



ONONDAGA COUNTY BAR ASSOCIATION
BAR REPORTER

FEATURED ARTICLES

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Charitable Planning **PAGE 10**

July/August 2019
Volume 64 Number 7



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:

Lunch & Learn with Edward Z. Menkin - August 20th
CNY Philanthropy Center, 2nd Floor Ballroom

18th Annual Dan Mathews Golf Outing - August 22nd
Pompey Country Club

CLE | Family Court Updates & Issues 2019 - September 13th
Bayshore Grove, 104 Bayshore Drive, Oswego, NY 13126

CLE | Bridge the Gap - October 4th
CNY Philanthropy Center, 2nd Floor Ballroom

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



In Memoriam...

Mark T. Harrington
July 18th, 2019

Letter from the PRESIDENT



As it does every year, summer is speeding by. The days are getting ever-shorter and Labor Day is far too close for comfort. Central New Yorkers certainly learn to make the most of the limited window of good weather. And the OCBA is no different.

Summertime presents great opportunities for members of the OCBA to connect with one another. In June the OCBA presented the Pride Networking Reception at the offices of Barclay Damon, LLP. Sponsors included Q Law, the OCBA Diversity & Inclusion Committee, the 5th Judicial District, Syracuse University College of Law Outlaw, Richard C. Failla LGBTQ Commission of the New York Courts, and Barclay Damon, LLP. The event celebrated the LGBTQ legal community and honored the 50th Anniversary of the Stonewall demonstrations. Members of the Bar and Judiciary alike were present at the well-attended event.



The Bar Association also sponsored the 5th Annual Welcome to Syracuse reception in July. Held at the Syracuse University College of Law, the event provided an opportunity for lawyers in the community – both new and experienced – to mingle with interns and current law school students to talk about living and practicing law in Central New York.

And on August 22, 2019, the OCBA will present the 18th Annual Daniel F. Mathews, Jr., Memorial Golf Outing at The Pompey Club. Foursomes of legal colleagues play against one another for the Onondaga County Bar Foundation Championship Cup. In addition to being a great time the proceeds from the event go to support the Lawyers Assistance Program, which provides anonymous assistance to attorneys, judges and law school students who may be struggling with depression, substance abuse and other mental health issues.

These events provide our colleagues opportunities to renew existing contacts and forge new relationships, all while supporting the OCBA and its various programs. And in so doing strengthen our community. Future opportunities include monthly CLE programs, the Annual Dinner in October (which will be attended by the Judges from the Fourth Department) and the Holiday Party in December at the Everson Museum of Art (featuring the Festival of Trees).

Come to an event. Attend the golf outing. Visit with old acquaintances and make new ones. Your participation is vital to maintain our thriving legal community. You are the Bar.



YOU are the Bar!

Aaron J. Ryder, President

President

Aaron J. Ryder

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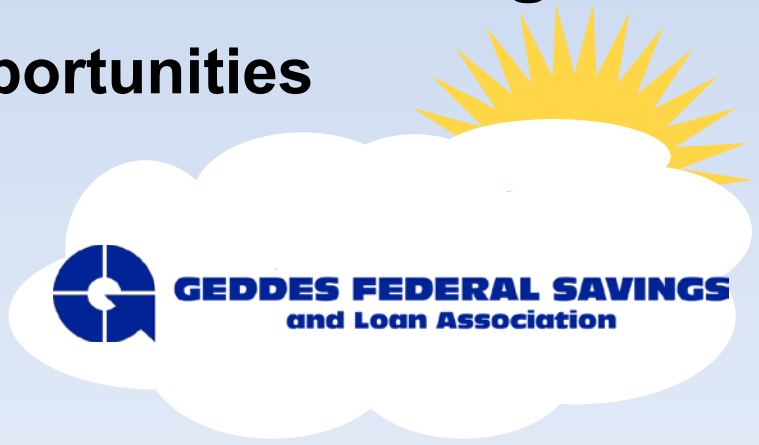
Graphic Designer & Marketing Assistant

18th Annual Dan Mathews Golf Outing

Sponsorship Opportunities

Date: Thursday, August 22, 2019

Location: Pompey Country Club



Platinum Sponsor \$1000

- Complimentary Foursome (\$500 value)
- Dinner for Four
- Hole Sponsor (Tee & Green)
- Four Cart Sponsors
- Recognition in Dinner Program
- Recognition on OCBA Website, Social Media and Bar Reporter

Hole Sponsor \$300

- Sign on Cart, Tee & Green
- Recognition on OCBA Website, Social Media and Bar Reporter

Tee Sponsor \$150

- Sign on Tee

Schedule

11:30am Registration & Lunch
12:45pm 18 Hole Shotgun Start
5:30pm Dinner & Awards

Prices

\$125 18 Holes, Cart & Steak Bake
\$100 Newly Admitted Attorney (<5 years)
\$50 Steak Bake Only

Register online at www.onbar.org/events-programs/
For more information, contact JUnaitis@onbar.org

18th Annual Dan Mathews Golf Outing Sponsorship Form

- Platinum Sponsor Hole Sponsor
 Tee Sponsor



Name _____
Firm _____
Address _____
Phone _____
Email _____

Players Names (if applicable) _____

Amount enclosed: \$ _____

*Event proceeds benefit the Lawyers Assistance Program of the
Onondaga County Bar Foundation and Bar Association*

