
SCHENECTADY COUNTY BAR ASSOCIATION, INC.

NEWSLETTER

April 2005

Mailing Address:
PO Box 1728
Schenectady, NY 12301-1728
e-mail: SchenectadyBar@aol.com

Administrative Assistant Arlene Williams: 377-6489 Thursdays 1:00-5:00 p.m.
Website: www.schenectadybar.com

Telephone Numbers:
President: 374-1800
Treasurer: 370-4743
Secretary/Newsletter/Membership: 377-6489

CALENDAR OF EVENTS

April 15-17, 2005	Federated Bar Meeting, Montreal
April 21, 2005	SCBA Meeting, 12:00 p.m.
April 29, 2005	SCBA Celebrates Law Day
May 12, 2005	SCBA Spring Social
May 19, 2005	Real Estate Seminar
June 16, 2005	SCBA Annual Meeting, 12:00 p.m.

ALL SCBA MEETINGS HELD AT
THE GLEN SANDERS MANSION, SCOTIA, NY

OFFICERS

President
Vice President
Treasurer
Secretary

John R. Seebold
Hon. Karen Drago
Robert W. Hoffman
Kathryn McCary

BOARD MEMBERS

J. David Burke
Diane Enzinna
Brian Ferrucci
Joanne Haelen
Frank Parisi
Hon. Mark I. Powers
Margaret Tabak

NOTE INCLUSIONS IN THIS ISSUE

- Real Estate Seminar Registration Form
- A Form to update your SCBA Directory Information

WE WELCOME NEW MEMBERS

We Welcome to the Association

M. Joe Landry

Mark J. Sacco

who were admitted to membership at the January 20
meeting



L NEXT MEETING **7**

APRIL 21, 12:00 P.M.

MEETING WILL INCLUDE

**MEMORIAL FOR GERRY HENNESSEY AND
ELECTION OF NOMINATING COMMITTEE**

*If you plan to attend the meeting, please contact Robert Hoffman at 370-4743 for reservations
or e-mail us at SchenectadyBar@aol.com*

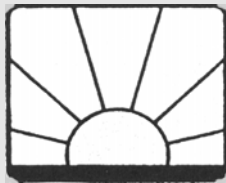
LAW DAY VOLUNTEERS NEEDED

Volunteers are needed to staff Law Day information tables:

- April 25, 11:00 a.m. - 2:00 p.m.
Schenectady County Public Library Main Branch
(Liberty & Clinton Streets)
- April 26, 10:00 a.m.- 1:00 p.m.
Schenectady County Office Building Lobby
(State Street)
- April 26, 5:00 p.m. - 7:30 p.m.
Schenectady County Community College
(Elston Hall)
- April 27, 10:00 a.m. - 1:00 p.m.
Schenectady County Office Building Lobby
- April 28, 5:00 p.m. - 7:30 p.m.
YMCA Board Room
(Lower State Street)

Each shift will be one to two hours long; locations are still being arranged. This is a good chance to interact with the public in a way that promotes a positive image of the profession!

There will be sign-up sheets at the Association luncheon meeting on April 21—but if you just can't wait



Don't Go It Alone

LAP—The Lawyer's Assistance Program of the Schenectady County Bar Association—is here to help members of the County Bench and Bar. LAP is concerned about your welfare. We want to help. Whether you are facing illness, alcohol or drug addiction, a gambling problem, psychological problems or financial difficulties, LAP is here to provide you with free, completely confidential assistance. All you have to do is ask.

Call us at
388-4352

or write us at
Schenectady County Bar Association
Lawyers Assistance Program
PO Box 602
Schenectady, NY 12301

In Memoriam

Gerald T. Hennessy—February 15, 2005
SCBA Memorial will be given at the meeting
April 21

In Memoriam

Mary Louise Corrigan Ferrucci—March 15, 2005
SCBA Memorial will be given at the meeting
June 16

(or want to be sure you get your preferred time), call Diane Enzinna at 388-4293 to volunteer.

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FROM THE COMMITTEES.

ALTERNATE DISPUTE RESOLUTION There will be a meeting of the Committee **C**; for further information call Chair Jean Carney, 872-9023.



CRIMINAL LAW For information about the committee, call Chair Paul Callahan, 895-2334



ESTATE & ELDER LAW For information about the Committee call Chair Kathleen Toombs, 465-7581.



LAW DAY: For information about the Committee, contact Chair Diane Herrmann, by calling 377-6731 or e-mailing to dianehermannesq@yahoo.com



MATRIMONIAL LAW: For information, about the Committee, call Chair Eric Tepper, 399-5400



REAL ESTATE For information about the Committee, contact Chair Larry Naviasky, at 374-7779 or pottnav_larry@global2000.net.



TRIAL PRACTICES: For information about the Committee, contact Chair John Massaroni, 374-1800.

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SHOULD I (An ethical challenge)

J. David Burke

1) *Should I* send a direct mail advertisement to potential clients that includes copies of newspaper articles about me?

2) *Should I* participate in a divorce mediation referral service that would use television and the Yellow Pages to advertise the availability of divorce mediators ?

3) *Should I* tell the judge that the indigent defendant I was appointed to represent intentionally misrepresented his financial condition?

4) *Should I* accept a loan from a client who was not represented by independent counsel?

5) *Should I* obtain a revocable power of attorney that authorizes me to settle a case and endorse my client's name on the settlement check?

Don't do any of these things until you see the answers in the June newsletter!

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ANSWER TO JANUARY YOU BE THE JUDGE

Lil' Kim moved to dismiss the complaint on the ground the postnuptial agreement that Beyonce would be named as beneficiary on Usher's pension plan and life insurance policies "so long as they live together as Husband and Wife" did not bar Usher's designation of Lil' Kim—with whom he was then living—as the pension plan beneficiary. You decide whether the motion should be granted or not.

Motion granted. Usher's designation of Beyonce as beneficiary was conditioned upon the parties' cohabiting. When this no longer occurred, nothing in the agreement impaired Usher's right to modify his pension's beneficiary designation. *Wallach v Hinckley*, ___AD3d___ Nov 18, 2004.

