27th Annual Real Estate Conference
Scheduled for March 11

The Real Property Law Committee will present its popular annual conference on Saturday, March 11 at the Buffalo Marriott Niagara, located at 1340 Millersport Highway in Amherst.

“This annual conference is our most well-attended event for practitioners and paralegals to be educated and to collaborate on how to better our practice in many areas of real estate law,” according to Real Property Committee Chair Nicole Hyziak Fenz.

This year’s program features speakers on the TILA-RESPA Integrated Disclosure rule (TRID) with updates from a lender’s perspective; 1031 Exchange considerations; the City of Buffalo Green Code and its implications for practitioners and clients; considerations for survey examination; in-depth analysis of escrow agreements; specific ethical concerns when handling real estate matters; Erie County Clerk’s Office updates; interesting title cases; and the intersection of Surrogate’s Court and Real Property.

The conference begins with registration and a continental breakfast at 8:00 a.m. The program runs until 1:00 p.m. and provides 7.0 CLE credits. Register online at www.eriebar.org or by calling the CLE Department at 852-8687. This program is a great opportunity to earn CLE credits and catch up with colleagues somewhere other than the County Clerk’s Office! Register today.

Special thanks to the following sponsors for their support: Chicago Title Insurance Services Company LLC; GPI; Holland Land Title & Abstract Company, Inc.; Key Bank Mortgage; Nussbaumer & Clarke, Inc., NYSBA Real Property Law Section; and Stewart Title Insurance Company.

Unleash the Power of Casemaker!

In addition to the online training sessions that have been held to familiarize you with our newest member benefit, there is now a live program available. Two sessions will be held on Wednesday, March 8 at the Bar Association offices, located at 438 Main Street in downtown Buffalo. Choose from 11:00 a.m. or 1:00 p.m. – each session is one hour long.

Casemaker’s Jim Corbett will provide instruction on how to effectively use this comprehensive online legal research tool – which is now available without charge to members only. A step-by-step demonstration will reveal the wealth of information available to you and explain key features of the program.

Appropriate for all attorneys, these training sessions offer 1.0 CLE credits in Skills. To register, visit www.eriebar.org or call the CLE Department at 852-8687.
Letter to editor

Member Kudos

The following letter was sent to the Bar Association by a grateful client.

I wish to acknowledge Mr. Renée Falbo and her staff for their positive attitude and hard work on my behalf going through my ‘Gray Divorce.’ My cousin referred me to Renée Falbo, who is a member of the Fried & Klawon firm. I was apprehensive about my very delicate situation; I procrastinated my decision to divorce for years for this reason. From our first meeting, she took my concerns to heart, which reduced my emotional stress. She handled the divorce proceedings professionally and skillfully to effect the best possible outcome for me and my children.

She made it look easy, although I know it was frustrating. She was simultaneously proficient and patient, not only with me but also with my ex-husband and his attorney, which is what I deemed the most. (This was a very real concern of mine and she validated my apprehension without depreciating it.) She knew what to say to motivate them and she had the vision to take the initiative to develop innovative solutions for all of us.

A “thank you” card just didn’t seem sufficient for this talented attorney and her efficient staff members. I appreciate the opportunity to thank her publicly for the security and peace of mind she validated my apprehension without depreciating it. She knew what to say to motivate them and she had the vision to take the initiative to develop innovative solutions for all of us.

Sincerely,
Maureen M. Holy
Orchard Park

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CONTRIBUTING MEMBERS


CONTRIBUTING MEMBERS


LETTERS TO THE EDITOR

...and short articles of general interest to our readers are always welcome. All materials submitted for publication in the Bulletin are subject to editing for reasons of style, space, content.

Send all submissions as Word documents to obrian57@comcast.net (preferred) or by mail to: Bulletin Editor, 438 Main Street, Sixth Floor, Buffalo, NY 14202.
Raymond L. Fink, Carol E. Heckman and Charles E. Telford III have joined Lipsy Mathes Weider Friedman as partners. They will provide the firm’s clients with access to new practice areas, including financial reorganization, restructuring and insolvency, Native American Law, and private dispute resolution services.

A former president of the BAEC, Fink has been in practice for more than three decades, representing corporate clients at various stages of development and from many diverse industries. A graduate of the University of Toledo College of Law, he currently serves as president of the board of directors of the Foundation for Jewish Philanthropies, Inc.

Heckman is a retired United States Magistrate Judge with more than 39 years of experience as a judge and a trial and appellate lawyer. Most recently, Heckman has represented Fortune 500 companies and a sovereign Native American tribe in a variety of commercial and business disputes. She graduated second in her class from Cornell Law School.

Telford focuses on corporate, general tax and estate planning. He represents clients before and in negotiation with Fortune 500 companies and a sovereign Native American tribe. With more than 39 years of experience as a judge and a trial and appellate lawyer, Telford has been in practice for more than three decades, representing corporate clients at various stages of development and from many diverse industries.

Department of Taxation on a wide variety of issues. He is a graduate of SUNY at Buffalo School of Law and also holds an LLM in taxation from New York University.

Laurie Styka Bloom of Nixon Peabody has received the Empire State Counsel Award presented by the New York Bar Foundation at NYSSBA’s recent annual meeting. Styka Bloom was one of two recipients of the award, which recognizes pro bono contributions to low-income and vulnerable clients, who otherwise could not afford an attorney or gain access to the civil justice system. She is a former president of the BAEC.

Michael S. Deal has been named managing attorney for the Appeals and Post-Conviction Unit at the Legal Aid Bureau of Buffalo, Inc. Deal was formerly of counsel to DeMara & Schoenborn and previously served in the criminal department of Lipper Green Scime Cambria, where he was promoted to partner. His litigation experience also includes First Amendment work and he worked as a prosecutor and local judge in Ohio. At Legal Aid, he will oversee appellate and post-conviction work in Genesee, Orleans and Cattaraugus Counties.

Craig R. Becki, a partner at Phillips Lyda LLP has been elected to The American Law Institute (ALI). New members are selected from confidential nominations submitted by ALI members. Becki focuses his practice on litigation involving state and municipal government, public authorities, and other quasi-governmental entities. He also represents business entities in commercial disputes and homeowners’ associations in enforcing real property covenants. Becki is currently chairing the BAEC’s annual mock trial tournament.

Dennis C. Vacco, a partner at Lipsy Mathes Weider Friedman LLP, has been named to the national advisory board of SUNY Buffalo’s Law Advocacy Institute. Lipsy Mathes Weider Friedman LLP is a founding donor of the Institute, which coaches students on trial advocacy, appellate advocacy, alternative dispute resolution and the Innocence and Justice Project. Vacco is a former NYS attorney general who focused his practice on government investigations and compliance.

The need may be based on medical problems, job loss, emotional difficulties, family crises or many other situations.

If you need assistance – or know a friend or colleague who does – please call Kathie Bifaro at 852-1777. All services are individualized and completely confidential.
applying the law to serve what is right time and again throughout his career, Judge Skretny richly deserves the honor bestowed upon him.

Meanwhile, merely a few blocks away at the Metropolitan Club, our very own Maryann Saccomando Freedman was honored at the House of Delegates dinner for her long and outstanding service as a trailblazer and leader in New York State and beyond (see page 3). After serving as the first woman president of our Association, she went on to become the first woman president of the New York State Bar Association and later became president of the New York State Bar Foundation. For her exemplary dedication to the practice of law, to the lawyers of the state, and especially to the lawyers of her community, she rightly holds a place not only as a true pioneer for women in the law, but as a force for change for all of us.

Not to be undone, Interim Dean James Gardner was awarded the Law School’s highest honor by being named this year’s winner of the Jackloe Award. His scholarship, clarity of thought, and leadership are second only to his good humor and kindness. His stewardship of the school through difficult times and teachable moments deserves our praise and recognition of his accomplishments.

In a larger sense, each of these individuals demonstrates what can be accomplished when desire is transformed into dedication. In each of these instances, it was not enough for them to be satisfied with doing their job; it occurs to me that each wanted to be a force for change within their spheres of influence. As we come off our first ever Member Appreciation Month, I find it a good time to evaluate what we have accomplished this year, and more importantly, assess where we need to go in order to propel us into the next phase of organizational development.

While there have been many successes this year, the year has also been fraught with concerns over lack of participation and involvement among the membership. While it is true that an Association exists to serve its members, it is also true that the bond between us is reciprocal.