Onondaga County Bar Foundation's
18th Annual

Daniel F. Mathews, Jr.
MEMORIAL GOLF OUTING



Presenting Sponsor

**GEDDES FEDERAL SAVINGS
and Loan Association**

Platinum Sponsor

**BARCLAY
DAMON** ^{LLP}



NAVE LAW FIRM

Hole Sponsors

Ed Menkin

"Death on the Doorstep & Other Stories"

Tee Sponsors

George Murad

**REAGAN AND DAILEY
ATTORNEYS AT LAW**

David Hayes

Paula Mallory Engel

PAUL V. MULLIN

Hon. James P. Murphy



In Memoriam

The Onondaga County Bar Association extends its deepest sympathy to family, friends and colleagues of those we lost in 2019:

Judith L. Alderman

John J. Curran

Paul M. Hanrahan

Mark T. Harrington

Hon. John S. Parker

Michael J. Pekarsky

Angelo J. Rinaldi

Marcus A. Stornelli

William E. Sugnet

Harrison V. Williams Jr.

Hon. James C. Tormey III

Please advise *Jeff Unaitis* at junaitis@onbar.org of other members of our profession whom we have lost.

LUNCH



LEARN

Death on the Doorstep & Other Stories *A trial lawyer's memoir*



Meet the Author, Edward Z. Menkin

Tuesday, August 20, 2019

CNY Philanthropy Center, 2nd Floor Ballroom

Noon - 1:00p.m. | Doors open at 11:30a.m.

Lunch courtesy of the Author! **Register Now! www.onbar.org**

Ed Menkin will be reading excerpts from his new memoir "Death on the Doorstep" and talk a little about the process of writing a lawyer's memoir and putting out a book on Amazon. Ed will be happy to sign books (which will also be available for purchase at the author's discounted price). Pizza and soft drinks will be available.



A darkly funny, insightful, compelling, and well-written book about what it's really like to practice as a criminal defense attorney on the front lines of American justice. From the profound (a man accused of murder for shooting a masked gunman who attacks him and his wife on their doorstep) to the ridiculous (a major Federal investigation into fishermen shooting cormorants), Ed Menkin's memoir is told with humor, wisdom, and insight. It will have you questioning everything you ever thought you knew about how our criminal justice system really works. It brings to vivid life lawyers, judges, and crooks, revealing their character, their demeanor, their authentic speech, and their seriocomic lives.

Available for purchase on 

THE PRACTICE PAGE:

OBTAINING OUT-OF-STATE WITNESSES AND DOCUMENTS

*Hon. Mark C. Dillon **

Subpoenas *duces tecum* and *ad testificandum* cannot be served upon non-parties who are out of state (Judiciary Law 2-b[1]). Doing so, where there is no jurisdictional predicate over the non-parties, renders such subpoenas void and unenforceable. There are cases, conceivably, where out-of-state documents or witnesses are crucial to a party's claim or defense. What is an attorney to do if non-party materials or witnesses, which are out of reach under the normal subpoena processes, are needed to by a party to establish claims or defenses via summary judgment or at trial? The answer lies in either CPLR 3108 or the Uniform Interstate Deposition and Discovery Act ("UIDDA"), depending on the state where the non-party documents or witnesses are located.

CPLR 3108, which has been on the books since 1962, permits a New York court to execute a "commission" reflecting an official seal, requesting that it be honored by an out-of-state court. The commission, when presented to the out-of-state court, should result, as a matter of comity, in the execution by the foreign court of a subpoena that would be served and enforceable in the foreign state. If the subpoena seeks non-party documents, the responsive records may be transmitted directly to counsel in the normal course. If the subpoena is for either pre-trial deposition or trial testimony of a non-party witness, the testimony is to be taken within the foreign state. While CPLR 3117(a)(3)(ii) permits the reading the transcript at trial, Uniform Rule 202.15 and CPLR 3113(b) also permit its videotaping for use in accordance with that statute and rule.

New York courts will not issue commissions under CPLR 3108 merely upon request. The party seeking the commission must meet a two-part test. First, the party must show that the foreign state witness or document custodian will not cooperate with a discovery notice and will not otherwise voluntarily come to New York to participate in the pre-trial discovery or trial. The second test is to show that the non-party document or testimony is material or necessary to the party's claim or defense.

The commission procedure of CPLR 3108 can sometimes be too time-consuming, particularly when there is a fast-approaching trial date, as it is layered with two different courts, a process server, and a non-party responder. New York adopted the streamlined procedures of the UIDDA in 2011, as embodied in CPLR 3119. Under the UIDDA, the party

seeking out-of-state documents or deposition testimony may present a validly-executed New York subpoena to the clerk of the county in the foreign state where the discovery or testimony is sought. The clerk is to ministerially and promptly issue a parallel foreign state subpoena for service upon the person to whom it is directed. The language of the UIDDA does not speak to trial testimony, but only to discovery. The subpoena is to be served, and any discovery issues resolved, under the laws of the foreign state. While attorneys in out-of-state actions may utilize CPLR 3119 to obtain records or deposition testimony from non-party New Yorkers, New York attorneys may only use the UIDDA in the 38 other states that have adopted it so far. Attorneys who wish to use the UIDDA must first determine that the foreign state has adopted it, and if so, carefully follow the language of the version adopted by that foreign state. Otherwise, attorneys must use the more cumbersome commission procedure of CPLR 3108.

