



ONONDAGA COUNTY BAR ASSOCIATION
BAR REPORTER

FEATURED ARTICLES

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October 2019
Volume 64 Number 9



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 Conference | Advanced Topics in Effective Representation of Vulnerable Populations

November 12th - 14th

Downtown Syracuse, Onondaga Community College

OCBA's Holiday Reception - December 11th

Everson Museum of Art

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



In Memoriam...

Ben Wiles, Jr.
September 26th, 2019

Joseph J. Lawton, Jr.
October 7th, 2019

Charles H. Umbrecht, Jr.
October 8th, 2019

Joseph R. Pacheco II
October 23rd, 2019

Letter from the PRESIDENT

With memories of summer fading as quickly as the afternoon sunlight, fall is definitely in full swing. It always seems like a good time to take stock of what the year has brought, and to look forward to the year ahead. 2019 has been a good year for the Onondaga County Bar Association. Just last week our legal community celebrated the 144th Annual Dinner. Almost 300 colleagues gathered with other members of the Bar, the President of the New York State Bar Association, Hank Greenberg, and many esteemed members of the judiciary. All were assembled to honor Distinguished Lawyer of the Year Ed Moses, and Ruger Award Recipient the Hon. John Brunetti. It was a fantastic celebration of two very deserving people.



On October 18th, **the OCBA was honored to host** the posthumous induction of William Herbert Johnson to the New York State Bar. Attorney Johnson was the first African American graduate of the Syracuse University School of Law in 1903. The ceremony took place in the S. F. Hancock Ceremonial Courtroom at the Onondaga County Courthouse. In front of a standing-room-only crowd, Presiding Justice of the Fourth Department Gerald J. Whalen issued an Order admitting Mr. Johnson to the Bar. This historic event was not only an occasion to honor Mr. Johnson and the members of his family in attendance, but it also provided an opportunity to acknowledge the fact that inequality still exists. As a legal community and a Bar Association, our highest priority is to ensure the equal treatment and recognition under the law for all persons.

Looking forward, the OCBA annual holiday party is going to be held at the **Everson Museum on December 11th**. The event **coincides with the museum's Festival of Trees**, which makes for a terrific holiday setting! There will be no programs and no speeches; simply an opportunity to stop by and enjoy a relaxing moment or two of respite from an otherwise busy month.

Lastly, the OCBA is offering 6 free Audio CLE credits for 2020. By renewing your membership, or perhaps joining as a new member, you will be eligible to receive these CLE credits. Credits can be obtained by conveniently ordering CLE programs on CD or via MP3 (or Dropbox download). You can listen at your desk or in your car. Membership renewal forms can be found at www.onbar.org under the link for "Member Information." Submit a membership application and begin receiving your 6 free Audio CLE credits for 2020!

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THE 144TH Annual Dinner

WEDNESDAY, OCTOBER 23RD, 2019

The 144th Annual Dinner of the Onondaga County Bar Association was held in the beautiful Persian Terrace of the Syracuse Marriott Downtown on October 23.

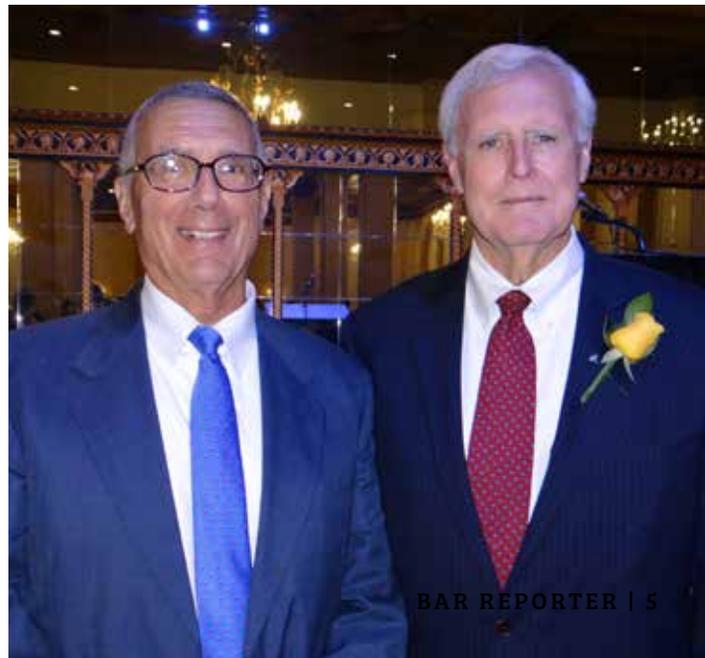
A crowd of nearly 300 joined in celebrating the 2019 Distinguished Lawyer honoree Edward J. Moses, and the recipient of the 2019 Ruger Centennial Award the Hon. John J. Brunetti. Special guests included NYSBA

President Henry "Hank" Greenberg, and justices from the Appellate Division, Fourth Department. We thought you'd enjoy this photo re-cap of that evening - we'll have more in next month's newsletter. If you weren't able to attend the Dinner but would like to browse the evening's program, please click [HERE](#).

Thanks to the many event sponsors and table hosts, who contributed to a record-breaking event.

See you next year!





Trained Interpreters on Your Team Can Change the Outcome of a Case

By: Mary Stronach

The harsh reality is that individuals who speak little or no English are still being denied due process in our legal system -- due to inadequate language and cultural assistance. In central New York, the problem has gotten more apparent as more refugees and immigrants settle here.

"Due process" includes the right to be present at and participate fully in legal proceedings. The right to be "present" means having "meaningful linguistic presence." While our legal system, in general, works to ensure this, there are those who have not embraced the idea that the "Limited English Proficient" be present linguistically and culturally from the beginning of the legal process, which may be the police station, the lawyer's office, or a hospital.

Part of this problem's answer is to engage the skills of a **trained** interpreter who speaks both languages well and who can capture nuances and the possibility of relevant cultural issues.

Let's take the case of a refugee child from Myanmar (formerly Burma). He is taken to the doctor because he is having difficulty breathing. Upon examination, the doctor notices bruises running down the child's back.

What would you instinctively think? Child abuse? Indeed, this is exactly

what the doctor suspects and, after further evaluation and questioning, decides to report his findings to Child Protective Services. The parents hardly speak any English and, while there is someone with them who speaks better English, that individual is also dumbfounded by the confusion, accusations and questioning that takes place. While the effort is made to explain to the family what is happening, they do not fully understand the seriousness of the situation and are devastated when their child is not immediately returned to them. There's panic, fear, crying – even if they could understand, it would be difficult to process what is going on.

