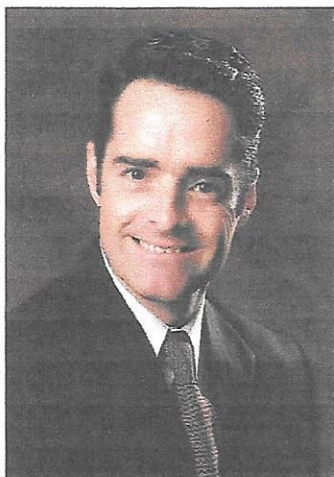


TIPSTAFF

APRIL 2016

THE PRESIDENT'S MESSAGE

By Dennis J. O'Connor



Since this is my last President's message for the Tipstaff, I would like to share a few observations that I have made during my term as president.

First, our bar association is experiencing a period of transition. Recently, we moved to a new office location and hired a new executive director who, unfortunately, will retire in June, resulting in a new hire. Additionally, due to either death or retirement, our local judiciary is now comprised of several new faces, as is our

Bar Foundation, for similar reasons. Our membership also continues to grow in large part from attorneys relocating to our region to enjoy a saner ("allegedly") way of life or young lawyers who are native to the Warren County area returning home to practice law. These changes can provide many exciting opportunities going forward, since fresh ideas can only enhance what is at the core of the strength of our association, i.e. a willingness to get involved and a recognition of the value of camaraderie.

Second, our association is a collection of men and women who care about one another. Unlike larger bar associations, we are not a collection of sub-committees comprised of distinct interest groups, or faceless or nameless attorneys, who come together either infrequently or only for formal events. As I have witnessed this past year, we willingly come together in large numbers, as friends, either to honor one another at members' funerals, or retirement or recognition parties, at civic activities, and at monthly lunches and dinners. We personally know one another. The familiarity of our membership, surely makes us more conscientious as individuals and, in my opinion, more thoughtful practitioners.

Finally, our members appreciate that the practice of law is not only a (Please see continuation on page 3)

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Notes from the House of Delegates

Submitted by Maria G. Nowotny

The fourth and final House of Delegates meeting of the 2015/16 fiscal year was held on April 2, 2016 at New York State Bar Association headquarters in Albany.

One vote was conducted at the meeting. The vote was on the report and recommendations presented by the Committee on the New York State Constitution. In 2017, a referendum will be held to determine whether a state constitutional convention should be held. The issue presently addressed is not whether the State Bar Association should or should not support the convening of a constitutional convention but to be prepared in the event such a convention is held. In that light, the Committee reviewed Article IX on the New York State Constitution. Article IX, Constitutional Home Rule, ensures the authority of local governments to exercise self-government. The report summary states "... while the protections set forth in Article IX are more extensive than Home Rule provisions in other states, in practice Home Rule has provided local governments with limited autonomy due to the doctrines of 'preemption' and 'state concern.' In addition, Home Rule is limited by the State Legislature's imposition of mandates on local government, often without providing necessary funding." The committee urges the public and policy makers to closely analyze and debate the operation of Home Rule. If a state constitutional convention is held in 2017 the preparatory constitutional commission recommends Home Rule receive significant consideration. The Report and Recommendation of the Committee was passed unanimously.

David Miranda continued to express concern in his President's Address as to third-party (non-lawyer) delivery of legal services. People with limited financial resources may resort to expending their limited funds on services provided by non-lawyers who, among other things, are not subject to the rules of professional conduct. NYSBA has always supported provision of legal services for the financially disadvantaged. In its continuing efforts to address unmet legal needs, a symposium is being held on May 3, 2016 at the Bar Center in Albany. Three panels will address the issues of use of nonlawyer housing advocates who may assist those who cannot afford to hire an attorney. The panels will examine assistance in housing courts, the rise of nonlawyer entrepreneurs providing legal services and bar association lawyer referral services.

