
SCHENECTADY COUNTY BAR ASSOCIATION, INC.

NEWSLETTER

November 2004

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

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

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

CALENDAR OF EVENTS

November 18, 2004 SCBA Meeting, 12:00 p.m.
CLE: Paul Zonderman on Labor Arbitration

December 2, 2004 SCBA Winter Holiday Social

January 20, 2005 SCBA Meeting, 12:00 p.m.

March 10, 2005 Estate Planning & Elder Law Seminar

April 15-17, 2005 Federated Bar Meeting, Montreal

April 21, 2005 SCBA Meeting, 12:00 p.m.

May 1, 2005 Law Day

June 16, 2005 SCBA Annual Meeting, 12:00 p.m.

ALL SCBA MEETINGS HELD AT

OFFICERS

President
Vice President
Treasurer
Secretary

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

BOARD MEMBERS

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

NOTE INCLUSIONS IN THIS ISSUE

- Information and Registration forms for a Part 137 Fee Dispute Arbitration Training



WE WELCOME NEW MEMBERS

We welcome to the Association

Kevin Burke - Mark Caruso

Patricia Flaherty - Tina Marriner

Stephen Rockmacher

who were admitted to membership at the September 2004 meeting

L NEXT MEETING **7**

NOVEMBER 18, 12:00 P.M.

Will include Memorial for Joseph J. Buchyn

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. Seebold

Greetings. I hope your summer was an enjoyable one. I look forward to serving my second year as the President of our Association and I encourage you to call me should you have questions or concerns.

Part 137 of the Rules of the Chief Administrator provides for a fee dispute resolution process between attorneys and clients through arbitration and mediation. Part 137 applies where representation has commenced on or after January 1, 2002, to all attorneys admitted to the Bar of the State of New York. The fee dispute process is no longer confined to domestic relation matters and, with a few exceptions, essentially covers any civil matter where a fee is charged.

The program is administered in the Fourth Judicial District by the Federation of Bar Associations. Arbitration under this program shall be mandatory for the attorney if requested by a client, and the Arbitration award shall be final and binding unless de novo review is sought. When an attorney and client cannot agree as to the attorney's fee and there has been no prior written consent to arbitration, the attorney is required to forward a written notice to the client setting forth the client's rights. If the client elects to pursue arbitration, the client will be instructed to contact the Administrative Office of the Fourth Judicial District's Administrative Judge. The office will then forward the

petition rules, procedures and written instructions to the client by mail at which time the petitioner may file the petition with the office. Upon the office's receipt of the petition and respondent's answer, the office shall forward the complete file to the Federated Bar (currently administered by Larry Hamilton, Esq.). Larry then forwards the dispute to the appropriate Member Bar Association. The Bar Association then forwards the matter to an arbitrator who hears the case and renders the decision.

Unfortunately, these fee disputes are increasing in number and the list of arbitrators, quite frankly, is short. In fairness, I cannot call on the same arbitrators time and time again. Further, disputes involving a sum from \$6,000 to \$50,000 shall be submitted to a panel of three (3) arbitrators, which shall include at least one (1) attorney and one (1) non-attorney member of the public.

At my request, Nick Tischler, Esq. has scheduled an arbitrator training for December 3, 2004 at the Glen Sanders Mansion. CLE credits will be awarded. Member Bar Associations are encouraged to recruit arbitrators representing a wide of range of law practices and firm sizes and a diversity of non-attorney professions and occupations representing a cross section of the community. Lists of attorney arbitrators may be maintained under the following headings: matrimonial, litigation, real estate, business and other. Attorney arbitrators may self identify themselves as being within one or more of these areas and where practical, matters will be assigned to arbitrators in order of placement on the respective list.

Obviously, this fee dispute resolution program can affect every one of you involved in civil practice. I strongly request that you be trained as an arbitrator and add your name to the list. If the current list does not grow, I may have no choice but to assign two (2) non-attorneys and an attorney who primarily practices in an area different than that subject to the fee dispute to determine a significant legal fee. I do not want to do that so please help out.

Sorry for the serious message to kick off our new year. I hope to see you at the next membership luncheon at noon on November 18, 2004, at the Glen Sanders Mansion and at the arbitration training on December 3, 2004. Please also mark your calendars for December 2, 2004, Thursday, from 5:00 - 7:00 p.m. for our holiday gathering at the Stockade Inn, compliments of our association.

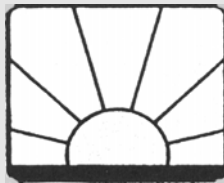
Respectfully,

John Seebold

hhhh

FROM THE COMMITTEES.

