



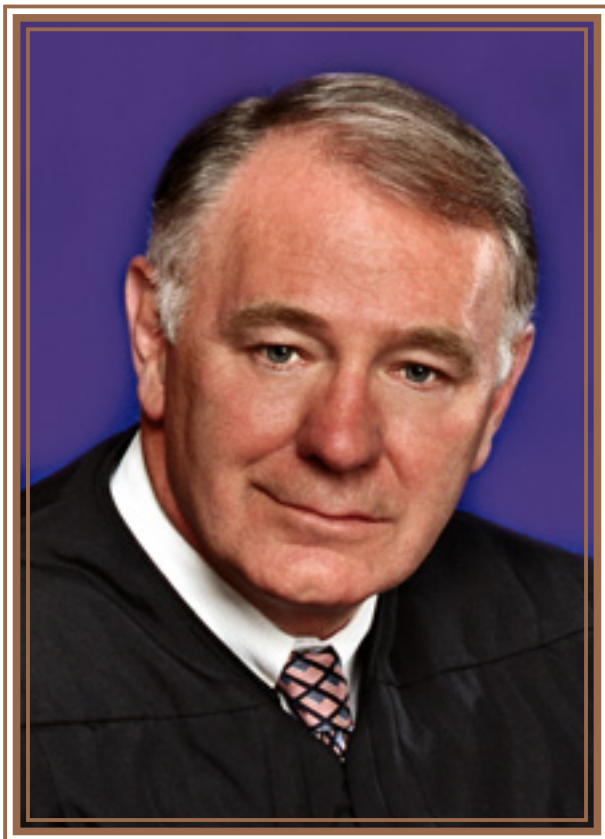
# ONONDAGA COUNTY BAR ASSOCIATION BAR REPORTER

VOLUME 61 NUMBER 2 | July 2016

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

## Ruger Award and Distinguished Lawyer Winners to be Honored at The 141<sup>st</sup> Annual Dinner

OCBA is pleased to announce it will honor the Hon. Norman A. Mordue and Susan R. Horn, Esq. at the 141<sup>st</sup> Annual Dinner on Thursday, Oct. 27, 2016. This year's event takes place in the Grand Ballroom of the Marriott Syracuse Downtown, the former Hotel Syracuse. Please join us there to celebrate this year's honorees.



**Ruger Award Winner**  
Hon. Norman A. Mordue



**Distinguished Lawyer**  
Susan R. Horn, Esq.

### UPCOMING EVENTS:

OCBA Family Open Golf Outing	Sept. 17
Diversity & Inclusion CLE Series Part III	Sept. 22
50 Year Luncheon	Sept. 29
Annual Dinner	Oct. 27

### MISSION :

To maintain the honor and dignity of the profession of law, to cultivate social discourse among its members, and to increase its significance in promoting the due administration of Justice.

# FROM THE PRESIDENT

I wrote this feature a few days before it was due, and as I reflected on which OCBA events from the past couple of months to write about, I found it impossible to write about our many OCBA activities without acknowledging that during the same time period there also occurred profoundly troubling deaths in Orlando, Minnesota, Syracuse, Dallas, Baton Rouge and many other places worldwide – and these are only the ones we hear about. To write about anything that happened in June and July of 2016 without acknowledging these events also happened, seemed somehow wrong. We all have to bear witness. What that means in terms of appropriate response is up to all of us to figure out.

But until we figure it out what's to be done, we do carry on, as we must. In this month's newsletter we report on several activities and programs that demonstrate our optimism as a profession -- that it is possible to rebuild, repair, restore or at least attempt to avert disaster. We also celebrate the work and contributions of our colleagues, offer support to those in need and on occasion, try to have fun.

In June, OCBA offered a CLE to train volunteers willing to assist members of our own profession who may be in need of assistance responding to disciplinary matters. The OCBA Foundation was encouraged to take this project on by the Fourth Department. The CLE entitled, "The Defense and Prosecution of Attorney Disciplinary Matters: The Nuts and Bolts of the New Attorney Disciplinary Rules," brought together a group of distinguished panelists including Hon. Gerald J. Whalen, Christopher Lindquist, Esq., Anthony J. Gigliotti, Esq., and Hon. John V. Centra. Many thanks to those who helped to create this innovative program and who have volunteered to assist. [For more information contact OCBA Executive Director Jeff Unaitis.](#)

Also in June, OCBA presented the Central New York Women's Bar with the first Annual Diversity and Inclusion Award. In creating the award the D&I Committee wanted an award that could be presented to the honoree, but that also could be enjoyed by and shared with the public as a way of recognizing the accomplishments of the honoree and promoting OCBA's commitment to diversity and inclusion. We created a framed poster which we presented to the CNY Women's Bar. We also hope to have copies of the poster displayed in places where the public can enjoy it and learn about the OCBA and the award recipient. Many thanks to OCBA's Michele Maciejewski for her creativity in designing this year's poster. The poster includes a QR Code (Quick Response Code) which can be read with a

downloadable app on your cell phone. The QR Code will lead you to information about the award recipient and the OCBA. [Copies of the poster are for sale on OCBA's website.](#)



**OCBA President Jim Williams helps Midlakes Navigation Boat Captain Peter Wiles launch the Barbara S. Wiles for another season of delivering mail on Skaneateles Lake**

Note that throughout the newsletter, there are links in the text that you can follow to learn more about what is mentioned in the text.

And speaking of recognition, please save the date, Thursday, October 27. Our Annual Dinner Committee this year chaired by OCBA VP John McCann is hard at work. OCBA will be returning to the Hotel Syracuse -- now Marriott Syracuse Downtown -- where we will be honoring Ruger Award recipient the Hon. Norman Mordue and Distinguished Lawyer Award recipient Susan Horn. If you would like to become a sponsor of the event you can do so with this [sponsorship form](#).

Regards,

A handwritten signature in black ink that reads "Jim Williams".

# Hon. Norman A. Mordue Receives Ruger Award

By: Carrie Chantler, Managing Editor

**T**he Ruger Award is named after OCBA's first president, William Crawford Ruger (1824-1892), who completed his legal career as Chief Judge of the New York State Court of Appeals. Award recipients, of which there have been only eight since the award was founded in 1975, exemplify "singularly outstanding achievement in devotion to the principles or our system of justice."

The Hon. Norman A. Mordue, Senior U.S. District Judge of the U.S. District Court of the Northern District of New York, upon a unanimous vote of OCBA Board of Directors, is the ninth recipient of the Ruger Award.

"I cannot think of a more deserving jurist," said OCBA President-Elect the Hon. James P. Murphy. "His knowledge, fairness, professionalism and pragmatism have made him a mentor to many young trial lawyers in Central New York, including me."

Mordue received his juris doctor from Syracuse University College of Law in 1971, but began his 46-year legal career in 1970 as the Onondaga County District Attorney's Office lone law clerk. A law school moot court presentation in his first year resulted in his getting this opportunity to clerk. A desire to hone his prosecutorial skill at the office meant he turned his energy to drafting an appeal of *People v. McKnight*, 26 N.Y. 2d 1034 (1970). His writing served to reverse the lower Onondaga County Court and the Appellate Division Court ruling in the search and seizure during a traffic stop case and may have been a harbinger of what was to come.

