



Fall 2011

# NIABA News

*Men and women sharing a common heritage in a chosen profession*

## Spring Investiture Preludes NIAF's 36th Washington D.C. Gala in October



By Frank Schiro  
NIABA President

It has been but a few months since the May 21, 2011 Black Tie Optional Investiture of New Officers and Board Members at the prestigious Milwaukee Athletic Club Grand Ballroom in downtown Milwaukee, Wisconsin

It is with humble heart and pride that I was installed as the new President of NIABA. I accept this position as an opportunity to serve rather than as a crown of glory.

The installation weekend was filled with fraternal, cultural and professional connections, including the assembling for board meetings at the Justice Scalia-dedicated new Marquette University Law School; an invitation cocktail reception hosted by the Wisconsin Justinian Society at the exclusive Wisconsin Club; a private box buffet party at the state-of-the-art Miller Park baseball stadium watching the then-pennant hopeful Milwaukee Brewers; a sumptuous Italian dinner at a well known Scilian cafe, La Conco D'Oro, and a surprise cameo visit by retired board member Paul Vitrano from Michigan, who enriched us with his affirmation of the worthy purposes and friendships offered by NIABA membership.

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### *Letter from the President*

## A Unique, Abiding History Brings Us Together

We are reminded that NIABA exists and gathers together for the purpose of advancing the interests of the Italian-American legal community and to



improve the administration of justice.

In doing so we are uniquely connected to our heralded, unparalleled cultural history allowing our members – including judges, law professors, law students, private and public sector attorneys – to network professionally and fraternally so as to create and nourish new and continuing life-long relationships and pursuit of our common cause.

From the time my father immigrated to this country in the

early 1900s to now in the early 2000s, we have witnessed the transformation of a migrant population of mostly little-educated, needy, courageous pioneers; with a work ethic and embedded family values and an abiding faith in God to propel them now into the highest positions of public trust and service in the continuous sculpting of a very special and blessed nation – our America.

Now we no longer band together principally for common

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## BOARD OF DIRECTORS

### OFFICERS:

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Executive Vice President

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## Investiture

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In Milwaukee we also contracted with Mind Your Business and hired Ms. Dana Robb as our Administrative Assistant for promising infrastructure upgrades.

It is with distinct pleasure that I announce our next board meeting sessions to be held in Washington D.C. on October 28-30, 2011 in joint participation with the NIAF (National Italian American Federations) 36th Annual Convention and Gala. The convention site is the Washington Hilton, wherein we will hold our board meetings on Friday afternoon and Saturday morning.

NIABA has committed to (3) tables (30 tickets) for the Saturday evening black tie Gala dinner that will host many national and international dignitaries.

We are pleased to once again to co-sponsor with NIAF a \$5,000 scholarship to a worthy qualified Italian American student.

Any NIABA member and guest would be

welcome to join the board for our meetings and especially for Saturday night dinner at our reserved tables by notifying me at 1-414-271-7776 as soon as possible. You will be afforded the block room rates at the Hilton for the weekend events.

The October 2011 Washington D.C. NIABA participation with the NIAF Gala once again gives opportunity to nourish our relationships with our NIABA colleagues and network and connect with thousands of others attending the Gala to further advance the interests of the Italian-American legal, cultural and fraternal community.

In 2012 we will be planning to add a NIABA-NIAF jointly sponsored CLE as an added dimension to our participation.

If you are an Italian American attorney you are invited to join us to march together for common cause in culture and profession to pursue our worthy goals.

## President

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cause in culture and profession to defend against iniquities and discrimination practiced against we Italian-Americans, but rather to celebrate our achievements and successes that continue to significantly weave the making of the American fabric.

In doing so we offer various membership

benefits, a national voice, continuing legal education, an acclaimed law journal, *THE DIGEST*, plus professional and fraternal networking and enduring relationships.

Fraternally yours,  
Frank J. Schiro  
NIABA President

## Submissions Sought For *THE DIGEST* Law Journal

The next issue of NIABA's law journal, *THE DIGEST*, is being put together and Professor Robin Paul Malloy, our Editor-in-Chief, has put out a call for material. NIABA members are invited to submit articles for consideration. Articles on all topics are welcome and may be sent at any time. Student editors are available to help with some of the footnote work.

Professor Malloy is Senior Associate Dean for Academic Affairs and Professor of Law & Economics at Syracuse University. Articles should be sent to him in Word format at [rpmalloy@law.syr.edu](mailto:rpmalloy@law.syr.edu), or by mail to Professor Robin Paul Malloy, College of Law, Syracuse University, Syracuse, NY 13244.