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RECENT DECISIONS

J. David Burke

Boles v Dormer Giant, ___NY3d___ [Feb 22, 2005]

An employer who does not obtain workers' compensation coverage for its employees, does not enjoy the protection from third-party liability for contribution or indemnity afforded by Workers' Compensation Law § 11.

Campbell v City of New York, ___NY3d___ [Feb. 17, 2005]

Reaffirms the rule that the year and 90 day period contained in General Municipal Law § 50-i is a Statute of Limitations subject to the tolling provisions of CPLR 205 [a] rather than a condition precedent.

People v Hardy, ___NY3d___, [Feb 17, 2005]

The U.S. Supreme Court in *Crawford v Washington* (541 US 36 [2004]) held that the under the Sixth Amendment's Confrontation Clause *ex parte* testimonial statements are admissible in a criminal trial only when the accused had an opportunity to cross-examine the declarant. Court holds that a plea allocution of a non-testifying co-defendant is testimonial and therefore inadmissible, reversing *People v Thomas* (68 NY2d 194 [1986]). Court points out that a Confrontation Clause violation is subject to the harmless error rule. In *People v Ryan* (___AD3d___ [March 3, 2005], the Appellate Division in a footnote states that *Crawford* applies retroactively to all cases pending on direct review or not yet final.

People v Pitts, ___NY3d___ [Feb. 15, 2005]

Court holds there is no time limit for bringing a post-conviction motion requesting the performance of forensic DNA testing and that the People, as the gatekeeper of the evidence, must show what evidence exists and whether the evidence is available for testing.

People v Thomas, ___NY3d___ [Feb 15, 2005]

Holds that the People may file a new information that alleges additional facts or charges offenses that were not included in a previously filed information but stem from the same criminal transaction.

Matter of Crown Communication v Department of Transp, ___NY3d___ [Feb 7, 2005]

Because the public and private uses of state owned telecommunication towers were sufficiently intertwined, the installation of private antennae on the towers was exempt from local zoning regulations.

Cahill v Triborough Bridge & Tunnel Auth., ___NY3d___ [Dec 21, 2004]

Employer makes safety devices available & instructs employee to use them. Several weeks later, employee doesn't use safety device & falls. Employee may not recover under Labor Law § 240(1) because a jury could have found that his conduct was the sole proximate cause of his accident.

People v Nazario, ___NY3d___ [Feb 7, 2005]

Where a defendant has shown that there is a special relationship between a proposed spectator and the

defendant of a kind that enables the proposed spectator to give the defendant the kind of moral and emotional support that a family member would, the spectator should be admitted to a closed courtroom unless the People show a specific reason to exclude him or her. Does this mean Tinker Bell should be admitted to the Michael Jackson trial?

People v Parris, ___NY3d___ [Dec 21, 2004]

Lays out the relief available to a criminal defendant when the reporter's minutes of some proceedings were lost and never transcribed. Despite what you might think, loss of the minutes does not by itself require reversal of the conviction.

Matter of Smith v Town of Mendon, ___NY3d___ [Dec 21, 2004]

A municipality's conditioning of its approval of a site plan on the landowner's acceptance of a development restriction consistent with its pre-existing conservation policy does not constitute an unconstitutional taking. Judge Read (a/k/a mini Scalia) thinks otherwise.

Matter of Curtis, ___AD3d___ [March 3, 2004]

Discusses the procedure to be followed in an accounting proceeding, like who has the burden of proof and stuff like that.

Loris v S&W Realty Corp., ___AD3d___ [March 3 2005]

On a motion to vacate a default judgment, the movant is only required to demonstrate the existence of issues of fact sufficient to establish a meritorious defense if proven at trial which is a lesser standard than the summary judgment standard.

Heiss v Moose, ___AD3d___ [March 3, 2004]

On a motion for a change of venue for the convenience of witnesses, the fact the witnesses reside in other counties does not by itself establish they would be unduly burdened by having to travel to attend the trial. In this case the trial was in Ulster County and the witnesses were from St. Lawrence, not an insignificant distance.

People v Serkiz, ___AD3d___ [Feb 24, 2005]

Points out that in the absence of a specific showing of prosecutorial misconduct, fraudulent conduct or any other error potentially prejudicing the grand jury's ultimate decision an indictment should not be dismissed on the ground the grand jury proceeding was impaired.

Rubycz-Boyar v Mondragon, ___AD3d___ [Feb 24, 2005]

Parties settle dispute regarding lease and, even though she contemplated bringing a malpractice claim against defendant, plaintiff executed a general release encompassing all claims or actions "...by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the release." She then commences her malpractice claim. Sorry, the release extinguishes the malpractice claim says Judge Reilly and the App Div.

Matter of Heckstall v McGrath, ___AD3d___ [Feb 24, 2005]

Because Civil Rights Law §52 forbids audiovisual coverage of all proceedings in which the testimony of subpoenaed witnesses is or may be taken, County Court erred in permitting TV coverage of a murder trial. Oh well there's still *Law & Order*.

Gerber v Gerber, ___AD3d___ [Feb 24, 2005]

Plaintiff testified that defendant's conduct made him feel uncomfortable and caused him to be agitated, annoyed and bothered. Because there was no proof that defendant's conduct caused any tangible physical or mental ailment, or created any actual threat to his health or safety, plaintiff was not entitled to a divorce on the ground of cruel and inhuman treatment. Perhaps if he testified that he was bewitched, bothered and bewildered, the result would have been different.

Matter of Colonie Plaza v Assessor of Town of Colonie, ___AD3d___ [Feb 24, 2005]

Once a municipality undertakes a revaluation or update, the three year repose created by RPTL 727(1) is abolished.

Fink v Shawangunk Conservancy, ___AD3d___ [Feb 10, 2005]

If you say nasty things about someone's real estate title, you can be sued for slander of title. This case sets forth the elements of that cause of action.

Matter of Cassos v King, ___AD3d___ [Feb 10, 2005]

A CPLR Article 78 proceeding is proper in a tax assessment case only where the petitioner is challenging the jurisdiction of the taxing authority, the method employed in the assessment or the legality or constitutionality of the tax itself. Otherwise, you are relegated to an RPTL article 7 proceeding.