ALTERNATE DISPUTE RESOLUTION For information about the committee call Chair Jean



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

Carney, 872-9023.

ï

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

ï

ESTATE & ELDER LAW There will be a meeting of the Committee on December 8, location to be determined; call Chair Kathleen Toombs, 465-7581 for further information.

ï

LAW DAY: For more information, contact Chair Diane Herrmann, by calling 377-6731 or e-mailing to dianeherrmannsq@yahoo.com

ï

MATRIMONIAL LAW: There will be a meeting of the Committee November 11 at noon at the offices of Gorden, Tepper & DeCoursey. Pizza will be served. For information, call Chair Eric Tepper, 399-5400

ï

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

ï

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

hhhh

YOU BE THE JUDGE

J. David Burke

The Duke of Earl purchased Blueberry Hill from Jumpin' Jack Flash for \$50,000, orally promising to pay Jack in installments over time. He also agreed to purchase Heartbreak Hotel from Jack, going so far as to draw up a Memorandum of Agreement, which he signed but Jack did not. Duke's last venture was to orally agree with Billy Joe McAllister to sell the Tallahatchie Bridge to him on condition Billy Joe would devise it to Duke. After Billy jumped, it was

In Memoriam

Joseph John Buchyn—September 23, 2004
SCBA Memorial will be given at the meeting
November 18 meeting January 15

discovered he devised the Bridge to Prince.

Naturally, Duke didn't pay Jack for Blueberry Hill, and Jack didn't sell Heartbreak Hotel to Duke. Plus, Duke wants the Bridge. Three lawsuits result and all are dismissed by Supreme Court. On appeal, will Supreme Court be reversed in:

1. *Jack's case against Duke for \$50,000*
2. *Duke's case for specific performance regarding the agreement to purchase Heartbreak Hotel*
3. *Duke's case to enforce Billy Joe's promise to devise the Tallahatchie Bridge to him.*

ANSWER TO JUNE YOU BE THE JUDGE

1. *Inasmuch as the assault was expected and intended by Roman, did his actions constitute an "accident" and therefore an "occurrence" within the meaning of the policy?*

Yes. Roman's act could not be attributed to Bacchanalia as it was outside the scope of his employment and therefore was not expected or intended by Bacchanalia.

2. *Did the "bodily injury" for which Hedda sued Bacchanalia arise out of a "body massage"?*

No. The "body massage" exclusion refers to a bruise or similar injury inflicted on the customer by the massage itself, not to the emotional or physical injury resulting from a sexual assault by a masseur.

cf RJC Realty Holding Corp. v Republic Franklin Ins. Co., ___NY3d___ [April 1, 2004]

hhhh

RECENT DECISIONS

J. David Burke

Matter of Bauer, ___NY3d___ [October 14, 2004]

How to lose a judgeship. Fail to advise defendants of their right to counsel; sentence defendants in excess of the legal maximum; repeatedly jail defendants when they could not meet excessive bail; coerce defendants into pleading guilty; convict defendants without a trial or guilty plea; and most egregiously, consistently maintain you did nothing wrong and attack the motives of the Commission on Judicial Conduct and the Referee, a retired judge of the Court of Appeals.

Carvel Corp. v Noonan, ___NY3d___ [Oct 14,

New Opportunities for Your Old Clothes

The Public Defender's Office needs men's used clothing in clean and decent condition for its clients to wear to court—suits, sports jackets and slacks, dress shirts and ties. Drop them by the Office (519 State Street) or call Ben Shaw at 386-2266 to arrange pickup.

Thanks, guys!

2004]

Franchisees bring suit against franchisor (Carvel) based on the tort of interference with a non-binding economic relationship, claiming that Carvel unlawfully interfered with the relationship between themselves and their customers when it started selling its products in supermarkets. Court held that to sustain this claim plaintiffs must show that Carvel's interference amounted to a crime or constituted an independent tort. In the event plaintiffs cannot make this showing, they can recover if Carvel engaged in conduct for the sole purpose of inflicting intentional harm on them.

Matter of Catherine G. v County of Essex, ___NY3d___ [Oct 14, 2004]

Leave to file a late notice of claim under General Municipal Law 50 (e) (5) should not be granted for a patently merit less claim.

People v Valencia, ___NY3d___ [Oct 14, 2004]

Where a defendant does not dispute that he or she violated a plea agreement, due process does not require the sentencing court to conduct an evidentiary hearing and find by a preponderance of the evidence that defendant violated the agreement before sentencing him or her to prison.