While I am heartened by the positive response to many of our initiatives that have been brought to bear over the course of the year, it is, at times, dispiriting to see that participation in our committee meetings is down, and that attendance at certain events that have been mainstays among the bench and bar in our community for decades have likewise experienced a lull.

While our numbers of new and renewed members are at several year highs, membership is not enough. Alluding to last month’s letter, just as diversity without a plan for inclusion is unlikely to produce long-term results, membership without meaningful participation will inevitably trend toward apathy.

There can be no doubt that it is my job to invigorate the membership and demonstrate that involvement in the activities central to the Association are not only worthy of your time, but are also worth the effort, I encourage you to take that next step.

Sign up for a committee. If you are on a committee, turn to the back page and mark its next meeting in your phone calendar. Participate in a community event sponsored by the Association. Or simply vote in this year’s election.

Any step you take strengthens the bond between us. And as can be seen by our recent awardees, that first step can lead to a career of fulfillment in your chosen endeavor. [B]
Independent Judiciary Dates Back to 1788

By Gregory T. Miller

The following editorial was recently submitted to the Buffalo News.

When, in the late afternoon of January 27, 2017, President Trump signed an Executive Order barring admission of all people with non-immigrant or immigrant visas from seven Muslim-majority nations for 90 days, barred all refugees from anywhere in the world for 120 days, and placed an indefinite ban on refugees from Syria, he set into motion the very machinery of the Constitution itself. Not only does the President’s authority to sign such an order ultimately come from the Constitution, so too does the state of Washington and state of Minnesota’s right to bring a challenge to that Executive Order on behalf of its citizens in order to protect their individual liberties.

Most importantly, the right of the judiciary to determine whether or not the President’s actions in signing that order was subject to judicial review, and if so, whether that order violated the rights guaranteed us by the Constitution; and not according to their own will, but instead, according to their own judgment as to what the Constitution requires; and since the power to sign and enforce an Executive Order arises from the will of the People, the Constitution must be set forth in the Federalist Papers in 1788. In Federalist No. 78, he argued that since the Constitution itself was the embodiment of the Will of the People, and since the President’s power and the Congress’ power - as agents for the people - are derived from the Constitution, then there must be a mechanism set into place whereby the actions of the other co-equal branches of government could be challenged. Since the power to sign and enforce an Executive Order arises from the will of the People, the Constitution must be the measuring stick against which the order is analyzed.

Of necessity then, it is the judges who do the measuring. And not according to their own will, but instead, according to their own judgment as to what the Constitution requires; the court, as an independent branch of government, does not seek to replace its will for that of the political desires of the Congress or the President that provoked the statute or the order in the first instance. For a court determining the constitutionality of an act of the President, its only master is the Constitution. It is the only filter through which the act, the statute, or the order is distilled.

Contrary to the expressed views of the President, it is specifically because the judiciary is divested from policy and politics that it alone has the authority to rule on those pieces of legislation or executive action that by definition are themselves subservient to the Constitution. Because of this, the judiciary is the ultimate protector against those that would assault it.

Though this authority is not unlimited, and it is well recognized by the courts themselves that it must give deference to the executive and legislative branches in certain circumstances, this only serves to prove the point all the more that a charge of a “politicized” judiciary without evidence of the same is unfounded and unsubstantiated.

It is our view, then, that the process must be allowed to play itself out, and if there be disagreement with the result, so be it. Nevertheless, that disagreement must not come at the expense of undermining the trust in the very institutions that serve as the foundation of our constitutional democracy.
Ringing in a New Judicial Year

Mark your calendar now and plan to attend the annual gala in honor of President Gregory T. Miller and the Association’s past presidents. This year’s event will be held on Saturday, May 6 at the Buffalo Club from 7:00 until 10:00 p.m.

Watch your mail and next month’s Bulletin for further details.

SAVE THE DATE FOR THE 2017 PRESIDENT’S BALL!

Special thanks to the following sponsors for their support of this event:

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- Lipsitz Green Scime Cambria LLP
- Lipsitz & Ponterio, LLC
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- Law Office of Timothy M. O’Mara
- Tully Rinckey PLLC

Pictured above at the Judicial Welcoming Ceremony, sponsored by the Bar Association of Erie County, The Minority Bar Association of Western New York and the Women’s Bar Association of the State of New York, Western New York Chapter, are left to right, WBASNY President Elizabeth A. Kraengel, BAEC Vice President Melinda G. Diare, Hon. Mary L. Sline, Hon. Craig D. Hannah, Administrative Judge Paula L. Feroletto, BAEC President Gregory T. Miller, and MBAWNY President Maisha M. Blakney. Not pictured is Hon. Daniel J. Furlong.
Acceptance Remarks from Judge Skretny

The New York State Association of Criminal Defense Lawyers recently presented the Hon. William Brennan Award for Outstanding Jurist to Hon. William M. Skretny, United States District Judge for the Western District of New York. Following are excerpts from Judge Skretny’s acceptance remarks:

“(The criminal justice system) is a much maligned system, especially in today’s climate of increased divisiveness. Of course, institutional criticism is not new. Thomas Jefferson long ago suggested that the judiciary was something to be feared, commenting that “the judiciary bodies were supposed to be the most helpless and harmless of the government … Experience, however, soon showed in what way they were to become the most dangerous.”

In my opinion, Jefferson’s criticism is overstated. But, ironically, that same criticism strengthened the constitutional principle of co-equality among the three branches of government, just as today, the severe criticism being leveled at our criminal justice system strengthens the resolve to transform our system works if together we work at it! It is that simple.

In 1972, before his accession to the Supreme Court, Felix Frankfurter said: “We must have law and lawyers that are sensitive to the feelings and needs of the various ingredients that make the sum total of the American nation. Lawyers that are hard headed without being hard, lawyers that are wise rather than smart. In the last analysis, the law is what the lawyers are.”

And while efforts for reform are ongoing, justice is being served every day, notwithstanding the varying degrees of sensitivity to relevant issues such as mass incarceration and the formal principle of colorblindness. I mention these contemporary challenges because Michelle Alexander’s critical spotlight of them in her book, “The New Jim Crow,” has been transformative to me in my thinking and my approach to federal sentencing, as to what actually is fair, just, reasonable, sufficient, and not greater than necessary.

But despite these challenges—and a host of others—those of you who know me, have heard me say numerous times: our criminal justice system works if together we work at it! It is that simple.

There is a lot of truth in that quote. (and…) that lawyer is each of you: devoted; prepared; creative; hard-working; and committed to seeing justice served. Not questioning the status quo is unacceptable. Whether, it means taking on the legions to change New York’s gravy train statute; or to encourage the use of trial practice penalties to force plea agreements; or even to litigate discovery practices to obtain fair disclosure in perceptually less important misdemeanors cases; bar none, You are always up to the challenge. And that is what makes the system work.

Day in and day out, you fulfill Gideon’s promise by providing some of the most needy of our communities the zealous advocacy and aggressive representation that they deserve. And for each and every defendant you represent, the treason made famous by Victorian novelist and modern oracle, George Eliot, must forever remain the mantra that underscores your noble mission. Simply stated, “it is never too late to be what you might have been.”

My dear friends all, with every fabric of my being, I commend and thank each of you for your daily, endless contributions to the administration of justice, and I urge you to remember…that the criminal justice system works when you work at it. And to remember every day that you play a vital role in making our system what it is: the best system of justice in the world.”

(B)
eldest child of an immigrant, working class, Indo-Caribbean family, I am not only a first generation high school and college graduate, but I also went on to become an attorney. Citizenship grants immigrants the opportunity to integrate and become full participants in our democratic institutions.

Buffalo is the second most populous city in New York state, after New York City. According to a recent report by the Office of the New York State Comptroller, immigrants now represent 22 percent of the New York state’s population. The national average is 13 percent.[1] Immigrants now comprise 10 percent of Buffalo’s population and roughly 10,000 refugees resettled in Buffalo during the last decade.[2] Among the first wave of immigrants to settle in Buffalo were people from Germany, Ireland, Poland, Italy, and parts of Eastern Europe. Today, Buffalo’s immigrant groups include people from Myanmar, Thailand, Ethiopia, Sudan, Pakistan, Somalia, Iraq, and Vietnam.

