

FIREFIGHTERS' NEWSLETTER

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT FIREFIGHTER RIGHTS



KNOW YOUR LEGAL RIGHTS

- BOTH ON DUTY AND OFF DUTY -

Fortunately, the members of the UFA have a real choice when it comes to selecting a law firm whenever they need legal assistance. We are grateful that the UFA invites us to come to the Delegate Education Seminars in Atlantic City. It is always great to catch up with so many old friends, and to speak to both the newest delegates and the senior ones. We make sure to advise every firefighter of the legal rights that are uniquely available to NYC's bravest.

Below are some of the topics that our attorneys have reviewed with the delegates. We hope that our advice is reaching all Firefighters, especially the newest members who might not otherwise know their legal rights.

LINE OF DUTY INJURIES:

Firefighters should know that the law often protects them when they sustain an injury. Don't let anyone think that they can't receive compensation for a line of duty injury because "it's just part of the job", or "it was my fault". Injured firefighters should always consult with an attorney, preferably an attorney experienced in firefighter injury cases. CD-72s must be

filled out correctly whenever a firefighter sustains an injury. They are especially critical to protect your pensions. Don't sign it until you have read it carefully. Make sure that your officer has documented the defect, if any, that caused your accident.

The Pen Can Be Mightier than the Haligan

Since most of our practice involves cases on behalf of injured firefighters, many of our lawsuits are commenced against negligent building owners whose violation of the Fire Code, Electrical Code or Building Code caused the firefighter's injuries or burns. Since firefighters are in the field everyday, an important tool you may use to help us protect your rights is a pen. Don't ignore building violations when out on "building inspection" or an EMS run. Documenting violations today may help you or another firefighter tomorrow if they are injured. Very often a documented violation proves invaluable when litigating a lawsuit which may influence a jury's decision whether to find in favor of any injured firefighter.

continued on page 4

SPOTLIGHT ON DRUNK DRIVING

Should you take the breathalyzer test?

During the holiday-party season, our law firm typically gets calls from firefighters who want to understand their legal rights should they ever get pulled over by a police officer while driving home from a party. Bruce Kaye, Esq., of our criminal division, answers the most frequently asked questions about alcohol-related offenses, including the most FAQ: "Should I take the breathalyzer test?"

What are the penalties for driving while intoxicated as compared with driving while impaired?

Driving While *INTOXICATED* is a Misdemeanor. A conviction will result in a criminal record and exposure to stiffer penalties for subsequent DWI convictions, including elevation to a felony offense. The penalties include up to one year in jail, a mandatory revocation of driving privileges for 6 months, and mandatory fines ranging from \$500 to \$1000. A driver with a prior DWI conviction within the past 5 years

continued on page 2



continued from "Drunk Driving" page 1

must receive a jail sentence of 5 days, or a 30-day community service sentence.

Conversely, driving While **IMPAIRED** is a traffic infraction. It is **not** a crime and will not leave the driver with a criminal record. The penalties include a maximum jail term of 15 days, and a mandatory license revocation period of 90 days. Mandatory fines range from \$300 to \$500.

A Blood-Alcohol Concentration (BAC) of .08 % or more, creates a rebuttable presumption that the operator is guilty of Driving While *Intoxicated*. A BAC of at least .05% but less than .07% creates a rebuttable presumption that the operator is guilty of the violation of Driving While *Impaired*.

What is the effect of refusing the breathalyzer test?

If a driver refuses the test, his license will be revoked for six months (second offense - one year). Evidence of the refusal will be admissible in any trial so long as the person was warned of the consequences of refusing.

While declining the test deprives the prosecution of a test score, and reduces the proof to the officer's observations of the driver (e.g., the presence of the odor of alcohol, the manner in which the vehicle was operated, bloodshot eyes, attitude, balance, coordination, speech, general appearance, etc.), the penalties for refusal are

stiff. What's more, most District Attorney's Offices have a policy of not offering a plea to the lesser offense of Driving While Impaired to drivers who have refused the test.

If you are uncertain whether to take the test, request an opportunity to call your attorney. Inform the arresting officer that you are not refusing the test, just requesting advice from your attorney. You have the legal right to telephone an attorney before you take the test, as long as it doesn't interfere with the test being administered within 2 hours of your arrest.

Will there be a Video-tape?

The NYPD routinely video-tapes the chemical-test request. This taping will take place at a precinct within two hours of the arrest. Because the tapes are played for the jury, they provide a unique opportunity for the motorist to establish his innocence and/or explain his refusal to take the breath test.

Should I speak to the officer?

You should be cooperative, but there is no penalty for limiting conversation to pedigree information or even remaining mute. The refusal to engage in conversation is not admissible at trial.

The natural inclination is to explain oneself, but, this can have drastic consequences. It is not uncommon for a motorist to admit having come from a party or having had one or two drinks. Admissions of this nature will surely be offered as evidence

at trial, and where the motorist elects not to submit to the chemical test, will confirm the presence of alcohol.