Matter of Whitaker, ___AD3d___ [Sept. 30, 2004]

How to lose your license. While acting as an executor of an estate, authorize loans to yourself in the amount of \$175,000.

Matter of Hall, ___AD3d___ [Sept. 30, 2004]

How to lose your license (cont.). Leave vulgar voice mail on a Law Guardian's answering machine; communicate directly with your client's spouse despite being told not to; engage in sexual relations with your client during the course of the lawsuit.

Maroney v New York Central Mutual Fire Ins. Co., ___AD3d___ [Sept. 23, 2004]

Homeowner's policy covered insured's home but not his barn. Child-visitor, whom insured was supervising, was injured while in the barn (kicked by a horse). Policy excluded, *inter alia*, "injuries arising out of a premises owned by the insured that is not an insured location." Majority held the exclusion applied because there was no causal connection between the insured premises and the injury. The dissent argued that the only those injuries causally connected to some dangerous condition of the uninsured premises are excluded as opposed to injuries arising primarily from the insured's negligent act or omission. Thus, because the actions of the insured in negligently supervising the child are the basis of the claim, the exclusion does not apply.

Matter of County of Delaware v Gerster Farms, ___AD3d___ [September 16, 2004]

When a municipality seeks to foreclose a tax lien it must file a list of all parcels of real property affected by delinquent tax liens. Failure to do so is a fatal defect.

Schantz v O'Sullivan, ___AD3d___ [July 29, 2004]

In May 2002, Legislature enacted statute prohibiting the foreclosure of all mortgages given to secure payment of legal fees in matrimonial actions. Court finds that statute is unconstitutional because, by delaying the right to foreclose as long as the mortgagor chooses to retain the mortgaged property as his or her primary residence, without imposing any conditions or providing a mechanism for attorneys to seek a waiver of the rule in extraordinary circumstances, it violates the Contracts Clause (impairment of contracts). This holding is of little import now because there is now a court rule prohibiting foreclosure of a mortgage taken on a client's primary residence by an attorney in a domestic relations matter (22 NYCRR 1400.5 [b]).

Scott, Stackrow & Co. v Skavina, ___AD3d___ [July 29, 2004]

This case provides good guidance if you are called upon to draft an employee agreement not to compete.

State Farm Fire & Cas. Co. v Firmstone, ___AD3d___ [July 29, 2004]

A landlord who accepts rent after the tenant breaches the lease waives the breach even if the lease contains a non-waiver provision.

Hausman v Hoffman, ___AD3d___ [July 29, 2004]

Contains a lesson on how not to establish a serious injury under the 90/180 day category.

Carney v Allied Craftsman Gen. Contr., ___AD3d___ [July 29, 2004]

A general contractor's authority to stop a subcontractor from engaging in an unsafe practice and its general oversight of the progress and quality of the work is insufficient to raise a material question of fact with respect to whether the general contractor exercised the requisite degree of supervision and control over the work being performed to sustain a claim under Labor Law §200 or common-law negligence.

LEGISLATION 2004 SESSION

Chapter 518: This measure would add a new§180.85 to the Criminal Procedure Law to authorize a local criminal court or superior court to terminate a prosecution, on consent of the parties, where a felony complaint has been awaiting Grand Jury action but not presented after the passage of months, or even years.

Chapter 515: This bill would amend the Vehicle and

Traffic Law to require the parking violations bureau to promptly, within thirty days, return any amounts paid by the individual in fines or penalties for a parking infraction if such individual has won an appeal of such infraction.

Chapter 480: Amends the General Obligations Law to confirm that a showing of "hardship" is not required when the court reviews a proposed structured settlement transfer.

Chapter 450: Amends the Eminent Domain Procedure Law and the Real Property Tax Law to require that a condemnor serve written notice of a required pre-acquisition public hearing to each assessment record billing owner or his or her attorney of record.

Chapter 438: Amends the Mental Hygiene Law, in relation to the appointment of guardians for personal needs or property management to clarify certain provisions of Article 81 of the Mental Hygiene Law.

Chapter 406: An act to amend the Town Law and the Public Officers Law, in relation to the duty of public officers to file an oath of office.

Chapter 403: Clarifies that all Town Justices must file an Oath of Office with the Town Clerk, the applicable County Clerk and the Office of Court Administration.