Unfortunately, while many embrace and celebrate our diversity, falsehoods about immigrants, documented and undocumented, abound. A prevalent misconception is that immigrants and refugees adversely impact the economy.
The Bar Association of Erie County organizes and schedules annual “in person” admissions to the United States Supreme Court Bar. The next excursion to Washington, D.C. is scheduled for Monday, April 24, 2017. Bar Association members are admitted in open court before all nine justices and listen to oral argument.

Washington Lawyer magazine has listed “observing oral arguments at the Supreme Court” as the number one alternative for “expanding the mind and improving one’s practice.” The U.S. Supreme Court is “distinctly American in concept and function,” as former Chief Justice Hughes has observed. It is a unique experience to observe an entire branch of the federal government in action and participants always rate this event highly.

Interested applicants must be admitted to practice for three years, free from any adverse disciplinary action, and sponsored by two members of the U.S. Supreme Court Bar. A $200 fee is required.

Applications are due by March 24. For further information, please contact Dennis J. Bischof, who coordinates the admissions program, at 630-6500.

Join Us at the Supreme Court!

“…It is a unique experience to observe an entire branch of the federal government in action and participants always rate this event highly.”

Missing Records

The Bar Association frequently receives calls from clients, court staff and member attorneys who are attempting to locate the records of deceased attorneys. If you have any information concerning the files of a deceased member, please contact Darren Canham at 852-8687 or dcanham@eriebar.org so that we can update our records. Your assistance is greatly appreciated!
ERISA
In Madden v. Brady, et al., No. 16-CV-571(EAW) (Jan. 18, 2017), plaintiff sued defec tors’ former employer, retire ment system, and former spouse to establish the estate’s rights to the entirety of decedent’s retirement benefits. Although decedent and her former spouse had executed a separation agreement in which both parties agreed to waive any interest in the other’s retirement benefits, decedent’s retirement system still determined that the retirement benef it should be split with 30 percent going to the former spouse as the designated primary beneficiary. Prior to commencing the lawsuit, plaintiff requested unsuccessfully that the former spouse voluntarily renounce his interest in the retirement benefits, but received no response. When the former spouse also failed to answer the complaint, plaintiff moved for a default judgment, which the court granted on plaintiff’s claim that the former spouse had breached the separation agreement. The court found that the allegations in the com plaint, when accepted as true and combined with the attached separation agreement, established that the former spouse had waived his interest, thus making plaintiff entitled to the entire retirement benefit.

PRODUCTS LIABILITY
In Miccio v. Conagra Foods, Inc., et al., No. 16-CV-6140(EAW) (Dec. 28, 2016), plaintiff sued the manufactu rers and distributors of a cooking spray can after sustaining injuries when the can, unused at the time, exploded in her workplace. She brought her lawsuit under theories of strict liability (including design defect, manufacturing defect, and failure to warn), breach of express and implied warranty, and negligence. After defendant moved to dismiss the complaint and plaintiff moved to amend the complaint, defendant argued that the proposed amended complaint still failed to adequately plead manufacturing defect, breach of express warranty, and negligence claims.

The court denied the motion, finding that plaintiff had sufficiently pleaded a strict liability manufacturing defect by alleging that the product:

a) was defective due to an error in the manufacturing process through inadequate or a lack of testing; and
b) deviated from all other like units due to that defect.

Although plaintiff failed to make any specific allegation about the product’s manufacturing process, it was sufficient that she had alleged the canister exploded and nothing she did caused the explosion. On the other hand, the court held that plaintiff had not sufficiently pleaded a breach of express warranty claim. Plaintiff failed to allege that defendants had made any specific statement concerning the safety or efficacy of the cooking spray can, and generalized and vague allega tions that defendants supposedly made express warranties were not enough. In addition, plaintiff also failed to allege that the warranty had induced her employer to purchase the product or that she had relied on the warranty to deter minement.

TRIBAL SOVEREIGNTY AND STATE TAX LAWS
In Seneca Nation of Indians v. Patterson, No. 15-CV-00867(MAT) (Jan. 23, 2017), plaintiff sought declaratory and injunctive relief concerning the alleged unconstitutional ity of certain New York state tax law amendments imposing a tax on cigarettes sold on an Indian reservation to non-residents. Plaintiff challenged the amendments or enforcement of the tax law amendments. In granting defendants’ motion and denying plaintiff’s cross-motion, the court first reaffirmed its prior finding that the tax law amendments do not unconstitutionally burden plaintiff’s right of tribal sovereignty. Next, because plaintiff’s complaint alleged only pre-enforcement claims, the court found that its holding could not include “future” or “hypothetical” claims, because such claims are speculative and undeveloped. As a result, plaintiff’s claims were dismissed with prejudice.

INSURANCE COVERAGE
In Cyberseed USA, LLC v. U.S. Underwriters Ins. Co., No. 16-CV-00424(EAW) (Dec. 20, 2016), plaintiff claimed that defendant breached the parties’ insurance contract when it canceled the policy because plaintiff failed to make certain improvements to the underlying property. Defendant moved to dismiss the complaint, arguing that plaintiff failed to sufficiently allege a breach since the policy could be cancelled with or without cause, and merely required 30 days’ notice of the cancellation. The court granted the motion and dismissed the complaint, finding that defendant’s reason for cancelling the contract was “wholly immatu rity” to its analysis because New York law required the court to infer the contract was terminable without cause in the absence of a provision specifically requiring cause. Therefore, because defendant had an unqualified right to terminate the policy after providing 30 days’ notice, there had been no breach.

DISCOVERY SANCTIONS
In Scott-Iverson v. Ind. Health Assoc, Inc., No. 13-CV-4515(FP) (Jan. 4, 2017), an action alleging race and gender discrimination, defendant moved to compel plaintiff’s pres ence at the continuation of her deposition for an additional three hours and 16 minutes as a result of late starting times, break and disruptive conduct by plaintiff and her attorney. Defendant also sought an order compelling plaintiff to answer 11 questions asked at her prior deposition, which plaintiff refused to answer. Finally, defendant requested an order enforcing plaintiff’s cross motion for sanctions.

As to the first request, the court found that plaintiff failed to provide any evidence contradicting defendant’s calculation of the short-fall in her actual deposition time as computed in accordance with Fed. R. Civ. P. 30(d)(1). As a result, defendant was entitled to a con tinuation of the deposition for the requested time. Regarding the second prong of defendant’s motion, the court found that plaintiff’s repeated refusal to answer the questions at issue was unjustifi able, noting that, when a deponent believes a deposition is being conducted in bad faith, the deponent should apply “immedi ately” for judicial intervention under Fed. R. Civ. P. 30(d)(3)(A). Accordingly, plain tiff’s motion was denied. “Without notice of trespassers, the court determined there did not exist a duty to install a fence.”

continued on page 12
Case Notes

continued from page 11

Lawyers Helping Lawyers

Lawyer Distress Revisited

If you or a colleague are struggling with substance abuse, help is readily available. Call 852-1777 for completely confidential assistance.

I only offer my personal experiences as a woman who is a lawyer and as a recovering alcoholic who has worked in the profession for nearly 20 years, with a clientele of primarily female, over 50 percent of whom sought treatment for alcoholism. From my own experiences and those of many of my peers, I concur that feelings of rejection, fear of being inadequate for the job. Contributing to my slide into alcoholism were my parents' divorce when I was 10 years old, my experiences as a “functioning alcoholic.” Women fall off the career track very often too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. Because of their stigma of shame also keeps women from getting help until it is too late and their jobs are lost. ""
Top Ten Things to Know about the Lawyer Referral Service

1. FEES – Have ranged up to $409,000 for a single case!
2. CLIENTS – More than 15,000 of them called us last year!
3. EASY – Confused by too many lawyer ads, consumers call us instead.
4. BROAD BASE – We receive clients from all over the U.S. and abroad.
5. PAID ADS – We pay all costs of print, radio and online advertising.
6. CREDIBILITY – Because we are part of the BAEC, public confidence is high.
7. REFERRALS – Clients are referred by attorneys, the courts, community agencies, and EAPs.
8. PRE-SCREENING – Staff members pre-qualify all potential clients.
9. PAID SERVICES – Referrals are made only when there is a real legal need and the ability to pay.
10. TIME SAVINGS – The upfront screening and intake is handled by our staff, not yours.

To join, call Marcia McKowan at 852-3100.
By William Mattar, President

You may have heard this parable about starfish, but it bears repeating.

A young man was walking along the ocean and came upon a beach littered with thousands of starfish that had washed ashore. Ahead of him he spied an old man, walking slowly, stooping often, picking up one starfish after another and tossing each one gently into the ocean.

