President's Letter

By Giles P. Manias

Apparently, this is my last president’s column. I know, I know, you’re saying “what will we do without your monthly drone?” ……….Suffer!

Ironically, just like my first column, I am sitting in another CLE presentation. Only this time, it’s an all day CLE. And I am moderating it … a last minute fill-in for the suddenly ill scheduled moderator.

This has been a very last and very interesting year. Being president of this Association is a really great job. You get to work with a fantastic staff which makes the job effective. The things you deal with are very interesting and sometimes you can make a difference. I also like how many people I have gotten to know, and I really appreciate how many of you recognize me and say “hello.”

As I leave office in June, I leave with a long wish list for us:

- I wish that every lawyer you deal with from now on says their word is their bond, and means it. Let’s help each other to do that from now on.
- I wish we could get further away from electronic mail and the communication in important matters. Nothing replaces looking your opponent or colleague in the eye. There is no greater gateway to concern for your fellow lawyer and civil advocate of high principle and simple demeanor. He has taken stands on unpopular and controversial issues because it was the right thing to do. Even in those matters where he represented the “wrong” side, he made the right arguments to hold the other side accountable. Can anyone say his word was “wrong” side, he made the right arguments to hold the other side accountable. Can anyone say his word was ever? Can anyone say he was uncivil to the other side? Can anyone say his word was ever? Can anyone say his word was not his bond, ever? Can anyone say he was uncivil to the other side? Can anyone say he was uncivil to anyone else is disastrous."

Jay to Receive 2009 Lawyer of the Year Award

Buffalo lawyer David G. Jay will receive the 2009 Lawyer of the Year Award at the Bar Association of Erie County’s 122nd annual dinner to be held on Wednesday, June 10 at the Hyatt Regency Buffalo. The evening will begin with a cocktail hour at 6:00 pm followed by dinner at 7:00. Further details will be mailed shortly and advance reservations may be made by calling Sharlene Hall at 852-3003.

“The outpouring of support for David Jay as Lawyer of the Year was rather staggering,” according to Awards Committee chair Robert J. Feldman, who noted that Jay’s nomination was “supported by half a dozen committees of the Bar Association and letters of support were submitted by dozens of lawyers and judges.”

Jay was admitted to practice in 1967. In over 40 years of practice, he litigated and won significant cases in front of various courts, including the New York State Court of Appeals and the United States Court of Appeals for the Second Circuit. Many of these involved unpopular or controversial clients and/or issues. He is perhaps best known as a civil rights lawyer who “handled every case as seriously as what one might otherwise consider his most important. The dooms and deans of comments on the quality of his work as a lawyer emphasized the enormous skill he brought to each case, his willingness to handle the most difficult cases and the most difficult clients, his consistent professionalism and courtesy in handling all of these matters without sacrificing the interests of his clients and his consistent willingness to help other lawyers seeking advice from him,” according to the Awards Committee report submitted to the board of directors.

A former director of the BAEC, Jay has been “recognized for his services to the legal community and the community as a whole with awards too numerous to mention,” according to the report. Jay was the 1990 recipient of the BAEC Award of Merit and also served as chair of the Committee on Professional Ethics.

As President Giles P. Manias observes in his final President’s Letter in this issue, “David Jay is … a fair and civil advocate of high principle and simple demeanor. He has taken stands on unpopular and controversial issues because it was the right thing to do. Even in those matters where he represented the ‘wrong’ side, he made the right arguments to hold the other side accountable. Can anyone say his word was not his bond, ever? Can anyone say he was uncivil to anyone else is disastrous."

The recipient of the 2009 Outstanding Jurist Award is New York State Supreme Court Justice Hon. Joseph D. Mintz. This award is presented only when the BAEC board of directors believes that there is a jurist whose devotion to the profession and judicial system warrants singular recognition.

Judge Mintz was first elected to the Supreme Court bench in 1978, was re-elected in 1992, received per-continued on page 4
Dear Editor,

I am writing in response to Arthur Gacula’s letter regarding Judge Joseph Makowski which was published in the April 2009 issue of the Bulletin. The letter pertained to a decision rendered by a judge which has recently resurfaced from the bench, which decision was adverse to the writer’s clients. Had it not been for this judge’s recent fortunes, I suspect that this letter never would have seen the light of day.

Had the letter been simply another sanctimonious effort to lay a boot to the foot of a judge who had already been leveled by his own human failings, I could understand it. There certainly has already been more than enough of this in the general media. However, this letter took issue with specific rulings by the judge in a litigation matter, using such terms as the judge “sleight of hand” and “dunk of candel,” referring to the judge’s interpretation of a certain document as being “incredible,” and implying, without a shred of evidence presented, that the judge was “trying to fix a case.”

The letter’s headline, furnished by the Bulletin and not by the letter writer, gave emphasis to this misstated implication. Before printing this letter, did the Bulletin in any way look into the merits of the partisan views presented?

If a judge makes a decision that is claimed to be factually or legally incorrect, the proper forum to address these issues is an appellate court, not the Bulletin. There is at least one diagnostically parted in every decision matter. If it will now be the Bulletin’s policy to print one-sided letters from unhappy litigants, be prepared for a deluge of letters from those lawyers who are on the losing side of every legal decision.

— Francis X. Carroll
Buffalo

Do you agree with these writers? Disagree? Either way, we want to hear from you. The “letters” page is provided as a forum for all members to express their opinions and does not reflect official positions adopted by the BAEC board of directors. Send your letters to bulletin@eriebar.org. All letters are subject to editing for content, space and other considerations.

Letters to the editor

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 and content.

Send all submissions as Word documents to obrian@eriebar.org (preferred) or by mail to: Bulletin Editor, 438 Main Street, Sixth Floor, Buffalo, NY 14202.

Deadline

**SUMMER 2009 Bulletin DEADLINE**

The next deadline for all Bulletin contributors and advertisers is Friday, June 5, 2009.
This "members only" column is published each month to share news and information among BAEC members. Submissions should be limited to 100 words and will be edited for space and other considerations.

**Bench & Bar in the News** is reserved to announce items such as: new members of a law firm; name change or relocation; formation, merger, or new affiliation of law practice(s); change in job status; and professional appointments, honors, or awards. Announcements which do not fall into these categories may be published in the Bulletin as paid advertisements.

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**Two Former BAEC Presidents Chosen to Serve on Mediation Panel**

Karen A. Korkie, Kristel M. Aldstrom and Liam A. Dwyer have been named Erie County Assistant District Attorneys. Korkie, a graduate of the University at Buffalo Law School, will be assigned to the Integrated Domestic Violence Bureau. She also holds a master’s degree in Philosophy and had been in private practice. Aldstrom, a graduate of Duke University Law School, is assigned to the Buffalo City Court Bureau. She was previously employed by the U.S. Department of Veterans Affairs and the U.S. District Court for the Northern District. Dwyer, a recent summa graduate of the University at Buffalo Law School, will be assigned to the Buffalo City Court Bureau. Dwyer previously interned with the Office of the New York State Attorney General and the United States Attorney’s Office.

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President's Letter

and that we all get to go for the signing ceremony.

• I hope that we continue to expand our awareness of the many facets and talents of our brother and sister lawyers and grow our appreciation of them as real people, not just adversaries.

• I sincerely wish that we develop and fully accept a meaningful Pledge of Professional Conduct, and call each other on it when we see it violated.

Okay, okay, I'll stop. You all know I am so proud of the many good things this Association, its committees, staff and members do for our community. There are so many good things that flow from the efforts of lawyers in this community. We have the ability to do powerful things. We can lend a gentle hand to the downtrodden and hold the powerful accountable. We can point out threats to our freedom, to our Constitutional protections. We can demand those protections be applied to the least of our citizens.

We, as an association of the legal experts of a community, have an obligation to take a stand when we see abuses of law or to justice. We need to point out the dangers the citizenry faces. There are those who say our Association has no business speaking out to the public. After all, they argue, we are really only a trade guild for a professional group. I disagree because I believe we are actually the people every free society throughout history has looked to for protection of its freedoms. We should demand respect for law from the powerful as well as the lowly. We are the protectors of our system of justice, ethical and moral monitors of conduct (not just our advertisements make us look that way … but we are).

The community at large expects us to guide and advise them. They want us to make them aware of the dangers we face. We should accept that role. Embrace that role. Often such activities or causes may be unpopular with the general public. But we shouldn't act professionally.

I would like you to bear in mind the example of the man we have chosen as our lawyer of the year for 2009. David joy is a gentle man, a fair and civil advocate of high principle and simple demeanor. He has taken stands on unpopular and controversial issues because it was the right thing to do. Even in those matters where he represented the "wrong" side, he made the right arguments to hold the other side accountable. Can anyone say his word was not his bond, ever? Can anyone say he was unconvincing? I can't even remember him in any conversation without a smile. And finally, has ever advertised?

I leave you with that picture in mind. I ask for God's blessings upon each of you, my brothers and sisters in the law. May wisdom, prosperity, health and happiness be your next fees. It has been a great year. Thank you for the privilege of being your president. [B]

Civility Award Honors Memory of Former President Charles H. Dougherty

This year's Charles H. Dougherty Civility Award will be presented to former BAEC president Richard N. Blewett and Joseph R. Mistrett. Each was nominated by multiple committees of the Bar Association and each nomination was supported by dozens of letters from practicing attorneys. As noted in one of the nomination letters, "Dick Blewett represents the best traditions of our profession. In his practice and in his leadership of the Legal Aid Bureau and the Bar Association, he earned a reputation for integrity, judgment and collegiality of the highest order. Despite his impressive accomplishments, he is not at all impressed with himself. His civility is not just a matter of good manners; it is a manner of absolute of integrity of character and genuine respect for others, exemplified in a particularly fine combination of candor and courtesy." Mistrett also received multiple committee nominations and dozens of supporting letters. He practiced at the Legal Aid Bureau, as an assistant U.S. attorney, and then as a federal public defendant. As noted in one of the letters in support of his receipt of this award, submitted by one of the Federal Court's confidential law clerks, "I have always been deeply impressed by Joe's unique ability to zealously advocate his client's cause with utmost respect for his opponent and without losing sight of a fair and expeditious resolution of the matter at the end. His career serves as a very model of integrity, honor and courtesy of the highest professional level."

Lukasik to Receive Special Service Award

The criteria for this award indicate that it "shall not be presented annually, but only when there is a person who has contributed to the good and welfare of the Bar Association of Erie County and its members in an exceptional manner." This year, the Awards Committee unanimously recommended that Daniel T. Lukasik receive the Special Service Award. Lukasik's work resulted in the Bar Association's creation of a committee to assist lawyers with depression. As a result, the BAEC received the 2007 Award of Merit from the New York State Conference of Bar Leaders, as the committee was the first of its kind in New York state. When he was himself diagnosed with depression, Lukasik "came to believe that he had a responsibility to help other attorneys" who were suffering in silence. Since then, he has received widespread national attention for his efforts. His "tireless work on behalf of attorneys both locally and nationally" has illustrated the necessity of providing resources and information to attorneys who are grappling with the disease. "Perhaps most remarkable is the fact that — although admission by a lawyer that he or she is suffering from depression is a very risky act — Dan has forged ahead with courage and leadership in order to help other attorneys," according to the Nominating Committee report. "One of the greatest hindrances to lawyers who struggle with depression is the fact that the disease, up till now for the most part, has been an invisible one. Thanks to Lukasik's one-man crusade, that is finally beginning to change." Congratulations and thanks to each of the 2009 award winners for their dedicated service to our members and our community!

Meet the Candidates

Candidates who are running for Bar office will be introduced to the membership at the dinner. See the special election insert in this issue for detailed information on the candidates. The annual election will be held on Friday, June 12th in the Alt-Root CLE Center at Bar Headquarters. Once again this year, all members have the option of voting either in person or by proxy.

