

BULLETIN

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President's Letter

By Jeremiah J. McCarthy



You Mean I Actually Have to Write This?

Why didn't somebody tell me before I decided to run? Anyway, here goes. As you know, my main job for the past year has been to keep my mouth shut and to gaze adoringly at Your President, James M. Shaw, during board meetings and various public functions (note to Steve Lamantia - start practicing your adoring gaze). I passed the time by daydreaming about the name I would choose for my presidency. While my predecessor chose "Jim," I had my heart set on "Benedict," but somebody beat me to the punch. So, I'm stuck with Jeremiah.

I want to thank Jim Shaw for his tireless efforts on our behalf over the past year. He has done more for our Association this past year than most of you will ever know, and how he's been able to juggle his bar responsibilities with a very active law practice is a constant source of amazement to me. I'd also like to thank Jim's brother Joe, and all of the attorneys and staff at Shaw & Shaw, P.C., who enabled Jim to take the time to serve this Association so well. While I'm at it, let me thank in advance my colleagues at Phillips Lytle LLP ("a full service law firm" - they make me say that), and especially our managing partner, Morgan Graham, who has told me that he doesn't care if I bill a single hour in the next year! (He also doesn't care if I'm paid a single dollar in the same time frame.) For you doubters, let me just ask: would I be saying this in the *Bar Bulletin* if it weren't true? What do you think this is ... Newsweek?

On with the thanks: to our outgoing treasurer, Ann Bermingham, who closely watched the books, and to our outgoing directors, Kathy Bestine, Tom Brydges, Giles Manias and Oliver Young, who just as closely watched the bagels every other Tuesday at 8:00 a.m. Their dedication will be sorely missed. And welcome to our new directors and officers: Vice President Steve Lamantia, Deputy Treasurer Bob Convissar, and Directors Len Berkowitz, John Elmore, Pat Maloney, and Candy Vogel. I look forward to working with you. Congratulations also to Jeffrey Freedman and Hon. John O'Donnell, who were elected to the Nominating Committee.

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McCarthy Assumes Bar Presidency for 2005-06; Lamantia Elected Vice President



Photo by Susan Kohlbacher

Newly elected officers and directors were installed at the Association's 118th Annual Meeting held on Friday, June 10. Pictured above, left to right, are Hon. Sharon S. Townsend, Director Patrick J. Maloney, President Jeremiah J. McCarthy, Vice President Stephen R. Lamantia, Director Leonard Berkowitz, Director Candace K. Vogel, Director John V. Elmore and Deputy Treasurer Robert N. Convissar.

Jeremiah J. McCarthy of Williamsville was sworn in as president of the Bar Association of Erie County at its 118th Annual Meeting and Election held on Friday, June 10, 2005. McCarthy is a partner in the Buffalo firm of Phillips Lytle LLP. Buffalo attorney Stephen R. Lamantia was elected vice president in voting by 1,251 members of the Association. Lamantia defeated Buffalo attorney Michael P. Daumen.

Robert N. Convissar of Hamburg was elected deputy treasurer. He will become treasurer following the 2006 Annual Meeting and Election. Assuming the office of treasurer for 2005-06 is Thomas J. Sciolino of Orchard Park.

Bar Association members also elected attorneys Patrick J. Maloney of Buffalo, Candace K. Vogel of Clarence, Leonard Berkowitz of Orchard Park and John V. Elmore of Williamsville to serve three-year terms on the Board of Directors.

Attorney Jeffrey M. Freedman and Supreme Court Justice Hon. John F. O'Donnell were chosen to serve three-year terms on the Nominating Committee. Members also approved an amendment to the Association's by-laws which will create a new category of membership for law students. For the first time this year, members were able to cast their votes online, in addition to in person or by proxy.

Non-Lawyer Closings Continue, UPL Committee Warns

The Unauthorized Practice of Law Committee has learned that some "settlement services" companies, corporations and non-lawyers have continued to conduct real estate closings that violate the Judiciary Law, despite the cautionary notice sent last year by then-BAEC President, Michael J. Flaherty. In fact, there appears to be a growing number of such companies. Such activity may constitute the unauthorized practice of law in violation of the Judiciary Law.

