

SARATOGA COUNTY
BAR ASSOCIATION

“SERVING THE
INTERESTS OF
JUSTICE”

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LAW NOTES

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Torts and Civil Practice:

Selected Cases from the Appellate Division, 3rd Department



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DUTY OWED TO NON- CONTRACTING THIRD PARTY PLAINTIFF?

Lamoy v. MH Contractors, LLC (Spain, J., 11/4/10)

The defendant contractor had been hired by Albany County Airport to build a 3-foot high wooden deck at the entrance to a building leased to a commuter airline. Plaintiff, employed by that lessee airline, alleged the deck handrail was not properly secured and blamed it for his fall and resulting injuries. Su-

preme Court (McDonough, J., Albany Co.) dismissed the plaintiff's case at the close of his proof, finding that defendant did not owe plaintiff a duty of care under the facts presented. While the case did fit one of the three circumstances in which a contracting party may owe a duty of care to non-contracting third parties, the Third Dept. affirmed dismissal because the allegedly negligent construction work did not "constitute the creation or exacerbation of a dangerous condition".

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3 WAYS TO USE THE INTERNET TO GROW YOUR LAW PRACTICE



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We go to law school, take the bar exam, start working and many of us decide to go out on our own. How do we get clients though? When do we learn where to find attorney marketing tools and how to use them? You've got to know the answers to these questions in order to make your law firm thrive in this economy.

Right now, the internet is the most effective of all attorney marketing tools available. It has a minimal cost, can be accessed at any time, and reaches people around the globe. Whether you are a solo, small law firm owner, or a partner at a large

law firm, leveraging the internet is the best way you can expand your pool of potential clients.

You can use the internet to position yourself as an expert in your legal field, differentiate your law firm, create referral relationships, and find out what your potential clients need. Here are three specific ways you can begin to use the internet to attract more clients.

Connect with your potential clients. You can find prospective clients through online forums. You can read blogs and blog comments and find out

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Torts and Civil Practice, cont.

Sciscente v. Lill Overhead Doors, Inc. (McCarthy, J., 11/4/10)

Applying the same test examined above in Lamoy, the Third Dept. here affirms dismissal by Supreme Court (Hummel, J., Rensselaer Co.) of the case sued by the plaintiff injured at work when a garage door struck him in the head. The defendant contractor had installed (12 years before the accident) several garage doors for the plaintiff's employer and repaired them on an as-needed basis when requested to do so by the employer. The plaintiff's proof fell short of establishing that the alleged negligence "launched a force or instrument of harm", and in the absence of a duty owed, there can be no liability.

"ALTER EGO" DEFENSE FAILS

Lee v. Arnan Dev. Corp. (Cardona, J.P., 10/28/10)

Plaintiff was a cement truck operator who claimed a dangerous condition on defendant's property caused him to suffer a knee injury. Supreme Court (Coccoma, J., Otsego Co.) denied summary judgment to defendant who argued that it was the "alter ego" of plaintiff's employer, meaning plaintiff's sole remedy should be worker's compensation benefits. The Third Dept. found that although the same person owned both the defendant company and the plaintiff's employer, there was enough evidence contrary to the "alter ego" argument (the companies were not subsidiaries of each other; were each formed for distinct purposes; and maintained separate office space in separate loca-

tions) that denying summary judgment was proper.

SPOILIATION

Merrill v. Elmira Heights Central School Dist. (Rose, J., 10/21/10)

Plaintiff was climbing retractable bleachers in the defendant school's gymnasium and blamed her fall on an improperly-secured, temporary railing. The fall happened in February; notice of claim was served in April; and after suit was filed and discovery ensued, a school witness testified that the removable railing system used at the time of the accident had been replaced by fixed, permanent railings. Plaintiff's spoliation motion resulted in Supreme Court's (Mulvey, J., Chemung Co.) order precluding defendant at trial from contesting plaintiff's description of the "amount of sway" in the railing at the time of the accident and from offering proof of the condition of the railing when plaintiff fell. The Third Dept. modified the spoliation sanction, limiting it to an adverse inference charge pursuant to PJI 1:77.1. Plaintiff failed to show she asked for preservation or inspection of the temporary railings, or that her case had been prejudiced by their absence.

LACK OF PERSONAL JURISDICTION EQUALS SUMMARY JUDGMENT

VanNorden v. Mann Edge Tool Co. (Rose, J., 10/21/10)

When the defendant defaulted in this products liability action, plaintiff proceeded to a damages inquest resulting in a \$1-million judgment. Supreme Court (Kramer, J., Schenectady Co.) vacated the

default judgment but denied defendant's motion for dismissal. The Third Dept., finding plaintiff failed to obtain jurisdiction over a foreign corporation not authorized to do business in New York as explicitly detailed in Business Corp. Law § 307, modified the order and dismissed the case due to a lack of personal jurisdiction.