Chapter: 401: This measure incorporates the substance of CPLR 203(g) into CPLR 213(8) so that, upon reading the latter, the public and the Bar can glean that the proper statute of limitations for an action for fraud is six years from the time of the fraud or two years from its discovery, whichever is later.

Chapter 375: Allows for the admission of certain medical and diagnostic tests into evidence if they contain identifying information of the type customarily inscribed by the medical practitioner or medical facility.

Chapter: 372: Clarifies that an attorney for a party in a personal injury or wrongful death trial is permitted to make reference to a specific dollar amount in closing statements, but not opening statements.

Chapter 362: An act to amend the Family Court Act and the Criminal Procedure Law, in relation to the age of child witnesses to increase the age when a child who has been the victim of a sexual offense and/or incest may be declared vulnerable from 12 to 16 and testify in a criminal proceeding by closed circuit television.

Chapter 359: An act to amend the Estates, Powers and Trusts Law, in relation to the termination of uneconomical trusts. Under this measure, any trustee or beneficiary of a lifetime or testamentary express trust (other than a wholly charitable trust or a supplemental

needs trust) may, by application to Surrogate's Court, seek early termination of the trust if the expense of its administration is uneconomical.

Chapter 336: Amends the CPLR and the Family Court Act to clarify that support magistrates, in addition to judges, will be authorized to issue subpoenas to produce persons, adjudicate contested paternity proceedings (with the exception of cases involving issues of "equitable estoppel").

Chapter 240: This measure would increase the base period of disqualification for jurors once they serve to six years and retain the eight-year period for those jurors who serve beyond ten days.

Chapter 111: This bill would allow a litigant in a civil proceeding to keep his or her residential or business addresses and telephone numbers confidential from any party when there would be an unreasonable risk to such litigant's health and safety.

Chapter 107: Following a verdict of not responsible by reason of mental disease or defect, this bill authorizes the court to place certain special conditions on the activities and behavior of the defendant.

Chapter 66: Permits the parties to a lawsuit to agree

to conduct depositions by telephone or other remote electronic means.

Chapter 61: Adds the requirement that a seller of real property must provide disclosure when a water utility surcharge applies to the property being sold.

MESSAGES FROM THE COURTS AND OTHER OFFICIALS

**SHERIFF’S CIVIL OFFICE FEE SCHEDULE
EFFECTIVE MARCH 1, 2004**

INCOME EXECUTIONS
 1st Stage (certified mail service) \$35.25
 [Provide original +5 copies]
 2nd Stage (certified mail service) 35.25
 [Provide original + 3 copies]

PROPERTY EXECUTIONS
 Bank Accounts \$30 + mileage
 [Provide original +3 copies]
 All others of any kind \$70 + mileage
 [Provide original +3 copies]

ORDER OF ATTACHMENT \$110 + mileage
 [Provide 2 copies and SAE* Return Envelope]

ORDER OF SEIZURE \$160 + mileage
 [Provide 2 copies and SAE* Return Envelope]

SUMMONS/COMPLAINT/ORDER/CITATION/SUBPOENA
 \$15 + mileage
 [Provide 2 copies and SAE* Return Envelope]

PETITION \$45 +mileage
 [Provide 2 copies and SAE* Return Envelope]

WARRANT OF EVICTION/72 HOUR NOTICE
 \$105 + mileage
 [Provide 2 copies and SAE* Return Envelope]

WARRANT OF ARREST \$45 +mileage
 [Provide 2 copies and SAE* Return Envelope]

POSTING NOTICE OF FORECLOSURE SALE
 \$15 + mileage for each posting

ADVANCE FEES FOR EXPENSES ON VEHICLE/HOUSE

SALES \$350
 POSTAGE FOR CERTIFIED MAIL SERVICE \$5.25

All fees are payable in advance; mileage is calculated based on zip code, as follows:

12301, 12304, 12305, 12307, 12308 \$2.17
 12309 \$5.83
 12303, 12306 \$6.90
 12302 \$15.04
 Princetown \$11.14
 12056 \$15.04
 Mariaville \$16.33
 12137, 12150 \$17.18
 12053 \$22.95
 12066 \$23.25

* SAE: Self-Addressed Envelope

FOURTH JUDICIAL DISTRICT SURROGATE’S COURTS

Surrogate Court fill-in forms, in both PDF and Omni format, are available at www.courts.state.ny.us. The Omni format forms can be filled out on-line, and a completed form printed out. Check it out!

