The tragedy in Charlottesville and similar events raise fundamental questions about our democracy and our role as lawyers in that democracy.

The white supremacists and neo-Nazis in Charlottesville may have been within their constitutional rights when they assembled and chanted their abhorrent, racist and anti-Semitic slogans. However, being constitutionally protected does not make the activities right or acceptable. To the contrary, they were repugnant to all for which our democracy stands. Abundant state and federal laws and constitutional provisions reflect and implement the fundamental guiding principle that all people are created equal and should be treated equally. Together, at their core, our laws require respect and tolerance for all people of all colors and all religions at all times.

While violence cannot be tolerated, to suggest there is a moral equivalence between these racist, anti-Semitic protagonists and those who opposed such views is simply wrong. It is now more critical than ever for those of us who are trained in the law to set an example by advocating for the just exercise of all rights we hold dear. Otherwise, our nation’s democracy may deteriorate beyond recognition. The public climate and our fundamental principles of democracy need as many vocal supporters of these core principles as possible. 

“Settlement Week” Scheduled for Western District

The U.S. District Court for the Western District of New York will host “Settlement Week” in an effort to explore the potential for settlement with some of the older cases on the Court’s docket. The program will run from October 30 through November 8, at the Jackson Courthouse in Buffalo, and then from November 13 through 22, at the U.S. Courthouse in Rochester. Mediators from the Court’s ADR Program will be assigned to mediate the cases selected, with the costs of the mediator fees to be paid by the Court.

Chief U.S. District Judge Frank P. Geraci, Jr., launched Settlement Week as part of his efforts to identify means by which to move cases through the system efficiently and deal with the Court’s heavy caseload.

“Mediation has proven to be an effective tool for resolving cases, and this initiative will hopefully assist us in our constant struggle to keep up with the increasing caseload,” Geraci says.

The committee planning the program is chaired by U.S. District Judge Elizabeth A. Wolford, and consists of Senior U.S. District Judge William M. Skretny, ADR Program Administrator Barry L. Radlin, Chief Deputy Clerk Patrick Healy, and ADR Program Law Clerk Amanda G. Brennan. Skretny was instrumental in starting the Court’s ADR Program, which is said to be one of the most innovative and successful programs in the country. Settlement Week is intended to complement the existing ADR Program and target cases that either went through the Court’s automatic mediation prior to January 1, 2015, or have never participated in the ADR Program.

For additional information, contact Barry Radlin at 551-1511 or barry_radlin@nywd.uscourts.gov.

Free Casemaker Webinars

Casemaker is a comprehensive web-based legal research system offering resources that others charge thousands for - but it’s yours for free for as long as you’re a member! (And no, there IS no catch.)

Casemaker includes Case law, statutes, rules, codes, secondary materials and more for all 50 states as well as the Federal system.

Free introductory webinars are available on October 18, November 15, December 20 and January 17 from 11:00 a.m. until noon. Register at www.eriebar.org

“October gave a party; the leaves by hundreds came The Chestnuts, Oaks, and Maples, and leaves of every name, The Sunshine spread a carpet, and everything was grand Miss Weather led the dancing, Professor Wind the band.”  

– George Cooper
Consensual E-Filing for Chautauqua County

Pursuant to an Administrative Order of the Chief Administrative Judge of the County, (AO 170/17), a filing by consent is now available for Chautauqua Supreme Court for all actions except Election Law proceedings, Matrimonial Matters, and Mental Hygiene Law matters.

Please review the newly issued Joint Protocols for the New York State Courts E-Filing (NYSCEF) Case Filing in Supreme Court Chautauqua County which can be found: http://www.nycourts.gov/courts/28/Chautauqua/cfla.shtml

Further information regarding the consensual e-filing program in Chautauqua County is available at Supreme Court Chautauqua County Chief Clerk’s Office at 716-753-4266.

[8]
Free to Bar Association Members!

Don’t miss our special webinars designed to showcase Casemaker, a web-based legal research system that is available without charge to BAEC members. See page 1 for further details.
Blockchain

Have you heard about blockchain? If not, you are likely to hear a lot more about it in the days to come.

According to Wikipedia, blockchain is a “distributed database used to maintain a continuously growing list of records, called blocks. Each block contains a timestamp and a link to a previous block. A blockchain is typically managed by a peer-to-peer network collectively adhering to a protocol for validating new blocks. By design, blockchains are inherently resistant to modification of the data. Once recorded, the data in any given block cannot be altered retroactively without the alteration of all subsequent blocks and the collusion of the network.”

Blockchain was introduced in 2008 in connection with bitcoin, a virtual currency. Blockchain is the technology, and bitcoin was the first application. The blockchain holds tremendous potential for many types of transactions.

In an excellent article entitled “The Truth About Blockchain” by Marco Iansiti and Karim Lakhani in the January-February 2017 edition of the “Harvard Business Review,” the authors explain the promise that the technology holds. Consider how business works now. Every organization keeps its own records, and they’re private. The problem is, reconciling transactions across individual providers and private ledgers takes a lot of time and is prone to error. For example, a typical stock transaction can be executed within milliseconds, often without human intervention. However, the settlement—the ownership transfer of the stock—can take as long as a week.

That’s because the parties have no access to each other’s ledgers and can’t automatically verify that the assets are in fact owned and can be transferred. Instead a series of intermediaries act as guarantors of assets as the record of the transaction traverses organizations and the ledgers are individually updated. In a blockchain system, the ledger is replicated in a large number of identical databases, each hosted and maintained by an interested party. When changes are entered in one copy, all the other copies are simultaneously updated. So as transactions occur, records of the value and assets exchanged are permanently entered in all ledgers. There is no need for third-party intermediaries to verify or transfer ownership. If a stock transaction took place on a blockchain instead of a bank, it would be settled within seconds, securely and verifiably.

The financial sector is actively pursuing blockchain technology. For example, Nasdaq has completed a number of cross-border payment transactions with Citigroup using blockchain processing and validation. Nasdaq has also provided blockchain technology for a new exchange scheduled to launch in late 2017, the New York Interactive Advertising Exchange that allows publishers and advertisers to trade advertising inventory.

Other sectors are exploring blockchain technology as well. The Swedish land registry is working on a decentralized title system using blockchain. A joint effort between Swiss Bank UBS, German power company Enogy, and automotive technology company ZF allows electric car owners to use blockchain-based eWallets to pay for charging vehicles, parking fees, tolls, and car-sharing fees.

In South Africa, software company Basketmonger installed blockchain-backed meters that allow tenants anywhere in the world to provide a copy of tenancy donation to an underfunded African school so that the school can purchase electricity.

Everledger, a digital registry for over 3 million diamonds, is working with IBM to use blockchain technology to track sales of diamonds. Each diamond is identified by more than 40 features (a “digital fingerprint”), and the registry tracks the chain of title starting at the mine. The website at Everledger.io proclaims “Welcome to the digital vault of the future” and states that Everledger “uses the best of emerging technology including blockchain, smart contracts and machine vision to assist in the reduction of risk and fraud for banks, insurers and open marketplaces.” Everledger believes that its technology could be used to track other high-value assets such as fine wines, watches, and vehicles.

Some commentators note that distributed ledger technology, which enables peer-to-peer payments and the distribution of movies, music and other creative works, may threaten successful companies like Apple, PayPal and Netflix. Other commentators note, however, that a company like PayPal may benefit if the new technology means PayPal no longer has to offer credit card merchant fees that it must pass along to retailers. To be sure, a lot of hype surrounds blockchain, and it remains to see just how revolutionary the technology will be.

Numerous platforms are gaining traction in the field of blockchain and other forms of distributed ledger technology. They include Ethereum, Corda, and Hyperledger Fabric. Ethereum, an open source blockchain technology, is supported by the Enterprise Ethereum Alliance, which includes major players such as BP, Toyota, Mastercard, Microsoft, Merck, Cisco, Intel, and Credit Suisse. Another large consortium, led by technology company R3, uses a distributed ledger platform called Corda, designed specifically for the financial industry. Hyperledger Fabric, led by Linux Foundation, features a modular system.

