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Sabrina Charles-Pierre,
Editor

ROCKLAND COUNTY BAR ASSOCIATION



NEWSBRIEF

www.rocklandbar.org

August 2018

President's Post

Welcome to a new year with the RCBA! For our members who do not know me yet, my name is Andrea F. Composto, Esq. and I was recently installed into my second term as President of our organization this past June. It is a pleasure to meet you!

We are half way through our summer and gearing up for an exciting year. As you know this is our 125th Anniversary Year. The RCBA has been an active Bar Association since 1893...can you believe it?! We have many exciting events planned to commemorate our 125th year, including a FREE Member and Family BBQ on September 23rd. We also have a 125th Anniversary event at the Historical Society of Rockland County on September 13th. I am thrilled to announce our On-Line store is up and running and we are selling 125th Anniversary Commemorative Lapel Pins and Mugs. This is just a few of the exciting things we have planned for this year and we look forward to sharing them with you.

I encourage you all to join a Committee and work with your fellow members of the RCBA. There are several committees here at the RCBA...ranging from Commercial Law to Zoning Law; Diversity to Mock Trial! Truly, there is something for everyone. I can tell you first-hand that your experience with RCBA will be enhanced when working with your fellow committee members.

I look forward to seeing you all throughout this year and may you enjoy the remaining days of Summer.

Sincerely yours,

Andrea F. Composto, Esq.

ROCKLAND COUNTY BAR ASSOCIATION, INC.
337 NORTH MAIN STREET - SUITE 1
NEW CITY, NEW YORK 10956
845-634-2149

125th Anniversary Gala

Souvenir Journal

Guest of Honor

Hon. Janet DiFiore

Chief Judge of the Court of Appeals and the State of New York
and

The Lifetime Achievement Award:

Richard A. Glickel, Esq.

The Natalie Couch Award:

Lawrence A. Codispoti, Esq.

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Please make your check payable to the *ROCKLAND COUNTY BAR FOUNDATION*
DATE OF ANNUAL/ANNIVERSARY DINNER: THURSDAY, OCTOBER 25, 2018

Please email your ad to: - sabrina@rocklandbar.org -- ad deadline October 12, 2018.
Call us with your questions: Sabrina Charles-Pierre – 845-634-2149
Rockland County Bar Association, 337 N. Main St., Suite 1, New City, NY 10956



**125th Anniversary Gala
(ANNUAL DINNER)**

**THURSDAY, OCTOBER 25, 2018
6:00 P.M. – Patriot Hills Country Club**

Featuring

***GUEST OF HONOR
HON. JANET DIFIORE***

Chief Judge of the Court of Appeals and the State of New York

And

***LIFETIME ACHIEVEMENT AWARD RECIPIENT
RICHARD A. GLICKEL, ESQ.***

And

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COMMERCIAL LITIGATION ISSUES OF INTEREST**August 2018****Submitted by Paul Savad, Esq.****Chair, Commercial and Corporate Law Committee,****Joseph Churgin, Esq., and Susan Cooper, Esq., of****SAVAD CHURGIN, LLP, Attorneys at Law**

Your client is a minority member of an LLC that sells diamonds wholesale to jewelers. There is a prior pending action in which your client claims the LLC had an opportunity worth tens of millions of dollars to sell its diamonds to the largest specialty jeweler in the world, but the majority member of the LLC diverted the opportunity to itself, in breach of its fiduciary duties. You now commence a separate action against the companies through which the profits of the diverted business are being siphoned out of the United States. You allege that the companies aided and abetted the majority member's breach of fiduciary duty. The defendants have moved to dismiss your new action, arguing that there can be no claim for aiding and abetting a breach of fiduciary duty if there is no cause of action pleaded in the new action for the underlying breach of fiduciary duty.

Will you defeat the motion to dismiss?

The answer is yes.