“Old man, why are you throwing starfish into the ocean?” he asked.

The old man replied, “Because the sun is up and the tide is going out and if I don’t throw them further in they will die.”

“But, old man, don’t you realize there are miles and miles of beach and starfish all along it? You can’t possibly save them all, you can’t even save one-tenth of them. In fact, even if you work all day, your efforts won’t make any difference at all.”

The old man listened calmly, bent down, picked up another starfish and threw it into the sea. “It made a difference to that one.”

A wise old man indeed. Often, we justify not giving or helping by telling ourselves that our small contribution could not possibly make a difference. I am here to challenge that justification and remind you that no matter what the value, every gift to the Bar Foundation does make a difference for a lawyer in need.

More than that, those who contribute to the Bar Foundation mentor and shape the next generation of lawyers. If we (as established attorneys) do not lead by example, as the old man does in the starfish parable, then what legacy do we leave the next generation of lawyers? I would submit that it would be a bleak and dismal legacy.

A gift to the Bar Foundation is a tangible vote of confidence in our legal community demonstrating support from one generation of lawyers to the next. Together, our life experience, our wisdom and our resources keep our legal community strong.

Be not like the young man and make excuses for not giving. Be instead like the old man and give whatever it is that you can. Donate now – online at www.eriebar.org or call 852-8687 today. I can assure you, it DOES make a difference.

Thank you!
Become a fan of your favorite Bar Association. "Like" us on Facebook, follow us on Twitter and join our group on LinkedIn.

Are You An Attorney Struggling With Depression?

If so, you’re definitely not alone. A recent Johns Hopkins study of 108 occupations found that lawyers topped the list of those who suffered from depression. Attorneys were found to suffer from depression at a rate of four times that of the general population.

Depression is a treatable illness and the right combination of medications and therapies can significantly improve the quality of life for those who suffer from it.

Help and support are just a phone call away. The Lawyers with Depression Support Group meets on a weekly basis to share stories and fellowship. The group meets every Friday (except holidays). See the calendar on page 28 for meeting dates, times and locations.

If you or a colleague are struggling with depression, there is no need to suffer in silence. For further information, visit www.lawyerswithdepression.com or contact Daniel T. Lukasik at 913-6309 or danieltlukasik@gmail.com. All calls are strictly confidential. We invite you to join us and share your story.
However, it is no secret that immigrant and refugee populations have not only stemmed Erie County’s population decline but have also contributed to Buffalo’s cultural and economic renaissance. More broadly, immigrants – documented and undocumented – pay taxes and contribute to the Social Security Fund. According to the Institute for Taxation and Economic Policy, undocumented immigrants collectively paid over $11 billion in state and local taxes last year.[3] Undocumented immigrants, many of whom entered the U.S. lawfully but overstayed expired visas, provide as much as $12 billion a year to the Social Security Fund, according to the Social Security Administration (SSA).[4] However, many of them are unlikely to reap the benefits of their contributions later on without a clear path to citizenship.

Notwithstanding the historical, cultural, and economic contributions of immigrant and refugee populations, the demonization of certain immigrant and refugee groups has made these groups vulnerable to the deprivation of certain rights to which they are entitled under federal and state law, including the federal and state Equal Protection Clause (“No person shall be denied equal protection of the laws…”). Consequently, several organizations in Buffalo gathered on February 4 for a Know Your Rights event for immigrants and refugees at Jericho Road Community Health Center. The event covered topics such as housing, employment, consumer issues, matrimonial matters, and criminal defense. It was advertised in community centers in English, Spanish, Arabic, Karen, French, Burmese, Nepali, Somali, Swahili, and Vietnamese.

The event was a collaboration of the Office of the New York State Attorney General, City of Buffalo Office of New Americans, Muslim & Immigrant Court Collaborative, Journey’s End, Jewish Family Service of Buffalo & Erie County, Legal Aid Bureau of Buffalo, Inc., Erie County Bar Association Volunteer Lawyers Project, Inc., and International Institute of Buffalo.

Several volunteers from these organizations fielded inquiries from many people in the community seeking counsel about issues affecting their families. Interpreters were also available.

There is no question that for many immigrants and refugees, this is a time of alarming uncertainty. The sweeping Executive Orders promulgated by the White House on January 27 regarding the ban on the admission of certain immigrant groups to the U.S. will continue to galvanize what is likely to be a long, systemic collaborative effort to protect the fundamental rights of immigrants and refugees residing in Buffalo. Our work as a cohesive and collective community has never been more important to protect the disenfranchised and promote the values of civil society. Our democratic ideals and institutions will depend upon our mutual support and service to one another.

For additional information regarding the citizenship drive, please contact Jennifer Kimura at jkimura@legalaidbuffalo.org or Sarah Bertozzi at sbertozzi@jersbuffalo.org. You may also visit legalaidbuffalo.org and jersbuffalo.org.
Welcome New Members

The Bar Association of Erie County is pleased to welcome the following new members:

Todd J. Aldinger
Catherine D. Aughey
Arthur N. Bailey
Kailene M. Balzano
John P. Bartolomei
Danielle A. Becker
Matthew J. Bird
Susan B. Bjornholm
James P. Blenk
David C. Brautigam
Kevin R. Brick
Melanie L. Brown
Erik A. Burrows
Jennifer M. Cameron
Kevin G. Cope
Nicholas A. DiCerbo, Jr.
Anthony A. Domenico
John R. Ewell
Kristen E. Flick
Jay William Frantz
Erica Gasiewicz
Amy Gathings

It’s great to belong to something this good.

Michael T. Gioia
Alexander Glebov
Kate Hartman
Seth A. Hiser
Kathryn D. Horn
Meaghan P. Kelsey
John M. Kuzdale
Kevin R. Lelonek
Kenneth P.L. Lowe
Eriel W. Marriott
Rudyn McLin
Thomas D. Migliaccio
Michael E. Otto
Michael C. Panepianco
Davis A. Podkulski
Nicholas A. Pusateri
Jesse C. Pyle
Michelle Ray
Steven B. Salcido
Michael J. Schaefer
Michael P. Schug
Jonathan P. Schultz
Nicholas J. Schemik
Daniel E. Skinner
Brandi Smith
Lisa A. Smolarek
James Speyat
David R. Stapelton
Bridge C. Steele
Nara J. Tijrodpajja
Robert Townley
Maximilligan G. Tresmond
Michael R. Tucci
Gina L. Vallone-Bacon
Pete L. Veefh
Crystal Wentz
Nicholas Weston-Swan
Katherine L. Wood
Robert Zielinski

Domestic violence doesn’t discriminate. It happens within all age ranges, ethnic backgrounds, and financial levels. If it happens once, it will happen again. The abuse may occur during a relationship, while a couple is breaking up, or after a relationship has ended. Despite what many people believe, domestic violence is not due to an abuser’s temporary loss of control over his or her behavior. In fact, violence is a deliberate choice made by the abuser in order to take control of a spouse or partner.

Look What You Made Me Do! In spite of the abuser’s efforts to “blame the victim,” domestic violence is NEVER your fault. If you or a loved one are suffering, help is just a phone call away. Don’t wait. Please call the 24-hour domestic violence hotline at 884–6002.

Don’t Suffer in Silence.
Let Us Help You Find Your Voice.
In Memoriam

“Silently, one by one, in the infinite meadows of heaven, blossomed the lovely stars, the forget-me-nots of the angels.”

~ H.W. Longfellow

We wish to honor the memory of the following members of our Bar Association. Memorial gifts to the Erie County Bar Foundation are an excellent way to remember friends and colleagues, as gifts are used for the benefit of the entire profession.

MaryAnn Killeen-Ast
Donald G. McGrath
Richard M. Handel
Richard E. Heath
Richard E. Moot
Jerome D. Adner
John B. Walsh
Richard A. Grimm, Jr.

RECYCLE YOUR BULLETIN
In addition, lawyers who handle lawsuits in the First or Second Departments involving personal injuries and other specified claims should heed the court rules found in 22 NYCRR 603.7 (First Department) and § 691.20 (Second Department). Those rules direct attorneys for both plaintiff and defendant to preserve, for seven years after any settle- ment or judgment, the pleadings and other papers pertain- ing to the claim. The inquiring lawyer did not specify whether any of the personal injury claims he handles are in the First or Second Department. To the extent that any claims are subject to those rules, the proposed early destruc- tion of those files would appear to violate the court rules cited above, and would thus also violate 3.6(c), again regardless of whether the client consented to the destruction of the file.

