As We Remember Gene

A pall was cast over the membership of the State Magistrates Association when we learned of the death of Eugene W. Salisbury in March. Gene was a mentor to many Town and Village Judges across New York State, a friend to many more and an advocate and role model for us all. He was all those things to me.

Gene’s legacy with the SMA is well known, of course. He served as Village Justice, Blasdell from 1961 to 2001. He served as President of the Association and was named Magistrate of the Year in 1967. The Magistrate of the year Award was later named for him and is now fittingly called “The Eugene W. Salisbury Magistrate of the Year Award”.

Nowhere was Gene’s influence better served than in our continuing Judicial Education Program. In the days before UCS played the prominent role it does today in the education and training program, Gene – together with Judges Jim Morris and Duncan McAffer - was responsible for developing the sophisticated curriculum we now enjoy. One of the things I enjoy most at our Annual Meeting is to tour the photo murals which depict, in prominent part, Gene’s lectures in venues from N.Y. City to Buffalo, and all places between. Judge Salisbury was the author of the Manual of Procedure for New York Courts (1973) and Forms for New York Courts (1974), which he updated annually.

Gene’s wit and wisdom were prominently displayed at our annual meetings where he served as toast master, par excellence. None of us I am sure will soon forget his booming voice leading us in the rendition of God Bless America at the outset of the dinner.

Gene was the first Town and Village Justice to serve on the State Commission on Judicial Conduct. He was also the first to serve as the Chairman of the Commission.

Members of the Association may not know much of other parts of Gene’s life, which were also dedicated to public service. He was a much commended combat veteran of the Korean War and received a Bronze Star and Purple Heart from a grateful Nation. While attending law school at the University of Buffalo he served as a patrolman in the Village of Blasdell. He graduated Law school in 1960, Cum Laude. While at law school he was the managing editor of the Buffalo Law Review.

In private practice Gene was a partner in the firm Lipsitz, Green, Fahringer, Roll, Salisbury and Cambria, specializing in labor issues. He remained active in the firm until his death. Gene was honored for his work in Who’s Who In America Law, Best Lawyers in America, Who’s Who World Wide, and Who’s Who In Business and Finance.

One would expect a person who exemplified wisdom in his public life to demonstrate that wisdom in his private life. And so it was with Gene. Gene and his lovely wife Ann raised five children and enjoyed spending time with his children and grandchildren at his home on Chautauqua Lake.

Past President Bob Bogle was out the country at the time of Gene’s death. It was my unhappy duty to tell Bob of Gene’s passing. After we spoke of Gene’s life and accomplishments Bob said, “We are lucky that a man who lived so many lives shared one of them with us”. Very lucky indeed.

Rest in Peace Our Dear Friend.
Hon. Timothy Cooper

The Magistrate is a Publication of The New York State Magistrates Association 2013 Vol 53 No 2
EXCITING NEW FEATURE
Online Credit Card Payments
Enabled By nCourt™

Reduce Scofflaws
Pay tickets online 24/7
No more bounced checks
Pay tickets in multiple courts
Download payments with the click of a button
Reports for tracking online payments
Batch print / email receipts
Reduce your workload
Payments guaranteed
No cost to the court

The CourtRoom Program
Service Education, Inc.
790 Canning Parkway, Suite 1
Victor, NY 14564

(585) 264-9240
www.nyCourts.us
The Leader in Court Automation
Since 1987
DEUTERONOMY, CHAPTER 1

And I charged your Judges at that time, Saying,
Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him. Ye shall not respect persons in judgement; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgement is God's: and the cause that is too hard for you, bring it unto me, and I will hear it.

SELECTED CANONS FROM THE CODE OF JUDICIAL CONDUCT

(c) No full-time judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) a school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau of society designated to represent indigents in accordance with article 18-B of the County Law.
It's hard to believe that in a few short months we will be heading to Lake Placid for our Annual Conference. For me, I'm stunned at how fast the time has passed since taking office as your President.

As for Lake Placid, our Conference and Curriculum Committees are hard at work preparing for a quality academic experience. Please remember that this is one of the sites that we have total exposure to live trainers for each and every class. With the help of our friends at the Office of Justice Court Support we hope we have chosen curriculum that “fills in the gaps” and expands your annual training options.

In mentioning the “filling of gaps” I’m sure we can all agree that one gap that will never be filled is the one left by the passing of Hon. Eugene Salisbury. If you have been in office any amount of time, you surely know Judge Salisbury’s impact over many years that was the cornerstone of our training and education. I happen to believe that we continue to feel those affects because so many of those mentors that were instrumental in our education then, still work in our system today. Personally, I can remember the first day of my basic (now Taking the Bench) class in November 1979 in Buffalo. Every student understood why they were there and what their responsibilities of being a judge would be by the time they completed the course. “Thank you Gene for all you’ve done for us, rest assured that you truly have prepared all of us for the future”.

In our last issue a legislative packet was inserted requesting support from our membership in finally getting our underage drinking bill passed. Anticipating passage by the Senate within days of this writing we look forward to our continued discussions with the members of the Assembly.

I would like to express my sincere appreciation to all of you that had sent your letters to your legislators. We were not alone; hundreds of prevention and treatment providers, law enforcement, private citizens, and businesses had joined us in our efforts. Our own County Association Committee, chaired by Hon. Sherry Davenport did an outstanding job contacting each and every County association president to get their assistance in the distribution of our materials.

Additionally, I have been in contact with The Substance Abuse and Mental Health Services Administration, in Rockville Maryland, to secure whatever assistance they may offer with this legislation. There can be no question that this serious topic will go unresolved until this bill is passed. Not only is it a health and safety issue for our youth, it continues to clog our courts with open cases that are unresolved. Let us not forget the city court judges for their assistance in this effort. They feel our pain as well.

We also continue to monitor the judicial wellness legislation and “paper terrorism” bills. There has been growing support by way of resolutions from town and village boards as well as county legislators as well on the “sovereign man” issue. This topic was a part of the “Core B” training; if you haven’t seen it please do so. NYSMA will remain vigilant in monitoring this legislation until something is done.

Finally, I hope each of you enjoy the summer ahead, please consider attending the conference as I look forward to seeing each of you in Lake Placid. I have thoroughly enjoyed each and every county visit that I have attended. There is no doubt as to the commitment of these local associations and all they do to professionally do their jobs. I also look forward to working on the newly created Court Clerks Training and Education Committee in these coming months. This committee is a reminder to all that NYSMA is committed to the court clerks. My message wouldn’t be complete without me expressing my appreciation to their association under the fine leadership of President Richardson and all they do for our courts.

See you in the Fall !!!
Executive Committee Highlights

Highlights of the March 9, 2013 Executive Committee Meeting held at the Holiday Inn Resort, Lake George, NY are presented for your information.

President Gary A. Graber welcomed all attendees to the Holiday Inn meeting site. He noted his numerous County Magistrates Association visits and discussed his many Alcohol Treatment Provider meetings. There will be a national webinar on prevention and enforcement issues with drugs and alcohol cases that he will be part of and be able to address the judicial side of the issues at hand. Our Legislative activity was reported. Judge Graber reported the need to market our positions and flourish as an Association by reminding everyone that during these difficult times we continue to do our jobs; fighting the fight.

Discussions were held on possible new classes to offer to town supervisors and village mayors as well as different ways to educate our communities as to what the Town and Village Courts do. A new Outreach Committee was created, chaired by Hon. David Kozyra to help facilitate educating the public. Discussion was held on many of the Committee reports. President Graber reported on a meeting held with Judge Coccoma, a Committee was established to help the court clerks receive more training.

A resolution was passed that supports that the Attorney General be required to defend town and village justices against legal processes brought by Sovereign Citizens.

A motion was made to oppose the proposed amendment to New York Codes Rule of Judicial Conduct 22 NYCRR§100.3 (B) (12) Relating to a judge’s role in facilitating the ability of unrepresented litigants to have their matters fairly heard. The new section states that it is not a violation of this rule for a judge to make reasonable effort to facilitate the ability of unrepresented litigants to have their matters fairly heard. It was noted that this statement is entirely too vague and what would happen if a judge went too far. It was felt the parameters need to be more clearly defined.

The next Executive Committee meeting will be held at the Water’s Edge Resort in Old Forge on June 8, 2013.
New York’s Political Activity Rules: Simple Except For Judicial Campaigns  By Gerald Stern*

Introduction

Political activity rules are easy to remember for judges who are not in campaigns for elective judicial office. Judges may vote in a primary, a caucus, and an election, may sign a designating petition, and may register as a member of a political party, but not much more (unless they are then candidates for elective judicial office). When they are not active candidates, they may not engage in partisan political activity of any kind.

The rules get more complex as they relate to running campaigns. Candidates obviously have more latitude to engage in certain campaign activity. This enhanced political activity (the window period) may begin nine months before any political process that selects the candidate, or if there is none, nine months before the election. The window period ends six months after the election.

But even as candidates, they may not have lawn signs or bumper stickers on their property for any candidacy other than their own; except that they may be shown on literature and on lawn signs with other candidates on their slates. They may not endorse anyone for political office, or contribute to other campaigns; and this applies as well to candidates of their political party or other candidates on their “slates.”

In some states, there are fewer restrictions on judicial candidates because federal and state courts have held that the First Amendment protects campaigns for elective public office. Restrictions in those states have been held to be unconstitutional. A few high court decisions have even authorized judicial candidates to make personal solicitations for funds to run their campaigns. Imagine a judicial candidate who has an excellent chance of winning the election who calls lawyers to ask for money.

Judicial campaigns tend to be unruly and undignified where restrictions are few and weak. Incumbent judges may be more vulnerable to unfair attacks on “their records” when challengers have broad rights under the First Amendment. By comparison, New York has held out for tough restrictions, modified somewhat to be less vulnerable to constitutional attack. Consequently, judicial campaigns in New York are relatively tame.

Political Contributions Under New York Law

No judge may give, solicit or accept political contributions. The rule also applies to non-judge candidates for judicial office. A candidate for judicial office may appoint a committee to raise funds for the candidate’s campaign. A candidate may attend a fund-raiser during the window period on his or her behalf, where the candidate will meet contributors. The idea that judicial candidates do not know the identity of their financial contributors is pure fiction even if a candidate really tries hard not to know. The rules are silent as to whether the candidates have to try to be shielded from knowing their contributors. Thus, it is not improper to know.

May a judge contribute to a Presidential candidate? Although a judge may not make a political contribution from personal funds or campaign funds, some time ago when I was Administrator of the Commission, a judge asked me whether she could make a small contribution to a Presidential campaign. I said that the rules prohibit judges from making political contributions. That was the textbook answer. (Rules, Section 100.5 [A][1][h].) The judge replied

* Mr. Stern was the Administrator of the Commission on Judicial Conduct from December 1974 to July 2003, and served on the faculty of the Town and Village Justice Educational Program from 2005 to May 2011. He can be reached at Gstern42@mac.com as to any aspect of this article or other articles he has written for The Magistrate.
that she had just done so, and I could report her to the Commission if I chose to do so. I did not do so because I believed that the matter was not worth exploring.

