SEPTEMBER 2023 VOL.68 EDITION 7

THE BAR REPORTER

The Newsletter of the Onondaga County Bar Association

In this issue

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.

In Memoriam

Deborah Kenn
Robert Liegel
Michael Crough
Donald Porter
Rosalind W. Johnson
Hon. Rosemary Shankman Pooler

Upcoming Events

Thursday, October 5, 2023	An Evening to Celebrate New 5th J.D. Administrative Judge the Hon. Deborah Karalunas, 5 to 7 p.m., WCNY, 415 W. Fayette St., Syracuse, $25 per person, register **here**.
Tuesday, October 10, 2023	Breakfast at the Bar, 8 to 9:30 a.m., Salt City Coffee & Bar, 484 S. Salina Street, Syracuse
Thursday, October 12, 2023	VLP of Central New York Casino Night, 6 to 8 p.m., Rosamond Gifford Zoo
Monday, October 16, 2023	The Annual Red Mass, 12:00 p.m., Cathedral of the Immaculate Conception, 259 East Onondaga Street, Syracuse
Wednesday, October 18, 2023	CLE | Eviction Basics & Tenants' Rights, 1 to 3 p.m. via ZOOM, Legal Services Personnel and those who'll volunteer for a Landlord/Tenant Court Clinic attend for free, only $25 for all others. Register **here.**
Thursday, October 26, 2023	146th Distinguished Lawyer Celebration and Ruger Centennial Award Presentation, 5 to 7:30 p.m., Persian Terrace/Marriott Syracuse Downtown, $65/person, $500 Tables of 8. Register **here**.

TABLE OF CONTENTS

The 1,200-member Onondaga County Bar Association was founded in 1875. Among its purposes are: to maintain the honor and dignity of the profession of law; to promote suitable reforms and necessary improvements in the law; to facilitate the administration of justice; and, to elevate the standards of integrity, professional competence, and courtesy in the legal profession.

From the President

Dear Members,

I hope everyone had a wonderful summer and are enjoying their fall routines. We certainly have an exciting time ahead of us! There are many things to celebrate, recognize, and reflect upon as we approach the holiday season.

On October 26th, please join our community at the 146th Distinguished Lawyer celebration and Ruger Centennial Award presentation. In addition to celebrating Susan Katzoff as the 2023 Distinguished Lawyer, this year we recognize Hon. James P. Murphy with the William C. Ruger Award. Judge Murphy is only the 12th recipient of this award. This will be a wonderful evening honoring our recipients and socializing with friends and colleagues. We encourage all of our members to attend and ask that attorneys and firms consider sponsoring this event.

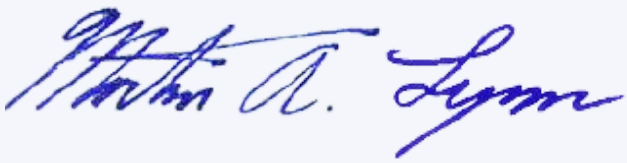
Together with the Central New York Women's Bar Association, we are hosting an evening to celebrate and recognize Hon. Deborah H. Karalunas for her appointment as Administrative Judge of the 5th Judicial District. Please join us on October 5th at WCNY.

We hope to see all of our members at these wonderful events this fall!

We also want to congratulate Judge DelConte and Judge Fogel. After serving our legal community throughout the 5th Judicial District, Hon. Scott J. DelConte was elevated to the Appellate Division, Fourth Department. We congratulate Judge DelConte and wish him continued success in Rochester. We also congratulate Hon. Danielle M Fogel, a former OCBA president and longtime supporter, on her appointment as the Supervising Judge of the Supreme Courts for the 5th Judicial District.

We have all been thinking of Hon. Rosemary S. Pooler and her family over the last several weeks. From a practicing attorney in Syracuse, to a Supreme Court Justice in Onondaga County, to a Justice on the United States District Court of Appeals for the 2nd Circuit, she was a trailblazer for women on the bench (and all lawyers and jurists) and was a supporter of OCBA throughout her career. She received the Ruger Award in 2009. Our community will miss her.

Thank you for your support of OCBA!



Martin A. Lynn, Esq.

The 146th Distinguished Lawyer Celebration and Ruger Centennial Award Presentation of the Onondaga County Bar Association

Our Ruger Award Honoree

Hon. James P. Murphy

Deputy Chief Administrative Judge for the NYS Courts Outside New York City

Our 2023 Distinguished Lawyer

Susan R. Katzoff, Esq.

Corporation Counsel, City of Syracuse

Join us for the Bar Association's biggest night of the year when we celebrate Ruger Award Honoree the Hon. James P. Murphy and 2023 Distinguished Lawyer Susan R. Katzoff, Esq. for their uncompromising integrity, commitment to our profession, and dedication to equal access to justice for all.

Thursday, October 26, 2023

5 - 7:30 p.m.

The Persian Terrace

Syracuse Marriott Downtown

Cocktail Reception | Food Stations

$65/person | Table of 8 $500

Register online at www.onbar.org

Sponsorships available.
Contact OCBA's
Jeff Unaitis at 315.471.2667

REGISTER

Our 2023 Ruger Centennial Award Honoree

Hon. James P. Murphy

The Onondaga County Bar Association Board of Directors is pleased to announce the selection of the Hon. James P. Murphy as recipient of the William C. Ruger Centennial Award, reserved for recognition of singularly outstanding achievement in jurisprudence and devotion to upholding the principles of our system of justice.

In June, Judge Murphy became the Deputy Chief Administrative Judge for the Courts Outside New York City, supervising the operations of all courts in the Third through Ninth Judicial Districts, with 640 State-paid judges and 6,000 non-judicial employees in 57 counties.

Judge Murphy began his legal career after graduating from the Syracuse University College of Law at the Onondaga County District Attorney's Office as an Assistant District Attorney. In 1987, he became an associate with the law firm of O'Hara & Hanlon and in 1992, returned to public service as a part-time Assistant District Attorney. In 2000, he was elected to the Onondaga County Legislature and served three terms as a Legislator, chairing the Ways & Means Committee from 2003-04.

In 2004, he was elected to his first term as New York State Supreme Court Justice in Onondaga County, serving as the Supervising Judge for the Town and Village Courts from 2007 until 2019, overseeing 210 town and village judges throughout the Fifth Judicial District. In 2018, he was re-elected to a second term as New York State Supreme Court Justice.

In 2019, he was appointed as the Administrative Judge for the Fifth Judicial District. His guidance and leadership through the pandemic kept the courts operational while maintaining a significant focus on access to justice for all.

Judge Murphy has always demonstrated a commitment to the bench and bar alike. He has served on the Board of Directors for the Onondaga County Bar Association from 2013-2018 and has been an ex officio member since 2022. Judge Murphy has long been a member of the OCBA Executive Committee, holding many different titles throughout the years, including as President from 2017-2018. That same year, Judge Murphy was also a Director for the Onondaga County Bar Association Assigned Counsel Program, Inc. and worked on overhauling the structure of the Assigned Counsel Program into what it is today.

We look forward to celebrating Judge Murphy's achievements at our Distinguished Lawyer Celebration on October 26.

Celebrating Our 2023 Distinguished Lawyer

The Onondaga County Bar Association Board of Directors is pleased to announce the selection of Susan R. Katzoff, Esq. as its 2023 Distinguished Lawyer Honoree.

Katzoff has had a distinguished career in both the public and private sectors and since March 2022 has served as Corporation Counsel for the City of Syracuse, where she provides counsel and oversight on all matters of municipal law including contracts, property disposition, litigation and governance.

At the law firms of Hiscock Barclay (now Barclay Damon) and then Bousquet Holstein, where she remains Of Counsel, she demonstrated her commitment to pro bono and diversity, equity and inclusion initiatives with significant leadership roles in those areas at each firm.

In 2019, Katzoff became President of the Board of Directors of the Volunteer Lawyers Project of Central New York and led that organization through the worst of the pandemic, devoting much personal time to helping the agency plan, and then work remotely during those extraordinarily challenging years. She is also a member of the Gifford Foundation Board of Trustees.

Her practice expertise lies with public and quasi-public entities including industrial development

Susan R. Katzoff, Esq.

agencies, local development corporations and port authorities in public finance transactions involving the issuance of tax-exempt and taxable obligations as well as economic development incentives.

Katzoff obtained her Bachelor's Degree in Communications and English from SUNY Albany, and her J.D. from St. John's University School of Law.

We look forward to honoring Susan Katzoff at our 2023 Distinguished Lawyer Celebration on October 26.

We are grateful to these 146th Distinguished Lawyer Celebration and Ruger Centennial Award Presentation sponsors

Presenting Sponsor

DEFRANCISCO & FALGIATANO, LLP
PERSONAL INJURY LAWYERS

Gold Sponsors

HANCOCK ESTABROOK LLP

BARCLAY DAMON LLP

LYNN Law Firm, LLP

MACKENZIE HUGHES LLP
Plain talk. Exceptional expertise.

Silver Sponsors

BOUSQUET HOLSTEIN PLLC

BOND SCHOENECK & KING ATTORNEYS

Sugarman LAW FIRM LLP

COSTELLO
COONEY & FEARON, PLLC

PORTER LAW GROUP
NEW YORK'S PERSONAL INJURY LAWYERS

bottarlaw

RUDDEROW LAW

Event Sponsors

FOGEL & BROWN P.C.

KenneyShelton LiptakNowak LLP
Attorneys

Supporting Sponsor

ccb LAW

MACKENZIE HUGHES LLP

Plain talk. Exceptional expertise.

Labor and Employment Attorney

Candidate will be responsible for traditional labor and employment matters, including unfair labor practice charges, labor arbitrations, advice and counsel to employers on labor matters, and employment agreements. Candidate will manage cases from inception through trial, including drafting memoranda, pleadings, and motions; collaborating with other attorneys about strategies; attending court appearances; taking and defending depositions; conducting discovery including eDiscovery; handling settlement negotiations; and conducting trials.

Candidate must be licensed to practice law in New York State; have 3+ years of handling employment litigation in state and federal courts and matters before the administrative agencies; have excellent research and communication skills; be able to function effectively in a team-oriented environment; demonstrate high level organizational skills for prioritizing workload; and demonstrate ability to absorb, process and understand new information rapidly.

We offer a competitive compensation package including a performance bonus. Salary range for the position is $90,000 to $140,000 depending on experience. Employee benefits include medical, dental, vision, 401k, and profit-sharing retirement plan.

To apply, please send your resume and cover letter to: humanresources@mackenziehughes.com

---

Litigation Attorney

Candidate will be responsible for managing cases from inception through trial, including drafting memoranda, pleadings, and motions; collaborating with other attorneys about strategies; attending court appearances; taking and defending depositions; conducting discovery including eDiscovery; handling settlement negotiations; and trials.

Candidates must be licensed to practice law in New York State; have 5+ years of litigation experience; have excellent research and communication skills; be able to function effectively in a team-oriented environment; demonstrate high level organizational skills for prioritizing workload; and demonstrate ability to absorb, process and understand new information rapidly.