Additional issues are raised by the inquiring lawyer’s pro- pose to destroy files by relying on the lack of any instructions from the client during the specified 30-day period. The New York Court of Appeals addressed the client’s rights in the lawyer’s file in Sage Realty Corporation v. Proskauer Rose Goetz and Mendelsohn, 191 N.Y.2d 30 (1997). In that deci- sion, the Court of Appeals held that a client has the right to inspect and copy any documents possessed by the lawyer relating to the representation, unless substantial grounds exist to refuse access. The court further stated that, even without a request, an attorney is obligated to deliver to the client, no later than promptly after representation ends, such documents relating to the representation as the client rea- sonably needs. The client’s right of access has been described as a “property right” in the subject file. Sage Realty Corporation v. Proskauer Rose Goetz and Mendelsohn, 294A.D.2d 190 (1st Dep’t 2002).

Since the client has a property right to the lawyer’s files, it is the opinion of this committee that the proposal to destroy the file a mere 30 days after the conclusion of the matter, based only on the client’s failure to respond within that brief period, is not consistent with the lawyer’s ethical obligations to the client. If the client gives express informed consent (preferably in writing) to the destruction by the lawyer of file materials that are not required to be retained by any law or rules such as those referenced above, the lawyer would then be free to destroy those portions. Also, even with- out express consent, it may be reasonable in some circum- stances to infer that a client has given implied consent to the destruction of a file (e.g., when many years have passed since the conclusion of the representation, during which the client has not requested any materials, and the lawyer has deter- mined that the file does not contain any materials the client would reasonably require in the future). However, the thirty- day unilateral destruction proposal made by the inquiring lawyer here does not present such circumstances.

Not all clients will be capable of giving informed consent to the disposition of the file. Some clients may be minors or may lack sufficient mental or emotional capacity to appreci- ate the ramifications of the various alternatives, notwith- standing conscientious explanations by the lawyer. The individual differences that exist among clients and cases warrant the type of blanket destruction policy proposed by the inquiring lawyer here.

There have been several published opinions by other ethics committees on issues related to time limitations to retain files. See e.g. ABA Committee on Ethics and Professional Responsibility in formal Opinion 1384 (1977) (“A lawyer should not use a law firm’s destroyed case information that the client may need?”), NYSBA Opinion 780 (2004) (“When a lawyer determines that the entire file of representation to the client is no longer required to deliver to the client property, including files, which the client in entitled to receives as a matter of law”), NYSBA Opinion 766 (2003), NYSBA Opinion 623 (1991), NYSBA Opinion 460 (1977), “Association of the Bar of the City of New York Ethics Opinion 2008-3,” Nassau County Opinion 2006-02 “(There is strong support for a recom- mended period of seven years for the general preservation of files”), Nassau County Opinion 81-10 (1981) (“An attorney should retain all files for a period of seven years from the time a particular matter is closed.”) These ethics opinions should be consulted in connection with the development of any record retention policy by a law firm.

As an alternative to either retention or agreed-upon destruction, the inquirer may also wish to consider the transferring of physical possession of the file to the client upon completion of the legal services.

Conclusion: The file destruction policy proposed by the inquiring lawyer does not conform to established ethical responsibilities because (1) it does not take into account the requirements in the Rules of Professional Conduct or other rules governing the particular types of records documented therein, (2) it does not take into account the client’s informed consent before the destruction of other types of records, and (3) it contemplates the unilateral destruction of the entire file by the lawyer after a waiting period far shorter than the periods recommended in the ethics opinions that have addressed the subject.

[B]
It’s that time of year again! Organizers are gearing up for the 18th Annual Bowling Tournament to benefit Lawyers for Learning.

Please join us for another fun evening of bowling and camaraderie in support of the students at Buffalo Public School 18. In addition to the weekly one-on-one tutoring the group has provided for the last 19 years, contributions from the legal community have allowed Lawyers for Learning to send dozens of inner-city children to summer camp at the YMCA’s Camp Weona, sponsor many educational field trips, and to continue work on the community garden across the street from the school.

Thank you for your continued support of Lawyers for Learning, which makes these programs possible.

The Bowling Tournament sold out last year and some teams could not join in the festivities. Sign up early to be a part of this annual tradition!

Check should be made payable to LFL, Inc. Bowling donations for YMCA Camp Weona are tax deductible and can be donated at the alley or sent directly to our Bowling Tournament Committee c/o Garvey & Garvey, 416 Pearl St., Buffalo, New York 14202. If you have any questions or need any further information, please do not hesitate to contact Matt Garvey at 855-4848, or by email at mgarvey@garveyandgarvey.com.

Check should be made payable to LFL, Inc. Camping donations for YMCA Camp Weona are tax deductible and can be donated at the alley or sent directly to our Bowling Tournament Committee c/o Garvey & Garvey, 416 Pearl St., Buffalo, New York 14202. If you have any questions or need any further information, please do not hesitate to contact Matt Garvey at 855-4848, or by email at mgarvey@garveyandgarvey.com.

Applications due on or before Thursday, May 4, 2017 - but hurry!! Lanes will sell out quickly.

BECOME A SPONSOR!! Visit www.lawyersforlearning.org and click on "Upcoming Events."
If you were not contacted during our pledge drive, please consider making a contribution at this time, or at any time during this year. Pledges in honor of a memory of friends, family members and colleagues become a lasting tribute to the profession, as funds are used exclusively to assist attorneys and provide understanding of our legal system.

Donations to the Bar Foundation may be made at any time, either in person at 438 Main St, Sixth Floor, Buffalo, NY 14202, online at www.eriebar.org/ErieCountyBar Foundation or by mailing a check to:

Erie County Bar Foundation
438 Main Street, 6th Floor
Buffalo, NY 14202

$10,000 or more

Collins & Barnes
William E. Mattar

$5,000 - $9,999

Donald P. Chiaro
Jeffrey M. Possman
Lipsit & Pontier, LLC

$2,500 - $4,999

Joseph V. McCarthy
Robert J. Lane, Jr.

$500 - $999

Dan D. Kohane
William F. Keenan
Hodgson Russ LLP

Paul B. Zuydhoek
Wayne D. Wisbaum

$200 - $499

Katzenelson Foundation or by mailing a check to:

Donations to the Bar Foundation
Buffalo, NY 14202
438 Main Street, 6th Floor
Erie County Bar Foundation

“...we can always give it meaning and transform it into something of value.”

~ HERMAN HESSE

Thanks to the generosity of this legal community, the Erie County Bar Foundation’s Campaign 2016 raised over $226,000 from almost 850 donors.

Because the quality of our advocacy and the success of our practices cannot protect any of us from personal tragedy or loss, the Foundation provides a much-needed safety net to assist those in need.

On behalf of all members and women who benefit from the Foundation’s services, we are deeply grateful for your support. Without it, our services would simply not be possible.

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**Bench & Bar continued from page 3**

Jennifer A. Ehman of Hurwitz & Fine, P.C. has received the Sheldon Hurwitz Young Lawyer Award from NYSSBA’s “Vets, Insurance and Compensation Law Section. Named for the co-founder of the firm, the award is presented to a lawyer admitted 10 years or less who has made “a significant impact” in their field. Ehman focuses her practice in insurance coverage.

**Anthony Domenico and Michael Panbianco** have joined Lewis & Lewin, P.C. Domenico previously served as a certified legal intern/assistant in the prosecutor’s office in Batavia, Ohio. His legal interests include animal and human rights, advocacy for women and children of abuse, criminal, family, and Constitutional law. Domenico is a graduate of Canisius College and the University of Akron School of Law. Panbianco will focus his practice on criminal defense. While in law school, he interned at The Center for Community Alternatives. Panbianco previously served as a law clerk with Lewis and Lewin, P.C. He holds undergraduate degrees in political science and economics from SUNY at Fredonia and received his law degree from Syracuse University College of Law.

Sam Burniano has joined First State Bank as assistant general counsel and director of regulatory compliance and enterprise risk management. He has represented the finance industry for more than 20 years. He serves on the bank's management committee and provides legal advice, manages compliance, and oversees enterprising risk management. Burniano is a graduate of SUNY Buffalo and the Cleveland-Marshall College of Law.

**Cory J. Zoroch** has joined Simpson & Simpson, PLLC as an associate focusing on intellectual property law. He also assists clients with evaluating the patentability, writing patentability and infringement opinions, and drafting and prosecuting patent applications.

