

Legal Notes

Lacy,
Katzen,
Ryen &
Mittleman, LLP



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Our attorneys

Louis A. Ryen
Ronald A. Mittleman
Michael S. Schnittman
Peter T. Rodgers
Sally A. Smith
Karen Schaefer
Richard G. Curtis
Lawrence J. Schwind
David E. Anderson
Craig R. Welch
Christopher B. Mumford
Leslie W. Kernan Jr.
Terrance W. Emmens
Mark H. Stein
Jacqueline M. Thomas

Herbert W. Lacy
(1920-1989)
Leon Katzen,
Sr. Counsel

David D. MacKnight
Denine K. Carr
Matthew A. Ryen
Jennifer L. Chadwick
Joanne Constantino
Lara R. Badain
Suzanne L. Cognata
Kevin A. Morabito
Daniel S. Bryson
Lisa C. Arrington

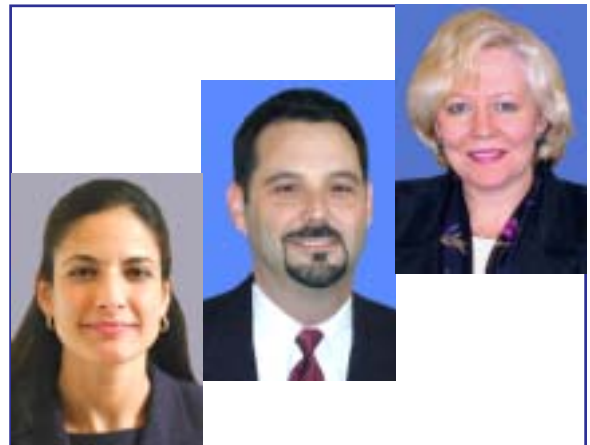
Collaborative family law offers unique approach to matrimonial law

Coping with divorce is never easy, which is one reason **Lacy, Katzen, Ryen & Mittleman, LLP** has chosen to be among a limited number of law firms to offer an innovative, unique and new alternative to matrimonial conflict resolution.

The approach is called collaborative family law, and it is being used more and more frequently in matrimonial and family law these days, according to Lacy, Katzen's **Sally Smith, Lawrence Schwind** and **Suzanne Cognata**, who are among a growing number of local attorneys who employ this process.

Collaborative family law has its origins in Minnesota, expanded to California and now has reached New York State. A professional association of attorneys dedicated to the collaborative approach has been established in Rochester — the Association of Collaborative Family Law Attorneys (ACFLA), which provides training, support and resources to attorneys who choose to practice collaborative law.

Under the traditional approach to divorce, each party takes a position



*The collaborative family law team:
(l to r) Suzanne Cognata, Larry Schwind, Sally Smith.*

based on what he or she determines is best for him or her. If they are unable to reach an agreement or compromise, a judge decides for them. By contrast, under the collaborative approach, the parties agree to discuss their respective needs and concerns until they are able to reach an agreement that fully addresses the concerns of both parties. They further agree that they will not resort to the courts to resolve their differences. Should either party decide to “go to court,” both parties must “start over” with new legal counsel. In this way, the parties and their attorneys commit themselves to the process from the inception of a case.

Continued on next page

Collaborative law, continued

Under the collaborative approach, the parties address and resolve their differences through informal conferences where the parties, with the assistance of their attorneys, seek to understand each other's concerns and seek to reach an agreement that is acceptable to both parties.

The same laws apply to both the traditional and collaborative approach. The difference lies in how the parties go about resolving their differences. "Under the collaborative process," says Schwind, "the parties craft their own resolution, rather than leaving these important decisions to a judge who has only a limited understanding of the parties, their family or their concerns."

According to ACFLA, the collaborative approach offers clients "a cooperative and dignified approach to separation and divorce." "In the court system, parties are presumed to be on opposite sides. Once spouses become plaintiffs and defendants, they too often see their litigation as a battle to be waged with a winner and a loser. Because of the adversarial nature of court, litigants can lose sight of the reality that most family members, even as they are reorganizing their lives through separation and divorce, have common goals."

The informal nature of collaborative law creates a less-confrontational environment for a matrimonial case. As ACFLA materials indicate, "Collaborative attorneys help the parties to face distress over the breakup of their relationship appropriately, identify real interests and remember the need of children to be kept out of the middle." According to Cognata, it tends to be a more amicable and flexible process and, due to the reduced formality and increased emphasis on cooperation, "it can often work faster and be less expensive than a traditional divorce."