PREMISES LIABILITY

Jones v. Shamrock of Ithaca, Inc. (Stein, J., 11/4/10)

Plaintiff went to dinner at defendant's restaurant and was seated on a platform (used at times as a stage) that was 6 inches higher than the regular floor. After dinner, plaintiff forgot the edge was there and stepped backward off it, causing her to fall and sustain injuries. Supreme Court (Sherman, J., Tompkins Co.) denied defendant's motion for summary judgment and the Third Dept. affirmed, focusing on a property owner's obligation to warn of potentially hazardous conditions (this property owner admitted he tried to place warning tape along the edge of the platform but could not make it stick; and employees would instruct patrons seated on the platform to "watch your step").

Timmins v. Benjamin (McCarthy, J., 10/28/10)

Plaintiff was hurt when she fell down the staircase in the house she and her roommates rented from defendant. Finding issues of fact about whether the defendant had actual or constructive notice that the staircase was unrea-

Torts and Civil Practice, cont.

sonably dangerous, Supreme Court (Krogmann, J., Washington Co.) denied the defendant's motion for summary judgment. Affirming, the Third Dept. noted photos and testimony established that a handrail in the staircase ended at the point where the stairs made a 90-degree turn to the left "where a handrail would ostensibly be most helpful".

Santiago v. United Cerebral Palsy of Ulster County, Inc. (Kavanagh, J., 10/28/10)

Plaintiff was hurt while delivering a 500+ lb. generator to the defendant's property; the injury sustained when a hand truck he borrowed from defendant became stuck as it passed over a door sill. Analyzing whether the hand truck was a "gratuitous or mutual benefit bailment", Supreme Court (Work, J., Ulster Co.) found a question of fact and denied defendant's motion for

summary judgment. Calling the bailment classification essentially irrelevant, the Third Department reversed and dismissed the case, finding that defendant established the hand truck was reasonably fit for its intended purpose.

Connolly v. United Health Services, Inc. (Mercure, J., 10/28/10)

Supreme Court (Libous, J., Broome Co.) denied defendant's motion to dismiss the case of the plaintiff who claimed she slipped and fell on ice at the entrance to the defendant's hospital. Constructive notice of the dangerous condition, meaning it was "visible and apparent and it must exist for a sufficient length of time prior to the accident" to permit it to be found and remedied, was found to have been a triable issue of fact, and the Third Dept. affirmed. Plaintiff's

proof included photos of the accident location taken within 5 minutes after the fall showing what a security officer described as a 10 x 12 feet light coating of partially melted ice or frost, underneath an overhang outside the hospital entrance.

Wood v. Schenectady Municipal Housing Auth. (Malone, Jr., J., 10/28/10)

Defendant claimed on its motion for summary judgment that it did not have notice of the icy sidewalk in the apartment complex on which plaintiff claimed she slipped and fell. Supreme Court (Kramer, J., Schenectady Co.) denied the motion and the Third Dept. affirmed in light of "conflicting" proof including a defendant employee's testimony that the snow bank onto which plaintiff stepped before her fall was the result

of the defendant's prior snow removal efforts.

Renwick v. Oneonta High School (Lahtinen, J., 10/21/10)

The plaintiff was one of four high school students under the supervision of two school employees, the group returning from an educational activity off school district property. Taking a shortcut back to school over an unmaintained trail in a park, the plaintiff slipped on snow-covered ice, fell, got up and was hurt after a second fall. Supreme Court (Dowd, J., Otsego Co.) denied defendant's motion for summary judgment and was affirmed by the Third Dept., which found sufficient proof from which a jury might find that the school employees did not act as a "parent of ordinary prudence" in allowing the students to pass through the

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3 Ways to Use the Internet to Grow your Law Practice, Cont.

what they are talking and asking about, join them in the groups where they spend time online, and much more.

Connect without advertising. We all know how expensive it can be to advertise our law firms. A few hundred dollars for the actual ad, a mandatory contract lasting several months, and payment to our State bar to review the advertisement. We can avoid all of these expenses and actually connect with our clientele much more effectively using the internet. Using the internet is completely different to advertising. Depending on your State bar, you may be limited in terms of what you are able to include on your website.

