

The Magistrate

The Courts Closest to the People



Winter 2017

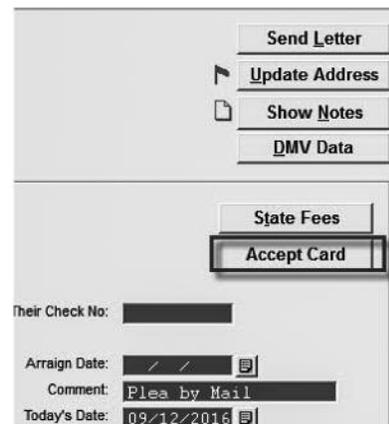
IN THIS ISSUE:

Conference Photos
Meet Your New Directors
& Officers



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2. Presidents Message

4. Executive Committee Highlights

6. Notice from the New York State Education Department

7. Pine Plains Town Justice Elected to Supreme Court

8. Stern Article/ The Court of Appeals Rules That a Judge's Failure to Recognize Clear Misconduct Compounds the seriousness of the Original Misconduct

11. Changing The World

12. Tilney Tidbit #34 Criteria for Sentencing

14. Post Readiness Delay

19. - 26. Color Conference Center Spread (19. New Officers / 20. New Directors / 22. & 24. Photos
25. Vendor Photos / 26. Magistrate of the Year)

27. Historical Listing of Magistrate of The Year / Conference Attendance by County

28. Deceased Members

29. Amicus Award

30. About My County Association

34. Advisory Committee on Judicial Ethics

37. Decision & Order

38. - 41. Conference Photos / Save the Date for the 2018 Conference

42. Happy Holidays

44. Quiz of the Month

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

100.6 Application of the Rules of Judicial Conduct

(B) Part-Time Judge: A part-time judge:

(1) is not required to comply with sections 100.4(C)(1), 100.4(C)(2)(a), 100.4(C)(3)(a)(ii), 100.4(E)(1), 100.4(F), 100.4(G), and 100.4(h)

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;



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PRESIDENT'S MESSAGE

Hon.

David S. Gideon



My Fellow Judges-

I am truly humbled and appreciative of the trust that you have all placed in me to guide our great organization in its endeavors throughout the forthcoming year. I anticipate a year where we will face many challenges requiring our strong advocacy. Lest it be

overlooked, the Town and Village Judges represent the largest judicial contingency in the New York State judicial system – we are the “Courts Closest to the People” serving a vital role in the administration and delivery of fair and impartial justice throughout our great State.

The New York State Magistrates Association is me, it is you and it is all of us together. United we are a voice to be heard, a voice to be taken seriously. Divided we will surely fall. So this year, I will be reaching out to each of you and our County Associations asking for your assistance as we tackle the important issues in this forthcoming year. Your elected officers of the New York State Magistrates Association are but your representatives; each of you working collectively are the true power. To parallel what President John F. Kennedy once said, “ask not what your Association can do for you, ask what you can do for your Association.”

Over the past several years your Association has increased its lobbying efforts at the State Legislature with regular visits to the hill. Our reception has been cordial and welcome and our input appreciated. We have called upon each of you to support our Association positions and to write to or talk to your State Legislators and you have risen to that occasion and our legislators have heard.

But our voices can be louder, stronger and our numbers multiplied by including the valued members of our New York State Association of Magistrates Court Clerks within our ranks. Gillian Koerner, the President of the New York State Association of Magistrates Court Clerks was a welcome addition to our conference and I have extended my invitation to her to attend all of our meetings. It is about time that our Associations start working together.

At my first Executive Board Meeting I presented the executive board member assignments to the respective committees of our Association. For your reference, these committee assignments are posted on our Association website. I have included members from the New York State Association of Magistrates Court Clerks to sit on and be an active part of the Legislative Committee, the Training and Education Committee, the Consolidation, Court Reform and Counsel at Arraignment Committee and the Site Selection Committee. All, in my opinion, are crucially important committees as we address the issues before us, together, for the ensuing year.

To be sure, we are facing many challenges this year. While we all may not agree all of the time, we must all work together to ensure our continued existence as the “Courts Closest to the People;” able to administer justice in its purest sense.

As early as election day this year on November 7th, we faced the vote to decide whether or not there would be a Constitutional Convention on the ballot; a vote which could have determined our very existence. The New York State Bar Association advocated for a “Yes” vote, making it clear that in their opinion there should be no non-attorney judges; that somehow only attorneys are in the unique position to administer justice. Our Association

strongly disagreed and advocated for a “NO” vote and each of you rose to the challenge and advocated to your family, friends and acquaintances to vote “NO;” that a Constitutional Convention would surely have resulted in significant changes to the law, the legal system and/or to the administration of justice.

This year we will also face changes in the delivery of justice as we all struggle, county by county, to provide the assistance of counsel at each and every arraignment and court proceeding as guaranteed by the Constitution. Whether through Centralized Arraignment Parts or otherwise, our Association welcomes and acknowledges these fundamental rights, but one size surely does not fit all. The delivery plan must be made county by county using a common sense approach to determine the best way to deliver.

Finally, funding and discussions concerning consolidation will continue to increase and we must be ready to bring reasoned and intelligent input to the table lest hasty decisions will be made. I have asked the committee to develop regionalized advocacy teams to assist our local county associations in addressing proposed consolidation plans; to advocate for plans that make sense, not just plans for the mere sake of consolidation.

Each of you, and the involvement of your county associations, will be crucial in our endeavors to bring reasoned and intelligent options to the table as we face these important issues this year and in to the future.

Personally, I will endeavor to be available by either e-mail or by telephone and I welcome your input as we face these many challenges together.

This year, our Executive Board Meetings will be open to all of our membership who wish to attend and observe how our Association operates. Traditionally our Executive Board Members arrive

on Friday evening and get together on an informal social basis before the work session on Saturday. Of course, if you would like to join us, please feel free. I would ask that you please let the Association office know, however, of your plan to attend so that we can properly acknowledge your attendance and fill you in on all of the details. A schedule of the Executive Board Meetings is posted on the Association website for your reference.

President Theodore Roosevelt said it best many years ago, “It is not the critic who counts; not the man or woman who points out how the strong man or woman stumbles, or where the doer of deeds could have done them better. The credit belongs to the man or woman who is actually in the arena, whose face is marred by the dust and sweat and blood; who strives valiantly; who errs, who comes up short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself or herself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he or she fails, at least fails while daring greatly, so that his or her place shall never be with those cold and timid souls who neither know victory nor defeat.”

I look forward to working side-by-side with all of you. From my heart, I thank you all.





Executive Committee Highlights

Highlights of the September 15, 2017 Executive Committee Meeting held at the Turning Stone Resort, Verona, New York are presented for your information.

The proposed 2018 Legislative Agenda was presented by Past President Hon. Robert Bogle.

- 1) *Amendment of ABC Law 65-c* - Recommend to the Legislature to allow the Court to suspend the driving privileges of a defendant in those instances where a defendant fails to appear and/or fails to comply with a sentence imposed by the court in connection with the charge of unlawful consumption and/or sale of an alcoholic beverage; and/or authorize courts to render default judgments in cases of failure to answer for unlawful possession of an alcoholic beverage with the intent to consume by persons under the age of twenty-one years.
- 2) *Full Retirement Benefits for Town and Village Justices* - Town and Village Justices have given years of dedicated service to their communities and New York State. Considering the nominal pay these local Justices receive, and the fact that they are on call and available 24/7/365, the Committee believes that full retirement benefits would be an appropriate recognition of their service which would not have a significantly negative impact on the state retirement system.
- 3) *Court System Funding* - NYSMA has advocated that the State provide adequate funds to continue implementation of the Action Plan including JCAP for the State's town and village justice courts. Because of the 2011-2012 funding crisis, there is serious concern over the ability of these courts to perform their constitutional function and provide access to justice. To provide true access, the courts must have well trained personnel and maintain all necessary facilities. As part of this, the State should bring the JCAP amount back up to \$10,000,000.00 per year.
- 4) *Open file discovery in disciplinary hearings* - Mandate that, in disciplinary actions before the Commission on Judicial Conduct, judges are entitled to the same level of open file discovery that many District Attorney's offices offer to defendants and that attorney disciplinary bodies now offer.
- 5) *Small Claims and Other Court Fees* - The present fees for small claims actions brought in Justice Courts are \$10.00 for claims under \$1,000.00, and \$15.00 for claims between \$1,000.00 and \$3,000.00. It is therefore suggested that the fees be increased to \$20 and \$40, respectively. Raise the fee to a Town or Village Justice to perform a wedding to \$150.00.
- 6) *Associate Village Justice. Amend the Term of Appointment* Amend the term for which an associate village justice is appointed from one year to a maximum of four years. Second associate village justice - Support legislation which permits the appointment of a second associate village justice directly by the Mayor and Board of Trustees instead of the current requirement of New York State Legislative approval on each separate occasion.
- 7) *Suspension for parking offenses* - Amend the registration suspensions procedures to allow a municipality the discretion to suspend registrations for parking violations.
- 8) Amend the Vehicle and Traffic Law to allow for a plea of guilty and the payment of fines electronically via the Internet.
- 9) Raise the statutory reimbursement rate for translation services (foreign language and sign language for the deaf) from \$25.00 per day to \$250.00 per day.

A motion was made to accept the proposed 2018 Legislative Agenda and present it to the general membership at the annual business meeting. Carried.

Highlights of the Annual Business Meeting on October 16, 2017 with the Hon. Edward Van Der Water presiding are presented for your information. Pursuant to section 217 of the Judiciary Law of 1983, the Special Annual Meeting of the New York State Magistrates Association was called to order. In accordance with this section of the Judiciary Law that all justices in the State of New York have an Association and that such an Association will meet annually to elect officers and raise matters to be brought to the attention of the Chief Judge and the Judicial Conference for their consideration. All certified judges in attendance will be reimbursed for lodging up to \$91.00 and transportation and for certain applicable meals unless living within 35 miles of the conference site. UCS reimbursement vouchers were distributed at the close of the business meeting.

The Bylaws proposed amendments for Article XIV, new sections 3 and 4 regarding elections was introduced (Printed in the Spring issue of The Magistrate). Motion made to accept. Carried.

The 2018 proposed legislation was presented by Hon. Robert Bogle and voted on. All nine items of the Proposed Legislation were passed by the membership.

President Sherry Davenport presented Certificates of Recognition to the following out-going Directors: Hon. Kenneth Ohi Johnsen, TJ Day, Saratoga County, Hon. David A. Murante, TJ Ogden, Monroe County, Hon. Thomas J. Sheeran, TJ Lewiston, Niagara County, Hon. Joseph J. Sperber, VJ East Williston, Nassau County, and Treasurer: Hon. John P. Teixeira

The four-at-large members of the nominating committee, Hon. Pamela Wylubski, TJ Afton, Chenango County, Hon. Deborah Stritzel, TJ Williamson, Wayne County, Hon. James T. Phillips, Jr., TJ Morristown, St. Lawrence County, and Hon. Howard Peacock, TJ North Harmony, Chautauqua County were recognized and thanked for their service.

Past President Harold Bauman, Chair of the Nominating Committee and Hon. Edward G. Van Der Water then presented the 2017-2018 slate of candidates to serve as Directors for a three-year term. They are as follows:

Hon. Paul W. Peter	Rensselaer County
Hon. Michael Sterio	Oswego County
Hon. Susan Sullivan-Bisceglia	Dutchess County
Hon. Donna Yerdon	Otsego County

On motions from the floor with seconds, all present were in favor of the proposed directors and the secretary was authorized to cast a unanimous ballot.

It was explained that as President Elect, David S. Gideon, would automatically become President upon being sworn in at the Tuesday evening banquet.

Past President Harold Bauman, Chair of the Nominating Committee, then presented the 2017-2018 slate of candidates for Officers of the Association. The Hon. Edward G. Van Der Water conducted the voting process. They are as follows:

President Elect	Hon. Michael A. Petucci	Herkimer County
1st Vice President	Hon. Jonah Triebwasser	Dutchess County
2nd Vice President	Hon. Karl E. Manne	Herkimer County
3rd Vice President	Hon. Dennis Young	Chatauqua County
Treasurer	Hon. Thomas Sheeran	Niagara County

On motions from the floor with seconds, all present were in favor of the proposed officers and the secretary was authorized to cast a unanimous ballot.