I would only be guessing if I predicted whether the Commission today would investigate a judge for making a small contribution in a national election. Not every violation of a rule needs to be enforced. In fact, the Preamble to the Chief Administrator’s Rules expressly states, “It is not intended...that every transgression will result in disciplinary action.”

**Attending a Political Fund-Raiser**

Since neither a judge nor a judicial candidate may make a contribution to another candidate or to a political organization, the question is whether a judicial candidate is permitted to attend a political dinner or other function when there is a monetary cost to attend. Section 100.5(A)(2)(v) of the Rules provides that a judicial candidate may purchase no more than two tickets to such an event for the judge to attend. That rule recognizes the reality of campaigning for office and permits the judicial candidate to be where it is helpful to campaign.

Is the purchase of two tickets considered a contribution? Well, realistically, it probably is a contribution, but the rule defines it otherwise. If the cost of the ticket is $250 or less, the amount paid to attend is “deemed” to be the cost of the dinner, and not a contribution. Of course, when the purpose is to raise funds, the true cost of the event generally is less than the cost of the ticket to attend. But the rule permits attendance while maintaining the no-contribution standard.

If the cost of the ticket is greater than $250, the situation becomes more complex. The candidate who wishes to attend must take additional “protective” steps before purchasing the ticket(s). A candidate may not pay more than $250 per ticket (for a maximum of two tickets) unless the candidate obtains a written statement from the sponsor that the amount paid is the proportionate cost of the event. (Rules, Section 100.5[A][2][v]). Do politicians really run expensive events to lose money? It seems odd to condition attendance on such a letter, but perhaps it discourages attendance at expensive affairs.

**Engaging in Campaign Rhetoric**

The judicial candidate should be careful. Candidates for other public offices make promises or pledges to the electorate in order to be elected, but a judicial candidate could bring a sudden end to a successful campaign if he or she acts as those other candidates do. Implicit or explicit promises to support certain issues or classes of the electorate or groups in court may be popular with the electorate, but not with the Commission on Judicial Conduct or the Court of Appeals. Such conduct is apt to result in charges of misconduct with serious penalties.

The rule was clarified in 2006 to permit pledges or commitments, except those that are inconsistent with the impartial performance of the adjudicative duties of judicial office. *Matter of Watson*, 100 NY2d 290 (2003) sets forth precisely what a campaign should not be about. The Court, rejecting the Commission’s determination of removal, censured the judge for making a litany of statements during his campaign against two incumbent judges that “effectively promised that, if elected, he would aid law enforcement rather than apply the law neutrally and impartially in criminal cases.” The judge promised a “real prosecutor on the bench” if he were elected and blamed the two incumbents for the increase in crime. The Court warned that campaign conduct that violated the ethical rules could result in the sanction of removal.

Of course, a pledge to work hard and be a good judge in every respect is not inconsistent with the impartial performance of the adjudicative duties of judicial office. Before that rule change was made, the broader rules (prohibiting pledges and promises) were probably unconstitutional because the restriction included promises that could properly be made and were not intended to be prevented.
Advisory Opinion 12-84/12-95 (B)-(G)

The Advisory Committee released a far-ranging joint opinion last summer covering several issues that are not directly addressed by the rules. The opinion concerned a series of issues presented to the Judicial Campaign Ethics Subcommittee by candidates.

Here are the issues covered and the answers provided:

1. May a candidate invite another candidate to the first candidate’s political, fund-raising dinner without charging the price of admission? Although it sounds like it might be construed as a contribution to the other candidate’s campaign, it is not a contribution according to the Advisory Committee. “Comping” (a verb from the word, “complimentary”) another candidate is fine in this situation, said the Committee. The cost of the “comped” dinner was $500.

2. Speaking at a political organization’s event during the judicial candidate’s window period raises interesting questions. In one situation, a recently elected judge was invited to receive an award and speak at a political fund-raiser. The award and speech at the fund-raiser would not be advertised. In another case, a candidate was asked to be an announced speaker at a political event that was not a fund-raiser. The Committee stated that the recently elected judge (within the judge’s post-election window period) could speak at the political fund-raiser since the candidate’s participation was unannounced prior to the event. Thus, the judge would not be used to “draw” people to the event, and the judge would not be used to raise funds for the political organizations.

The Committee stated that the recently elected judge (within the judge’s post-election window period) could speak at the political fund-raiser since the candidate’s participation was unannounced prior to the event. Thus, the judge would not be used to “draw” people to the event, and the judge would not be used to raise funds for the political organizations.

As to the second situation, a judicial candidate would be an advertised speaker at a political organization’s event, but the event was not a fund-raiser. The Committee advised that the candidate could speak since it was not a fund-raiser for the political sponsor.

This advice clarifies whether certain judges (who were campaigning or who had just campaigned) could speak at political events, but it is worth highlighting that for most judges — who are not within their campaign window periods — such political activity would be prohibited. Even attending to hear another speaker would be prohibited for judges who are not candidates.

3. May a judicial candidate list the name of a sitting judge as a reference for a political party’s screening panel? The Committee stated that a candidate could list a sitting judge as a reference, but may not ask the sitting judge to write to the screening panel directly on the candidate’s behalf (which would be an endorsement). The political organization could write to the judge and the judge could properly respond without endorsing the candidate.

4. May a judicial candidate’s website be linked to the website of a political organization? The Commission on Judicial Conduct in an annual report had said that the practice was unacceptable because the candidate was in effect referring online searchers to the political party’s website where funds were solicited.

The Advisory Committee stated that this is an acceptable practice when the political party’s website contains information promoting the judicial candidate’s campaign. (One justification offered by the Advisory Committee is that the candidate, by linking to the political organization’s website, is able to demonstrate that he or she really has been endorsed by the political organization.)

5. May a successful judicial candidate spend surplus campaign funds to attend various non-political functions? Some years earlier, the Commission had disciplined a Supreme Court Justice for spending large sums of his campaign contributions on a victory party and $710 on payment to attend various functions, including $75 for a dinner of the Association of Supreme Court Justices, $175 for a dinner of a county bar association, $80 for a law school alumni luncheon, $200 for a dinner of a not-for-profit organization, $120 for an event of a community college, and $60 for a breakfast of a not-for-profit organization. The charge relating to the expenditure of the $710 in campaign funds was a minor portion of the misconduct case.
The Advisory Committee seems to refer critically to the Commission’s conclusion that the judge’s conduct in that case was improper, and the Committee advised a judge that he or she may spend surplus campaign funds to attend events on the premise that the judge was attending the events to thank voters for their support and others who had worked for the judge’s campaign. The Committee stated that a candidate was in the best position to determine whether he or she would meet voters to thank them at a particular, non-political event.

The ethics issue of course concerns the use of campaign funds to pay for such dinners and luncheons, not whether the judge may attend such events. The issue is whether it is a proper use of campaign funds to pay for such events, and the Committee’s point that there may be valid reasons to attend a post-election event with campaign funds is valid.

Judicial candidates should be wary that despite the understandable intent of the Advisory Committee to make clear that some post-election events can be paid for from campaign funds, on specific facts the Commission could make a case that expenditures were for the “private benefit” of the candidate and hence improper. Rules, Section 100.5(A)(5). If the evidence points to the use of campaign funds to cover what is a private benefit for the candidate, it would be a violation of Section 100.5(A)(5).

It is obvious that the Committee is not saying that all post-election dinners and luncheons may be paid from unexpended campaign funds, and the Commission has not stated that using campaign funds to attend all such events is improper.

The Advisory Committee states that the judge is in the best position to determine his true purpose in attending the dinner. The candidate’s stated intent should be given considerable weight, but it might also be challenged when it appears from the facts that the cost should not have been paid from campaign funds. In the case of the Supreme Court Justice, he accepted the facts as presented and conceded that he should not have used campaign funds for that purpose. Indeed, as a newly elected Supreme Court Justice, it seems unlikely he attended his first dinner of the Association of Supreme Court Justices to thank them for supporting him. The Commission decided that he should have paid for that dinner with his own money.

Fair disclosure: I was the Commission Administrator in 2003 when the case of the Supreme Court Justice was presented to the Commission. The judge, his lawyer and I had signed an “Agreed Statement of Facts” that the judge had engaged in the conduct and that it was improper.

Conclusion
Almost no political activity is permitted for judges in the New York unified court system. The exception is during campaigns for elective judicial office. Judges are thrust into the political world. They usually campaign, seek votes, raise funds, and engage in some advertising in an effort to be elected. But judicial candidates in New York are limited by campaign activity rules, which, for the most part, have been successful in maintaining dignified elections of the judiciary in New York.

The Commission disciplines judges for the most blatant violations of the rules. And the Advisory Committee on Judicial Ethics responds to judges’ questions that arise from the rules. Both serve an important purpose.

The National Judicial College offers free webcasts at http://www.judges.org/webcasts/index.html that you may be interested in.
At the last Executive Committee meeting President Graber asked that we focus on doing more to provide others with a better understanding of what it is that we do. Why? One reason is that our lives as judges would be easier if our supervisors, mayors, councilors, and trustees had a better understanding of what it is that we do. So here is a reminder. One of the benefits of NYSMA membership is access to a glossy marketing brochure that will help you get the word out about what it is that we do. A copy of the brochure appears in this issue of our magazine for your ease of reference. Call or e-mail our office with at least a two week lead time to order them. At a minimum, you should provide one to each elected official in your municipality. They are also a great handout to use when you address community and other groups.

If you have ideas for additional information we should consider including in the brochure, call or e-mail our Executive Director, the Hon Tanja Sirago. Our office telephone number is 1-800-669-6247 and our office e-mail is nysmal@gmail.com. Working together we can make a difference.

A Tradition Of Service To Community

When our nation’s founders developed the framework of our judicial system over 230 years ago, they could scarcely have imagined the challenges facing modern society. Yet throughout our history, from state and national constitutions to landmark Supreme Court decisions, the judicial branch has remained a stabilizing force in American society.

Nowhere is this more evident than with New York State’s Town and Village Justices. There are 1277 justice courts in New York State. Every day, local justices make important decisions affecting the lives of thousands of our neighbors.

Clearing Up Misconceptions

Whether on a local, state, or federal level the judicial branch of government is a separate, equal and distinct branch. Not too long ago, town justices were also members of the town board, playing an integral part in the day-to-day operation of town government. For ethical reasons, justices are no longer members of the town boards. While this development has been good for judicial integrity, it has created a situation where the duties, powers and responsibilities of the judicial branch are often misunderstood by other municipal branches.

All too often, it is assumed that town and village justices merely preside over traffic court, or help resolve the most minor disputes. In fact, the jurisdiction of the local courts is, as discussed below, much more extensive. Understanding the jurisdiction of the town and village courts would help to eradicate the misconception that the judicial branch is less than equal to the executive and legislative branches.

In a very practical sense, this misunderstanding has led to the under funding of town and village courts in some locations, which restricts the court’s ability to keep pace with its workload and to carry out the duties vital to its local community.
Realm of Jurisdiction

Justice courts have a very broad, but limited jurisdiction in matters affecting the local community and are readily accessible geographically to the people. It is for this reason, justice courts are often called, “the courts closest to the people.”