Nonetheless, you can use the internet to create a professional presence for your law firm and develop strategic alliances. Your website is the very first thing that your potential clients see. It is a reflection of your services and your personality. Make sure it reflects the message you would like to relay to your potential clients.

Create strategic alliances. Networking takes time. However, you can start networking from the comfort of your own office. You can begin to create relationships with gatekeepers and influencers of your target demographic through the use of professional social networks online.

One of the most effective venues to do this is through www.linkedin.com. Once you create an interesting and descriptive biography, get involved. Make sure to join groups that consist of members who provide services to your target demographic, contribute useful material to the conversation, and reach out to members on an individual basis. A phone meeting can result in thousands of dollars in referrals.

The internet is the one marketing tool that is available to every single law firm regardless of size. Learning how to leverage the internet to attract more clients and referrals sets you apart from your competi-

tion and provides you with more free time. You can do each of the three activities above without stepping foot out of your office. Remember, clients hire professionals they know, like, and trust. Think outside the box and leverage the internet as the powerful business development tool that it is.

Sonia Gallagher, Esq. is an attorney and business development consultant. Her mission is to help lawyers leverage the internet and their local network to get more clients, more profits, and more free time. Find out how you can start connecting with the right clients today. Schedule a complimentary 1-hour consultation at www.TimeForLifeNow.com

Torts and Civil Practice, cont.

park when no part of it was plowed, shoveled, sanded, salted or otherwise maintained.

Etkin v. Albany Medical Center (Spain, J., 10/28/10)

The “trivial defect” defense succeeded here when Supreme Court (Williams, J., Saratoga Co.) dismissed the case of the plaintiff who claimed injuries from a stumble while walking up an exterior ramp leading to an entrance of a building owned by the defendant hospital. The ramp was built to provide additional access to the building during a construction project, and an employee who replaced two screws in the ramp immediately after the

fall testified that even at that time the threshold was flush with the sidewalk. Agreeing that the defect was “trivial” and not dangerous enough to be classified a “trap or nuisance”, the Third Dept. affirmed.

DISCOVERY DISPUTE OVER DSS RECORDS

Allen v. Ciannanea (Cardona, P.J., 10/21/10)

Property owners defending a lead paint exposure injury claim sought disclosure of Dept. of Social Services (DSS) records made during a 14-month period when the infant plaintiffs were in foster care. Supreme Court (Ceresia Jr., J., Rensselaer Co.), after

in camera inspection, denied the motion to compel citing to Social Services Law § 422 which prohibits disclosure of Child Protection Services (CPS) reports relating to abuse and maltreatment. Defendants argued the less restrictive disclosure standard of Social Services Law § 372 governing DSS, and not CPS, records should apply and the Third Dept. agreed, reversing the trial court and noting that “the fact that the children’s cumulative DSS files may be held in the physical custody of CPS does not automatically restrict disclosure of all information contained therein”.



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The New York Law Journal recently reported on a spirited disagreement that arose between two entities whose focus is judicial ethics: the Commission on Judicial Conduct (the Commission) and the Advisory Committee on Judicial Ethics (the Committee) (“Ethics Panels Cross

JUDICIAL ETHICS AND THE PROPRIETY OF INVESTIGATING THE TRIAL JUDGE IN MID-TRIAL

Swords on Questioning of Trial Judge,” June 18, 2010, p 1 col 3). An unnamed judge was presiding over a contested child custody case in Supreme Court. The non-jury trial of the matter had begun, but the completion of testimony had been delayed for reasons not disclosed. While the trial was pending, the Commission sent the judge a copy of an eight-page complaint that had been submitted by one of the parties in the action. In addition, the Commission asked the judge to respond in writing to a number of questions regarding various rulings that the judge had made and regarding the judge’s treatment of the attorneys in the case. After responding to the Commission’s questions, the judge wrote to the Committee asking for an advisory opinion on whether

recusal was required under these circumstances.

In response, the Committee issued Advisory Opinion 10-38. In essence, the judge was advised that recusal was not mandatory and that the judge could continue to preside over the trial as long as the judge believed that s/he could remain fair and impartial. The Opinion went on, however, to criticize the Commission strongly for its intrusion into the deliberative process in the middle of a trial. The Commission responded with an open letter authored by its administrator and counsel, Robert H. Tembeckjian. The letter explained that it was “a general practice” of the Commission to refrain from contacting a judge concerning a pending case, though it carved out exceptions for “protracted court cases that last for years”

SCBA SUBMISSIONS!

The Saratoga County Bar Association Newsletter is electronically distributed bi-monthly by the Saratoga County Bar Association.

