
SCHENECTADY COUNTY BAR ASSOCIATION, INC.

NEWSLETTER

January 2003

Mailing Address:
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Telephone Numbers:
President: 853-8102
Treasurer: 370-4743

Secretary/Newsletter/Membership: 377-6489

Website: www.schenectadybar.com

CALENDAR OF EVENTS

January 16, 2003	SCBA Meeting, 12:00 p.m. CLE Opportunity–Workers Comp
February 13, 2003	Estate & Elder Law Seminar
March 20, 2003	Joint Legal, Medical & Dental Dinner Meeting, 6:00 p.m.
April 17, 2003	SCBA Meeting, 12:00 p.m.
May, 2003	Law Day
May, 2003	Real Estate Seminar
June 19, 2003	SCBA Annual Meeting, 12:00 p.m.

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

OFFICERS

President
Vice President
Treasurer
Secretary

J. David Burke
John R. Seebold
Robert W. Hoffman
Kathryn McCary



WE WELCOME NEW MEMBERS

We welcome to the Association

Dana Boniewski

Kathleen Kiley

Who were admitted to membership at the October, 2002 meeting.

NOTE INCLUSIONS IN THIS ISSUE

- Estate and Elder Law Seminar
Registration Form
- Niskayuna Town Court Plea-by-Mail
Procedures

IS MY FACE RED!

The new member admitted in June from the law offices of Bryan Simmerman is **Sandy Pemburn**; the new member sponsored by Jean Carney is **Christine McCue**. I apologize (profusely) for misspelling Sandy's last name and Christine's first name!.

L NEXT MEETING **7**

JANUARY 16, 12:00 P.M.

Will Include Memorial for Morris Marshall Cohn

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

The Editor apologizes for the delay in publishing this newsletter, which was caused by the complete replacement of

the computer system in her office, on top of the general insanity of December. Won't happen again, folks!

FROM THE PRESIDENT

J. David Burke

If you have been admitted in good standing for three years and can spend \$100, keep Monday, June 14, 2004 free because that is the date you will be admitted to the United States Supreme Court. SCBA will be the sponsor for this group admission ceremony, and we will be forming a committee and providing you with further details as the year progresses.

Turning from future to the past, I want to thank Judge Caruso, Joanne Haelen, Kathryn McCary and Bob Hoffman for their extraordinary efforts in organizing and coordinating Judge Levine's retirement celebration which, in everyone's opinion, was a hugely successful event. [*Editor's Note: We won't inquire as to why President Burke neglected to mention his wife, Kathleen Burke, who helped out behind the very busy reception table on the night of the celebration; both she and President Burke deserve lots of special thanks for their work on this event!*]

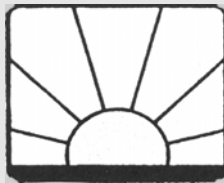
While still looking backwards, we received responses from Judge Lippman and Judge Plumadore to our letter regarding the use of recording devices in Supreme Court. Judge Lippman assures us that the

State's financial circumstances have not diminished the court system's support for court reporters nor is there any systemic plan to replace existing court reporters, leaving open the question of whether replacements will be hired for those who retire. In the Fourth Judicial District, electronic recording will be used in Supreme Court only if a reporter is not available, which is interesting since I am not aware of any Supreme Court that is equipped with electronic recording equipment. We will see what happens.

At the invitation of Chief Judge Kaye, Judge Joseph Sise, Kathryn McCary, Chris Galvin, Nick Tishler, Lillian Moy and I attended a Pro Bono Convocation in October that was convened to explore the serious problem that only 20% of the poor receive legal representation, primarily because 50% of the Bar does not provide pro bono services. While specific proposals have yet to be developed, the overall goal is to develop a pro bono culture in which the furnishing of pro bono services is fundamental to the practice of law. Although some have proposed mandatory pro bono as a solution, it is not being considered at this time. Will keep you posted.

Back to the future. If you have been checking the SCBA bulletin board on our website (SchenectadyBar.com) you know there are a couple of CLE opportunities coming up. Specifically, after our January 16th meeting, Ray Seligman will present a one-hour program on Worker's Compensation and on February 13, 2003, the Estate Planning and Elder Law Committee will present its annual seminar. Also, coming up will be the Medical-Legal-Dental joint meeting, Law Day, the Real Estate Committee's seminar and the high school mock trial competition. Besides the local competition, in late April we will be hosting the regional mock trial competition. If you would like to be a judge for one of the regional mock trials, please let Judge Powers or Judge Drago know. In addition to all of these activities, watch for SCBA After Five, an informal gathering (no speeches, no agenda, and no introductions) that will probably be free and may be held at the Parker Inn in early or mid March. Meanwhile, keep an eye on the SCBA bulletin board for updates.

My editor told me to keep it short, so just two more items. The terms of U.S. Magistrates Gustave J. DiBianco and David R. Homer will expire at the end of 2003. If you have an opinion as to whether they should be reappointed, let me know. Lastly, congratulations to Joanne Haelen who had an article published in the



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

October 2002 New York State Bar Association Journal and to Lisa Tumminelli who was elected chair of the Social Security Disability Law section of the Association of Trial Lawyers of America.