Civil jurisdiction of a local town or village court is currently limited to $3,000.00. The New York State legislature has considered increasing this amount to $5,000.00. In landlord/tenant proceedings, however, the monetary jurisdiction is unlimited.

Actions can be filed in the regular civil part. Individuals can also file actions in the procedurally more relaxed small claims part of the court. New York State Town and Village Courts have criminal jurisdiction over all misdemeanors, violations, and infractions. They have arraignment and preliminary jurisdiction over felonies. Jury and single judge trials are conducted. The most common laws violated or governing the processes followed in justice court are listed below.

Common Laws:

- Alcoholic Beverage Control Law
- Civil Practice Law & Rules
- Contract Law
- Criminal Procedure Law
- Domestic Relations Law
- Environmental Conservation Law (Hunting-Fishing-Licensing-Pollution)
- Local Laws & Ordinances
- Mental Hygiene Law
- Navigation Law
- Parks & Recreation Law
- Penal Law
- Public Health Law
- Real Property Actions & Proceeding Law
- Small Claims Law
- Tax Law
- Thruway Rules & Regulations
- Transportation Law
- Unified Justice Court Act
- Vehicle and Traffic Law

Family Offense Proceedings

The local town and village courts and family courts have concurrent jurisdiction over certain offenses committed between members of the same family or household - related by blood or marriage, former spouses, a common child, etc. - such as disorderly conduct, harassment, menacing, reckless endangerment, certain assaults.

The complainant in these matters may proceed in both local criminal court and family court at the same time. A local criminal court has authority to issue temporary family court orders of protection, receive family court petitions and may modify family court orders of protection when the family court is not in session.

Qualifications

The position of town or village justice is not one that the State or the justices take lightly. In addition to local election laws, justices must comply with uniform statewide standards. Justices are considered to be local, as opposed to state, elected officials. They preside on a part-time basis, they are not required to be lawyers. Two justices are elected in each town to four year terms. Villages may have no more than two justices elected to a four year term.

However, if a village has one justice, the village Board must appoint an “acting justice” to serve as directed by the elected village justice.

Justices are required to audio or stenographically record all court proceedings, and keep accurate, legible records. At least annually they must submit case dockets for examination and audit to the Town Board. Justices must account for all fines and fees collected to the New York State Comptroller by the 10th of every month. Justices must complete not only basic training, but also at least 12 hours of annual training. Justices who do not have a law degree must pass a written exam annually. Many justices significantly exceed the annual training requirements. Costs and expenses to meet these training requirements are subject to appropriate approval and are the responsibility of the town or village.

There are strict rules limiting the manner in which justices may campaign for their positions, as well as their participation in local, state and national politics. These rules, combined with those governing behavior while in office, help maintain the independence, dignity and integrity of the court system.

Continued on Page 25
The Bible is, fundamentally, the story with man’s encounter with God and the triumph of faith. It is also a practical guidepost for living, the basic rules for man’s relationship with God and his fellow man. Yet, in this latter role as a rulebook for man’s dealings with his fellow men, the Bible is, importantly, a book of law. Indeed, the longest Psalm contained in the Bible – Psalm 119 – is a Psalm in praise of the law. The Bible, somewhat like the United States Constitution, was the basis legal source against which all legal actions in its time were measured. Common law judges can interpret the Constitution just as Talmudists or modern theologians interpret the Bible – and much can be done under the aegis of interpretation – but neither has power to amend the basic document.

Basic Jurisprudence

The sixth commandment, explicitly prohibiting murder, and implicitly prohibiting all crimes against a person, and the eighth commandment, prohibiting crimes against property, established the first two fundamental individual protections for persons and things. Equally essential to a mature legal system, and an important part of American Jurisprudence, are the concepts of due process and the quality of life for all persons “Life for life, eye for eye and tooth for tooth” guarantee the poorest inhabitant the same rights as the aristocratic assailant. It deems the tooth of the poorest peasant as valuable as that of a nobleman. Life for life, eye for eye and tooth for tooth were never literally applied since monetary compensation was already a phenomenon under Biblical Law.

Thefts

There is an affirmative requirement that a thief return the stolen article, and the Bible even makes a provision for a form of punitive damages in certain circumstances. With regard to restitution, the Bible provides for an additional 25% to be added to the restitution amount.

Specific Parallels

Judges of old, like their modern counterparts on the Federal bench, were appointed and had lifetime tenure. Women as well as men served as judges. The book of Exodus expressly precludes the taking of gifts by decision makers and states “a gift blindeth them that have sight, and preventeth the words of the righteous”. It should be noted that the book of Ecclesiastes outlaws bribery.

Criminal Law

Numerous specific biblical parallels are found in American Jurisprudence. One interesting parallel between the Bible and the U.S. Constitution is revealed by the examination of Article III. The founding fathers, after defining the crime of treason, established a critical procedural prerequisite for conviction, “no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court”. The Constitution then expressly limits the punishment of treason to the guilty party alone. “The Congress shall have power to declare the punishment of treason, but no conviction of treason shall work corruption of blood or of forfeiture except during the life of the person detained.” Simply speaking, a son cannot be punished for the sins of his father. First degree murder under minor statues is often defined, at least in part, in terms of “malice” or “malice aforethought”. Under Michigan law, “murder which had been perpetrated…lying in wait”..., Similarly the Bible includes as murder striking a person with stone or a weapon of wood “whereby a man may die”. ie: Under circumstances likely to produce death. Homicides
committed without malice (or without the requisite disregard for life) would be charged as manslaughter under Common Law. Under Biblical law killing a person “without enmity” is likewise manslaughter rather than murder and subjects the perpetrator to exile rather than execution.

**Testifying/Speedy Trial**

An accused, under Biblical criminal procedure, was never compelled to testify against himself. The confession of guilt, although admissible in evidence could not, standing alone, support a conviction. From the book of Ezra modern criminal practice gets the requirement of a speedy trial. From the practice of having biblical judges first establish all arguments in favor of the defense, the presumption of innocence has evolved.

**Aliens**

Under American Law, aliens are entitled to many of the same protections as U.S. citizens. The same was true under Biblical Law where the books of Exodus and Leviticus contrived the same rules for the “home born” and the “stranger”. The Ten Commandments bring the alien within the protection of the Sabbath and the so called Cities of Refuge and were available equally to aliens and citizens. American Law requires a form of temporary allegiance. In like fashion, the alien under Biblical Law, although not required to worship the God of Israel, was nonetheless specifically prohibited from desecrating the holiness of his temporary home through blasphemy. The United States government may require the registration of aliens just as the numbering of aliens was required by King David and King Solomon. One avenue of endeavor was foreclosed to the alien under Biblical Law. He could not become a king, a model undoubtedly understood by the Constitution of our fathers when they limited the U.S. presidency to native born Americans.

**Consumer Protection**

A District of Columbia Act of 1906 employs proper legislative drafting techniques when it recites that – “no person shall sell or offer for sale anywhere in the District of Columbia any provisions or produce or commodities of any kind for weight or measure less than true weight or measure thereof”. The book of Proverbs more simply, yet eloquently teaches that – “a false balance is an abomination to the Lord; but a perfect balance is His delight”. In the area of environmental protection, Isaiah admonishes that – “all unto them that joined house to house that lay field to field till there be no room and he be made to dwell alone in the midst of the land”.

**Environmental Protection**

Theodore Roosevelt might well have had the admonition of Isaiah in mind when he ordered the creation of the first national park. Twenty first century zoning commissions might likewise take notice similarly in the area of increasing urban development. More Planning Boards can hearken to God’s injunction – “when thou shall besiege a city a long time, in making war against to take it, thou shall not destroy the trees thereof by wielding an axe against them; for thou may eatest of them but thou shall not cut them down.”

**Selective Service Law**

One of the most fascinating biblical parallels in contemporary law is found in the area of the law of military deferments. This is an area which, although of recent great interest, is not of recent origin. Chapter 20 of the book of Deuteronomy establishes a comprehensive list of exemptions from military service. American Law has historically provided exemptions from military service for husbands and fathers, but Biblical Law establishes, amongst other things, an exemption for fiancées. Biblical Law also evinces a fascinating understanding of human psychology by providing an express exemption from military service for “the fearful and faint hearted”. This nonetheless requires a confession of fear.

The more things change, the more they remain the same.
## MAGISTRATES ORDER FORM

<table>
<thead>
<tr>
<th>Item #</th>
<th>Description</th>
<th>Color</th>
<th>Size</th>
<th>QTY</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>2050</td>
<td>Screenprinted Sport Shirt - Royal or Lt Blue</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$15.00</td>
</tr>
<tr>
<td>2060</td>
<td>Sport Shirt w/ Pocket - Ash</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$16.00</td>
</tr>
<tr>
<td>2064</td>
<td>Embroidered Sport Shirt w/ Pocket</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$26.50</td>
</tr>
<tr>
<td>2075</td>
<td>Hooded Sweatshirt in Dark Green</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$30.00</td>
</tr>
<tr>
<td>2090</td>
<td>Fleece Sweatshirt in Ash - Screened</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$18.00</td>
</tr>
<tr>
<td>2095</td>
<td>Fleece Sweatpants - Heather - Open Bottom</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$18.00</td>
</tr>
<tr>
<td>2099</td>
<td>Fleece Sweatpants - Navy - Open Bottom</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$26.50</td>
</tr>
<tr>
<td>2100</td>
<td>Embroidered Fleece Sweatpants - Navy - Heather</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$30.00</td>
</tr>
<tr>
<td>2105</td>
<td>Jogging Shorts - Navy - Ash - Heather</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$18.00</td>
</tr>
<tr>
<td>2121</td>
<td>Mock Turtle Neck - Navy - Heather</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$20.00</td>
</tr>
<tr>
<td>2124</td>
<td>Embroidered T-Shirt - Black</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$18.00</td>
</tr>
<tr>
<td>2125</td>
<td>Embroidered T-Shirt - Navy - Brown - Green</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$18.00</td>
</tr>
<tr>
<td>2126</td>
<td>Embroidered Pocket T-Shirt - Navy - Brown</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$20.00</td>
</tr>
<tr>
<td>2140</td>
<td>Screened T-Shirt - Black - Ash - Colonial Blue</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$30.00</td>
</tr>
<tr>
<td>2154</td>
<td>Long Sleeve Pique Polo - State Blue</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$20.00</td>
</tr>
<tr>
<td>2155</td>
<td>Embroidered Polo - Navy - Red</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$34.00</td>
</tr>
<tr>
<td>2166</td>
<td>Embroidered Moisture-Wick Polo - Purple - Blue</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$35.00</td>
</tr>
<tr>
<td>2164</td>
<td>Embroidered Polo - Black - White - Navy - Stone</td>
<td>S-M</td>
<td>2X-3X</td>
<td>4X</td>
<td>$28.00</td>
</tr>
</tbody>
</table>

## ADD: $2 for 2XL, $4 for 3XL, $6 for 4XL

### SHIPPING INFORMATION

- **NAME:**
- **ADDRESS:**
- **CITY, STATE, ZIP:**
- **SIGNATURE:**
- **CARD #:**
- **3 DIGIT CODE ON BACK OF M/C, VISA, DISCO:**
- **4 DIGIT CODE ON FRONT OF CARD FOR AMEX:**

---

**Summer 2013 - The Magistrate**
Before graduating from law school (first in his class) and beginning a successful career in the legal field, Michael B. Powers, a life long resident of Clarence, attended St. Bonaventure University where the values instilled in him by his parents were reinforced by the Franciscans. Throughout those years, he learned what community inclusiveness and service to others really means. He learned that it is more than being a member of a community, it is about what we can do for our friends, our neighbors and our community as a whole that matters.