"There's no such thing as a little case," Mordue said. "We're not here to do anything but our best job."

He continued in the D.A.'s office until 1982, concluding his time there as Chief Assistant District Attorney in charge of the homicide and felony trial unit. As a prosecutor, Mordue thrived in the courtroom and was influenced especially by Judges Thomas Aloji, Albert Orenstein and Ormand Gale who presided over his cases.

"I just thought the world of them," he said. "They were very bright and had excellent judicial decorum. It was an honor to go before them, so I started doing things that would assist me in becoming a judge should the opportunity present itself."

He made it a priority to meet those who could

help him get there; campaign officials, politicians and party leaders.

The opportunity arrived in 1982 when he was elected to fill the seat of Judge James Anderson who died shortly after winning a close election for the Onondaga County Court judgeship. And from there he never looked back rising to new posts every few years: Onondaga County Court Judge (1983-85), cross-endorsed by all parties for the New York State Supreme Court Justice (1986-1998), appointed by President Bill Clinton to the United States Federal District Court, Northern District of New York (1998-2013), Chief Judge, United States District Court, Northern District of New York (2006-11) and Senior Federal District Court Judge (2013-present).

Such a long tenure means Senior Judge Mordue has presided over a vast number of diverse cases in a more than 33-year judicial career. A disturbing trend he's noticed since his start is the increase in gang violence and drug cases.

"There has been a steady increase in these areas of criminal behavior," he said. "What's sad is it seems to be getting worse."

He sees the scales balance somewhat with the advent of supervised release programs such as the redemptive work of the Intensive Re-entry Court.

"That's an attempt to get people who have drug addiction issues rehabilitated, educated and counseled so that they may find jobs and become responsible and productive citizens in our community," he said. "And, that's a good thing."

And he enjoys his job. His staff, whom he considers "like family," has been with him since 1998, or earlier.

Annelle McCullough, Esq., has been Mordue's "elbow clerk" for 18 years. A Class of 1977 SUCOL graduate, she has clerked her entire career.

"It is a privilege to work for and learn from Judge Mordue, a scrupulously fair judge and a compassionate and insightful person," she said.

His chambers are filled with photos of his family, and the artwork of the little ones who visit him. When speaking of his three children or his wife, Christina, his hometown sweetheart from Elmira whom he wed as a Syracuse University undergraduate, his face brightens.

*Continued on page 4*

# Hon. Norman A. Mordue *Continued from page 3*

Warm moments can happen in the courtroom too, he said, recalling a case from his trial attorney days. Helping a friend adopt a child from Korea he found himself in Family Court, the antithesis of his usual day's work. He noticed the court personnel smiling, heard children laugh, saw clerks hand out lollipops and an upbeat attitude float over the proceedings.

"I thought it was the most rewarding happy thing I ever did in a courtroom," he said. "I can never forget that day."

Judge Mordue's distinguished legal career might not have happened, however, were he not wounded during the Vietnam War.

"I wanted to be a career soldier," he said. "My dream was to be a general."

An academic stand out, Mordue was both a Syracuse University ROTC Distinguished Military Graduate and Distinguished Military Student. A commissioned officer, upon his 1966 graduation, he saw active duty in Vietnam from 1966 to 1967, achieving the rank of Captain at the time of his U.S. Army discharge.

He performed mightily on the gridiron as a varsity halfback on legendary Orangemen Coach Ben Schwartzwalder's 1964-65 football team, which narrowly lost to the Louisiana State University Tigers in the 1965 Sugar Bowl. And he's received SU Athletics distinctions, but it was his heroic military career that brought him to the attention of the leaders of the nation.

He possesses five medals: Combat Infantryman's Badge, an Air Medal, a Purple Heart, a Bronze Star with "V" device, and the second highest recognition bestowed to a U.S. Army soldier, the Distinguished Service Cross.

**"I cannot think of a more deserving jurist. His knowledge, fairness, professionalism and pragmatism have made him a mentor to many young trial lawyers in Central New York."**

For his valorous actions on May 31, 1967, in the Viet Nam village of An Qui, Mordue led his Airmobile platoon into a fierce attack to relieve a fellow platoon experiencing hostile gun and grenade fire. During the fray, as two of his men were wounded, Mordue "braved withering enemy fire to rescue them," the award reads.

In the battle against the North Vietnamese Regulars he became severely wounded himself, refusing medical care until his unit reached safety. His bravery and leadership significantly contributed to defeat of the enemy.

An exemplar to many Mordue is himself a true hero.

The Distinguished Service Cross Award concludes: "First Lieutenant Mordue's extraordinary heroism and devotion to duty were in keeping with the highest traditions of the military service and reflect great credit upon himself, his unit, and the United States Army."

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# Distinguished Lawyer Honoree Named: Susan Horn, Esq.

By: Carrie Chantler

Considered by her colleagues to be the face of the Hiscock Legal Aid Society, Susan Horn, Esq. has spent the bulk of her 42-year career providing legal services to Onondaga County's working poor.

Nominated by fellow lawyers Catherine Richardson, Dennis Baldwin and George S. Lowe, as well as 17 members of the HLAS senior legal staff, Horn is honored with the Onondaga County Bar Association's 2016 Distinguished Lawyer Award.

"I'm very touched to be nominated for this award and I'm honored that the kind of work we do at HLAS is being recognized," Horn said. "I can't think of a better place to work."

Horn is President and Chief Executive Officer of HLAS, beginning there as a staff attorney in 1979. A member of the Syracuse University College of Law Class of 1974, Horn struck out on her own shortly after graduation with partner stints in two private firms plus two years with the Onondaga Neighborhood Legal Services, now Legal Services of Central New York, before finding a home at HLAS.

**"Because of Susan's work, justice has been served for so many clients who otherwise would never have been able to afford an attorney in times of dire need."**

In her early career, as both a law student and a private practitioner, Horn defended headline-making cases: inmates charged during the Attica Prison Riot (1971) and protestors known as the Plowshares Seven demonstrating at Griffiss Air Force Base amid the mid-1980s antinuclear movement.

These cases, particularly the latter, changed the trajectory of her career, Horn said.

"That was a very meaningful case. Those were people who dedicated their lives to ending war," she said. "They went to jail numerous times to change the world."

Praised by her peers for her extraordinary leadership and vision, Horn, they say, demonstrates daily why she is conspicuous among them.

"Frankly, Susan has been a dedicated champion of the work of Hiscock for so long that you cannot think of the organization, and the constant improvement of the delivery of legal services to the working poor, without thinking of Susan," wrote U. S. Magistrate Judge Thérèse Wiley Dancks. "Our community is better because of her work."

Founded in 1949, and funded with state, county and private monies, HLAS annually handles a high-volume caseload of as many as 5,000 mandated criminal representation and civil legal service cases. Aiming to do more than represent HLAS clients in legal proceedings, Horn encourages her staff to empower every person who crosses its threshold seeking assistance.

In the 26 years Horn has led HLAS, several programs have been added to its list of advocacy services, such as the Domestic Violence Project, Upstate New York Immigration Law Project, Cancer Legal Advocacy and Legal Services Project, and the Foreclosure Prevention Project.

"Even as HLAS has become increasingly specialized, Susan has insisted that the Society keep its doors open most days for walk-in clients to come in and receive advice and counsel on virtually any civil legal matter," said Sam Young, Esq., a former HLAS attorney and current board member.

