



# ONONDAGA COUNTY BAR ASSOCIATION **BAR REPORTER**

## FEATURED ARTICLES

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JANUARY 2019  
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Onondaga County Bar Association  
CNY Philanthropy Center  
431 East Fayette Street, Suite 300  
Syracuse, NY 13202  
315-471-2667

## *Our 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.



## UPCOMING EVENTS:

**CLE | Getting and Keeping Utility Service: Utility Consumer Rights Pursuant to Art. 2 of the Public Service Law** - February 6<sup>th</sup>

Low Center for Justice, First Floor Education Room

**Memorial Observance** - February 7<sup>th</sup>  
Onondaga County Courthouse, Legislative Chambers Room 407

**CLE | Top Legal and Business Landmines in Selecting a Construction Project Delivery Method** - February 20<sup>th</sup>  
CNY Philanthropy Center, Second Floor Ballroom

**CLE | Volunteer Lawyers Project & CNY Women's Bar Association Pro Bono Family Law Update** - February 26<sup>th</sup>

Low Center for Justice, First Floor Education Room

**CLE | Surrogate Decision-Making Volunteer Training** - February 28<sup>th</sup>  
CNY Philanthropy Center, Second Floor Ballroom

**Annual Meeting** - April 4<sup>th</sup>  
Onondaga County Courthouse

**50-Year Luncheon** - June 13<sup>th</sup>  
Pascale's at Drumlins

Visit our [website](#) for more information.

# Letter from the PRESIDENT



I am pleased to report that your Onondaga County Bar Association has received the 2018 Bar Leaders Innovation Award from the NYS Bar Association in recognition of the creation of our Veterans' Rights and Military Law Section. The Award was presented at the NYSBA House of Delegates meeting on January 18, 2019.

The real success story though is in the enthusiastic response received by the OCBA to the official launch of this new Section at its organizational meeting held this past Tuesday at the Syracuse University Law School. The Section already boasts a membership of more than 25 judges, lawyers, and law students, many of whom have long served as advocates for and provided legal services to veterans. Kudos to Section Co-Chairs Chantal Wentworth-Mullin and Robert Whitaker for pulling this together with the able assistance of Executive Director Jeff Unaitis and our OCBA staff.

Active planning by the Section is already underway for CLE programs directed to meeting the needs of veterans and active members of the military, and a variety of other programs and services are under consideration. It is anticipated that the Section will continue to serve as an organizational platform for advocates, build upon existing efforts of support groups and focus on unfulfilled needs.

Special note should also be given to plans underway to establish a Veterans' Court in Onondaga County. The Hon. Theodore Limpert and the Hon. David Gideon each provided reports on this judicial initiative at the Section's January 29th meeting. By connecting former service personnel contending with addiction, mental illness, or other disabilities with appropriate treatment and outside services, this Court will directly address specific needs of our veterans. More details will be forthcoming.

President, John T. McCann



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John T. McCann

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Onondaga County Bar Association's

# *Memorial Observance*

Onondaga County Courthouse  
Legislative Chambers, Room 407  
Thursday, February 7, 2019 9-10:00 a.m.

## *Remembering*

Daniel B. "Danno" Altwarg  
Hon. Robert J. Bertrand  
Hon. William J. Burke  
Michael R. Canestrano  
C. Edwin "Ed" Close  
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Barclay Damon LLP, a nearly 300-attorney law firm, with 33 practice offerings and offices throughout New York State and the Northeast, is seeking Attorneys of the following positions:

## **Commercial Litigation Attorney (Syracuse)**

Seeking an Associate for its Syracuse office to join its Commercial Litigation Practice Group. The Associate should have 4 years of litigation experience, and prior experience in complex commercial litigation will be highly regarded.

Candidate must be licensed to practice in the state of New York; have superior verbal, written and interpersonal skills as well as have demonstrated abilities to work directly with clients and develop and execute service strategies.

## **Torts & Insurance Staff Attorney**

Seeking a full-time Staff Associate for its Rochester and Syracuse offices to join its Torts & Products Liability Defense Practice Area. The Staff Associate should have 1 year of torts defense experience. The demonstrated ability to independently manage matters up to trial, including court appearances, depositions, and motion practice, is highly desired.

Candidate must be licensed to practice in the state of New York; have superior verbal, written, and interpersonal skills; and have demonstrated abilities to work directly with clients and develop and execute service strategies.

## **Corporate Attorney (Syracuse)**

Seeking a senior level associate or junior level partner for its Syracuse office in the Business Services Practice Group with demonstrated experience in corporate and transactional work.

The attorney will represent sophisticated firm clients in mergers and acquisitions, commercial, and other transactional work, including preparing and negotiating acquisition agreements, associated documents,

and due diligence in connection therewith. The attorney will also advise clients on general corporate and business law issues and compliance matters. Strong communication and negotiation skills are required.

The ideal candidate will have a minimum of eight years of relevant experience in general business and transactional work. The attorney will be involved in the development and maintenance of client relationships. A portable and growing book of business, although not a requirement, is highly desired.

## **ERISA Attorney (Syracuse, Albany, Buffalo, Rochester)**

The attorney will represent sophisticated firm clients in all areas of employee benefits law, including qualified and non-qualified retirement plan design and compliance, ESOPs, sponsor and fiduciary risk management, benefit plan documentation, executive compensation, health and welfare benefit plans, ERISA claims and dispute resolution, governmental investigations and audits, and Affordable Care Act compliance.

The ideal candidate will be able to practice independently at a partner level in the above areas and will be involved in the development and maintenance of client relationships. A portable and growing book of business is highly desired.

Qualified applicants should submit a cover letter, resume, writing sample, and law school transcript in confidence to:

### **Recruitment Coordinator**

**Barclay Damon LLP**  
**Barclay Damon Tower**  
**125 East Jefferson Street**  
**Syracuse, NY 13202**  
**Email: [jobs@barclaydamon.com](mailto:jobs@barclaydamon.com)**



# JDinteractive:

Heading to law school was the next step for Kathryn Morris ... just not in Oregon.



Law Student Kathryn Morris

**T**he nation's first American Bar Association-accredited online law degree could shorten the distance from the Beaver State to Dineen Hall.

Syracuse University College of Law founded the nation's first fully interactive online JD program earlier this year and welcomed 32 future alumni through its doors. Morris was among them.

She and her husband Corey live in the Willamette Valley wine country, about an hour south of Portland; approximately 2,830.8 miles from the Carrier Dome.

None of Oregon's three law schools appealed to Morris who, after 10 years as a bank compliance officer, finally took the law school plunge.

"I started Googling 'online law school' and quickly discovered that there was a new program that would fit my needs," she said. "This program is quite literally the only way that a legal education is approachable given my professional and family life."

Morris, 32, will continue working full time plus teach at a compliance school, as she manages an average of nine

credits a semester during the year-round, 10-semester course of study she aims to complete in three years and three months.

The JDi program requires students attend two annual on-campus residencies. Otherwise courses for the far-flung class of 2022 happen in real-time thanks to the Internet. From the comfort of their own home – whether that's in Oregon (or 19 other states), Germany, Tanzania, or Japan – students take part in live class discussions.

Living a distance from campus doesn't mean SU is far away for its online students.

SUCOL built the program schedule to ensure ample opportunity for students and staff to connect. Students feel little, if any, disadvantage not being on campus, Morris said. SUCOL even implemented a shipping system from the law school's library assuring any resource needed is delivered.

"The professors have been so open and welcoming, and I truly feel supported in this journey so far," Morris said.

While it's a first-of-its-kind program in-the-moment classroom occasions happen in a throwback fashion.



"We use the ZOOM platform, which puts us on camera in Brady Bunch style," Morris said of the online forum that allows professors and students to hear and see every answered question, arched eyebrow, and raised hand.

"It's great because the professor can see the looks on our faces," she said. "Having been on campus and being able to make connections with students and professors when you get on the webcam you know everyone."

Morris praises SUCOL's choice to host an on-campus residency followed by the onset of digitally delivered courses. Such innovation will keep the program sustainable as it evolves, she said. The in-person meeting coupled with immediate coursework "was really smart on the part of the college of law."

During the January visit, any reservations Morris may have had about being a non-traditional student were assuaged. The diverse backgrounds of her classmates impressed and inspired her.

"The average age is 35," she said. "I started to realize the amount of life experience contained within the 32 people is going to greatly enhance the education we're about to receive."

### **The JDInteractive Class of 2022 consists of:**

- Fifteen military and military-affiliated students;
- The program welcomes those with established careers in medicine, real estate, private business, border patrol, environmental engineering, and non-profit leadership;
- In addition to military service members, the class includes caregivers, community advocates, mentors, a choir director, and a volunteer football coach; and
- Forty-one percent are first-generation college students.

Only a month or so into her law school education, Morris already has a study buddy and takes part in student



groupchats. The ease and convenience of the WhatsApp app means brainstorming brew at a time that works for all concerned.

Associate Dean for Online Education Nina A. Kohn is also the David M. Levy Professor of law and is Morris' Torts professor.

