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WARREN COUNTY BAR ASSOCIATION, INC. 16 Maple Street, Suite 3 Glens Falls, NY 12801

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Michele Battle Executive Director

# **TIPSTAFF**



### PRESIDENTS MESSAGE Maria G. Nowotny, Esq.

Welcome to the Fall edition to the Tipstaff! We hope you find the articles and the notes informative and engaging.

We started the Fall season with our September meeting at the Lake George Beach Club. The evening offered perfect weather, perfect setting, and most importantly, perfect company. Everyone enjoyed getting caught up following the summer hiatus. We were treated to an entertaining rendition by Mayor Blais of the last several decades of Lake George's history.



October was marked by the invaluable CLE presentation by our colleague, Matt Fuller, Esq., on the ethics of email use in law practices. The examination of NYRules Professional of Conduct and NYSBA ethics opinions applied to email usage provided much to consider. These considerations may lead to further presentations on the use of technology in law offices. This CLE presentation was an exciting event as WCBA was the approved provider of the CLE credit, as contrasted with serving as the venue for another organization to issue the credit. Another two CLE programs will be provided by the WCBA – a three hour real estate CLE in February and a second ethics CLE in April. A valuable benefit of WCBA membership is the ability to acquire CLE credits without charge for the credits and without traveling outside Warren County and in the convivial company of our membership. Looking ahead, the Mannix Dinner is upon us. This is always an evening of fun and camaraderie providing a wonderful opportunity for newer members to become better acquainted with the judges and more seasoned members of our bar.

## Collegiality By James Cooper

At one time my passion for hiking was indulged to the detriment of my house and yards. But after I got my "46" and started working on the hundred highest with more casual effort, I wanted to share some of the beauty of the High Peaks with some lawyer friends. We went in the early autumn to maximize daylight, as some came from Albany. Over six or so years various groupings of us climbed Giant of the Valley and Rocky Peak, Upper Wolf Jaw, Armstrong and Gothics, Cascade and Porter, Macomb, Colden, and Algonquin. Getting lawyers to cooperate and heed instructions is like the cliche', "herding cats." We had adventures and humorous things happen.

My friend from law school, Mike Novack, became clerk of the Appellate Division 3rd Department. I had outsized respect for him and his office. He came up with the Albany contingent and appeared in my driveway. My dog, a yellow lab named, "Mike", squirted out the porch door when I opened it to greet the Albany group of lawyers. I hollered at him loudly, "Get in here Mike!", whereupon Novack snapped out "OK" and took a couple of quick steps toward the house, showing that his training at LaSalle Military

Institute was pretty enduring.

When we did the circuit over Giant to New Russia, they were indifferent to my warnings that we were running out of daylight, so light failed us after our descent of Rocky Peak. A survey of equipment revealed that only Rhona Novack had heeded my list of gear and sent Mike along with a good flashlight that we used by shining it forward from the rear of the Indian file until the front man picked up the trail marker.



When I took them up the Trap Dike on Mount Colden, their wisecracks and needling stopped when we got to the free climbing section where sober reflection required Fred Monroe to stop to smoke two cigarettes, and Ron Newell, confronted with the unacceptable route went Viking berserk up the right side grabbing spruce saplings or anything else for handholds. Some stayed relatively close to me on the open slides while the others understood that 'up' led to the summit through brush and krumholtz. (see the above remark about 'herding cats')

We would have steaks at the Elm Tree Inn, usually involving a long wait to get a table for nine or so, enabling us to sample the beer menu. The recounting of the day's adventure with a large meal and refreshments meant that the Albany guys got home at about 2:00.

Once the Glens Falls lawyers agreed to meet at the old HoJos on Aviation Road. When the last arrived, the Muller brothers lifted and carried Newell from the busy restaurant by each arm and loudly announced that it was time to return to the home.

The magic of the event was in the lifetime of memories developed between us because of the shared adventure. It's nearly impossible to be hostile to a colleague when you have gotten dirt under your fingernails together.

Get a small group of lawyer acquaintances together. Do a hike or a ski trip back to a remote pond or lake. There is a lasting bonding that words prove inadequate to describe.



Please join us on Thursday, November 16th, at 5:30pm for a casual evening where we will continue our tradition of comradery and creating memories.