Clements v Lasher, ___AD3d___ [Feb. 3, 2005]

The statement that plaintiff's ability to use affected muscles in the course of her usual and customary daily activities which would involve use of these muscles in "lifting, pushing or pulling" does not establish a serious injury because it makes no meaningful comparison so

that a mild injury can be distinguished from a serious one.

Nelson v Sweet Assocs., ___AD3d___ [Feb 3, 2005]

A plaintiff, employed by an owner, whose tasks were limited to providing inspections rather than the relevant enumerated activities of “construction, excavation or demolition” is not covered by Labor Law § 241(6).

Jurkiewicz v Zechewytz, ___AD3d___ [Feb 3, 2005]

Evidence point: Parol evidence is admissible where a party is asserting that what purports to be a contract is, in fact, no contract at all.

Matter of Mangum v National Union Fire Ins. Co., ___ADd3d___ [Jan 27, 2005]

Holds that the doctrine of laches and estoppel apply to Workers’ Compensation Board proceedings and that if the Board finds that estoppel lies, the finding must be supported by substantial evidence.

AG Props. of Kingston v Besicorp-Empire Dev. Co., ___AD3d___ [Jan 27, 2005]

Party wrongfully terminates contract. Other party has two options: it could treat the termination as an anticipatory breach, consider the contract at an end and seek damages, or ignore the anticipatory breach, continue to perform the contract, wait to see if the other party performs when required by the terms of the contract and, if it did not do so, bring suit on the subsequent breach.

Ruggerio v New York Racing Assn., ___AD3d___ [Jan 27, 2005]

Defendant’s investigator gives police signed complaint accusing plaintiff of petit larceny. Plaintiff subsequently arrested on arrest warrant issued by City Court. Charges dismissed with defendant’s consent. Does plaintiff have a false arrest or malicious prosecution cause of action? Court says false arrest because warrant was based upon false information supplied by the defendant which is an exception to the general rule that where an arrest is made pursuant to a warrant malicious prosecution is the appropriate cause of action.

GMAC v Vucich, ___AD3d___ [Jan 20, 2005]

UCC 9-609(b) (2) imposes a non-delegable duty on a secured creditor to keep the peace in the course of a repossession without judicial process of collateral. The statute of limitations for the breach of that duty is three years. Also, the secured party is responsible for the actions of others, including independent contractors, it hires to repossess collateral.

Matter of Blasdell v Steiner, ___AD3d___ [Jan 20, 2005]

Petitioner attorney - solo practitioner. Family Court imputes an annual adjusted gross income of \$40,219. Court says this was entirely reasonable. I think I made a wise choice to live off taxpayer largesse.

Abulhasan v Uniroyal-Goodrich Tire Co., ___AD3d___ [Jan 20, 2005]

On a motion for summary judgment in a products liability case, a defendant who asserts that it did not manufacture the allegedly defective product has the initial burden of establishing, as a matter of law, that it did not do so.

Burton v Burton, ___AD3d___ [Jan 20, 2005]

When the basic child support obligation reduces the non-custodial parent’s income below the poverty income guidelines, the obligation cannot be increased by adding his or her pro rata share of health and child care expenses. However, with respect to the custodial parent, the court “shall” pro rate uncovered medical expenses between the parents regardless of the custodial parent’s income, unless it would be unjust to do so.

Sheils v County of Fulton, ___AD3d___ [Jan 20, 2005]

Holds that an unpleaded affirmative defense may be invoked to defeat summary judgment or serve as the basis for an affirmative grant of such relief in the absence of surprise and prejudice, provided the opposing party has a full opportunity to respond. Obviously, I didn’t know that.

People v Demestsenare, ___AD3d___ [Jan 13, 2005]

Evidence point: An accident reconstruction animation video is admissible only if it will aid the jury in understanding expert testimony regarding the theory of reconstruction. Dose this mean Sponge Bob Square Pants is not welcome in the Third Dept.?

Matter of Donnelly v Donnelly, ___AD3d___ [Jan 13, 2005]

A Support Magistrate has authority to hear and determine issues relative to the defense of constructive emancipation which occurs when a kid under 21 leaves home without sufficient cause and withdraws from the parents’ control, refusing to comply with reasonable parental demands. Being the father of two teenagers, gives me a lot of familiarity with that last clause.

Matter of Stangle, ___AD3d___ [Jan 13, 2005]

The anti-lapse statute (EPTL 3-3.3) does not apply to a residuary bequest where the testator has made an alternative disposition in the will.

WFR Assocs. v Memorial Hosp., ___AD3d___ [Jan 13, 2005]

Deed provided that office space in building could only be leased to "qualified persons" Whether this restraint on the disposition of property is unreasonable is a question of fact depending on the restraint's purpose, duration and specification, if any, of the sale price.

Karac v City of Elmira, ___AD3d___ [Jan 13, 2005]

Points out that prior written notice of defect statutes do not apply to private entities which are contractually obligated to provide services to a municipality.

Bond v Giebel, ___AD3d___ [Jan 13, 2005]

An uncertified police accident report may be presented in opposition to a motion for summary judgment provided it is not the only proof submitted.

Gray v Seaboard Securities, ___AD3d___ [Jan 13, 2005]

Holds that General Business Law § 349 (deceptive business practices) is not applicable to securities transactions.

Engel v Clapper, ___AD3d___ [Jan 13, 2005]

Points out that a court appointed guardian of a minor or incapacitated person may commence derivative actions to recover costs expended for the care of such wards.

People v Pryor, ___AD3d___ [Jan. 6, 2005]

Sets forth the guidelines for obtaining a blood sample from a suspect. This is for you CSI Miami folks.

People v Banks, ___AD3d___ [Jan 6, 2005]

Points out that the *Aguilar-Spinelli* test is inapplicable where a search warrant is based upon info provided by a named confidential informant.

Moore v Melesky, ___AD3d___ [Jan 6, 2005]

Points out that a claim of intentional infliction of emotional distress cannot be maintained against governmental entities.

