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# SCHENECTADY COUNTY BAR ASSOCIATION, INC.

## NEWSLETTER

September 2004

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Mailing Address:  
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Website: www.schenectadybar.com

Telephone Numbers:  
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Treasurer: 370-4743

Secretary/Newsletter/Membership: 377-6489

### CALENDAR OF EVENTS

September 16, 2004 SCBA Meeting, 12:00 p.m.  
November 18, 2004 SCBA Meeting, 12:00 p.m.  
January 20, 2005 SCBA Meeting, 12:00 p.m.  
April 21, 2005  
May 1, 2005 Law Day  
June 16, 2005 SCBA Annual Meeting, 12:00 p.m.

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

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

## NOTE INCLUSIONS IN THIS ISSUE

- The Collected *Recent Decisions* of 2003-2004



### **L** NEXT MEETING **7**

**APRIL 15, 12:00 P.M.**

*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*

Respectfully,  
*John Seibold*

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**FROM THE COMMITTEES.**

ALTERNATE DISPUTE RESOLUTION There will be a meeting of the Committee September 30 at 12:00 at the City Squire on Keyes Avenue. Please RSVP to Chair Jean Carney, 872-9023 if you plan to attend.

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

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ESTATE & ELDER LAW For information about the committee, call Chair Kathleen Toombs, 465-7581.

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LAW DAY: There will be a meeting of the committee September 29 at 12:00 noon, at the office of Capasso & Massaroni, 215 State Street—with FREE PIZZA! For more information, contact Chair Diane

Herrmann, by calling 377-6731 or e-mailing to dianeherrmannesq@yahoo.com

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MATRIMONIAL LAW: For information about the Committee, call Chair Eric Tepper, 399-5400

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

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

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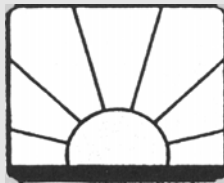
**YOU BE THE JUDGE**

*J. David Burke*

At 12:30 a.m. Deputy Alert noticed a vehicle in the parking lot of a college residence hall. About 30 minutes later in another part of town Alert observed the same vehicle speeding. She pulled the vehicle over, asking the driver, Leadfoot, about an odor of burning marihuana. Leadfoot admitted to having smoked half a joint 30 minutes before at the residence hall. When asked with whom he had been smoking, Leadfoot identified defendant by name. In response to a question as to whether he could pay a fine, Leadfoot showed Alert a \$100 bill, but admitted he had no job and offered no explanation how he obtained the cash. Suspecting that Leadfoot had sold marihuana to the defendant, Alert returned to the residence hall, contacted the resident director who confirmed that defendant lived there. At Alert's request, the director admitted her to the locked residence hall and escorted her to the door of the suite where defendant lived with several other students. When Alert knocked, a voice from within said "come in," whereupon Alert and the director entered the suite. Defendant met Alert in the suite's hallway and agreed to talk to her. When she told him about her encounter with Leadfoot, defendant became nervous and admitted to possessing a number of ecstasy pills, which he gave to Alert. He then agreed to speak further with Alert in his bedroom. During the conversation Alert asked him if there was something else she should know about. At that point, defendant grabbed a box, ran out of the bedroom and down the hall where, when he was seized by a second police officer, a 33-ounce brick of cocaine fell from the box he was carrying. Defendant moves to suppress the evidence seized from him.

*In deciding how the motion should be decided, consider:*

*Whether Alert had the authority to enter the residence hall and knock on the door of the suite at night to investigate possible criminal activity?*



**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

*Whether Alert had the authority to enter the suite?*

*The answer will appear in the June newsletter*

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## RECENT DECISIONS

*J. David Burke*

*Abbateiello v Lancaster Studio Assocs* \_\_\_NY3d\_\_\_ [July 1, 2004]

Because Public Service Law §228 (1) prohibits a landlord from interfering with the installation of cable television facilities upon his [or her] property, Labor Law §240 (1) does not apply where a cable technician is injured while performing work without the owner's knowledge or consent since any permission to work on the premises was granted upon compulsion of the statute.