SCHENECTADY COUNTY SURROGATE’S COURT

Chief Clerk Paula B. Miller reminds all attorneys that Part 36 of the Rules of the Chief Judge requires a law firm which, in aggregate in the course of a calendar year, receives Part 36 compensation of \$50,000 or more to submit a Report using Form UCS 876. The form is available at www.nycourts.gov/ip/gfs, where it can be completed on line and printed-out, or the form can be obtained from your local surrogate court.

**SUMMARY JURY TRIALS
ARE AVAILABLE IN SCHENECTADY COUNTY**

The Honorable Vincent J. Reilly, Jr. reminded members of the Association at the September meeting that Summary Jury Trials are available in Schenectady County. For those unfamiliar with this relatively new process, the following information may be helpful. Additional information can be found at <http://nycourts.gov/8jd/internet/html/sjt.html>

WHAT IS A SUMMARY JURY TRIAL?

A Summary Jury Trial is a one-day trial in which each party presents a stripped-down case in court before a judge and jury; the parties stipulate in advance whether the jury's verdict will be binding or non-binding. This consensual alternate dispute resolution technique

- % allows the parties to have their day in court, while minimizing the costs and risks of litigation;
- % enhances the experience of jurors, who can do their civic duty expeditiously and with a minimum of inconvenience;
- % assists courts to calendar cases efficiently.

HOW DOES IT WORK?

[This is a description of the rules in use in Chautauqua County, in the Eighth Judicial District; local practice may be different, and the parties have significant control over the process through stipulation]

- % The case is heard by 6 to 8 jurors who are selected either
 - “ by counsel, with time limits on *voir dire*, and a limit of 2 peremptory challenges apiece
 - “ by the judge, out of the presence of counsel, with any juror having a conflict stricken automatically from the panel
- % Each party has
 - “ 10 minutes to open/10 minutes to close
 - “ 1 hour to present a case—including cross-examination time
 - “ no more than 2 live (or video-taped) witnesses “whose credibility is key to the case”

The presiding judge may adjust the time limits if necessary to insure full exploration of the issues

- % The parties can stipulate in advance on a trial notebook to be given jurors, which includes affidavits and depositions of additional witnesses together with documentary evidence; each lawyer, as part of presentation of his/her case, may explain the contents to the jury
- % The parties can also stipulate to other matters such as
 - “ whether the jury's verdict will be binding or non-binding
 - “ whether damages will be floored or capped
 - “ whether the alternate jurors will participate in deliberations
- % Jurors

- “ are given a copy of the jury charge during deliberations
- “ may question attorneys—questions are written, and submitted to the court for approval
- “ are not told whether their verdict will be binding
- “ may be questioned by court and counsel after a non-binding verdict is rendered

- % Five out of the six jurors must agree in order to reach a verdict, and there is a time limit on their deliberations
 - “ If the parties stipulate that the verdict is non-binding, either party may demand a full-scale trial after verdict
 - “ If the parties stipulate that the verdict is binding, the grounds for appeal are limited, similar to the grounds for appeal from an arbitration decision under CPLR Article 75
 - “ The verdict is not released to the public or to the news media
 - “ If the jurors are unable to reach a verdict, they may be polled so the parties know what their positions were
- % If the verdict is to be non-binding, no official record is kept

Summary Jury Trial is available immediately—if it sounds right for your client's case, go for it! And, by the way—we'd love to include a report on the process in a future issue of the newsletter. So if you give it a whirl, drop the editor a line about what worked, what didn't work, and what you (and your client) think of the process!

REPORT:

THE SEARCH FOR MISSING WILLS

We will be printing in the January newsletter an up-to-date list of the information the Association currently has about who has wills drafted by local attorneys no longer in practice—so if you have information that you haven't supplied us, let us know ASAP!

KEEP THOSE CARDS & LETTERS COMING IN!

hhh

SCBA RECORDS AND ARCHIVES

The Association has been blessed with many years

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

hhhh

NOTICES/ITEMS OF INTEREST

The New York State Bar Association, in its State Bar News, recently noted the volunteer legal service offered on August 14 and 15 by certain Schenectady lawyers, through the Association's Lawyer Referral & Information Service,

to military personnel. Thank you, Pete Coffey, John Fantauzzi, paralegal Marianne Maggio, Rachel Rappazzo and Alexandra Verrigni.

hhhh

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

SPACE AVAILABLE

Professional Office Suite. New building, British American Office Park, Latham. Several windowed offices for rent within professional offices. Conference rooms, secretarial stations, law library, kitchen and broadband service. Available January 1, 2005. Contact (518) 690-7000.