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FROM THE COMMITTEES

ALTERNATE DISPUTE RESOLUTION There will be a luncheon meeting of the Committee in January at the Van Dyck restaurant; for information call Chair Jean Carney, 872-9023

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ESTATE & ELDER LAW There will be a meeting of the Committee January 9 at 8:00 a.m. at the Law Offices of Robert Hoffman, 1802 Eastern Parkway; which will include a presentation by Lisa Zahnleuter about Medicaid. For information, call CoChairs Pam McDevitt, 370-4743 or John Fantauzzi, 370-4645.

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REAL ESTATE There will be a meeting of the Committee January 15 at 8:00 a.m. at the offices of Higgins, Roberts, Beyerl & Coan, P.C., 1430 Balltown Road; Ed Gifford will be present to talk about Roads. All are welcome. Contact Chair Larry Naviasky, 374-7779 or pottnav_larry@global2000.net with questions or regrets.

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

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MATRIMONIAL LAW No meeting in January; none scheduled for February or March. For information about meetings, call Chair Eric Tepper, 399-5400

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LAW DAY: Dinner meeting with the teachers at the Glen Sanders, January 16 at 6:00 p.m; RSVP required to Chair Diane Herrmann, by calling 346-1281 or e-mailing to dianeherrmann@hotmail.com

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In Memoriam

Morris Marshall Cohn, October 4, 2002
 SCBA Memorial will be given at the meeting
 January 16, 2003

Guy A. Graves, November 19, 2002
 SCBA Memorial date will be announced

YOU BE THE JUDGE

J. David Burke

Larry, Tony, and Frank supplied crack cocaine to James and Sharon who sold it from their home. Unfortunately for them, one of their customers was a confidential informant. After their arrest, James, Sharon, and the confidential informant testified at trial against Larry, Tony, and Frank pursuant to a cooperation agreement. At mid-trial, it was discovered that Larry's pretrial attorney simultaneously represented the confidential informant on unrelated charges. It also developed that Tony's attorney had previously represented James on an unrelated matter. Before cross-examining James, Tony's attorney, in Tony's presence, elicited the fact of his prior representation on the record and obtained James' consent to use any privileged information acquired as the result of the representation. Because Larry and Tony's attorneys feared that a vigorous cross-examination of a police witness would open the door to testimony harmful to their clients, they successfully pressured Frank's attorney not to do so. On appeal, the defendants claim they were denied effective assistance of counsel.

Given the fact that a defendant is entitled to representation that is reasonably competent, conflict free and single-mindedly devoted to the client's best interest, should the defendants prevail on their appeals?

The member who submits the first correct answer by e-mail(SchenectadyBar@aol.com) will be SCBA's guest at the January meeting.

The correct answer will be on our website (SchenectadyBar.com) after the January meeting.

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RECENT DECISIONS

People v James, ___NY2d___ [Dec. 17, 2002]

Because the exclusion of jurors on the basis of race continues to plague the judicial system, Judge Smith urges the Legislature to take a “hard look” at the issue of peremptory challenges.

Pierre v Providence Washington Ins. Co., ___NY2d___ [Dec 12, 2002]

What is interesting about this case is that it points out that a federally registered motor carrier engaged in transporting goods in interstate commerce must obtain a federally mandated policy endorsement to its liability policy which provides that the insurer will pay any final judgment rendered against the insured for bodily injury or death despite the insured’s failure to comply with policy conditions.

People v Jackson, ___NY2d___ [Dec 12, 2002]

To justify a suspicionless stop of a motor vehicle, the People have the burden of showing that the stop was motivated by some type of immediate vehicle-bound threat to life and limb rather than being undertaken to further general crime control.

Continental Insurance Co. v State of New York, ___NY2d___ [Nov. 21, 2002]

Plaintiff, an employee as well as a shareholder-executive officer of a corporation engaged in roofing work, elected to be excluded from Workers’ Compensation coverage pursuant to Workers’ Compensation Law § 54(6). Thereafter, he was injured in a job related accident and subsequently recovered damages from the general contractor. The general contractor, in turn, obtained a judgment for indemnification against plaintiff’s corporation that had purchased a single policy providing Workers’ Compensation and Employers’ Liability insurance coverage for its employees. The corporation’s insurer denies coverage. Court held it did not have to provide coverage since plaintiff’s election to forego coverage included both Workers’ Compensation and Employers’ Liability coverage.

McCoy v Feinman, ___NY2d___ [Nov 19, 2002]

Wife’s attorney negligently failed to secure pre-retirement death benefits under her ex-husband’s employee benefit plan. The divorce judgment was entered in the county clerk’s office on June 14, 1988. Ex-husband dies in September 1994 before retirement and his new wife received the survivorship benefits because there was no QDRO naming wife # 1 as the surviving spouse. On June 12, 1996, plaintiff brings a legal malpractice action against her former attorney, claiming the three-year Statute of Limitations did not

begin to run until 1994. The Court said no, holding that the Statute began to run no later than the day the divorce judgment was entered. What is important here for you matrimonial gurus is that the mere mention of *Majauskas* in a stip or agreement does not by itself establish the parties’ intent to allocate pre-retirement death benefits.

