

W E S T E R N N E W Y O R K

LEGAL

GUIDE

*"A Guide to Legal Services*

*in Western New York"*



UNITED STATES  
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Supplement to



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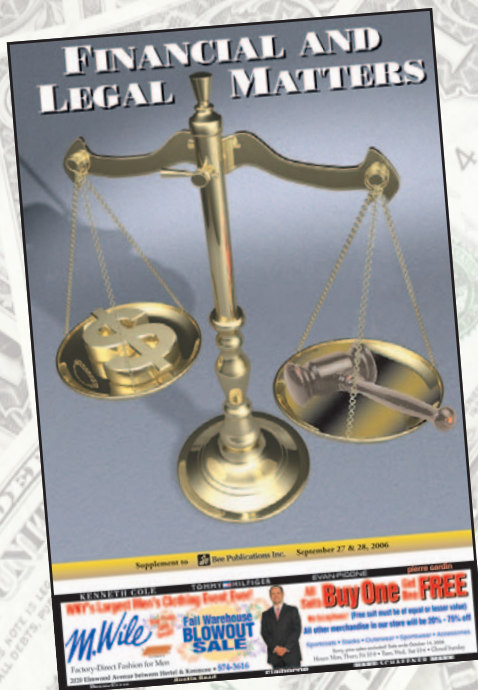


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## 2007 Special Section Schedule

Publication Date	Section Theme	Ad Deadline
Sept. 19-20	Autumn	9/04
Sept. 26-27	Financial & Legal Matters	9/11
Oct. 3-4	Dining Out	9/2
Oct. 10-11	Ideas for the Home	9/25
Oct. 17-18	Life After 50	10/02
Oct. 31-Nov. 1	Health	10/16
Nov. 7-8	Veterans Salute	10/23
Nov. 21-22	Gift Guide 1	11/06
Nov. 28-29	Gift Guide 2	11/12
Dec. 5-6	Gift Guide 3	11/16
Dec. 12-13	Gift Guide 4	11/27
Dec. 19-20	Life After 50	12/04

## 2008 Special Section Schedule

Publication Date	Section Theme	Ad Deadline
Jan. 2-3	Health	12/18
Jan. 16-17	Education & Learning	12/31
Jan. 23-24	Community Outlook "A Local Business Forecast"	1/08
Jan. 30-31	A Wedding to Remember	1/15
Feb. 6	Life After 50	1/22

For More Information,

Call Mary Anne Cappon, Advertising Marketing Director • 204-4937

# Tips to hiring a lawyer

*BuffaloLawyers.com*

It is normally wise to seek out an attorney who has expertise in the field of law to which you are seeking legal advice and assistance. You should seek a consultation from at least two lawyers, interview the lawyer and let your selection be based upon experience, cost, history of success and your comfort level with the attorney.

## Some Basic Questions to Ask a Lawyer

The first question should be regarding their experience — how long have they been in practice? What is their expertise in this particular field?

The next question should be how many cases have they handled like yours? What is their success rate? A reputable attorney should have proof of success, i.e., copies of verdicts and testimonials from previous or current clients.

Will the chosen attorney actually perform all legal services from inception to conclusion, or will your case instead be referred to another law firm, just to obtain a legal fee?

Another important question is to find out all of your options — what other alternatives do I have to resolve my case? Can it be arbitrated or mediated to come to a possible resolution?

Finally, while an attorney cannot possibly guarantee an outcome or the length of time that it will take to come to a resolution of the matter, you can ask him/her how long they think it will take to resolve based upon their experience and the particulars of your situation.

# Understanding Social Security disability

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It is important that you understand how Social Security defines "disability." That's because other programs have different definitions for disability. Some programs pay for partial disability or for short-term disability. Social Security does not.

Disability under Social Security is based on your inability to work. You will be considered disabled if you cannot do work you did before and it is decided that you cannot adjust to other work because of your medical condition(s). Your disability also must last or be expected to last for at least a year or to result in death.

This is a strict definition of disability. The program assumes that working families have access to other resources to provide support during periods of short-term disabilities, including workers' compensation, insurance, savings and investments.

## Who can get disability benefits?

You can receive Social Security disability benefits until age 65. When you reach age 65, your disability benefits automatically convert to retirement benefits, but the amount remains the same.

Certain members of your family may qualify for benefits on your record. They include:

- Your spouse who is age 62 or older or any age if he or she is caring for a child of yours who is under age 16 or disabled and also receiving checks.

- Your disabled widow or widower age 50 or older. The disability must have started before your death or within seven years after your death. (If your widow or widower caring for your children receives Social Security checks, she or he is eligible if she or he becomes disabled before those payments end or within seven years after they end.)

- Your unmarried son or daughter, including an adopted child, or, in some cases, a stepchild or grandchild. The child must be under age 18 or under age 19 if in high school full time.

- Your unmarried son or daughter, age 18 or older, if he or she has a disability that started before age 22. These children are considered disabled if they meet the adult definition of disability. (If a disabled child under age 18 is receiving benefits as the dependent of a retired, deceased or disabled worker, someone should contact Social Security to have his or her checks continued)

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## Second annual Western New York Legal Guide

The Bee Group Newspapers has teamed up with Buffalo Lawyers.com to provide the community with Western New York's premier guide for legal services, estate planning and legal issues that matter most to consumers.

The Western New York Legal Guide is a legal resource that is promoted and branded all year long in print and online. The guide is not intended to be legal advice but simply general legal information. If you have a legal problem, seek advice of counsel. Firms and the guide will be promoted and featured throughout the year on BuffaloLawyers.com, Western New York's legal online source at [www.buffalolawyers.com](http://www.buffalolawyers.com) and through print advertisements in the Bee Group Newspapers. For more information, call Mary Anne Cappon at 204-4937.



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# General information on workers' compensation

**Q:** How do I know whether I am covered by workers' compensation?

**A:** Determining whether or not you are covered by workers' compensation can sometimes be quite complicated.

Generally, there are two main factors that determine your status: first, whether you are an employee, and second, whether your injury occurred as a result of your employment. It should be noted that neither of these factors is an absolute guarantee that you will be covered by workers' compensation.

For example, depending on the state, some employees (for example, agricultural workers) are not covered by workers' compensation. Also, if you were intoxicated at work or intentionally injured yourself, you might not be covered by workers' compensation. When in doubt, you should contact an experienced workers' compensation lawyer, who can advise you of your rights.