As part of its investigation into this unlawful activity, the UPL Committee makes this urgent request for all attorneys in western New York to provide copies of documentation from files (client's names redacted) where anyone other than a lawyer is representing any party in a real estate transaction, including the lender. The UPL Committee will review these materials with a view toward pursuing potential further action on these violations with the State Attorney General's Office. The

Bar Association of Erie County requests copies of the following:

- Any correspondence from the settlement company or non-lawyer;
- Any mortgage commitment which shows the settlement agent as anyone other than a lawyer or law firm;
- The HUD-1 Settlement Statement;
- Any closing documents prepared by a non-lawyer closing agent; and
- Any other documents reflecting the participation of the settlement company or non-lawyer in the real estate closing.

All documents should be sent to: Bar Association of Erie County, Attn: UPL Committee, 438 Main Street, Buffalo, New York 14202. Your participation and cooperation in this critical investigation are greatly appreciated.

Summer Afternoon...

quite possibly the two most beautiful words in the English language!

Enjoy the lazy, hazy days ahead.

The *Bulletin* will be back in September.

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committed to an agreement they themselves were responsible for making. Data suggests that parties who directly participate in the settlement process are more likely to go beyond their original financial commitments by willingly and voluntarily assuming responsibility for additional, non-essential child-related expenses, including a greater willingness to finance at least in part, the children's college expenses.

The common element in the reporting of higher levels of satisfaction with the process seems inextricably related to the experience of "being heard, or having been listened to." Ironically, nothing in the black letter law can provide this experience to parties in conflict, yet it is critical that parties feel they have been heard and understood in order to instill the belief that justice has been well served.

The traditional understanding of the justice system as a place where truth wins out in the crucible of adversarial interrogation entirely ignores the concept of party satisfaction. A contest structured as win-lose can, at best, only succeed 50 percent of the time. These are poor odds when, for the best interest of the children, the parties need to preserve a satisfactory relationship in the future. It is time for us to re-evaluate the processes by which we can foster a sense of justice in the public. It is time for us to be more creative and expansive. It is time for us to encourage the judicial system to provide incentives to the parties to take control of their own lives.

Enter Mediation and Collaborative Law

It is hoped that this Commission has been convinced by the testimony before it that creative alternatives such as Mediation and Collaborative Law should be encouraged by the courts, by the bar and by the state legislature.

As one of the few practitioners in our area who has been able to work as a Collaborative Lawyer, I wish to share a little of my personal experience in this practice with the Commission. I find Collaborative Law the most rewarding part of my practice for the following reasons. Collaborative practice enables me to combine the skills I apply in Mediation: that is, communication techniques to target the parties' underlying needs and interests with the unique perspective I have as a matrimonial lawyer to counsel, advise and problem solve with my client. It also permits me the unique opportunity to work closely and towards the same end as the other attorney in the case.

This model allows me to fulfill my role as a party's attorney in the true sense of "counselor at law." As a Collaborative Lawyer, I am truly an advocate for the best interest of my client. This involves focusing my client and myself on the reality that for my client to

achieve the best possible outcome, he or she must keep in mind what is best for the whole. It is in effect, a systems approach wherein the system is the nuclear or extended family, or in the case where the parties have no children, the system may be the relationship itself, which has been allowed to come to a constructive end with appropriate closure.

It is never best for a family with children to have parents that hold deep animosity towards each other, one they will carry far into the future. It is never best for young children to live with the constant tension and fear of showing preference for one parent over the other, to be forced to second-guess the impact of their acts of affection towards one parent on the other parent. It is never best for grown children to feel compelled to plan their own family events so as to keep their parents apart or otherwise pacified. Unfortunately, these kinds of dilemmas are commonplace fallout for children of divorced parents.

It is always best for children to observe their parents acting with respect towards each other. It is always best for children to feel free to express their affection for one parent in front of the other parent. It is always best for the children to be the children and the parents to be the parents and caretakers, and to keep the roles clear and unambiguous.

These goals are rarely achieved following a traditional, contested divorce. In contrast, parties to both Mediation and Collaborative Law most often complete the process having learned new and more effective communication skills and most importantly, they can walk away with a feeling of self respect and independence because they have been able to work their way through adversity while maintaining an attitude of mutual respect towards the other party.

Not many matrimonial attorneys talk about their practice as being fun. In Collaborative Law, I have found that, in spite of the challenges of working with people experiencing pain and sorrow, we can sometimes see the lighter side. At times, we even laugh together, which is a sure sign the clients are starting on the path towards healing. The team consists of the two parties and the two attorneys. We face the challenges together, trusting that we are all working towards the same goal and with the confidence that together we have the internal resources to reach that goal. The synergy thus created by having four people working together creates a whole that can only result in more than the sum of its parts.