NIABA is grateful to Professor Malloy and the student editorial board which he oversees for their commitment to producing a worthy publication.

# Washington D.C. Board of Directors Meeting

The National Italian-American Bar Association is pleased to announce that we will once again conduct our Fall Board Meeting in conjunction with the National Italian America Foundation's Annual 36th Annual Gala Event in Washington D.C., on October 28th and 29th.

The Board will conduct business meetings on Friday afternoon and Saturday morning at the Washington Hilton Hotel, where NIAF hosts its annual gala event. NIABA purchases blocks of tickets for the Saturday evening black tie Gala dinner and invites those who wish to attend to join us. Please contact NIABA President Frank Schiro at [fschiro@gmail.com](mailto:fschiro@gmail.com) to let him know if you wish to drop by and meet the board, or if you would like to sit with us on Saturday evening.



While in Washington, the board is making plans to meet and visit with local NIABA members for networking and socializing. This annual event has become a tremendous success and an opportunity to meet Italian American attorneys and important Italian Americans from around the country.

NIAF has scheduled a weekend full of activities including the incredible Expo Italia, which showcases the best of Italy on Friday and Saturday.

There will also be world class entertainment on Friday night, the celebrity auction and, of course, the black tie gala on Saturday evening – at which time NIAF presents its honorees.

## Appointments Committee Seeks Candidates for the Federal Bench

The NIABA board of directors reminds its members of our association's interest in the advancement of qualified candidates for appointment to the federal bench and to administrative positions within our government.

To that end, the NIABA provides its Appointments Committee, currently chaired by board member Cirino Bruno of New York. The committee invites those seeking federal judicial or administrative appointment to submit a de-

tailed resume together with a description of the position sought, the name and address of the appropriate contact to whom a recommendation may be sent and other materials pertinent to the evaluation process.

The association is proud to submit its recommendation on behalf of qualified Italian-American legal professionals, as it has in the past. Information and requests may be submitted to Cirino Bruno, Esq. at [cirinobruno@yahoo.com](mailto:cirinobruno@yahoo.com).

## We Need Your Email Address

If you received a hard copy of this newsletter in the mail, it probably means we do not have your current email address. Please help us, help yourself, and help the environment by providing that contact information to NIABA Administrator Dana Robb at [dana@barefoot-marketing.com](mailto:dana@barefoot-marketing.com).

Not only will we save the cost of printing and mailing, as well as the environmental resources, you'll also get your newsletter sooner, and be able to take better advantage of the information and resources we offer in each issue.

Thanks, in advance, for your cooperation!

## Celebrate Italian Heritage Month with the Mass. JLS

On October 26, 2011 the Massachusetts JLS will be celebrating Italian Heritage Month, along with the October is Italian Heritage Month Committee, at Spinelli's Banquet Hall, Route 1 So., Lynnfield, MA. Cocktails are at 6 p.m., with dinner to follow. The group will be honoring Robert "Teddy" Tomasone, Clerk Magistrate of the Somerville District Court, for his work with the North End Athletic Association, a youth sports promotional group, and his years of public service in the Trial Court.

Italian Heritage Month in Massachusetts is a very special time and we encourage those who are interested to participate in the many cultural, culinary and historic events throughout the month. Log onto the Justinian or the OIHM web sites for more information and scheduled events.

In 2011, the designation of October as Italian Heritage Month was first promulgated by Governor Argeo Paul Cellucci, the first Italian American Governor of the Commonwealth since Volpe in the 1960s. Because of the hard work and efforts statewide of many different Italian-American cultural groups, each year this has become grander than the last!

# Affiliate Highlights

## Columbian Lawyers Association (First Judicial Department)

On September 14th, the organization celebrated the achievements of Judges of Italian American ancestry at the Columbus Citizens Foundation. On October 5th, the Columbians presented a CLE entitled, "Scams, Schemes and Rules to Keep Clean" by Richard Grayson.

## Columbian Lawyers Association Of Brooklyn

There was a dinner meeting on October 4th at the Rex Manor. The guest speaker was Burton N. Lipshie of Stroock, Stroock & Lavan, LLP.

On Monday, October 10th, all Columbian Lawyer Associations made their traditional march up Fifth Avenue in New York City in the Annual Columbus Day Parade.

A Red Mass will be celebrated on October 19th at the Cathedral Basilica of St. James. On October 20th there will be a special celebration of Italian Heritage and Culture Month at a private dinner club.