Snow v Snow, ___AD3d___ [Jan 6, 2005]

Reiterates the rule that the distribution of marital property must be equitable, not merely a 50/50 split of assets. Query. Would not a mandated 50/50 split, absent a showing of special circumstances, lead to simpler and less expensive divorce actions?

Alternatives Federal Credit Union v Olbios, LLC, ___AD3d___ [Jan 6, 2005]

Ambiguous contract. Prove parties intent by

extrinsic evidence or by the subsequent conduct of the parties, which oftentimes is the most persuasive evidence. See also, *United States Fid & Guar. Co. v Delmar Dev. Partners*, ___AD3d___ [Jan 13, 2005]

People v Powell, ___AD3d___ [Dec 30, 2004]

After the prosecutor has exercised his or her peremptory challenges and the defendant has exercised his or hers, it is error to permit the prosecutor to exercise a peremptory challenge.

Matter of Loren B. v Heather A., ___AD3d___ [Dec 30, 2004]

Holds that polygraph evidence is not admissible in a Family Court proceeding.

Matter of Carey v Carey, ___AD3d___ [Dec 30, 2004]

How to get yourself disqualified. Violate the Code of Professional Responsibility DR 7-104 by accompanying your client on a visit to the marital residence knowing the other spouse would be there and despite the clear protestations to the visit from opposing counsel and when you arrive instigate conduct with the other spouse warranting police intervention. Can the Committee be far behind?

Matter of State Farm Mut. Automobile Ins. Co [Celebucki], ___AD3d___ Dec 30, 2004

Evidence Point. To take advantage of the rebuttable presumption of receipt, you must offer proof of regular mailing procedures and office practices geared to assure the proper addressing or mailing of the letter. Of course, if it is important, like a notice of claim, why not spend an extra dollar and send it certified mail return receipt requested.

Waring v Kingston Diagnostic Radiology Ctr, ___AD3d___ [Dec 30, 2004]

Points out that the continuous treatment doctrine may apply to a diagnostician where periodic diagnostic examinations are prescribed as part of ongoing care for a plaintiff's existing condition and are explicitly anticipated by physician and patient alike.

Matter of Pronti v Allen, ___AD3d___ [Dec 30, 2004]

What a court must do to hold someone in contempt for conduct that is contemptuous in its presence. It is more than you would think.

Matter of Santa's Workshop v Board of Assessors, ___AD3d___ [Dec 30, 2004]

Practice Point: RPTL article 7 proceeding; Except where the parties otherwise stipulate or there is a court order extending the time, a note of issue must be filed within four years of the commencement of a tax

certiorari proceeding to avoid having it dismissed. I would think Santa's workshop is a little worn since I remember going there when I was 7 or 8 years old.

People v Goldstone, ___AD3d___ [Dec 23, 2004]

Judge arraigns defendant and then later recuses himself pursuant to Judiciary Law § 14. As a result the arraignment and defendant's plea were void.

People v Allen, ___AD3d___ [Dec 23, 2004]

People v Gorghan, ___AD3d___ [Dec 23, 2004]

Two cases of prosecutorial overreaching in Rensselaer County that resulted in reversals because of the improper use of inadmissible testimony and references to uncharged conduct that revealed "a pervasive pattern by the prosecutor of pushing beyond accepted boundaries on key issues and in a fashion prejudicial to a fair trial" This wouldn't happen on *Law and Order*.

Fane v Howard, ___AD3d___ [Dec 23, 2004]

Fair consideration under the Debtor and Creditor Law when a fair equivalent is given for the property exchanged and the transfer is made in good faith by both the transferor and transferee.

Czarnecki v Welch, ___AD3d___ [Dec 23, 2004]

Proof that a dog's owner bragged that his dog attacked a person and ripped the coat right off him while pinning him against a car is sufficient proof to raise a question of fact on the issue of knowledge of vicious propensities. On the advice of my insurer, I unequivocally state that my 14 pound Boston terrier is incapable of such conduct, although she will accept handouts if offered, just like her owner.

Matter of New York State Correctional Officers & Police Benevolent Assn. v State of New York, ___AD3d___ [Dec 23, 2004]

Where arbitrator's discretion is expressly limited to determinations of guilt or innocence and the appropriateness of proposed penalties, he or she cannot confer a prospective benefit like unpaid personal leave or paid administrative leave.

Henry v Cobleskill-Richmondville Cent. School Dist., ___ADd3d___ [Dec 23, 2004]

A plaintiff goes home from the courthouse empty handed when he or she cannot prove what caused him or her to fall in a situation where there could be other causes for the fall.

People v Thomson, ___AD3d___ [Dec 16, 2004]

Points out that counts in a criminal indictment are not multiplicatus if each count requires proof of an additional fact that the other does not.

J & K Plumbing & Heating Co. v William H. Lane, Inc., ___AD3d___ [Dec 16, 2004]

Subcontract provided that subcontractor's sole recourse for nonpayment was a direct claim against the owner without any recourse against the general contractor. Sorry, general contractor provision is unenforceable as it violates public policy.

McLaughlin v Malone & Tate Builders, ___AD3d___ [Dec 16, 2004]

Worker hit by brick that fell from scaffold on which it was stacked. Because the bricks were going to be used by the masons within a short time, a hoisting device or securing device was not necessary or expected. Therefore, Labor Law § 240(1) does not apply.

Johnson v Hudson River Constr. Co., ___AD3d___ [Dec 16, 2004]

Good case to look at if you are involved with bifurcation issues. To those of you unfamiliar with trial practice, bifurcation has nothing to do with biology.

Beltrone Marital Trust II v Lavelle & Finn, ___AD3d___ [Dec 16, 2004]

Defendant assumed assignment of lease, but vacated premises prior to end of lease term. Landlord sued for rent. Defense was that there was no liability since defendant was no longer in privity of estate with landlord. Court recognized general rule that the liability of an assignee comes from privity of estate with the landlord, not privity of contract. Nevertheless, it held that an out of possession defendant could be liable for rent if it expressly agreed to undertake the terms of the lease.