Mike (his one request was that I not call him Mr. or Judge) has been deeply committed to his friends, his neighbors and to many aspects of the Clarence Community. He helped reestablish the Clarence Little League Football program in 1993. He is a founding member of the Clarence Recreation Advisory Committee, and in that role, helped acquire the land and establish the Clarence Memorial Park. Mike is also a founding member of the town that will now remain forever green; Mike and his law firm, Phillips Lytle, also created the not-for-profit organization Remember Flight 3407, Inc. and, Mike, as it's President, guided the creation of the Flight 3407 Memorial remembering the 51 loved ones lost that terrible evening in Clarence Center.

Mike has shown the same commitment to his clients as an attorney for over 30 years and a partner at Phillips Lytle since 1988. For several years, he has been listed in the prestigious The Best Lawyers in America, America’s Top Lawyers, Best Lawyers in New York, Upstate New York Super Lawyers® list and Business First’s Who’s Who In The Law. And who can forget that it was Mike who launched the legal attack that removed the Ogden and Breckenridge Street toll barriers from the I 190.

Apparently having too much time on his hands, Mike became the Clarence Town Justice in 2008. In that role, he created the Clarence Driving School, the Clarence Community service Program and the program which he tells is most near and dear to his heart, the Clarence Drug Court – a specialized treatment court that has helped many young people conquer their addictions and move on to healthy, productive lives outside the criminal justice system. And Mike recently embarked on yet another new project the creation of a Clarence Youth Court that will allow young people, under Mike supervision, to help their peers avoid substance abuse and criminal behavior at an earlier point in their lives than the Drug Court alone is permitted to do.

For these efforts and for the significant time he spends educating young people about the dangers of substance abuse, Mike was honored with the Clarence Friend of Youth Award in 2011. Mike has also been honored with St. Bonaventure University’s Gaudete Medal, an honor given to a community leader who has inspired others through his personal and professional life. Mike has also received the Leadership Buffalo Values Award for Leadership Impact; the Make-A-Wish Shooting Star Award and Working for Downtown award for long term commitment to Downtown Buffalo, to name just a few. He has also served on the Board of Directors of the Make-A-Wish Foundation, the YMCA of Western New York and the MS Society.
NYS Magistrates Association
Package Guest Room Rates are as follows:

- A Complimentary One-hour Scenic Boat Cruise
- Complimentary greens fees on the Lake Placid Club Pristine 9 Executive Golf Course

Single Occupancy: $631.95 + tax = $686.95 Package
$631.95 tax exempt

Double Occupancy (1 exempt w/ taxed guest) $1023.20 Package
(2 exempt / 2 judges, 1 room) $498.45 each total $996.90

Includes: Accommodations for two guests from September 8-10, 2013
Sunday: Breakfast, Lunch, Break, Dine-A-Round, Overnight Stay
Monday: Breakfast, Lunch, Break, Dine-A-Round, Overnight Stay
Tuesday: Breakfast, Lunch, Break, Dinner, Overnight Stay
Wednesday: Breakfast, Break, Lunch, Break, Dinner, Overnight Stay

Nightly Package for less than 3-night stays:
Single Occupancy: $220.65 + tax = $239.76 Package
$220.65 tax exempt

Double Occupancy (1 exempt w/ taxed guest) $361.84 Package
(2 exempt / 2 judges, 1 room) $176.15 each, total $352.30

Nightly package includes applicable meals and nightly surcharge for less than 3-night stays

To confirm your reservation, a credit card number must be provided or a check/money order in the amount of $210.00, sent with reservation form. Cannot use purchase order for initial deposit.

Check Credit Card
CC#: ________________________________ Exp. __________
Name: ___________________________________________________________
Address: ___________________________________________________________
City __________________________ State: _______ Zip: __________
Phone: __________________________ Fax: __________________________
Email: ___________________________________________________________

# of rooms: ___________________ # of people per room:__________________
Roommates: __________________________________________________________
Arrival Date: __________________ Departure Date: ______________________
Special Needs: ______________________________________________________

Entrée Choice for Sunday Night Banquet:
Please include spouse choice

# ___ Salmon Beurre Blanc  # ___ Chicken Normande

RESERVATION POLICIES
- To confirm your reservation, a credit card number must be provided or a check/money order in the amount of $210.00, sent with reservation form.
- If paying final bill by Purchase Order, a copy of your purchase order must be received at check-in.
- A copy of your NYS tax exemption form must be received with reservation form. Payment (Purchase Order or Credit Card) must match the name on the NYS tax exemption form.
- Guests staying on dates outside group’s conference and/or are self pay will be subject to tax.
- Reservation forms must be received no later than Friday, August 9, 2013. Reservations received after that date will be accepted on a space and rate availability basis.
- Cancellations must be received no later than August 25, 2013. Guest room deposit will not be refunded after that date.
- Cancellations after this date will result in forfeiture of the deposit.
- Reservations will be guaranteed from date of arrival to date of departure, as confirmed and credit will not be given for Early Check-outs or missed meals.
- Telephone reservations will not be accepted.
- Check-in time is 4:00pm. Check-out time is 11:00am.
- Room–only Rates for early arrival, before 9/8/13 or late departure, after 9/11/13 will be offered at the discounted rate of $139.00/night + tax, based upon availability.
- A conference rebate has been included in the package rate to offset the expenses of the conference.
- Confirmation of your Reservation will be e-mailed, faxed, or mailed using the information provided on this form.

UNLESS ALL PROPER FORMS ARE SUBMITTED & COMPLETED, RESERVATIONS WILL NOT BE PROCESSED

I have read and agree with the above Reservation Policies

Please sign and date

Reservation Form, Deposit and Tax Exempt Certificate must be received by Thursday, August 9, 2013 to:
Crowne Plaza
Attn: Reservations Dept.
101 Olympic Drive
Lake Placid, New York, 12946
Fax (518) 523-9410

For Office use only:
Confirmation #:_______
Reservation Agent:_________ Date:_________
We hope you will join us September 8, 2013 – September 11, 2013 for the Fall conference at the Crowne Plaza Resort in Lake Placid, NY. The drive to the conference is beautiful in the Fall and there is so much to see and do there.

Lake Placid was the home of two Olympic Games; 1921 and 1980 and you can still see the famous ice skating rink, ski lifts, the luge run and much more. Some are within walking distance of the conference site.

The hotel is still located at the top of the steep hill. Fortunately there is a complimentary shuttle that runs through town to the hotel every hour. This means that the ladies have easy access to all the shops on the main street. The shuttle will also facilitate the dine around on Monday evening, although some may prefer to walk.

We have also planned a complimentary scenic boat ride on Lake Placid (home of Kate Smith for those who remember “When the Moon Comes Over the Mountain”). The one hour cruise will take place during the regular scheduled hours. You can cruise at your convenience. The lake is just a short drive away.

Golf at the Lake Placid Club is also available. The green fees on the Pristine Nine hole are complimentary with discounted fees for the Mountain Course and Links Course so bring your golf clubs. All rooms have a refrigerator/freezer, coffee maker, iron/ironing board, data ports, high speed wireless internet and in room movies/games.

Our 100th anniversary conference in Lake Placid was a success and enjoyed by our members. We hope you will enjoy this conference and by attending the classes we have planned you will return home with a greater understanding of the law and how it applies to your court.

Hope to see you in Lake Placid in September!
New York State Department of Taxation and Finance

New York State and Local Sales and Use Tax

Exemption Certificate

Tax on occupancy of hotel or motel rooms

This form may only be used by government employees of the United States, New York State, or political subdivisions of New York State.

Name of hotel or motel

Dates of occupancy

From:

To:

Address (number and street)

City

State

ZIP code

Country

Certification: I certify that I am an employee of the department, agency, or instrumentality of New York State, the United States government, or the political subdivision of New York State indicated below; that the charges for the occupancy of the above business on the dates listed have been or will be paid for by that governmental entity; and that these charges are incurred in the performance of my official duties as an employee of that governmental entity. I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document, and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that the vendor is a trustee for, and on account of, New York State and any locality with respect to any state or local sales or use tax the vendor is required to collect from me; that the vendor is required to collect such taxes from me unless I properly furnish this certificate to the vendor; and that the vendor must retain this certificate and make it available to the Tax Department upon request. I also understand that the Tax Department is authorized to investigate the validity of tax exemptions claimed and the accuracy of any information entered on this document.

Governmental entity (federal, state, or local)

Agency, department, or division

Employee name (print or type)

Employee title

Employee signature

Date prepared

Instructions

Who may use this certificate

If you are an employee of an entity of New York State or the United States government and you are on official New York State or federal government business and staying in a hotel or motel, you may use this form to certify the exemption from paying state-administered New York State and local sales taxes (including the $1.50 hotel unit fee in New York City). This does not include locally imposed and administered hotel occupancy taxes, also known as local bed taxes.

New York State governmental entities include any of its agencies, instrumentalities, public corporations, or political subdivisions. Agencies and instrumentalities include any authority, commission, or independent board created by an act of the New York State Legislature for a public purpose. Examples include:

- New York State Department of Taxation and Finance
- New York State Department of Education
- Empire State Development Corporation
- New York State Canal Corporation
- Industrial Development Agencies and Authorities

Public corporations include municipal, district, or public benefit corporations chartered by the New York State Legislature for a public purpose or in accordance with an agreement or compact with another state. Examples include:

- United States Department of State
- Internal Revenue Service

Other states of the United States and their agencies and political subdivisions do not qualify for sales tax exemption. Examples include:

- the city of Boston
- the state of Vermont

To the government representative or employee renting the room

Complete all information requested on the form. Give the completed Form ST-129 to the operator of the hotel or motel upon check in or when you are checking out. You must also provide the operator with proper identification. Sign and date the exemption certificate. You may pay your bill with cash, with a personal check or personal credit card, with a government voucher, or with a government credit card.

Note: If, while on official business, you stay at more than one location, you must complete an exemption certificate for each location. If you are in a group traveling on official business, each person must complete a separate exemption certificate and give it to the hotel or motel operator.

To the hotel or motel operator

Keep the completed Form ST-129 as evidence of exempt occupancy by New York State and federal government employees who are on official business and staying at your place of business. The certificate should be presented to you when the occupant checks in or upon checkout. The certificate must be presented no later than 90 days after the last day of the first period of occupancy. If you accept this certificate after 90 days, you have the burden of proving the occupancy was exempt. You must keep this certificate for at least three years after the later of:

- the due date of the last sales tax return to which this exemption certificate applies; or
- the date when you filed the return

This exemption certificate is valid if the government employee is paying with:

- cash
- personal check or credit/debit card
- government voucher
- government credit card

Do not accept this certificate unless the employee presenting it shows appropriate and satisfactory identification.

