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Program Co-Chair

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New York City

Course Book Editor

Ilene S. Cooper, Esq.

Farrell Fritz, P.C.
Uniondale

NYSBA

Trusts and Estates Law Section Spring Meeting

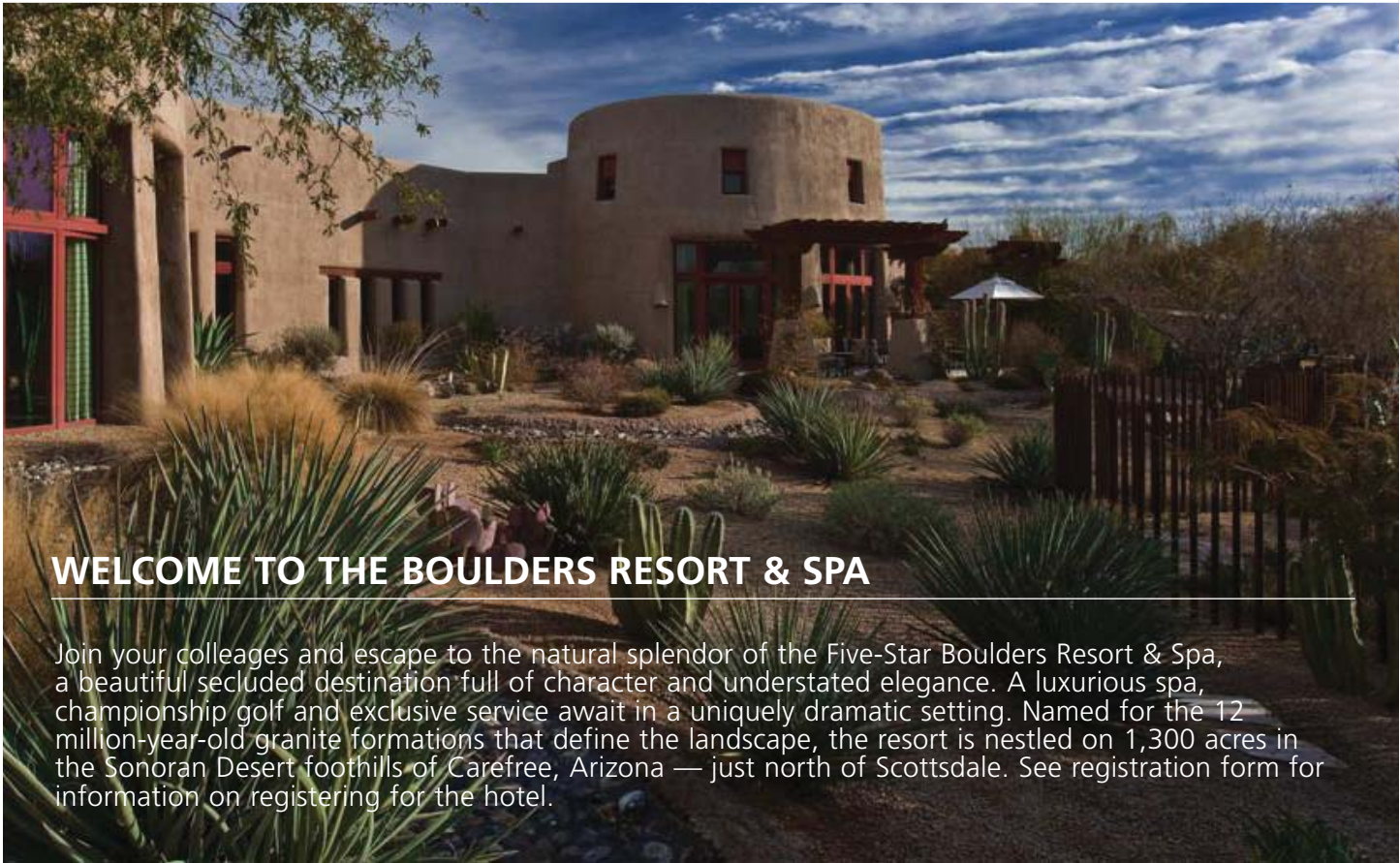
The Boulders Resort & Spa
Carefree, Arizona

