

INSIDE THIS ISSUE

President's Message	1
The Judge Club by James Cooper	2
From the Judge's Chambers	3
February '19 CLE	4
March Mixer	5 - 6
April '19 CLE	7
Torts & Civil Practice by Tim Higgins	8-10
Welcome	11
Mock Trial Winners	12
Bulletin Board	13 & 14
Advertisers	15 & 16

WARREN COUNTY
BAR ASSOCIATION,
INC.

6 Maple Street, Suite 3
Glens Falls, NY 12801

Telephone
(518) 792-9239
admin@wcbany.com
ESTABLISHED 1913

TIPSTAFF

PRESIDENT'S MESSAGE Daniel J. Mannix, Esq.

Dear Colleagues,

Happy Spring! The warm days are almost here. Hopefully, you are able to push back from your desk and enjoy these fleeting days. How fast the season will pass! Since my last letter to you, a great deal has transpired through the efforts of both the Bar Association and the Bar Foundation.



The March Mixer was a great success! Over 100 guests spent the evening enjoying each other's company and sharing a memorable mixer, while honoring the Paralegals and Support Staff of the Warren County Legal Community! Morgan & Co. put on a great spread. The money raised, through the generosity of our donors and through the silent and live auctions, will provide scholarships and grants to many deserving individuals and organizations. Many thanks to the committee: Dennis Tarantino, Timothy Bartlett, Brian Borie, Michael Dezik, and Rose Place for their hours of hard work.

Our final CLE for 2018-2019 took place on April 17th, also at Morgan & Co. The event was very well attended, and the feedback was extremely positive! Many thanks to Justices Muller and Auffredou for their timely and informative presentation entitled: *Social Networking, the Law and Other Modern Phenomena*. Again, thank you to Maria Nowotny, for her efforts to provide the membership with 3 meaningful and important CLEs throughout this year.

We recently hosted the 23rd Annual Walk/Run/Hike at the Glens Falls YMCA to benefit the Open Door Soup Kitchen. The following morning we shared breakfast at the Glens Falls Country Club to celebrate Law Day 2019 and to honor this year's Liberty Bell Award winner, Mark E. Frost, founder, editor and publisher of The Chronicle. Many thanks to the members of the Law Day Committee: Amanda Kukle and Claudia Braymer, Chairs; Tim Bartlett, Katherine Chambers, Bruce Lipinski, Elisabeth Mahoney, Stephen Perkins, and Daniel Speranza. It was a great event!

On May 16th our Annual Meeting will take place, once again, at the beautiful Lake George Club.

As always, membership remains a priority, and we are very encouraged by the number of new members and several returning members throughout the course of this year. Currently, we have 142 members, with 12 new members coming on board since May 2018. The WCBA is a very active organization, offering many services, as well as numerous social and educational opportunities to its members. We hope you'll encourage your colleagues to join us when the new year begins next month!

In closing, please allow me to welcome two new members, who have recently joined us: Jordan Austin and Constantine DeStefano.

Wishing you sunny days!

Dan

The Judge Club

Judges are human, and it's well that they are. It was once said that it is desirable that judges be good, but not so good as to be without regrets for past mistakes, to have concomitant understanding of their fellow man's frailties, to have the real capacity for compassion and mercy. In a perfect world, justice is blind, but not deaf and dumb. You have to take realities into account. I read in the New York Law Journal once that a senior lawyer was arguing a case in the Appellate Division First Department when one of the judges started a conversation with a colleague. The lawyer stopped and stood silent until the judge turned to him, and the PJ said he could resume his argument. He started again, and again interrupted his argument when the judge again averted his attention. The PJ asked him why he stopped his argument. Addressing the jurist who was rude, he said, "My client paid me to come and argue his case. The people of this state pay your honor to listen." The author of the article commented that a lawyer has to have lots of gray hair and a few face wrinkles to say something like that. My guess is that it did not inure to the benefit of his client.

Some lessons are hard learned. I learned early that, when arguing for a reversal of a decision and judgment, sarcasm about or pointed criticism of the judge below is not well received. We all want to believe that no matter how obnoxious or irritating a lawyer might be in arguing his/her case, jurists would not allow their feelings to prejudice the case against the client.

The late Judge Casey disclosed that it particularly irritated him when lawyers began their arguments with the salutation, "May it please the Court." Why that ritualistic and common expression would start counsel off on a bad foot can't be known, but after I heard that, I never began to address the court other than to say, "Good morning/afternoon, your honors."

