



ONONDAGA COUNTY BAR ASSOCIATION **BAR REPORTER**

FEATURED ARTICLES

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Commercial Litigation
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May 2019
Volume 64 Number 5



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 | New York State Civil Practice Laws and Rules - June 6th

SUNY Oswego Metro Center, Syracuse

Pride Networking Reception - June 10th

Barclay Damon Roof-Top Terrace, Syracuse

50-Year Luncheon - June 13th

Pascale's at Drumlins

VALAC Mutt Strut! - June 20th

Rail Line, 530 South Clinton Street, Syracuse

Paralegals Luncheon - June 27th

CNY Philanthropy Center, Second Floor Ballroom

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



In Memoriam...

Paul M. Hanrahan

April 30th, 2019

Judith Levy Alderman

May 7th, 2019

Angelo J. Rinaldi

May 7th, 2019

Letter from the PRESIDENT



My term of office as President of the OCBA is very quickly coming to an end this month. *Tempus fugit*. As I move into the highly coveted office of Immediate Past President, it seems an appropriate time to reflect on the significant improvements made to your Bar Association in my six plus years as a director and officer.



I would first like to recognize Marion Hancock Fish and other past leaders who guided the Association through some difficulties before my time, and laid the foundation for future successes. Their hiring of Executive Director Jeff Unaitis was an excellent start. We have since made great strides in our finances, moving over time from some large deficits to a balanced budget. We made a consequential move from our long time headquarters in the State Tower Building to the Philanthropy Center, allowing for a more productive environment for our staff and much improved accommodations for our events and programs. We created a more informative, interactive and visually appealing website. Thanks again to Jim Hughes for the photographs of the beautiful courtrooms that now anchor our website pages. The Bar Reporter, once reduced to only an occasional offering, was brought back to a regular monthly publication, supplemented with weekly Tuesday Tips. Our Bylaws were given a much needed overhaul following a painstaking review. We have created a new Section for Veterans Rights and Military Law and a new Section for Animals and the Law, and added Diversity & Inclusion and Community Engagement Committees, all of which have received the benefits of enthusiastic members. We have received statewide recognition from the NYSBA for innovation in programming. We are one of only a handful of local bar associations across the state receiving grants in support of a Lawyers Assistance Program, which we are presently in the process of expanding. There have also been some challenges, all of which were addressed in good faith and to the best of our collective abilities.

The officers and directors with whom I have had the pleasure to serve are too numerous to mention here. Each brought their own talents, time and visions to the table. Our membership owes all of them a debt of gratitude. Your leadership going forward will not miss a beat, with incoming President Aaron Ryder and another capable team of officers and directors ready to expand upon past successes and promote new endeavors.

Continued...

President

Aaron J. Ryder

President-Elect

Paula Mallory Engel

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Danielle M. Fogel

Treasurer

Scott A. Lickstein

Secretary

L. Graeme Spicer

Immediate Past President

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M. Eric Galvez

Jenna W. Klucsik

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Sarah C. Reckess

Ramon E. Rivera

Laura L. Spring

Robert J. Thorpe

Jennifer L. Wang

Ex-Officio

Dean Craig M. Boise

Jean Marie Westlake

Staff

Jeffrey A. Unaitis

Executive Director

Peggy Walker

Membership Coordinator

Carrie Chantler

Marketing & Communications Director

Maggie James

Administrative Professional

& Lawyer Referral Service Manager

Nicole Rossi

Graphic Designer & Marketing Assistant

Letter from the PRESIDENT



On a more personal note, serving as your President has been a highlight if not the capstone of my career to this point, but there will be new challenges. I am thankful to my partners at Hancock Estabrook for supporting my involvement over the years. I look forward to continuing my service in the NYSBA House of Delegates. I will be serving on a Task Force assembled by NYSBA President Miller to evaluate the recent changes to the NYS Bar Examination, and also on a Committee established by Judge Tormey to address Access to Justice in our local communities. I would welcome any assistance or ideas our members might bring to either of these initiatives. More importantly for present purposes, I will chair our Nominating Committee in the coming year. If any of you have an interest in taking on a leadership role with your OCBA as an officer or director, I would encourage you to contact me. You will not regret it.



Lastly, special recognition is in order for all our dedicated OCBA staff members, without whose tireless efforts none of our accomplishments would be possible. It is their work, most often behind the scenes, that makes our programs and events successful. Thanks go to Peggy Walker, Maggie James, Carrie Chantler, Nicole Rossi and especially to Jeff Unaitis. You have helped to make my year as President a great experience.

President, John T. McCann

President

Aaron J. Ryder

President-Elect

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Nicole Rossi

Graphic Designer & Marketing Assistant

THE ONONDAGA COUNTY BAR FOUNDATION
CORDIALLY INVITES YOU TO THE ANNUAL

Fifty

YEAR
LUNCHEON

RECOGNIZING THE “CLASS OF 1969”

Richard B. Alderman Thomas J. Kellish Ronald A. Mittleman
Michael J. Balanoff Elizabeth C. McGinty Samuel M. Tamburo
Arthur A. Chalenski Andrew A. Mecca Joseph C. Watt Jr.

Thursday, June 13th, 2019

12:00 - 1:30 p.m.

PASCALE'S AT DRUMLINS

800 Nottingham Road, Syracuse, New York 13224

COST: \$50 | TABLES OF 8 AVAILABLE: \$350

Register online at www.onbar.org/events-programs/
or call **Peggy Walker** at 315-579-2582

Please RSVP by Monday, June 10th



Don Doerr Receives OCBA Outstanding Service Award

By: Jeff Unaitis

Four years ago, the Onondaga County Bar Association created its Outstanding Service Award to recognize a lawyer and OCBA member whose extraordinary service to the legal profession contributes to the overall welfare and general good of the Bar Association, its membership and our professional community. The fourth annual award was presented at the recent Law Day Ceremony to former OCBA President Don Doerr, whose service to this Bar Association is the definition of "above and beyond."

In presenting the award, OCBA President John McCann said, "To many of us, Don is "Mr. Bar Association." He's the first one to register for our special events – and usually one of the last to leave. He has been a presenter for years for our CLE program, joining with Michael Klein in our annual Supreme Court Practicum. He offers constructive and, occasionally, critical feedback about member communications and eagerly raises his hand to help whenever we need it."

During his tenure as President, Don hosted one of the Association's most successful Annual Dinners ever – our Association's 125th Anniversary. McCann added, "Don's a cheerleader – literally, and figuratively – for our Association and our profession. And his service continues to this day."

Don received his undergraduate and law degrees from Syracuse University, then served as a Confidential Law Clerk to the Justices of the New York State Supreme Court Appellate Division in Rochester. After serving as an Associate in the Litigation Department of a New York City law firm Don returned to Syracuse and was a founding Partner of McDermott, Doerr & Britt, P. C. From 2004 to 2006 he served as an Assistant Vice President at Syracuse University where he oversaw the Office of Alumni Relations and its over 230,000 alumni.

Don was previously of Counsel at POMCO, one of the nation's largest third-party administrators of Health and Welfare Benefit Plans. He served on the Board and was Compliance Officer at Health Insurance Company of America (HIGA), a Syracuse domiciled Insurance Company.

Don is currently with the CERIO Law Offices in Syracuse, where he specializes in civil litigation and municipal and land use law. He currently serves as the Zoning Board of Appeals (ZBA) attorney and Town Prosecutor for several Towns in Onondaga County.