The outcome of such a situation, if taken to the extreme, could go two ways: one, the parents are arrested, possibly jailed and/or deported and pay thousands of dollars in legal fees, or they happily take their child home with the appropriate directions.

Should the situation reach CPS, the frightened parents may visit your office – still not comprehending why their child has been taken from them. Would you understand? Would you have the trained interpreter by your side ensuring the information the parents provide is complete and accurate?

In actuality, what the doctor saw as abuse, was a loving parent trying

to help an ill child in their cultural norm. The qualified interpreter could translate the parent's report of the practice as a cultural norm in their community.

Some in the system say it is the responsibility of the individual to obtain an interpreter. But, in this case, the "interpreter" the family selected was not prepared linguistically able to handle the situation making it difficult to interpret accurately and completely.

HELLO

مرحبا



Having a trained, competent interpreter ensures communication happens completely, professionally, with no conflict of interest or bias.

The interpreter is not allowed to stop court proceedings to address possible culture bumps. This is the realm of the attorney who explores and questions beforehand. It happens in the lawyer's office during the legal consultation.

The practice of having a competent interpreter protects lawyers from possible malpractice, and positions cases for effective appeals. It ensures justice for individuals, reduces court system stress, reduces the need for appeals, and ultimately saves money.

There are dozens of cases that have been appealed around the country where due process was denied a client because of the lack of a trained, competent interpreter; and as many reasons why having one is important.

But the most important reason is that, as a servant of the people, the lawyer has the skills and experience that can ensure justice and fairness for our neighbors who speak little or no English and find themselves lost in the jungle of a new culture.

Learn more about this topic at the November 12, 2019 CLE | [Accommodating Language Barriers: Providing Effective Representation to LEP Client](#). Click [HERE](#) to register.

Mary Stronach is an interpreter in Spanish and Italian, and is a trainer for MAMI of CNY, which provides trained on-site interpreters in more than 50 languages, and telephonic interpreting in almost 300 languages.



PRESUMPTIVE ADR IS ALMOST HERE!



Chief Judge Janet DiFiore, as part of her Excellence Initiative, announced in her State of the Judiciary address that Alternative Dispute Resolution (or Appropriate Dispute Resolution) (or ADR) will play an important part in her quest for excellence in the judicial system. The ADR process is not foreign to our Fifth District. To be sure, Fifth District courts have referred certain matters to various Community Dispute Resolution Centers (CDRC), Part 146 mediators and neutral evaluators who appear on approved court rosters and the Fifth Judicial District Permanency Mediation Program. What is new is the Chief Judge's mandate for APresumptive ADR." Very soon, all civil actions or proceedings heard in the Supreme Court, Court of Claims, County Court, Family Court, Surrogate's Court and City Court, shall be presumptively eligible for early referral to an alternate dispute resolution process, unless otherwise excluded.

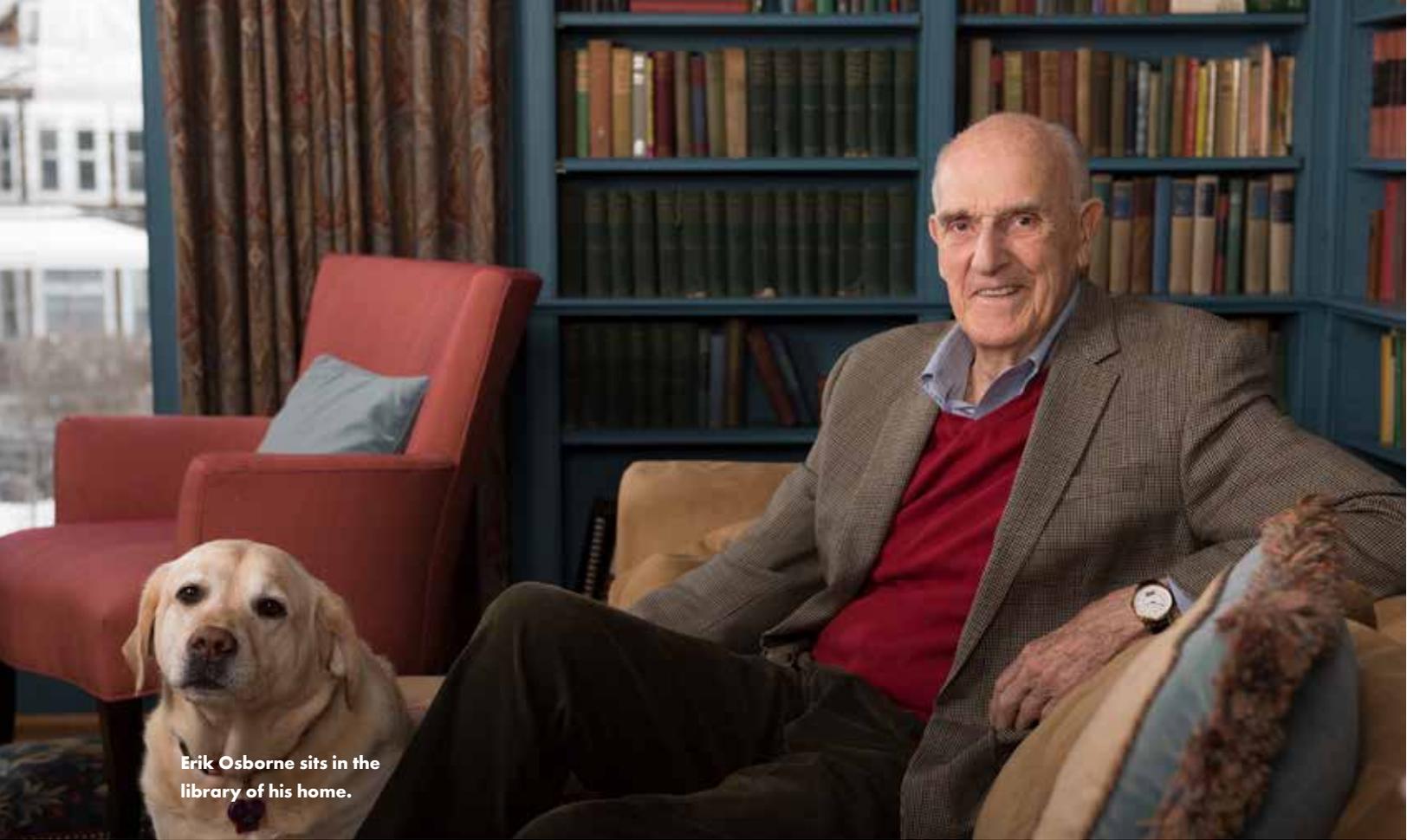
As you may already know, ADR refers to a variety of processes that enable parties to settle their disputes without the necessity of formal discovery and a trial. Familiar ADR processes include mediation, arbitration, pre-trial conferences, settlement conferences, neutral evaluation and summary jury trials, just to name a few. These processes are generally confidential, less formal, and less stressful than traditional court proceedings, thereby saving the parties and the courts the time and money inherent with litigation. Moreover, by facilitating settlements through the ADR processes, the ADR neutral or mediator facilitates discussion between/among the parties and their attorneys where applicable, which encourages creative solutions, longer-lasting outcomes, greater satisfaction, and improved relationships.