The Association will also recognize its 25 and 50-year members at the dinner (see page 23 for a complete listing of our gold and silver honoraries). Watch your mail for further details and plan now to join us for this important collegial evening on June 10th at the Hyatt.

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Lawyer of the Year Award

Robert M. Elardo, Managing Attorney of the Volunteer Lawyers Project, Inc., was nominated by the BAEC's Appellate Practice Committee of the Bar Association and unanimously supported by the Awards Committee. Elardo has managed the Volunteer Lawyers Project since 1984. During that time, he also served as president of the National Association of Pro Bono Coordinators, co-chair of the New York Pro Bono Coordinators Network and as a consultant to the American Bar Association Center for Pro Bono. He is also a member of the New York State Bar Association's Presidents Committee on Access to Justice.

According to one nomination, "Bob has been instrumental in keeping our Volunteer Lawyers Project operating and operating effectively for the numerous clients it serves each year, notwithstanding the difficulties constantly present in obtaining funding appropriate to the task with which the Volunteer Lawyers Project is charged."

A VLP colleague wrote that "Bob is extremely committed to VLP and greatly values those of us who work (there). He is a kind, patient, and generous person. What we find amazing is that he never seems to burn out. He has some source of renewable energy. After 25 years, he still bears each client with enthusiasm and treats each case as if it were the only one. At the same time, he bears the responsibility of not only keeping the organization afloat during constant budget cuts, but in developing it to maximize its reach within the community and the legal profession."

Judge Mintz has a well-deserved reputation as one of our best judges, according to one of the nominating letters. Mintz was nominated by the Committee on Access to Justice. He has been deeply involved in the area of pro bono services, where he represented the "wrong" side, he made the right arguments to hold the other side accountable. Can anyone say his word was not his bond, ever? Can anyone say he was unconvincing? I can't even remember him in any conversation without a smile. And finally, has he ever advertised?

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Please join

THE WESTERN NEW YORK TRIAL LAWYER’S ASSOCIATION

and

THE ERIE INSTITUTE OF LAW

for the

ANNUAL SUMMER ETHICS CLE SEMINAR AND PARTY

THURSDAY JULY 23, 2009
Harry’s Harbour Place Grille
2192 Niagara Street, Buffalo

The seminar will be held from 4:00 - 5:00 p.m.
(1 credit hour of CLE)
The party starts at 5:00 p.m.

$75 includes the cost of the CLE and party

$50 if attending party only

Please remit checks payable to “Western New York Trial Lawyer’s Association” to John Danieu, Roach, Brown, McCarthy & Gruber, 1920 Liberty Building, #2A Main Street, Buffalo, NY 14202. Questions? Call Kathleen M. Reilly at 858-3861.

Watch your mail for more information.

WNY Trial Lawyers Elect Officers

Pictured above, seated, at left, president Brian Sutter and at right, vice president Paul A. Bender. Standing, from left to right, are treasurer John P. Danieu, director Lawlor F. Quinlan III, director Michael C. Scinta, secretary Kathleen M. Reilly, director Matthew J. Duggan and director Daniel J. Marren. Photo by Susan Kohlbacher

Not pictured are directors Michael M. Chelus and Katherine B. Roach and deputy treasurer Robert Viola.

PRO BONO — NOTICE — PRO BONO

We are living in a period of economic depression, affecting many of us. In an effort to attempt to alleviate the severe hardships being experienced by homeowners who are losing their homes to banks and/or other similar creditors, our company is offering free service to them in order to help lessen their imposed expenses. This pro bono service shall be performed by us upon receipt of documented verification from legal counsel.
Special Thanks to Our 2009 Annual Dinner Sponsors!

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- Personius Melber LLP

Lawyer of the Year Award

Become a Contributing Member!

For more information about the BAEC, please visit www.eriebar.org.
ERISA

In Hall v. Kodak Retirement Income Plan (07-CV-6169, 3/20/09), the court granted defendants’ motion for summary judgment dismissing the plaintiff widow’s claim for alleged wrongful denial of pension benefits. Plaintiff claimed that her late husband, who was married to someone else when he retired, was not made aware of the option to designate her as an optional contingent annuitant. Among other holdings, the court held that, even if the summary plan description did not list this option, this was a “harmless error” because the employer’s business records demonstrated that the husband had been given a fact sheet informing him that he could revoke his prior election and elect a different payment option.

PRIVILEGE

In Equal Employment Opportunity Commission v. Nichols Gas & Oil, Inc. (05-CV-6482CJS, 3/9/09), in which the EEOC sued on behalf of alleged victims of a hostile work environment, the defendant employers moved to compel production of medical records and related information concerning psychological treatment one claimant received from her primary care physician and a second claimant received from two mental health counselors. The magistrate judge found that only the second claimant had properly asserted a psychotherapist-patient privilege because, for that privilege to apply, the patient must have been treated with a mental health – as opposed to medical – provider. The judge held further that the second claimant had not waived the privilege as to counseling records and related information because she alleged only “garden variety” emotional distress, rather than a diagnosis of a specific psychiatric disorder. Among other holdings, the judge also held that physician-patient privilege in CPLR §4508(a) did not apply in this federal question case.

REAL ESTATE

In Seven Corners Shopping Center Falls Church, Va. L.P. v. Chesapeake Enterprises USA LLC (07-CV-6332T, 3/13/09), the court granted in part and denied in part competing motions for summary judgment between the plaintiff/landlord and the defendants/former tenants in an action arising out of the tenants’ alleged breach of a commercial lease. The court first ruled that, although the lease terminated when the landlord re-let the premises following the tenants’ abandonment, the tenants remained liable for rent because they had expressly agreed to a “survival of liability” clause in the lease. The court also held that a rent acceleration clause in the lease did not constitute a penalty or a forfeiture and, therefore, was enforceable as a liquidated damages provision. But the court also held that a hearing was required to resolve issues of fact concerning the amount of rent the tenants owed.

RELIGIOUS DISPUTES

In Hoyle v. Dimond (08-CV-357C, 3/5/09), plaintiff sought damages and restitution for property he conveyed to the defendant monastery after he entered it with the intention of becoming a Benedictine monk, only later to learn that the monastery was not affiliated with the order of St. Benedict. Defendants moved to dismiss plaintiff’s unjust enrichment claim on the ground that a plaintiff may proceed on a theory of quasi contract as well as breach of contract where there is a bona fide dispute as to the existence of a contract or its application, and the court granted plaintiff’s motion to amend his complaint to allege a RICO conspiracy claim, finding that the elements of such a claim were adequately pled.

By Paul K. Stecker and Kevin M. Hogan
Citations continued from page 6

Failure of the process server to testify as to the alternate service on the defendant resulted in a dismissal of the complaint. (Ballantine Manor Farm, LLC v. Andrews, __AD3rd__, 4th Dept., 3/20/09, #343)

A WIN FOR WINDPOWER
A series of wind-powered generators was found to qualify as a “utility” by our Fourth Department in construing a zoning ordinance. (In the Matter of Wind Power Ethics Group v. Zoning Bd. of App. et al; __AD3rd__, 3/20/09, #34)

RESIDENCE REDUX
Defendant was convicted of offering a false statement for filing and grand larceny for not reporting that the father of one of her children spent several nights a week at her residence while she was accepting benefits from the Department of Social Services. Our Fourth Department found that spending several nights at the residence was by itself insufficient to establish that this was her “residence.” (Pet. v. O’Herlihy, __AD3rd__, 3/20/09, #35).

SLIP TIPS AND STUMBLE BUMBLES
In Kuszman v. Barone et al; __AD3rd__, 3/20/09, #347, our Fourth Department upheld a jury verdict wherein plaintiff allegedly slipped and fell on an ice-covered rear step which did not have a handrail.

In Costello v. Zaino et al; __AD3rd__, 871 NYS2nd 370, 2nd Dept., 1/13/09, summary judgment was granted to defendant building owners where plaintiff had allegedly slipped on water, but where there was insufficient evidence showing that the owner had constructive notice or had created the condition. See also Zelen v. Saratoga National Golf Club; __AD3rd__, 871 NYS2nd, 3rd Dept., 10/16/08, where the A.D. denied defendant’s motion for summary judgment (water ponding on porch).

In Kislows-Hendrix v. Johnson Controls, Inc; __AD3rd__, 871 NYS2nd 359, 2nd Dept., 1/13/09, factual issues precluded summary judgment to the parking lot maintenance contractor where plaintiff allegedly fell on an ice patch. See also San Marino v. Village of Mount Kisco; __AD3rd__, 871 NYS2nd 236, 2nd Dept., 12/23/08, where the A.D. reversed and granted defendant’s dismissal motion.

In factual issues precluded summary judgment where plaintiff tripped on parking lot repairs in Robe v. State of Hawaii; __AD3rd__, 871 NYS2nd; 2nd Dept., 1/13/09.

In the last few months, the Legal Aid Bureau of Buffalo, Inc., has undergone some major revisions, reorganizations, and renovations, all of which reflect our growing commitments and obligations. As we approach 100 years of age (we were founded in 1912), we have taken stock of a century’s worth of developments and re-worked the model that matches our mission to provide effective legal representation to financially needy men, women, and children in Western New York.

At the most symbolic level, we have changed the names of two of our divisions: The Law Guardian Unit is now known as the Attorneys for Children Unit, and the Public Defender Unit has become the Criminal Defense Unit. Clarity of purpose and expanded responsibilities form the rationale for the change in each case.

The term “attorney for the child” rather than “law guardian” is now used by the court system to better reflect the function of children’s lawyers whose role is to articulate and advocate the views and wishes of their clients in family court proceedings. Moreover, the court system has capped caseload levels and provided additional funding to offices such as the Legal Aid Bureau in order to reduce our per-attorney caseloads. We have consequently increased our staff by three attorneys, a social worker and a secretary. The resulting reduced caseloads will translate into improved service to the children we represent.

As for the “Criminal Defense Unit,” we have changed the title from the “Public Defender Unit” to avoid confusion about just who we are. A “Public Defender” office is statutory term for a county office that employs attorneys to represent the poor in criminal cases whereas the Legal Aid Bureau is a not-for-profit agency unaffiliated with a local government entity and our staff answers directly to us. We feel the public is better served if the distinction is preserved.

Bringing an End to Different Counsel at Different Stages
We have also taken on a greater role in the practice of indigent defense, in that we can now provide vertical representation — service by the same attorney throughout the proceedings — in D and E felony cases charged in the city of Buffalo as well as all misdemeanor and violations in Buffalo City Court. This is the culmination of an effort by the Legal Aid Bureau and the Assigned Counsel Program to rectify the inequity and inefficiency of different counsel at different stages.

To oversee an expanded criminal defense staff and its expanded responsibilities, we are pleased to welcome Kenneth F. Case. In his 14 years in Erie County District Attorney’s Office, the last seven working exclusively on homicides, Case accrued numerous awards, won all his trials, and was the chief prosecutor in the “bike path rape” case noted for its use of DNA that both convicted a guilty man and exonerated an innocent one.

Further enhancing the delivery of criminal defense services at Legal Aid has been the arrival of Erie County’s Client Specific Planning Services in our offices. Under the aegis of the Center for Community Alternatives, a well-established organization in Syracuse and New York City that promotes alternatives to imprisonment, the move consolidates advocacy programs to aid criminal defendants facing sentencing. These sentencing advocacy services, under the direction of Aaron Miller, are available to the Legal Aid Bureau’s indigent clients as well as to others from assigned or private defense counsel. Mr. Miller can be reached at 237 Main Street, Suite 1510, Buffalo, NY 14203 (716) 853-9555 ext. 664.