The Task Force to identify unmet and underserved pro bono legal services presented an informational report recommending establishment of a fund to provide resources, as well as, partnering with existing pro bono services. It was noted there are communities which have a great need for pro bono services with too few attorneys or legal service providers available in those areas. The report observed that online access to pro bono opportunities must be improved and that limited scope representation to provide legal assistance without a formal attorney-client relationship could have a significant impact in easing unmet legal needs.

The Commercial and Federal Litigation Section presented a report looking at the use of social media in the trial setting. In view of jurors' use of social media explicit instructions are needed to ensure that

social media is not misused during the pendency of a trial. Recommendations to revise Pattern Jury Instructions including explicit admonitions regarding use of social media during a trial were put forth. NYSBA has made available juror room signs which remind jurors that they must not use the internet or social media in respect to the subject trial, not to conduct their own research, not to post or share anything a juror would not say in front of the judge and to advise the judge or court personnel if the rules are violated.

John Gross, Esq., President of the New York State Bar Foundation, reported that almost \$600,000 was awarded to assist efforts in the arenas of veterans, human trafficking, immigration and documentation assistance, as well as, domestic violence, homelessness, and legal assistance for re-entry post-incarceration. He explained a simple and cost-free manner of donating to the Foundation: the AmazonSmile program. When making an Amazon purchase, a button can be clicked directing a contribution by Amazon to NYSBF.

As noted at the outset, this my last meeting as Delegate. I genuinely thank the Warren County Bar Association for the opportunity to serve as Delegate. Witnessing the discussion of issues and formulation of policy truly was an engaging and educational experience.

The next meeting of the House of Delegates will be held on June 18, 2016 at The Otesaga in Cooperstown, New York.

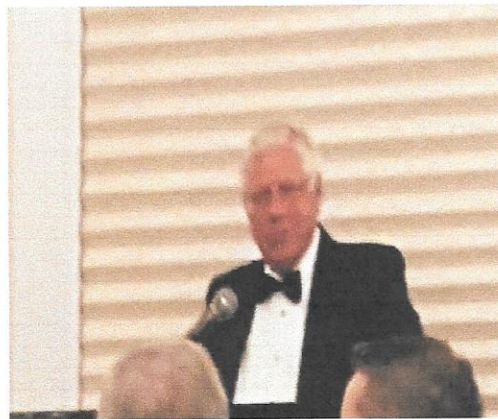
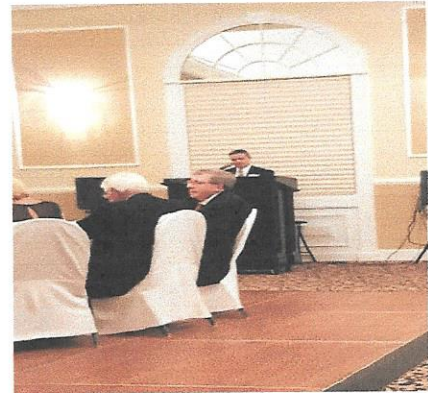


PRESIDENT'S MESSAGE (continued from page 1)

vocation. Outside of our legal practices, I have witnessed time and time again, how our members also serve as politicians/public servants, sit on committees and boards, serve as sponsors of charitable events and as leaders in their houses of worship, and volunteer countless hours doing “good” in our community and at home as confidants to their family and friends. There is sometimes a tendency for the media and the public to focus on the greed and egotism (“allegedly”) that may exist in the legal community. Within our association, at least, I have witnessed a different reality. Each of you deserves thanks and a pat on the back for your contribution and effort. I am very proud to have had the opportunity to serve as your President. Keep up the good work! A special thanks to Kathy Macura for her hard work and friendship. Although you have retired from your working life, may the fun have just begun! - Dennis J. O'Connor

JUDGE DAVID B. KROGMANN TRIBUTE

The highlight of the dinner following the Warren County Bar Foundation Mixer was the numerous tributes presented in honor of Judge David B. Krogmann upon his retirement. The truly heartfelt testimonials to Judge Krogmann's many attributes and accomplishments were moving. Humorous moments recalled were equally touching. Below surrounding the picture of Judge Krogmann appear many of the speakers who honored him.