People v Samuels, ___NY2d___ [Nov 14, 2002]

Proof that an undercover officer saw crack cocaine in defendants’ possession, that defendants engaged in conduct typical of drug sale operations, accepted payment and operated in a known drug-selling location was sufficient proof to sustain their conviction of the crime of third degree sale of a controlled substance under an offering for sale theory even though when they were arrested the police did not recover any drugs, drug paraphernalia or pre-recorded buy money.

People v Hitchcock, ___NY2d___ [Oct 24, 2002]

Where a child in a household obtained unauthorized possession of a weapon and inadvertently discharged it, resulting in injury or death to another child, the gun owner who made a significant efforts to conceal the weapon was not guilty of the crime of endangering the welfare of a child whereas the owner who left virtually all of his 23 firearms openly accessible was guilty.

Fisher v Qualico Contracting Corp., ___NY2d___ [Oct 22, 2002]

After plaintiff’s house was negligently destroyed by fire, their insurer paid them \$862,770 to replace their home. In a negligence action against the tortfeasors, plaintiffs’ damages were established at \$480,000. The Court held that, under CPLR 4545(c) [admissibility of collateral source of payment], the \$862,770 insurance proceeds was properly offset against the \$480,000 award. Another case for the infamous zip file.

Greenfield v Philles Records, ___NY2d___ [Oct 17, 2002]

Holds that the unconditional transfer of ownership rights to a work of art includes the right to use the work in any manner unless those rights are specifically limited by the terms of the contract, which means, *inter alia*, the Ronettes are not entitled to any royalty payments for use of “Be My Baby” in “Dirty Dancing”. Big news to us late 50’s early 60’s rock and rollers.

People v Jackson, ___NY2d___ [Oct 17, 2002]

Restates the rule that an age discrepancy between a defendant and the fillers in a lineup, without more, is not sufficient to create a substantial likelihood that the defendant would be singled out for identification.

Matter of Mendon Ponds Neighborhood Assn. v Dehm, ___NY2d___ [Oct 17, 2002]

Plaintiff purchased an index number and filed a petition and notice of petition with the Chief Clerk of the Supreme and County Courts. Court holds that petition was properly dismissed since CPLR 304 requires that the summons or notice of petition be filed with the County Clerk.

People v Cooper, ___NY2d___ [Oct. 10, 2002]

Unless an event occurs which triggers the specific contingencies of CPL 30.30(5), CPL 30.30 time periods are generally calculated based on the most serious offense charged in the accusatory instrument and measured from the date of commencement of the criminal action.

Matter of Joseph DD., ___AD2d___ [Dec 12, 2002]

This is the notorious child neglect case where right instincts went awry with the result that a hearing that was suppose to be held within three days was not held until 14 months later.

Fontanas v Wilson, ___AD2d___ [Dec 12, 2002]

The fact that defendant's large dog barked or growled when strangers approached his owner or his owner's property is not enough to establish vicious propensities.

Lounsbury v Lounsbury ___AD2d___ {Dec 12, 2002}

Good discussion on what makes a separation agreement unconscionable and what constitutes duress.

Peek v Peek, ___AD2d___ [Dec 5, 2002]

Pursuant to separation agreement wife was to receive a share of husband's pension. Because he was injured on the job, husband receives disability pension under Retirement and Social Security Law § 63-a, which he contends is separate property not subject to equitable distribution since it is based solely on his disability. The Court says no, holding that the non-disability portion of the pension is subject to equitable distribution.

Castracane v Campbell, ___AD2d___ {Dec 5, 2002}

Points out that, while it is improper to prove that a person did an act on a particular occasion by showing that he or she did a similar act on a different, unrelated occasion, such evidence is relevant to prove intent or the absence of malice.

Salzano v Town of Poughkeepsie, ___AD2d___ [Dec 5, 2002]

Sorry you can't sue the town judge because judicial

immunity for acts done in the exercise of judicial authority extends to judges of courts of limited jurisdiction.

People v Wood, ___AD2d___ [Nov 27, 2002]

Reiterates the rule that under federal and New York law when a party to a conversation consents to its recording, the constitutional privacy rights of the other participants are not implicated. Calling Linda Tripp.

Matter of Young v Young, ___AD2d___ [Nov 27, 2002]

Why there are appellate courts (cont). Even though the issue was not properly before him, the Family Court Hearing Officer *sua sponte* vacated the parties' stipulation regarding child support and proceeded to make a *de novo* determination of child support.

Matter of Serazio-Plant v Channing, ___AD2d___ [Nov. 14, 2002]

Where, in a matrimonial case, the attorney failed to provide a written retainer, failed to provide a statement of client's rights and failed to provide timely itemized bills, the arbitrator's direction to return the entire \$13,000 fee to her former client was sustained. Lesson, follow the rules.

Isabell v U.W. Marx, Inc., ___AD2d___ [Nov. 14, 2002]

Reiterates the rule that in order to establish Labor Law §240(1) liability in a falling object case, it does not matter whether the plaintiff was working at an elevated height; instead, it must be shown that, while being hoisted or secured, the object fell because of the absence or inadequacy of a safety device of the kind enumerated in the statute.

