing and administering NDNY-FCBA sponsored CLE (Continuing Legal Education)
- Maintain and direct Bar Association events
- Efficiently handle the rollout of membership registration
- Maintain monthly board meeting materials
- Act as website administrator

Thorough understanding of Word, Excel, PowerPoint, Outlook. Strong organization, time management, accuracy & communication skills.

Associates Degree preferred with experience in the legal profession. Send cover letter, resume, references and salary requirements to: Jeffrey Hurd at Burke Scolamiero, Mortati & Hurd, LLP
7 Washington Square PO Box 15085
Albany, New York 12212-5085
or via email at ndnyfcb2015@gmail.com

NEW YORK STATE COMMISSION ON JUDICIAL NOMINATION

The New York State Commission on Judicial Nomination ("the Commission") today announced that it is seeking recommendations and applications of persons who may be qualified to serve as **Associate Judge** of the State's highest Court, the **Court of Appeals** of the State of New York. On August 24, 2015, a vacancy will exist on the Court due to the retirement of **Associate Judge Susan Phillips Read**.

Candidates for Judge Read's vacancy may download an application from the Commission's website (www.nysegov.com/cjn) or contact the Commission's Counsel, Henry M. Greenberg, c/o Greenberg Traurig, LLP, 54 State Street, 6th Floor, Albany, New York 12208 [Tel.: (518) 689-1492; e-mail: greenbergh@gtlaw.com; Fax: (518) 689-1499]. Applications may be filed electronically by e-mailing them to CJN_Applications@gtlaw.com or submitted by mail to the Commission's Counsel. Applications must be submitted to the Commission no later than August 10, 2015.

The Commission is currently soliciting candidates to fill the upcoming vacancy of Chief Judge of the New York State Court of Appeals and the State of New York that will occur as of January 1, 2016, due to Chief Judge Jonathan Lippman's mandatory retirement by reason of age. Applications for the position of Chief Judge are due to the Commission no later than August 24th. Candidates who have submitted an application by the July 13, 2015 deadline may also be considered in connection with the coming vacancy created by Judge Read's retirement and DO

NOT NEED TO SUBMIT AN ADDITIONAL APPLICATION, so long as they indicate to the Commission on or before August 10, 2015 that they want to be so considered. Persons interested in learning more about the Commission are encouraged to visit its website: www.nysegov.com/cjn.

APPLICATION DEADLINE EXTENDED

The New York State Commission on Judicial Nomination today announced that it has extended the deadline for submitting applications for the forthcoming vacancy on the Court of Appeals, which is due to the retirement of Associate Judge Susan Phillips Read. Applications for the Associate Judge vacancy must now be submitted to the Commission no later than August 24, 2015. The extension is intended to ensure that the size and composition of the pool of applicants for the State's highest court represents the broadest possible spectrum of qualified candidates, and to give applicants additional time during these summer months. The Commission will take a fresh look at all applications submitted for this vacancy, evaluating candidates who previously submitted applications for the Chief Judge vacancy and indicated interest in being considered for the Associate Judge vacancy, as well as considering all new applicants.

Applications may be downloaded from the Commission's website, <http://www.nysegov.com/cjn/>. Applications may be filed electronically by emailing them to CJN_Applications@gtlaw.com, or otherwise submitted by mail to the Commission's Counsel at the above address.



BOUSQUET HOLSTEIN PLLC

LITIGATION ATTORNEY

We are looking for a lawyer with proven skills in research and writing who has enthusiasm for litigation, knowledge of procedure, and a passion for excellence. The successful candidate will be expected to critically evaluate facts and the law and possess the ability to integrate each into persuasive briefs and memoranda of law. In addition, the successful candidate will be someone who wants to grow in the practice and develop as an attorney. The litigation practice group works collaboratively, integrating skills at all levels. The successful candidate should expect to work closely with clients, senior lawyers, paralegals, and support staff. We would prefer candidates to have 1-3 years' experience, but candidates with more or less experience may be considered.

Our firm includes over 30 lawyers and our practice areas are broad. A substantial part of our litigation practice is in business disputes, estate and trust litigation, and commercial litigation and arbitration. We also enjoy an active litigation practice in employment law and tort litigation.

Please submit your resume, a writing sample, and other materials you wish us to consider to:

Bousquet Holstein PLLC
Suite 900, 110 West Fayette Street
Syracuse, NY 13202
Attn: Karin Taddeo, HR Director

or to: hr@bhlawpllc.com

OCBA Offers Sponsorship Opportunities for 2015 Annual Dinner

OnCenter | Thursday | October 15

HONORING

2015 Ruger Award Winner

HON. LANGSTON C. MCKINNEY

AND

2015 Distinguished Lawyer

JOHN P. SINDONI

The 140th Annual Dinner of the Onondaga County Bar Association will be held Thursday, October 15, 2015 at the OnCenter Convention Center in downtown Syracuse. During what is always the highlight of OCBA's program year, Ruger Award recipient the Hon. Langston McKinney and Distinguished Lawyer recipient John Sindoni will be honored. OCBA is now seeking sponsors for the Dinner, and more information about those sponsorship opportunities may be found on the Association's website, www.onbar.org.

