
SCHENECTADY COUNTY BAR ASSOCIATION, INC.

NEWSLETTER

November-December, 2001

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

Telephone Numbers:
President: 853-8102
Treasurer: 370-4743
Secretary/Newsletter/Membership: 377-6489

CALENDAR OF EVENTS

November 16, 2001 Dinner honoring Judge Howard G. Munson
January 17, 2002 SCBA Meeting, 12:00 p.m.
February 7, 2002 Elder Law Seminar
April 18, 2002 SCBA Meeting, 12:00 p.m.
May 1, 2002 Law Day
May 16, 2002 21st Annual Real Estate Seminar
June 20, 2002 SCBA Annual Meeting, 12:00 p.m.

ALL 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



L NEXT MEETING 7
JANUARY 17, 2002, 12:00 P.M.

FROM THE PRESIDENT

J. David Burke

Progress! Our web-site should be up and running before the end of the year. As presently envisioned, it will primarily serve as an information resource for the Bar, containing such items as: our newsletter; schedule of upcoming events; committee news; and your names, addresses, phone numbers, and area(s) of concentration. There will also be links to other law related sites. Our next outreach project will be to produce a brochure. If anyone would like to participate in this endeavor, or has any ideas on what should be included, contact me by phone or e-mail (SchenectadyBar@aol.com).

Guided by the old adage, "nothing ventured, nothing

gained", we have invited our state legislative representatives to join us at our January meeting to meet with us on an informal basis and, if they wish, share their outlook on the 2002 legislative session. Given the importance of the work of the legislature to our profession, we thought this outreach effort might be worthwhile.

On October 26, I mailed a donation of \$9,800 to the New York State World Trade Center Relief Fund. On behalf of the officers and directors, I want to thank all who contributed with special thanks to Jim Bendall who originated the proposal to undertake the fund drive and to Ellie DeCoursey, John Seebold, Phil Rodriguez, Kathryn McCary, Vince Capasso and Bob Hoffman for their efforts. Also, thanks to Bob Hoffman's staff for the time and effort they devoted to the drive.

While in a thanking mode, those of you who were able to attend Judge Lynch’s portrait unveiling ceremony know what a nice affair it was. The reason for its success was due to the skill of Judge Vito Caruso in arranging the ceremony and the hard work of Joanne Haelen, Chris Galvin, John Seebold, Hon. Neil Moynihan, Jack Warner, Sherry Barnum and Sharon Sheffer who carried out his directions. Many thanks to all.

On the OCA front, not much news. In our comments regarding the proposed Letter of Engagement Rule, we included the views of some members who believe the \$1,000 threshold is too low and should be increased to \$3,500. As of now, the Fee Dispute Resolution Program is slated to go into effect on January 1, 2002. While we have the option of being the arbitral body that runs the program in Schenectady County, the administrative burden is not one we are anxious to take up. So unless there is a selfless (masochistic) volunteer who wants to undertake this task, our present intention is to defer to the District Administrative Office and let it operate the program. I still have my doubts about the startup date since the forms you are supposed to use are not yet available. Just to be safe though, familiarize yourself with the program before January 1, 2002.

On October 15, I attended a Symposium on Judicial

Campaign Conduct sponsored by the NYSBA and OCA that was convened to promote the plan of having bar associations form judicial election campaign committees to monitor compliance with the Code of Professional Responsibility and the Code of Judicial Conduct. Judge Plumadore attended the symposium and it was his suggestion that in our judicial district a regional approach might be more effective than having each bar association act independently. For those of you who remember our attempts to evaluate judicial candidates, Judge Plumadore’s proposal has merit. We will see what develops.

Congratulations to Dick Antokol, Vince Capasso, Howard Carpenter, Ken Gibbons, Larry Gordon, Chris Kouray (posthumously), John Massaroni, Ed Salvo, Paul Tocker and Rich Weiskopf on the award each received from the NYSBA Lawyer Referral Program. We appreciate your efforts, which improve the public’s perception of the legal profession.

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FROM THE COMMITTEES

CRIMINAL LAW There will be a meeting of the Committee November 29 at 12:00 noon at the Schenectady County Courthouse. For information call Chair Paul Callahan, 895-2334.

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ESTATE & ELDER LAW There will be a meeting of the Committee November 14 at 8:00 a.m. at the Hoffman Law Firm, 1802 Eastern Parkway. Phil LePore, Director of the Older Driver Family Assistance Program at the NYS Office of the Aging will discuss where families can turn when they are concerned about older drivers.