How much time do you think judges can give to reading your brief? Put yourselves in their shoes. Our appellate court hears virtually all of the appeals from determinations of state agencies in addition to criminal appeals and civil appeals in the Third Department, thousands of briefs a year. I always believed that my brief was going to get two quick looks before it was turned over to the clerks. The precise statement of issues is crucially the first and a conclusion that summarizes the argument and the most important fact supporting it in concise sentences, rather than simply saying, "The judgment below should be affirmed" is the second chance you have to hook the judge's interest and take yourself out of the mediocre lawyer class.

Sometimes you just have bad luck, like being the last case argued on a Friday afternoon, watching the judges pile up their papers as you approach the podium.

Can you imagine how boring it is sometimes for a sitting member of the appellate bench to listen to lawyers drone on day after day? Once I was watching a lawyer representing a public union and, therefore, before the court perhaps weekly, when the seam of his pocket broke as he was nervously giggling change during argument. All of the coins poured down his pant leg and out onto the carpet. The bench reacted as if someone had slipped on a banana peel, something different.

Another time I watched as probably the most well known Capital District lawyer nervously fingered the back of his suit coat as he was arguing his appeal. Notwithstanding his career honors and reputation, he was nervous because he knew and successfully understood that all lawyers are equal before the bar, but not so with those lawyers on the bench.

Thank God we don't have to wear horse hair wigs and utilize archaic fawning of the jurist before us, but you forget at your peril and to your client's prejudice if you confuse the court's cordiality and familiarity with equality. They won't.

Jim Cooper

MARTIN D. AUFFREDOU, JUSTICE OF THE SUPREME COURT

STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

[CLICK HERE FOR](#)

DENISE PRZYBYLO and PAUL PRZYBYLO,
Plaintiffs,

-against-

GARY BULL,

Defendant.

DAVID DUELL, SUPERINTENDENT OF HIGHWAYS of
the TOWN OF QUEENSBURY,

Nominal Defendant.

[DECISION AND ORDER](#)
[Index No.EF2018-66119](#)
[RJI No. 56-1-2018-0604](#)

STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

In the Matter of the Application of:

AMY CHRISTINE SCHWINDT,
Petitioner,

[CLICK HERE FOR](#)
[DECISION AND ORDER](#)
[Index No. 65616](#)
[RJI No. 56-1-2018-0380](#)

For Judgment Pursuant to Article 78 of the New York Civil
Practice Law and Rules

-against-

NIAGARA MOHAWK POWER CORP. D/B/ A NATIONAL
GRID, DANIEL DECHIARO and NEW YORK ST A TE
DIVISION OF HUMAN RIGHTS,

Respondents.

Queensbury Hotel



On Valentine's Day morning, many local attorneys shared breakfast at the Queensbury Hotel, while attending a 3-credit CLE, entitled *Real Property Update: Umpteenth Annual Real Estate Practice Update; Lender's Perspective on Short Sales & Foreclosures; Tenants & Persons in Possession-Exceptions and Coverage*. Hosted by the WCBA and Chicago Title Insurance Company and Fidelity National Title Group, the CLE featured 3 prominent presenters: Peter Coffey, Esq., Michael Catalfimo, Esq., and Penny Epler-Carl, Esq.

Morgan & Co.



On March 21st, the Warren County Bar Foundation hosted it's
17th Annual March Mixer at Morgan & Co...
and to quote Frankie Valli , "Oh, What a Night!"

Our biggest turn out yet, over 100 guests gathered to enjoy the evening, to honor the paralegals and support staff of the Warren County legal community, and to support the fundraising efforts of the Foundation. We are most grateful to the over 50 major sponsors and donors who gave so generously and to all those who supported the evening by their attendance!



MORE March Mixer 2019

Morgan & Co.



MORGAN & CO.
Restaurant

Social Networking, the Law and Other Modern Phenomena

Morgan & Co.



3rd Department
Tim Higgins, Esq.
Lemire & Higgins, LLC
2534 Rt. 9
Malta, N.Y. 12020
(518)899-5700
tjh@lemirelawyers.com

Court of Appeals: A stairway can be a sidewalk.**Hinton v. Village of Pulaski (2/21/19)**

The defendant's Village Code required written notice of a sidewalk defect as a precondition of imposing liability on the Village. Plaintiff's fall and injury happened not on a sidewalk; but on a stairway connecting a public road to a municipal parking lot. Despite two dissenters, the Court of Appeals (which had previously ruled that a stairway "functionally fulfills the same purpose that a standard sidewalk would serve") found the lower courts had properly dismissed the plaintiff's cause of action for failing to plead or prove compliance with the written notice provision.

