President’s Ball to be Held at Twentieth Century Club

Hon. Eugene F. Pigott, Jr., Senior Associate Judge, New York State Court of Appeals, will deliver the keynote address at the BAEC’s annual Law Day Luncheon. The luncheon will be held on Thursday, April 21 at the Hyatt Regency Buffalo beginning at 12:00 noon. Tickets are $35 per person and can be ordered at www.eriebar.org or by calling 852-8667. There will be no assigned seating this year.

The 2016 national Law Day theme is “Miranda: More than Words.” This year marks the 50th anniversary of Miranda v. Arizona, perhaps the nation’s best-known Supreme Court case. Law Day 2016 events will explore the procedural protections afforded by the U.S. Constitution, how these rights are safeguarded by the courts, and why the preservation of these principles is essential to our liberty.

The 2016 President’s Ball, in honor of President Kevin W. Spitler and the Association’s past presidents, will be held on Saturday, April 16 at the Twentieth Century Club from 7:00 until 10:00 p.m. The black-tie optional gala will include cocktails, hors d’oeuvres, food stations and dancing to the sounds of Total Eclipse. Located at 595 Delaware Avenue in downtown Buffalo, the Twentieth Century Club was designed by E.B. Green and serves as an elegant reminder of the city’s outstanding architectural history. Opened in 1894, the classic revival clubhouse played an important role during the Pan American Exposition that was held in Buffalo in 1901.

Plan now to enjoy an elegant evening of camaraderie and good cheer with your friends from the bar! Special thanks to the following sponsors for their support of this event:

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About Hon. Eugene F. Pigott
A graduate of LeMoyne College, Judge Pigott served on active duty in the United States Army from 1968 to 1970. While in the service, he was stationed in the Republic of Vietnam, serving as a Vietnamese interpreter. He graduated from SUNY Buffalo School of Law in 1973 and was admitted to the New York State Bar in 1974. Judge Pigott practiced law in Buffalo with the firm of Offermann, Fallon, Makoney & Adair from 1974 to 1982. In 1982, he was appointed Erie County Attorney and served in that position until 1986. In 1986, he became chief trial counsel for the firm of Offermann, Cassano, Pigott & Greco.

In 1997, he was appointed to the New York State Supreme Court by Governor George E. Pataki and thereafter was elected to a full 14-year term. In 1998, he was designated to the Appellate Division, Fourth Department and was appointed Presiding Justice in 2000. In 2006, he was nominated by Governor Pataki to the Court of Appeals and his nomination was confirmed by the New York State Senate shortly thereafter.

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Tickets are $125 per person; contact Susan Kohlbacher at 852-8687 or skohlbacher@eriebar.org to make reservations.

2016 Law Day Luncheon

Plan now to attend the 2016 Law Day Luncheon – see lead story for details.

Non-Profits: The Need to Evolve

Medico-Legal Ethics

Lawyers for Learning Bowling Tournament
President's Letter continued from page 1

• the change in expectations for pro bono work
• the formation of the Bar Association’s Aid to Indigent Prisoners program
• the requirement for Continuing Legal Education
• the creation of the Volunteer Lawyers Project

What can we predict now that will be true 129 years from now?

• Could your client be charged with assaulting a robot?
• Will you be closing real estate deals on the moon?

It’s just fun to think about. Although it is difficult to predict what the practice of law will be like 129 years from now, I do believe that the purpose of the Bar Association is to be meeting the legal needs of the residents of Erie County and western New York. So as we evolve, our fundamental reason for being remains the same. Citizens who find themselves in need of legal assistance, in any and all legal matters, will rely on the good services of the women and men who populate the Bar Association of Erie County. I like the idea that we lawyers are the placeholders for those who came before us, and the standard bearers of the future of Buffalo.

Back to the present. I always like to give shout-outs to other attorneys who give of their time to act as advisors to these high school teams. The outcome is that these high school students come that this information becomes so widely disseminated throughout the high schools and the households. While some of these students may become lawyers, the majority will enter other professional fields, with an understanding of the responsibilities that help the public come to better understand what we do. As you are all aware, the Bar Association sponsors the annual Moot Court competition amongst local high schools for those who came before us, and the standard bearers of the future of Buffalo.

Although it will have already taken place by the time you read this letter, as I write it, I am looking forward to the reception that we will co-host with Justice Gerald J. Whalen, presiding judge of the Appellate Division for the Fourth Judicial Department. I am also looking forward to the Low Day Luncheon, to take place later this month, and our annual dinner, to be held in June, as well as the future of Buffalo.

CORRECTION: An article on page 25 of the March issue incorrectly listed the cost of registering for the Lawyers for Learning Bowling Tournament. The correct price is $175 per team. Read page 20.

Other attorneys give their time to act as advisors to these teams. The outcome is that these high school students come to understand what the law plays in their lives. I am certain that these students discuss with their peers and their families what they learned from their involvement. It’s great that this information becomes so widely disseminated throughout the high schools and the households. While some of these students may become lawyers, the majority will enter other professional fields, with an understanding of the law and an appreciation for the rule of law. They will be our jurors in our future cases, and good times they will be.

Speaking of the most court competition, I want to thank the Winters New York Trial Lawyers Association for graciously agreeing to help fund the new additional cost associated with using space at the UB law school to hold this competition.

I recently attended and was able to serve as MC at the reception for newly-admitted attorneys. I would like to thank all the judges who attended, and I would like to extend the RACE’s gratitude to our sponsors. It was the first time I have attended a bar-sponsored event at the Buffalo Marriott Harborcenter. Every time I am in that area, I am excited for the future of Buffalo.

It would be you to see your name here? See page 4 to find out how to become a contributing member.

CONTRIBUTING MEMBERS


April 2016 | www.eriebar.org
Elizabeth Bergen has been named chair of the board of directors at Journey’s End Refugee Services. Bergen is special counsel to Gibson, McAdell & Crosby, LLP and has been a member of the Journey’s End Board since 2014. Anne Doebler has been named vice chair. With more than 15 years of experience in immigration law, Doebler has been a member of the board since 2009. She is credited with an instrumental role in the creation and expansion of Journey’s End legal department, and continues to mentor its staff.

Jennifer J. Phillips has joined the insurance coverage practice team at Hurwitz & Fine, P.C. She formerly served as a law clerk in both the Buffalo and New York City offices, focusing on complex litigation matters. She is a magna cum laude graduate of both Canisius College and the University of Illinois College of Law.

Steven E. Peiper has been named co-chair of the insurance coverage department at Hurwitz & Fine, P.C. Head of the firm’s first-party team, he writes a column on recent developments in first-party coverage disputes for the firm’s e-newsletter. A graduate of Shippanburg University, Peiper received his JD from SUNY at Buffalo Law School.

Nicole M. Komin has joined Cohen & Lombardo, P.C. as an associate attorney. She holds a MA and BA degree from the University at Buffalo and a JD from the University of California, Hastings. Komin was awarded “Best Brief” in the David Roitt Moot Court Competition. She will focus on matrimonial and family law and insurance defense litigation.

Vincent G. LoTempio, a registered patent attorney and partner at Kloss, Signore & LoTempio, appeared along with his client, inventor Wayne Fromm, on an episode entitled “Silfie Stick Man.” Fromm created the world’s first selfie stick, known as the Quik Pod.

The need may be based on medical problems, job loss, emotional difficulties, family crises or many other situations. No person or problem is categorically excluded.
Annual Awards to Be Presented at Luncheon

Each year, as legal communities across the country pay tribute to the justice system, the Bar Association of Erie County honors those who have distinguished themselves in service to the law.