We welcome the submission of articles or other items of interest to the bar and also encourage your comments on the SCBA, recent articles, columns or other letters.

The SCBA may reject or edit for style and length any article or letters submitted (Anonymous letters are not published). The views expressed in the letters and columns reflect the opinions of the authors and may not reflect the views of the Association, its Officers or Directors. Address all communications to:

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out of a concern that “[a] judge’s recollections may fade.”

This controversy underscores a pressing need for more careful legislative circumscription of the Commission’s powers. The stated goals of both the Committee and the Commission include fostering the independence of the judiciary, safeguarding the integrity of the judicial process and enhancing the public’s perception of the fairness of our legal system. The attainment of these goals is frustrated when the Commission acts as the conduit for an ex parte communication (here, the eight-page complaint from one of the

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parties to the litigation) and then compounds the error by asking the judge to explain – prior to rendering a decision in the trial – the reasons for various rulings made in the course of the pending litigation.

The Committee could have and should have augmented its advisory opinion with this admonition: while recusal is a matter of personal conscience, there are a number of considerations that should be weighed when making this important decision. First, if the judge decides not to recuse, s/he must determine how to deal with the litigant's written complaint as an ex parte communication with the court. Most likely, the judge will need to disclose this complaint to all parties and counsel (see Advisory Opinions 98-144, 07-192, 08-54). By making this disclosure, however, the judge will, of necessity, be waiving, at least in part, the statutory right to confidentiality attendant upon Commission proceedings (see Judiciary Law § 45). The judge must then decide whether s/he can remain fair and impartial under such circumstances. The judge must also be mindful that, while s/he will probably need to make this implicit partial waiver of confidentiality if there is no recusal, s/he will concurrently be ethically barred from exercising the right under Judiciary Law § 45 (1) to waive confidentiality as to the balance of the matter currently before the Commission. This is so because such a waiver would open to public inspection the judge's responses to the Commission's interrogatories and, in the process, this would be making a public comment on a pending case; itself an ethical violation (see 22 NYCRR § 100.3 [B] [8]).

In short, then, though the decision on recusal is a matter of personal conscience, the failure to recuse, even if based upon a founded conviction that the judge can remain fair and impartial, might well be considered as having the appearance of impropriety and thus would be nonetheless unethical (see 22 NYCRR § 100.2).

The above discussion should underscore the impropriety of Commission intervention while a trial is pending. Both the Committee and the Commission believe that there could be exceptional circumstances in which Commission involvement in a pending trial might be appropriate. Such a position is both unfortunate and wrong for a number of reasons. Nowhere in the Constitution, the Judiciary Law or the New York Code of Rules and Regulations is there any support for the proposition that the Commission's mandate includes acting as the forum of last resort for a disgruntled litigant, no matter how egregious the perceived misconduct or how notorious the case. The Commission's functions are, of necessity, retrospective: it is charged with the duty of investigating facially meritorious allegations of judicial misconduct and, where such misconduct is proven, imposing appropriate sanctions, subject to review by the Court of Appeals (Judiciary Law § 44). When the Commission misconstrues this mandate as including the ability to intervene in pending trials, it perverts the judicial process from an open adversarial system into a secret, inquisitorial Star Chamber proceeding.

Moreover, to contend that the Commission has the right, under any set of circumstances, to inject itself into the

middle of an ongoing bench trial and potentially to influence its outcome offends fundamental principles of separation of powers by placing an administrative body in control of a pending judicial proceeding. This erodes judicial independence; this is inimical to the integrity of the judicial process; and this can only denigrate the public's perception of the fairness of court proceedings. There can be no justification for this.

The proceeding which gave rise to this controversy was a contested child custody action in Supreme Court. The parties were represented by counsel as, presumably, were the subject children (see e.g. *Amato v. Amato*, 51 A.D.3d 1123, 1124 [3d Dep't 2008]). If either party or the attorney for the children felt that the children were at risk of imminent harm, numerous avenues of redress were available. As an example, an independent *habeas corpus* proceeding could have been commenced (see Domestic Relations Law § 70). If the petitioning party felt that the *habeas* petition should not be assigned to the trial judge, an appropriate request for assignment to another judge could have been made. Prompt disposition of the *habeas* proceeding would have been assured (cf. CPLR 7003 [c]), with immediate avenues of appellate review available. Alternatively, a party aggrieved by the inordinate delay of this trial could have sought CPLR Article 78 review in the nature of mandamus. (It is peculiar, to say the least, that neither the Committee nor the Commission mentioned in their published remarks the fact that 22 NYCRR § 202.16 [1], which mandates that "[h]earings or trials pertaining to temporary or permanent custody or visi-

tion shall proceed from day to day to conclusion," was being flagrantly violated here.)