To carry out this initiative, each Judicial District was tasked with developing an ADR Plan. The Fifth District generated a list of Stakeholders and who attended a two-day summit earlier this year to discuss what ADR resources we currently have, what courts these resources can cover and where our resources were lacking or needed to be supplemented. The stakeholders were asked to outline a plan that they believed was workable and accomplished the goals of the Chief Judge.

Our draft Plan was completed and submitted early in September of this year. We (and all Districts) are waiting for approval of our Plan by Chief Administrative Judge, Lawrence Marks and Deputy Chief Administrative Judge, Vito Caruso. Once approved, expect implementation of the Plan to begin immediately. That is not to say there won't be bumps in the road. We will monitor our Plan for each of our courts and modify the Plan as needed. This is a collaborative process and your input is necessary and appreciated, for the benefit of all. Please do not hesitate to let me know your experiences.

Thank you.

James P. Murphy, J.S.C., Fifth Judicial District Administrative Judge



Erik Osborne sits in the library of his home.

Hailing from a long line of entrepreneurs, activists and social reformers, I have worked tirelessly to not only honor, but grow the legacies of the family members who came before me. My family has strong ties to the Auburn community and helping to build one another up is a common thread running through our history.

It was imperative for me to find a permanent home for my family's foundation to carry on a positive impact on Cayuga County even after I am gone. I partnered with the Community Foundation to transfer our private foundation into a donor-advised fund to solidify and streamline our support.

The Community Foundation's permanent stewardship and prudent investment management aimed at long-term growth will ensure that my family's charitable legacy is carried on for the benefit of future generations.

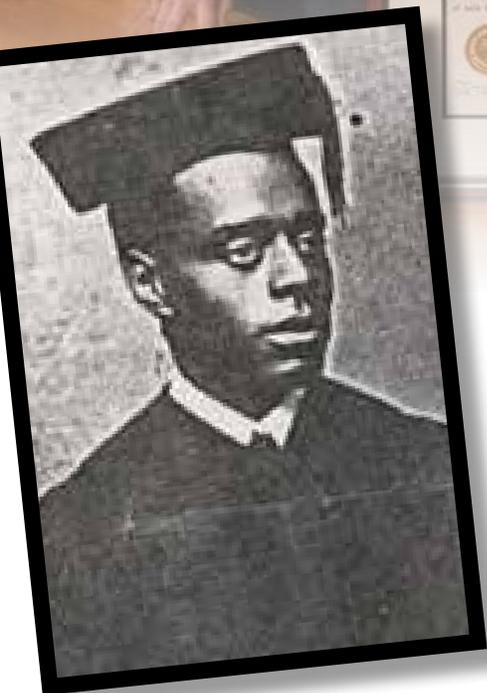
Family Giving: Erik Osborne



Read more of Erik's story at
Osborne.5forCNY.org



CENTRAL NEW YORK
COMMUNITY FOUNDATION
315.422.9538 | CNYCF.ORG



“The Arc of the moral universe is long but it bends toward justice.”

-Dr. Martin Luther King, Jr.

One hundred and sixteen years is the time it took for **William Herbert Johnson** to become admitted to practice law in the State of New York.

Johnson was the first African-American graduate of the Syracuse University College of Law and was the valedictorian of the Class of 1903.

On the morning of Friday, October 18, in the S. F. Hancock Ceremonial Courtroom, with his grandsons present to witness the occasion, Mr. Johnson was added to the permanent role of attorneys admitted to the state bar.

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Appellate Division, Fourth Department Presiding Justice Gerald J. Whalen led the historic swearing-in by citing Mr. Johnson’s stature at the beginning of the 20th century. He’d served his country in the Spanish-American War, was a Boston University alumnus, had returned to his hometown to enroll in its law school and, despite being denied the privilege to practice law, became a pillar of his community by introducing Syracuse to such luminaries as abolitionist Harriet Tubman and agricultural scientist George Washington Carver.

Whalen characterized Mr. Johnson’s non-admission as “wrong, terribly wrong” and was the first of several speakers to celebrate the overdue

moment, including the Hon. Langston McKinney, Hon. Shirley Troutman, Mayor Ben Walsh, and Prof. Paula C. Johnson, whose biographical research began the process of righting this wrong.

Among the emotional ceremony’s many warm moments, Mr. Johnson’s grandsons, now in their golden years, spoke about their grandfather whom they clearly admired and respected.

Their loved one, said William Calvin Johnson, relayed to his kin that he fully understood it was unlikely he’d be able to practice law after receiving his juris doctorate, but he pursued it nevertheless saying, “Someone has to be first.”

We're Hiring!



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

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Candidates must be licensed to practice in New York State or eligible to waive into the New York State Bar, have one to six years of experience as an attorney in commercial real estate or financing transactions with experience commensurate with years of practice, be organized and detail oriented, and possess excellent verbal and written communication skills. Consideration will be given to recently admitted attorneys who have non-lawyer business experience in commercial real estate, securitization, structured finance, or related fields.

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Barclay Damon seeks an IP litigation partner with seven or more years in trademark, copyright, and unfair competition litigation experience. Prior experience must include some or all of the following: drafting preliminary injunction or summary judgment briefs, taking and defending expert depositions, and appearances in court to argue substantive motions.