May 5 - 8, 2016

***Avoiding Attacks Against the
Fiduciary and the Attorney***



Attendance at this meeting offers up to **9.0 MCLE** credit hours: **6.0** credits in Professional Practice and **3.0** credit in Ethics. **A total of 3.0 MCLE credit hours are transitional: 3.0 credits in Ethics.**



WELCOME TO THE BOULDERS RESORT & SPA

Join your colleagues and escape to the natural splendor of the Five-Star Boulders Resort & Spa, a beautiful secluded destination full of character and understated elegance. A luxurious spa, championship golf and exclusive service await in a uniquely dramatic setting. Named for the 12 million-year-old granite formations that define the landscape, the resort is nestled on 1,300 acres in the Sonoran Desert foothills of Carefree, Arizona — just north of Scottsdale. See registration form for information on registering for the hotel.

IMPORTANT INFORMATION

The New York State Bar Association's Meetings Department has been certified by the NYS Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York.

Under New York's MCLE rules, this program has been approved for a total of up to 9.0 credit hours, 6.0 credits in Professional Practice and 3.0 credit in Ethics. **A total of 3.0 MCLE credit hours are transitional: 3.0 credits in Ethics.**

DISCOUNTS AND SCHOLARSHIPS: New York State Bar Association members and non-members may receive financial aid to attend this program. Under this policy, anyone who requires financial aid may apply in writing, no later than ten working days prior to the program, explaining the basis of his/her hardship, and if approved, can receive a discount or scholarship, depending on the circumstances. For more details, please contact: Kathy Heider, New York State Bar Association, One Elk Street, Albany, New York 12207. kheider@nysba.org.

SPECIAL DISCOUNTS: The Trusts & Estates Law Section has approved a policy which allows for a 50% discount on the registration fees for all Trusts & Estates Law Section members who practice in the public sector or as Court personnel. This discount is not automatic and must be requested in writing as stated above under Discounts and Scholarships. Where applicable, members of the Judiciary may also register and pay the reduced guest registration fee.

Newly-Admitted Attorneys and **First Time Attendees** can register at a discounted registration fee. Rates are indicated on registration form. To qualify for the First Time Attendee rate you must be a Trusts and Estates Section member who has never attended a Trusts and Estates Section Spring or Fall meeting.

Accommodations for Persons with Disabilities: NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, please contact Kathy Heider at 518.487.5500 or kheider@nysba.org.

SCHEDULE OF EVENTS

All meetings are located in El Pedregal & Tohono Conference Center. Please call or text at least 20 minutes prior if you need transportation; it is an approximately 10 minute walk to the various locations.

Thursday, May 5

- 11:00 a.m. – 6:00 p.m. **Registration and Exhibitors – Tohono Foyer**
- 12:00 – 2:00 p.m. **Executive Officers’ Meeting – Lyon Den**
- 2:00 – 5:00 p.m. **Executive Committee Meeting – Tohono 1 & II**
- 6:00 – 7:30 p.m. **Welcoming Cocktail Reception – Duck Pond**
Cocktails and substantial hors d’oeuvres will be served, along with coffee and dessert.



Friday, May 6

- 7:00 a.m. – 1:00 p.m. **Registration and Exhibits – Tohono Foyer**
- 8:00 – 8:50 a.m. **Breakfast with the Surrogates – Saquaro Room**
“THE FIDUCIARY: LITIGATE OR MEDIATE – LET’S ASK THE SURROGATE”
- Mediation? When to consider and how to approach.
 - Contested accountings: surcharges, costs and counsel fees
 - Reaching settlement in the Court of Equity

Speakers:

- | | |
|---|--|
| Hon. Nora S. Anderson
New York County Surrogate’s Court
New York City | Hon. Louis P. Gigliotti
Oneida County Surrogate’s Court
Utica |
| Hon. Brandon R. Sall
Westchester County Surrogate’s Court
White Plains | Hon. Stephen W. Cass
Chautauqua County Surrogate’s Court
Mayville |

- 8:00 – 9:30 a.m. **Continental Breakfast – Tohono Foyer/Terrace**
Everyone, including spouses and guests, is invited to a continental breakfast with our exhibitors.