We offer a competitive compensation package including a performance bonus. Salary range for the position is $90,000 to $140,000 depending on experience. Employee benefits include medical, dental, vision, 401k, and profit-sharing retirement plan.

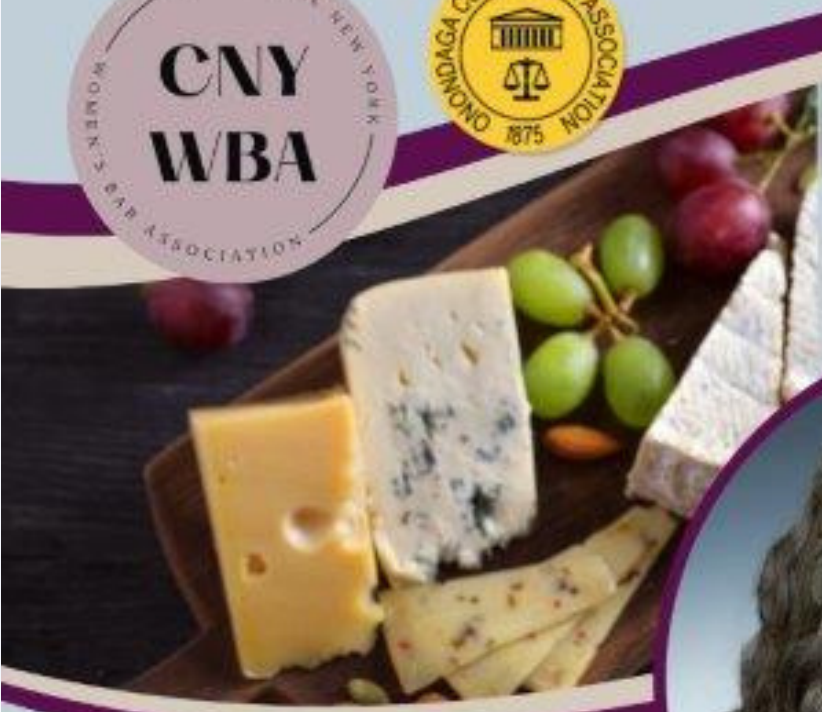
To apply, please send your resume and cover letter to: humanresources@mackenziehughes.com

An Evening to Celebrate CNY's New 5th JD Administrative Judge!

CNY WBA

CENTRAL NEW YORK WOMEN'S BAR ASSOCIATION

ONONDAGA COUNTY BAR ASSOCIATION 1875



Hon. Deborah Karalunas

Join Us!

5PM-7PM
$25 ticket
Free Parking
www.cnywba.com

OCTOBER | 05 TH | 2023

WCNY, 415 W. Fayette St, Syracuse

bottarlaw

LYNN Law Firm, LLP

Sugarman Law Firm LLP

HON. THERESE WILEY DANCKS
HON. BERNADETTE ROMANO-CLARK
HON. DANIELLE FOGEL

Syracuse University College of Law

Gillette & Izzo

GALE, GALE & HUNT, LLC

BOND SCHOENECK & KING ATTORNEYS

MEMBER SPOTLIGHT

Leah Witmer, Esq.

OCBA Member Leah Witmer, Esq. is the President of the Central New York Women's Bar Association and has just been reappointed to another five-year term as a Director and Chief Administrative Law Judge with the City of Syracuse's Municipal Violations Bureau. She was also recently recognized by the CNY Business Journal in its 40 Under Forty designation.

Are you a Central New Yorker? Where'd you go to college/law school?

I grew up in Northeastern Pennsylvania and spent my childhood attending Syracuse basketball and football games. I went on to be a Fighting Violet attending New York University (NYU) for undergrad where I majored in Psychology and minored in Sociology and Italian. NYU did not have a football team, so I continued rooting for the Orange throughout college watching them play in the Big East Tournament at Madison Square Garden. I then attended Syracuse University College of Law and went back to watching games at the Dome. I am now proud to call Syracuse home and live in the Meadowbrook neighborhood with my husband, three children and dog.

Tell us about your lawyer journey, your career. What kind of law do you practice, or have practiced?

I just concluded my first five-year appointment with the City of Syracuse as the Director and Chief Administrative Law Judge of the Municipal Violations Bureau (MVB) and was reappointed to another five-year term. The MVB encompasses the Bureau of Administrative Adjudication (BAA) and Parking Violations Bureau (PVB) which handle the adjudication of tickets issued for non-compliant property code violations, parking violations and sanitation violations. Prior to joining the City of Syracuse I was a Supervising Attorney for the Civil Program at Frank H. Hiscock Legal Aid Society. I have focused my legal career on civil litigation including state/local property maintenance code; zoning law; general municipal law; vehicle and traffic law; health and sanitation matters; foreclosure defense; tenant housing matters; family law; matrimonial law; and unemployment insurance benefits.

Your work with the City of Syracuse must give you insight into our neighbors and neighborhoods. What have you learned about the city and its denizens that you didn't know before?

I have been privileged to develop the City's Bureau of Administrative Adjudication after the state and local laws were enacted enabling Syracuse to create a BAA in 2018. Administrative law is critical to modern governments and Syracuse is at the forefront of municipalities across NYS streamlining the adjudicative process for non-compliant property code violations to ensure safe and healthy housing for all residents. The process also provides both property owners and the Department of Code Enforcement with an opportunity to effectively and efficiently resolve non-compliant property code violations

Continued from previous page

On June 20th you were installed as the President of the Central New York Women's Bar Association. What does that mean to you? What would you like to share about what is ahead for the CNYWBA?

It has been such an honor to join the incredible ranks of Past Presidents and serve as the President of the Central New York Women's Bar Association. This year, our theme, "Dimensions of Wellness," will provide members with an opportunity to explore and engage in wellness practices and offerings in and around the City of Syracuse while highlighting and supporting local MWBE's.

So many of us are juggling demanding jobs, professional and community commitments as well as friends and families that it's essential to step back and ensure we are taking time and equipping ourselves with the tools to manage it all. An Introduction to Wellness Basics is what we plan to strive for this term - giving members a taste of what is available in our community. So far, we have enjoyed making desktop zen gardens at our Installation with Right Mind Syracuse, explored the power of affirmations through stickers curated by local craft vendors and are planning a book club with Parthenon Books.

As legal professionals, occupational wellness is of the utmost importance. We will continue to provide robust and applicable learning and training opportunities to our members. Vera House and the Volunteer Lawyer Project of CNY, Inc. provided a Domestic Violence CLE for members interested in volunteering at the Vera House - Monday Night Legal Clinic. We have our Women in Medicine Law Dinner with SUNY Upstate Women in Medicine event next month. We are also planning events around book banning and abortion laws. We welcome members to reach out to us with other ideas and look forward to an exciting term.

October 5th is a big event where an important member of the CNYWBA is being honored for her commitment to her profession and recognized as a leader in the NYS Unified Court system – what does that achievement mean to the Women's Bar?

The CNYWBA is delighted to celebrate the Honorable Deborah J. Karalunas as the Fifth Judicial District Administrative Judge. Judge Karalunas has been a longstanding member of the CNYWBA having served as President from 2003-2004. While she was no doubt busy in the years following her Presidency, having joined the bench in 2002, she has always found time to serve the organization and support the organization's lawyers such as myself. Judge Karalunas embodies all the characteristics encompassed in the CNYWBA mission:

> ***To promote justice for all, regardless of sex, in all phases of the study, practice, and application of the law, to ascertain and advance the social, economic, and legal status of women through law, to expand opportunities for women for advancement in the field of law, and to raise the level of competence and integrity in the legal profession.***

The New York State Judicial Committee on Women in the Courts 2020 Gender Survey recognized that while the treatment of women in our court system has improved, "significant areas of bias and untoward treatment in our court system still exists." Women are still greatly underrepresented in positions of leadership in courts, despite having comprised over 50% of law school graduates for more than 30 years. With the appointment of Judge Karalunas as the first female Administrative Judge for the Fifth Judicial District we continue in our path to equity and equality in our courts. We invite to join us in celebrating on Thursday, October 5th from 5-7pm – more details can be found at cnywba.org.

The Practice Page

LAW CLARIFIED ON PROXIMATE CAUSE OF NEGLIGENT SECURITY

Hon. Mark C. Dillon *

Judicial departments within the state differed on a salient point of law regarding proximate cause in negligent security cases.Recently, the Court of Appeals resolved these differences in Scurry v. NYCHA and Estate of Murray v NYCHA, 39 NY3d 443, jointly decided on May 23, 2023.Both cases were similar, as they involved mortal crimes in NYCHA buildings where there were alleged defective door locks permitting intruders' with criminal intent easy access into the premises.One was the death of a plaintiff's decedent by flammable immolation. The other was by a gang-related shooting. The stakes in these cases are understandably high. Negligent security cases against landowners are not uncommon, rendering the Scurry/Murphy holdings noteworthy for the bar.

As a general matter, property owners have a duty to take at least minimal precautions to protect tenants from foreseeable harm, including harm that may arise from the criminal conduct of third persons (Burgos v Aqueduct Realty Corp., 92 NY2d 544, 548). Negligence includes the separate concepts of duty and foreseeability --- once a duty is found to exist, foreseeability determines the scope of the efforts that must reasonably be undertaken to fulfill the duty (Maheshwari v City of New York, 2 NY3d 288, 294). A tension naturally exists when criminal conduct occurs within a premises --- it might arguably be an intervening cause severing the nexus between an occurrence and an injury, or alternatively, be criminal conduct that is foreseeable as to expose the landowner to potential liability (Nallan v Helmsley-Spear, Inc., 50 NY2d 507, 520).Liability may exist where intervening acts are a natural and foreseeable consequence of circumstances created by the defendant, but not where the acts are not foreseeable (Derdiarian v Felix Constr. Corp., 51 NY2d 308, 315).

That all said, the First Department has had a long line of cases distinguishing between "targeted" criminal acts against a particular victim within a premises, versus opportunistic crimes at a premises against random victims. If a crime is targeted against a specific person such as murder, the First Department held that the proximate cause between an occurrence and an injury is essentially broken by the intervening criminal event, on the theory that no amount of building security can foreseeably prevent a planned and targeted crime (Estate of Murphy v NYCHA, 193 AD3d 503 [1st Dep't. 2021]; see also Roldan v. New York City Hous. Auth., 171 AD3d 418, 419; Estate of Faughey v New 56-79 IG Assoc., L.P., 149 AD3d 418, 418; Flynn v Esplanade Gardens, Inc., 76 AD3d 490, 492; Cynthia B. v 3156 Hull Ave. Equities, Inc., 38 AD3d 360; Flores v Dearborne Mgt., Inc., 24 AD3d 101, 101-02; Buckeridge v Broadie, 5 AD3d 298-300; Cerda 2962 Decatur Ave. Owners Corp., 306 AD2d 169, 169-70; Rivera v New York City Hous. Auth., 239 AD2d 114, 115; Harris v New York City Hous. Auth., 211 AD2d 616, 616-17). Under many of those cases the defendant landlords were entitled to summary judgment. By contrast, where the criminal act was perpetrated in the First Department in a "random" manner, the causal nexus between the plaintiff's injury and the landowner's duty of care raised triable issues of fact about the adequacy of the building security (Gonzalez v Riverbay Corp., 150 AD3d 535, 536 [sexual assault by perpetrator who entered building by "piggybacking" a tenant who entered at the door using a key]; Gonzalez v 231 Ocean Assoc., 131 AD3d 871, 871-72 [random intruder in defendant's building]; Foreman v B&L Props. Co., 261 AD2d 301 [random sexual assault in elevator with evidence of broken front door lock]).