Horn marvels that roughly 600 parole revocation cases alone are handled yearly by just two HLAS attorneys, and credits her entire team for pitching in to help out, always, cooperatively and in collaboration.

*Save the Date!*

**141st Annual Dinner**

Thursday, October 27<sup>th</sup>

The Grand Ballroom  
Marriott Syracuse Downtown

*DETAILS TO FOLLOW*

"We've tried to respond to emerging needs in the community, but do it in a way that's true to our core mission, which is to provide legal services to people in need," she said.

Since Horn assumed HLAS leadership in 1990, she's grown its budget from \$800,000 to more than \$4 million, and works shoulder-to-shoulder with a 38-attorney staff and 61 employees in total.

Horn gives laurels to her entire staff, past and present, for HLAS's continued growth and strong community presence, and singles out longtime Chief Operating Officer Joanne P. Sawmiller, a 54-year HLAS employee, for her vast institutional knowledge of legal aid funding.

"Talk about inspiring," said Horn. "None of it was by myself."

In her three-page letter of recommendation, Chair of the HLAS Board of Directors Suzanne Galbato, Esq., of Bond, Schoeneck & King, supports the nomination of her friend of 18 years.

"Susan has distinguished herself by devoting her entire career to the ideal of equal justice under the law," wrote Galbato. "Because of Susan's work, justice has been served for so many clients who otherwise would never have been able to afford an attorney in times of dire need."

Known for her personal warmth and dedicated work ethic, Horn is especially well-received by those who have the good fortune of her mentorship, her supporters claim.

"When I was in the SU Law School summer internship class, I recall hearing my colleagues in the program who were placed at HLAS speak so highly of their experience there," Galbato wrote. "That Susan has taken the time to get to know the summer interns and mentor them speaks volumes about her dedication to her organization's mission."

Ever modest, Horn demurs she possesses a secret formula for being an exceptional boss giving her law student mentees credit for their own success.



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"The people who work here all have contributed to this agency," she said. "Nobody comes here to get rich. People come here because they care about the people they serve."

# OCBA Congratulates Newly Admitted Attorneys in the 5th Judicial District

The New York State Supreme Court Appellate Division, Fourth Department held its Admission Ceremony in Rochester on January 13 and June 20. Upon such an achievement, OCBA extends its heartiest congratulations to these new lawyers. The following represent those newly admitted attorneys in the 5th Judicial District:

## ADMITTED IN JANUARY

Jeffrey D. Albert  
Kayla A. Arias  
Brandon D. Armstrong  
John R. Beatty  
Cameron T. Bernard  
Upnit K. Bhatti  
Daniel J. Bleiberg  
Patrick R. Blood  
Kenneth L. Bush, III  
Salvatore J. Capecelatro, IV  
Jessica N. Carbone  
Georgia G. Crinnin  
Tonastacia S. Dennis-Taylor  
Timothy P. Dunn  
Danny P. Karim Essadiq

Daniel J. Fetter  
Ryan G. Files  
Lucas W. Finley  
Matthew P. Germain  
Ian W. Gilbert  
Kathryn F. Hartnett  
Kasey Kaspar Hildonen  
Michelle E. Hollebeke  
Anthony J. Johnston  
Benjamin M. Kopp  
Sang Eun Lee  
Sarah C. Lee  
Liza R. Magley  
Kevin M. Mathewson  
Kelly J. McIntosh

Daniel Mercedes  
Michael J. Murabito  
Brittany L. Murgalis  
Anthony E. Nortz  
Shannon B. O'Neill  
Peter C. Papayanakos  
Ryan M. Poplawski  
Robert H. Rubinstein  
Susan L. Schneider  
Timothy E. Stalnaker  
Kathleen I. Tastrom  
Michael W. Tyszko  
Susan E. Upward  
William S. Whitman  
Zakary I. Woodruff

## ADMITTED IN JUNE

Kayla M. Beauduy  
Danielle K. Blackaby  
Angel A. Castro, III  
Kattie M. Chmielowiec  
Audrey L. Flynn  
Derek L. Francisco  
Lindsay A. Getman

Jordan O. Goldstein  
Brandon J. Hellwig  
Kristy L. Johnston  
Whitney M. Kummerow  
Brandon M. Lewis  
Meghan A. McGrattan  
Justin P. McHugh

Allison L. Pardee  
Anna Putintseva  
Bridget E. Riley  
Justin A. Tarantino  
Christopher M. Warren  
Denise E. Wengert



# Appellate and Criminal Court Case Notes

Contributed by Bradley E. Keem, Esq. | Associate, D.J. & J.A. Cirando



## *Affidavit of Errors Required in Local Criminal Courts where there is no Stenographer*

### **People v. Smith, No. 103, and People v. Ramsey No. 104, Court of Appeals, 6/23/16**

Criminal Procedure Law §460.10 requires a defendant, who was convicted in a local court to file an Affidavit of Errors to preserve a client's right to appeal a judgment of conviction rendered in a local criminal court where there is no court stenographer. The recording of court proceedings electronically is not the functional equivalent of a record taken by a court stenographer. Therefore, even if the court proceedings were electronically recorded, a defendant must file an Affidavit of Errors to preserve his or her appellate rights. The failure to do so is a jurisdictional defect requiring dismissal.

## *Burden of Proof in a SORA Proceeding*

### **People v. Cobb, Fourth Department, KA-14-01483, 7/8/16**

The Court of Appeals, in *People v. Gillotti* (23 N.Y.3d 841, 863-864) made clear that the burden of proof when ascertaining whether a downward departure is appropriate is clear and convincing evidence, rather than a preponderance of the evidence. As such, the matter was remitted for a determination of defendant's request for a downward departure using the proper standard.

## *Corroboration*

### **People v. Jackson, Fourth Department, KA-13-01066, 7/1/2016**

Defendant's conviction of Murder in the Second Degree [felony murder] did not require corroboration of the underlying predicate felony (*People v. Harper*, 132 A.D.3d 1230, 1231). Therefore, while the evidence was legally sufficient in terms of the corroboration of defendant's statement to support defendant's conviction of Murder in the Second Degree [felony murder] (see Criminal Procedure Law §60.50), it legal insufficiency in regard to the corroboration of the crimes of Attempted Robbery in the First Degree (2 counts) and Attempted Robbery in the Second Degree did not necessitate the reversal of the entirety of the judgment of conviction.

Therefore, the judgment of conviction was modified by reversing those parts convicting defendant of Attempted Robbery in the First Degree (2 counts) and Attempted Robbery in the Second Degree, and as modified, the judgment was affirmed.

## *Cross-Examination of Police Officer*

### **People v. Smith, No. 109; People v. Ingram, No. 110, and People v. McGhee, No. 111, Court of Appeals 6/28/16**

Law enforcement witnesses must be treated in the same manner as any other prosecution witness for the purpose of cross-examination, and as such, a police witness's prior bad act that has not been proven in a criminal prosecution or other court proceeding can be the subject of cross-examination. Allegations of police misconduct do not lose their relevance to a police witness's credibility simply because the alleged bad

acts are not regarded in all cases as criminal or immoral.