- 8:30 a.m. – 1:00 p.m. **SPOUSE/GUEST PROGRAM – *Heard Museum and Desert Botanical Garden Tour***
\$95 per person
This tour combines two of the Valley’s most unique and interesting visitor attractions. The Desert Botanical Garden is the only botanical garden dedicated entirely to the study of desert plant life. Its display of over 15,000 desert plants is one of the finest in the world. Located in beautiful Papago Park, the garden draws over 100,000 people each year.
The internationally acclaimed Heard Museum is one of the best places to experience and learn about the fascinating cultures and art of Native Americans of the Southwest. Founded in 1929 by Dwight B. and Maie Bartlett Heard to house their personal collection of Native American artifacts, the museum today is known for its extensive collection of artifacts, fine art, unique exhibits and innovative programming. **Transportation will depart at 8:30 a.m. from main lobby.**

- 9:00 a.m. – 12:45 p.m. **GENERAL SESSION – “LITIGATING THE FIDUCIARY” – Tohono Ballroom**

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| 9:00 – 9:10 a.m. Welcoming Remarks
Magdalen Gaynor, Esq.
Section Chair | Program Introduction
Carl T. Baker, Esq.
Program Co-Chair |
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- 9:10 – 10:00 a.m. **“Claims Against Fiduciaries and Basis for Removal”**
- Conflicts of interest for executors/administrators and trustees
 - Dishonesty and improvidence
 - What constitutes breach of the fiduciary duty - executors, trustees and attorneys-in-fact
 - Helping clients understand fiduciary liability and avoiding claims

Speaker:

- Donald Novick, Esq.**
Novick & Associates, P.C.
Huntington

SCHEDULE OF EVENTS

Friday, May 6 continued

10:00 – 10:50 a.m.

“The Fiduciary’s Arsenal: Litigating Discovery Proceedings”

- The legal fishing expedition: the inquisitorial phase
- The trial: the turnover phase
- Common issues and burdens of proof
- Estate Planning to avoid discovery proceedings
- Playing defense: reverse discovery proceedings

Speaker:

Angelo M. Grasso, Esq.

Greenfield Stein & Senior LLP
New York City

10:50 – 11:05 a.m.

Refreshment Break with the Exhibitors – Tohono Foyer

11:05 – 11:55 a.m.

“Will and Trust Contests: What Steps Can the Estate Planning Attorney Take to Prevent, Minimize or Defeat Objections to a Decedent’s Will or Trust”

- In terrorem clauses and disinheriting family members the right way
- Testamentary capacity issues and dealing with the client with diminishing capacity
- Choosing the right executor, trustee or attorney-in-fact to avoid future conflict
- Best practices

Speaker:

Gordon Dickens, Esq.

Woods Oviatt Gilman LLP
Rochester

11:55 a.m. – 12:45 p.m.

“Settlement Agreements: Avoiding Traps and Further Disputes”

- Drafting settlement agreements for will contests and contested estate accountings
- Settlement agreements involving trust terminations and trust modifications
- Avoiding tax surprises in settlement agreements
- “So ordered” or not? What’s the difference?

Speakers:

Mitchell J. Cooper, Esq.

Spizz & Cooper
Mineola

Hon. John M. Czygier, Jr.

Suffolk County Surrogate’s Court
Riverhead

1:00 p.m.

Golf Tournament at Boulder’s Golf Course – \$200 per person

Shuttle will pick you up from the main lobby. Green fees, cart fees and boxed lunches will be provided. Experience challenging play on the sun-splashed terrain of the Boulders Club. **Prior sign up required.**

6:30 – 10:00 p.m.

Reception and Dinner - Cocopelli

Saturday, May 7

7:30 a.m. – 12:40 p.m.

Registration and Exhibits – Tohono Foyer

8:00 – 8:50 a.m.

Committee Breakfast Meetings – Saquaro Room

8:00 – 9:30 a.m.

Continental Breakfast – Tohono Foyer/Terrace

Everyone, including spouses and guests, is invited to a continental breakfast with our exhibitors.

8:50 a.m. – 12:35 p.m.

GENERAL SESSION – “LITIGATING THE ATTORNEY” – Tohono Ballroom

8:50 – 9:05 a.m.

Welcoming Remarks

Magdalen Gaynor, Esq.
Section Chair

NYSBA Welcome

David P. Miranda, Esq.
President, NYSBA

Program Introduction

Jill Choate Beier, Esq.
Program Co-Chair



SCHEDULE OF EVENTS

Saturday, May 7 continued

9:05 – 9:55 a.m.