Substantial penalties will result from misuse of this certificate.
You Must Receive Prior Approval To Attend
Section 77-b of the General Municipal Law authorizes the governing board of any municipality, by majority vote, to authorize any of its members, any officer or employee, or any other person who has been elected pursuant to law to a public office for which the term has not commenced, to attend a conference as defined in Section 77-b(b). The authorization must be by resolution adopted prior to such attendance (General Municipal Law §77-b[2]). The governing board, however may delegate its power to authorize attendance to any executive officer or administrative board.

Even Your Registration Fee Can Be Reimbursed
Subdivision 3 of section 77-b provides that all actual and necessary registration fees, all actual and necessary expenses of travel, meals and lodging and all necessary tuition fees incurred in connection with attendance at a conference shall be a charge against the municipality and the amount thereof shall be audited, allowed and paid in the same manner as are other claims against the municipality.

New York State Picks Up a Portion of the Tab
The Office of Court Administration will reimburse each Justice who attends the Annual Meeting on Monday afternoon for mileage, up to $108.00 for one day’s lodging and up to $61.00 for certain applicable meals. These costs would lower the reimbursement required from your municipality.

Need A Cash Advance?
In addition to the authorization in subdivision 3 to reimburse for expenses previously incurred, subdivision 6 of section 77-b expressly authorizes a municipality to provide for cash advances to persons duly authorized to attend a conference for estimated expenditures for registration fees, travel, meals, lodging and tuition fees. If an advance is provided, the officer or employee must submit an itemized voucher showing actual expenditures after attendance. Also moneys advanced in excess of actual expenditures must be refunded to the municipality. If an officer or employee fails to return such excess advance at the time of submitting the voucher or upon demand after audit of the voucher, the municipality shall deduct the amount of the unreturned excess advance from the salary or other money owed the officer or employee. Any itemized actual and necessary expenses in excess of the cash advance may be paid after audit.

Municipality Won’t Pay? You Can Usually Deduct the Expense on Your Taxes
In most cases, expenses incurred in connection with attendance at this conference are qualifying work-related expenses. Depending on your individual circumstances, conference related expenses can be deducted on Schedule A if you itemize your deductions. We recommend that you discuss this with your tax preparer.

Does Your Town of Village Pay Your NYSMA Dues?
Pursuant to Op. St. Comp. 80-501, 10/29/80, with prior approval of your Town or Village Board, Association dues may be a legitimate charge against a Town or Village.

Important
PLEASE BE SURE TO FILL OUT THE STATE EXEMPTION CERTIFICATE ON THE HOTEL REGISTRATION FORM. (OTHERWISE YOU WILL BE BILLED FOR TAXES).

MAKE SURE YOUR MUNICIPAL PAYMENT VOUCHER IS ATTACHED TO THE HOTEL REGISTRATION FORM. THIS WILL AVOID ANY PROBLEM AT CHECK OUT TIME.
The following officers of the SMA will be elected at the Annual Conference

PRESIDENT ELECT • THREE VICE-PRESIDENTS • TREASURER • FOUR DIRECTORS

The SMA Nominating Committee seeks qualified members (sitting Town or Village Justices) for these positions. Association members are asked to complete the form below, submit a current resume and indicate why the judge(s) would be suitable candidate(s) for a leadership position in the SMA and return to:

Hon. Peter D. Barlet — Chairperson, Nominating Committee
NYS Magistrates Association — 163 Delaware Ave., Delmar, NY 12054

Deadline: August 9, 2013  Nominations will not be accepted after this date

NOMINEE INFORMATION

Name:________________________________________ Position of: __________________________________
Present Judicial Title: ______________________________________________________________________
Municipality: Town/Village of: ______________________________________________________________
Submitted by: (name of member): ____________________________________________________________
Address: __________________________________________________________________________________

Please attach candidate(s) resume(s)

What’s Expected of New Directors

Four Directors of the Association will be elected at the Annual Meeting. The term of a Director is three years. Occasionally, a vacancy requires that an additional Director must also be elected to complete a partial term.

Each Director will be expected to attend all five Executive Committee meetings which are held each year. Two of these meetings are held during each Annual Conference. The first is held in the afternoon on the Sunday on which the conference begins. The second conference meeting (which, of course, is the first meeting for Directors newly elected during the Conference) is held in the morning of the Wednesday on which the Conference concludes.

Additionally, a Saturday Executive Committee meeting is held each December, March and June at various locations throughout the State. These locations are selected by the President. Travel costs relating to the three Saturday meetings, including applicable lodging, will be reimbursed by the Association.

Each Director will be assigned to one or more of the Association’s committees by the President and will be expected to participate as directed by the Committee(s)’ chair.
Dear Member,

As in the past, all certified sitting Justices, who are members in good standing of NYSMA and registered for the conference, attending the New York State Magistrates Association Annual Meeting on Monday, September 9th at 4:30 pm will be reimbursed by the State through the Unified Court System for one (1) night of lodging and mileage at the current State rate, unless living within 35 miles of the conference site. The remaining expense is eligible for reimbursement by your town or village. (Necessary expenses, including transportation, meals, room and registration fees incurred by fully authorized municipal officials and employees are properly reimbursable from municipal funds pursuant to §77-b of the General Municipal Law).

Accredited Advanced Training Courses will be offered by the NYS Unified Court system on Tuesday and Wednesday, September 10 & 11, 2013 with the minimum of 6 elective credits offered.

In order to expedite registration, we urge you to Pre-Register.

FEES: Pre-Registration: $50.00: On-site Registration: $75.00

All members participating in any portion of the conference are required to pay the fee, which covers the many detailed arrangements necessary for a successful conference. For your convenience, receipts will be available at our registration desk.

On behalf of President Graber and your Executive Committee members, we urge you to attend. It is a great time to renew old acquaintances, make new ones, to learn, speak your thoughts, vote, enjoy — and help celebrate our 104th Anniversary.

Please note Registration and Fees for the Conference and Hotel are separate.

• If you are not pre-registered, the Hotel will not hold a room

MAGISTRATE REGISTRATION FORM

The 104th Conference of the New York State Magistrates Association
Crowne Plaza - Lake Placid, NY

Name: ____________________________________________ Town Justice of: ________________________________

Address: ________________________________________________ Village Justice of: ________________________________

Address: ________________________________________________

City/State/Zip: _____________________________________________ E-mail (Please Print): ________________________________

County: _____________________________________________ Current Co. President: ________________________________

Guest’s Full Name if Attending: ________________________________ Court Clerk: Y______ N____

NAME TAG WILL BE PROVIDED

TRAINING PART I: _______ PART II ______ IS THIS YOUR FIRST CONFERENCE Y_____ N____

Fee: $50 must be received by 8/9/13 — Non-Refundable after 8/16/13

MAKE CHECKS PAYABLE TO: NYS Magistrates Association
Eugene W. Salisbury
Magistrate of the Year Award

To: All Sitting Justices

It is June and time to look ahead to the 2013 Annual Magistrates Conference, which is in Lake Placid, NY. One of the highlights of the annual gathering is the presentations of the Magistrate of the Year award. This award, recognizes a judge for contribution to the judiciary, as well as his or her community.

I am certain that each of you has knowledge of an individual who deserves to be considered for the award. Who among you has contributed to the improvement and overall effectiveness of the judiciary? Who has shown that contributing to the betterment of the community is what justice is all about? Who has gained your association’s respect because of outstanding contribution?

Please consider and Nominate a person that deserves this Recognition. Keep in mind that this award depends on the participation of each of you.

When considering your Nomination(s), please consider the guidelines below.

Hon. David A. Murante, Chair of The 2013 Magistrate of the Year Committee

As a person:
...Do they display honesty, trustworthiness and behavior that benefits a member of the judiciary?
...Do they command respect from others and show confidence in their actions?
...Have they remained free of legal and ethical infractions and troubles?
...Is this person considered to be a good solid citizen by the members of his or her community?

As a judge:
...Have they remained free from even the appearance of impropriety?
...Do they exhibit sound temperament, attentiveness, patience and impartiality while on the bench?
...Have they been on the bench long enough to show that they command the respect of their community electorate?
...Have they enhanced the integrity and knowledge of local judicial community?
...Have they remained free of consideration of personal popularity or public notoriety?

...Do they command the respect of his or her peers as a judge?
...Has this Judge asserted sound and constructive leadership in the Magistrates Associations.

As a member of the judicial community:
...Have they actively participated in the local Magistrate Association?
...Have they made a significant effort to enhance the integrity, effectiveness and prestige of the Town and Village Courts?
...Have they been involved in local or state level legislation that leads to improving the judiciary?
...Has his or her contact with the public at large resulted in constructive actions toward improving the Town and Village Courts?

Applications should include a resume and other supporting documentation and letters from the local judicial, legal, and public officials who have knowledge of the nominee. Supported self nominations are allowed.

Submit packages to:
New York State Magistrates Association
163 Delaware Avenue, Suite 108 • Delmar, NY 12054
Applications must be in by August 2, 2013
If so please let us know. At the Annual Conference, members of the Magistrates Association will be recognized for 20 or more years of service as a magistrate. This is done in increments of five years; 20, 25, 30 etc.

The Membership and Pins Committee have been recognizing Justices who have 20 or more years of service as a Justice. The problem is, that we don’t know who some of you are. We do NOT have good records on when some of our members became a Judge. (They joined before we started computerizing our records.) If you have more than 20 years and you have not received a pin* recognizing that fact, send your name, the name of your Municipality, your home address and the date that you first became a sitting Justice. Send the information to the Membership and Pins Committee, NYSMA, 163 Delaware Avenue, Delmar, NY 12054.

*Previous Recipients are on record and need not re-apply.

Member Name: ___________________________ Town/Village: ___________________________

Address: ____________________________________________________________

First Presided/Year: ________ County: ___________________________ Years of Service: ________

Comments: __________________________________________________________________________

____________________________________________________________________________________

President of County Association: ___________________________

Signature: ___________________________________________________________________________ Date: __________

Please Note: Deadline for Application is August 2, 2013

Send To: New York State Magistrates Association
163 Delaware Avenue, Suite 108
Delmar, NY 12054
**About My County Association**

---

**Chautauqua County**

On February 27th, 2013 the Chautauqua County Magistrates Association held a meeting where Hon. Gary Graber – President of the NYSMA was the guest speaker. Judge Graber was there lecturing on Transportation Law and also performed the swearing in ceremony for the 2013 officers.

---

**Dutchess County**

Defense services for the indigent was the topic at the recent dinner meeting of the Dutchess County Magistrates Association at Copperfields in Millbrook.

William Leahy, Director of the New York State Office of Indigent Legal Services spoke of his office’s grants to local counties to provide attorneys at after business hours arraignments.

*Shown in the photograph L to R:*

Dutchess County District Attorney William Grady, Magistrates President Judge Christi Acker (Town of North East), Mr. Leahy and Dutchess County Public Defender Tom Angell.
Genesee County

The Kiwanis Club of Batavia hosted its annual Law Day Dinner on April 25th. They honored six individuals for their outstanding career achievements in law and law enforcement, two of which are town justices; NYSMA member, Hon. Thomas A. Graham and our President Hon. Gary A. Graber.