"The program is off to a strong start," Kohn wrote in an email. "It is remarkable how little difference there is between teaching here in Dineen Hall and teaching in my virtual classroom online. In both, I use the Socratic Method to engage my students in legal analysis in real time. In both classrooms, I can see all my students at the same time, and they can see me and all their classmates as well. The dynamics of the two classrooms, and the conversations we have in them, are remarkably similar."

In the time between now and her SUCOL graduation, Morris will figure out where and how she'll apply her new legal knowledge. She's happy in the world of banking and finance, but is leaving open other possibilities.

"Having worked with my banks to protect consumers, I have a unique perspective on how banks can be regulated to maintain

strong consumer protections while continuing to do robust and profitable business," she said. "However, I have always been interested in politics and policy and could see myself changing career trajectories as well."

Until she figures it out she remains enterprising.

She and a few of her classmates are considering forming a student organization with an advocacy mission promoting access for online students to on-campus groups and activities – and beyond!

"We want to take what SUCOL has done by innovating legal education and what that looks like now and see how we can take that innovation into the lawyer community at large, once we graduate, and leverage that technology," she said.

# SUCOL

# CRIMINAL CASE NOTES

By: Bradley Keem, Esq.



## Anonymous Jury

### **People v. Flores, No. 141, Court of Appeals, 12/13/18**

The Court of Appeals determined that the trial court improperly impaneled an anonymous jury. The Court stressed that the trial court acted without any factual predicate for the extraordinary procedure. The trial court merely relied on anecdotal accounts from jurors, and then exacerbated the error by taking no steps to mollify the potential prejudice to the defense. Accordingly, the Court affirmed the Appellate Division's Order granting a new trial.

## Discretionary Persistent Felony Offender Status

### **People v. Ellison, KA-13-00035, Fourth Department, 12/21/18**

Defendant appealed the judgment of Monroe County Court, convicting him, upon a jury verdict of the crimes of burglary in the third degree (2 counts) and criminal possession of stolen property in the fourth degree, and sentenced as a Persistent Felony Offender to life imprisonment.

As a matter of discretion, in the interest of justice, the Court elected to vacate defendant's adjudication as a Persistent Felony Offender, and reduced the sentence to 3 ½ to 7 years. In exercising such discretion, the Court noted that defendant had been offered the opportunity, prior to trial, to plead guilty to concurrent indeterminate terms of imprisonment of 2 to 4 years. It further emphasized that defendant's lengthy criminal history did not involve violence, mostly dealt with shoplifting to support his addiction to drugs, and that the People did not seek Persistent Felony Offender adjudication.

## Duplicitous Count

### **People v. Hilton, 109302, Third Department, 11/21/18**

Defendant appealed the judgment of the Schenectady County Court, convicting him, upon a jury verdict of the crimes of assault on a police officer, assault in the second degree, strangulation in the second degree, resisting arrest, and the violation of disorderly conduct.

A City of Schenectady Police Officer observed defendant, who was drunk, in the middle of the street holding an orange traffic cone and speaking through it as though it was a bull horn. The officer inquired about the cone, and was reassured by defendant's friends that the cone would be returned. Later, however, defendant still had the traffic cone. The officer stopped defendant, asked defendant for identification and, after defendant refused, the officer told defendant he needed to be detained. Defendant then assaulted the officer. Later, police officers discovered defendant hiding in a dumpster, and his removal led to an additional altercation.

When a single count charges one criminal act, that count is duplicitous if the evidence makes plain that multiple criminal acts occurred during the relevant time period, rendering it nearly impossible to determine the particular act upon which the jury reached its verdict. Here, the indictment charged defendant with one count of resisting arrest. The evidence presented to the jury, however, consisted of two instances where defendant resisted an officer's arrest--once with the initial officer and another with the officers who discovered him in the dumpster. The trial court, in response to a jury note concerning the issue, did not dissipate the confusion.

Accordingly, the Court exercised its interest of justice jurisdiction, because the issue was not properly preserved, and dismissed the conviction of resisting arrest with leave to the People to re-present to a new grand jury, and as so modified, affirmed the judgment of conviction.



## Improper Guilty Plea

### **People v. Demkovich, 108444, Third Department, 1/17/19**

Defendant appealed the judgment of Broome County Court, convicting him, upon his plea of guilty of the crimes of attempted kidnapping in the second degree and criminal possession of a controlled substance in the third degree.

Despite defendant's failure to preserve his contention that his guilty plea was not knowing, intelligent, and voluntary due to the trial court's failure to advise him of the constitutional rights he waived by pleading guilty, the majority elected to exercise its interest of justice jurisdiction, and vacate the plea.

The majority recognized that a trial court is not required to adhere to a rigid script or formula in accepting a defendant's guilty plea. It determined, however, that the failure to advise defendant of his right to jury trial, and that he waived his privilege against self-incrimination, and failed to obtain any assurance that defendant spoke to defense counsel about such rights, rendered the guilty plea invalid.

The dissent explained that nothing about the case "cries out for fundamental justice beyond the confines of conventional considerations" and would not exercise the Appellate Division's interest of justice jurisdiction for such an unpreserved error.

## Ineffective Assistance of Counsel

### **People v. Jones, 2200/14, First Department, 12/6/18**

Defendant appealed the judgment of New York County Court convicting him, after a jury trial, of robbery in the third degree.

The Court determined that defendant was deprived of the effective assistance of counsel due to defense counsel's failure to request a jury charge on the lesser included offense of petit larceny. At trial, defendant conceded that he took money from the victims. Defense counsel's strategy was to avoid a felony conviction by challenging the People's proof on the element of force. Specifically, defense counsel's theory was that rather than using force, defendant tricked the victims. Defense counsel, however, instead of seeking the misdemeanor charge of petit larceny, sought the misdemeanor charge of Fraudulent Accosting, but such charge was not a lesser included offense of robbery in the third degree.

Such an error by defense counsel had no strategic reason, and was prejudicial due to the plainly reasonable view of the evidence to support petit larceny. As such, a new trial was ordered.

### **People v. McGee, 108603, Third Department, 11/29/18**

Defendant appealed the judgment of Clinton County Court convicting him, after a plea of guilty, to the crimes of criminal sale of a controlled substance in the third degree (four counts), criminal possession of a controlled substance in the third degree, and criminal possession of a firearm.

Despite the lack of preservation, the Court elected to exercise its interest of justice jurisdiction, and reverse the judgment of conviction due to ineffective assistance of counsel. The Record revealed that, on March 28, 2016, prior to defendant's entrance into the plea agreement, defense counsel brought the trial court's attention to a highly charged incident between him and the prosecutor. Although the details were not placed on the Record, defense counsel apologized for his inappropriate conduct, and stated that he "let some personal issues override [his] better judgment," that he "should never have said most of the things that [he] said, if not all of the things," and that, "as a result of part of that problem, [he] misconstrued what [defendant] was willing to do relative to the plea offer that was on the table at that time." Defense counsel believed, because of his conduct, a more favorable plea offer that was purportedly available on the preceding Friday, was no longer available.

Under such circumstances, the Court determined that the trial court should have disqualified defense counsel from continuing to represent defendant. The Court noted that defense counsel may have been required to provide testimony regarding the events that allegedly took place on that preceding Friday. Following such a substitution, the trial court should have conducted a Hearing to determine whether defendant received ineffective assistance of counsel during the plea negotiation process, and thus was entitled to an order directing the People to reoffer the more favorable plea offer it allegedly made available on the preceding Friday. The Court stressed that the trial court repeatedly misinformed defendant that it could not direct the People to reoffer the plea offer, and that defendant could either take a new plea offer or go to trial.

Accordingly, the judgment of conviction was reversed, and the matter was remitted to the trial court for further proceedings.

## Making a Terroristic Threat

### **People v. Kaplan, 110141, Third Department, 1/17/19**

Defendant appealed the judgment of Warren County Court, convicting him, upon a jury verdict of the crime of making a terroristic threat.

Police arrested defendant in July of 2015. At the time of his arrest, defendant possessed a cell phone, police scanner, \$2,707, and rolling papers. These items were held as evidence by the Warren County Sheriff's Office. On August 2, 2016, defendant presented his Certificate of Disposition and requested the evidence custodian provide him with his property. The evidence custodian refused, asserting that the certificate of disposition was insufficient, and that office policy precluded her from releasing personal property until at least 30 days after the disposition of the case. Defendant became angry, and said he was going to "come back and shoot the place down."

As a result of defendant's remark, he was indicted for making a terroristic threat, convicted after trial, and sentenced to a five year determinate term of imprisonment with three years of post-release supervision. The Appellate Division reversed, determining that the People did not prove that defendant's remark was aimed at influencing governmental action, or that he intended to affect the conduct of a unit of government by murder, assassination, or kidnapping, a necessary element of the offense.

### **People v. Richardson, 107973, Third Department, 12/6/18**

Defendant appealed the judgment of Chenango County Court, convicting him, upon a jury verdict of the crime of Making a Terroristic Threat, and from an Order from Chenango County Court denying defendant's Criminal Procedure Law §440.10 Motion to vacate the judgment of conviction, without a hearing.