Continued on the next page.

The Second Department took an entirely different approach to the issue in Scurry v NYSHA, 193 AD3d 1 (2nd Dep't. 2021). The Second Department specifically rejected the distinction between "targeted" and "random" attacks at a premises for legally defining issues of foreseeability and the reasonable security measures that should be undertaken by landlords. This is particularly true, said the court, as there may be more than one proximate cause of an occurrence such as, in Scurry, the criminal intent of the perpetrator and the premises' broken door lock facilitating the crime. Therefore, in the Second Department, a landlord could not receive summary judgment in its favor by merely establishing that a crime at a premises was "targeted," but rather, had to prove prima facie that any alleged security deficiencies were not a proximate concurrent cause of the occurrence (Scurry v NYCHA, 193 AD3d at 10).

The Third and Fourth Departments do not appear to have directly addressed the dichotomy between "targeted" and "random" crimes, if any such dichotomy should even be recognized. The closest any Third Department case came to the issue was in Haire v Bonelli, 107 AD3d 1204 (2013). There, the plaintiff was a victim of a 2005 mass shooting by an individual at a shopping mall using a semiautomatic weapon. The Third Department held that such an event was not reasonably predictable or foreseeable. As such, the reasonableness of the shopping mall's security measures did not need to be reached given the difference between duty and foreseeability.

The Court of Appeals joined the appeals of Murphy from the First Department decided in 2021 with Scurry from the Second Department, also decided in 2021, for oral argument and a joint opinion. In a 6-0 opinion authored by Chief Judge Rowan Wilson (Judge Halligan not taking part), the Court of Appeals resolved the differences between the two departments in favor of the approach of the Second Department. The Court of Appeals held that the First Department's conclusion in Murphy, that the broken condition of the door lock at the premises would not have prevented a targeted attack, mistakes a factual determination for a legal one. In other words, the question of whether a targeted attacker's intent qualifies as a superseding cause of an occurrence is a matter of proximate cause and foreseeability that belongs to a trier of fact, rather than being a question of law for the court on summary judgment. This is now the law statewide.

For the record: There is no intramural competition between the judicial departments. The justices of each department render opinions that they each sincerely deem correct, and in the event of differences of opinion, genuflect to the ultimate determinations of the Court of Appeals that set forth statewide standards. The Scurry/Murphy opinion from the Court of Appeals is an example of how the statewide system "works" in practice, providing the bench and bar from Montauk to Buffalo with a uniform legal standard that will guide similar issues in the future. That role is clearly recognized by the Court of Appeals, as evidenced by that court's joinder of the Murphy and Scurry appeals and the publication of a joint opinion resolving the differences between the judicial departments on the issue presented. Well done.

Mark C. Dillon is a Justice of the Appellate Division, 2nd Dep't., is an Adjunct Professor of New York Practice at Fordham Law School, and is a contributing author of CPLR Practice Commentaries in McKinney's.

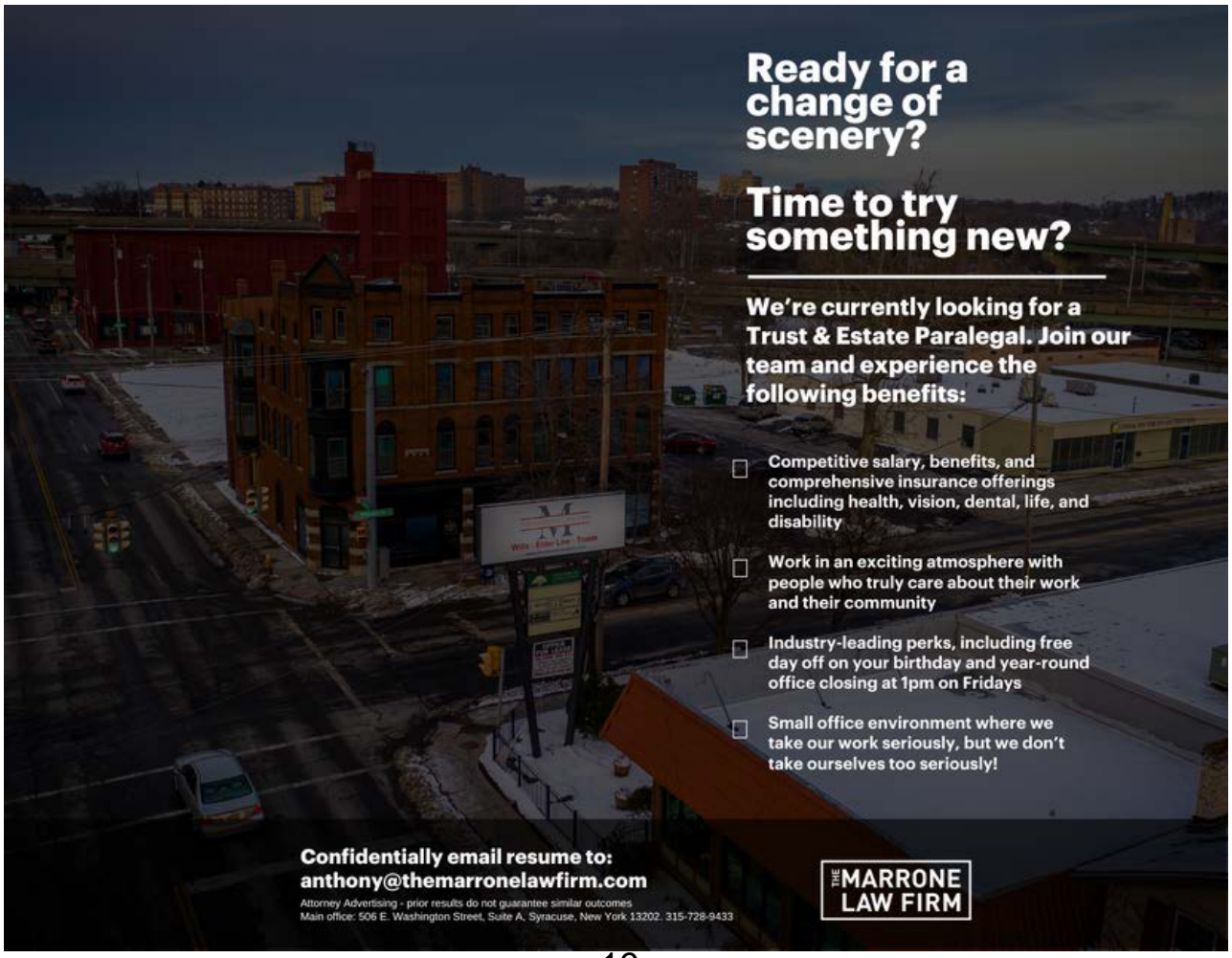
SHEATS & BAILEY, PLLC

www.theconstructionlaw.com

Associate Attorney & Of Counsel Attorney

Sheats & Bailey, PLLC, is seeking a commercial litigation associate attorney and one or more of counsel attorneys. Our practice serves all aspects of the design and construction industry. We represent developers, design-builders, contractors, suppliers, design professionals, contractor associations and all parties in the contracting chain. Within the industry our practice covers construction project management, contract negotiating and drafting, HR, corporate, labor relations and personnel law. We represent parties in all types of contract claims, real estate, mechanics liens, HR, labor and design professional litigation. Candidates must be admitted in New York State and should have at least five (5) years experience. Salary for associates and rate for of counsel will be commensurate with experience and book of business. Duties include research and writing, depositions, discovery, mediation and arbitration, motion practice. The associate/of counsel will work with our senior attorneys and train and grow in all aspects of commercial litigation.

Interested candidates should submit a resume and wring sample to: esheats@theconstructionlaw.com; jbailey@theconstructionlaw.com with a copy to tnoel@theconstructionlaw.com.



The OCBA
hears from people
in search of
wills and last testaments
of loved ones
when they discover
the lawyer who penned
those documents
has retired or is deceased.

Contact the OCBA to let us know
where your files may be forwarded
so we can help these callers
and lighten their load.

(315) 471-2667

It's a busy time at OCBA, but not too busy for some smiles!

ONONDAGA COUNTY BAR ASSOCIATION 1875

CASE SUMMARY CORNER

Summaries and Excerpts of Select Appellate Decisions

with a principle focus upon the New York Court of Appeals
and the Appellate Division, Fourth Department

Ken Tyler & Melissa Swartz
Cambareri & Brenneck

*Case captions in **red** denote decisions from the New York Court of Appeals. Ken Tyler & Melissa Swartz are attorneys with Cambareri & Brenneck in Syracuse. A substantial portion of their practice is devoted to appellate and other postconviction litigation. Questions/Suggestions are welcome sent via e-mail at ken@cambareribrenneck.com and melissa@cambareribrenneck.com.*

JUNE 2023

***People v Worley* (40 NY3d 129 [2023])** – offender's due process rights regarding SORA risk level determination.

Before a defendant convicted of a registerable offense is released from prison or otherwise discharged on their sentence, the sentencing court must determine his or her sex offender designation and risk level. As part of that process, the Board of Examiners of Sex Offenders issues own recommendations, and the court holds a hearing. Although the People may seek a determination differing from the recommendation submitted by the Board, the offender has a due process right to notice, at least 10 days before the scheduled hearing, of that request, with a statement setting forth the determinations sought by the People and the reasons for them (*Worley*, 40 NY3d at 134, quoting Correction Law § 168-n [3]). The point is to give the defendant notice and a meaningful chance to respond.

The Court of Appeals concluded that defendant was deprived of due process, and a new determination was warranted. At the hearing, the sentencing court concluded that defendant was properly scored as a presumptive level 2 risk based on relevant Guidelines considerations. But the court then imposed an upward departure to level 3, based upon reasons—his prison disciplinary record—of which defendant had no advance notice. He thus had no ability to contest that basis for departing upward to a level 3 designation, or marshaling any evidence that might persuade against it (*Worley*, 40 NY3d at 135-136).

***People ex rel E.S. v Superintendent* (__ NY3d __, 2023 NY Slip Op 03298 [June 15, 2023])** – SARA's school grounds condition applies to youthful offenders

Under the Sexual Assault Reform Act (SARA), a person "serving a sentence" and released on parole for an enumerated offense against a minor is prohibited from coming within 1,000 feet of school grounds (Executive Law § 259-c [14]).The Court held that, although the statute uses the phrase "serving a sentence," a person who is adjudicated a youthful offender for their commission of the offense is still subject to this "school grounds" condition.

