TIPSTAFF

INSIDE THIS ISSUE:

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ESTABLISHED 1913

PRESIDENT'S MESSAGE Maria G. Nowotny, Esq.

Greetings!

We have survived the better part of a relentless winter with grace and good spirits. Our collegiality and fellowship buoyed us through the dark, cold days due, in large part, to the monthly meetings, so ably planned by Dan Mannix, Esq. Several of the meetings were receptions lasting a couple of hours, enabling everyone to be home early.

The Holiday Party was enjoyed by all who attended and featured delicious offerings by Fort William Henry. Judge Hobbs provided valuable information on centralized arraignment, Opioid Diversion Court, and the Distracted Driving Simulator at our January meeting.

Upcoming are the Foundation's March Mixer, followed by the April luncheon meeting at which a 2-hour CLE in ethics will be led by our fellow member, Monica Duffy, Esq. May brings us Law Day. The month and our 2017/18 year concludes with the Annual Dinner on May 24th at the Lake George Club with guest speaker, Sharon Stern Gertsman, Esq., NYSBA President.

WCBA working for you has presented two CLEs to date. Both Ethics of Email and Real Property Update were well attended and well received.

Visiting guests at our meetings often remark that WCBA is one of the few county bar associations which continues to hold monthly meetings and that the resulting comraderie is evident. Suggestions for meeting topics are always welcomed.

This edition of the Tipstaff highlights case notes, anecdotal recollections and important notices. Enjoy your reading! Thanks to Jill O'Sullivan, Esq. and Kate Fowler for all their work in producing this edition.

Best regards,
Maria

Old School
By James Cooper

I was described by a lawyer of my generation as “old school”when queried by a young attorney who related that to me in a transaction. I suspect that the designation was pejorative. In matters of fashion, I am wise enough to know that attitudes change, and that an ‘old school’ lawyer should have sense enough to keep his mouth shut about what tie patterns should be worn with what shirt patterns. After all, when I started practicing it was considered bold to wear a colored shirt or patterned shirt to court. I read once that every age has to be the master of its own laws, just as modern man in a suit of chain mail is not only uncomely, but also uncomfortable. Still, there are timeless truths.

Clients are paying for legal competence, of course, but it is important to them that you as their representative reflect favorably on them in all aspects. I had several occasions when clients commented to me or each other after a transaction that the other party’s lawyer dressed sloppily. They were doing a self-worth comparison that translated like, “We could afford a real lawyer, but they could only afford a shoestring operator.” It’s not unreasonable to speculate that the other attorney’s clients were doing the obverse of the same evaluation, perhaps to the detriment of his future retainer by them. I experienced a closing when the other lawyer showed up in a sweat suit, another time a different lawyer in jeans and work boots.

To the extent that practicing law is cousin to acting, remember to go in a costume that reflects the professionalism your clients are paying for and expecting.

Jim Cooper

MANDATORY E-FILING ANNOUNCEMENT

To: The Warren County Bar Association

From: The Hon. Robert J. Muller, J.S.C
The Hon. Martin D. Auffredou, J.S.C
The Hon. John S. Hall, Jr., Warren County Judge
The Hon. Pamela J. Vogel, Warren County Clerk
Lori L. Rich, Chief Clerk, Warren Supreme and County Courts

Date: Feb. 1, 2018

Re: Mandatory E-Filing

In Summer 2017, the Warren County Supreme Court – Justice Muller, Justice Auffredou, Warren County Court Judge Hall, their most capable staffs, and the Warren County Clerk's Office, were contacted by the administrative office of the Fourth Judicial District and invited to participate in a coordinated program to implement mandatory e-filing in the Fourth Judicial District.

After a series of discussions, in-person and telephone meetings, and careful planning on the part of the Administrative Office, the formal letter requesting authorization to move forward has been sent to Chief Administrative Judge Lawrence Marks. Target date: April 2018! Of course, as is protocol within the NYS Unified Court System, your comments are most appreciated!

In anticipation of the commencement of e-filing, Warren County is confident in our ability to responsibly and successfully implement this latest electronic initiative for our Supreme Court. Our local experience supports this effort:

- Our Supreme Court Judges presiding over e-filing cases in neighboring Essex County since 2016;
- Introduction of e-filing in Judge Hall's Warren County Surrogate's Court in 2017;
- County Clerk's daily practice in electronic recordkeeping - e-recording since 2014; 2 million civil court pages digitized since 2008, and having a system vendor, IQS, with an established, professional relationship with the UCS and 13 e-filing counties!