Liberty Bell Award

Established in 1964, the Liberty Bell Award is the highest award bestowed at the Law Day program. The purpose of this award is to recognize community service that has strengthened the American system of freedom under the law and to accord public recognition to those who, among other criteria, have encouraged a greater respect for the law and the courts; fostered a better understanding and appreciation of the rule of law; and stimulated a deeper sense of individual responsibility so that citizens recognize their duties as well as their rights.

The recipient of this year’s Liberty Bell Award is Bethany A. Solek of the Erie County District Attorney’s Office. She will be recognized for eight years of dedicated service as coordinator of the Bar Association of Erie County’s Stop DWI Student Assembly Program. Solek has organized teams of presenters and also presented the program herself at countless school assemblies.

Her “leadership and exceptional service have provided thousands of students with essential information about their rights and responsibilities,” according to nominating materials. “The information presented at these assemblies can have positive, life-altering consequences for young people in our community,” and Solek will be cited for her efforts to empower them and protect their rights.

Justice Award

The Justice Award is bestowed only when circumstances warrant and not necessarily on an annual basis. The purpose of this award is to recognize individuals and programs that have substantially contributed to the improvement of our system of justice.

This year’s award will be presented to Kimberly L. Beart, Deputy Commissioner of the Buffalo Police Department. She will be recognized for her 28-year career with the Police Department, during which she facilitated greater community engagement and communication with the Buffalo Police and served as a “significant force behind the advancement of community policing and problem-solving strategies in racially diverse neighborhoods.”

Beart is the first African-American woman to serve as Deputy Police Commissioner and the first female Chief of the “E” District, which encompasses several densely populated city neighborhoods.

Special Service Award

The Special Service Award is presented each year to a non-lawyer connected with a governmental agency or the court system who has provided outstanding service to the legal community. Christine C. Biggie, Volunteer Attorney Coordinator at the Volunteer Lawyers Project, Inc., will receive this year’s award.

Biggie was selected for her “uncanny ability to efficiently and correctly match up volunteer attorneys to clients in desperate need of legal services and assist with any problems they encounter.” She will also be recognized for her work in planning and coordinating CLE programs; running VLP’s annual attorney recognition award ceremony; and volunteer-
Non-Profits: The Need to Evolve

After 30 years of law practice covering a variety of business and non-profit issues, I find myself currently spending about half of my time on intellectual property issues and the other half on exempt organizations. This interesting mix has led me to ponder the state of non-profits in our region and beyond. I will try to connect the two areas of law in this month’s column.

A number of my non-profit clients were formed in the late 1800s, and many were formed before 1900, when the New York Non-Profit Corporation Law took effect. How are these non-profits faring in the 21st century?

We know that our society is trending away from involvement in organized religion, unions, social clubs, fraternal orders, and political parties. The typical 21-year-old today is not likely to become a member of the local lodge, probably does not attend weekly religious services, and may or may not vote. On the other hand, he or she is probably connected 24/7 to the interactive digital content, the organization will say, I predict that if the group does not find ways to connect to the younger generation, whether through hands-on printed brochures. Membership is decreasing.

Meanwhile, similar organizations in western New York – organized through Meetup.com – are gaining new members daily. The Meetup website makes it easy for persons interested in a particular hobby or mission to meet with like-minded persons. There are Meetup groups for persons interested in hiking, kayaking, wine tasting, writing, and many other interests, with hundreds of active members in our region.

I urged the board to consider paying the $14.99 per month to host a larger scale Meetup group, a cost that would be offset if the group managed to attract even one duo-paying member per month, but the suggestion was met with resistance. Sad to say, I predict that if the group does not find ways to join the online world soon, with timely and interactive digital content, the organization will not be around much longer.

Exempt organizations, like law firms, must adapt and evolve or they will go the way of the Dodo bird. Digging in one’s heels and insisting on last century’s norms will not cut it. Organizations must be willing to step outside their comfort zone and find new ways to operate and recruit. It is tragic to watch laudable and likeable non-profits sputter and flame out because they cling to the 20th century. I fear that – if the organization does not attend weekly religious services, and may or may not vote. On the other hand, he or she is probably connected 24/7 to the

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

BULLETIN
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PAGE 5
“Liberty Under Law” Film Screening Set for April 13

This screening was made possible by The Robert H. Jackson Center in Jamestown, NY, with support from Phillips Lytle LLP.
I finished my last piece in transit to Vienna, on route to the European Bar Leaders conference, held each year to coincide with the Vienna ball season. Amid the splendor of the meetings and dinners held in the wonderful palaces dotted about the city, some real business was being discussed. The refugee crisis is, for many here, a tragic scenario played out each day in the media coverage. For many of our near European neighbors, it is very real, on their doorsteps and in the offices. Some of the humanitarian issues lead on from legal points as to legitimacy of travel but getting legal advice to people arriving on boats is not always seen as a priority. There are stories of arbitrary treatment by local officials, overwhelmed by sheer numbers. To give some scale, I understand that on one Greek island some 500,000 people have arrived while the indigenous population is little over 10,000 and exacerbated by difficult local economic conditions.

Bar associations are offering assistance but that must of course, be dealt with in a regulatory context, as advice may be specific to that jurisdiction and not cross European borders. On a different note, most delegates wanted my opinion on the possibility or probability of a British exit from the European Union. Of course, if I knew the answer I would be laying bets but, as with the Presidential race, the unexpected might happen. Politics (frighteningly) is sometimes less about the real issues and more about instinct and feeling.

The culture and mindset of mainland Europe, especially the southern countries, is quite different to the United Kingdom, perhaps generating a natural antipathy in the minds of some. In what looks to be a close race, that may tip the balance. But things can change, as is oft repeated here, in a quotation from Harold Wilson, Prime Minister in the 1970s: “A week is a long time in politics.”

This gets more interesting still for us as the Lord Chancellor and Minister of Justice, Michael Gove, long-term and close personal friend of David Cameron, has declared for the ‘Leave’ campaign, (so is opposing official party policy). If he resigns or is removed, our relationship with the government will be changed and the delicate moves around the future of the profession which we have sought to nurture could be upset, a real left-field situation.

The big event of the conference was to attend the Juristen Ball at the Hofburg palace. It is the legal social event of the year attended by 3,000 party goers with a strict dress code of white tie for men and floor length ball gowns for women. We were treated to a display of cotillion dancing by the young Viennese debutants – quite a sight and not one matched by my feeble efforts.

The recent unhappy history of the Austrian nation was brought home to me on discovering that the Ministry of Justice in Vienna was housed in this splendid palace, used as headquarters by the occupying Russian army as late as 1955. The country has come such a long way in a relatively short time.

My year in office makes by, trips to Istanbul, Beijing, Shanghai, St Petersburg and possibly even Kazakstan are still to come, as well as a quick hop over the pond to NYC for the ABA Section on International Law meeting from April 9-13. If you are there, please come and say hi!

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Bar Association of Erie County
Professional Ethics Opinion

The BAEC’s Professional Ethics Committee is available to respond to your ethics questions and issues facing the legal community. This Committee, chaired by Terence B. Newcomb, cannot, however, consider complaints about unethical practices, or any grievance matters. They are available to entertain inquiries about whether or not prospective activities of counsel fall within accepted guidelines. For further information, please contact Susan Kohlbacher at 812-8657 or skohlbacher@eriebar.org.