Law Office Space Available. 162 Lafayette Street Schenectady, 740+ square feet. Walking distance to County Office Building, Courthouse. Two offices, reception, gallery, restroom. Offices tastefully decorated with carpeting, wallpaper and chair rail. Computer network wiring installed. Three parking spaces plus street parking. \$795 per month plus utilities. Contact: Susan (518) 372-9518, Fax (518) 372-9590 or susanmwatson.cpa@verizon.net

HELP WANTED

Attorney. Prominent Albany law firm seeks attorney with 3 to 7 years experience in Estate Administration, Trusts, Accountings, and Estate Tax Returns. Submit resume and salary requirements to:

Harry V.B. Miller, Esq., Herzog, Engstrom & Koplovitz PC 7 Southwoods Blvd., Albany, NY 12211 hmiller@herzoglaw.com

Associate Attorney. Full and part time positions available with Jones Ferradino in Saratoga Springs. 3+ years experience preferred. Experience in litigation, business transactions, contracts and general practice. Fax (580-0857) or email (sferradino@saratogalaw.com) resume to Stephanie W. Ferradino

INTERESTED IN GETTING INVOLVED?

To join an SCBA committee, contact:

Alternate Dispute Resolution—Jean Carney

Criminal Law—Paul Callahan

Estate & Elder Law—Kate Toombs

Law Day—Diane Herrmann

Matrimonial Law—Eric Tepper

Real Estate—Larry Naviasky

Trial Practice—John Massaroni

Pro Bono Matrimonial—J. David Burke

[addresses & numbers are in the SCBA directory—which will be issued in mid-October.]

hhhh

MINUTES—SCHENECTADY COUNTY BAR ASSOCIATION—MEMBERSHIP

REGULAR MEETING—September 16, 2004—12:00 p.m.—The Glen Sanders Mansion, Scotia, NY

The meeting was called to order by President Seebold at 12:20 p.m., 40 members of the Association being then present and constituting a quorum.

The President called on John Massaroni, Chair of the Trial Practice Committee, to introduce a presentation by the Honorable Vincent J. Reilly, Jr. on summary jury trials. Mr. Massaroni stated that, after due deliberation, the Trial Practices Committee had concluded that the summary jury trial is a technique worth considering. Judge Reilly explained that the summary jury trial is an innovative alternate dispute resolution method, with emphasis on the word alternate; it is not mandatory, and it isn't binding unless the parties agree that it will be. The rules of evidence are relaxed and there are time limits on presentation. It differs from other alternate dispute resolution techniques in that it uses a judge and jury. Among its advantages are that it is less expensive than a full trial, it gives the parties a sense of what a jury would be likely to do after a full trial, and it makes more efficient use of jurors, thus increasing their sense of satisfaction in performing jury duty. The Eighth Judicial District has been using it in Chautauqua County very successfully for some time, and it is available in Schenectady County at any time. The judge then played a video presentation on summary jury trials, and announced that copies of the proposed rules used in Chautauqua County were available. In response to questions from members of the Association the judge indicated: that a summary jury trial could probably be scheduled more quickly than a regular trial; that the jury was not informed about stipulations of the parties that the verdict would not be binding, or would be subject to a cap or floor; and that he believed a summary jury trial could be used in a matrimonial proceeding.

President Seebold then welcomed the judges present, and welcomed all members of the Association to the new program year. He noted the recent distribution of the current by-laws and Association directory, and thanked Administrative Assistant Arlene Williams for her work on them. An item which may be added to future directories is Association Committee service—President Seebold asked that the chairs of the substantive law committees provide him lists of their committee members

MINUTES OF PRIOR MEETING

The minutes of the June 17, 2004 meeting were approved by general consent.

TREASURER'S REPORT

A written Treasurer's report was distributed, copy attached to the official copy of these minutes. Treasurer Robert Hoffman noted that the amounts shown for the Schenectady County Community College scholarship and for insurance both represent two annual payments. The Treasurer's Report was accepted by general consent.

PRESIDENT'S REPORT

President Seebold informed the membership that dues this year will remain at their previous level, without increase.

President Seebold attended a Diversity Round Table the preceding week at the offices of the New York State Bar Association; the Albany County Bar Association and Albany Law School have been conducting a diversity internship program, placing law students from minority groups in Albany firms. Any Schenectady firm interested in participating in such a program should contact either President Seebold or Pat Rodriguez.