“Ethical Issues in Estate and Trust Litigation” (Part I: Conflicts and Fees)

Conflicts and Duties:

- Prior representation and handling the estate
- Fiduciary v. beneficiary
- Fiduciary v. co-fiduciary
- Fiduciary v. successor

Setting and Billing Attorney Fees:

- Representing the fiduciary
- Representing the beneficiary

Speaker:

Jennifer F. Hillman, Esq.

Ruskin Moscou Faltischek, P.C.
Uniondale

9:55 – 10:45 a.m.

“Ethical Issues in Estate and Trust Litigation” (Part II: Settlements, Privilege, Confidentiality)

- Settlement agreements and compromises
- Settling with multiple fiduciaries
- Client confidentiality and privilege
- Best practices

Speaker:

Ian William MacLean, Esq.

MacLean Law Firm, P.C.
New York City

10:45 – 11:00 a.m.

Refreshment Break with the Exhibitors – Tohono Foyer

11:00 – 11:50 a.m.

“Malpractice Considerations for Trusts and Estates Practitioners”

- *Schneider v Finmann* and its implications for estate planning attorneys
- Post-*Schneider* developments - the class of plaintiffs expands
- Statute of limitations implications on malpractice claims
- Mistakes leading to malpractice and potential damages
- How to limit exposure

Speaker:

Lucy Kats, Esq.

Whiteman Osterman & Hanna LLP
Albany

11:50 a.m. – 12:40 p.m.

“Disqualification and Withdrawal from Representation - Professional Responsibility and Ethics”

- Permissive and mandatory withdrawals
- Post-withdrawal obligations
- Retaining liens: scope of file retention and limitations
- Charging liens
- Third-party fee actions

Speaker:

Joseph T. LaFerlita, Esq.

Farrell Fritz P.C.
Uniondale

Afternoon at your leisure

1:00 p.m.

Tennis Tournament – \$55 per person

Shuttle will pick you up from the main lobby.

Ranked as one of the “Top 50 Tennis Resorts in America” by TENNIS Magazine, the Boulders features exceptional service and first-class facilities including the newly-renovated terraced Tennis Garden. **Prior sign up required.**

6:30 p.m.

Reception and Dinner – El Pedregal Courtyard

THINGS TO DO - BOULDERS RESORT

Carefree, Arizona, and the Boulders offer an endless amount of activities for you and your family. Below is just a glimpse at what you can do during your stay.

GOLF

Experience challenging play on the sun-splashed terrain of the Boulders Club, where you'll test your handicap on two award-winning, Jay Morrish-designed courses that stretch across an enchanting desert landscape and are listed among the finest in the United States.

SPA

Restore mind and body at the 33,000 sq. ft. spa, offering stimulating revitalization through the art of massage, the science of facials, and other refreshing therapies infused with ingredients from the Boulders' desert environment. Whether you're detoxifying in the steam rooms and saunas, meditating in their signature labyrinth, or reclining alongside the heated swimming pool, you'll find this luxurious spa offers everything you need for soul-stirring renewal.

**Reservations are strongly encouraged prior to arrival.
480-595-3500**

TENNIS

Ranked as one of the "Top 50 Tennis Resorts in America" by TENNIS Magazine, the Boulders features exceptional service and first-class facilities including the newly-renovated terraced Tennis Garden.

OUTDOOR ADVENTURES:

The ancient landscape of the Boulders Resort offers endless opportunities for unforgettable outdoor recreation. A sampling of the adventures offered are listed below. **Contact the hotel concierge at 480-488-7317.**

GRAND CANYON AIR TOUR

2 person minimum. About 3 hours.

Witness the terrain from an awe-inspiring perspective with an incredible journey over the fabulous Arizona landscapes and majestic expanses of the world-famous national park.

DESERT HUMMER ADVENTURE

3 person minimum. About 2-3 hours.

You crave excitement! Immerse in the adrenaline rush of an EXTREME adventure which centers on the unmatched capabilities of the HUMMER. For example, the H1 can climb a 22" vertical wall, can scale a 60 degree slope, can traverse a 40-degree side slope, and can ford 30" of waters (2+FEET).

