

***In this issue:***

- Lacy Katzen Named as a Top Workplace in Rochester in 2016
- Remembering Leon Katzen, Co-Founder of Lacy Katzen LLP
- Social Media Policy Considerations for Employers
- The Early Recognition and Treatment of Patients With Sepsis Saves Lives
- Elder Law Update: Extended Medicaid Application Approval Times
- Lacy Katzen is Proud to Announce the Formation of its Pro Bono Committee
- Congratulations! The Award Goes To...

Visit our new blog at  
[www.lacykatzen.com](http://www.lacykatzen.com)

**Our Attorneys**

**Partners**

Peter T. Rodgers  
 Karen Schaefer  
 Lawrence J. Schwind  
 David E. Anderson  
 Craig R. Welch  
 Christopher B. Mumford  
 Terrance W. Emmens  
 Mark H. Stein  
 Jacqueline M. Thomas  
 Matthew A. Ryen  
 Jennifer L. Chadwick  
 Daniel S. Bryson  
 John Refermat  
 Lisa C. Arrington  
 Mary V. Fisher  
 Timothy Muck  
 Robin Folts  
 Herbert W. Lacy  
 (1920 - 1989)  
 Leon Katzen  
 (1918 - 2015)

**Of Counsel**

*Sr. Counsel*  
 Louis A. Ryen  
 Robert M. Vigdor  
 Michael S. Schnittman  
 Robert J. Burke  
 Kevin A. Morabito  
 Daniel L. Romano

**Attorney**

David D. MacKnight  
 Joanne Constantino  
 John M. Wells  
 Michael J. Wegman  
 Rachelle H. Nuhfer  
 Matthew D. Holmes  
 Kelly R. Gusmano  
 Joshua B. Beisker

**LACY KATZEN NAMED AS A TOP WORKPLACE IN ROCHESTER IN 2016**

Lacy Katzen is proud to have been named a Top Workplace in Rochester for 2016. To be awarded with this recognition, Lacy Katzen team members were given the opportunity to provide feedback on our Firm’s culture and work environment through an anonymous survey conducted by Workplace Dynamics for the Democrat & Chronicle. Based on the feedback of our employees, we were honored to be recognized along with some of the best companies in Rochester.

Lacy Katzen strives to fulfill the mission of our Firm, which is to serve our clients with excellence each day. We do this by holding steadfast to our values of Teamwork, Excellence, and high Ethical standards while following Common sense financial practices. Every day we are privileged to work together collaboratively with a great team of talented employees. We are proud to be recognized as a Top Workplace in Rochester.

**REMEMBERING LEON KATZEN, CO-FOUNDER OF LACY KATZEN LLP**

While 2016 promises to be a year of exciting and new challenges for Lacy Katzen LLP, it is also one that is marked with sadness. It is the first year that we are without our co-founder, Leon Katzen. Leon passed away on October 29, 2015 at the age of 97.

Leon left behind a legacy that will be permanently engrained in the Firm. He exemplified and enacted the core values that we steadily stand by today—teamwork, excellence in all that we do, high ethical standards, and common sense financial practices.

Leon founded the law firm with fellow World War II veteran Herb Lacy back in 1950. Their vision was to create a full-service regional law firm that represented each client with unmatched advocacy. They also believed in a philosophy that being a good lawyer goes beyond the knowledge of the law and must include a dedication and caring for the clients being served. Throughout Leon’s 70-year legal career, he became widely recognized and revered for his passion and commitment to his clients. He may have been tough, but it was out of an internal drive and desire to see justice served to those for whom he advocated. He believed in standing up for those who felt as if they did not or could not have a voice and zealously did so when representing a client.

Just two months before his passing, Leon could be seen coming in to the office a couple of times each a week. Just this past August he was out on the dance floor at the Firm’s annual summer party. He has been described as the “soul” of Lacy Katzen and as “having boundless energy” by those that have worked with him.

Predeceased by his wife of 61 years, Leon leaves behind 4 children, 10 grandchildren, several great-grandchildren, friends, and over 70 co-workers at his firm. He is and will be greatly missed.