Blockchain technology can facilitate the operation of the Internet of Things. For example, IBM and Samsung have developed ADEPT (Autonomous Dezentralized Peer-to-Peer Teleometry), so that electronic devices can interact between themselves. A smart washing machine knows that its detergent is running low, and it places an order for more detergent. The detergent retailer receives a digital payment, and the order is acknowledged. The owner receives an alert via smartphone. All interactions between the devices are handled automatically, through the cloud, via a peer-to-peer encrypted network utilizing blockchain technology, and the transactions are secure and private. (Now if only the washer would toss the clean, damp towels into the dryer, fold them, and put them away. Personally, I’m hoping for a text alert that the laundry is 100 percent finished and dinner is waiting on the table.)

This all sounds Utopian, but one wonders if the washing machine will start negotiating, and it will be like Mickey Mouse surrounded by the ever-increasing buckets of laundry in “The Sorcerer’s Apprentice.” It’ll be miffed when the text alert says the laundry’s all done and I come home to find a flooded basement. (Earlier this week, Verizon cheerily texted me to say my landline was all fixed, but on arriving home I discovered that the phone was nonfunctional.)

Next month, we will look at some of the legal issues related to blockchain and distributed ledger technology.

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For more information, contact Michael L. McCabe at smgwny@gmail.com or visit our website at www.stthomasmorewny.org.
I start this column with some sadness having learnt only recently of the untimely passing of your immediate past president. I had the privilege of meeting Greg briefly in April 2015 when I spoke at your Law Day Luncheon. He was, at that time, proposing to stand for vice president, and I recall speaking warmly of his opponent in that election. I tell you that such a selfless sentiment would bode well for the Association and so it came to pass.

I so enjoyed reading his President’s Letter in each edition, which highlighted the passion and fervour which he brought to the role. I am sure that he will be missed by all professional colleagues but that his period of office will leave a lasting legacy in the life of the Association.

It hardly seems two and a half years since I was with you. So much water has passed under the bridge, or over the Falls. (You should know that your editor kindly corrects my English aphasions from time to time!) Indeed as regular readers will be aware, I now contribute from Down Under. The possibility of living here was well beyond my imagination when I was last in Buffalo.

My theme for the speech at your Law Day Luncheon was the Rule of Law. Not too surprisingly a title bearing in mind the 800th anniversary of the sealing of Magna Carta that year. It was all the rage at the time. The continuing challenge, as I mentioned at the time, is for us as lawyers and for leaders of our Bar associations in all the Australian states and territories to keep it in the public imagination.

By fortunate chance in the last few months, the Australian government has made that easy for my organization, the Law Council of Australia, as the body representing the all the Law Associations and Law Societies worldwide to enhance their career prospects.

I write this column, up against the publishing deadline in advance of your reading. I have been juggling its paragraphs with editing of a press release, pushing back the publication date when I was last in Buffalo.

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The ECBA Volunteer Lawyers Project (VLP) and Center for Elder Law & Justice (CELJ) will be honoring the 2017 Champions for Justice at the 10th Annual Champions for Justice Bash Awards Reception on November 17, 2017 at 4:30pm at the Hotel @ The Lafayette.

This year, both programs will present the Champion for Justice Award to Katherine S. Bifaro in honor of her years of service as executive director of the Bar Association of Erie County.

VLP awards will be presented to:

- Attorney of the Morning: Michael Charles Cimasi
- VIP: Joshua Dubs
- Divorce: Keith B. Schulefand
- Immigration: Drew & Drew LLP, William Altreuter, Matthew L. Kolken
- Family Court Help Desk: Kevin C. Condon
- Community Partner: Robert C. Brucato
- Law Firm Commitment: Kenney Shelton Liptak Nowak LLP
- Income Tax Controversy: E. Greenard Poles
- Director, Tax Program: Buffalo Federation of Neighborhood Centers, Inc.
- Law Firm Pro Bono Coordinator: Robert P. Heary
- Judicial: Joseph Deren
- Court Attorneys: Buffalo City Court
- Federal Court Pro Se Assistance Program: Hurwitz & Fine, P.C.

CELJ awards will be presented to:

- Pro Bono Attorney of the Year: Edward Robinson
- Law Firm Partner of the Year: Smith Vavonese, LLP
- Distinguished Board Member Award: Denise Gomez-Santos
- Erie 1 BOCES
- Elder Welfare Partner of the Year: Western New York Independent Living
- Community Partner of the Year: Pride Center of WNY/Silver Pride Project
- Attorney Excellence Award: Lenora Foote
- New York Unified Court System
- Corporations Partner of the Year: Advance2000
- Medical Partner of the Year: Dr. Kathleen Grimm
- Erie County Medical Center
- Law Student Volunteer of the Year: Alexandra Balmer
- Student Volunteer of the Year: Liam McMahon

For more information on the 10th Annual Champions for Justice Bash, including the Awards Reception, sponsorship opportunities and tickets, visit www.elderjusticeny.org/justicebash or www.ecbavlp.com.

Champions for Justice Award Winners

The Nominating Committee chaired by president Melinda G. Disare is now accepting applications from interested members of the Bar Associations of Erie County for the positions of vice president, deputy treasurer and director. You may nominate yourself or other members you feel would be qualified and willing. Candidates should be able to demonstrate a history of activity within the organized bar.

Vice President

The vice president performs the duties of the president if he or she is absent or unable to perform the duties of the office. The vice president serves a one-year term followed by a one-year term as treasurer. The president is the chief executive officer of the Association and presides at all meetings of the Association and all meetings of the board of directors. The president is the Association’s spokesperson.

Deputy Treasurer

The deputy treasurer is a member of the Finance Committee and performs as treasurer in his or her absence or inability to perform the duties of the office. The deputy treasurer serves a one-year term followed by a one-year term as treasurer. The treasurer is the Association’s chief financial officer.

Director

The affairs of the Association are managed by a 16-member board of directors. Four directors rotate off the board annually and four new directors are elected. Directors are elected to a three-year term and are not eligible for re-election as a director until the expiration of one year after he or she has left that position. Interested persons should send a resume along with the position title to: Nominating Committee, Bar Association of Erie County, 438 Main Street, Sixth Floor, Buffalo, New York 14202 or mail@eriebar.org. The Nominating Committee is actively soliciting nominations from the membership.

Nominating Committee

Melinda G. Disare, Chair
Katherine J. Bertine
Catherine B. Dempsey
David L. Edmonds, Jr.
John V. Elmore
Anne E. Joynt
Hon. Frederick J. Marshall

Nominations Sought for Bar Association Leaders

The Bar Association of Erie County is seeking active, involved leaders to run for officer and director positions for the 2018-19 year.

VLP awards will be presented to:

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- VIP: Joshua Dubs
- Divorce: Keith B. Schulefand
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Revised Protocols for Civil E-filing In Erie County Supreme Court

Newly revised joint protocols for e-filing of civil cases in Supreme Court, Erie County are available on the Eighth Judicial District website at www.nycourts.gov/courts/8jd/Erie/eoffice.shtml. Any questions regarding the revised joint protocols should be directed to the Erie Supreme and County Court Chief Clerk’s Office.
It started with an email, of course. I should have picked up on the small red flags at the beginning of the message indicating that I was the victim of what begins as a simple inquiry from an Internet fraud. It is still a chastening experience to learn how easily one is victimized by what appears a legitimate innocent party. So once again I suggest obeying the first commandment: KNOW THY CLIENT before proceeding any further.

By John H. Heyer

It started with an email. The sender’s name was Green, but he did not bother to verify much of the information. He needed a well-known manufacturer. The seller advised me it was a standard brochure from Atlas Copco, a well-known manufacturer. The seller advised me it was  located. The check accompanied a letter signed by the seller’s website and they seemed to be a legitimate business in California. The next email from the seller attached a brochure describing the equipment in great detail, with pictures. It appeared to be a sales brochure from Atlas Copco, a well-known manufacturer. The seller advised me it was located in Tennessee and that the buyer would pick it up there. I thought it was just a bit odd that a New York oil and gas drilling company wanted a drilling rig suited more to rock mining, and that he would be picking it up in Tennessee, allegedly at the “port of Chattanooga.”