Expanded Mission Calls for Expanded Space
And what have we done to accommodate this growth? We have expanded our space by leasing Suites 1510 and 1540 at 237 Main Street, just below the main offices in Suite 1602. The Felon Office of the Criminal Defense Unit as well as Client Specific Planning Services is now located in Suite 1510 and the Bureau’s Appeals Unit is located in Suite 1570. The Attorneys for Children Unit, the Bureau’s Civil Legal Services Unit and our administrative office remain on the 16th floor. The City Court Office of the Criminal Defense Unit remains in woefully inadequate space on the fourth floor of Buffalo City Court, however, the court system and the City of Buffalo are working with Legal Aid to hopefully provide us with much needed additional space within the courthouse. We are optimistic that in the not too distant future the attorneys and staff of our City Court Office will, like the rest of the Legal Aid Bureau, have the space necessary to best serve the needs of our clients.
Recent Surrogate’s Court Decisions and Other Estate Planning Matters

Matter of Hunt, 21 Misc. 3d 1128(A) (Surr Ct. 2008), shows the importance of careful pleading in a will contest, and, perhaps, the limits of the court’s patience. After the testator died in December 2006, her will, dated January 2002, was offered for probate. The objectant initially faxed unsigned objections to probate to the court. Those objections were returned by the court for lack of a filing fee, and the will was admitted to probate. The objectant then moved to vacate probate and to file her objections which motion was granted. The objectant then filed objections to probate which alleged that the testator was unaware of the “nature and bounty of her estate.”

Pre-trial discovery proceeded, after which the objectant moved to amend her objections to include allegations of fraud and undue influence. In support of her motion, the objectant claimed that the lawyer who had drawn the testator’s will in 1988 refused to draw a new will for the testator in 2002 because he had concerns about the testator’s capacity, however, the objectant made no claim of lack of testamentary capacity.

To support her claim of undue influence, the objectant claimed that the executors were present in the home when the testator executed her will. The objectant also claimed that around the time of the testator’s death, four years after the execution of the will, the executors engaged in questionable transactions with the testator’s bank accounts.

Surrogate Larry M. Himmel of Cattaraugus County found that the allegations of questionable financial transactions four years after the execution of the will did not support an allegation of undue influence at the time of the execution of the will. The court held that in order to amend a pleading upon motion, the claim the objectant sought to add needed to have merit. The Surrogate found no merit in the objectant’s claims, and denied the motion to amend.

All of this could have been avoided if the objectant had merely filed the standard form objections alleging lack of due execution, lack of capacity, and fraud, duress or undue influence. The decision also noted that the lack of any evidence of undue influence would not have withstood a motion for summary judgment in this case. The court noted, “Mere hope that further discovery might lead to evidence that would prove a claim is insufficient to deny summary judgment [cit. om.]”

Matter of Marshall v. Weiner – unpublished decision. This unpublished decision of Justice Patrick H. NeMoyer, Supreme Court, Erie County, holds that Grantor Retained Annuity Trusts (GRATs) are not annuities for purposes of Medicaid qualification.

Since the enactment of the Deficit Reduction Act of 2005 (DRA), one of the few remaining avenues to preserve some assets and still qualify for Medicaid to pay nursing home expenses, has been to gift a portion of the applicant’s funds to family members, and then put roughly an equal amount into a short-term annuity. If the annuity meets the certain qualifications, the purchase of the annuity will not be considered a transfer, nor will the annuity be considered an available asset which would disqualify the applicant from Medicaid.

Annuity Trusts for purposes of Medicaid qualification.

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The assets gifted to family members will result in a penalty period before the applicant may receive Medicaid assistance. The DRA provides that the penalty period commences when the applicant is otherwise eligible for Medicaid. The applicant would have to wait for the penalty period to expire before she would receive Medicaid assistance. The annuity payments are used to pay almost all of the nursing home bill during the penalty period, if the annuity paid the full bill, the applicant would not be “eligible for Medicaid” because her income pays her expenses. The balance of the nursing home bill is paid by family members from the gifted assets. Things are generally timed so the annuity runs out as the penalty period expires. When the penalty period expires, the applicant receives Medicaid to pay for her nursing home going forward, and the balance of the gifted assets belong to the family.

In Marshall, the applicant gave roughly $60,000 to her two sons, and put $60,000 in a Grantor Retained Annuity Trust (GRAT) to pay her an annuity for 8.8 months while the penalty period on the gift was running.

The Erie County Department of Social Services (DSS) took the position that the GRAT was not an annuity, but rather a self-settled trust, which is considered an available asset. This disqualified the applicant from Medicaid. A Fair Hearing upheld that determination, and the applicant brought an Article 78 proceeding in Supreme Court.

Justice NeMoyer, in upholding the Fair Hearing decision, noted that under 42 USC §1396p(c)(1)(D) and (G), in order to qualify as an annuity which is not considered an available asset for Medicaid qualification purposes, the annuity must: a) name as beneficiary to the extent
Death and Taxes

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...medical assistance paid; b) be irrevocable and non-assignable; c) be actuarially sound; and d) provide for equal payments during the term of the annuity, with no deferred and no balloon payments.

The court also noted that 18 NYCRR 360-4.5 states with respect to an irrevocable trust created by the applicant, “any portion of the trust principal, and of the income generated from the trust, which can be paid to, or for the benefit of the applicant/recipient under any circumstances, must be considered to be an available resource.”

The court held that contrary to the assertion of the applicant, a GRAT is a trust, not an annuity. Therefore, the trust is considered an available asset under 18 NYCRR 360-4.5, which prevents the applicant from qualifying for Medicaid. “It seems to the court that the Grantor Retained Annuity Trust is an annuity in name only and that the entire transaction bears none of the earmarks of a true annuity.”

In light of the provisions of 18 NYCRR 360-4.5 about self-settled trusts, this appears to be a correct decision.

Despite holding that the GRAT was a trust, however, the court went on to make a somewhat troubling observation. It said that since the GRAT only called for payments for nine months, not for the annuitant’s life or any period of years bearing a reasonable relationship to her life expectancy, there was no risk assumed by the annuity payer that she would outlive her life expectancy. The court noted: “It would be meaningless to refer to the nine months of guaranteed payments ... as either ‘actuarially sound’ or unsound —there are no actuarial considerations or implications at all in the transaction. For those reasons, the transaction does not resemble the purchase of a true annuity.”

This appears to be a novel interpretation of the term “actuarially sound.” Most commentators think that the language in 42 USC 1396p(c)(1)(G), that an annuity must be actuarially sound, means that the annuity cannot extend beyond the annuitant’s actuarial life expectancy. If Justice NeMoyer is correct in this interpretation, the whole landscape of Medicaid planning may change.

Matter of Estate of Degnan, 55 A.D.3d 1238 (4th Dept., 2008) is another case involving joint accounts and §675 of the Banking Law.

Alleged joint accounts have long been a continuing source of litigation. § 675 of the Banking Law provides that if a bank account is in the names of two or more people “... in form to be paid or delivered to either or the survivor of them ...” there is a rebuttable presumption that the account was intended to be a joint account, and the account will pass entirely to the survivor upon the death of one joint tenant. Absent that language there is no joint tenancy, and the survivor must prove that a gift was intended.

Mrs. Degnan’s will left her estate equally to her four children, one daughter was designated as executor. That daughter’s name had been added to the mother’s M&T Bank account about nine years prior to the mother’s death. The Niagara County Surrogate’s Court (Peter L. Broderick, S.) determined that under §675 only applied to bank accounts, and had no application to the investment accounts. The court held that under EPTL 6-2.2, since the investment accounts did not contain words of survivorship, they constituted tenancies-in-common, and they should be split 50-50 between the daughter and the estate.

On appeal, the Fourth Department unanimously reversed. The Appellate Division in a memorandum decision held that none of the accounts included in their titles the statutory language of § 675 “... paid or delivered to either or the survivor of them.” Further, none of the signature documents for the accounts contained those magic words.

The court noted that any reference in the account documents to other materials which might discuss a right of survivorship was insufficient to give rise to the statutory presumption.

As noted above, the Surrogate treated the investment accounts as tenancies-in-common and divided them between the daughter and the estate.

However, absent proof of a gift, the monies in a tenancy-in-common belong to the contributor. See Matter of Seidel, 134 A.D. 2d 879 (9th Dept. 1987).

The Appellate Division held that the intent of the deed of trust evidenced by the will was inconsistent with the daughter’s claim that the two investment accounts and the bank account were joint tenancies with survivorship rights, or gifts, and, therefore, all of those assets were part of the probate estate.
New York and E-911...A Call to Action

Except for a few strange policy and public service wonks, most people don’t think twice about 911. What most people know is that it’s a service which exists to help people in emergencies. And aside from those nitwits who occasionally forget that 911 is for emergencies only, most people respect the motivation and expertise of the hard-working, highly trained individuals who staff the phones to help us in times of crisis.

When 911 is dialed from a traditional wireline telephone (home phone, for example), the person receiving the call receives specific information about the location of the caller, including not only street address information, but also cross streets and other useful locating information. Given that a first responder has four minutes to get to a person in cardiac arrest, this information is time critical and its accuracy imperative.

When 911 is dialed from a wireless phone, the information received is nowhere near as specific. This is one of the reasons that I bang my head against the wall when speaking with friends and colleagues who have abandoned traditional landlines. This is a topic for another column, but be advised that if you call 911 from a wireless phone, you MUST be prepared to provide specific location information. You cannot rely on the device, regardless of what the salesperson told you, to give location-specific information.

When 911 is called from behind a multi-line telephone system (MLTS), there are a myriad of other issues, all of which define the word “critical.” For example, if you work for an enterprise (business or government) where the phone system is set to provide the entity’s main listed number as Caller ID (or, in technical telecom terms, Automatic Number Identification/Automatic Location Information, a/k/a ANI/ALI), the first responder may see the name XYZ Bank, but have no idea which floor, or in what location on that floor, the call was submitted. Compounding this problem is the fact that the first responder has no number to return the emergency call except the bank’s main listed number. Obviously, this creates a life-threatening problem if the first responder cannot identify where the problem is when every second counts.

Beware “Fat Finger Disease”

Secondly, if the phone system requires that users dial a digit before making an outside call (many entities use “9”), does this mean that someone in an emergency must call 9911? Are employees aware of this? Thirdly, if the entity doesn’t require that extra digit to get an outside line, are there people with what the telecom glitterati call “fat finger disease,” who dial 9 to get an outside line, and then inadvertently hit 1 twice, causing the rescue squad to respond post haste when there is, in fact, no emergency but just a wrong number?

As is often the case, it’s a much easier task to define the questions than offer the answers. Legally, there is no federal 911 or E 911 policy. Partially this is the result of the fact that this type of service falls under different federal government areas, making issue ownership impossible to quantify. As such, issues of E911 policy have been left to the states. At this time - May, 2009 - only 16 states (New York is NOT one of them) have taken any affirmative steps towards addressing information requirements for multi-line telephone systems. While other states (AK, AR, CO, CT, FL, IL, KY, LA, MA, ME, MN, MS, RI, TX, VT, and WA) have put in place rules and regulations addressing the type(s) and specific components of information to be required, New York has yet to act, even after the calamitous events of 9/11.

That’s not to say that a statewide mandated 911 compliance program would have saved lives or minimized losses on that fateful day. But, in the aftermath, considering the significant number of multi-tenant facilities, behind whom hundreds of thousands of New Yorkers work, it is somewhat surprising that no such action has been taken by the New York State Legislature, particularly when similar actions have been taken by other state legislatures within the U.S.

With 34 states not taking any stand on this issue, the National Emergency Number Association (NENA or nena.org) recently re-issued its model legislation to help legislators close the gap in those states, including New York, that have yet to act.

Specifically, NENA felt compelled to take this action because emergency dialing from multi-line telephone systems is a critical piece of today’s communications infrastructure, and customers (wrongly) assume that these issues have all been worked out because they can simply dial 911.