People ex rel. Rivera v Superintendent (__ NY3d __, 2023 NY Slip Op 03299 [June 5, 2023]) – application of SARA "school grounds" condition does not violate Ex Post Facto Clause when applied to offenders whose crimes predated the 2005 amendments

In 1986, petitioner was convicted of two counts of second degree murder, two counts of attempted second degree murder, and one count of rape in the first degree. The convictions stemmed from an incident when, acting in concert with others, shot four people, killing two, and also raped one victim before shooting her three times (2023 NY Slip Op 03299, *1).

In 2019, he was granted an "open parole release date" set for May 23, 2019. Before release, a SORA was hearing was held, and petitioner was adjudicated a level three, sexually violent offender, subjecting him to the Sexual Assault Reform Act's provision that he may not live within 1,000 feet of a school (Executive Law § 259-c [14]). He was unable to find "SARA-compliant housing," and was thus held in custody beyond his open release date (id., *1-2).

Continued on the next page

Petitioner sought immediate release by filing a petition for a writ of habeas corpus. Applying the "intent-effects" test (*see Smith v Doe*, 538 US 84, 92 [2003]), the Court of Appeals concluded that the application of SARA—enacted in 2000 and expanded in 2005—to an individual whose offense predated the statute did not violate the U.S. Constitution's Ex Post Facto Clause's prohibition on retroactively increasing punishment for crimes (2023 NY Slip Op 03299, *3-5). The petitioner was required to show that SARA, which was undisputedly intended to be civil (rather than punitive), was in effect "so punitive either in purpose or effect as to negate the intention to deem it civil" (*id*., *3 [citation and ellipses omitted]). The most significant factor weighing against petitioner here was SARA's "rational connection to a nonpunitive purpose"—keeping level three sex offenders a safe distance away from schools and avoiding contact with minors while awaiting appropriate housing (*id.*, *7).Moreover, New York's school grounds condition is, relative to other state residency restrictions, "carefully tailored so as to burden" only two populations of offenders representing the "severest threat"—those who have "already bused children" and level three sex offenders convicted of an enumerated offense (*id.*, *8-9). Although recognizing that applying the school grounds condition as a prerequisite to petitioner's release "may result in harsh consequences," that fact alone did not make the statutory scheme "punishment" (*id.*, *10).

July 2023

Hart v City of Buffalo **(218 AD3d 1140, __, 2023 NY Slip Op 03984 [4th Dept 2023])** – even where a local law requires prior written notice as a precondition to suit for damages from a defective condition, Highway Law § 139 may permit such a suit without written notice if the defendant county had **constructive notice**; potential interdepartmental split.

Plaintiff was returning to her job at a courthouse owned by Erie County when her foot "went into a hole of deteriorated concrete in the sidewalk" next to a metal grate, causing her to fall and sustain injuries. She filed a notice of claim and then a negligence action against, inter alia, Erie County. Erie County answered that it did not receive prior written notice of the condition as required by a Local Law, and thereafter moved for summary judgment. Supreme Court granted the County's motion. Plaintiff appealed. The Fourth Department reversed.

As the Fourth Department explained, a local law (here, Local Law No. 3-2004 [3]) requiring prior written notice as a precondition to a suit alleging damages from a defective condition must be read in conjunction with Highway Law § 139 (2) to permit an action against the county based on *constructive notice* of the dangerous condition (*Hart*, 2023 NY Slip op 03984, *2). And, more centrally here, the Fourth Department held that the term "highway" as used in the statute applies to sidewalks (*id.*). Recounting various principles of statutory interpretation that apply in general, the Court explained why "highway" under Highway Law § 139 in particular encompasses sidewalks, including the text of relevant statutes and the existence of decisional law at the time of § 139's enactment which included sidewalks within the term highway (*id.*, *3).

Three additional points are worth noting. First, the Fourth Department expressly declined to adopt an apparently contrary position taken by the Appellate Division, Second Department, ostensibly creating an interdepartmental split:

> "We decline to follow the contrary interpretation advanced by the Second Department because, in our view, that interpretation is not persuasive (cf. Zash v County of Nassau, 171 AD2d 743, 744 [2d Dept 1991]). The Second Department reasoned that the omission of the word "sidewalk" from Highway Law § 139 (2) meant that the legislature did not intend to extend a county's liability for injuries resulting from [*4]defective sidewalks by allowing for constructive notice thereof. However, as previously discussed, that view of the statute is unwarranted because, at the time the legislature enacted Highway Law § 139 (2), it was established in decisional law—of which the legislature was presumed to be aware—that the generic term "highway" included sidewalks. Thus, there was no need for the legislature to alter the retained language of Highway Law § 139 in order to cover sidewalks. Moreover, the Second Department's view that the legislature

Continued on the next page

> intended to make a distinction between the law applicable to counties and that applicable to cities, towns, and villages (*see Zash*, 171 AD2d at 744) is belied by the legislative history establishing that the legislature intended to give the *same* powers and responsibilities to counties that were then provided to cities, towns, and villages (*see* Senate-Assembly Mem in Support, Bill Jacket, L 1982, ch 722). Lastly on this point, we note that if the term "highway" does not include sidewalks for purposes of the statute, then local county laws like Local Law No. 3-2004 that expressly require prior written notice of defective sidewalk conditions would arguably be inconsistent with the general law embodied in Highway Law § 139 (2), which, by its terms, authorizes counties to enact prior written notice requirements only with respect to defects in a "road, highway, bridge or culvert" (*see generally* NY Const, art IX, § 2 [c]; *Holt v County of Tioga*, 56 NY2d 414, 418 [1982]). Stated conversely, if the term "highway" is broad enough to include sidewalks for purposes of authorizing counties to limit their liability through prior written notice laws, the term must apply equally to the legislature's imposition of liability for defects of which counties have constructive notice."

Second, a nuance important to any appeal: a party cannot advance new arguments at the appellate court. The County argued that, irrespective of the "highway" issue, there had been no showing that the County was responsible for maintaining the street abutting the sidewalk where plaintiff was injured. The Fourth Department declined to take up this "alternative ground for affirmance" because the County "raises it for the first time on appeal" (*id.*, *4). Thus, even if the County established that it did not receive prior written notice, it did not show that it lacked constructive notice of the sidewalk defect; its motion for summary judgment should have been denied.

Third, the Court decided that some of its own prior cases were "wrongly decided" (*id.*, *5, citing *Scovazzo v Town of Tonawanda*, 83 AD3d 1600, 1601 [4th Dept 2011] and *Keeler v City of Syracuse*, 143 AD2d 518, 518-519 [4th Dept 1988]). Those cases held that a plaintiff could not raise "exceptions" to a municipal "prior written notice requirement" in opposition to a summary judgment motion where that "theory of liability" had not been pled in a notice of claim, complaint, or bill of particulars. These exceptions were not, the Fourth Department now recognizes, novel theories of liability because "the cause of action remains based on the municipality's breach of its duty to maintain the subject premises in a reasonably safe condition" (*id.*, *6).

***Greco v Syracuse ASC, LLC* (218 AD3d 1156, __, 2023 NY Slip Op 03987 [4th Dept 2023])** – Appellate Division addresses the novel question of standing in the contest of civil suit over a "data breach"

Plaintiff brought a putative class action for damages resulting from a third party's unauthorized access of personal data, stored on defendant's computer system (i.e., a data breach). The parties recognized that the case presented "the novel issue" of "what circumstances, specific to this context, create an injury that is 'sufficiently' concrete and non-speculative to constitute an injury-in-fact" and thus confer standing (*id.* at 1157).

The Court concluded that, under the facts alleged, plaintiff had not made out an injury-in-fact. "Perhaps most importantly," the Fourth Department observed, plaintiff had not alleged that the information access by the third party had been "misused in the over one-year period between the alleged data breach and the issuance of the trial court's decision" denying defendant's motion to dismiss (id. at 1158). Additionally, the third party allegedly accessed health data, but not data "more readily sued for financial crimes such as dates of birth, credit card numbers, or social security numbers," and plaintiff alleged no "direct harm flowing from the breach of defendant's electronic system" (*id.*).

Continued on the next page

Finally, the Fourth Department was unpersuaded by plaintiff's argument that she suffered an injury by virtue of having incurred the cost to purchase identity protection. Any harm from the breach was still conjectural, and a plaintiff "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending" (*id.* at 1158-1159, quoting *In re Practicefirst Data Breach Litig.*, 2022 WL 354544, *4 [WD NY Feb. 2, 2022]).

People v Ramos **(218 AD3d 1113 [4th Dept 2023]) –** murder conviction reversed based on appellate court's review of the evidence

This appeal from a murder trial is a clear reminder that, on an appeal, the Fourth Department is carefully reviewing the record for meaningful logical gaps in the evidence. The appellate courts enjoy an important factual review power and, here, the Court exercises it to overturn a jury verdict.

Ramos was convicted of second degree murder and weapon possession, based on evidence that he acted in concert with his codefendant, who shot and killed the victim in a bar. The codefendant-shooter's conviction was upheld no appeal. Here, however, the Fourth Department reviewed the evidence and concluded that that it did not support the jury's verdict convicting Ramos. A person is criminally liable for the conduct of someone else when, "acting with the mental culpability required for the commission" of the offense, he or she "solicits, requests, commands, importunes, or intentionally aids" the other (Penal Law § 20.00).

The People presented evidence that Ramos was "best friends" with codefendant, and that Ramos owned a white sedan in which he and codefendant were seen "shortly before the shooting" (*Ramos*, 218 AD3d 1113, 1114).The case was built in part on surveillance camera video: footage showed the car arriving at a corner a block north and west of the bar, parking out of view, and a person identified as codefendant walking to, and into, the bar (*id.*). Footage from after the shooting showed codefendant walking a block west and north, returning to where the car had parked (*id.*). But footage did *not* show Ramos getting into or out of the car, which was parked off camera, and the footage that did capture the car's movements was "pixelated to an extent that precludes a conclusive identification . . . as belonging to Ramos" (*id.*).

Likening this case to a similar one (*People v McDonald*, 172 AD3d 1900 [4th Dept 2019]), the Fourth Department concluded that Ramos' presence in the area, standing alone, was insufficient to convict him of murder and weapon possession; even if Ramos dropped off codefendant and picked him up near the scene, this was not enough to establish that he shared codefendant's intent to kill (*id.* at 1114-1115).

An added dimension: the People sought to buttress the case against Ramos with the testimony of a jailhouse informant (*id.* at 1115). He testified that Ramos "confessed to him that he planned and participated in the shooting with the codefendant for the purpose of seeking retribution for the victim's purported cooperation with law enforcement" (*id.*). According to the informant, Ramos told him, months after the shooting, that codefendant "deviated from the agreed-upon plan, causing [Ramos] to have to pick the codefendant up at a business that . . . is approximately six to eight blocks north of the bar where the shooting occurred, on a busy thoroughfare populated by businesses" (*id.* at 1116).

Reviewing the record closely, the Fourth Department found the informant's account to be "completely at odds with the video evidence establishing that the codefendant took an efficient, one-block circuitous route from the side street" where the white car parked, to the bar and then back to the car afterward (*id.*). Additionally, the "timing of the events" as they transpired was "too tight to permit" these sorts of "alternate routes" to have been taken, as the informant claimed, and it would have been an "irrational choice" for codefendant to run along "a busy thoroughfare several blocks away from the" white car (*id.*).Substituting it its own credibility determination, the Court concluded that the informant was not credible and reversed the judgment.