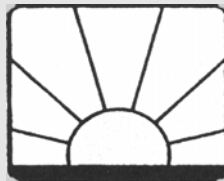
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MATRIMONIAL LAW There will be a meeting of the Committee December 13 at 8:00 a.m. at the offices of Gordon, Tepper & DeCoursey, Socha Plaza South, 113 Saratoga Road, Glenville.

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REAL ESTATE For date and time of the December meeting, call or e-mail Chair Larry Naviasky at 374-7779 or pottnav_larry@global2000.net.

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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

RECENT DECISIONS

Suspension of Statute of Limitations

The temporary suspension of the various Statutes of Limitations terminated on October 12, 2001 at 11:59 p.m. for those not directly affected by the events of September 11, 2001. For those directly affected, the suspension continued until November 8, 2001 at 11:59 p.m.

People v Rojas, ___ NY2d ___ [October 25, 2001]

Where a defendant uses a beneficial *Molineux* ruling as a sword to his advantage, the People may introduce evidence of a prior alleged crime that was originally precluded under the Court's ruling.

People v Hines, ___ NY2d ___, [October 23, 2001]

The Court held that when a trial court denies a motion to dismiss at the close of the People's case, it cannot review that decision in the context of a post-verdict CPL 330.30 motion after the defendant called witnesses and testified in his own behalf since, by so proceeding, the defendant waived subsequent review of the mid-trial decision.

Panek v County of Albany, ___ AD2d ___, [November 1, 2001]

Where, prior to the start of the demolition of a building, an employee was injured while engaged in salvage work that involved the removal of heavy air cooling equipment from a building, the Court held he was not entitled to the protection afforded by Labor Law §240(1) since the salvage work could not be viewed as part of the future demolition work nor did it come within the definition of any of the other protected activities.

Hawkes v Catatonk Golf Club, ___ AD2d ___, [November 1, 2001]

The Court holds that the doctrine of primary assumption of risk does not apply to a plaintiff who was struck by an errant golf ball while in the golf course's parking lot en route to the clubhouse well before the commencement of the tournament in which he intended to play. Location is the key to this holding, *see below*.

Brust v Town of Caroga, ___ AD2d ___ [October 25, 2001]

However, the doctrine applies to an experienced golfer who, while on the fairway, is struck by an unoccupied, run away golf cart since she is held to a common appreciation of the fact that there is a risk of injury from improperly used carts, which risk is inherent in and arises out of the nature of the sport of golf.

Roupp v Conrad, ___ AD2d ___ [October 25, 2001]

The Court noted there is no persuasive authority for the proposition that a court should take judicial notice of the ferocity of any particular breed or type of domestic animal.

Jones v General Motors Corp., ___AD2d___ [October 4, 2001]

Unless you want your conduct to be termed "inexplicable and deplorable" and don't mind paying the maximum sanction, it is not a good idea to secrete evidence from your adversary.

Multari v Sorrell, ___AD2d___ [October 4, 2001]

A petitioner who is neither the child's biological nor adoptive parent lacks standing to seek visitation of a child no matter how close and loving his relationship with the child is.

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NYSTLA HONORS JUDGE KRAMER

The Honorable Barry D. Kramer was one of two judges saluted by the New York State Trial Lawyers at their seventh annual recognition dinner for State Supreme Court Judges in the Third Department. Judge Kramer, elected Schenectady County Surrogate in 1993 and appointed as a full-time acting Supreme Court Justice in 1996, was given the Harold E. Koreman award in recognition of his commitment to the administration of justice with fairness and compassion.

The Honorable Thomas W. Keegan, a Supreme Court Justice since 1991, was given the Felix J. Aulisi award in recognition of his enduring respect for the rights of litigants and attorneys appearing before him, and the fair administration of justice.

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NEWS FROM THE LAW LIBRARY

Patricia Schultz, Librarian

While Supreme Court Law Libraries are primarily a ready reference research facility for the UCS judges and staff, recently Law Libraries have become actively involved in public access outreach. The New York State Unified Court System Schenectady County Supreme Court Law Library (DL46) would like to thank Judge Barry D. Kramer for his issuance of a court order allowing a prisoner from the Schenectady County Jail to use this facility. The Schenectady Library—also known as the Joseph F. Egan Memorial Supreme Court Law Library—is the only direct access to up to date legal information that the prisoners have. The jail's in-

house collection is a poorly maintained, minimal collection. This is the first time in the Law Librarian's 20+ years tenure that such an order has been issued.