**Q:** If an employee is receiving workers' compensation benefits, but returns to work, does the employee still get to receive workers' compensation benefits?

**A:** The answer to this question is "maybe." If the return to work enables the employee to receive wages equal to or greater than he or she was earning prior to the injury, then it is likely benefits will be stopped. If, however, the employee is still experiencing a wage loss due to his or her injury, he or she may continue to receive wage loss benefits, although the benefits will most likely be for a lesser amount.

**Q:** Can an employee recover workers' compensation benefits, no matter what he or she did, because it is a "no-fault" system?

**A:** No. Although most injuries are covered by workers' compensation, that does not mean that employees have free reign to injure themselves, or act in any manner in which they choose, and then collect benefits. Generally, if an employee sustains injuries as a result of intoxication or illegal drug use, benefits may not be payable.

**Q:** Can an employee recover workers' compensation benefits, even if he or she was not actually at the workplace when injured?

**A:** The answer to this question will depend on the laws in your particular state and the facts of the specific case. Generally speaking, if the injury "arises out of" and occurs "within the scope of employment," it is covered.

For example, if an employee is a traveling salesperson and is injured in the hotel where he or she is staying for business purposes, compensation may be appropriately paid.

Similarly, if an employee is running an errand that takes him or her outside of the workplace, at the request of the employer, compensation benefits may be payable if an injury occurs in the course of running that errand. If the employee is on a business errand but has stopped or deviated from that errand for

personal reasons, then a closer examination of the rules and facts is necessary.

Finally, employees injured while attending an employer-sponsored recreational event, like a company picnic or outing, may be able to receive workers' compensation benefits, even though they were not physically on the employer's premises at the time of the injury.

**Can I recover workers' compensation benefits if I work for federal, state or local government?**

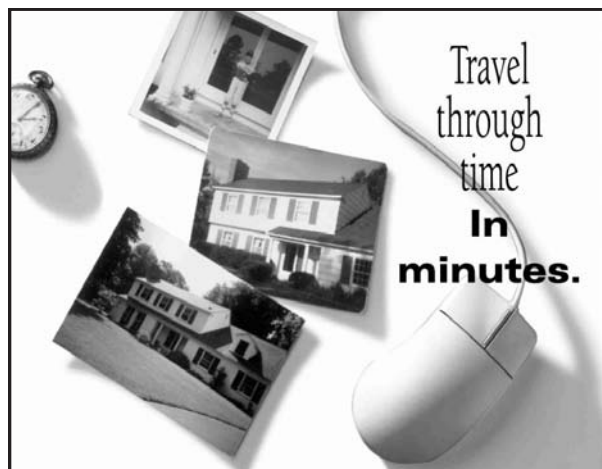
- State and local employees

Whether a state or municipal employee is covered by the state's workers' compensation statutes, or by a different system, depends on the specific provisions of each state's laws.

In general, state workers' compensation statutes specifically set forth which types of employees are eligible to receive benefits under the state system and which types of employees are not.

Most state statutes prohibit payment of workers' compensation benefits to "officials" of the state. However, who is considered an "official" can often be questionable. As a general rule of thumb, if an individual exercises some portion of the state's sovereign power, he or she will be considered an

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Travel  
through  
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## \$25 Million settlement attained for injured worker

A \$25 million settlement was received by a local driver who was severely injured when a liquid nitrogen tank he was delivering ruptured.

James T. Scime, attorney for the driver, projects the settlement could ultimately provide \$30 million for the injured worker and his heirs. "The bulk of the settlement will be paid right away with an annuity agreement to produce an additional \$5 million or more, which will be paid later on," Scime stated.

Although no records are kept on such settlements, a state court system spokeswoman indicated this is believed to be one of the largest settlements of its kind in Western New York and one of the largest in the state.

The driver, a resident of Western New York, had his right hand and both legs amputated as a result of the accident. The contents of the ruptured liquid nitrogen tank inflicted devastating burns on the injured man.

Scime stated "While nothing can ever replace what my client has lost, at least he has the peace of mind of knowing his financial needs will be met and that at least some measure of justice was done"

James T. Scime is a senior partner with Lipsitz Green Scime Cambria LLP. Mr. Scime has vast experience in successfully litigating complex personal injury cases. More information about Mr. Scime can be found at [www.lglaw.com](http://www.lglaw.com)



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# Estate and Medicaid planning

## *Much ado about nuttin'?*

by DENNIS DEE  
Attorney

The act of planning for the future is difficult enough, but when it comes to planning for the future beyond, much has been said, and a good deal of it actually heard, considered, weighed, casually discussed, adjourned, reconvened, reconsidered and, in most cases, tabled for another day, either convinced or content that it is part of an agenda to be revisited when.... well, like most everything else, when the "time is right," which too often occurs when there is either the realization or disclosure that too little "time is left."

And that certainly comes into play and is acted out, off-stage and far off-Broadway, far too often. It is when we are left alone to ponder the fate of ourselves or our loved ones, recalling the many times we've contemplated actual performance of those available opportunities, which, at that moment, revealed what appeared to be the many broad ways available to us to achieve our ultimate objectives. What's the rush...? Reviews have been good, according to reports received.

I sometimes believe that a good number of people

— and I say this fondly and without recrimination — are "cock-eyed optimists," sincerely believing that the world is full of Helen Kellers, who are not blind to ways of available "miracles" despite the warnings to the contrary and who are not deaf to the pleas(e) of those who have procrastinated, but only because of the many uncertainties of life, which, with or without the human factor thrown in, is in a constant state of flux. Then, again, isn't life one big gamble? One lives in the moment and cannot predict, let alone anticipate, the future, nor dwell on the past, for that matter!

So, left to our own devices, we take the cue from Hamlet and revel in our own procrastination, waiting for the "final act" to deliver the denouement, only to be "given the hook" and yanked off stage, never to deliver that final soliloquy, which makes it clear to our intended audience the final lines that we have so earnestly committed to memory, yet denied the critical act of delivery: "I, being of sound mind and memory do hereby make and publish this...."

How many times, over the past 40 years, have I witnessed ... nay, have I failed to witness ... such fulfilled intent?

