
SCHENECTADY COUNTY BAR ASSOCIATION, INC.

NEWSLETTER

January 2004

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Website: www.schenectadybar.com

Telephone Numbers:
President: 374-1800
Treasurer: 370-4743

Secretary/Newsletter/Membership: 377-6489

CALENDAR OF EVENTS

January 15, 2004	SCBA Meeting, 12:00 p.m.
March 11, 2004	SCBA Estate & Elder Law Seminar
April 15, 2004	SCBA Meeting, 12:00 p.m.
April 30, 2004	Law Day
April 30-May 2	Federated Bar Annual Meeting
June 17, 2004	SCBA Annual Meeting, 12:00 p.m.
June 14, 2004	US Supreme Court Admission Trip

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

Hon. Jo Anne Assini
J. David Burke
Eleanor M. DeCoursey
Diane Enzinna
Brian Ferrucci
Frank Parisi

NOTE INCLUSIONS IN THIS ISSUE

- Supreme Court Admission Trip Registration Form
- Estate and Elder Law Seminar Registration Form



WE WELCOME NEW MEMBERS

We welcome to the Association
Marcia Hordines and Leslie Morsillo
who were admitted to membership at the October
2003 meeting.

L NEXT MEETING **7**

JANUARY 15, 12:00 P.M.

Will Include Memorial for Arnold Gordon

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

FROM THE PRESIDENT

John R. Seibold

Happy New Year. I hope your holiday season was a joyous one!

After not having argued in the Appellate Division for a number of years, I argued twice at the last session. I do not know if it was my absence from the Court or just the passage of time, but I left the arguments with some observations which I would like to share:

First, in the normal course of our practices, we see a limited number of attorneys engaged in limited areas. However, at the Appellate Division, and albeit short, you can witness attorneys that you will never work with argue on a broad spectrum of issues. I strongly encourage newer attorneys to sit in on an appellate or trial proceeding in which there is no interest in the outcome. In my humble opinion, there is no better continuing legal education than to watch another attorney practice their craft who has already "been there and done that".

Second, from my personal experience conducting depositions and eliciting trial testimony, I know that witnesses often do not answer the question asked. I now know that attorneys also often do not answer the question asked. At the arguments, Judge Cardona asked

the same question of appellant counsel on three occasions, none of which met with a direct response. When respondent counsel stood up, Judge Cardona said to counsel "Now maybe you can answer my question." Although extreme, this was not the exception at the arguments. As I instruct clients in preparation for depositions, a witness needs to listen to the question asked and answer the question asked. I think that we should take our own advice.

Third, the first argument on the calendar was conducted by a veteran attorney from a large Albany Law firm and by retired Presiding Justice of the Appellate Division Leonard Weiss. At the conclusion of the arguments, Judge Cardona asked counsel if they had sat down in a room and attempted to resolve the difference. After counsel responded in the negative, Judge Cardona stated that knowing the attorneys as he did that he would be very surprised if after sitting down and discussing the issues that the matter would not be resolved. With all due regard to the appellate process and our right to utilize same, I feel in the exercise of judicial economy and practice civility that is incumbent upon us as attorneys to attempt to resolve our differences short of the courtroom. It sounds trite, but we should keep it in mind. I know we have the civil appeals settlement program (CASP) in place, but the conferences will only work if the participants approach it with settlement in mind, not just as a prerequisite to get to the appellate division.

On a lighter side, thank you to those who attended the holiday mixer at the Stockade Inn. Based upon the attendance and the favorable response, our association will consider these type of social activities in the future. Any suggestions for themes, locations or dates are greatly appreciated.

I wish you all a healthy and prosperous 2004! I hope to see you at the January 15, 2004 luncheon meeting to be held at noon at the Glen Sanders Mansion.

Respectfully,

John Seibold

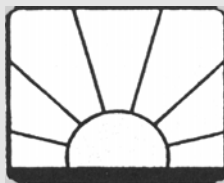
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FROM THE COMMITTEES.

ALTERNATE DISPUTE RESOLUTION There will be a meeting of the Committee on February 11 at 12:15 at Aashiana Restaurant on Jay Street in Schenectady. For more information call Chair Jean Carney, 872-9023

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CRIMINAL LAW The Committee is in the initial stages of planning an afternoon seminar on driving while intoxicated. All members of the Association are encouraged to offer suggestions on topics or



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

speakers. For information about the committee—or to offer suggestions concerning the seminar—call Chair Paul Callahan, 895-2334

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ESTATE & ELDER LAW There will be a meeting of the Committee January 14 at 8:00 a.m. at the offices of Robert W. Hoffman, 1802 Eastern Parkway, Schenectady; guest speakers will be Paula Miller and Giselle Fortune, Chief Clerk and Deputy Chief Clerk of the Schenectady County Surrogate's Court. For more information, call Co-Chairs Pam McDevitt, 370-4743 or Gerard Parisi, 377-9096.