The check duly arrived for a considerable sum of money which I deposited in my trust account; I was told by the bank that the funds would be available in approximately two days. It was not a personal check on the broker’s account but rather a bank check from a bank in California where the broker was located. The check accompanied a letter signed by the broker on their letterhead. I did not carefully examine the envelope which was overnight mail or I would have noticed it was not mailed from California but rather from somewhere in Canada although the return address was in California.

Despite the fact that the real flags were multiplying, I still did not have any serious suspicions although I did have some doubts about the legitimacy of the transaction. In the meantime, I had spoken with the sender of the emails by telephone at a number in Europe and I got an impression that he was a legitimate officer of the company which was selling the equipment. He suggested that I study better what he was doing and drafting the agreement until the money was actually deposited.

Two days after the deposit, I received another email from the seller advising me that it was necessary to wire funds to their parts supply department which was located in Cambodia. This finally raised a flag large enough and bright enough even for me to create a serious suspicion. I went to a bank officer, showed him the emails and a copy of the check and the bank began its investigation. The bank in California was contacted and they advised that they would have to wait until the check had been returned to them for payment and examination before they could establish its validity. In the meantime, I went to the seller’s website and noted that the phone number was a switchboard number which did not match the number given to me by the purported seller.

I called that number and asked for the person who had contacted me by email. He told me his identity had been stolen from his LinkedIn page, and that he believes other people were using it for several different fraudulent operations. My bank told me that I had ordered the funds to be wired while they were thought to be in my account that I would be personally liable for the entire amount which amounted to several hundred thousand dollars. I then attempted to contact the broker in California who at that time I did not know was a part of the scheme. I called the actual broker and I finally found that their identity had also been stolen and they were being used to an alleged middle man and had been victimized by such schemes several times over the past two years.

I told them that their attempts to involve the FBI in an investigation had been rejected as they were told that the funds involved were not serious enough. After two more days, the bank in California told my bank that the check was in fact a forgery. I had sent an email to the purported seller advising him that I could no longer comply with his instructions and I was withdrawing from representation. He then queried me as to what was wrong with the wire instructions, as I had told him that my bank was “not okay” with the wire instructions. I did not correspond with him any further. I passed this information on to the real European company and its manager and awaited news of any investigation from their side. Meanwhile, my bank is attempting to involve authorities in a further investigation.

While I realize that many high level executives and other knowledgeable parties have been victimized by various Internet scams, it is still a chastening experience to learn how easily one is victimized by what begins as a simple inquiry from what appears a legitimate innocent party. So once again I suggest obeying the first commandment: KNOW THY CLIENT before proceeding any further.

Appendix: Flags I Missed

1. Client email address - different from real company
2. Phone number - different from real company
3. Broker email address - different from real broker
4. Equipment unsuited to buyer
5. Seller’s title different from actual person
6. Tennessee location not logical
7. California broker - far from buyer
8. Brochure on equipment - non-specific to unit
9. Check mailed from Canada, not California

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In Memoriam

SUBJECT MATTER JURISDICTION

In U.S. Bank Trust, N.A. v. Welch, No. 16-cv-6797(MAT) (Aug. 8, 2017), plaintiff commenced an action on behalf of a trust to foreclose a mortgage, asserting diver- sity of citizenship as the sole basis for the court's subject matter jurisdiction. Shortly after the court dismissed a similar action brought by the same plaintiff based on lack of subject matter jurisdiction, the court issued an order requiring plaintiff to show cause why its complaint in this action should not also be dismissed given the complaint's inadequate allega- tions concerning plaintiff's citizenship, and the citizenship of the underlying trust. After reviewing plaintiff's response, the court found that, while plaintiff ade- quately established that its citizenship (rather than the citizenship of the trust) controlled for purposes of determining diversity, plaintiff nonetheless failed to provide sufficient information regarding its citizenship.

In doing so, the court observed that the citizenship of a national banking association is determined by the state designated in its articles of association as its “main office,” and that the national association’s “principal place of business” is not to be considered. The court then held that, because plaintiff relied on the location of its “principal executive offices” rather than providing its articles of association or any allegations concerning the “main office” listed therein, the court lacked the infor- mation necessary to determine plaintiff’s citizenship, and dismissed the complaint for lack of subject matter jurisdiction.

In Perkins v. United States, No. 16-CB-495(LJ)[August 4, 2017], plaintiff, one of whom is a member of the Seneca Nation, removed and sold gravel from Seneca Nation territory, paid taxes on that income after receiving a notice of deficiency from the Internal Revenue Service, and then commenced this action alleging they were owed a tax refund because the income from the gravel sale was exempt from federal income tax based on two treaties between defendant and the Seneca Nation. According to the court, the claim presented the novel issue of whether a treaty between defendant and the Seneca Nation, but also individual Nation members, were entitled to the “free use and enjoyment” afforded under the treaty, which plaintiff did not include as a basis for their tax refund claim. The court also held that the so-called 1842 Treaty protected “the lands of the Seneca Indians... from all taxes,” and that this language did not distinguish examples from real property taxes and exemptions from taxes on the dirt, gravel, boulder, and other features that make up that real property.

TORT LAW

In McConaughy v. Vertima Systems, Inc., No. 14-cv-6248(MAT) (July 28, 2017), plaintiffs claimed that defendant violated the New York Public Health Law by charging them an across-the-board rate of 75 cents per page for copies of their medical records, rather than the actual cost to repro- duce those records. Plaintiffs moved for class certification and the court first found that Fed. R. Civ. P. 23(a) was satis- fied because the Rule’s requirements regarding numerosity, commonality, typicality, and adequacy of representation were all met. Then, noting that courts within the Second Circuit consistently recognize an “implausible requirement of ascertain- ability,” the court determined that factor was also satisfied.

Next, the Court addressed plaintiffs’ argument that Fed. R. Civ. P. 23(b) was satisfied given the complaint’s inadequate allega- tions concerning the type of job plaintiff would be assigned was actionable in this case because plaintiff also plausibly alleged that defendant had no intention of actually hiring plaintiff for that assignment and thus made the statement with the preconceived and undis- closed intention of not delivering. Defendant also argued that any reliance on such a promise was unreasonable as a matter of law because plaintiff was an at-will employee. This the court also rejected because the fraudulent inducement claim, and plaintiff’s alleged injuries resulting from the loss of income due to the inferior job assignment, were separate and distinct from plaintiff’s ultimate termination and, there- fore, her at-will employment status was of no moment.

CLASS CERTIFICATION

In McCracken v. Verisma Systems, Inc., No. 14-cv- 6248(MAT) (July 28, 2017), plaintiffs claimed that defen- dant violated the New York Public Health Law by charging them an across-the-board rate of 75 cents per page for copies of their medical records, rather than the actual cost to repro- duce those records. Plaintiffs moved for class certification and the court first found that Fed. R. Civ. P. 23(a) was satis- fied because the Rule’s requirements regarding numerosity, commonality, typicality, and adequacy of representation were all met. Then, noting that courts within the Second Circuit consistently recognize an “implausible requirement of ascertain- ability,” the court determined that factor was also satisfied.

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Self-Settled Supplemental Needs Trusts

Section 1917(d)(4) of the federal Social Security Act exempted from consideration for Medicaid qualification certain Supplemental Needs Trusts which were funded with assets of the Medicaid applicant. To qualify the trust had to be for a disabled person under age 65, it must have been created by a parent, grandparent, or guardian of the person, or by a court, and it must have contained a pay-back provision, which, at the death of the disabled person, reimburses the state from trust assets for any amounts of Medicaid expended by the state for the disabled person. Even though the trust was to be funded with the disabled person’s assets, he or she could not create the trust. This led to considerable inconvenience. Often, if the disabled person lacked a parent, grandparent or guardian, application would be made to a court to obtain a court order directing creation of the trust. But courts in some states had ruled that they lacked statutory authority to issue such an order.

The federal 21st Century Cures Act, enacted in late 2016, amended the Social Security Act to permit such a trust to be created by the disabled individual. While the federal act was binding upon the states, it was felt in some circles that the states needed to enact conforming legislation. This has now been done in New York by Senate Bill 4779, which amended Section 366 of the Social Services Law, to permit creation of a self-settled Supplemental Needs Trust by the disabled individual. That bill was signed into law by Governor Cuomo on August 21, 2017.