Collaborative family law should

not be confused with the better-known process of mediation. Mediation is typically directed by one person, not necessarily an attorney, whose role is to seek compromise. "Mediation is useful if both parties are on equal footing," says Smith, "but in a matrimonial case, where one person often dominates the relationship, mediation can often lead to an unbalanced compromise."

With the collaborative approach, each party is represented and counseled by their own attorney whose job it is to assist his or her client in reaching a resolution that fully and fairly addresses his or her concerns. "With the collaborative process, the attorneys work together to help their clients address the needs and concerns of both parties without favoring one person over the other. The process becomes more balanced."

Since collaborative law represents a departure from traditional legal practices, it requires a different set of skills, which are best developed

after an attorney has had substantial experience in handling various matrimonial issues. For this reason, special training is required to become a member of ACFLA. This training is usually provided only to attorneys with several years of matrimonial law experience. Further, collaborative attorneys in the Rochester area are required to participate in ongoing training to remain a member of ACFLA. Smith, Schwind and Cognata have committed to this additional level of training to be able to provide this alternative to their clients.

Collaborative family law can be employed effectively in any area of family law, including issues involving custody, visitation, support, or division of assets, as well as issues involved in modifying existing separation or divorce arrangements. However, it is important to note that the collaborative process is not necessarily for everyone. "It is unlikely to be appropriate for people dealing with serious mental problems, drug or alcohol abuse, or the problems associated with an abusive relationship," says Smith. "In certain cases, the traditional approach to divorce remains necessary and even preferable."

For that reason, Smith, Schwind and Cognata continue to represent clients in the traditional fashion. However, in light of the potential benefits it may provide to many clients, they are pleased to offer the collaborative approach as an innovative alternative.

Please feel free to contact Smith, Schwind or Cognata if you would like more information regarding Collaborative Family Law or if they may be of any other assistance to you regarding your matrimonial or family law concerns. They will be glad to meet with you at any of Lacy, Katzen's satellite offices, as well as downtown.

See page 6 for our locations.

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Writer/Editor:

Ruth E. Thaler-Carter

Ruth@writerruth.com

(585) 232-8036

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inadvertently dialing 858.

Community service is a way of life at Lacy, Katzen, Ryen & Mittleman, LLP

The members of **Lacy, Katzen, Ryen & Mittleman, LLP** — attorneys *and* staff — are involved in a wide variety of community and charity activity in the Rochester area to an extent that warms the heart and may inspire others.

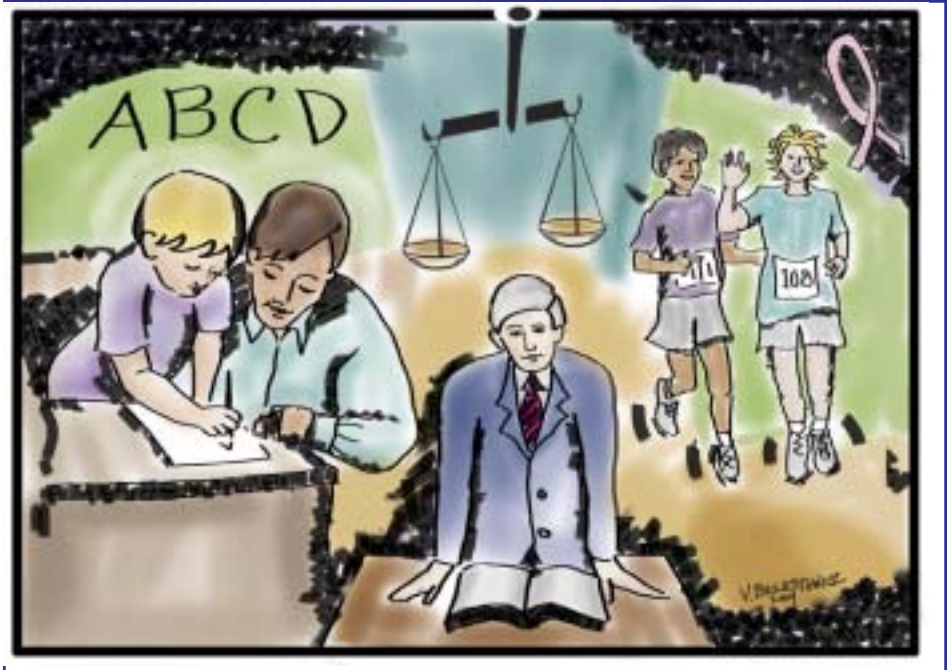
Whether they have a sense of a community commitment, a desire to give something back in return for their own good fortune, or simply an interest in strengthening their links to family, Lacy, Katzen's staff are true givers. Here is an overview of some, but by no means all, of the firm's involvement to service in the Rochester community.