This local experience together with the guidance and training offered by the NYSCEF Resource Center under the expert coordination of Jeffrey Carucci, Esq. *(CLE at Warren County March 8, 2018!)** and the administrative oversight of the Fourth Judicial District will ensure the Warren County Supreme Court's successful transition into the world of electronic filing! We look forward to working with all!

*Editor's Note: This session was canceled due to inclement weather. New date TBD

Case Summary RB v. RJB
Citation for Full Decision: 58 Misc 3d 1209(a)

Plaintiff RB and defendant RJB were married on January 26, 2007 and have four children: LB (born 2005); ARB (born 2006); AMB (born 2009); and ALB (born 2011). Plaintiff commenced this action for divorce upon the grounds of irretrievable breakdown in the relationship by the filing of a summons with notice on September 22, 2017 (see Domestic Relations Law §170 [7]). Pendente lite motions:
(1) modification of a prior Order of Custody and Visitation so as to grant plaintiff sole physical and legal custody of the children;
(2) temporary child support; and
(3) interim counsel fees.

Case Summary ES v. TS
Citation For Full Decision: 58 Misc 3d 1215(A)

Wife ES petitioned for interim counsel fees, as did husband TS, and to claim the parties' child as a dependent on his 2017 income taxes. ES argued she made barely $27,000 while husband made over $58,000, thus was the non-monied spouse entitled to counsel fees. TS claimed the parties lived apart for over four years and ES was fully self-supporting, noting he paid child support and the parties health insurance. The court agreed finding TS succeeded in rebutting the presumption that ES was entitled to counsel fees noting while TS's annual income was greater than her's, he appeared to have more expenses and debt, denying the motion. It also noted there was no case law providing for payment of counsel fees by a non-monied spouse to a monied spouse as a result of any obstructionist tactics, ruling it was most equitable for them to be responsible for their own counsel fees. Also, it was held where a non-custodial parent met all or a substantial part of a child's financial needs, as here, they were entitled to declare the child as a dependent, and as ES claimed the child on her 2016 taxes, TS was entitled to claim the child on his 2017 taxes.

Case Summary Queensbury v. Coughtry
Citation for Full Decision: 57 Misc 3d 1202(A)

Defendants property owners were alleged to have violated Town of Queensbury Building and Zoning Codes with the on-going construction of a permanent structure on their property. Defendants indicated they planned to relocate the structure and were given time, and a subsequent extension to do so, but failed. Plaintiff town commenced suit and sought a preliminary injunction restraining defendants from continuing any construction or permitting use and occupancy of the structure pending conclusion of the action. The court noted a municipality seeking to enforce its zoning ordinances was not subjected to the traditional three-pronged test for injunctive relief. Defendants argued the subject dwelling was a custom built recreational vehicle, not a permanent structure. The court disagreed finding defendants failed to submit reliable evidence establishing the dwelling was portable or able to travel. Most telling, it noted when it invited defendants to bring the trailer to the courthouse, the suggestion “did not inspire much enthusiasm,” finding the balance of the equities were in town’s favor. Also, the court found town presented a likelihood of success on the merits, granting plaintiff’s motion for a preliminary injunction.

NEW CLE REQUIREMENT FOR ATTORNEYS DUE TO RE-REGISTER

As of January 1, 2018, there is a new Continuing Legal Education requirement applicable to all experienced attorneys who are due to re-register on or after July 1, 2018.

You must take at least one credit hour in the category of "diversity, inclusion and elimination of bias". The NYS Bar Association has various course offerings that will help you satisfy the new requirement.

The other CLE requirements still apply.

For more information, go to: http://www.nycourts.gov/Attorneys/CLE/

Parents' liability for party hosted by their 18-year old son.

Lathers v. Denero (Lynch, J., 11/2/17)

A New York landowner can be held liable for an injury to a guest by a third party if the owner had the opportunity to control the third party and was "reasonably aware of the need for such control". Plaintiffs here were allegedly assaulted by fellow guests at a party on defendants' property (24 acres of vacant land, 3 miles away from their house) hosted by their son who invited (by word of mouth and social media) upwards of 80 guests, some of whom were not of legal age to consume alcohol. The parents were not present on the date of the incident but had prohibited their son from hosting parties and were concerned to the point of having a tracking device installed on his cell phone. Supreme Court (Catena, J., Montgomery Co.) denied defendants' motion for summary judgment, and the Third Department affirmed, finding evidence to raise a question of fact whether the parents knew or should have known that the party was being held.

Slip-and-fall; thickness of ice can show constructive notice.

