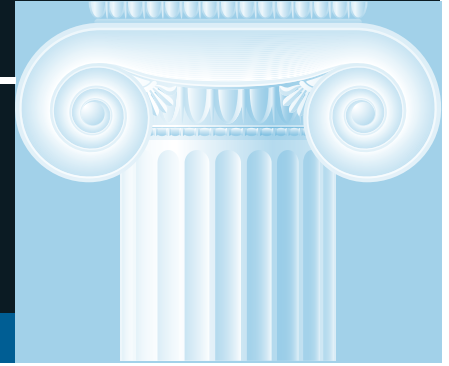


Legal Notes



BURT J. BLUSTEIN
MICHAEL S. BLUSTEIN
RICHARD J. SHAPIRO
RITA G. RICH
GARDINER S. BARONE
JAY R. MYROW

MARCELLO A. CIRIGLIANO
AUSTIN F. DUBOIS
WILLIAM A. FRANK
BRIAN NEWMAN
DIANA PUGLISI
RAYMOND P. RAICHE
JEANINE GARRITANO WADESON

ARTHUR SHAPIRO,
of Counsel
DAVID S. RITTER,
of Counsel

IN THIS ISSUE:

- **THREE ATTORNEYS AT BSR&B RECOGNIZED BY SUPER LAWYERS**
- **SEXUAL HARASSMENT IN THE WORKPLACE: AN OVERVIEW FOR EMPLOYERS & EMPLOYEES**
- **UNDER WHAT CIRCUMSTANCES MAY A CUSTODIAL PARENT RELOCATE WITH THE CHILDREN?**
- **SHAPIRO TO PRESENT AT UPCOMING MEDICAID SEMINAR**
- **MUST A POTENTIAL BUYER BE TOLD THAT THE SELLER'S HOME MAY BE HAUNTED?**
- **EDUCATIONAL WORKSHOPS**

GOSHEN

10 MATTHEWS STREET
GOSHEN, NY 10924
PHONE: (845) 291-0011

WARWICK

21 OAKLAND AVE.
WARWICK, NY 10990
PHONE: (845) 988-1515

WWW.MID-HUDSONLAW.COM



BLUSTEIN, SHAPIRO, RICH & BARONE, LLP

ATTORNEYS AT LAW

Super Lawyers
2014

THREE ATTORNEYS AT BSR&B RECOGNIZED BY SUPER LAWYERS



Gardiner "Tad" Barone
Super Lawyer
(3rd consecutive year)
BUSINESS LITIGATION



Richard J. Shapiro
Super Lawyer
ESTATE PLANNING
AND PROBATE



Austin F. DuBois
Rising Star
ELDER LAW

BSR&B Partners Gardiner "Tad" Barone and Richard J. Shapiro were recently named 2014 Super Lawyers in the fields of business litigation, and estate planning and probate, respectively.

Austin F. DuBois, a BSR&B Associate, was recognized as a Rising Star in the field of elder law.

"It is outstanding to have three of our talented attorneys recognized for the quality of their work," said Managing Partner Michael Blustein. "We have an amazing team at the firm, and it makes me tremendously proud that we continue to receive attention from our peers."

Super Lawyers is a national and independent third-party rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The patented selection process is multi-phased and includes independent research, peer nominations, and peer evaluations.

No more than five percent of the lawyers in New York State are selected to receive this honor.

Rising Stars are selected through the same selection process as Super Lawyers, but they are 40 years old or younger, or have been in practice for 10 years or less. No more than 2.5 percent of attorneys in New York are named Rising Stars.

Richard, Tad, and Austin's profiles appear in Super Lawyers magazine, which is published in all 50 states and Washington, D.C., reaching more than 13 million readers.

SEXUAL HARASSMENT IN THE WORKPLACE: AN OVERVIEW FOR EMPLOYERS & EMPLOYEES

(PART 1 OF 2)



By William A. Frank, J.D.
wfrank@mid-hudsonlaw.com

You are a hardworking and productive employee. You are up for a promotion. Your immediate supervisor, whose recommendation will be pivotal in determining whether you get the promotion, wants to discuss the matter with you after working hours at a local bar. The explanation that you are given for the after-hours meeting is because your potential promotion “needs to be kept confidential”. Perhaps this is a plausible enough explanation on its face. However, you are aware that your supervisor’s divorce was recently finalized and you have declined two separate social invitations from this person in the last three months.

You politely inform your supervisor that you would prefer to meet at the office during the day. Your request is rejected, and you are told that the only way that you will get the supervisor’s recommendation for the promotion is the after-hours meeting at the bar. You deserve this promotion. Could you be the victim of sexual harassment? The answer is a resounding *yes*.

What is Sexual Harassment?