Opinion 11-03

Topic: Personal Guarantee of Client’s Water Charges at Real Estate Closing

Digest: Seller’s Attorney Guarantee of Water Charges, with Escrow of Twice the Amount of the Current Water Bill, Would be De Minimis And Raise No Ethical Conflict Under Rule 1.7(a)(2)

Rule: 1.7(a)(2)

Question: Does an ethical conflict arise when the attorney for the seller of certain real property guarantees “payment of all water charges for the property through the date of closing and agree to hold a sum equal to the greater of: (i) two times the paid amount shown on the most recently receipted bill for the water account or (ii) $250 in escrow for payment of all unpaid water charges attributable to the property through closing?”

Opinion: This inquiry seeks an opinion as to the propriety of the above-stated guarantee, which the Bar Association’s Real Property Committee seeks to include among form agreements for the sale of real estate.

Pursuant to Rule 1.7(a)(2) of the New York Rules of Professional Conduct, a seller’s attorney’s guarantee of payment for water charges accrued for the seller’s property through the date of closing would present an ethical conflict only if such a guarantee entails the representation of differing interests, or if “there is a significant risk that the lawyer’s professional judgment on behalf of a client will be adversely affected by the lawyer’s own financial, business, property or other personal interests.”

Neither circumstance arises from the putative guarantee. It does not cause the seller’s attorney to represent the interests of the purchaser. It also does not present, in general, a “significant risk” of an adverse affect on the seller’s attorney’s professional judgment, because the risk of payment of water charges would be “de minimis” in light of the escrow issue.

Because of the escrow agreement involved in the proposed guarantee, there is not “a significant risk that the lawyer’s professional judgment on behalf of a client will be adversely affected by the lawyer’s own financial, business, property or other personal interests” under Rule 1.7(a)(2).

The BAEC recently sponsored a Ski Day for members at the HolMont Ski Area in Ellicottville. Attendees enjoyed a full day of skiing, followed by an après-ski party with drinks and hors d’oeuvres. Photos courtesy of Laurie Styka Bloom
Applying the Child Support Cap to Arrears that Accrued During Incarceration

Individuals reentering society after incarceration are faced with numerous obstacles and the Legal Aid Bureau of Buffalo is working with various groups to address the civil legal issues these returning citizens face. We are especially honored to be working with Heis. Hugh B. Scott on the WDNY Federal Reentry Court team in Buffalo. The most common problems our reentry clients face are: unemployment discrimination; issues with licensing from state agencies such as the Department of Health and the Education Department; re-obtaining a driver license; and child support arrears.

The New York Family Court Act provides that parents with children under the age of 21 are charged with supporting their children “if possessed of sufficient means or able to earn such means.” Section 413(1)(g) states: “Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the custodial parent or child who is the subject of the order or custodial parent and the income of the custodial parent is less than or equal to the poverty income guidelines amount for a single person as reported by the non-custodial parent or child who is the subject of the order, or the prospective child support obligation.”

For parents who fall below the poverty line after a court order for child support has been entered but do not immediately seek a modification of their child support order, the courts have applied the cap to the child support arrears that accrued after the parent fell below the poverty line. Applying the cap after the fact does not violate §451's prohibition on reducing arrears because by operation of § 413(1)(g), the arrears have not accrued. Where some arrears accrued before the parent was below the poverty line, the courts will preserve those arrears and cap only the portion that accrued after the parent fell below the poverty line.

The issue is whether non-custodial parents returning home from prison are entitled to a cap on arrears that accrued during their incarceration. Incarcerated parents are below the federal poverty level and are not “possessed of sufficient means or able to earn such means” necessary to pay child support. While the answer may seem obvious, incarcerated persons have historically faced special obstacles with regard to child support modifications, regardless of whether their incarceration was related to their failure to pay child support. The Act provides that “the court may modify an order of child support, including an order incorporating without merging an agreement or stipulation of the parties, upon a showing of a substantial change in circumstances.”

However, for decades, support magistrates have followed the rule created by Matter of Krupko v. Krupko, which held that the Family Court had not abused its discretion in “concluding that it would be unfair for an individual who had freely chosen to commit a crime to be relieved from the accrual of a support obligation.” As a result, thousands of parents were burdened with innumerable child support debts upon their release from prison. In 2010, the state legislature attempted to add the language that “incarceration shall not be a bar to finding a substantial change in circumstances provided such incarceration is not the result of non-payment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment.” For reasons that have yet to be examined, the courts have not since been inundated with petitions by incarcerated parents to modify child support orders.

What we have found is that many parents leaving prison receive letters from CSE informing them they owe tens of thousands of dollars in child support arrears. These amounts not only cause their bank accounts to be frozen and driver licenses to be suspended, but also mean that if the parent is able to find work after leaving prison, up to 65 percent of his or her paycheck can be garnished to cover current and past due child support. The Federal Department of Health and Human Services has implemented states to address this issue because these enormous sums discourage formal employment and hurt family relationships.

Parents calling the toll-free number listed in the statement from CSE are told that nothing can be done about their arrears and that the only available relief is to petition the court for a modification of the prospective child support obligation.

These parents, who have finished serving their prison sentences, find themselves sentenced to years of trying to live on 35 percent of the after-tax income from what are often low-wage jobs. Even an individual earning a gross income of $50,000 per year would find themselves trying to live on less than $300 per week. In reality, our clients are more likely to be working 30 hours a week earning minimum wage, which puts them below the Self Support Reserve established by New York state. Most of our clients will be making minimum wage when they start working, yet very few of our clients will allow us to pursue a modification of the prospective child support obligations. They want to pay child support going forward and only seek help with the arrears so they have money left in their paycheck when they start working.

In practice, it appears to be uncommon for magistrates to lower the support figures below the consent of the other party, because of the Act’s prohibition against reducing child support arrears. Further, non-custodial parents facing a substantial change in circumstances that puts them below the poverty line are likely seeking timely child support modifications.

As such, we believe it is unusual for support magistrates to be asked to reconsider the calculations of the arrears. Indeed, there is little case law regarding applying the child support cap to a larger balance, but much of what exists has in fact come from the Fourth Department.

Many of our clients entered prison at a time when modifications were not available for incarcerated parents. Hypothetically, a person entering prison tomorrow could petition the court today for a downward modification of the child support to $25 and have prison in five or 10 years with a $1500 arrears balance. A person leaving prison today is just as entitled to that $500 cap. If the cap was not applied automatically, the remedy is to ask the court to apply the cap.

1 N.Y. Fam. Ct. Act § 413(1)(a) (McKinney).
2 See N.Y. Fam. Ct. Act § 413(1)(d) (McKinney).
3 See e.g., Matter of Chomik v. Sypniak, 81 A.D.3d 1259 (4th Dep’t 2011).
5 W. v. N.Y. Fam. Ct. Act § 413(1)(g) (McKinney).
6 N.Y. Fam. Ct. Act § 413(1)(a) (McKinney).
8 N.Y. Fam. Ct. Act § 413(1)(g) (McKinney).
9 Federal Department of Health and Human Services, Child Support Fact Sheet Series Number 4.
11 See footnote 10.
12 Plus any arrears that existed before incarceration.
Federal Basis Reporting Requirements

On March 4, shortly before the deadline for this column, the Internal Revenue Service published the Temporary Regulations for Section 6035 and the Proposed Regulations for Section 1014(f) with regard to the new basis reporting required of fiduciaries filing form 706 after July 31, 2015. The documents total over 50 pages. We will try to analyze them for our next column. Be aware, however, that any fiduciary who was required to file a form 706 after July 31, 2015 is supposed to issue the new form 8971 30 days after filing the form 706, or March 31, 2016, whichever is later. Initial review of the Proposed Regulations has identified a number of problems, and the AICPA has written to the IRS requesting an extension of the March 31 deadline to May 31.