*American Transit Ins. Co. v Sartor*, \_\_\_NY3d\_\_\_ [July 1, 2004]

Motor vehicle accident between car and taxi. Taxi does not inform its insurance company of the accident nor of the commencement of plaintiff's lawsuit in which it defaults. Plaintiff does not notify insurance company either and eventually obtains a default judgment which it served upon the insurance company. Insurance company disclaims, citing provisions in its policy requiring notice of a lawsuit against its insured. Court upholds disclaimer, noting that under Insurance Law §3420 (a) (3) the plaintiff had the right to provide notice to the insurance company.

*Zegarelli v Hughes*, \_\_\_NY3d\_\_\_ [July 1, 2004]

Holds that a defendant complies with CPLR 3101 (I) (production of video tapes, etc.) by delivering a complete copy of the tape to plaintiff's counsel well in advance of trial so that plaintiff will have an opportunity to examine the original if he or she chooses to do so.

*Frankel v Frankel*, \_\_\_NY3d\_\_\_ [June 29, 2004]

An attorney in a matrimonial action who is discharged without cause by his client may seek attorney fees from the monied spouse under Domestic Relations Law §237 (a). In a footnote the Court notes that it would benefit the non-monied spouse if interim counsel fee awards were made more frequently rather than being deferred to trial.

*People v LaValle*, \_\_\_NY3d\_\_\_ [June 24, 2004]

In the penalty phase of a death penalty case the Court must instruct the jury that if they fail to agree on

an appropriate sentence (death or life imprisonment without parole), the Court would sentence the defendant to life imprisonment with a minimum term of 20 to 25 years and a maximum term of life. The Court held that this "deadlock instruction" is unconstitutional under the State Constitution because of the unacceptable risk that jurors might impose the death penalty on a defendant whom they believed did not deserve it simply because they fear that the defendant would not serve a life sentence as he or she may be paroled after 20 to 25 years and pose a threat to society in the future.

*Stejskal v Simons*, \_\_\_NY3d\_\_\_ [June 24, 2004]

Labor Law §§240(1) and 241(6) do apply to construction activity involving the conversion of a multiple dwelling into a one-family dwelling for the owner's use.

*Matter of Belmonte v Snashall*, \_\_\_NY3d\_\_\_ [June 10, 2004]

Holds that the term "board certified" as used in Workers' Compensation Law §137 (3) means certification by a medical speciality board rather than by the Workers' Compensation Board.

*Brill v City of New York*, \_\_\_NY3d\_\_\_ [June 8, 2004]

CPLR 3212(a) establishes a timetable for the making of summary judgment motions in the hope of eliminating the practice of making such motions on the eve of trial. Of course, no one pays any attention. Now, the Court says, unless there is good cause for the delay, failure to abide by the statute requires the denial of the motion.

*Holterman v Holterman*, \_\_\_NY3d\_\_\_ [June 8, 2004]

In a divorce action, Court determined that the wife was entitled to \$214,200 as her equitable share of her husband's enhanced earnings premised on his medical license and ordered the husband to pay child support in the amount of \$34,875.65 annually. Court rejects husband's argument that his annual installment payment to his wife of her distributive share of his enhanced earnings should be deducted from the computation of his income in determining his child support obligation and included as income to the wife. As a result of these and other awards, the defendant, who earns \$181,837 per year, is left with \$16,389 to live on. As Martha Stewart says this is not good. The dissent argues that the misguided *O'Brien* holding (*O'Brien v O'Brien*, 66 NY2d 576) be limited to the classical student-spouse, working spouse syndrome and not be used where the enhanced earning capacity associated with a professional license is already fully reflected in the license holder's earnings. Interestingly,

no other state has adopted the O'Brien holding even though it has been around for 16 years.

*People v Aarons*, \_\_NY3d\_\_ [June 8, 2004]

In order to dismiss a criminal charge, there must be a formal vote of the grand jury and 12 of its members must concur in that result.

*People v Calabria*, \_\_NY3d\_\_ [June 8, 2004]

Defendant's conviction based upon testimony of a single witness who identified him at a lineup and at trial. Defendant challenges the sufficiency of the evidence. Court states that it may reverse a conviction when all the evidence of guilt comes from a single prosecution witness who gives irreconcilable testimony pointing both to guilt and innocence. That was not the case here since the witness never wavered in her testimony.

*People v Linares*, \_\_NY3d\_\_ [June 3, 2004]

Holds that trial courts should substitute assigned counsel when a defendant can demonstrate "good cause", i.e., a genuine conflict of interest or failure to provide meaningful representation.