MEMBERS' NOTES

AWARDS AND RECOGNITION

Jessica Hugabone Vinson, Esq. and Jill O'Sullivan, Esq. were recently honored for their worthy efforts, under the auspices of the Adirondack Women's Bar Association, in creating and sustaining the Legal Aid Clinic to Aid Survivors of Domestic Violence. For six years the Clinic has provided essential legal information to enable survivors of domestic violence to move forward successfully and confidently. Jessica continues to oversee the project, as did Jill O'Sullivan until she assumed the position of Court Attorney which rendered her ineligible to do so.

On April 2, 2016, Attorneys O'Sullivan and Vinson received the prestigious Angelo T. Cometa Award from the New York State Bar Association on behalf of the Adirondack Women's Bar Association. The award is sponsored by the Committee on Lawyer Referral Service in honor of past NYSBA President Cometa who played a critical role in the creation of the Lawyer Referral and Information Service and, in general, increasing access to lawyers by the public. The award recognizes efforts in providing information about available legal services and referrals to private attorneys, as needed.

Jill and Jessica were recognized on April 11, 2016 for their exemplary work by the Catholic Charities' Domestic Violence Project of Warren and Washington Counties at the annual Crime Victims' Rights Awards Ceremony in recognition of National Crime Victims' Right Week.

The Clinic's services are offered monthly at the local Catholic Charities office. Volunteer attorneys meet with domestic violence survivors in one-half hour sessions to provide counsel on a variety of issues directly and indirectly related to domestic violence. A service cited by Jessica Hugabone, in accepting the Angelo T. Cometa Award, was something as basic as providing assistance in balancing a checkbook. Most of the problems, though, require legal advice in areas such landlord/tenant, divorce support and tax. Hundreds of domestic violence survivors have been helped. Comments by users of the Clinic include

- "I got fantastic advice."
- "Careful, empathetic consideration
- "Direction to go next"

Congratulations to Jessica and Jill !



was given to my issues.""

Jill O'Sullivan and Jessica Hugabone Vinson receiving the Angelo T. Cometa Award

LRIS – Lawyer Referral and Information Service of the New York State Bar Association

Are you interested in expanding your client base? The LRIS could be the answer. Below appears a brief article provided by Eva Valentin-Espinal, LRIS Manager about the program and contact information for enrolling.

State Bar's Lawyer Referral Service Celebrates 35 years By Eva Valentin-Espinal, LRIS Manager

35th anniversaries are traditionally celebrated with gifts of jade and coral. This year the Lawyer Referral and Information Service (LRIS) celebrates its 35th anniversary. And, while gemstones aren't in our future we look forward to continuing to serve our communities.

Since its inception in 1981, the LRIS has assisted more than 655,000 members of the public. Our program currently serves 44 counties in Upstate and Western NY. For counties that we do not serve, we collaborate with local and county bars to ensure that the public finds the legal information they need.

Lawyer Referral Services are a great way for the uninformed consumer to access an attorney.

"Thank you for your help! This was such a relief to find the right attorney to help my family member." (LRIS Client)

The LRIS is also great for attorneys. "The LRIS really helped me grow my practice. Now that I have been in business for myself for more than 10 years, it's still a great way to find new clients." Elena Jaffe Tastensen, Esq

If you want to join the service contact LRIS Manager, Eva Valentin-Espinal at evalentin@nysba.org . If you have a client that needs help outside of your area of practice refer them to us 800.342.3661.

LOCAL JUDICIARY OPINION NOTES

The "Tipstaff" is pleased to present a new column conceived by Honorable Robert J. Muller, S.C.J. Local opinions of interest to the bar will be presented. In this space appears note(s) of opinions with its citation followed by a link to the full text. The link will take the reader to the WCBA website [www.WarrenCountyBarAssociation.org] The "Opinions" will be found under the tab "Publications."