Tibby v Fletcher, ___AD3d___ [Dec 16, 2004]

How not to make money in real estate. Make no investigation at all prior to the purchase, relying instead on a handshake and trust that "you got the right papers." Unfortunately, this technique doesn't work when you run into a serial grantor and you're the second grantee.

Matter of State Police Admin. Disciplinary Hearing, ___AD3d___ [Dec 16, 2004]

Practice Point: A judicial *subpoena duces tecum* may be issued only in the context of an action or proceeding pending before the court. Also, unless there is statutory authority, courts have no jurisdiction to issue subpoenas with respect to administrative proceedings.

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MESSAGES FROM THE COURTS AND OTHER OFFICIALS/ORGANIZATIONS

The Unified Court System

% One or two-year clerkships are available for **recent law school graduates interested in a career in commercial law**; the assignments will be in New York County. Applications are due no later than April 29; please contact the SCBA office at 377-6489 for a brochure.

% There are also one-year Legal Fellowships available to **introduce recent law school graduates to careers in the public sector**. Applications will be accepted through October 15, 2005; contact Alice Chapman-Minutello at (212) 428-2540 or achapman@courts.state.ny.us for more information.

% The Commission to Examine Solo and Small Firm Practice, appointed by Judge Kaye, is gathering data in a **study of the unique challenges faced by solo and small firm practitioners**. Practitioners interested in providing input may fill out a survey, copies of which are available at the County Courthouse; contact Paula Miller, Chief Clerk of Surrogate's Court, to get a copy.

Schenectady County Supreme Court & County Clerk

% An additional index number fee is required—although no additional index number will be issued—for filing a third-party summons. However, no additional index fee is required when a supplemental summons is filed (adding a party *other than* a third party) or when an amended summons (correcting errors in but not adding parties to the original summons) is filed.

SCBA RECORDS AND ARCHIVES

The Association has been blessed with many years of dedicated volunteer leadership, with the archives and records handed on from one leader to the next. We've been able to locate, and incorporate into the files in the Association office, some of these old files, but others elude us. If your office has Association files—however old—please let Secretary Kathryn McCary know, and she will make arrangements to take them off your hands.

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REPORT:

THE SEARCH FOR MISSING WILLS

Does anyone know the current whereabouts of wills **drafted by Alexander Diamond**, whose office was located at 434 State Street?

Does anyone have on file the original wills of **Eugene and Susan Lamb**?

KEEP THOSE CARDS & LETTERS COMING IN!

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CLASSIFIED ADVERTISING

SPACE AVAILABLE

Professional Office Suite., New building, British American Office Park, Latham. Several windowed offices for rent within professional offices. Conference rooms, secretarial stations, law library, kitchen and broadband service. Available immediately. Contact A. Mastro at (518) 690-7000.

HELP WANTED

Attorney Positions Seeking hard-working litigation attorneys for state-wide lead paint poisoning practice representing children, including experienced associate attorney for deposition and trial work. We are also expanding our environmental and toxic tort practice and are seeking to add another experienced trial attorney to our team. Unique opportunity for rewarding career and partnership or merger. Send resume in confidence to Peter Danziger, Esq. or Mark Richter, Esq., O'Connell and Aronowitz, 54 State Street, Albany NY 12207, fax: 518-427-6988 or e-mail: pdanziger@oalaw.com.

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ADVERTISING IN SCBA PUBLICATIONS:

Advertising will be accepted for inclusion in the Schenectady County Bar Association Newsletter, Membership Directory, and other publications. Please contact Kathryn McCary at 377-6489 for information.

KEEP YOUR PROFESSIONAL COLLEAGUES POSTED

IF

- you have relocated
- you or someone you know has received special recognition
- your firm is involved in community based activities
- you have special personal news

and you would like your announcement placed in the **SCBA** newsletter, please drop us a line:

SCBA
c/o McCary & Huff, LLP
107 North Ballston Avenue
Scotia, NY 12302

so we can share the good news.

NOTICES/ITEMS OF INTEREST

Congratulations to *Lillian Moy*, recently appointed as a Member of the House of Delegates of the **New York State Bar Association**.

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INTERESTED IN GETTING INVOLVED?

To join an SCBA committee, contact:

Alternate Dispute Resolution–Jean Carney

Criminal Law–Paul Callahan

Estate & Elder Law–Kate Toombs

Law Day–Diane Herrmann

Matrimonial Law–Eric Tepper

Real Estate–Larry Naviasky

Trial Practice–John Massaroni

Pro Bono Matrimonial–J. David Burke

[addresses & numbers are in the SCBA directory]

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GOT NEWSLETTER CONTRIBUTIONS?

If you have something you want included in a future newsletter, the following is the deadline:

June (mailing date 6/7) — **May 16**

REMINDER

SEND US YOUR UPDATED INFORMATION FOR THE SCHENECTADY COUNTY BAR ASSOCIATION MEMBERSHIP DIRECTORY USING THE FORM IN THIS NEWSLETTER. WE NEED IT NO LATER THAN THE END OF MAY!

MEMBERSHIP INFORMATION UPDATE

The Schenectady County Bar Association **MEMBERSHIP DIRECTORY** for 2005-2006 will be published in the summer. We'd like to include the most up-to-date, accurate information. Please take a moment to complete this form and mail or fax it to:

Arlene Williams
c/o McCary & Huff, LLP
107 North Ballston Avenue
Scotia, New York 12302
Fax: (518)-377-6521

[If the information in the 2004-2005 directory is generally accurate, you may e-mail change information to kathryn.mccary@verizon.net]

Name: _____

Firm Affiliation: _____

Preferred mailing address:

Telephone: _____ Fax: _____

E-Mail Address: _____ Year of Birth** _____

Practice Areas—Include up to three (you can be *reasonably* creative in naming practice areas):

Languages [*other than English*] Spoken fluently: _____

The above is the only information that will be included in this directory, but we are interested in knowing what our members would like to have included in future directories. Please use the following space to tell us if there are additional types of information you think would be useful.

** Birth year information will NOT be included in the directory—it will be included in the member data base, to allow us to track eligibility for Life Member status.