Defendant Ingram was granted a new trial due to an improper categorical prohibition against permissible cross-examination, while the judgments of conviction in regard to defendants McGhee and Smith were both affirmed because, while they were respectively improperly restricted in cross-examination of police witnesses, such restrictions were harmless.

## *Expert Testimony*

### **People v. McCullough, No. 105, Court of Appeals, 6/28/16**

The decision to admit or exclude expert testimony concerning factors that affect the reliability of eyewitness identifications rests within the sound discretion of the trial court (see *People v. Lee*, 96 N.Y.2d 157, 160). When a Motion is submitted, the trial court must weigh the request to introduce such testimony against other relevant factors such as the centrality of the issue and the existence of corroborating evidence (*Lee*, 96 N.Y.2d at 163).

The trial court, did not abuse its discretion, as a matter of law, in precluding the introduction of expert testimony. The trial court was entitled to reject the expert testimony after a proper balancing of the probative value of the evidence against its prejudicial or otherwise harmful effects. Accordingly, the Appellate Division erred in holding the trial court abused its discretion as a matter of law in precluding the testimony, and

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# Appellate and Criminal Court Case Notes continued...

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the matter was remitted for consideration of the facts and issues raised but not determined on appeal to that court.

## *Guilty Plea*

### **People v. Bertolini, Fourth Department, KA-15-00788, 7/8/16**

Despite defendant's failure to challenge the factual sufficiency of his plea bargain, the narrow exception to the preservation requirement applied because his factual recitation cast significant doubt upon his guilt, and negated the element of depraved indifference. Accordingly, the matter was remitted for further proceedings on the Superior Court Information.

## *Jury Note*

### **People v. Mack, No. 74, Court of Appeals, 6/7/16**

Criminal Procedure Law §310.30 requires that a trial court: provide counsel with meaningful notice of the content of a jury note, and the trial court must provide a meaningful response to a jury note (People v. O'Rama, 78 N.Y.2d 270, 276, 277). While a trial court's failure to provide counsel notice of a jury note is a mode of proceedings error---for which preservation is not required---the failure to meaningfully respond to a jury note is not a mode of proceedings error, and requires preservation for appellate review.

In the case at bar, defense counsel had knowledge of all the facts required to object to the trial court's procedure or lack of response to the jury's requests, if he considered such actions prejudicial to defendant, but he did not. Furthermore, designating the alleged error a mode of proceedings error would be inappropriate because it would require the trial court to ignore defense counsel's strategic request that the court not respond to a jury note before accepting the verdict, and would incentivize defense counsel to not object. Accordingly, the Appellate Division's Order was reversed and the matter was remitted to that court for consideration of the facts and issues raised, but not determined on the appeal to that court.

## *Order of Protection*

### **People v. Lawrence, Appellate Division, Fourth Department, KA-14-00658, 7/1/2016**

An Order of Protection in favor of defendant's wife was vacated because though defendant was previously convicted of a crime, and was found guilty of possessing a loaded firearm in his home, that act was not a "crime or violation between spouses, between a parent and child, or between members of the same family or household" (Criminal Procedure Law §530.12 [5]). Accordingly, the judgment was modified on that ground, but otherwise the judgment of conviction was affirmed.

## *Out-of-State Predicate*

### **People v. Helms, KA-13-00647, Fourth Department, 7/8/16**

Defendant was convicted of Attempted Criminal Possession of a Weapon in the Second Degree, as a Second Felony Offender. Defendant was determined to be a Second Felony Offender as a result of a 1999 State of Georgia Burglary

conviction.

The Georgia statute, in 1999, provided that "[a] person commits the offense of burglary when, without authority and with the intent to commit a felony or theft therein, he enters or remains within the dwelling house of another" (Ga Code Ann former §16-7-1 [a]). The statute did not require, as Penal Law §140.25 [2] does, that knowledge that the entry or decision to remain is unlawful. The majority, therefore, held that since the New York law requires proof of an element that Georgia law does not, defendant's Georgia conviction cannot serve as a predicate, and defendant must be resentenced. The dissent's view was that while the statutes did not share the exact same words, the elements, upon examining Georgia precedent, remained the same.

## *Preservation*

### **People v. Griggs, No. 87, Court of Appeals 6/14/16**

Defendant was charged with Robbery in the First Degree after he displayed a firearm in a dispute with a taxi driver and took \$30 from the driver. Defendant testified before the Grand Jury while he was represented by counsel and shackled. Defense counsel made a timely request for defendant's ex-girlfriend to testify. Although the prosecutor received the request, the prosecution did not inform the Grand Jury of defendant's request, and the prosecution incorrectly included the ex-girlfriend's name on the Criminal Procedure Law §710.30 Notice of witnesses that had identified defendant. The Grand Jury subsequently returned an Indictment charging defendant with Robbery in the First Degree.

Despite defendant's shackling, the Court of Appeals determined that the error was unpreserved, and did not constitute an unwaivable mode of proceedings error. Similarly, defense counsel also did not preserve the propriety of the prosecution's questions to defendant dealing with an unrelated pending Indictment or the prosecution's failure to inform the Grand Jury that his ex-girlfriend was an intended witness. Such actions did not amount to ineffective assistance of counsel, as counsel attempted to raise certain errors, but was undermined by defendant's requests to proceed pro se. As such, the Appellate Division's Order, affirming the judgment of conviction was affirmed.

## *Probable Cause*

### **People v. Crooks, No. 116, Court of Appeals, 6/23/16**

Evidence was presented concerning two controlled drug buys. The People did not establish that the police directly observed that drugs or money were exchanged between defendant and the Confidential Informant during the transaction. The People's Search Warrant, however, only sought to establish that probable cause existed to search defendant's apartment for drug activity. The proof concerning the controlled buys, which included visual and audio observation, was alone sufficient to establish probable cause for that purpose. Therefore, probable cause for a Search Warrant can be based strictly on the police's own independent observations. A Confidential Informant's statements are not necessary to

# Appellate and Criminal Court Case Notes continued...

Contributed by Bradley E. Keem, Esq. | Associate, D.J. & J.A. Cirando

establish probable cause. As such, no Darden Hearing was necessary, and the Appellate Division's Order was affirmed.

## *Review of Grand Jury Minutes*

### **People v. Roth, Appellate Division, Fourth Department, KA-15-01259, 7/1/2016**

The standard for reviewing the legal sufficiency of the evidence before the Grand Jury is whether the evidence, viewed in the light most favorable to the People, if unexplained and uncontradicted, would be sufficient to warrant conviction by a trial jury. A trial court's inquiry in this regard is limited to the legal sufficiency of the evidence, and not its weight or adequacy.

With respect to the crime of Manslaughter in the Second Degree (2 counts), and Criminally Negligent Homicide, the evidence that defendant provided a quantity of drugs to the victim, refused to permit other children present to call for medical assistance; and directed children not to answer cell phone calls from the victim's mother because the victim was not supposed to be at defendant's house established prima facie evidence that defendant's actions created a substantial and unjustifiable risk of death.

As such, the trial court's dismissal of the three counts of the Indictment was reversed, those counts were reinstated, and the matter was remitted for further proceedings.