*State Farm Mut. Automobile Ins. Co. v Glinbizzi*, \_\_AD3d\_\_ [July 22, 2004]

Auto policy defines "bodily injury" as "bodily injury to a person, and sickness, disease or death which results from it." Because this definition could be interpreted in two different ways, Court holds that insurer must indemnify its insured for any judgment related to a zone-of-danger cause of action wherein the plaintiff sought to recover for psychological injuries caused by witnessing an accident in which his father was fatally injured.

*Fallsburg Fishing & Boating Club v Spiegel*, \_\_AD3d\_\_ [July 22, 2004]

When Court issues a preliminary injunction, it must require an undertaking to provide a source of payment for any damages and costs that might be sustained as the result of the injunction. Court points out that the undertaking does not constitute liquidated damages which means that the defendant against whom the injunction was issued must prove his or her damages.

*Matter of Estate of Pilon*, \_\_AD3d\_\_ [July 22, 2004]

In this will contest, the objectors claimed that the testator suffered from an insane delusion. Court points out that a delusion does not affect capacity if the proof of its existence depends upon external and observable facts, giving rise to impressions, which, upon investigation, might be proved unjust. In other words,

a belief is not insane if there was the slightest basis for the testator's belief. Here, objectors did not sustain their burden that testator's belief his grandchildren did not care for him was delusional because there was proof they visited him infrequently or not at all.

*Kingsley Arms v Copake-Taconic Hills Central School Dist.*, \_\_AD3d\_\_ [July 15, 2004]

Case involves disputes that arose in January 2001 regarding construction work at a school. In April 2001, plaintiff sent a letter to the school district's attorney setting forth its claims in detail and denoting the letter as its notice of claim. The Court holds that the service of the letter upon an employee of the district did not satisfy the requirements of Education Law §3813 (1) which provides that a notice of claim must be served upon the governing body of the district.

*Marszal v Anderson*, \_\_AD3d\_\_ [July 15, 2004]

Mom gives son a durable power of attorney. Son transfers all of Mom's assets to himself. Sorry kid, absent a specific provision in the power of attorney authorizing gifts, a gift made by an attorney-in-fact to himself or herself or to a third party carries with it a presumption of impropriety and self dealing, which can only be overcome by demonstrating the clearest showing of intent by the principal to make such gift.

*Matter of Lamar Advertising of Penn v Pitman*, \_\_AD3d\_\_ [July 15, 2004]

Building inspector improperly issues building permit to plaintiff who begins construction. Stop work order is issued. Plaintiff seeks to have it vacated, arguing that it had acquired a vested right to complete construction. Court says no because a permittee may not acquire a vested right based upon an improperly issued permit that purports to allow construction that violates the applicable zoning regulations.

*Foote v Traditional Bldrs.*, \_\_AD3d\_\_ [July 8, 2004]

Haste makes waste, sometimes not. In March 2001 defendant advises plaintiff he sued wrong defendant. Two years later plaintiff seeks to serve amended complaint on the proper party which was rejected because, you know why, the Statute of Limitations had run. Court holds that plaintiff's CPLR 3012 (d) motion must be denied because of his failure to offer any excuse or explanation for his delay in identifying the proper defendant.

*Matter of Center Square Assoc. v City of Albany*, \_\_AD3d\_\_ [July 8, 2004]

In a zoning case presumption of injury for standing arises where the petitioner was entitled to receive

mandatory notice of the Zoning Board's proceedings.

*CV Holdings v Artisan Advisors*, \_\_\_AD3d\_\_\_[July 8, 2004]

Court points out that a real estate broker's contract will not be interpreted as creating an exclusive right to sell unless it clearly and expressly provides that a commission was due upon sale by the owner or excludes the owner from independently negotiating a sale. So far, so good. It then goes on to say that because the contract language is not clear in this case there is a question of fact as to whether the parties entered into such a contract. Query? If the contract is ambiguous, it is not clear and if it is not clear it cannot be deemed a contract creating an exclusive right to sell. So, where's the issue?

*Etkin v Capital District OTB*, \_\_\_AD3d\_\_\_[July 8, 2004]

Former OTB czar entitled to health and life insurance coverage for an additional six years beyond the termination of his employment, a package worth some \$210,000, because such coverage constitutes deferred compensation rather than an illegal contract of employment for a fixed term.