1. **Dispute concerning condominium association common charges. Motion to amend pleadings.** *The Board of Managers of Green Mansions County Club Estates Section III-Building 11, Plaintiff, v. Mark A. Grimaldi and Christine Grimaldi, Defendants*, Supreme Court Warren County, Index No. 58943, RJI No. 56-1-2014-0031 1. Green Mansions
 2. **Summary judgment dismissing claims for tortious interference, demand for an accounting, action for a deficiency judgment referred to referee.** *Litchfield Financial Corporation, Plaintiff, v. Northern Hotels Corporation, et al., Defendants*, Supreme Court Essex County, Index No. 369-03, RJI No. 15-1-2003-0223 2. Litchfield
 3. **Summary judgment in slip and fall denied.** *Stephanie Carota, Plaintiff, v. Hess Corporation*, Supreme Court Warren County, Index No. 60319, RJI No. 56-1-2014-0630 3. Carota
 4. **Issues presented concern the municipality's change of insurance programs for retirees. Preliminary injunction ordered with undertaking.** *Plattsburgh City Retirees' Association, et al. v. City of Plattsburgh*, Supreme Court Clinton County, Index No. 2015-1625, RJI No. 09-1-2015-0666 4. Plattsburgh Retiree's
 5. **Disinterment of long deceased child denied.** *John Manson, Petitioner, v. Diana Manson and Roman Catholic Community of Morristown, Hammond and Rossie, Respondents*, St. Lawrence County, Index No. CV-2015-0146170, RJI No. 44-1-2015-0495 5. Manson
 6. **Criteria concerning attorney disqualifications from representation.** *McCutchen, Appellant, v. 3 Princesses and A P Trust Dated February 3, 2004 et al.*, (Third Dept., Decided and Entered April 7, 2016) 6. McCutchen
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Torts and Civil Practice: Selected Cases from the Appellate Division, 3rd Department

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Insurance agent malpractice claim reinstated

Finch v. Steve Cardell Agency (Garry, J., 2/18/16)

Plaintiff is a businessman who, among other things, puts on rodeos. Prior to each show, he obtained a rodeo liability insurance by contacting the defendant agency. Several bystanders at a 2012 event in Pennsylvania were hurt when four bulls escaped while being loaded into a trailer, and when lawsuits ensued, the liability insurer declined coverage in reliance on two policy exclusions: injuries caused by animals and injuries arising out of use of an auto (the loading trailer). Supreme Court (Guy, J., Broome Co.) granted defendant's cross-motion for summary judgment, finding the animal exclusion was not the proximate cause of plaintiff's loss. Reversing, the Third Department ruled there were triable issues of fact as to whether plaintiff and defendant had a "special relationship" and if so, whether the agency was negligent in "failing to advise and guide (plaintiff) in obtaining adequate insurance coverage for all aspects of his rodeo operations, including his trailers".

Lawyer's libel suit dismissed

Bouchard v. Daily Gazette Co. (Clark, J., 2/25/16)

New York Civil Rights Law § 74 provides immunity from civil liability to entities that publish a "fair and true report of any judicial proceeding". The plaintiff-attorney was convicted in federal court after which the U.S. Department of Justice ("DOJ") issued a media release entitled "Attorney Convicted in Mortgage Fraud Prosecution"; which resulted in the defendant newspaper's article entitled "Albany lawyer convicted of mortgage fraud". Relying on the statutory privilege of § 74, Supreme Court (Connolly, J., Albany Co.) granted defendant's motion to dismiss plaintiff's action for libel and the Third Department affirmed, concluding that a liberal reading of the newspaper article shows it to be a "substantially accurate" report of the DOJ press release and that any inaccuracies were not so egregious as to fall outside the statutory immunity.