New Business: Hon. Pamela Wulybski, TJ Afton, inquired of the use of extra security to be provided by OCA for town and village judges in cases where threats are received. Currently there is no approval for such extra security, yet county and city court judges receive such extra security.

Old Business: Hon. Judy Conger, TJ Richland inquired what else can be done to pass legislation that has been on our agenda for years. Hon. Gary Graber and Hon. Robert Bogle both responded.

Judge Thomas R. Dias, Chair of the Pin Recognition Committee recognized the twenty Judges present and noted that eighty-three members would be receiving their Service Award Pin of twenty years or more of service as justices.

Highlight of the September 18, 2017 Executive Committee Meeting held at the Turning Stone Resort, Verona, New York are presented for your information.

President Gideon welcomed the new Directors to the meeting. Scott Brown of Beggar Promotions attended briefly to discuss the new store.

Hon. Peter Barlet moved to donate \$200.00 to the NYSBA Luncheon. Carried.

President Gideon circulated his Committee assignments.

Old Business: Discussion was held to request a NYSMA member be added to the CJE approval committee.

New Business: Hon. Tanja Sirago found a new office for NYSMA located at: 33 Elk Street, Downtown Albany. Hon. Ed Van Der Water moved to relocate the NYSMA office with a Five Year lease at \$1100.00 per month inclusive. Carried.





Notice from the New York State Education Department



The University of the State of New York

THE NEW YORK STATE EDUCATION DEPARTMENT

The New York State Office of Professional Discipline is an agency within the State Education Department that investigates, prosecutes, and adjudicates professional misconduct of individuals who are licensed in over 50 professions. A list of the professions is available on our website: <http://www.op.nysed.gov/prof/>.

The NYS Board of Regents and the department have jurisdiction to investigate and take disciplinary action against an individual's license for professional misconduct. The agency has 12 offices located throughout the State of New York.

Under New York State Education Law Article 130 General Provisions, and §6509 sub (5), professional misconduct is defined as: (a) Being convicted of committing an act constituting a crime under: (i) New York State Law or, (ii) Federal Law or, (iii) the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State Law. In prosecuting allegations of professional misconduct based on this section of the Education law, the Office of Professional Discipline requests the following court documents: a Certified Certificate of Disposition (with a raised seal) and Certified Accusatory Instruments (with a raised seal), along

with plea and sentencing minutes. The Office is unable to accept faxed or emailed copies.

The Office of Professional Discipline has had a long working relationship with New York State Courts for many years. We look forward to your continued cooperation in the future.



Regina R. Larkin
Supervising Investigator



Pine Plains Town Justice Elected to Supreme Court

By Hon. Barbara Seelbach

*Hon.
Christi Acker*



The Dutchess County Magistrates Association is pleased to announce that the Honorable Christi Acker, Town Justice of the Town of Pine Plains, Dutchess County, has been elected as Supreme Court Justice in the Ninth Judicial District. Judge Acker has proudly served as a Town Justice in her town for the past

10 years. Judge Acker has also previously served as Secretary, Vice-President and President of the Dutchess County Magistrates Association. In addition to her Town Justice position, she has also been employed for the last 16 years as a Principal Court Attorney to County Court/Acting Supreme Court Justice James T. Rooney in Putnam County. Prior to that,

Judge Acker was engaged as a litigator in private practice, appearing in various courts across the Ninth Judicial District. She has also worked part-time for the Putnam County Department of Social Services, where she prosecuted cases involving the abuse and neglect of children. Her varied professional experience, dedication to her career, reputation for fairness and judicial temperament make her well suited for her newest role on the bench in Supreme Court. Congratulations Judge Acker!



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The Court of Appeals Rules that a Judge's Failure to Recognize Clear Misconduct Compounds the Seriousness of the Original Misconduct

By Gerald Stern¹

Background

In the Fall edition of *The Magistrate*, I described a case in which “Judge A” assisted his adult daughter in defending against a cell phone traffic ticket and sent argumentative letters to the County Court hearing an appeal of his orders. The Court of Appeals has recently issued a decision accepting the Commission’s determination of removal in that case (*Matter of Ayres*, _NY3d_, 2017 NY Slip Op 0103 [2017]).

Judge Ayres’ daughter had told her father she was only handing the phone to her pre-school children in the back seat of the car. Her father intervened in the case by asking the court clerk, where the ticket was to be handled, to move it from the calendar of one judge to the co-judge, speaking on the telephone to the co-judge and urging him to handle the case, and attending a pre-hearing conference with the ADA and aggressively urging dismissal of the charge.

Somewhere Judge Ayres had heard that a judge can act “as a parent” in such circumstances. Asked to explain that, he seemed to be saying that at a training session, he heard someone from the Commission on Judicial Conduct say a judge could be present in court when a family member is a party. But of course he did more than attend the proceeding. When he met with the ADA at a conference, he presented his daughter’s defense. In Judge Ayres’ presence, his daughter told the ADA that her father was a judge. He chimed in that if the case were in his courtroom, he would dismiss the charge, and he added that other judges he had spoken to agreed with him.

A second charge concerned his writing eight times to the County Court about the merits of an appeal from restitution orders he had issued. Five of

his letters were *ex parte*. His letters insisted that the appeal had no merit, and he disparaged the defendant and his attorney. The County Court judge replied that Judge Ayres should not be addressing such letters to the appellate court, but that did no good. Even after being advised by the County Court judge that such letters were inappropriate, Judge Ayres continued to write to the County Court about the case. He never questioned the propriety of his conduct with respect to sending such letters to the County Court.

Although the charges were serious and would probably have raised the issue whether he should be removed from office, the Commission might have considered as a mitigating factor (in determining a sanction) the judge’s present acknowledgment of wrongdoing if he had done so. It appears that his removal from office was sealed by his failure to recognize that his actions in both charges were improper.

Analysis of Judge Ayres’ Conduct

It should be obvious to all readers of this article that there is no defense that the judge on these facts was acting as a parent. It is crystal clear that the judge lent the prestige of judicial office to advance the private interests of his daughter by attempting to influence the outcome of her traffic ticket case, in violation of Section 100.2 (C) of the Rules Governing Judicial Conduct. It should also be clear on these facts that his best chance of remaining a judge, when his misconduct was so clear, was to express sincere remorse for his actions and tell the referee who handled his hearing, the Commission, and the Court of Appeals that he understood his actions were improper. That would have been an important mitigating circumstance. Clearly, Judge Ayres needed advice.

¹ Mr. Stern served as Administrator of the Commission from 1974 to 2003 and as faculty in the Town and Village Justice educational program from 2004 to 2011. He has represented a few judges over the past few years, but will no longer represent clients before the Commission. His email is gstern42@mac.com.

A responsible, competent attorney would have explained to the judge that on the facts he was conceding, he had engaged in serious misconduct and would have warned him of the risk that he would be removed if he failed to show remorse for his misconduct. No guarantees, but his chances would have been better if he recognized his own, clear misconduct. The facts could be easily established, and the law was clear: he violated the ethical rules charged.

Throughout the disciplinary proceedings Judge Ayres relied on the validity of the defense he had asserted in his daughter's case: that the ticket should have been dismissed. But he seemed to fail to understand that regardless of the validity of his daughter's defense, it was highly improper for him to assert it. The minor point was that the "facts" were not established at that point and that the court would decide her case on the merits. The major point was that he acted as his daughter's advocate and repeatedly used his judicial influence to attempt to get the ticket before another judge and to assert his daughter's defense.

The Commission's Action

Judge Ayres, as a *pro se* respondent before the Commission, was articulate and self-assured. As to the first charge, he relied on the parental defense throughout the disciplinary proceeding and seemed oblivious to the ethical implications of his attempted use of judicial authority in a case that was not before him. As to the second charge, whatever rulings he had made were under review by a higher court. His duty was to let the higher court decide without his participation.

When he appeared before the Commission, after the referee recommended that the Commission sustain both charges, one Commission member asked him if he thought he had done anything wrong. That was his chance, possibly even at that late date, to express convincing remorse for his actions. His "remorse" was that the court personnel and the ADA misunderstood him and in the future he would be clearer. Based on my reading of the transcript of the argument before the Commission members who were to decide his fate, he was unable to recognize why his conduct violated the ethical rules and accept responsibility for it.

On balance, his conduct warranted removal, and his failure to establish that he now understood that his conduct was highly improper sealed his fate.

One Commission member wrote a concurring opinion stating that judges need attorneys in Commission proceedings. This case is a clear example of the validity of that point. As articulate as Judge Ayres was, he certainly needed an attorney who could talk to him frankly.

Even with the best representation, of course, it would have been Judge Ayres' decision whether to admit that his actions constituted misconduct, but it is plain that he needed to hear the dangers of pursuing his parental defense. Apparently, he made a decision not to retain counsel because of the costs. He explained in his Answer to the charges that he was unable to retain an attorney in the disciplinary proceedings "due to financial restraints."

As an advocate for his daughter, he was successful. The traffic charge was dismissed when the ADA's supervisor decided that the ADA should recommend a dismissal. The question is whether that victory in a traffic case was worth losing a judgeship over.

The Court of Appeals Decision

The judge filed a record, wrote a 22-page brief and argued the case on his own behalf. His written submission to the Court of Appeals cited only one prior decision that resulted in a sanction less severe than removal from office. It expressed no mitigation to show why he should be retained as a judge, except to say that "mistakes were made" and "this experience will make me a better judge in the future." Neither his written submission nor his oral argument to the Court demonstrated that he had learned anything from his experience.

In accepting the Commission's determination of removal, the Court stated that the judge's "failure to recognize these breaches of our ethical standards and the public trust" compounds the seriousness of the underlying misconduct in the two charges

Continued on page 10

(*Ayres*, Slip Op., pp.8-9). The closest he came to accepting responsibility was his statement that he learned how easily his words and actions “can be misinterpreted” and he would “avoid any occasion or situation that could be misconstrued” (*Ayres*, Slip Op., p.9). The Court observed that the judge “fails to accept that this is not a question of a misunderstanding,” and as to the second charge, the Court noted that Judge Ayres “acted inappropriately,” but “continues to minimize the import of his actions” (*Ayres*, Slip Op., pp.9, 10).

It was the Court’s view that if Judge Ayres were to retain his judgeship, “we may expect more of the same” (*Ayres*, Slip Op., p.10).

Conclusion

There should be no doubt that a judge under charges may dispute the facts or the law, or both, preferably through defense counsel without getting stung by a negative conclusion that he or she fails to understand the seriousness of the misconduct. A judge’s position could be in essence: “If I did that it would have been improper, but I did not do that.” If a charge is not justified or inapplicable sections of the rules were charged, it would be appropriate to contest those charges.

Of course, the judge must be candid in his or her portrayal of the facts. In Judge Ayres’ case, the facts were mostly undisputed. He was candid on the facts, but seemed not to recognize his own misconduct as to both charges on the facts he acknowledged. There is an irony in his asking other judges what they would do if his daughter’s case were before them since he should have sought advice about his conduct before he engaged in it.

Whatever the other judges told him about his daughter’s case, he should have then asked them whether he could become his daughter’s advocate under the ethical standards they and he must abide by. The town and village judges I have met would have told him to stay out of his daughter’s case.

And after he took his foolish action, if only he had spoken to an attorney as to how to respond to the

Commission, maybe he would have realized that the best defense would have been simply to say, “Yes I did it. I was wrong, and I now realize it.” An able attorney would have been helpful in discussing with him the risk of defending what is indefensible. The goal should have been to keep the judge on the bench.

When a judge has asserted judicial influence to benefit the judge, a relative or a friend, it is dangerous for the judge to ignore that the most important mitigating circumstance would be to show recognition that the conduct was improper. Unrepresented judges have achieved just results, especially in signing “agreed statements of facts” in which they have acknowledged their misconduct. But when a judge is determined to contest the charges, it can be very difficult for the judge to ably represent himself or herself. The judge has no one to confide in, talk to, provide perspective and test his or her paternal or maternal instincts about a traffic case.

In this case, Judge Ayres would have profited by the advice of a knowledgeable person who would have told the judge that he had engaged in misconduct as to both charges. Any attorney who would not give that advice on the facts that existed here would not have been doing a service to his or her client. Maybe it would not have been as expensive as he feared.