Calvitti v. 40 Garden, LLC (Mulvey, J., 11/22/17)

It is well-settled New York law that liability for a slip-and-fall accident requires a showing that the defendant either created or had actual or constructive notice of the dangerous condition that caused the fall and injury. This plaintiff claimed she slipped on an unlit section of (defendant's) sidewalk coated with "bumpy and wavy" ice that was approximately two inches thick and 3-4 feet in length. Supreme Court's (Gilpatric, J., Ulster Co.) denial of defendant's motion for summary judgment was affirmed by the Third Department, which noted that plaintiff's description of the thickness and extent of the ice on which she fell, if accepted by a jury, would be "relevant to the factual question of how long it was present and whether it was visible and apparent" for enough time that defendant could have found the hazard and had sufficient time to remedy it (i.e., constructive notice).

CPLR 3025(b) amendment of pleadings.

Bynum v. Camp Bisco, LLC (Mulvey, J., 11/30/17)

Plaintiff's daughter was seriously injured after reportedly ingesting a harmful substance while attending the defendant-sponsored music festival in 2012. She died four years later (three years after suit was filed). Plaintiff's motion to amend the complaint (per CPLR 3025(b)) by adding a cause of action for wrongful death was granted by Supreme Court (Versaci, J., Schenectady Co.) which found defendants failed to demonstrate the amendment was a surprise or would prejudice their defense. Affirming, the Third Department agreed that the proposed amendment "does not change the theory of recovery" in the litigation and noted that the requirement for medical proof showing a causal connection between the alleged negligence and decedent's death is limited to actions premised on medical malpractice.

Primary assumption of risk jury charge not warranted.

DeMarco v. DeMarco (Rose, J., 10/26/17)

While a personal injury plaintiff's culpable conduct can reduce but does not bar recovery (CPLR § 1411), the doctrine of "primary assumption of risk" has been recognized by the Court of Appeals as a complete defense in some injury claims arising from sporting, athletic and recreational activities. In this action, the 48-year old plaintiff was hurt while jumping on a trampoline owned by her brother and sister-in-law. At trial, Supreme Court (Nolan, J., Saratoga Co.) denied the defendants' request to charge the jury on primary assumption of risk (but did instruct the jury on implied assumption of risk). On appeal, the Third Department found the trial court was correct, and affirmed the $800K verdict for plaintiff.

"Sole proximate cause" defense in motor vehicle accident.

Debra F. v. New Hope View Farm (Mulvey, J., 11/30/17)

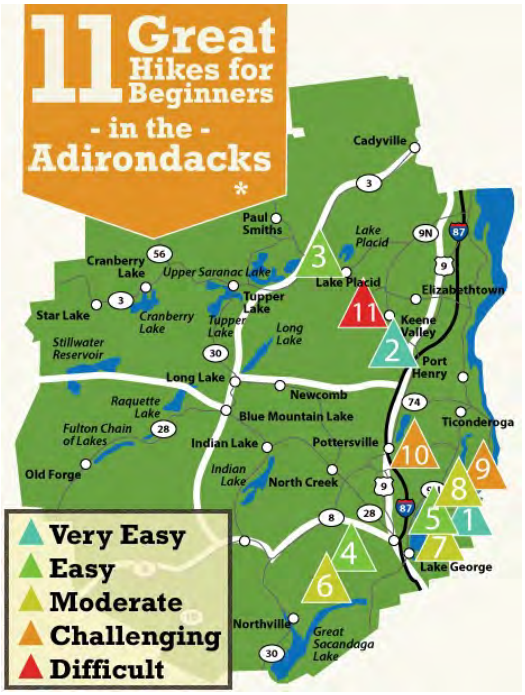
The infant plaintiff was a passenger in the defendant Sinclair's car which collided with the defendant New Hope View Farm's truck; the impact occurring after Sinclair made a left turn across the truck's eastbound travel lane. Sinclair was ticketed for failing to yield the right of way but plead guilty to a lesser charge (a non-moving violation). The defendant Farm's motion for summary judgment; arguing that the defendant Sinclair was the sole proximate cause of the accident; was denied by Supreme Court (Faughnan, J., Tompkins Co.). The Third Department affirmed. Although the defendant's proof, including an expert's evaluation of speed and time data from the airbag module in the truck, made a prima facie showing that the truck operator did not have a reasonable opportunity to avoid the collision, the plaintiff raised a question of fact with the testimony of an eyewitness who offered a "materially different version of the accident" that could lead a jury to find that the truck driver had enough time and opportunity to observe the Sinclair vehicle and take evasive action.