Meanwhile, on August 2, 2017, the director of the Centers for Medicare and Medicaid Services issued a letter to all state Medicaid directors, summarizing the enactment of the 21st Century Cures Act and its implications, and directing state Medicaid directors to update their state Medicaid rules accordingly. This letter perhaps indicated that amendment of the Social Services Law was not necessary, but now we have both.


This is a decision from the Erie County Surrogate’s Court which determined that a child in utero was to be considered “in being” for purposes of distribution of the remainder of a living trust.

David Wolfenson created a living trust over which he reserved a testamentary power of appointment. The trust agreement provided that upon David’s death, another great-grandchild was born. Upon judicial settlement of the Account of the Trustee, the question of whether the after-born great-grandchild should be included in the class of remainder beneficiaries was at issue.

Surrogate Howe held that because the trust agreement served as a will substitute, the principles of will construction apply in equal force in the trust construction proceeding.

EPTL 2-1.3(b)(2) provides that unless the creator expresses a contrary intention, a disposition of property to persons described as the issue, children, descendants, heirs, etc. at law, next of kin, distributes (or by any term of like import) the creation of another, includes children conceived before, but born after such a disposition becomes effective.

The three great-grandchildren argued that if David had intended to include great-grandchildren in utero at his death, he would have specifically said so in the trust agreement. However, he did not, so the court found the language of the trust was clear and unambiguous in that regard, so that such parole evidence would not be considered to vary that language.

Finally, the three great-grandchildren offered hearsay evidence of David’s religious beliefs, and asserted that teachings of the Talmud would warrant a different result. But the court found the language of the trust was clear and unambiguous in that regard, so that such evidence would not be considered.

“Articles of birth” became effective.

“Articles of birth” were to be considered “in being” for purposes of distribution of the remainder of a living trust.

We recognize that when we are privileged to be invited to collaborate with you and your clients, it is up to us to ensure that we deliver a service level that makes your client thank you for involving us in their Canadian matters.

Buffalo has office space available for attorneys wishing to sublet.

OFFICE SPACE AVAILABLE

The law firm of Harrington & Mahoney, 70 Niagara St. in Buffalo has office space available for attorneys wishing to sublet. A wood paneled executive office with fireplace is available and there is additional office space for a second attorney and assistants. Seeking attorneys with a compatible criminal, civil right or immigration practice.

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father while the decedent was in a nursing home. Using it, defendant removed plaintiff as beneficiary of the accounts, and, after decedent’s death, defendant withdrew the funds. Plaintiff sued in Supreme Court to recover his half of the funds. The defendant moved for summary judgment, which motion was denied. On appeal, the Fourth Department unanimously affirmed.

Defendant claimed that he was entitled to summary judgment because plaintiff had failed to prove that defendant had exercised undue influence over the decedent. The court rejected that argument, holding that the allegations in the complaint, as well as evidence submitted by the defendant in support of his motion, established that he had a confidential relationship with the decedent. Therefore, in order to meet his burden on the motion, the defendant was required to show affirmatively that no deception was practiced, no undue influence was used, and that all was fair, open, voluntary and well understood.

Further, the Appellate Division held that in seeking dismissal of the causes of action alleging that he breached his duty under the power of attorney, defendant failed to establish that in removing plaintiff as a beneficiary of the accounts he “acted in the utmost good faith and undivided loyalty toward the principal and... in accordance with the highest principals of morality, fidelity, loyalty, and fair dealing,” citing Matter of Ferrara, 7 N.Y.2d 244.


This is a trust accounting proceeding in Supreme Court. The order appealed from awarded attorney’s fees, costs and disbursements. The Appellate Division modified and remanded on that issue.

The Fourth Department held that in determining the reimbursement sought by the trustee for those items, the trial court should have considered the time spent, the difficulties involved in the matters for which the services were rendered, the nature of the services, the amount involved, the professional standing of counsel, and the results obtained, citing Matter of Chase Manhattan Bank (University of Rochester), 68 A.D.3d 1670, quoting Matter of Potts, 213 A.D. 59. Because the trial court failed to make any findings with regard to those factors, the Appellate Division was unable to determine whether the fees awarded were reasonable.

The Fourth Department further held, however, that the court below properly determined that to the extent the subject trusts do not contain sufficient assets to pay the reasonable fees, disbursements and costs, the respondents may be obligated to the respective trusts for those fees, disbursements and costs.

Death and Taxes continued from page 9

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Death and Taxes

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While scheduling orders may not be the sexiest of topics (and sex will not be mentioned again, so move along), they are too often not given the attention they deserve. So for those two or three of you who have not already turned the page, allow me to share a few thoughts on the subject.

Greater minds than mine have cautioned that a scheduling order “is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded without peril” (Coene v. 3M Co., 303 F.R.D. 32, 49 (W.D.N.Y. 2014)), and I’ve seen more than once the bad things that can happen if they’re not taken seriously. Things like the inability to complete discovery or, worse yet, preclusion of an expert witness due to untimely disclosure — things which may prove a bit difficult to explain to an unhappy client.

If I were king — and my wife assures me I’m not — I would eliminate scheduling orders altogether and allow the parties to progress the case at their own pace, with the court intervening only upon request. But I don’t make the rules. Rule 16(b) of the Federal Rules of Civil Procedure states that the court “must issue a scheduling order,” which “must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.” “Must” means what it says — federal courts have no more discretion to disregard [a] Rule’s mandate than they do to disregard constitutional or statutory provisions.” Bank of Nova Scotia v. United States, 487 U.S. 250, 255 (1988).

A particular trap for the unwary is Rule 16(b)(4), which provides that the scheduling order “may be modified only for good cause and with the judge’s consent.” Therefore, don’t assume that you can extend the deadlines simply by agreement with opposing counsel. “Mere stipulations by the parties do not constitute good cause…Neither the parties nor their counsel have the authority to stipulate or otherwise agree to changes in the Court’s orders regarding discovery or any other scheduling matter unless expressly authorized to do so by Rule or by court order.” Hernandez v. Mario’s Auto Sales, Inc., 617 F. Supp. 2d 488, 493 (S.D. Tex. 2009); 3 Moore’s Federal Practice (3d ed.), §16.14[2].

Before considering what does constitute “good cause” for an extension, here are a few examples of what does not: the “press of other business” (Lynch v. Waitman, 1995 WL 7991, *3 (S.D.N.Y. 1995)); “counsel’s inadvertence or oversight” (Carnrite v. Granada Hospital Group, Inc., 175 F.R.D. 439, 448 (W.D.N.Y. 1997)); or the “possibility of settlement” (Arnold v. Krause, Inc., 233 F.R.D. 126, 130 (W.D.N.Y. 2005)). The Second Circuit has given mixed signals as to what amounts to “good cause,” holding initially that it “depends on the diligence of the moving party” (Parker v. Columbia Picture Industries, 204 F.3d 326, 340 (2d Cir. 2000)) (Sotomayor, J.), but later stating that diligence “is not… the only consideration,” allowing the court to “consider other relevant factors including, in particular, whether allowing the [modification] will prejudice” the opponent. Kassner v. 2nd Ave. Delicatessen Inc., 496 F.3d 229, 244 (2d Cir. 2007). Since a later panel of the Second Circuit “cannot

continued on page 13
Chief Judge Names Emergency Legal Task Force to Assist Hurricane Harvey Victims

Chief Judge Janet DiFiore has announced the formation of a task force charged with mobilizing pro bono legal assistance efforts on behalf of Hurricane Harvey victims, as well as providing support to the Texas judiciary in its recovery efforts.

BAEC President Melissa G. Di Disario has been appointed to the Task Force. John S. Kiernan, President of the New York City Bar and a senior litigation partner at Debevoise & Plimpton LLP, and Sharon Katz, of Davis Polk & Wardwell LLP, will serve as co-chairs.