## Employment

*What are prohibited job interview questions?*

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Under federal and state anti-discrimination laws, employers cannot discriminate against employees on the basis of race, color, national origin, religion, sex, age or disability.

Therefore, employers may not ask questions that are designed to elicit certain information from you. Be careful about the information that you provide on a job application and know your rights.

Some questions are permitted even though they may reveal information about your protected class. For example, interviewers can list the required job duties and ask whether you would be able to perform those functions even though your answer could reveal a disability.

If your disability does not prevent you from performing the tasks associated with the job, the employer is prohibited from using information about the disability to deny you the job.

Prohibited topics are not always obvious and employers can try to find out prohibited information in indirect ways without blatantly asking whether you are a member of a protected class. For example, an interviewer may ask what year you graduated from high school as a way of determining how old you are. If an employer uses that information to deny you a job, then he or she is discriminating against you

*(Please turn to page 19)*

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# Wills, trusts and estates

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## What is a will?

Wills have been with us since the first days of recorded history. Archaeologists have found hieroglyphics in Egyptian tombs leaving property to others.

The Bible told of the story that Jacob left Joseph a larger inheritance than his brothers received and of the trouble that ensued as a result.

In our now-modern times, wills are somewhat different and certainly more complex. What you put in yours depends on what property and assets you have at the time of your death, the dynamics of your family and so on.

Depending on your situation and the value of your estate, it is wise to consult with an attorney who can properly advise you.

## What is a trust?

The biggest reason for setting up a trust is so the property does not have to go through probate at the time of death.

Probate is the legal process that inherited property goes through to transfer the title to the beneficiary. In setting up a trust, a person can transfer his/her property to a legal entity or person before death and still have the use of it during his/her lifetime. If a person has a large estate, it is often wise to set up a trust, as it is ultimately far less expensive.

## Estate planning

You've got an estate. You may be a prince who has thoroughbreds and live in your family's ancestral country manor; you may stash your prized coin collection in your one-bedroom apartment. For spending money, you may summon your private jet and fly off to get cash from your Swiss bank account, or you may literally dip into your cookie jar.

Let's face it, though — you probably sit somewhere in the middle. You have a nice house, a couple of kids, and a career or business you're reasonably happy with.

And, if you're like most Americans, you've avoided planning your estate — for two perfectly natural reasons. First, you're afraid that you don't have as much money as you go around thinking you do. As embarrassing as it may seem, many people would rather not know the full truth of their financial situation.

The second reason? You don't want to die — don't even want to think about it.

A sound estate plan will ensure that your family is taken care of, minimize the specter of your heirs fighting over their inheritances, and keep your wealth from disappearing into taxes and lawyers' fees.

What if you're wondering about the estate benefits to paying for your children's education? What if you doubt that your spouse could cope with the details of your estate? What if you and your spouse die simultaneously? Who would manage your estate for your underage children? And at what age should your children start receiving your assets? You can address all these issues through your estate plan.

Without planning, your survivors are likely to be unprepared for estate tax, meaning that your property and real estate may have to be quickly liquidated, thus making your survivors sellers in a buyers' market. So much the worse if, for instance, real estate prices are down and treasured holdings disappear for a fraction of their actual worth.

The basics of estate planning and some guidelines to get you started are outlined below:

- Estate planning is vitally important, so keep close track of (and a record of) your investments.
- Before you figure out what you want to give and to whom you want to give it, you need to determine what you actually have.
- Depending on the size of your estate, you'll need a few different people in specialized occupations, as the process can be a bit complicated — you might need professional help from estate planners, estate lawyers, insurance agents, appraisers, trust executives or bank officers. Good financial planners usually have a fiscal or legal background, with professional training and experience in accounting, banking or finance, insurance, stocks or tax law.

A good idea is to speak with the heirs to your bequests now, while you still have time to think about how you want to provide for your loved ones. A well-thought-out plan can go a long way toward reducing resentment among those you love.

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# What is bankruptcy?

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People normally file bankruptcy when their debt outweighs their current income and assets.

Bankruptcy is the filing of a petition with the federal bankruptcy court where you are attempting to obtain protection from the collection efforts of creditors.

At the end of the bankruptcy proceeding, some or all of the individual's debt will be canceled. There are two different options: Chapter 7 and Chapter 13. Chapter 7, used by approximately 70 percent of all consumers, is faster to complete and essentially "wipes the slate clean."

The Chapter 13 plan offers an alternative if the debtor has a steady income and a steady job and wants to attempt to pay off all of his or her debts.

Chapter 7 bankruptcy refers to the chapter of the federal statutes (the Bankruptcy Code) that contains the bankruptcy law. Chapter 7 bankruptcy is sometimes called "straight" bankruptcy. This bankruptcy cancels most of your debts; in exchange, you might have to surrender some of your property.

The Chapter 7 bankruptcy process takes about four to six months, involves costs of approximately \$200 in filing and administrative fees and usually requires

one trip to the courthouse for proceedings.

Filing for bankruptcy puts into effect the "automatic stay." The automatic stay immediately stops your creditors from attempting to collect any money that you owe them. Therefore, creditors cannot legally garnish your wages, draw from your bank account, seize your car, house or other property, or cut off your utility service or welfare benefits.

Until your bankruptcy case ends, your financial problems are in the hands of the bankruptcy court. It assumes legal control of the property you own (except your exempt property, which is yours to keep) and the debts you owe as of the date you file. Nothing can be sold or paid without the court's consent. You have control, however, with a few exceptions, of property and income you acquire after you file for bankruptcy.

The court exercises its control through a court-appointed person called a "bankruptcy trustee." The trustee is primarily interested in what you own and what property you claim as exempt. This is done because the trustee's primary duty is to see that your creditors are paid as much as possible on what you owe them. And the more assets the trustee recovers for creditors, the more the trustee is paid.

The trustee goes through the papers you file and asks you questions at a short hearing, called the "creditors' meeting," which you must attend. This meeting is not likely to last more than five minutes. Creditors may also attend but rarely do.

After this meeting, the trustee collects the property that can be taken from you (your nonexempt property) to be sold to pay your creditors. You can surrender the property to the trustee, pay the trustee its fair market value or, if the trustee agrees, swap some exempt property of equal value for the nonexempt property. If the property isn't worth very much or would be cumbersome for the trustee to sell, the trustee can "abandon" the property — which means that you get to keep it. Very few people actually lose property in bankruptcy.