A graduate of SUNY at Buffalo, he received his J.D. from the Law School and was admitted to the New York State Bar in January.

**John R. Ewell** has joined Hurwitz & Fine, P.C. as an associate in the firm’s insurance coverage and litigation departments. A former law clerk with the firm, Ewell joined Hurwitz & Fine with Hon. Eugene M. Fahey and also clerked at the U.S. Attorney’s Office for the Western District of New York. An All College Honors graduate of Canisius College, Ewell received his J.D. cum laude from the University at Buffalo Law School, where he served as publications editor of the Buffalo Law Review.

**Todd J. Aldinger** has joined Bouvier Law LLP as an associate handling litigation and general practice matters. He is a graduate of Pace University, as well as a summa cum laude graduate of the University at Buffalo Law School.

**Karthein A. Gillettes and Etna E. McCampbell** have been named junior partners at Lipitis Green Scime Cambria LLP. Gillette joined the firm in 2011 and focuses on personal injury. She earned her J.D. from the Loyola University School of Law and received her B.A. summa cum laude, from Le Moyne College.

McCampbell focuses her practice on appellate litigation and has experience as a law clerk to federal district and circuit judges. She joined the firm in 2015. A summa cum laude graduate of SUNY Albany, McCampbell earned her J.D. cum laude, from the School of Law at Washington & Lee University.

**Justina Potenza** has joined Chico, Hershik, Spyer & Monte, P.C. as an associate. She will assist with the firm’s litigation files as well as general practice matters. Potenza graduated magna cum laude from both SUNY at Buffalo Law School and Buffalo State College. She is a former teacher at Buffalo Public School 66.

**Patrick R. Curran** has joined Hurwitz & Fine, P.C., heading the firm’s medical malpractice & nursing home liability and medical device & drug product liability practice groups. Curran focuses on critical care litigation and risk management, medical and professional malpractice defense, and related matters. He is also experienced in ADR and has served as a mediator. A graduate of SUNY at Albany, Curran received his J.D. from New York Law School.

**Sarah P. Rera** has been named a shareholder at Gross Shanor Brandt & Gilfillan, P.C. She joined the firm in 2011 and concentrates her practice in personal injury and business litigation. Rera is admitted to practice in New York state and Federal Courts, as well as before the U.S. Supreme Court and Bankruptcy Court for the Western District of New York. A graduate of St. John’s College, she earned her J.D. from the University at Buffalo Law School in 2009.

**Rena J. Domagalski** has joined Hurwitz & Fine, P.C., leading the global legal department and is responsible for establishing and managing all legal strategies and issues for the company and its domestic and international affiliates and subsidiaries. A graduate of Pennsylvania State University, she also holds an executive M.B.A. from SUNY at Buffalo and a J.D. from its Law School.

**Amanda L. Lowe** has been elected a partner Phillips Lytle LLP. She concentrates her practice on civil litigation matters in federal and state courts. A member of the labor & employment practice team, Lowe represents both public and private employers and counsels clients on policies, procedures, and compliance issues. She is a summa cum laude graduate of SUNY at Buffalo and a cum laude graduate of its Law School.

**Kerry A. Feron and Katie M. Poleon** have transitioned to the matrimonial, family law, and estate departments and have founded Feron Poleon LLP, a practice focused on matrimonial and family law. Feron Poleon LLP is located at 1400 Sweet Home Road, Suite 9, Amherst, New York 14228, 716-639-1111, feronpoleon.com.

**Blaine S. Schwartz** has been elected managing director of Barclay Damon’s Buffalo office. He most recently served as co-managing director with James P. Domagalski following the merger of Domon Moyer and Huscroft & Barclay. Domagalski now serves as marketing partner for the 60-lawyer Buffalo office, along with Christopher A. Cardillo.

Schwartz devotes a substantial portion of his practice to the defense of high-exposure products liability and toxic substance litigation. A graduate of Dartmouth College and Georgetown University Law Center, he serves as vice chair of the Erie County Fiscal Stabilization Authority. Jett formerly chaired the board at the Kaleida Health Foundation and served as president of the Buffalo Renaissance Foundation.

**William Grieshaber, Jr.,** has been promoted to general counsel at Rich Products Corporation in Buffalo. He leads the global legal department and is responsible for establishing and managing all legal strategies and issues for the company and its domestic and international affiliates and subsidiaries. A graduate of Pennsylvania State University, he also holds an executive M.B.A. from SUNY at Buffalo and a J.D. from its Law School.

**Katherine A. Metcalf** of Hurwitz & Fine, P.C., received the Jewish Family Services of Greater Buffalo’s Volunteer of Distinction Award. Metcalf has been a volunteer for the past six years. Schwartz practices in the firm’s real estate practice group. He is also chair of the board of trustees of Jewish Family Services of Buffalo & Erie County and a vice president of the Bureau of Jewish Education.

**Sarah E. Marlette** has been re-elected as managing director of Barclay Damon’s Buffalo office. She most recently served as co-managing director with James P. Domagalski following the merger of Domon Moyer and Huscroft & Barclay. Domagalski now serves as marketing partner for the 60-lawyer Buffalo office, along with Christopher A. Cardillo. Marlettedevotes a substantial portion of his practice to the defense of high-exposure products liability and toxic substance litigation. A graduate of Dartmouth College and Georgetown University Law Center, he serves as vice chair of the Erie County Fiscal Stabilization Authority. Jett formerly chaired the board at the Kaleida Health Foundation and served as president of the Buffalo Renaissance Foundation.

**Peter S. Marlette** has been re-elected as managing director of Barclay Damon’s Buffalo office. She most recently served as co-managing director with James P. Domagalski following the merger of Domon Moyer and Huscroft & Barclay. Domagalski now serves as marketing partner for the 60-lawyer Buffalo office, along with Christopher A. Cardsilo.

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Autonomous Vehicles: Additional Issues

In this month’s column, which concludes our series on self-driving cars, we will take a look at a number of legal and technological issues that have arisen as autonomous vehicles are introduced to the marketplace.

I was unable to find any pending U.S. litigation related to autonomous vehicles. There has been litigation related to automated features such as cruise control. See Ford Motor Company v. Stimpson, 115 So.3d 401 (Fla. Dist. Ct. App. Fl. 2013)(ruling in favor of Ford in a motorist’s lawsuit alleging that an Aerostar van’s cruise control was defectively designed and caused sudden acceleration, injuring plaintiff).

So far as I can determine, the fatal crash of a Tesla car in Florida has not resulted in litigation (although a fatal crash of a Tesla in China is apparently being litigated). The Florida driver, Joshua Brown, died when his Model S automobile, operating on Autopilot, drove under a tractor trailer and crashed. Tesla has defended its technology, saying “Autopilot is an assist feature. You need to maintain control and responsibility of your vehicle.” In January 2017, the National Highway Traffic Safety Administration completed its review of the accident and found no evidence of defects in the NHTSA’s Automated Enhanced Braking system or Autopilot technology.

The Tesla vehicles involved in the last year’s accidents were not fully autonomous; the cars had driver override systems. One question is to what extent, if any, Tesla should be liable for damages related to a car accident caused by driver error. Commentators from the personal injury bar have observed that Tesla may not be able to escape liability simply by warning drivers to keep their hands on the wheel, ready to take over driving; there may be a duty to include software features that assure drivers are paying attention.

An advocacy group called Consumer Watchdog has asked the California Department of Motor Vehicles to fast-track a regulation banning the advertisement of cars as “self-driving” when systems like Tesla’s Autopilot require human monitoring. The group said “Car manufacturers, like Tesla, are hyping their vehicles now. People are getting killed. The DMV must take immediate action and stop such abuses.”

Other commentators have noted the irony that, as car manufacturers reduce crashes by creating autonomous vehicles, the manufacturers may face greater liability when such vehicles are involved in accidents because the manufacturer, rather than the driver, will be blamed. Looking at the economic issues, it seems clear that the price of self-driving vehicles will need to reflect the manufacturer’s increased level of risk. On the other hand, car buyers may find that insurance premiums will decrease if their cars face lower risks.

In this brave new world, how may it find useful and entertaining to ponder the many ways that the coming self-driving vehicle revolution will impact our society, our clients, and our own lives?