- The firm supports a variety of community organizations, especially those important to staff members, through financial donations. One is a theater group called Magical Journey Thru Stages, which partners with various charitable organizations to help all types of individuals in the Rochester area. One of the shining stars in this year's production is the daughter of staff member **Denine Scott**, and Scott's involvement has been so extensive that she shared the group's President's Award this year for her services.

Leading by example

Senior partners at Lacy, Katzen lead the way in charitable involvement for the rest of the firm.

- **Lou Ryen** is vice president of the Jewish Community Center of Rochester; serves on the Executive Committee of Temple Beth El, Finance Committee of the Visiting Nurse Service and Professional Performance Committee of the Monroe County Bar Association; provides free legal service to the Volunteer Legal Service Program; and is a volunteer speaker in the



Credit Abuse Resistance Education Program.

- As a member of the board of Volunteer Legal Services Project (VSLP), **Michael Schnittman** serves on its Finance Committee and participates in its Debt Clinics at least six times a year. "We counsel people who are unable to afford an attorney about their rights in regard to debts they owe and alternatives to bankruptcy," he said.

Schnittman also serves on the Social Action Committee of Temple Sinai and is involved in temple projects such as housing for the homeless. He tutors at School 29 one hour a week through a local bar-association program, Lawyers for Learning. He helps supply backpacks to give to needy children at the beginning of the school year, and gets other people in the firm involved with doing so as well.

"I volunteer because I believe it is important to give back to the community, both in time and money, to those less fortunate than us," Schnittman said.

- **Peter Rodgers** serves on the board of trustees for McQuaid Jesuit High School. The majority of his community service activity focuses on the legal profession itself: He is chair of the Grievance Committee for the 7th Judicial District, which reviews and acts upon complaints against lawyers who are charged with violating the Code of Professional Responsibility.

- **Karen Schaefer** often speaks to classes, and at programs for both parents and college-bound students, through the Honeoye Falls-Lima PTA. "With a daughter who is a freshman at Cornell University and a son who is a sophomore in high school, I am interested in the issues from both the parent and student perspectives, as well as from the professional perspective," she said.

Schaefer is a long-term member and past president of the board of the Norman Howard School — a school for learning-disabled students — and a member of board of directors of the Norman Howard School Foundation,

Continued on next page

Community service, continued

Inc., which supports the school. She also is active in the Business Law Council of the Monroe County Bar Association, for which she frequently organizes joint programs with the Monroe County CPA Society on a variety of business and legal issues.

• **Jacqueline Thomas** serves on the board of trustees at the Aquinas Institute, which is her alma mater, and serves as a mentor for the school.

• **Leslie Kernan** is a member and the clerk of the vestry of St. Paul's Episcopal Church, and also serves on the Parish Operations Council and Personnel Practices Committee of St. Paul's. "The vestry is analogous to a corporation's board of directors, and the clerk is essentially the corporate secretary," he said. "I do this because St. Paul's, its community and its mission are all very important to me."

Kernan and his wife Pattie co-chair a charity golf event that is the principal fundraiser for Trinity Montessori School in East Rochester. "The Montessori program provides a wonderful social and educational experience for children of all denominations, and we are committed to helping the school be as successful as possible," he said.

• As a board member of Junior Achievement of Rochester, **Jennifer Chadwick** serves on special committees that organize events. She also puts her commitment to physical fitness to work for charity, by helping organize a local Race for the Cure for Breast Cancer race every year to raise money for breast-cancer research, in honor of a beloved aunt who died of breast cancer. "My sister and I participate in the Buffalo run," Chadwick said. "We usually raise about \$500 or so a year to give to the Susan Komen Foundation for breast-cancer research."

"I have participated in other races throughout the years to raise money for various causes, from cancer research to the SPCA," she added.

• **Terrance Emmens** serves on the board of the Rochester Presbyterian Home, providing committee work in finance, property and long-range planning.