Indeed, if the Commission were so concerned by the apparently inordinate delay in the trial judge's scheduling of further hearing dates, other recourse was available to it. Judiciary Law § 44 (10) specifically authorizes the Commission's contacting appropriate administrative authorities. Surely, if the Commission was worried that this custody trial was apparently taking years instead of days to conclude, it could have asked the responsible administrative judge to relieve the trial justice of additional judicial responsibilities in order to free him or her to complete the trial expeditiously. Then, after the trial was concluded and the decision rendered, the Commission could proceed with its investigation without needing to intrude on the deliberative process.

Of course, apart from the argument over whether the Commission has the authority, whether in this case or in any case, to submit interrogatories to a judge in the midst of a bench trial, there is another question that has not been posed in this controversy: by what authority did Commission staff submit interrogatories to this judge in the first place? 22 NYCRR § 7000.3 outlines, in detail, the investigative tools available to the Commission and its staff during the investigative phase of their proceedings: they have subpoena power to compel the testimony of witnesses and the production of documents and other evidence, and they have the power to "require the appearance of the judge involved before the commission, or any of its members, or a referee designated by the commission" (subd. e). Absent, however, is any mention of the power to submit interrogatories

JUDICIAL ETHICS AND THE PROPRIETY OF INVESTIGATING THE TRIAL JUDGE IN MID-TRIAL, *CONT.*

to the judge. Apparently, this discovery tool is a device of the Commission's own creation.

The Commission's public response to Opinion 10-38 noted that "the judge had already answered the questions posed and does not appear to have raised any question about their propriety." This is hardly relevant. That a judge, who enjoys no right to silence before the Commission and who instead runs the risk of being charged with failing to cooperate with the Commission should s/he refuse to answer their questions, capitulates to its demands is hardly evidence of the propriety of those demands.

History has shown repeatedly that, given the opportunity, administrative bureaucracies tend to expand their own powers and increase their spheres of authority. In the

last few years, the Commission's budget has trebled, while paradoxically the judges and justices of the Unified Court System have gone without so much as a cost of living allowance for over a decade. The unfortunate result is that the Commission, a body which operates under a cloak of secrecy and whose administrator conceded in an interview with the New York Law Journal (June 18, 2010, p 1 col 3) that some of its procedures "are not in writing and are decided upon 'a case by case basis,'" has augmented its authority at the expense of judicial independence. At the same time, judges whose standard of living has been continuously eroding must either face charges of misconduct as *pro se* litigants or expend sums of money they can ill afford for private counsel.

The answer to the narrow question presented in the instant controversy is simple. The Legislature needs to amend the Judiciary Law to provide a bright-line rule prohibiting Commission staff from communicating, in any way, with a judge concerning a matter in which a trial has begun before that judge and in which a decision has not yet been rendered. The answer to the broader question, however, is somewhat more complex. Judges who are the subject of pending complaints before the Commission should have the option of being represented by counsel provided by the Office of Court Administration (OCA). This would yield a twofold benefit: the ever-increasing number of judges who find themselves in the Commission's cross-hairs, the overwhelming majority of whom

are ultimately exonerated of any wrongdoing, would not be required to undertake the crushing burden of retaining private counsel; more importantly, the OCA attorneys who would regularly represent judges would, over time, amass the necessary expertise to deal with Commission procedures (both written and unwritten), and would also be capable of dealing with the Commission on something approaching a level playing field.

Jim Montagnino has served as an attorney in the Unified Court System for more than fifteen years. He has been a Principal Law Clerk to a County Judge, a Court Attorney/Referee, and is currently Principal Court Attorney in Rensselaer County Family Court, serving under Acting Supreme Court Justice Catherine Cholakis.

The views expressed in the above article are those of the author and do not necessarily represent the views of, and should not be attributed to, the Saratoga County Bar Association.

WILLIAM D. YOQUINTO AND JESSICA A. DESANY OF CARTER CONBOY PARTICIPATE IN NYSBA WEBCAST PANEL

Albany, NY: Directors William D. Yoquinto and Jessica A. Desany, from the law firm of Carter Conboy, recently participated in a panel presentation for a Continuing Legal Education (CLE) webcast/webconference sponsored by the New York State Bar Association. An audience of attorneys from across, and outside of, New York State, logged on for the October 1, 2010 live seminar entitled "Settling a Personal Injury Case – Strategies for Obtaining the Best Settlement for Your Client." Mr. Yoquinto and Ms.