The Texas Supreme Court issued an emergency order that temporarily allows out-of-state lawyers to provide assistance to needy clients through any legal aid or pro bono program or bar association that provides services to Hurricane Harvey victims. Lawyers are needed for the full scope of legal services relating to the disaster. Among its top priorities, the Task Force will work with Texas government officials and the Texas legal community to coordinate the pro bono efforts of New York legal volunteers to best address the needs of Texans affected by the storm, who may require help with home insurance claims, FEMA benefits, mortgage matters and other pressing legal issues.

“Task Force members will also focus on assisting Houston-area courts crippled by the hurricane in their disaster management efforts...”

Task Force members will also focus on assisting Houston-area courts crippled by the hurricane in their disaster management efforts, as needed, offering technical assistance in critical areas including restoration of records, telecommunications and information systems.

Additionally, the group will coordinate with Texas court administrators to help meet the increased public safety demands faced by Houston-area courts in the storm’s aftermath, standing ready to send a contingent of uniformed officers from New York to fill in for their Texas counterparts who may need time off to sort out their own losses and other hurricane-related issues.

“The great public responsibility and power of the bench necessitates that the measure of qualification for judicial office must be greater than that required for the private practice of law. To be rated “Qualified” the applicant must meet each of the listed criteria to a reasonable degree. A rating of “Well Qualified” requires qualifications to a high degree, and a rating of “Outstanding” requires qualifications even beyond that high standard. In assessing an applicant’s qualifications it must be remembered that meeting the ‘standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession,’ is at least as important as the requirement of knowledge and proficiency in technical aspects of the practice of law...

While Bar Association Issues Ratings for Judicial Candidates

The Bar Association of Erie County has completed and issued in 2017 ratings for judicial candidates for Buffalo City Court, Erie County Court, Erie County Surrogate’s Court and New York State Supreme Court. Ratings include Overall, Well Qualified, Qualified, and Not Recommended. The ratings are as follows:

**New York State Supreme Court**
- Hon. Peter M. Feigin – Well Qualified
- Hon. Erin M. Peralta – Outstanding

**Erie County Surrogate’s Court**
- Hon. Amy M. Mosey – Outstanding

**Erie County Court**
- Hon. Susan M. Engan – Outstanding

**Buffalo City Court**
- Hon. Betty Calvi-Torre – Qualified
- Joseph T. Iannacek – Not Recommended
- Andrew C. LaTempo – Well Qualified

Judicial candidates are asked to complete a written questionnaire and are rated on criteria including integrity, experience, professional ability, education, reputation, industry, temperament, fairness, statutory standards, attitude, punctuality, and knowledge of the law; all of which are determined through a process which includes a personal interview with each candidate and interviews with lawyers and judges who wish to express their gratitude to co-chairs John Kiernan and Sharon Katz and the Task Force members – who bring a wealth of recovery disaster expertise acquired after 9-11 and Hurricane Sandy – for their dedication and support in linking Harvey victims to much-needed legal aid and assisting the Houston-area courts in resuming normal operations,” said Chief Judge DiFiore.

In response to other natural disasters, such as Hurricane Katrina and Superstorm Sandy, the legal community has often been at the forefront of fundraising efforts. The Task Force will likewise explore ways of mobilizing financial assistance, in addition to legal assistance, to Hurricane Harvey victims. Further details on pro bono and volunteer opportunities, as well as financial support, will be provided as they become available.
A Blessed Life

Early on in life, I was blessed. Having been raised in a good and loving family, I thought nothing could go wrong in my life. I loved school, and although I don’t really know why, I always wanted to be an attorney! Upon my graduation from law school, my good fortunes continued, and I was hired by one of the area’s best firms. I soon married and began a family.

All continued to go well, until my divorce. That was the turning point in my life. It was the beginning of my world turning upside down.

In despair, and feeling shame, I turned to a lifestyle that turned my life into a living hell. I began to use and abuse substances that I had previously attacked as a plague against our communities.

Once involved, there seemed to be no way to get my life back in order. I constantly felt that I was alone in this battle, with no one to turn to for help. I later learned that I was wrong.

Life was in complete turmoil, and I desperately wanted help. I thought that life would never be the same. I was wrong.

My life was a complete mess, and I desperately wanted help. I thought that life would never be the same. I was wrong.

I thought I could never let go of the lifestyle that had taken over my very existence. Again, I was wrong.

I soon learned that there were others out there who had gone through what I was going through.

The day I admitted to myself that I was powerless over my addiction, and that my life had become unmanageable, it was the first step toward recovery.

It was the beginning of my world turning upside down.

A turning point in my life. It was the beginning of my world turning upside down.

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Today I am a proud example that it can and does work. Having been raised in a good and loving family, I thought nothing could go wrong in my life. I loved school, and although I don’t really know why, I always wanted to be an attorney! Upon my graduation from law school, my good fortunes continued, and I was hired by one of the area’s best firms. I soon married and began a family.

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Bar Foundation Kicks Off Annual Campaign

“All the beautiful sentiments in the world weigh less than a single lovely action.”
— James Russell Lowell

It all started in 1957 - exactly 60 years ago - when a small group of concerned attorneys gathered informally to help a fellow attorney in need. Since then, the Erie County Bar Foundation has provided needed support to attorneys and their families in need.

This year, Foundation leaders are hoping to increase the number of participants who contribute to the annual campaign. In order to focus these efforts, a special day has been set aside to encourage both new and long-time donors to participate.

Who We Help

“It was only seven months ago that I summoned the courage to call. Within two hours, [you] were in my living room. Every emotion - from sheer terror to an instinctual sense of relief; from grief and sadness to a sense of peace; uncertainty to passive acceptance; loneliness to camaraderie - they were all right at the surface. One future was hanging by a thread. With your caring and commitment, we were able to come back from the abyss.

We could not have done it without you. My family is happy, healthy, secure and growing stronger every day. ‘Thank you’

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The concern is that the need has become greater than the amount raised. We must all increase our giving to the extent possible to help fund this haven of last resort for many of our colleagues. My work with the Foundation has reminded me continually that we are all just a little bit of bad luck away from needing its assistance. Let’s make this a special year where we demonstrate our commitment to our profession by substantially increasing the amount we contribute to help our fellow attorneys. Please make the Foundation a priority in your giving this year!

Pledges do not have to be paid at one time, but can be extended with periodic payments through June, 2018. The Foundation will then send reminders at the intervals requested. If you wish to contribute now, you can do so online at eriebar.org/ErieCountyBarFoundation. You can also donate by responding to the pledge card you will receive in a few weeks.

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In Memory of Harry Weinrib:
Jim & Mary Shea

In Memory of Nicholas H. Willett (Father of Christopher W. Willett):
Jim & Mary Shea

In Memory of Richard N. Blowett:
Jim & Mary Shea

By Alan S. Carmi

I agreed to chair this year’s Erie County Bar Foundation Campaign because I am amazed at the magnitude of the assistance the organization provides. I had no idea there was such great need among attorneys in our area, nor did I realize the phenomenal job the Foundation does in meeting that need. The Foundation serves people like you and me who never imagine we will require help. It assists attorneys whose lives have unexpectedly deteriorated because of a debilitating illness, the incapacity or death of a spouse, the death of a child, and/or the loss of a job to name a few. Their world has collapsed! They are devastated and overwhelmed because they cannot pay their rent or mortgage, utility bills, insurance or perhaps even provide food for their families. I have been shocked to see the names of people I know, who once had thriving practices, whose lives have been shattered due to circumstances beyond their control, and who now need confidential assistance.

That is when the Foundation comes to the rescue! It begins by making grants or loans of direct financial assistance for emergency living expenses, medical costs, and other necessities. Next, it helps attorneys get back on their feet by providing professional counseling, and by directing them to resources and agencies whose purpose is to help people with their particular problem. The Foundation remains involved, working continually with lawyers by giving guidance and financial help until the situation has been resolved. The results have been fantastic! The Foundation has consistently and miraculously resurrected the lives of attorneys who were devastated and felt defeated.

The concern is that the need has become greater than the amount raised. We must all increase our giving to the extent possible to help fund this haven of last resort for many of our colleagues. My work with the Foundation has reminded me continually that we are all just a little bit of bad luck away from needing its assistance. Let’s make this a special year where we demonstrate our commitment to our profession by substantially increasing the amount we contribute to help our fellow attorneys. Please make the Foundation a priority in your giving this year!