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LAW DAY: Law Day this program year will be April 30, 2004. For information about the Committee, contact Chair Diane Herrmann, by calling 346-1281 or e-mailing to dianeherrmann@hotmail.com

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MATRIMONIAL LAW: There will be a meeting of the Committee January 21 at 12:00 noon at the offices of Gordon, Tepper & DeCoursey, LLP, 113 Saratoga Road, Glenville. For more information, call Chair Eric Tepper, 399-5400

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REAL ESTATE There will be a meeting of the Committee January 7 at 8:00 a.m. at the office of Englert, Coffey & McHugh, LLP, 224 State Street, Schenectady. For more information, contact Chair Larry Naviasky, at 374-7779 or pottnav_larry@global2000.net.

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TRIAL PRACTICES: There will be a meeting of the Committee January 22 at 5:00 p.m. at the offices of Capasso & Massaroni, LLP, 215 State Street, Schenectady. On the agenda will be plans for a CLE program in which attorneys litigate portions of a civil litigation matter before a panel of Committee members which will offer advice, guidance, tips and critique. For information about the Committee, contact Chair John Massaroni, 374-1800.

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RECENT DECISIONS

J. David Burke

Bankers Trust Corp. v New York City Dept. of Finance, ___ NY2d___ [Nov 25, 2003]

Generally, it is not necessary to exhaust administrative remedies where it would be futile to do or it would cause irreparable harm (*Watergate II Apts. v Buffalo Sewer Auth.*, 42 NY2d 52). This rule does not apply however where the Legislature has specifically delineated the exclusive steps a party must undertake in

In Memoriam

Arnold Gordon—October 29, 2003
SCBA Memorial will be given at the meeting January 15

order to seek judicial relief unless the statute is being attacked as unconstitutional or as being wholly inapplicable.

People v McDonald, ___ NY2d___ [Nov 24, 2003]

Whoops. Defendant pleads guilty upon his attorney's advice he would not be deported. The next day, INS begins deportation proceedings. Defendant moves to vacate plea, claiming ineffective assistance of counsel. Denied because, under the Federal Constitution, the failure to advise a defendant of the possibility of deportation does not constitute ineffective assistance of counsel where there is no proof that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial.

County of Nassau v Canavan, ___ NY2d___ [Nov 24, 2003]

The importance of this case is the Court's observation that, when implemented pursuant to a carefully drafted statute, civil forfeiture of automobiles can be an extremely effective tool in the battle against drunk driving. In this case the statute was struck down because it was too broadly worded and did not provide for a prompt post seizure hearing in all cases.

David v County of Suffolk, ___ NY2d___ [Nov. 20, 2003]

Another indication that the Courts are playing a more active gatekeeping role with respect to expert's affidavits. Here, the Court found that the expert's affidavit lacked probative force because he failed to establish the foundation or the source of standards underlying his conclusion.

Esposito v New York City IDA, ___ NY2d___ [Nov 20, 2003]

Plaintiff did not fall within Labor Law § 240(1) because his work involved replacing components of an air conditioning unit that required replacement in the course of normal wear and tear and thus constituted routine maintenance and not "repairing".

O'Connell v O'Connell, ___ NY2d___ [Nov 20, 2003]

In 1982 plaintiff's New York divorce action

dismissed for failure of proof. In 1994, she commenced a divorce action in Vermont. Vermont court granted the divorce but made no property distribution. In 1995, plaintiff commenced action in New York seeking equitable distribution. Court holds that, because plaintiff would be precluded from commencing a separate action for equitable distribution in Vermont, New York must also preclude a subsequent action for equitable distribution under the Full Faith and Credit Clause.

DiSimone v Good Samaritan Hosp., ___NY2d___ [Oct 30, 2003]

If a party fails to comply with CPLR 3216 (demand to file note of issue within 90 days), but demonstrates a justifiable excuse for the delay and a good and meritorious cause of action, Special Term may not dismiss the action because CPLR 3216 “is extremely forgiving of litigation delay”. How forgiving is it? I’d rather not have to find out. Moral, if you are not in position to file the note of issue because you don’t want to foreclose discovery, seek an extension under CPLR 2004, which nice Courts, like the one in Fonda, let you do by letter.