Under New York and federal law, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- Submission to the conduct is made either explicitly or implicitly a term or condition of an individual’s employment; or
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- The conduct has the purpose or effect of unreasonably interfering with an affected person’s work performance, or creating an intimidating, hostile, or offensive work environment.

Sexual harassment refers to behavior that is not welcome, is personally offensive, fails to respect the rights of others, lowers morale, or interferes with work effectiveness. Employees are entitled to an environment that is free from all forms of sexual harassment. This entitlement is gender neutral. No employee, male or female, may sexually harass any other employee of the opposite or same gender.

One common form of harassment is the demand for sexual favors; other forms of harassment may include, but are not limited to:

- **Verbal Harassment** such as slurs, sexual innuendos, suggestive or derogatory comments, jokes of a sexual nature, sexual propositions, and threats.
- **Non-Verbal Harassment** such as abusive written language, showing or displaying pornographic or sexually explicit objects or pictures, graphic commentaries, leering, whistling, or obscene gestures in the workplace.
- **Physical Harassment** such as unwanted physical contact, including touching, pinching, and/or persistent brushing against the body.

The harasser can be a supervisor, a co-worker, or someone who is not an employee, such as a client or customer. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision. Sexual harassment is prohibited by Title VII of the 1964 federal Civil Rights Act and the New York State Human Rights Law.

What should an employee do if they believe that sexual harassment has occurred?

An employee who believes that they are being sexually harassed, who believes that they have been retaliated against for opposing such harassment, or who has witnessed such activity, should report the alleged acts of harassment to their immediate supervisor without delay. Of course, if a complaint involves any of these actions allegedly committed by the immediate supervisor, the complaint should be made directly with the person who has authority over that supervisor. In a larger organization, reports are customarily made to the Human Resources/Personnel Department. Allegations of sexual harassment generally may be made either orally or in writing.

Can an employee be punished for reporting sexually harassing conduct in good faith?

No. Retaliation for making a complaint about sexual harassment is prohibited by law. If this occurs, you may have a separate claim of retaliation in addition to any claim of sexual harassment. Retaliation occurs when the terms and conditions of one’s work are unfavorably changed as a result of one’s reporting sexual harassment or cooperating with the investigation of a sexual harassment complaint or lawsuit. If you believe you have suffered retaliation, you should consult with an attorney.

Sound legal advice is invaluable for both employers that are mindful of the need for proper sexual harassment prevention tools as well as employees who have been victimized by such conduct. In Part 2 of this article, we will examine the remedies available to victimized employees, as well as preventive and corrective measures that all employers should take to deal with this all too common workplace occurrence.

UNDER WHAT CIRCUMSTANCES MAY A CUSTODIAL PARENT RELOCATE WITH THE CHILDREN?

By Raymond P. Raiche, J.D.
rraiche@mid-hudsonlaw.com



“Now that I have been granted custody by the Court, can I move far away from my ex?”

That is the question that I have been asked repeatedly at the conclusion of many matrimonial cases involving the award of custody of a child or children.

In short, a move by the custodial parent to a distant locale generally is not permitted by a New York Court when it would effectively deprive the noncustodial parent of regular access to a child of the marriage. This policy is based upon the principle that visitation is a joint right of both the noncustodial parent and the child, and upon the premise that the best interests of the child will be furthered by the child being nurtured and guided by both of the natural parents.

In cases where a custodial parent seeks permission to relocate away from the area in which the noncustodial parent resides, the Courts will apply the appropriate weight to the following factors that may be relevant to that determination, including:

- Each parent’s reasons for seeking or opposing the move,
- The impact of the move on the quantity and quality of the child’s future contact with the noncustodial parent,
- The feasibility of preserving the relationship between the noncustodial parent and the child through suitable visitation arrangements, and
- Any relocation restrictions included in the parties’ separation agreement.

Where the noncustodial parent is fit and has maintained a close relationship with the child, the Court will be reluctant to interfere with such parent’s rights by sanctioning a move by the custodial parent to a distant location. The parent seeking to move with the child must show by a preponderance of the evidence that it is in the child’s best interest. Previous cases allowing relocation involved: a custodial mother being allowed to relocate out-of-state with a child, because it was in the child’s best interest, where (a) her relationship with the child’s father had been tumultuous and at times dangerous due to the father’s drug use, inability to control his anger, and violations of past orders of protection; (b) the relocation would substantially increase the income of the mother and her new husband so as to permit the mother to stop working and stay at

home with the child; and (c) the move will provide a supportive extended family for the child, and permit the child to live in a more spacious home in a rural setting.

However, the child’s best interest was not proven where, although the custodial father’s relocation plans were motivated by employment and financial considerations, he could provide no financial evidence regarding his existing employment or financial status to support a finding of a financial need to relocate; merely asserting that he had unspecified work lined up in the new location was insufficient to justify depriving the son of an established, meaningful relationship and regular contact with his mother.