In July of 2012, when defendant was in jail for violating an Order of Protection, he sent letters to his estranged wife in envelopes addressed to her mother. In one letter, defendant expressed his anger toward judicial officials, including an unnamed judge, and said, "These [c]ounty officials are way too [easy] to get my hands on" and that he made some "really useful contacts...with heavy explosives." Defendant further wrote, "I want to just walk up slowly to the judge [and] put a 45 slug [between] his eyes" (emphasis omitted). Defendant's letter mocked the judge, accused him of having a conflict of interest, and stated that he would "deal with him in [three] months," which was his planned release date.

As a result of defendant's letters he was charged in an indictment with making a terroristic threat, convicted, and sentenced to a seven year determinate term of imprisonment, followed by three years of post-release supervision. The Appellate Division reversed, stressing that while defendant's letters detailed violent acts against a judge, amongst others, there was a lack of evidence that such threats were intended to influence a policy of a governmental unit by intimidation or coercion or affect the conduct of a governmental unit. The Court did not sanction defendant's written statements, but maintained that they reflected vented anger toward those involved in his Family Court proceedings, and not with terrorism as defined in Penal Law §490.00.

## Probation

### **People v. Hakes, No. 139, Court of Appeals, 12/13/18**

Defendant herein wore a Secure Continuous Remote Alcohol Monitoring (SCRAM) device for several months as a condition of his probationary sentence, but then lost his ability to work, and could no longer pay for it. The trial court held that defendant violated his probation and sentenced him to prison. The Appellate Division reversed the judgment of conviction on the basis that the sentence imposed was illegal because sentencing courts cannot require a defendant to pay for the cost of electronic monitoring.

The Court of Appeals determined that, as a condition of probation, sentencing courts can require a defendant to wear and pay for a SCRAM bracelet that measures their alcohol intake. The Court relied on Penal Law §65.10 (4), but noted that requiring a defendant to wear and pay for an electronic monitoring device will not always be reasonable, especially where a condition of probation includes a cost a particular defendant cannot feasibly meet. The Court, therefore, stressed that a probationary sentence is a tentative one that by its nature may be altered or revoked pursuant to the discretion of the trial court during the probationary term.

The Court instructed that in the event a defendant asserted that they are unable to meet the financial obligations of a condition of probation, then the sentencing court must hold a hearing where defendant could be heard, in person, present witnesses, and offer evidence establishing a bona fide effort to pay. If defendant establishes an inability to pay despite bona fide efforts to do so, the trial court must attempt to fashion a reasonable alternative to incarceration. If, on the other hand, the trial court determines, by a preponderance of the evidence, that the probationer willingly refused to pay, when they can pay, then the trial court is justified in revoking probation.

Accordingly, the Order of the Appellate Division was reversed, and the case remitted for a determination of the facts and issues raised, but not determined on appeal to that court.

**People v. Clause, KA-18-00021, Fourth Department, 12/21/18**

Defendant appealed the judgment of Niagara County Court revoking defendant's sentence of probation and imposition of a sentence of imprisonment.

The Court, as a matter of discretion in the interest of justice, vacated the revocation of defendant's sentence of probation, and continued the sentence of probation with the addition of 100 hours of community service. The Court noted defendant's youth---18 at the time of the offense; completion of substance abuse counseling; employment; lack of criminal behavior on probation; compliance with the reporting requirement during a 2 ½ year period; and a psychologist's opinion that incarceration would impede her progress and setback her recovery from substance abuse, as factors supporting restoration to probation.

## Promoting Prison Contraband

**People v. Flagg, KA-16-01323, Fourth Department, 11/16/18**

Defendant appealed the judgment of Onondaga County Court convicting him, upon a jury verdict, of promoting prison contraband in the first degree and criminal possession of a controlled substance in the seventh degree.

Defendant, an inmate at Onondaga County Correctional Facility, was charged with the above crimes because of his possession of four Tramadol pills. The Court determined that such pills did not constitute "dangerous contraband" because the evidence presented by the People failed to establish a "substantial probability" that the Tramadol would bring about a "major threat" to the safety or security of the facility. Additionally, the People did not establish that the ingesting of Tramadol could "cause death or other serious injury."

The Court acknowledged that some courts, including the Appellate Division, Third Department, have considered cases involving the possession of drugs and concluded that the possessed drugs were dangerous contraband on what may be viewed as less "specific, competent proof" of a substantial probability that the item will be used in a manner that is likely to cause death or other serious injury, to facilitate an escape, or bring about other major threats. The Court, however, disagreed with such cases, and stressed that the focus should be on the dangerousness of the use of the particular drug at issue, not on broad concerns that could involve any sort of contraband, such as alcohol, cigarettes, or other items that are not inherently dangerous like weapons. The Court also noted that the determination of what type and quantities of drugs are "dangerous contraband" per se, should be left to the Legislature.

Though defense counsel failed to preserve the claim concerning the sufficiency of the evidence, the Court, as a matter of discretion in the interest of justice, reduced the conviction of promoting prison contraband in the first degree under the first count of the indictment to promoting prison contraband in the second degree, and vacated the sentence imposed on that count, and as modified, the judgment of conviction was affirmed, and the matter remitted for resentencing.

## SORA, History of Alcohol and Drug Abuse

**People v. Madonna, KA-17-00483, Fourth Department, 12/21/18**

Defendant appealed the judgment of Onondaga County Court determining that defendant was a level two risk pursuant to the Sex Offender Registration Act.

Risk factor 11 indicates that because alcohol and drug abuse are highly associated with sex offending, 15 points are added if an offender has a substance abuse history. The evidence established that defendant drank one can of beer each month.



The evidence also indicated that defendant smoked marijuana from his teenage years to his early twenties, but thereafter participated in a drug treatment program and, at the time of the presentence interview, had not smoked marijuana for four years.

The Court determined that defendant's alcohol use was occasional, and that his recent history of drug use was one of prolonged abstinence, and as such, the evidence was insufficient to warrant the assessment of points under risk factor 11. The Court, therefore, reduced the 15 points on defendant's Risk Assessment Instrument dropping his score from 85 to 70, and rendering him a risk level one offender.

## SORA, Registration

### **People v. Diaz, No. 134, Court of Appeals, 12/11/18**

The Court of Appeals reiterated that a person must register as a sex offender in New York, if they were convicted of a felony in any other jurisdiction, and if such felony conviction required the offender to register as a sex offender in the other jurisdiction as a result.

Defendant herein, at the age of 19, shot and killed his 13-year-old half-sister while living in Virginia. As a result of that conviction, he registered in Virginia's Sex Offender and Crimes Against Minors Registry because the victim was under 15 years of age. There was no sexual component to the crime. When defendant moved to Bronx County, he was required to register pursuant to SORA, and determined to be a risk level III offender. The Appellate Division, First Department reversed, and the Court of Appeals affirmed. The Court of Appeals explained that since defendant was not considered a sex offender by Virginia, he was not subject to SORA registration.



### **Bankruptcy/Corporate Restructuring Associate – Syracuse, NY**

Bond, Schoeneck & King, PLLC, a full-service law firm with 250 attorneys in 10 offices, is seeking an experienced associate-level attorney for its state-wide Business Restructuring, Creditors' Rights and Bankruptcy practice in the Syracuse, New York office. This is an excellent opportunity to work for sophisticated regional, national and international clients in a collaborative setting with the largest dedicated practice group of bankruptcy and restructuring attorneys in New York State outside of the New York metropolitan area. 3 to 4 years of experience in financial restructuring and bankruptcy is preferred. Applicants must have excellent academic credentials and communication skills. Compensation commensurate with relevant experience and credentials. We are an EEO employer.

***Please send cover letter and resume to [hrbsk@bsk.com](mailto:hrbsk@bsk.com).***



# VETERANS RIGHTS & MILITARY LAW SECTION

ONONDAGA COUNTY BAR ASSOCIATION

The Onondaga County Bar Association was recognized by the New York State Bar Association during its House of Delegates meeting in NYC on January 18th. The OCBA received the 2018 Bar Leaders Innovation Award for the creation of its Veterans' Rights and Military Law Section.

The OCBA established the Section in conjunction with the Wohl Family Veterans Clinic at the Syracuse University College of Law. The primary initial purposes of the Section are to advocate for the creation of a Veterans Court in Onondaga County; provide training to attorneys in Onondaga County and contiguous counties in the processing of VA disability benefits appeals; expand upon networking and social activities among veterans who are members of the Bar; and also increase networking between veterans advocacy groups and members of the Bar. The Section's purposes include public service, pro-bono and law-related education components.

The Section was established with representative Co-Chairs from the Onondaga County Bar Association and the Syracuse University College of Law. Co-Chair Chantal Wentworth-Mullin is a Fellow of the Veterans Legal Clinic. Co-Chair Robert C. Whitaker, an attorney with Hancock Estabrook, LLP, has served with the Navy JAG Corps and has provided legal services to veterans' organizations, individual veterans and active members of the military.

Chosen from a field of 15 nominations, the OCBA was among four bar associations that ultimately received this accolade. The OCBA received the Award in the medium size bar association category.