People v Mills, ___NY2d___ [Oct. 28, 2003]

In 1978 defendant causes the drowning death of a 12 year old boy. Is indicted in March 2000 for murder in the second degree. At trial, he requested the lesser included charge of criminally negligent homicide be given to the jury. He was convicted of that charge and acquitted of the murder charge. On appeal defendant argued that conviction should be vacated because the crime of criminally negligent homicide was time-barred. Court demurred, holding that, where an indictment is based on legally sufficient evidence, a statute of limitations defense is waived or forfeited by the defendant’s request to charge a lesser included offense.

Matter of Medical Society v Serio, ___NY2d___ [Sept. 26, 2003]

Sustains regulations reducing time frames for claiming and proving entitlement to no-fault automobile insurance benefits. Now, the time limit for filing a notice of claim is 30 days after the date of the accident; the time to submit proof of loss due to medical treatment is 45 days; proof of work loss is 90 days. Also, under the revised regulations interest on overdue payments is to be calculated as simple interest rather than as compound as before.

Striegel v Hillcrest Heights Dev. Corp., ___NY2d___ [Sept. 26, 2003]

Court holds that the application of Labor Law §

240(1) does not hinge on whether the worker actually hit the ground. Here, the statute applied where the worker, a roofer, slipped and fell as he was walking along the roof’s ridge and slid 15 to 20 feet down the roof to the eaves where several protruding nails snagged his pants, preventing him from falling to the ground.

Matter of Parkhurst v McFall, ___AD2d___ [Nov 26, 2003]

Even though the custodial parent’s denial of visitation went beyond occasional interference, reversal of the custody order was not warranted as there was nothing in the record to suggest that she did so in a willful and/or malicious attempt to interfere with the father’s relationship with the child.

People v Plaisted, ___AD2d___ [Nov. 26, 2003]

Indictment charged that defendant committed crime in August 2000. Following the close of proof, County Court, *sua sponte*, amended the indictment to allow the jury to consider that the crime might have been committed in August 1999. Court said sorry can’t do that since the amendment created a real potential of prejudice to the defendant since his trial strategy centered on attempting to prove the crime could not have occurred in August 2000.

Matter of Coleman v Coleman, ___AD2d___ [Nov 26, 2003]

Aside from the fact that you don’t want to block the defendant’s view by dancing in the aisle at a rock concert, this case points out that an order of dismissal is entitled to *res judicata* effect only where the circumstances evince that it is on the merits or with prejudice to a re-litigation of the earlier claim.

Zanger v Zanger, ___AD2d___ [Nov 26, 2003]

Even though plaintiff-husband could not provide a paper trail documenting the source of money used to purchase the marital residence, he was entitled to a separate property credit because nothing in the record suggests any possible source for the money other than his separate property. To see what happens when spouse can’t show there was no other possible source for the money see *Cassara v Cassara*, ___AD2d___ [Nov. 26, 2003].

Vasquez v McGeever, ___AD2d___ [Nov 13, 2003]

Defendant obtained summary judgment on ground plaintiff’s sole remedy was workers’ compensation since she was Defendant’s employee. Reversed. Whether a person is an employee within the meaning of Labor Law § 2(7) is to be resolved by the Workers’

Compensation Board rather than the courts.

Weiglhofer v Weiglhofer, ___AD2d___ [Nov 13, 2003]

Exclusive possession and use of the marital residence to one party during the pendency of a matrimonial action should not be awarded absent a hearing unless there is a showing exclusive possession is necessary for the protection of the safety of persons and property or where one party has established alternative living arrangements and there is a history of violence or domestic strife.

Buster v Parker, ___AD2d___ [Nov. 6, 2003]

Practice Pointer. In a “serious injury” case, an affidavit by plaintiff’s treating chiropractor based upon an examination conducted 16 months prior to the date of the affidavit is deficient as a matter of law.

Fazzone v Gourlay, ___AD2d___ [Nov 6, 2003]

Where the evidence in a case is contrary to the facts that form the basis of the expert’s opinion, or where the expert equivocates on cross-examination, a jury may properly disregard his opinion.

People v Gulnac, ___AD2d___ [Oct 30, 2003]

During a home invasion, defendant carried a handgun which led to his indictment and conviction for the crime of burglary in the first degree because he possessed a “deadly weapon.” Court reversed, holding that although defendant’s gun was test-fired successfully using ammunition from the police inventory, there was no proof that the ammunition recovered from defendant had been tested and determined to be live nor was any explanation given as to why that procedure had not been followed.