If you've pledged property as collateral for a loan, the loan is called a secured debt. The most common examples of collateral are houses and motor vehicles. In most cases, you'll have to either surrender the collateral to the creditor or make arrangements to pay for it during or after bankruptcy. If a creditor has recorded a lien against your property, that debt is also secured. You may be able to wipe out the lien in bankruptcy.

If, after you file for bankruptcy, you change your mind, you can ask the court to dismiss your case. As a general rule, a court will dismiss a Chapter 7 bankruptcy case as long as the dismissal won't harm the creditors. Usually, you can file again if you want to, although you may have to wait 180 days.

At the end of the bankruptcy process, most of your debts are wiped out (discharged) by the court. You no longer legally owe your creditors. You can't file for Chapter 7 bankruptcy again for another six years from the date of your filing.

## DENIS A. KITCHEN

### Attorney at Law



*With 30 years experience, Denis Kitchen has the capability to expertly handle any legal need. He has significant experience in the following areas:*

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- Litigation – family matters, personal injury, collections, contract disputes, traffic violations, and all types of criminal cases

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# Criminal law

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Criminal law serves its purpose in our communities by setting acceptable standards in our society.

Each state and federal government has their own set of laws, and each citizen is required to abide by such laws.

## What is a crime?

A crime occurs when a wrongful act is committed by a person against a state or federal government. When a crime is committed, it is against all members of the community, not just the victim.

A victim cannot make the decision whether or not they chose to prosecute the perpetrator of a crime. It is the decision of the government, acting as the victim's representative, whether or not there is sufficient evidence to prosecute the crime. If a person is convicted of a crime, it is punishable by imprisonment, fine, restitution or other penalty, depending

the state.

## What are the kinds of crime?

Under our current law, known as common law, crimes are divided into two main categories; felonies and misdemeanors. The primary difference in the two is the seriousness of the crime and the punishment for the crime.

Different states follow different systems of law. Some follow common law, which means that judges follow judgments, or precedents, handed down by the other courts in that state.

Others follow penal codes, which are based on the Model Penal Code but are often drafted with state-specific variations. (The Model Penal Code was developed by the American Law Institute and sets forth various definitions, elements and mental conditions required to prove specific crimes and guilt.) So far, about 36 states have revised their criminal law statutes to reflect those found in the Code.

All states define crimes within the following basic categories:

- Crimes against property

These are crimes involving property, like a house, car or money. The majority of crimes in this category involve taking another person's property without permission, for example, theft, burglary, robbery and shoplifting. Property crimes also include entering or damaging another person's property.

- Crimes against a person

Perhaps the most obvious crime against a person is murder, and there are varying degrees of this crime. This category also includes assault and battery, kidnapping and abduction.

- Crimes against the public

This category includes public drunkenness and loitering, violation of a noise ordinance and environmental pollution.

- Crimes against the government

Such crimes include treason  
(Please turn to page 15)

## Criminal

## Defense

## Attorney



Glenn Edward Murray, Esq.

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## Glenn Edward Murray Offers Criminal Defense

Glenn Murray's practice emphasizes criminal defense, involving all phases of criminal matters, through investigation, grand jury proceedings and trial.

Glenn Edward Murray, Esq., has more than 25 years of litigation defending criminal and traffic charges. In the Buffalo area, he is the only member of the National College for DUI Defense, Inc. He is a former Village of Williamsville prosecutor for over 10 years.

He is listed in "Who's Who in American Law," "Who's Who of Emerging Leaders in America" and he is a former Army prosecutor and military defense counsel who has taught Constitutional Law at Canisius College, and as a frequent guest speaker at the University at Buffalo Law School.

Murray has been awarded the Martindale-Hubbell Law Directory's highest accolade: An "AV" rating, which places him in the top 11 percent of American lawyers and Canadian barristers.

He has lectured and chaired numerous seminars for lawyers and judges sponsored by the State and County Bar Associations and the NYS Office of Court Administration, including lectures given at an OCA-sponsored NYS Judicial Institute seminar in White Plains for all NYC criminal court judges on the topic of "Collateral Consequences." He was recently named to "Who's Who" of criminal defense lawyers by Business First and the Buffalo Law Journal.

Mr. Murray is also the author of numerous articles about defending criminal cases, and he is the author of the following books: "Collateral Consequences of Criminal Conduct" (NYSBA, 1992), and the co-author of "Criminal Law Slangue of New York, 3d." (LexisNexis Publishing, 2006).

Glenn Murray's office is located at The Cornell Mansion, 484 Delaware Ave., Buffalo, NY. For more information, call 884-0139.



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# Criminal law (Continued from page 13)

(the attempt to overthrow the government), jury tampering, perjury, tax fraud and bribery of a public official.

- Anticipatory crimes

These are acts done with the intent to commit a crime — regardless of whether that crime successfully occurs — and include conspiring to commit a crime.

- Privacy and technology crimes

The increase in technology advances has led to an

increase in technology-related crimes, like computer fraud, hacking and cyberstalking. Wiretapping also falls in this category.

- Sex crimes

Sex crimes include rape and other criminal sexual conduct that may or may not involve sexual penetration. Many legislatures have been under fire in recent years to eliminate laws against such sex crimes as sodomy between consenting adults.

- Drug crimes

The majority of inmates in the U.S. prison system are serving sentences for drug crimes. These offenses include everything from simple possession to manufacture and distribution.

- "Victimless" crimes

This category of crimes is called "victimless" because the actions that fall under it don't necessarily hurt anyone except the criminal. The most common victimless crimes are gambling and prostitution.

- Felonies and misdemeanors

Punishment for a crime depends on whether it is considered a felony or a misdemeanor. Felonies are generally considered more serious crimes, punishable by death or imprisonment for more than one year. Murder, rape and kidnapping are considered felonies. All other crimes, such as shoplifting and minor vandalism, are considered misdemeanors.

## DWI violations

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The definition of driving while intoxicated is driving over the state's maximum permissible blood alcohol limit.

It is currently against the law in all 50 states to drive under the influence of drugs or alcohol. In the eyes of the law, you can also be guilty of a DWI when your physical abilities are impaired, as it makes no difference whether the drug is legal or illegal. If taking that drug impacts your senses of seeing, hearing, talking, walking and/or judging distances, you may be guilty of a drunk driving offense.