Thomas A. Graham — Town Justice, Oakfield, New York
Judge Graham has been the Town Justice for Oakfield since 2006. He is the treasurer for the Genesee County Magistrates Association and is also responsible for coordinating training for the group. Previously, Judge Graham was employed as a Sergeant with the Genesee County Sheriff’s Office, and after serving 20 years, retired in 2005. During his tenure at the Sheriff’s Office, Judge Graham oversaw the Dispatch Center and its transition to the 800 megahertz radio system. Judge Graham is involved in educating the youth in Oakfield by allowing Boy Scout Troops and students to attend his court sessions and then stays after to answer questions and explain court procedures. In his role as Town Justice, Judge Graham has earned the respect of other judges and attorneys in the County by portraying a professional and fair attitude. Judge Graham was nominated for this award by fellow Oakfield Town Justice and retired Batavia Police Chief Randy Baker.

Gary A. Graber — Town Justice, Darien, New York
Judge Graber has been the Town Justice of Darien for the past 33 years, the longest presently sitting Justice in Genesee County. He has been a life member of the Darien Center Chemical Fire Department for 38 years, 10 years on the Board of Directors including two years as chairman, he also served as Darien Town constable prior to being elected town justice. Judge Graber has been an outstanding and recognized leader in the area of criminal justice in Genesee County, New York State and nationally. He most recently was elected as president of the New York State Magistrates Association for 2012-2013 and has been a member of several committees and associations. Judge Graber was nominated for this award by retired Town of Bethany Justice Edgar J. Hollwedel.

Niagara County

The Niagara County Magistrates Association presented of a collage of all of the Town Magistrates which was hung at the Niagara County Courthouse in Lockport, New York. At the same time a permanent plaque was presented regarding the dedication of the collage in memory of the Hon. Margaret Randuns who died last year.


About My County Association

Suffolk County

The Suffolk County Magistrates meeting for May was devoted to the issue of “Sovereign Citizens” in our Courts. These litigants are a particular problem for the Town and Village Courts and less so for the other State Courts. Mr. Michael Mohun, Esq. from Cowlesville was our great lecturer. He briefed those attending on the National scope of the Sovereign Movement and the tactics they will employ in our Courts. These people believe that the laws of the State of New York and the United States do not apply to them. An internet search will disclose the extremes of their belief. The danger these persons pose was emphasized by a video recording the murder of two police officers during a traffic stop of two sovereigns in a vehicle with homemade sovereign license plates. The Justices must be careful in dealing with Sovereigns in that they will file false liens and other documents against the Justice. Administrative Judge Glenn Murphy attended the meeting and circulated information from OCA relative to reporting when these litigants appear in our Courts.

JUDGES MEET IN POUGHKEEPSIE

Town and Village Justices from throughout the Hudson Valley came to the Italian Center in Poughkeepsie to hear the Hon. Gary Graber, President of the New York State Magistrates Association, speak about issues of current interest to local jurists.

Shown in the photograph L to R:
- Putnam County Magistrates President, Hon. John King
- Columbia County Magistrates President Hon. Dr. Carrie A. O’Hare
- State Magistrates President Hon. Gary Graber
- Dutchess County Magistrates President Hon. Cristi Acker
Looking Toward The Future

Local courts handle millions of cases each year and contribute greatly to the funding of State and Local governments. In 2009, town and village courts collected $246,265,687.47 in fines, penalties or other revenue. $119,887,201.33 was returned to or retained by our towns and villages and $10,087,753.12 was distributed to counties. $115,690,733.02 was sent to the State.

Unlike the executive and legislative branches, the judicial branch does not have the authority to finance its operations, raise taxes or otherwise support itself. It relies on town and village boards for the funding of facilities and staff. It has long been the goal of local courts to serve the people by providing justice — substantial, timely and equal justice — and to fulfill the notions of a separate, independent judicial branch as set forth by our forefathers in the Constitution. To do this, town and village justices must be given reasonable and necessary funding to support an independent judiciary — one that is not subservient to the other municipal branches.

About The New York State Magistrates Association

The New York State Magistrates Association is an organization of approximately 3,150 sitting and retired town and village justices. There are approximately 2,200 town and village justice positions statewide filled by men and women from the local communities in which they serve. Some of the justices sit as both a town and village justice. Town and village justices make up approximately 2/3’s of all sitting justices in the State of New York Unified Court System.

Court Clerks

Where caseloads warrant, it is appropriate to authorize one or more support staff under the title of court clerk. One town in Erie County has 18 court clerks. While much of a court clerk’s responsibilities center on record keeping and the handling of monies taken in by the court through fines and fees, court clerks handle correspondence, prepare the court calendar and even issue certain notices of petition and judgements. An experienced court clerk can lift the burden of clerical detail from the justice, although it is the justice who is ultimately responsible for all the work performed by the clerk.

Get Sober!

You No Longer Have a Choice

Contact: Continuous Monitoring Solutions LLC. www.ScramAlcoholism.com
Office: (518) 280-5799
Cell: (518) 301-4193
Answers to Quiz of the Month
(from page 35)

1) tip
2) rear window
3) red and glossy
4) 1192-3
5) lawyer
6) 1192-2
7) simulator solution
8) nontestimonial
9) in prison
10) advise the Penn Yann Police Department that its machine was operating properly

Bonus: reasonable
December 13, 2012

Digest: A part-time judge need not disqualify him/herself where the emancipated adult child of a town board member or village trustee, who participates in setting a judge’s salary, appears as a witness.

Rules: 22 NYCRR 100.2; 100.2(A); 100.3(E)(1); 100.3(F); Opinions 09-138; 09-107; 09-106; 09-16; 04-100; 94-61 (Vol. XII); 91-63 (Vol. VII); 90-175 (Vol. VI); Joint Opinion 88-17(b)/88-34 (Vol. II).

Opinion:

A part-time town/village judge asks if he/she may preside when the police officer appearing in the judge’s court is the child of a town board member for the municipality where the judge presides. The judge advises that the officer appears in a variety of cases, including Vehicle and Traffic matters and cases involving felony offenses.

A judge must avoid even the appearance of impropriety (22 NYCRR 100.2) and must always act to promote public confidence in the judiciary’s integrity and impartiality (22 NYCRR 100.2[A]). Also, a judge must disqualify him/herself when the judge’s impartiality might reasonably be questioned (22 NYCRR 100.3[E][1]).

The Committee previously has advised that a part-time judge should disqualify him/herself in matters involving a town board member or village trustee as a private litigant or as counsel for a party if the town board member or village trustee participates in setting the judge’s salary (Opinions 09-106; 94-61 [Vol. XII]; 91-63 [Vol. VII]; Joint Opinion 88-17[b]/88-34 [Vol. II]). In the Committee’s view, the judge’s impartiality might reasonably be questioned under those circumstances. Similarly, the Committee has advised that a part-time judge must disqualify him/herself in matters where a deputy sheriff, who also serves on the town board and participates in setting the judge’s salary, appears before the judge as prosecutor or witness (Opinions 09-16; 90-175 [Vol. VI]). In the Committee’s view, a public perception of partiality could be created when a judge is required to evaluate the credibility and conduct of a deputy sheriff who writes many summonses and frequently thereafter testifies in the judge’s court (Opinion 90-175 [Vol. VI]).

Finally, the Committee has advised that a judge’s impartiality might reasonably be questioned, and disqualification is therefore required, when certain close relatives of a town or village board member who participates in setting the judge’s salary appear in the judge’s court (Opinions 09-107 [town supervisor’s sibling appears as defendant in small claims matter]; 09-16 [town board member’s spouse appears in his/her capacity as deputy sheriff; town board member’s child or child-in-law appears as party or witness]).

Disqualification in any of these circumstances is subject to remittal, unless a party appears without representation (see 22 NYCRR 100.3[F]; Opinion 04-100). ¹

Under the circumstances presented here, the town board member or village trustee who participates in setting the judge’s salary has an adult child who will appear before the inquiring judge only as a witness, and not as a party. The Committee is now of the view that, when a relative of a town board member or village

Continued on Page 28

¹ See Advisory Committee on Judicial Ethics Opinion 04-100. In that Case, a deputy sheriff's spouse appeared as a party in a small claims action.
trustee who participates in setting a judge’s salary appears before the judge only as a witness, it is appropriate to distinguish between a spouse and other relatives. A board member and his/her spouse ordinarily reside in the same household and maintain both an emotional and financial relationship. Therefore, the judge’s impartiality might reasonably be questioned should the board member’s spouse appear in the judge’s court, even as a witness (see 22 NYCRR 100.3[E][1]; Opinion 09-16), and to that extent the Committee reaffirms Opinion 09-16. By contrast, the public will readily perceive that a board member’s relationship with other relatives who do not reside in the board member’s household is ordinarily more attenuated and does not raise a reasonable question as to the judge’s impartiality. Thus, a part-time judge need not disqualify him/herself where the emancipated adult child of a town board member or village trustee who participates in setting a judge’s salary appears as a witness. Therefore, Opinion 09-16 is modified to the extent that it mandates disqualification when the adult child of a board member who participates in setting a judge’s salary appears as a witness. Of course, if the judge doubts his/her ability to be impartial, the judge should disqualify him/herself.

1 Remittal is a three-step process: First the judge must fully disclose the basis for disqualification on the record... Second, ... without the judge’s participation, the parties who have appeared and not defaulted and their lawyers must all agree that the judge should not be disqualified. Third, the judge must independently conclude that he/she can be impartial and be willing to participate in the case. If all three steps are satisfied, the judge may accept remittal of his/her disqualification and must incorporate the parties= and their attorneys= agreement into the record of the proceeding@ (Opinion 09-138, relying on 22 NYCRR 100.3[F]).

2 The Committee notes that disqualification is still required when the board member’s close relative is a party (see Opinions 09-107; 09-16)

1

Advisory Committee on Judicial Ethics
Opinion 12-171

May 9, 2013

Dear Justice:

This responds to your inquiry (12-171) asking whether you may request the transfer of a client’s case to another court in order to avoid the prohibition set forth in 22 NYCRR 100.6(B)(2) (part-time judge shall not practice law in any court in the county which his/her court is located before a judge who is permitted to practice law).

The Committee has previously advised that it is not permissible for a part-time judge to seek to transfer a matter already assigned to a lawyer-judge to another judge or for a presiding or administrative judge to transfer a case to another judge solely to allow a lawyer-judge to continue appearing in the case.

Very truly yours,

George D. Marlow, Assoc. Justice
Appellate Division, First Dept. (Ret.)
Committee Chair

---

1 Remittal is a three-step process: AFirst the judge must fully disclose the basis for disqualification on the record... Second, ... without the judge’s participa-
	tion, the parties who have appeared and not defaulted and their lawyers must all agree that the judge should not be disqualified. Third, the judge must independently conclude that he/she can be impartial and be willing to participate in the case. If all three steps are satisfied, the judge may accept remittal of his/her disqualification and must incorporate the parties= and their attorneys= agreement into the record of the proceeding@ (Opinion 09-138, relying on 22 NYCRR 100.3[F]).