People v Torra, ___AD2d___ [Oct 30, 2003]

Points out that two indictments based upon separate criminal transactions may be joined when evidence of a crime charged in one indictment is material and admissible as evidence of a crime charged in the second. Here, when police attempted to arrest defendant for a prior burglary, he resisted, injuring the cop. Court said OK to join because evidence that defendant committed a burglary was clearly admissible to establish his motive for later resisting arrest.

Soskin v Scharff, ___AD2d___ [Oct 30, 2003]

Holds that Labor Law §§ 240 and 241 liability does not attach to prime contractors having no authority to supervise or control the work being performed at time of injury.

Matter of Fischer v City of Binghamton, ___

AD2d___[Oct 30, 2003]

Business a little slow? Lawyer gets parking ticket. Ticket dismissed. Lawyer brings CPLR article 78 proceeding seeking a full hearing. Petition dismissed. Appeals. Loses.

Memorial Hospital v Kligerman, ___AD2d___ [Oct 30, 2003]

A bit of minutia. Caption identifies plaintiff as “Memorial Hospital” instead of “Albany Memorial Hospital”. Because defendant did not object within two days (CPLR 2101 (f) he waived objection. In any event, the hospital was correctly identified in the complaint and supporting papers.

Fleming v Barnwell Nursing Home & Health Facilities, ___AD2d___ [Oct 30, 2003]

Something to note. Public Health Law § 2801-d provides a private right of action for nursing home residents to recover for deprivation of certain rights and for class action certification of the claims based on that section and negligence.

Gizzi v Hall, ___AD2d___ [Oct 30, 2003]

Acceleration of a mortgage entitles the mortgagee to all of the mortgage principal still owed as of the date the acceleration option was exercised, not the total of all scheduled mortgage payments from that date throughout the remaining term of the mortgage.

People v Velasquez, ___NY2d___ [Oct. 23, 2003]

Holds that the failure to record a criminal defendant's presence at a sidebar conference with prospective jurors regarding bias or hostility does not constitute substantial evidence establishing an Antommarchi violation (*People v Antommarchi*, 80 NY2d 247)

People v Terry, ___AD2d___ [Oct. 23, 2003]

Defense in this criminal trial rested without calling defendant. Prior to closing arguments, defendant asks that he be allowed to testify. Request denied. Reversed. There was no evidence that defendant agreed to waive his right to testify and there is no way of knowing whether his testimony would have resulted in a different verdict.

Carlo v Lynn Ladder & Scaffolding Co., ___AD2d___ [Oct 23, 2003]

Practice Point: Make sure the verdict sheet tracks the charge to avoid a challenge to the verdict on the ground of juror confusion. Hint, suggest to the judge that he or she really should prepare both documents to avoid this problem. Brave advice from a noncombatant.

Matter of Carr v Carr, ___AD2d___ [Oct 23, 2003]

When your income in 1999 is \$44,620 and is \$230,750 in 2001, you will pay more child support since that increase is in and of itself sufficient ground to establish a change of circumstances. Also see, *Stricos v Stricos*, ___AD2d___ [Oct 23, 2003] applying the same principle to maintenance. There the increase was from \$14,000 to \$40,314.

Matter of Thompson, ___AD2d___ [Oct 23, 2003]

In the residuary clause of his will decedent gave his property "unto my beloved wife to be hers absolutely, to the exclusion of any children of mine..." Court holds this absolute language falls short of showing that the decedent intended to create an irrevocable mutual will with his wife and that the parties agreed to renounce the right of the survivor to dispose of this property as she saw fit.

Schultz v Schultz, ___AD2d___ [Oct 23, 2003]

The execution of a separation agreement serves as a terminating event in defining marital property for equitable distribution purposes. In this case, the marital

residence that was conveyed to the wife in 1982 pursuant to the terms of a separation agreement was deemed separate property when the parties divorced in 1999.

Bing v Mangione, ___AD2d___ [Oct 23, 2003]

Love labor's lost, maybe. Boyfriend buys house, put's girlfriend's name on deed, leased a Nissan Pathfinder for her and gave her \$15,000 in living expenses. After closing, girlfriend changes locks on the residence, telling boyfriend the party's over. Court says he can get his gifts back if the sole motivation for giving them was a contemplated marriage that never occurred.

Kayemba v Kayemba, ___AD2d___ [Oct 23, 2003]

Court lacks statutory authority to hold spouse in contempt for failure to pay child support unless it is shown that less drastic means of enforcement would be ineffectual.