## Italian American Lawyers Association (Los Angeles)

The first annual golf tournament will be held on October 21st.

A Supreme Court Night is being planned for December 6th and An Evening with Andrea Bocelli for December 11th.

## Justinian Law Society of Massachusetts

Come celebrate Italian Heritage Month at Spinelli's on Route 1 in Peabody, MA on October 26th. Robert Tomason Clerk Magistrate of the Somerville District Court will be the guest of honor.

A Christmas party and scholarship awards dinner will be held on December 2nd. The biannual installation of officers and directors will take place on January 1st, 2012.

The slate of officers and directors for the 2012-2013 term includes:

- President: John F. Tocci
- President-Elect:  
Richard C. Bardi
- Executive VPs:  
Valerie L. Giglio  
Matthew J. Machera  
Hon. Richard A. Moti  
Hon. Dominic J. Paratore
- Secretary:  
Audrey L. Marinelli
- Asst. Secretary:  
Kristin M. Cataldo
- Treasurer: Claire I. Campo
- Asst. Treasurer:  
Joseph A. Boncore
- Board Members:  
Matthew Duffy  
Riccardo L. Rullo  
Leonard L. Spada  
Jeffrey R. Turco

Elections generally take place at a meeting of the entire society in November, and installations will take place in January at a time and location to be announced.

## Justinian Society of Lawyers (Chicago)

An installation and awards dinner was held on September 22nd at the Palmer House.

On October 20th, the organization will hold its annual scholarship awards dinner at the Holiday Inn Chicago Mart Plaza.

A Past Presidents Dinner meeting will be held on November 17th.

On February 16th, 2012, there will be a Bocce Tournament to be held at Mazzini Verdi Club.

## Justinian Society of Lawyers (Philadelphia)

On October 24th the organization will host author Michael Perino who wrote *The Hellhound of Wall Street*, the story of Italian born attorney Ferdinand Pecora. (See NIABA's Spring 2011 newsletter).

The organization's annual Christmas party will be held on December 13th at The Grand Ballroom at the Ben Franklin.

## Law Student Chapter

As a regular feature to this newsletter, your editors provide this section on law student news. We welcome input from each of our law school chapters to assure inclusion of all items of interest from laws school chapters from through out the country.

A new law student starter kit is now available from

NIABA. The kit contains all the necessary forms for individual student membership, including how to start a law student chapter at your school.

The NIABA student membership posters are available. If one is not on display at your law school, then please let us know.

NIABA has created a list of NIABA law student members, sorted by law school. If you would like to receive a list advising you of student member colleagues with whom you can network at your law school, please let us know.

Inquiries and requests for information are to be directed to Daniel J. Stallone, Esq., Chairperson, NIABA Law Student Division; e-mail [stallone@nova.edu](mailto:stallone@nova.edu).

## New York State Greater Capital Regional Chapter

This year, instead of awarding a scholarship to a law student, the IABA provided a grant to the Legal Aid Society of Northeastern New York, enabling it to hire a law school student as an intern for the summer. With this grant, IABA was able to assist a law school student and support the work that the Legal Aid Society provides in its communities.

With the grant, the Legal Aid Society hired law student Erica "Nic" Rangel who worked in the Amsterdam office and assisted in the Homelessness Prevention and Rapid Rehousing Project.

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## Highlights

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The winner of a raffle -- two tickets to Italy -- was Julia Cannizarro, secretary to Presiding Justice Anthony V. Cardona. Supreme Court Justice Richard T. Aulisi advised Julia of her good fortune.

### Rhode Island Justinian Law Society

An installation dinner will be held on October 26th at the prestigious Aurora Civic Association. Denise Lombardo Meyers will be sworn in as the

Justinian's new President and a distinguished achievement award will be presented to attorney Joyce Farone.

The organization is also planning its annual Christmas par-

ty for December 12th, as well as a resumption of its well attended and popular Food for Thought, Italian Style in April of 2012.

## Rapallo Award Honors Outstanding Jurist



Rapallo Chairperson Thomas Laqueria, Hon. A. Gail Prudenti, Past President Vincent Cuttita and Chief Judge Jonathan Lippman.

Over the course of this past year, the Columbian Lawyers Association for the First Judicial Department has continued its strong tradition of hosting events that exemplify the achievements of Italian American attorneys in the New York City metropolitan area.