Driving while intoxicated is a very serious crime. While under the influence of alcohol or drugs, it can drastically affect your ability to operate heavy machinery, which includes automobiles.

Recently, the laws in New York State have changed. No tolerance is the policy.

Drunk driving, sometimes referred to as driving while intoxicated (DWI) or driving under the influence (DUI), has two meanings:

Driving with a blood alcohol level over the state's maximum permissible blood alcohol limit. The limit for adults is either 0.08 percent or 0.10 percent. As of October 2000, the following 19 jurisdictions used the 0.08 percent standard to define drunken or impaired driving: Alabama, California, the District of Columbia, Florida, Hawaii, Idaho, Illinois, Kansas, Kentucky, Maine, New Hampshire, New Mexico, North Carolina, Oregon, Texas, Utah, Virginia, Vermont and Washington State. All other states use 0.10 percent, except Massachusetts and South Carolina, which do not use numerical limits.

In October 2000, Congress passed a law requiring all states to adopt a limit of 0.08 percent by 2004 or lose some of their federal highway funds.

Most European countries are far stricter than the United States and have limits that are far below 0.08 percent. You can be considered "legally drunk" and be arrested even though you do not feel or look as though you are under any influence from the alcohol.

## *Involved in a DWI?* We help protect your rights.

If you are faced with DWI/DUI charges in NYS, immediately contact the Law Offices of James Granville. Let the New York DWI defense attorneys use their collective 40 years experience to fight for your rights. The firm will not be satisfied until you are.

A DWI/DUI Conviction in New York is a serious and complicated criminal charge.

Contact the Law Offices of James Granville to make sure your rights are protected.

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# Matrimonial and family law

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When you and your spouse agree to separation or divorce, consider the win/win approach of Divorce Mediation.

## What Is Divorce Mediation?

In a word, fair. Instead of settling differences in a courtroom battle,

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The goal of divorce mediation is a fair outcome in less time, with less expense and with less emotional trauma through a nonadversarial, voluntary settlement.

The mediator is a neutral, specially trained person who does not represent either party, does not take sides or make decisions for you. Instead, the mediator helps separating or divorcing couples find workable solutions to the end of their marriage without assigning blame or making judgments.

## Plaintiff Support Services

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Plaintiff Support Services Inc. was established in 1991 to assist personal injury claimants in need of financial support during the pendency of their cases.

Plaintiff Support Services now works with hundreds of law firms and has provided critical financial support to more than 1,000 personal injury plaintiffs.

The goal of Plaintiff Support Services is to assist plaintiffs with the requirements of their daily living

expenses until case settlement or award. Plaintiff Support Services has helped many families to remain solvent throughout the duration of their lawsuit, thereby maximizing the value of the case.

If you are an attorney representing a client with a serious personal injury claim, you know it can sometimes take years to resolve the litigation. During this time, your clients may be left without the resources to pay their bills and meet their other financial obligations. If you have clients in this unfortunate situation, Plaintiff Support Services can help. Simply have your client call them directly or call on their behalf.

For additional information, call 636-0340, toll-free, at 1-800-352-9676 or visit [www.plaintiffsupport.com](http://www.plaintiffsupport.com).

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## Intellectual property

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Often times people confuse trademarks, copyrights and patents. The question is, what is the difference between the three and why are they important?

### What Is a Patent?

A patent for an invention is the grant of a property right to the inventor, issued by the Patent and Trademark Office. The term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. U.S. patent grants are effective only within the U.S., U.S. territories and U.S. possessions.

The right conferred by the patent grant is, in the language of the statute and of the grant itself, "the right to exclude others from making, using, offering for sale, or selling" the invention in the United States or "importing" the invention into the United States.

What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention.

(Please turn to page 22)

# Real estate

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Although you can sell a home on your own, it is wise to consult with a real estate attorney, as it can get rather complex, especially if there are contingencies involved.

As the seller, you are normally responsible for paying the broker's commission.

All potential homebuyers are afraid of purchasing a money pit. A house may look good from an aesthetic standpoint, but what if it develops problems after you've put money down, signed the papers and moved in?

A house that seems in perfect condition when you buy it during the summer may have a roof that leaks during the winter. Or the kitchen floor that looks fine during an open house may have a crack that is revealed only after the sellers move out.

## Disclosure laws

Although New York does not have a disclosure law, there are ways you can help prevent a nightmare from happening to you.

To prevent the above from happening, many states have enacted statutes that require sellers to disclose hidden defects to potential buyers. These states usually require the seller to fill out a disclosure form that asks a series of questions about the property.

Even if state law does not require the seller to fill out a disclosure form, the buyer or real estate agent may require it. Property disclosure statements cover such topics as:

- Drainage problems
- Faulty furnaces
- Roofs
- Termites
- Cracks or flaws in walls or foundation
- Leaks
- Fires
- Plumbing problems
- Sewage problems
- Dampness in the basement or attic
- Whether work was done to code

The following states have disclosure laws: Alaska, California, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maryland, Maine, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington and Wisconsin.

Sellers must fill out the form truthfully to the best of their knowledge, but they will not be liable if they don't disclose defects that are unknown to them at the time. If there is any reason to believe there is a defect in the property, however, the seller should make every reasonable effort to investigate.

The disclosure statement does not act in place of a home inspection by a qualified individual. Buyers should still hire an inspector. He or she may find something the seller didn't know about.

If defects are disclosed, it doesn't necessarily mean the deal will be off. Buyers can use information

disclosed by the seller as a negotiating tool. For example, you may be able to get the seller to agree to repair the defect before the closing or to get money off of the purchase price or closing costs.