The successful candidate will have a practice mostly dedicated to serving clients in the areas of branding, trademarks, and copyrights. It is not required for the candidate to be admitted to practice before the US Patent and Trademark Office (PTO). A book of business is required.

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

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

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

Torts & Insurance Associate (Syracuse)

Barclay Damon seeks an associate who is licensed to practice in New York State; has superior verbal, writing, and interpersonal skills; and has 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 handling the defense of products liability, personal injury, and professional malpractice actions.

How to Apply

Qualified applicants should submit a cover letter, resume, writing sample, and law school transcript in confidence to: barclaydamon.com/careers

For questions, please contact: jobs@barclaydamon.com

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Syracuse Small Acts

By: Colleen Gibbons, Esq.

The historian and professor Howard Zinn famously said: “We don't have to engage in grand, heroic actions to participate in the process of change. **Small acts, when multiplied by millions of people, can transform the world.**”

Not everyone is going to be a Distinguished Lawyer or Ruger Award winner, but **everyone** can engage in some sort of small act of kindness to help make our world a better place. It's based on this concept that I pitched the idea of a “Small Acts” column to the OCBA's community engagement committee. At that meeting, one committee member nominated our first *Small Acts* feature: Mark Wladis.

Mark's mother and father raised him and his brothers on the idea of doing good deed for others in our community. Over twenty years ago, Mark's father started a hat and glove collection and giveaway for elementary school children in Syracuse City Schools. Although the senior Mr. Wladis has passed on, Mark and his brother Steven have continued the giveaway. Last year, over sixty individuals and companies throughout Central New York participated in the collection, resulting in over 11,300 hats and gloves being donated and this year's program is underway with even more commitment from the community. Mark says, “Teachers love it because the kids come to school warm and they're ready to learn – then everyone has a good start to the day. Donating hats and gloves is a small way for the community to contribute, too.”

Mark's goal is to give back to the community that has given him so much – a mindset



Featuring: *Mark Wladis*

instilled by his family - so he does all he can to help community organizations. Several years ago, Mark chaired the “Success by Six” campaign, which helps make sure kids are ready for success by focusing on literacy and physical and mental health. Over time, this community campaign expanded into United Way's Early Childhood Alliance.

Mark also recognizes the role that charitable donations play in providing a strong financial foundation for organizations, but Mark also knows it's not only about the money. When he chaired the Jewish Federation's recent capital campaigns, his focus was on building a sense of community instead of just raising money. Mark believes it's critical to “build a bigger tent so there is a place for everyone to play a role” – not just the high stakes donors. Thanks to his ability to foster strong community engagement, by the third year of the campaign, the Federation raised 35% more than in previous campaigns. Similarly, by focusing on community building, when Mark and his wife Diane chaired the Manlius Pebble Hill Gala, they were able to raise the highest sum in many years, while also expanding the number of people involved and attending the event.

At the end of the day, Mark and Diane are proud to see that the giving spirit that their parents helped foster in them continues, as their four children each volunteer in their communities. These small acts are truly multiplying.

One small act can improve the world for those around us. Do you know members of the legal community who should be featured here for their everyday deeds or small acts of kindness? Send me an email at cogibbons@nycourts.gov. I'd love to feature them!





DEPARTMENT OF LAW

OFFICE OF THE CORPORATION COUNSEL

CITY OF SYRACUSE, MAYOR BEN WALSH

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Department of Law
Office of Corp. Counsel
233 E. Washington St.
City Hall, Room 300
Syracuse, N.Y. 13202

Office 315 448-8400
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www.syrgov.net

The City of Syracuse's Department of Law is hiring. If you are a resident of the City of Syracuse (or are willing to relocate) and have a passion for public service, take a look at the exciting opportunities with the City. Apply via email at law@syrgov.net.

1. Assistant Corporation Counsel - Vacant Housing (AKA *Zombie Busting Attorney*): The City of Syracuse is seeking an aggressive, experienced, creative and public-service minded attorney to address issues of housing vacancy, including zombie structures, in Syracuse. This is an excellent opportunity for an attorney who cares deeply about the quality of neighborhood life in the City of Syracuse and wants to use their legal talents to make a visible, positive impact in Syracuse neighborhoods.

This attorney will need a combination of litigation, research, innovation and project management skills to develop and implement a comprehensive legal strategy for combatting the blight caused by vacant properties in the City of Syracuse. Candidates must be admitted to the New York bar and have at least three (3) years of experience litigating civil matters in New York state courts. Candidates should have a deep understanding of NY CPLR, have excellent research and analytical skills.
2. Assistant Corporation Counsel - Civil Litigation: The City of Syracuse is seeking an experienced litigator to handle complex civil litigation in state and federal court on behalf of the City, including the defense of civil rights, employment discrimination, personal injury, property damage and contract claims. The litigator must be able to independently manage all phases of litigation, including discovery, motion practice, trials and appeals. The successful candidate must have superior analytical, writing and oral advocacy skills, and must be able to handle a heavy caseload. Must be admitted to the New York bar. Will consider varying levels of experience.
3. Assistant Corporation Counsel – Collections & Housing: The City of Syracuse is seeking an experienced attorney to litigate housing and legal collections matters and provide leadership to other attorneys and paralegals in this area. This is an opportunity to make a difference in the neighborhoods of Syracuse by gaining increased compliance with codes requirements. This attorney will focus primarily on complex collections matters, employing a variety of legal strategies to drive collections of outstanding judgments related to housing code violations and demolitions. The attorney must also pursue aggressive, innovative legal strategies to drive compliance by the most difficult housing code violators. Experience with civil litigation in New York state courts is required. Knowledge of judgment and collections provisions of the NY CPLR is a plus.

The City of Syracuse is an Equal Employment Opportunity Employer.

Thoughts

By: Judith La Manna Rivette



Trick or Treat. By the time you get this newsletter, Halloween will be upon us. In the weeks leading to today, if your neighborhood is like mine, you will notice houses decorated for the big day: hanging orange and black lights, fake tombstones dotting yards, stretches of netting webs on shrubbery and porches, dancing skeletons and scary witches with green faces and scraggly clothes. I don't remember all of this décor when I was young.