**SCHENECTADY COUNTY BAR ASSOCIATION
TWENTY FOURTH ANNUAL
REAL ESTATE PRACTICE SEMINAR**

THURSDAY, MAY 19, 2005

Glen Sanders Mansion, 1 Glen Avenue, Scotia, New York
PROGRAM - 8:00am – 4:30 pm; LUNCHEON – 12:15 – 1:00 pm
COST: SCBA Member \$75.00 – Includes Luncheon
COST: Non-Member \$100.00 – Includes Luncheon

MANDATORY CLE INFORMATION

The **Schenectady County Bar Association (SCBA)** has been certified by the New York State Continuing Legal Education Board as an **Accredited Provider of continuing legal education in the State of New York** [August 28, 2002 – August 27, 2005]. This continuing legal education program has been approved in accordance with the requirements of the New York State Continuing Legal Education Board for a maximum of **7.5** credit hours, of which **1** credit hour can be applied toward the **ETHICS and PROFESSIONALISM** requirement, and an aggregate of **6.5** credit hours can be applied toward the **SKILLS requirement or AREAS of PROFESSIONAL PRACTICE** requirement. **TOTAL: 7.5 Hours CLE credit** (This is the maximum total allowed for this seminar) Duplicate credit for the same hour of instruction is not permitted.

Discounts and scholarships are available, based on financial hardship. This discount applies to the educational portion of the program only. Under that policy, any member of our Association or of a similar professional association, who has a genuine basis of his/her hardship, and if approved, can receive a discount or scholarship, depending on the circumstances. To apply for a discount or scholarship, please send your request in writing to Laurence Naviasky, Chair Real Estate Committee, Schenectady County Bar Association, PO Box 957, Schenectady, New York 12301.

SCHEDULE AND TOPICS ON BACK

CLE for other states is also available. Please indicate this on the registration.

**To attend, please fill out and return the slip below with your
check made payable to Schenectady County Bar Association for:
\$75.00 SCBA Members/\$100.00 Non-Members**

NAME _____ FIRM _____

CLE for another state ? _____, ADDRESS _____, NY _____

TELE _____, FAX _____, EMAIL _____

ARE YOU A MEMBER OF THE SCHENECTADY COUNTY BAR ASSOCIATION? ___ YES ___ NO

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- **Deadline to register is May 1, 2005 OR WHEN FULL. (Capacity is 200) Send registration & fee or direct questions to: Laurence Naviasky, PO Box 957, Schenectady, NY 12301; (518) 374-7779; fax-374-2180; email lnav@nycap.rr.com (You may register via email -- registration will be complete upon receipt of check.)**
Make check payable to “Schenectady County Bar Association”

**SCHENECTADY COUNTY BAR ASSOCIATION
TWENTY FOURTH ANNUAL REAL ESTATE SEMINAR
MAY 19, 2005
SCHEDULE & TOPICS**

8:00 – 8:30am REGISTRATION & CONTINENTAL BREAKFAST

MORNING SESSION: (4.0 hours CLE including 1.0 hour ethics)

8:30 –9:20am **PLANNING TO APPEAR BEFORE ZONING AND PLANNING BOARDS: ISSUES AND HIGHLIGHTS**

Arkley L. Mastro, Jr. Attorney, Gordon, Siegel, Mastro, Mullaney, Gordon & Galvin, PC, Latham, NY.

9:20 – 10:10am **ETHICS FOR THE REAL PROPERTY PRACTITIONER –KEEPING YOUR HANDS CLEAN AS A “DIRT” LAWYER**

Dorothy H. Ferguson, D. H. Ferguson, Attorney, PLLC, Rochester, NY, Chairperson, Real Property Law Section of the New York State Bar Association.

10:10 - 10:30am **REFRESHMENT BREAK**

10:30 – 11:20am **THE MORTGAGE PROCESS, CREDIT ANALYSIS, AND MORTGAGE PRODUCTS**

Therese Raco, Underwriter, M & T Mortgage Corp., Albany, NY.

Timothy J. Murphy, Senior Loan Counselor, M & T Mortgage Corp., Albany, NY.

11:20 – 12:15pm **B AND C LOANS: WHAT TO LOOK FOR AND ABUSES**

Kirsten Keefe, Attorney, Greater Upstate Legal Project, Albany, NY.

12:15 – 1:00pm **BUFFET LUNCH**

AFTERNOON SESSION: (3.5 hours CLE)

1:00 – 2:30pm **THE UMPTEENTH ANNUAL REAL ESTATE UPDATE**

Peter V. Coffey, Attorney, Englert, Coffey & McHugh, Schenectady, NY.

2:30 – 2:45pm **REFRESHMENT BREAK**

2:45 – 3:35pm **THE TITLE INSURANCE POLICY**

Marvin N. Bagwell, Vice President and Eastern Divisional Counsel, United General Title Insurance Company, White Plains, NY.

3:35 – 4:30pm **REAL ESTATE TITLES AND BANKRUPTCY; and POST-FORECLOSURE SALES**

Francis X. Carroll, Regional Counsel, Tigor Title Insurance Company, Buffalo, NY.

Questions & Answers – as time allows

PLEASE WRITE ANY SPECIFIC QUESTIONS DOWN AND HAND THEM UP TO THE SPEAKER.

CLE: YOU WILL RECEIVE A CERTIFICATE OF ATTENDANCE FOR THE CATEGORIES LISTED IN THE ANNOUNCEMENT. CREDIT SHALL ONLY BE AWARDED FOR ATTENDANCE AT AN ENTIRE PROGRAM OR FOR ATTENDANCE AT AN ENTIRE SESSION OF A PROGRAM.

As required by the rules, we will keep a list of attendees for four years, for verification purposes. Please feel free to ask any CLE related questions. We will endeavor to answer them.

Our 50-Year Honorees

At the General Membership meeting on April 21, we will honor two members of this Association who have been in practice for Fifty years or more. Here's a little information about these long-time colleagues.