Bonus: Court of Appeals clarifies statute of limitations on "extraordinary expenses" claim.

B.F. v. Reproductive Medicine Assoc. of N.Y., LLP (DiFiore, C.J., 12/14/17)

40 years ago, the Court of Appeals recognized a new cause of action permitting parents to seek recovery of "extraordinary expenses" incurred to care for a disabled infant who, but for a doctor's negligent failure to detect or advise on the risks of impairment, would not have been born. Such "wrongful birth" claims, alleging medical malpractice, are governed by the 2 ½ - year statute of limitations in CPLR § 214-a. Defendants in these actions failed in their motions to dismiss the claims as untimely because suit was filed more than 2 ½ years after the dates of the alleged malpractice. Affirming the lower courts and Appellate Divisions, the Court of Appeals holds that the cause of action accrues (and the statute of limitations begins to run) on the date of the infant's birth. Citing to the "unique circumstances" underlying such a claim, the Court notes that until the child is born "it is impossible to ascertain whether parents will bear any extraordinary expenses" and emphasizes that setting the date of birth as the date of accrual gives parents a reasonable opportunity to file suit "while at the same time limiting claims in a manner that provides certainty and predictability to medical professionals engaged in fertility treatment and prenatal care".

The Bulletin Board



CLICK HERE TO LEARN MORE

In keeping with Jim Cooper's observations. I am proposing a hike some weekend in the Lake George area. Perhaps Pilot Knob with an inspection of a 1969 plane wreckage or Cat and Thomas Mountains in Bolton on two newer Conservancy lands with extraordinary lake views.
I'd like to hear back from interested Bar members with expressions of interest and other suggested destinations.

Hon. Robert J. Muller

Please email Judge Muller at:
rjmuller@nycourts.gov

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 WCBA:
admin@wcbany.com

TIPSTAFF is a publication of
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Send articles of interest, classifieds, and announcements to: admin@wcbany.com

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Deadline for Submissions for Next Edition: April 20, 2018

PRESS RELEASE
NOTIFICATION

CHANGE OF TELEPHONE NUMBERS

Effective November 13, 2017

The telephone numbers and email addresses (previously fax numbers) for the Unified Court System in Warren County at the Warren County Municipal Center, at 1340 State Route 9, in Lake George and Glens Falls City Court, at 42 Ridge Street, in Glens Falls, New York, changed on **November 13, 2017**. The state court system will no longer participate in the telephone system operated by **Warren County**, and will move to an IP telephone system.

The new numbers will now provide access to all of the various courts and offices of the Unified Court System in Warren County. The area code remains (518). Where necessary and appropriate, callers will reach an automated attendant with a menu of convenient options for further connections.

Fax numbers are no longer be in service. Instead an email address has been provided for expediting documents to the Courts.

Questions may be directed to any of the chambers or court offices.

A chart of the new telephone numbers and office email addresses follows on the next page.

The Bulletin Board

WARREN COUNTY NEW TELEPHONE NUMBERS

Effective November 13, 2017

Judges' Chambers	*Telephone*	*Email Address*
Chambers of Hon. Robert J. Muller	*518-480-6346*	*ChambersRMuller@nycourts.gov*
Chambers of Hon. Martin D. Auffredou	*518-480-6302*	*ChambersMAuffredou@nycourts.gov*
Chambers of Hon. John S. Hall	*518-480-6351*	*ChambersJHall@nycourts.gov*
Chief Clerk's Offices		
Supreme and County Courts	*518-480-6335*	*WarrenSupremeCo@nycourts.gov*
Surrogate's Court	*518-480-6360*	*WarrenSurrogate@nycourts.gov*
Family Court	*518-480-6305*	*WarrenFamily@nycourts.gov*
Related Offices		
Commissioner of Jurors	*518-480-6330*	*WarrenJury@nycourts.gov*
Drug Court	*518-480-6340*	*WarrenDrug@nycourts.gov*
Court Security	*518-480-6355*	
Glens Falls City Court	*518-480-6365*	*GlensFallsCity@nycourts.gov*
Court Office	*518-480-6380*	
Court Security		

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

MATTHEW A. McKEIGHAN

LAKE GEORGE BEACH CLUB

Address
3 Lower Montcalm Street
Lake George, New York 12845

Phone

518.685.5418

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 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 WCBA website and allow those who use the website easy access to the advertisers' information.

Prices for 2017 - 2018:
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 518.430.7572 or email: admin@wcbany.com