In our childhood, on Halloween night (as my sister described it years later) we would dress up in strange costumes and walk door to door mostly in our own neighborhood to "beg for candy." At each door we would hold out our pillowcase sacks and intone "trick or treat" (In Solvay where I grew up, we would say "hotchy, potchy dandy, give me some cake or candy". It is an expression I am fairly certain is not used elsewhere, and I never wanted cake, anyway.) We would drag our filled sacks home and examine our take: unwrapped penny candy, apples and popcorn balls, and the rare bar of real chocolate. In the name of fun, we braved cold, rain and sometimes even snow. (Who else was made to wear snow pants and jackets under their princess costume?)

Then it happened. Needles were found in popcorn balls, razor blades turned-up in Halloween apples; candy was altered or some chocolate turned out to be re-wrapped ExLax, strangers in the neighborhood. And just like that, no more door-to-door for us. We found ourselves at sanctioned Halloween parties where we learned to bob for apples and ate dirt cupcakes topped with gummy worms, sugar-cinnamon doughnuts and cider. Organized by watchful adults, in this protected behavior, we buzzed away the night.

It is remarkable how much our Trick-or-Treat days prepared us for the daily practice of law. Think Stepford about our costume of suit and sensible shoes. Think door-to-door travel (office to courtroom to County Clerk's office to...?) asking for what we want. We bump into hanging skeletons along the way (Surrogate Court?); fearsome threats lurking in dark corners (Family Court?); and webbing nets cast over the process (motions, cross-motions, filings that beget filings?). Those witches with scary faces? Think adversary, clerk, court attendant or - yikes, a judge or two? There are razor blades in our apples (the client forgot to tell you what?). The Court is our ever-watchful adult (procedures, objections, rulings?), who sadistically let us bob for good apples while risking our very breath under water to capture the prize (more procedures, appeals, paperwork?). While in costume, we roam, asking for a treat to resolve a matter, while meting-out our store of tricks.

We succumb to the hocus pocus of it all. Rusty banking regulations terrorize simple real estate. We do the devil's dance on a criminal charge, side-stepping the tombstones of arrested dark desperation to ask for holy assistant district attorney intercession; we cower before the Court and amid all of this dark magic we transform our client into a paragon of virtue. We deal with gore, pain and tortuous medical procedure for our accident or med-mal clients more frightening than an axe-handle-in-the-head lurching zombie. And talk about roaming in frightening darkness? Start a law suit.

There are tricks. A dark sea of records, responses and discovery that never comes and endless delay of scheduled appearances and deadlines because of the procedural parry of opposing counsel and court rescheduling, are events frustrating enough to make any self-respecting Werewolf (or attorney) bay at the moon.

There are treats, too: that client you-helped-me look, the "attaboy/ attagirl" from a colleague, the smiling nod of a seasoned Court clerk, pay for services rendered, to finally close that file at the end of your long door-to-door travail.

Oh, but there remains one other trick. Records retention requirements keep the case with you, stacked in looming file cabinets with others, perhaps tucked in some dark basement, a kind of haunting. Boo!



THE ONONDAGA COUNTY BAR ASSOCIATION WISHES A

Happy Retirement TO Peggy Walker!

After a nearly 23-year career at the Onondaga County Bar Association, the Bar leadership and staff celebrated the retirement of Peggy Walker on September 26th.

Although her title was "Membership Coordinator," Peggy was and meant so much more to this organization. She seemingly knew the name of every OCBA member and where they worked, staying up to date with the many career and organizational moves of this 1200-member Association. She oversaw the Part 137 Fee Arbitration program, ran registrations for the many Bar Association and Foundation annual and special events, and used her decades of experience to provide information and assistance to the many callers to our offices. She assisted executive directors with meeting handouts and preparation, and welcomed visitors to our office with an ever-ready smile.

She deserves to enjoy her retirement, and we know you'll join us in wishing her well although we'll miss her dearly.



Save the Date to Meet the Judges!

The Central New York Chapter of the UB Law Alumni Association invites you to be our guest at a
Special Reception with the Judiciary
preceded by a CLE Program

Thursday, November 14, 2019

4:00-7:00P.M

**Maxwells (Event Room)
122 East Genesee Street
Syracuse, NY 13202**

**CLE: The Next Generation of Appellate Practice in New York
Featuring Robert Brucato Jr. '90
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Counsel Press**

Earn 1.0 NYS CLE credit in the area of Skills (transitional or non-transitional credit).

Please register [HERE](#).

THE PRACTICE PAGE:

AMENDMENT TO CPLR 3018 CONFESSIONS OF JUDGMENT

*Hon. Mark C. Dillon **

There is an amendment to CPLR 3218 effective on August 30, 2019, which limits the availability of judgments by confession.

The basic concept behind a judgment by confession remains intact. If a debt is owed or may become due, the original statute permitted the debtor to confess the debt or contingent debt by executing an affidavit setting forth 1) the amount that is or may become due, and 2) the county where the debtor resides, or if not a resident of the state, the county where collection is authorized. The affidavit must state the facts out of which the debt arose to demonstrate that the confessed amount is just. If the affidavit secures a contingent liability, it must describe the contingency and show that the sum does not exceed the actual liability. The costs, delays, and uncertainty of litigation are avoided by this procedure, as the filing of the affidavit permits the entry of a judgment within three years from the affidavit's execution, by a court in the county where the debtor resides or which is designated in the affidavit.

The earlier version of CPLR 3218 expressly permitted the confession of debts by both residents and non-residents of New York, and was little used. In 2014, only 14 judgments were entered in New York pursuant to CPLR 3218. Since then, an astounding 32,000 judgments were entered under the state's uniquely-liberal confession procedure, mainly on contingent liability loan contracts involving small businesses with no jural connection to New York. Once those judgments were entered in New York, they were used to collect upon debtors' properties whether located within New York or elsewhere. While confessions of judgment play a practical role in the lending industry in permitting the seizure of assets from debtors who default on their obligations, the state legislature did not want our courts to be used as a national clearinghouse for debt enforcements where no New York interest is at stake. The 2019 amendments to CPLR 3218 now prohibit the use of the statute where the debtors are non-residents of New York, whether natural persons or businesses.

The amendments operate prospectively, applying only to confession affidavits executed from the effective date and forward. Pre-existing affidavits may continue to be filed and result in judgments against non-New York residents, but should be limited in time as CPLR 3218(b) continues to require that qualifying affidavits be filed within three years from their execution to permit the entry a judgment upon

them. Thus, the inflated volume of CPLR 3218 filings should run its course by August of 2022. If any New York debtor executes an affidavit and then moves out of state before the affidavit is filed, the amendment still permits the filing of the confession in the county where the debtor resided *at the time the affidavit was executed*.