Fox v Fox, ___AD2d___ [Oct 23, 2003]

Gotta know when to hold them. Defendant filed six appeals, four of which raised no meritorious issues and five separate motions seeking various relief. Court says enough and imposes sanctions of \$7,500 on defendant. Court also points out that, absent the termination of a marriage by judicial decree, courts do not have the authority to direct, *pendente lite*, the sale of property owned by the parties as tenants by the entirety.

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COLLABORATIVE LAW—ANOTHER WAY TO APPROACH DISPUTE RESOLUTION

Richard Antokol

Collaborative what? This somewhat oxymoronic phrase describes a relatively new procedure in the arsenal of the dispute resolution professional. No, it didn't start in California. The guilty party is one, Stuart Webb, Esq. from Minneapolis. The concepts were developed about ten years ago and elaborated upon in a book published by Mr. Webb.

Last Spring, at the Suffolk University School of Law in Boston, I attended a three-day training seminar to learn to use this dispute resolution method. A most interesting three days. There are already approximately 100 attorneys in the greater Boston area who are practicing using the collaborative model.

The core of this model is in this paragraph. Individuals engaged in a dispute would both need to have an interest in using the collaborative strategy. Each would retain their own attorney, similarly interested. Unlike a mediator, the attorney has an

attorney-client relationship with his or her respective client. At the inception of the dispute resolution process, both clients and attorneys sign a single contract setting forth the collaborative procedure to which they are agreeing. The procedure permits and requires that the parties and attorneys engage in all appropriate discovery, investigation and negotiations. The contract, however, prohibits these two attorneys from representing these two parties in litigation, should the effort at dispute resolution fail at the collaborative level. The experience of attorneys who are engaged in this practice is that, by so agreeing, the dispute resolution dynamics are fundamentally altered. There becomes a disincentive on the attorneys to overtly and/or subtly, and/or even subconsciously, manipulate for the failure of a non-litigation resolution of the dispute. To do so, would simply mean that the attorney would lose that client. The client would be compelled to retain new counsel to engage in litigation. Obviously, the success of the resolution of the dispute, using the collaborative model, would encourage the client to make further referrals to the attorney for new work. In the same vein, there is a significant disincentive on the client to fail to reach a negotiated settlement. If the parties were not able to reach a settlement at the collaborative level, the client would need to spend the money to hire a new attorney to engage in litigation. By contractually placing both attorneys and the clients in the position of having a significant incentive (over and above what exists in the traditional litigation environment) to settle the matter, a negotiated settlement is far more likely to occur.

There are a wide range of tactics, strategy and specific methodology that have been developed to assist the practitioner in becoming successful with this method of dispute resolution. The details of those items are beyond the scope of this article.

How does this method fit into the overall matrix of various dispute resolution methods? I believe there is a scale or spectrum of dispute resolution methods. The appropriate use of each method is dependent upon the significance of the power imbalance between the parties and the intensity of the parties' internal need to be disputatious. That is to say, for those parties more or less evenly matched in their power and both having a low intensity of need to engage in a dispute, a simple negotiation, usually without attorneys, will suffice. The inclusion of attorneys in that negotiation is the next level up, if you will, on the scale. The next level up would be a negotiation conducted with a neutral, *i.e.* mediation as it is presently understood. Up until now, for those parties higher on the disputational scale, once mediation failed, there were no further alternatives to full scale litigation. The collaborative method falls in-

between mediation and litigation. In the collaborative method, by having an attorney-client relationship between each party and his/her attorney, a significant correction of any power imbalance can occur. Further, by providing a disincentive to litigate, the level of hostility (in an appropriate case) can be reduced. Of course, if the parties are "terminally ticked" at each other, it is unlikely that anything short of litigation will settle the dispute.

For what cases is the collaborative law model appropriate? I start with the premise that for many disputes, winning is highly illusory. Certainly this is true in Family Law, it is probably generally true in estate litigation, disputes between neighbors and many others. Essentially, where the parties will continue to have some connection with each other after the dispute is resolved, the notion of winning is often a hollow promise. In such cases the collaborative method may be very attractive to the parties. Also, from the practitioner's perspective, by giving the dispute resolution professional one more effective strategy to resolve disputes, the market for the services of attorneys is enlarged.

JANUARY CLE OPPORTUNITY— YOUTH COURTS

Niskayuna Town Justice Daniel Burns and Marcia Hordines, Director of Community Justice Services at the Law, Order & Justice Center, will present a CLE program on Youth Courts following the regular meeting of the membership on January 15. Topics to be covered include the definition and purposes of Youth Courts, how Youth Courts operate, a description of the Niskayuna Youth Court and Schenectady Youth Court, and the role of attorney mentors. Attendees will receive on “areas of practice” CLE credit; they will also be encouraged to become mentors for the Schenectady and Niskayuna Youth Courts.