## *SORA Determination*

### **People v. Sincerbeaux, No. 113, Court of Appeals, 6/28/16**

In calculating points for a SORA risk-level classification the SORA court is not limited to assessing points related to the current offense, but may also assess points for clear and convincing evidence of: other criminal acts presented as admission from the offender; statements from victims; and reports from probation officers, parole officers, corrections counselors, or other reliable sources; other sworn statements; and even unsworn statements of the victim if it has the requisite indicia of reliability (*Sex Offender Registration Act: Risk Assessment Guidelines and Commentary* at 5 [2006]; see *People v. Mingo*, 12 N.Y.3d 563, 567).

Accordingly, the SORA court properly considered a sworn statement of the victim, and defendant's prior non-sexual conviction of the crime of Endangering the Welfare of a Child in determining that defendant was a Risk Level III Sex Offender. *People v. George*, KA-14-01893, Fourth Department, 7/8/16

The nineteen-year old defendant was a presumptive Risk Level III Offender. The underlying offense dealt with defendant's nonforcible sexual intercourse with a fourteen year old female acquaintance. The Court stressed the relatively slight age difference between defendant and the victim, as well as the undisputed evidence that the victim's lack of consent was premised only on her inability to consent by virtue of her age in determining that 25 points under Risk Factor 2---sexual contact with the victim---was an overassessment of defendant's risk to public safety. Accordingly, as a matter of the Court's discretion, defendant's Risk Level was reduced to Level II.

## *Unlawfully Dealing with a Child*

### **People v. Berry, No. 94, Court of Appeals 6/14/16**

To establish that a defendant permitted a child to enter or remain in a particular place, premises, or establishment, within the meaning of Penal Law §260.20 [1], the People must show that the defendant had a relation to either the child or to the place, premises, or establishment, such that he or she could control whether the child entered or remained there.

In the case at bar, defendant had no legal relationship to the nine, five, and six month old children in question. Defendant's name was also not on the lease agreement of the residence. TH, the children's mother testified that defendant had no authority over the children, and that defendant was never left alone with them.

The Court of Appeals held that to establish a defendant permitted a child to enter or remain in a particular place, premises, or establishment, under Penal Law §260.20 [1], the People must show that defendant's relation to the child or to the place, premises, or establishment was of such a kind that defendant had some ability to control the child so as to permit the child to enter or remain in the place in question. A mere ability to notify authorities is not enough. Therefore, because the evidence was legally insufficient to establish such elements, the Appellate Division's Order was reversed, the judgment of conviction vacated, and the Indictment dismissed.

## *Waiver of Presence at Sentencing for a Felony*

### **People v. Rossborough, No. 69, Court of Appeals, 6/2/16**

Criminal Procedure Law §380.40 [2] does not, on its face, provide an exception to the general rule that a defendant must be present when being sentenced for a felony. Nonetheless, the Court of Appeals has recognized that when a defendant absconds during trial, or before sentencing, then he forfeits his right to be present (*People v. Corley*, 67 N.Y.2d 105, 109-110).

An additional exception is now recognized where defendant expressly waives his right to be present. Just as other fundamental rights (right to waive the right to a jury trial by pleading guilty; right to waive counsel) may be waived so too may the right to appear at sentencing.

## **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](mailto:pwalker@onbar.org)**

# BAR BOARDS:

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Mid-size Syracuse law firm seeks to hire a self-starting, energetic attorney with 2-5 years' experience for its commercial law and transactional practices. The successful candidate will have excellent verbal, interpersonal, and research and writing skills. Must be licensed to practice in New York. Please forward resume to [hiringpartner@melvinlaw.com](mailto:hiringpartner@melvinlaw.com).

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Jackson Bergman, LLP seeks to hire an associate attorney to handle family court, matrimonial and criminal defense cases. Must be admitted to practice law in the State of New York. Salary commensurate with experience. Interested applicants can send email to [ben@jacksonbergman.com](mailto:ben@jacksonbergman.com).

## **Law Practice for Sale**

Established Liverpool law firm (general practice) seeking buyer for law practice. Only serious inquiries at: [mlikon@yahoo.com](mailto:mlikon@yahoo.com).

## **Ferrara, Fiorenza PC Seeking Associate Attorney(s)**

Ferrara, Fiorenza PC is seeking an attorney(s) admitted in New York State with 2+ years experience to handle administrative proceedings, civil litigation and support its Education and Employment law practice. Considering applicants for both Rochester and Syracuse. Competitive salary, 401K, profit sharing and health benefits. Direct resumes to Katherine Senn, Office Administrator at: Ferrara, Fiorenza P.C., and 5010 Campuswood Drive, East Syracuse, New York 13057 Phone: 315-437-7600, Fax: 315-437-5617, email [kasenn@ferrarafirm.com](mailto:kasenn@ferrarafirm.com).

## **Opening for Matrimonial Attorney at Melvin & Melvin, PLLC**

Mid-size Syracuse law firm seeks to hire a self-starting, energetic attorney with 2-5 years' experience for its matrimonial practice. Please forward resume to [hiringpartner@melvinlaw.com](mailto:hiringpartner@melvinlaw.com).

# BAR BOARDS:

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Applicants must be admitted to practice in New York State and be in good standing. No experience is necessary, but compensation will be commensurate with applicant's experience level. Resumes may be sent to [cspoon@nr-law.com](mailto:cspoon@nr-law.com).

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## 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 [cchantler@onbar.org](mailto:cchantler@onbar.org). Editor Emeritus: John A. Cirando, Esq.  
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# OCBA Recognizes the Central New York Women's Bar Association with Diversity & Inclusion Achievement Award



By: Carrie Chantler

**O**n Wednesday, June 15, nearly 39 years to the day of the first inklings of the [Central New York Women's Bar Association](#) it received OCBA's first annual Diversity & Inclusion Committee Achievement Award.

The CNYWBA was formally organized in 1980, but was conceived on June 20, 1977 months after an in-flight conversation between airline passengers Syracuse attorney and National Organization of Women President Karen DeCrow and Joan Ellenbogen, an active member of the Women's Bar of the City of New York.

Their in-flight discussion centered on organizing a women's bar association in the region. And within a few years after several casual meetings of area female attorneys a group was forged.

In the 36 years since, the CNYWBA has blazed trails providing and fostering law student scholarships plus social and economic advancement for area women and families. With a focus on helping women succeed in the

legal profession, CNYWBA has offered continuing legal education seminars on work/self/family balance, how to become a judge and this spring hosted the 12th Annual Law-Medicine Dinner: Women Leaders in CNY – What Glass Ceiling?



In the mid-90s, when U.S. Magistrate Judge Thérèse Wiley Dancks served as its president, the CNYWBA formed the Domestic Abuse Project which continues today with the Vera House Advocacy Program. The Monday Night Legal Clinic sees member-volunteers counsel the domestic and sexual violence service's clientele on divorce and custody issues.

CNYWBA's yearly business is meted out in regular director's meetings, annual leadership elections, judiciary screenings, evaluations and receptions. Additionally, CNYWBA's Karen DeCrow Lecture Series hosts speakers whose topics range from gender equality to human rights, such as the February event that discussed intellectual property protection with Sarah Feingold, Esq., Counsel at ETSY, Inc., an e-commerce marketplace catering to artists and collectors.