Don has been very active in professional and civic organizations. In addition to his OCBA leadership, he is a past member of the House of Delegates and the Executive Committee of the New York State Bar Association, where he is Chairman of the Committee on Committees and an active member of the Membership and Insurance Committees. He was recently elected as a Director of the New York Bar Foundation (NYBF) where he is a "Life Fellow" and serves as Chair of the Fellows of the 5th Judicial District.

Don also sits on several boards in the community including the Volunteer Lawyers Project of Onondaga County, the Hendricks Chapel Board of Advisors at Syracuse University, Pass da' Rock, a local non-profit that works with inner-city youth. He is the Past President of the Syracuse University National Alumni Association and a former member of the Syracuse University Board of Trustees and the College of Law Board of Visitors. Don resides with his wife Maria in the Town of DeWitt.

Congratulations, Don, and thank you for all the support, time and effort you've given to OCBA over the years.



PRIDE 2019 / STONEWALL 50TH ANNIVERSARY

PRIDE NETWORKING RECEPTION

Hosted By

Q Law / Onondaga County Bar Association Diversity & Inclusion Committee /
The 5th Judicial District / Syracuse University College of Law OutLaw /
Richard C. Failla LGBTQ Commission of the New York Courts / Barclay Damon LLP

Monday, June 10th

5:00 - 7:00 p.m.

Barclay Damon Roof-Top Terrace
125 E. Jefferson St., Syracuse, NY



(NOTE: Your RSVP is requested – simply reply by June 5th to OCBA Executive Director Jeff Unaitis at JUnaitis@onbar.org if you're able to join us June 10th!)

We're inviting you to an informal networking event celebrating the 50th Anniversary of Stonewall. Members and allies of the LGBTQ+ legal/professional community are welcomed.

Light refreshments, beer and wine and soft drinks will be available.

Please share this information with your LGBTQ colleagues and allies – and let us know if you're able to attend.

We look forward to seeing you and celebrating 50 Years of Progress.







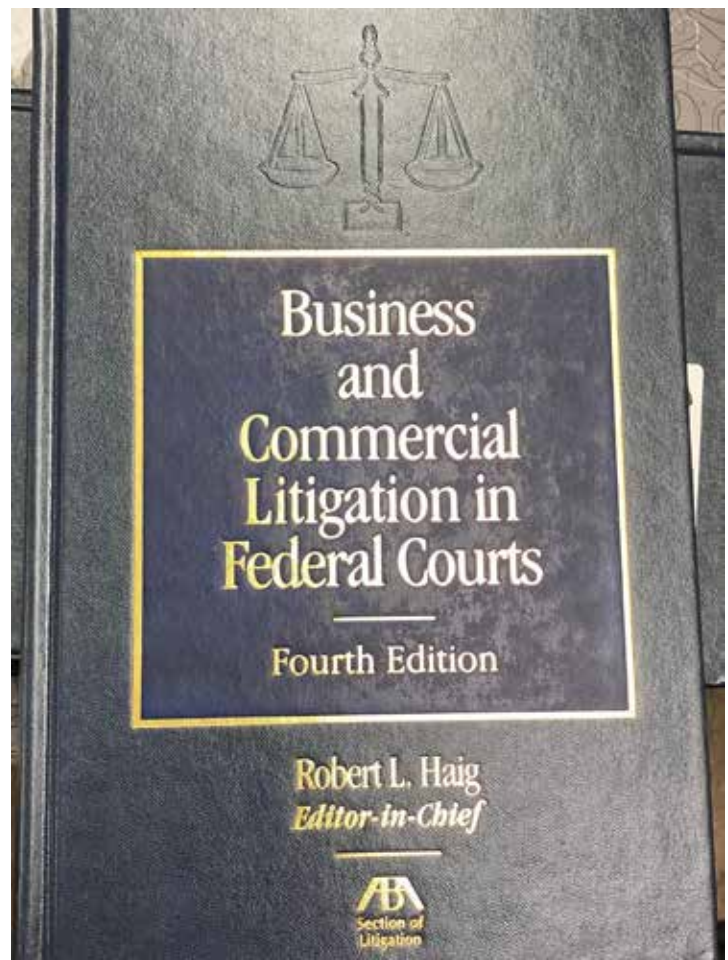
REVIEW:

BUSINESS & COMMERCIAL LITIGATION IN FEDERAL COURTS, 4th EDITION

The multi-volume treatise *Business & Commercial Litigation in Federal Courts* was initially published in 1998, and has proven to be a valuable resource both for experienced federal litigators and for those practicing in the federal courts for the first time. The treatise was the creation of one of the nation's foremost commercial litigators, Robert L. Haig, who was the founder and first chair of the New York State Bar Association's Commercial and Federal Litigation Section. The treatise is a joint publication of Thomson Reuters and the American Bar Association's Section of Litigation. The publishers have recently published the Fourth Edition.

Fortunately, Mr. Haig has continued to serve as Editor-in-Chief of the Fourth Edition. The Fourth Edition became necessary because the pocket parts for the Third Edition, consisting of eleven volumes, had grown unwieldy as the authors updated chapters to keep up with the swiftly developing commercial law. The Fourth Edition has fourteen volumes, 153 chapters, and contains over 17,000 pages of text. Mr. Haig has used his stature in the federal bar to recruit 296 principal authors, including 27 members of the judiciary. Chapter 60 on "Appeals to the Court of Appeals", for example, is co-authored by Judge Richard Wesley of the Second Circuit, who many of our local practitioners will recall appearing before in the Fourth Department and later the New York Court of Appeals. Like many of the chapters, Chapter 60 could be a stand-alone resource for how to handle an appeal in the federal courts.

The Fourth Edition contains 25 new chapters, again reflecting the swiftly-changing law in



business litigation. For those of us still not content to rely on computers for all of our legal research, each chapter is rich with footnotes containing case citations. The Fourth Edition includes separate volumes containing a table of cases, and a table of statutes and rules.

The treatise has the benefit of covering both federal procedural issues, and the many substantive areas of law (both federal and state) that business litigators may be presented with in federal court. The Fourth Edition includes 78 chapters on substantive areas of law. Each such subject is dealt with in depth.

Although the treatise deals with topics in depth, and in a manner that sophisticated practitioners will appreciate, it is also loaded with practical guidance for new practitioners. Chapter 7, on "The Complaint", for example, is divided into four parts, and has 97 sections. It covers every issue a practitioner will face in drafting a complaint in a commercial case in federal court, including how

to wade through the debate and confusion in the bench and bar following the Supreme Court's decisions in *Twombly* and *Iqbal* regarding the amount of factual detail necessary under federal court pleading rules. The chapter concludes with a useful checklist and form complaint.

One of the new chapters in the Fourth Edition is on a procedural tool I have found highly useful in my practice, the declaratory judgment action. I have found the declaratory judgment action particularly useful when a client wishes to strike first, but does not seek to recover monetary damages. The chapter on declaratory judgments contains an illuminating discussion of the Declaratory Judgment Act and Federal Rule of Civil Procedure 57. As with the chapter on complaints, it includes practical guidance and a checklist for drafting a declaratory judgment complaint.