It is predicted that today’s infants will grow up in a world where they have never learned to drive an automobile. Instead of yours truly driving from the Southtowns every day and leaving my vehicle parked all day in a downtown lot, where it is of no use to anyone (unless I want to dash to a midday meeting), I will summon a car and ride in it solo or with other passengers to my office, and follow the same procedure to return home in the evening.

That could be a bit challenging when I need to stop at three stores on the way home. Where will I put my purchases in between stores? Perhaps stopping at stores will no longer happen, and I will simply order everything online using my Internet wristwatch, earphones or nose ring. Maybe a drone will deliver it all to my doorstep while I am at work, and in the evening I’ll find the purchases by my door, unless the raccoons or dogs next door have helped themselves to all my groceries.

When I want to go camping, I will summon a recreational vehicle, lead it with camping gear, input my destination, and drive it to the campground (where my campsite has been reserved online). I wonder if the vehicle will provide entertaining wilderness-themed movies to watch en route and, upon my arrival at the campsite, project a delightful Smokey the Bear hologram next to the water spigot? If I stay too long or party too hard, will the vehicle rat me out to Big Brother? And if my camper’s computational features are hacked, will I ever make it back home?

Vehicles will be put to use constantly, resulting in shorter vehicle lifespans. Parking lots and parking meters will decrease or disappear. Traffic jams will diminish. Accidents will decrease. It all sounds quite utopian, until the vehicle breaks down, the fellow passenger lights up a cigarette and blasts rap music, or the pickup vehicle never arrives while I stand at the curb with grocery bags during a snowstorm, shooting curses at the autonomous vehicle industry as the Lake Erie winds whip away my pitiful cases.

If the industry predictions come true, many of our clients will be significantly impacted. Think of the car dealers, the car insurance companies, and the wiper blade manufacturers (there may not be wiper blades on fully autonomous vehicles, except perhaps small wipers for the vehicle’s cameras). Law firms devoted to car accident cases will need to find a new line of work.

FedEx drivers, truck drivers and school bus drivers may need to find new employment. Municipalities that rely on emergency roadside assistance services may dry up. Highway signs will no longer be needed.

You can have fun coming up with your own list of changes. As for me, by the time you read this, I will be loading up my SUV and travel trailer for a long trek to a campground in Florida. It is hard to imagine a world in which I might not own either of these vehicles. On the other hand, if I could simply read or nap all the way down to the campground in Florida, instead of jockeying for position with the maniacs on I-95, that might be a good thing. Happy trails!
Surrogate’s Court Guardian Ad Litem 2016

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CD and DVD: $100 BAEC Members, $140 Non-Member
ON DEMAND: $105 Member (Use PROMO CODE: member2017), $150 Non-member

This program is designed to provide the information necessary to allow each attending attorney to qualify as a Guardian Ad Litem in Surrogate’s Court proceedings by providing information about Part 56 and the duties of a Guardian Ad Litem in various types of proceedings.

You will learn what you need to be aware of with respect to Part 56 of the NY CRL along with the required forms and appointment process.

Referee’s Powers and Duties in a Foreclosure Sale

Product Code 2390

1.0 CLE credit: Areas of Professional Practice
Presented on April 22, 2015
Available on CD
CD: $30 BAEC Member, $40 Non-Member

This informative program explains the referee’s role in real estate foreclosures. Attorney Franklin W. Heller addresses the statutory mandate of appointment of referee, when and how a referee is appointed, and what the court reviews and determines prior to the appointment.

Part 36 Receivership Training

Product Code 2255

3.0 CLE credits: 0.5 Ethics, 2.0 Areas of Professional Practice, and 0.5 Skills
Presented on December 16, 2015
Available on CD, DVD or ON DEMAND at www.eriebar.org
CD or DVD: $80 BAEC Members, $120 Non-Member
ON DEMAND: $85 Member (Use PROMO CODE: member), $130 Non-Member
For Part 36 training only (no CLE credit): $35

This three-hour program provides an overview of the types of situations in which a receiver is available, instructions on applying for and obtaining a receiver, and the compensation, duties, and powers of a receiver in various contexts.

This seminar is important for individuals interested in receiving training to serve as court-appointed receivers. Attorneys working in a practice area in which the appointment of a receiver may be necessary or helpful should attend.

Stress, Anxiety & Depression in the Legal Profession

Product Code 2262

3.0 CLE Credits: 1.0 Ethics, 2.0 Law Practice Management
Presented on April 7, 2016
Available on DVD or ON DEMAND at www.eriebar.org
DVD: $90 BAEC Member, $120 Non-Member
ON DEMAND: $95 Member (Use PROMO CODE: member2017), $130 Non-Member

This program explores the topics of stress, anxiety and depression in the legal profession. Learn what steps you can take to lead a happier and healthier life in the law.

New York’s Residential Mortgage Foreclosure Process

Product Code 2274

3.0 CLE credits: 1.0 Ethics, 2.0 Areas of Professional Practice, and 0.5 Skills
Presented by Barbara Strzemski-Haase and the Real Property Law Committee, this program walks the practitioner through a residential real estate closing from the initial contract through closing and post-closing requirements. The seminar addresses representing both a buyer and seller and addresses what is required in representing each.

To order, please send check payable to: The Erie Institute of Law
438 Main Street, Sixth Floor
Buffalo, New York 14202

Be sure to include your name and address for mailing purposes; add $5.00 shipping and handling for each tape purchased. Tapes are mailed via UPS, no P.O. boxes please. To order by phone using your Visa or MasterCard, please call 852-8687.

For a complete listing of taped CLE programs, visit www.eriebar.org or call 852-8687.

New York’s Residential Real Estate

FREE

Product Code 2175

1.0 CLE credit: Skills • CD or DVD

Presented by Barbara Strzemski-Haase and the Real Property Law Committee, this program walks the practitioner through a residential real estate closing from the initial contract through closing and post-closing requirements. The seminar addresses representing both a buyer and seller and addresses what is required in representing each.

Nuts and Bolts of Residential Real Estate

FREE

Product Code 2175

1.0 CLE credit: Skills • CD or DVD

Presented by Barbara Strzemski-Haase and the Real Property Law Committee, this program walks the practitioner through a residential real estate closing from the initial contract through closing and post-closing requirements. The seminar addresses representing both a buyer and seller and addresses what is required in representing each.

Contact Celeste Walsh 852-8687 ext. 118 or cwalsh@eriebar.org

LISTEN, LEARN & EARN!

In today’s competitive, fast-paced legal environment, effective time management is essential. Take advantage of the Erie Institute of Law tape library and start earning your CLE credits when the time is convenient for you.

The Erie Institute of Law is now offering our most recent CLE seminars on CD, DVD and/or ON DEMAND. For ON DEMAND selections, please look for the symbol. All seminars are professionally edited and are accompanied by a full set of course materials.

Visit www.eriebar.org for a complete listing of taped CLE programs, or call 852-8687 to order.

Buy One, Get One Free!

DWI Practical Tips And Traps
Refresher: Overview Of The 2012 DMV Regulations, Case Law Update And Various Trial Issues

$10 BAEC Members, $40 Non-Members
Product Code 2271

1.0 CLE credits: 0.5 Skills, 0.5 Areas of Professional Practice • CD

The Art of Cross Examination In DWI Cases

Free

Product Code 2146

1.0 CLE credit: Skills • CD or DVD

An effective cross-examination in DWI cases requires evaluation of factual and legal defenses. Topics covered in the program include:

Cross-examining cirular witnesses
Cross-examining arresting officers
Cross-examining chemical test operators and
Cross-examining hostile witnesses.

Failure to perform an effective cross-examination may cause disappointment, dissatisfaction and disaster for both client and counsel.

2016 Update on New York State Civil Practice & Procedure

Product Code 2216

3.0 CLE credits: 1.0 Ethics, 2.0 Areas of Professional Practice, and 0.5 Skills
Presented on September 9, 2016
Available on CD, DVD or ON DEMAND at www.eriebar.org
CD and DVD: $80 BAEC Member, $120 Non-Member
ON DEMAND: $85 Member (Use PROMO CODE: member2017), $130 Non-Member

This half-day seminar covers salient changes in statutory and case law from 2015-2016 pertaining to civil practice.

• Cause of action accrual in breach of contract, fraud and breach of fiduciary duty claims
• Legislative amendments regarding use of expert reports on summary judgment under CPLR 3212(b)
• Evolution of evidence preservation and spoliation under Zubulake
• Timing issues around re-filing of dismissed actions under CPLR 3211
• How to get an adverse inference instruction when an opposing party distorts evidence
• When to use CPLR 3216 versus CPLR 3404 to dismiss an action for neglect to prosecute
• When does an action ‘terminate’ under CPLR 205 when an appeal is taken?