Serrano v Canton, ___AD2d___ [Nov 14, 2002]

This case spells out in detail what an expert's affidavit should contain in a "serious injury" automobile negligence case. What is significant is that the Court indicates that the defendant's expert affidavit is held to the same standard as the plaintiff's.

Ault v Richman, ___AD2d___ [Nov 7, 2002]

A stark reminder not to rely on oral extensions of time to serve a complaint. Also, in a medical malpractice case you need an expert's affidavit to establish merit.

Warrick v Capabilities, Inc., ___AD2d___ [Nov 7, 2002]

Supreme Court did not err in receiving evidence that the plaintiff tried to bribe a witness since such evidence constitutes an admission by acts and conduct that the party's case is weak and his or her evidence is dishonest. Add this case to the zip file.

Leckanby v Cohoes Community Center, ___AD2d___ [Nov 7, 2002]

Reaffirms the rule that a landowner does not have to warn of an open and obvious condition that is readily observable by the normal use of one's senses nor does he or she have to enclose natural geographical phenomena which present open and obvious dangers. In this case the plaintiff snowboarded into the side of a building.

Green v Covington, ___AD2d___ [Nov 7, 2002]

Telephone technician parks his telephone aerial truck near a utility pole on the shoulder of a highway, activates the truck's flashers, puts out warning cones and proceeds to get in the bucket and raise himself 21 feet to repair a loose clamp on the pole. Plaintiff collides with the truck while the repair work was underway. Court applied the "reckless disregard" standard set forth in Vehicle & Traffic Law § 1103 (b) [hazard vehicle engaged in a hazardous operation]

Niro v Village of Lake George, ___AD2d___ [Nov. 14, 2002]

But, the "reckless disregard" standard does not apply where a village employee was using the village's plow to clear out the driveway at his home that was located outside the Village's boundary.

People v Demers, ___AD2d___ [Oct. 31, 2002]

County Court erred in imposing a 10% collection surcharge with respect to a restitution order in the absence of an affidavit indicating that the actual cost of collection exceeded 5%.

People v Creighton, ___AD2d___ [Oct 31, 2002]

In view of the language of CPL 530.13 (4) currently in effect, an order of protection issued in favor of a witness to a criminal act is invalid.

Matter of Moerdler v Tax Appeals Tribunal, ___AD2d___ [Oct 31, 2002]

Petitioner leases automobile for 36 months and pays sales tax on the total sum due under the lease. Five months later, the car is stolen and lease is terminated. Petitioner foolishly seeks a refund of the sales tax. . Was he successful? You know the answer. I say send

the tax people to Dr. Phil for sensitivity training.

City of Albany v Wise, ___AD2d___ [Oct 31, 2002]

Another example showing that an extensions of time to effect service under CPLR 306-b's the interest of justice standard are not given out for the asking.

Matter of Wyman v Braman, ___AD2d___ [Oct 31, 2002]

For an association to have standing in a zoning matter, some or all of its members must have standing to sue, *i.e.*, that they suffered an injury in fact, distinct from that of the general public.

Loving v Abbruzzese, ___AD2d___ [Oct 24, 2002]

Illustrates that a proceeding in Bankruptcy Court can provide the foundation for the application of the doctrine of collateral estoppel is a subsequent Supreme Court action.

Welton v Drobnicki, ___AD2d___ [Oct 24, 2002]

It is sort of chintzy, but a plaintiff's failure to provide a copy of all pleadings with his or her summary judgment motion requires summary denial of the motion. The victory is short-lived however since the plaintiff can simply renew the motion on proper papers.

People v Chaney ___AD2d___; *People v Skinner* ___AD2d___ [Oct 17, 2002]

These cases are interesting from the standpoint that they may indicate that the Court is taking a little closer look as to when evidence of prior crimes may be admitted under the Molineux rule.

Matter of Milnarik v Rogers, ___AD2d___ [Oct 17, 2002]

Points out that the doctrine of exhaustion of administrative remedies has no application where the purpose of the judicial proceeding is to compel the performance of a legal duty.

Matter of Baby Boy O, ___AD2d___ [Oct 17, 2002]

Where the Commissioner of Social Services was not a party to an adoption proceeding, Family Court had no authority under Family Court Act § 255 to direct the Commissioner to pay the guardian ad litem's compensation and expenses.

Matter of Fowler v New York State Bd. Of Law Examiners, ___AD2d___ {Oct 17, 2002}

Whoops! First the Board says petitioner, an English citizen, can take the NYS bar exam, then says no you can't after she did. She wants to see her mark, the Court said no. I say sue for the infliction of extreme emotional distress.

Matter of PDH Props. v Planning Bd of Town of Milton, ___AD2d___ [Oct 17, 2002]

Reminder that when denying an application for a special use permit, a zoning board must base its denial upon proof pertinent to the legislative conditions imposed upon the permitted use and not merely upon generalized community objections.

Matter of Rifenburgh v James, ___AD2d___ [Sept. 26, 2002]

Plaintiff, a recipient of Workers' Compensation benefits, commences third-party action that he subsequently settles for less than the policy limit without obtaining judicial approval or the consent of the workers' comp carrier. Two years after the settlement, plaintiff sought nunc pro tunc judicial approval. Court denied application with the result that plaintiff lost his workers' comp benefits. Do you see another lawsuit lurking in this scenario?