Pat Mannix and Jack Mannix were Warren County Bar Association members who encouraged camaraderie among the members, both young and old. Pat Mannix regularly hosted spaghetti dinners at his home to bring attorneys, new and experienced, along with judges, together in a fun and casual setting to encourage collegiality. Jack Mannix left a bequest to the Warren County Bar Foundation to fund programs that continued to promote these traditions. It is in their spirit that the WCBF and WCBA are proud to invite you to their annual Mannix Dinner.

#### THIS YEAR WE WILL BE ADDING A BLIND TASTE TESTING CONTEST!!!

Please bring your favorite dessert, put your name (not Firm Name) on the bottom of the dessert and we will judge to see who gets the most votes!!! The winner will receive a gift certificate! If you are interested in participating, please email the WCBA at michele@wcbany.com

We encourage all "seasoned" attorneys to attend!



MENU:
Spaghetti
Chicken Parmesan
Tossed Salad
Villa's Bread
Dessert
Beer, Wine, Coffee, and Sodas



\*\*\*Attorneys admitted to practice 10 years or less and their significant others are FREE!\*\*\*



## STATE OF NEW YORK SUPREME COURT CHAMBERS ROBERT J. MULLER, JUSTICE OF THE SUPREME COURT

In the Matter of the
Dissolution of TWIN BAY
VILLAGE, INC. VLADIMIR CHOMIAK et al.,
Respondents; TATIANA CHOMIAK
KASIAN, Also Known as TANYA
CHOMIAK KASIAN, et al.,

Summary:

A recent commentator observed: "If there was an award for the crudest and most draconian case of shareholder oppression, Matter of Twin Bay Village, Inc., 2017 NY Slip Op 06024 [3d Dept Aug. 3, 2017], decided earlier this month by an upstate appellate panel, would be a serious contender" This is the Appellate Division's affirmance of an order granting petitioners' application, in a proceeding pursuant to Business Corporation Law article 11, to direct the judicial dissolution of Twin Bay Village, Inc. on Lake George

TO SEE FULL OPINION CLICK HERE

In the Matter of the Application of Frederick C. Tedeschi, Petitioner v. Lake George Park Commission, Michael C. Hopper, Doris Hopper

Summary:

In keeping with a Lake George theme plaintiff and defendants each owned property in the Shore Colony, with owners having an undivided 1/100 interest in a beach, boardwalk and main docks. The instant dispute involved the interpretation of a restrictive covenant and an articulating dock upon which plaintiff claimed two boards attached to the side of the dock constituted a building or obstruction on the main dock violating the covenant. [New York Law Journal- August 22, 2017]

TO SEE FULL OPINION CLICK HERE

Henry MARLER and Marler Family Properties, LLC, Plaintiffs, v.
A & S LAKE SHORE LEASING, INC. and Fred Alexy, Defendants

Summary:

Court grants summary judgment on plaintiffs' specific performance cause of action and considers an award of counsel fees.

56 Misc.3d 1212(A)

TO SEE FULL OPINION CLICK HERE

## STATE OF NEW YORK SUPREME COURT CHAMBERS MARTIN D. AUFFREDOU, JUSTICE OF THE SUPREME COURT

**BRETT BENANSKY, Plaintiff,** 

AGILITY FUNDING, LLC, Plaintiff,

V.

٧.

TOWN OF STONY CREEK, NEW YORK, Defendant

AUFFREDOU, J.

Summary:

Road Established as Highway By Use Pursuant to Highway Law § 189; Town's Easement Not Limited to Traveled Width of Roadway; Plaintiff's Motion for Summary Judgment Denied and Town's Motion for Summary Judgment Granted

TO SEE FULL OPINION CLICK HERE

WILMINGTON TRUST NATIONAL ASSOCIATION, as Trustee for MFRA Trust 2015-1, THE BOARD OF

MANAGERS OF CRANDALL SQUARE

**CONDOMINIUM, and "JOHN DOE NO.** I" through "JOHN DOE NO. 15", the last fifteen names being

fictitious persons or parties unknown to plaintiff, the persons of parties intended being the tenants, occupants, persons or corporation, if any, having or claiming an interest in or lien upon the premises described in the Complaint

Defendants

AUFFREDOU, J.