Sometimes the misconduct is so egregious that a judge’s professed recognition that the conduct was improper would not preserve his or her judgeship. But here, although the misconduct was egregious, from the nature of the questions by the Commission members after the hearing, he might have gotten lucky. It is noteworthy that the concurring opinion stated, “the choice between censure and removal hung in the balance.” In the argument before the Court of Appeals, he had another opportunity to express contrition when two judges prompted him to address mitigation; instead, he defended his conduct and reiterated that he was “there as a parent.”

His answers revealed he did not understand the special role and special responsibilities of a judge. Clearly, equating parental duties with a judge’s ethical responsibilities was a gross mistake.





Changing The World By Hon. Thomas Liotti

I am often reminded of that scene from a John Grisham movie where a retired lawyer is breaking in a young attorney to the practice of law. The older lawyer says: "I am giving you the opportunity to change the world one case at a time." Make no mistake about it, changing the world for the better is a full-time job. Your success in doing so is difficult to measure. Changing people's minds is often beyond our pay grade. Psychiatrists may strive to modify or control behavior, but changing attitudes is often as difficult as tearing down the Berlin Wall.

In the 1980's the Chief Judge in New York established the Judicial Commission on Minorities. At the time New York State Bar Association had issued a report stating that Nassau's sentencing in criminal cases was harsher with respect to African Americans than it was in the case of Caucasians. I published an article about it which of course then won me the enmity of Nassau's Chief Judge, among others.

I became the only witness from Nassau to testify before the Commission which held hearings in New York City where I also cited that of Nassau's 87 trial court judges, only one was African American; we had few women; no Asian Americans or progressives. Most were conservatives who often followed the letter of the law without regard to empathy or changing mores.

This has since changed. We now have more minorities and women on the Bench. While judges must still follow *stare decisis* or prior decisions, more of our judges are publishing decisions which show an intolerance for denial of civil and human rights. We are maturing, at least in Nassau.

At a recent meeting of the Nassau Magistrates' Association, the President of the Bar Association, Hon. Steve Leventhal, a village

justice who has spoken at our Constitution Day programs, announced a donation by the Bar Association to Puerto Rico's relief efforts. At the same meeting we heard from a spokesperson for the Long Island Regional Immigration Assistance Center which furnishes free immigration law support for attorneys who provide mandated representation to non-citizens. These are wonderful changes in attitude of which we can all be proud.



—Tom Liotti is the Village Justice for the Village of Westbury.



Reprinted with from The Westbury Times
October 18-24, 2017
2A



Tilney Tidbit #34 Criteria for Sentencing

By Hon. Leonerd G. Tilney, Jr. Lockport Town Justice

The toughest decision that a Town Justice must make is to determine the severity of punishment to be meted out to the defendant. Certainly on more serious misdemeanors we are guided by our respective County Probation Departments. But they can only recommend and we are not bound by that recommendation and are actually not bound by anything but our judicial discretion except for the maximum and minimum penalties enumerated in the specific sentencing statutes which can be found in the Penal Law under Sections 60.00 - 65.00 and 70.15, etc.

The Fourth Department in *People v. Burghardt* 17 A.D. 2d 912 (1962) has given us eight criteria which the Court can consider when determining its sentence. They are:

1. The nature of the act;
2. The community's condemnation of the defendant's misconduct;
3. The protection of the community;
4. The deterrence for others similarly inclined to do the same act;
5. The potential of the defendant for rehabilitation;
6. Defendant's previous record and conduct;
7. Defendant's ability to conform and his capacity to accept social disciplines and limits; and
8. His overall stability to adjust to a normal life in the community.



OCA Connection

JusticeCourtTechSupport@nycourts.gov or
1-800-622-2522

Some helpful information from Justice Court Technical Support office.

Microsoft Office Windows 10 has been released July 29, 2015. Please do NOT install this update on any town and village desktops and/or laptops. The Office of Court Administration does not support this version of Windows at this time.

Bitdefender is the New Virus protect for OCA computers in the Town and Village Courts. If you have not installed Bitdefender on your desktop/laptops please contact OCA at 1-800-622-2522.

All Town and Village Judges and Clerks have an **OCA email address**. If you do not know your email information, please call 1-800-622-2522. OCA uses this email address, exclusively, to provide information. It is also available to configure your smartphones for OCA email access.

You can now change your OCA email password, through this site: <https://iapps.courts.state.ny.us/sspr> if you do not know your password or you use CDR/WebDVS, please call OCA at 1-800-622-2522.

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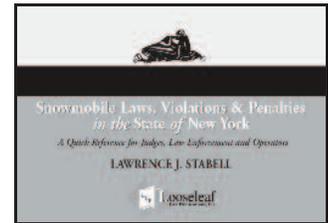
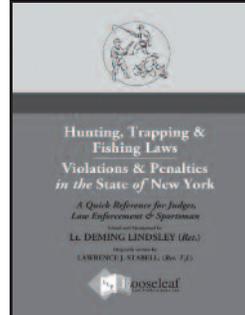
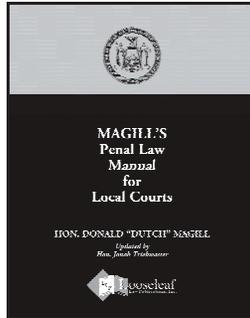
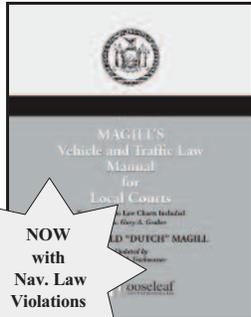


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Post Readiness Delay By Hon. Robert G. Bogle

In *People v. Clarke*, 28 NY3d 48 (2016), the court held that the time needed to conduct DNA testing and to produce a DNA report may, under certain circumstances, be excluded from speedy trial computation. To invoke the exclusion provided in CPL 30.30 (4)(g), the People must exercise due diligence in obtaining the evidence. Here, a 161-day period of delay was attributable to the People because it was a result of the People's inaction in obtaining defendant's DNA exemplar. The People have the burden of proof of showing that they exercised due diligence sufficient to exclude the delay and that burden was not met here.

Proof of Commission of Crime Charged (Molineux)

In *People v. Valentin*, 29 NY3d 150, 53 NYS3d 592 (2017), the Court of Appeals held that the People may be permitted to introduce evidence of a defendant's prior drug sale conviction on their direct case when a defendant asserts an agency defense under *People v. Molineux*, 168 NY264 (1901) on the issue of intent to sell the drugs. Thus, undercover New York City police officers observed the defendant in a "buy and bust" operation in Manhattan walk together with another man, Barrios, for about 40 minutes and then saw Barrios hand the defendant money. The defendant then crossed the street and entered a 20-story building. After a few minutes, the defendant exited the building and walked directly over to Barrios, who had moved to another corner. The undercover observed the defendant hand what was later revealed to be glassine envelopes of heroin to

Barrios who then placed them in his right front pocket. As the two walked away, they were arrested by the police. After the completion of jury selection, the defense counsel indicated the "possibility" that the defense might be agency. During cross-examination of the officers, defense counsel "honed in" on this claim and thus explored the agency defense. Mid-trial, in light of the defendant's continues assertion of agency, the People asserted that they would not rest without the opportunity to present evidence of the defendant's prior drug sales. The court first explored whether an agency charge would even be proper, but then permitted the People to introduce evidence only of the defendant's 1997 conviction of fifth degree criminal sale of a controlled substance. In affirming the Court held that the trial court did not abuse its discretion in allowing the People to do so even though the defendant did not testify or present his own witnesses and thus based its decision solely on inferences what arguably may be drawn from the People's case alone.

Test of Body Fluids for Presence of Alcohol or Drugs

In *People v. Lin*, 28 NY3d 701 (2017), on this appeal, defendant argued that the Confrontation Clause was violated when the police officer who testified at trial regarding defendant's breathalyzer test was not the officer who had personally administered the test. The Court held that because the testifying officer had observed the test, was himself personally trained to operate the machine, and was familiar with the process and could tell whether the

machine was functioning based on its sounds, he was an adequate surrogate for the test-administrator and could testify regarding the test results. The Court reasoned that, “[n]either the United States Supreme Court nor this Court has required the primary analyst to testify in every case in order to protect a defendant’s confrontation rights” and further that, “both courts have commented that the Confrontation Clause is satisfied if the trial witness is a trained analyst who supervised, witnessed or observed the testing, even without having personally conducted it.” Here, because the testifying officer had satisfied these requirements, the Court held that the Confrontation Clause was not violated.

Voluntary and Intelligent Plea of Guilty

In *People v. Peque*, 22 NY3d 168, 980 NYS2d 280 (2013), the Court of Appeals held that, as part of its independent obligation to ascertain whether a defendant is pleading guilty voluntarily, a trial court must alert a noncitizen defendant that he or she may be deported as a consequence of the plea of guilty (*see id.* at 193, 980 NYS2d 280). Although no particular litany is required, “[t]he trial court must provide a short, straightforward statement on the record notifying the defendant that, in sum and substance, if the defendant is not a United States citizen, he or she may be deported upon a guilty plea” (*id.* at 197, 980 NYS2d 280).

In *People v. Lopez-Alvarado*, 149 AD3d 981, 52 NYS3d 418 (2nd Dept. 2017) the Appellate Division agreed with the defendant that the County Court did not provide him with such a statement on the record. However, contrary to the defendant’s contention, he is not entitled to reversal of the judgment of conviction at

this juncture. In order to withdraw or obtain vacatur of a plea based upon a *Peque* error, “a defendant must show that there is a reasonable probability that he or she would not have pleaded guilty and would have gone to trial had the trial court informed the defendant of potential deportation” (*id.* at 198, 980 NYS2d 280). Accordingly, the case was remitted to the County Court for further proceedings.

Conduct of Prosecutors

The Court of Appeals held that the prosecution’s use of a PowerPoint presentation during his summation in a burglary trial, coupled with timely limiting instructions, both prior to the closing statement [that the attorney’s statements were not evidence and that the jury was sole judge of the facts], did not deprive the defendant of a fair trial. Thus, in a case in which the People introduced surveillance and still photographs of the scene outside the victim’s apartment, which, among other things purported to show the defendant with several other men, enter the building and then shortly thereafter run out, and during summation the prosecutor displayed a PowerPoint presentation containing slides of images of the trial exhibits, some of which had been annotated with text, circles and arrows that did not completely correspond to the trial testimony, the Court held that this is “no inherent problem with the use of a PowerPoint presentation as visual aid in connection with closing arguments,” as long as the PowerPoint “accurately represents the trial evidence.” Thus, to the extent the slides with their captions varied from the testimony, the trial court instructed the jury on more than one occasion that the attorneys’ arguments were not evidence and moreover, the actual trial exhibits remained available for review in

Continued on page 16

their “pristine” condition. *People v. Williams*, 29 NY3d 84, 52 NYS3d 266 (2017).

Examination of Prospective Jurors

During *voir dire*, defense counsel asked prospective jurors whether “[a]nybody [had] a problem with the fact that [the case involved] death of a five year old child.” Prospective juror No. 123 responded that he could not be impartial given the circumstances of the case. On further questioning, prospective juror No. 383 indicated that she felt the same and that “I can’t do it.” Thereafter on follow-up questions by the court, Juror No. 383 indicated that she would form her own conclusions, follow the law as provided by the judge and that if there were sufficient proof, she could convict and otherwise would find the defendant not guilty. Thereafter, the court denied the defense challenge for cause of this juror based on her unequivocal assurances of impartiality. The Court of Appeals reversed an appellate division ruling on the conclusion that viewing prospective juror No. 383’s statements in totality and in context, her assurances to the court adequately expressed her ability and willingness to adhere to her obligation to acquit the defendant if the evidence required her to do so and that she would render an impartial verdict untainted by the “aforementioned bias or sympathy.” *People v. Warrington*, 28 NY3d 1116, 45 NYS3d 345 (2016).