*Tabner v Drake*, \_\_\_AD3d\_\_\_[July 8, 2004]

A cautionary tale illustrating the inadvisability of representing, or appearing to represent, both parties involved in a business transaction. Don't do it.

*Stocklas v Auto Solutions of Glenville*, \_\_\_AD3d\_\_\_[July 8, 2004]

Points out that Courts on a motion to renew no longer overlook the requirement that the movant must present a reasonable justification for the failure to present the "new" facts on the original motion.

*Matter of Jenkins v Jenkins*, \_\_\_AD3d\_\_\_[July 8, 2004]

1999 New York custody order; 2000 Mom & kid move to Georgia; Dad & grandparents reside in New York; October 2002 New York Family Court order awards paternal grandmother custody; May 2003 Mom files petition in Georgia for custody. Court holds that matter should be transferred to Georgia because New York is an inconvenient forum inasmuch as evidence relating to the threshold issue of whether there was evidence of sufficient acts or omissions on the Mom's part sufficient to justify interference with parental custody lies primarily in Georgia.

*Dalton v Pataki*, \_\_\_AD3d\_\_\_[July 7, 2004]

After explaining when a slot machine is not a slot machine, Court holds that the law permitting the

operation of video lottery gaming at racetracks is unconstitutional because it directs that a portion of the proceeds be reinvested in breeding funds and enhanced purses rather than in education.

*Matter of Newsday v State Dept. Of Transportation*, \_\_\_AD3d\_\_\_[July 1, 2004]

Federal government requires states to perform and maintain engineering services of all public roads in order to locate any potential hazards. Sorry litigators this info is not for you since the statute (23 USC §409) states that such reports shall not be subject to discovery or admitted into evidence in any action for damages.

*Matter of Mega Personal Lines v Halton*, \_\_\_AD3d\_\_\_[July 1, 2004]

This is an action to set aside a conveyance as fraudulent within the meaning of Debtor and Creditor Law §273-a. Court points out that the good faith of both the transferor and transferee is an indispensable component of fair consideration. It noted that the transfer of corporate assets to an insider established a lack of good faith as a matter of law provided the assets were transferred directly to the insider or to an entity

controlled by the insider.

*Matter of Fairbairn*, \_\_\_AD3d\_\_\_[July 1, 2004]

In a prenuptial agreement both parties renounced the right of election and agreed to accept whatever disposition that was left under the will of the spouse who died first. Husband then makes will leaving wife more than her elective share. He then dies and a will contest follows. Court holds that while husband could have given the wife less than an elective share, the fact he didn't, standing alone, does not create an issue of fact on the question of undue influence or fraud.

*Stickles v Fuller*, \_\_\_AD3d\_\_\_[July 1, 2004]

If you can show that an out-of-possession landlord retained control of the premises, contracted to repair or maintain the property or has affirmatively created a dangerous condition or defect, you may be able to hold him or her liable for a dangerous condition existing upon the leased premises. The general rule is that once possession has been transferred, liability ceases.

*People v Martin*, \_\_\_AD3d\_\_\_[June 24, 2004]

When a defendant testifies, statements taken in violation of his or her *Miranda* rights or the right of counsel may still be used for impeachment purposes if the defendant gives testimony inconsistent with those statements, as long as the illegally obtained statements were voluntary.

*People v Rogers*, \_\_\_AD3d\_\_\_[June 24, 2004]

For the purpose of prosecution, State Police request a private lab to perform testing on the victim's blood. Although such tests by outside labs are regularly relied upon by the State Police because they do perform such testing themselves, the lab's report of the results of the test does not qualify as a business record merely because it was regularly filed with the State Police's records. The Court went on to say that documents prepared for litigation lack the indicia of reliability necessary to invoke the business records exception to the hearsay rule.

*Matter of Niagara Mohawk Power Corp. v Town of Moreau Assessor*, \_\_\_AD3d\_\_\_[June 24, 2004]

Clyde, a California resident, comes to New York to testify and is served with a summons. Claims New York does not have jurisdiction over him. To invoke the doctrine of immunity from service, Clyde must show that (1) he is in fact a nonresident, (2) whose sole purpose in appearing in New York was to attend judicial proceedings, and (3) there were no other means of acquiring jurisdiction over his person other than personal service in New York.