President Seebold then noted the following: The Appellate Division will be sitting in Schoharie County tomorrow, September 17. The Schenectady County Family Court has had to eliminate the lawyer's lounge, and end the practice of lawyers congregating in the corridor outside the courtroom instead. OCA is aware of the problems this has created, and hopes to be able to establish a private area (and perhaps conference rooms) for attorneys. Any Association member with a specific concern relating to this issue should contact President Seebold.

A proposal for no-fault divorce legislation has been referred to the Matrimonial Law Committee for comment. Association Member Richard Sise has been appointed as State Court of Claims Administrative Judge. A new state-wide committee on *pro bono* has been formed, chaired by Chief Judge Kaye. The Schenectady County Public Defender's Office recently underwent an evaluation by a professor from Washington University together with other Public Defenders. The Association has been asked to comment on the acceptability of Judge Cortese to be appointed as an Acting Supreme Court Justice; anyone having comments should let President Seebold know.

The Association is proud to be able once again to contribute a scholarship for a Schenectady County Community College student. We are also advertising in the Proctor's Playbill, in an effort to improve the public image of lawyers. The Association has been receiving a number of fee disputes for arbitration under Part 137. The arbitration program is administered through the Federated Bar for the Fourth Judicial District; the list of Schenectady County lawyers trained as arbitrators is very short. President Seebold is arranging for a training to be conducted locally, and urges all members to sign up.

NYSBA HOUSE OF DELEGATES

Peter Coffey, the Association's delegate to the New York State Bar Association, reported on the June meeting of the House of Delegates. The House is working on the report concerning fiduciaries, a recommendation that all police interrogations be taped, and issues concerning judicial selection, and has taken a position in favor of no-fault divorce. Changes have been made

in governance structure: there will now be 2 positions on the Executive Committee reserved for diversity candidates. The Executive Committee is also considering whether to take a position on same-sex marriage; while it is unanimously in favor of some form of equal protection for gays and lesbians, it is not prepared at this time to endorse marriage. The Legal Aid Committee is recommending the establishment of a requirement that every lawyer support pro bono programs financially through an assessment of \$200 per year.

COMMITTEE REPORTS

MEMBERSHIP

The names of the following applicants for membership were read, and they were thereupon admitted to membership: Kevin Burke, Mark Caruso, Patricia Flaherty, Tina Marriner, Stephen Rockmacher.

LAW DAY

Chair Diane Herrmann reported that there is a meeting of the committee scheduled for October 29 at noon at the offices of Capasso & Massaroni; lunch will be served. The Committee will be brainstorming changes in format. President Seebold urged past presidents to attend.

REAL ESTATE

Bob Hoffman reported on behalf of chair Larry Naviasky that there will be a meeting October 6 at 8:00 a.m. (with food). He noted there has been an increase in recording fees for the Equalization and Assessment form

ALTERNATE DISPUTE RESOLUTION

Chair Jean Carney reported that there will be a meeting of the Committee on September 30 at the City Squire. The Committee will be sponsoring a CLE program following the November meeting, at which the Honorable Paul Zonderman will discuss labor arbitration.

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

Respectfully submitted,

Kathryn McCary, Secretary

Approved:

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

Consumer law

Employment

Education, including unemployment

Family, including Custody, Support, Visitation,
Separation and Divorce

Health, including Health Care Proxies, Medicaid and
Medicare

Wills and Estates

Real property issues including evictions and
foreclosures

SSI Benefits

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:

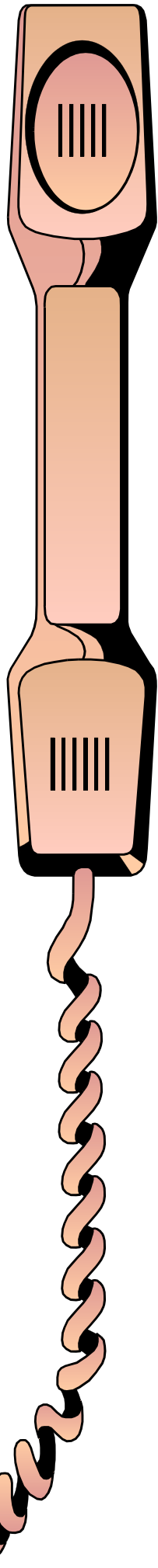
The Domestic Violence Legal Connection

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: THE BASICS OF LABOR ARBITRATION
Date/Time: Following November luncheon meeting
Place: Glen Sanders Mansion
Presenter: Hon. Paul Zonderman
Cost: Included in cost of luncheon
CLE Credits: 1 Practice Skills