In *Allfield Trading v. Ideal Diamond Trading*, NYLJ 1529620448NY651364201; Index No. 651364/2015 (Sup. Ct. NY, Co. May 16, 2018), Allfield (the minority interest holder of 21st Century Diamond), sued Ideal Diamond for aiding and abetting Exelco (the majority interest holder of 21st Century) to breach its fiduciary duty. The amended complaint alleges that Exelco diverted to itself 21st Century's opportunity to sell Tolokowsky-branded diamonds to Sterling Jewelers, a subsidiary of the largest specialty jeweler in the world. Ideal Diamond was alleged to have been created by Exelco to siphon the profits out of the United States.

Exelco was not a defendant in this action, but was a third-party defendant in a separate action by 21st Century against Allied and others, wherein the Appellate Division ruled that Allied had properly pleaded a third-party claim against Exelco for breach of fiduciary duty (88 A.D.3d 558 [1st Dep't 2011]).

Ideal Diamond moved to dismiss the complaint for failure to state a cause of action for aiding and abetting a breach of fiduciary duty, arguing that there was no cause of action pleaded in this action for the underlying breach of fiduciary duty by Exelco, which was not a party to this action.

The Court began by citing *Kaufman v. Cohen*, 307 A.D.2d 113, 125 (1st Dep't 2003), noting that a claim for aiding and abetting a breach of fiduciary duty requires allegations of 1) a breach of fiduciary duty, 2) the defendant's knowing inclusion or participation in the breach, and 3) plaintiff being damaged by the breach. Allfield alleged the defendants aided and abetted Exelco's breach by providing substantial assistance to the breach by assisting in the concealment and transfer abroad of profits generated by the opportunity with Sterling.

The Court ruled that these allegations, together with others in the amended complaint, are sufficient to survive dismissal at the pleading stage. The Court ruled "the claim may stand even though the underlying breach of fiduciary duty is not a cause of action in this case," citing *Weinstein v. Cohn Reznick, LLP*, 144 A.D.3d 1140 (1st Dep't 2016), which upheld a cause of action for aiding and abetting a breach of fiduciary duty based on allegations that the defendant assisted nonparties to breach their fiduciary duties.

The lesson? If feasible, bring a claim for aiding and abetting breach of fiduciary duty in the same action with your claim for breach of fiduciary duty, naming as defendants all parties known to have been involved in the breach. However, a stand-alone claim for aiding and abetting breach of fiduciary duty will survive a motion to dismiss, as long as the pleading alleges a breach of fiduciary duty, the defendant's knowing participation in the breach, and damages caused by the breach.

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FREE CLE

HOW DO YOU PROTECT AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT?

September 6, 2018

12:00pm - 2:00pm

Paramount Country Club

60 Zukor Road

New City, New York 10956

1 Ethics

1 Diversity, Inclusion, and Elimination of Bias

IT'S DUES TIME!

This is a friendly reminder that it is time to pay your 2018-19 RCBA Membership Dues.

Annual Dues for 2018-19 for regular Members are \$185.00.

Renew and pay online by clicking [here](#), or print out a Renewal Form & send in your check.

After September 30, 2018 Dues amount increases to \$200.00!

If you have any questions about your Membership, please contact Sabrina Charles-Pierre, Program Coordinator, at sabrina@rocklandbar.org, or call Sabrina at 845-634-2149. Enjoy the rest of your summer!

BIG BROTHERS BIG SISTERS OF ROCKLAND COUNTY IS SEEKING BRO BONO LEGAL ASSISTANCE TO FORMAT A 501c3 ORGANIZATION.

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THE PRACTICE PAGE
WHICH MEDICAL PROFESSIONALS ARE SUBJECT
TO THE 2 ½ YEAR STATUTE OF LIMITATIONS ?