If you have any legal topics that you would like to know more about, please visit your local court law library.

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FEE DISPUTE RESOLUTION

The Board of Governors of the Attorney-Client Fee Dispute Resolution Program established under Part 137 of the Rules of the Chief Administrative Judge has adopted Standards and Guidelines for Fee Dispute Resolution Programs. Part 137 and the Standards and Guidelines will apply to any representation in a civil matter if the representation commences on or after January 1, 2002 and the amount in dispute is between \$1,000 and \$50,000; there are some limited exceptions. The Schenectady County Bar Association Board of Directors will be considering how a Fee Dispute Resolution Program can most effectively be provided for this county.

The text of Part 137 and the Standards and Guidelines is posted in Portable Document Format (.pdf) on the Fee Dispute Resolution Program website at www.courts.state.ny.us. Forms for the program have not yet been created, but will appear on that website as well. Members who do not have access to the Internet may call Kathryn McCary for copies of the documents.

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DON'T GO IT ALONE

LAP--The Lawyers Assistance Program of the Schenectady County Bar Association--was formed in 1994 to provide assistance to members of the County bench and bar who are ill or incapacitated, experiencing difficulty with alcohol or drug addiction, depression or other psychological illness, gambling, or financial debt. LAP can even help an attorney start a law practice. As a confidential referral organization, LAP knows how to get a lawyer the help that is needed.

The Program is dedicated to providing financial and non-financial assistance to members of the County's bench and bar. Financial assistance includes helping the attorney, or the attorney's spouse and other dependents, in order to prevent a state of crisis or indigency from being reached through means which include outright grants and loans. Examples of non-financial assistance include: relieving an attorney who is ill or is detained in a long trial and who may need coverage of pending matters; referring an attorney to the appropriate agency or professional; or referring an attorney with legal problems

such as bankruptcy or disciplinary proceedings.

Communications with a member of LAP are completely confidential and protected under federal regulation 42 CFR Part 2 and Judiciary Law §499. The identity of those seeking assistance, and the specifics of each case, will not be revealed without the individual's express consent.

LAP can be contacted at 388-4352, or by mail at Schenectady County Bar Association, Lawyers Assistance Program, P.O.Box 602 Schenectady, New York 12301

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NOTICES/ITEMS OF INTEREST

A dinner celebrating 25 years of distinguished Federal Judicial service by the Honorable Howard G. Munson, Senior Federal District Court Judge for the Northern District, will be held Friday, November 15, 2001 in the Oncenter, Syracuse, Cocktails at 6:00/Dinner at 7:30 p.m. The Schenectady County Bar Association has joined other bar associations in the Northern District in adopting a resolution honoring Judge Munson; President Burke will attend the celebration as a representative of the Association, but all are welcome. Tickets are \$100 per person; reservations must be made by November 1. Please contact either Deborah Karalunas, Bond, Schoeneck & King, LLP at One Lincoln Center, Syracuse 13202 (315) 422-0121/dkaralunas@BS&K.com or Edward Z. Menkin, State Tower Building, Syracuse, 13202 (315) 425-1212/emenk@aol.com for information or reservations.

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The Catholic Lawyers Guild of the Capital District invites all members of the judiciary and bar--regardless of their faith--to attend the annual Red Mass, the traditional Mass celebrated for those in the legal community--in 2002, the Red Mass will be held on June 20, at noon, at St. Catherine of Siena Parish. For information, contact Mary Beth Dunne at 489-4102 or mbtttd@yahoo.com.

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Rules of Practice in the Schenectady County Supreme Court, a useful tool for anyone practicing in that court, are available from Judge Caruso's chambers; call 388-4327.

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

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Proud New Parents

Cara & John Fantauzzi, 18 Beechwood Drive in Scotia on October 3rd welcomed Isabella Jean Fantauzzi, 20.75", 8lbs, 7oz..

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ARE YOU A 50-YEAR PRACTITIONER?

PAID ADVERTISING

In the Spring of 2002, the Association will honor members still in active practice who have been in practice for 50 years or more. Association records in this area are incomplete—if you should be on the list below, please call President Dave Burke 393-4115 .

Mary Louise Corrigan
Albie S. Ferrucci
Harold Friedman
Arnold M. Gordon
Nicholas J. Grasso
Gerald T. Hennessy
Francis Jay Juracka
Athena C. Kouray
Frank J. Litz
Joseph P. McGrane
Nicholas D. Morsillo
Lawrence Ott
James L. Pemberton
Rita Toppetta

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INTERESTED IN GETTING INVOLVED?