On April 30th, the Association held its 46th Annual Rapallo Award Luncheon, which is named after Charles A. Rapallo, the first Italian-American to sit on the New York State Court of Appeals -- New York's highest court.

The Honorable A. Gail Prudenti, the first female Presiding Justice of the Appellate Division, Second Department, was the recipient of this year's

award, which was presented to her by the Honorable Jonathan Lippman, Chief Justice of the Court of Appeals.

The luncheon was held in the Grand Ballroom of the Waldorf Astoria Hotel. Over 650 people attended, including many prominent attorneys, judges and court personnel.

More recently, on September 14th, the Association hosted its annual Judges' Night at the Columbus Citizen's Foundation. Over 50 Italian American judges from nearly every realm of the local New York judiciary attended as honored guests, giving the many attorneys who attended a unique opportunity to network with the Judges before whom they appear.

## Former President of JLS Mass. Nominated to Appeals Court



Former President of the JLS of Massachusetts, Judge Peter W. Agnes, Jr. has been nominated by the Governor of the Commonwealth for elevation to the Appeals Court of Massachusetts (from the Superior Court Division of the Trial Court).

Judge Agnes began his judicial career as the presiding justice of the Charlestown District Court in 1990. He was elevated to the Superior

Court, where he was known for his thoughtful and unprecedented written decisions on a plethora of civil and criminal matters. Judge Agnes was also honored by the Italian American Policemen's Association this summer for his work in the judiciary.

JLS Mass is very proud of him. He has worked very hard in virtually every undertaking he has participated in and the organization wishes him success and many more accolades in his new post.

## REFLECTIONS... on judging

We are told that on the bench, "Lord Lyndhurst's lips would often be seen to move, but no sound proceeding from them would be heard by the bar. The registrar writing beneath him could tell another tale. He could hear his lordship mutter in the course of an argument, 'What a fool this man is!' Then, after an interval, 'Eh, not such a fool as I thought'; then after another interval, 'Egad, it is I that was the fool.'"

- J. Shientag, *The Personality of The Judge*

# Heads Up! Medicare is Looking for You

By Michael E. Civittolo, Esq.

This article discusses some of the significant issues facing the practitioner handling a case in which Medicare's interests are involved. For the reasons which follow, you will see that failure to spot compliance issues and then deal with them appropriately can have serious adverse consequences, not only for your client, but also for you personally.

## Mandatory Insurance Reporting

The Medicare and Medicaid SCHIP Extension Act ("MMSEA") was passed in 2007. Section 111 was included in the Act to create mandatory reporting of payments to medicare beneficiaries by so called Responsible Reporting Entities in personal injury and workers compensation cases. Responsible Reporting Entities face fines of \$1,000 a day per claim for failure to report. The magnitude of the potential exposure from failure to report will ensure compliance and the amount of data should provide the Centers for Medicare and Medicaid Services ("CMS") the information necessary to carry out its duties much more effectively.

Perhaps less well known is the obligation of insurance carriers and self insureds under existing regulations to report to CMS when it is demonstrated that medicare has made payment and the insurance carrier or self insured has made or should have made primary payment.

## The Medicare Secondary Payer Statute (MSP)

Medicare is prohibited from providing coverage to a ben-

eficiary in situations where another applicable plan has paid or is reasonably expected to make payment. Medicare is, however, allowed to make conditional payments subject to reimbursement if there is a recovery by the beneficiary. Although Medicare's right to reimbursement is many times referred to as a lien, it is actually a right of recovery which arises by operation of law at the time the beneficiary receives payment. All parties sharing in the proceeds used to resolve the claim are personally liable for the entire amount of reimbursement due to the Federal Government. Quite simply, not only the medicare beneficiary but also the beneficiary's attorney, medical providers and the primary payer are jointly and severally liable for the entire amount.

The collection tools available to medicare are formidable:

1. It may offset the amount it is due against money a responsible party is entitled to receive from the Federal Government.
2. It may bring an action for double damages against any responsible party.
3. It may bring an action under the Federal False Claims Act for treble damages plus a civil penalty of \$5,000 to \$10,000.
4. It may join or intervene in the relevant action.
5. It may pursue its own separate right of subrogation.

The MSP statute also establishes a private cause of action for double damages in the case of a primary plan which fails to make payment or appropriate reimbursement to a medicare beneficiary.

Besides facing an action from the United States Government, the Federal False Claims Act also provides for Qui Tam actions by private parties to enforce the government's rights. These actions could be quite profitable for those who pursue them.