Desany presented insight into the pros and cons of the alternative dispute resolution process as well as potential pitfalls of the settlement process, changes to statutory law related to settlement of litigation, as well as the common law interpretation of the pertinent laws by the Courts.

Mr. Yoquinto focuses his practice on all phases of defense, including trials and appeals, in matters relating to product liability, medical malpractice, pharmacy, professional licensing, and other liability claims.

Ms. Desany practices in the area of civil litigation, including actions defending claims of personal injury, premises liability, and professional liability, as well as in the areas of insurance coverage analysis and disputes, and commercial real estate.

Founded in 1920, the law firm of Carter Conboy, located at 20 Corporate Woods in Albany, NY, serves clients in upstate New York and western Massachusetts. For additional information about the firm, visit www.carterconboy.com.

LEMIRE JOHNSON, LLC ANNOUNCEMENT

On October 22, 2010 Gregg T. Johnson, Esq. conducted an Educational Seminar entitled: **Avoiding School Board Litigation Methods for Staying Out Of The Legal Liability Quagmire** which was part of the New York State School Board Associations 91st Annual Convention held in New York City. The Convention is attended by School Board members from across New York State.

Matrimonial Update



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"I speak two languages, Body and English." Mae West

"I gave him my body, but he gave me nothing." Patrizia D'Addario, prostitute and alleged mistress of Prime Minister Silvio Berlusconi

"We have finite resources." Jonathan Lippman, October 14, 2009

You know, I'm going to miss fault divorces. My clients won't, because they cost too much and for the most part they were attempts to deprive someone of the fruits (\$\$\$) of the marital pie. But I sure have had some fun trying fault issues, sometimes in front of juries. I remember my last jury trial, when I put the alleged paramour on the stand in hopes of proving adultery so my nice client could get a piece of her hubby's engineering practice. When I asked the penultimate question however, the lass

stated, "No, we didn't. He tried, but we didn't have sex." Next up was Mr. "Can't Perform," who proudly exclaimed to the jury when asked if he had sex with this harlot, "I sure did!" Oops. What could be more fun?

How about the time Justice Joseph Harris, may he rest in peace, allowed a jury divorce to proceed even though I had withdrawn my client's answer and consented to the divorce. That one made the front pages of the Times Union. These morality plays will become the stuff of legend, like the long ago jury trial that ended with one question on cross examination by my legendary former partner Frank Warner inquiring about the athletic skills of a plaintiff who had complained of compulsory heinous sexual acts at the behest of her physician husband. I believe the trial justice's words were, "Gentlemen, I do not care how long it takes, but we are not leaving chambers until this is settled, because this jury has heard enough in my courtroom."

Now all that has gone by the wayside, at least since Columbus Day, when we inaugurated the six months of irretrievable breakdown into the New York Domestic Relations Law lexicon.¹ Now the floodgates are open. Why? Beats me. I never thought I would see no fault divorce in New York in my lifetime, thanks to the concerted efforts of the Catholic Church and the National Organization for Women, among others. But here it is, the ultimate Get Out of Marriage Free Card, or at least without having to prove all those nasty fault things, like cruel and inhuman treat-

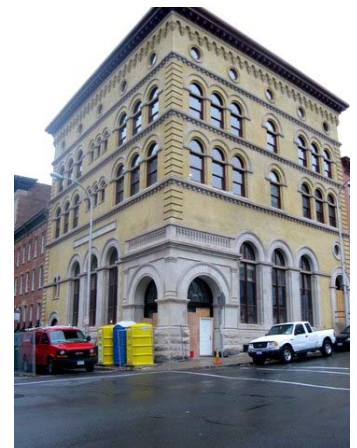
ment or abandonment for a year or more, or some other stuff. Gone are the shackles of Hessonⁱⁱ and Bradyⁱⁱⁱ, as we used to say. If you get into this stuff, it gets pretty strange, or as the late Dr. Hunter Thompson wrote, "When the going gets weird, the weird turn pro." The bill memo has this little ditty as the justification for the new law, that it is intended to "grant full recognition and respect to valid marriages of same sex couples to obtain relief under New York State Laws and New York Courts." The memo states that the term "husband and wife" is specifically not intended to preclude access to relief by same sex couples with valid marriages performed outside of the state. Say what? That is like saying I root for the Toronto Blue Jays because Christine O'Donnell is a witch. Makes no sense, eh?