Once placed under arrest, a clear and unequivocal request to speak with an attorney will effectively invoke the constitutional right to counsel. This right cannot be waived unless the attorney is present and will generally render any subsequent statements inadmissible.

Will my car be impounded?

The NYPD is empowered to commence a forfeiture action against the owner of a vehicle that was used during the commission of a crime. If the driver is also the owner, a forfeiture action is all but guaranteed. If the vehicle is leased and the lease agreement allows the leasing company to rescind the lease of an impounded vehicle, the NYPD will release the vehicle to the leasing company as the titled owner.

Most forfeiture actions are settled after payment of administrative fees and proof of either satisfactory completion of an alcohol-treatment program, or a competent evaluation that finds an no alcohol treatment is necessary.

CONCLUSION

If you haven't been drinking, then take the breath test ..., if you were drinking and you think you'll fail the test, then politely make a request to consult with your attorney.

**Barasch McGarry
continues to sponsor
worthwhile charities.
This year over half
our staff participated
in the
2008
Tunnel to
Towers
Run/Walk.**



From left to right: Ed Marcowitz and daughter Taylor; Simone Derby; Lorena Mottes and Pat Graziano.



From left to right: Pat Graziano; Capt. John Graziano (L78); Lorena Mottes; Simone Derby

Social Security Disability Applicants Should Be Aware That Disability Requirements May Differ From One Applicant to Another

by Phil Seelig, Esq.

The Fire Department's Pension Fund has one universal standard of disability....a fire member must show a "permanent disability from full firefighting duty." However, Social Security Disability requirements change according to the applicant's age, education and/or work experience. For example, the Social Security threshold for disability required for a firefighter who is under 50 will be different than the disability standard for a firefighter over 50. The standard changes yet again for a firefighter over 55 years of age. What can make this appear even more confusing, is that social security disability standards also change according to your education level or the type of work experience you have. For example, a firefighter who is a college graduate of the same age and work experience may be required to show a different level of disability than a firefighter who is a high school graduate. Likewise, a firefighter promoted to Fire Marshal may be judged differently than a regular firefighter.

These differing requirements can not only be confusing to the applicant, but, more significantly, they may be confusing to your treating physician. Your doctor may be well intentioned and wish to help you, but that doctor may author a letter which does not properly address the particular level of disability required by the Social Security Administration. A letter authored for another firefighter may not apply or be helpful to you. Or, even worse, a letter stating physical ability at the wrong functional level, may end up damaging your claim or result in a denial.

Given that Social Security Disability benefits can pay up to \$750.00 a week or more in additional income to you and your family, it is of utmost importance that you take great care to insure your claim is carefully prepared and managed. For this reason it is always prudent to meet with an experienced disability attorney who will assess your claim, give you advice, make recommendations, determine your particular requirements and prepare letters to your doctors which are tailored to your claim and clearly explain what is required in a medical report. An attorney will also insure that your disability application is properly completed and filed. You do not have to use a lawyer when filing for Social Security Disability, however you have a better chance of winning with legal representation. During the application process, an attorney will also assist with your

claim's medical development, and insure that only proper documentation is brought to the attention of the Social Security Administration reviewers.



Phil Seelig

An attorney will prepare you for the testimony you must give at your hearing, and will cross examine the Social Security Administration's expert witnesses who may testify against your case.

As part of their services, the law firm of Seelig & Ungaro give free consultations and invite inquiries at their offices. They may be contacted directly at (212) 766-5500. Seelig and Ungaro are paid only upon a successful result. Given the immense financial value of the benefit and the improved chance of success, it is prudent to consult with an attorney whether or not you ultimately decide to use one.

This information does not apply to every situation, it is, instead a general statement of disability law and procedures and is not to be used as a substitute for specific legal advice after a consultation with an attorney.

WHAT YOU SHOULD KNOW ABOUT DEDUCTING YOUR EXPENSES

by Elaine Frank, MBA, Controller of the Law Offices of BMSP

I have received a number of calls from NYC Firefighters regarding IRS audits for the tax year ending 2006. Specifically, they have targeted your gifts to charity and unreimbursed employee expense deductions. Below is a checklist of what you must provide your accountant in order to deduct these items on your 1040 Personal Income Tax Return; Schedule A Itemized Deductions:

1. The IRS requires that all charitable contributions reported on your return be substantiated with a cancelled check or a written communication from the charity/church stating its name, date of contribution and the amount of the donation.
2. If you donate non-cash items to a church/charity please request a receipt and attach a list of the items being donated.
3. Travel to and from your home to the firehouse is not deductible. However, "portal to portal" travel costs are allowed, as are travel costs related to going to a second job from your firehouse. The IRS requires that a diary or journal be kept to substantiate auto expense deductions.
4. If you report earnings from a second job on your tax return, keeping documentation for automobile deductions is very important. Receipts should be kept, whenever possible, for gas, repairs, insurance, tolls, EZ pass etc. This will enable your tax preparer to deduct all your allowable automobile expenses.
5. Please keep the receipts for your purchases of safety equipment, small tools, cleaning and maintenance of uniforms and subscriptions. Receipts are required to substantiate your deductions.