Another of the useful new chapters on procedure is Chapter 11 on "Civil Justice Reform." The chapter contains a useful discussion of the ever-increasing costs of civil litigation for the business community, as the time and resources committed to completing discovery in civil litigation continue to expand. It covers in detail the 2015 amendments to the Federal Rules of Civil Procedure, which incorporated new concepts of proportionality and cost shifting in discovery. While the 2015 rules may no longer be "new", many practitioners would benefit from reading the explanation of these changes to the Federal Rules in the treatise, particularly our colleagues in the bar who continue to serve boilerplate objections to document demands that were prohibited in the 2015 amendment to Rule 34(b)(2)(B). Of course, the treatise contains a detailed chapter devoted exclusively to document discovery (Chapter 25), as well as a chapter devoted entirely to discovery of Electronically Stored Information, co-authored by the leading jurist in the area of ESI, Judge Scheindlin, recently retired from the Southern District of New York.

For those who practice extensively in the area of business torts, the substantive chapters are extremely useful, including chapters on "Theft or Loss of Business Opportunities" (Chapter 118), "Torts of Competition" (Chapter 121), and "Commercial Defamation and Disparagement" (Chapter 123). These substantive chapters can be coupled with the procedural chapters to provide a complete resource to prosecute a business tort case. As set forth above, Chapter 7 includes all the guidance a new litigator would need to draft a complaint. Business tort cases often kick off with a request for a TRO or preliminary injunction, and Chapter 17 on "Provisional Remedies", has a detailed discussion of both.

The Fourth Edition of the treatise *Business & Commercial Litigation in Federal Courts* should be in the library of any law firm that represents businesses. It is both a research tool and a practice guide. Those practitioners who feel they can only practice in state court, and feel the need to refer out any case in federal court, should be particularly interested in acquiring the treatise, as it provides a road map for any litigator to successfully litigate a commercial case in federal court.



Jonathan B. Fellows

Bond, Schoeneck & King PLLC
(Chair-elect, Commercial and
Federal Litigation Section, NYSBA).

Western and Central New York ALA Chapter Launches 1st Annual Conference

By: Louise Spinelli

May 9, 2019

Firm sustainability, diversity, project management, cannabis in the workplace – topics that many businesses are grappling with. Office administrators are often looked to for guidance on such trending hot topics.

Legal administrators typically rely on the (national) Association of Legal Administrators (ALA), NALP, SHRM, and other professional conferences to stay ahead of the curve on trends and changes that impact their organization. On June 5, 2019 the WNY and CNY Chapter of ALA (with membership throughout the Fourth Department) present their first conference enabling upstate New York law firm administrators to learn about these topics presented by local and national experts. While the conference is open to all, Chapter President Katrina Connelly, with Faraci Lange, indicated that “the Chapter board decided to enhance the benefits of membership by going beyond our monthly educational meetings with a half day in-depth conference.”



Keynote Address by ALA (National) President James Cornell

Kicking off the conference is a presentation over lunch on blockchain followed by sustainability. With more attention on corporate social responsibility, firm clients and employees view sustainability with growing importance. Connelly added, “We are thrilled that Gayatri Joshi (executive director of the Law Firm Sustainability Network) join us to discuss how environmental sustainability drives success in operational management.”

The Ongoing Challenge of Improving Diversity Recruiting and Retention

Recognizing that achieving diverse and inclusive workplaces is a business imperative, a session on how improving diversity and inclusion can result in better retention will be open to managing partners and those involved in the hiring process. The panel includes Julia Green with Harter Secrest & Emery, Langston McFadden with Pullano & Farrow, and Clayton Osborne, president of True Insights Consulting. As further enticement, Diversity & Inclusion CLE credit will be issued, thanks to Harter Secrest & Emery.

Other topics include Lean Sigma and Project Management, presented by national speaker, Fred Esposito, Jr., MBA, and, Cannabis in the Workplace, presented by Morgan Hopkins with DeJoy Knauf & Blood and Theresa Rusnak with Bond Schoeneck & King.

In addition to ongoing education, networking while socializing is an important part of ALA Chapter offerings. ALA’s tradition of a social reception with local managing partners will take place immediately following the program. For complete conference details, please visit www.wcnysala.org or contact Louise Spinelli with any questions (Lspinelli@hselaw.com or 585.231.1473).

With a mission to promote and enhance the competence and professionalism of all members of the legal management team, the goal is for the conference to become an annual event. ALA is able to charge reasonable fees due to the generosity of several business partners, including Consiliarium, Bowman Personnel, FM Office Products, GLC Business Services, Jamison, Lawley Insurance, and LMT Technology Solutions. ABA Retirement Funds is the social hour sponsor.

Louise Spinelli, when not working as the Professional Development Specialist with Harter Secrest & Emery, is President-Elect of ALA and co-chair of the VLSP 2019 Art of Lawyering. She can be reached at Lspinelli@hselaw.com or 585.231.1473.

Mutt Strut!



VALAC
Volunteer Advocate Lawyers for Animal Abuse Court

Rescue Runway Show and Dog Pageant

A Summer Fund-Raising Party to Support VALAC:
Volunteer Advocate Lawyers for Animal Abuse Court

Thursday, June 20th

6:00 – 8:30 p.m. – Rain or Shine!

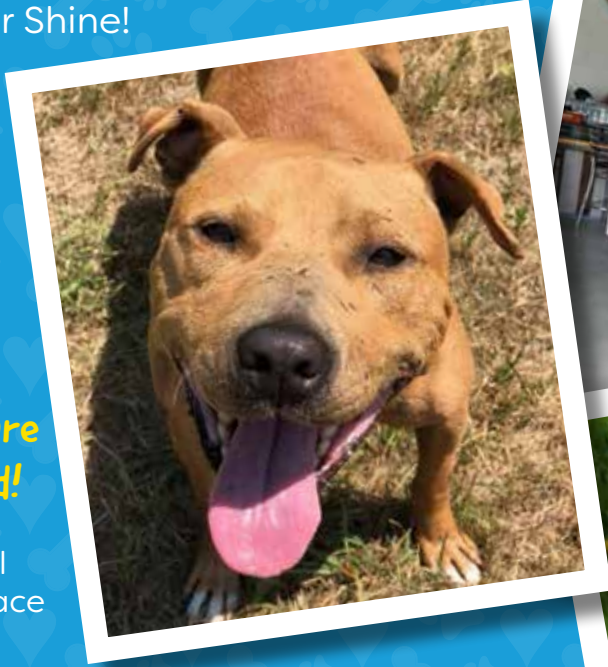
Rail Line Events Venue

530 S. Clinton Street, Syracuse
(Runway show/pageant at 7:15)

Off-street parking is available at the building level by entering the ramp on the north side of Clinton Plaza. (Venue is accessible for those with mobility issues only from the upper ramp parking lot.)

Your well-behaved dogs are welcomed and encouraged!

(Or, if you don't have a dog, come play with ours!) The Rail Line offers ample outdoor space for playing.



Door-Prize Raffles 🐾 Mystery Prize Wall 🐾
Live Music by Wordenius 🐾 Food Truck by Chef4Rent
including vegan options 🐾 Cash Bar...and a fashion show including some adoptable 4-legged friends.

Limited VIP Seating with perks will be available at the event.

Donations of dogfood will be accepted at the door and donated to rescue organizations.

If you're interested in sponsoring or donating gift items for the raffle, contact Maggie James at the Onondaga County Bar Association at info1@onbar.org.

Sponsored By:



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WORDENIUS

You're Invited!



Paralegals Luncheon

THURSDAY
JUNE 27TH | Noon-1:00p.m.