Denial of Motion for a Mistrial

In *People v. Then*, 28 NY3d 1170 (2017), the defendant appealed arguing that he was denied a fair trial when he was compelled to wear orange correctional pants for half of the day of jury selection. The Court held that, because there was “no evidence on this record that the correctional pants were visible to the jury, and

because the clothing that was visible to the jury - a black sweater- was “clearly not identifiable as correctional garb,” defendant’s right to a fair trial had not been denied. The Court expressly noted that, “[b]ecause we find no error here, we do not address whether harmless error analysis applies when a defendant is compelled to stand trial before a jury dressed in identifiable prison clothes.”

Unavailability of Counsel

In *People v. Barden*, 27 NY3d 550 (2016), the issue was who is chargeable, for statutory speedy trial purposes, with each discrete time period within a pre-readiness adjournment when the People initially request an adjournment to a specific date, defense counsel is unavailable on that date and request a later date, but the court is unavailable on that later date, resulting in an even longer adjournment. The Court concluded defendant did not consent to the additional delay attributable to court congestion and, because the People failed to announce readiness within the statutory time period, defendant was entitled to dismissal of the indictment on speedy trial grounds. The general rule is that the People should be charged with pre-readiness delays caused by court congestion, and that defendant must clearly express consent to adjournments in order to relieve the People of the responsibility for that portion of the delay. Consent does not arise by counsel merely indicating that a date suggested by the court is convenient.

Expectation of Privacy

In *People v. Bushey*, 29 NY3d 158 (2017), the Court decided (1) whether a police officer’s license plate check with a government database constitutes a search violating defendant’s Fourth Amendment rights and (2) whether

information obtained indicating that the registration of defendant's vehicle was in violation of law may provide probable cause for the officer to stop the driver of the vehicle.

In this case, a Buffalo State University police officer ran defendant's vehicle plates through a DMV database as the defendant drove past him even though defendant was not driving erratically or unusually. The check indicated that the vehicle's registration was suspended. The officer subsequently pulled defendant over and arrested him for intoxication and driving with a suspended registration and license.

Defendant argued, and the suppression court agreed, that the officer had no reasonable basis for running the plates because the probable cause standard for manually running a license plate is the same as it is for stopping a driver. The intermediate appellate court reversed, determining that both the license plate check and the stop were lawful. This Court affirmed.

The Court found that an officer's inquiry into the information associated with a vehicle's license plate does not violate defendant's Fourth Amendment rights, nor any provision of our New York State Constitution because a license plate check does not constitute a search. Using the "reasonable expectation of privacy" standard in *Katz v. United States* (389 US 347,361 [1967]), the Court held that the driver of a vehicle has no reasonable expectation of privacy in the DMV database information associated with the car's license plate number. The purpose of a license plate is to make information about the drivers readily available to law enforcement in the interest of public safety. In addition, the information is typically required to obtain a valid license and registration. Accordingly, the Court, joining every federal circuit, answered the question of whether a

license plate check constitutes a search in the negative.

Investigatory Stop

In *People v. Jones*, 148 AD3d 1666, 50 NYS3d 647 (4th Dept. 2017), The Appellate Division, Fourth Dept., held that contrary to defendant's contention, the People established that there was reasonable suspicion to believe that defendant "was involved in a felony or misdemeanor," thus justifying his forcible stop and detention. A police officer who had been called to the scene in the early morning hours heard numerous gunshots and saw a cloud of smoke coming from the area of those gunshots, i.e., an area between two vehicles. Immediately thereafter, the officer observed defendant and another man "pop up" from behind one of the vehicles. Inasmuch as defendant's temporal and spatial proximity to the area from where the shots were fired "made it highly unlikely that the suspect had departed and that, almost at the same moment, an innocent person . . . coincidentally arrived on the scene," therefore, the Court concluded that the officer had the requisite reasonable suspicion to stop and detain defendant.





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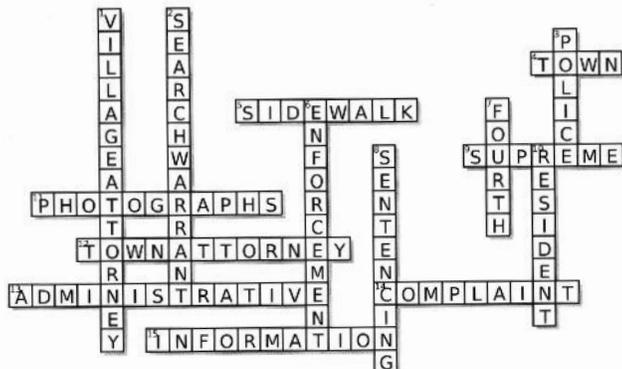
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Answers to Quiz of the Month

Zoning Cases
[From 2017 SMA Training Manual]

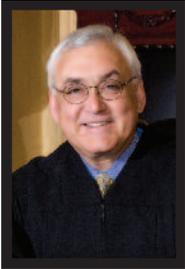


On page 44





New Officers



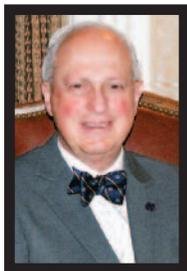
HON. DAVID GIDEON
NYSMA President
Town Justice, DeWitt

Hon. David S. Gideon currently presides as Town Justice in the Town of DeWitt, New York; a suburb of Syracuse. Judge Gideon formerly presided as an Acting City Court Judge in the Syracuse City Court. Judge Gideon graduated from Syracuse

University in 1979 with a Bachelor of Science Degree, with a dual major in Biology and Psychology; thereafter receiving his Juris Doctor Degree from Western New England College, School of Law in 1982 where he was a member of the Legal Fraternity of Phi Delta Phi.

Judge Gideon is a lifelong resident of the DeWitt, New York community and currently is employed as the Principal Law Clerk to the Hon. James C. Tormey, Administrative Judge for the Fifth Judicial District. In particular, Judge Gideon is Special Counsel to the Town and Village Courts in the Fifth Judicial District, coordinating and implementing the Action Plan for the Justice Courts within the District.

Judge Gideon was admitted to the New York State Bar and the United States District Court, Northern District of New York in 1984. Judge Gideon has served as a senior faculty member for the Office of Justice Court Support, Town and Village Court Education Program, having also appeared as a panel member in its statewide satellite broadcasts. Judge Gideon is also an instructor for the Onondaga County Bar Association Continuing Legal Education Program.



HON. JONAH TRIEBWASSER
NYSMA 1st VP
Town & Village Justice, Red Hook

Hon. Jonah Triebwasser brings more than 47 years of experience to the bench as a police officer, investigator, attorney, prosecutor and judge. He is a graduate of the John Jay College of Criminal Justice, New York Law School and the National Judicial College. He is a

member of the New York State Bar Association, Dutchess County Bar Association, Dutchess County Magistrates Association and New York State Magistrates Association. He serves as Town and Village of Red Hook Justice. He is married for 44 years to Ellen and father to daughter Alison, son-in-law Paul, son Tom, daughter-in-law Suzanne and grandfather to Shalom.



HON. MICHAEL A. PETUCCI
NYSMA President Elect
Town Justice, Herkimer

Judge Hon. Michael A. Petucci currently presides as Town Justice in the Town of Herkimer to which he was first elected in 2007. Since then he has been an active member of the Herkimer County Magistrates Association, having served two years as their President.

In March of 2011 Judge Petucci was appointed to the 5th Judicial District Town and Village Courts Advisory Committee and in 2013 to the 5th Judicial District's Peer Review Board.

Judge Petucci served as a Director of the New York States Magistrates Association from 2011-2013 and since then has served as our 3rd, 2nd, and 1st Vice President.

In addition to his Judgeship, Judge Petucci holds an M.B.A. in Technology Management and Health Infomatics from SUNY Polytechnic Institute. He is currently employed as the Director of Information Technology for Slocum-Dickson Medical Group in New Hartford, New York.

Judge Petucci is a lifelong resident of Herkimer, New York where he resides with his wife Colleen and their two boys, James and Joseph.

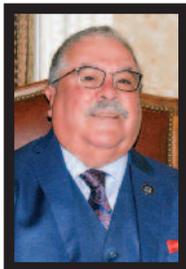


HON. KARL E. MANNE
NYSMA 2nd VP
Town Justice, Herkimer

Judge Karl E. Manne currently serves as Town Justice in the Town of Herkimer and formerly served as Village Justice in the Village of Herkimer. He has been an active member and director of the NYSMA since

taking the bench in 2007 and is a staunch proponent of our constitutionally established justice court system. A graduate of Hartwick College and Albany Law School, he has been engaged in a private practice of law since 1993. Judge Manne has also served as Village Attorney for the Village of Mohawk, Town Attorney for the Town of Frankfort, President of the Herkimer County Bar Association, Vice-President of the Herkimer County Magistrates Association and as a member of the Attorney Grievance Committee for the Fifth Judicial District. Active in his community, Judge Manne has served on the boards of numerous non-profit organizations over the years. He and his wife Jennifer recently celebrated their 26th wedding anniversary and have two adult children.

New Officers



HON. DENNIS W. YOUNG
NYSMA 3rd VP
Town Justice, East Otto

The Hon. Dennis W. Young has been a Justice in the Town of East Otto since January of 2000. Judge Young currently is the President of the Cattaraugus County Magistrates Association, a position that he has held since 2009. Judge Young has previously served as a Director for NYSMA from 2013 to 2016. He is a graduate of State University College at Buffalo, earning a Bachelor of Arts Degree in Communications. Judge Young retired from his position, Legal Investigator, for the Buffalo Sewer Authority in April of 2014.



HON. THOMAS J. SHEERAN
NYSMA Treasurer
Town Justice, Lewiston

Hon. Thomas J. Sheeran is Town Justice in the Western New York community of Lewiston. Judge Sheeran is a native of Katonah in the Town of Bedford. He received Bachelor's and Master's degrees from Ithaca College, a Master's degree from Niagara University and a doctorate from the State University of New York at Buffalo. Elected Town Justice in 1992, Judge Sheeran has been re-elected every four years and is currently in his seventh term. A longtime member of the Faculty of Education at Niagara University, Judge Sheeran is the author of dozens of articles, books and monographs, and has presented papers and workshops across the U.S., Canada, and Asia. He is a member or fellow of many professional education and judicial societies and has served in various capacities in the Niagara County Magistrate's Association. Judge Sheeran has served as a member of the senior faculty for the New York State Judicial Institute's Continuing Education program for Town and Village Justices presenting programs in various venues across the State. In 2008, Judge Sheeran was appointed by the Chief Administrative Judge to the Advisory Committee on Judicial Ethics. Having recently completed a term as a Director of the New York State Magistrate's Association, Sheeran was recently appointed to the position of Treasurer.



New Directors



HON. MICHAEL STERIO
Town Justice, Oswego

Judge Sterio holds a BA degree from SUNY College at Oswego and is a retired police lieutenant, serving 24 years in Oswego Police Dept. He then worked for ten years as a Director of School Security and Emergency Management at the Oswego BOCES. He was first elected to the Town of Oswego Justice court in 2005 and re-elected every four years thereafter. Judge Sterio has served two terms as President of the Oswego County Magistrates Association (OCMA) and is currently the Vice-president of the OCMA. He serves on the Fifth District Town and Village Courts Advisory Committee and is also a member of the district's Peer Review Committee. He is a mentor judge for new judges in the district. He resides in the Town of Oswego with his wife, Myrtis. They have three grown children.



HON. SUSAN SULLIVAN-BISCEGLIA
Associate Village Justice,
Wappingers Falls

Judge Sullivan-Bisceglia is the Associate Justice in the Village of Wappingers Falls, New York, Secretary of the Dutchess County Magistrates Association and previous Member of the Industrial Board of Appeals for the State of New York. She received her J.D. from New York Law School and is a private attorney with Sullivan-Bisceglia Law Firm, P.C., with offices at the Hudson Valley Regional Airport, located in Wappingers Falls, New York. Judge Sullivan-Bisceglia has well over 18 years of combined experience obtained in the courts, major law firms, Fortune 500 companies and the State of New York. She is also a Commercial Pilot with Instrument and Multi-Engine Ratings. Judge Sullivan-Bisceglia resides in Lagrangeville, New York with her husband Paul and her two children.