## **SOCIAL MEDIA POLICY CONSIDERATIONS FOR EMPLOYERS**

---

Facebook, Snapchat, Instagram, Twitter, and countless other social media platforms are the go to sources of information for anything from the presidential election to new and exciting recipes. Social media platforms also allow anyone to share their own unique experiences with all of their friends and families. While these platforms are an excellent source of information, they can also cause major headaches for employers who want to keep company morale high and protect their company's reputation.

Employers that want to actively monitor the social media activities of their employees must exercise caution, because government agencies such as the National Labor Relations Board ("NLRB") are increasing their review of social media policies and practices. The failure to follow local and national laws regarding social media and the workplace can lead to costly litigation. Therefore, employers must be diligent in drafting and/or reviewing their social media policies. The following ideas should be kept in mind while considering social media policies:

### **1. If you are terminating an employee because of a social media post, be sure that the post was not related to a concerted activity or criticism of any terms and conditions of their employment:**

The NLRB recently issued a number of decisions holding an employer liable under the National Labor Relations Act ("NLRA") for terminating an employee related to social media because the act of posting an employee's complaints to social media was a protected concerted activity under the NLRA. While this development is relatively new, the fact that these protections now extend to social media usage should be no surprise to employers, because the NLRB has consistently made the point that it strives to protect employees who discuss their working condition, complaints, and the terms of their employment.

Therefore, when evaluating a decision to terminate an employee because of a social media post, employers should ask:

*a. Is the employee discussing issues with another employee that may be interpreted as protected concerted activity?*

*b. Is the employee criticizing a management policy or generally complaining about the terms of employment?*

If the answer to either question is yes, then the employer must re-evaluate whether the employee can be terminated, because these types of activities would most likely be protected under the NLRA, even if there is no union involved. Employers must also remember that they cannot prevent an employee from discussing their wages or other conditions of employment with another person.

Are there any ways that you can terminate an employee for their social media posts? Absolutely. An employer has the right to take adverse action against an employee if the employee's social media posts:

1. Poses a threat against a co-worker
2. Constitute a threat against a co-worker
3. Contain confidential information about the company or client relationships that if released to the general public would harm the company's reputation.
4. Contain information that would indicate that the employee is engaging in fraud or a deceptive practice against the company (i.e. an employee calls in sick one day and is later seen on Facebook that same day out at a bar casually drinking).

All of the above ideas should either be in your company's social media policy or should be brought up the next time the policy needs to be revised.

### **2. Using social media proficiency in the hiring process could open an employer up to a discrimination claim.**

It is completely understood that brand new companies want to take to social media to develop their brand, garner recognition, and hire talented individuals. It is also commonplace to acknowledge that social media presence can be a deciding factor as to whether a company is successful. Therefore, it makes perfect sense that an employer who has a major presence on social media would want to hire someone who can understand its intricacies and effectively market it to the public.

However, knowing how to manage multiple Twitter accounts and having the ability to take the best photos on Instagram cannot be used as guiding factors to screen qualified employees. Social media savvy could be interpreted as discriminatory against applicants who either have not had access to social media or do not have the resources to become familiar with it. These skills could be seen as a selection tool that eliminates entire groups of people such as the poor or the elderly.

If your company needs employees with a strong social media background, then it should consider incorporating training procedures in social media to qualified applicants, because the failure to do so may ultimately be seen as discrimination.

## THE EARLY RECOGNITION AND TREATMENT OF PATIENTS WITH SEPSIS SAVES LIVES

---

Sepsis is a range of clinical conditions caused by the human body's systemic response to an infection. Sepsis affects about 750,000 people every year in the United States. The mortality rate between twenty and fifty percent is alarming. A patient's likelihood of death as a result of sepsis can depend on how quickly the patient is diagnosed and treated with powerful antibiotics to battle the bacteria racing through their system as a result of sepsis.

The New York State Health Department has stated that in New York State the number of severe sepsis cases increased from 26,001 in 2005 to 43,608 in 2011 – an increase of 68%. The number of sepsis cases in New York State increased from 71,049 in 2005 to 100,073 in 2011 – an increase of 41%. According to the New York State Health Department, sepsis mortality is significant and ranges widely from one hospital to another. In New York, sepsis mortality ranges from 15% to 37%.