Slip-and-fall

Chirumbolo v. 78 Exchange St., LLC (Peters, J., 3/3/16)

Plaintiff's trip-and-fall suit, alleging injuries caused by a dangerous "lip created by a height differential in adjoining concrete slabs" on the defendant's sidewalk, was dismissed on defendant's summary judgment motion by Supreme Court (Reynolds Fitzgerald, J., Broome Co.) which declared the alleged defect was trivial as a matter of law. Plaintiff was familiar with the area where she fell, having walked there some 100 times over 60 years, including once earlier on the day of her accident. Affirming dismissal of the suit, the Third Department noted that while plaintiff's expert witness (a self-employed contractor) opined that the defendant's sidewalk was "maintained in a manner below industry standards", no such applicable code, standard or accepted practice was identified.

Potter v. YMCA of Kingston (McCarthy, J., 2/25/16)

New York's "storm in progress" doctrine affords defendant property owners a reasonable period of time after the storm ends to remedy a dangerous snow/ice condition. Here, the defendant's meteorologist offered proof that light snow and/or freezing rain began about 25 minutes before plaintiff slipped and fell in the YMCA parking lot. In opposition to defendant's motion to dismiss, plaintiff's weather records showed more than 8 inches of snow had fallen two days before the accident. Plaintiff's contention that his fall was due to ice that had built up over time; combined with defendant's acknowledgment that it had no records showing sanding/salting had been done in the month of February, led Supreme Court to conclude that material issues of fact precluded summary judgment, which the Third Department affirmed.

Claim dismissed: absence of duty

Mayorga v. Berkshire Farm Center (Garry, J., 2/25/16)

Plaintiff was hurt when his car was struck by a stolen vehicle that was being pursued at high speed by police. The driver of the stolen car was a former resident of the defendant's non-secure detention facility; having been ordered there in the custody of the local Department of Social Services by Family Court in the course of juvenile delinquency proceedings. The resident, about a month before the car crash, was attending an educational program "on an open campus without gates or bars" that he chose to leave; after which he was discharged by defendant. Supreme Court (Mott, J., Columbia Co.) granted defendant's motion for summary judgment which the Third Department affirmed, agreeing that defendant proved as a matter of law "that it owed no duty to plaintiff to prevent the resident from leaving its facility" and as such, was not liable for plaintiff's injuries.

Medical privilege outweighs need for disclosure

Bellamy v. State of New York (Devine, J., 2/25/16)

Claimant, while being treated at one of the state's psychiatric care centers, was assaulted by another patient. Contending that the defendant failed to protect her

despite knowing of the assailant's dangerous behavior, claimant sought disclosure of documents, including medical records, specific to the assailant and other patients. The Court of Claims (DeBow, J.) partially granted claimant's motion to compel such discovery but permitted discovery of only one page of a redacted document that established the defendant had been aware of threats made by the assailant. On claimant's appeal, the Third Department affirmed, agreeing that the information and documents protected from disclosure contained "diagnostic information" that should remain confidential because the medical privilege was not outweighed by a compelling interest or the interests of justice.

Hostile work environment claim fails

Pawson v. Ross (Rose, J., 3/31/16)

Plaintiff and three other female employees of defendant's accounting firm jointly filed suit against the business' owner, alleging his sexually harassing conduct subjected them to a hostile work environment in violation of New York's Human Rights Law. Supreme Court (Krogmann, J., Warren Co.) partially denied defendant's motion for summary judgment which the Third Department ruled was error, resulting in the order being modified, dismissing the case in its entirety. Finding that no plaintiff established a prima facie case, the Appellate Division determined that the owner's sexually harassing conduct, while offensive and grossly unprofessional, was "not severe or pervasive enough to render" the work environment "objectively hostile and abusive" as defined in the Human Rights Law.



Submission of articles on substantive areas of law and, otherwise, law related are encouraged and welcomed! Please send your submissions to wcba-ny@verizon.net

Thank you.