New Directors



HON. PAUL W. PETER
Town Justice, Schodack

Hon. Paul W. Peter is a Town Justice in the Town of Schodack, Rensselaer County. Judge Peter was first appointed to the bench in 1992 succeeding his father, the late Hon. Albert T. Peter. He has now served for over twenty-five years in the position, while also presiding over the Village of Castleton Court

for sixteen years until its consolidation in 2014. Judge Peter is a member of the Rensselaer County Magistrates Association and an Associate member of the Columbia County Magistrates Association.

In addition to his serving on the bench, Judge Peter is an active member of his community. He is a life member of the Castleton Fire Company and has held many positions including treasurer, captain, assistant chief and Chairman of the Board of Trustees. He is also a member of the Rensselaer County Farmland Protection Committee and Rensselaer County Cooperative Extension. He is a former member of the Farmers Home Administration Board of Directors for Rensselaer and Columbia Counties, Rensselaer County Committee for the U.S.D.A. Farm Service Agency, Rensselaer County Farm Bureau, a voting delegate for Agri-Mark Milk Cooperative and Chairman of the Town of Schodack Conservation Advisory Committee.

Judge Peter is a lifelong resident of Schodack and lives and works on the family farm, which has been in the family for one hundred and five years, with his wife Janette, two children, Susan and Charles (Cathleen) and two grandchildren Emma and Lily.



HON. DONNA YERDON
Town Justice, Middlefield

Hon. Donna Yerdon has presided as Town Justice in the Town of Middlefield for the past 8 years. Since Judge Yerdon was first elected in 2010 she has been a very active member of the Otsego County Magistrates Association as the Secretary/Treasurer, Vice President and for the past

3 years, President. She has just recently retired from the Fort Plain Central School District after 30 years as a Teacher.

Judge Yerdon resides in Middlefield with her husband Rodney, owner and operator of his own welding business. Together they have an up and coming maple business, "Sap-n-Tap".

New Directors Swearing In



Hon. Donna Yerdon, Hon. Susan Sullivan-Bisceglia, Hon. Michael Sterio, Hon. Paul W. Peter, Hon. Dennis W. Young, Hon. Karl E. Manne, Hon. Jonah Triebwasser and Hon. Michael A. Petucci



Hon. Thomas Dias presenting Arnold P. Etelson with certificate of recognition for 50 years of service on the bench.

Hon. P. Etelson with his wife



Gillian Koerner President of the New York State Magistrates Court Clerks Association

Outgoing Directors



President Sherry A. Davenport honored the Outgoing Directors and treasurer with Certificates of Recognition at the Annual Conference.

(L to R) Hon. Joseph J. Sperber, Hon. Thomas J. Sheeran, Hon. Kenneth Ohi Johnson, Hon. John P. Teixeira, Hon. David A. Murante & Hon. Sherry R. Davenport

108th Annual Conference



2017





Turning Stone, Verona





Passing of the Gavel
*Hon. Sherry Davenport to
 Hon. David S. Gideon*



Honor Guard 174th Attack Wing, NYSP, Oneida Indian Nation, Cayuga County Sheriff's Department, Town of Dewitt Police Department and Oneida County Sheriff's Department

Past Presidents



New President Hon. David S. Gideon presenting gift to Past President Sherry Davenport



(L to R) Back Row: Hon. Peter Barlet, Hon. Harold Bauman, Hon. Amel Jowdy, Hon. Dennis Quinn, Hon. Thomas Dias, Hon. Edward Van Der Water, Hon. Gary Graber, Hon. David Fuller
(L to R) Front Row: Hon. Timothy Cooper, Hon. Sidney Farber, Hon. Mark Farrell, Hon. Robert Bogle, Hon. Allan Pohl, Hon. Edwin Winkworth



New President Hon. David S. Gideon Swearing In with his wife and two sons.
(LtoR) Hon. James C. Tormey, Fifth District Administrative Judge, Joshua Gideon, Hon. David S. Gideon, Kathy Gideon, Alex Gideon.

18 Judges received their Service Pin Recognition at the 2017 Conference.



Pins 2017 picture

L to R Top Row: Hon. Edward Van Der Water, TJ Van Buren 25 years, Hon. Robert Bogle, VJ Valley Stream, 30 years, Hon. Robert J. Botzer, TJ Wilson, 20 years, Hon. Joseph A. Farrell, Jr. TJ New Baltimore, 25 years, Hon. Marilyn C. Gerace, TJ Ellicott, 25 years, Hon. Amel S. Jowdy, Jr., TJ Cambria, 20 years, Hon. James T. Phillips, Jr. TJ Morristown, 40 years, Hon. Harold G. Weaver, Jr. TJ Livingston, 40 years, Hon. John P. Teixeira, TJ Niagara, 40 years, Hon. Thomas Sheeran, TJ Lewiston, 25 years

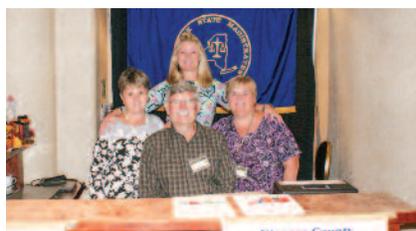
L to R Bottom Row: Edwin Winkworth, TJ Granby, 35 years, Hon. Edward Stewart, TJ Bolton, 25 years, Hon. Harry Demarest, TJ Boton Landing, 30 years, Hon. Raymond C. Chase, Jr. VJ Wappingers Falls, 40 years, Hon. Sherry R. Davenport, TJ Summerhill, 20 years, Hon. David O. Fuller, Jr. VJ Tuchahoe, 35 years, Hon. Arnold P. Etelson, TJ Ramapo, 50 years, Hon. Paul W. Peter, TJ Schodack, 25 years



Josh Gideon presenting framed picture of The 26th President Theodore Roosevelt in 1919 to his father.



Vendors 2017



The New York State Magistrates Association thanks the following commercial exhibitors for their support of our 108th Annual Conference.

*Beggar Promotions * Craft Robe Company * General Code * Governor's Traffic Safety Committee
Looseleaf Law * nCourt * Smart Start New York * Tina Richburg*

Thank you to the following participants:

Office of Justice Court Support, City, Town and Village Resource Center ≈ Unified Justice Court System ≈ Dawn Cota; Esq. ≈ Gary Berberian ≈ Catherine Opela Gillian L. Koerner ≈ Kim M. Howard ≈ Kathleen M. Roberts ≈ Hon. John C. Rowley ≈ Paul Curtin, MA, CASAC ≈ Craig A. Chorney ≈ William J. Leahy, Esq. Joseph Wierschem, Esq. ≈ Sheriff Robert M. Maciol ≈ Hon. James P. Murphy ≈ Anthony C. Rossi, Esq. ≈ Jeffrey S. Carpenter, Esq. ≈ Peter Gerstenzang, Esq. Gerald J. Neri, Esq. ≈ Hon. Sandra Schepp ≈ Susan T. Magari Esq. ≈ Hon. Matthew J. Doran ≈ Todd C. Carville, Esq. ≈ Louis H. Mannara, Esq. ≈ Melanie Goldberg, Esq. Kurt D. Parry, Esq. ≈ Geof Huth ≈ Chloe Edwards-Stowe ≈ Mark G. Gebo, Esq. ≈ Charles W. Malcomb, Esq. ≈ Sharon L. Ames, Esq. ≈ Tina Hartwell, Esq. Dr. George David Annas, MD, MPH ≈ Hon. Brian J. Lauri ≈ Gary Smith; James L. Knoll, IV, M.D. ≈ Douglass Dowty ≈ Brett Hall ≈ Perry White ≈ Tina Richburg Audrey E. Stone, Esq. ≈ Meghan Schott ≈ Valerie Celentano ≈ Michael R. Sharbaugh ≈ Michele James ≈ Monica Y. Richardson, MA, CASA-t Office of Court Administration ≈ Department of Motor Vehicles ≈ Commission of Judicial Conduct ≈ Westlaw ≈ Lexis-Nexis ≈ NYS Office of Indigent Legal Services NYS Division of Criminal Justice Services, as well as many of our Officers and Directors of the New York State Magistrates Association.



The Eugene W. Salisbury Magistrate of the Year



Amel S. Jowdy, Jr.

This year our office received many qualified applications with numerous letters of support listing the nominee's good deeds. Unfortunately, only one recipient is selected per year. The Magistrate of the Year is selected by the Committee Chair and all past recipients of the award.

The New York State Magistrates Association presented its prestigious award of "The Hon. Eugene Salisbury's Magistrate of the Year" for 2017 to Honorable Amel S. Jowdy, Jr. on October 15th at the Turning Stone Resort during their annual conference of training and education.

This award recognizes a judge for contributions to the judiciary, as well as for contributions to his or her community. As a justice, the nominee's public and judicial conduct has been free from even the appearance of impropriety. They exhibit sound temperament, attentiveness, patience and impartiality in their conduct on the bench.

It recognizes the recipients as studious in the knowledge of the principles of the law and diligent in endeavoring to ascertain the facts, that they have tenure on the bench long enough to show that they command respect of their community electorates. They remain free from partisan demands and their actions have been free from consideration of personal popularity or public notoriety.

The award also recognizes their impact on the judicial community in such ways as improving the quality of our local court system, enhancing the integrity, effectiveness and prestige of the Town and Village Courts, actively participating and asserting sound and constructive leadership in the county and state magistrates associations.

Hon. Amel S. Jowdy, Jr. is not the first Jowdy to sit on the bench; there is a long history of service to the Jowdys' community. The Jowdy family has served the Town of Cambria's Justice Court for almost ninety years! His father Amel S. Jowdy was first to sit on the bench as Cambria Town Justice in 1967, serving as justice for twenty-eight years. In 1995 Hon. Amel S. Jowdy, Jr. was elected judge and continues to sit alongside his own son, Hon. Amel S. Jowdy, III following in his grandfather's and father's footsteps. Amel Jr. is currently in his sixth term serving twenty-one years, with his wife clocking in forty-one years of service as court clerk.

Judge Jowdy was the President of the New York State Magistrates Association in 2013 and continues to sit on the Board as a Past President serving on many committees. His long-standing Chair position on the Site Selection Committee has served the membership well. He continues to look after the best interests of the membership when considering locations for training and education. As a former member of the Legislative Committee, he has walked the halls of the legislative building in Albany, speaking on behalf of town and village judges from across the State on legislative proposals to effectuate better justice in our courts.





1967 Hon. Eugene W. Salisbury	1986 Hon. Irving Tenebaum	2005 Hon. Gary A. Graber
1968 Hon. Irving W. Orth	1987 Hon. James E. Morris	2006 Hon. Robert G. Bogle
1969 Hon. Sylvester J. Albano	1988 Hon. David M. Brockway	2007 Hon. Vernon Barber
1970 Hon. John F. Hyland	1989 Hon. Nicholas F. O'Shea	2007 Hon. David O. Fuller Jr. Co-recipient
1971 Hon. James B. Lamb	1990 Hon. Paula L. Leonard	2008 Hon. James W. Dougherty
1972 Hon. J. Webb Sheehy	1991 Hon. Duncan S. MacAffer	2009 Hon. Mark G. Farrell
1973 Hon. Harold W. Hayward	1992 Hon. Walter A. Saxton	2010 Hon. Richard H. Roberg
1974 Hon. Oliver H. McGraw	1993 Hon. David Jacobs	2011 Hon. Thomas Schroeder
1975 Hon. Edward A. Scott, Jr.	1994 Hon. Malcom W. Knapp	2012 Hon. David A. Murante
1976 Hon. Roderick B. Travis	1995 Hon. William Gee	2013 Hon. Edward G. Van Der Water
1977 Hon. William S. Decker	1996 Hon. Philip B. Dattilo, Jr.	2014 Hon. Donald "Dutch" Magill
1978 Hon. Helen Burnham	1997 Hon. James F. Wolff	2014 Hon. David S. Gideon, Co-recipient
1979 Hon. Charles G. Rose	1998 Hon. Sidney T. Farber	2015 Hon. Ralph R. Mackin
1980 Hon. Judson Wright	1999 Hon. Timothy J. Cooper	2016 Hon. Richard W. Alberstadt
1981 Hon. J. Garland Pynn	2000 Hon. John U. Holmes	2017 Hon. Amel S. Jowdy, Jr.
1982 Hon. Herman H. Tietjen	2001 Hon. Daniel F. Coleman	
1983 Hon. Betty Lou Salmon	2002 Hon. Roger H. Dilmore	
1984 Hon. Thomas E. Goldman	2003 Hon. Richard M. Parker	
1985 Hon. Harold G. Cronin	2004 Hon. Raymond H. Berry	



Albany.....2	Hamilton1	Rensselaer7
Allegany2	Herkimer6	Rockland5
Broome9	Jefferson.....10	Saratoga4
Cattaraugus7	Livingston4	Schenectady1
Cayuga.....7	Madison.....6	Schoharie3
Chautauqua7	Monroe18	Seneca1
Chemung.....3	Montgomery.....3	St. Lawrence2
Chenango1	Nassau5	Steuben4
Columbia8	Niagara13	Suffolk2
Delaware1	Oneida4	Sullivan.....2
Dutchess12	Onondaga.....11	Tioga1
Erie2	Ontario.....1	Tompkins.....2
Franklin2	Orange3	Ulster7
Genesee7	Orleans.....3	Warren3
Greene5	Oswego4	Washington2
	Otsego.....8	Wayne9
	Putnam.....1	Westchester2
		TOTAL..235

Deceased Members



Whereas, again Almighty God has called from our midst a number of treasured associates, and, bowing in humble obedience to his will, we pause to remember the following magistrates who have passed away since our last conference.

