



# Schenectady County Bar Association, Inc.

## NEWSLETTER



MAILING ADDRESS: PO Box 1728, Schenectady, NY 12301-1728

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FALL 2009

## Schenectady County Bar Association 2009-2010 Meetings

*Meetings are held at the Glen Sanders Mansion*

Doors open at 11:30 • Meeting begins at 12 noon • Hot Luncheon Buffet  
\$20 for members, \$25 for non-members  
*Everyone Attending Must Pay*

<b>September 10, 2009</b>	Membership Meeting	Thursday
	Free One Hour CLE immediately Following Meeting	
	CASP Program: How it Can Help Attorneys and Clients	
	Presented by Honorable G. Douglas Grisct	
<b>November 12, 2009</b>	Membership Meeting	Thursday
<b>January 14, 2010</b>	Membership Meeting	Thursday
<b>April 8, 2010</b>	Membership Meeting	Thursday
<b>June 17, 2010</b>	Annual Membership Meeting	Thursday

## Membership News

In order to make membership more affordable for attorneys just starting out, the Association offers a graduated dues scale. Please encourage new attorneys to join our organization!

### 2009-2010 DUES

First Full Year of Bar Admission	Free
Second Year to Fifth Year of Bar Admission	\$55.00
Regular Dues	\$110.00
Over Seventy Years of Age	Free
Sustaining Member	Additional \$40

You can help our association financially by becoming a **Sustaining Member**, for an additional \$40 per year. Sustaining dues will be used for . You can upgrade your membership at any time. Please consider joining your colleagues today. We will acknowledge our sustaining members in our newsletter and in our website.

Membership in the Schenectady County Bar Association is open to any person who is a member of the Bar of New York or any other State. Membership applications can be obtained from:

Andrew Healy

PO Box 1728 • Schenectady, NY 12301

Or contact, Diane Herrmann, Executive Director at 393-4115

Applications are also available online, [schenectadycountybar.org](http://schenectadycountybar.org)

## Continuing Legal Education Update

The 2009 Fall Schedule is now being finalized. Registration materials will be mailed soon.

### SAVE THE DATE

**November 13, 2009,**  
All day Seminar  
Family and Matrimonial Law  
Riverstone Manor – Located in Scotia, NY,  
only one mile from the end of I-890

#### Scheduled Presenters Include:

- Hon. Joseph Sise –  
What a Family Court Judge Looks For
- Hon. Kathleen Jennings – Child Support
- Jennifer Rutkey – Adoptions
- Barbara King – Ethics
- Elizabeth Critz Schockmel, Psy.D. –  
Evaluations

### NEW THIS FALL

**Luncheon Series**, a 2 hour CLE  
scheduled during the lunch hour

#### Upcoming Seminars will include:

- Evidence Overview Presented by  
Professor Michael Hutter
- Auto Insurance for the General Practitioner  
Presented by Mark Blanchfield
- **Happy Hour**, Join us for a Quick  
One Hour CLE with light refreshments

#### Programs geared to newer members

- City Court Overview – Presented by  
Honorable Christine Clark
- How To Manage a Demanding Client –  
Presented by Barbara King

#### Half-Day Programs

- Civil and Criminal Law Updates:  
Civil Update, John Seebold  
Criminal Update, Michael Koenig



## Schenectady County Bar Association

### OFFICERS & DIRECTORS

#### OFFICERS

Frank M. Putorti, Jr.  
*President*

Michael E. Basile  
*Vice President*

John Fantauzzi  
*Treasurer*

Jenifer Wharton  
*Secretary*

#### DIRECTORS

Paul Callahan

Roland Faulkner

Pamela McDevitt

Mark Powers

Karen Drago

Christine M. Clark

Robert Hoffman

Barbara King

Ann Sharpe

#### EXECUTIVE DIRECTOR

Diane Herrmann

## President's Message

Senior members of our bar association recall the "old days" when lawyers got together to socialize, tell a few war stories and discuss the issues of the day facing our profession. Over the years the numbers of lawyers and members of the SCBA increased, the bar association evolved and now does so much more to assist the bar and our community in many ways.