“Based on information we have received from the MLTS community, we can safely estimate that only 25 percent of the MLTS systems have the proper programming in place to deal with emergency calls pro-

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The sparkling new Burchfield Penney Art Center at Buffalo State College was the venue for the annual Bar Association gala, held in honor of President Giles P. Manias and the Association’s past presidents. The freshly unveiled art museum was the perfect place to pay tribute to our current president, who is also a professional painter. The museum’s distinctive gallery spaces feature 12 captivating exhibitions that celebrate the history, diversity, and beauty of western New York art. More than 150 members of the bench and bar turned out to dine, dance and spend an elegant evening.
Michael and Cindy Menard

Former president Stephen E. Cavanaugh, center, and wife Millie, greet President Manias.

Bonnie A. Redder and husband Sanford L. Clark congratulate President Manias.

Jill Manias with daughter Alex and son-in-law Richard Arnold

Pictured from left to right, are, E. Meghan Barnett, Sara Sullivan Goodman, Melissa M. Morton and Dana Herrington.

Former presidents Raymond L. Fink and Paul Michael Hassett

Former president Harold J. Brand, Jr.

Sue and E. Michael Semple

Former president Stephen E. Cavanaugh, center, and wife Millie, greet President Manias.

Michael and Cindy Menard
News from the Young Lawyers Committee

By Melissa A Foti, Chair

In terms of mock trial news, we have yet another re-match on our hands. As of press time, the Buffalo Academy of the Sacred Heart and Clarence High School were gearing up for the final round, which will be presided over by Supreme Court Justice Paula L. Feroleto. In keeping with tradition, the round will take place in the Ceremonial Court Room.

This year, 38 schools participated in the Mock Trial Tournament, which has been presented annually by the Bar Association since 1981. Stay tuned for the results, which will be published in the summer issue of the Bulletin.

On behalf of the Young Lawyers Committee, we would like to thank all the volunteers who served as attorney advisors and judges by offering their time and talent. Your support is what makes this program such a success! We would also like to thank Marie Boccio from the BAEC for her efforts and dedication to this program. Congratulations to all of the schools that participated this year!!

On a separate note, the Young Lawyers Committee is pleased to report that our March meeting, featuring a meet-and-greet session with Hon. Lisa Bloch Rodwin, was a huge success. Judge Rodwin also addressed the issue of civility among practicing attorneys. We would like to thank everyone for attending.

Lost in (Techno) Space

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eerly, including a large group of systems, (VoIP and Legacy TDM) that are exposed,” according to Mark Fletcher, ENP who leads NENA’s MLTS Technical Subcommittee, in addition to his role as Nortel’s E911 Product Line Manager. “It’s literally a ticking time bomb, and one that is ignored too often.”

Administrators fail to realize that the information sent to the emergency responders is often either inadequate or inaccurate (or both), thus easily jeopardizing the life of a person who is experiencing significant medical distress.

With this in mind, it’s time to summon the powers that be so that employers who have multi-line telephone systems have frequently-tested programs in place to manage medical emergencies, both within the entity, and in its contacts with first responders. Absent affirmative steps taken by the state Legislature requiring minimum standards, enterprises are on their own to work this out. It’s a matter of life and death. And, oh, by the way, employers in other states who have not provided sufficient information to assist first responders have been held liable under theories of negligence, as well as OSHA rules, resulting in not only large verdicts, but actual multi-million dollar settlements.

Suburban Lawyers’ Luncheons

Northtowns, Wednesday, May 20th at 12:00 noon
800 Maple Restaurant

Southtowns, Tuesday, June 2nd at 12:00 noon
Romanello’s South

Lunch is $25 per person.

Call Sharlene Hall at 852-8687 for further details.
I was fortunate to have been chosen to participate in the 2009 BAEC Leadership Institute. Ours was the Leadership Institute’s second class and I had heard very positive remarks from members of the first class. The Leadership Institute seemed like a great opportunity to learn leadership skills alongside others who work in the legal community. The Buffalo legal community reflects much of what I love about Buffalo itself; the hard-working, friendly and helpful people. I had never participated in anything like the Leadership Institute, and as a relative newcomer to western New York, I knew that I would learn a lot from my fellow classmates, many of whom would most likely embody that Buffalo character that I admire.

The 2009 class was made up of a diverse group of attorneys: Scott Bylewski is a solo practitioner and the Town Supervisor of Clarence; Adrian Dayton is a newly admitted associate at Jaeckle Fleischmann & Mugel LLP; Jonathan Hickey is a founding member of Burden, Gulisano & Hickey, LLC; Mary Kay LaForce is a partner at Hamberger & Weiss; Brendan Mehaffy practices in the City of Buffalo’s Law Department; Claudia Schultz trains and supervises criminal attorneys for the Assigned Counsel Program; Rosa S. Svisco is an immigration attorney at Magavern Magavern & Grimm LLP; Eileen Wheeler is an attorney at Rosenthal, Siegel & Muenkel, LLP; Pietra Lettieri practices at Harris Beach LLP and I’m the attorney employment manager at Hodgson Russ LLP. We came from different professional backgrounds and personal circumstances. Few of us had met before but over the course of the program we developed a bond (and many shared jokes) because the diversity of the group was instrumental in the success of the program, my only criticism is the program’s lack of racial and ethnic diversity. It is crucial that the BAEC solicit participants from attorneys of racially diverse backgrounds. I hope all of the Institute’s past participants can assist the BAEC in achieving this goal going forward.

The Leadership Institute was once again moderated and lead by Kristina M. Young. Kristina is bright, insightful and funny. Attorneys are a tough group to lead and one of Kristina’s most remarkable traits was her ability to listen to feedback and adjust her training as we went along. At each weekly meeting, we would discuss the previous week’s reading and then delve into the week’s topic. Classes were a mix of guided exercises and group discussion. At our Beaver Hollow Retreat, we drafted personal leadership mission statements and started drafting thought-provoking personal action plans. Although my classmates and I work in very different settings, it was interesting to hear how similar our daily experiences are as we navigate the common challenges of work.

“If your actions inspire others to dream more, learn more, do more and become more, you are a leader.”

~ JOHN QUINCY ADAMS
Correspondence from Kent, Our Sister City in Great Britain

By Jonathan Smithers

Have you ever wondered why in any voluntary organization the same names come up time and time again? It was once suggested that I volunteered for jobs as part of an elaborate game to see how often my name was in the AGM Minutes! Needless to say, it was not a game and involved me in a lot of work although it was – and continues to be – fulfilling.

It is often said that if you want to get something done, you ask a busy person. Those unpaid members of Law Societies are often amongst the busiest practitioners, but it means that they are actively in practice and should be up to date with the hopes, needs and aspirations of their members.

That is not to discount the wise counsel from senior members of the profession – which I am becoming more rapidly than I wish to think about – but we now live in rapidly changing times, our legislating career may be disaffected or intent on making a negative contribution. Those who are serving do so often to the silent majority, indeed that is often the purpose of their experience. Those who are serving do so often to the silent majority, indeed that is often the purpose of their experience. Those who are serving do so often to the silent majority.

The service given is nonetheless necessary if the organization is to continue. Some organizations have a sub-group of people who may be disfracted or intent on making a negative contribution. Whilst that may seem hard work, it can serve a purpose in keeping the office holders on their toes and up to speed on the rules.

There may be a further sub-group of those who would like to have the know-how of participating without any of the work. Thankfully we don’t have any of those in Kent Law Society, but it does remind me of the story of two explorers sitting in a kayak feeling a bit cold.

They lit a fire in their wooden craft. Not surprisingly it sank, proving once and for all that you can’t have your kayak and heat it too!

Editor’s Note: In corresponding with Jonathan Smithers over the past year, I have often found the e-mail correspondence contained in his e-mails to be ever so fascinating as it has included in his articles. With his indulgence, I’m sharing the following musings he had about President Obama’s recent visit to England. Although his term as president of the Kent Law Society will have ended by the time you are reading this, I hope that his willingness to participate in the Sister Cities program and contribute to the Bulletin will continue for many years to come.

“We have recently been graced by your new President and First Lady. Our newspapers were obsessed with Michelle putting her arm around the Queen (as you may know, very bad form for anybody to touch the Monarch). However, she not only got away with it but had praise heaped upon her for choice of clothes and style.

President Obama continues to appear very statesmanlike and even if he cannot solve the world’s problems, it looks like he is trying and is sincere - plus he looks very cool next to any of the other world leaders, which is a big plus. When he went to the European Parliament in Strasbourg to ask for more troops saying that Afghanistan was a world problem, there was a notable degree of silence from many of our European partners. I think the new President will find it hard to shake off the legacy of the previous one on this subject.

Last time we talked about politics, you suggested I write another piece. I’ll perhaps leave it for a month or so to see what is in the news and see if I can put something together for you then. I am conscious that if I write it now, that politics will have moved on by then and it may look a little irrelevant... or in the words of the song “it’s not irrelevant, it’s a hippopotamus!”

It’s great to belong to something this good.
Editor's Note: The brainchild of Lynn Clarke and Diane LaVallee, this feature highlights the careers of 20 local attorneys who have practiced law for 50 years or more.

Talk to someone who has heard of Grace Marie Ange and you will hear her described in the same way: “feisty,” “explosive,” even “difficult.” Talk to someone who knows her, though, such as her former partner of twenty-four years, Richard H. Gordon, and you will learn that these are “all the things she isn’t.”

“1000 Years of Legal History” is proud to present its first profile of a woman attorney who has been practicing over fifty years. Ange excelled in a profession when women lawyers were considered an oddity.

“Some of us were indeed odd,” she jokes, evidencing her typical humor and self-deprecating wit. The youngest of five children, she was not the first to enter into a male-dominated field.

When presented with the supposition that she was a trailblazer, Ange recounted that her oldest sister, 20 years her senior, went to medical school before World War II. The sister had applied to Strong Memorial Hospital for her residency but was refused because they had no place for a woman to stay. She offered to live at home or with the nurses, but was repeatedly turned down. She wound up at Women’s Hospital in Detroit.

“When World War II broke out and all the men were drafted, Strong called her back and tried to get her to come,” Ange recalls, clearly enjoying the memory.

Ange’s father, “a traditional Italian immigrant,” gave her sister grief about going to medical school “because she’d see men without their clothes.” It wasn’t to be the first time that one of his daughters would shock him. Shortly after graduating from the University of Buffalo Law School in 1957 (one of three women in the class), Grace Marie Ange began practicing with the now legendary criminal defense attorney, John Condon. Ange’s father came to hear her argue her first appeal. It was an incest case. Despite winning the appeal, her father was mortified.

“He wondered why it couldn’t have been a nice, respectable murder,” Ange chortles.

Ange went to law school “because I didn’t want to go to work; I thought I would delay that inevitable time for three more years.” She applied to Buffalo, Syracuse, and Albany, and was admitted to all of them.

“One Thousand Years of Legal History in Western New York
A Profile of Grace Marie Ange

By Diane M. LaVallee

Talk to someone who has heard of Grace Marie Ange and you will hear her described in the same way: “feisty,” “explosive,” even “difficult.” Talk to someone who knows her, though, such as her former partner of twenty-four years, Richard H. Gordon, and you will learn that these are “all the things she isn’t.”

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Ange went to law school “because I didn’t want to go to work; I thought I would delay that inevitable time...
Several weeks into the program, the tragic crash of flight 3407 occurred in Clarence, and our classmate Scott was called upon to demonstrate his leadership. Scott had struck us as a warm and generous person and we enjoyed his low-key sense of humor. In class, he provided thoughtful feedback to his classmate’s comments. Watching the news in the days and weeks after the crash, we were impressed by his calm and pointed demeanor. When we subsequently met as a class, it was fascinating to hear him relay his experiences dealing with the tragedy, the media, his constituents and his own feelings about what had happened. His leadership skills were tested in a way that is, thankfully, rare.

Other classmates shared their experiences as volunteers in the community. Several participants shared the goal of becoming more effective members of the not-for-profit boards on which they sit. It was fascinating to listen to our classmates discuss their board experience and discover ways in which they could make their participation more fulfilling for themselves and their organizations. We learned concrete skills such as how to lead effective meetings and how communication is a leadership tool. One of the key tips I learned was the extent to which preparation is essential to being a leader. This tenet came up repeatedly in different contexts, communicating difficult information, consensus building, and of course, public speaking.