We remember them as fond friends, loyal servants, and staunch exponents of democracy and our judicial system. We enjoyed their friendship and helpful contributions in our work as Magistrates, in business, and in social hours. Their memory is revered and their virtues are recalled at this annual conference.

Now, be it resolved, that a copy of this resolution be included in the minutes and records of this annual conference; that copies be available to survivors; that a copy be spread in the publication of this association; that the sincere sympathy of the officers and members of the New York State Magistrates Association be expressed.

<u>Name</u>	<u>Title & Location</u>	<u>Name</u>	<u>Title & Location</u>
Hon. Guy J. Anatriello	AVJ Ravena / Albany Co.	Hon. Girard F. Kelley	TJ Parishville / St. Lawrence Co.
Hon. Alvin L. Arnold	VJ Saddle Rock / Nassau Co.	Hon. Bernard Kessler	TJ Hyde Park / Dutchess Co.
Hon. Everett Roger Bensink	TJ North Harmony / Chautauqua Co.	Hon. John E. King	TJ Patterson / Putnam Co.
Hon. Dale W. Bentley	TJ Bolivar / Allegany Co.	Hon. Lee F. Klein	TJ Pendleton / Niagara Co.
Hon. Clark H. Borngraber	TJ Brant / Erie Co.	Hon. William E. Kolmetz	TJ Bergen / Genesee Co.
Hon. James N. Bult	TJ Schodack / Rensselaer Co.	Hon. Bruce L. Lloyd	TJ Dryden / Tompkins Co.
Hon. Joseph L. Cannella	TJ Harrison / Westchester Co.	Hon. Donald "Dutch" Magill	TJ Maine / Broome Co.
Hon. Anthony J. Cavotta	TJ Stillwater / Saratoga Co.	Hon. Daniel Markewich	AVJ South Nyack / Rockland Co.
Hon. Daniel F. Coleman	TJ Warwick & VJ Florida / Orange Co.	Hon. Morton Marshak	TJ Monroe / Orange Co.
Hon. James P. Connors	TJ Eastchester / Westchester Co.	Hon. Robert Q. Moore	TJ Livingston / Columbia Co.
Hon. Kenneth E. Coonrod	TJ Willsboro / Essex Co.	Hon. Paul C. Odell	VJ Westfield & TJ Brocton Chatauqua Co.
Hon. Douglas R. Cronk	TJ Arcade / Wyoming Co.	Hon. Arnold S. Pease	VJ Tivoli / Dutchess Co.
Hon. Joseph Dickenson	TJ Ephratah / Fulton Co.	Hon. Stephen A. Safranko	TJ Albany Co.
Hon. John L. Dillon	TJ Marcy / Oneida	Hon. Richard J. Saletta	TJ Hanover & VJ Silver Creek Chatauqua Co.
Hon. John A. Favreau	AVJ Rouses Point & TJ Champlain Clinton Co.	Hon. Gary B. Slater	TJ Reading / Broome Co.
Hon. Mary J. Frock	TJ Baldwin & AVJ Erin / Chemung Co.	Hon. Russ G. Slingerland	TJ St. Armend / Essex Co.
Hon. Edward B. Joahcim	VJ Old Westbury & W. Hampton Beach & TJ Riverhead / Suffolk Co.	Hon. John L. Taft	TJ Southport / Chemun Co.
Hon. Sanford Kaplan	TJ North East / Dutchess Co.	Hon. Walter L. Webster	TJ Brunswick / Rensselaer Co.

Please inform us of members who have passed away.

Name _____

Court _____

Years of Service _____

Date of Death _____



Members are asked to inform NYSMA of the passing of any current or former Town and Village Justices in your county Obituary information should be sent to **Hon. Vera Husted** at **vhustead@nycourts.gov** with a copy to **nysma1@gmail.com**.

We will publish a notice in **The Magistrate**, we will note the passing at our annual meeting and we will send condolences to the family.

Magistrate Magazine Production Schedule 2018

<u>2018 Issue</u>	<u>Copy to Tanja</u>
(1) Spring	23 February
(2) Summer	4 May
(3) Fall	27 July
(4) Winter	2 November

Amicus Award



President Sherry Davenport presenting the NYSMA 2017 Amicus Award to recipient Connie Cutler.

Connie retired in April 2017 after thirty-four years of service to the State of New York, twenty plus with the Office of Court Administration. Among her many positions, she worked in the Governors Office of Employee Relations, Governors Counsels Office, Law Office of Nixon Hargrave Devans and Doyle, LLP, Office of employee Relations- OCA, Payroll Office- OCA, NYS Office of Court Administration Advisory Committee on Judicial Ethics.

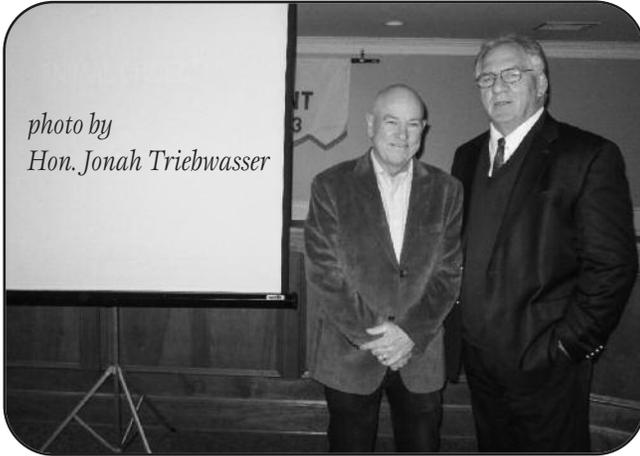
Connie was recruited by Judge Traficanti to work under the direction of Maryrita Dobiell, Esq. in assisting in Education and Training for Town and Village Judges and Court Clerks. In this

capacity she was responsible for the administration process of all training and education programs and the tracking of mandatory judicial education. She worked closely with town and village judges, making sure all mandatory forms were filed and maintained, answered incoming calls and correspondences concerning training issues, necessary forms such as oaths of office, bank account statements, etc. in a timely manner, answered questions and facilitated the town and village credit card program. She administrated training programs for NYS Magistrate Court Clerks, worked with other members of the staff to take the files of all past and present judges into a paperless computerized format.

Connie lives in Colonie with her son Matthew.



About My County Association



Shown in the photo, from left to right are the President of the Columbia County Magistrates Association, the Hon. James Borgia-Forster (Town of Chatham Justice) and Hon. David Fryer.

Columbia County

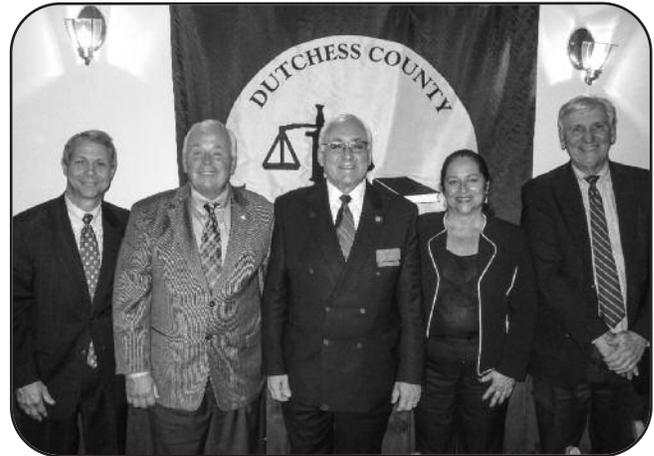


Honorable David W. Fryer, Assistant Deputy Counsel Office of Justice Court Support, and Town of Sand Lake Justice, was the guest of honor and keynote speaker at the recent dinner meeting of the Columbia County Magistrates Association. Judge Fryer spoke to the assembled town and village justices about the intricacies of animal cruelty cases.

photo by Hon. Andrew Martin



Hon. David Gideon, President of the New York State Magistrates Association and Town of DeWitt justice, was the guest of honor and keynote speaker at the recent meeting of the Dutchess County Magistrates Association. Judge Gideon spoke to the local town and village justices about the SMA's opposition to the constitutional convention and the experience of other counties with centralized arraignments.



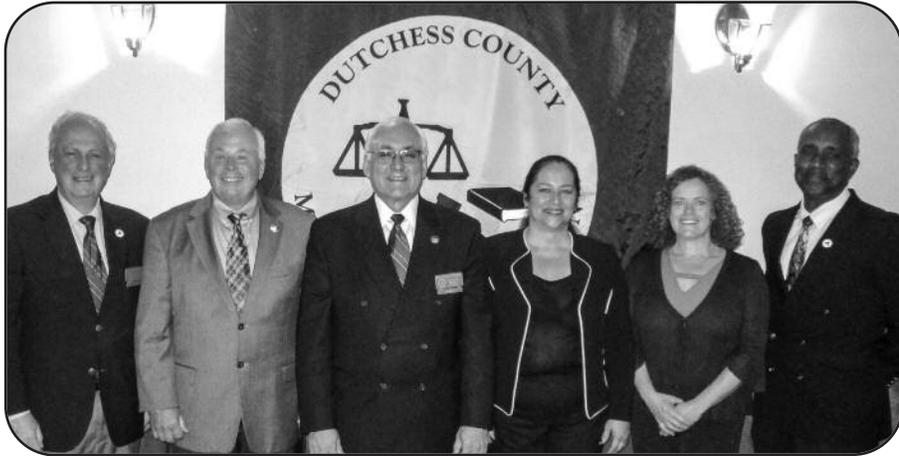
Shown in the photo from left to right are Dutchess County Magistrates Vice-President Hon. Jeffrey C. Martin (Town and Village of Red Hook), Dutchess County Magistrates President Hon. Rick Romig (Town of East Fishkill), Hon. David S. Gideon, Dutchess County Magistrates Secretary Hon. Susan Sullivan Bisceglia (Village of Wappingers Falls), and Dutchess County Magistrates Treasurer Hon. John Kane (Town and Village of Rhinebeck).



Would you like to see **your** county magistrates association events on this page? Please send a clear photograph with a caption identifying everyone in the photo to nysma1@gmail.com.

Officers and Directors of the NYSMA welcomed Judge Gideon to Dutchess County.

photo by Hon. Andrew Martin



*Dutchess County
Continued*

Shown in the photo from left to right are SMA 1st Vice-President Hon. Jonah Triebwasser (Town and Village of Red Hook), Dutchess County Magistrates President Hon. Rick Romig (Town of East Fishkill), NYSMA President Hon. David S. Gideon, NYSMA Directors Hon. Susan Sullivan Bisceglia (Village of Wappingers Falls) and Hon Barbara Seelbach (Town of Clinton) and NYSMA Past President Hon. Thomas Dias (Town of Ancram, retired.)

A special guest at the dinner was Andrew Martin, son of Hon. Jeffrey C. Martin. Andrew has announced plans to run for Town of Red Hook Justice in 2040!



*photo by
Hon. Jonah Triebwasser*



About My County Association



Dutchess County

LOCAL JUDGES ATTEND ANNUAL MEETING AND TRAINING CONFERENCE

Ten Town and Village Justices from Dutchess County recently attended the 108th Annual Conference and Certified Advanced Training Program of the New York State Magistrates Association (NYSMA) held in Verona, New York.