NEIL W. MOYNIHAN

Attorney Moynihan is a graduate of Manhattan College and Albany Law School; he was admitted to the Bar in 1955 and commenced practicing in Schenectady with the law firm of Begley, Diamond and Begley. Subsequently he was a partner with the Bates, Shaw, Abbey & Moynihan and Begley, Moynihan and Quinlan law firms. Presently, he is the senior partner in the Moynihan, Hayner and Moynihan firm; he was an Assistant and Deputy Corporation Counsel with the City of Schenectady; a member of the Schenectady County Board of Representatives; Town of Niskayuna councilperson; Niskayuna Town Justice; and Schenectady County Surrogate Judge; member of the Board of Directors and Vice-President of Dominion Home; trustee and past president of Board of Heritage Home for Women of Schenectady; past president and a past secretary of the Schenectady County Bar Association.

ROMOLO VERSACI

Attorney Versaci is a graduate of Harvard College and Albany Law School; he was admitted to the Bar in 1955, joining F. Heawood Robinson in the practice of law. Thereafter, he formed a partnership with Guy A. Graves and Joseph Eagan. When Judge Graves ascended to the Bench, he became a sole practitioner and is still an active practitioner. In 1975 he served as the Schenectady City Court Judge; later he was the attorney for the Municipal Housing Authority and for ten years was an assistant corporation counsel for the City of Schenectady, successfully defending the City in many negligence actions.

MINUTES--SCHENECTADY COUNTY BAR ASSOCIATION--MEMBERSHIP

REGULAR MEETING--January 20, 2005--12:00 p.m.--The Glen Sanders Mansion, Scotia, NY

The meeting was called to order by President Seebold at 21:20 p.m., 40 members of the Association being then present and constituting a quorum.

President Seebold welcomed the judges and invitees present, including Assemblymen Tonko and Tedisco.

MINUTES OF PRIOR MEETING

The minutes of the November 18, 2004 meeting were approved by general consent.

TREASURER'S REPORT

A written Treasurer's report was distributed, copy attached to the official copy of these minutes. Treasurer Robert Hoffman noted that the item for professional fees was for preparation and filing of tax returns due for the last 4 years, and that the Board of Directors had authorized a donation of Five Hundred Dollars (\$500) to the Red Cross Tsunami Relief Fund. The Treasurer's Report was accepted by general consent.

PRESIDENT'S REPORT

President Seebold noted, in connection with the donation to the Tsunami Relief Fund, that 91% of moneys donated to the Red Cross go to actual charitable use.

The Association recently raised a question about whether an additional index number fee is due for a supplemental summons, amended summons, or third-party summons. Joanne Haelen researched the question and provided guidance, which County Clerk John Woodward will implement. Briefly, there is no additional fee for adding a party (supplemental summons) or correcting the summons (Amended Summons), but there is a charge for adding a third party.

The Association has had a request for wills for Eugene and Susan Lamb.

The Committee on the Future of Indigent Defense Services will be conducting public hearings around the State, including one on February 17 at the New York State Bar Association office in Albany. Anyone interested in testifying should contact President Seebold.

The recent Part 137 Arbitrator training was very successful--we now have 42 new arbitrators.

The Mock Trial program is up and running, and it appears there are enough judges and coaches.

Judge Eidens has retired; a very informal gathering will be held next week to mark this event.

President Seebold also noted the upcoming meeting of the New York State Bar Association and that the Legal Aid Society is looking for a new attorney, and reminded everyone to fill out the Pro Bono Committee's questionnaire distributed in the recent newsletter.

President Seebold called on Phil Rodriguez, who reported that the joint dinner with the Medical Society will be held March 18 at the Mohawk Club, with the doctors providing a speaker.

The President called on Joanne Haelen, who explained that the Part 137 fee dispute arbitration program will in future be administered by the Administrative Office of the Fourth Judicial District, although the Federated Bar will still be responsible for providing training. The Program's Rules will be amended to reflect this change. Nick Tishler rose to observe that this will allow a more efficient and streamlined process; the next training will probably be held in Plattsburg.

The President noted that it is once again possible to plead by mail in City Court.

The President called on Nick Tishler, who announced that the annual meeting of the Federated Bar will be held April 15-17 in Montreal; there will be tours of the trial and appellate courts in Montreal, and a bench and bar luncheon Friday morning.

The President recognized Lillian Moy, who spoke on behalf of the Legal Aid Society of Northeastern New York. Ms. Moy noted that it is always difficult to ask people for money, and thanked President Seebold and member Peter Coffey for their participation in the recent Phonathon. She also noted that there are only 10 days left to join the Justice For All campaign by contributing the sum of \$200 per lawyer in your firm. The participation in this effort, which was spearheaded by Peter Coffey, has been very good. Mr. Coffey rose to observe that the campaign was modeled on campaigns in Boston and New York, and that it has resulted in an increase in annual

donations from approximately \$40,000 last year to \$130,000-140,000 this year. The President thanked Ms. Moy, and noted that her work is of immense benefit to the Legal Aid Society.

The President recognized Peter Coffey, who reported on matters coming before the New York State Bar Association House of Delegates at the annual meeting later this month, in particular a vote on the Report of the Committee on Same Sex Marriage, and a proposed change in the definition of *pro bono* service. Warren Redlich rose to ask whether the Legislature would have a role in imposing mandatory *pro bono* service; Assemblyman Tedisco replied that it probably would become involved if this became a hot topic. Several other members offered comments on the topic of *pro bono*, mandatory *pro bono*, and mandatory reporting.

COMMITTEE REPORTS

MEMBERSHIP

It was announced that M. Joe Landry and Mark J. Sacco have applied for membership, and will be admitted effective immediately

LAW DAY

Chair Diane Herrmann reported that there is a meeting next Tuesday.

REAL ESTATE COMMITTEE

Robert Hoffman reported that the real estate seminar will be held May 19. There are good topics, and the speakers are set; it will include one hour of ethics, and good handouts.

There being no additional business to come before the Membership, the meeting was adjourned at 1:00 p.m.

Respectfully submitted,
Kathryn McCary, Secretary

PRO BONO RESOURCES

Looking for a chance to uphold one of the profession's finest traditions—the provision of free legal advice and services to those who can't afford them? Whatever may have been true in the past, today's busy practitioner doesn't readily find, in daily life and practice, significant *pro bono publico* opportunities. That doesn't mean the opportunities aren't out there: the need is great, and it is a need only we are qualified to meet.