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Foundation Contributions to Benefit Profession

Contributions to the Erie County Bar Foundation provide an excellent vehicle for recognizing and honoring members of our profession. Memorial gifts to the Foundation become a lasting tribute to the entire legal profession, as funds are used exclusively to assist attorneys and promote understanding of our legal system.

The Foundation gratefully acknowledges the following contributions:

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In Memory of Donald J. Holzman:
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In Memory of Mike Flaherty:
Jim & Mary Shea

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Warren J. Glickman
Sharon S. Gold
Seth A. Goldberg
Gary R. Goldstein
John F. Glicenstein
Nancy W. Gonzalez
Hon. Josephine Gonzalez
Joseph D. Gonzalez
Economic Development Council
Rustic Overlook
Wheeler Vineyard
Lodi Hills
New York Metro Area Project
Philadelphia Fund
Pittsburgh
Boston
Chicago
New York
San Francisco
Hon. Sharon S. & Bradlee W. Townsend
Frederick D. Turner
Vineyard Wine
Amy J. Vigneron
Carole K. Vogel
Colombia Valley Winery
Robert M. Viner
James R. Vele
Cambridge Winery
Terry D. Shaw
Benjamin M. Zuffranieri, Jr.
Laurence H. Woodward
Lauren J. Zilinski
Hon. William B. Bither
Donna J. Birtwell
Gerard A. Bojarski
John E. Bower
Karen J. Brabec
Terry D. Smith
Jeffrey M. S Broadcom
Warren B. Gelman
Sharon Stern Garner
Nicole A. Goldberg
Joyce C. Gordon
George R. Grasser
Richard E. Griffin
Robert W. Grimm, Jr.
John F. Egan
Thomas J. Keane
John D. Keener
Donald T. Eppers
Hon. Joseph R. Fallon
Hon. Diane W. Wing
John F. Galley
Stephanie J. Schauer
Michael A. Brintner
Laura E. Ander
Stephen J. Schauer
E. Michael Semple
Michael A. Piette
Michael F. Perley
Michael J. Roach
Michael J. Rous
Richard P. Rosso
Richard F. Griffin
Michael J. Ryan
David F. Davis
Hon. John J. Fromen, Jr.
John J. Freuden
Mark J. Friedenberg
Hon. John J. Freuden
Mark J. Friedenberg
Hon. Mark J. Friedenberg
Mark J. Friedenberg
Rodney G. Rabinovich
Hon. John J. Freuden
Mark J. Friedenberg
Rodney G. Rabinovich
Hon. John J. Freuden
Mark J. Friedenberg
Rodney G. Rabinovich
was a defense. Finally, the court found that a class action was superior to the alternative of individual lawsuits because, among other things, the costs of litigating such individual suits would be prohibitive for any single class member or even a small group of them. As a result, the court granted plaintiffs’ motion and certified the proposed class.

FEDERAL TORT CLAIMS ACT

In Farey, et al v. United States, No. 11-CV-1198 (August 15, 2017), plaintiff, a security contractor who worked at defendant’s immigration detention facility, brought this negligence action under the Federal Tort Claims Act (“FTCA”) for personal injuries suffered following an assault by a detainee. Defendant moved to dismiss (and alternatively for summary judgment), arguing that the discretionary function exception limited the waiver of sovereign immunity afforded under the FTCA and prohibited plaintiff’s lawsuit. Under the discretionary function exception, no sovereign immunity applies and the United States remains immune from suit if the acts alleged to be negligent were not compelled by statute or regulation and involved an element of judgment or choice that is grounded in considerations of public policy. The plaintiff first claimed that defendant was negligent in its failure to disseminate information regarding the detainee’s violent propensities, but the court held that this theory of negligence implicated a policy that left considerable discretion to defendant to determine how best to achieve the aim of increasing safety while balancing that consideration against the detainee’s privacy.

The court then held that, while defendants satisfied the first prong (because, if the exemption applied, it would end the litigation), they did not satisfy the second prong because they failed to identify any Circuit Court of Appeals decision, or any decision issued by a court in the Second Circuit, that conflicted with the underlying order. Finally, the court found that defendants failed to demonstrate that the third prong was satisfied because, if defendants did not succeed on appeal, there would be a substantial delay in the resolution of the action and, even if defendants succeeded, plaintiff would likely then appeal the denial of his motion for summary judgment. As a result, the court refused to certify an interlocutory appeal.

MOTION FOR INTERLOCUTORY APPEAL

In Roesler v. JDE Pneumatics, Inc., No. 15-cv-6745-EAW-MWP (Aug. 1, 2017), a putative class action asserting claims for unpaid overtime compensation under the Fair Labor Standards Act and New York Labor Law, both parties moved for summary judgment. The court denied plaintiff’s motion, and denied defendants’ motion in part, finding that defendants did not fall within a statutory exception for overtime compensation. Defendants then moved for leave to appeal, arguing that the court mistakenly relied on a decision from the Eastern District of New York that was “strongly decided” and should not have been applied in this case. In evaluating the motion, the court first observed that it can only certify an order for interlocutory appeal where the underlying order involves a controlling question of law as to which there is substantial ground for difference of opinion, and the immediate appeal may materially advance the ultimate termination of the litigation.

The court then held that, while defendants satisfied the first prong (because, if the exemption applied, it would end the litigation), they did not satisfy the second prong because they failed to identify any Circuit Court of Appeals decision, or any decision issued by a court in the Second Circuit, that conflicted with the underlying order. Finally, the court found that defendants failed to demonstrate that the third prong was satisfied because, if defendants did not succeed on appeal, there would be a substantial delay in the resolution of the action and, even if defendants succeeded, plaintiff would likely then appeal the denial of his motion for summary judgment. As a result, the court refused to certify an interlocutory appeal.

October 2017 | www.eriebar.org
For older adults with a basic actions or complex activities and 37 percent report having representation to 40 percent more people. In Erie County, CELJ, you have the tools and skills to change someone's life. Independently and with dignity. As a pro bono attorney for CELJ, you have nothing to give but their gratitude. In short, it makes us feel like attorneys. It is cathartic and empowering.

Through CELJ’s Pro Bono Program there are countless opportunities for attorneys to provide meaningful and fulfilling representation to western New York’s seniors, people with disabilities and low-income individuals. Our services help people maintain the essentials of life – access to health care, secure and affordable housing, protective services to remain free from violence, and access to sufficient income to improve the overall quality of life. Two of our newer units are addressing the needs of older refugees and LGBT seniors. Our mission is to use the legal system to help clients live independently and with dignity. As a pro bono attorney for CELJ, you have the tools and skills to change someone’s life.

At CELJ, we are seeing a growing demand for our services. In just the past three years, we have provided direct legal representation to 40 percent more people. In Erie County, older adults make up almost 25 percent of the population. For attorneys with time restraints, CELJ hosts several limited scope representation and full service representation options for attorneys interested in longer-term projects, limited scope clinics per year that are “done in a day” events, allowing attorneys to take on cases for CELJ clients. The Center for Elder Law & Justice’s Enhanced Pro Bono Program: Securing Justice for our Community’s Seniors

The Center for Elder Law & Justice’s Pro Bono Coordinator, Nicole M. Komin, summarizes the advantages of pro bono services for CELJ’s pro bono attorney program is to expand the scope of legal services and provide legal advice and counsel in areas of law that exceed the agency’s expertise. There are many opportunities at CELJ for pro bono attorneys that include limited scope representation and full service representation.

For attorneys with time restraints, CELJ hosts several limited scope clinics per year that are “done in a day” events and require only a two to four hour time commitment per clinician. Likewise, CELJ offers full service representation options for attorneys interested in longer-term projects, allowing attorneys to take on cases for CELJ clients. CELJ pro bono attorneys are not alone. All pro bono volunteers are provided with training and given manuals to aid their representation. Mentors or co-counsel from the agency are also assigned to attorneys looking for additional help and substantive expertise. If you’re reluctant to step outside your comfort zone, then volunteer in your field. There is a high need for attorneys with tax, bankruptcy, estate and trust, and divorce expertise. Use your niche to make a difference.