A patient may have a greater chance of dying of sepsis if care is provided by an institution ill-prepared to deal with this illness or from providers not thoroughly trained in identifying and treating sepsis. The likelihood of death following initial diagnosis of sepsis is more than 20% and the window for administering effective treatment is short.

According to the New York State Health Department, the rapid diagnosis and management of sepsis is critical to successful treatment. The sepsis patient is usually already critically ill and requires immediate attention to avoid rapid deterioration. It is necessary to treat the patient at the same time as confirming the diagnosis.

The New York State Health Department recently promulgated new regulations which promote the early identification and treatment of sepsis at the general hospitals in New York State by focusing on the following areas:

- Recognition of risk factors, signs and symptoms of sepsis;
- Resuscitation with rapid intravenous fluids and administration of Antibiotics upon diagnosis of sepsis;
- Referral to appropriate clinicians and teams as appropriate;
- Measurement and evaluation of current practices for purposes of informing future policy; and
- Quality improvement measures that will permit development and dissemination of best practices through clinical and administrative information sharing.

New York State regulations require all hospitals within New York State to submit evidence to the New York State Department of Health of the following:

- Adoption of an evidence based sepsis protocol;
- Information sufficient to evaluate each hospital's adherence to its own sepsis protocol;
- Data to permit the evaluation of risk-adjusted severe sepsis mortality rates.

At Lacy Katzen we are experienced in representing patients who have suffered harm or death as a result of the failure of a physician or hospital to timely and accurately diagnose and appropriately treat serious medical problems, including sepsis.

## ELDER LAW UPDATE: EXTENDED MEDICAID APPLICATION APPROVAL TIMES

---

Medicaid applications in Monroe County are taking longer to get approval due to the fact that the Department of Social Services in Monroe County has recently experienced an increase in employee turnover. The staffing issues have been caused by the retirement of many experienced caseworkers, creating a noticeable loss of institutional knowledge. Newly hired caseworkers are working hard to keep up with the heavy case load as they come up to speed with complicated asset protection plan applications.

In order to keep cases moving and to meet statutory processing time limits, applications are now being "opened" with limited Medicaid coverage and passed on to conversion caseworkers to complete the application review. This limited Medicaid coverage preserves the application date but does not allow for payment of outstanding nursing home bills.

As a result, Lacy Katzen Medicaid paralegals are finding that additional time and effort is now required to review the case with a second caseworker in order to get Chronic Care Medicaid coverage approved. Currently, applications are pending in Monroe County on average six to eight months. We have also noted an increase in errors on Medicaid Determinations when they are finally received as to coverage date, monthly income, resource calculation and application of penalty periods. Under the current conditions, clients are strongly advised to seek assistance with filing Medicaid applications.

If you have questions, please do not hesitate to contact a member of the Lacy Katzen Elder Law team.

## LACY KATZEN IS PROUD TO ANNOUNCE THE FORMATION OF ITS PRO BONO COMMITTEE

---

Lacy Katzen's attorneys and legal professionals share a longstanding, deep commitment to providing legal services, free of charge, to those in need in the Rochester community. We are dedicated to offering quality pro bono legal services to the disadvantaged members of our community, giving them access to justice.

Consistent with those values of dedication to the community, Lacy Katzen is proud to have established a Pro Bono Committee to coordinate and oversee the firm's pro bono activities. The Committee's membership currently consists of attorneys Mary V. Fisher and Michael Wegman, Director of Operations Sandra Harte, and Administrative Assistant Hillary Panek. The Committee members will work to bring pro bono opportunities to the attention of the other members of the firm, facilitate communication between members of the firm and community pro bono programs (such as the Volunteer Legal Services Project or "VLSP"), and assist in monitoring active pro bono cases being handled within the firm.

The Committee has implemented a formal pro bono policy encouraging each Lacy Katzen attorney to take on a minimum of one new pro bono case each year. The policy encourages attorneys to work with and take on cases referred through the VLSP in particular, as VLSP is an established local pro bono program with a long track record of serving disadvantaged persons.

We hope that in providing legal services to those most in need, we will gain a better understanding of the issues and challenges the people in our community face on a daily basis. Lacy Katzen is proud to continue serving and supporting the Rochester community.