Over 265 judges from all areas of New York State took part in the four day event, which combines the State Magistrates Association Annual Meeting and Conference with the Advanced Training Courses which are required by New York State for all Town and Village Justices in the Unified Court System.

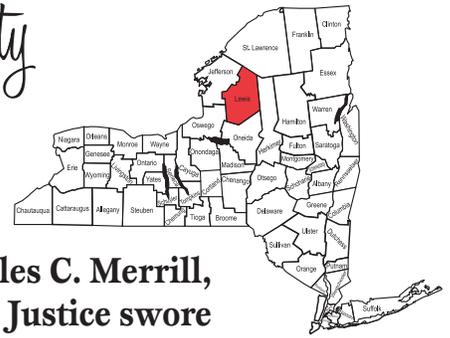
During the conference, Village of Wappingers Court Justice, the Hon. Raymond Chase, was honored for his 40 years of service on the bench. Town and Village of Red Hook Justice, the Hon. Jonah Triebwasser, was elected 1st Vice-President of NYSMA. Village of Wappingers Court Associate Justice, the Hon. Susan Sullivan-Bisceglia, was elected a three-year director of NYSMA.

The major purposes of NYSMA are the maintenance and support of the local judiciary through education and coordination with the New York State agencies regarding laws and other matters affecting local courts, "The Courts Closest to The People." NYSMA works closely with the Office of Court Administration to assure the training enhances the professional development of the judges and is relevant to the practical situations encountered in the local courts.

Shown in the photograph are (Standing, left to right): Hon. John Kane (Town and Village of Rhinebeck), Hon. Russell Tompkins (Town of Clinton), Hon. Frank Weber (Town of Stanford), Hon. Jeffrey C. Martin (Town and Village of Red Hook), Hon. David Sears (Town of Pleasant Valley) and Hon. Frank Christensen (Town of Milan); (Sitting, left to right): Hon. Jonah Triebwasser (Town and Village of Red Hook), Hon. Susan Sullivan-Bisceglia (Village of Wappingers Falls), Hon. Raymond Chase (Village of Wappingers Falls), and Hon. James Devine (Town of Amenia).



Lewis County



The Hon. Charles C. Merrill, Supreme Court Justice swore in the new officers of Lewis County. NYSMA’s President Elect Hon. David Gideon was the guest speaker.

- Hon. Errol “Tony” Aueter - Vice President - Town Justice - Town of New Breman*
- Hon. Carrie Kubinski - President - Town Justice - Town of Turin*
- Hon. Aimee Murphy - Secretary/Treasure - Town Justice - Town of New Breman & Court Clerk - Town of Croghan*
- Hon. David S. Gideon, Town Justice - Town of Dewitt - President Elect NYSMA*
- Hon. Dennis Quinn - Town Justice - Town of Champion - Past President NYSMA*



Monroe County



Top (L to R)
Hon. Joseph Valentino, Irondequoit Town Justice and Association VP; Hon. David S. Gideon ; Hon. James Mulley, Penfield Town Justice and Association President; Hon. Allyn Hammel, Clarkson Town Justice and recipient of the James Morris Award (he also held just about every office within the Association over the years); Hon. Joseph Genier, Irondequoit Town Justice and Association Sergeant at Arms;

Bottom (L to R):
Hon. Thomas DiSalvo, Webster Town Justice and Association Trustee; Hon. Robert Connors, Sweden Town Justice and Association Past President; and Hon. Richard Moffett, Hamlin Town Justice and Association Treasurer.

Hon. David S. Gideon , Hon. James Mulley, Hon. Allyn Hammel, and Hon. Robert Connors.



Advisory Committee on Judicial Ethics

ADVISORY COMMITTEE ON JUDICIAL ETHICS
c/o OFFICE OF COURT ADMINISTRATION
25 BEAVER STREET, SUITE 866
NEW YORK, NY 10004

Opinion 17-58

May 4, 2017

Digest: A village court clerk may not accept appointment as associate village justice of the same court, even where he/she would act only in the absence of the other village justice.

Rules: 22 NYCRR 100.2; 100.2(A); 100.6(B)(4); Opinion 16-53; 12-175; 11-92; 08-172; 07-62/07-69; 03-22; 98-113; 1994 Ops Atty Gen No. 94-29; 1974 Opps Atty Gen 307.

Opinion:

A village court clerk asks if he/she may be appointed as associate village justice, to “sit only in [the] absence” of the current sole village justice. The clerk would attend judge school “and follow all the rules,” but would only actually serve as a judge “in an emergency” when the current village judge is unavailable.

A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100.2) and must always act to promote public confidence in the judiciary’s integrity and impartiality (*see* 22 NYCRR 100.2[A]). A part-time judge may nonetheless accept public employment in a

federal, state or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge’s duties (*see* 22 NYCRR 100.6[B][4]).

A part-time judge may serve as a court clerk in another jurisdiction (*see* Opinions 08-172; 07-62/07-69) and may even “act as his or her own clerk” in some circumstances (*see* Opinion 11-92; 1994 Ops Atty Gen No. 94-29).¹

By contrast, a part-time judge in a two-judge court may not also serve as that court’s clerk because the positions are ethically incompatible (*see* Opinions 16-53; 03-22; 98-113; *cf.* Opinion 12-175 [part-time judge may not serve as a part-time court attorney to his/her co-judge]). For example, a part-time judge “might not be perceived as impartial if he or she is also a court clerk for another judge of the same court, handling cases that could potentially come before him or her” (Opinion 98-113). Moreover, the parttime judge “would be simultaneously his/her co-judge’s peer in his/her capacity as a judge; and his/her co-judge’s subordinate in his/her [nonjudicial] capacity” (Opinion 12-

¹ To the extent legally permitted, a part-time judge who is the sole judge of a court with two court clerks may perform certain duties normally assigned to a court clerk and be separately compensated for these duties (*see* Opinion 11-92; 1994 Ops Atty Gen No. 94-29; 1974 Ops Atty Gen 307). At a minimum, the co-court clerk must perform “any duties that must, by law, be separately supervised or approved by the judge” and “accept for filing all documents the judge is required by law to file with the Court Clerk” (Opinion 11-92, distinguishing Opinion 03-22).

175). This remains true even if one judge would exclusively handle civil matters, and the other criminal (*id.*).

Indeed, Opinion 16-53 is directly on point. In that inquiry, a judge wished to “permit the court clerk to serve as acting justice of the same court” (Opinion 16-53). Relying on prior opinions, the Committee advised the positions were ethically incompatible (*id.*). Here, too, addition of an associate village justice would make the court a two-judge court, even though the court clerk would only serve as a judge when the current village justice is unavailable. The court clerk would simultaneously be his/

her co-judge’s peer and subordinate (see Opinion 12-175) and would presumably be required to perform duties as the court’s sole clerk that “must, by law, be separately supervised or approved by the judge” (Opinion 11-92). The proposed dual employment is therefore impermissible (see Opinions 16-53; 12-175; 03-22; 98-113).

Accordingly, this village court clerk must either decline appointment as associate justice in the same village court or resign his/her position as court clerk if he/she accepts the appointment.



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Is Pleased To Announce

Maryrita Dobiél, Esq.

Formerly Chief Counsel to the
NYS Chief Administrative Judge’s Advisory Committee on Judicial Ethics

Has joined the firm as Of Counsel

Providing advice and representation to lawyers, law firms, law students and judges in professional responsibility and ethic matters, and white-collar criminal matters. The Firm also advises, proactively via advisory letters; reviews websites and escrow accounts to ensure compliance with ethical obligations; assists law students with their bar applications; and, provides defensive counsel when a professional or judge is faced with allegations of ethical misconduct or criminality.

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Advisory Committee on Judicial Ethics

**ADVISORY COMMITTEE ON JUDICIAL ETHICS
c/o OFFICE OF COURT ADMINISTRATION
25 BEAVER STREET, SUITE 866
NEW YORK, NY 10004**

Opinion 17-84

Dear :

This responds to your inquiry (17-84) asking if you may attend a regionally exclusive newspaper interview about your life story, your religious activity, career path and work-life balance.

The Committee has previously advised that a judge may be featured in a newspaper or magazine article. However, the judge's participation may not interfere with his/her judicial duties, and the judge must adhere to all judicial speech limits, including the bar against commenting on pending or impending cases or making comments that would cast doubt upon a judge's impartiality (see 22 NYCRR 100.3[B][8]; 100.4[A][1]).

Enclosed, for your convenience, are Opinions 13-31; 11-115 and 04-117 which address this issue.



Very truly yours,
George D. Marlow, Assoc. Justice
Appellate Div., First Dep't (Ret.)
Committee Co-Chair

Hon. Margaret T. Walsh
Family Court Judge
Acting Justice, Supreme Court
Committee Co-Chair

Have you written a decision that might be of general interest to your fellow justices? If so, please send it to nysma1@gmail.com. Decisions will be published as space permits.



Decision & Order *By Hon. Barbara Seelbach*

STATE OF NEW YORK
TOWN OF CLINTON JUSTICE COURT

COUNTY OF DUTCHESS

TOWN OF _____,
PLAINTIFF,
- vs -

DECISION AND ORDER
DOCKET. 170700

TIMOTHY _____,
DEFENDANT

SEELBACH, T.J.

In the matter, plaintiff Town of _____ seeks recovery of an outstanding balance for unpaid fees in the amount of \$3,000 owed by defendant for use of the Town’s municipal transfer station dating back to 2008.

The small claim proceeding was commenced August 21, 2017. Defendant appeared *pro se* and the Town of _____ bookkeeper appeared on behalf of the plaintiff municipality. At the initial appearance, the Court advised both parties of their respective right to obtain counsel. Thereupon defendant requested attorney representation and based upon his application, the plaintiff requested same. The Court granted both applications. The matter was thereby adjourned and the parties were directed to appear with their attorneys on September 7, 2017.

On September 7, 2017 the Town of _____ bookkeeper appeared on behalf of the plaintiff. The Court waited for over an hour for the defendant and/or his attorney to appear. Upon neither having made an appearance for the proceeding, the court proceeded with an inquest and the bookkeeper was duly sworn.

Upon inquiry from the Court, the bookkeeper stated that the Town chose not to hire an attorney to handle this matter and that they preferred to have an authorized representative, i.e., the bookkeeper, represent their interest. The Court thereby requested evidence of express authorization directly from the Town stating that the bookkeeper was their authorized representa-

tive. The bookkeeper submitted a letter that she had written dated August 31, 2017. The letter, addressed to the Court, states “:...it is at the Board’s request that I, the bookkeeper to the Town of _____ appear, once again, on behalf of the Town...” The letter was signed by the bookkeeper and carbon copied to the Town Supervisor and Town Board.

UJCA §501 states: “A corporation may appear as a party in any action brought pursuant to this act except as otherwise provided in section eighteen hundred nine thereof by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial.” Plaintiff has failed to provide the court with substantial proof that the municipality transferred their express and binding authority to the bookkeeper to represent the Town in this proceeding. Accordingly, the action must be dismissed.

It is hereby ORDERED that this matter is dismissed without prejudice to renew upon proper papers.

This shall constitute the Decision and Order of this Court.



Dated: September 21, 2017

Poughkeepsie, New York

HON BARBARA SEELBACH, Clinton Justice Court



108th Annual

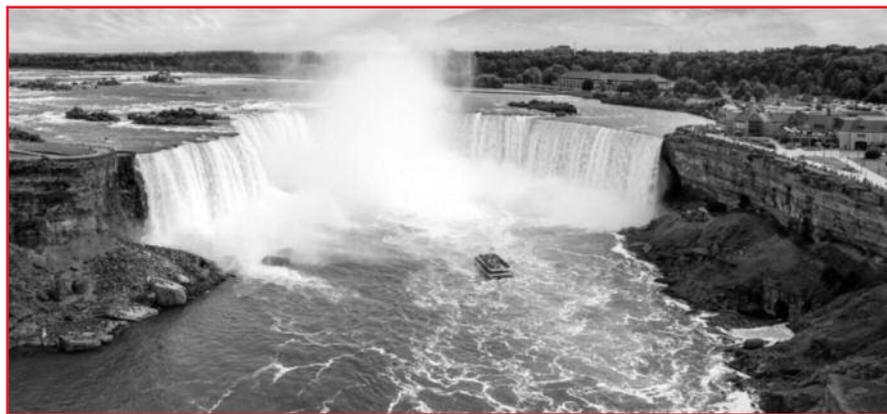




Conference Photos







Save the Date
2018 NYSMA Annual Conference
SEPTEMBER 23, 2018 -
SEPTEMBER 26, 2018
WILL BE HELD AT THE
SHERATON AT THE FALLS
AND CONVENTION CENTER
IN NIAGARA FALLS, NEW YORK.