HORSEBACK RIDING

2 person minimum. About 2.5 hours.

Enjoy the neighboring trails on horseback, explore the beautiful desert terrain of the Tonto National Forest and some of the most vibrant scenery in the United States.

BOULDER CLIMB

5 Maximum. Minimum age 16. About 2.5 hours.

Experience the thrill of real rock climbing. Yes, you can do this! Our expert guides will help you push beyond your current boundaries, and discover your true abilities.

GRAND CANYON & SEDONA LUXURY TOURS

1 person minimum. About 12 hour.

Visit the beautiful red rocks of Sedona on the way to Grand Canyon National Park! Explore the South Rim, which is the widest and deepest part of the Grand Canyon, offering several viewpoints of this vast wonder of the world. You will learn fascinating information about the geography, culture and history of Arizona by expert guides.

DESERT PHOTO TOURS

2 person minimum. About 2 hours.

Learn proper camera angles, photo composition and lighting from accomplished nature photographer Linda Covey in this Desert Photo Tour (held at sunrise and sunset).

SCENIC GUIDED HIKES

2 person minimum. About 2.5 hours.

Explore the Sonoran Desert with an experienced guide. Learn about local plants, animals, geology and history – while burning lots of calories.

MOONLIGHT BIKE RIDE

2 person minimum. About 1.5 hours.

Night-riding is a great outdoor adventure. The desert comes alive at night as we cruise along the resort's roller-coaster golf cart paths by the light of high-tech handlebar-mounted LED systems. These "trails" are paved, so this activity is perfect for the night-riding novice. We'll supply the mountain bike, helmet, water, and 500-lumen lighting system.

DESERT JEEP TOUR

2 person minimum. About 3 hours.

The Sonoran Desert offers some of the most scenic and rugged terrain in the western United States - enjoy an informative, exhilarating guided tour in an open-air, four-wheel-drive vehicle.

ASTRONOMER STARGAZING

2 person minimum. About 1 hour.

You'll marvel at the magnificent Arizona skies from The Boulders fairway when you go stargazing with a professional astronomer.

ATV & UTV DESERT TOURS

2 person minimum. 2, 3, 5 hour tours available.

Explore the Sonoran Desert on an ATV or UTV, guided by a team of experts! Discover a local ghost town, and search historic goldmines.

THANK YOU TO OUR EXHIBITORS

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Doyle

ElderCounsel

Empire Valuation Consultants

FMV Opinions, Inc.

InterActive Legal

Keane

NYSARC, Inc. Trust Services

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RESORT RESTAURANTS

PALO VERDE

Palo Verde restaurant offers phenomenal views of the Sonoran Desert overlooking the 6th fairway of the award-winning South Course and the charming Duck Pond. The dining experience here is simple, sophisticated and comforting, with a contemporary southwestern-inspired menu.

THE GRILL KITCHEN AND BAR

Casual yet elegant, with a menu featuring a wide variety of American cuisine - The Grill features an exhibition kitchen, fireplace, and beautiful patio seating with grand views of the lush 18th hole fairways.

SPOTTED DONKEY CANTINA

Experience the lively atmosphere and unique food at The Spotted Donkey Cantina at El Pedregal. Choose from a menu of Mexican classics and 46 varieties of Tequila while sitting outside in the large patio underneath the Arizona sky.

SPA CAFE

The fresh, healthy and balanced meals prepared by Chef Neal Hall at the Spa Café are made from regional ingredients and fresh herbs harvested daily from our own certified organic garden whenever possible. **Loggerhead Grill** Enjoy gourmet sandwiches, grilled burgers, salads and wraps, or wet the whistle with a specialty drink or cocktail poolside

DISCOVERY LOUNGE

Comfortable furnishings and a well-stocked bar and humidior await you at the Discovery Lounge. Enjoy spirits and stogies by one of our outdoor fireplaces as you revel in breathtaking resort views and an atmospheric waterfall.

THE BAKERY CAFE

Now proudly brewing Coffee Bean products, kick start your morning with a hot beverage, home made pastries, bagels or refreshing fruit. This quaint bistro is the perfect place to sit back and refuel when you need a break from shopping.



NEW YORK STATE BAR ASSOCIATION
MEETINGS DEPARTMENT

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