Finally, the 2019 amendment of CPLR 3218 contains a carve-out favoring governmental agencies to whom a civil or criminal judgment is owed. Such agencies may file a confession of judgment in any county within the state. While the amended language fails to state whether this exception applies to New York residents with property in New York, or also to non-residents of the state who have property here, the Introducer's Memorandum in Support of the amendment, which accompanied the Senate version of the bill (S6395), makes clear that the intent of the legislature is to apply the governmental agency exception to both residents *and non-residents* of New York. Legislative intent, such as that reflected by the Introducer's Memorandum, may be examined where, as here, statutory language is written with an ambiguity. The public policy behind the exception is to assist governmental efforts at collecting civil or criminal recoveries, such as those payable as restitution to victims, so it makes sense that the carve-out apply to the broader universe of debtors regardless of their states of residence.

1. 2019 Sess. Laws of NY, Ch. 214, sec. 1.

2. CPLR 3218(a)(1).

3. CPLR 3218(a)(2).

4. CPLR 3218(a)(3).

5. CPLR 3218(a)(b).

6. Zachary Mider and Zeke Faux, *New York Moves to Ban Confessions of Judgment for Out-of-State Loans*, Bloomberg News, <https://www.bloomberg.com/news/articles/2019-06-21/n-y-moves-to-ban-confessions-of-judgment-for-out-of-state-loans>.

7. 2019 Sess. Laws of NY, Ch. 214, sec. 1(b).

*** Mark C. Dillon is a Justice of the Appellate Division, Second Department, and an Adjunct Professor of New York Practice at Fordham Law School.**



For the last several years, OCBA Member Mark Ventrone, Esq. has committed his time, interest, and energy to the New York State Bar Association's Law Youth and Citizenship Committee.

This committee oversees the statewide High School Mock Trial Program, crafting the case that each year is argued by hundreds of schoolchildren and was won in 2019 by the young counselors of Fayetteville-Manlius High School. Every fall the committee offers an annual education conference plus, in January, the "Public Education and the Law" CLE program at the NYSBA annual meeting.

On October 4th, in Saratoga Springs, during the 43rd Annual Civics and Law-Related Education Conference approximately 75 attorneys and educators from across the state gathered. Ferrara Fiorenza's Donald E. Budmen, Esq., who specializes in School Law among other practice areas, was on hand to provide a CLE related to the theme of ***Student and Faculty Mental Health and Substance Abuse Issues | What Can School Districts Do?***

NYSBA President-Elect Scott Carson is pictured wearing glasses in the photograph above, in the middle of the line-up.

SAVE THE DATE!

Mark your calendar!

The Committee on Law, Youth and Citizenship will present its annual CLE program at the NYSBA Annual Meeting.

Public Education and the Law
Wednesday, January 29, 2020
9:00am-12:00pm
New York Hilton Midtown
New York City

Next year's Fall Conference will be:

SAVE THE DATE!

Mark your calendar!

LYC 44th Annual Civics and Law-Related Education Conference
Friday, October 30, 2020
8:30am - 3:30pm
The Sagamore Resort
Bolton Landing, NY

The Monthly Newsmakers

VOLUME 64 NUMBER 9

OCTOBER 2019

50 CENTS

COUNTY NEWS



HANCOCK ESTABROOK^{LLP}

HANCOCK ESTABROOK, LLP JOINS FORD MOTOR COMPANY'S LEGAL ALLIANCE FOR WOMEN IN A GLOBAL DAY OF SERVICE

Worldwide Effort Brings Together Volunteers from the Legal Profession to Support More Than 70 Community-Based Organizations



Joining volunteers around the world, attorneys and staff from Hancock Estabrook took part in the Second Annual Global Day of Service, a worldwide initiative spearheaded by Ford Motor Company's Legal Alliance for Women

(LAW), the company's professional organization focused on women in the legal profession. The coordinated global effort assisted organizations that support the empowerment and well-being of women and girls in their

respective communities. Hancock Estabrook is among more than 70 law firms around the world who partnered with LAW to volunteer their time in a day of community service on September 26.

Attorneys and staff from Hancock Estabrook volunteered with the Girls Scouts of NYPENN Pathways to assist with activities at the Camp Hoover facility at Song Lake in Tully, New York. Volunteer tasks included the beautification of the waterfront and maintenance in various areas of the camp.

"Through this day of service, we are aiming to marshal the collective efforts of our partners in the legal profession around the world to give back to the community," said Beth Rose, assistant general counsel at Ford Motor Company and chair of Ford's LAW. "The passion we share in advocating for and serving our communities extends beyond this one day. It is part of who we are as individuals and drives our community service year-round."

HANCOCK ESTABROOK ATTORNEYS SELECTED TO THE BEST LAWYERS IN AMERICA

Hancock Estabrook, LLP is pleased to announce that 17 of its attorneys representing 22 different practice areas have been selected for inclusion in *The Best Lawyers in America for 2020* including: **Cora A. Alsante, Janet D. Callahan, Richard W. Cook, John F. Corcoran, Michael L. Corp, Catherine A. Diviney, Lindsey Helmer Hazelton, Joseph T. Mancuso, Wendy A. Marsh, John T. McCann, Walter L. Meagher, Jr., John L. Murad, Jr., Timothy P. Murphy, Alan J. Pierce, John G. Powers, Steven R. Shaw and Doreen A. Simmons.**



Cora A. Alsante has also been selected as a 2020 *The Best Lawyers in America* "Lawyer of the Year" in the Syracuse, New York metropolitan area for Trusts &

Estates. **Janet D. Callahan** was selected as a 2020 *The Best Lawyers in America* "Lawyer of the Year" in the Syracuse, New York metropolitan area for Products Liability Litigation - Defendants.

The Best Lawyers in America is a ranking publication that compiles lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. To learn more about this ranking publication, visit bestlawyers.com.

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

LYNCH JOINS EMPIRE ADVOCATES

Tom Lynch, consultant, has joined Empire Advocates, LLC, a non-legal consulting services subsidiary of Barclay Damon LLP, where he advises on government relations, public relations, and lobbying for NYS clients in the energy, utility, and telecommunications industries. He primarily focuses on helping clients navigate the Climate Leadership & Community Protection Act and other energy policy issues related to battery storage, siting, and reducing greenhouse gases. Lynch is based in the Albany office.