There were a few committees when I became a member in 1977. Now we have over 20 committees, special events and programs to address areas of concern & service, including By-Law Revision, Bar Liaison, Continuity, Continuing Legal Education, Criminal, Elder Law, Family/Matrimonial, Grievance, Judiciary, Law Day, Lawyers Assistance, Legislative, Membership, Memorials, Mock Trial, Newsletter, Pro Bono, Public Relations, Real Estate, Social, Benefits & Activities, Sunshine & Awards, Trial Lawyers and Unauthorized Practice of Law.

The committees and volunteers do a great job in service to our association and to the public. For example, our annual Real Estate Seminar is famous and Mock trials have been a tremendous success.

I urge each and every one of you to get involved; join a committee, attend meetings, submit an article for our newsletter, do what is comfortable for you.

*Frank M. Putorti Jr.*

## SCHENECTADY COUNTY BAR ASSOCIATION

Annual Meeting – June 18, 2009 • Glen Sanders Mansion, Scotia, New York  
**12:00 p.m.**

At 12:20 p.m., the meeting was called to order by President Robert Hoffman with a sufficient number of the Association being then present to constitute a quorum.

President Hoffman welcomed all members and the students and teachers from Notre Dame/Bishop Gibbons.

### 1. New Members:

John Fantauzzi announced the following new members:

Nina Daratsos  
 Wendy S. DeForge,  
 Heather Gray  
 Valerie Kerker  
 William D. Pfeiffer,  
 Joseph J. Villano  
 Larissa Wasyl

### 2. Moot Court Winners:

Judge Mark Powers announced Notre Dame/Bishop Gibbons as the winners of the 2009 Reilly Cup and presented the trophy to the team. Judge Powers thanked Judge Drago and Judge Clark for their efforts and acknowledged the lawyer coaches, Kevin Burke and Judge Cynthia Amhrein.

### 3. Election Process:

President Hoffman announced that Peter Coffey, serving as Inspector, would be collecting proxies for the vote and that Fran Friedberg, Ann Sharpe and Danielle Lange would serve as tellers for the election.

J. David Burke spoke and indicated that he wanted someone additional to view the election process and nominated Fred Killeen to be a poll watcher. Mr. Killeen accepted the nomination and he proceeded to monitor the election.

President Hoffman proposed that a motion be made confirming the election of the various uncontested offices as follows:

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*Vice President*

**Michael Basile**

*Treasurer*

**John Fantauzzi**

*Secretary*

**Jenifer Wharton**

*Board*

**Robert Hoffman  
 Ann Sharpe  
 Barbara King**

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Motion made by Bruce Trachtenberg, seconded by Richard Antokol. No opposition, motion carried and the officers and board members were duly elected.

President Hoffman advised that the members would now cast their ballots for the contested office of president. The election then commenced by distribution of ballots and collection and processing of proxies.

During the election, various members spoke:

**Dennis Englert** – Noted that when he had joined SCBA, it was basically a social club whose members met out for a meal or to play cards. He remarked, “In the past twenty years, SCBA has come so far.” He noted that SCBA has always worked harmoniously in the past, and that no matter what the association had stuck together as a bar association. He hoped that after the election, everyone would be able to shake hands and go on as an association.

**Roland Faulkner** – Wanted to echo Dennis’ remarks and noted that the secret to success was cordiality.

**Richard Antokol** and **Romolo Versaci** also made similar remarks.

The election continued and President Hoffman addressed other business of the Association.

### 4. Minutes of the Prior Meeting:

President Hoffman announced that the April minutes had been amended and proposed that the minutes of the prior meeting, as amended, be adopted. Motion made by Rolly Faulkner, seconded by John Casey. No objections made, motion carried.

### 5. Annual Report:

President Hoffman distributed copies of the Annual Report to members. He also

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## SCBA Annual Meeting

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provided copies of the Treasurer's report. Copies of the same will be attached to the official copy of these minutes. President Hoffman proposed that the Annual Report be adopted to include the Treasurer's Report. Motion made by Richard Antokol, seconded by John Fantauzzi. No objections made, motion carried.

### 6. New Business:

Diane Herrmann announced that on Tuesday, July 14th, members of the SCBA are invited to a dinner buffet at the Hall of Springs followed by a ballet performance. Tickets are \$66.00 a person and non-members may also attend.