E-mailed complaint to City may satisfy prior written notice obligation.**Van Wageningen v. City of Ithaca (Devine, J., 1/17 /19)**

The Ithaca City Charter's prior written notice statute was deemed to apply to this claim in which plaintiff's decedent was killed in a fall from a city-owned trail into a gorge; the trail being a paved walkway and the functional equivalent of a sidewalk or highway. Supreme Court (Rowley, J., Tompkins Co.) denied defendant's motion for summary judgment although there was no evidence of a prior written complaint about the particular defects that allegedly led to the fatal fall. Affirming, the Third Department ruled that plaintiff's proof; including an email with a map and photos that "appear to reference the defects in the area where decedent fell" sent 11 months prior to the incident to an assistant public works superintendent, raised a question of fact on the notice issue that must be resolved by a jury.

More municipal liability claims**Relf v. City of Troy (Mulvey, J., 2/21/19)**

Troy police responded to a report of a gas station robbery, including with a member of its K-9 division who, with the assistance of a police dog, attempted to track the suspects. The patrol officer released the dog, after which it came upon the plaintiff (who was not involved in the robbery) and bit him on the knee after the plaintiff climbed on the hood of his car to get away from the police dog. The officer testified that the dog did as she was trained to do, and agreed that the dog is not able to "differentiate between the person we're tracking and the person ... walking out of a house or walking down the street". The dog had previously bitten another police officer and an innocent bystander in a separate police response. Affirming Supreme Court's (McGrath, J., Rensselaer Co.) denial of the defendant's motion for summary judgment, the Third Department agreed that there existed a question of fact whether a reasonable police officer would release the dog from its leash with knowledge that the dog could not distinguish between a suspect and an innocent bystander.

Powers v. Greenville Cent. School Dist. (Aarons, J., 2/28/19)

New York tort law requires schools "to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately" caused by the absence of such supervision. This plaintiff's daughter suffered an eye injury while playing a lacrosse-type game during gym class. Supreme Court (Fisher, J., Greene Co.) granted the school's motion for summary judgment but the Third Department reversed, concluding there were triable issues of fact regarding whether the students were actually playing the game known as "soft lacrosse" and whether the students should have been given protective eyewear.

Howell v. State of New York (Devine, J., 2/21/19)

Claimant alleged he was hurt when a New York State snowplow clearing the highway sideswiped the disabled minivan (parked on the shoulder of the road) in which he was a passenger. Following a trial on liability, the Court of Claims (Schaewe, J.) found the defendant negligent and solely responsible for the accident. The Third Department reversed and dismissed the claim in its entirety, finding the trial court erred in applying the "emergency operation" standard in Vehicle & Traffic Law§ 1104(a); and should have applied V&T Law§ 1103(b), which imposes a "recklessness" standard of care and "exempts from the rules of the road all vehicles ... which are actually engaged in work on a highway."

from the Appellate Division, Third Department

Santos v. State of New York (Rumsey, J., 2/28/19)

Labor Law § 240(1) requires contractors and owners to provide adequate safety devices -such as ladders and scaffolding -to protect workers who are exposed to elevation-related hazards. This claimant, sandblasting a state-owned bridge while standing on a temporary metal decking, broke his ankle when his foot backed into an opening on the deck that was partially covered by a board. The Court of Claims (Collins, J.) granted claimant's motion for summary judgment on the § 240 cause of action, and the Third Department affirmed. The metal deck, "which was functioning as a scaffold", failed to provide proper protection even though the worker didn't fall entirely through the opening. The defendant's "sole proximate cause" defense failed because while there may have been boards available to cover up the gap in the deck, there was no evidence that claimant was instructed or responsible to do so.

Working "for hire" and the scope of Labor Law § 240.**Doskotch v. Pisocki (Garry, P.J., 1/3/19)**

Plaintiff fell from a ladder while climbing to the roof of the defendant's (his mother) rental property to inspect a chimney that needed repairs. Defendant, who owned and placed the extension ladder from which plaintiff fell, testified that she did not plan to pay her son for the inspection but would have paid him if he eventually repaired the chimney. Supreme Court (Meddaugh, J., Sullivan Co.) denied defendant's motion for summary judgment, finding questions of fact whether plaintiff was an employee "for hire" under the Labor Law, and whether the chimney inspection brought plaintiff under the protective scope of § 240(1). The Third Department affirmed, noting that defendant had previously paid the plaintiff for other repair work on her property (for which plaintiff claimed there was a \$100 per job agreement). And while an inspection performed "solely for investigatory purposes" where the inspector will not be doing the work that follows is not protected under § 240(1), such inspection can fall within the statute's coverage when it is "on-going and contemporaneous with" repairs or when it's part of an otherwise covered activity for which the employee was hired.