This is an action by a nursing home to recover the costs of care from the patient’s “responsible party” when the patient was denied Medicaid coverage. The defendant’s mother was admitted to the plaintiff’s nursing home, and defendant executed a “private pay agreement” on her mother’s behalf. The agreement named the defendant as “responsible party,” and (1) obligated her to pay for her mother’s care from the mother’s resources, (2) not transfer any of the mother’s assets in a manner that would result in Medicaid ineligibility, and (3) pay for the mother’s care if Medicaid coverage were denied “solely as the result of [defendant’s] actions.”

The action was brought by the nursing home because Medicaid was denied as the result of transfers made by defendant from the mother’s revocable trust, of which defendant was a co-trustee. The court below denied motions for summary judgment by both parties. On appeal, the Fourth Department affirmed. While the Appellate Division concluded that plaintiff established its prima facie entitlement to a determination that defendant breached the private pay agreement by demonstrating defendant’s control over her mother’s resources, defendant’s agreement to pay plaintiff from those resources, and the existence of approximately $54,000 in the revocable trust on the date the mother was admitted, which could have been, but was not, used to pay the nursing home. The record established that defendant “accepted personal responsibility to utilize her access to her mother’s funds to pay for the mother’s care and then breached that agreement by failing to apply available assets to pay nursing home bills.”

However, summary judgment was denied because there remained some triable issues of fact relating to the amount of damages, and whether a payment of $133,000 made by defendant to plaintiff, allegedly “gratuitously” compensated the nursing home for any damages flowing from the defendant’s breach of the contract.


This case involves notice requirements for revocation of Medicaid, and the interpretation of the state Medicaid manual. But it is particularly interesting reading with respect to its extensive discussion of administrative regulations and
administrative interpretations of statutes, and the “deference” which a court must give to those regulations and interpretations. This could have application in other areas of administrative law, such as the Internal Revenue Service. In the decision the court noted, “An agency’s interpretation of its own statute and regulation must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation.” In this case, that interpretation was used against the administrative agency.

The pertinent regulation (32 C.F.R. §431.223 provides that the state “may deny or dismiss a request for a hearing if…[t]he [claimant] fails to appear at a scheduled hearing without good cause.” Plaintiff read this regulation as requiring the state to ascertain whether the claimant lacked good cause for failing to appear, before immediately acting. Plaintiff contended that the regulatory history and agency interpretations (through the state Medicaid manual) of the regulation support this reading. The court determined that due process might not require such an additional finding and notice, but that the relevant statute (42 USC 1396a(a)(3)) went beyond bare minimum due process requirements. This case involved a decision by DSS to revoke Medicaid after the claimant has defaulted in appearing at a fair hearing with respect to an appeal of such revocation. The plaintiff on behalf of himself and a class similarly situated, was seeking an injunction directing DSS to issue post-default notice, giving the class members an opportunity to show that their default was as the result of good cause. The court found that the manual required that a fair hearing request may be considered abandoned when neither the claimant nor his representative appears at a scheduled hearing, provided that DSS mails the claimant an inquiry as to whether he wishes any further action on his request for a hearing, and after 10 days no reply is received. The court then granted a preliminary injunction requiring such a 10-day notice be mailed to all class members whose Medicaid assistance was revoked for failure to appear at their scheduled fair hearing. (B) April 2016 | www.eriebar.org
Become a fan of your favorite Bar Association. “Like” us on Facebook, follow us on Twitter and join our group on LinkedIn.
The Safe Harbor is No Longer Safe

Context is incredibly important in all things. As I have been preparing for a conversation about information security and privacy at a major international event, I decided that by means of introduction, I should come up with a (totally unscientific) list of people who have changed the contemporary world. Other than leaving off mass murderers and war criminals, I was open to just about anyone, and that’s what I got. Although the list is long, some obvious choices were, in no particular order, Bill and Melinda Gates, Gordon and Eleanor Brown, Margaret Sanger and Indira Gandhi. Among the less traditional choices were David Bowie, Billie Jean King, Magic Johnson, Robert Oppenheimer, the Pope and Elvis. If nothing else, it’s been a very interesting exercise.

The point of gathering this information has been to put in context the person who has had a dramatic effect on the world with respect to information security and privacy. Like it or not, Edward Snowden has changed the world. Whether you agree with his actions or not, he has — and will continue to have — a significant impact on all of us, both personally and professionally, particularly where technology enables entities to reach more deeply into our personal lives than has ever before been considered, let alone possible.

In the first part of this series, I presented information that was focused more intensely on the domestic side of this issue. That is, how American entities need to consider the data that they have in order to fully manage it. In this part, we’ll look at least a bit more globally, with particular attention to the relationship between the US and the European Union (EU) with respect to information security. The decision to the relationship between the US and the European Union, the decisions of which enable US companies to self-certify that their own processing of personal data that they have in order to fully manage it, is located. It matters!

The Case

Austrian Maximilian Schrems brought suit in an Irish court following the disclosures made by Edward Snowden. Specifically, Schrems claimed that the US did not offer sufficient protection from US surveillance for data that was transferred from an EU location (in this case, Ireland) to the US. Specifically, Mr. Schrems claimed that the information that he provided to Facebook was stored at Facebook’s Irish subsidiary, and some — or all — of his data was then transferred to other Facebook servers in the US for processing. No one disputes these facts.

In 2000, the EU adopted its “Safe Harbor” decision, which enabled US companies to self-certify that their own internal company practices ensured a sufficient level of protection for data coming from the EU to the US, under the terms of the EU Data Protection Directive. This EU’s safe harbor was effective until last October, when the EU Advocate-General determined that the protections provided by it were insufficient. Further, in his opinion, the court determined in a potential conflict of laws case that — while an EU court made this decision — individual court members (i.e., EU member countries) have power, independent of the EU, to not only investigate claims about the level of data protection between respective EU countries and the US, but to suspend data transfers if, on an individual and not collective basis, each determines that the US doesn’t provide a sufficient level of protection of personal information.

Key Take-aways

Many EU-based companies utilize US-based cloud services. As such, although an entity may assume that its company keeps all personal data outside of US jurisdiction, it is now time to verify and then take steps to secure that information, as necessary.

These same entities can no longer rely on safe harbor self-certification. Entities need to independently verify that company transfers of personal data from the EU to the United States meet the level of data privacy protection considered adequate by the EU Data Protection Directive. The European Commission has recommended that companies confirm that the US provides sufficient protection for data transferred from the EU to the United States. The US, the Schrems decision (and the rules that will follow) becomes crucially important. As such, it’s important, particularly for EU entities to know where the cloud they are using is located. It matters!

EU-approved standard contractual clauses, the EU-approved Binding Corporate Rules, or the EU Data Protection Directive. The European Commission has recommended that companies consider using the EU-approved standard contractual clauses, the EU-approved Binding Corporate Rules, or the enumerated derogations under which data can be transferred. There are two sets of standard contractual clauses for transfers from data controllers to data controllers established outside the EU/EEA and one set for the transfer to processors established outside the EU/EEA. Loss of safe harbor protection could be a deal breaker for entities that process and store data coming from the
Lawyer Depression... and What You Can Do About It

By Daniel T. Lukasik

Are you a lawyer suffering from depression? Do you know a colleague that struggles with it? If so, you’re not alone.

Researchers at John Hopkins University found statistically significant elevations of major depressive disorder in only three of 104 occupations surveyed. When adjusted for sociodemographic factors, lawyers topped the list, suffering from depression at a rate of 3.6 times higher than employed persons generally.