Since completing the program, I’ve been surprised by how much of the material has stayed at the forefront of my mind. I review class notes from time to time, but I am reminded of some of the key concepts introduced in class at unprepared times. A few weeks after the last class, I had lunch with a partner at Hodgson Russ who is also actively involved in the management of the firm. We were talking about firm management and some of the partners who are particularly effective in their roles as leaders of their practice groups. One of the theories of effective leadership that had been exposed to me is the philosophy of “servant-leadership,” which came to mind as a fitting description of the actions and attitudes of the partners we were discussing. Our discussion led us both to do further reading on servant-leadership. The class also influenced and informed an article I wrote for a national publication. It has been extremely satisfying to make use of the knowledge I have gained from the Leadership Institute.

The success of a leadership training program depends upon the skill of the moderator, as well as the qualities of the participants. This program had both. I would once again like to thank the BAEC for supporting this program. Thanks to Kristina’s skill, Cheryl Smith Fisher’s vision and the organizational aptitude of Maureen Gorski (who has the most positive attitude and delightful disposition), my classmate and I have the tools to help us continue to develop as leaders. Special thanks to Counsel Press for sponsoring this program.

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 monthly to share stories and fellowship. The group meets every other Friday (except holidays). See the calendar on the back page for meeting dates. Meetings are held at Bar Headquarters, 438 Main Street, Sixth Floor, at 12:30 pm and lunch is provided. There is no need to pre-register.

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 Kelly Bainbridge at 628-4892. All calls are strictly confidential. We invite you to join us and share your story.
Cast your ballot for officers, directors, and members of the Nominating Committee.

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Paul B. Curtin

Exercise Your Right! Members have the option of voting either in person, online at www.eriebar.org, or by proxy. The annual election will be held on Friday, June 12 in the Adelbert Moot CLE Center at Bar Headquarters. Proxy ballots, which will be mailed to all members, must be returned no later than Thursday, June 11 in order to be counted.

“What is freedom? Freedom is the right to choose, the right to create for oneself the alternatives of choice.”

~ Archibald MacLeish, 1892-1982
American Poet and Critic

USE YOUR RIGHT TO CHOOSE!
All candidates for bar office have been encouraged to campaign actively. Please thoughtfully consider what each of them has to say before casting your ballot in this year’s election.

NOMINATING COMMITTEE

Gerald P. Gorman
John J. Molloy
Michael J. Roach
Howard S. Rosenhoch

The bylaws require that dues be paid in full for fiscal year 2009-10 before members are allowed to vote in the annual election.
VICE PRESIDENT

ROBERT J. FELDMAN

Robert J. Feldman has been a resident of western New York since 1973. A native of Brooklyn, he received his JD magna cum laude from the University at Buffalo Law School in 1976 and his BA in history from SUNY Binghamton in 1973. After graduating from law school, he began his career at Gross, Shuman, Brizdle and Gillilan, P.C. where he has been a partner since 1981. Feldman concentrates his practice in the areas of business law and litigation, business bankruptcy and creditor/debtor rights, and education law.

In addition to private practice, he also serves as a mediator for the U.S. District Court, Western District of New York ADR Program. He is an active member of the Bar Association of Erie County, serving as a director since 2006, a member and past chair of the Commercial and Bankruptcy Law Committee, a member of the Corporate Law Committee and as a tutor in the Lawyers for Learning program. He is also a member of the New York State and American Bar Associations.

ROBERT J. FELDMAN

SCOTT M. SCHWARTZ

Scott M. Schwartz is presently special counsel to the firm Lipitz Green Scime Cambria LLP and has been practicing law for more than 30 years. A graduate of the University of Akron with BA in History, Schwartz graduated from its Law School in 1974, where he was a member of Law Review. Schwartz has been an active member of the Bar Association since his admission in 1975. He was elected to the board of directors in 1998 and served a three-year term, working collectively to set Bar Association policy and guide the Association. He most recently completed a three-year term chairing the Judiciary Committee, upon which he had previously served as a member for many years. The Judiciary Committee issues ratings of all attorneys and judges seeking elective office. Schwartz had previously served on the Negligence Committee and Human Rights Committee. Through his service on the board and these committees, he has a strong grasp on the mission of the Bar Association in servicing the practicing lawyers of WNY and serving the community.

Schwartz was a partner in the two-person firm of Freed & Schwartz for 25 years and thus has an understanding of practicing in a small firm environment with all of the practical issues that can arise. Now, being special counsel to a much larger firm, he appreciates the challenges faced by the larger firm and attorneys who work within that setting. During his association with both offices, Schwartz has practiced extensively as a personal injury attorney, with Freed & Schwartz, his practice also included family law, real estate, and wills and estates. His varied background in both employment experience as well as practice gives him a balanced perspective that would work to the benefit of the bar president.

Schwartz sees the mission of Bar Association president as that of spokesperson for its membership and he seeks to affirmatively advance a positive image of lawyers and emphasize the value of the legal profession to the community. This commitment to presenting a positive image of lawyers has always been needed, but now appears to be more pressing than ever. He states that any attorney picking a jury will likely hear juror criticism, whether stemming from the McDonald’s hot coffee case, lawyer advertising, or incomplete understanding of publicized verdicts. As lawyers, it seems that the profession is on the public image defensive and we need to be committed to reverse this trend.

A former vice president and member of the board of directors of Jewish Federation Housing, a partially subsidized housing facility for the elderly, he was also a member of the Buffalo Committee for the State of Israel Bonds, and in years gone by, a little league baseball and youth soccer coach.

Schwartz is a member of the New York State Bar Association, New York State Trial Lawyers Association and Erie County Trial Lawyers Association.

He and his wife, Sharon, a substitute teacher in a primary school in the Amherst Central School District, have two sons, Ben and Jonathan. Ben is in graduate school and Jonathan is employed in graphic design, both in Chicago.

VICE PRESIDENT

Scott M. Schwartz

2009 CANDIDATES

DEPUTY TREASURER

VINCENT J. MOORE

Vincent J. Moore believes that service to the legal profession is a noble calling. Many serve with visibility and flair and others serve quietly beneath the radar screen. Regardless of style, the important element is dedicated involvement in a process whose continuing goal is the delivery of first rate legal services for the betterment of the community. As such, it is his privilege and honor to seek office within the Bar Association.

Moore has been a long time member of the Bar Association of Erie County and has served for many years on its Real Estate Committee and upon several of its sub-committees, including acting as chair of the Pride and Practice Subcommittee. Over the last several years, he has been actively involved with a joint effort of the Real Property Committee and Unlawful Practice of Law Committee in its consumer protection work aimed at eliminating abuses by non-attorneys in the unauthorized practice of real estate law. Previously, Moore served the Bar Association by testifying before the United States House of Representatives on the abuses of local real estate practices during hearings conducted regarding revisions to the Real Estate Settlement Protection Act (RESPA). He has also been a member of the New York State Bar Association, participating in its Title and Transfer Committee and has been an active member of the American Bar Association. Vince has lectured in manyCLE programs and seminars for both the Bar Association of Erie County and the New York State Bar.

DEPUTY TREASURER

DAVID C. MINEO

David C. Mineo earned bachelor degrees in Political Science and International Relations from Canisius College in 1983. While at Canisius, he interned with the New York State Legislature and studied abroad at the Loyola University Rome Center. He graduated from the John Marshall Law School after having spent his final year as a visiting student at the University at Buffalo School of Law. He was admitted to the Bar in 1988.

After graduation, Mineo joined Traveler’s Insurance as a technical specialist and directed their Alternative Dispute Resolution program. In 1995, he was appointed claims counsel for Tico Title Insurance Company. He managed a

DIRECTOR

KEVIN P. WICKA

Kevin P. Wicka is a partner at Offermann, Cassano, Greco, Slisz & Adams, LLP, which he joined in 1998. He is a litigator practicing in the areas of employment law and personal injury. Wicka is the immediate past chair of the BAEC’s Labor Law Committee, a position he held from 2006 - 2008. He has litigated numerous matters and counseled clients in cases involving claims of discrimination because of race, sex, religion, national origin, age and disabili- ty. Wicka has lectured for the Erie Institute of Law
KEVIN P. WICKA (Cont'd)

Committees. He has also served as a judge for the high school mock trial program run by the Bar Association of Erie County. Wicka has also donated his time to the community by being a member of the Big Tree Elementary Building Level Team Committee, as well as coaching youth hockey and soccer.

Wicka is a graduate of Albany Law School of Union University, where he was a member of the Moot Court Board, the Order of the Barristers and a Senior Prize Trials Competition Champion. He did his undergraduate studies at the University at Buffalo, graduating in 1993. He is admitted to the New York State Bar, the Second Circuit, United States Court of Appeals, the United States District Court for the Western District of New York, and the United States District Court for the Northern District of New York.

He resides in Hamburg, New York, with his wife, Karen, who is an attorney who teaches at Genesee Community College. They have two children, Carly and Kyle.

DIRECTOR

STEVEN G. WISEMAN

Wiseman has been an active member of the BAEC, including as a member of the Practice and Procedure Committee, the Family Court Committee, and the Matrimonial and Family Law Committee, of which he is a past chair. He has also been on the Alternative Dispute Resolution Committee and has served as a judge for the annual high school mock court competition. Wiseman has served as a volunteer for the Erie County Bar Foundation’s annual fundraising drive and has participated as a presenter in a number of BAEC and New York State Bar Association Continuing Legal Education programs. He is a member of Siegel, Kelleher & Kahn’s Volunteer Lawyers Project and has himself handled a number of cases at the request of VLP. Together with the other members of his firm’s family law section, Wiseman is a recipient of a New York State Bar Association award for pro bono service. He has served as an officer and board member of Temple Sharey Zedek and as a director of Deaf Adult Services.

In discussions with colleagues located elsewhere, Wiseman finds they are always impressed by the BAEC’s connected elections, as opposed to their having to solicit volunteers for bar positions, as well as by the range of services the BAEC has to offer its members. He believes the BAEC is a leader in promoting a positive image of attorneys and the legal profession to the public, as well as maintaining a relationship of respect between the bar and the judiciary.

While practicing in Niagara County at Kushner, Kushner & Roscetti, P. C., Wiseman obtained a broad range of current legal services, including real estate, business and corporate transactional and litigation matters, family law, and criminal law. He served as an assistant corporation counsel for the city of Niagara Falls and was an adjunct professor of business law at Niagara University.

Since becoming a member of Siegel, Kelleher & Kahn, LLP, Wiseman has practiced primarily in the area of family law, while also handling business and real property litigation matters. He has appeared before the Appellate Divisions in the Third and Fourth Departments.

Wiseman graduated from SUNY Binghamton in 1973 with a major in English and Comparative Literature. He graduated from the Georgetown University Law Center in Washington, D.C. in 1976 and was admitted to the New York State Bar in 1977.

Wiseman resides in Williamsville with his wife, Ronna, who is a medical laboratory technologist. His son, David, is a golf professional at Westwood Country Club and attending Buffalo State College; David is engaged to Kelly Manthey. Wiseman’s daughter, Rebecca, graduated in 2008 from Michigan State and is a claims specialist for Liberty Mutual in the Chicago area.

KRISTIN LANGDON ARCURI

Arcuri is an active member of both the New York State Bar Association and the Bar Association of Erie County. She presently serves as chair of the BAEC Practice and Procedure Committee. A member of the Family Law section of the New York State Bar Association and of the Matrimonial and Family Law Committee of the BAEC, she has lectured at numerous CLE seminars and conferences.

Arcuri has received specialized training in divorce mediation and collaborative law. A founding member and past president of the Western New York Collaborative Law Professionals Ltd., she offers her clients alternative to litigation to resolve their disputes through mediation or the collaborative process.