CPLR 3108 and the UIDDA are not needed if out-of-state document custodians or witnesses are cooperative. But even then, there is no down side to being careful and using the subpoena procedures that are available to practitioners. Since the acquisition of documents or testimony is sometimes crucial from cooperative and uncooperative sources, and the time elements of CPLR 3108 or the UIDDA are controlled by others, attorneys should utilize the available procedures as soon as practically possible in litigations.

¹ • *Peterson v Spartan Industries, Inc.*, 40 AD2d 807, *aff'd.*, 33 NY2d 463.

² • *Susan A. v Steven J.A.*, 141 AD2d 790, 791.

³ • *Misfud v City of New York*, 208 AD2d 701, 702.

⁴ • CPLR 3119(a)(4), (b).

⁵ • Law Commission, available at www.uniformlaws.org/Act.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act.

* *Justice of the Appellate Division, Second Department, and Adjunct Professor of New York Practice at Fordham Law School.* MDillon@nycourts.gov



We're Hiring!

BARCLAY DAMON LLP

Barclay Damon LLP, a leading regional law firm of nearly 300 attorneys that operates from a strategic platform of offices located in the Northeastern United States and Toronto, is seeking attorneys for the following positions.

Commercial Litigation Associate (Syracuse)

Candidates should have a minimum of four years of litigation experience. Prior experience in complex commercial litigation is preferred.

Candidates must be licensed to practice in New York State; have superior verbal, writing, and interpersonal skills; and have demonstrated abilities to work directly with clients and develop and execute service strategies.

ERISA Attorney (Albany, Buffalo, Rochester, or Syracuse)

The attorney will represent sophisticated 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 and will be involved in the development and maintenance of client relationships. A portable and growing book of business is highly desirable.

Public Finance and Financial Institutions & Lending Junior Partner (Albany or Syracuse)

The firm seeks a senior-level associate or junior-level partner for this position. The attorney will represent sophisticated firm clients in public and private financing transactions, including issuers, underwriters, direct purchasers, and not-for-profit entities in connection with the issuance of tax-exempt bonds and lenders and borrowers in both bond-related transactions and traditional commercial loan transactions. The attorney will be involved in the development and maintenance of client relationships.

The ideal candidate will have a minimum of eight years of relevant experience working on public finance or commercial financing matters. Strong communication and negotiation skills are required. A portable and growing book of business, although not required, is desirable.

Torts & Insurance Associate (Syracuse)

Candidates must be licensed to practice in New York State; have superior verbal, writing, and interpersonal skills; and have demonstrated abilities to work directly with clients and develop and execute service strategies. The ideal candidate will have experience in New York State and federal courts defending products liability, personal injury, and professional malpractice actions.

Trusts & Estates Attorney (Syracuse)

The attorney will advise clients on trusts and estates issues; perform transactional work, including preparation and drafting of wills, trusts, powers of attorney, and other documents; administer trusts and estates, including assisting with accounting issues and tax returns; and perform related research and due diligence. The attorney will also be responsible for maintaining client relationships and working with other attorneys and paralegals across the firm platform.

Strong communication skills, writing skills, and work ethic are required. The ideal candidate will have a minimum of two years of progressively responsible experience in trusts and estates practice and be able to demonstrate knowledge and experience in this practice area.

How to Apply

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

Or submit by email to jobs@barclaydamon.com.
Barclay Damon is an equal opportunity employer.

EEO M/F/V/H

Business Owner Transition and Charitable Planning

By Thomas Griffith, AEPC®, CAP®, ChFC®



For many business owners, a business sale is more than a transaction; it's a major life transition. Their business is often the largest asset that they own, as well as the key part of their financial and estate plans. What's more – their business has likely played an important role in shaping their daily life and identity. A failure to fully align the sale of a company with their personal plans could potentially undermine the long-term wealth preservation and family engagement opportunities afforded by the business deal. This is especially true for owners with charitable components to their plans.

At a recent forum I attended on the subject of business ownership, the main themes were collaboration and transitions. Preparing for a business sale involves assembling a team of advisors, reviewing financial and estate plans, assessing the transition and creating a plan of action. This work really needs to begin early in the business formation, because you never know when a transition will occur. Whether it is unexpected happenings like the “5 Ds” (death, disability, disaster, divorce and disagreements) or the planned changes such as retirement and incorporating the next generation into a family business, the earlier the planning begins with a collaborative team that works with the business owner's values as their guide, the better chance of success.

The forum also highlighted the advantages of having people-focused skills and how retaining an advisor with that specialty can be of value. That may mean a psychologist to help coach the business owner on how to have difficult conversations with key employees or a life coach to help plan a purposeful transition into retirement; both areas play a big role in overall success of a business transition if planned and executed well.

Also, by incorporating effective charitable discernment and planning, business owners can reduce estate tax, avoid capital gains tax, create a charitable income tax deduction, reduce tax to heirs and generate charitable resources to help the now former business owner and their family achieve their desired impact.

How Does It Work?