## Caveat emptor

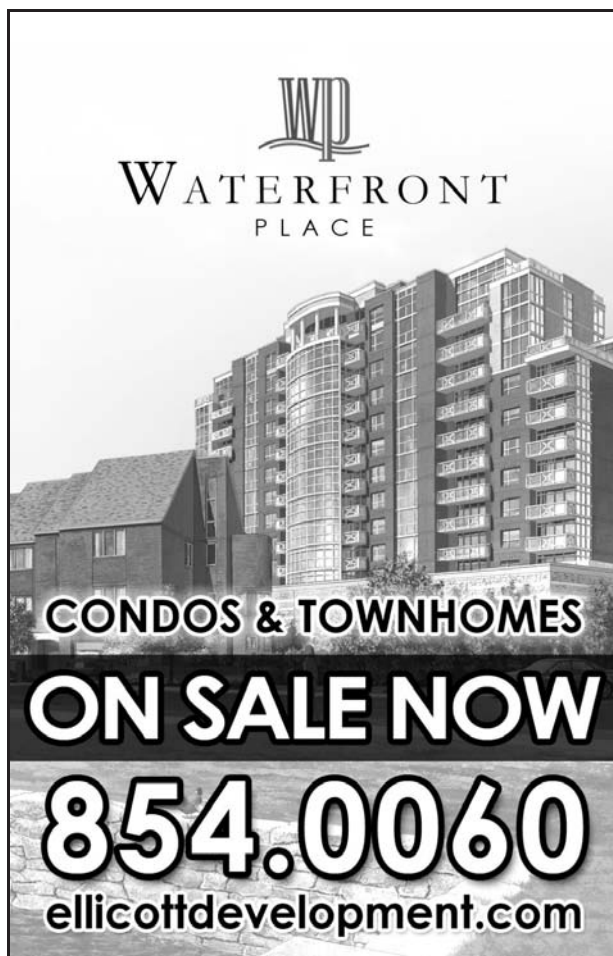
In states without disclosure laws, the historical rule with regard to real estate sales is caveat emptor, meaning "let the buyer beware." Under caveat emptor, the seller is not liable for defects if:

- The defect is obvious upon reasonable inspection, the buyer had access to inspect the premises and there was no fraud.

The cause of the defect doesn't have to be obvious; if the defect itself is obvious, you have a duty to investigate the cause. For example, if you notice water in the basement, you have a duty to find out why the water is there. If you don't investigate and go ahead with the purchase of the house, you cannot later claim you didn't know there was a problem with leaking in the basement.

Even in states that follow caveat emptor, there are certain things a seller must disclose. Some courts have held that a seller who doesn't disclose a hidden defect commits fraud if the buyer could not discover the defect through reasonable diligence. For example, if a seller knows there is a leak in the basement that is only noticeable when it rains and there is no way for the buyer to discover this during the normal

*(Please turn to page 19)*



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# Collaborative Family Law

Separation, divorce, custody and other family issues no longer need to be the contentious areas of law they once were.

A group of specially trained Western New York attorneys are dedicated to resolving family conflicts, implementing the values of responsibility, respect and cooperation. Although Collaborative Family Law is up and coming in Western New York, it has been utilized in other areas of the state and throughout the country for many years.

Collaborative Family Law involves minimal conflict and avoids the necessity of appearing in court. In place of traditional litigious proceedings are four-way conferences between the parties and their attorneys, allowing for effective communication and more productive negotiations. Typically, Collaborative Family Law is more time-efficient and cost-effective than the traditional means of resolving family conflicts.

Although not every situation is

suited to Collaborative Family Law, for those to whom it is suited, the process enables the clients to have greater control over the ultimate settlement, employing creative solutions that are better for the family as a whole. Collaborative Family Law takes the focus away from the court and puts it where it belongs — in the hands of the clients.

Further information and a listing of Collaborative attorneys can be found at [www.WNYCollaborativeLaw.com](http://www.WNYCollaborativeLaw.com).

## Traffic violations

Tickets are often divided into two main categories: moving violations and non-moving violations.

### Moving violations

A moving violation is one that occurs while a driver is operating a vehicle. Moving violations are generally more serious than nonmoving violations.

In some states, this infraction can result in “points” against your license, which result in increased insurance rates. If you get to a certain number of points, your license may be suspended or even revoked. Even if you don’t reach that maximum, your insurance rates will spike dramatically with each point accumulated. The length of time that the points remain on your license varies, but the average is 36-48 months.

Examples of moving violations are driving over the speed limit, running a red light, making an illegal turn, driving under the influence of drugs or alcohol, driving with a suspended or revoked license or registration, illegal passing, following too closely, and driving on the wrong side of the road.

### Non-moving violations

Non-moving violations are lesser infractions that generally result in the payment of a small fine but don’t appear on your driving record. Non-moving violations don’t normally accumulate points on your license, so there are no issues with an increase in insurance rates.

Examples of non-moving violations include parking in front of a fire hydrant, parking in a handicapped zone, failure to pay a parking meter, driving with an expired inspection sticker and double parking your vehicle.

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## Social Security (Continued from page three)

at age 18 on the basis of disability.)

For more information about disability benefits for children, ask Social Security for the booklet, “Benefits for Children With Disabilities” (publication No. 05-10026).

Note: The Supplemental Security Income (SSI) program also pays benefits to needy disabled children under age 18.

## Real estate (Continued from page 17)

house-buying process, the seller must disclose this to the buyer.

In addition, some courts have required sellers to disclose information about problems occurring on neighboring property that affect the property for sale. For example, sellers may have to disclose if there is a toxic waste dump near the property they are trying to sell.

## Employment (Continued from page 10)

on the basis of your age.

Deciding what to do if an employer asks an illegal question during an interview or on an application can be tricky. If you refuse to answer the question, you may jeopardize your chances of getting the job. If you do answer the question, however, your employer could use that information to discriminate against you. You might want to wait and see whether you get the job before taking any actions.

### Wages

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay and child labor standards. Unlike anti-discrimination law, the FLSA does not exempt small businesses from its requirements.

Though most employers are subject to the FLSA, not every employee is covered under the Act. There are some major exceptions most notably, professional, administrative and executive employees.

The FLSA prohibits employers from paying employees an amount below the minimum wage — currently \$5.15 an hour. It also requires employers to pay certain employees overtime if they work more than 40 hours in a given week and are considered to be an hourly employee, not salaried.

One thing the FLSA does not do is require employers to give employees time off. Many states, however, have laws requiring employers to give employees time off for jury duty or military leave. In addition, the Family and Medical Leave Act requires employers to give up to 12 weeks unpaid leave to employees dealing with their own or a family member's health problems.

The FLSA also does not limit the amount of hours an employer can require you to work. Employers can require you to work overtime as long as they pay you for that time.