Lynch previously served as the director of government affairs at the New York State Energy Research and Development Authority (NYSERDA) for 12 years, where he was a member of the executive team and managed the intergovernmental affairs and legislative program. In that position, he cultivated relationships with state agencies and authorities such as the Empire State Development Corporation (ESDC), the New York Power Authority (NYPA), the New York Public Service Commission (PSC), the Governor's office, and others.

Prior to NYSEERDA, Lynch spent 15 years working in the NYS Legislature, including serving as chief of staff and legislative director for former assemblyman Paul Tonko and serving on the Bill Drafting Commission. While working for Tonko, he helped enact several significant pieces of legislation, including Article 10, Power for Jobs, the Energy Consumer Protection Act, the NY College Savings Program, and Timothy's Law.



Bond Announces 11 Attorneys Named in 2019 Upstate New York Super Lawyers Rising Stars

Bond, Schoeneck & King is pleased to announce 11 of the firm's Syracuse attorneys have been recognized in the 2019 Upstate New York Super Lawyers Rising Stars list. Attorneys were selected by their peers from among the top up-and-coming lawyers, defined as 40 years of age and younger, or in the practice of law for less than 10 years.

- Recognized as Rising Stars in Syracuse:
- **Blaine T. Bettinger** - Intellectual Property
 - **Stephanie M. Campbell and James P. Wright** - General Litigation
 - **Nicholas P. Jacobson** - Employment Litigation: Defense
 - **Scott R. Leuenberger** - Business / Corporate

- **Liza R. Magley** - Civil Litigation: Defense
- **Daniel J. Pautz** - Business Litigation
- **Kate I. Reid** - Schools & Education
- **Amy G. Rhinehardt** - Real Estate
- **Katherine R. Schafer** - Employment and Labor
- **Brendan M. Sheehan** - Securities Litigation

Bond, Schoeneck & King PLLC is a law firm with 250 lawyers serving individuals, companies, non-profits and public sector entities in a broad range of practice areas. Bond has eight offices in New York State as well as offices in Naples, Florida and Kansas City.

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Barclay Damon Participating in National Pro Bono Celebration Week

In honor of National Pro Bono Celebration week from October 20 to October 26, Barclay Damon's Buffalo, Rochester, Syracuse, Albany, and Boston offices will highlight their respective pro bono work with the Erie County Bar Association Volunteer Lawyers Project, the Volunteer Legal Services Project of Monroe County, the Volunteer Lawyers Project of Onondaga County, the Albany Law School Community Development Clinic, and Mass Legal Answers Online on the firm's Facebook, LinkedIn, and Twitter accounts. An employee giveaway and contests will also be held in the firm's offices.

"National Pro Bono Celebration Week gives us the opportunity to acknowledge the work we've done with amazing community partners and to reaffirm our deeply held commitment to advocating for those struggling with economic and social barriers who typically lack access to systems that can help them meet their legal needs," Heather Sunser, the firm's pro bono partner, said. "I am proud to be part of a law firm where each attorney is willing to donate their

time and talent to help those who need it most."

Through its multi-award-winning pro bono program, Barclay Damon dedicated more than 3,500 hours of time valued at nearly \$1 million to pro bono efforts in 2018, with each of the law firm's full-time attorneys participating for the second year in a row. In 2018, attorneys actively participated in firm-sponsored family court clinics, litigated civil rights violations, drafted wills for veterans, assisted with clemency applications, and provided online legal aid through initiatives such as the American Bar Association's Free Legal Answers program. They also helped clients handle legal matters involving many of today's critical issues, including immigration, housing, women's rights, prisoners' rights, and community building and economic development.

The firm's dedication to pro bono work has been recognized with numerous honors, including being named a Free Legal Answers™ Firm Honoree by the New York State Bar Association. In

January, Barclay Damon was additionally honored as an Empire State Counsel Honoree by the NYSBA at its annual Justice for All Luncheon for the third year straight. Among other accolades, Barclay Damon has also been ranked the number one firm for pro bono service in Western New York by Buffalo Law Journal.

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 about 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.

COUGHLIN JOINS BARCLAY DAMON

Barclay Damon announces Andrew Coughlin, associate, has joined the firm. Coughlin is based in the Syracuse office.

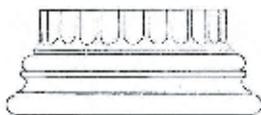
Coughlin is Barclay Damon's first cross-practice associate, assisting with matters across all practice areas and industry teams. Prior to Barclay Damon, he held a position as a law clerk in the DC Superior Court, serving as a legal adviser to 14 judges. During the clerkship, Coughlin researched, drafted, and finalized orders and opinions after advising senior judges on complex civil and criminal legal issues.

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 approximately 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.

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PROCOPIO JOINS FIRM



Cohen Compagni Beckman Appler & Knoll, PLLC (CCB Law) is pleased to announce that **Taylor L. Procopio** has joined the firm as an attorney in the Litigation and Commercial Real Estate Practice Groups.

Prior to joining CCB Law, Taylor was a litigation associate at Smith Sovik Kendrick & Sugnet, P.C., where she handled litigation matters involving medical malpractice claims, labor and employment disputes, and personal injury cases. Before moving back to Syracuse, Taylor was a commercial real estate associate at Fried, Frank, Harris, Shriver & Jacobson, in New York City, where she focused primarily on drafting and negotiating purchase and sale agreements, lease agreements, and joint venture agreements for clients.

Taylor is a 2017 graduate of Fordham University School of Law. As a law student, she served as a research assistant in the Leitner Center for International Law and Justice, where she assisted in not only the research for, but also the drafting of articles centered on the illegal ivory trade in Africa and the country's anti-poaching laws and efforts. Taylor was a staff writer for the Fordham Urban Law Journal. She also volunteered with the Domestic Violence Action Awareness Center as an attorney-advocate for victims of domestic violence throughout her law school career. Taylor earned a Bachelor of Science in Newspaper and Online Journalism from the S.I. Newhouse School of Public Communications at Syracuse University in 2014, where she graduated summa cum laude.