In the simplest case, a cash gift to charity can be made either before or after the sale of the business. As long as this is done in the same year as the sale, a tax deduction will help offset the income received. The needed tax deduction is often much greater than the client's annual charitable giving. Using a donor-advised fund, the gift can be made in the year needed and grants may be

distributed from the fund to support charities of the client's choice for many years into the future.

The cash gift, while simple, does not maximize the tax advantages of gifting. A preferred approach would be to gift stock or ownership shares to a donor-advised fund prior to the business sale. When the sale occurs, the fund receives the proceeds from the sale for its portion. This creates a charitable deduction similar to gifting cash, and also avoids taxation on any capital gains embedded in the ownership because the fund is administered by a tax-exempt public charity.

Using a donor-advised fund at a local entity such as the Community Foundation also provides ongoing charitable planning support. Whether it is legacy planning or engaging future generations in giving, there are often extensive resources to deploy. For example, the Community Foundation's flexible discernment process allows donors to work at their own pace with a range of tools to develop their legacy plan. Staff members are available to facilitate family meetings and to help donors maximize use of their fund as their needs change over time.

There are also more complex planning tools that can be incorporated into a business sale. For example, charitable remainder trusts can be used to create income streams for heirs while ultimately creating a charitable resource. This type of trust planning can be useful for wealth distribution and addressing spendthrift or creditor concerns with heirs. Another tool is the charitable lead trust, which creates an initial charitable resource but allows for tax-efficient transfer of the trust corpus to heirs in the future.

Regardless of your charitable client's needs, proper planning can result in a more tax-efficient and comprehensive result for their financial and estate plans as well as the inclusion of a steward to their charitable plan.

When we work together, everyone benefits. When our community thrives, we all thrive. We encourage you to connect your charitable clients with the Community Foundation. To learn more about our charitable giving services or to request a meeting, please contact me at tgriffith@cnycf.org or (315) 883-5544.



CENTRAL NEW YORK
COMMUNITY FOUNDATION

We've got good news
we'd like to share with you.



The Rescue Mission has found
a home for our new Runaway
& Homeless Youth Shelter.

Thursday, Aug. 15, 2019
5:30-7:30pm

1226 Lancaster Ave., Syr. NY 13210

Event is hosted by the
Rescue Mission's Lamp in the Window
Legacy Society Committee.

Presenting ways to support this project:
Andrea Kimball, UBS Financial Advisor
and Emilee Lawson Hatch, Attorney,
Bousquet Holstein

RSVP by August 8 to Carolyn Hendrickson
at 315-701-3855 or
Carolyn.Hendrickson@rmsyr.org.
Limited seating.

Refreshments and light fare
will be provided.

Free parking across the street
at All Saints Parish parking lot.



*Chief Program Officer, Amber Vander Ploeg
will share how the Rescue Mission came to
the decision to start this new program for
homeless LGBTQ youth, how it will operate
and when we plan to open.*

*Learn about the community partnerships
we have established that will provide
comprehensive care for the youth, as well
as the many opportunities to support the
project now and in the future.*



Have an Oswego client that wants to do business with Onondaga County?



Please use supplier.ongov.net to self-register on our Supplier Portal website.

Once your User registration is complete you can perform procurement and sourcing tasks on behalf of your company.

User guides covering registration and view/submitted bids are available online.

If you have any questions please contact Terrance Smith, Onondaga County Division of Purchase at (315) 435-2249 or by email TerranceSmith@ongov.net

You will need:

- Supplier ID if already an Onondaga County supplier
- W9 and Tax Identification (TIN) or Employer Identification Number (EIN)
- MBE/WMBE Certification Documents

Click [HERE](#) to read the Request for Proposal document.



We "Paws" to Give Thanks!

The employees at Bousquet Holstein, PLLC and Grossman St. Amour CPAs, PLLC, recently held a joint "Jeans' Day" fundraiser. In exchange for their donations to OCBA's Volunteer Advocate Lawyers for Animal Abuse Court ("VALAC") program, the employees were able to wear jeans and other casual attire during the month. The combined efforts of those two firms and the generosity of their employees resulted in a total of \$640 in donations to the VALAC program. On behalf of the volunteers and the animals who have benefited from the program, we thank you!



BOUSQUET HOLSTEIN PLLC



grossman st. amour
CERTIFIED PUBLIC ACCOUNTANTS PLLC

Listen! The 2019 Audio CLE List is Updated!

Did you miss this year's CPLR seminar or the recent packed-house CLE on the new Landlord/Tenant Rules? No worries. We've got you covered!

Order these CLEs from the newly updated Audio CLE list! Remember, if you're an OCBA member in good standing you receive **6.0 Audio CLE credits** for FREE! Do it before the end of the year or lose this rockin' membership benefit!

Review the Audio CLE order form [HERE](#).





HISCOCK
LEGAL AID
SOCIETY

THE 2019 JUSTICE FOR ALL AWARDEE:

HONORABLE LANGSTON C. MCKINNEY

Justice for All | October 16, 2019 | 7:30 a.m. | RSVP today: whoozin.com/jfa

We defend. We empower. We collaborate. We promote justice for all.

This October, Hiscock Legal Aid Society (HLA) is hoping you'll join two events that promote justice for all.