In addition to the FLSA's requirements, employers can't give different wages to different employees on the basis of race, color, national origin, religion, sex, age or disability. For example, an employer can't pay Asian employees more than white employees or vice versa.

Employers may also be required to withhold money from employees' paychecks. All employers have to withhold income tax and social security payments from paychecks. In addition, in some circumstances, employers may deduct from paychecks the cost of meals, housing and transportation; loans; debts and wage garnishments; and child support and alimony.

What if the seller doesn't disclose a defect?

If a seller doesn't disclose a hidden defect or erroneously fills out the property disclosure form, the buyer can sue for fraud. The seller may have to pay for any repairs to the property that result from the undisclosed defect. However, if seller discloses a problem and you fail to investigate it, you can't sue the seller later.

If the seller's real estate agent does not require the seller to fill out a property disclosure form or aids the seller in lying about the condition of the property, the agent may also be liable for any damages.

### Disclosing lead paint

The federal Lead-Based Paint Hazard Reduction Act requires sellers to give buyers of homes built before 1978 information on lead paint.

Sellers must provide buyers with: a pamphlet on lead hazards and what to do about them, a warning statement, a disclosure of any known lead-based paint hazards on the property and actual test reports, if available.

If they wish, buyers have 10 days (or another mutually agreeable period) to test for lead-based paint hazards at their expense.

The federal regulation does not require anyone to test for or abate lead hazards if he or she chooses not to. However, states may have laws regarding lead paint that are more stringent than the federal law.



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**Fonda Dawn Kubiak** has earned a solid reputation for providing the highest quality legal services in a broad range of legal areas. After years as a solo practitioner, she recently founded The Kubiak Law Firm with a vision to provide effective and efficient legal services to clients in the Buffalo and Western New York area. Our clients are assured the expert representation they expect and deserve.

Kubiak earned her Juris Doctorate Degree from the State University of New York at Buffalo Law School. She has been admitted to practice law in the State of New York and the U.S. District Court, Western District of New York since 1995. Successfully made the transition to solo practice becoming sole proprietor. Currently represents clients in a variety of fields, including State and Federal Criminal Defense, Real Estate, and general practice law.



**Nathan A. Shoff** Practices in the areas of Landlord/Tenant Law and Civil Litigation, Public Interest Litigation, Matrimonial & Family Law, as well as handling other general practice legal matters.

- Graduated from UB Law School, Magna cum laude.
- Awarded Harold A. Dautch Memorial Scholarship for academic excellence

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BuffaloLawyers are experienced in handling all matters related to the law. They have represented people with injuries due to auto or motorcycle accidents, accidents caused by drunk drivers, slips and falls, medical mistakes, dog bites and many other types of accidents.

## Intellectual (Continued from page 16)

### What Is a Trademark or Servicemark?

A trademark is a word, name, symbol or device which is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others.

A servicemark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product. The terms "trademark" and "mark" are commonly used to refer to both trademarks and servicemarks.

Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark.

### What Is a Copyright?

Copyright is a form of protection provided to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished. The 1976 Copyright Act generally gives the owner of copyright the exclusive right to reproduce the copyrighted work.

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# What is personal injury?

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Personal injury is part of the law that includes all kinds of injuries to people and their property.

Personal injury law covers injury suffered by a person. State law usually governs personal injury lawsuits, but federal law may apply in certain circumstances. For example, an injury suffered on federal property may be covered by the Federal Tort Claims Act, or liability for injuries suffered in an airplane crash may be governed by international treaties.

## Damages

If a judge or jury finds the defendant liable for their wrongful conduct in a personal injury case, the question becomes one of what type(s) of damages the plaintiff is entitled to.

In most tort actions, the plaintiff must have been injured in some way that he/she is now entitled to damages. For example, in negligence torts, the plaintiff must prove injury (the plaintiff must have some type of physical, emotional or monetary harm) in order for the defendant to be held liable.

However, with some intentional torts (such as battery, assault or trespass), the plaintiff may only have to establish that the defendant engaged in unauthorized conduct. He or she may not have to prove there was actual physical harm in order to recover damages.

To determine the types of damages that can be awarded to the plaintiff, courts look at such factors as the seriousness of the harm, the extent of the defendant's wrongful conduct and the circumstances surrounding the wrongful conduct. Three basic kinds of damages are awarded in personal injury cases: compensatory damages, punitive damages, and nominal damages.

## Compensatory damages

Compensatory damages are derived from the word "compensate," meaning "to make up for." These are damages paid monetarily for the harm done to the plaintiff. The victim has a right to be reimbursed for all costs as a result of the damages incurred. Insurance adjusters will refer to this category as "special damages" or merely "specials."

The damages can include:

- Wages lost while injured and during a recuperatory period
- All medical bills
- Cost to replace or repair damaged property
- Injured victims can also sue for general damages in addition to actual damages
- Costs associated with household, nursing help during recovery, cost of wheelchair or crutches, or rental cost of substitute cars

General damages include the things that can't be precisely documented in dollars, including:

- Disfigurement resulting from injuries
- Pain and suffering endured due to injuries and any subsequent mental anguish
- Value of future wages plaintiff will lose in the future

- Value of medical expenses the plaintiff is likely to incur in the future

- Aggravation of pre-existing injury

## Punitive damages

Punitive damages are not based on a victim's injuries. Rather, they are a way to punish the defendant for gross negligence — behavior that is so egregious that a civil court penalty is needed to deter the defendant from committing the same negligence again in the future.

For example, if a doctor practices without a license and botches an operation resulting in the severe disfigurement of a patient, the plaintiff may ask for hefty punitive damages to penalize the doctor.

## Nominal damages

Nominal damages are symbolic gestures acknowledging that the plaintiff was legally wronged, while at the same time recognizing a lack of evidence establishing that the plaintiff suffered actual damages. Nominal damages are very small awards with fines of \$1 not being uncommon.

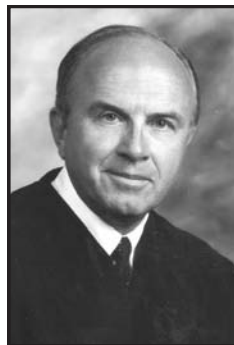
## Attorneys' fees and court costs

In addition to damages, a plaintiff may also be able to recover attorneys' fees and court costs. Court costs include the cost of stenographers, transcriptions or translators. Attorneys' fees include billed hours, expert testimony and all remaining expenses generated from handling a case.