"The NYSBA Committee for Bar Leaders was very impressed with OCBA's work to establish this section," said Mark Wilson, of the NYSBA Office of Bar Services.

"It's clear the OCBA had a real game plan" when it came to the formation of its new section, Wilson added, and that's what impressed the nominating committee.





## Year-End Giving Tips

**Earlier is better.** Beat the year-end rush by sending gifts early. Also, more complex gifts, such as an IRA distribution or a gift of stock, may take longer to process, so please allow enough time.

**Notify us when transferring stock.** It is important to contact us when donating securities so that we may credit the gift appropriately. Also, please disclose the client's name when transferring the shares so we can identify them easily.

**Use our online resources.** Using our website, [cnycf.org](http://cnycf.org), donor-advised fundholders can make grant suggestions, replenish a fund, access our stock transfer form, and much more.

**Dates to Know:** Gifts credited for 2018 tax returns must be delivered to the Community Foundation by 4:30 p.m. on December 31, postmarked on or before December 31, or given online by 11:59 p.m. on December 31.



## CNY Vitals: Making it easier to make a difference by Monica Merante

*Monica Merante is the Senior Director of Philanthropic Services at the Central New York Community Foundation. She serves as the primary contact for Community Foundation donors, focusing on donor stewardship, outreach and engagement. In the article below, Monica previews how our new CNY Vitals website can prove a vital tool for advisors and their charitable clients.*

Professional advisors play an important role in providing opportunities for their clients to achieve their charitable objectives. Most advisors agree that sparking dialogue about charitable giving is a crucial part of their practice, as it can be good for them, good for their clients and good for the broader community.

But asking the basic questions is often not enough. Recent trends in charitable giving point to a growing desire for curated giving options and opportunities to connect to measurable impact. Today's donors are savvy, smart and collaborative. They want to know that their support is effecting real change in their core areas of interest.

For example, how do you help your clients choose which causes to support and decide which avenues of giving will have the greatest impact? Some of your clients rely on facts and figures when directing charitable dollars. Others are compelled by stories of those in need. Still others are prompted by trusted advisors or friends. CNYVitals.org is a new website that delivers all three of these influencers in one easy-to-use resource, and it may just change how you and your clients make decisions about giving.

CNY Vitals aggregates and monitors local information that tells the story of Central New York. It is a project of the Community Foundation, but the data contained in the site draws from a variety of sources, including the US Census Bureau American Community Survey, the US Department of Labor, the Syracuse City School District and the New York State Education Department Report Card Database. Data that feed into the charts and graphs on CNY Vitals are regularly refreshed, giving you and your clients an accurate and relevant picture of their charitable impact.

The site is divided into six sections representing areas of need: Poverty, Education, Health, Housing, People and Economy & Arts. The data on these topics can be filtered by county and by city.

Additionally, subsections feature information beyond the numbers:

- Introduction (an overview of the topic)
- Let's Break It Down (what the data tells us)
- Why Does It Matter? (how this issue impacts our broader community)
- A Local Story (a real-life example to illustrate the cause)
- What You Can Do (how to volunteer, donate and take action)

Clients who are keen on statistics can find them for each of the five counties in the Community Foundation's service area, and drill down by city and census tract.

(continued)



Those inspired by the stories can connect the reported data to real people and their everyday lives. Just like the data sources, these narratives will be updated over time.

The call to action presented within each of the six highlighted areas is the result of the Community Foundation's knowledge of community resources, and our mission to make it as easy as possible for people to give, engage and advocate.

The Community Foundation is committed to helping people who care about CNY make informed decisions about charitable giving through data-driven philanthropy. We encourage you to explore CNYVitals.org and share the website with your clients to help guide their research and charitable decision-making. Throughout the year let us know how you and your clients are using the data so we can continue to refine this valuable community resource. Visit CNYVitals.org to learn more.

We are stronger when we give – and plan – together. The Community Foundation aims to be your partner in philanthropic giving – helping to simplify decisions and provide actionable data and insight into the influence your clients' charitable giving is having on our community. When we work together we can help them achieve their financial.

**To learn more about charitable giving and community indicators at the Community Foundation, contact Tom Griffith, Vice President, Development at [tgriffith@cnycf.org](mailto:tgriffith@cnycf.org).**



CENTRAL NEW YORK  
COMMUNITY  
FOUNDATION, INC.

## Contact Us

Our development team is available to assist you with the information and tools that help your clients achieve their charitable goals.

**Thomas Griffith, ChFC®, CAP®**

*Vice President, Development*

315.883.5544

[TGriffith@cnycf.org](mailto:TGriffith@cnycf.org)

**Peter Dunn, JD**

*President & CEO*

315.883.5530

[PDunn@cnycf.org](mailto:PDunn@cnycf.org)

# The Monthly Newsmakers

VOLUME 64 NUMBER 1

JANUARY 2019

50 CENTS

## COUNTY NEWS

*Appellate Division, Fourth Department*

### 5TH DISTRICT APPLICANTS ADMITTED TO THE NEW YORK STATE BAR

Alessandra Lauren Ambrosi  
Grace HaEun Beckler  
Scott Alexander Berlucchi  
Ashley Anne Chrabot  
Samantha Ellen Cirillo  
Samuel Benjamin Cohen  
Kevin William Connell  
John Lawrence Cronin  
Krista Mary Dean  
Thomas J. DeBernardis  
Tristen Joan Durand  
Jeri A. DuVall  
Nicholas Paul Fedorka  
Leah Kristine Folgherait

Melissa Leeann Green  
Rachael Erika Hancock  
Christian Timothy Heneka  
Jennifer Caroline Hicks  
Bryan Michael Hoffman  
Nicholas Alan Jacobs  
Teal Rachel Johnson  
Sarah Danch King  
Sarah Alexandra Lafen  
Ian Sheldon Ludd  
Nicole K. Macris  
Joseph Matthew Marzocchi  
Conor Lane McSweeney  
Annie Marie Millar

Samantha Ann Netzbund  
Amanda Lee Oppermann  
Diane E. Orosz  
Bianca Marie Pavia  
Joseph Jeffrey Porcello  
Jennifer Leigh Pratt  
Catherine Alexandria Ray  
Melissa O'Brien Rothbart  
Thomas J. Snyder  
Brian Nelson Tedd  
Andriy Troyanovych  
Boliang Xia  
Ivan Zajicek  
Melissa Gabrielle Zajicek

## BARCLAY DAMON<sup>LLP</sup>

### *Locke and Blow Join Barclay Damon*



Barclay Damon  
a n n o u n c e s  
**Alexandra Locke**,  
associate, and **Steve  
Blow**, of counsel,  
have joined the firm.  
Blow and Locke will  
work out of the  
firm's Albany and  
Syracuse offices,  
respectively.

Locke is a member of the Real Estate  
and Financial Institutions & Lending  
Practice Areas, supporting commercial  
real estate and finance transactions,  
including the acquisition, sale, leasing,  
and mortgaging of retail shopping  
centers. Prior to Barclay Damon, Locke  
served as associate counsel at Raymours  
Furniture Company, Inc.

Blow is a member of the Regulatory  
Practice Area. Prior to Barclay Damon,  
he spent nearly four decades working

as a NYS Department of Public Service  
attorney, handling significant energy,  
environmental, and telecommunications  
matters that included Article VII, VIII,  
and X siting cases; rate cases; Section  
68 proceedings; and orders regarding  
regulation of energy companies. He has  
substantial involvement in making the  
PSC website more accessible to visually  
impaired users. Blow also served as  
the NYS Public Service Commission  
records-access officer, giving him  
extensive experience with the legal  
issues surrounding confidential filings  
and Freedom of Information Law (FOIL)  
requests.



# HANCOCK ESTABROOK, LLP

## COUNSELORS AT LAW

### *Hunsicker, Mannion and Pollak Admitted to Partnership at Hancock Estabrook*



Hancock Estabrook, LLP is pleased to announce that **Jaime J. Hunsicker**, **Daniel K. Mannion** and **Carrie J. Pollak** have been elected to the Firm's partnership.

Jaime J. Hunsicker is a member of the Firm's Elder Law, Trusts & Estates, Tax and Family Business Succession Planning Practice Areas. She assists clients with a wide range of trusts, estate planning and retirement planning matters. Ms. Hunsicker is admitted to practice in New York State, and is a graduate of the State University of Buffalo and Syracuse University College of Law.

Daniel K. Mannion serves a diverse portfolio of clients in connection with commercial real estate and corporate

matters. He regularly advises real estate developers, lenders, property owners, nonprofit organizations and public agencies on an array of commercial real estate matters, including the purchase and sale of commercial properties, lease transactions, commercial loans, foreclosures and landlord/tenant issues. Mr. Mannion is admitted to practice in New York State. He is a graduate of University of Buffalo Law School and the University of Notre Dame.