Continued on page 24

Retiring Attorney Transitioning Clients

Established Central New York Attorney, practicing privately for over 40 years in the Syracuse market, is seeking an Attorney or firm to assume his practice. Specializing in residential and commercial real estate transactions, estate planning and probate, landlord tenant proceedings and litigation, this sole practitioner has developed a strong reputation in the legal community and relationship with his clients.

This is an excellent and unique opportunity for an attorney or firm looking to grow their practice or establish a presence in the Central New York Region. This is not a sale. Retiring Attorney would consider acting of counsel to assist in the transition of his practice. Office contents and law library are negotiable.

Inquiries should be made to (315) 422-7138.

Civil Litigation Position Available

Pittsford, NY

The Law Firm of Janice M. Iati, P.C. is looking for a full-time, in office, attorney admitted in New York.

Our firm focuses on civil litigation. An Ideal candidate must possess excellent writing and researching skills. We offer a competitive salary, health & dental insurance, and 401(k).

Please send resumes and a writing sample to haultman@janiceiati.com.

All applications will be held in confidence.

HISCOCK LEGAL AID SOCIETY

JUSTICE For ALL

Join us for a free, one hour breakfast! Take a tour of our mission and vision through compelling stories from agency staff and past clients.

Support our work with a tax-deductible contribution at the conclusion of the program.

Giving is confidential and optional.

Register: givebutter.com/JFA2023

October 18, 2023 | 7:30 a.m.- 8:30 a.m
Drumlins | 800 Nottingham Road | Syracuse | New York | 13244

WE DEFEND. WE EMPOWER. WE COLLABORATE. WE PROMOTE JUSTICE FOR ALL.

REGISTER HERE

***People v Reid* (218 AD3d 1273 [4th Dept 2023])** – the defendant was tried and convicted on a charge for which he had not been indicted, requiring reversal.

Defendant, a level-one sex offender, was charged with a felony for failing to appear at a law enforcement agency to have provide a current photograph of himself for purposes of his registration. By statute, defendant was required to appear within 20 days of the third anniversary of his initial registration, and every three years thereafter, for an updated photograph (*Reid*, 218 AD3d at 1273; *see also* Correction Law § 168-f [2] [b-3]).

The problem in this case was that the indictment alleged that he committed the offense on an entirely different date than that proven at trial. Under the facts and based on the date of his initial registration, defendant may have committed the offense—failing to appear for his triennial photograph—on August 2, 2016. The trial evidence was sufficient on that point. But the indictment charged that defendant failed to appear on or about December 10, 2018. Given this "variance between the People's trial evidence and the indictment," and the lack of evidence that defendant failed to appear during the registration window in December 2018, defendant was "essentially tried and convicted on a charge for which he had not been indicted" (*id.* at 1275-1276).

Although the People contended that the crime was a "continuing offense" (i.e., that defendant continued to violate the statute requiring an updated photograph through December 10, 2018), the Fourth Department rejected that claim (*id.* at 1276-1277). Additionally, the Court recognized that, "except where time is a material ingredient of the crime the prosecution is not confined in its evidence to the precise date laid in the indictment, but may prove that the offense was committed at any time prior to the commencement of the prosecution and such proof does not constitute a material variance" (*id.* at 1276).Here, however, "the date *is* a material element of the crime" because the offense is for failing to appear "within the time periods provided for in" the Correction Law (*id.*, quoting Correction Law § 168-t).

***People v Lane* (218 AD3d 1152 [4th Dept 2023]) – a simple reminder about the scope of the record on appeal**

This case reminds us that parties on appeal cannot typically rely on matters not properly made part of the record. Defendant contended that his sentence should be reduced based on "post-conviction conduct while incarcerated," and he handed up "letters, memoranda, and report" by attaching them to his appellate brief. But the Fourth Department concluded that, "[b]ecause the documents in the appendix to defendant's brief are dehors the record and do not come within an exception to the general rule, they may not be considered on appeal" (*Lane*, 218 AD3d at 1154, quoting *People v Wilson*, 227 AD2d 994, 994 [4th Dept 1996]). Defendant also had not "sought to properly include the documents as part of the record on appeal" (*id.*, citing 22 NYCRR 1250.7 [d] [3] and *People v Chen*, 176 AD2d 628, 628 [1st Dept 1991]).

***People v Johnson* (218 AD3d 1347 [4th Dept 2023]) – scope of automatic discovery related to police personnel records**

For the last three years, much has been written at the trial court level about the scope of the prosecution's disclosure requirements as they concern police disciplinary records. Here, the Fourth Department held that the People did not fail to turn over the records to which defendant was entitled:

> "CPL article 245 requires the People to automatically disclose to the defendant 'all items and information that relate to the subject matter of the case" that are in the People's "possession, custody or control' (CPL 245.20 [1]; *see People v Bonifacio*, 179 AD3d 977, 977-978 [2d Dept 2020]). That includes evidence that tends to 'impeach the credibility of a testifying prosecution witness' (CPL 245.20 [1] [k] [iv]). The court properly denied the motion inasmuch as defendant was not automatically entitled to the entirety of a police officer's personnel file as impeaching material under CPL 245.20 (1) (k) (iv), but rather only to the extent that the information 'relate[d] to the subject matter of the case' (CPL 245.20 [1]). We conclude that there were no such personnel records here that were subject to automatic discovery" (*Johnson*, 218 AD3d at 1350).

Continued on the next page

While this straightforward analysis may have been sufficient to resolve defendant's specific appellate contention under the facts presented, it likely begs further questions in cases to come (*compare e.g. People v Hamizane*, 2023 NY Slip Op 23233, *4 [App Term 2d Dept July 13, 2023] ["Clearly, the disciplinary records of a potential police witness which were created in relation to a different case goes to the weight of the credibility of the witness and can be used for impeachment purposes. Impeachment evidence is not limited to what is related to the subject matter of the charges against a defendant"] [citation omitted]).

***People v Maull* (218 AD3d 1236 [4th Dept 2023]) – a CPL 440.10 hearing was warranted; police were apparently listening to privileged jail calls between defendant and his attorney, following which defendant was indicted for murder**

Defendant was being held at the county jail on bail jumping charges stemming from an underlying case from 2013. He spoke to his attorney on the underlying case by phone. Unbeknownst to defendant or the attorney, "at least three" of these calls were "intercepted and eavesdropped" by the county sheriff's office, including the lead investigator on an open murder case. On the calls, defendant and his attorney "seemingly discussed the murder case" (*Maull*, 218 AD3d at 1237)—in relation to which defendant was a suspect. Only after these eavesdropped calls was defendant indicted for murder; the lead investigator prepared notes memorializing the calls, and ultimately testified at trial. Defendant was convicted.

Cattaraugus County Court denied defendant's motion to vacate his judgment of conviction without a hearing. Finding law enforcement's apparent eavesdropping on privileged calls "alarming," the Fourth Department reversed County Court's order and remitted the case for a hearing on whether law enforcement violated his right to counsel, and whether defense counsel was ineffective for not seeking relief for the eavesdropping sooner. Although the ultimate question would be whether the eavesdropping "tainted" the People's evidence at trial, there was sufficient evidence to warrant a hearing on that issue:

> Specifically, we observe that the detective's notes about the phone calls create a strong inference that he was one of the individuals listening in. Thus, there is a question whether the eavesdropping tainted the People's case inasmuch as the detective was the lead investigator in the murder case, and ultimately testified at trial on the People's behalf. At the very least, a hearing on this issue could involve obtaining testimony from the detective to ascertain the circumstances and scope of the eavesdropping, and whether it led to evidence that was introduced at trial. Further, given the timing of the eavesdropping relative to the indictment—i.e., the calls were intercepted *before* defendant was charged in the murder case—a hearing is necessary to ascertain whether the people's decision to see the indictment was influenced by what law enforcement learned from the intercepted calls. Moreover, the purported impossibility of the eavesdropping by law enforcement—as the People expressly professed at sentencing—plainly raises factual questions about how, precisely, law enforcement was able to eavesdrop on the phone calls in question, and whether there were additional eavesdropping instances involving defendant and his counsel. In short, this is precisely the type of case where a factfinding hearing is appropriate to fully flesh out the seriously concerning allegations made by defendant.

Continued on the next page

***People v Maull* (218 AD3d 1236 [4th Dept 2023]) – a CPL 440.10 hearing was warranted; police were apparently listening to privileged jail calls between defendant and his attorney, following which defendant was indicted for murder**

Defendant was being held at the county jail on bail jumping charges stemming from an underlying case from 2013. He spoke to his attorney on the underlying case by phone. Unbeknownst to defendant or the attorney, "at least three" of these calls were "intercepted and eavesdropped" by the county sheriff's office, including the lead investigator on an open murder case. On the calls, defendant and his attorney "seemingly discussed the murder case" (*Maull*, 218 AD3d at 1237)—in relation to which defendant was a suspect. Only after these eavesdropped calls was defendant indicted for murder; the lead investigator prepared notes memorializing the calls, and ultimately testified at trial. Defendant was convicted.

Cattaraugus County Court denied defendant's motion to vacate his judgment of conviction without a hearing. Finding law enforcement's apparent eavesdropping on privileged calls "alarming," the Fourth Department reversed County Court's order and remitted the case for a hearing on whether law enforcement violated his right to counsel, and whether defense counsel was ineffective for not seeking relief for the eavesdropping sooner. Although the ultimate question would be whether the eavesdropping "tainted" the People's evidence at trial, there was sufficient evidence to warrant a hearing on that issue:

> Specifically, we observe that the detective's notes about the phone calls create a strong inference that he was one of the individuals listening in. Thus, there is a question whether the eavesdropping tainted the People's case inasmuch as the detective was the lead investigator in the murder case, and ultimately testified at trial on the People's behalf. At the very least, a hearing on this issue could involve obtaining testimony from the detective to ascertain the circumstances and scope of the eavesdropping, and whether it led to evidence that was introduced at trial. Further, given the timing of the eavesdropping relative to the indictment—i.e., the calls were intercepted *before* defendant was charged in the murder case—a hearing is necessary to ascertain whether the People's decision to seek the indictment was influenced by what law enforcement learned from the intercepted calls. Moreover, the purported impossibility of the eavesdropping by law enforcement—as the People expressly professed at sentencing—plainly raises factual questions about how, precisely, law enforcement was able to eavesdrop on the phone calls in question, and whether there were additional eavesdropping instances involving defendant and his counsel. In short, this is precisely the type of case where a factfinding hearing is appropriate to fully flesh out the seriously concerning allegations made by defendant.