CCBLaw Attorneys Listed in 2020 Best Lawyers, 2019 Super Lawyers, and Martindale-Hubbell



Cohen Compagni Beckman Appler & Knoll, PLLC ("CCBLaw") is pleased to announce that its attorneys have been recognized in the 2020 U.S. News & World Report – Best Lawyers "Best Law Firms" edition, 2019 Super Lawyers, and Martindale-Hubbell rating services.

Best Lawyers has designated CCBLaw as the Top Listed in Syracuse in Healthcare Law and also recognized the following CCBLaw attorneys individually:

- **Stephen H. Cohen** – Healthcare Law and Employee Benefits (ERISA) Law
- **Michael J. Compagni** and **Marc S. Beckman** – Healthcare Law
- **Andrew M. Knoll** for Litigation – Healthcare Law
- **Laura L. Spring** for Litigation – Labor and Employment Law

In addition, CCBLaw attorney **Marc S. Beckman** has been selected as **Best Lawyers' 2020 Lawyer of the Year** for Healthcare Law.

Super Lawyers has recognized these CCBLaw attorneys who practice in the following areas:

- **John R. Appler** – Business Law and Commercial Real Estate
- **Marc S. Beckman** – Healthcare Law, Business Law and Commercial Real Estate

- **Stephen H. Cohen** – Healthcare Law, Business Law, ERISA and Employee Benefits
- **Michael J. Compagni** – Healthcare Law, Business Law, Commercial Real Estate and Banking Law
- **Bruce A. Smith** – Healthcare Law, Business Law and Real Estate Law
- **Laura L. Spring** – Labor and Employment Law, Healthcare Law, Professional License Defense and Litigation
- **Bruce E. Wood** – Healthcare Law, Business Law and Real Estate Law

Super Lawyers has also recognized CCBLaw attorneys **Anastasia M. Semel** and **Kyle R. Sutliff** as Rising Stars in 2019. Anastasia practices in the areas of Commercial Litigation and Healthcare Law. Kyle practices in the areas of Healthcare Law and Business Law.

Martindale-Hubbell has awarded **Stephen H. Cohen, Marc S. Beckman, Andrew M. Knoll, and Bruce A. Smith** their *AV Preeminent* status for the highest level of Professional Excellence for 2019.

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Wayne Bodow, CLTC



I am a Financial Professional. After 40 years of practicing law, I retired from my law practice. I no longer provide legal advice nor offer legal services.

I discovered that I prefer an active work lifestyle that now enables me to help others.

Ask yourself this important question.

"What is important about money to you?"

I listen. I then guide discovery options. Together we can find solutions and strategies to help achieve goals for yourself and or your clients.

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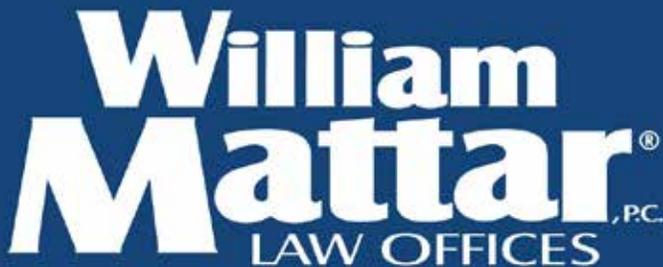
Gale Gale & Hunt, LLC seeks an attorney with good people skills and an organized mind. Immediate opportunity for hands on experience, drafting motions, attending depositions and meeting with clients. Interested candidates, kindly submit your resume with cover letter, transcript and writing sample to jobs@gghlawoffice.com.

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Nixon Peabody is seeking an associate to join our Labor & Employment Group in our Rochester office. To learn more, and to apply online, please visit our website at <http://www.nixonpeabody.com/careers>. Nixon Peabody LLP is an Equal Opportunity / Affirmative Action Employer. Disability / Female / Gender Identity / Minority / Sexual Orientation / Veteran.

THE FAMILY OF CRAIG TYFAIR SEEKS HIS LAST WILL & TESTAMENT

Did you craft a Last Will and Testament for Craig A Tyfair? Are you the recipient of the files of the lawyer who might have? His family is seeking to locate those documents. Mr. Tyfair was born March 30, 1943 and resided at 8307 Sandra Ave., Cicero, NY 13039. Mr. Tyfair retired from Henderson & Johnson Construction, 918 Canal St., Syracuse and belonged to the Carpenters Union. If you have information regarding this matter, please contact his eldest daughter Tammy Johnson, 3660 Sailfish Lane, Baldwinsville, NY 13027. Mobile, 315-663-7632, alternate contact 315-409-4384.



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Attention: Lisa M. Reedy

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.

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



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.



OCBA CONTINUING LEGAL EDUCATION

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Conference: Advanced Topics in Effective Representation of Vulnerable Populations

Tues – Thurs, Nov. 12-14, 2019



In partnership with the **Legal Project of Vera House, Inc.** this conference will help you represent your clients in a more trauma-informed and client-centered way. You will learn best practices for working with

vulnerable populations, including those who have experienced trauma or with limited English proficiency. The last day of the conference gives you tools to build resiliency and strength so you may represent your clients with compassion without feeling traumatized yourself, becoming complacent, or burning out.

Tuesday, Nov. 12 • 1 to 4 p.m. • MCLE 3.0 • Downtown Syracuse



Accommodating Language Barriers: Providing Effective Representation for LEP Clients

Courts have a **mandate** to accommodate those with Limited English Proficiency (LEP) and provide interpretation/translation services to all who appear before a judge; find out the rules!

Wednesday, Nov. 13 • 9 a.m. to 12:30 p.m. • MCLE 4.0 • Downtown Syracuse



What Every Lawyer Needs to Know about Trauma | Learn how trauma changes the brain and how to engage with clients who've experienced trauma.

Wednesday, Nov. 13 • 1 to 4 p.m. • MCLE 3.0 • Downtown Syracuse



Childhood Trauma, Mental Illness, Substance Abuse; Historical Trauma | This training answers a variety of questions concerning Adverse Childhood Experiences, Mental Illness and Trauma and what constitutes Historical Trauma.

Thursday, Nov. 14 • 8:30 a.m. to 2 p.m. • MCLE 4.5 • Onondaga Cty Community College



The Age of Overwhelm

Best-selling author Laura Van Dernoot Lipsky provides insight into what it means to be overwhelmed in our daily lives, what it looks like and how to recognize it in ourselves, loved ones & clients. She offers strategies to deal with systematic oppression and introduces us to Liberation Theory.

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