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SCHENECTADY LAWYERS DO THE PUBLIC GOOD

We are proud to note that, in the first 5 months of this program year, Schenectady County lawyers have accepted 31 *pro bono* assignments from the Legal Aid Society of Northeastern New York. Thank you, Dave Burke, Tom DeLorenzo, Dennis Englert, John Fantauzzi, Kathryn McCary, Peter McHugh, Ralph Nocera, Frank Putorti, Art Pasquariello and Bryan Simmerman—and everyone participating in the *pro bono* matrimonial program!

But we shouldn’t rest on our laurels! Our record in that period is matched by Saratoga County—and Albany County lawyers accepted 131 assignments (an impressive number, even after you discount the 25 assignments accepted by Albany Law School). Our profession’s acceptance of an ethical obligation to help others goes back a long way—let’s make an effort to show that Schenectady lawyers value professional traditions. Information about *pro bono* opportunities is available inside the newsletter back cover. Take advantage, and do some public good!

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WHERE HAS THE APPELLATE DIVISION GONE?!

Due to renovations to its offices, the Appellate Division, Third Department, temporarily relocated most of its operations to 286 Washington Avenue Extension, effective December 8, 2003. The mailing address for regular mail has not changed, but the address for express or overnight mail will be, during this temporary relocation:

State of New York
Supreme Court, Appellate Division
Third Judicial Department
Corporate Plaza West
286 Washington Avenue Extension
Albany, NY 12203-5371

Some phone numbers have changed—new numbers can be found on the Court’s website at www.nycourts.gove/ad3 under “How to Contact Us.” The Law Research Department, Law Guardian Program, and Civil Appeals Settlement Program remain at the Justice Building; their addresses & telephone numbers have not changes. The December 2003 and subsequent terms will be held at the Washington Avenue Extension address.

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TWELVE FREE CLE CREDITS

Northeast Legal Aid Society is sponsoring a two-day intensive CLE program on Effective Practice in Family Court. Participants must agree to accept *pro bono* representation of two victims of domestic violence—course participation is worth 12 CLE credits, which will include ethics credits. Enrollment is limited to 20 attorneys; a deposit of \$100 is required, which will be refunded on successful completion of the training. See detail on the *Pro Bono* Opportunities page on the inside back cover.

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REPORT:

THE SEARCH FOR MISSING WILLS

Nothing new to report, but
KEEP THOSE CARDS & LETTERS COMING IN!

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**NEW CITY COURT FEE SCHEDULE
ANNOUNCED BY THE UNIFIED COURT
SYSTEM** (Unless otherwise indicated,
section references are to UCCA)

Effective October 22, 2003, the following schedule
of fees will be in effect in City Courts:

Filing Summons/First Paper §1911(a)(1)	\$45
Order of Attachment §1911(a)(2)	\$45
Infant's Compromise §1911(a)(3)	\$40
Notice of Trial §1911(a)(4)	\$40
Judgment unless (a or b) §1911(a)(5)	\$45
Notice of Appeal §1911(a)(6)	\$30
Satisfaction of Judgment §1911(a)(7)	\$6
Trial by Jury §1911(a)(8)	\$70
Exemplification §1911(a)(9)	\$15
Certifying a paper §1911(a)(10)	\$6
Recovery of Real Property §1911(a)(11)	\$45
Small Claims—\$1,000 or less §1803(a)	\$15
Small Claims—more than \$1,000 §1803(a)	\$20
Small Claim counterclaim §1803(c)	\$5
	plus cost of 1 st class mail
Bail Poundage GML§99m	3% of bail ordered
Trial <i>de novo</i> 22 NYCRR §28.120	\$75
Photocopy Fees CPLR §8019(f)(1)	\$.65/page
	\$1.30/minute
Commercial Claim Filing Fee §1803-A(a)	\$25
Commercial Claim Certified Mail	
plus first class §1803-A(a)	prevailing rate
Commercial Claim Counterclaim §1803-A(d)	\$5
	plus cost of 1 st class mail

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. Now that we have an office—and staff!—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

The Italian-American Bar Association will hold its first Annual Abbondanza Di Festa at the Glen Sanders Mansion Friday, January 23, 2004 at 6:30 p.m. Entertainment, food and wine, silent auction as well as live auction with auctioneer Bob Roche, Esq., proceeds to benefit Law Student Scholarship Fund. Cost \$75 per person; for reservations contact Nancy Sciochetti, Esq 462-5601 or Nancy@OALAW.com

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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—Pam McDevitt/Gerard Parisi
 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—which will be issued in mid-October.]