On October 10, 2019: HLA will be collaborating with Syracuse Stage for a performance of 12 Angry Men. The organization will host a pre-show reception offering light snacks and a cash bar as well as the opportunity to network with folks from around CNY and support justice for all.

The reception begins at 6 p.m. The performance of 12 Angry Men begins at 7:30 p.m. Anyone who buys tickets through <https://hla2019.brownpapertickets.com> will be receive a ticket to the show and admission to the pre-show cocktail reception. A portion of the ticket sales will support the work of HLA in promoting justice for all in our community.

On October 16, 2019: HLA will host its annual Justice For All breakfast which provides a one-hour virtual tour of the mission and vision through compelling stories by agency leadership and former clients. The 2019 Justice For All award will also be presented to Judge Langston C. McKinney. RSVP for the free breakfast today at: whoozin.com/jfa.

The Monthly Newsmakers

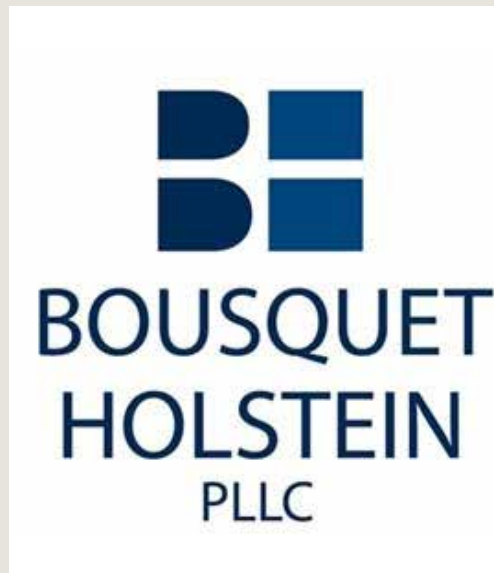
VOLUME 64 NUMBER 7

JULY/AUGUST 2019

50 CENTS

COUNTY NEWS

BOUSQUET HOLSTEIN PLLC CONGRATULATES PORCELLO AND BOUSQUET



Bousquet Holstein PLLC is pleased to announce that **Joseph J. Porcello** has been elected a Member of the firm. In addition, **Philip S. Bousquet** has been re-elected to serve on the firm's Board of Managers.

Joe Porcello joined Bousquet Holstein in 2018, having practiced for over a decade at a top global law firm. He helps clients resolve commercial disputes and defend product liability lawsuits, advises clients regarding trademarks and marketing and advertising issues, assists policyholders to maximize their insurance coverage, and negotiates commercial agreements. 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.

Phil Bousquet has been Member of the firm since its formation in 2000 and was a principal in its predecessor firm. Phil leads the firm's Business Law and Brownfield practice groups, and first served on the firm's Board of Managers from 2009 to 2014. In addition to handling a broad range of business matters, Phil helps clients navigate the financial incentives under New York's Brownfield Cleanup Program (BCP) and other economic development programs, including the federal Opportunity Zones program. He has spoken about the tax aspects of the BCP throughout New York on behalf of many groups, including the New York State Bar Association, the Center for Creative Land Recycling (CCLR), the New York City Brownfield Partnership, and local municipalities and associations. Phil is a magna cum laude graduate of Syracuse University

College of Law and Syracuse University School of Management, and earned his Bachelor of Arts at Kenyon College.

Bousquet Holstein PLLC is a diversified law firm with offices in Syracuse, Ithaca, and New York City. The firm provides legal counsel in mergers and acquisitions, business transactions, alternative dispute resolutions, public finance, immigration, economic development, government relations, litigation, commercial bankruptcy, trusts and estates, employee benefits, commercial real estate, employment and labor, environmental and land use, family law, and tax planning and advocacy. For more information, please visit www.bhlawpllc.com.

Pictured left to right: Joseph J. Porcello and Philip S. Bousquet.

HOOKER JOINS FIRM



Bousquet Holstein PLLC is pleased to announce that **Erika H. Hooker** has joined the firm as an attorney in the Trusts and Estates and Agriculture Practice Groups.

Erika's background growing up and working in the Central New York agriculture community has provided her with the experience to address a diversity of legal matters associated with family farms. These include the complicated nature of transitioning or expanding farm businesses and succession planning for family ownership. As a Trusts and Estates attorney Erika cares deeply about understanding her client's individual background and needs, and she has the experience to work with clients on complicated issues that come with aging, disability planning, long-term care, end of life decisions, and preparing the appropriate legal documents.

Erika is a 2019 magna cum laude graduate of Syracuse University College of Law. As a law student she represented clients in the Elder and Health Law Clinic for elder financial abuse cases. She also served as a research assistant to Professor David Driesen, working mainly in the area of Constitutional Law. Erika earned a Bachelor of Science in Communications and International Agriculture and Rural Development from Cornell University.

Erika gained experience interning with the Volunteer Lawyers Project of Onondaga County, Inc., where she represented tenants in Landlord Tenant Court, assisted with trust and estate questions in the Surrogate's Court legal clinic, and worked on asylum cases. She also interned with a law firm in Syracuse working in the areas of corporate law and estate planning with family farms across New York State. Prior to law school, Erika served as an Agriculture Extension Agent with the Peace Corps in Senegal for two years.