Tragically, lawyers rank fourth in proportion of suicides by profession.

A new landmark study conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs published last month reveals that 21 percent of licensed, employed attorneys currently qualify as problem drinkers, 28 percent struggle with some level of depression and 19 percent demonstrate symptoms of anxiety.

Forty-six percent reported concerns with depression at some point in their legal careers.

When put in perspective, that means that of the nearly 4,000 lawyers in Erie County, over 1,000 are struggling from depression right now.

It can be mild, moderate or severe in intensity. According to the National Institute of Mental Health, symptoms include:

- Difficulty concentrating, remembering details, and making decisions;
- Fatigue and decreased energy;
- Feelings of guilt, worthlessness, and/or helplessness;
- Insomnia, early morning wakefulness, or excessive sleeping;
- Irritability, restlessness;
- Loss of interest in activities or hobbies that were once pleasurable;
- Loss of pleasure in life;
- Thoughts of death, recurrent thoughts of suicide;
- Suicide attempts.

Lawyers for the Arts

The fifth anniversary Lawyers for the Arts show sold out the Tralf and doubled the amount of money raised last year. A grand total of $37,000 will be distributed among various arts groups through Give for Greatness, as administered by Arts Services Initiative.

The sold-out standing room only crowd was “dancing and clapping to ten bands jamming on two stages to music from rock to klezmer,” according to organizers.

“All the musicians are lawyers and judges from western New York and the event was a singular success,” according to Buffalo attorney Sandra Cassidy, who chaired the event.

“We stepped it up quite a notch this year,” she said. “The music was fantastic, we changed venue to the Tralf for more room after we sold out last year - then we sold out again and doubled the money raised!”

The annual event, which also sells fine art created by lawyers, is held the last week in February and is an extension of Artvoice’s Give for Greatness campaign. It is run through a committee composed of Sandra Cassidy, Ken Africano; Lenni Johnson; Joanna Dickinson; Amber Poulin; Les Groshorn, Keri Collosco, Jim Petersen; Dennis Escoffor; Mike Scinta; David Block; Ann Rutland; Joe O’Donnell; Lucy Dull and Connie Companaro of ASI.

Presenting sponsors this year were Key Bank and Hodgson Russ LLP. Other sponsors included: Artvoice; Dana & D’Arts LLP; Harper Seccott & Emerly LLP; Lipsticks Green Scime Cambria; Vacco Farme; Avalon Document Services; Joe Mattulano; Phillips Lytle LLP and Brown Chain.
**Lawyer Depression...and What You Can Do About It**

continued from page 17

- Overeating or appetite loss;
- Persistent sad, anxious or "empty" feelings; and
- Thoughts of suicide or suicide attempts.

Whether or not you’re clinically depressed can only be determined by a mental health professional. To be so deemed, you must have at least five of the above symptoms for at least two weeks.

But many people never get to the point of receiving such an evaluation or treatment because they or others see their symptoms as a “shy,” “sadness,” or even burnout. Perhaps a vacation will cure the blues, some say. Others take the tough love approach and tell the depressed lawyer to “snap out of it.” But none of this works.

That’s because depression isn’t sadness. Richard O’Connor, Ph.D., author of the best-selling book, “Undoing Depression,” writes:

The opposite of depression is not happiness, but vitality – the ability to experience a full range of emotions, including happiness, excitement, sadness, and grief. Depression is not an emotion itself; it’s the loss of feelings; a big heavy blanket that insulates you from the world yet hurts at the same time. It’s not sadness or grief, it’s all illness.

**What Causes Depression?**

Depression has many causes. A genetic history of depression in one’s family, hormone imbalances, and biological differences, among others. Certain personality traits, such as low self-esteem, a pessimistic outlook, chronic stress at work or home, childhood trauma, drug or alcohol abuse and other risk factors increase the likelihood of developing or triggering depression.

**Why Do Lawyers Experience Depression at Higher Rates?**

According to Patrick Krill:

(Th)e answer is less straightforward, but the rampant, multidimensional stress of the profession is certainly a factor. And not surprisingly, there are also some personality traits common among lawyers – self-reliance, ambition, perfectionism and competitiveness – that aren’t always consistent with healthy emotional skills. The type of emotional elasticity necessary to endure the unrelenting pressures and unexpected disappointments that a career in the law can bring.

According to Martin Seligman, Ph.D., it has to do with negative thinking:

One factor is a pessimistic outlook defined not in the colloquial sense (seeing the glass as half empty) but rather as the pessimistic explanatory style. These pessimists tend to attribute the causes of negative events as stable and global factors (“It’s going to last forever, and it’s going to undermine everything.”) The pessimist views bad events as pervasive, permanent, and uncontrollable, while the optimist sees them as local, temporary and changeable. Pessimism is maladaptive in most endeavors.

But there is one glaring exception: Pessimists do better at law. Perfectionism is seen as a plus among lawyers, because seeing trouble as pervasive and permanent is a component of what the law profession deems prudent. A prudent perspective enables a good lawyer to see every conceivable snare and catastrophe that might occur in any transaction. The ability to anticipate the whole range of problems and betrayals that non-lawyers are blind to is highly adaptive for the practicing lawyer who can, by so doing, help his clients defend against these far-fetched eventualities. If you don’t have this prudence to begin with, law school will seek to teach it to you.

Unfortunately, though, a trait that makes you good at your profession does not always make you a happy human being.

Tyger Latham, Ph.D., a psychologist in Washington, D.C., who treats many lawyers with depression, writes:

...I’ve come to recognize some common characteristics amongst these in the profession. Most, from my experience, tend to be Type A’s (i.e., highly ambitious and over-achieving individuals). They also have a tendency toward perfectionism, not just in their professional pursuits but in nearly every aspect of their lives. While this characteristic is not unique to the legal profession – nor is it necessarily a bad thing – when rigidly applied, it can be problematic. The propensity of many law students and attorneys to be perfectionistic can sometimes impede their ability to be flexible and accommodating, qualities that are important in so many non-legal domains.

**What Can You – or Someone You Care About – Do?**

Join a support group that was created by lawyers in Erie County almost ten years. The group meets once a week on Friday from 12:30 to 1:30 at the Bar Association. The meetings are strictly confidential. It’s a place for lawyers to share their struggles with depression and gain the encouragement and support they need to recover and remain well.

A support group is not group therapy. This group is run by the members. We’re all practicing lawyers so we know all too well about the stress that our demanding profession puts on all of us. While law has many satisfying and wonderful qualities, most of us experience the wear and tear on our psyche from perpetual stress that our adversarial profession dishes out.

If you would like to learn more about the Bar Association’s support group for lawyers with depression in Erie County, contact me at 913-6309 or daniel@lukasik.com. For further information on lawyer depression, visit www.lawyer-withdepression.com.

**Editor’s Note:** A seminar on Stress, Anxiety and Depression in the Legal Profession will be held on April 7. See page 22 for details.

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4 National Institute of Mental Health.
5 Richard O’Connor, Ph.D., Undoing Depression (What Therapy Can’t Teach You and Medicine Can’t Giver You).
6 Patrick Krill, JD, Why Are Lawyers Prone to Suicide? CNN, 1295/14.
8 Tyger Latham, Psy.D., The Depressed Lawyer, Psychology Today, 5/2/11.
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 never the fault of the victim. If you or a loved one are suffering, or her behavior. In fact, violence is a deliberate choice made by the abuser in order to take control of a spouse or partner.