## CONGRATULATIONS! THE AWARD GOES TO...

---

Lacy Katzen attorney Mary V. Fisher has been active in the Rochester community since the 1980s, and 2015 was no exception for her.

Mary's community involvement began with Mary Cariola Children's Center, a place for children with multiple, complex disabilities, and various religious centers and organizations. When asked what motivated her to volunteer in the community, she noted that her parents had been involved in the community and volunteering, so it was instilled in her from a young age. "It just becomes part of your soul," she said.

Mary is currently involved in a number of community organizations, including the Highland Park Conservancy, where she is currently working toward rebuilding the children's pavilion in the park, and Cracker Box Palace and Historic ALASA Farms where she writes grant applications, organizes the annual golf tournament, and works on the Farm Frenzy Walk-A-Thon. She also volunteers her time at the Sojourner Development Corporation and Monica Housing, the VLSP Advisory Committee, and committees on the Rochester Area Community Foundation. In the past, Mary has been a board member on the Rochester Area Community Foundation, the Rochester Contemporary Arts Center, the Sojourner House, and the Planned Giving and Endowment Committees of various religious and not-for-profit organizations.

Due to her outstanding involvement in the Rochester community, Mary was the 2015 recipient of the Daily Record's Nathaniel Award, which is awarded to one member of the Rochester legal community each year "who regularly goes above and beyond the call of duty in the name of justice."

We are proud to have Mary as a part of our team here at Lacy Katzen and congratulate her on her outstanding accomplishments.

## NEWS WITH THE FIRM

We are happy to welcome Kelly R. Gusmano to Lacy Katzen LLP. Kelly graduated from Syracuse University College of Law. Kelly will focus her practice in the area of Elder Law and Medicaid Planning within the Trusts & Estates Department.

We are happy to welcome Matthew D. Holmes to Lacy Katzen LLP. Matthew is a recent graduate of Syracuse University College of Law. Matt will be working with the Partners in the Corporate, Business and Banking Department of the Law Firm. He will also be focusing on Employment Law.

Joshua Beisker, Esq., LL.M. has joined the Trusts and Estates team as an Associate, primarily working on Estate Planning and Estate Administration matters. Josh received his JD degree from St. Thomas University School of Law and his Master of Laws Taxation (LL.M.) from Villanova University Law School Graduate Tax Program. Josh has been working in the area of Trusts & Estates for 10 years with his most recent work at Boylan Code LLP.

Partner Larry Schwind has authored a chapter in a new book being published by Thomson Reuters Westlaw titled: "Inside the Minds: Strategies for Family Law in New York." This publication will feature insights from Family Law partners from law firms throughout the state. The book will be published in late spring of 2016.

Monroe County Bar Association (MCBA) President Neil Rowe recently appointed Lacy Katzen partner John Refermat to serve as an alternate on the MCBA's Judiciary Committee, which evaluates candidates for judicial office, issues candidate recommendations to MCBA Trustees, and provides annual evaluations of sitting judges.

Lacy Katzen LLP has been recognized with Tier 1 Best Law Firm Distinction from Best Lawyers and U.S. News & World Report in the areas of Medical Malpractice Plaintiffs and Trusts & Estates Law and Tier 2 Best Law Firm Distinction from Best Lawyers and U.S. News & World Report in the areas of Banking & Finance, Bankruptcy & Creditor Rights, and Corporate Law.

We are honored to have attorneys Mary V. Fisher, Peter T. Rodgers, Karen Schaefer, and Michael S. Schnittman recognized as 2015 Upstate New York Super Lawyers and attorneys Robin L. Folts, Timothy C. Muck, and John M. Wells recognized as Super Lawyer Rising Stars for 2015.

The following Lacy Katzen attorneys were recognized as Best Lawyers in America® for 2016: Jennifer L. Chadwick (Banking and Finance Law), Terrance W. Emmens (Trusts & Estates), Mary V. Fisher (Trusts & Estates), David D. MacKnight (Bankruptcy & Creditor Debtor Rights), Peter T. Rodgers (Medical Malpractice Law representing Plaintiffs), and Karen Schaefer (Corporate Law and Trusts & Estates).