CNY Philanthropy Center
2nd Floor Ballroom
431 East Fayette Street
Syracuse, NY 13202

Guest Speaker: Barrie Gewanter
Executive Director, Onondaga County
Commission on Human Rights

Lunch Provided By:
OCBA Paralegals Section

RSVP: Jean Swanger, jswanger@barclaydamon.com

The Monthly Newsmakers

VOLUME 64 NUMBER 5

MAY 2019

50 CENTS

COUNTY NEWS



BOND

SCHOENECK & KING ATTORNEYS

Bond, Schoeneck & King Practices Ranked in Chambers USA 2019

Bond, Schoeneck & King PLLC is pleased to announce it has once again been recognized in the annual *Chambers USA: America's Leading Lawyers for Business* directory in the following areas:

•**Environmental – New York.** For Bond's environmental practice Chambers states that the team "enjoys a fine track record acting for major industrial clients including those in the pharmaceutical, chemical, waste and energy sectors. Adept at handling a diverse range of compliance and regulatory matters, including in relation to chemical safety, OSHA and hazardous waste. Notable expertise also lies in air and water permitting as well as in development siting."

•**Labor & Employment – Upstate New York.** Chambers ranked Bond's labor and employment team stating that it is "Recognized as one of the leading labor and employment practices in upstate New York, with deep expertise in traditional labor matters and employment litigation. Advises an impressive roster of clients including Fortune 500 companies, academic institutions, municipalities and medical centers. Handles labor relations, including collective bargaining, contract negotiation and arbitration, as well as

a broad range of discrimination claims. Able to call upon the wider expertise of the immigration and employee benefits practice groups."

•**Corporate – Upstate New York.** Chambers recognized that Bond is widely recognized for its strength in managing a broad range of middle-market transactional concerns in this space, with significant experience in M&A and corporate reorganizations. Supplements its business offering by drawing on complementary expertise in environmental, intellectual property and tax law. Advises a significant portfolio of clients from a variety of industries including the healthcare, financial services and real estate sectors. Maintains a presence in Syracuse, Rochester and Buffalo.

•**Litigation – Upstate New York.** Chambers noted that Bond's litigation team is known as a "well-regarded practice with a strong reputation in the litigation space. Excels in securities and IP disputes, and is also noted for its expertise in False Claims act litigation and breach of contract matters. Represents a strong choice for complex class action defense. Diverse client portfolio ranges from individuals to international corporations, including

a mixture of public and private sector clients."

•**Real Estate – Upstate New York.** Chambers commented: "Noted practice with experience in a range of real estate development and construction matters. The team handles leasing, financing, zoning and land use, permitting and approvals, and site due diligence, among other matters. Also able to handle real estate litigation."

Chambers USA is a well-respected publication that carefully researches law firms, practice areas and individual attorneys in more than 185 jurisdictions and is widely considered to be the most reputable law firm directory in the world. Its rankings are based on interviews with leading practitioners and clients.

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.

Four Barclay Damon Practices, Seven Partners Earn Chambers Recognition

Barclay Damon announces four of its practice areas are recognized by Chambers USA in its 2019 directory as top-ranked in their geographical areas. They are Corporate/M&A, Labor & Employment, and Litigation: General Commercial, all in Upstate New York, and Energy: State Regulatory & Wholesale Electric Market, in New York State.

Additionally, Chambers listed the following partners as notable practitioners: Jim Canfield and Chris Greene (Corporate/M&A), Jon Devendorf and Gabe Nugent (Litigation: General Commercial), Maureen Helmer and George Pond (Energy: State Regulatory & Wholesale Electric Market), and Anne Evans (Real Estate).

About the firm's Corporate/M&A practice, Chambers said the Barclay Damon team is "valued for its strengths across commercial transactions, tax and intercreditor agreements as well as securities concerns and business formation matters" and has extensive knowledge "in the energy and health care spheres, with impressive experience acting for multinational corporations, venture capital funds, and financial institutions." Chambers also referenced the practice "drawing on the firm's multidisciplinary cybersecurity team." A client stated, "They are highly capable and the value received is excellent. They understand the objective and work as part of a team to achieve that objective."

About the Labor & Employment practice, which was ranked for the first time this year, Chambers praised the "highly rated team" for its strengths in "employment discrimination and retaliation litigation, trade secrets and noncompetition agreements as well as employee discharge cases." The practice's "employment litigation and advice for clients in the hospitality, tech, manufacturing, energy, and health care sectors" were also highlighted. Numerous clients said the team "always

has our best interests" and is "extremely knowledgeable and competent, very understanding, and quick to respond to our needs."

About the Litigation: General Commercial practice, Chambers described the "strong civil litigation practice" as covering "a range of cases arising from tax, contracts, franchising, and energy disputes" and being "regularly called upon for its strengths in product liability cases and white-collar criminal defense." Chambers additionally cited the practice for "increasingly handling risk mitigation for large clients." A client complimented the team's "overall professionalism and speed of response to emails and telephone inquiries, as well as their extensive experience and knowledge of the subject matter."

About the Energy: State Regulatory & Wholesale Electric Market practice, Chambers said, "The strong team is equipped to handle the full spectrum of energy cases, from environmental and regulatory matters to M&A, land use, and public policy issues." Chambers added that the team is "active in the oil and gas industry as well as the renewables space" and "clients benefit from the team's wealth of experience gained during various roles in public bodies." Multiple clients praised the team for being "extremely knowledgeable locally" and "very well connected with the state government in Albany."

Chambers singled out the following individuals for recognition:

- **Jim Canfield**, ranked since 2015; Chambers acknowledged numerous sources praising his "excellent work product."
- **Chris Greene**, ranked since 2015; Chambers cited multiple clients who noted, "He is very personable and gets the job done."
- **Jon Devendorf**, ranked since 2015; Chambers referenced a source describing him as an "all-around good lawyer," noting, "He's effective and he

gets the job done."

- **Gabe Nugent**, ranked since 2016; Chambers cited multiple clients complimenting him for "taking issues and breaking them down into laymen's terms" as well as "giving very straight feedback and offering creative solutions."
- **Maureen Helmer**, ranked since 2013; Chambers highlighted her role as the former chair of the NY Public Service Commission and "acting for energy and telecommunications clients in a range of regulatory matters."
- **George Pond**, ranked since 2011; Chambers cited a source describing him as "extremely knowledgeable."
- **Anne Evans**, ranked since 2017; Chambers described her as having "notable real estate experience ... bolstered by her license as a title insurance agent."

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.

CURTIN LAW FIRM, P.C. ATTORNEYS AT LAW

Curtin Law Firm seeks an Associate Attorney with at least two years of experience for an active practice focused on Municipal Law, Commercial and Residential Real Estate, Estate practice, Employment Law, Title IX and related laws. Must be admitted to the New York Bar. Interested applicants should submit Resume, Cover Letter and Writing Sample to jmurphy@curtinlawpc.com.

42 Albany Street,
Cazenovia, New York 13035

PAYNE NAMED TRAILBLAZER



Barclay Damon announces **Sara Payne**, cannabis team leader, was named to the inaugural New York Law Journal "New York Trailblazers" list.

Individuals across the state were selected as those "who have made significant marks on the practice, policy, and technological advancement of their practice ... who are sincerely innovators and thought leaders."