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# Automobile accidents

*Who pays for the damage and the injuries?*

by **JAMES T. SCIME**

*Senior Partner at Lipsitz Green Scime Cambria LLP*

Nearly everyone has experienced an automobile accident — whether a fender-bender or something more serious.

Here are the questions most commonly asked:

## **What Are No-Fault Benefits?**

Regardless of who caused the motor vehicle accident, the insurance company for the vehicle in which the injured person is a driver or a passenger pays what is commonly known as “no-fault” benefits. The basic benefits include:

1. Up to \$50,000 in expenses for medical, hospital, surgical, nursing, dental, ambulance, x-ray, prescription drug and prosthetic services and other health care services;
2. Up to \$2,000 per month for three years for lost earnings from work;
3. Up to \$25 per day for one year for other reasonable and necessary expenses.

## **Can I Sue the Driver and Owner of the Other Vehicle?**

If a person suffers a “serious injury” or death, a claim or lawsuit can be brought against the driver and owner of the other vehicle. “Serious injury” is a term technically defined by the law and includes broken bones, damage to certain organs and other body parts, significant disfigurements, and soft tissue injuries under many circumstances.

## **What Can I Recover if I Sue?**

A seriously injured person or the family of a person

killed in an auto accident may recover compensation for past and future pain and suffering, which includes loss of enjoyment of life, lost wages or benefits not covered by no-fault and medical expenses not covered by no-fault.

## **What Can I Do If The Driver And Owner Of The Other Vehicle Has A Small Insurance Policy And My Injuries Are Extremely Serious?**

You are permitted under New York Law to purchase additional insurance called “Supplementary Uninsured or Underinsured Motorist Insurance” (also known as SUM coverage). This coverage may allow you to collect from your own insurance company if the person who injured you does not have enough insurance to cover your injuries. You should examine your insurance policy to make sure that you have purchased this additional insurance to protect you in the event that you are hit by someone with limited insurance coverage.

Being injured in an automobile accident can be a significant life-altering event. Injured persons can be left unable to work or perform daily activities. If you are injured in an automobile accident, it is important that you obtain competent legal advice to guide you through the legal process and ensure all of your rights are protected.

# Product liability

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Products liability is a legal remedy against the manufacturers and sellers of defective products.

In general, products liability makes a company strictly liable to an injured consumer when the company fails to produce a safe product, or fails to warn the consumer of risks associated with the use of its product.

Strict liability means that the company will have to compensate an injured consumer regardless of the company's fault. If you were seriously injured by a defective product or hurt because you were not properly warned of the product's possible dangers, you should consult an attorney who specializes in products liability actions.

The statute of limitations in New York State for products liability cases is usually three years or less. Once the statute of limitations elapses, you can be prevented from bringing suit; thus, you should seek the advice of any attorney in a timely manner.

*This article was provided by Michael H. Doran, Esq., of the firm Doran & Murphy, LLP.*

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# General information (Continued from page seven)

official and therefore ineligible to collect workers' compensation benefits.

A common issue arises regarding the right or ability of police officers and firefighters to recover workers' compensation benefits. These individuals do not fit squarely into the definition of an employee, nor can they be considered "officials." Many state statutes, in recognition of this issue, have specific provisions within their acts to clarify that workers' compensation benefits, rules and requirements will apply to these individuals.

In order to determine whether a particular state or municipal employee is covered by the state's workers' compensation scheme, an attorney should be consulted to carefully examine the particular state's laws.

- Federal employees

In general, federal employees do not receive workers' compensation benefits from their employers

under state systems. Instead, federal employees have separate systems through which they can seek to recover benefits for work-related injuries.

The Federal Employee's Compensation Act (FECA) controls the rights of most federal employees to obtain workers' compensation benefits. FECA allows for the recovery of benefits when a federal employee is either disabled or killed as a result of an injury "sustained while in the performance of duty."

Special types of employees may bring claims for benefits under other, specific federal acts. For example, the Federal Employer's Liability Act was enacted to provide recovery for injuries sustained by employees engaged in interstate transportation, such as railroad workers.

The Jones Act provides for seamen in the case of work-related injuries, and the Longshore and Harbor Workers'

Compensation Act provides similar benefits to longshoremen and others who are engaged in maritime activities on navigable waters.

Other statutes that play a role in the compensation of certain employees include: The Outer Continental Shelf Lands Act, the Death on the High Seas Act and the Defense Base Act (for employees working on defense bases or public works projects outside the United States).

Whether an employee falls under the protection of FECA or another act designed to protect other specific categories of employees will depend on the nature of the employment and a close examination of the facts of the particular case.

Therefore, it is advisable to discuss the laws that might govern your workers' compensation claim with an experienced workers' compensation attorney.

# Medical malpractice

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*Information below provided by the law firm of Doran & Murphy, P.C.*

Daunting statistics, indicating that 94 percent of all medical malpractice trials are won by doctors, highlight the necessity of experienced and competent counsel in this demanding area of litigation.

Our firm has an enviable track record representing individuals and their families against doctors, hospitals, dentists and other health care professionals whose deviation from acceptable standards of practice led to unnecessary injury.

For example, the law firm of Doran & Murphy, P.C., recently obtained results include compensation at trial in excess of \$11,000,000 for a teenage girl whose doctor mistakenly tied off the wrong blood vessel during surgery resulting in nerve damage and weakness in both legs.

A confidential settlement was similarly obtained from the medical center whose substandard post operative care resulted in the death of a young mother. Compensation will provide structured financial security to each of her children and the ability for them to attend higher education and achieve their personal goals.

If you've been injured as a result of a doctor's negligence, you need to consult with experienced attorneys who practice in the highly complex field of medical malpractice law.

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## Tips on adoption

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For first-time adoptive parents, the adoption process can seem overwhelmingly complicated, time-consuming and frustrating — especially if you are eager to get started. The first step is to read and to educate yourself about adoption in general, the types of children available to adopt and the various

avenues to adoption. Adoptive-parent support groups throughout the United States have members willing to assist those who are considering adoption. State Adoption Specialists in each state can send you information to help get you started. As you learn more, you will become better prepared to make the choices that are best for you. The next step is finding a lawyer who practices in adoption.

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