Congratulations to the firm's Director of Operations, Sandra Harte, on her inauguration as President of the Rochester Chapter Association of Legal Administrators for 2016.

Congratulations to Partner Larry Schwind who has been selected for the second year in a row by the American Institute of Family Law Attorneys as one of the "10 Best Family Law Attorneys" in New York. This distinction is based on professional achievements and client satisfaction ratings.

Welcome to our new employees: Sue Gill, Ingeborg Mallory, Jill Routly, and Mary Beth Davis.

Partner Lisa C. Arrington gave a seminar in conjunction with MetLife. The seminar topic was Estate Planning and was given at Monroe Community College.

Attorney John Wells will be giving a seminar at the Monroe County Bar Association. The topic is on "Cost Effective Legal Research."

Partner Lisa C. Arrington presented at a Medicaid seminar for the New York State Bar Association.

Holly Krossber, a Paralegal in our Estate Administration Team, was elected as the newest Trustee of the Village of Rushville.

Partner Karen Schaefer will be presenting on "Family Business Succession Planning at the Intersection of Estate Planning and Business Law" for lawyers at the Monroe County Bar Association.

Partner Larry Schwind has been asked to present a seminar in the MCBA Family Law Section "Separation Agreement Series," focusing on Child Support provisions in Separation Agreements. The seminar is scheduled to take place on Friday, May 20th.

Attorney Rachelle Nuhfer is presenting at two upcoming seminars presented by the New York State Bar Association. The first topic will be Estate Planning and Will Drafting. Specifically, Rachelle will be providing an estate planning overview and will discuss will drafting techniques. During the second seminar, Rachelle will be presenting on issues related to Guardian ad Litem service in Surrogate's Court.

Congratulations to Marilyn Rowell on the birth of her grandson, Eli, Dave MacKnight on the birth of his grandson, Aidan, Lisa Robertson on the birth of her grandson, Evander Bradley Robertson, and Ami Gallagher and her new husband, Mark Gallagher.

## Legal Notes

130 East Main Street

P.O. Box 22878

Rochester, New York 14692-9903

### Legal Notes

is published by Lacy Katzen LLP

© 2016 Lacy Katzen LLP

To receive the newsletter by  
e-mail, send a request to  
sharte@lacykatzen.com

To change mailing information,  
send details to  
sharte@lacykatzen.com

## Our practice groups

- Corporate, Business & Banking Law
  - Real Estate
  - Municipal Law
- Business Succession Planning
- Estate Planning & Wealth Management
  - Elder Law & Medicaid Planning
  - Estate Administration
- Medical, Hospital and Nursing Home Malpractice
  - Personal Injury & Wrongful Death
  - Motor Vehicle Accidents
    - Litigation
    - Family Law
  - Creditors' Rights
  - Collections

## Our website and e-mail

- Visit our new website  
[www.lacykatzen.com](http://www.lacykatzen.com)
- Please feel free to send  
questions or comments to:  
[atty@lacykatzen.com](mailto:atty@lacykatzen.com)

## Our offices

*We work with you in an office close to you!*

### Rochester

The Granite Building  
130 East Main Street  
Rochester, NY 14604  
(585) 454-5650  
800-676-5576

### Bergen

16 North Lake Street  
Bergen, NY 14416  
(585) 494-1382

### Batavia

Suite 2-6  
319 West Main Street  
Batavia, NY 14020  
(585) 219-4090

Attorney Advertising

### Canandaigua\*

23 North Street  
Canandaigua, NY 14424  
(585) 394-5220

### Greece

1101-C English Road  
(Corner of English Rd.  
and Fetzner Rd.)  
Rochester, NY 14616  
(585) 225-2470

### Charlotte

4292 Lake Ave  
Rochester, NY 14612  
(585) 663-4543

### Hilton\*\*

20 Main Street  
Hilton, NY 14468  
(585) 392-2990

### Pittsford\*

1173 Pittsford-Victor Rd.  
Suite 140  
Pittsford, NY 14534  
(585) 454-5650

### Ontario

1276 Ridge Road  
Ontario, NY 14519  
(315) 524-5000

\*The phone numbers for these locations are answered at our main office.

\*\*The phone number for this location is now being answered at our Greece office.