Carrie J. Pollak is a member of the Firm's Corporate, Public Finance, Tax, Municipal, Healthcare and Nonprofit Governance & Tax-Exempt Organizations Practice Areas, and is resident in the Firm's Ithaca office. Her

legal practice concentrates on corporate governance. Ms. Pollak regularly advises tax-exempt and nonprofit organizations on diverse legal issues including formation, taxation, tax-exempt concerns, corporate governance, corporate restructurings, regulatory matters commercial ventures, contracts and other transactions and tax-exempt financing, including bond issuance. She represents providers of charitable services such as long-term healthcare and affordable housing and works with a number of nonprofit groups. Ms. Pollak is admitted to practice in New York, Massachusetts and Pennsylvania. She is a graduate of the University of Massachusetts and Cornell Law School.

"We are pleased to welcome Jaime, Dan and Carrie to the partnership" said Timothy P. Murphy, the Firm's Managing Partner. "It's an honor to elevate and recognize these great attorneys for their high level of dedication and the contributions they have made to the Firm and our clients."

***Pictured left to right: Jaime J. Hunsicker, Daniel K. Mannion and Carrie J. Pollak***

## JOYCE JOINS HANCOCK ESTABROOK, LLP



Hancock Estabrook, LLP, is pleased to announce that **Jillian C. Joyce** has joined the Firm as an Associate in our Elder Law & Special Needs and Trusts & Estates practice areas.

Ms. Joyce has over five years of experience counseling clients in various aspects of trusts and estates matters, including estate planning and administration, elder law and wealth transfer planning. Ms. Joyce regularly assists clients and families with establishing wills, powers of attorney, health care proxies, living wills, revocable living trusts, irrevocable trusts, asset preservation trusts, and

supplemental needs trusts.

She is a graduate of the University of Notre Dame and received her law degree from the University at Buffalo School of Law, where she was a member of the Gender, Law and Social Policy Journal.

Ms. Joyce is admitted to practice in New York, Florida, and Minnesota.



# Hancock Estabrook Named A 2019 Best Companies To Work For In New York

Hancock Estabrook, LLP, one of Upstate New York's leading law firms, is thrilled to announce that the Firm has been named as one of the 2019 Best Companies to Work for in New York by the New York State Society for Human Resource Management (NYS-SHRM) and Best Companies Group.

This statewide survey and awards program is designed to identify, recognize and honor the best places of employment in New York, the 2019 Best Companies to Work for in New York list is made up of 75 companies from across the state. "We are honored to be recognized as one of the Best Companies to Work for in our 130th anniversary year because it is primarily based on information from those who know us best – our employees!" said Timothy P. Murphy, Managing Partner, "Our employees are essential to our Clients' and Firm's success, and we take great pride in cultivating a culture and a work environment where our employees can thrive. With input from

all members of our team, we have taken a comprehensive look at the Firm as an employer and service provider. What could we do better? How could we do it better? From the input we gathered, we developed an internal policy for client service, designed a student loan repayment program for our young attorneys, established a women's initiative and diversity program, a mentoring program, and a firm wide wellness program in addition to revisiting our community service, Pro Bono and work life balance programs."

Companies from across the state entered the two-part survey process to determine the Best Companies to Work for in New York. The first part consisted of evaluating each nominated company's workplace policies, practices, philosophy, systems and demographics and was worth approximately 25% of the total evaluation. The second part consisted of an employee survey to measure the employee experience. This part of the process was worth



approximately 75% of the total evaluation.

For more information on the Best Companies to Work for in New York program, visit [www.BestCompaniesNY.com](http://www.BestCompaniesNY.com).

Named a 2019 Best Law Firm by U.S. News & World Report, Hancock Estabrook, LLP is committed to providing excellent service to clients throughout New York State. The Firm provides a broad range of legal services and representation across a variety of industries, disciplines and practice areas, proudly serving as trusted advisors to large corporations, small and medium-sized businesses, nonprofit institutions, governmental entities and individuals. For more information about the Firm and its legal services, visit [hancocklaw.com](http://hancocklaw.com).

## HEALTHCARE ATTORNEY WANTED

Hancock Estabrook, LLP is seeking a Healthcare Associate Attorney with at least three years' experience within a law firm or in-house. Experience in the areas of Anti-Kickback, Stark, False Claims Act, EMTALA, HIPAA, regulatory compliance, CMS/Medicare/Medicaid/third party billing issues, corporate structuring, hospital governance and operations, physician-hospital contracting, patient care issues, negotiating and drafting contracts and corporate transactions is preferred. Our thriving Healthcare Practice represents diverse healthcare providers in Central and Upstate New York, including hospitals, hospital systems, continuing care retirement communities, nursing homes, doctors, medical practices, dentists, nurses, laboratories, health centers, and clinics.

.....  
Please submit your resume to our Recruitment Administrator at [recruiting@hancocklaw.com](mailto:recruiting@hancocklaw.com)



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## *Kerwin and Scarfone Elected Partners* *Barclay Damon Welcomes Back David Glasel*



Barclay Damon announces **Matt Kerwin** and **Nick Scarfone** have been elected to the law firm's partnership.

Kerwin is a member of the firm's Telecommunications, Land Use & Zoning, Project Development, and Energy Practice Areas and its renewable energy team. He counsels individuals and businesses in a wide range of land use and development matters with a focus on representing wireless telecommunications providers and tower companies in the acquisition of land use and zoning approvals throughout New York State. Kerwin has served as special counsel to several municipalities on zoning compliance matters on numerous development projects.

Scarfone is a member of the firm's Tax, Corporate, and Trusts & Estates Practice Areas and its Canada/cross-

border and cannabis teams. He is an experienced tax lawyer and a certified public accountant with a track record of planning and implementing effective tax-driven structures and transactions. Scarfone has a broad range of legal and business experience, including handling regulatory compliance matters for for-profit and not-for-profit clients, including educational institutions, and structuring and implementing mergers and acquisitions, joint ventures, debt workouts, financing transactions, tax credit deals, and complex executive compensation arrangements. In addition, Scarfone has successfully negotiated favorable settlements for clients in tax controversies, both civil and criminal.

John Langan, Barclay Damon's managing partner, said, "This was a no brainer. Matt and Nick's achievements for clients, their commitment to service, and their dedication to our communities are exactly the qualities our firm and clients expect from our partners. I am proud to welcome these two exceptional attorneys to Barclay Damon's partnership."

***Pictured left to right: Matt Kerwin and Nick Scarfone***



Barclay Damon announces **David Glasel**, of counsel, has rejoined the firm. The first chair of the Health Care & Human Services Practice Area at Hiscock & Barclay, LLP, one of the two

firms that combined in 2015 to form Barclay Damon, Glasel most recently served as chief legal officer at Acacia Network. He will work out of the firm's Albany and New York offices.

Glasel is a member of the firm's Health Care & Human Services and Health Care Controversies Practice Areas, where he counsels for-profit and not-for-profit clients on enterprise development; capital financing; project development; certificates of need and licensing; and mergers, acquisitions, and reorganizations. With over 40 years of legal experience, he uses his deep knowledge of complex governmental regulations, compliance, and organizational management to help health care clients navigate the industry. Glasel additionally handles state and federal surveys and investigations, Medicare- and Medicaid-enforcement investigations, and professional-licensing disciplinary and criminal proceedings.

Barclay Damon attorneys team across offices and practices to provide customized, targeted solutions grounded in industry knowledge and a deep understanding of our clients' businesses. With nearly 300 attorneys, Barclay Damon is a leading regional law firm that operates from a strategic platform of offices located in the Northeastern United States and Toronto.

## FULVIO JOINS BARCLAY DAMON



Barclay Damon announces **David Fulvio**, associate, has joined the firm. Fulvio will work out of the firm's Syracuse office.

Fulvio is a member of the Torts & Products Liability Defense

and Professional Liability Practice Areas, representing clients in both state and federal court. Prior to joining Barclay Damon, he was an associate at Villani & Grow, where he represented individuals,

insurance carriers, businesses, and municipalities in a variety of matters, including litigation, transactions, and day-to-day operations. Fulvio graduated from Boston University School of Law.

Barclay Damon attorneys team across offices and practices to provide customized, targeted solutions grounded in industry knowledge and a deep understanding of our clients' businesses. With nearly 300 attorneys, Barclay Damon is a leading regional law firm that operates from a strategic platform of offices located in the Northeastern United States and Toronto.

# Barclay Damon Attorneys Achieve 100-Percent Pro Bono Participation for Second Year in a Row

Barclay Damon announces, for the second year in a row, every one of the law firm's full-time attorneys provided pro bono legal services to low-income individuals in need of legal assistance and organizations serving those seeking access to justice.

"To achieve 100-percent pro bono service in 2017 at a firm like ours with nearly 300 attorneys was an incredible accomplishment and to attain it again in 2018 demonstrates how deeply passionate we all are about giving our time and talent to best serve our communities," Heather Sunser, the firm's pro bono partner, said. "We are proud to advocate for those struggling with economic and social barriers who are most susceptible to inequality."

Through its multi-award-winning pro bono program, the firm dedicated more than 3,500 hours of time valued at nearly

\$1 million to pro bono efforts in 2018, with attorneys actively participating in firm-sponsored family court clinics, litigating civil rights violations, drafting wills for veterans, assisting with clemency applications, and providing online legal aid through initiatives such as the American Bar Association's Free Legal Answers program. They also helped beneficiaries handle legal matters involving many of today's critical issues, including immigration, housing, women's rights, prisoners' rights, and community building and economic development.