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

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

CONDITIONAL CLASS CERTIFICATION

In Augustyn v. LaSalle Home Center, LLC, No. 14-CV-00488-JJM (Feb. 6, 2016), plaintiff brought an action against her employer seeking recovery on behalf of herself and others similarly situated, alleging that she was misclassified as a salaried employee for the purpose of avoiding the overtime provisions of the Fair Labor Standards Act. Plaintiff later filed a motion for conditional certification of a nationwide class, which the court denied. Before the motion was filed, however, more than 50 individuals from several states filed complaints to “opt-in” to the action. Defendants argued that the court’s denial of conditional certification required dismissal of the opt-in plaintiffs’ claims without prejudice, but the court rejected that argument, holding that the sole consequence of denying conditional certification was that notice would not be sent to potential class members.

It did not, however, automatically require dismissal of those plaintiffs who opted-in without receiving such notice. Nonetheless, the court held that the opt-in plaintiffs could only join the action if they were similarly situated to the individual plaintiff who brought the suit, and that it was plaintiff’s burden to make that showing. Although the plaintiff “will face an uphill battle in demonstrating that the opt-in plaintiffs are similarly situated to her,” the court granted her the opportunity to make that showing.

STAY OF PROCEEDINGS

In Zink v. First Niagara Bank, N.A., No. 13-CV-01076-BJA-JJM (Mar. 1, 2016), a putative class action in which plaintiff seeks to recover statutory damages for defendant’s alleged “systematic failure” to timely file mortgage satisfactions, plaintiff filed a second “uncontested” motion requesting preliminary approval of the parties’ settlement following the denial of his initial uncontested motion. In support of the second uncontested motion, defendant argued that the settlement should be approved now because the Supreme Court is currently considering a case concerning Article III standing. The court held that plaintiff met the plaintiff’s burden on the motion. Turning to whether plaintiff had satisfied the plaintiff’s burden on the motion, the court determined that it could not ignore the issue because it has an obligation to assure itself that Article III jurisdiction exists. Ultimately, the court questioned whether the belated filing of plaintiff’s satisfaction of mortgage amounts to a “palpable deprivation” sufficient for Article III standing and concluded that a stay of limited duration was appropriate.

FAIR DEBT COLLECTION PRACTICES

In Andino v. Mercentific Adjustment Bureau, LLC, No. 14-CV-JPJ-FTC (Feb. 18, 2016), plaintiff brought an action to recover actual and statutory damages under the Fair Debt Collection Practices Act (“FDCPA”) based on defendant’s alleged conduct in attempting to collect a debt incurred by plaintiff’s mother. Upon completion of discovery, defendant moved for summary judgment, contending that plaintiff failed to come forward with evidence rebutting its records showing that it called plaintiff’s telephone number on only two occasions over a 10-day period, a volume and pattern that defendant claimed was insufficient as a matter of law to constitute a violation of the FDCPA.

Observing that "courts have not hesitated to grant defendant’s summary judgment where the evidence demonstrates an intent to contact debtors rather than an intent to annoy, abuse, or harass them," the court found that defendant met its burden on the motion. The court held that plaintiff met its burden on the motion. The court determined that it could not ignore the issue because it has an obligation to assure itself that Article III jurisdiction exists. Ultimately, the court questioned whether the belated filing of plaintiff’s satisfaction of mortgage amounts to a “palpable deprivation” sufficient for Article III standing and concluded that a stay of limited duration was appropriate.

AUTOMATIC STAY

In FTC v. Unified Global Group, LLC, No. 15-CV-423WFJ (Feb. 9, 2016), the FTC brought suit under the Federal Trade Commission Act to enforce the Fair Debt Collection Practices Act. The court denied defendant’s motion for summary judgment where the evidence demonstrates an intent to contact debtors rather than an intent to annoy, abuse, or harass them." The court found that defendant met its burden on the motion. The court held that plaintiff met its burden on the motion. The court determined that it could not ignore the issue because it has an obligation to assure itself that Article III jurisdiction exists. Ultimately, the court questioned whether the belated filing of plaintiff’s satisfaction of mortgage amounts to a “palpable deprivation” sufficient for Article III standing and concluded that a stay of limited duration was appropriate.

continued on page 20
Case Notes (continued from page 10)

Collection Practices Act, and sought to enjoin defendants’ allegedly deceptive, abusive and unfair debt collection prac-
tices, which the FTC claimed had caused consumers to pay millions of dollars to the defendants, resulting in unjust enrichment. After defendants’ assets were frozen and a receiver was appointed for the corporate defendants, one of the individual defendants filed for bankruptcy. Under Chapter 11 of the Bankruptcy Code and sought to stay the FTC law-
suit pursuant to the automatic stay provision in 11 U.S.C. §362(a). The court declined to stay the lawsuit under the “governmental units” or “police powers” exception to the automatic stay, which applies when a governmental unit is using a debtor to prevent or stop an violation of anti-fraud, consumer protection, or similar police or regulatory laws, such as the FTC was doing in this case.

INTERPLEADER AND ATTORNEYS’ FEES

In Metropolitan Life Insurance Co. v. Delabio, et al., No. 15-CV-641EW (Feb. 1, 2016), plaintiff filed a complaint in interpleader seeking to deposit the proceeds of a life insurance policy with the court and discharge plaintiff from fur-
ther liability pending a determination of the policy’s proper beneficiaries. After granting plaintiff’s motion seeking that relief, the court denied plaintiff’s request for an award of attorneys’ fees to be paid from the life insurance proceeds. The court acknowledged that it possessed equitable discre-
 tion to award costs and fees to a disinterested stakeholder who deposits a disputed res into the court, but noted that, in matters involving the payment of insurance proceeds, an award of attorneys’ fees to an insurer is appropriate only when the incurred expense exceeds the ordinary cost of doing business, which the court found plaintiff had failed to estab-
lish in this case. The court also was troubled that the requested fees and costs totaled nearly seven percent of the amount of life insurance proceeds at stake.

DISCOVERY

In Beck v. Look, Inc., et al. v. Vitamin Health, Inc., No. 15-CV-649WJP (Feb. 9, 2016), a patent infringement action, the court previously issued a discovery order directing plaintiff to supplement a response to an interrogatory prior to depositions being taken, but defendant deposited three wit-
nesses before the supplemental response was served, and then moved to preclude plaintiff’s infringement claim. The court agreed that plaintiff had violated the discovery order, but refused to preclude the infringement claim as a sanction, finding that preclusion would be disproportionate to the rel-
ative harm sustained by defendant as a result of plaintiff’s discovery violation. Rather, the court ordered that, at plain-
tiff’s expense, defendant could re-depose the witnesses with regard to those facts disclosed in plaintiff’s supplemental interrogatory response.

PLEADING

In United States ex rel. Takahashi v. The Hartford Financial Services Group, Inc., et al., No. 15-CV-6158 (Jan. 20, 2016), plaintiff commenced a qui tam action on behalf of the United States, who elected not to intervene, pursuant to the False Claims Act (“FCA”), seeking to recover damages from defendants for their alleged failure to reimburse the govern-
ment for payments made to Medicare beneficiaries. Defendants moved to dismiss under Rule 12(b)(6) and Rule 9(b). After first granting plaintiff’s request for leave to drop a “knowingly concealed” allegation and proceed solely with a claim that defendants “knowingly and improperly avoided or decreased an obligation to pay money to the gov-
ernment” under Section 3729(a)(1)(G) of the FCA, the court granted the motion to dismiss, finding that plaintiff failed to allege facts sufficient to allow each defendant to understand the basis of plaintiff’s claim against it.