2 The Committee notes that disqualification is still required when the board member’s close relative is a party (see Opinions 09-107; 09-16).
When SOBRIETY is Court Ordered…

Is Your Only Choice

- DWI – Pre-Trial Release
- Probation Supervision
- Drug Treatment Court
- Family Court
- House Arrest vs. Incarceration

Continuous Monitoring Solutions LLC.– Local Service Provider

Office: (518) 280 – 5977
Cell: (518) 301 – 4193
E-Mail: ScramAlcoholism@gmail.com
Decision & Order

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431
This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

The People of the State of New York,

Plaintiff,

- v -

Kelly A. Rossi,

Defendants

Defendant Kelly Rossi was charged with Resisting Arrest (Penal Law § 205.30), a misdemeanor; Aggravated Driving While Intoxicated (Vehicle and Traffic Law § 1192 [2-a] [a]), a misdemeanor; and Driving While Intoxicated (Vehicle and Traffic Law § 1192 [3]), a misdemeanor. On January 3, 2013, this Court was presented with a “Memorandum of Plea Bargain,” noting that the Office of the District Attorney was “declin[ing] to prosecute” all three charges. The Memorandum of Plea Bargain was signed by defendant, defendant’s counsel, and an Assistant District Attorney. By Decision and Order dated January 3, 2013 the Court rejected the proposed plea disposition pursuant to Vehicle and Traffic Law § 1192 (10) (d) and People v. Douglass, 60 NY2d 194 (1983). The Court further noted that, during the pendency of this matter, it would entertain any motions filed pursuant to the Criminal Procedure Law. Defendant now moves for the Court to reconsider its prior Decision and Order dated January 3, 2013. The People have not submitted papers with regard to this motion.

The Criminal Procedure Law does not permit the reconsideration of motions. CPLR 2221 governs motions affecting a prior order. See People v. Duquette, 152 Misc 2d 239, 240 (County Court, St. Lawrence County, 1991). A motion for leave to reargue is addressed to the sound discretion of the trial court and “may be granted upon showing that the court overlooked or misapprehended the facts or law or mistakenly arrived at its earlier decision.” Viola v. City of New York, 13 AD3d 439, 440 (2d Dept. 2004), lv denied 5 NY3d 706 (2005); see Carrillo v. PM Realty Group, 16 AD3d 611, 611 (2d Dept. 2005); Loris v. S & W Realty Corp., 16 AD3d 729, 730 (3d Dept. 2005); CPLR 2221 (d) (2).

Defendant argues that the Court misapprehended the law in arriving at its earlier decision. Specifically defendant takes issue with the Court’s reliance on Vehicle and Traffic Law § 1192 (10) (d). Defendant contends that “the People’s decision not to prosecute this case is not a plea bargain” because, what the People are attempting to do, would not result in defendant entering a plea of guilty. Sill’s Letter at 1 (dated 1-17-13) (emphasis in original). Defendant argues that section 1192 (10) does not apply to this case.

The Office of the District Attorney (DA) informed the Court that it declined to prosecute all of the charges in this matter by way of a plea bargain form signed by the Assistant District Attorney. The Court considered this offer a plea bargain. Vehicle and Traffic Law § 1192 (10) (d) provides:

In any case wherein the charge laid before the court alleges a violation of subdivision two-a of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of subdivision two, two-a or three of this section, and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of this section is not warranted, such district attorney may consent and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge,

Summer 2013 - The Magistrate
provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition . . . (emphasis supplied).

The language of section 1192 (10) (d) is clear. A defendant charged with a violation of Vehicle and Traffic Law § 1192 (2-a) may only plea to a violation of Vehicle and Traffic Law §§ 1192 (2), 1192 (2-a) or 1193 unless the DA consents, after reviewing the available evidence, to allow another disposition, with Court approval. See generally Matter of Auerbach v. Board of Educ., 86 NY2d 198, 204 (1995) (“Where the terms of a statute are clear, the court should construe it so as to give effect to the plain meaning of the words used.”) [quoted case omitted]). Moreover, in order for a disposition to be authorized outside Vehicle and Traffic Law § 1192, section 1192 (10) (d) requires the Court to put the reasons on the record. Thus section 1192 (10) (d) does not permit a District Attorney to simply decline to prosecute a charge under section 1192 (2-a). The DA's Office has not given this Court any reasons why the very serious charge under section 1192 (2-a) should not be prosecuted. Since the proposed disposition for the section 1192 (2-a) charge is not allowed under section 1192 (10) (d), the Court declined to approve it.

Even if section 1192 (10) (d) does not apply to this case, People v Douglass, 60 NY2d 194 (1983), supra precludes the Court from approving the proposed disposition. In Douglass, the Court of Appeals explained that a local Criminal Court does not have the authority to dismiss a case for “failure to prosecute.” People v. Douglass, 60 NY2d at 204-206. A court has limited authority under the Criminal Procedure Law to dismiss a case. Id. at 204-206; see also People v. Pueblas, 18 Misc 3d 131A (App Term, 2d Dept., 2008); People v. Tartaglione, 5 Misc 3d 126A (App Term, 2d Dept., 2004).

Defendant's reliance on People v. Beckman, 957 NYS2d 830, 2012 NY Slip Op 22370 (County Ct., Columbia County 2012) is not controlling. The Court is not obligated to follow Beckman because the Court of Appeals has already spoken on the issue that is before the Court. See generally Matter of Patrick BB, 284 AD2d 636, 639 (3d Dept. 2001); Mountain View Coach Lines, Inc. v. Storms, 102 AD2d 663, 664 (2d Dept. 1984).

The main focus of Douglass is that the Legislature placed limits on the power of courts and prosecutors to dismiss an Information. See CPL 170.30; 170.40. The CPL sections allowing dismissal require either a legal reason for dismissal or some type of justification to allow dismissal in the interest of justice. People v. Douglass, 60 NY2d at 202 (“It is interesting to note that it was the fear that too many criminal proceedings would be dismissed by District Attorneys without justification that prompted the Legislature . . . to authorize courts to intercede in this process.”); see also People v. Extale, 18 NY3d 690 (2012); Peter Preiser, Practice Commentaries, McKinney's Cons Laws of NY, Book 11 A, CPL 170.40). In Douglass, the Court of Appeals recognized the need for checks and balances as contemplated by the Legislature in order to insure that any proposed disposition is above board and appropriate. The Legislature provided the only mechanisms for removal of a case from the local Criminal Court docket to be via trial, a plea or in response to a motion made under the Criminal Procedure Law.

In this case, the DA's Office has not explained to the Court why it is declining to prosecute the charges. Also, the Court cannot find any reason in the record to justify the Court dismissing the charges on its own motion in the interest of justice. See CPL 170.40 (2). The charges against the defendant are serious and concern matters of public safety. A statement by the DA's Office that they decline to prosecute, without more, is insufficient to remove the charges from the Court.

Accordingly, defendant's motion to reargue this Court's prior Decision and Order dated January 3, 2013, denying defendant's motion to dismiss for failure to prosecute, is denied in all respects. Defendant is entitled to be present at every stage of the proceedings. All motions not granted herein are hereby denied. This opinion shall constitute the Decision and Order of the Court.

ENTER SO ORDERED

March 1, 2013
Stuyvesant, New York
Hon. Dr. Carrie A. O’Hare
Town Justice — Stuyvesant Town Court

Footnote 1: Defendant's further reliance on a statement made on the record by another County Court Judge relative to Beckman, supra. is not binding.
JUSTICE COURT OF THE TOWN OF RED HOOK
SMALL CLAIMS PART

DANIELLE WYANT and ARDIE SIMMONS, Plaintiff,

- v -

MARIBETH and TODD CATLIN, Defendants

P

laintiffs (hereinafter “Tenants”) are suing defendants (hereinafter “Landlords”) for the return of $2,393.82 of Tenants’ security deposit. A trial was held on April 18, 2013. Tenants and Landlords appeared pro se.

Facts of the Case

Pursuant to the lease entered into between the tenants and landlords on January 26, 2011, (Defendants’ Exhibit J, in evidence) tenants paid a security deposit of $2,800.00. This security deposit, according to the lease, was “ . . . a damage deposit . . . all or part of which may be non-refundable upon termination of this lease to repair damage done by this Tenant.” (Emphasis added.)

On February 14, 2013, tenants vacated the premises, owing no rent to the landlords. On that date, landlord and tenant did a “walk-through” of the premises to assess any damages for the purposes of applying the security deposit, or part thereof, to repair any damage. The sworn, uncontradicted testimony is that, at the conclusion of the walkthrough (which was accomplished in approximately five minutes) landlord told tenant “[p]lace looks good guys.” Landlord did not take the opportunity of the walk-through to show all of the later-alleged damage to the premises. Tenants saw workman doing work in the house on February 15, 2013, the day after they moved out and participated in the walk-through.

Landlords withheld $2,393.82 of the security deposit to pay for damages that they claim occurred at the hands of the tenants.

Analysis of the Exhibits in Evidence

In support of their contention that they were justified to withhold the amount in question, landlords presented to the Court numerous photographs of damages in various parts of the house. (Defendants’ exhibits A, B and C, in evidence.) It should be noted that most of these photographs have dates imprinted on them, the dates all being before tenants moved out. Landlords sought to explain that discrepancy by claiming that they were unfamiliar with the date-setting mechanism of their own digital camera. Landlords later admitted on cross-examination that they had no independent proof of when the photos were actually taken.

Landlords complained of the condition of the yard, with numerous cigarette butts found along with a large volume of dog droppings. Landlords admitted on cross-examination that the premises are fenced on only three sides and that dogs other than the tenants could have left their “calling cards” and that smokers other than the tenants could have left the butts or that they could have blown in through the area that was not fenced.
Landlords then attempted to prove that the premises were in acceptable shape when tenants moved in on January 28, 2011, by placing into evidence the lease (Defendants’ exhibit E, in evidence) and cancelled checks showing the return of security of the prior tenants (Defendants’ exhibit D, in evidence), claiming that they would not have returned the security to the prior tenants if there had been problems. However, the lease between the landlords and the prior tenants expired January 23, 2010, a full year before the plaintiff-tenants moved in. Landlords had no explanation for that date discrepancy. The checks in Exhibit D do add up to the amount of the prior tenants’ security, and are dated in early 2012, but again, landlords had no explanation for the discrepancy in the dates of the prior lease.

Landlords placed into evidence receipts from various hardware supply stores to show that they had to expend funds to repair the premises after the tenants vacated the premises. However, two of these receipts are dated before tenants vacated the premises and therefore could not have been as a result of damage allegedly detected at the walk-through of February 14, 2013. (Defendants’ exhibits 3 and 4, in evidence.) Again, landlords were unable to satisfactorily explain this discrepancy.

During cross-examination, landlords admitted that they had no “before” photos of the premises showing its true condition before tenants moved in. They admitted that they had no proof that the cigarette burns shown in the photos (Defendants’ exhibit C, in evidence) were made by tenants rather than by the workmen who were there the day after tenants moved out. In fact, landlords offered no substantive proof of the condition of the premises as they were before the tenants moved in.