"This commitment to the idea of 'liberty and justice for all' has played an integral role in developing our internal culture over the course of our long history and in establishing ourselves as a leading regional law firm in the United States," John Langan, the firm's managing

partner, said. "As attorneys, it is our civic duty to use our unique skills and knowledge to give back to some of the nation's most vulnerable populations, and we are thrilled to have once again reached 100-percent pro bono participation, a goal we hope to see other law firms strive to meet as well."

The firm's dedication to pro bono work has been recognized with numerous honors, including being named a Free Legal Answers™ Firm Honoree by the New York State Bar Association. On January 17, Barclay Damon was additionally honored as an Empire State Counsel Honoree by the NYSBA at its annual Justice for All Luncheon for the third year straight. Among other accolades, Barclay Damon has also been ranked the number one firm for pro bono service in Western New York by Buffalo Law Journal.

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## City of Ithaca New York

The City Attorney's Office in Ithaca, NY (consistently rated one of the most "livable" cities in the U.S.), seeks to fill the full-time position of **Assistant City Attorney**, part of a dynamic legal team that advises City government in its operation and legislation. The successful candidate will have substantial experience in civil litigation or labor and employment law (grievances, arbitration, contract negotiation, etc.), with a preference for the latter. Expertise in contract, land use, environmental, real estate, and/or municipal law is desirable. Requirements: Bar admission in any U.S. jurisdiction, at least 3 years of legal practice, and within one year of hire: NYS bar admission and Tompkins County residency. Must be available for occasional evening meetings. Salary commensurate with experience, within range \$85,966 to \$103,159; attractive benefit package.

Please visit [here](#) to apply today!



## FOUR LAW CLERKS NAMED ASSOCIATES AFTER ADMISSION TO NEW YORK STATE BAR



Barclay Damon announces **Charlie Barth, Dena DeFazio, Kaleigh Morrison, and Ivan Zajicek** have been admitted to the New York State Bar. The former law clerks are now associates at the firm.

Barth is a member of the Corporate Practice Area, where he primarily engages in matters involving mergers and acquisitions, corporate and partnership formations, business start-ups, and general corporate and business law. He graduated magna cum laude from the University at Buffalo School of Law and served as a US District Court for the Western District of New York

judicial extern to Judge William Skretny. He is based in the firm's Buffalo office.

DeFazio is a member of the Health Care & Human Services and Health Care Controversies Practice Areas, where she focuses on both regulatory and compliance issues as well as health care-related litigation and administrative proceedings. She graduated summa cum laude from Albany Law School and interned in its Government Law Center and its Clinic & Justice Center's Health Law Clinic. She is based in the firm's Albany office.

Morrison is a member of the Branding,

Trademarks & Copyrights Practice Area, where she primarily focuses on identifying, searching, and preparing applications for both domestic and international trademark protection. She graduated cum laude from New York Law School and served as a Ladas & Parry, LLP trademark intern; an Epstein Drangel, LLP litigation group legal intern; and a CBS Sports and Shutterstock, Inc. legal intern. She is based in the firm's Syracuse office.

Zajicek is a member of the Regulatory and Environmental Practice Areas, where he advises on the effects of regulatory and environmental requirements imposed on the firm's energy clients. He graduated magna cum laude from Vermont Law School and served as an Eversheds Sutherland (US) LLP summer associate, a US Court of Appeals for the Second Circuit judicial extern to Judge Peter Hall, and a NYS Attorney General Environmental Protection Bureau legal intern. He is based in the firm's Syracuse office.

*Pictured left to right: Charlie Barth, Dena DeFazio, Kaleigh Morrison, and Ivan Zajicek*

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# BOUSQUET HOLSTEIN ELECTS NEW MEMBERS



Bousquet Holstein PLLC is pleased to announce that **Aidan Mitchell-Eaton**, **Kavitha Janardhan**, and **Julia J. Martin** have been elected Members of the firm.

Aidan joined the firm in 2011 and focuses his practice on trust and estate administration and litigation, estate planning, and tax matters involving estate, gift, GST, and fiduciary income tax. Aidan routinely handles complex estate administration, probate proceedings, trust terminations, preparation of accountings, litigation regarding contested accountings, analysis of investment practices and performance, trustee resignation and succession proceedings, as well as reformation of trusts both in judicial and non-judicial settings. In addition to his trusts & estates practice, Aidan specializes in the law and regulations regarding tax-exempt organizations. Aidan is a graduate of State University of New York at Buffalo Law School and Smith College. He currently serves as Vice-President of the Jowonio School Board.

Kavitha joined the firm's Litigation Practice Group in 2016 and has served as Of Counsel to the firm since 2018. She has extensive experience representing both companies and individuals on a broad range of labor and employment disputes, including employment discrimination claims, whistleblower suits, and wage and hour claims. In addition to employment matters, Kavitha focuses her practice on complex commercial litigation

disputes, trademark matters, and trade secrets and non-compete disputes. Kavitha is a member of the Young Professionals Board of the CNY Diaper Bank, and organizes a yearly diaper drive at Bousquet Holstein. Kavitha is a graduate of Boston College Law School and the University of Michigan, Ann Arbor.

Julia joined the firm in 2009 and advises clients on a broad range of tax and business matters, from planning and compliance, through the audit process, to controversy and litigation. Julia's practice focuses on corporate income, franchise, gross receipts, sales and use, and personal income taxes. Julia has significant experience advising individuals and businesses on federal and New York State tax matters. Julia has worked extensively on audits with the New York State Division of Taxation and Finance, as well as cases before the New York State Division of Tax Appeals, the New York State Tax Appeals Tribunal and the New York State Supreme Courts. In particular, Julia focuses her practice on economic development initiatives such as the tax credits available under New York's Brownfield Cleanup Program and federal Opportunity Zones. Julia received both her undergraduate and law degrees from Syracuse University. Julia is a past president of the Central New York Women's Bar Association and currently serves on the Board of Trustees for Syracuse Stage.

*Pictured left to right: Aidan Mitchell-Eaton, Kavitha Janardhan, and Julia J. Martin*

## Porcello Joins Bousquet Holstein



Bousquet Holstein PLLC is pleased to announce that **Joseph J. Porcello** has joined the firm as Senior Counsel in the Litigation Practice Group.

Joe is a commercial lawyer helping clients resolve commercial disputes and defend product liability lawsuits, advises sales managers and teams regarding marketing and advertising issues, assists policyholders to maximize their insurance coverage, and negotiates commercial agreements. He has substantial international experience, and assists clients with cross-border matters. A focus of Joe's practice involves assisting clients in favorably resolving commercial disputes, including through litigation, if necessary. He has broad subject matter experience, representing clients in contract disputes, false advertising / unfair competition matters, and intellectual property litigation. Joe regularly assists policyholder clients seeking insurance coverage in a variety of contexts, including product and construction defect liabilities, property damage, and business interruption losses. He also provides strategic advice regarding the management of underlying claims to maximize insurance recovery.

Prior to joining Bousquet Holstein, Joe practiced for more than 11 years at global law firm K&L Gates LLP. He is a magna cum laude graduate of the University of Pittsburgh School of Law, and earned his Bachelor of Arts in Political Science, graduating magna cum laude at James Madison University in Harrisonburg, VA. Joe is a native of Central New York, and he and his family recently relocated back to the area from Pittsburgh. He is admitted to practice law in both New York and Pennsylvania.

For more information on Bousquet Holstein, PLLC, please visit [www.bhlawpllc.com](http://www.bhlawpllc.com).

# ANTONACCI JOINS COSTELLO, COONEY & FEARON, PLLC

Syracuse law firm Costello, Cooney & Fearon, PLLC today announced that Robert Antonacci will join the firm as Senior Counsel.

Mr. Antonacci brings to the firm almost 30 years of experience as an attorney and Certified Public Accountant. Before being elected to the New York State Senate, he served as the County Comptroller for Onondaga County. He will be based in the firm's downtown Syracuse office.

Costello, Cooney & Fearon CEO Robert Smith expressed the firm's pleasure in having someone of Mr. Antonacci's caliber join the firm. "Bob brings a wealth of experience from his private sector and public sector experiences that will add significantly to the firm's

depth in business, tax and commercial litigation," he said.

About Costello, Cooney & Fearon, PLLC Headquartered in Syracuse, New York, Costello, Cooney & Fearon, PLLC provides legal services in the areas of litigation, labor and employment, environmental, estate planning, banking/commercial and real estate law as well as civil litigation. Our attorneys provide individualized attention along with expert advice and progressive legal solutions to the individuals, corporations, businesses, insurance companies, health care organizations and municipalities we represent. For more information, visit our website at [www.ccf-law.com](http://www.ccf-law.com) or call 315-422-1152.