New York Law Journal highlighted Payne's role in creating and managing the multidisciplinary Barclay Damon cannabis team in July 2018 to represent clients producing medical marijuana, recreational marijuana, and industrial hemp; her representation of one of the first five companies in New York State that was authorized to grow, manufacture, and dispense medical

marijuana products; and her roles as a member of the New York State Bar Association Committee on Cannabis Law and contributing editor for Cannabis Law Digest.

"Sara's selection as a New York Trailblazer is a well-deserved honor. She has proven herself as a dedicated attorney and

industry frontrunner who has set the bar high with her outstanding service to clients in this exploding field, placing her and Barclay Damon ahead of the curve," John Langan, the firm's managing partner, said. "Our cannabis practice is thriving under Sara's leadership, and she is an undeniable asset to the firm."

LYNN LAW FIRM, LLP

The Lynn Law Firm, LLP accepts referrals of civil appeals and dispositive motions. Over 30 years of appellate experience in all appellate courts throughout New York State.

Contact: Patricia A. Lynn-Ford, Esq.
pford@lynnlaw.com

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101 S. Salina Street
Syracuse, NY 13202
T: 315.474.1267



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Carter Conboy endeavors to recruit well-rounded attorneys with intelligence, compassion, a strong work-ethic, and an entrepreneurial spirit. We want professionals of diverse backgrounds, who bring different perspectives, experiences, wisdom, values, and beliefs to our firm. Carter Conboy will afford you professionalism, civility, collegiality, the highest standards of ethical conduct, and access to mentorship from a wide-range of talent, from retired federal and appellate judges to highly-skilled and regarded trial and transactional attorneys.

Carter Conboy has a current career opportunity for an Associate Attorney with 2-5 years of experience in litigation, specifically personal injury, medical malpractice, trucking & transportation, and general liability defense to join our Albany, NY office. Please direct confidential inquiries to Stacy Smith at ssmith@carterconboy.com.

Carter Conboy is an equal opportunity employer.



Chief Judge Suddaby Announces Appointment of New Magistrate Judge Miroslav Lovric



New United States Magistrate Judge Miro Lovric

On March 21, 2019, the Board of Judges of the United States District Court for the Northern District of New York selected **Miroslav Lovric** to serve as a Magistrate Judge in Binghamton upon the retirement of Magistrate Judge David E. Peebles. Magistrate Judge Peebles will be retiring on June 30, 2019.

Mr. Lovric received his Juris Doctorate from Hofstra University School of Law and his Bachelor of Arts degree from Columbia University. Mr. Lovric served as an Assistant District Attorney for New York County for eight years and has been in his current position as an Assistant United States Attorney for the Northern District of New York in the Binghamton Office for the last 26 years.



The Board of Judges and the staff of the United States District Court are pleased to welcome Miroslav Lovric to the Northern District of New York bench. I am confident that he will serve the litigants and public well in his new position as a United States Magistrate Judge. Full-time Magistrate judges are appointed by the District Court Judges to eight-year terms; they assist District Court Judges with the work of the court by facilitating the disposition of certain civil and criminal cases.

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DIVERSITY AND PROFESSIONAL DEVELOPMENT OFFICER - SYRACUSE

Bond, Schoeneck & King, PLLC, is accepting applications for a Diversity and Professional Development Officer in the Syracuse office. This position will be responsible for developing, supporting and implementing policies, programs, processes and initiatives to facilitate the firm's mission to create and sustain a diverse and inclusive work place. The Officer shall identify, develop and pursue opportunities to recruit minority attorneys. The Officer shall also create and implement retention initiatives to ensure the professional development of all attorneys at Bond. The Officer shall report to the COO and work closely with the Chairman of the Management Committee, Recruiting Committee, Associate Committee, Diversity Committee, and Women's Initiative. A Bachelor's or Master's degree is required, a J.D. degree is preferred. Qualified candidates will have at least 10 years of progressive experience preferably in a law firm setting, demonstrated experience in advancing diversity and inclusion initiatives and programs within a complex firm, and expert understanding of best practices in professional and career development. Candidates must have excellent verbal and written communication skills, listening skills, be detail orientated and be able to multi-task. Travel to all of Bond's offices is required. Please send a cover letter and resume to openings@bsk.com. We are an EEO Employer.

HH&K ORBAND RE-ELECTED Hinman, Howard & Kattell, LLP MANAGING PARTNER



The Partners of the law firm of Hinman, Howard & Kattell, LLP have re-elected **James W. Orband** to the position of Managing Partner for a new five-year term.

A 1981 graduate (magna cum laude) from Binghamton University, Mr. Orband received his juris doctor degree (cum laude) from Albany Law School of Union University in 1984. Mr. Orband joined Hinman, Howard & Kattell, LLP in 1984. He became a Partner in 1991 and has served as the Firm's Managing Partner since 1999. His new term will run through 2023.

In addition to the responsibilities required of him as Managing Partner, Mr. Orband maintains an active legal practice, focusing in the areas of Banking and Financial Services, Business and Securities Law, Construction Law, and Estate and Trust Planning and Administration.

A native of New York's Southern Tier, Mr. Orband serves as a Director of Security Mutual Life Insurance Company of New York and Southern Tier High Technology Incubator, Inc. He is a member of the New York, Pennsylvania and Florida Bar Associations and previously served as

the Chair of both the New York State Bar Association Business Law Section and its Banking Law Committee. In the community, Mr. Orband serves on the Boards of Directors of Our Lady of Lourdes Memorial Hospital, Southern Tier Economic Partnership, Newman House at Binghamton University, and Broome County Historical Society, as well as Lourdes Hospital Foundation, Binghamton University Foundation and other charitable foundations. He is a frequent lecturer on law office management.

The law firm of Hinman, Howard & Kattell, LLP was organized in 1902 and has occupied its headquarters offices in the Security Mutual Building in Binghamton, New York since 1905. Mr. Orband is just the fourth Managing Partner in the 117-year history of the Firm, following in the footsteps of predecessors Harvey Hinman (1902-1949), George Hinman (1950-1980) and John Keeler (1981-1998), each of whom provided outstanding vision and leadership during their respective decades at the helm of the Firm.

Hinman, Howard & Kattell, LLP has grown to employ 90 attorneys in thirteen locations, with a total staff of over 180 employees. Beyond its base in downtown Binghamton, the Firm also has offices in Syracuse, Manhattan,

White Plains, Albany, Hamilton and Oneonta, New York; Scranton and Tunkhannock, Pennsylvania; Palm Beach Gardens and Boynton Beach, Florida; Saddlebrook, New Jersey; and, Manchester, New Hampshire. Hinman, Howard & Kattell, LLP assists clients in all major areas of law. Firm clients include regional, national and international businesses, as well as thousands of individuals and smaller companies. The Firm offers the capabilities of its large firm peers combined with the personal attention of a local firm.

HH&K Partner Larry Anderson observes that "Jim has exceptional abilities as an attorney, CEO and community leader. Our clients, our Firm and our community are well served by Jim's guidance, support and leadership." Lillian Levy, Chair of the Firm's Real Property and Commercial Lending practice groups, remarks that "the HH&K tradition of providing high quality and effective legal services to our clients continues to grow and flourish under Jim Orband's steady direction."

Upon his re-election, Jim Orband stated, "I appreciate the continued support from all of our HH&K attorneys. I look forward to my fifth term as Managing Partner and will continue to faithfully serve the Firm, our clients and our community in the years ahead."

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VOLUNTEER LAWYERS PROJECT OF ONONDAGA COUNTY, INC.