We hope the following opportunities may spark your curiosity, engage your compassion, or at least fit your convenience.

THE PRO BONO MATRIMONIAL PROGRAM OF THE SCHENECTADY COUNTY BAR ASSOCIATION

Contact Person: J. David Burke—853-8102

Provides assistance in completing the papers and procedures to obtain a divorce, through two programs:

- % Volunteer attorneys agree to accept one case per year to represent an indigent litigant.
- % Biennial pro-se clinics, at which pro-se plaintiffs are guided through the divorce process.

This is our very own program; more volunteers are urgently needed. Call Dave to sign on.

LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK

PRIVATE ATTORNEY INVOLVEMENT PROGRAM

Coordinator: Elena Rich—462-6765

Matches lawyers with clients in the following areas:

- | | |
|--|--|
| Bankruptcy | Health, including Health Care Proxies, Medicaid and Medicare |
| Consumer law | Wills and Estates |
| Employment | Real property issues including evictions and foreclosures |
| Education, including unemployment | SSI Benefits |
| Family, including Custody, Support, Visitation, Separation and Divorce | |

The program is also interested in hearing from you if you have legal expertise in another area you are willing to share with those in need.

Services qualify for CLE credit (1 credit for 6 hours of service/you can accumulate up to 6 hours of credit through *pro bono* in each 2-year CLE cycle). Malpractice insurance coverage is provided, and out-of-pocket expenses are covered by the program. The program also offers training programs that qualify for CLE credit.

You can call Elena for information or a registration form; forms are also available through the SCBA office, call 377-6489 or e-mail kathryn.mccary@verizon.net.

Legal Aid has also offers the **Children's Legal Project**, providing free civil legal representation for low-income children in Albany, Rensselaer, and Schenectady Counties; at this time these services are being provide in-house, but those interested in volunteering should let Elena know, in case there are cases the in-house attorney can't handle.

CAPITAL DISTRICT WOMEN'S BAR ASSOCIATION

THE LEGAL PROJECT

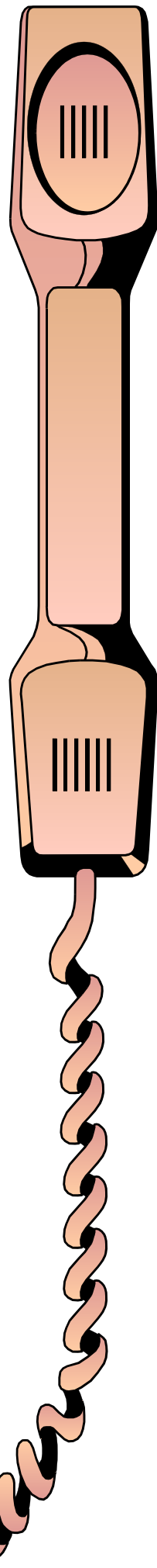
435-1770

Addresses the need for non-criminal legal assistance by providing innovative, cost effective services that are collaborative in nature and that focus on well-defined but unmet community needs. A unique aspect of The Legal Project is its provision of assistance to the working poor—those who don't qualify as indigent, but still can't afford to pay standard legal fees.

The Legal Project provides legal advice and information through a bi-weekly column in the *Times Union*, Project Helpline on the Channel 10 morning news, custom-designed workshops for community groups and organizations, and Legal Clinics at local community agencies.

The Legal Project provides legal representation through the following programs:

- The Domestic Violence Legal Connection
- Affordable Housing Attorney Assistance
- Bankruptcy and Credit Program
- Battered Immigrant Legal Assistance
- Civil Legal Services to Sexual Assault Survivors



CONTINUING LEGAL EDUCATION OPPORTUNITIES

SCHENECTADY COUNTY BAR ASSOCIATION

Topic: TWENTY-FOURTH ANNUAL REAL
ESTATE SEMINAR
Date/Time: May 19, 2004
Place: Glen Sanders Mansion
Presenters: Various
Cost: \$75 SCBA Members/\$100 Non-Members
CLE Credits: 6.5 Areas of Practice/1Ethics
Contact: Larry Naviasky, 374-7779

SEE FLYER ELSEWHERE IN NEWSLETTER!

ALBANY COUNTY BAR ASSOCIATION

Contact: Barbara Davis 445-7691 or acba@global 2000.net

Topic: CLE BY THE SEA
Date/Time: April 22 & 23
Place: The Mohegan Sun Casino
Presenter: Various
Cost: \$175 (\$200 at door); day prices available
CLE Credits: 4.5 Skills, 1.5 ethics

Topic: DEPOSITIONS FROM A-Z
Date/Time: May 12:15-2:30
Place: LaSerre Restaurant
Presenter: Mae D'Agostino
Cost: \$40 Member/\$55 Non-Member/\$25 Law
Students/Paralegals
CLE Credits: 2 Skills

Topic: SOFTWARE AND INFORMATION
TECHNOLOGY LICENSING
Date/Time: May 20 12:15-2:30
Place: The Gideon Putnam
Presenter: Robert J. May, Jr. & Sonya del Peral
Cost: \$45 Member/\$60 Non-Member/\$25 Law
Students/Paralegals
CLE Credits: 2 Skills

Come on in—You will find:

- A NEW Feature from Dave Burke: “Should I?”
- Information about our 50-Year Practitioners
- Law Day Information

See you at lunch, April 21!

“Transportation for life” was the sentence it gave,
“And *then* to be fined forty pound.”
The Jury all cheered, though the Judge said he feared
That the phrase was not legally sound.
But their wild exultation was suddenly checked

When the jailer informed them, with tears,
Such a sentence would have not the slightest effect,
As the pig had been dead for some years.

The Judge left the Court, looking deeply disgusted:
But the Snark, though a little aghast,
As the lawyer to whom the defence was intrusted,
Went bellowing on to the last.

Charles Lutwidge Dodgson, from Fit the Sixth—The Barrister’s Dream, in *The Hunting of the Snark*