
SCHENECTADY COUNTY BAR ASSOCIATION, INC.

NEWSLETTER

September, 2001

Mailing Address:
PO Box 1728
Schenectady, NY 12301-1728

Telephone Numbers:
President: 393-4115
Treasurer: 370-4743
Secretary/Newsletter/Membership: 377-6489

CALENDAR OF EVENTS

September 20, 2001	SCBA Meeting, 12:00 p.m.
October 18, 2001	SCBA Meeting, 12:00 p.m.
October 23, 2001	Lynch Portrait unveiling 10:00 a.m., County Courthouse
January 17, 2002	SCBA Meeting, 12:00 p.m.
April 18, 2002	SCBA Meeting, 12:00 p.m.
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
SEPTEMBER 20, 2001, 12:00 P.M.

If you plan to attend the meeting, please contact Robert Hoffman at 370-4743 for reservations

FROM THE PRESIDENT

J. David Burke

When I was a teenager (Ike was President) my friend's father used to report to us that he had won a couple of a hundred bucks in the card game that was held following the bar meeting. Obviously in the ensuing years, our organization has evolved from a pure social gathering to one that can be properly viewed as a service organization. Given our relatively small size and the number of activities we sponsor from Law Day to our pro-se matrimonial clinics, we can be very proud of our Bar. While I am confident that we can continue,

and even increase, our presence in the community, we need everyone's help. Therefore, if you are not as yet a member of a committee, you will have an opportunity at the September meeting to join one or more of the following committees: Matrimonial, Pro-Bono Matrimonial, Elder Law; Real Estate, Membership, Law Day, or Moot Court.

The one thing that has surprised me so far is the number of calls I receive from people looking for a lawyer. I am telling them to look in the section of the yellow pages where attorneys are listed in accordance with their specialties and I also give them the number of

New York State Bar Association's Lawyer Referral Service. I am not really thrilled with this procedure since I would prefer to direct these calls to SCBA members, however, I haven't been able to design a fair way to do it. If you have any suggestions, give me a call (853-8102) or e-mail me at SchenectadyBar@aol.com.

On August 20, Rich Weiskopf and I had the pleasure of presenting the first Schenectady County Bar Association Scholar Award (a \$1000 scholarship) to Andrew J. Ramirez, a June 2001 graduate of Mohonasen High School who will be attending Schenectady County Community College in the fall.

As you may know, the Administrative Board of the Courts has proposed a new rule requiring an attorney to provide the client with a written letter of engagement at the commencement of representation where the fee to be charged is expected to be \$1000 or more. Basically, the letter must explain the scope of the legal services to be provided, the fees to be charged and provide notice of the client's right to arbitrate fee disputes. Judge Lippman has solicited our views of the proposed rule—if you have an opinion let me know so that it can be considered in framing our response which must be submitted by November 1.

With respect to fee arbitration, this program is treading water ever since OCA discovered that local bar associations are not eager to underwrite the costs of operating it. The rule is supposed to go into effect on January 1, 2002, but I wouldn't be surprised if it is delayed again. Will keep you posted.

On another OCA matter, there was a recent article in the Law Journal that OCA conducted a random audit of 499 attorneys to determine their compliance with the CLE rules. Forty-seven lucky souls were not able to demonstrate compliance and are now facing disciplinary proceedings. The lesson from this is to get your CLE credits and keep your CLE records for the required four year period. Incidentally, the CLE rules can be obtained online at www.courts.state.ny.us/mcle.htm; they are also summarized in the back of the SCBA Membership Directory.

The last bit of news I have is that Kevin Lane, the Chair of the Insurance Coverage Committee of the NYSBA Tort, Insurance & Compensation Law Section is seeking someone who has an interest in insurance coverage questions to serve as liaison between his committee and us. If interested, let me know and I will forward your name to Mr. Lane.

Looking to the future, we are planning a formal unveiling of Judge Lynch's portrait sometime in October. Stay tuned for details.

When I started this, I didn't think my message would be so chatty. Hopefully, you made your way through it and found it informative. I am looking forward to seeing you at the September 20th meeting which I will make every effort to end by one o'clock.

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FROM THE COMMITTEES

ESTATE & ELDER LAW There will be a meeting of the Estate & Elder Law Committee on September 19 at 8:00 a.m. at the Hoffman Law Firm, 1802 Eastern Parkway, Schenectady. The guest speaker will be Dr. O'Connor, Director of Long Term Health Care at the Annie Schaffer Center.

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REAL ESTATE The Real Estate Committee will hold its first meeting of the year on Wednesday, September 12, 2001 at 8:00 a.m. at the law offices of Pott and Naviasky, LLP, 426 Franklin Street, Schenectady. The Committee will begin work on the annual real estate seminar and conduct other business. Old and new members alike are welcome. Contact Chair Larry Naviasky at 374-7779 for more information.

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RECENT DECISIONS

People v DePallo, ___ NY2d ___ [July 2, 2001]

When a defense attorney learns during trial that his client intends to commit perjury, his or her revelation of the client's perjury to the court is a professionally responsible and acceptable response.