ALBANY COUNTY BAR ASSOCIATION

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

Topic: LEARN FROM THE EXPERTS ABOUT CRIMINAL LAW
Date/Time: November 19 8:45 a.m.
Place: Albany Marriott
Presenter: F. Stanton Ackerman, Stephen Coffey, Hon. Stephen Herrick, E. Stewart Jones, Raymond Kelly, Thomas O'Hern, Gene Primomo
Cost: \$85 Member/\$110 Non-Member/\$45 Law Student or Paralegal
CLE Credits: 7 Skills

Topic: LABOR AND EMPLOYMENT LAW: DRAFTING & NEGOTIATING EMPLOYEE SEPARATION AGREEMENTS AND RECENT DEVELOPMENTS REGARDING COVENANTS NOT TO COMPETE
Date/Time: November 23 7:45-10:00 a.m.
Place: Crowne Plaza
Presenter: Ronald Dunn & Bill Wallens
Cost: \$45 Member/\$60 Non-Member/\$25 Law Student or Paralegal
CLE Credits: 2 Professional Practice

Topic: HOME RULE POWERS OF LOCAL GOVERNMENT; LOCAL LAW PROCEDURE AND DRAFTING STRATEGIES
Date/Time: January 13 12:15 p.m.
Place: Crowne Plaza
Presenter: Kevin Crawford
Cost: \$35 Member/\$50 Non-Member/\$25 Law Student or Paralegal
CLE Credits: 1 Professional Practice

Topic: RESOLVING HIGH CONFLICT MATRIMONIAL AND FAMILY LAW ISSUES: CUSTODY, RELOCATION, DISTRIBUTION OF RETIREMENT AND DISABILITY BENEFITS AND ENHANCED EARNINGS
Date/Time: January 21, 1:45-5:00 p.m.
Place: Jack's Oyster House
Presenter: Carolyn D'Agostino, Hon. W. Dennis Duggan and Michael Friedman
Cost: \$50 Member/\$75 Non-Member/\$35 Law Student or Paralegal
CLE Credits: 3 Professional Practice

THE DOMESTIC VIOLENCE TRAINING COALITION*

Contact Elena Rich, Legal Aid Society of NENY, 689-6322 or erich@lasnny.org

Topic: REPRESENTING VICTIMS OF DOMESTIC VIOLENCE: FAMILY OFFENSE BASICS
Date/Time: November 12, 8:30-5:00
Place: NYS Office for the Prevention of Domestic Violence, 80 Wolf Road, Albany
Presenters: Karla Digirolamo, Unity House; Melissa Breger, Geri Pomerantz, Ellen C. Schell
Cost: \$150 attorney (fee waived for attorneys who agree to accept *pro bono* cases—ask for further information); \$75 Law Guardian, 18-B Assigned Counsel, paralegal, legal assistant; \$25 domestic Violence advocate
CLE Credits: 8 Transitional

Topic: SELECTED ISSUES IN DOMESTIC VIOLENCE AND CHILD WELFARE: THE NICHOLSON CASE
Date/Time: December 2, 4:30-7:30 p.m.
Place: Albany Law School
Presenters: Jill Zuccardy, Jo M. Katz, Jamie Greenberg, MSW, Jim Green, Stacey Gorman, Sherry Frohman, CSW, Charles Carson, Geri Pomerantz
Cost: \$75 attorney (fee waived for attorneys who agree to accept *pro bono* cases—ask for further information); \$60 Law Guardian, 18-B Assigned Counsel/ \$50 paralegal, legal assistant; \$25 Domestic Violence advocate
CLE Credits: 3 Transitional

* Legal Aid Society of Northeastern New York, Albany Law School, Greater Upstate Law Project, Inc., The Legal Project of the Capital District Women's Bar Association

Come on in—You will find:

- Information about Summary Jury Trials
- The ever-popular Recent Decisions & You Be the Judge
- Lots of useful information

See you at lunch, November 18!

“‘You must know—’ said the Judge: but the Snark exclaimed ‘Fudge!
That statute is obsolete quite!
Let me tell you, my friends, the whole question depends
On an ancient manorial right.

‘In the matter of Treason the pig would appear
To have aided, but scarcely abetted:
While the charge of Insolvency fails, it is clear,
If you grant the plea ‘never indebted.’

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

‘The fact of Desertion I will not dispute:
But its guilt, as I trust is removed
(So far as relates to the costs of this suit)
By the Alibi which has been proved.

‘My poor client’s fate now depends on your votes.’
Here the speaker sat down in his place,
And directed the Judge to refer to his notes
And briefly to sum up the case.”