### 7. Election Results:

During the meeting, the election took place. Peter Coffey, who served as Inspector for the meeting, announced the results: Frank Putorti received 90 votes and Sheila Ferrucci received 79 votes. Accordingly Frank Putorti was duly elected as the new president of the Schenectady County Bar Association. Frank thanked the Membership and adjourned the meeting.

### Next Meeting shall be announced by newly elected President Putorti.

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

Respectfully submitted,  
Jenifer M. Wharton,  
Secretary.

## LAWYER ASSISTANCE PROGRAM

### *What, Who, When and How*

Patricia Spataro, Director  
New York State Bar Association's  
Lawyer Assistance Program



Attorneys suffer from substance abuse and depression at a rate twice that of the general population. Addiction and depression are treatable but because denial is an inherent part of the disease these illnesses are often left untreated. In addition, some attorneys think that asking for help is a sign of weakness, yet attorneys and judges ultimately face serious consequences when mental health concerns are not addressed. An impaired attorney is at risk for disciplinary problems because it is hard to be a good attorney when there are serious personal problems.

The Lawyer Assistance Program provides assistance to attorneys and judges suffering from addiction, depression, debilitating stress, or other mental health issues. Services include assessment, referrals, education, intervention, and peer assistance. The program is confidential as is described in section 499 of the Judiciary Law.

LAP services are provided by the professional LAP staff and attorney volunteers who have had personal experience with the issues. The attorney volunteers generously give their time to help a colleague in need. Assistance is readily available and a simple phone call is all it takes to connect to the valuable LAP resources.

Many attorneys contact LAP when they realize they have a problem... often this happens as a result of a crisis such as DWI, loss of job, or notice from discipline. We take every opportunity to educate attorneys about the early warning signs of addiction, depression, and other mental health concerns in hopes of preventing a crisis.

Occasionally attorneys and judges call LAP looking for a way to help a colleague who is demonstrating behaviors that are out of character, self-destructive, or pose harm to clients or others. These behaviors may include excessive drinking, using illegal drugs, becoming withdrawn, isolating themselves, behaving aggressively, inappropriately interacting with others, or not meeting professional or personal responsibilities.

Denial and stigma pose significant barriers to attorneys getting help and the consequences for untreated mental health concerns are serious and can include loss of job, of family, or of life. For the profession it can mean loss of a colleague, client harm, and a damaged public image of the legal profession. LAP provides resources to help the members of the legal community stop the loss of good attorneys to these highly treatable ailments.

**Please call for further information and/or assistance**

**1 800 255 0569**

## Updates from the Matrimonial Committee

Two, and possibly three new changes in matrimonial / family law to report:

### 1. Automatic Orders for Matrimonial Actions

Domestic Relations Law section 236 has been amended to provide for new automatic orders. These provisions apply to matrimonial actions which are commenced on or after September 1, 2009. For matrimonial actions commenced on or after that date, the plaintiff must now also serve a copy of the new automatic orders on the defendant. Service is to be made at the time that the summons is served on the defendant. Specifically, the new automatic orders are as follows:

(1) Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2) Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual

retirement accounts, 401K accounts, profit sharing plans, Keough accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the court.

(3) Neither party shall incur unreasonable debts hereafter, including, but not limited to further borrowing against any credit line secured by the family residence, further encumbering any assets, or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

(4) Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

These automatic orders are not signed by any judge. They are binding on the plaintiff in a matrimonial action immediately upon filing of the summons with notice or filing of the summons with complaint. They are binding on the defendant once the defendant is served with a copy of these orders with the summons.

These automatic orders remain in full force and effect during the pendency of the matrimonial action unless they are sooner modified or terminated by a further order of the court which is based either on a written agreement of the parties which must be duly executed and acknowledged or upon a motion of one of the parties.

### 2. New Equitable Distribution and Maintenance Factor

The loss of health insurance benefits has been added as a factor for the court to consider in determining equitable distribution and maintenance. This will be effective for actions commenced on or after the effective date of September 21, 2009. However, you can still sneak it in under the "other factors" catchall provisions in both of these sections for any pending actions.