A member of the Fourth Department Law Guardian panel, Arcuri serves as an attorney for children by appointment of the court. She was honored to receive the Michael F. Dillon Law Guardian Award in 2005 in recognition of her work on behalf of children.

Arcuri has committed herself to community service, devoting her time through serving as a coach for Mount Mercy Academy’s mock trial team for the past several years, representing clients through the Volunteer Lawyers Program and other various community programs and projects.

Arcuri is a graduate of Capital University School of Law and The University of Charleston. She is admitted to the New York State Bar, United States District Court and United States Bankruptcy Court. She and her husband, Angelo, have two sons, Thomas and Patrick.
BRIDGET MAUREEN O’CONNELL (Cont’d)

Throughout the years, Gates has been active in the Bar Association. She served on the Judiciary Committee for several years. She is a member of the ADR committee and was on the steering committee for the planning and execution of settlement week in Federal Court in 1992. She is also a member of the Bar Foundation for six years and is still active in Bar Foundation fundraising efforts.

Gates has served on the Alliance Board of Roswell Park Cancer Institute for over 10 years and is on the board of the Buffalo Squash Racquets Association. She has two children, Julia and Lauralynn, and resides with her husband, Dan Drury.

LYNN D. GATES graduated from Smith College located in Northampton, Massachusetts with a bachelor of arts degree. She graduated from the University at Buffalo School of Law in 1976. Prior to law school, Gates worked for the ABC-TV affiliate KABC in Los Angeles, writing and producing the news, and later wrote for a business marketing magazine in New York City.

Upon her graduation from law school, Gates joined the law firm of Smith, Murphey & Scheepers, LLP. She became a partner in 1985 and is still practicing with the firm, focusing on arbitration and mediation.

BRIDGET MAUREEN O’CONNELL

Bridget Maureen O’Connell is a graduate of the University of Vermont and a graduate of the Western New York College of Law. She has been a member of the New York State Bar Association and the Western New York Trial Lawyers Association. She has lectured on the topics of social security disability and personal injury law. She is a member of the New York State Bar Association and the Western New York Collaborative Law Professionals, LTD. The first formal collective of collaborative law attorneys in the western New York area and is proud to bring these options to the evolving needs of the profession.

Upon graduation from law school, Dillion joined the law firm of Albrecht Maguire, Heffern & Gregg. There, she has represented people primarily with Richard Sullivan and thereafter joined his firm Sullivan, Benavitt, Oleviero & Trimboli. She has worked with Shaw & Shaw in Hamburg since 1994 and focuses her practice in disability law, civil litigation and appeals and employment law. She is a member of the New York State Bar Association and the Western New York Collaborative Law Professionals, LTD. The first formal collective of collaborative law attorneys in the western New York area and is proud to bring these options to the evolving needs of the profession.

Director

Director

PAUL B. CURTIN is a graduate of the University of Buffalo and an MA in Linguistics from the University of Texas-Austin. He received his law degree from Northwestern University School of Law in 1998.

Upon his graduation, Curtin worked in Estates and Real Property Law. He then joined the housing unit at Neighborhood Legal Services, representing tenants in landlord-tenant disputes as well as victims of predatory lending. In 2002, he moved to the Legal Aid Bureau of Buffalo, where he defended homeowners in Buffalo City Housing Court, as well as those facing tax foreclosure. He worked for two years in the felony appeals unit and is presently an attorney for children in Erie County Family Court.

Curtin has written and given presentations on predatory lending, housing court issues, and foreclosure defense. He gave presentations for the City of Buffalo’s “Save Our Streets” landlord trainings as well as for Neighborhood Housing Services’ homebuyer training sessions. He is involved in the ReEntry program, helping former prisoners re-engage with society after their release. He also took part in a number of projects promoting the transition to democracy in post-communist Europe, most notably in Poland and the Republic of Georgia.

Curtin and his veterinarian spouse, Leslie, live in Buffalo where they dabble in gardening, cat herding, music, and amateur astronomy.
Law Intern Program of Buffalo

Buffalo, New York, is the third poorest city in the United States. Unemployment for adult minority males is more than 50 percent and higher than 40 percent for Caucasian males. There is a lack of job opportunities for bright and capable young adults. Many do not have the opportunity to observe what it is like to work in an office setting.

A Win-Win Situation

You and your firm can benefit while also making a difference in the life of a bright and capable young adult.

The Goal of the Law Intern Program of Buffalo

- To provide opportunities to those who would not otherwise be able to work in a professional office setting and learn about the legal system.
- To provide personal contact and experience for students who will most likely come from low-income families.

The Law Intern Program of Buffalo

- Places teenage high school students, 16-17 years old, who would not otherwise have this opportunity, in internships for 12 hours per week (or more if the intern and firm so choose).
- The internships will run for six weeks, from approximately June 29, 2009 to August 7, 2009, but may be extended at the discretion of the law firms.
- We are asking the firms to pay at least minimum wage.

The Benefits of the Law Intern Program of Buffalo

- The students will learn to work in an office setting and can fill in for the firm’s support staff and/or work on special projects.
- An orientation program will be given by court staff on Tuesday, June 30, 2009, to orient interns on filing papers, motions, and locations of the various judges.

The student interns will come from programs such as the public high school pre-law programs at Bennett High School and McKinley High School.

Please consider hiring an intern this summer. For little cost to your office, you may be able to change a child’s life for the better.

If you can participate this summer, please contact Mara Donley or John P. Fredericks, 910 Main Court Building, 435 Main Street, Buffalo, New York 14202, 854-0700. The name of your intern will be provided by mid-June.

50 YEAR MEMBERS

Ronald D. Anton
John J. Barone
Noel E. Bartlo
Thomas R. Beecher Jr.
Richard A. Boccio
Kenneth L. Cooper
Richard B. Dompkins
James L. Dowsey III
Maryann Saccomando Freedman
William H. Gardner
Richard A. Grimm Jr.
F. Bernard Hamshier
Edwin R. Harder
James W. Kirkpatrick
Stuart G. Lerman
James L. Magavern
Frank R. Nicosta
James J. Rababé
Arthur J. Rumire
Richard G. Schwind
J. Michael Shane

25 YEAR MEMBERS

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William C. Allreuter
Brian D. Baird
Stephen E. Barnes
Ruth E. Baum
Laurie Styka Bloom
Keith N. Bond
Hon. Colleen A. Brown
David F. Butterrim
John J. Carney III
Joe R. Cavan
Sherry Ann Chase
Donald P. Chiari
Karlene L. Cieslik
Lynn A. Clarke
Dennis P. Clary
Howard B. Cohen
Michael J. Colmerauer
Anthony J. Colucci III
David F. Davis
Linda J. De Tine
Julie Ann Dye
Mark P. Della Posta
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Jerry A. Gambino
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Wayne R. Grady
John C. Greennell
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Kathleen A. Hopjacki
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Kathryn A. Jackson
Alice A. Jesseff
Richard S. Juda Jr.
Barbara A. Kavanaugh
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Christopher C. Kerr
Diane M. LaVallee
Robert D. Leary
Thomas E. Liptak
Michael J. Liszewski
David A. LoTempio
Joan E. Maloney
Michael E. Marszalkowski
James R. Mayer
Raymond N. McCabe
Alan P. McCracken
Michael P.J. McGorry
Mark R. McNamara

Congratulations to our Gold and Silver Honorees!

Bar Association of Erie County

25 & 50 YEAR MEMBERS

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Dennis P. Clary
Howard B. Cohen
Michael J. Colmerauer
Anthony J. Colucci III
David F. Davis
Linda J. De Tine
Julie Ann Dye
Mark P. Della Posta
Laura C. Doolittle
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Dennis C. Gaughan
Stephanie S. Gelber
Mary K. Godin
Wayne R. Grady
John C. Greennell
Marc S. Gromis
Janet M. Gunner
John P. Hains
David M. Hehr
Kenneth R. Hiller
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Hon. E. Jeffette Ogden
John A. Pappano
Robert W. Patterson
J. Matthew Plankett
Michael A. Ponterio
Samuel G. Pulveo
Thomas M. Rizzo
Mary (Molly) K. Rouch
Patrick J. Rosch
Edward C. Robinson
Debra C. Rougeux
S. Michael Rua
F. David Rusin
Karen C. Russo-McLaughlin
Lawrence R. Schwach
Blaine A. Schwartz
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Mark R. Walling
Mark W. Warren
Paul R. Warren
Brian R. Welsh
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J. Joseph Wilder
Hon. Gerald J. Whalen
J. Joseph Wilder
Hildegard Neubauer
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Brian R. Welsh
Hon. Gerald J. Whalen
J. Joseph Wilder
Thomas D. Williams
Diane Y. Wray
Leonard D. Zaccagnino
Benjamin M. Zaffranieri Jr.
One Thousand Years of Legal History

continued from page 17

"It was very difficult being a mom of any kind back then," according to Maryann Saccomando Freedman, former president of the Erie County and New York State Bar Associations, fellow trialblogger, and long-time friend.

"A woman couldn't just say, 'I have a sick kid at home. I need an adjournment.' When Grace wanted to buy a house in 1966, she couldn't get a mortgage because there was no man to sign as a responsible person.

Ange did eventually get a mortgage, and one day, the small group of women attorneys was meeting at her home. Her then-toddler, John, played nearby. One of the women asked John if he was going to be a lawyer someday. Having only seen women as lawyers at that point, John replied, "Oh no! I'm not a girl!" John is now a partner with his mother in one of the first mother-son law firms in the city.

Although beset on all fronts by the negative parts of the legal practice, Ange does recall similar stories of narrow-mindedness, including being told that "No real woman would ever go into law.

In typical Ange style, however, she turned this prejudice into an advantage. "Men would assume you wouldn't know what you're doing." Pay the poor unsuspecting opponent. No... don't!" It is no wonder that Ange has earned a reputation as being a fighter. Her colleagues all regard her as tough but fair.

"She knows the law. She's a tenacious advocate. She's not crazy and she doesn't make outrageous demands. And she doesn't give up," Freedman says.

Grace Marie Ange is, however, much more than just a great trial attorney. She is an excellent cook who works beautifully. Nothing delights her more than playing with her eight-year-old granddaughter, Anna. She is currently working on a doll's quilt. She has appeared in numerous Bar Revue shows, unself-consciously joking fun at members of the bench and bar and, of course, herself. "To a person, her friends describe her as non-judgmental.

"She has a wide perspective on life. She accepts people of different lifestyles," Hon. Ann T. Mikoll recalls, drolly adding, "even if she thinks they're stupid."

Family Law is Cleaner than Medicine

The field of law Ange is most known for is, of course, family law. Her sister had wanted her to follow in her footsteps and go to medical school. Ange said no.

"I smelted bird and was yucky," she maintains. Acknowledging that the practice of family law is sometimes fraught with smell and stinky things, she notes that she doesn't have to touch them. Her entry into this specialty was borne more of necessity than of planning.

"Some family law issues came up in Gordon's practice; he was uninterested in that area of law so I handled those cases and the rest is history."

In the mid to late 1970s, Ange tried a custody case against Richard "Dick" Gordon in front of Judge Joseph Mattino. Gordon represented the husband and Ange the wife. It was their first meeting. During the trial, Gordon saw the judge staring at something. Following his gaze, Gordon saw Ange's client holding her hand to her ear. 'Take me for a drink!' she said. "I can't," I told her. My client was standing right next to me. I have to drive my client home."

"Tell your client to take a bus," she said. My client said he would take a bus. Grace and I went over to the Statler and talked all afternoon. By the end of our conversation, we decided to open the first matrimonial partnership in Buffalo."

"It was kind of crazy to do a partnership then. We did it mainly because we were so busy bringing generalists. We wanted a gentle practice," Gordon explains.

Two years later, in 1980, the equitable distribution law passed and it was necessary to change the practice. "We needed a lot of different skills, so we became a nine-person firm to handle all the parts of the practice.