"I decided to get more involved in community service in an area where I feel my professional experience would be of value," Emmens said. "As an estate planner with a focus on preserving assets in the face of long-term-care costs, I think it beneficial to understand better how services are delivered in the community to those needing assistance. I would hope to participate in creating an environment that elevates a person's dignity and autonomy while meeting their assisted-living needs."

To Emmens, every effort helps create a better society: "If everybody who could (do something for others) did a little, we'd make Rochester that much nicer."

• **Mark Stein** is a vice president

Available for clients

These are only a few of the many ways in which the firm of **Lacy, Katzen, Ryen & Mittleman, LLP** serves the greater Rochester community. Everyone in the firm shares a strong commitment to making Rochester a better place in an ever-increasing variety of ways.

Please keep in mind that, as part of its commitment to the community, Lacy, Katzen attorneys are available for speaking engagements at your business, school or community organization. "Any of our lawyers would be happy to speak at various forums, including community groups, schools, business associations, etc.," said **Karen Schaefer**.

Just call (585) 454-5650 and ask for **Suzanne Mayer** if you would like to arrange for a Lacy, Katzen attorney to address your organization.

on the board of directors of Delphi Drug and Alcohol Council Inc., a Rochester not-for-profit organization that provides prevention counseling services and adult and teen treatment programs incorporating educational services. "It is important for me to provide my input to this organization, either from a legal standpoint or just from giving my ideas on how it can continue to serve the region and provide needed services to the community," said Stein.

Support staff carry the flag

• Paralegal **Karen A. Markle** is a parent representative for the Committee for Special Education (CSE) of the Oakfield-Alabama School District of Genesee County.

"I talk with parents to help remove the stigma that 'special education' reflects severe mental or physical disabilities, and to reassure them that their children won't be removed from the mainstream," she said. "I attend CSE review meetings with parents to give them moral support — being there for the parents to see their children are given every available program or class or mechanical tool to aid in their learning experiences. I give information about what is available, suggest questions to ask, and emphasize the importance of being an involved parent. I help families look at special education services in a different light and take full advantage of the services available."

Markle's service to others grew from watching her father's involvement with his students and their families — he taught school for 45 years — and her own family's experiences. "I became involved when our daughter was struggling in first grade and we found that she had some physical-development problems and certain learning disabilities that required special attention for her to grow and learn," she recalled.

• **Marianne Bailey** coaches a
Continued on next page

Downtown office provides free parking

Wondering where to park when you head for the downtown office of **Lacy, Katzen, Ryen & Mittleman, LLP**?

We realize a lot of people may not be familiar with the in's and out's of downtown these days, and we know there's no parking along Main Street itself, so we've started a new

parking service to make it easier for clients to use our main office in the historic Granite Building at **130 E. Main Street**.

Just park in the **South Avenue Garage**, accessible from South Avenue, Broad Street, Stone Street or Main Street (at the Hyatt Hotel). We have made arrangements with the

hotel to provide our clients with free parking. Show your garage ticket to our receptionist to be stamped as you leave the Lacy, Katzen office. Present the validated ticket to the attendant, and you won't be charged.

Lacy, Katzen also is looking into a similar arrangement with the Clarion Riverside Hotel and the possibility of offering a valet-parking service at our downtown location.

Watch out for that small print when summer fun beckons

Summer sunshine means more outdoor activity for family members, but such fun in the sun could mean unexpected legal worries. Your child wants to go horseback riding or take a school trip; you're asked to sign a release. The family heads for a water park or rock-climbing wall; you notice a disclaimer of responsibility on the back of the tickets after you've paid for everyone.

They pop up year-round but most often in summertime: "releases from liability" or release forms from school, along with tiny-print caveats on the backs of tickets — all meant to protect purveyors of fun and frolic from liability in case a child or family member gets hurt. What do they mean, and should you sign?

Whether the activity is low-risk or high-impact; from hiking to parachuting; at private facilities or public ones, the trend is to try to protect sponsors of such activities from responsibility for your safety. Such "exculpatory release agreements" are the providers' way of protecting themselves. In the midst of a light-hearted outing, it's hard to stop

and think about what could go wrong, but signing or accepting these could create terrible financial and emotional problems should an accident occur and someone gets hurt. These agreements can result in a negligence action being dismissed simply based on the release or ticket, rather than tried on its merits.