*Ackley v New York State Electric & Gas Corp.*, \_\_\_AD3d\_\_\_[June 24, 2004]

Telephone company employee falls from ladder that had been secured against a utility pole owned by defendant. Court holds that defendant not liable under Labor Law §§240(1) and 241(6) because it did not own the equipment plaintiff was working on and did not otherwise act in the capacity of an owner with respect to the equipment being worked on.

*Bennardi & Associates v Ramsons One*, \_\_\_AD3d\_\_\_[June 24, 2004]

Practice Point: Plaintiff cannot defeat summary judgment dismissing the complaint because of the existence of an arguably meritorious cause of action different from those pleaded. Instead, plaintiff should seek leave to file an amended complaint.

*Sutton v Eastern New York Youth Soccer Assn.*, \_\_\_AD3d\_\_\_ [June 17, 2004]

Points out the doctrine of assumption of the risk can apply not only to participants in sporting events, but to spectators and bystanders who are not actively engaged in watching the event at the time of their injury. Here, the doctrine was applied to guy who got whacked with a soccer ball while he was in a tent some 30 to 40 yards behind the goal line.

*Rodrigues v N&S Building Contractors*, \_\_\_AD3d\_\_\_[June 17, 2004]

In an indemnification agreement, subcontractor agreed to indemnify contractor "to the fullest extent permitted by law." Court holds that Workers' Compensation Law §11 precludes a third-party indemnification claim against the subcontractor because the indemnification agreement does not unambiguously and expressly provide that the subcontractor must indemnify the contractor for injuries sustained by the subcontractor's employees in the scope of their employment. In a footnote the Court noted that the agreement did not specify the persons covered nor the types of losses covered and contained no references to the particular job site.

*Thomas v Benedictine Hosp.*, [June 10, 2004]

Plaintiff in medical malpractice actions dies. No substitution. Defendants' motion to dismiss pursuant to CPLR 1021 granted. Counsel for deceased plaintiff appeals. Appeal dismissed. Counsel lacked standing to appeal.

*Burford v Fabrizio* \_\_\_AD3d\_\_\_[June 10, 2004]

Plaintiff alleges she sustained a serious injury

within the 90/180 day category. Defendant moves for summary judgment, but her expert does not offer an opinion as to whether plaintiff suffered an injury which limited her daily activities for 90 of the 180 days immediately following the accident. Summary judgment denied on the ground defendant did not sustain her burden of proof.

*Matter of Mazzone v Czajka*, \_\_\_AD3d\_\_\_ [June 10, 2004]

*Matter of Manne v Main*, \_\_\_AD3d\_\_\_ [June 10, 2004]

These two guys lose their pistol permits because (1) Mr. Mazzone believed that his former neighbors were members of an organized crime family who were conspiring with the Columbia County Sheriff's Department to murder him (2) Mr. Manne makes citizens arrest of two 14 year old girls who were operating an ATV on his property. Besides firing a warning shot at them, he threatened to shoot out their engine if they attempted to flee. The scary thing is that not only did these guys have guns, they presumably are capable of procreating.

*Loughran v Cruickshank*, \_\_\_AD3d\_\_\_ [June 10, 2004]

In a partition action involving tenants in common, the preferred remedy is to partition the property unless one party demonstrates that actual physical division would cause great prejudice to the owners, in which case the property must be sold at public auction.

*Morse v Colombo*, \_\_\_AD3d\_\_\_ [June 10, 2004]

One of my favorite subjects, being a dog aficionado: dog bites. Case points out that, even in the absence of a prior bite, a triable issue of fact regarding knowledge of vicious propensities may be raised by other evidence of the dog's aggressive behaviors, such as the animal being territorial, aggressively barking when her area is invaded, attacking another animal, growling and biting at another dog. Yikes, my 14 pound dog does all those things.

*Benamati v McSkimming*, \_\_\_AD3d\_\_\_ [June 10, 2004]

To come within Labor Law §§200, 240(1) and 241(6), you have to be hired by someone, be it owner, contractor or their agent.

*McKeever v McKeever*, \_\_\_AD3d\_\_\_ [June 3, 2004]

Points out that outstanding financial obligations incurred during the marriage which are not solely the responsibility of the spouse who incurred them may be offset against the total marital assets to be divided.