The CNYWBA influence has been felt since its early days when Beatrice Krupkin, its first president,

successfully lobbied the Onondaga County Bar Association to move its annual meeting from an all-male club to a gender-inclusive venue to accommodate its growing female membership. This shift proved to be a landmark move for the CNYWBA and was followed by more women candidates appearing on election slates and winning leadership roles. This factored into the Diversity & Inclusion Committee's Achievement Award designation.

OCBA's President Jim Williams welcomed more than 100 attendees to the Diversity & Inclusion Committee's first annual award ceremony held at the Syracuse University College of Law. The work of the CNYWBA, he said, its reputation and its place in the region helps to create a "place where people want to come and practice law."

**"Women now are in leadership roles in our community and now in our nation."**

"The Central New York Women's Bar Association played a significant role in OCBA's ongoing journey in becoming more diverse and inclusive," he said. "Women now are in leadership roles in our community and now in our nation."

CNYWBA President Samantha L. Millier accepted the recognition, which followed a Best Practices in Diversity and Inclusion in the Legal Profession CLE.

"I'm honored to be here and to accept this award on behalf of all the great women who have come before me," she said. "There are challenges we still face and there's still a lot of work to be done."

2013 Trailblazer Award recipient Lillian Moy, Esq., executive director of Legal Aid of Northeastern New York, presented at the earlier CLE on diversity in law firm hiring practices. She discussed remaining roadblocks likening them to water flowing upstream such as a lack of qualified minority candidates and a willingness on the part of firms to value cross-cultural communication.

CNYWBA and D&I Committee member Melanie Cuevas Rodriguez sees an opportunity for members of both bar associations to promote fair employment by creating allies.

Building relationships through law student mentorship, she said, goes a long way to create a new generation of lawyers by exposing them to what could be.

"By preparing them for clients who have not walked the same path as they have and ready them for international service and a global practice," she said. "Allies are just as important as those who can identify."

# Diversity & Inclusion Committee Sponsors CLE Series

By: Suzette Melendez and Jim Williams

Consistent with its mission ([see the committee's website](#)) to lead and guide the OCBA to create and foster a legal community where the same opportunities for growth, development and advancement are open to all, the OCBA's Diversity and Inclusion (D&I) Committee this year is sponsoring a series of three CLEs that will address the importance of diversity and inclusion in the legal profession and showcase best practices. The CLEs will provide training and support to members of the local bar who are making or would like to make efforts to increase awareness and improve the workplace as well as the profession.

On May 10th, the D & I Committee hosted "Recognizing and Addressing Implicit or Unconscious Bias" (pictured). The program's goal was to discuss how implicit bias can derail diversity and inclusion efforts in the workplace. Panelists included Eric M. Galvez, Esq. from Barclay Damon, LLP, and from the Syracuse University College of Law Paula C. Johnson, Esq., Professor of Law, Melanie Cuevas-Rodriguez, Associate Director for Student Life, and Moderator Suzette M. Melendez, Esq., Director of Children's Rights and Family Law Clinic.

During the program, panelists explained that biases are both negative and positive associations that one makes in relation to a given circumstance, interaction or reaction to something or someone. Implicit (or unconscious) Bias refers to biases that we are unaware of and that are formed outside of our own conscious awareness. Unconscious beliefs are formed



by life experiences (good and bad), cultural environment, and social stereotyping to name just a few factors. The danger presents itself when the impact of unconscious bias is negative or otherwise inaccurate which can permeate an organizational structure thereby undermining efforts aimed at advancing diversity and cultural change.

The participants discussed what we in the legal profession can do to raise our levels of consciousness and interrupt bias on a personal and organizational level. We began this process



utilizing an effective exercise aimed at exploring why each and every one of us make certain choices and how we can expand our personal and professional circles so as to make better and more informed decisions that are not tainted by biases – implicit or explicit.

The participants also began a discussion regarding strategies that can be used to address implicit bias on an organizational level such as surveying past and present employees to gauge their perspectives on policies and practices as well as supporting cross-cultural and diversity training for all members of an organization and utilizing consultants who can identify issues of hiring to performance evaluations and promotions. The session ended with an acknowledgement that this is an ongoing process of learning in which we must all actively and collectively engage for the sake of the profession and the various communities that we serve. The session concluded with the proposition that holding ourselves accountable is a step in the right direction.

The second part of the series, “Best Practices: Diversity and Inclusion in the Legal Profession,” took place on June 15th, and included Laurence Bousquet, Esq., Bousquet Holstein PLLC, Sally Curran, Esq., Moderator, Volunteer Lawyers Project of Onondaga County, Susan R. Katzoff, Esq., Barclay Damon, LLP, Lillian Moi, Esq., Legal Aid Society of Northeastern New York and Clifford G. Tsan, Esq., Bond Schoeneck & King, PLLC.

The program was very well-received and informative. Panelists emphasized that diversity and inclusion is critical to business development, both to grow clients and to recruit and retain employees. But how does a relatively homogenous group come to understand the perceptions and concerns of people whose backgrounds and identities significantly differ from their own?

CLE attendee Attorney Kim Morrell said she was intrigued by the possibilities inherent in reverse mentoring raised by panelist Lillian Moi. “As I understand the concept,” Ms. Morrell explained, “in reverse mentoring, senior employees must be prepared to listen and learn to examine their own presumptions, while junior mentors must be encouraged to speak truth to power.” Attorney Nicole Scialabba said that she found the CLE extremely enlightening, “We heard from firms of different sizes regarding the challenges they face in not just hiring but retaining diverse attorneys and other staff. It was great to hear about the different practices and initiatives they have been developing to improve diversity within their firms as they recognize that it’s not only a good thing to have different voices in the room but that it’s something that is growing more and more important to their clients.”

The third CLE of the series is planned for the fall and will focus on Diversity in leadership. Stay tuned. If you are interested in reviewing the materials distributed at these CLEs, they are available at <http://www.onbar.org/about-us/committees/diversity-and-inclusion/>.

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# LEGAL BRIEFS LEGAL BRIEFS LEGAL

## **Jeffrey D. Eaton Selected for National Conference of Bankruptcy Judges Next Generation program**

Menter, Rudin & Trivelpiece, P.C. is pleased to announce that Jeffrey D. Eaton, an associate with the Firm's Bankruptcy group, was designated as a participant in the National Conference of Bankruptcy Judges Next Generation program. The NCBJ Next Generation program is intended for lawyers who have been practicing 5-10 years, and have met certain qualifications including legal excellence in the practice of bankruptcy law, a serious commitment to principles of civility, ethics, and professionalism, and a commitment to the continued educational development of bankruptcy professions. Mr. Eaton will be one of 40 attendees participating in a roundtable discussion with more than 20 bankruptcy judges from around the country at the NCBJ Conference which will be held this October in San Francisco.

## **Anna V. Putintseva Becomes Of Counsel to Bousquet Holstein**

Bousquet Holstein PLLC is pleased to announce that Anna V. Putintseva has recently become Of Counsel to Bousquet Holstein. She will focus her practice on business transactions, mergers and acquisitions, and immigration law.



Anna received her Master of Laws' degree from the University of Washington School of Law and an International Law and International Relations' degree from the Kyiv International University, Ukraine. She first joined Bousquet Holstein as a law clerk and was recently admitted to the New York State Bar.

Anna practiced for 13 years at the Kyiv office of the international law firm of Chadbourne & Park LLP, where she advised multinational and Ukrainian companies on crossborder M&A deals, joint ventures, restructuring and various business transactions.