In any event, it is the dawning of a new day, together with temporary maintenance guidelines, presumptions of mandatory legal fees (yeah!) and new standards for modification of child support agreements, like three years have passed or your income has changed by 15%. Whose hasn't? More about that stuff at another time.

I know you are doing your Christmas shopping and all, but for me the highlight of the season is the Office of Court Administration Budget, which comes out about this time every year. Last year's was a 557 page extravaganza with an eye popping bottom line of \$2,709,301,640 or to the cognoscenti, \$2.7 Bil. Sure it has a lot of silly stuff like the Candidate Fitness Program and other useless "initiatives"

to drain the last drops of blood from our bankrupt state. Want to know how we stack up with other states? Our most populous state, California, runs its court system on \$1.76 billion, just a tad shy of one billion less than the Empire State. But then again, they have to service 90% more people than we do, not including illegal aliens. How about Texas, with 5 million more citizens than we have? \$217 million, but they do not have the Übermann OCA overseeing everything from robe dry cleaning to marital counseling for judges. New Jersey has a similar system to ours, but their budget is only \$656 million. So why do we cost more? It certainly isn't used to fund raises for Supreme Court Justices. Maybe it is Jonathan Lippman's \$23 million bedroom on the corner of Lodge and Pine Streets in Albany. That's the \$900 per square foot "secure residential space for the Court of Appeals Judges while in Albany" that is mentioned on the last page of last year's OCA budget.

By the way, want to know who earned the most bucks in the New York Judicial System? Topping out at \$181,486 is the Honorable Lawrence K. Marks,



New Court of Appeals Secure Residential Space

Matrimonial Update, cont.



an “Acting” Supreme Court Justice and the Administrative Director of OCA (Office of Confused Adults, as I call them) and I’m guessing that doesn’t include the limo. By the way, the Chief of Opera-

tions of OCA, a lawyer, earns more than the Supreme Court Justices, acting and otherwise, by about 10k. But enough of that.

Did you see all the new statistics on divorces? Makes me laugh. For example, if you live in a Red (Conservative) State, you are 27% more likely to get a divorce than in a Blue State like New York. Darn. Or if you have a daughter your chances of divorce are 5% higher than if you have a son. And have you noticed that divorce is now quite *de rigueur*? After all, Reba McIntyre now has a hit song called, “The Day She Got Divorced,” which to me is a rip off of the great George Jones tune, “He Stopped Lov-

ing Her Today.” Here’s my favorite riff from Ms. McIntyre: “Left her kids with the girl next door, Parked her car at the county court, Round and round ‘bout the child support he’ll never pay.” Walt Whitman, eat your heart out. Or how about Nora Efron’s latest: I Feel Nothing about her problems with her husband. There was a time when a divorce lawyer was the pariah of the legal profession, bottom feeding on the misery of others. Now, what would they do without us for entertainment? After all, if you’ve been married for more than a year, can’t you cobble together at least 6 months worth of irretrievable breakdowns?

I wish to thank the Saratoga

County Bar Association for publishing these rantings. I hope to have more for you after the New Year. Felice Navidad, y’all.

ⁱTechnically Section 170(7) of the Domestic Relations Law

ⁱⁱHessen v. Hessen, 33 N.Y.2d 406 (1974)

ⁱⁱⁱBrady v. Brady, 64 N.Y.2d 339 (1985)

You can see all the state’s judicial budgets here, if you are so inclined:

<http://www.ncsc.org/information-and-resources/budget-resource-center/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/budget%20narratives%2010%2028%2010.ashx>

The views expressed in the above article are those of the author and do not necessarily represent the views of, and should not be attributed to, the Saratoga County Bar Association.

Brian Lee Law Firm, PLLC

Brian Lee Law Firm, PLLC

is pleased to announce that

**Steven P. Shultz, M.Ed, J.D.
has joined the firm as
Special Counsel**

The Brian Lee Law Firm, PLLC concentrates solely in Personal Injury claims.

Attorney Steven Shultz will focus his work on trials and arbitrations.

Steve practiced Personal Injury Law for the past 25 years. Nationally, he is one of approximately 1,000 lawyers ever selected to attend and graduate The Gerry Spence Trial Lawyers College. He has performed trial work in thousands of cases and has taken scores of verdicts. Attorney Steven Shultz is admitted to practice in New York and Massachusetts and is a member of the Federal Bar in the Northern District and Southern District of New York.

ANNOUNCEMENTS

Jones Named to Tax Committee of the Trusts and Estates Section of the NYSBA

BONNIE MCGUIRE JONES, an attorney focusing in Trust and Estate Planning & Estate Administration in Saratoga County and the Capital Region, has been named to the Tax Committee of the Trusts & Estates Section of the New York State Bar Association.