Tenants offer the theory that, because the landlords have put the premises up for sale on the real estate market (Plaintiffs’ exhibit 1, in evidence) that landlords seek to pay for “sprucing up” the premises with the tenants’ funds to enhance the possibility of a sale. Tenants also point to the fact that the workmen came the day after tenants moved out to show that the damages may have been caused by the workmen.

**Court’s Reasoning and Decision**

Tenants have proven by a preponderance of the evidence that they submitted a security deposit of $2,800.00 to the landlords at the start of the lease and that landlords have withheld $2,393.82 of that security deposit.

The purpose of the security deposit was clearly labeled in the lease as “. . . to repair damage done by this Tenant.” The lease is a contract between the landlords and tenants. Once these tenants proved to the satisfaction of the Court that the security deposit, or some portion thereof, has been withheld to pay for repairs which they contest, it becomes incumbent upon the landlords, pursuant to that contractual obligation, to prove that the damages were caused by tenants and the true value of the repair of those damages. Landlords have failed to prove that the damages complained of were caused by tenants. Therefore, they must return the balance of the security deposit to tenants.

It is the decision and Order of this Court that the landlords, Maribeth and Todd Catlin, shall pay to the tenants, Danielle Wyant and Ardie Simmons, the sum of $2,393.82 plus court costs of $15.00, for a total due Danielle Wyant and Ardie Simmons of $2,408.82, within 30 days of the date of this Order.

SO ORDERED.

Dated: Red Hook, New York
April 29, 2013

JONAH TRIEBWASSER,
Justice, Town of Red Hook
2013 NEW YORK STATE VEHICLE & TRAFFIC LAW QUICK CHART

Pre-order form. You will not be charged until the book is mailed (usually mid to late February) Please send voucher if necessary.

THE NEW YORK STATE VEHICLE & TRAFFIC LAW Quick Chart provides QUICK access to the law both numerically and alphabetically. This easy to use guide provides the section number, violation, fines, jail penalties, points, and license and registration consequences. Used by thousands since 1997.

Pre-order the 2013 Quick Chart book and receive immediate access to the website.

For Courts Only: Get the print AND online version for the price of just the book.

Please send the 2013 NEW YORK STATE VEHICLE AND TRAFFIC LAW Quick Chart to:

Name ________________________________
Phone # ________________________________
Court ________________________________
Address ________________________________
City / State / Zip ________________________________
County ________________________________
email address (will not be sold) ________________________________
2013 V & T Quick Chart $25.00 ea. (include’s online version) ______
10% discount for 2 or more ______
TOTAL ENCLOSED (Send voucher if necessary) ______
Make check payable to: Michael A. Sackett
6202 Diffin Rd
Cicero, NY 13039

VEHICLE & TRAFFIC VIOLATIONS
CMV VIOLATIONS WITH FLOW CHART FROM JUDGE GRABER, TOWN OF DARIEN
COMMON BOATING VIOLATIONS
BOOK UPDATED ANNUALLY.
WEBSITE UPDATED MONTHLY
PRICED AT ONLY $25.00
TOTAL SATISFACTION GUARANTEE or YOUR MONEY BACK
The events which led to Robert Pealer’s conviction for DWI began innocently enough, when dispatch at the Penn Yan Police Department received an anonymous (1) [donation/tip]. In short order, a Penn Yan police officer observed the defendant’s car weaving and also saw a Finger Lakes Community College sticker affixed to the (2) [rear window/trunk]. The officer stopped the car and during his questioning of the defendant, determined that the defendant’s eyes were (3) [closed/red and glossy], his speech was impaired and he had an odor of alcohol. After the defendant failed the field sobriety tests and a breath screening test indicated that he had been drinking, he was placed under arrest for (4) [1192-2/1192-3] and transported to the police station.

At the police station, he called his (5) [wife/lawyer] before submitting to a breath test. the test result was .15 and the defendant was charged with (6) [1192-2/1192-3].

At trial, the defendant’s attorney sought to raise a Confrontation Clause challenge to the documents which the prosecution attempted to offer into evidence i.e. those dealing with calibration of the machine and the (7) [simulator solution/tuning fork] The court ruled that since they were (8) [testimonial/non-testimonial], there was no right to cross-examine the authors of the documents. The defendant was convicted of a felony DWI and sentenced to 2 1/3-7 years (9) [in prison/on probation supervision].

On appeal, the Appellate Division affirmed and the case then went to the Court of Appeals which held that the primary motivation for the People’s use of the three breathalyzer records was to (10) [provide evidence to convict the defendant of DWI/advice the Penn Yan Police department that its machine was operating properly] and thus they were admissible.

In his dissent, Justice Pigott argued that stopping the defendant’s vehicle because of the offending Finger Lakes Community College College sticker was not (B) [reasonable/constitutional] and therefore the evidence of the defendant’s intoxication should have been suppressed.
MICHAEL A. SANTO*

ATTORNEY AT LAW

Duffy & Duffy Medical Malpractice & Personal Injury Attorneys

At Duffy & Duffy, our mission is to advocate for patients who are harmed by medical malpractice, negligence or personal injury and to help our clients “and their families” receive justice. We bring to each client engagement years of legal experience, unprecedented knowledge of trying medical malpractice and negligence cases and a passion to defend and fight for patients’ rights.

We invite you to learn more about Duffy & Duffy, our commitment to advancing patient safety and the ways we can help if you or someone you know has been the victim of medical malpractice. Read about our areas of practice to know more about us and our specialized practice areas. Also browse through our types of cases to know more about medical malpractice and personal injury cases.

Choosing Duffy & Duffy over other law firms to handle your personal injury matter will help give you a peace of mind that your case is handled by experienced and dedicated lawyers, working hard to maximize recovery for their clients. Duffy & Duffy provides legal counsel to victims throughout the Nassau County, Long Island and five boroughs of New York City and New York State.

Our cases are pending from Long Island to all parts of New York City, as well as other New York and out-of-state locations at times. All initial appointments and meetings are free and our fee is based on a contingency at arrangement.

* Admitted to practice in the states of Massachusetts, New York, and New Jersey
* Provided pro bono representation to the SMA & Justices in matters with their respective municipalities

www.duffyduffylaw.com    msanto@duffyduffylaw.com

Cell
516.551.5503

Office
516-394-4200
516-746-2840
Provide A Public Service with NYSP

THE NYSP DRIVER IMPROVEMENT PROGRAM IS NOW AVAILABLE ONLINE

New York Safety Program (NYSP) announces a new convenient way to provide driver safety education benefits. The NYSP 6-Hour PIRP (Point and Insurance Reduction Program) is now available online as well as in the classroom. That means violators may participate in the NYSP driver improvement program from any computer with an internet connection 24/7. In the development of the online version of the syllabus we were careful to include security and the integrity you rely on and expect from NYSP. Because of the use of superior technology and adherence to a proven curriculum the NYSPOLINE.com website represents the best program of its kind.

NYSP classroom courses are also available at conveniently located classroom facilities with classes scheduled in two parts during the evening on weekdays or in one session on the weekend.

NYSP provides feedback to the court!

For years NYSP has provided information regarding violator participation in the classroom PIRP course for analytic purposes. This feedback has always been provided by NYSP at no cost to municipalities through the NYSP Court Referral Program. The same service is now available for the internet version of the NYSP PIRP class.

Use the contact information provided below to get the details on how to participate in this program.

WHY WE WANT YOU TO ENCOURAGE VIOLATORS TO TAKE THIS COURSE:

According to the National Highway Traffic Safety Administration of the U.S. Department of Transportation, “In 2008, there were an estimated 5,811,000 police-reported traffic crashes, in which 37,261 people were killed and 2,346,000 people were injured; 4,146,000 crashes involved property damage only.” “An average of 102 people died each day in motor vehicle crashes in 2008 — one every 14 minutes.” A comprehensive study released on May 9, 2002, by the NHTSA shows that the economic impact of motor vehicle crashes on America’s roadways has reached $230.6 billion per year, or an average of $820 for every person living in the United States. The NHTSA study, The Economic Impact of Motor Vehicle Crashes 2000, also estimates the annual economic cost of roadway crashes: $61 billion in lost workplace productivity, $20.2 billion in lost household productivity, $59 billion in property damage, $32.6 billion in medical costs and $25.6 billion in travel delay costs. All told the cost of motor vehicle crashes in the United States has reached 2.3 percent of the U.S. gross domestic product.

And, from Money Magazine, 5/03, p.89: “crashes remain the leading cause of death for Americans, ages one to 34.”

Effectiveness of the NYSP Program; The last effectiveness study of the program indicates that it results in
35% reduction in traffic accidents and a 65% reduction in traffic violations

NEW YORK SAFETY PROGRAM

POINT & INSURANCE REDUCTION PROGRAM

On the Internet 24 hours a day 365 days a year
Or conveniently scheduled classroom courses available near you

Statewide: (800) 942-6874 • info@nysp.com • www.NYSP.com

NEW YORK STATE DEPT OF MOTOR VEHICLES APPROVED

NYSP Affiliations include:
• County Legislators and Supervisors (CLAS) • New York Conference of Mayors (NYCOM) • New York State Association of Counties (NYSAC) • Federation of New York Insurance Professionals (FNYIP) • New York Federation of Professional Health Educators (NYSFPHE) • District Council 37 (DC37) • Civil Service Employees Association (CSEA) • Catholic Schools Administrators Association of New York (CSAA)
The National Traffic Safety Institute not only offers the NY DMV approved 6-hour defensive driving/traffic safety course, we also provide effective and cost efficient educational solutions to courts, probation departments and individuals.

**Court Diversion – Awareness Programs**

Our programs/workshops can be used as a sentencing alternative or court avoidance tool. In addition employers can use our training materials as a valuable in-house employee training and development program.

- **Theft/Consumer Awareness Workshop (Adults & Youth):**
  Instructor led 4-6-8 hour class. Completion certificate available

- **Anger Awareness Workshop Level 1 (Adults & Youth):**
  Instructor led 6-8-16 hour class. Completion certificate available

- **Alcohol/Drug Awareness Education Program (Adults only)**
  **Focus:** Important information on alcohol and other drugs. Instructor led 8 hour class. Completion certificate available

- **Civic Responsibility Life Skills Program (Adults Only):**
  **Focus:** Personal Choices; Values; Action Planning & more
  Instructor led 6 hour workshop. Completion certificate available

- **Youth Success Workshop (Youth Only)**
  **Focus:** Peer Pressure, Self-Image, Goal Planning & more
  Instructor led 4 hour workshop. Completion certificate available

**6 Hour Defensive Driving Classes**

(Available online or classroom)

NTSI’s New York Defensive Driving course contains the most current information on defensive driving, traffic laws, collision avoidance, and the affects of alcohol and drugs on drivers. NTSI is a DMV-licensed Sponsoring agency approved since 1979. Attendees can receive 10% on liability insurance, reduce up to 4 points on their license (if applicable) and certificate is good for 3 years.

For more information visit our website **WWW.NTSI.COM** or contact us at 1.800.733.6874, email at ntsine@ntsi.com or fax us at 718.720.7021

201 Edward Curry Avenue, Suite 206, Staten Island, NY 10314