Releases absolving owners of recreational facilities from liability for injuries as a result of their negligence generally were enforced. Since 1976 legislation, though, consumers have been protected from such releases, based on the idea that they are either unaware of such language in admission tickets or don't realize the legal consequences of signing such releases.

"We all hope that all our clients and their families have an eventful but safe and happy summer," said Managing Partner **Peter T. Rodgers**. "However, if a family member is injured as a result of carelessness on the part of the recreational facility and you've signed a release or accepted a ticket with such language on it, don't assume that you have no recourse. Be sure to contact us *immediately* and let us review your situation. You may be able to recoup your losses and cover your expenses."

Community service, continued

girls' soccer team for Happy Five Soccer at her church. "It's a great program because all the children participate, not just the 'super stars,' and we try to teach values such as team playing, respect for parents, etc.," she said.

- Community service may keep people young: **Molly Burden** is over 70, but she not only still works at Lacy, Katzen, she is active in her church, where she helps out in the office and serves on several committees. She also collects for the American Heart Association and American Cancer Association.

- **Tracy Gagliano** collects for the

American Cancer Society every year during its annual daffodil sale. Now you know why the Lacy, Katzen office is a-bloom every spring!

- Even though **Mary Lynch** has had to reduce her level of volunteer activity recently, she still spends a couple afternoons a week at The Heritage at St. Ann's as a certified ombudsman — an advocate for residents in long-term-care facilities. "Any resident who has issues can come to me and, ideally, we can get the issues resolved," she said. "Many residents are apprehensive about speaking for themselves and many do not have family members to speak for them."

Lynch also volunteers at what is popularly called "the Catholic fundraiser" — bingo — one evening a week at the Church of the Annunciation, and is in a pre-associate program at the Sisters of Mercy, where her volunteer work has yet to be determined. Just imagine how much she would give to others if she were feeling up to par!

- **Joani Pritchard**'s community service involves hands-on aspects of police activity — she has been an active member of the Rochester Police Department Community Response Team for the past four years, as one of a trained group of civilians who respond

Continued on next page

Community service, continued

on a “call-out” basis when a homicide occurs in the city.

“We meet at the Police Section where the homicide occurred, are briefed by homicide Investigators and Family Crisis Intervention Team (FACIT) to go into the affected area, speak to the neighbors and assist them with their problems and concerns,” said Pritchard. “Many people, including young children, are affected by crime in their ‘backyards.’ I have found that our presence is very much appreciated by residents and they are thankful that Police Chief Duffy and Mayor Johnson have sent us to reach out to them. My involvement in the Homicide Response Team has been one of the most fulfilling accomplishments of my life. It amounts to doing something for others without the dollar. My reward is a tremendous amount of inner peace from reaching out to our community in times of need.”

• **Wende Hull-Schultz** has been costume coordinator for her daughters’ school musicals for the past few years. Being one of the parent volunteers who take care of props, stage scene construction, ushering, cast party, concessions, flower sales and costumes, just to name a few things, “has been a wonderful experience for all involved and brings the families closer together,” she said.

Have a safe summer,
but remember that our
personal-injury, medical
and hospital-negligence
practice areas
are at your service
if you need us.

Firm news

• **Karen Schaefer** discussed “Law as a Career” at a U.S. History and a Business Law class at Honeoye Falls-Lima for the school’s Junior Class Career Day in March. In June, she will address an investment club on estate planning, including wills, ways to save estate and income tax, protecting assets from long-term-care costs, powers of attorney, healthcare proxies and living wills, structuring assets, and beneficiary designations.

Our Practice Groups

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- Collection & Creditor Services
- Corporate, Banking & Business Law
- Debt Relief & Bankruptcy
- Divorce & Family Law
- Employment Law
- Estates, Trusts & Elder Law Services
- Municipal Law
- Personal Injury & Wrongful Death
- Real Estate Services
- Wills & Estate Planning

Our website and e-mail

- Visit us on the Web at www.lacykatzen.com
- Please feel free to send questions or comments to: attorney@lacykatzen.com

Our Offices

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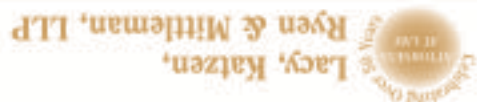
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Canandaigua 23 North Street Canandaigua, NY 14424 585-394-5220	Linden Oaks/Eastside 110 Linden Oaks, Suite E Rochester, NY 14625 <i>(By appointment only)</i> 585-454-5650
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