COMMUNITY FOUNDATION ANNOUNCES NEW HIRES

The Central New York Community Foundation has hired two employees.



Dara Harper joined the Community Foundation in April as Events and Communications Associate. She is responsible for planning and executing

Community Foundation events and provides general communications support. She previously served as Development Manager for the Juvenile Diabetes Research Foundation and has been a yoga teacher for the past 24 years. Originally from the Louisville area, Dara holds a bachelor's degree in Liberal Arts from Bellarmine University.



Sean Reed, Jr. joined the Community Foundation in May as Program Manager, Strategic Initiatives. He assists with the implementation of strategic initiative and affiliate fund

programs. Sean is also the President of UPSTAR Academy and holds a degree in Business Administration and Management from North Carolina Agricultural and Technical State University.



MACKENZIE HUGHES LLP

IN MEMORY OF MARK T. HARRINGTON



With great sadness we announce the passing of our friend and former partner, Mark T. Harrington on July 18, 2019.

Mark was with Mackenzie Hughes LLP for almost thirty years. Mark was admired, liked, and respected by all, from partner to support staff and from client to opposing counsel. As Chair of our Business Department Mark mentored many young associates and his positive impact on their legal careers will remain a long-lasting legacy from him to our profession.

We offer Mark's family and friends our deepest sympathy.



The Marrone Law Firm Welcomes New Hires

The Marrone Law Firm has hired **Meghan Pompo** as an Associate Attorney.

Meghan concentrates her practice in the areas of estate planning and estate and trust administration. She enjoys working with clients to develop an estate plan tailored to meet their individual needs. Prior to joining The Marrone Law Firm, Meghan was an Associate Attorney in the trust and estate practice group of a Syracuse-based law firm. During law school, Meghan completed an externship with the Honorable Ava S. Raphael in the Onondaga County Surrogate's Court. She also was a Student Attorney in the Syracuse University College of Law Elder Law Clinic. Meghan received

her Bachelor of Science Degree in Accounting from the State University of New York at Geneseo. After graduating from Geneseo, she worked for a public accounting firm in Ithaca. Meghan is a Central New York native and currently resides in Westvale with her family.

The Marrone Law Firm has hired **Lesley Harlem** as a Summer Law Clerk. Lesley will be a third year student at Syracuse University College of Law in the Fall.

Lesley is a member of the Syracuse Law Review and last semester, she participated in the Low-Income Taxpayer Clinic as a student attorney where she assisted clients being audited by the IRS. Lesley has worked in the legal

field for almost ten years. Throughout college and before and during law school she worked as a paralegal in a general practice law firm in Oneonta. After college she worked as the office manager of West Virginia Continuing Legal Education prior to entering law school. Lesley developed an interest in the law at a young age, and her experience in the legal field solidified her decision to go to law school. In her professional career, Lesley plans to provide high quality legal services tailored to her clients' needs and desires, while simultaneously developing and maintaining strong relationships.

Pictured left to right: Meghan Pompo and Lesley Harlem.

BARCLAY DAMON ^{LLP}

ATTORNEY DANIELLE KATZ JOINS BARCLAY DAMON

Barclay Damon announces **Danielle Katz**, associate, has joined the firm. She works out of the Syracuse office.

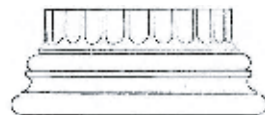
Katz is a member of the Corporate and Trusts & Estates Practice Areas, primarily concentrating on corporate transactions and general trusts and estates matters. She also uses her financial-services and tax background to best advise clients.

Prior to Barclay Damon, Katz was a legal intern at Vontobel Securities Ltd. and Vontobel Swiss Wealth Advisors AG.

Your Environmental Guy



THE LAW OFFICE OF
DOUGLAS H. ZAMELIS



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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.
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.



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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!



Oneida County Bar Association End of Summer Golf Outing

Friday, September 6, 2019
Stonebridge Golf and Country Club
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Captain and Crew

**PLEASE SUBMIT
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FORM AND CHECK
NO LATER THAN
AUGUST 30, 2019**

Chairman: George C. Murad, Esq.

- TIME:** 12:00 - 1:00 p.m. – Registration and Lunch
1:00 p.m. – Shot Gun Tee Time
- LUNCH:** Hot Dogs, Burgers, Macaroni Salad available at the Club House adjacent to 1st Tee
- COCKTAILS:** 6:00 p.m.- 7:00 p.m. – Open Bar
- DINNER:** 7:00 p.m.
- MENU:** Dinner Buffet - Carved Beef and Turkey, Baked Haddock, Pasta Station with Two Pastas, Antipasto Station, Stuffed Mushrooms, Cheese & Crackers, Pizza
- PRIZES:** Longest Drive, Closest to Pin, Raffles, 50/50 Drawing

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Name(s): _____ Phone #: _____

Number Attending: _____ 18 Holes of Golf x \$50.00 = \$ _____

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For more information contact:

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Family Services Associates-- (315) 451-2161

Onondaga County Bar Association

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

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NOTICE TO THE BAR

Fourth Department to Expand Mandatory E-Filing Categories

The Appellate Division, Fourth Department is expanding the categories of appeals that will be subject to mandatory e-filing in the coming months.