More 2002 Legislative hi-lites or hi-jinks, depending on your viewpoint

Chapter 676 - Provides that only a person licensed under the Education Law can use the term's "psychologist", "psychology" or "psychological" in connection with his or her practice.

Chapter 672 - Amends CPLR 4545 by excluding the receipt of charitable contributions by injured parties from being considered as a collateral source payment.

Chapter 663 - Establishes time frames for combined dispositional and permanency hearings for termination of parental rights and children freed for adoption. Effective 12/03/02.

Chapter 609 - Creates uniform forms of certification of acknowledgments taken by notaries public within and without the state.

Chapter 607 - Adds a new section to the state finance law to create tattoo and body piercing regulations and permit fund. Just what we need.

Chapter 656 - rental company to offer renters "optional

vehicle protection" to insure loss. Effective 2/24/03. - Removes the \$100 cap on driver liability for loss or damage to a rental vehicle, allows rental company to hold renter responsible for the actual damage.

Chapter 655 - Amends CPLR 8011 to increase the fees for sheriffs for performing such services as serving executions, etc.

Chapter 644 - Amends Vehicle and traffic Law to require young drivers (16-18) to complete a series of experience and education requirements before they obtain full driving privileges. Effective 9/1/03.

Chapter 624 - Requires health care provisions in all supreme and family court orders; provides that when child is insured the order must direct the parent providing the benefits to maintain them; where there is no insurance, order must direct custodial parent to apply for CHP or Medicaid. Effective 10/02/02.

Chapter 619 - Criminalizes theft of identity and unlawful possession of personal identification information. Effective 11/1/02.

Chapter 595 - Provides state appellate courts with the authority to respond to changes in technology by giving them the authority to regulate the form of appellate briefs through court rules.

Chapter 593 - Amends CPLR 103(c) to permit courts to convert a motion into a special proceeding or vice-versa.

Chapter 598 - Amends CPL 310.20(2) to provide that whenever a court submits two or more counts charging offenses set forth in the same article of the law (i.e., second degree murder and second degree manslaughter), it may include on the verdict sheet relevant information to assist the jury in distinguishing among the counts. Effective immediately.

Chapter 584 - Amends Insurance Law §3420(g) by requiring insurers to make available to an insured, upon request and payment of a premium, supplemental liability coverage for an insured's spouse for injuries caused by the insured's negligence. Effective January 1, 2003.

Chapter 582 - This bill streamlines the process for discharging a mechanics' lien by establishing the amount of the bond discharging the lien at 110% of the lien amount, thereby eliminating the need to apply to the court for an order fixing the amount of the bond.

Chapter 575 - Adds a new CPLR 3122-a to provide that non-party business records may be obtained by a subpoena duces tecum issued by an attorney or court clerk. Effective September 1, 2003.

Chapter 573 - Prohibits the slaughter of dogs and cats for food and the use of fur, hair, skin or flesh of a dog or cat in any product offered for commerce. Effective January 22, 2003.

Chapter 571 - Provides that a junior license or learner's permit shall be suspended pending prosecution when the holder has been charged with a violation of Vehicle & Traffic Law § 1192 (1), (2) or (3).

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A PLEA FOR HELP

The Law Day Committee needs members to get involved! The teachers in local districts participating in the day are enthusiastic about his year's theme: "Independent Courts Protect Our Liberty." Chair Diane Herrmann and her committee need more help to plan and implement the activities for what may well be a record turn-out of students. Law Day is a lot of fun for the student participants, and a great image builder for the Association; joining the Committee is a good way to get involved. For more information—or to sign up—call or e-mail Diane 346-1281/dianeherrman@hotmail.com.

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INTERIM REPORT OF THE CONSTITUTION & BY-LAWS COMMITTEE

The Constitution & By-Laws Committee is at work on a new draft of the Association governing documents.

One of the most significant changes contemplated is the elimination of the Constitution, and creation of a single document, the By-Laws. The Committee believes the Constitution no longer has a necessary function: the Association's Charter, filed with the Secretary of State as part of the process of incorporation in 1916 established the existence of the corporation, the function of the constitution of an unincorporated association. Merger of the content of the Constitution and By-Laws in a single By-Laws document will eliminate the duplication—and occasional conflicts—inherent in the existing structure.

Other potential revisions being considered are:

- Permitting any lawyer admitted to the bar in New York State to join the Association as a voting member, regardless of where s/he lives

or works;

- Revising the application process so that applicants don't have to wait so long for admission to the Association;
- Creating a mechanism to allow reduction or waiver of dues in appropriate cases;
- Increasing the size of the Board of Directors;
- Modifying the Committee structure, which no longer reflects the actual practice of the Association.