*Tanzman v LaPietra*, \_\_\_AD3d\_\_\_ [June 3, 2004]

D tells P that his corporation owned a vacation

home and that if she invested in the corporation, it would buy back her shares at the original price after two years. Of course it didn't happen; so is P entitled to damages for fraud? No, a present expression of the intent to perform a future act is actionable as fraud only if actually made with a preconceived and undisclosed intention of not performing it.

*Matter of Cornell v Cornell*, \_\_\_AD3d\_\_\_ [June 3, 2003]

15 year old child expresses wish to live with dad. Court points out that kid's wish should not be determinative, rather it is but one factor to be considered in the required best interest analysis.

*Cynoske v Cynoske*, \_\_\_AD3d\_\_\_ [June 3, 2004]

Where it has been determined that the amount of child support presumptively due under the Child Support Standards Act is unjust or inappropriate, the non-custodial parent cannot be ordered to pay any part of the child's future reasonable medical expenses not covered by insurance.

*Jacob v Jacob*, \_\_\_AD3d\_\_\_ [June 3, 2004]

Reaffirms *Brady v Brady* (64 NY2d 339 [1985]) by stating that a very high degree of proof is required for termination of a marriage of long duration on the grounds of cruel and inhuman treatment. Another point. When defendant interposed counterclaim for divorce based on abandonment, plaintiff had been absent from marital residence for six months. A year later at trial, defendant moves to conform the pleadings to the proof. Should motion be granted? E-mail SchenectadyBar@aol.com for the answer.

*State of New York v Exxon Corp.*, \_\_\_AD3d\_\_\_ [May 20, 2004]

Jury returns a 4-2 verdict in favor of plaintiff. Court directs verdict in plaintiff's favor. Sorry can't do that. CPLR 4413(b) states where 5 jurors cannot agree on a verdict the trial court's only alternative is to discharge the jury and direct a new trial.

*Culver v Parsons*, \_\_\_AD3d\_\_\_ [May 20, 2004]

Points out that a guarantor's liability is not impaired by the discharge of the principal's obligation in a bankruptcy proceeding

*A. Servidone, Inc. v Commercial Underwriter's Ins. Co.*, \_\_\_AD3d\_\_\_ [May 24, 2004]

When an insurance company disclaims coverage based upon an exclusion of coverage, it must serve a timely notice of disclaimer, however if a claim is not within the ambit of the policy, no notice is required.

*Washington v Montefiore Hosp.*, \_\_\_AD3d\_\_\_ [May 20, 2004]

Depositions conducted within the context of a workers' compensation proceeding are governed by CPLR Article 31.

*Matter of Acquisitions Plus v Shapiro*, \_\_\_AD3d\_\_\_ [May 20, 2004]

Reminder that a discharge in bankruptcy is a discharge from personal liability only and without more, does not have any effect on a judgment lien. To cancel the judgment you must make an application pursuant to Debtor & Creditor Law §150.

*Matter of Johnson*,\_\_\_AD3d\_\_\_ [May 20, 2004]

In a trial in Surrogate's Court decedent's attorney testified about conversations he had with decedent concerning provisions to be included in the decedent's will. Respondent raised the attorney-client objection. Overruled, the attorney-client privilege can be waived by the executor, particularly where the assertion of the privilege works to the detriment of the estate.

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**REPORT:**

**THE SEARCH FOR MISSING WILLS  
KEEP THOSE CARDS & LETTERS COMING IN!  
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**SCBA RECORDS AND ARCHIVES**

The Association has been blessed with many years of dedicated volunteer leadership, with the archives and records handed on from one leader to the next—a system with immense potential for screwups. 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**

*Schenectady County's Citizens for Law, Order & Justice* will host a **Latin Dance Party** at the River Stone Manor,

featuring the music of Alex Torres and the Latin Kings Orchestra, light *hors d'oeuvres* and cash bar from 7:00 p.m. to midnight on October 23. Proceeds will help support LOJ's many vital community justice, conflict resolution and supportive family service programs. Tickets \$50. Law firm sponsorships would be appreciated—contact Martha Weiskotten at 346-1281 for more information.