Cantadlino v Danner, ___ NY2d ___ [June 28, 2001]

A dismissal of a criminal proceeding in the interest of justice can be considered a "favorable termination" for the purposes of a malicious prosecution action as long as the dismissal is not inconsistent with the plaintiff's innocence.

Lynn G. v Hugo, ___ NY2d ___ [June 7, 2001]

Illustrates continuing trend of examining experts' reports on summary judgment motions to insure they are predicated upon relevant facts and rejecting them if they are conclusory (*cf Martin v Village of Tupper*

Lake, ___ AD2d ___, 723 NYS2d 715).

Shumsky v Eisenstein, ___ NY2d ___ [May 10, 2001]

Discusses continuous treatment doctrine insofar as it applies to legal malpractice.

Trotter v Hart, ___ AD2d ___ [July 12, 2001]

When a report of a chiropractor is used to establish a “serious injury” within the meaning of Insurance Law §5102(d), the report must identify the tests used, the degree of limitation or any treatment recommendations. Further, the opinion expressed in the chiropractor’s affidavit must be based upon a recent medical examination. The Court held that a 20% loss of use of the cervical spine was not significant nor consequential.

Mary Anne “ZZ” v Blasen, ___ AD2d ___ [June 21, 2001]

Defendant assured mother that she would keep an eye on her daughter while she was babysitting at a house across from defendant’s residence. Daughter sexually assaulted at house where she was babysitting. Defendant’s motion for summary judgment denied based upon defendant’s voluntary assumption of duty to keep an eye on the victim.

Lowe v Spada, ___ AD2d ___, 722 NYS2d 820

In a slip and fall case, notice of a dangerous condition can be established by proof of the defendant’s general awareness of a dangerous, recurrent condition in the area of the slip and fall that was routinely left unaddressed.

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NOTICES/ITEMS OF INTEREST

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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ANNUAL AWARDS CEREMONY

At the annual meeting in June, the Association honored four individuals for their service to the community and the profession.

LIFETIME ACHIEVEMENT AWARD

A recognition, as the name indicates, of a life dedicated to the highest standards of legal service, this award is given to a lawyer who has

- had a distinguished legal career in either the public or private sector;
- shown a commitment to *pro bono* work or similar public service
- attained the respect of colleagues
- served the organized bar in some capacity

This year, the Association was proud to present the award to Harold Friedman, a 60-year veteran, still active as a partner in the Schenectady firm of Friedman, Hirschen, Miller & Campito, P.C.

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EXCELLENCE IN SERVICE AWARD

The organized bar’s appreciation of the invaluable service

provided to lawyers and the public by court employees, this award is given to a court employee who has either

- had a consistent dedication and commitment to our court system and the people it serves

or

- made an outstanding contribution during the past year.

The award was made this year to Sherri Barnum, Chief Clerk of the Supreme and County Courts of Schenectady County, in recognition of her efforts to reorganize and improve the Clerk's office in order to make the courts more responsive to litigants and counsel.



LAWYER IN SERVICE TO THE COMMUNITY AWARD

To acknowledge the contributions of lawyers to their communities, this award is presented to a lawyer who

- has performed outstanding service of a social or civic nature in county bar, community, or charitable activities;
- gives of him/herself to the community in an outstanding way which benefits our community and the reputation of the legal community.

Martin Finn, a partner in the Albany firm of Lavelle & Finn, LLP, was honored this year for his service as a volunteer board member and officer for local medical, educational and athletic non-profit organizations, work he performs with a professionalism and commitment which reflect well not only on Marty but on the profession as a whole.



YOUNG LAWYER AWARD

Presented annually to a lawyer age 35 or younger who has demonstrated *both*

- legal proficiency

and

- community involvement

Kevin Burke, an associate with the Scotia firm of McGivern, Shaw & O'Connor, was recognized for his tireless service as a law guardian in Family Court, and his frequent representation on a *pro bono* basis of those unable otherwise to afford legal representation.

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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.

ANNUAL MEETING, JUNE 2001

Sherri Barnum, Excellence in Service Award
with Presenter Honorable Michael Eidens

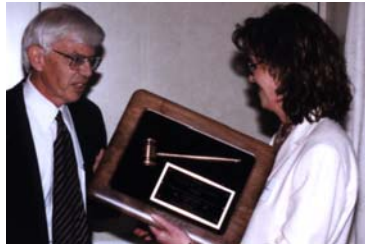


Harold Friedman
Lifetime Achievement Award

Kevin Burke
Lawyer Award



Martin Finn, Lawyer in Service to the Community Award
with Presenter Eleanor DeCoursey



Past & Future Presidents
Dave Burke—Ellie DeCoursey



Past & Future VPs
John Seebold—Dave Burke

Awardees/Past & Future Officers: Harold Friedman, Kevin Burke,
Martin Finn, Kathryn McCary, Sherri Barnum, Eleanor DeCoursey,
Dave Burke, John Seebold, Mark Powers, Bob Hoffman



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The Schenectady County Bar Association September Newsletter

See you all on September 20!