If you are interested in working with our clients and fulfilling your law school quest for justice, please consider volunteering for CELJ’s pro bono program. As always, feel free to contact us at nicolem@elderjustice.org or 855-303-077, extension 248, with any questions or visit our website at www.elderjustice.org.

Bench and Bar continued from page 3

Benjamin E. Wisniewski, an attorney at Lippes Mathies Wieder Friedman LLP, has received the first ever Environmental Law LL.M. conferred by the University at Buffalo School of Law. He recently completed a second stint at law school to study various issues related to environmental law, energy law and local government law in New York state. Wisniewski is a member of the firm’s government investigations & enforcement actions practice team. He earned his J.D., magna cum laude, Order of the Coif from University at Buffalo School of Law and his B.S. in atmospheric science from Cornell University. Prior to entering law school, Wisniewski served as an officer in the United States Navy for six years.

Lipitz & Ponterio, LLC has relocated to 424 Main Street, Suite 1500, Buffalo, NY 14202. Phone and fax numbers remain the same.
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.

#2160 - Alison Shields of Legal Ease Consulting presents “Retention & Billing” which is the first session of our three-part Getting Paid Series.

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Mediation: Let’s Make a Deal
Product Code 3316
3.0 CLE credits: 1.0 Ethics, 1.0 Areas of Professional Practice, 1.0 Skills
Presented on January 21, 2009
Available on CD
CD: $100 BAEC Members, $140 Non-Members
Mediation is here to stay. Advocates of the approach emphasize its many advantages over traditional litigation.

A distinguished panel of local lawyers and jurists discuss the current state of Alternative Dispute Resolution (ADR) in Erie County including court programs and mediation panels. The program includes focus groups, a mock mediation, discussions of ADR procedure and the ethical issues involved, and comments from Hon. Eugene E. Pigot, Jr.

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October 21 – 2017 Ethics Awards, 11:00 – 1:00 p.m. • 2.0 Ethics
October 25 – Don’t Be an Outlaw: The Ethical Imperative to Follow the Law, 1:00 – 2:00 p.m. • 1.0 Ethics
October 31 – A Nightmare on Ethics Street, 2:00 – 3:00 p.m. • 1.0 Ethics

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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 PO 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 and click on the Continuing Legal Education link or call 852-8687.

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

Deals of the Month

Deal of the Month

Surrogate’s Court Guardian Ad Litem Training
$100 BAEC Members, $140 Non-Members
Product Code 2236
4.5 CLE credits: 0.5 Ethics, 2.5 Areas of Professional Practice, 1.5 Skills • CD or DVD

This program is designed to provide the information necessary to allow an attending attorney to qualify as a Guardian Ad Litem in Surrogate’s Courts proceeding by providing the attendee with information concerning Part 36 and the duties of a Guardian Ad Litem in various types of Surrogate’s Court proceedings.

During this program, you will learn what you need to know about ethical duties to respect Part 36 of the NYCRR, the required forms and appointment process. In addition, you will be instructed as to your obligations as a Guardian Ad Litem in various types of proceedings.

Referee’s Powers and Duties in a Foreclosure Sale
$30 BAEC Members, $40 Non-Members
Product Code 2236
1.0 CLE credit: Areas of Professional Practice • CD

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

Part 36 Receivership Training
$80 BAEC Members, $120 Non-Members
Product Code 2235
3.0 CLE Credit: 0.5 Ethics, 2.0 Areas of Professional Practice, 0.5 Skills • CD or DVD

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 a necessary or helpful provisional remedy, such as mortgage foreclosures, creditors’ enforcement actions and corporate dissolutions, will also find this useful.

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

LISTEN, LEARN & EARN!

In today’s competitive, fast-paced legal environment, 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.

Appellate Practice in the Fourth Department (The Former Law Clerk’s Perspective)
Product Code 2210
3.0 CLE credits: 1.0 Areas of Professional Practice, 2.0 Skills
Presented on June 27, 2013
Available on CD
CD: $80 BAEC Members, $120 Non-Members
Learn about Appellate Practice in the Fourth Department from the perspective of former law clerk! Our experienced presenters cover brief writing, issue preservation and motion practice. A panel discussion on career paths concludes this informative program, which will benefit both civil and criminal practitioners.

Getting Paid: A Series on Ethics and Practice Management Issues
Product Code 2193
Individual Sessions:

Product Code 2191 - Retaining & Charging Liens
Product Code 2192 - Grievances & Fee Disputes
Entire Series - 6.0 CLE credits: 3.0 Ethics, 3.0 Law Practice Management
Purchased individually – 2.0 CLE credits per session: 1.0 Ethics, 1.0 Law Practice Management
Presented on April 4, April 11 and May 16, 2012
Available on CD
CD: Entire series - $115 BAEC Members, $160 Non-Members; per session - $55 BAEC Members, $90 Non-Members

The Buddy System for CLE Audio/Video Tapes
Accreditation for viewing a CLE tape is handled on an individual basis. Each lawyer must pay the requisite fee; fulfill the requirements for accreditation, and acquire and retain his or her own certificates of completed continuing legal education activity.

However, as a service to our members who wish to participate in group or sequential viewing of CLE tapes, the Erie Institute of Law offers the following alternative: One member in the group may purchase tapes, the Erie Institute of Law offers the following alternative: One member in the group may purchase the audio/video tape of his or her own certification of completed continuing legal education activity.

In order to adminster CLE credit, the names of all participating attorneys must be given at the time of purchase. No more than five people per tape allowed.

The Buddy System applies to programs costing $100 and up. The Buddy System for CLE Audio/Video Tapes

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### Erie Institute of Law Registration Form