*The Capital District Paralegal Association, Inc.* will be hosting its annual Membership Drive Kick-Off Party September 14, 2004 at 6:00 p.m. at the Barnsider Restaurant in Colonie. Paralegals, legal studies students, educators and employers are invited; admission is \$5.00. For more information contact Tracey Young, RP (518) 464-6770 or cdpa\_ny@yahoo.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—Kate Toombs
- Law Day—Diane Herrmann
- Matrimonial Law—Eric Tepper
- Real Estate—Larry Naviasky

**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.

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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### CLASSIFIED ADVERTISING

SPACE AVAILABLE

**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

HELP WANTED

**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

**The Appellate Division, Third Judicial Department,** is seeking applicants for a one-year clerkship in the Law Research Department, to commence in August, 2000. Applicants must be law-school graduates with an exceptional record, admitted to the State Bar (JG-26), or admitted within 18 months of appointment (JG-23). Applications are due by September 28, 2004—for more information contact Robert D. Mayberger, Deputy Clerk, Appellate Division, Third Department, PO Box 7288, Capitol Station, Albany, NY 12224.

**MINUTES**

**SCHENECTADY COUNTY BAR ASSOCIATION—MEMBERSHIP**

**REGULAR MEETING**

June 17, 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., 72 members of the Association being then present and constituting a quorum. The President welcomed the judges present, and noted the recent appointment of Judge Caruso as Administrative Judge for the 4<sup>th</sup> Judicial District. Judge Caruso assured the Association that he undertakes this responsibility wholeheartedly and with enthusiasm, and expressed his conviction that “there are things we can do to improve our delivery of justice. I look forward to implementing them.”

Judge Powers announced that Notre Dame-Bishop Gibbons was this year’s Mock Trial winner, with Schenectady City School District the runner-up. He presented a plaque and trophy to Notre Dame-Bishop Gibbons team. While the plaque will be kept by the school as a permanent record of its success, the trophy—named the Riley Cup in recognition of Judge Riley’s many years of involvement in the program and his efforts in support of quality trial advocacy—will be passed on to the winning team in each future year. Judge Powers expressed special thanks to his secretary, Andrea McConnelly, for her administrative support of the program. The Notre Dame-Bishop Gibbons team faculty Advisor thanked the Association for its support of this program, which serves as an alternative to sports; 4 of the school’s past mock trial participants just graduated from law school. Kevin Burke, who served as the Association advisor for the team, asked the Association to welcome these students as colleagues—they won the Regional competition and placed 4<sup>th</sup> in the State.

MINUTES OF PRIOR MEETING

The minutes of the April 15, 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. The Treasurer’s Report was accepted by general consent.

PRESIDENT’S REPORT

President Seebold noted that the Supreme Court admission trip at the beginning of the week went well, and that last night’s Social was well-attended.

He reported on the Association’s participation in the project to beautify the downtown Amtrak station, which was recently completed.

The Association has recently formed a *pro bono* committee; members should contact President Seebold if interested in serving on that committee. We will also be instituting a mentoring program.

Secure Pass renewals are coming up—make sure and apply.

An Alternate Treatment Court for those with mental disabilities is in the planning stages; contact Judge Eidens with comments or suggestions.

NEW YORK STATE BAR ASSOCIATION

Nick Tishler, the Association’s delegate to NYSBA, reported that the House of Delegates will be meeting in Cooperstown on Saturday June 19. One topic before the House will be a report and recommendation concerning electronic recording of police interrogations.

The report of the Special Committee on Law Practice Continuity has been released.

NYSBA has taken a strong position against mandatory *pro bono*, but is still talking about mandatory reporting of *pro bono* activity to be done along with CLE reporting.

FEDERATED BAR OF THE FOURTH JUDICIAL DISTRICT

Michelle Wildgrube, the Association’s delegate to the Federated Bar, reported that she attended the Montreal meeting, which was a great event with several interesting presentations. She encouraged all members to attend next year.

UPDATE ON THE NEW COURTHOUSE PROJECT

Judge Caruso reported that the Court Facilities Capital Review Board has now agreed with the County to plan for the courthouse. The County is to invite the City to participate in the process, select a consultant and establish a timetable for review of the facility plan and capital plan; some construction is scheduled to begin before the end of 2005. Judge Caruso urged all members of the bar to participate in this program as appropriate.\

INTEGRATED DOMESTIC VIOLENCE COURT

Judge Drago reported that she and Judge Powers will both participate in this specialized court project, which allows a single judge to handle both Family Court and City Police Court matters related to the same parties. They expect to have the program up and running by the end of 2004.