For more information please visit her website bio: <http://bhlawpllc.com/attorneys/anna-v-putintseva/>

## **Barclay Damon LLP News**

### **Barclay Damon Celebrates 1st Anniversary of Successful Merger**

June 1, 2016, marks the first anniversary of the formation of Barclay Damon, LLP, the super-regional law firm created when Hiscock & Barclay, LLP and Damon Morey LLP merged last year.

The 275-attorney combination established Barclay Damon as the Northeast's largest law firm not centered in a major metropolitan area. The firm's combined two centuries of legal experience significantly enhanced the breadth and depth of the services available to clients in practices that include health care, which is now one of largest health law practices based in Upstate New York; labor and employment; and corporate law, among other already-acclaimed practices such as intellectual property and energy. The merger also provided a platform for the firm to expand service offerings in areas such as higher education, international/cross-border, and cyber security. In all, the firm's 33 practice areas provide clients with access to outstanding attorneys who are proficient in virtually any legal area they may require. John P. Langan, Barclay Damon's managing partner, said, "It's been an exhilarating year, exceeding the expectations of our partners and clients who, themselves, ambitiously predicted great things from the combination. It clicked from day one—the people, the cultures, the unique energy triggered from the fusion of two great law firms—and it's been fun to watch since then."

Prior to becoming Barclay Damon, Hiscock & Barclay saw 20 years of lateral growth and merger activity, including

## **DID YOU KNOW ...**

The CLE Committee is an essential resource for the local law community. This important OCBA panel reviews, approves and generates continuing legal education seminars in a wide variety of legal topics. If you are interested in becoming a member of the committee, contact

**Carrie Chantler at 579-2578  
or email [cchantler@onbar.org](mailto:cchantler@onbar.org)**

# LEGAL BRIEFS LEGAL BRIEFS LEGAL

10 major additions to the firm of between five and 65 new attorneys with each addition. This type of merger between law firms is increasingly a major national and global trend, with more law firm mergers occurring in 2015 than any previous year.

## Raymond N. McCabe Honored by New York State Bar Association

Barclay Damon, LLP, Partner, Raymond N. McCabe is the recipient of the 2016 New York State Bar Association President's Pro Bono Service Award for the Eighth Judicial District. McCabe received his award on May 2, 2016 at the

President's Pro Bono Service Awards luncheon ceremony for his extraordinary pro bono service. McCabe was nominated for this honor for volunteering to incorporate and obtain IRS recognition of tax-exempt status for several Western New York charitable organizations including a sports-themed youth development organization, a charity that raises funds for cancer treatments and research, an inner-city non-denominational church, rural



youth enrichment center, developer of a memorial skate park and an inner-city health clinic. He also helped resolve a conflict among directors of a charity, facilitating a corporate reorganization that resulted in dividing the charity into three separate entities.

These awards are presented publicly to recognize and thank the people who give such service and also to convey a message to the profession and the public about the importance of pro bono in achieving equal access to justice.

McCabe is a member of the firm's Tax and Labor & Employment Practice Areas. He has a substantial background in corporate transactions, including reorganizations, mergers, and affiliations of both for-profit and not-for-profit entities. He serves as benefits counsel to for-profit and charitable organizations, and as corporate governance counsel to not-for-profit corporations and foundations. McCabe's practice is enriched by his prior work experience in the Chief Counsel's office of the Internal Revenue Service and his experience as a board member and board chair of various Western New York charities.



Also honored was former partner **Frederick Stephen Marty**, who retired from Hiscock & Barclay in 2012. Marty was the recipient of the 2016 New York State Bar Association President's Pro Bono Service Award in the Senior Lawyer category.

## Brenda D. Colella Honored with "Exceptional Women of Central New York" Award

Barclay Damon, LLP is pleased to announce Brenda D. Colella, a partner in the firm's Project Development and Energy Practice Areas, is the recipient of the 2016 Exceptional Women of Central New York Award in business. The award, presented by Assemblymember Pamela J. Hunter, honors outstanding women who are doing their parts to make the community an even better place.



Ms. Colella was nominated for the award for her continued work in the community. Ms. Colella is actively involved in many neighborhood groups and events dedicated to improving the community, including the Greater Strathmore Neighborhood Association as well as the Central New York Women's Bar Association. She is also a founding member of the Strathmore Huntley Group, an organization committed to restoring a historic apartment building located in Syracuse. The group purchased the building for \$1 in 2010 and has since raised over \$2.6 million for renovations and has developed plans to restore the building.

**Do you have a legal brief?**

**Send your legal news and press releases to Carrie Chantler at [cchantler@onbar.org](mailto:cchantler@onbar.org).**

# Animal Advocacy's Dog Days

Depending on the level of damage to an animal, defendants are charged with a felony or misdemeanor under Section 353 of the Agriculture & Markets statute.

Once an animal is sheltered, Thompson contacts OCBA and an animal law guardian is assigned from a rotating list of attorneys who begins a series of visits, facilitates the animal's surrender if not already achieved, and initiates progress reports.

VALAC lawyers do not represent any party in the subsequent criminal case, except to the extent their written reports on the physical and emotional health of the sheltered animals are considered by the presiding judge.

Knowing an under-appreciated animal may one day become adopted into a forever home, rather than face continued suffering or worse, is enough to render the work of these volunteer guardians worth it, said VALAC member Colleen Gibbons.



By: Carrie Chantler

**A**dvocating on behalf of an abused or neglected animal can be heartbreaking. "But, it's the good kind of heartbreaking," said Kerilyn Micale, a member of OCBA's Volunteer Advocate Lawyer for Animal Abuse Court program. "I want people to know about us and for our role to be known and to act as a deterrent to abusing animals."

The year-old program is winning the hearts and minds of this growing committee of both established attorneys and law students dedicated to championing the rights of these most innocent of clients.

The brainchild of 2014 OCBA President Nicholas DeMartino, VALAC serves to update Syracuse City Court judges on the status of animals seized or surrendered in pending criminal cases.

"We provide information to the court and work, ultimately, toward getting the animal adopted," he said. "The program has gone far beyond what I ever anticipated."

To date, four dogs have been referred to the program by Animal Cruelty Investigator, Syracuse Police Officer Becky Thompson.

In her follow-up work, Thompson always circled back to check on the welfare of affected animals. Knowing a better future could exist for animals improperly confined and malnourished, she urged the Syracuse Police Department and the District Attorney's Office to cooperatively shelter them at DeWitt Animal Hospital and the Veterinary Medical Center of CNY.



**The change in Bully is evident in these photographs. To the left, Bully is pictured both before and after arriving at the Dewitt Animal Hospital. Above, Bully, now named Teddy, is happy and healthier several weeks into training.**

This spring, Gibbons answered the call and met Bully, a now playful pit bull, who was woefully undernourished and denied exercise for his first two years. With DeWitt Animal Hospital assistance, Bully's begun to be less aggressive about his toys and food and now resides in a private facility working with a trainer to even his temperament. Shortly after meeting her client, Gibbons crowdfunded, in two days, the impressive sum of \$1,500 on gofundme.com, more than enough to cover the \$1,350 cost of Bully's training.