**Check our Calendar for Updates and Added Programming at www.eriebar.org**

#### Erie Institute of Law Registration Form

<table>
<thead>
<tr>
<th>Date/Time/Location</th>
<th>Topic</th>
<th>CLE Credits</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Wednesday, October 4, 2017</strong> &lt;br&gt;12:00 p.m. - 1:00 p.m. &lt;br&gt;Bar Association of Erie County &lt;br&gt;438 Main Street, Sixth Floor &lt;br&gt;Buffalo, NY</td>
<td>Encore Video Replay: Good Cop/Bad Cop: Two Sides of Landlord/Tenant Law (Encore Video Replay)</td>
<td>1.0 credit</td>
<td>Registration: $25 members $50 non-members $5 printed material</td>
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<tr>
<td><strong>Thursday, October 5, 2017</strong> &lt;br&gt;9:00 a.m. - 11:00 a.m. &lt;br&gt;Bar Association of Erie County &lt;br&gt;438 Main Street, Sun Room Auditorium &lt;br&gt;Buffalo, NY</td>
<td>NYS Paid Family Leave – What You Need to Know For Your Business and Your Clients (Live Seminar presented by the Matrimonial &amp; Family Law Committee)</td>
<td>2.0 credits</td>
<td>Registration: $750 members $80 non-members $10 printed material</td>
</tr>
<tr>
<td><strong>Wednesday, October 11, 2017</strong> &lt;br&gt;9:00 a.m. - 12:30 p.m. &lt;br&gt;Bar Association of Erie County &lt;br&gt;438 Main Street, Sixth Floor &lt;br&gt;Buffalo, NY</td>
<td>Encore Video Replay: Surrogate Court Practice in the Digital Age (Encore Video Replay)</td>
<td>5.5 credits</td>
<td>Registration: $580 members $115 non-members $20 printed material</td>
</tr>
<tr>
<td><strong>Thursday, October 12, 2017</strong> &lt;br&gt;1:00 p.m. - 2:50 p.m. &lt;br&gt;Bar Association of Erie County &lt;br&gt;438 Main Street, Sun Room Auditorium &lt;br&gt;Buffalo, NY</td>
<td>Using Focus Groups to Plan Your Case for the Jury (Live Seminar presented by the Solo and Small Firm Practice Committee)</td>
<td>1.5 credits</td>
<td>Registration: $55 members $60 non-members $5 printed material</td>
</tr>
<tr>
<td><strong>Tuesday, October 17, 2017</strong> &lt;br&gt;1:00 p.m. - 3:40 p.m. (Seminar) 4:00 p.m. - 6:00 p.m. (Reception) &lt;br&gt;The Buffalo Club &lt;br&gt;388 Delaware Avenue &lt;br&gt;Buffalo, NY</td>
<td>You Can Ask for ADR: Finding the Forum to Resolve Disputes (Live Seminar co-sponsored by the ADR Committee) &lt;br&gt;Thank you to our generous sponsors: Paramount Settlement Planning; Krista Gottlieb, Esq.; ADR Center &amp; Law Office; Richard F. Griffin, Esq., Mediator &amp; Arbitrator; and Bridget M. O’Connell, Chair, ADR Committee.</td>
<td>5.0 credits</td>
<td>Registration: $185 members $120 non-members $20 printed material</td>
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<tr>
<td><strong>Wednesday, October 18, 2017</strong> &lt;br&gt;12:00 p.m. - 1:00 p.m. &lt;br&gt;Bar Association of Erie County &lt;br&gt;438 Main Street, Sixth Floor &lt;br&gt;Buffalo, NY</td>
<td>Encore Video Replay: Domestic Animal Owner Liability in the Fourth Department (Encore Video Replay)</td>
<td>1.0 credit</td>
<td>Registration: $25 members $50 non-members $5 printed material</td>
</tr>
<tr>
<td><strong>Friday, October 20, 2017</strong> &lt;br&gt;9:00 a.m. - 1:30 p.m. &lt;br&gt;Bar Association of Erie County &lt;br&gt;438 Main Street, Sun Room Auditorium &lt;br&gt;Buffalo, NY</td>
<td>Court Certified Article 81 Training (Live Seminar presented by the Elder Law Committee)</td>
<td>7.0 credits</td>
<td>Registration: $120 members $160 non-members $5 printed material</td>
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<tr>
<td><strong>Tuesday, October 24, 2017</strong> &lt;br&gt;9:00 a.m. - 12:30 p.m. &lt;br&gt;Hotel Lafayette &lt;br&gt;Buffalo, NY</td>
<td>Preservation Buffalo Niagara Developer Roundtable: Combining Historic Tax credits and Low-Income Housing Tax Credits (Live seminar co-sponsored by the Erie Institute of Law and Preservation Buffalo Niagara)</td>
<td>5.5 credits</td>
<td>Registration: TBA</td>
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<tr>
<td><strong>Wednesday, October 25, 2017</strong> &lt;br&gt;12:00 p.m. - 1:00 p.m. &lt;br&gt;Bar Association of Erie County &lt;br&gt;438 Main Street, Sixth Floor &lt;br&gt;Buffalo, NY</td>
<td>Encore Video Replay: How to Use the NYS Freedom of Information Law Effectively (Encore Video Replay)</td>
<td>1.0 credit</td>
<td>Registration: $25 members $50 non-members $5 printed material</td>
</tr>
<tr>
<td><strong>Friday, October 27, 2017</strong> &lt;br&gt;12:30 - Lunch 1:00 p.m. - 2:50 p.m. (Seminar) &lt;br&gt;Bar Association of Erie County &lt;br&gt;438 Main Street, Sun Room Auditorium &lt;br&gt;Buffalo, NY</td>
<td>You are a Fiduciary Now! ERISA for Partners and Office Managers (Midday Learning Lecture) &lt;br&gt;Lunch and registration fees for this program are being covered in full by our generous sponsor: Buffalo Wealth Strategies.</td>
<td>1.5 credits</td>
<td>Registration: FREE Thank you to our generous sponsor!</td>
</tr>
<tr>
<td><strong>Tuesday, October 31, 2017</strong> &lt;br&gt;8:50 a.m. - 4:00 p.m. &lt;br&gt;Millennium Hotel &lt;br&gt;Walden Avenue &lt;br&gt;Cheektowaga, NY</td>
<td>64th Annual Tax Institute (FULL DAY) (Live Seminar)</td>
<td>12 credits (total program)</td>
<td>Registration: $400 w/hard copy of materials $370 Paperless $275 Day One only</td>
</tr>
<tr>
<td><strong>Wednesday, November 1, 2017</strong> &lt;br&gt;8:50 a.m. - 1:00 p.m. &lt;br&gt;Millennium Hotel &lt;br&gt;Walden Avenue &lt;br&gt;Cheektowaga, NY</td>
<td>64th Annual Tax Institute (HALF DAY) (Live Seminar)</td>
<td>12 credits (total program)</td>
<td>Registration: $400 w/hard copy of materials $570 Paperless $580 Day Two only</td>
</tr>
</tbody>
</table>

**CHECK OUR CALENDAR FOR UPDATES AND ADDED PROGRAMMING AT www.eriebar.org**

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2. 
3. 

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Enclosed is my check in the amount $__________

[ ] Check enclosed [ ] Visa [ ] MasterCard

Additional fees for printed course material. See program brochures for details.

**Card Number:**

**Exp. Date:**

**Cardholder Signature:**

**Cancellations received less than 48 hours in advance are subject to an administrative fee of $5 or $10, depending on the seminar.**

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<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>MONDAY 2</td>
<td>Professional Ethics Committee</td>
<td>12:15 p.m. – Joseph V. McCarthy, Chair</td>
</tr>
<tr>
<td>TUESDAY 3</td>
<td>Board of Directors</td>
<td>8:00 a.m. – Melinda G. Disare, President</td>
</tr>
<tr>
<td>WEDNESDAY 4</td>
<td>Human Rights Committee</td>
<td>12:15 p.m. – Sharon Nosenchuck, Chair</td>
</tr>
<tr>
<td>THURSDAY 5</td>
<td>Negligence Committee</td>
<td>12:15 p.m. – Adelbert Moot CLE Center, Dianne D. Schoenmaker, Chair</td>
</tr>
<tr>
<td>FRIDAY 6</td>
<td>Commercial &amp; Bankruptcy Law Committee</td>
<td>12:15 p.m. – Angela Z. Miller, Chair</td>
</tr>
<tr>
<td>MONDAY 9</td>
<td>OFFICE CLOSED COLUMBUS DAY</td>
<td></td>
</tr>
<tr>
<td>TUESDAY 10</td>
<td>Matrimonial &amp; Family Law Committee</td>
<td>12:15 p.m. – 25 Delaware Ave, 5th Floor, Michelle M. Schwach, Co-Chair</td>
</tr>
<tr>
<td>TUESDAY 17</td>
<td>Board of Directors</td>
<td>8:00 a.m. – Melinda G. Disare, President</td>
</tr>
<tr>
<td>WEDNESDAY 4</td>
<td>Real Property Law Committee</td>
<td>12:15 p.m. – Adelbert Moot CLE Center, Nicole E. Hystik, Chair</td>
</tr>
<tr>
<td>WEDNESDAY 11</td>
<td>Intellectual Property, Computer &amp; Entertainment Law Committee</td>
<td>12:15 p.m. – Jordan L. Walbesser, Chair</td>
</tr>
<tr>
<td>WEDNESDAY 12</td>
<td>Committee on Eminent Domain &amp; Tax Certiorari</td>
<td>12:15 p.m. – Mark R. McNamara, Chair</td>
</tr>
<tr>
<td>THURSDAY 19</td>
<td>Committee on Veterans’ &amp; Service-Members’ Legal Issues</td>
<td>12:15 p.m. – Jeffery E. Marion, Chair</td>
</tr>
<tr>
<td>FRIDAY 13</td>
<td>Committee for the Disabled</td>
<td>12:15 p.m. – Christopher J. Grover, Chair</td>
</tr>
<tr>
<td>FRIDAY 20</td>
<td>Young Lawyers Committee</td>
<td>12:15 p.m. – Katie M. Ireland &amp; Laura B. Berloth, Co-Chairs</td>
</tr>
<tr>
<td>TUESDAY 31</td>
<td>Board of Directors</td>
<td>8:00 a.m. – Melinda G. Disare, President</td>
</tr>
</tbody>
</table>

*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.*

**October 2017**

“Ausable River, Adirondack Mountains” by Glenn Edward Murray