Attorney Jones commented that “In nearly 30 years of practicing law, I have never seen a time when estate tax rates, gift tax rates, capital gains tax rates and income tax rates could all change dramatically over the next year. The Tax Committee of the State Bar Association places me right in the middle of the news, analysis and commentary on those tax law changes when they occur. I look forward to the Tax Committee’s work and the opportunity to explain the tax law changes to the public through educational presentations and newspaper articles”.

Bonnie McGuire Jones is the co-owner and co-manager of Jones Wilcenski & Pleat PLLC in Clifton Park. She devotes her entire practice to Trust and Estate Planning & Estate Administration. Martindale-Hubbell, the independent rating service of the legal profession, has awarded her the highest ratings for expertise and ethics. In 2010 she was selected for the Super Attorney designation in Trust and Estate Planning & Estate Administration in upstate New York.

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Classifieds

PART-TIME ATTORNEY WANTED: Schenectady based global chemical manufacturing company is seeking a part-time attorney with at least three years experience negotiating product purchase/sale agreements, confidentiality agreements, vendor agreements and other commercial contracts. Hours are flexible. For more information, please contact Stephanie.Ho@siigroup.com, SI Group

SEEKING ATTORNEY POSITION: S. Peter Pedrotty, Esq. seeking position as an attorney. Mr. Pedrotty is experienced in litigation, but is also interested in other practice areas. For further information, please contact Mr. Pedrotty at (518) 598-9270 or spedrotty@gmail.com.

SEEKING ATTORNEY POSITION: Recent law school graduate, Joseph D. Rossi, Esq., is seeking an associate attorney position. For further information, please contact Mr. Rossi at (518) 598-7711 or JDRossiJr@gmail.com.

PRO BONO DIVORCE PROJECT FOR VICTIMS OF DOMESTIC VIOLENCE

PROPOSAL SUBMITTED TO THE SARATOGA COUNTY BAR ASSOCIATION

Each year, The Legal Aid Society of Northeastern New York (hereinafter "Legal Aid") advises and closes numerous cases for clients who need a divorce and who are victims of domestic violence. Until October 2009, Legal Aid had a grant that supported representation of domestic violence victims in matrimonial matters. LASNNY now has no funding to provide this representation and makes this proposal to the Saratoga County Bar Association to launch a small pro bono project to fill this gap. Approximately six Saratoga County residents a year fall into this category of needed legal assistance.

Legal Aid has comparable programs running in Schenectady and Columbia Counties. In sum, a selected member of the bar would place the client with a pro bono attorney (another SCBA member).

First, before a request for referral is made, the client is screened by Legal Aid to determine eligibility. If eligible, the client receives preliminary advice from an intake specialist. If the case is found to have merit, it is transferred to the Private Attorney Involvement Program (hereinafter "PAI") for placement.

Once received by the PAI program, a call is made to the contact person of the SCBA. If the client is a defendant, information regarding service is provided, together with a brief summary of the facts. If the client is a plaintiff, Legal Aid will have the client complete a divorce questionnaire asking the client about grounds, assets, children, safety and consent. Legal Aid will ensure that custody and support orders are already in place. Legal Aid will obtain copies of custody and support orders. If orders are not in place, we will assist client in obtaining the appropriate orders. Once said issues are resolved, we will call the contact person at Saratoga County Bar Association, give a brief summary of facts, and confirm willingness to place client with a member of the bar.

Once the Bar contact finds an attorney in the Association who is willing to take the case, the Bar contact will contact Kristie Cinelli. The contact will let Kristie know the name of the attorney who has agreed to assist the clients. At this step in the process, the Bar contact's work is complete. Kristie Cinelli of Legal Aid will then prepare the file for referral, together with a Certificate of Indigency to waive all fees pursuant to CPLR 1101(e). Said Certificate waives the need for a poor person application to the Court. She will call the client and go over the referral process. From the point forward, Kristie is the contact for the attorney to call with any requests for reimbursement or other questions that may arise during the divorce proceeding. Of course, she would be the contact for the client as well.

I am hopeful that this proposal will be welcomed and accepted by the members of The Saratoga County Bar Association. I feel that the number of clients is low enough that it would not be overly burdensome upon the Bar. On the other side, it will be a tremendous relief to the clients who need assistance the most, those being sued for divorce and those who need to be freed from their batterer.

Kindly consider said proposal and if there are any questions, please let me know. My direct line is 518-689-6322.

Respectfully,

Kristie M. Cinelli
PAI Director