Lyon Receives NYSBA 2019 President's Pro Bono Service Award

On May 1, 2019, the New York State Bar Association awarded its 2019 President's Pro Bono Service Award for the 5th Judicial District to **Ashley Lyon, Esq.** of the McClusky Law Firm in Adams, New York for her volunteer work with the Volunteer Lawyers Project of Onondaga County (OnVLP). OnVLP provides access to justice through engaging the legal community in pro bono service to those in need. Volunteer attorneys provide free legal information, assistance, and representation in civil legal matters to low-income people.

OnVLP proudly celebrates Lyon's 2019 President's Pro Bono Service Award in the Individual Attorney: Fifth Judicial District category. Lyon has been volunteering with the organization since 2015. OnVLP offers a twice-monthly

Family Court Clinic in Jefferson County Family Court. At this clinic, Lyon assists pro se litigants with completing petitions and forms for custody, visitation, child support and paternity in Family Court. In addition, she provides legal advice and information regarding custody, visitation, child support and paternity issues and referrals to other legal service providers when appropriate. Lyon has stepped up to the plate in a significant way, volunteering at every clinic. She eagerly offers her time and expertise and is happy to provide this imperative pro bono service twice a month. In 2018 Lyon contributed over fifty hours of volunteer time, benefiting fifty



individuals. She offers critical guidance for those needing help navigating the complex legal system.

"We are thrilled Ashley received this award," said Sally Curran, Executive Director of OnVLP. "She is an outstanding attorney; a zealous advocate with an unwavering commitment to pro bono service. We are so grateful for the incredible work she does to support those in need. She is most deserving of this recognition."

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COSTELLO COONEY & FEARON PARTNER WINS AWARD *Alicia Calagiovanni honored by Onondaga Community College*

Alicia Calagiovanni, a partner with the Syracuse law firm of Costello Cooney & Fearon, and her husband, Richard Calagiovanni, recently were honored by Onondaga Community College (OCC) with one of the college's highest awards. Richard Calagiovanni is a 1968 graduate of OCC with a degree in humanities.

The couple were awarded the 2019 John H. Mulroy Founder's Award which recognizes individuals whose exemplary service has significantly advanced OCC's mission, vision, and excellence, as well as made it possible for the school to expand its ability to provide traditional and nontraditional access to high-quality, affordable higher education. They received the award from the OCC Board of Trustees earlier this month.

"We congratulate Alicia and Dick on receiving this well-deserved award," said Robert J. Smith, CEO, Costello Cooney & Fearon. "We all know how hard they both have worked on behalf of the college and in making a college degree accessible to students of all ages and from diverse socioeconomic backgrounds. We couldn't be prouder of their achievement."

Alicia Calagiovanni joined CCF in 1982 and was named partner in 1991. She focuses her practice in the fields of estate planning, wills, trusts and elder law. Richard Calagiovanni spent 30 years in television production, including 14 years as production manager for Syracuse's public television station WCNY. Now retired, he volunteers video production services with the Library of Congress Veterans History Project.

About Costello, Cooney & Fearon, PLLC Headquartered in Syracuse, New York, Costello, Cooney & Fearon, PLLC provides legal services in the areas



Pictured left to right: OCC President Dr. Casey Crabill, Alicia Calagiovanni and Richard Calagiovanni.

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 or call 315-422-1152.

About the Award

The John H. Mulroy Founder's Award recognizes individuals whose exemplary service has significantly advanced the mission, vision and excellence of Onondaga Community College and enhanced its capacity to provide

students of all ages and backgrounds with the opportunity to explore, discover and transform their lives through access to high-quality, affordable higher education.

John H. Mulroy was the very first Onondaga County Executive and an outstanding supporter of Onondaga Community College.

He was the County Executive when the County Legislature voted in 1961 to form the college.

OCC would welcome its first class of students in the fall of 1962 at the Midtown Plaza in downtown Syracuse.

Syracuse University

College of Law

SUCOL Invites Participants for the Inaugural Syracuse National Trial Competition

Syracuse University College of Law has invited applications from other law schools nationwide to compete in the Syracuse National Trial Competition (SNTC), a new invitational advocacy competition that will take place in Syracuse city courtrooms and at the College of Law, Oct. 10-12, 2019.

According to Director of Advocacy Programs Professor Todd Berger, 12 law school teams will be selected to compete from those that apply. Team selection will be based on the quality of a school's advocacy program and on wide geographic diversity.

"We look forward to presenting a robust and exciting competition with talented student advocates sharpening their skills in a realistic courtroom setting," says Berger. "Each team will be guaranteed four rounds of competition

before the semi-final and final rounds, which will take place in Dineen Hall. The fact pattern likely will be based on a civil case. In addition to the team competition, awards will be given for individual student performances."

"The College of Law has a stellar reputation for the quality and scope of its advocacy program and for its successes at the regional and national levels of major competitions," says Dean Craig M. Boise. "The visibility the College will garner from hosting a new national trial invitational, and the level of competition we expect will take place, present a significant opportunity for our students and for the College as a whole."

Honored 10 times as New York's best trial skills law school by the New York State Bar Association, the College of Law's

Travis H.D. Lewin Advocacy Program teaches essential skills that student advocates will require as practicing lawyers, including trial procedures, strategies, and techniques. As part of the curriculum, simulated trials and competitions take place in Dineen Hall's state-of-the-art courtrooms.

Supporting the advocacy curriculum, the College's Advocacy Honors Society (AHS) promotes the development of critical written and oral advocacy skills through competition opportunities. AHS hosts four intra-collegiate advocacy competitions and sponsors College of Law teams that participate in 17 nationwide inter-collegiate competitions.

ATTORNEY WANTED - ITHACA

Hancock Estabrook, LLP is seeking an experienced transactional attorney with at least 5 years' experience to join our Ithaca, New York office. Experience in corporate, nonprofit, real estate and trusts and estates matters is preferred. Hancock Estabrook provides attorneys with a competitive salary and benefits package including medical, dental and vision coverage; a 401 (k) and profit sharing retirement plan; paid holidays, vacation, personal and sick time; life insurance; short-term and long-term disability insurance. Join a work environment that earned Hancock Estabrook the distinction of being one of the Best Companies To Work For in New York in 2019.

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HISCOCK LEGAL AID SOCIETY

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JUSTICE FOR ALL AWARD

Overview:

Annually, HLA honors a lawyer or judge who embodies the spirit of Frank H. Hiscock and through his or her actions by serving the mission of the organization that bears his name.

Judge Hiscock was the former Chief Judge of the New York Court of Appeals whose bequest led to the founding of the Frank H. Hiscock Legal Aid Society. Upon the making of the bequest, the Chief Judge said that there ought to be an organization in our community that can provide legal services to people in need.

For nearly 70 years, the Frank H. Hiscock Legal Aid Society – HLA – has promoted the fundamental right of every person to equal justice under the law by providing high quality legal assistance to individuals and families in need in Onondaga County and the surrounding region.

Judge Hiscock's life was marked by dogged determination, tenacity, and unyielding perseverance. Born in Tully, NY, Judge Hiscock was raised by his uncle after his father's murder. He went on to study at Cornell University and continued his studies at Columbia Law School.

Judge Hiscock served as a justice on the New York Supreme Court and in the Appellate Division, Fourth Department. He was elected Chief Judge and only retired from the bench when he reached the Constitutional age limit of 70. He served as an Official Referee of the Court of Appeals and resumed his law practice at Hiscock & Barclay until he retired in 1935.