The court found that the amended complaint grouped related corporations together without differentiating as to the involvement of each, in violation of Rule 8(a), and that a plaintiff was not permitted to rely on discovery to determine whether or not, and against whom, a cause of action might lie. Moreover, the court found that the amended complaint failed to identify any particular payment obligation which defendants had avoided, knowingly or otherwise. The court proceeded to dismiss the amended complaint with prejudice, and without leave to replead, noting that plaintiff had made only a bare-bones request for leave to replead without explaining how any new pleading would cure the deficiencies identified by the court.

The court also concluded that plaintiff lacked a good faith basis for certain allegations in the complaint, a factor the court could consider when deciding whether to allow plain-
tiff to replead. Finally, having concluded the amended com-
plaint failed to satisfy the more relaxed pleading standard under Rule 8(a), the court concluded it did not need to decide whether plaintiff’s “knowing and improper avoid-
ance” claim under the TCA was subject to the heightened pleading standard under Rule 9(b).

BECOME A SPONSOR!

Visit www.lawyersforlearning.org and click on “Upcoming Events.”
Samuel A. Alba has joined the law firm of Friedman & Ranzenhofer, PC as an associate attorney. A graduate of Buffalo State College, he received his JD from SUNY at Buffalo Law School. He is currently the president of the Williamsville Central School District PTSA District Council. He concentrates his practice in civil and estate litigation and criminal defense.

Michael N. Vranjes has joined Simpson & Simpson, PLLC as a registered patent attorney, where he handles all phases of intellectual property law. A graduate of SUNY Buffalo Law School, Vranjes focuses his practice on prosecution and protection of technology in various technical disciplines. He was formerly an associate at International Business Machines Corporation and has experience in all aspects of patent law.

The Holocaust-Inspired Roots of Medical Informed Consent and Current Medico-Legal Ethics: Concerns for Physicians and Attorneys

A program will be held on Thursday, May 5 from 5:30 until 8:00 pm at Temple Beth Zion on Delaware Avenue to explore the corruption of medical ethics in Nazi Germany, the foundations for modern-day understandings of informed consent in the Nuremberg trials, and current issues of informed consent and patients’ rights, including euthanasia, and the Human Genome Project.

This program will be sponsored by the Holocaust Resource Center of Buffalo, the Robert H. Jackson Center, the Medical Societies of Erie and Chautauqua Counties, the Bar Association of Erie County Human Rights Committee, and the Women’s Bar Association of the State of New York, WNY Chapter (WBA-NY-WNY). Participants will earn 2.0 CLE credits in Ethics.

Speakers include Raul Artal, MD, of the St. Louis University School of Medicine and Jennifer R. Scharf, president of WBA-NY-WNY.

Dr. Artal was born in 1943 in Beresad, a concentration camp in a part of Ukraine called Transnistria administered by Romania under Nazi control. His history inspired him to become an obstetrician who specializes in high-risk pregnancies. Now the retired chair of chair of the department of obstetrics, gynecology and women’s health at St. Louis University, Dr. Artal was named a “champion” for the Center for Medicine after the Holocaust in Houston, focusing on the atrocities committed by physicians during World War II, and educating physicians, nurses and scientists to never allow history to repeat itself.

Jennifer R. Scharf is associate general counsel at Roswell Park Cancer Institute. She previously served as a litigation attorney at Duke, Holzman, Photiadis & Gresens, LLP and Connors & Vilardo, LLP, where she focused her practice on representation of physicians and other professionals, personal injury litigation, commercial litigation, employment law, as well as other civil litigation.

Expenses for this program generously underwritten by Dr. Mont Stern and family.

Missing Records

The Bar Association frequently receives calls from clients, court staff and member attorneys who are attempting to locate the records of deceased attorneys. If you have any information concerning the files of a deceased member, please contact Darren Canham at 852-8687 or dcanham@eriebar.org so that we can update our records. Your assistance is greatly appreciated!
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.

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<th>Date/Time/Location</th>
<th>Topic</th>
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<tr>
<td><strong>Friday, April 1, 2016</strong></td>
<td>2016 Cross Border Dispute Resolution</td>
<td>7.5 credits</td>
<td>Registration: $100 NYSBA/BAEC members $150 non-members</td>
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<td>8:30 a.m. – 4:35 p.m.</td>
<td>Conference: Lessons &amp; Insight for Effective Use and Application of DR</td>
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<td>Buffalo Marriott Harborcenter</td>
<td>(Live Seminar co-sponsored by the NYSBA and the BAEC)</td>
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<td>99 Main Street</td>
<td>To register, call Beth Gould at 516-487-5674</td>
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<td><strong>Thursday, April 7, 2016</strong></td>
<td>Stress, Anxiety &amp; Depression in the Legal Profession</td>
<td>5.0 credits</td>
<td>Registration: $65 members $95 non-members</td>
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<td>9:00 a.m. – 12:00 p.m.</td>
<td>What’s the Problem &amp; What Can We Do about It?</td>
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<td>Employment Law Update</td>
<td>5.0 credits</td>
<td>Registration: $125</td>
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<td>10:00 a.m. – 4:30 p.m.</td>
<td>(Live Seminar presented by the Erie Institute of Law WRASSY and the Labor Law Committee of the BAEC)</td>
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<td>Bar Association of Erie County</td>
<td>If you register 5 or more attorneys from your firm, you will receive a 10% discount. All 5 registrations must be received at the same time. Call 852-8687 for details.</td>
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<td><strong>Thursday, April 14, 2016</strong></td>
<td>The Basics of Litigating a Motor Vehicle Accident Case</td>
<td>1.0 credit</td>
<td>Registration: $50 members $80 non-members</td>
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<td><strong>Friday, April 15, 2016</strong></td>
<td>Risk Management 101</td>
<td>4.0 credits</td>
<td>Registration: $80 members $110 non-members</td>
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<td>9:00 a.m. – 1:00 p.m.</td>
<td>(Live Seminar presented by the Negligence Committee)</td>
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<td><strong>Wednesday, April 27, 2016</strong></td>
<td>DWI Practical Tips and Traps: Specific topic TBA</td>
<td>1.0 credit</td>
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<td><strong>Thursday, April 28, 2016</strong></td>
<td>A Refresher Course on Intellectual Property for all Attorneys</td>
<td>4.0 credits</td>
<td>Registration: $80 members $110 non-members</td>
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<td><strong>Friday, April 29, 2016</strong></td>
<td>Life After Law School: Day One</td>
<td>5.5 credits</td>
<td>Registration: $95 Day One $80 Day Two $65 Day Three</td>
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<td>(Live Seminar presented by the Admission to the Bar Committee)</td>
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<td>Bar Association of Erie County</td>
<td>Day Two scheduled for June TBA and Day 3 scheduled for October TBA</td>
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<td>Thank you to our sponsors: Counsel Press, Erie County Bar Foundation, Paramount Settlement Planning LLC, and Precision Resolution, LLC.</td>
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<td>Buffalo, NY</td>
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<tr>
<td><strong>Saturday, April 30, 2016</strong></td>
<td>Working Smarter, Not Harder</td>
<td>TBA credits</td>
<td>Registration: TBA</td>
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<tr>
<td>9:00 a.m. – 1:00 p.m.</td>
<td>(Live Seminar presented by the Professional Continuity Committee)</td>
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<td>Bar Association of Erie County</td>
<td>Watch our website for more details</td>
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<tr>
<td>438 Main Street</td>
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<td>Buffalo, NY</td>
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**CHECK OUR CALENDAR FOR UPDATES AND ADDED PROGRAMMING AT WWW.ERIEBAR.ORG**