In matters in which a notice of appeal is filed on or after October 1, 2019, e-filing at the Appellate Division, Fourth Department will become mandatory in all non-Family Court civil matters. E-filing in non-Family Court civil matters has been voluntary/consensual since January 1, 2019.

Beginning on October 1, 2019, appeals in criminal matters and appeals from Family Court will become subject to e-filing. In matters in which a notice of appeal is filed on or after October 1, 2019, e-filing in all criminal appeals and in all appeals from Family Court will be voluntary/consensual. A party who has voluntarily e-filed an appeal shall serve upon the other parties a notice of e-filing together with the Entry of Initial Information for Electronic Filing pursuant to 22 NYCRR 1245.3. Any other party may voluntarily participate in e-filing in the same manner as an unrepresented litigant pursuant to 22 NYCRR 1245.4 (d). No party shall be compelled, directly or indirectly, to participate in e-filing, but e-filing is encouraged in all matters in which it is allowed.

Finally, e-filing will become mandatory in all criminal appeals and in all appeals from Family Court in all matters in which a notice of appeal is filed on or after January 1, 2020.

E-filing is currently mandatory in the Fourth Department in all appeals from the Commercial Division of Supreme Court, all appeals in matters originating in, or transferred to, Surrogate's Court, and all matters that were e-filed in Supreme Court. With the expansion of e-filing on October 1, 2019 and January 1, 2020, e-filing will be required in almost all categories of appeals in the Fourth Department not subject to the exemptions listed in 22 NYCRR Part 1245. It is anticipated that the Court will expand mandatory e-filing to all remaining categories of matters within its jurisdiction, including original and transferred proceedings and appeals from the Court of Claims, early in 2020.

For updates and rules regarding e-filing in the Fourth Department, please visit <https://ad4.nycourts.gov/efile>.

Discovery Reform in New York Summary of Major Legislative Provisions

Effective January 1, 2020, New York State is replacing its discovery law, dubbed the “blindfold” law, with a new statute requiring the sharing of evidence by default between the prosecution and defense on an accelerated timeline. The reform may shrink case processing times, resulting in shorter jail stays for defendants held in pretrial detention. By facilitating the defendant’s ability to prepare a defense, the changes may also result in fewer prison or jail sentences. This summary explains the major components of discovery reform.

The Prosecution Must Disclose Evidence on a Strict Timeline

- **Open File Discovery:** The current law requires defense attorneys to make written motions to obtain the prosecutor’s evidence during the pretrial period. By contrast, the new law requires the “automatic” discovery of all relevant materials that the prosecution has in its possession. The new law also directs judges to apply a “presumption of openness,” favoring disclosure when interpreting the law in specific cases.
- **Strict Timeline:** The current statute does not require discovery to be complete until pretrial hearings or trial. Discovery reform, on the other hand, requires the prosecution to turn over all “discoverable” materials as soon as practicable, but no later than 15 days after arraignment. An additional 30 days is permitted if the materials are voluminous or the prosecutor is not reasonably able to obtain them. In effect, the maximum timeframe for most discovery information (with a limited number of specific exceptions) is 45 days after the initial arraignment.
- **Discoverable Materials:** The new statute enumerates 21 types of materials that prosecutors must turn over; several of these were not listed in the old statute. Notably, the prosecution will now be required to disclose: names and contact information for any person with relevant information (including law enforcement); statements by witnesses; electronic recordings (including 911 calls); and “Brady” disclosures, which entail information that favors the defendant.
- **Grand Jury Proceedings:** When the defendant wishes to testify in the grand jury, the prosecution must provide to the defense any statements made to law enforcement by the defendant or a co-defendant 48 hours prior to the defendant’s scheduled grand jury testimony.
- **Plea Offers:** Defendants will no longer be required to consider a plea offer without knowing the evidence against them. If the prosecution makes a plea offer during the pre-indictment phase of a felony (before grand jury proceedings), the prosecution must turn over discovery materials at least three days

prior to the expiration of the offer. During other stages, discovery must be shared seven days prior to the expiration of any plea offer.

Information Possessed by Law Enforcement Must be Turned Over

- **Law Enforcement, an Extension of the Prosecution:** Discovery reform defines any materials possessed by law enforcement as, in effect, possessed by the prosecutor. Thus, delays in conveying evidence from law enforcement to the prosecutor are not valid excuses for providing late discovery to the defense.
- **Prosecutors' Responsibilities to Obtain Discovery from Law Enforcement:** Prosecutors must ensure a regular “flow of information” between law enforcement and the prosecuting agency. For example, when the defense requests a specific 911 call, the prosecution must ensure that law enforcement preserves it.
- **Law Enforcement Responsibilities:** State and local law enforcement must make all relevant records and files available to the prosecution. Whenever a 911 call, police radio transmission, body camera video, or audio recording is created, the arresting officer or lead detective must make copies and notify the prosecution of their existence, in writing, once a criminal case is filed. If law enforcement does not make a recording available to the defense as required by the statute, the defendant can move for, and the court must order, a remedy or sanction.