Furthermore, additional factors the Courts may consider include legitimate health, financial, educational, or employment considerations which may constitute exceptional circumstances justifying relocation by the custodial parent to a distant location. Of greater significance is whether the noncustodial parent will have the opportunity for meaningful visitation. In determining whether relocation to a distant locale is justified on economic grounds, the Court will look to whether similar economic opportunities are available nearer to home, and whether such opportunities have been investigated.

Finally, in permitting relocation of the children, Courts may attach conditions, such as having the custodial parent assume the increased cost of the noncustodial parent enjoying visitation rights at a long distance; or even the custodial parent **forgoing child support payments** from the noncustodial parent.



Shapiro to present at upcoming Medicaid seminar

BSR&B Partner Richard Shapiro will share his expertise at the National Business Institute’s “Protecting Assets While Qualifying for Medicaid” seminar on Monday, Nov. 17 at the Poughkeepsie Grand Hotel.

Monday, November 17 8:30 a.m.-4:30 p.m.	Poughkeepsie Grand Hotel 40 Civic Center Plaza Poughkeepsie, NY 12601
--	--

Who Should Attend:

- Attorneys
- Social Workers
- Trust Officers
- Estate & Financial Planners
- Nursing Home Administrators
- Geriatric Care Managers
- Accountants & CPAs
- Paralegals

CE Credits Available.

To register or for more information, call 800.930.6182 or visit nbi-sems.com.

MUST A POTENTIAL BUYER BE TOLD THAT THE SELLER'S HOME MAY BE HAUNTED?

By Diana Puglisi, J.D.
dpuglisi@mid-hudsonlaw.com



Ghosts, goblins, and ghouls... do you have to inform a potential buyer that your house might be haunted?

In early 2014, Gregory and Sandi Lesson of Dunmore, Pa. listed their house for sale on the real estate website Zillow. They described their 113-year old home as "Slightly haunted. Nothing serious though. The occasional ghastly visage in the bathroom mirror." While the idea of purchasing a "haunted house" does appeal to certain buyers, listing the word "haunted" in any home advertisement instead of, say, stainless steel appliances or a renovated bathroom, might attract more curiosity seekers than real buyers. Even I am guilty of staying at the purportedly haunted Lizzie Borden house.

The answer lies in a 1991 New York Supreme Court Appellate Court decision in *Stambovsky v. Ackley* (169 A.D.2d 254). Mrs. Helen Ackley was the owner of a turn-of-the-century Victorian house in Nyack, N.Y. During her ownership, she reported several paranormal occurrences during her ownership (including apparitions), participated in a Reader's Digest article about the haunting, and even had her house listing on a local haunted house walking tour. Her potential buyer, Jeffrey Stambovsky of New York City, was unfamiliar with the local stories. When he discovered them after signing a contract, he sought to cancel the contract, which the seller refused. He in turn brought an action requesting the canceling of the contract. The Court concluded that as a "matter of law" the haunting of the house had been established through the seller's publicized ghost stories, regardless of whether the house was truly haunted or not. The Court also held that "the most meticulous inspection and search would not reveal the presence of poltergeists at the premises or unearth the property's ghoulish reputation in the community" and that the seller took unfair advantage of the buyer's ignorance and created the condition. Mr. Stambovsky was allowed to cancel the contract.

In an October 2011 REALTOR® Magazine article published by the National Association of REALTORS® entitled *Got Ghosts? How to Sell a 'Haunted' House* by Gina Roberts-Grey, the author describes what odd occurrences a realtor should look for, and which of those occurrences can be explained away. She goes on to say, "[i]n all seriousness, though, you should say something if you or others have noticed: objects levitation or moving by themselves; strange voices or sounds when no one else is around; recurrent, out of the ordinary phenomena with light and shadow."

Regardless of whether you believe in spirits, if you are aware of occurrences in your house that might be of concern to a potential buyer, especially those things that a typical home inspection would not reveal, it's best to describe what you have observed. You never know – your buyer might find it a selling point.

FREE EDUCATIONAL WORKSHOPS:

Estate Plans That Work™

We'll explain little-known pitfalls and the best methods to protect your loved ones' inheritance after you're gone.

Nov. 5, 2014

3:00 p.m. to 6:00 p.m.

ALL
NEW!!!

Warwick Office:
21 Oakland Ave., Warwick, NY

Nov. 13, 2014

3:00 p.m. to 6:00 p.m.

Dec. 9, 2014

3:00 p.m. to 6:00 p.m.

Goshen Office:
1st floor
10 Matthews St., Goshen, NY

RESERVE YOUR PLACE TODAY!
SEATING IS LIMITED.

Call 845.291.0011 x242 or
email receptionist@mid-hudsonlaw.com.