Comments on the above changes—or on other Constitution and By-Laws issues that you think should be considered—can be addressed to Committee Chair Mike Basile, 374-3399 or MEBasile@HRBCLaw.com

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THERE'S PLENTY OF CONFLICT OUT THERE

A report by ADR Committee Chair Jean Carney on the October 17 CLE Program

Frank Woods of the Unified Court System's ADR Office, in his CLE presentation following the October meeting, offered some provocative insights and useful ideas concerning the role of mediation in the practice of law. Acknowledging the concern of some attorneys, that mediation may reduce the need for their services, Frank pointed out that there is no shortage of conflict out there—there's plenty to go around

From the point of view of the lawyer, mediation is part of a strategy for working smart. There is a place in the alternate conflict resolution process for both the attorney-advocate and the mediator-neutral. A lawyer's advice is often an integral part of the decision-making the parties to a mediation need to do—in general, conflicts that don't warrant attorney involvement in the mediation process also don't involve sufficient money to make attorney involvement worthwhile in the absence of mediation. In those cases where attorney involvement is worthwhile, achieving a satisfactory outcome at a low cost can solidify the long-term attorney-client relationship.

Mediation is primarily a process which encourages the parties to talk for themselves, which can make lawyers nervous, but it is also a process which encourages the parties to consult their attorneys when analyzing the issues and developing positions and strategies. The role of the mediator, in part, is to slow down the communication enough by asking questions so that the parties can begin to articulate their underlying interests in order to achieve joint gains. The role of the attorney in mediation can include:

Before the Mediation:

- explaining the process
- helping the client determine what

- issues are really in dispute
- identifying laws applicable to the dispute
- discussing alternative outcomes
- helping the client identify satisfactory outcomes

During the Mediation

- helping the client structure presentations to maximize their effectiveness
- caucusing to analyze proposals or presentations from the other party

After the Mediation

- performing any legal services needed to implement any agreement

Many of the principles which make for good negotiations, and which lawyers are trained to use, are important in successful mediations.

Mediation can be most effective when the parties need to have some sort of ongoing relationship—separating parents, siblings in estate disputes, neighbors. Even when it doesn't result in an agreement, the process will usually give the parties a better understanding of what the issues really are.

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REPORT: THE SEARCH FOR MISSING WILLS

Since distribution of the October newsletter we have learned of the whereabouts of wills drafted by:

John Brown (of Ballston Spa), Harold Friedman, Bob Gilbert, George A. Maksail, & Heywood Robinson

Thanks to:

Bob Hoffman, Tom Hirschen

Keep those cards & letters coming in, folks!

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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—a system with immense potential for screwups. We would like to consolidate all existing records, with the intent of establishing a more reliable system for maintaining and preserving them.

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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NOTICES/ITEMS OF INTEREST

Professionals AA meeting: 6:00 p.m. every Wednesday, First United Methodist Church, 603 State Street, Schenectady—rear entrance

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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—John Fantauzzi/Pam

McDevitt

Matrimonial Law—Eric Tepper

Real Estate—Larry Naviasky

Law Day—Diane Herrmann

Pro Bono Matrimonial—J. David Burke

[addresses & numbers are in the SCBA directory—if you've mislaid your copy, call Kathryn McCary for a replacement]

MINUTES—SCHENECTADY COUNTY BAR ASSOCIATION—MEMBERSHIP

REGULAR MEETING—October 17, 2002—12:00 p.m.—The Glen Sanders Mansion, Scotia, NY

The meeting was called to order by President J. David Burke at 12:20 p.m., 45 members of the Association being then present and constituting a quorum.

MINUTES OF PRIOR MEETING

The minutes of the September 19, 2002 meeting were, on MOTION of Richard Antokol, approved by general consent.

TREASURER'S REPORT

Treasurer Robert Hoffman distributed an accounting for the 9/1/01-8/30/02 fiscal year (copy attached to the official minutes). Income exceeded expenses by \$3,131.21; the balance on hand at year's end was \$25,456.47.

Treasurer Hoffman further reported that a significant percentage of dues owed for the 2002-2003 program year have been received.

PRESIDENT'S REPORT

President J. David Burke reported that Judge Lippman has not responded to his letter concerning the use of recording equipment rather than live reporters, but that Judge Plumadore—to whom he sent a copy—did respond indicating that this would be done only when necessary. President Burke noted that there currently is a hiring freeze in the court system, which may affect this issue.

The Honorable Mark Powers will be chairing the Mock Trial Program, with the assistance of past chair the Honorable Karen Drago. Schenectady will be hosting the regional competition; judges are needed, and members are urged to volunteer.

On November 1 the Association will present a CLE program on the basics of trial tactics, which was organized by the Honorable Joanne Assini. A retirement dinner for Family Court Clerk Jim Armour will be held at Malozzi's Restaurant on October 29. Judge Levine's retirement dinner will be held at the Glen Sanders Mansion on November 22.

COMMITTEE REPORTS

John Fantauzzi announced that there will be a meeting of the ELDER LAW COMMITTEE on October 23 at Frank Parisi's office; there will be a speaker on Medicaid, and discussion of plans for the February seminar.

MEMBERSHIP COMMITTEE REPORT

The names of the following applicants were read for the second time:

Dana Boniewski, who both lives and works in the County and is sponsored by Thomas DeLorenzo; Kathleen Kiley, who works in the County and is sponsored by Thomas DeLorenzo.

Ms. Boniewski and Ms. Kiley were welcomed to membership in the Association.