[Sponsor form Annual Dinner 2015](#)



OCBA CONTINUING LEGAL EDUCATION

431 East Fayette St. | Syracuse, NY | Phone: 315-579-2578 | Fax: 315-471-0705 | cstirpe@onbar.org

SEAN CARTER | Lawpsided Law 2015 Ethy Awards

Friday, OCTOBER 2, 2015

CNY Philanthropy Center 2nd Floor Ballroom



Part One: THE BEST OF THE WORST ETHICS VIOLATIONS

9:30 – 11:30 am | 2.0 MCLE Ethics & Professionalism

Sean Carter, America's foremost legal humorist recaps the best of the worst ethics violations from the last year. He explains the specific ethics violation, discusses how we can avoid similar outcomes in our practice of law, and awards the Ethy to the "winner" in each of the following categories: **The Outlaw(yer) Award** (Violations of Rule 8.4 — Misconduct — Criminal Acts) **Most Creative Billing** (Violations of Rule 1.5 — Fees) **The Houdini Award** (Violations of Rule 1.15 — Safekeeping property) **Best Supporting Actor In a Criminal Enterprise** (Violations of Rule 8.4 — Misconduct) **The AT&T Award** (Violations of Rule 1.4 — Communication) **The Joan Rivers Award** (Violations of Rule 1.6 — Confidentiality) **Least Competent in a Legal Representation** (Violations of Rule 1.1 — Competence and Rule 1.3 — Diligence) **Best Use of Deception in Legal Marketing** (Violations of Rule 7.1 — Advertising, Rule 7.4 — Identification of Practice and Specialty, and Rule 7.5 — Professional Notices, Letterheads and Signs) **Worst Love Scene** (Violations of Rules 1.7 & 1.8 — Conflicts of Interest) **The Lifetime Achievement Award** (Amazing compilations of ethics violations by one attorney)

Part Two: LAWYERS BEHAVING BADLY

1:00 – 3:00 pm | 2.0 MCLE Ethics & Professionalism

In this off-beat "awards" program, Sean examines attorney misbehavior in light of our obligations to behave professionally and civilly. Using the New York Rules of Professional Conduct and New York Standards of Civility as guides for appropriate behavior, he will explain where these lawyers went wrong, provide tips to help you avoid being a nominee in the 2016 Ethy Awards, and announce the winners in the following categories: **Most Over-animated Courtroom Outburst** (Breaches of courtroom decorum) **The Pit Bull Award** (Vexatious conduct) **Worst Legal Strategy** (Dubious litigation tactics) **Miss (Mister) Uncongeniality** (Acts of rudeness and disrespect) **The Archie Bunker Award** (Exhibiting racial, gender and other biases) **Critic's Choice Award** (Improper criticism of judges) **Worst Temper in a Non-Legal Setting** (Acts of violence outside the practice of law) **Most Impaired in a Legal Setting** (Using intoxicating substances in the practice of law) **Most Impaired in a Non-legal Setting** (Substance abuse outside the practice of law) **The Hitchcock Award** (Misconduct that surprisingly resulted in bar discipline)

Under NYS rules this CLE has been APPROVED for both Newly Admitted and Experienced Attorneys
CLE Tuition Waiver Policy available: www.onbar.org/cle

I would like to attend: Part One: The Best of the Worst Part Two: Lawyers Behaving Badly

Attendee _____ Phone _____

Firm _____ Email _____

Address _____ City _____ State _____ Zip _____

Check Enclosed Visa, MasterCard, or AmEx Card# _____ Exp. _____

BOTH SESSIONS

- Member \$ 120
- Paralegal Member \$ 60
- Agency & Lifetime Member \$ 60
- Non- Member \$ 140

ONE SESSION

- Member \$ 70
- Paralegal Member \$ 35
- Agency & Lifetime Member \$ 35
- Non- Member \$ 80

ONONDAGA COUNTY BAR ASSOCIATION | 431 East Fayette St. | Syracuse, NY | 13202
Phone: 315-579-2578 | Fax: 315-471-0705 | cstirpe@onbar.org

FROM THE EDITORIAL BOARD

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

The Editorial Board encourages members to submit articles for publication concerning issues presented in each edition or other issues related to the legal community. Submissions should be sent to OCBA, Attention Bar Reporter or Email cstirpe@onbar.org.

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T&E, CORPORATE AND LITIGATION ASSOCIATE ATTORNEY

Ithaca's largest law firm is looking for attorneys with at least two years of experience for our T&E, Corporate and Litigation practice groups:

T&E: Our sophisticated estate planning and estate administration team is looking for an attorney to work with our stable, loyal client base. Duties include counseling clients, analyzing tax and family issues, and preparing appropriate documents. Relevant experience preferred but not necessary.

Corporate: Our firm's corporate clients include startups, venture capital, banks and other financing entities, not-for-profit organizations, and real estate development firms. Duties include counseling clients, analyzing business, and preparing appropriate documents. Relevant experience preferred.

Litigation: Our very busy matrimonial and family law practice needs help. Some relevant experience required. Duties include all aspects of matrimonial law, from antenuptial agreements through divorce, child support and custody trials.

If you are looking to join a dynamic practice in one of the East Coast's most livable cities, these opportunities are for you. If you have excellent credentials, good client management skills, and are interested in working in a creative and family-friendly environment, please email your cover letter, resume, and writing sample to jobs@millermayer.com for prompt and confidential consideration.