In closing, I caution you to carefully select your tax preparer. The allure of a large tax refund may be appealing, but choosing an accountant solely based on this reputation may be costly in the future.

If you would like to discuss the above, or if you have tax questions, please contact Elaine at our office.



continued from "Know Your Rights" page 1

We are proud to report that our law firm is responsible for seven of the leading Firefighter-injury cases cited in the NYS Pattern Jury Instructions (*Judges and attorneys routinely use the PJI as a guide to the general principles governing civil trials and the law in all types of negligence actions.*)

NON LINE OF DUTY CASES:

Besides line-of-duty injuries, among the wide range of other personal injury cases we handle for NYC's Bravest are those resulting from Motor Vehicle Accidents, Slips and Falls, Construction Accidents (many Firefighters' second job), Medical Malpractice, Wrongful Death, Defective Products, and Aviation Accidents. We also represent Firefighters when they need criminal court representation.

Since car accidents are unfortunately so common, we urge you and your loved ones to know the following legal rights. If you are injured in an automobile accident in NY, you are entitled to receive no-fault insurance benefits for accident-related

losses regardless of who was at fault for the accident. Keep in mind that these benefits are in addition to any right you may have to bring a lawsuit for pain and suffering and lost income against the owner and driver of the offending vehicle.

In order to receive no-fault benefits, the injured party must contact the no-fault insurance company (generally your own carrier), request an application for benefits and return the completed application. Under current law, an injured person has only 30 days from the day of the accident to apply for no-fault benefits. Of course, we are always willing to help you fill out and file these time-sensitive applications.

In addition, we strongly encourage you all to look at the declaration page(s) of your automobile policy (where the coverage limits are listed) and see how much Uninsured Motorist (UM/SUM) coverage you have. If it is less than your liability coverage, and the coverage is less than the value of your home, call your carrier and buy this additional (relatively inexpensive and all too often overlooked) coverage that will protect you

and your family in the event of an unfortunate automobile accident with someone who is uninsured or underinsured.

Please take advantage of our free offer to review all your homeowner and automobile insurance policies to ensure that you are adequately covered.

WILLS AND HEALTH

CARE PROXIES: Amazingly, only 10% of active Firefighters have a will. We are proud that we have drafted over 1000 free wills, health care proxies and living wills for active Firefighters. Please call us to take advantage of this free offer.

Please consider our firm if you or anyone you know is ever injured whether on duty or off duty. While accidents, negligence or medical malpractice can result in injuries, not all injuries are lawsuit worthy. We are always available to take your call, and will give you our honest opinion as to whether or not you should sue. It's worth a phone call to Know Your Rights.

Rest assured that all consultations with our office are free and confidential.

Make Sure Your Doctor is Qualified

Unfortunately, health care providers sometimes make mistakes. That includes doctors. Before entrusting your care, or that of a loved one, to a physician, you may want to know whether he or she has been sued for malpractice. The New York State Department of Health collects such information regarding New York State licensed physicians, and makes it publicly available at its website, www.nydoctorprofile.com. The website also provides information about a physician's education, training, licensure, and board certification. We encourage you to take an active role in learning about your doctors.

MICHAEL BARASCH RECOGNIZED BY SUPERLAWYER MAGAZINE

Barasch & McGarry is proud to announce that MICHAEL BARASCH has been named by *Super Lawyers* magazine as one of the top plaintiffs' personal injury attorneys in New York State. Only five percent of the lawyers in the state are named by *Super Lawyers*.

The selections for *Super Lawyers* are made by Law & Politics, a division of Key Professional Media, Inc. of Minneapolis, Minn. Each year, Law & Politics undertakes a rigorous multi-phase selection process that includes a statewide survey of lawyers, independent evaluation of candidates by Law & Politics' attorney-led research staff, a peer review of candidates by practice area, and a good-standing and disciplinary check. Michael was recognized, in part, for the legal work that he and the firm have done in the past 5 years on behalf of more injured NYC Firefighters than any other law firm in the City.

Law & Politics publishes *Super Lawyers* magazines across the country. In addition to the magazines, Law & Politics publishes newspaper inserts and magazine special sections devoted to *Super Lawyers*. In 2008, *Super Lawyers* will reach more than 13 million readers.

Super Lawyers can be found online at superlawyers.com, where lawyers can be searched by practice area and location.



This is the THIRTY-SEVENTH edition of the **BARASCH McGARRY SALZMAN & PENSON NEWSLETTER...attorney advertising which presents topics of interest to firefighters.** For questions, additional copies, or more information about topics raised in this newsletter, call or write:

**BARASCH McGARRY
SALZMAN & PENSON
11 PARK PLACE SUITE 1801
NEW YORK, NEW YORK 10007
Toll Free No. 1-888-FIRELAW
(1-888-347-3529) or
212-385-8000
www.firelaw.com**