REPORT OF THE MEMORIAL AND SUNSHINE COMMITTEE

Committee Chair Neil Moynihan offered the following resolution in memory of Joseph P. McGrane, Esq.

WHEREAS, Joseph P. McGrane died at Ellis Hospital on the 26th day of July, 2002, and
WHEREAS, Joseph P. McGrane was a native and life-long resident of Schenectady, being a graduate of Nott Terrace High School, SUNY of Albany and Albany Law School, he served his county honorably in World War II, in the U.S. Army, and

WHEREAS, he subsequently practiced his profession with distinction in our community, for over fifty years, as a partner in the former firm of Begley, Diamond & Begley and, subsequently, as a sole practitioner in our city. In addition, he served as a trial attorney with the New York State Attorney General's Office for more than a decade, and

WHEREAS, he was an active member of several professional and community organization; to wit: Schenectady County Bar Association, N.Y. State and American Bar Associations in addition to being a member of Our Lady of Fatima Church, of Schenectady, and

WHEREAS, Joseph P. McGrane, a true family man, is survived by his wife of 54 years, Jean Cunningham McGrane, his sons, Joseph P. McGrane, Jr. and John Patrick McGrane; now therefore, be it

RESOLVED, that this Schenectady County Bar Association records with deepest sorrow the death of Joseph P. McGrane, and takes this occasion to note publicly the loss of an attorney who, in his professional, community and family life, exemplified integrity of the highest character, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting and recorded in the journal of proceedings, and a copy thereof be transmitted to Joseph P. McGrane's wife and family.

President Burke noted that, although he never personally met Joseph P. McGrane, several of Attorney McGrane's contemporaries have remarked to President Burke on what an outstanding individual he was.

Thereupon, on MOTION of Neil Moynihan, seconded by Richard Antokol, the Resolution was adopted by unanimous vote of the membership.

Nick Tishler reported that he is on the Nominating Committee for the State Bar Association, and that they will be making nominations in November. He also reported the caucus of the 4th Judicial District met, and Cris Cioffi will be the candidate for NYSBA Vice President from the 4th Judicial District; delegates from the District will be Steve Rodriguez, Nick Tishlker and Lori Ann Cantrell.

Mr. Tishler also noted that he has been asked to represent the Federated Bar of the 4th Judicial District at a *Pro Bono* Convocation organized by Chief Judge Kaye, to be held in November. He anticipated that there would be discussion of mandatory *pro bono*, and indicated that it was his intent to speak in opposition to mandatory *pro bono*. President Burke noted that he will also be attending the convocation; he pointed out that one way to stave off the imposition of mandatory *pro bono* is to increase our efforts at voluntary *pro bono*.

PRESENTATION ON MEDIATION PROGRAMS AVAILABLE THROUGH LOJ

President Burke commented that, over time, he has thought that the adversary process is not always the best way to resolve every dispute. Dianne Herrmann, a member of this Association and the Coordinator of the Divorce Mediation Program at the Law, Order & Justice Center, described the divorce mediation program, in which trained mediators assist divorcing spouses to resolve issues about which they disagree. The decisions the parties mutually agree on are then put in a memorandum of agreement, which the parties then take to their lawyers to be used in drafting a separation agreement.

The Honorable Vito C. Caruso noted that, as the divorce mediation program was being developed, there were significant concerns about how mediation would affect the role of the attorneys for the parties, and about whether parties would be directed to mediate when they did not want to. He explained that the program is voluntary, but the courts encourage its use; those judges who hear matrimonial cases support the program. He also noted that the parties can choose to mediate only some issues, rather than all issues between them. Mediation is not intended to replace, or undercut, the services of an attorney.

Judge Caruso indicated that the bench is concerned about the underutilization of the divorce mediation program, which is grant-supported, with minimum standards to be met in order to continue funding. He urged all members of the Association to learn about the program, and consider how mediation can be of service in their practice.

Ms. Herrmann reminded the membership that the service is free, and that attorneys can—but do not have to—attend the mediation sessions with their clients. She reminded those in attendance that there will be CLE presentation following this meeting on how mediation can be of value to the practicing attorney.

In closing, President Burke noted that local court staff find that mediation is a great benefit, as it helps resolve things for which there are not easy and obvious resolutions, stuff that the attorneys don't want to have to get involved in, and can't realistically charge the clients for.

There being no additional business to come before the Membership, the meeting was adjourned at 12:50 p.m.

Respectfully submitted,

Kathryn McCary, Secretary

CLASSIFIED ADVERTISING

SPACE AVAILABLE

Office Space available for two attorneys and two staff. 650 Franklin Street, Schenectady. Space includes parking and use of conference rooms, kitchen and reception areas, also may include telephone answering, Internet access and facsimile service. If interested, please contact Lewis Kaehler Bates & Angle LLP, 374-3344.

Office Space available for sole practitioner. 38 North Ferry Street, Schenectady. Space includes use of conference room and reception area. If interested please contact Phil Rodriguez, 346-7275

POSITION AVAILABLE

One of the Capital District area's leading estate planning, tax and elder law firms seeks general business associate to assist with family business formations, asset protection strategies, business counseling, buy-sell agreements and transactions involved in an extensive practice environment. Strong communication skills and compute abilities a must. Financial background, 2-5 years progressive experience, client following a plus. Salary, incentives, great working environment with strong support and partner potential. Contact: Martin S. Finn, managing partner, Lavelle & Finn, LLP, 450 New Karner Road, Albany, NY 12205, fax (518) 869-0572, e-mail Marty@lqvelleandfinn.com.