AUGUST 2023

***Lavine v Glavin* (__ AD3d __, 2023 NY Slip Op 04290 [4th Dept 2023]) –** the requisites of a defamation claim

Plaintiff Lavine sought damages for allege defamation, based on statements made by Rita Glavin (an attorney for former Governor Andrew Cuomo) in a letter to the New York State Inspector General. In her letter, Glavin expressed concern that plaintiff—a member of the New York State Joint Commission on Public Ethics—and others were disclosing confidential information to media outlets. In her answer, defendant interposed a counterclaim under the anti-SLAPP statute (Civil Rights law §§ 70-a, 76-a). Glavin moved to dismiss the complaint, and her motion was denied. She appealed.

Continued on the next page

The Fourth Department agreed that plaintiff's defamation claim should have been dismissed; Glavin's statement in the letter to the Inspector General amounted to expression of "opinion . . . accompanied by a recitation of the facts upon which it is based" (*Lavine*, 2023 NY Slip OP 04290, *1). Glavin used phrases like "appear to be" and "[t]o the extent that there is evidence," while setting forth facts forming the basis of those allegations—the purpose of which was to urge the Inspector General to undertake an investigation.As the Fourth Department reminded, "[b]ecause 'falsity is a necessary element of a defamation cause of action and only 'facts' are capable of being proven false, 'it follows that only statements alleging facts can properly be the subject of a defamation action' " (*id.*). The "full context of the communication, including its town and purpose," revealed that the author offered the basis for her "personal opinion," for further evaluation by the IG (*id.*, *2).

***People v Rodriguez* (__ AD3d __, 2023 NY Slip Op 04262 [4th Dept 2023])** – a defendant must generally allege facts establishing standing to challenge the propriety of a police search (*see also People v Chavis*, 218 AD3d 1368 [4th Dept 2023], decided in July)

Defendant was convicted of criminal possession of a controlled substance. On appeal, he contended that County Court erred in summarily denying his motion to suppress evidence of cocaine found in a discarded jacket. But to show entitlement to suppression, or an evidentiary hearing on that issue, a criminal defendant must advance "sworn allegations of fact supporting the conclusion that he [or she] ha[s] standing to contest" the search (*Rodriguez*, 2023 NY Slip Op 04262, *1). Here, defendant failed to allege the necessary facts suggesting that he had standing to contest the search of the jacket. As a result, defendant was not entitled to even a hearing on the issue of suppression; the court below rightly denied his suppression motion on the papers.

People v Saeli (__ AD3d __ 2023 NY Slip Op 04268 [4th Dept 2023]) – search warrants, including those for cell phones, must be sufficiently particularized to leave no discretion to executing officers

Defendant, on trial for kidnapping, moved to suppress evidence found on his cell phone (including internet search history information) during a search executed by law enforcement pursuant to a warrant. The problem identified by defendant here was that the search warrant had no particularity—it provided that officers were to search his phone for all "digital and/or electronic evidence from August 13, 2016 to August 15, 2016." As the Fourth Department observed, the warrant "contained no language incorporating any other documents or facts," was not restricted by reference to "any particular crime" under investigation, and the warrant application was not incorporated into the warrant itself (*id.*, *2). As a result, the trial court should have suppressed the cell phone evidence; the Fourth Department granted a new trial.

***Matter of Tuttle v Worthington* (__ AD3d __, 2023 NY Slip Op 04282 [4th Dept 2023])** – extraordinary circumstances are required to deprive a parent of custody; here, the Court split on whether those circumstances existed

It is axiomatic that "[the State may not deprive a parent of the custody of a child absent surrender, abandonment, persisting neglect, unfitness or other like extraordinary circumstances" (*Matter of Bennett v Jeffreys*, 40 NY2d 543, 544 [1976]). Like many things in the family law domain, whether those circumstances exist is a fact-intensive question.

Here, the child's mother sought to modify a prior order from three years earlier, by which she shared joint custody of her child with the father and paternal grandparents; the mother and father had both evidently suffered with years-long substance abuse issues (*Tuttle*, 2023 NY Slip Op 04282, *1-2); stated otherwise, the mother sought to retain primary placement of the child. Finding that the grandparents failed to establish the existence of extraordinary circumstances, Family Court awarded custody to the mother. The grandparents (and the father) appealed.

The Fourth Department reversed and found that extraordinary circumstances existed, warranting an examination of the best interests of the child. The Court explained:

Continued on the next page

> It is undisputed that the child, who was eight years old at the time of the hearing, had lived with the grandparents for his entire life in the only home he has ever known; the child expressed a strong desire to continue residing with his grandparents and the AFC adheres to that position on appeal; the mother and the father both suffered from severe substance abuse problems for years and were unable to care for the child on their own; the mother failed to contact the child for a period of 18 months before resuming visitation in January 2018; the child's half-sister also resided with the grandparents and the child developed a sibling relationship with her; and "the grand[parents] ha[ve] taken care of the child for most of his life and provided him with stability. Additionally, according to the AFC, the child had developed a strong emotional bond with the grand[parents]" (*id.*, *2-3 [citations and internal quotation marks omitted]).

Somewhat atypically, this decision drew a two-justice dissent, which noted at the outset that the reviewing court typically affords "great deference to the determination of the hearing court with its superior ability to evaluate the credibility of the testifying witnesses" (*id.*, *3 [Curran and Ogden, JJ., dissenting]). From that vantage, the dissent explained that, on the record, it would not have disturbed Family Court's grant of custody to the mother:

> "The mother's separation from the child was the result of substance abuse issues, but the mother testified at the hearing that her final use of illegal substances was over five years before the hearing began. Furthermore, we believe that the record supports the conclusion that there have been no prolonged periods of separation between the mother and child inasmuch as the mother has been actively exercising the visitation set forth in the prior order, with the exception of the period of her final relapse into drug use which occurred more than two years prior to her filing of the instant petition (*see Matter of Jody H. v Lynn M.*, 43 AD3d 1318, 1318-1319 [4th Dept 2007]). It is evident that the separation between the [mother] and child is not in any way attributable to a lack of interest or concern for the parental role, and therefore deserves little significance. Consequently, contrary to the contentions of the grandparents, the father, and the attorney for the child, inasmuch as the grandparents failed to establish the existence of extraordinary circumstances, there is no need to conduct an analysis of the best interests of the child" (*id.*, *3-4 [citations and internal quotation marks omitted]).

***Webster Golf Club, Inc. v Monroe County Water Auth.* (__ AD3d __, 2023 NY Slip Op 04280 [4th Dept 2023])** – riparian rights and the timeliness of nuisance/trespass claims

Golf club plaintiffs sued, inter alia, the Monroe County Water Authority, in connection with damages allegedly sustained when, as part of a water treatment project, the Water Authority installed a backwash pipe on the golf club property pursuant to an easement (id., *1).This project resulted in two alleged harms to the golf club property: (1) diminishment of the flow of water from the Water Authority's property to the golf club's stream, and (2) the deposit of silt or sediment onto the club's ponds (id., *2). The Fourth Department's decision, granting the Water Authority summary judgment on certain causes of action based on the diversion of water, illustrates two points related to the assertion of property rights.

First, a downstream property owner—here, the golf club—has no riparian rights in surface waters. When it comes to surface waters (rather than water in a natural water course), "before it leaves [the owner's] land and becomes part of a definite water-course, the owner of the land . . . may appropriate it to [its] exclusive use, or get rid of it in any way [it] can . . . although by so doing [it] prevents the water reaching a natural water-course, as it formerly did, thereby occasioning injury to . . . other proprietors on the stream" (id., *2, quoting Barkley v Wilcox, 86 NY 140, 147 [1881]). Plaintiffs alleged that the Water Authority "prevented water from flowing off its property," diminishing water flow to the stream on the golf club property (id.). By alleging that the water in question

Continued on the next page

originated from wetlands, rainwater, groundwater, and/or underground springs on the Water Authority property, plaintiff's own pleadings established that there was no "natural water-course" over plaintiffs' property (*id.*). As a result, the court below should have granted the Water Authority's motion for summary judgment in this regard.

Second, there is a distinction between causes of action for nuisance and trespass based on a "single wrong" and such claims for a "continuous" wrong; this distinction may have important statute of limitations implications (which, for a cause alleging injury to property, is three years (CPLR 214 [4])). "[I]njuries to property caused by a continuing nuisance involve a 'continuous wrong' and, therefore, generally give rise to successive causes of action that accrue each time a wrong is committed" (*id.*, *3 citation omitted]). Here, plaintiffs alleged that salt or silt was discharged into the golf course's ponds by the Water Authority when the water treatment facility was constructed; that was not a "continuous wrong," but rather "the continuing effects of earlier unlawful conduct" (*id.*). As a result, the limitations period ran from the completion of the project, more than three years earlier. Plaintiffs' complaint was untimely in this respect (*id.*).

SEPTEMBER 2023

Matter of Canning v Revoir **(__ AD3d __, 2023 NY Slip Op 04623 [3d Dept 2023]) – motion for writ of prohibition granted; journalist may not be compelled to testify at defendant's retrial for murder**

Issues concerning journalistic privilege may be relevant to any case that draws media coverage, the materials of which are later sought by the party to litigation.

Petitioner Andrea Canning, a journalist and Dateline correspondent, was subpoenaed to testify at an upcoming murder re-trial of Ramsaran, who is accused of killing his wife. She interviewed Ramsaran for Dateline in 2014, while he was awaiting his first trial. Ramsaran made "several statements relating to the circumstances involving the death and disappearance of the victim," and parts of the interview were the basis of two Dateline episodes (*Canning*, 2023 NY Slip Op 04623, *1). Ultimately, Ramsaran was convicted.

Ramsaran, aided by new counsel, subsequently filed a motion to vacate his conviction based on, inter alia, the ineffective assistance of his trial counsel. That motion was granted after a hearing.* As the People prepared to try Ramsaran again, they subpoenaed Canning, the journalist, requiring her testify at trial about her interview of Ramsaran.She filed a motion to quash the subpoena, which was opposed by the People. The court denied her motion, and Canning commenced this proceeding at the Appellate Division for relief.

The Third Department granted Canning's application, and ordered that she could not be compelled to testify at the re-trial. The substantive issue at the heart of the dispute was Civil Rights Law § 79-h, the New York Shield Law. The People were seeking, in essence, nonconfidential material, requiring them to overcome a qualified privilege by making "a clear and specific showing that the news: (i) is highly material and relevant; (ii) is critical or necessary to the maintenance of a party's claim, defense or proof of an issue material thereto; and (iii) is not obtainable from any alternative source" (*id.*, *3, quoting Civil Rights Law § 79-h [c]).

This the People failed to do. The Third Department held that, even if the information the prosecution sought—statements made by Ramsaran about the events surrounding his wife's disappearance—were "highly material and relevant" to the prosecution, they were not "critical or necessary" (*id.*, *4). The People had access to "a multitude of other evidence," including statements that Ramsaran made to the police and others.Additionally, the People had not shown that the materials were unobtainable from any other source: they had the original recordings of some of his calls that were subject of the interview, and the People could, if desired, present evidence of Ramsaran's demeanor by way of the "video footage of the interview," authenticated by the cameraperson (*id.*, *5). Additionally, Ramsaran's counsel represented that, if the People were allowed to call Canning regarding only "published materials," counsel would not limit her cross-examination to only published portions of NBC's reporting. Allowing the People to subpoena Canning would thus present a Confrontation Clause problem.As a result, the Third Department prohibited the trial court and the People from enforcing the subpoena.