Judge Hiscock saw the law as a force for good and wanted to continue his life's work through the actions of HLA.

Criteria:

To qualify, the nominee should:

1. possess the same dogged determination and perseverance in promoting justice for all as Judge Hiscock did during his life;
2. support the provision of effective legal representation for those in need in a sustained manner despite potential setbacks;
3. engage in activities and projects that serve some of CNY's most marginalized yet resilient residents;
4. be a respected, thoughtful, engaged - though not necessarily well known - member of the local community.

Nomination process:

Nominations for this annual award can be provided at any point to the Executive Director, President and C.E.O. of HLA, Ms. Linda Gehron, Esq. or to Virginia Hoveman, Esq. the Chair of the Board of Directors.

A complete nomination includes a nomination letter of no more than two single spaced pages in size 12 font describing how the nominee fits the criteria listed above, and articulating how the nominee carries out the mission of the Frank H. Hiscock Legal Aid Society in her/his work. Additionally, the nominator must include contact details of nominator including full name, email address, and phone number. **The deadline for applications is June 14, 2019.** The recipient of the award will be honored at the Justice For All breakfast on October 16, 2019.

Please submit nominations via e-mail to:

Linda Gehron, Executive Director, President and C.E.O. - lgehron@hlalaw.org

Virginia Hoveman, Chair, Board of Directors - vhoveman52@gmail.com



UCS-23

EMPLOYMENT
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PLEASE POST
ANNOUNCEMENT NO. 54902

The Appellate Division, Fourth Judicial Department is recruiting for **one (1)** position in the Attorney series. The position filled will be in either of the following titles and the title utilized will depend, in part, on the qualifications of the applicant selected. Applicants should specify on the UCS-5, the position title or titles for which they wish to be considered.

POSITION TITLE: ASSOCIATE ATTORNEY **JG: 28**

BASE SALARY: \$95,606

QUALIFICATIONS: Admission to the New York State Bar and two (2) years of service in the Senior Attorney title; or equivalent legal experience.

DISTINGUISHING FEATURES OF WORK: Associate Attorneys serve in a confidential capacity and research legal questions and issues, organize complex investigations, prepare and present complex cases before administrative tribunals and trial and appellate courts, and perform other related duties. Associate Attorneys provide legal research and advocacy services in the Mental Hygiene Legal Services, attorney disciplinary committees, 18B panel administration, or other such units. They may also oversee a departmental law guardian program

POSITION TITLE: PRINCIPAL ATTORNEY **JG: 31**

BASE SALARY: \$112,170

QUALIFICATIONS: Applicants must be admitted to the New York State Bar and have two (2) years of service in the Associate Attorney title; or equivalent legal experience.

DISTINGUISHING FEATURES OF WORK: Principal Attorneys serve in a confidential capacity in the Mental Hygiene Legal Services, attorney disciplinary committees, departmental law-guardian offices, or other such units where they research legal questions and issues, organize complex investigations, prepare and present complex cases before administrative tribunals and trial and appellate courts, and perform related duties. Principal Attorneys may also assist in selecting and training new staff, developing and implementing policies and procedures and in handling day-to-day administrative matters. They may also work with advisory committees, assist with planning and executing educational programs, assist with resolving administrative problems, and serve as director of a departmental law guardian office.

LOCATION: ATTORNEY GRIEVANCE UNIT
SYRACUSE, NY

CLASSIFICATION: NON-COMPETITIVE/CONFIDENTIAL

ASSIGNMENT: Duties include but are not limited to: reviewing allegations of misconduct by attorneys, organizing and supervising investigations, examining respondent attorneys and witnesses, preparing written reports and presenting cases before the Attorney Grievance Committees, preparing petitions charging professional misconduct, conducting evidentiary hearings before Judicial Hearing Officers, researching legal issues and preparing motions and legal memoranda, arguing motions and appeals before the Appellate Division, and lecturing regularly at Continuing Legal Education seminars on ethics.

GENERAL INFORMATION: The above statements are intended to describe the general nature and level of work being performed by persons assigned to this title. They do not include all job duties performed by employees in the title, and every position does not necessarily require these duties. Although a position is available and situated at a specific location, the appointee may be subject to reassignment to any position in the same title in this promotion unit dependent upon the needs of the Unified Court System. All applications received from this announcement may be used to fill any vacancies in this title that may occur in this court or agency within the next six (6) months. Special arrangements for the disabled may be made by contacting the Human Resources Office of the Appellate Division, 4th Department at (585) 530-3104 prior to the interview. Position(s) available at the present time: 1.

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Thursday, October 24th, 2019

1:00 – 4:00 p.m.

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- Dealing with Personal Crisis: The Role of Lawyer Assistance

Watch for registration for both events later this summer!

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;
- Service to the public and the legal community;
 - Equal access to the legal system for all;
 - Professional ethics and responsibility;
 - Legal research and education; and
- Dissemination to the public of information about the legal system and the rule of law.

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.

The Lawyers' Assistance Program Of Onondaga County

What is the Lawyers' Assistance Program?

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

What Kind of Assistance is Available?

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

What Can I Expect When I Call for an Appointment?

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

Is Contact with the Lawyers' Assistance Program Confidential?

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

Why Was the Program Set Up?

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

Who May Call?

Attorneys, judges and law students in Onondaga County and these other neighboring counties: Oswego, Jefferson, Lewis, Herkimer, Oneida, Cortland, Cayuga and Madison counties.



For more information contact:

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

Family Services Associates-- (315) 451-2161

Onondaga County Bar Association

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

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.
9. The Ethics Hotline does not respond to complaints or inquiries regarding unethical conduct of other lawyers. Any such complaints or inquiries should be addressed to the Grievance or Disciplinary Committee for the county in which the lawyer practices (see <http://www.nycourts.gov/attorneys/grievance/>).
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.

ETHICS OPINION 1165

New York State Bar Association
Committee on Professional Ethics

Opinion: 1165 (05/07/2019)

Topic: Unpaid Client Fees

Digest: Lawyer may not remove amounts from client's trust account if in dispute. Lawyer may only charge reasonable interest if provided for in the engagement letter.

***1 Rules:** 1.15(b)(4)

FACTS

1. The inquirer, a New York lawyer, was retained nine years ago to represent a client in numerous litigations arising out of an estate matter. The client is executor of the estate and sole beneficiary of various annuity contracts of the decedent that the Surrogate's Court ruled, in response to interpleader litigation, were the client's property and not part of the estate. A sum of money was received into the inquirer's escrow account while the interpleader litigation regarding the annuity contracts was pending. The Surrogate's Court has now authorized the distribution of those funds to inquirer's client.
2. The inquirer had previously sent the client invoices for legal fees and expenses while the litigation was ongoing, but the inquirer agreed at the client's request to defer payment until the end of the litigation. The client raised no objection to the invoices at the time. The principal balance of the bill is now an amount greater than \$50,000, which the inquirer observes is the ceiling set forth for mandatory fee arbitration under 22 N.Y.C.R.R. § 137.1. The client refuses to pay the bill, demanding that the inquirer cut the bill by approximately 20%. The inquirer claims that the inquirer has repeatedly and voluntarily reduced the amount of the bill over the years, and has recently evinced a willingness further to negotiate, but now wants the client to pay the outstanding amount. The inquirer asserts that a "written formal fee agreement" exists. The inquirer wants to withhold payment of the escrowed funds in an amount equal to the fees the inquirer says are due and owing, as well interest on those fees and an amount to cover fees and expenses should litigation arise over the amount the inquirer says is due and owing, which the inquirer proposes to seek by litigation after what the inquirer asserts is some statute of limitations.