Summary:

Defendant's Default in Appearing Vacated; Complaint Dismissed Based Upon Election of Remedies Doctrine, Pursuant to RPAPL 1301

TO SEE FULL OPINION CLICK HERE

### STATE OF NEW YORK SUPREME COURT CHAMBERS

Court Rules
of
The Honorable Martin D. Auffredou, J.S.C.
~ 2017 ~

TO SEE FULL SET OF RULES PLEASE CLICK HERE

Court Rules
of
The Honorable Robert J. Muller, J.S.C.
~ 2017 ~

TO SEE FULL SET OF RULES PLEASE CLICK HERE

Torts and Civil Practice: Selected Cases from the Appellate Division, 3rd Department, By Timothy J. Higgins, a partner at Lemire, Johnson & Higgins, LLC

## Deposition questions seeking legal/factual conclusions are "palpably improper."

#### Kaye v. Tee Bar Corp. (Lynch, J., 6/29/17)

The plaintiff brought a personal injury claim after falling while attempting to mount a horse at the defendants' resort. At deposition, he declined to answer certain questions, including what warnings he believed should have been given by the defendants. Supreme Court (Cahill, J., Ulster Co.) denied the defendants' motion to compel and the Third Department affirmed, finding each non-answered question was "palpably improper" and violative of 22 NYCRR 221.2, which precludes "plainly improper" questions that (if answered) would cause significant prejudice.

#### Summary judgment motions

#### Kirby v. Summitville Fire Dist. (Egan Jr., J., 7/13/17)

The scope of a landowner's duty to maintain its property in a safe condition is measured in terms of foreseeability; the primary issue here where the plaintiff, exiting the defendant's firehouse after a holiday party, walked out a back door and around the side of the building, allegedly stepped on a pipe and was hurt in a fall down an embankment. Supreme Court (Schick, J., Sullivan Co.) granted defendant's motion for summary judgment and was affirmed by the Third Department, agreeing that the plaintiff's means of egress was not reasonably foreseeable, especially since he could have exited by the firehouse front door, closest to where his car was parked. A witness' testimony that children were allowed to play "flashlight tag" that evening in the general area where the plaintiff fell did not create a question of fact whether the defendant had actual or constructive notice that firehouse guests were using that part of the property as a path or walkway.

#### Olsen v. Campbell (Mulvey, J., 5/11/17)

Finding that the defendant had no prior knowledge of his dog's vicious propensities, Supreme Court (Ferreira, J., Schoharie Co.) dismissed the claim by plaintiff whose 3-year old daughter was bitten on the face by a 12-year old Siberian husky. Defendant testified that he kept the dog chained up outside; that the animal's "job" was to alert him to the presence of people in his yard and to protect his business assets, and that some 3-5 years earlier the dog "grabbed a customer's pant leg" but did not break any skin. The Third Department reversed and reinstated the complaint, noting that the prior dog incident, although it did not break the person's skin, "may reflect a proclivity to act in such a way that puts others at risk of harm" and could constitute evidence that the dog had a vicious propensity.

Torts and Civil Practice: Selected Cases from the Appellate Division, 3rd Department, By Timothy J. Higgins, a partner at Lemire, Johnson & Higgins, LLC

#### Webb v. Albany Medical Center (Peters, P.J., 6/22/17)

Plaintiff was at the defendant hospital visiting a friend who'd had surgery and went with her to a physical therapy session. Her friend allegedly fell during transfer to a PT bed and plaintiff claimed she hurt her shoulder when she caught the patient mid-fall. Supreme Court (Connolly, J., Albany Co.) found the action sounded in medical malpractice, as plaintiff alleged that attempting to perform a slide board transfer of the patient was a deviation from the minimum standard of medical care, and granted defendant's motion for summary judgment. Affirming, the Third Department agreed that the plaintiff's expert witness affidavit (by an orthopedic surgeon) was conclusory and "patently insufficient" because, among other things, the expert failed to identify or define the applicable standard of care and failed to list any steps or procedures that could have prevented the patient from falling during the transfer.

#### Feeney v. County of Delaware (Peters, P.J., 5/4/17)

The defendant's deputy sheriffs and a defendant state trooper (Begeal) arrested the defendant Lacey, who needed medical care for a laceration. At the Delaware Valley Hospital, Lacey allegedly kicked and injured the plaintiff (who was Lacey's attending physician assistant). Supreme Court (Burns, J., Delaware Co.) granted summary judgment to the county but not Trooper Begeal, who had placed Lacey under arrest and assumed his custody. The Appellate Division modified the lower court order and granted summary judgment to Begeal, finding that "his discretionary acts of not restraining Lacey's legs and leaving the examination room before the attack took place were protected" by the commonlaw doctrine of governmental immunity.