CCBLaw, PLLC

The 2024 Edition of **Best Lawyers in America**, and the 2023 Edition of **Upstate New York "Super Lawyers"** again recognize our attorneys as Best Lawyers and Super Lawyers respectively. Since their inception, Best Lawyers and Super Lawyers have regularly recognized CCBLaw attorneys.

The 2023 Edition of **Best Law Firms** designates CCBLaw as Tier 1 for Health Care Law (the only law firm so designated in the Syracuse Region) and Tier 2 for Employee Benefits (ERISA) Law and Litigation-Labor & Employment.

Best Lawyers recognizes Marc S. Beckman, Stephen H. Cohen, Michael J. Compagni, Andrew M. Knoll, Bruce A. Smith, and Laura L. Spring. In addition, Michael J. Compagni has been recognized as 2024 **Lawyer of the Year for Health Care Law**.

Super Lawyers recognizes Marc S. Beckman, Stephen H. Cohen, Michael J. Compagni, Andrew M. Knoll, Maureen D. McGlynn, Bruce A. Smith, Laura L. Spring, and Bruce E. Wood. In addition, Laura L. Spring has also been designated a "**Top 25 Women" in Upstate New York** for the sixth year.

507 PLUM STREET, SUITE 310
SYRACUSE, NEW YORK 13204
PHONE: (315) 671-6000 | FAX: (315) 671-6001
web: www.ccblaw.com

ccb LAW

NEWSMAKERS & INFLUENCERS

Brian Butler Elected Chair of Bond, Schoeneck & King

Butler

Earlier this summer, Brian J. Butler was elected Chair of BOND's Management Committee, effective Jan. 1, 2024. Butler will succeed Kevin M. Bernstein who will have served two four-year terms, the maximum allowed under the firm's operating agreement. Over the next six months Butler will work closely with Bernstein on the transition to his new position of leading the nearly 300-attorney law firm and its 16 offices.

Butler, a litigation attorney, currently serves on the firm's management committee and is the managing member of the firm's Syracuse office. As a litigator, Butler has represented clients in complex business and commercial litigation in federal and state courts as well as in arbitration in the banking, communications, construction, insurance and securities industries and also regularly represents governmental and educational institutions.

"It's been the privilege of my career to serve as Chair of the Management Committee," stated Bernstein. "In the past eight years the firm has grown, thanks to the dedicated and knowledgeable lawyers we have and the commitment of everyone at the firm to serve our clients. I look forward to working with Brian on the transition and am confident that he will lead the firm with vision and commitment in his tenure as Chair."

According to Butler, "I am humbled that the members of the firm put their trust in me and am grateful for and energized by the opportunity to work with the members, all our attorneys and staff to help them do what they do best, which is to provide the highest quality service to our clients to help them prosper and grow. I'm excited to work with Kevin over the next six months and look forward to building on Kevin's achievements by continuing to focus on client service, innovation and growth."

After Jan. 1, 2024, Bernstein, an environmental and energy attorney, will be continuing his practice as a full-time attorney serving the firm's clients to help them with their environmental and energy issues.

Kimberly Wolf Price Named BOND's Chief Strategy & Diversity Officer

Bond, Schoeneck & King named Kimberly Wolf Price as the firm's Chief Strategy & Diversity Officer earlier in September. This pivotal role serves as an advisor to the Management Committee and its Chair as well as to the Chief Operating Officer. She will work closely with the General Counsel's office, committee chairs, as well as other firm leadership and departments to implement the firm's strategic initiatives. In this role, Wolf Price will focus on the key areas of strategic planning, attorney professional development, diversity and inclusion, innovation and growth, fostering a learning culture within the firm and strategic talent acquisition.

Wolf Price

Wolf Price, resident in Bond's Syracuse office, joined the firm in 2020 as Attorney Professional Development and Diversity Officer. In that role, she worked to advance the firm's goals and has overseen the diversity efforts of both attorneys and staff.

Wolf Price is an attorney, admitted to practice in New York, and remains engaged in pro bono work. She began her law career at Clifford Chance US LLP as an associate in the Litigation & Dispute Resolution Department. She has extensive experience in higher education serving as an assistant dean, program director and instructor at the law school level. She has served on the New York State Bar Association's Committee for DEI for many years and is currently the chair of NYSBA's Women in Law Section.

Kevin Bernstein, chair of Bond's management committee commented, "Kim is a proven strategic thinker and has contributed to the planning and direction of the firm since she joined us. This new title more fully represents her many contributions to the firm and the value she brings to us. She is well-respected among her peers and continues to be a role model for all attorneys at the firm."

NEWSMAKERS & INFLUENCERS

Gabe Nugent Selected to SVP & General Counsel of Syracuse University

Nugent

Barclay Damon announces Gabe Nugent has been selected to the role of senior vice president and general counsel for Syracuse University. Nugent previously served as deputy general counsel at the university and succeeds Dan French, partner and co-chair of the White Collar & Government Investigations Practice Area and the Higher Education Practice Area at Barclay Damon, who has returned to practicing law full time at the firm. In this new role, Nugent will depart from Barclay Damon.

As general counsel, Nugent will lead the Syracuse University Office of University Counsel. The OUC represents the university on all legal matters, including the provision of legal services and advice to the board of trustees, the chancellor, and all units and duly authorized representatives of the university.

During his 17-year tenure at Barclay Damon, Nugent has made countless administrative contributions, including serving alongside French as the co-chair of the White Collar & Government Investigations Practice Area since 2012, as the former managing director of the firm's Syracuse office and a member of the Management Committee, and as leader of the Commercial Litigation Practice Group.

Nugent has been recognized by the US District Court for the Northern District of New York and the New York State Bar Association for his exceptional pro bono services, and he earned Chambers recognition and was selected to Best Lawyers and Super Lawyers Upstate New York for his outstanding client service. In 2023, New York State Governor Kathy Hochul appointed Gabe as the chairperson of the New York State Judicial Screening Committee for the Appellate Division, Fourth Department, and as a member of the New York State Judicial Screening Committee.

Nugent said, "I am honored and excited to step into this role, though I certainly have big shoes to fill in the wake of Dan's distinguished service." He continued, "Although it is with great nostalgia that I depart from Barclay Damon, I know that I'm leaving the firm's robust Higher Education Team in a very strong position to continue providing outstanding legal service to an already distinguished and growing list of higher education clients."

Wendy A. Marsh Named a 2023 Feinstone Award Recipient

Marsh

Hancock Estabrook, LLP last month announced that Wendy A. Marsh, Chair of the firm's Environmental and Zoning and Land Use Department, will be honored as a 2023 Feinstone Award Recipient by the ESF College Foundation on October 19, 2023. The program recognizes leaders who care for the environment, encourage volunteerism and add to society's understanding of environmental issues and their solutions.

Marsh joined the firm in 1998 and has been honored as a *Best lawyer in America* since 2020. She concentrates her practice on assisting clients to resolve legal issues involving environmental or land use planning. She is active in supporting numerous arts and community organizations in Central New York and the Finger Lakes. She is a former chair of the ESF College Foundation Board. And she and her partner, Dave Linger, have been active in the revitalization of downtown Geneva since 2005.

NEWSMAKERS & INFLUENCERS

James P. Youngs Elected to Federation of Defense & Corporate Counsel

Youngs

Hancock Estabrook, LLP Litigation Department Chair James P. Youngs has been elected by the Board of Directors to the Federation of Defense & Corporate Counsel.

Youngs is an experienced litigator and trial attorney who represents companies, organizations and individuals in a broad range of matters, including business and contract disputes, unfair competition and trade secret claims, and environmental, construction, employment and products liability litigation. He also assists entrepreneurs, startup companies and emerging businesses in identifying, assessing and protecting their intellectual property assets and rights. Additionally, he regularly advises new and existing businesses seeking to obtain Minority and Women owned Business Enterprises (MWBE) Certification and Recertification from New York State and the federal government.

FDCC is composed of recognized leaders in the legal community who've achieved professional distinction and who are dedicated to promoting knowledge, fellowship and professionalism as they pursue the course of a balanced justice system and represent those in need of defense in civil lawsuits.

For more than 80 years, the hand-picked members of the FDCC have been leaders in-house and in the courthouse. It is an elite group that drives the agenda and educates the defense legal community.

Costello, Cooney & Fearon, PLLC Welcomes New Associates

French

Costello, Cooney & Fearon, PLLC announces that Margaret A. French and Kimberly A. Nezda, upon their recent admission to the New York State Bar that each will begin their practice with the firm as an Associate.

Ms. French will practice in the firm's Litigation Practice Group. Maggie, as she is known, graduated from the Syracuse University College of Law in 2022. She previously graduated cum laude from Syracuse University in 2019. She is a member of the Central New York Women's Bar Association and serves on the firm's Department of Fun.

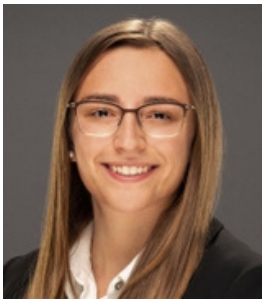
Nezda

Her colleague, Kimberly A. Nezda, or Kim, will practice mainly in the firm's Trusts & Estates Practice Group. Kim is a 2022 graduate of the Syracuse University College of Law. She previously graduated with a Master of Public Administration degree from the Maxwell School of Citizenship and Public Affairs at Syracuse University, also in 2022, and graduated with University Honors, and as a member of the Phi Sigma Iota Honor Society, from Niagara University in 2015.

New Associate Samantha McDermott now at Barclay Damon

Associate Samantha McDermott this fall joined the Barclay Damon Torts & Products Liability Defense and Professional Liability Practice areas and she'll work from the firm's Syracuse office

She will focus her litigation practice on asbestos claims and commercial automobile litigation. Prior to joining the firm, McDermott was an associate and a law clerk at a Syracuse firm. She gained additional experience as a law clerk for an international insurance company and at a firm in Albany.



McDermott

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 Appt?

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 LAP Confidential?

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

Why was the Program Established?

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

Who May I Call?

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

The New York State Bar Association
Lawyer Assistance Program

(518) 487-5688

The New York State Bar Association
Lawyer Assistance Program Hotline (24/7)

(877) 772-8835

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 following:

- The administration of justice;
- Service to the public and the legal community;
- Equal access to the legal system for all;
- Professional ethics and responsibility; and,
- Legal research and education.

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.

Onondaga County Bar Foundation • 431 E. Fayette St., #300 • Syracuse, NY 13202

Ethics Hotline

New York lawyers faced with ethical questions regarding their own prospective conduct can reach the Ethics Hotline by calling volunteers Victor Hershdorfer at **315-913-4087** or Tony Gigliotti **315-727-6780**.

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 attached guidelines – need hyperlink to the document). 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.