QUESTIONS

3. May the inquirer remove from the trust account the sums equal to what the inquirer believes are due and owing, and, if so, may this amount include payment of interest due on the unpaid bill?
4. May the inquirer also withhold from distribution to the client an amount the inquirer depicts as a "cushion" to cover fees and expenses in the event that the fee dispute results in litigation?

OPINION

5. The answer to each question is no.
6. Rule 1.15(b)(4) of the New York Rules of Professional Conduct (the "Rules") states that a lawyer may withdraw funds from a trust account "when due, unless the right of the lawyer to receive it is disputed by the client ... in which event the disputed portion shall not be withdrawn until the dispute is finally resolved."

The client's insistence on the discount is a dispute for purposes of the Rule and so the inquirer may retain but must not remove from the trust account those sums that the client questions until the dispute is resolved, whether by settlement or through some dispute resolution process. Insofar as the client concedes that some of the amounts in the account are properly the lawyer's property, the lawyer may distribute the same to the lawyer's account; to the extent the client disputes any portion of those sums, the lawyer must retain them in escrow.

*27. Absent a prior written agreement, the lawyer may not unilaterally charge interest on a delinquent client account. "[I]n order to charge interest on delinquent accounts, a lawyer must advise the client prior to performing services of the fact that interest will be so charged, the definition (time period) of delinquency, and must obtain the client's consent thereto." N.Y. State 399 (1975). "A law firm may seek its clients' agreement to modify its retainer agreement with the clients during the pendency of a current matter to secure payment, by confessions of judgment and collateral mortgages, of fully earned but unpaid legal fees and expenses in an amount on which the parties agree, if the law firm complies with the rules governing business transactions with clients and is mindful of ongoing obligations to avoid general conflicts of interest." N.Y. State 1139 (2017). See N.Y. State 910 (2012) ("A lawyer may request a client to amend a retainer agreement. Whether such an amendment must meet the requirements for fee agreements under Rule 1.5 or for business transactions between the lawyer and client under Rule 1.8(i) depends on the circumstances in which the amendment is requested and the nature of the amendment."); N.Y. State 783 (2005) ("If a client deliberately disregards an agreement to pay legal fees and expenses, and the letter of engagement or retainer agreement is silent as to interest charges on the delinquent accounts, a lawyer may condition continued representation on the client's agreement to prospectively pay interest on any past balance due for services previously rendered or to be rendered in the future"). Accordingly, absent a prior written agreement, the inquirer may not charge interest on the amounts the inquirer believes are due and owing.

8. Nor may the inquirer decide to withhold from the escrowed funds an amount that the inquirer deems apt to indemnify the inquirer for fees and expenses that the inquirer may incur in the event that litigation arises from the dispute with the client over the appropriate amount of fees for services rendered. In our view, the inquirer is ethically obligated to pay to the client those sums that are not part of the fee dispute - that is, the amount the client agrees the lawyer is due, without reference to interest or other holdbacks unless the client explicitly agrees. See Rule 1.15(c)(4) (lawyer must promptly pay to the client as requested by the client funds the client is entitled to receive). Absent some agreement, no authority exists for a lawyer to use disputed funds for self-help in the event that a dispute arises between a lawyer and a client over legal fees.

CONCLUSION

9. A lawyer may not remove any amounts from the client's trust account if the client disputes the lawyer's entitlement to them. The lawyer may charge only a reasonable rate of interest on any unpaid bills if provided for in the written fee agreement.

CONTINUING LEGAL EDUCATION



Onondaga County Bar Association IN COLLABORATION WITH The Office of Court Administration



Part 137 **Attorney-Client Fee Dispute Resolution Program** **Arbitrator Training**

Tuesday, June 18, 2019 • 8:30 a.m. - 2:30 p.m.

CNY Philanthropy Center • 2nd Floor Ballroom • 431 East Fayette Street, Syracuse, NY 13202

Registration: 8:30 a.m.

Orientation to Part 137 • presented by MARK W. WASMUND, ESQ.

Arbitration Skills • presented by JOHN W. McCULLOUGH, New Justice Conflict Resolution, Inc.

5th Judicial District • represented by MICHAEL A. KLEIN, ESQ., District Executive

Working Lunch Provided!

The Attorney-Client Fee Dispute Resolution Program

for the 5th Judicial District seeks qualified **Attorneys** admitted to the New York State Bar for at least 5 years *and* possessing at least 3 years experience in the practice of law *and* qualified **Non-Attorneys** residing in one of the following counties: **Herkimer, Jefferson, Lewis, Oneida, Oswego or Onondaga** to serve as Volunteer Arbitrators in this program.

This training is mandatory for all who have not qualified as an arbitrator under the American Arbitration Association rules, by the office of Court Administration or by the United States District Court through any of their arbitration programs, or through another qualifying program.

*You are invited to attend this 6-hour training session **FREE!***

Subject to a commitment to serve as a volunteer arbitrator a minimum of 2 times per year

Final admission to the roster is subject to Part 137 Board of Governors approval.



To participate in the training PRE-REGISTRATION IS REQUIRED.

Name _____ Phone _____

Address _____ Email: _____



ONONDAGA COUNTY BAR ASSOCIATION

CNY Philanthropy Center
431 East Fayette Street, Suite 300, Syracuse, NY 13202
Attention: Peggy Walker

Fax: 315-471-0705

Call: 315.471.2667 or Email: pwalker@onbar.org

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
October	Tuesday, October 15, 2019 – Friday, October 25, 2019
Nov/Dec	Monday, November 18, 2019 – Friday, November 22, 2019
	Monday, December 2, 2019 – Thursday, December 5, 2019



OCBA CONTINUING LEGAL EDUCATION

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

NY Civil Practice - 2019

Thursday, June 6th, 2019

1:00 - 4:00 p.m.

SUNY Oswego Metro Center

2 South Clinton Street, Syracuse, NY 13202

Presenters:



Hon. Deborah Karalunas

Presiding Justice of Supreme Court,
Commercial Division, Onondaga County;
New York Pattern Jury Instructions Committee



Thomas E. Myers, Esq.

Retired, "Emeritus," Bond, Schoeneck & King,
Syracuse University College of Law,
Adjunct Professor of Law, NY Civil Practice,
2018 OCBA Distinguished Attorney of the Year



3.0 MCLE (2.5 Professional Practice, 0.5 Ethics)

Light refreshments will be served.

Register at Onbar.org **or** by mail using the form below!

The Onondaga County Bar Association is committed to providing Mandatory Continuing Legal Education Programs at an affordable price to its members as well as the bar-at-large. Financial waiver forms are available upon request or may be downloaded when you visit www.onbar.org.

NY Civil Practice - 2019

Thursday, June 6th, 2019 | RSVP by June 4th

Member \$60 | Non-Member \$90 | Paralegal \$30 | Free to Lifetime/Agency/Student

Doors Open at 12:30p.m.

(Please make checks payable to the Onondaga County Bar Association)

Attendee(s): _____ Phone: _____

Firm/Organization: _____ Email: _____

Address: _____ Billing Zip: _____

☐ Check Enclosed ☐ Will Bring Check to CLE CC Card #: _____ Exp: _____