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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.

CLASSIFIED ADVERTISING

Reasonable office space for rent in prime location. Included are library services, conference room, copier, fax, reception, secretarial space and other amenities available. First or second floor available. Contact Richard M. Antokol, Esq., Antokol,

Reisman & Coffin, 514 State Street, Schenectady, NY 12305
(518) 370-2500

MINUTES—SCHENECTADY COUNTY BAR ASSOCIATION—MEMBERSHIP

REGULAR MEETING—October 16, 2003—12:00 p.m.—The Glen Sanders Mansion, Scotia, NY

The meeting was called to order by Vice-President the Honorable Karen Drago at 12:35 p.m., 50 members of the Association being then present and constituting a quorum. The President welcomed the judges present.

MINUTES OF PRIOR MEETING

The minutes of the September 18, 2003 meeting were approved on MOTION of Frank Parisi.

TREASURER'S REPORT

Treasurer Hoffman distributed a written report, copy attached to the official copy of these minutes. The Treasurer indicated that there has been little activity since the beginning of the year. Dues Notices have gone out, and dues are coming in. The Treasurer's Report was accepted by general consent.

PRESIDENT'S REPORT

Vice-President Drago announced that the Honorable Vincent Versaci will be receding the Association's Young Lawyer award at the January meeting. There will also be a one-hour CLE presentation following that meeting, presented by the Honorable Daniel Burns of Niskayuna Town Court, and Marsha Hordines of the Law, Order & Justice Center, to train youth court mentors.

The New York State Bar Association will be conducting a public education radio campaign between October 6 and November 2; it will consist of 3 separate spots, on AIDS, adoption, and the role of lawyers as advisors.

A new Magistrate Judge has been appointed to the Syracuse Office of the United States District Court for the Northern District of New York; he is George H. Lowe, of Bond, Schoeneck & King in Syracuse.

The Mock Trial kick-off dinner will be held December 10 at the Glen Sanders Mansion starting at 5:30; Judges Powers and Eidens will be presiding.

The Association will host a holiday party for its members in early December at the Stockade Inn.

The annual meeting of the Federated Bar of the Fourth Judicial District will take place April 30 through May 2, 2004.

Copies of the Annual Report of the Board of Trustees of the Lawyers Fund for Client Protection were available at the meeting for distribution to members.

Surcharges will be increased November 30, 2003 for those convicted of offenses under the Vehicle & Traffic Law.

COMMITTEE REPORTSCONSTITUTION & BY-LAWS

Chair Michael Basile reported on the proposed new By-Laws mailed to members in the October newsletter. The Committee is recommending the following changes from the draft proposed to the membership in June: the substitution of the term "Honorary Associate" for "Honorary Member," and the replacement of the title "President Elect" with "Vice President"; he noted a typographical error in Section 2 of the Duties of the Board of Directors, in which "Honorary Membership" should have been "Honorary Associate."

There being no discussion, the Amended By-Laws were adopted as proposed, on MOTION of

Michael Basile SECONDED by Romolo Versaci, by unanimous vote of the members present.

Former President David Burke, who appointed the Committee, thanked the Committee for its work.

MEMBERSHIP

Chair Kathryn McCary announced the admission, in accordance with the procedures of the newly adopted By-Laws, of Marcia Hordines, sponsored by Diane Herrmann, and Leslie Morsillo, sponsored by Nicholas Morsillo, and the new members were welcomed to the Association.

ESTATE AND ELDER LAW

Co-Chair Pamela McDevitt reported that there will be a meeting of the Committee at 8:00 a.m. on November 5 at the office of Gerard Parisi.

REAL ESTATE

Robert Hoffman reported that there will be a meeting of the Committee at 8:00 a.m. on October 21 at the offices of Robert W. Hoffman; the business of the Committee will be the planning of the spring seminar.

LAW DAY

Chair Diane Herrmann reported that Law Day will be April 30, 2004; a dinner meeting to plan for it is to be scheduled.

MEMORIAL AND SUNSHINE

Committee Chair Neil Moynihan offered the following resolution in memory of the Honorable Richard F. Youmans, Sr.