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.

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If

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- % you or someone you know has received special recognition
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Scotia, NY 12302

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CONTINUING LEGAL EDUCATION OPPORTUNITIES

THE SCHENECTADY COUNTY BAR ASSOCIATION

Topic: WORKERS COMPENSATION
Date/Time: January 16, following meeting
Place: Glen Sanders Mansion
Presenters: Ray Seligman
Cost: Included in lunch cost of \$15
CLE Credits: 1 Areas of Practice

Topic: ESTATE PLANNING & ELDER LAW
Date/Time: February 13, 2003, 7:30 a.m.
Place: Glen Sanders Mansion
Presenters: Rose Mary Bailly, Karleen Karlson, Jennifer Corcoran, Chris Fagan, Martin S. Finn, Peter V. Coffey
Cost: \$60 attorney/\$35 non-attorney
CLE Credits: 4½ Areas of Practice/½ ethics [newly-admitted attorneys: 4½ Skills/½ ethics]
Contact: John A. Fantauzzi, 370-4645

ALBANY COUNTY BAR ASSOCIATION

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

Topic: ETHICAL ISSUES FOR THE PRACTICING ATTORNEY
Date/Time: January 16, 2003 1:45
Place: Albany County Courthouse Jurors' Lounge
Presenters: Mark Ochs.
Cost: \$40 Member/\$45 Non-Member/\$25 Student
CLE Credits: 2 Ethics

Topic: MOTION PRACTICE IN THE SUPREME COURT: ADVICE FROM THE INSIDE
Date/Time: January 22, 2003 12:15
Place: LaSerre Restaurant, Albany
Presenters: Glen Doherty, Esq.; Joe Berger, Esq.
Cost: \$30 Member/\$40 Non-Member/\$20 Student
CLE Credits: 1 Professional Practice

Topic: MAKING A CASE FOR COMMUNICATION: HOW TO RAISE THE BAR WITH SOLID SPEAKING STRATEGIES
Date/Time: February 5, 2003 12:15
Place: Vellano's Restaurant, Albany
Presenters: Dale Klein
Cost: \$30 Member/\$40 Non-Member/\$20 Student
CLE Credits: 1 Professional Practice

Topic: CIVIL RIGHTS—FALSE ARREST, EXCESSIVE FORE, MALICIOUS PROSECUTION—HOW TO ASSESS IF THERE IS A CASE
Date/Time: February 7, 2003 1:45
Place: Albany County Courthouse Jurors' Lounge
Presenters: Kevin Luibrand
Cost: \$40 Member/\$45 Non-Member/\$25 Student

CLE Credits: 2 Professional Practice

Topic: REAL PROPERTY TAX CHALLENGERS: ADMINISTRATIVE TO JUDICIAL PROCEEDINGS
Date/Time: February 13, 2003 12:15
Place: Vellano's Restaurant, Albany
Presenters: Daniel Vincelette.
Cost: \$30 Member/\$40 Non-Member/\$20 Student
CLE Credits: 1 Skills

Topic: UTILIZATION OF PARALEGALS
Date/Time: March 7, 2003 1:45
Place: Albany County Courthouse Jurors' Lounge
Presenters: Chad Jerome & Cynthia LaFave
Cost: \$40 Member/\$45 Non-Member/\$25 Student
CLE Credits: 2 Professional Practice
Contact: Barbara Davis 445-7691 or acba@global 2000.net

Topic: MEDICAID PLANNING & MANAGING LONG TERM CARE COSTS
Date/Time: March 13, 2003 12:15
Place: LaSerre Restaurant, Albany
Presenters: Frank Lang
Cost: \$30 Member/\$40 Non-Member/\$20 Student
CLE Credits: 1 Professional Practice

Topic: NIGHT COURT PRACTICE
Date/Time: March 20, 2003 12:15
Place: LaSerre Restaurant, Albany
Presenters: William Gray and Joe McCoy
Cost: \$30 Member/\$40 Non-Member/\$20 Student
CLE Credits: 1 Skills

Topic: UPDATE ON EVIDENCE
Date/Time: April 9, 2003 12:15
Place: Jack's Oyster House, Albany
Presenters: Michael Hutter
Cost: \$30 Member/\$40 Non-Member/\$20 Student
CLE Credits: 1 Skills

Schenectady County Bar Association
c/o McCary & Huff, LLP
107 North Ballston Avenue
Scotia, NY 12302

Come on in—You will find:

- CLE Information—including the annual estate & elder law seminar
- New Niskayuna Town Court Plea-by-Mail rules
- And, of course, all the usual suspects

See you at lunch, January 16!

*“The Law is the true embodiment
Of everything that’s excellent.
It has no kind of fault or flaw,
And I, my Lords, embody the Law.”*

The Lord High Chancellor*, in William Schwenck Gilbert’s, *Iolanthe*, Act I

* Not a Judge—Surprise!