## *In Memoriam...*

**Gaetano L. Colozzi**  
*December 28<sup>th</sup>, 2018*

**Leslie C. Westerman**  
*December 28<sup>th</sup>, 2018*

**Harrison V. Williams, Jr.**  
*January 8<sup>th</sup>, 2019*

**Hon. John S. Parker**  
*January 11<sup>th</sup>, 2019*



### **Litigation Attorney**

Costello Cooney & Fearon, PLLC is seeking a litigation attorney with 2-5 years' experience for its Syracuse, NY office. Candidate must be licensed to practice in New York State. 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 resumé via email to [mdf@ccf-law.com](mailto: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**

## *Schuyler County* **New York**

### **ASSISTANT COUNTY ATTORNEY**

Schuyler County is seeking to fill the position of Assistant County Attorney. The position is full time, 35 hours per week, with excellent benefits. Candidates must have been admitted to, and be a member of good standing with, the Bar in the State of New York and must be legal residents of Schuyler or a contiguous (Chemung, Seneca, Steuben, Tompkins and Yates) county upon taking office and remain so during the entire term of appointment.

Salary commensurate with experience plus excellent benefit package. All candidates must submit a Civil Service application, along with a resume, a writing sample and three (3) professional references. Information must be submitted to the Schuyler County Civil Service office. Applications will be accepted until position is filled.

Interested candidates may visit the Schuyler County website ([www.schuylercounty.us](http://www.schuylercounty.us)) for the application form and job description -or- contact the **Schuyler County Civil Service Office**, 105 9th Street, Unit 21, Watkins Glen, New York 14891. Phone: 607-535-8190





# BOND SCHOENECK & KING ATTORNEYS

## *Centrone Elected As Member of Bond, Schoeneck & King*



Bond, Schoeneck & King is pleased to announce that **Bethany A. Centrone** from the firm's Syracuse office has been elected as a member (partner) of the firm. Her appointment was announced in conjunction with those of six other attorneys at the law firm by Kevin Bernstein, chairman of the firm's management committee. According to Bernstein, "Bethany is an outstanding lawyer, has been a leader in the firm's school districts practice, has consistently performed at the highest level, and possesses the qualities we expect and value in our members."

Bethany A. Centrone is co-chair of the firm's school districts practice and concentrates her practice in school and labor and employment law. Prior to joining Bond, she served as chief of

human capital initiatives for a large city school district and chief labor negotiator, where she led over 120 employees in areas of human resources, employee benefits, risk management, labor relations and professional learning. Bethany also served as labor and employment counsel for a large city school district, representing and advising the district in both school law and labor and employment law matters.

Bond, Schoeneck & King PLLC is a law firm with 250 lawyers serving individuals, companies and public sector entities in a broad range of practice areas. Bond has eight offices in New York State and offices in Naples, Florida and Kansas City. For more information, visit [bsk.com](http://bsk.com).

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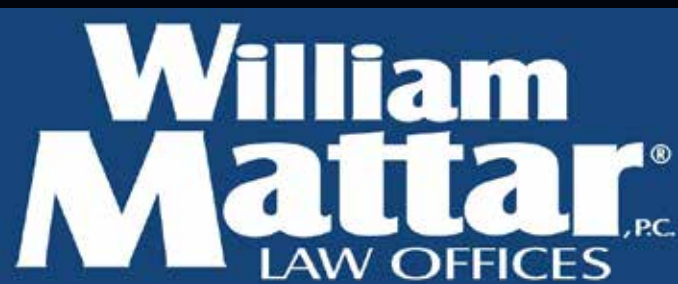
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# Ethics Hotline

New York lawyers faced with ethical questions regarding their own prospective conduct can reach the Ethics Hotline through Customer Service, **Victor Hershdorfer** at **315-913-4087** or **Paula Mallory Engel** at **315-727-7901**.

The Ethics Hotline is operated and staffed by members of the Onondaga County Bar Association's Committee on Professional Ethics (the "Committee"). These volunteers respond to inquiries made by lawyers admitted in New York who face ethical questions regarding their own prospective conduct. The purpose of the Hotline is to provide informal guidance to callers in accordance with the New York Rules of Professional Conduct (the "New York Rules"). Any information provided in response to a Hotline inquiry is merely the opinion of the Committee member answering the call. It is not the opinion of the Committee as a whole. The information provided in response to a Hotline inquiry does not constitute legal advice. If the matter involves complex issues, or implicates a substantive area of law, you may wish to retain professional ethics counsel.

## **Callers should be aware of the following guidelines before calling the Ethics Hotline:**

1. The Hotline only provides guidance to lawyers admitted to practice in New York about the New York Rules.
2. The Hotline only provides guidance concerning the caller's own prospective conduct. We do not answer questions about past conduct or the conduct of other lawyers.
3. The Hotline does not provide legal advice or answer questions of law.
4. The Hotline does not provide answers to hypothetical questions nor inquiries which have also been submitted to another bar association's ethics committee.
5. The Hotline does not answer questions about the unlicensed practice of law (UPL). UPL is governed by statutory law, not the New York Rules and is, therefore, outside the Committee's jurisdiction.
6. The Hotline provides general guidance. Due to the limited information we can obtain during a brief and informal telephone conversation, we cannot provide a definitive answer to Hotline questions.
7. The Hotline does not answer questions where the issue itself is the matter of a pending legal proceeding or is before a grievance committee.
8. Although it is the Committee's policy to maintain confidentiality of all Hotline inquiries, callers should be aware that the information is not protected by the attorney-client privilege or RPC 1.6.
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10. Lawyers who call the Ethics Hotline are required to provide their full name and telephone numbers.

If, after speaking with someone on the Hotline, a New York lawyer wishes to obtain a written Informal Opinion from the Committee, he or she may submit a written request. Please review the guidelines for requesting an Informal Opinion here (See the attached guidelines [here](#)). As with Hotline questions, the Committee's Informal Opinions are limited to interpreting the New York Rules. Please be aware that the Committee cannot provide a concrete timeline for responding to written requests. If your matter is urgent, you may wish to retain professional ethics counsel.

The mission of the Onondaga County Bar Foundation, the philanthropic arm of the Onondaga County Bar Association, is to aid members of the legal profession in Onondaga County who may be ill, incapacitated, indigent or otherwise in need, and to improve and promote:

- The administration of justice;
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Established in 1975, the Foundation is a 501(c)(3) tax-exempt corporation. To fulfill its mission, the Foundation depends on individual donations (which are tax deductible as charitable contributions) and grants from other funding sources. The Foundation welcomes grant applications for projects consistent with this mission statement.

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### Who May Call?

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Family Services Associates-- (315) 451-2161

Onondaga County Bar Association

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

# From the Courts



## **Appellate Division 4th Department Terms for 2019:**

January	Monday, January 7, 2019 – Thursday, January 17, 2019
Feb/March	Monday, February 19, 2019 – Friday, March 1, 2019
April	Monday, April 1, 2019 – Thursday, April 11, 2019
May	Monday, May 13, 2019 – Thursday, May 23, 2019
June	Monday, June 17, 2019 – Wednesday, June 19, 2019
August	ELECTION TERM
September	Wednesday, September 4, 2019 – Friday, September 13, 2019
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## New York State Bar Association Committee on Professional Ethics

Opinion No. 1160 01/02/19 [Inquiry No. 12-18]

**Topic:** Affiliation and fee-sharing with a New York resident attorney not admitted in New York, although admitted out-of-state, and licensed to practice in New York federal courts.

**DIGEST:** Not proper for a New York attorney to affiliate and share fees with a lawyer who, though resident in New York, is not admitted to practice in New York, if the solicitation of clients, sharing of fees, and any other services performed, would as a matter of law constitute the unauthorized practice of law.

**Rules:** 1.5(g); 5.5; 7.1, 7.2, 7.3, 8.4

### FACTS

1. The inquirer, an attorney recently admitted to practice in New York, is acquainted with another lawyer. The other lawyer, like the inquirer, resides in New York, but the other attorney is admitted only in another state, not New York, though the latter is admitted to practice in federal courts located in New York. According to the inquirer, the other lawyer is capable of generating business, and the inquirer would like to affiliate with this other lawyer, listing the other lawyer as a partner, associate, counsel, or otherwise, on letterhead showing that the other lawyer is admitted solely in the other state and not New York. The inquirer anticipates that the other lawyer would attend initial meetings with the clients being produced by the other lawyer, but then would not deal with any of the legal work being performed.

### QUESTION

2. May a lawyer admitted in New York affiliate and share legal fees with another lawyer, who, while a resident of this State, is not admitted here, with the affiliation intended solely for the purpose of obtaining clients referred by the non-admitted lawyer?

### OPINION

3. “Our prior opinions have recognized that a New York law firm may include lawyers not admitted to practice in New York.” N.Y. State 955 ¶ 7 (2013); *see, e.g.*, N.Y. State 704 (1997). Our main concern has been that the New York firm, consistent with the rules governing lawyer advertising set out in Rule 7.1 of the N.Y. Rules of Professional Conduct (the “Rules”), avoid misleading the public by failing to disclose the jurisdictional limitations on practice by out-of-state lawyers. *See* Rule 7.5(d) (partnership practicing with lawyers licensed in different jurisdictions must “make clear the jurisdictional limitations on” lawyers in the firm not licensed to practice in all jurisdictions); N.Y. State 1042 ¶ 15 (2014) (so concluding); N.Y. State 144 (1970) (same result under the Rules’ predecessor the N.Y. Code of Professional Responsibility (the “Code”)).