To join an SCBA committee, contact:

Criminal Law—Paul Callahan
Estate & Elder Law—John Fantauzzi/Pam McDevitt
Matrimonial Law—Eric Tepper
Real Estate—Larry Naviasky
Law Day—Michelle Wildgrube
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]

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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. Those who are interested, please contact Kathryn McCary at 377-6489.

**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

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.

CONTINUING LEGAL EDUCATION OPPORTUNITIES

CAPITAL DISTRICT WOMEN'S BAR ASSOCIATION

Multidisciplinary Practice for Lawyers:

New Rules, New Opportunities

Date: December 4, 2001

Place: Albany Marriott

Presenters:

Hon. Anthony V. Cardona
Presiding Justice, 3d Department
Steven C. Krane
President, New York State Bar Association
Mark S. Ochs
Chief Attorney, Committee on Professional Standards

Cost: \$55, CDWBA Members/\$65 Non-Members

CLE Credits: 1 Practice Management/1 Ethics

Contact: CDWBA 438-5511

SCHENECTADY COUNTY BAR ASSOCIATION

Ethics Update

Date: January meeting, January 17, 2002

Place: Glen Sanders Mansion

Presenter:

Mark S. Ochs
Chief Attorney, Committee on Professional Standards

Cost: Cost included in luncheon meeting attendance

CLE Credits: 1 Ethics

LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK, INC.

Basic Social Security Disability Law

Date: November 29, 2001

Place: Albany County Courthouse, Jurors Lounge

Presenters:

Louise M. Tranatino, Greater Upstate Law Project
Michael Foster, Legal Aid Society of NENY

Cost: Free with promise to accept 2 referrals
\$75 without promise

CLE Credits: 3

Contact: Elena Rich, 462-6765

GULP Domestic Violence Task Force Meeting

Date: December 18, 2001

Place: New York State School Board Assoc., 119
Washington Avenue, Albany

Presenters:

Geri Pomerantz, Albany Law School
Elizabeth C. Schockmel, Psy.D.
Kelli O'Brien
Hon. Linda Griffin, Rensselaer County Family Court

Cost: Free for those attending meeting

CLE Credits: 2 Skills/1 Areas of Professional Practice

Contact: Jenn DeCarli, by fax to: (716) 454-2518

The membership directory for 2002 will be published In the spring. We'd like to include the most up-to-date, accurate information about each of our members. Please take a moment to complete this form and mail or fax it to:

Kathryn McCary
McCary & Huff, LLP
107 North Ballston Avenue
Scotia, New York 12302
Fax: (518)-377-6521

[If the information in this year's directory is generally accurate, you may e-mail change information to kmccary@albany.net]
We will also be posting contact information and areas of practice on the Website when it is up and running. Please tell us if you do NOT want your information posted on the Website.

Name: _____

Firm Affiliation: _____

Preferred mailing address:

Telephone: _____ Fax: _____

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

Year of Admission to the Bar*** _____

Practice Areas—Include up to three (you can be *reasonably* creative in naming practice areas)—if you have recently supplied practice information to President Dave Burke, we'll use those, so you don't need to tell us again. . .

Languages Spoken fluently: _____

9 Please *do not* post information concerning me on the Association's Website.

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

** Birth year information will NOT be included in the directory—it will be included in the member data base, to allow us to track eligibility for Life Member status
***Admission year information will NOT be included in the directory—it will be included in the member data base, to allow us to track eligibility for 50-year Practitioner recognition

SCHENECTADY COUNTY BAR ASSOCIATION
C/O MCCARY & HUFF, LLP
107 NORTH BALLSTON AVENUE
SCOTIA, NY 12302

NEWS FROM THE SCHENECTADY COUNTY BAR ASSOCIATION, INCLUDING (BUT NOT LIMITED TO!)

- NEWS FROM THE LAW LIBRARY
- MANDATORY FEE DISPUTE RESOLUTION INFORMATION
- WEBSITE UNDER CONSTRUCTION
- CLE OPPORTUNITIES
- DIRECTORY INFORMATION UPDATE FORM

GOODBYE 'TIL NEXT YEAR. . .

“OUR DEFENSE IS NOT IN ARMAMENTS, NOR IN SCIENCE, NOR IN GOING UNDERGROUND. OUR DEFENSE IS IN LAW AND ORDER.”

ALBERT EINSTEIN, LETTER TO THE NEW YORK TIMES, 6/12/53