WHEREAS, Richard F. Youmans, Sr. died on September 4, 2003 at Ellis Hospital at the age of 68 years, having been a practicing attorney for more than 35 years, at the time of his death, *and* WHEREAS, being a native of Catskill, New York, he was a graduate of Union College, the recipient of an MBA from Rutgers University and a Juris Doctorate from St. John's School of Law and earned his Master of Law in Taxation from New York University School of Law, *and* WHEREAS, Richard F. Youmans, Sr. was admitted to both the New York State and State of Michigan Bars, was a certified Public Accountant, and had been employed at General Electric Company in Schenectady, as an international tax attorney, for Rockwell International in Pittsburgh, Pennsylvania, and as the director of taxes for the Carrier Corporation, *and* WHEREAS, Attorney Youmans served as Municipal Court Judge for the City of Buckhannon, West Virginia, after which he returned to our City of Schenectady, where he became associated with Wolfgang J. Riemer, Esq. in the private practice of law through the time of his death, *and* WHEREAS, he was a member of the Believers Fellowship in Glenville and is survived by his mother, Marjorie Matarazzo of Scotia, two sons, Richard F. Youmans, Jr., and Christian B. Youmans and two grandchildren; *now therefore, be it*

RESOLVED, that the Schenectady County Bar Association records the death of the Hon. Richard F. Youmans, Sr. with sincere sorrow and notes publicly the loss of this attorney who practiced his profession with determination, dignity and ability in his various and sundry pursuits, *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 Richard F. Youmans, Sr.'s family.

Wolfgang Riemer rose to observe that Richard Youmans was associated in his general practice for about three years, coming from the corporate and tax field, but that the first thing he got involved with was the treacherous waters of matrimonial law. He was an extremely honorable man, deeply religious and with high moral principles. Chair Moynihan read a letter from Family Court Judge Joanne Assini, who was unable to be present; Judge Assini noted that Richard Youmans was always on time, prepared, courteous and reasonable to judges, attorneys and litigants—he was a true gentleman. Judge Drago noted that when she and Judge Eidens were studying drug courts they had a number of meetings early in the morning; Mr. Youmans volunteered for the committee, being very concerned about the need for this type of serving, and offered great insight—they relied on him tremendously, he had a common sense approach and a gentlemanly manner.

Thereupon, on MOTION of Neil Moynihan, the Resolution was adopted unanimously.

There being no additional business to come before the Membership, the meeting was adjourned at 12:55 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

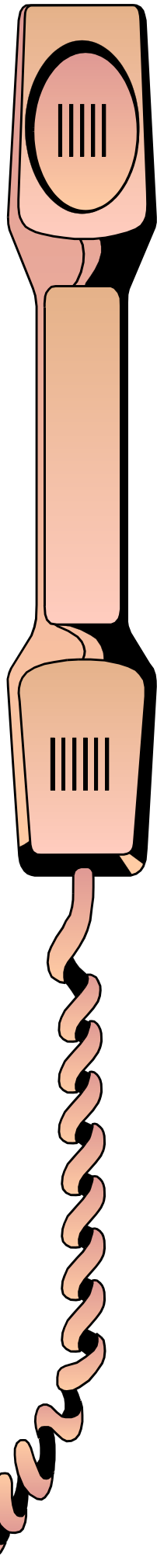
435-1770

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: EIGHTH ANNUAL ESTATE PLANNING & ELDER
LAW SEMINAR
Date/Time: March 11, 2004
Place: Glen Sanders Mansion
Presenters: Various
Cost: \$60 SCBA Members and non-attorneys/\$75
non-SCBA member attorneys
CLE Credits: 4 Areas of Practice/1/2Ethics
Contact: Pam MdCEvitt 370-4743

SEE FLYER ELSEWHERE IN NEWSLETTER!

ALBANY COUNTY BAR ASSOCIATION

Contact: Barbara Davis 445-7691 or acba@global2000.net
All programs include lunch

LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK

Topic: ESSENTIAL TRIAL SKILLS FOR EFFECTIVE
PRACTICE IN FAMILY COURT
Date/Time: March 12 & 19, 2004
Place: Albany Law School
Presenters: Various
Cost: Refundable \$100 Deposit, and agreement to
represent 2 domestic violence victims *pro bono*
CLE Credits: 12, including ethics credits
Contact: Elena Rich at 689-6322

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

Come on in—You will find:

- An Explanation of Collaborative Law
- The Usual Good Stuff

See you at lunch, January 15!

*“No doubtful balance of rights and wrongs,
Nor weary lawyers with endless tongues,*

*But low of cattle and song of birds
And health and quiet and loving words.”*

John Greenleaf Whittier, Maud Muller