MATRIMONIAL COMMITTEE

Chair Eric Tepper reported that there will be a meeting of the Committee on June 30. In addition, the Committee was asked to comment on the reappointment of Colleen Quirion as a Support Magistrate, and has advised Judge Plumadore that they are unanimously in support of such reappointment.

LAW DAY

President Seebold noted that he and the Committee will be reviewing the program, and may make significant changes to the structure; he invited all past Law Day chairs to participate in that discussion.

PRESENTATION TO RETIRING PUBLIC DEFENDER SKIP WATROUS

Dave Burke noted that, in the mid 1960s, a group of law students would congregate in the Schenectady County Law Library, often joined by then Assistant District Attorney Howard Levine. Many of those students later went into public service, including Skip Watrous who was himself an ADA for many years, later Public Defender for the County. He presented a plaque to Mr. Watrous, who noted that it was a real pleasure to have the presentation made by Dave Burke, and assured the Association that any rumors of his demise are greatly exaggerated—"like a bad penny, I will keep coming back."

NEW MATTERS

Bob Hoffman noted certain legislative developments in the real estate area: The Assessment Form (RP5217) filing fee is to be raised effective July 1, and the Legislature is considering a change in the property disclosure statement and the POA form.

Romolo Versaci thanked Dave Burke for compiling the very useful and interesting list of Recent Decisions.

ELECTION OF OFFICERS

On motion of Frank Putorti, as Chair of the Nominating Committee, the Secretary was unanimously directed to cast one vote for the following:

OFFICERS

President: John R. Seebold  
Vice President: Hon. Karen A. Drago  
Treasurer: Robert W. Hoffman  
Secretary: Kathryn McCary

DIRECTORS

Joanne Haelen  
Hon. Mark L. Powers  
Margaret Tabak

FEDERATION OF BAR ASSOCIATIONS, 4<sup>TH</sup> JUDICIAL DISTRICT

Delegate: Michelle H. Wildgrube  
Alternate: Richard D. Wickerham

There being no additional business to come before the Membership, the meeting was adjourned at 1:05p.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.

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### 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.

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### LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK

PRIVATE ATTORNEY INVOLVEMENT PROGRAM

Coordinator: Elena Rich—462-6765

Matches lawyers with clients in the following areas:

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|--|--|
| 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](mailto: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.

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### CAPITAL DISTRICT WOMEN'S BAR ASSOCIATION

THE LEGAL PROJECT

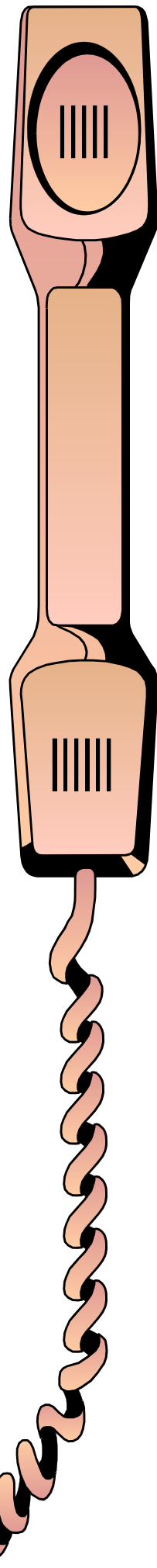
435-1770

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

## ALBANY COUNTY BAR ASSOCIATION

Contact: Barbara Davis 445-7691 or [acba@global2000.net](mailto:acba@global2000.net)

No Information has yet been received about upcoming  
CLE opportunities—look for information in the November  
newsletter!

Come on in—You will find:

- Last year's collected *Recent Decisions*
- Other good stuff

See you at lunch, September 16!

He dreamed that he stood in a shadowy Court,  
Where the Snark, with a glass in its eye,  
Dressed in gown, bands, and wig, was defending a pig  
On the charge of deserting its sty.

The Witnesses proved, without error or flaw,  
That the sty was deserted when found:  
And the Judge kept explaining the state of the law  
In a soft under-current of sound.

The indictment had never been clearly expressed,  
And it seemed that the Snark had begun,  
And had spoken three hours, before any one guessed  
What the pig was supposed to have done.

The Jury had each formed a different view  
(Long before the indictment was read),  
And they all spoke at once, so that none of them knew  
One word that the others had said.

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