4. Our prior opinions blessing affiliations with such non-lawyers presupposed that an affiliation among lawyers admitted in different jurisdictions were engaged in a common enterprise in which all lawyers in the firm would render legal services to clients of the firm within the confines of their jurisdictional limitations. The sharing of fees among lawyers in the circumstances is a function of the common enterprise in which the lawyers perform legal services for the benefit of the firm's clients within those confines. But we have never sanctioned an arrangement between a New York lawyer and a non-attorney consisting of nothing more than signing up clients and passing them on to lawyers, with a fee skimmed off the top. N.Y. State 705 (1997)(quotations and citations omitted).

5. The Rules “generally do not allow lawyers to pay for referrals of clients.” N.Y. State 979 ¶ 4 (2013). Rule 7.2 (a) says that an attorney “shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client,” subject to two exceptions. *See* Rule 7.2, Cmt [1]. One exception appears in Rule 5.8, which authorizes contractual relationships between lawyers and certain non-legal professional services enumerated in Section 1205.3 of the Joint Appellate Division Rules; an out-of-state law firm is not so listed. The other exception, Rule 1.5(g), allows a lawyer to share a fee with an unaffiliated lawyer if, among other things, the client gives informed consent, confirmed in writing, to the division of fees and the division either reflects the proportional contribution of the lawyers to the services performed or, in a writing shared with the client, the referring lawyer assumes joint responsibility for the representation.

6. We examined Rule 1.5(g) in N.Y. State 864 (2011), in which the inquirer wished to accept a referral from an out-of-state lawyer in a personal injury matter. The injury occurred in New York and the referring lawyer proposed that, in the particular matter at issue, the in-state lawyer would “handle” the matter and pay the referring lawyer a portion of any recovery. We endorsed the proposal subject to compliance with Rule 1.5(g). *Id.* ¶ 16. Although we have declined to delineate the precise contours of “joint responsibility” under this Rule, *see* N.Y. State 745 (2001); *cf.* Rule 1.5, Cmt. [7] (“joint responsibility entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership”), we have made clear that the mere cultivation of client relationships does not qualify as “services performed” by the referring lawyer, N.Y. State 954 ¶ 9 (2013). Thus, the inquirer's contemplated action would violate Rule 7.2(a) unless it could be said that the inquirer is ethically permitted to be affiliated with the out-of-state lawyer in the circumstances presented.

7. Our opinion in N.Y. State 801 (2006), which involved facts closer to the instant situation, is not inconsistent. There, the New York lawyer contemplated forming a professional partnership with an attorney admitted in another state, but not in New York. The out-of-state attorney was nevertheless to be based in the New York office, participate in work of the practice, including “paperwork,” meet with clients, and share fees. There, we said that either the out-of-state attorney would be engaging in the unauthorized practice of law here, or acting in a quasi-paralegal capacity, as a non-lawyer. While noting that unauthorized practice is a creature of statute not the Rules, we concluded that, “[i]f the out-of-state lawyer were to limit activities to those permitted a non-lawyer, such as a paralegal, then the lawyer would violate [the Rules] by partnering with the lawyer, as it is impermissible for a New York lawyer to share fees with a non-lawyer,” but that “[i]f the out-of-state lawyer is engaged in the unauthorized practice of law, then the New York lawyer would violate [the Rules] by partnering with the lawyer.”

8. The principal distinctions between the situation proposed here, and that considered in Opinion 801, would appear to be the facts that (a) the proposed affiliated attorney in the instant

inquiry is not to participate in “paperwork,” or in client meetings beyond the initial meeting, and (b) the proposed affiliated lawyer in the instant case is licensed to practice in the New York federal courts. What is being proposed here therefore appears to be an arrangement for the solicitation of legal work in New York, for purposes of receiving a share of the fees earned thereby, by an attorney residing in New York but not licensed to practice by the New York courts, using licensure by the federal courts in New York as a predicate. The question then becomes whether an out-of-state lawyer may set up shop in New York for purposes of rainmaking and fee-sharing based solely upon admission to federal courts located here.

9. As we have said, whether something constitutes the unauthorized practice of law is a question of statutory interpretation, which is beyond our purview. Nevertheless, Rule 5.5 says:

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.

(b) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

10. *In re Peterson*, 163 B.R. 665 (Bkptcy. Ct., D. Conn. 1994) addressed a situation similar to the one described by the inquirer. The situation was summarized by the Bankruptcy Court as follows, *id.* at 667:

Betsos is not licensed to practice law in Connecticut. He is licensed in New York, and is admitted to practice in the federal district courts for the district of Connecticut and the southern and eastern districts of New York. He has had no office in New York since approximately 1983. Betsos has a law office in Stamford, Connecticut where he has provided legal services by telephone in bankruptcy matters. Moreover, he has prepared pleadings in that office for filing in bankruptcy court. He has not met with clients at his office, but he has met with them at other locations in Connecticut. His stationery lists his Stamford office address and states that he is an attorney-at-law.

11. Determining that Betsos, on those facts, was engaged in the unauthorized practice of law, the Bankruptcy Court held, 163 B.R. at 672-673 (footnotes omitted):

I find at the outset that Betsos’s activities constituted the practice of law. The practice of law is not limited to appearing before state courts; it includes giving legal advice and drafting documents regardless of whether it occurs in a “court of record,” and regardless of whether the practice is carried on as a business.

\* \* \* \*

The flaw in [the attorney’s] argument is that it fails to recognize the distinction between the right to practice in a court and the right to practice law *generally*. The essence of that distinction is that the general practice of law connotes the right to offer legal services to anyone who seeks them, whereas the right to practice in a court is



limited to providing legal services that are incidental to a specific case or proceeding pending in that court.

12. *Peterson* was subsequently followed by, e.g., *Servidone Const. Corp. v. St. Paul Fire & Marine Ins. Co.*, 911 F. Supp. 560, 572-576 (N.D.N.Y. 1995) (also citing *Spanos v. Skouras Theatres Corporation*, 364 F.2d 161 (2d Cir.), *cert. den'd*, 385 U.S. 987 (1966)), and *In Re Swendiman*, 57 N.E.3d 1155, 1156-1157 (Sup. Ct., Ohio 2016) (noting that *Peterson* had been distinguished *In Re Desilets*, 291 F.3d 925 (6th Cir. 2002) (holding that an attorney licensed in Texas and admitted to practice before federal bankruptcy court in Michigan was authorized to practice federal bankruptcy law in Michigan, even though he was not licensed in Michigan, because the bankruptcy courts rules expressly permitted the attorney not only to appear before the bankruptcy court, but also to generally counsel clients)).

13. The ultimate question being one of law, we leave to the inquirer to resolve the import of *Peterson* and like cases on the proposed arrangement, with the caution that, were *Peterson* to control, then the inquirer would run afoul of Rule 5.5(b). We caution, too, that the proposal may well constitute improper solicitation under Rule 7.3, the provisions of which, in Rule 7.3(i), fully apply to an out-of-state lawyer who solicits retention of clients in New York. See Rule 8.4(a) (a lawyer may not “knowingly assist or induce another” to violate the Rules). Finally, we note that the Court of Appeals has adopted rules governing temporary practice by out-of-state lawyers, which provide, among other things, that “except as authorized by other rules or law,” an out-of-state lawyer shall not “establish an office or other systematic and continuous presence in this State for the practice of law.” 22 N.Y.C.R.R. Part 523.

## CONCLUSION

14. It would not be proper for the inquiring New York attorney to affiliate with, and share fees with, a solely out-of-state-licensed attorney, resident in New York, for matters to be solicited and originated by the out-of-state-licensed attorney, based upon the New York resident out-of-state-licensed attorney’s admission to New York federal courts, if the solicitation of clients, sharing of fees, and any other services performed, would as a matter of law constitute the unauthorized practice of law.



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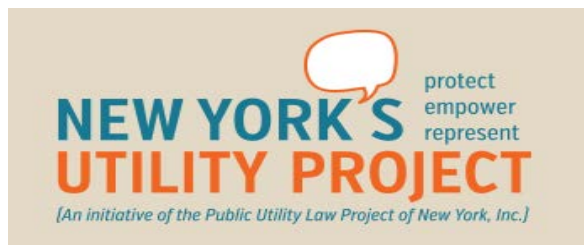
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### Mary John, Esq.

Supervising Attorney, Family Law  
Volunteer Lawyers Project of Onondaga County

### Bryn Lovejoy-Grinnell, Esq.

Director of Legal Services  
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## Surrogate Decision-Making Volunteer Training

### Deirdre Keating, Esq.

Director, Records Management & Access  
Counsel, Surrogate Decision Making Committee

### Laura Monthie, BS, RN, LSCW-R

Director, Surrogate Decision-Making Committee Program NYS



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