WELCOME
NEW MEMBERS
We're glad you're here!

*Jordan Austin, Esq.
Austin Law*

*Constantine F. DeStefano, Esq.
Law Office of Constantine F. DeStefano, PLLC
48 South Main Street
Mechanicville, NY 12118*

The Bulletin Board



CONGRATULATIONS!
2019 MOCK TRIAL WINNING TEAM
HUDSON FALLS HIGH SCHOOL!



CONGRATULATIONS!
2019 MOCK TRIAL RUNNER-UP
GLENS FALLS HIGH SCHOOL!

US Magistrate Judge Daniel Stewart judged the final round of the Warren-Washington Counties High School Mock Trial Tournament, held at the Warren County Municipal Center. Hudson Falls High School faced Glens Falls High School in the final round, and Hudson Falls placed first.

The Bulletin Board

2018-2019 WARREN COUNTY BAR ASSOCIATION, INC. OFFICERS AND DIRECTORS



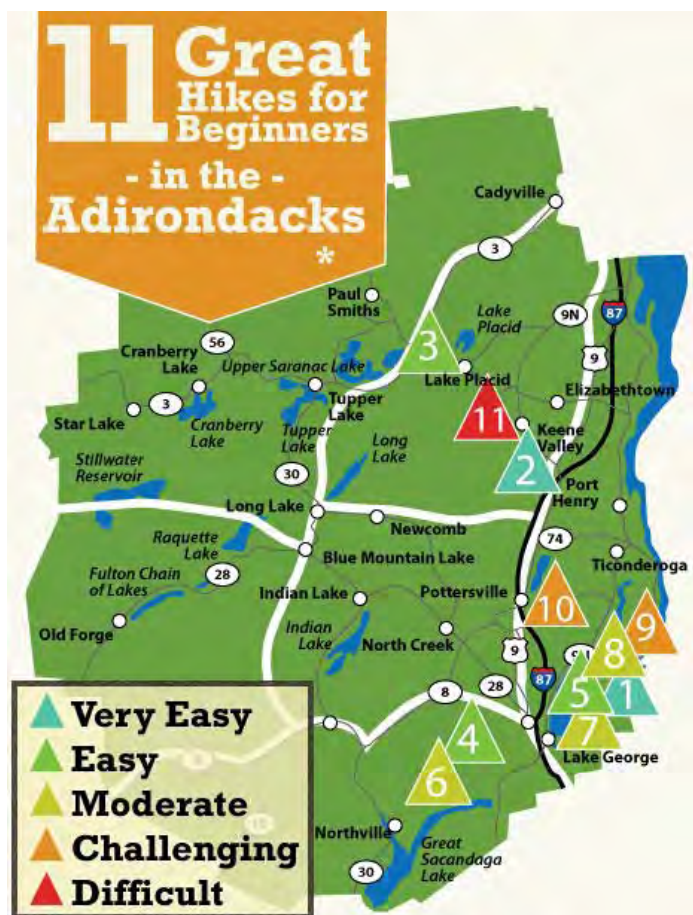
Pictured Left to Right: (Back row) Daniel J. Mannix, President; Maria G. Nowotny, Immediate Past President; Karen Judd, Director; Timothy Bartlett, Director; Claudia K. Braymer, Treasurer. (Front Row) Jeffrey R. Meyer, Secretary; Jessica H. Vinson, Vice President; Jill E. O'Sullivan, President-Elect; Amanda J. Kukle, Director. Absent from Photo: Hon. Eric Schwenker, Delegate to NYS House of Delegates; Brian Borie; Jeffrey L. Ferguson and Jacquelyn P. White, Directors.

The Bulletin Board

In an effort to spotlight WCBA member's commitment to public service, we are proud to present profiles of local non-profits and charities with which our members are associated.