Total Package Pricing overnight accommodations for 3 nights; Sunday, Monday and Tuesday, Sunday Welcome Reception, Breakfasts, Lunches, Dinners, Tuesday Gala Reception, Refreshment Breaks on Monday and Tuesday during classes.

3 Night Package Single Rate: \$711.55
 3 Night Package Double Rate: \$514.98 per person
 *A surcharge of \$50.00 will apply to any package of one or two nights.



Happy Holidays *By Hon. Vera L. Hustead*

As we all begin to see the season of giving approach, we are warmed by the love of family and friends. With the first snowfall of the season, our homes and work places start to sparkle and shine in anticipation of the celebrations we will share for the holidays. Holiday music and shopping, the store decorations and travel plans seem to start earlier every year. Fireplaces crackle as the weather gets colder. Children delight in the thought of Santa and his reindeer.

The houses in the towns and villages across the state begin to glitter with outside lights. Inside plans are being made for a holiday get together. Traditional family recipes are being gathered. I am making my Mother's Christmas Bread and Cherry Cookies. They are family favorites. Most of our holiday traditions are passed down from generation to generation. Then as our children grow up, they take what they love about the holidays and share it with their new loved ones, who also bring their favorite holiday traditions to share.

Will it be a live tree or an artificial tree? Will we have white or colored lights? Should we use garland or tinsel? My daughter will say neither. Do we celebrate at our house or Grandma and Grandpa's? Shall we stay home or travel this year? Would they like a gift or a gift card?

As many of us know, it doesn't really matter what you decide to do with your family and friends to celebrate the holidays. What matters most is that you celebrate it together. We think of how blessed we are to have our loved ones with us still, be they near or far. Even if we can not be together, we are with each other in our hearts and minds. For the brief, few wonderful days before and after the holidays, we are excited by the anticipation of shared memories of the holidays and the joy of seasons past.

I am always humbled by the reflective quiet as Christmas Eve arrives. Everything is done that is going to get done. The holidays will wait for no one. They will come and go with or without us. Peace and goodwill shines in all of us. For a brief moment in time, all seems to be right with the world.

Our hearts ache for those who have lost someone during the year. It is a difficult time for them as their grief is again heightened by missing their loved one. They struggle to get through this year of "first's". Where will the strength come from to spend the holidays without each other? My big brother Art died on Christmas Day, 2014. In December, 2015 it was very difficult for our family to carry on our holiday traditions. Time and memories truly are comforting.

You may be wondering what this article has to do with Magistrates in the Town and Village Courts? Let me tell you.

The time we, as judges, actually sit in court behind our bench is very small, when compared to the time we spend as Town and Village Justices in our communities. Most of our time is spent divided between our court offices, volunteering in our communities, serving on committees and associations, education and training, taking care of our homes, at our regular forty hour a week job and as parents and grandparents.

As the "courts closest to the people" we meet many people. Recently I wrote an article for this magazine about my attendance at our annual conferences. In that article, I talked about the friends I have made there over the years. At our Annual Meeting every year a Necrology Report is given listing all the names of the judges we have lost that year.

This year I was saddened to learn the passing of Dale Bentley of the Town of Bolivar passing. I have shared many lunches and dinners at our conferences with Judge Bentley and his wife Sue. I only saw them for three days every year at our conference and we exchanged Christmas cards. I was always happy to see them and thought of them as dear friends. We shared stories of our families and had interesting conversations about our courts. He was a very dedicated and learned judge and Sue is a lovely lady.

Because I only see them once a year, I didn't know he had passed away. As his name was read by Judge Dattilo, my heart was saddened at his loss. I had lost a dear friend. Had I known I would have certainly reached out to his wife Sue. I began to wonder how many times this happens to other judges and their families who only see each other once a year. We come together annually for education and fellowship. As a member of our Board of Directors, I discussed this with other officers and the Board directly.

The holidays are a time when we not only show our family and friends how much they mean to us, it is a time we remember and cherish the memories of those we have lost. It is a time to reflect and honor them. It is with this thought in mind that I would like to start our own new "tradition" in this magazine. Our *Magistrate* magazine is published four times a year. I would like to publish quarterly the name and town and or village of a justice who has passed away recently. This will get the information to our membership in a timely manner should any member wish to send condolences.

I am asking every County Association at their first meeting of 2018 to appoint a person to be in charge of a necrology report. This can simply be your county secretary. Upon learning of a member in their county who has passed away, please forward that member's full name and town or village of service to me at my nycourts address. I will then make sure their passing is reported to the editor of our magazine.

In this day of hurry up texts, tweets and instant messaging, I believe there is still time left in our world to reach out and mourn a friend we have lost.

I would ask that you still notify our NYSMA Executive Director of a judge's passing. This would be in addition to that. If you would like that judge's passing shared in our quarterly magazine, please notify me also. I would like to begin this program in our Spring, 2018 magazine.

Wherever you are this holiday season, I hope you are with family and friends, warmed by wonderful memories. The quiet moments of the holiday will arrive, with the dusk and maybe a few beautiful snowflakes in the wind. It is during this quiet time that our hearts and souls are enveloped and warmed by the memories and love of those we have lost. Let's honor them as they deserved to be honored.

You have my deepest sympathy Sue.



Hon. Vera L. Husted
NYSMA Board of Directors
Ripley Town Justice
vhustead@nycourts.gov

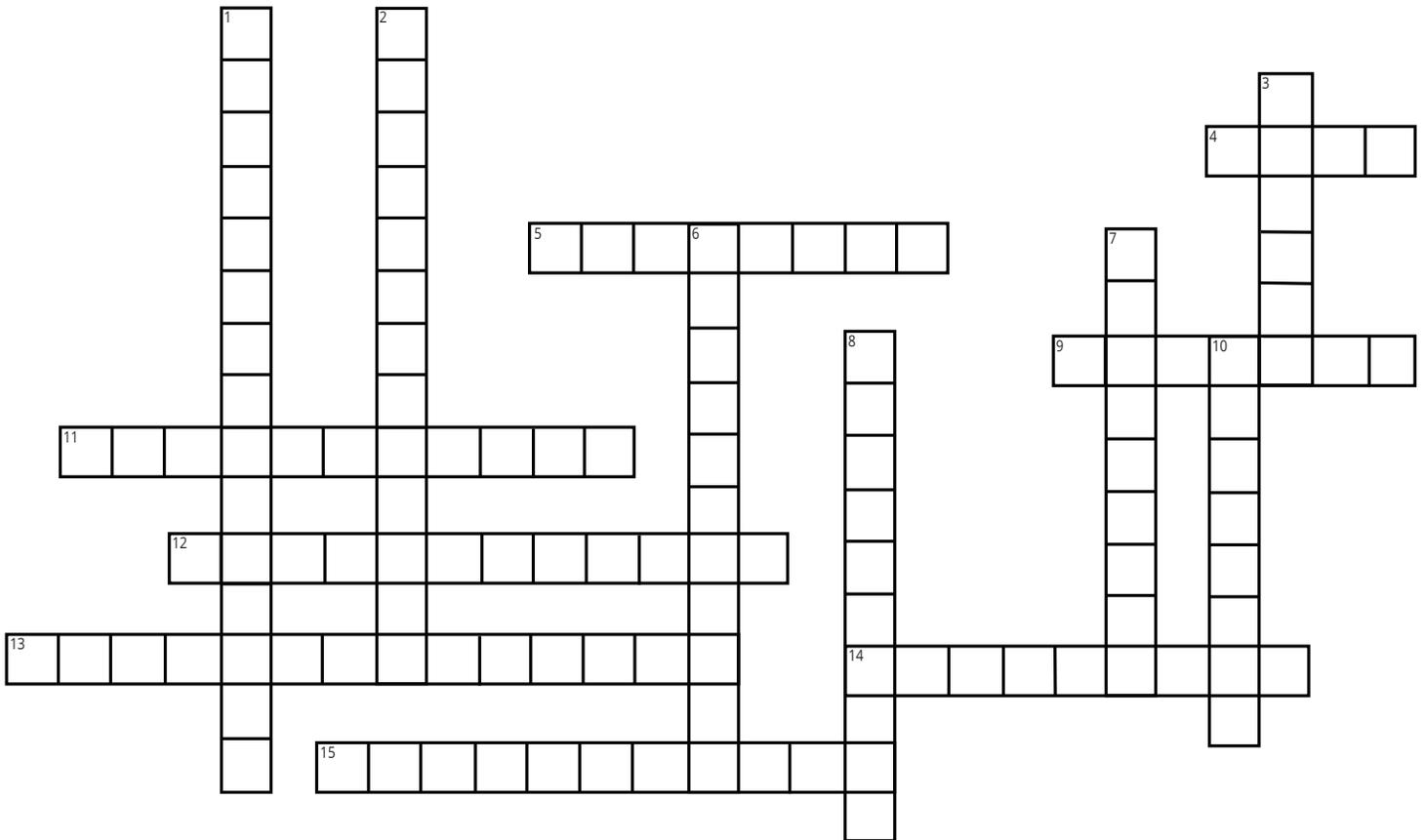
Members are asked to inform NYSMA of the passing of any current or former Town and Village Justices in your county. Obituary information should be sent to **Hon. Vera Husted** at vhustead@nycourts.gov with a copy to nysma1@gmail.com.

We will publish a notice in *The Magistrate*, we will note the passing at our annual meeting and we will send condolences to the family.



Quiz of the Month Submitted By Hon. Richard M. Parker

Zoning Cases — From 2017 SMA Training Manual



ACROSS

- 4 Under Town Law 268-1 it has the power to enforce building and zoning laws in the town.
- 5 A public vantage point from which the ZEO can make visual inspection of property which may be in violation of the zoning ordinance.
- 9 This court has the power to order the removal of a building which is in violation of the uniform code.
- 11 Besides written notes, these would be part of the ZEO's investigation and each should indicate the date/time it was taken.
- 12 Who besides the code enforcement officer can apply for a search warrant in town court. (2 words)
- 13 Type of search warrant which an enforcement officer would apply for, it is not the garden variety CRIMINAL search warrant.
- 14 A zoning case often commences when a violation is brought to the attention of the village or town by a neighbor who files this at the municipal office.

- 15 Of the five types of Accusatory Instruments detailed in CPL 100.5, this is the one used for local laws.

DOWN

- 1 Generally the DA will file a VanSickle motion allowing a village zoning case to be prosecuted by this official. (2 words)
- 2 Required when the property owner refuses to consent to the building inspector's request to enter the property. (2 words)
- 3 Executes the ZEO's search warrant.
- 6 The "E" in ZEO.
- 7 The amendment which protects our right to be secure in our homes against searches and seizures.
- 8 Follows a guilty plea in a zoning case.
- 10 Someone other than the property owner who could give the building inspector permission to enter the property.

Answers on Page 18



Point and Insurance Reduction Program

If you take the NYSP's DMV-approved Point and Insurance Reduction Program (PIRP) course, you can reduce your point total by four points AND save 10% on your automobile liability and collision insurance premiums. Take the course online: available 24 hours / 7 days a week / 365 days a year. If you have no points, you still get the insurance discount – it's the law!

NYSP provides feedback to the court!

For years NYSP has provided information regarding violator participation in the classroom. This feedback is provided at no cost to municipalities. For more information on how to enroll in NYSP's Court Referral Program contact us and start to participate now!



Proof of effectiveness

65% fewer violations - 35% fewer accidents
as a result of taking the NYSP 6 Hour driver improvement course

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Classroom info call 718-748-5252

Or go to www.NYSP.com

Online course go to www.NYSPonline.com

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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.

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