Fundraising is not a requirement of the VALAC program, but being resourceful is key to problem solving and DeMartino envisions VALAC eventually providing financial support for behavioral testing and training.

"We'll improve the program as we develop it," he said.

Bringing awareness to the plight of rejected, neglected and abused animals may help rout unlawfulness in other domestic situations.

"It's important legally, because this kind of abuse can be a giant warning sign of domestic abuse," Gibbons said. "This program may help us in our larger legal structure."

## Important Phone #s

### Animal Cruelty

Hotline: (315) 442-5336

### City of Syracuse Dog

Control: (315) 473-6608

### Syracuse Pit Crew

(dog rescue): <http://cusepitcrew.org>

### Dewitt Animal

Hospital: (315) 741-5131

### Veterinary Medical

Center of CNY: (315) 446-7933

### Have an interest in becoming involved in VALAC? Contact

Nick Demartino:

(315) 424-8326

# OCBA Paralegals Committee

Contributed by Kathrine Cook | Executive Committee, OCBA Paralegals Section

## June Monthly Luncheon Recap

On Thursday, June 9, 2016, the Paralegals Committee held its last luncheon meeting until September. We returned to The Spaghetti Warehouse, 689 North Clinton Street for this program. Our guest speaker was Daniel McAllister, Chief Deputy of Operations at the U.S. District Court for the Northern District of New York. He spoke about recent updates and programs at the District Court and how paralegals might get involved. Dan advised that paralegals can assist their attorneys by checking the Local Rules and General Orders of the Court to ensure reliance on proper and timely filing procedures. He advised that General Order #47 pertaining to the Mandatory



Mediation Program was recently amended. Individual Rules and Practices of Judge D'Agostino were changed on May 1, 2016.

One pilot program which Dan presented was the Social Security Appeals program. All cases in which a plaintiff seeks review of a decision by the Commissioner of Social Security will be randomly assigned to a United States Magistrate Judge. Also, the U.S. Attorney for the Northern District of New York and Regional Counsel for the Social Security Administration have agreed to participate in a Pilot Program for Electronic Service in Social Security cases (refer to General Order #18).

Dan McAllister began working with the Northern District of New York in February 1996, and has served the court in the positions of Docket Clerk, Courtroom Deputy to a Magistrate Judge and a District Judge, and as Operations Manager. Dan became Chief Deputy for Operations in June 2008. He is a graduate of the Federal Court Leadership Program and has a Master's Degree in Public Administration. Dan has worked on various national programs, including serving on the Next Generation of Case Management and Electronic Case Filing Project Steering Group.

If you have any questions regarding or encounter problems using the U.S. District Court for the Northern District website, please contact Dan at [mcallist@nynd.uscourts.gov](mailto:mcallist@nynd.uscourts.gov) or call (315) 234-8505.

## Luncheons Return September

Mark the date **Thursday, September 8th** on your calendar with the autumn return of the luncheon series. The featured speaker is **Gilbert Hoffman, of counsel at Bousquet Holstein**, who will be speaking about real property and titles.

*All are welcome to attend.* Please stay tuned for more information in the next issue.

# OCBA Welcomes New Staffers Carrie Chantler and Michele Maciejewski

The Onondaga County Bar Association has welcomed two new employees. Carrie Chantler is serving as OCBA's first-ever Marketing & Communications Director, while Michele Maciejewski is filling a new part-time position as Marketing Assistant.

State Associated Press Association and the Syracuse Press Club, from which she received its Professional Recognition Award in 2014.

Carrie received her M.A. in Magazine, Newspaper and Online Journalism from Syracuse University's S.I. Newhouse School of Public

Communications, and also has her B.F.A. in Acting from S.U.'s College of Visual and Performing Arts.

During an earlier stint in Chicago, Carrie worked as a legal secretary, a theatrical producer and a professional actress. She continues to use her performing talents as a vocalist and soloist in her church choir, and also does commercial voice-over work for many clients.

In addition to sharing her expansive editorial skills with OCBA members, Carrie is also overseeing the organization's Continuing Legal Education program.

Michele is also a recent graduate of the Newhouse School with an M.A. in Magazine, Newspaper and

Online Journalism. She received her B.S. in Communication Management and Design from the Roy H. Park School of Communications at Ithaca College. She has interned at the Syracuse Post-Standard, worked as a specialist at the Apple Store and continues to work as a personnel trainer for Fleet Feet Sports.

The mother of two-year-old daughter Alice, Michele is an accomplished competitive runner and recently won the women's division in the Herald of Victory Marathon held in Binghamton.

Unaitis said, "The OCBA office received an exciting boost of creativity, talent and enthusiasm with the addition of Carrie and Michele earlier this year, and we know our organization and our members will continue to be well served by our dedicated staff."



**From left to right:  
Michele Maciejewski and Carrie Chantler**

OCBA Executive Director Jeff Unaitis was assisted in the search for these positions by members of the organization's Executive Committee. He said, "While we received many excellent applications and were impressed with the several in-person interviews we conducted, our search committee strongly believed that the combination of Carrie and Michele will give OCBA and its members a new focus on enhanced member communications, including embracing OCBA's social media platforms."

Carrie joined OCBA from the Auburn-based The Citizen newspaper, where she was the education reporter covering Cayuga County and also reported on agriculture and the environment. Her work at The Citizen resulted in recognition by both the New York

# FROM THE COURTS

In *People v Smith* (\_\_\_NY3d \_\_\_, 2016 NY Slip Op 4973[2016]), the Court of Appeals recently held that “an affidavit of errors is a jurisdictional prerequisite for the taking of an appeal from a local court where there is no court stenographer.” This means that trial counsel must file an affidavit of errors to preserve a client’s right to appeal a judgment of conviction rendered in a local criminal court “in which the underlying proceedings were not recorded by a court stenographer.” (CPL 460.10[3]).

The affidavit of errors requirement is found in CPL 460.10. That statute says that an appellant is required to file, within 30 days, “either (i) an affidavit of errors, setting forth alleged errors or defects in the proceedings which are the subjects of the appeal, or (ii) a notice of appeal” (CPL 460.10 [3][a]). If the appellant first files a notice of appeal, he must then file, within 30 days of the filing of the notice of appeal, an affidavit of errors (id.). “[T]he appeal is deemed to have been take’ '[u]pon the filing and service of the affidavit of errors as prescribed’” (*People v. Smith*, 2016 NY Slip

Op 4973, quoting, CPL 460.10 [3][c]).

In *Smith* the Court of Appeals specifically rejected the argument that recording court proceedings electronically is the functional equivalent of a record taken by a court stenographer (id.). In other words, an affidavit of errors must be filed even if court proceedings were electronically recorded. A defendant’s “failure to do so is a jurisdictional defect requiring dismissal” (id.)

Given the jurisdictional nature of the affidavit of errors, trial counsel has a duty to file the affidavit, along with a notice of appeal (see 22 NYCRR 1022.11 [a]). Failing to fulfill this jurisdictional prerequisite, and preserving a client’s right to appeal, could result in a finding of ineffective assistance of counsel (see *People v. Syville*, 15 NY3d 391, 398 [2010] [“When counsel’s omission causes a defendant to lose the right to perfect or obtain merits consideration of an appeal, the deficient performance amounts to ineffective assistance of counsel in violation of the Due Process Clause”]).