Please send info to

admin@wcbany.com



TIPSTAFF is a publication of
The Warren County Bar Association

Send articles of interest, classifieds, and
announcements to: admin@wcbany.com

TIPSTAFF WCBA EDITORIAL STAFF:

Jessica H. Vinson
Kate Fowler
Daniel J. Mannix

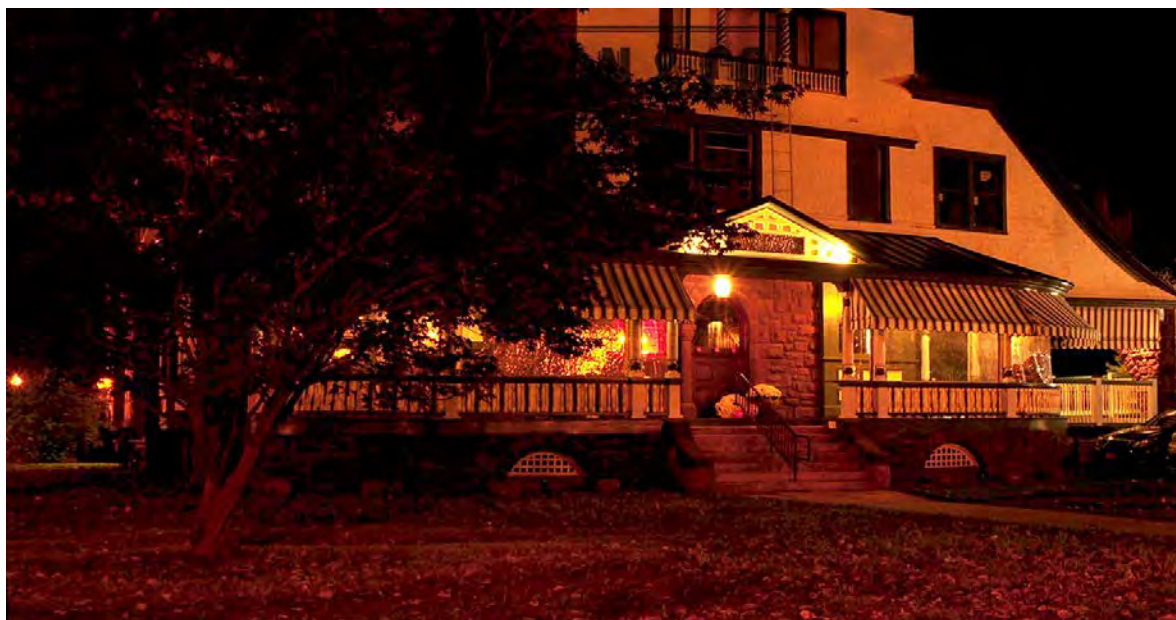
Deadline for Submissions
for Next Edition:
May 17, 2019



Address
3 Lower Montcalm Street
Lake George, New York 12845

Phone

518.685.5418



MORGAN & CO.
Restaurant

<http://www.morganrestaurant.com>

WARREN COUNTY BAR ASSOCIATION

OFFICERS: 2018- 2019

DANIEL J. MANNIX
President

JILL E. O'SULLIVAN
President-Elect

JESSICA H. VINSON
Vice President

JEFFREY R. MEYER
Secretary

CLAUDIA K. BRAYMER
Treasurer

ERIC C. SCHWENKER
Delegate to the New
York State House of
Delegates

MARIA G. NOWOTNY
Imm. Past President

DIRECTORS:

TIMOTHY BARTLETT
BRIAN C. BORIE
JEFFREY L. FERGUSON
KAREN JUDD
AMANDA J. KUKLE
JACQUELYN P. WHITE

Warren County Bar Association Advertising Opportunities

Warren County Bar Association (WCBA) creates an online, PDF newsletter, called *Tipstaff*, four times per year. It is sent to the WCBA membership, as well as other Bar Associations in our area. In total, the *Tipstaff* reaches over 200 people in the legal community, including approximately 150 attorneys. The WCBA is offering an opportunity for local businesses to advertise directly to the lawyers in their community.

The advertisement will include a hyperlink directly back to the company's website, as well. In addition to being distributed via email, the *Tipstaff* will be posted on the WCBA website and allow those who use the website easy access to the advertisers' information.

Prices for 2018 - 2019:

¼ Page \$150 and ½ Page \$250

Specs:

All art must be Camera ready, in a .jpg, .gif or .psd. The minimum dpi needs to be 72.

If you are interested in advertising in the *Tipstaff*, please contact the WCBA office at 518.792-9239 or email: admin@wcbany.com