#### Legac v. South Glens Falls Cent. School Dist. (Clark, J., 5/25/17)

Plaintiff's 15-year old son, during indoor tryouts for the defendant's JV team, was struck in the face by a ground ball hit onto the gym's hardwood floor by a coach positioned some 48 feet away. Supreme Court (Chauvin, J., Saratoga Co.) denied the defendant's motion for summary judgment which contended the plaintiff assumed the risk of being struck by a baseball. Plaintiff conceded he was aware that ground ball "bad hops" were common, that three or four players had fielded grounders from the same distance before his turn, and that his injury occurred on the 4th day of tryouts in the gym. The Third Department (with one dissenter) reversed and dismissed the complaint, concluding that the "conditions inherent" in the drill were readily apparent to the plaintiff "and the risk of being struck by a ball was a reasonably foreseeable consequence of engaging in that drill".

Torts and Civil Practice: Selected Cases from the Appellate Division, 3rd Department, By Timothy J. Higgins, a partner at Lemire, Johnson & Higgins, LLC

#### New York Insurance Law § 5102(d) "serious injury"

#### Fillette v. Lundberg (Clark, J., 5/25/17)

Reversing Supreme Court (Cahill, J., Ulster Co.), the Appellate Division found plaintiff was entitled to summary judgment on liability and that plaintiff raised issues of fact on whether his injuries in this crossover auto accident left him with a "significant limitation" of his neck, back and left shoulder (per New York Insurance Law § 5102(d)) as well as a causally-related emotional injury necessitating treatment related to "anxiety, stress, insomnia, nightmares, irritability, temperament changes" and flashbacks of the auto crash.

#### Snare v. Capitaland Taxi, Inc. (Rose, J., 6/15/17)

Supreme Court (Reilly, J., Schenectady Co.) granted defendants' motion for summary judgment which the Third Department reversed, finding a failure to make an initial prima facie showing in the 90/180-day category of "serious injury". Defendants primary medical proof was an IME report that was not affirmed "under the penalties of perjury" (CPLR 2106(a)) and plaintiff was never questioned at deposition whether his injuries from the auto accident prevented him from performing his "usual and customary daily activities" during the dispositive time period.

#### **Trial practice**

#### Noble v. Slavin (McCarthy, J., 5/4/17)

When plaintiff's medical malpractice claim went to trial, her expert witness (orthopedist) testified that the defendant, on the first day of treatment, negligently failed to recognize the need to perform surgery on the plaintiff's injured leg. However, plaintiff had failed to allege in bills of particulars that the defendant was negligent on that particular day, and at the close of plaintiff's proof, Supreme Court (Zwack, J., Rensselaer Co.) granted defendant's motion for a directed verdict (and implicitly denied plaintiff's application to conform her pleadings to the trial evidence). The Third Department found that was in error, reversed judgment for the defendant and remitted to Supreme Court for a new trial. A motion to conform the pleadings to the proof "should be liberally granted" absent prejudice to the non-moving party and the defendant made no such showing here. Defendant was on notice of the dates of medical care rendered to the plaintiff, and "acquiesced to the introduction of evidence" during trial regarding the surgeon's alleged negligence on that first day of treatment.

#### Meyer v. St. Francis Hospital (Clark, J., 6/29/17)

This medical malpractice action, alleging inadequate treatment of pressure sores in the post-surgical period, ended with a defense verdict which the Third Department reversed and directed a new trial. Question # 1 on the jury verdict sheet asked whether the defendant was "negligent in its care and treatment" of the plaintiff, which prompted a note from the deliberating jury asking for a "clear explanation of 'care & treatment'" and whether the term included "paperwork/documentation & policy". The Appellate Division found Supreme Court (Cahill, J., Ulster Co.) properly reviewed the note and a response to it with counsel but upon the jury's return to the courtroom failed to fully and adequately answer the jury's multiple questions and in so doing "precluded the jury from fairly considering a critical issue presented at trial".

Warren County Bar Association September 2017 Monthly Membership Meeting Recap Respectfully submitted by Matthew F. Fuller



The Warren County Bar Association had its monthly meeting at the Lake George Beach Club on September 21st. Attendees were blessed with the non-partisan regaling of the Hon. Robert M. Blais, Mayor of the Village of Lake George, on some of the events that have occurred during his well-documented tenure in office from his time as a local police officer through current events in the Lake George region. It is safe to say that no municipality has a better salesperson at the helm than does the Village of Lake George. We won't print any of his fine tales here but will leave the caution not to miss an event where you might catch one of his fantastic stories.