We broke up a lot of marriages, that's for sure," Gordon quips.

Ange liked to "mix it up." She always wanted to be on trial, always asking her partners, a veritable Who's Who of the matrimonial bar, for trials. Their partners included Paul Birzon, Hon. Janice M. Rosa, and Nelson F. Zakia.

"If it was necessary to scare the opponent, I would put Grace on the case. I'd say 'If you won't settle, Grace is going to try the case,'" Gordon recounts. "I put more settlements that way. She'd come back from court a winner even on the toughest cases."

While inspiring fear in the hearts of her opponents, Ange inspired only love and respect from her friends. "She was the most delightful partner anyone could have," Gordon insists.

"She is a great lawyer and an exceptional friend," according to Saccomando Freedman.

"She's a constant friend and real supporter of women in the law. That's how [our friendship] started," Justice Mikoll recalls.
Lawyers for Life Banquet Slated

The public is invited to attend the Western New York Lawyers for Life’s 13th annual Crisis Pregnancy Center Benefit Banquet on Thursday, May 21 at 6:30 P.M. at Salvatore’s Italian Gardens, 6461 Transit Road, jointly sponsored with The Catholic Medical Association and Holy Family Communications (WLOF-FM 101.7). All proceeds will benefit eight volunteer crisis pregnancy centers.

Lawyers for Life president Laurence D. Behr will present a recognition award to the event’s guest speaker, Rev. Patrick Mahoney, a nationally prominent pro-life activist and director of the Christian Defense Coalition. Music will be provided by Impressions of Love, and additional funds will be raised by a raffle of donated items.

The requested minimum donation is $35 per person or $65 per couple. For reservations, call Lawyers for Life vice president Denis Kitchen at 631-5661. To make a tax-deductible donation of money or raffle items, contact Larry Behr at 856-1300.

Assigned Counsel Program Honors Dell & Scinta

By Claudia S. Schultz

The former art deco jazz club known as the Rendezvous Room, on the lower level of the Statler Towers, came alive again recently as the lawyers of the Assigned Counsel Program were honored for the work they do by the program’s administrator and board of directors.

It was a chance to say the “thank yous” that are deserved but all too often overlooked. Both the board president, Vincent E. Doyle III, and the administrator, Robert D. Loniski, spoke of the great respect the legal community has for the attorneys who toil in the trenches every day for their clients. Loniski read a number of letters from grateful clients who had written to express their thanks for the results of that hard work.

Two attorneys in particular were honored for their distinguished service to the program: Joseph Scinta for his work in Family Court, and Paul Dell for his work in the criminal courts. More than anything, though, it was a chance to eat, drink, talk, and simply enjoy one another’s company.

Speaking Out About the Law

The Bar Association wishes to thank the following members of the Speakers Bureau who volunteered their time to help make particular areas of the law more comprehensible to students and other lay people in western New York.

Steven K. Long  Law as a Career  West Seneca East Middle School

John G. Brenon  Law as a Career  Cheektowaga Middle School

Craig R. Bucki  Law as a Career  Lancaster Middle School

Corey J. Hogan  What is the Role of the Medical Assistant?  The New York State Society of Medical Assistants

Kenneth E. Case  Law as a Career/Criminal Justice  Lovejoy Discovery School #43

If you haven’t already done so, why not consider becoming a member of the Speakers Bureau? Take the opportunity to share your valuable insight on the legal topics of your choice. Not only is speaking out about the law a great community service, but it is also an effective practice-building technique. Call Susan Kohlbacher at the Bar Association (852-3637 ext. 21) to sign up today!
Mikoll remembered how, in 1957, during her first run for office, Ange was there to help. Over time, they became close friends and travel companions, taking trips to Poland, Thailand, Australia, and France. “Grace is great at the law but not great at geography,” Mikoll chuckles. She recalls a time in Avignon, France when they had parked their car in town for a day of sight-seeing. When they headed back at night time, Ange insisted that the car was parked in a particular section of town. Mikoll knew it was parked in the opposite direction. Mikoll demanded the car keys, promising to pick Ange up after she’d finished wandering around. Eventually, Ange gave in and followed Mikoll to where Mikoll said the car would be. It was, of course, there.

Ange herself once ran for judicial office. In 1976, she ran for Family Court against Victor Manz. In typical fashion, she brushed it off with a joke. “They had to find someone really stupid to do that,” she concedes.

Of the myriad adjectives that could be used to define Ange, stupid is simply not one of them. Saccomando Freedman recalls appointing Ange to chair a committee on biotechnology while she was president of the New York State Bar Association. Ange’s committee issued three reports that became benchmark position papers on the issue of surrogate parenting.

How has the legal profession changed in the past 50 years? “The most positive change is the change in the population of practicing lawyers. Ever since that time, not only are there more women attorneys, there are also more minorities, as members of the bar and on the bench. The fact that the bench now more closely resembles the population of the community it serves assures a closer likelihood of equal justice for all,” Ange maintains. Asked what the greatest challenge for lawyers is now, she “believes the greatest modern challenge is a tendency for law to become less of a profession and just another entrepreneurial endeavor.”

When asked if she would do it all over again, Ange enthusiastically replies, “Yes, I would still become a lawyer. I have found the practice of law interesting and challenging and the fact that it is constantly evolving keeps the practice from becoming boring. Also, I would do it all over again because lawyers are my favorite kind of people.”

Who could ask for more? [B]
Domestic Violence is NEVER Okay.

Domestic abuse 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. Please call 852-1777 in complete confidence today to be referred to a colleague who can help.

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

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:

- In Memory of Robert B. Fleming on the 10th Anniversary of his passing:
  - Andy & Mary Pat Fleming
  - Bob & Ruth Fleming
- In Memory of Hon. Norman J. Wolf, Jr.:
  - Lauren D. Rachlin
- In Memory of Thomas DiMaria (Father of Bonnie O’Brien):
  - Thomas Santa Lucia
- In Memory of Lillian Pino (Mother of Carmen J. Pino):
  - James N. Carlo
- In Memory of Hon. Vincent E. Doyle:
  - Susan Biller
- In Memory of Andrew J. Szanyi (Father of Kevin Szanyi):
  - Hugh M. Riss, III
  - John E. Ballow
- In Memory of John J. Cotter, Jr.:
  - Lauren D. Rachlin
- In Memory of Jessica Daniels (Mother of Joel L. Daniels):
  - James N. Carlo
- In Memory of Hon. David J. Mahoney:
  - Irving C. Magrath, Jr.
- In Memory of Paul J. Diviak:
  - Bar Association of Erie County
  - Jim & Mary Shea
  - Paul E. Rudnicki
- In Memory of Loretta L. Mosey (Mother of Azza Mosey):
  - Michael J. Fisherty
- In Memory of Mark G. Hirschom:
  - Lauren D. Rachlin
- In Memory of John J. Flynn:
  - Irving C. Magrath, Jr.
- In Memory of Kathryn Pontario (Mother of Michael A. Pontario):
  - Victor C. Silverstein
- In Memory of John & Joan Condon:
  - Susan Biller
- In Memory of Charles F. Van Volkenburg:
  - Lauren D. Rachlin
- In Memory of George J. Navagh (Father of James Navagh):
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  - Coleman Volgenau
  - Diane E. Bosse
  - Donald & Sharon McKenny
  - Frank J. Longo
  - HSBC Real Estate Appraisal Department
  - James J. Navagh
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  - Irving C. Magrath, Jr.
Bench & Bar  continued from page 3

Robert A. Klump has received the Canisius College Adjunct Faculty Teaching Award from the College of Arts and Sciences. An adjunct professor of political science and associate director of the college’s Bacher Pre-Law Center, Klump was among four faculty members who were recently honored for outstanding service. He has taught American government and constitutional law at Canisius since 1984 and also serves as advisor for the college’s chapter of Phi Alpha Delta (PAD), the international pre-law fraternity.

Michael J. Keane has been named special counsel at Cohoct & Gallaher, PC. Amy C. Meyer and Carolyn F. Kirchberger have joined the firm as associate attorneys. Keane has focused his trial practice in general civil litigation, representing both plaintiffs and defendants in personal injury and business litigation. A former Erie County assistant district attorney, he is also experienced in criminal defense matters. Meyer has more than 10 years experience in general business, corporate law and litigation. Her practice will focus on general business, corporate and health law. Kirchberger’s practice focuses on general civil litigation in both state and federal courts, as well as bankruptcy court. She is admitted to practice in New York and Massachusetts.

Timothy W. Hoover of Phillips Lyde LLP was appointed to the Neighborhood Legal Services (NLS) board of directors for a three-year term. NLS is a not-for-profit agency providing free legal services to low-income persons and those with disabilities. Hoover was also appointed by the United States Court of Appeals for the Second Circuit to its pro bono panel for a three-year term. Members of this panel provide pro bono counsel to pro se parties in civil appeals in which briefing and argument by counsel would assist the court in deciding the cases. Hoover focuses his practice on commercial litigation and white collar and federal criminal defense.

Katherine A. Fijal has joined Hurwitz & Fine, PC, as a new member and Kirstin Lowry Sommers is now Of Counsel to the firm. Fijal is a litigation attorney with experience in insurance coverage analysis and insurance coverage litigation. She has joined the firm’s insurance coverage practice group, which serves local, national and international clients. Sommers is part of the commercial real estate development & finance practice group and focuses her practice on sustainable development projects, environmental regulatory matters and environmental business practices. An enrolled Seneca, Sommers also has experience in Native American law.

Michael T. Glascott, a former partner in Lustig & Brown, LLP has joined Goldberg Segalla LLP as a partner in its Buffalo office. Glascott is a member of the firm’s insurance coverage and extra-contractual liability practice group. He concentrates his practice in complex insurance coverage, bad faith and commercial litigation. Glascott is a member of the Federation of Defense and Corporate Counsel, where he serves as vice-chair for the insurance coverage section. He is also a New York state representative and serves on committees for member development and retention.

Michael J. Morton has joined Lipatitz & Poterrie, LLP as an associate. He will focus on asbestos and mesothelioma litigation as well as automobile accidents. Morton received his JD from the University at Buffalo School of Law.

Dan Kohane of Hurwitz & Fine P.C. recently received the Claims Conference Outstanding Presentations Award for 2009 bestowed by the Property Loss Research Bureau. He received the award at the group’s annual conference in Seattle. The PLRB is a not-for-profit, national association dealing with claims information.

Jonathan Schapp and Diane R. Cavall have joined Mattar, D’Agostino & Gottlieb, LLP. Schapp will practice civil litigation, appeals, professional liability, negligence, insurance and commercial law. A litigator with nearly 20 years experience, he is a graduate of the University at Buffalo, where he received his JD from its School of Law. Cavall will practice civil and commercial litigation. She received her JD from the Albany Law School of Union University after earning a BA at the University at Buffalo.

Terrie Benson Murray, an associate at Cohoct & Lombardi, has been elected recording secretary of the Philanthropic Education Organization for the chapter based in Orchard Park for a two-year term. Benson Murray is a founding member of the chapter. She earned her JD from the University at Buffalo Law School and graduated summa cum laude from SUNY at Fredonia.

Robert M. Albert has joined Lewis & Lewis, PC, practicing in the workers’ compensation department in the firm’s Buffalo office. He received his BA from the University of Florida’s Warrington College of Business and his JD from Nova Southeastern University School of Law. Albert is also admitted to practice law in the state of Florida.

Jeffrey Freedman Attorneys at Law recently received the Pro Bono Award for a small- or mid-sized firm for 2006 from the Volunteer Lawyers Project (VLP). The award, which was presented by Robert Elardo, Managing Attorney/CEO of the VLP, was given to the Freedman firm for civil litigation. The firm mainly handled bankruptcy filings for clients who could not afford attorney fees.
Okay, quick: Which one is Susan and which one is Mary? Which one do you call about a CLE audiotape and which one can help you place an ad in the Bulletin or Court Directory? Stop looking so befuddled over there, we told you there was going to be a test. All those who submit correct answers are eligible to receive a Chia pet that bears a remarkable resemblance to Wayne Newton. Enter by midnight tonight and we’ll throw in a set of Amazing Ginzu Knives PLUS an eight-track tape of Nana Mouskouri singing the Pina Colada song.