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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. ______________________________________________________

Name:____________________________________________________________________________________________
Firm:_____________________________________________________________________________________________
Street Address:__________________________________________________________________________________
City: _______________________________________________State: ______________________Zip:_____________
Phone: _____________________________________________Email:______________________________________
Enclosed is my check in the amount $__________
Check enclosed Charge my: [ ] Visa [ ] MasterCard
Card Number:__________________________________________  Exp. Date:______________________  Cardholder Signature:___________________________________________

Cancellation Policy: If you are unable to attend a seminar for which you have already registered, The CLE department at 852-8687. For a full refund, notice of your cancellation must be received before the date of the program. Registrants who are pre-registered and fail to attend will receive course materials in lieu of a refund. Mail or Fax to: Erie Institute of Law, 438 Main Street, Sixth Floor, Buffalo, New York 14202, (716) 852-8687, Fax (716) 852-7641.
Part 36 Receivership Training

Product Code 2255

3.0 CLE credits: 0.5 Ethics, 2.0 Areas of Professional Practice, 0.5 Skills
Presented on December 16, 2015
Available on CD, DVD or ON DEMAND at www.eriebar.org
CD or DVD: $75 BAEC Members, $125 Non-Members
ON DEMAND: $85 Member (use PROMO CODE: member), $135 Non-Member
For Part 36 training only (no CLE credit): $35

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

This seminar is important for individuals interested in receiving training to serve as court-appointed receivers. Attorneys working in a practice area in which the appointment of a receiver may be a necessary or helpful provisional remedy – such as mortgage foreclosures, creditors’ enforcement actions and corporate dissolutions – will also find this useful.

Client Document Preservation and Destruction

Product Code 2222

3.0 CLE credits: 2.0 Ethics, 1.0 Law Practice Management
Presented on October 30, 2013
Available on CD and DVD
$75 BAEC Members, $125 Non-Members

This seminar addresses what lawyers must do to preserve and protect client files and documents after a matter has been closed; and also presents helpful strategies for managing legal records. Among the questions discussed are:

- How must I preserve a file? For how long? What can be destroyed? What must be preserved and safeguarded?
- Where may files be stored? How may they be destroyed, what must be preserved and safeguarded in an IOLA account?

Surrogate’s Court Guardian Ad Litem Training

Product Code 2225

4.0 CLE credits: 0.5 Ethics, 2.5 Areas of Professional Practice, 1.0 Skills
Presented on May 31, 2014
Available on CD and DVD
$90 BAEC Members, $150 Non-Members
For Part 36 only (no CLE credit): $60

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

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

New Maintenance Guidelines

Product Code 2230

2.0 CLE credits: Areas of Professional Practice
Presented on November 19, 2015
Available on CD or ON DEMAND at www.eriebar.org
CD: $50 BAEC Members, $100 Non-Members
ON DEMAND: $40 Member (use PROMO CODE: member), $110 Non-member

On September 25, 2015, Andrew Cuomo signed into law the Maintenance Guidelines Legislation, which makes major amendments to New York’s Domestic Relations Law and the Family Court Act in enacting new guidelines for both temporary and post-divorce maintenance and spousal support.

Organized by the Matrimonial and Family Law Committee, this two-hour presentation provides a timely review of the legislation’s features as they relate to matrimonial cases.

Labor and Employment Law Symposium

Product Code 2224

5.0 CLE credits: 1.0 Ethics, 3.0 Areas of Professional Practice, 1.0 Skills
Presented on May 9, 2014
Available on CD
$100 BAEC Members, $160 Non-Members

The Labor Law Committee developed this program to help practitioners understand changes in employment laws and regulations. Topics covered include:

- Ethical pitfalls
- Revisions to Section 195 of the NYS Labor Law
- The National Labor Relations Act in the Non-Union Workplace
- An Update on the PPA
- Burden of Proof in Title VII, ADA, and ADA Cases
- Effective Preparation and Representation of Clients in Employment Discrimination
- Mediation; and more.

Don’t Say That! The Ethical Rules of Persuasion

Product Code 2254

1.0 CLE credit: Ethics • CD
Presented on December 15, 2015
Speaker: Leonard D. Zaccaigno
Shaw & Shaw, P.C.
Learn how to create an extraordinary presentation through the art of persuasion.

3 Seminar Package

S62.75 Members - $99.25 Non-Members
Contact Celeste Walsh 852-8687 ext. 118 or cwalsh@eriebar.org

For a complete listing of taped CLE programs, visit www.eriebar.org and click on the Continuing Legal Education link or call 852-8687.

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

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

For a complete listing of taped CLE programs, visit www.eriebar.org and click on the Continuing Legal Education link or call 852-8687.
FRIDAY 1
Commercial & Bankruptcy Law Committee
12:15 p.m. – James C. Thoman, Chair
Committee to Assist Lawyers with Depression
12:30 p.m. – Daniel T. Lukasik, Chair

TUESDAY 12
Matrimonial & Family Law Committee
12:15 p.m. – 25 Delaware Ave, 5th Floor
Michelle Schwach Miecznikowski & Elizabeth DiPirro, Co-Chairs
Criminal Law Committee
12:15 p.m. – Old Surrogate Court Courthouse
1st Floor of 92 Franklin Street.
Joseph J. Terranova, Chair
Real Property Law Committee
12:15 p.m. – Adelbert Moot CLE Center
Keri D. Callocchia, Chair
Labor Law Committee
12:15 p.m. – Josephine A. Greco, Chair

WEDNESDAY 6
Human Rights Committee
12:15 p.m. – Sharon Nosenchuck, Chair

THURSDAY 7
Negligence Committee
12:15 p.m. – Adelbert Moot CLE Center
Dennis J. Bischof, Chair

FRIDAY 8
Committee for the Disabled
12:15 p.m. – Jeffrey E. Marion, Chair

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

TUESDAY 19
Federal Practice Committee
12:15 p.m. – Timothy J. Graber, Chair

WEDNESDAY 20
Erie County Bar Foundation
8:00 a.m. – Garry M. Graber, President
Environmental Law Committee
12:15 p.m. – Jeffery C. Stravino, Chair
Appellate Practice Committee
12:15 p.m. – Timothy P. Murphy, Chair

THURSDAY 21
Committee on Veterans’ & Service-Members’ Legal Issues
12:15 p.m. – David J. State & Jeffery E. Marion, Co-Chairs

FRIDAY 22
Committee to Assist Lawyers with Depression
12:30 p.m. – Daniel T. Lukasik, Chair

MONDAY 25
Alternative Dispute Resolution Committee
12:15 p.m. – Bridget M. O’Connell, Chair

TUESDAY 26
Elder Law Committee
12:15 p.m. – Edward C. Robinson, Chair

WEDNESDAY 27
Regulatory Compliance Committee
5:30 p.m. – SUNY Buffalo Law School
Brad J. Davidzik and Brian C. Kearns, Co-Chairs

THURSDAY 28
P&P in Surrogate’s Court Committee
12:15 p.m. – 438 Main Street, 12th Floor
Sharon L. Wick, Chair
P&P in Family Court Committee
12:15 p.m. – Family Court Building
Tina M. Hawthorne & Bernadette Hoppe, Co-Chairs

FRIDAY 29
Solo & Small Firm Practice Committee
12:15 p.m. – Lana V. Tupchik, Chair
Committee to Assist Lawyers with Depression
12:30 p.m. – Daniel T. Lukasik, Chair