Given enough time, I think he could have convinced Denny Tarantino to vote for him.

Great food and drink were supplied by the Lake George Beach Club, which if you haven't been to the former Shepard's Cove location, you should visit. The owners have done a tremendous job remodeling one of downtown Lake George's best lake side locations.





### **Member Recognition**



In May, The Post Star honored people younger than 40 who have demonstrated success and dedication to their careers and who are role models in their trades or communities. We are lucky to have 2 of these individuals among our very own: Jennifer Jeram and Jeffrey Meyer. We asked each of them to tell us a little about their involvement in their communities.

#### Jennifer Jeram

I volunteer for Saratoga Center for the Family, an amazing organization that helps victims of child abuse and also has child abuse prevention programs. I am currently helping to plan the Center's annual wine and beer tasting event -- Corks, Forks & Brews – which will be held on November 3, 2017 from 6-9 P.M. at the Holiday Inn in Saratoga Springs, if anyone is interested! It will be a great time, and for a great cause! I am also a member of the Saratoga County Democratic Committee and the Clifton Park Democratic Committee. Finally, I am an active member of the PTA at Arongen Elementary School, where my son is in 1st grade. I help with various fundraising events throughout the year and also help out in the classroom whenever I can.

Jennifer Purcell Jeram Principal Law Clerk to Hon. Robert J. Muller, J.S.C.

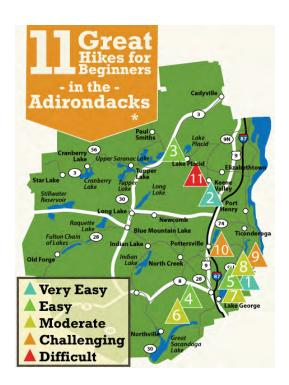


(Jennifer and her husband Dan Jeram)

#### **Jeffrey Meyer**

It was truly an honor to have been named as one of the top 20 under 40 by the PostStar. Community involvement has always played an important role in my life. I am the Treasurer and Board Member of the Washington County Economic Opportunity Council. While it is best known as overseeing Head Start and Early Head Start in Washington County, it provides so much more through supporting individuals and families in the fight against poverty through community collaboration, shared resources and services, with the focus on attaining and preserving self sufficiency. I am also a long time member of the Glens Falls Lions Club and the secretary of the Bar Association. Most importantly though, is being able to work near Lake George Elementary and being able to assist with my children's education, field trips, and the PTSO as much as possible.

Jeffrey R. Meyer Meyer and Fuller, PLLC Attorneys at Law



#### **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

Funding Social Problems, Not For Profit Promote Associations Charitable Promote Association Charitable Promote Associat

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: michele@wcbany.com

TIPSTAFF is a publication of the Warren County Bar Association

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

TIPSTAFF- Warren County Bar Association

EDITORIAL STAFF:

Jill E. O'Sullivan, Michele Battle, & Maria Nowotny

Deadline for Submissions for Next Edition: December 31st



## 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, will change 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 will 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. Existing numbers will be operative until the close of business on **November 10**.

A chart of the new telephone numbers and office email addresses follows on the next page. We ask for your cooperation and patience as we make this transition.

Many thanks.



#### WARREN COUNTY NEW TELEPHONE NUMBERS

### Effective November 13, 2017

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

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

Brent Frany Firth P.C.

Brent Baker Firth P.C.

FitzGerald Morris

FitzGerald Geoffrey Rafalik

Baker Firth P.C.

Ludemann McMorris & Silvestri, P.C.

Kathleen J. Fraher Baker Firth P.C. Baker Firth P.C.

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Marnie Abbott Wa Sciocchetti & Abbott, PLLC

Ryan Williams
Warren County Public Defender's Office

# Join the NDNY-Federal Court Bar Association in the reenactment of The Trial of Miss Susan B. Anthony



What: Susan B. Anthony Trial Re-enactment

Date: November 16, 2017

Time: 6:00 pm

Location: James T. Foley U.S. Courthouse,

445 Broadway

Albany, New York 12207

### The 14th Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. . . .

Members of the Judiciary and the community will be playing the roles of those involved in the Susan B. Anthony trial.



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### A Special THANKS to The Lake George Beach Club for

hosting our first meeting of this year!



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:

1/4 Page \$150 and 1/2 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: michele@wcbany.com

## WARREN COUNTYBAR ASSOCIATION

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