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## ***Updates from the Matrimonial Committee***

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### **3. Child Support “cap” possible changes**

Sitting on Governor Patterson’s desk is a bill which would increase the so-called child support income cap from \$80,000.00 to \$130,000.00. For those who don’t already know, the Child Support Standards Act provides a two part methodology for determining child support and provides that for child support based on combined parental income above \$80,000.00, the court should engage in an analysis as to whether or not application of the percentage to that “excess” income is appropriate or not. Many practitioners representing the support payors claimed that there was legislative intent to “cap” support. However, most courts have recognized that the \$80,000.00 figure was set many moons ago and that inflation and increases in costs of living have rendered that figure out dated.

If the bill is signed into law, support payors will now have to wait until the combined parental income hits \$130,000.00 before they can make their “cap” arguments. In addition, that number will be adjusted for changes in the consumer price index starting in 2012.



## **Modest Means Panel Update**

by Barbara King

Thank you to all who have signed up to be Representing Attorneys on the Modest Means Panel (MMP):

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**Ellie DeCoursey**

**Dennis Englert**

**Pat Rodriguez**

**Alex Verrigni**

**Fran Friedberg**

**Renee Tremblay**

**Barbara Guzman**

**Nicole Helmer**

**Barbara King**

**Greg Schaaf**

**Jennifer Sunderlin**

**Sven Paul**

**Laura Silva**

**Deanna Siegel**

**Kimberly Harp**

**Kate Toombs**

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There is still time for attorneys to sign up for this Program. The MMP is designed to offer representation in Family Court and Matrimonial matters at a reduced rate to financially qualified litigants. The Program is intended to meet the gap between those who do not qualify for Pro Bono or Assigned Counsel, but who can not otherwise afford to pay customary hourly rates. The program offers Mentor attorneys as well, so this is a terrific opportunity for newer attorneys or those looking to break into this area of practice. It is also a way for practitioners to give back to the community while still earning a fee for their services. If you are interested in this program, go to the Schenectady County Bar Association website at [schenectadycountybar.org](http://schenectadycountybar.org), or call Barbara King directly at 218-7100.

## Solo and Small Firm Attorneys and the New York State Bar Association

by Pamela McDevitt

During the past year, NYSBA's Special Committee on Solo and Small Firm Practice produced a report about solo and small firm practitioners in New York. More than 55 percent of NYSBA's members are in a practice comprised of fewer than 10 attorneys. If you increase the number to fewer than 20 attorneys, the percentage rises to 64. Among other things, the Committee was asked to look at how NYSBA was doing in providing support to solo and small firms and what the firms' needs are. The Committee worked with the Office of Court Administration, which had conducted a study in 2005 of small firm practice in the state. The Committee's mission was to recommend ways in which NYSBA, alone or with other local bar associations and courts, can support solo and small firm attorneys in their practices. This report was adopted by the State Bar House of Delegates in June of 2009. This report can be viewed in its entirety at [www.nysba.org/ssfreportjune09](http://www.nysba.org/ssfreportjune09).

During the next year, NYSBA will implement many of the Committee's recommendations. The report's short-term

recommendations include improving NYSBA's Web site to provide easier and wider access to solo and small firm users. This would include greater use of listserves, blogs, social networking opportunities, and more online continuing legal education opportunities.

Another Committee goal will be to improve the online Solo and Small Firm Resource Center at [www.nysba.org/solo](http://www.nysba.org/solo). This Center offers resources for solo and small firm practitioners. The report concluded that the site could be upgraded by improving search functions and by making the site's navigation easier for users.

I write this article not as a NYSBA employee promoting my employer, but to raise awareness about some of the free resources NYSBA provides for attorneys. On NYSBA's Law Practice Management site [www.nysba.org/lpm](http://www.nysba.org/lpm), there are free articles, sample forms, and downloadable publications that can help your practice. Also available are features where practitioners can seek advice on practice management and ethics issues.

Blogs are also featured on issues such as finance, management, and law firm technology. A new solo and small firm blog, unveiled this past June, is a place where solo and small firm practitioners can discuss issues, challenges, and concerns that are unique to them and in which they have in common. Solo and small firm practitioners can benefit greatly by the exchange of ideas and information from other practitioners and colleagues.



### Power of Attorney Legislative Update

A.8392 / S.5910: When the Senate convened on August 6, 2009 it did not take action on S.5910, the legislation that would have made technical corrections to the new power of attorney statute, Chapter 644 of the Laws of 2008. The Assembly did adopt A.8392, but for the time being the legislation remains as originally enacted.

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