Date notice posted: 09/06/23

Vacancy Notice

OCMBOCES

Committed to Your Success

Notice of vacancy within the Onondaga-Cortland-Madison BOCES

Position:	*Labor Relations Specialist*
Division:	Administration
Location:	Main Campus, 110 Elwood Davis Road, Syracuse, NY
Duties:	Responsible for all aspects of labor relations in multiple school districts. Serve as chief spokesperson for school districts in negotiations. Represent school districts in contract grievances up to and including arbitration as well as matters before PERB. Provides consultation and assistance to comply with local civil service rules and regulations. Provides advice and assistance interpreting and understanding with the Americans with Disabilities Act (ADA), Fair Labor Standards Act (FLSA), Family Medical Leave Act (FMLA), Workers' Compensation claims, discrimination law and any other laws at the state or federal level that impact our component districts. Assists with investigations of employee disciplinary matters, employee complaints, harassment complaints, and other issues that may require management representation in grievances, arbitration and/or civil service matters.
Qualifications:	JD degree or BA degree in personnel and labor relations and 2 years work experience involving contract negotiation and administration (grievance handling and arbitration); or 6 years work experience in labor management relations or meet Civil Service qualifications.
Salary:	Commensurate with experience.
Starting Date:	To be determined
Closing Date:	OPEN

Applications accepted on-line only. Register and apply at:
www.olasjobs.org/central

For questions regarding this Vacancy Notice, please contact:

Personnel Department/Recruitment Office
Onondaga-Cortland-Madison BOCES
PO Box 4754, Syracuse, NY 13221
Telephone: (315) 433-2638/Fax: (315) 433-2650
recruitment@ocmboces.org
www.ocmboces.org

Equal Opportunity Employer **#5474**

Legal Aid Society of Mid-New York, Inc. (LASMNY)

Staff Attorneys | Multiple Listings & Locations

The Legal Aid Society of Mid-New York, Inc. (LASMNY) is committed to a diverse, well balanced and inclusive workforce. We strongly encourage applicants from all backgrounds and walks of life to apply for employment opportunities.

Mission Statement. LASMNY is a 501 (3) (c) non-profit organization. Our mission is to provide free legal assistance to low-income people facing civil, legal problems that have a profound impact on the basic needs of life. Through legal advice, emergency legal services and representation, LASMNY helps its clients with the following issues: stabilize their finances, protect themselves and their children from Domestic Violence (DV), obtain access to health care, avoid homelessness as a result of wrongful evictions, protects homes from foreclosure and targets specific, vulnerable populations with our services such as senior citizens, victims of domestic violence (DV), people with disabilities, refugees and immigrants, and veterans.

LASMNY is a non-profit public interest law firm. We provide free legal information, advice and representation to people who are unable to afford a lawyer. The program area includes (13) counties: Broome, Chenango, Cayuga, Cortland, Delaware, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego and Otsego. In addition, our Farmworker Law Project (FLP) services the entire New York State out of our New Paltz Office.

STAFF ATTORNEY |Disability Advocacy Program (DAP)
Location - Utica, NY Office

The Legal Aid Society of Mid-New York (LASMNY), Inc. is actively seeking a dynamic fulltime Staff Attorney to represent clients in administrative proceedings and hearings before the Social Security Administration. The Position is based in our Utica, NY office and reports to the managing Attorney.

Essential Job Functions

The Staff Attorney will represent clients in administrative proceedings and hearings before Administrative Law Judges to maintain and obtain SSDI/SSI benefits. The Staff Attorney also will provide comprehensive legal services, including, but not limited to, advice, negotiation, and administrative advocacy. The Staff Attorney will carry a substantial caseload. This position requires that the Staff Attorney comply with all Legal Services Corporation (LSC) regulations, LASMNY policies and procedures, and grant-based reporting requirements.

Job Qualifications
The successful candidate must be admitted to the New York State (NYS) Bar. A commitment to serving indigent community members and survivors of domestic violence is required.

STAFF ATTORNEY – Domestic Violence Services

Locations - Oneonta | Watertown | Oswego - NY Offices

LASMNY is actively seeking dynamic full-time Staff Attorneys to provide legal assistance to represent domestic violence and sexual assault survivors. The positions are based in our Oswego, NY (Oswego and Jefferson counties) and Oneonta, NY (Delaware and Otsego counties) and Watertown. These positions report to the Managing Attorney.

Essential Job Functions

The Staff Attorney will provide direct and comprehensive legal services to survivors of domestic violence and sexual assault survivors including advice, negotiation, and litigation in family law and matrimonial matters. Additionally, this will include providing holistic representation in matters related to the abuse or violence, including but not limited to, housing, public benefits, disability, employment, consumer, education, health and elder law. Will engage in education and outreach efforts to community members, advocates and service providers. Will be required to comply with all Legal Services Corporation (LSC) regulations, LASMNY policies and procedures and grant-based reporting requirements.

Job Qualifications
The successful candidate must be admitted to the New York State (NYS) Bar. Trial experience preferred. A commitment to serving indigent community members and survivors of domestic violence is required.

STAFF ATTORNEY | Domestic Violence (DV) & Homeowner Protection Program (HOPP)

Location – Watertown, NY Office

The Legal Aid Society of Mid-New York, Inc. (LASMNY) is actively seeking a dynamic full-time Staff Attorney to provide legal assistance to clients facing foreclosure of their home under the Home Ownership Protection Program (HOPP) in Lewis and Jefferson Counties, domestic violence survivors in Lewis and Jefferson Counties, and seniors (age 60 and older) under an Older Americans Act Grant through the local Office for the Aging in Jefferson County. The position is based in our Watertown, NY office and reports to the Managing Attorney.

Essential Job Functions

The Staff Attorney will provide direct and comprehensive legal services to eligible clients, which will include advice, negotiation, motion practice, and litigation. The Staff Attorney will be responsible for providing a full range of legal representation and counseling to individuals facing foreclosure of their home. The Staff Attorney will also represent survivors of domestic violence in matrimonial actions and other civil legal related to the domestic violence, which may include custody/visitation, family offenses, abuse/ neglect matters, consumer, and housing issues.

Further, the Staff Attorney will provide legal assistance to elder law clients, including, but not limited to: preparing wills, health care proxies, and powers of attorney; providing counsel and advice on consumer and housing issues; and providing other legal services as appropriate. The Staff Attorney will carry a substantial caseload. This position requires that the Staff Attorney comply with all Legal Services Corporation (LSC) regulations, LASMNY policies and procedures, and grant-based reporting requirements.

Job Qualifications

The successful candidate must be admitted to the New York State Bar. Trial experience is preferred. Some travel may be required; must possess a valid NYS driver's license.

STAFF ATTORNEY – Eviction Defense Program

Locations – Binghamton |Oneonta | Oswego | Syracuse | Utica | Watertown – NY Offices

LASMNY is actively seeking several dynamic full-time Staff Attorneys for our Eviction Defense Program. The employment opportunities are available immediately in the office of your choice, as available. Travel will be required. The position reports to the Managing Attorney.

Essential Job Functions

The Staff Attorney will provide direct and comprehensive legal services to eligible clients including advice, negotiation, motion practice, discovery and litigation. Specifically, will offer holistic services to clients with financial and other hardships that could result in loss of housing. Will appear in the City, Town, and Village Courts across our region in eviction and warranty of habitability cases. Will engage in education and outreach efforts targeting community members, advocates and service providers. Will comply with all Legal Services Corporation (LSC) regulations, LASMNY policies and procedures and grant-based reporting requirements.

Job Qualifications

The successful candidate must be admitted to the New York State Bar. Trial experience is preferred. Travel is required; must possess a valid NYS driver's license. And that the Staff Attorney comply with all Legal Services Corporation (LSC) regulations, LASMNY policies, procedures and grant-based reporting requirements.

STAFF ATTORNEY - Homeowner Protection Program (HOPP) / Foreclosure

Locations - Syracuse | Binghamton |Oneonta | Utica, NY Offices

The Legal Aid Society of Mid-New York (LASMNY), Inc. is actively seeking a dynamic full-time Staff Attorney to provide legal assistance to clients facing foreclosure of their home under the Home Ownership Protection Program (HOPP). The position can be based in either our Syracuse, Watertown, Binghamton, Oneonta or Utica offices and reports to the Managing Attorney.

Essential Job Functions

The successful candidate must be admitted to the New York State (NYS) Bar. The Staff Attorney will provide direct and comprehensive legal services to eligible clients, which will include advice, negotiation, motion practice, and litigation. The Staff Attorney will be responsible for providing a full range of legal representation and counseling to individuals facing foreclosure of their home. The Staff Attorney will carry a substantial caseload. This position requires that the Staff Attorney comply with all Legal Services Corporation (LSC) regulations, LASMNY policies and procedures, and grant-based reporting requirements.

Job Qualifications

The successful candidate must be admitted to the New York State Bar. Trial experience is preferred. Travel is required; must possess a valid NYS driver's license.

For all listings, the following is required

A commitment to professional growth, excellent organizational, problem solving and interpersonal skills, enthusiasm for direct client services and commitment to social justice required. Other qualifying factors include: the nature and extent of prior legal experience, knowledge and understanding of the legal problems and needs of the poor, prior experience in the client community or in other programs to aid the poor, ability to communicate with persons in the client community; and cultural similarity with the client community. Bilingual or multilingual a plus.

LASMNY offers a generous benefit package!

Most benefits available as of date of hire. Medical, Vision, Dental, Basic/Voluntary Life Insurance, Health Savings Account, Flexible Savings Accounts, 403(b), SEP/IRA, Mileage Reimbursement, Training, CLE Registration Fees, Attorney Registration Fee, Local & NYS Bar Dues, Vacation, Sick, Personal, Parental Leave, Bereavement Leave, Jury Duty, Bar Exam Leave, EAP, Moving Expenses, Parking, Loan Repayment/Public Service Loan Forgiveness, Relocation Assistance and (14) Holidays.

Salary

Admitted to the NYS Bar: Estimated Salary Range: $60,000 to $90,540. Depends on Experience.

Application Process

We encourage interested qualified applicants to apply for this position by providing a cover letter, resume, writing sample and contact information, with email addresses, for three (3) professional references at **jobs@LASMNY.org**

Equal Opportunity Employer/Affirmative Action Employer

Visit us at www.lasmny.org

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

CLE | Eviction Basics & Tenants' Rights

WHEN: Wednesday, October 18, 2023
1 to 3 p.m.

HOW: via ZOOM

COST: Free for Legal Aid Personnel & Landlord/Tenant Program Volunteers only $25 for all others.

MCLE: 2.0 (Prof. Practice)

This CLE is appropriate for both newly admitted and established attorneys. Financial Waivers are available at www.onbar.org

REGISTER NOW

Do you have clients with Tenants' Rights issues? Sign up for this CLE and learn how to help them arrive at a solution that benefits all concerned parties.

Better yet - take the class, help your clients and ***then*** sign up to volunteer at a VLPCNY clinic and help our neighbors navigate the Landlord/Tenant Court system.

Help keep families safe and in their home. Be ***that*** lawyer.

Presenter

Kristin Greeley, Esq.
Senior Staff Attorney, Eviction Defense Program
Volunteer Lawyers Project of CNY, Inc.

VOLUNTEER LAWYERS PROJECT OF CNY, INC.