Not all matrimonial cases are appropriate for the alternative processes of Mediation and Collaborative Law. For those cases that cannot use these models, the matrimonial attorneys can still be encouraged to shift their perspective. They can learn not to give in to a client's need for revenge, and instead to provide a cool head for the client, to assist him or her in developing realistic expectations, to appeal to the client's higher sense of justice and to work towards empowering the client towards positive personal growth.

In closing, I ask this Commission to support the more humane methods of achieving matrimonial equity in divorce matters and for the sake of us all, to discourage the adversarial climate that leaves our children isolated and crying out for help while lying on a cold gurney in the emergency room. [B]

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"The Vision Thing"

As I met many of you on the campaign trail last year, I was often asked to explain my vision for the future of our Association. Actually, NOBODY asked me to explain my vision, perhaps because the sight of me shuffling down your hallways, clutching my fistful of business cards containing my carefully handwritten campaign slogan ("Sorry I missed you!"), caused many a door to close and/or phone to be picked up. But hey, that's okay with me. As I plan to be a one-term president, I take comfort in recalling that the most successful one-term president in the last quarter century had problems with "the vision thing." So who am I to have visions?

But actually, I do have a few visions - visions which give me a little boost on those days when, for example, I'm slogging through page nine of the definitions to a document request ("the word 'you' includes, but is not limited to, you, yourself, anyone claiming to be you..."), or when I tally up my timesheet at the end of a ten-hour day and only come up with five billables (I do recall taking one trip to the men's room, but was I really in there for four hours? I guess I was!).

At those times, when I'm asking myself whether there isn't a better way to make a living, I'll think of Dan Novak, Greg Hoelscher, and others who organized a "living Irish wake" for our late friend Tom Ryan at the Shannon Pub last fall, and of the hundreds of lawyers and judges who opened their hearts and wallets to Tom and his family (may you rest in peace, Tom). Or I'll think of opposing counsel who called recently to ask whether I knew that my client was in default for failure to answer a complaint which he has served on the Secretary of State, and upon learning that I had never seen the complaint, said that he would give me another two weeks to answer before seeking a default judgment. Or I'll think of a prominent defense lawyer who, moments after we had just finished bashing each other's brains in during oral argument at the Fourth Department, suggested that we go get a cup of coffee together. (Like most defense lawyers, he was unable to find his wallet when it came time for the tab, forcing me to spring for the whole thing. However, to spare him needless embarrassment in this widely-read publication, I've agreed to use only his initials: Thomas W. Bender.)

And when I reflect on these things, I realize that there's nothing I'd rather be doing, and no group of people with whom I'd rather be associated. I'm proud to be a lawyer, and I want to work in the coming year toward fostering the public's understanding of why it is we do what we do. I want them to see that lawyers may be of use to them even if they're NOT injured - that there may, in fact, be legal life beyond the billboards. I want them to appreciate the role which judges play, as well as the constraints under which they operate. I also plan to continue the initiatives which Jim Shaw and those before him have put in motion, including encouraging the use of ADR where appropriate, and fostering diversity within our profession.

Long on ideas, short on specifics, you say? Stay tuned! In the meanwhile, I've been warned that the one decision which can make or break a president's year is the selection of a roastmaster for the Judicial Candidates' luncheon. Having personally ruined more than one presidency myself, I know this to be a fact. Thus, I've searched high and low for the perfect candidate, and I have found her: Diane M. LaVallee. As many of you know, Harvard President Lawrence Summers recently stated that, although they are very good at math and science, women are genetically incapable of being funny. I'm betting my presidency that Diane will prove him wrong. So mark your calendars for October 26, and get ready to laugh your heads off! Or possibly not!! In which case, I quit!!!

I welcome your comments and suggestions for the coming year. Feel free to contact me any time, 24/7: by e-mail at jmccarthy@phillipslytle.com, at Bar headquarters (852-8687), at my office (847-7040) or in the evening at home (626-0875). If you should call between the hours of midnight and 6:00 a.m., please ask for Nancy K. McCarthy, as the phone is on her side of the bed. She will most graciously take your message, and may even have her own message for you!

Finally, for those who are still reading this far into my inaugural president's letter, let me just say: "I love you too, Mom!" [B]