The claimant's attorney is also exposed to a malpractice action for the client's losses and possibly a disciplinary complaint for failure to protect the interests of Medicare.

## Administrative Remedies

Beneficiaries may petition for a full or partial waiver of medicare's right of reimbursement. In addition, your client may seek to compromise medicare's claim. A request for compromise may be made before or after settlement of the underlying claim.

The rules and procedures governing these remedies are beyond the scope of this article. Obviously obtaining a waiver or reduction of the amount owed could be instrumental in resolving certain cases.

## Documentation

When medicare compliance issues are implicated in your case, standard form or boiler plate releases are insufficient. Settlement documents should precisely identify the injuries released since the scope of the obligation to CMS is determined by the injuries for which compensation is received. Other specific provisions may also be necessary.

## Medicare Set-Aside Arrangements

Your client may require future treatment for the injuries sustained as a result of the claim. If so and the medical expense

relating thereto would be covered by Medicare, you may have to set aside an appropriate amount of money to pay for the treatment. Failure to do so could result in Medicare's refusal to pay for such treatment later or if payment is made, CMS may treat it as a conditional payment subject to reimbursement as outlined above.

CMS will review for approval proposed set-asides in Workers Compensation cases that meet certain thresholds established by CMS. Proposed liability set-asides are reviewed within the discretion of the regional office. Even if CMS declines to review a proposed set-aside, the duty to provide for future medical expenses is not relieved.

The law and best practices in this area continue to evolve as CMS issues additional memos and alerts and appellate decisions are issued. For the reasons stated above, you must ensure that your office makes compliance an ongoing priority.

*Michael E. Civittolo, Esq. has been awarded the Medicare Set-Aside Consultant Certified credential from The International Commission on Health Care Certification and is a member of the National Alliance of Medicare Set-Aside Professionals. He may be reached at (401) 739-6700 x6 or mcivittolo@gmail.com with any questions.*

*The Rhode Island Supreme Court licenses all lawyers in the general practice of law. The court does not license or certify any lawyer as an expert or specialist in any particular field of practice.*

# NIABA Website Updates & Options

## Feedback Appreciated

The NIABA Internet Committee is interested in hearing from the membership regarding any additional suggestions, thoughts or concerns it may have on the subject of the Web Site.

Please feel free to contact committee chair Frank Schiro at fchiro@gmail.com. Visit our website at www.niaba.org and learn more about NIABA.

## Member Web Site Options

NIABA offers two optional website marketing opportunities for members. They are:

### Option 1: E-mail and/or Web Site Link – \$25 one-time charge

Your listing in the online Membership Directory will include your e-mail address and/or Web Site URL. Clicking on listing will activate direct connection. This will be a completely private communication. NIABA only provides the links!

### Option 2: Mini Web Site – \$300 per year

This feature will function as your very own web site, hosted by NIABA. It includes a home page with a direct URL (www.niaba.org/lawfirm), color logo, color picture, e-mail link and link to Service Information Section. This section may contain service descriptions, case studies and/or photos and bios of your principals and staff. Additional sections and content updates are available for a nominal charge. All you need to do is provide tile pictures and text.

To order either option, please complete the form below and mail it with your check to NIABA to:

NIABA  
2020 Pennsylvania Ave., N.W., PMB 932  
Washington, DC 20006-1846

Do not send graphics or text until you are contacted.

Name \_\_\_\_\_

Law Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_ Web site URL \_\_\_\_\_

- Check one:  Option 1: E-mail and or Web Link (\$25)  
 Option 2: Mini Web Site (\$300). Service covers one full year from date of placement of materials on NIABA site.

I affirm that I am a NIABA member in good standing, and that the information to be placed on the NIABA Web Site complies with all rules and regulations regarding lawyer advertising for the states in which I am licensed to practice law.

Signed \_\_\_\_\_

## REFLECTIONS... on advocacy

You state your case to a lawyer, simply. He answers you doubtfully, hesitatingly. You feel it's quite indifferent to him which side he would take. But once you have retained him and paid him to bite into it, he begins to be interested and becomes warmed up to it.

His reasoning and his learning warm up more and more. A manifest and indubitable truth presents itself. He discovers a wholly new light and he honestly believes it. He is convinced.

Indeed, I do not know if the zeal that is born of spite and obstinacy in an encounter with the violence of a magistrate and with danger, or a concern for reputation, has not driven a man to be burned at the stake for an opinion for which among his friends and at ease he would not have been willing to singe the tip of his finger.

- Montaigne, *Essays*, Book II, Chapter 12