

New York Law Journal



©2009 INCISIVE MEDIA US PROPERTIES, LLC

An *incisivemedia* publication

WWW.NYLJ.COM

TUESDAY, JULY 11, 2006

NEWS

Long Island Attorney Heads Trial Lawyers Association Meeting on Advertising Restrictions, Public Education on Awad's Agenda

By Michael Scholl

Joseph P. Awad, the new president of the New York State Trial Lawyers Association, grew up in Oneida, N.Y., where the members of the local bar encouraged him to become a lawyer.

"The phrase that was used in the late 60s and early 70s was that it [being a lawyer] would hone your mind and make it a wonderful thinking instrument," said Mr. Awad, a medical malpractice attorney and senior partner at the Garden City law firm of Silberstein, Awad & Miklos.

As president of the state trial lawyers, Mr. Awad will have to put his mind toward finding ways to combat advocates of tort reform and to promote the standing of a profession that many believe has fallen in terms of public esteem.

Mr. Awad became heavily involved in the association in 2002 when the group joined with its counterparts across the country in successfully fighting federal tort reform legislation.

"I saw that you can make a difference," said Mr. Awad, a 1976 graduate of Harper College at SUNY Binghamton and a 1981 graduate of Albany Law School.

"If you take the time and speak with people and educate them, you'll be able to argue the merits," Mr. Awad said. "You can get past the rhetoric."



JOSEPH P. AWAD

Rick Kopstein / New York Law Journal

As the trial lawyers' new president, Mr. Awad sees his role as fighting to protect the integrity of the judicial branch of government against encroachments from "extreme right" individuals who want to infringe upon the public's right to pursue lawsuits.

"The right to a trial by jury in civil cases is really a cornerstone of our democracy for the individual citizen," said Mr. Awad who lives in Muttontown, N.Y. with his wife of 23 years, Julie Pichardo, and their twin 17-year-old daughters, Ariana and Alexandra.

Advertising Restrictions

In addition to tort reform, Mr. Awad this year will have to deal with proposed restrictions on attorney advertising that were recently promulgated by the presiding justices of the state's four judicial departments (NYLJ, June 15, 2006).

Among other things, the new rules would bar attorneys from soliciting personal injury and wrongful death clients for 30 days after a disaster unless court deadlines require quicker action. Lawyers would be prohibited from using current client testimonials, from portraying judges, from re-enacting courtroom or accident scenes and from using courthouses and courtrooms as props. Attorneys would be required to objectively verify any claims they make in their ads and include disclaimers saying past victories are not guarantees of future success.

Mr. Awad noted that the New York recommendations are stricter than the suggestions made in a recent 130-page report prepared by the New York State Bar Association.

"We were surprised that the [presiding justices'] proposals seemed to differ so significantly from what the state bar association and the American Bar Association have recommended in this area," he said.

Mr. Awad argued that ads do more than just drum up business for lawyers.

"The legitimate purpose of advertising is also to inform the public," Mr. Awad said.

He said his members are also worried that excessive restrictions on attorney advertising would effectively tie the hands of lawyers as they try to fight against the ads put forward by insurance companies and other members of the business community, who generally face little or no restrictions over what they can say in their advertisements.

However, while Mr. Awad expressed concern on restrictions on the content of advertising, he stressed that the trial lawyers association was firmly opposed to the use of "runners," or non-attorneys, to procure clients. He also said the association opposes "brokering," the practice in which high-profile attorneys solicit cases and then farm them out for referral fees.

The association will hold a symposium Aug. 2 to solicit opinions from attorneys, legislators, good government groups and other interested parties about the proposed advertising restrictions. Mr. Awad said the comments made at the symposium will be used to prepare the report the association will submit to the presiding justices, who have ordered a 90-day public comment period that ends on Sept. 15.

Influence in Albany

The state trial lawyers have long been known for having a strong lobbying operation in Albany, and Mr. Awad indicated that he hopes to maintain that strength.

"Our organization is a very political, action-oriented organization," said Mr. Awad, who said his organizations' resources include two large lobbying firms and a political action committee.

"We have a sophisticated political director within the organization," Mr. Awad said. "We spend enormous amounts of time tracking legislation in Albany."

Over the past year, the association and the state AFL-CIO fought hard to defeat changes in workers' compensation that

they said would cut benefits to injured workers. The association also helped block the construction industry's efforts to repeal a state law that protects workers at elevated construction sites.

In September, at the association's urging, Governor George Pataki signed legislation that streamlines the ability of estates to make payments to funeral homes, hospitals and lawyers. The association had argued that delays in these payments were the result of an irrational requirement that fees could not be paid until all disputes among the estate's beneficiaries were resolved.

Educating the Public

Mr. Awad said he wants to expand the organization's outreach by tapping on the talents of its individual members. He said he would like those members to play a grassroots role by communicating the importance of their profession to local elected officials and other community leaders.

"What's critical is the community ties across the state," said Mr. Awad, who said "one of the aspects of my presidency is to take those 4,700 members and ask a lot of them to become much more involved, on behalf of themselves and the association, in their communities and with their elected leaders."

Mr. Awad said the association has done a lot over the past couple of years to expand the organization to include members of class-action, mass tort and aviation firms.

"My goal is to bring more and more people in to serve the association," said Mr. Awad, who said such an expansion is necessary to help better "educate the entire public about what it is that we do."

"Most of the propaganda against [trial lawyers] is that it's all about us, when it's really all about the safety of our clients," said Mr. Awad, who said the goal of his presidency is to "get my members to start educating the public, one citizen at a time."

"It's a massive undertaking," Mr. Awad said. "We can't match them [the business community and the insurance companies] for money. We don't have the advertising power of Allstate and State Farm and the multinational corporations. No one has that type of money. But we do have merit on our side and if my members, one person

at a time, can improve the image [of trial lawyers], they will."

However, the association is not exactly wanting for resources. It spent \$1 million on lobbying and \$711,220 million in campaign contributions in 2004 (NYLJ, April 6, 2003). Thanks to that spending, the association is widely recognized as one of the most powerful lobbying groups in Albany.

New Trial Lawyers' Group

Two years ago a group of, according to Mr. Awad's estimate, about 50 trial lawyers split from the the association to form the New York State Academy of Trial Lawyers.

Unlike the trial lawyers association, the new academy has come out strongly in favor of tougher restrictions on lawyer advertising. But Mr. Awad dismissed the academy as a small group of disgruntled lawyers.

"The reason why a few of these people left our organization and started their own small group was not because of advertising," said Mr. Awad, who said the academy was founded by lawyers who were dissatisfied with the results of the 2003 trial lawyers elections.

Academy president Robert Lahm said his group actually has about 500 members. He said Mr. Awad's claim that the split between the two groups resulted from the 2003 elections was "not accurate."

Mr. Lahm said the split occurred because of disputes over advertising restrictions and other proposed legislation and because of concerns over the governance of the association. He declined to be specific about those concerns.

"We're not seeking to quarrel with the trial lawyers," said Mr. Lahm, who said the two groups share many common goals and should try to work together to achieve them. "I'm not going to pick a fight with them because it's not necessary."

— Michael Scholl can be reached at mscholl@alm.com