The Prosecution Must Submit a Certificate of Compliance

The prosecution must submit a formal “certificate of compliance” after complying with the above discovery requirements. The certificate must state that the prosecutor exercised due diligence and turned over all known discoverable materials. The certificate must also list all materials that have been turned over. The prosecution cannot be deemed ready for trial without filing a certificate of compliance. If the prosecution later learns

of new evidence, a supplemental certificate of compliance must be filed once this evidence is turned over.

The Defense Must Provide “Reciprocal” Discovery to the Prosecution

The defense must provide “reciprocal” discovery within 30 days after the prosecution has served a “certificate of compliance.” The reciprocal discovery obligation relates to evidence the defense intends to offer at trial, including expert opinion, tapes and electronic recordings, scientific reports (e.g., generated from physical or mental health examinations), and names and contact information of individuals the defense intends to call to testify at trial.

Parties May Seek Protective Orders Allowing Some Information to be Withheld

Parties may at times have valid reasons for withholding information, generally related to the safety of witnesses or the preservation of a defendant’s constitutional rights. When a party does not wish to disclose specific evidence, that party must establish a “good cause” for the non-disclosure, notify the opposing party in writing, and apply for a protective order. When the parties cannot reach agreement about a protective order, a hearing must be held within three business days, and the court must then rule expeditiously.

Remedies or Sanctions Must be Imposed for Certain Noncompliance

The court must impose a remedy or sanction: (1) when information or materials are turned over late if the delayed delivery prejudiced (i.e., materially affected) the party receiving the information; and (2) when the materials have been lost or destroyed if the materials contained information pertinent to a contested issue. Remedies or sanctions can include: a new order for discovery; instructing to the jury to make an adverse inference against the noncompliant side; striking a witness’s testimony; ordering a mistrial; dismissing the case; or ordering any other sanction that the court deems just in the circumstances and consistent with the defendant’s constitutional rights.

ETHICS OPINION 1167

NEW YORK STATE BAR ASSOCIATION

Committee on Professional Ethics

Inquiry No.1167 (05/09/2019)

Topic: Law Firm Name: Use of Multiple Surnames

Digest: A lawyer who practices under the lawyer's full surname name may use a law firm name that omits a first name and includes only the lawyer's middle name and last name.

Rules: Rule 7.5(b)

FACTS

1. The inquirer, a New York sole practitioner whose full legal name we will call "Charlotte Moretti Jones," is forming a new law firm and wants to know whether the firm may be called "Moretti Jones, PC." The inquirer recently changed the inquirer's surname to include the name of a spouse. Nevertheless, the inquirer's concern is that, because the inquirer's middle name sounds like a surname, the public may mistakenly conclude that Moretti and Jones are two different lawyers.

QUESTION

2. May a lawyer practice under a law firm name that includes only the lawyer's surname includes a name that is a common last name?

OPINION

3. Rule 7.5(b) of the New York Rules of Professional Conduct (the "Rules") provides, with certain narrow exceptions, that a "lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm." As we have often remarked, the purpose of this rule is to protect the public from being deceived about the identity or status of those who use the firm name. See, e.g., N.Y. State 1003 (2014).

4. In N.Y. State 740 (2001), the Committee opined that "[u]sing a name that is not the legal name of one or more partners or former partners in the law firm constitutes [the] use of a trade name" within the meaning of Rule 7.5(b). Applying this interpretation of the rule to the inquiry at issue, the Committee concluded that a lawyer could not insert the letter A before the firm name to insure favorable placement in the Yellow Pages.

5. The Committee has, however, determined that not all minor name variations violate Rule 7.5(b). Thus, in N.Y. State 1003 (2014), the Committee opined that the inquirer could use a firm name that omitted the lawyer's first name but contained the inquirer's full surname and the initials of two middle names without running afoul of Rule 7.5(b). The Committee concluded that such minimal variation is acceptable as long as the proposed firm name is not misleading about the identity of the lawyer practicing under such name.

6. Applying these principles to the current inquiry, we conclude that the inquirer's proposed firm name does not violate Rule 7.5(b). For purposes of the Rule, no material difference exists between using a firm name that is comprised of a middle name and a last name and using a firm name that is comprised of middle initials and a last name. The inquirer's concern that the public might conclude that the firm's name is the last name of an additional partner because it happens to be a name that is commonly a last name is a concern too amorphous to affect our application of Rule 7.5(b). We live in a country (unlike some other countries) that does not impose blanket limitations on given names, and it is not uncommon for names that are more traditionally last names to be used as given names. In light of this facts, the public cannot reasonably assume that a particular name is a given name or a last name. Accordingly, we do not view the inquirer's proposed use of the firm name "Moretti Jones, PC" as "misleading" about the identity of the lawyer within the meaning of Rule 7.5(b).

7. We note the difference between this inquiry and the one we resolved in N.Y. State 1152 (2018). There, we concluded that the use of only a lawyer's first name as the name of the firm – as opposed to its use in advertising or branding – was impermissible. We reasoned that Rule 7.5(b) "embeds an understanding that a law firm's name consists of the surnames of lawyers who either practice there or once did." *Id.* ¶ 6. Here, by contrast, the inquirer's proposed firm name is the inquirer's actual surname, whether as a spousal name or a middle one coupled with an actual one.

CONCLUSION

8. A lawyer who practices under the lawyer's full surname may use a law firm name that includes only the lawyer's middle name and last name, without including the lawyer's first name.



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