In Memoriam

“Memory is a way of holding on to the things you love, the things you are, the things you never want to lose.”

~ Kevin Arnold

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.

Aaron Goldfarb
Paul J. Diviak
George J. Naragh
Carmen J. Pino
Toni Delmonte

The Legal Community on a Roll!

AT THE TENTH ANNUAL LAWYERS FOR LEARNING BOWLING TOURNAMENT!

Where: AMF Thruway Lanes, 1550 Walden Avenue, Cheektowaga
When: Thursday, May 7, 2009 / 6:00 registration and warm-up / 6:30 p.m. Tournament bowling
Why: Benefit the Lawyers for Learning program

- Two games of bowling (third game optional)!
- Shoes provided! Balls available!
- Men’s, women’s and mixed teams (five-person teams)
- Prizes! Raffles! Contests!
- Trophies!
- Admission includes pizza, wings, pop and draft beer (6:30 - 8:30 p.m.)
- Team and Individual prizes!
- Prizes for best team outfits/shirts, team names and other dubious distinctions!

Cost: $150 per team of five (We also ask that each team bring a camping item such as a flashlight, water bottle, sleeping bag, duffel bag, blanket, etc. to be used by the School 18 children that Lawyers for Learning will sponsor at YMCA’s Camp Weona summer camp.)

Spectators welcome: Only $20 includes food and bar privileges! First reserved, first served! Reserve early with your payment by FRIDAY APRIL 24, 2009! Questions? Direct them to Jim Eagan at 852-5875.
ERIE INSTITUTE OF LAW

PROVIDING CONTINUING LEGAL EDUCATION FOR YOUR PROFESSIONAL ADVANTAGE

PLEASE NOTE: The Erie Institute of Law is unable to issue partial credit for seminars, except for multiple session programs such as the Tax and Leadership Institutes. If you have questions about whether a program qualifies for partial credit, please call Mary Kohlbacher at 852-8687.

Mail or fax to: Erie Institute of Law • 438 Main Street, Sixth Floor, Buffalo, New York 14202 (716) 852-8687 • Fax (716) 852-7641

<table>
<thead>
<tr>
<th>Date/Time/Location</th>
<th>Topic</th>
<th>CLE Credits</th>
<th>Price</th>
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<tr>
<td>Friday, May 1, 2009 10:00 a.m. - 2:00 p.m.</td>
<td>Balancing Life and Law: Strategies for Managing Stress (Live Seminar)</td>
<td>4.0 credits</td>
<td>$10 members&lt;br&gt;$70 members</td>
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<td>Adelbert Moot CLE Center 438 Main St., Buffalo, NY</td>
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<td>Lunch included!</td>
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<td>Friday, May 8, 2009 8:50 a.m. - 1:00 p.m.</td>
<td>Niagara Falls: Past, Present and Future (Live Seminar)</td>
<td>4.5 credits</td>
<td>$70 members&lt;br&gt;$100 non-members</td>
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<td>Hyatt Regency Buffalo Two Fountain Plaza Buffalo, NY</td>
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<td>Wednesday, May 13, 2009 9:00 a.m. - 1:00 p.m.</td>
<td>Brush Up Your Surrogate’s Practice: A Review of Topics of Relevance (Live Seminar)</td>
<td>4.5 credits</td>
<td>$70 members&lt;br&gt;$100 non-members</td>
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<td>Hyatt Regency Buffalo Two Fountain Plaza Buffalo, NY</td>
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<td>Friday, May 15, 2009 9:00 a.m. - 4:30 p.m. Seminar 4:30 p.m. - 5:30 p.m.: Reception 1410 Flint Road Genesee Country Village and Museum Mumford, NY</td>
<td>Sixth Annual Western New York Bankruptcy Conference (Live Seminar)</td>
<td>7.5 credits</td>
<td>$200 members&lt;br&gt;$240 non-members</td>
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<td>After May 8: $210 members&lt;br&gt;$250 non-members</td>
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<td>Wednesday, May 20, 2009 1:00 p.m. - 2:00 p.m.</td>
<td>Fear Factor: Everyday Ethical Eventualities in Intellectual Property and Beyond (Noonday Lecture)</td>
<td>1.0 credit</td>
<td>$20 members and non-members</td>
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<td>Adelbert Moot CLE Center 438 Main St., Buffalo, NY</td>
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ERIE INSTITUTE OF LAW REGISTRATION FORM

Please register me for the following Erie Institute of Law sponsored events:

1. ____________________________________________
2. ____________________________________________
3. ____________________________________________

Cancellation Policy: If you are unable to attend a seminar for which you have already registered, call Mary Kohlbacher at 852-8687 ext. 15. For a full refund, notice of your cancellation must be received before the date of the program. Registrants who are preregistered and fail to attend will receive course materials in lieu of a refund.

Enclosed is my check in the amount of ____________ Visa MC

Card Number ____________ Exp. Date ____________

Cardholder Signature ____________
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 offers many of our most popular CLE seminars on compact disc, as well as on cassette tape and videotape.

All of our seminars are professionally edited and are accompanied by a full set of written course materials.

Among our most recent selections:

Critical Stages: Golden Opportunities Pretrial Hearings and Jury Selection Techniques for the Criminal Law Practitioner
Product code: 2137
4.5 CLE credits: 5 Ethics, 2 Practice Management/Professional Practice, 2 Skills
Presented on February 6, 2009
Available on Audiotape or CD
This seminar presented by the Criminal Law Committee of the Bar Association of Erie County includes Pretrial Hearing Pleading Requirements, Preparing for and Conducting a Pretrial Hearing, Ethical Considerations – Hearing and Your Duty to Practice and concludes with a panel discussion of Jury Selection Techniques.

Americans in Canada: Cottaging, Traveling or Working
Product code: 2138
4.5 CLE credits: 3 Practice Management/Professional Practice, 1.0 Skills
Presented on February 12, 2009
Available on Audiotape or CD
This seminar, presented by Richard Halinda, provides attendees with an overview of issues for Americans in regards to buying, selling and renting real estate, estate probate matters, estate planning techniques, taxation issues, driving infractions, border crossing rules, business and employment issues in Ontario.

Annual Real Estate Conference
Product Code: 2140
4.5 CLE credits: 0.5 Ethics, 2.5 Practice Management/Professional Practice, 1.5 Skills
Presented on March 14, 2009
Available on Audiotape or CD
It's cold out there – but that's no reason to get into hot water! This year's real estate conference touches on a wide range of issues that present obstacles to the practicing attorney, and our panel offers practical approaches to overcoming many of them. Presenters include attorneys W. Clark Trow, Francis X. Carroll, Peter J. Battaglia, Michael J. Lombardo, Samuel P. Pulver, Nancy W. Sza, and Bruce S. Zethel.

New York Rules of Professional Conduct
Product Code: 2141
3.5 CLE credits: Ethics
Presented on March 20, 2009
Available on Audiotape or CD
Last December, the Chief Judge of the Court of Appeals and the four Presiding Justices of the Appellate Divisions announced a very important change in the ethics rules applicable to New York lawyers. They decided to replace the Code of Professional Responsibility (which was first adopted nearly 40 years ago) with new Rules of Professional Conduct. This change became effective on April 1, 2009. The new rules add many provisions that are not in the existing disciplinary rules; they revise many of the existing rules in material respects; and they use a completely different organizational structure. To help members familiarize themselves with the changes introduced in these new Rules of Professional Conduct, the Professional Ethics Committee of the Bar Association of Erie County presented this timely and informative seminar. Panelists include attorneys Thomas S. Wiswall, David L. Edmunds, former BAEC president Cheryl Smith Fisher, Ralph L. Halpern and Patricia L. Morgan.

The Buddy System
For CLE Audio 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 the audio tape of their choice, paying the listed price; all other members in the viewing group who wish to receive accreditation for viewing the tape will receive a $20 discount. One set of audiotapes will be mailed along with course materials for each participant.

In order to administer 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 $70 and up.

Each seminar is priced as follows (unless otherwise stated):
CD/Audiotape: $70 BAEC members, $110 non-members
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 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, call Mary Kohlbacher at 852-8687.

If you haven’t received your copy of our most recent CLE catalog, please call Mary Kohlbacher at 852-8687.
ALL MEETINGS HELD IN THE BAR CENTER, 438 Main Street, Sixth Floor, unless otherwise noted. The Adelbert Moot CLE Center is also located at 438 Main Street, Sixth Floor.

FRIDAY 6
Committee for the Disabled
12:15 p.m. - Janet L. Bensman, Chair
P&P in Family Court Committee
12:15 p.m. - Part 14, Erie County Family Court
Kristin Langton Sawyer, Chair

MONDAY 11
Unlawful Practice Committee
12:15 p.m. - Harry G. Meyer, Chair

TUESDAY 12
Labor Law Committee
12:15 p.m. - Sean P. Beiter, Chair
Real Property Committee
12:15 p.m. - Adelbert Moot CLE Center
W. Clark Trow, Chair

WEDNESDAY 13
Health Care Law Committee
12:15 p.m. - Lisa McDougall, Chair

THURSDAY 14
Criminal Law Committee
12:15 p.m. - Rodney O. Persson, Chair

FRIDAY 15
Young Lawyers Committee
12:15 p.m. - Melissa Ann Foti, Chair and Pietra G. Lettieri, Co-Chair
Lawyers with Depression Support Group
12:30 p.m. - Bar Center, Brennan Room
Daniel T. Lukasik, Chair

MONDAY 18
Banking Law Committee
12:15 p.m. - Bar Center, Brennan Room
Timothy P. Johnson, Chair
Cooperation with Accounting Profession & Taxation Committee
12:15 p.m. - Raymond P. Rebert and Gary M. Kanaley, Co-Chairs
Workers’ Compensation Committee
12:15 p.m. - Workers’ Comp Board, Statler Towers
Philip Scaffidi, Chair

TUESDAY 19
Board of Directors
8:00 a.m. - Giles P. Manias, President
Corporation Law Committee
12:15 p.m. - Ronald J. Battaglia, Jr., Chair
Federal Practice Committee
12:15 p.m. - Adelbert Moot CLE Center
Anna Marie Richmond, Chair

WEDNESDAY 20
Erie County Bar Foundation
12:00 a.m. - T. Alan Brown, President
Northtowns Suburban Lawyers’ Luncheon
12:00 p.m. - 200 Maple Restaurant
For more information, please call Sharon Furler at 852-2687
Appellate Practice Committee
12:15 p.m. - Bar Center, Brennan Room
Maryann Hochfield, Chair
Intellectual Property, Computer & Entertainment Law Committee
12:15 p.m. - Ellen Swartz Simon, Chair

THURSDAY 21
Environmental Law Committee
12:15 p.m. - R. Hugh Stephens, Chair
Practice & Procedure in Justice Courts Committee
12:15 p.m. - Bar Center, Brennan Room
Jeffery F. Vorkel, Chair

MONDAY 25
Office Closed for Memorial Day Holiday

TUESDAY 26
Alternative Dispute Resolution Committee
12:15 p.m. - Patricia H. Potts, Chair
Elder Law Committee
12:15 p.m. - Adelbert Moot CLE Center
Charles Brinkman, Chair

THURSDAY 28
Human Rights Committee
12:15 p.m. - Alan J. Bowes, Chair
Municipal & School Law Committee
12:15 p.m. - Bar Center, Brennan Room
Herbert J. Glose, Chair

FRIDAY 29
Lawyers with Depression Support Group
12:30 p.m. - Daniel T Lukasik, Chair