The Erie Institute of Law is now offering our most recent CLE seminars on CD, DVD and/or ON DEMAND. For ON DEMAND selections, please look for the symbol. All seminars are professionally edited and are accompanied by a full set of course materials.

Visit www.eriebar.org for a complete listing of taped CLE programs, or call 852-8687 to order.
Date/Time/Location  Topic  CLE Credits  Price
Friday, March 3, 2017  Issues Affecting Craft Alcohol Beverage Manufacturers (Live Seminar)  2.5 credits  Registration:
1:30 p.m. – 3:30 p.m.  Thank you to our sponsors: Bond, Schoenbeck & King, PLLC, D4, The Krause Group, PLLC, Nard Comers Attorneys, and Winthrop Financial Attorneys will receive a complimentary flight of craft beer.
5:30 p.m. – Happy Hour
Hydraulic Hearth 716 Swan Street  Buffalo, NY

Wednesday, March 8, 2017  Unleashing the Power of Casemaker (Midday Learning Lecture)  1.0 credit  Registration:
11:00 a.m. – 12:00 p.m.  Held twice for your convenience. Select one.
Or 1:00 p.m. – 2:00 p.m.
Bar Association of Erie County 438 Main Street  Buffalo, NY

Saturday, March 11, 2017  27th Annual Real Estate Conference (Live Seminar presented by the Real Property Law Committee)  7.0 credits  Registration:
8:00 a.m. – 3:30 p.m.  Thank you to our sponsors: Chicago Title Insurance Company, GPI, Holland Land Title & Abstract Company, KeyBank Mortgage, NYSSBA Real Property Law Section, Nasshamoyer & Clarke, Inc., and Stewart Title
Buffalo/ Niagara Marriott

Wednesday, March 15, 2017  Vehicle & Traffic Law for the Mergers and Acquisitions Attorney (Midday Learning Lecture)  1.0 credit  Registration:
1:00 p.m. – 2:00 p.m.
Bar Association of Erie County 438 Main Street  Buffalo, NY

Wednesday, March 29, 2017  Intellectual Property as Collateral (Live Seminar)  3.0 credits  Registration:
4:00 p.m. – 5:30 p.m.  Thank you to our sponsors: Appeal Tech and Counsel Press LLC Attorneys will receive a complimentary flight of craft beer.

Thursday, March 23, 2017  State and Federal Obscenity Trials of James Joyce’s “Ulysses” (Live Seminar presented by the WNY WBA NY Employment Law Committee and the BAEC Labor Law Committee)  1.5 credits  Registration:
1:00 p.m. – 2:00 p.m.
Bar Association of Erie County 438 Main Street, Sixth Floor  Buffalo, NY

Thursday, March 16, 2017  Abstinence Syndrome (NAS) (Midday Learning Lecture presented by the P&P in Family Court Committee)  1.0 credit  Registration:
1:00 p.m. – 2:00 p.m.
Bar Association of Erie County 438 Main Street  Buffalo, NY

Monday, March 20, 2017  Transitioning in the Workplace: A Discussion of Transgender Employee Rights and Best Practices for Employers (Live Seminar presented by the WNY WBA NY Employment Law Committee and the BAEC Labor Law Committee)  3.0 credits  Registration:
9:00 a.m. – 12:30 p.m.
Canisius College
Regis Room, Richard J. Winter Student Center Pre-Law Center and the Erie Institute of Law)
Buffalo, NY

Thursday, March 23, 2017  What Lawyers Need to Know about Neoretal Abstinence Syndrome (NAS) (Midday Learning Lecture presented by the P&P in Family Court Committee)  1.0 credit  Registration:
7:00 p.m. – 8:30 p.m.
Canisius College
State and Federal Obscenity Trials of James Joyce’s “Ulysses” (Live Seminar co-sponsored by Canisius College Raitche Pre-Law Center and the Erie Institute of Law)

Wednesday, March 29, 2017  Jury Selection: A Practical Approach (Live Seminar)  1.5 credits  Registration:
4:00 p.m. – 5:30 p.m.
Bar Association of Erie County 438 Main Street  Buffalo, NY

Don’t forget to check out our Ethics Webinar schedule online. Visit www.eriebar.org to register.

CHECK OUR CALENDAR FOR UPDATES AND ADDED PROGRAMMING AT WWW.ERIEBAR.ORG
WEDNESDAY 1
Human Rights Committee
12:15 p.m. – Sharon Nosencuck, Chair
Justice Courts Committee
12:15 p.m. – Michael Kooshoian, Chair

THURSDAY 2
Negligence Committee
12:15 p.m. – Adelbert Moot CLE Center
Dennis J. Bischof, Chair
Committee to Assist Lawyers with Depression
12:30 p.m. – Daniel T. Lukasik, Chair

FRIDAY 3
Commercial & Bankruptcy Law Committee
12:15 p.m. – James C. Thoman, Angela Z. Miller, Co-Chairs
Committee to Assist Lawyers with Depression
12:30 p.m. – Daniel T. Lukasik, Chair

MONDAY 6
Professional Ethics Committee
12:15 p.m. – Terrence B. Newcomb, Chair

TUESDAY 7
Board of Directors
8:00 a.m. – Gregory T. Miller, President

WEDNESDAY 8
Intellectual Property, Computer & Entertainment Law Committee
12:15 p.m. – Jordan L. Walbesser, Chair

MARCH 2017
ALL MEETINGS HELD AT THE BAEC, 438 Main Street, Sixth Floor, unless otherwise noted. The Adelbert Moot CLE Center is also located at 438 Main Street, Sixth Floor.

THURSDAY 9
Committee on Eminent Domain & Tax Certiorari
12:15 p.m. – Mark R. McNamara, Chair

FRIDAY 10
Young Lawyers Committee
12:15 p.m. – Katie M. Ireland & Laura B. Berlth, Co-Chairs
Committee to Assist Lawyers with Depression
12:30 p.m. – Daniel T. Lukasik, Chair

MONDAY 20
Workers’ Compensation Committee
12:15 p.m. – Ellen Shanahan Becker, Chair

TUESDAY 21
Board of Directors
8:00 a.m. – Gregory T. Miller, President
Federal Practice Committee
12:15 p.m. – Timothy J. Graber, Chair
Criminal Law Committee
12:15 p.m. – Old Surrogate Court Courthouse
Michael Anthony Rossi & Nicholas Michael Rossi, Co-Chairs

WEDNESDAY 15
Eric County Bar Foundation
8:00 a.m. – William K. Mattar, President

WEDNESDAY 22
Justice Courts Committee
12:15 p.m. – Michael Kooshoian, Chair

FRIDAY 24
Solo & Small Practice Committee
12:15 p.m. – Lana V. Tuchik, Chair
Committee to Assist Lawyers with Depression
12:30 p.m. – Daniel T. Lukasik, Chair

MONDAY 27
Alternative Dispute Resolution Committee
12:15 p.m. – Bridget M. O’Connell, Chair

TUESDAY 28
Elder Law Committee
12:15 p.m. – Edward C. Robinson, Chair

FRIDAY 31
Committee to Assist Lawyers with Depression
12:30 p.m. – Daniel T. Lukasik, Chair

Environmental Law Committee
12:15 p.m. – Richard E. Stanton, Chair
Appellate Practice Committee
12:15 p.m. – Timothy P. Murphy, Chair

Committee on Veterans’ & Service-Members’ Legal Issues
12:15 p.m. – Jeffrey E. Marion, Chair

THURSDAY 23
P&K in Surrogate’s Court Committee
12:15 p.m. – 438 Main Street, 12th Floor
Sharon L. Wick, Chair
P&K in Family Court Committee
12:15 p.m. – Family Court Building
Bernadette Hoppe, Chair

FRIDAY 17
Committee to Assist Lawyers with Depression
12:30 p.m. – Daniel T. Lukasik, Chair

MONDAY 27
Alternative Dispute Resolution Committee
12:15 p.m. – Bridget M. O’Connell, Chair

TUESDAY 28
Elder Law Committee
12:15 p.m. – Edward C. Robinson, Chair

FRIDAY 31
Committee to Assist Lawyers with Depression
12:30 p.m. – Daniel T. Lukasik, Chair

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