Hon. Mark C. Dillon*

CPLR 214-a provides that the statute of limitations for medical, dental, and podiatric malpractice is 2 ½ years. Other actions for professional negligence, such as actions against attorneys and accountants, are governed by the general 3-year limitations period of CPLR 214(6) (*Farage v Ehrenberg*, 124 AD3d 159, 163-64, lv. den., 25 NY3d 906 [attorneys]; *Williamson v PriceWaterhouseCoopers LLP*, 9 NY3d 1, 7-8 [accountants]). As clear as the language of these statutes might seem, there are a number of gray areas where courts have had to decide whether actions involving treatment of the body or mind are governed by the 2 ½ or 3 year statutes of limitations.

Psychiatrists. CPLR 214-a contains no language applying the shorter statute of limitations to psychiatrists. However, the 2 ½ limitations period applies to them anyway on the ground that psychiatrists are medical doctors. *Karasek v LaJoie*, 92 NY2d 171, 176.

Psychologists. Actions against psychologists are measured against the longer 3 year statute because, unlike psychiatrists, they are not medical doctors. *Karasek v LaJoie*, 92 AD2d at 176.

Chiropractors. They are not medical doctors but do treat the body in manners related to medical doctors. They have the benefit of the 2 ½ year statute if their work is performed at the direction or request of a physician, but are subject to the 3-year statute when their work is independent of a physician's treatment. *Perez v Fitzgerald*, 115 AD3d 177, 183.

Veterinarians. While the work of veterinarians seems "medical" in nature, animals are considered chattel in New York. Since medical malpractice involves acts or omissions towards humans rather than property, veterinary malpractice actions are not "medical" and are instead subject to the 3 year statute for professional negligence. *Ratusch v Attas*, 3 Misc.3d 763, 765.

Orthodontists. Orthodonture is sufficiently akin to that of dentists as to be governed by the 2 ½ years limitation of CPLR 214-a. *Cresson v NYU College of Dentistry*, 45 AD3d 352.

Optometrists. Optometry has been held to not involve the practice of medicine under the state's Education Law, and thus, claims against optometrists are subject to the general 3-year statute. *Boothe v Weiss*, 107 AD2d 730.

Hospitals. The controlling statute of limitations depends on the nature of the action, with the shorter period applying to acts or omissions of hospital personnel that involve medical treatment; otherwise, the longer period controls for matters of ordinary negligence. *Bleiler v Bodnar*, 65 NY2d 65, 70-71.

Nurses and paramedics. Nurses and paramedics are not physicians. However, the applicable limitations period depends on the nature of the alleged acts or omissions. If they involve "medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician," such as failing to obtain medical history from a patient, the action is governed by the 2 ½ year rule for medical malpractice (*Bleiler v Bodnar*, 65 NY2d at 72). If the conduct does not involve any medical services per se, such as creating an ordinary trip hazard in a lobby, the general 3-year statute applies.

Laboratories. The 2 ½ year rule controls for claims involving acts or omissions of a lab physician such as a radiologist misreading a CT scan (*Brocco v Westchester Radiological Associates, P.C.*, 175 AD2d 903), and to any faulty analyses of specimens related to the diagnosis, prevention, or treatment of a patient's disease (*McDermott v Torre*, 56 NY2d 399, 405-06). However, if the work is unrelated to any particular patient, such as the general screening of a blood supply against HIV, the general negligence statute applies (*Weiner v Lenox Hill Hosp.*, 88 NY2d 784, 788).

None of the foregoing changes complicating limitations factors such as tolls, continuing treatment and foreign object extensions, or relation-back calculations. Attorneys whose cases involve professionals other than physicians, dentists, and podiatrists must carefully consider which limitations period will apply to the action, so that plaintiffs' actions will be filed timely, and to enable defendants' attorneys to interpose statute of limitations defenses when warranted

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Mark C. Dillon is a Justice of the Appellate Division, Second Department, and is an Adjunct Professor of New York Practice at Fordham Law School.



Rockland Surrogate's Court - Tips from the Court

Submitted by: Hon Keith J. Cornell, Rockland County Surrogate

It has been my great honor to serve as Surrogate since January. As the Surrogate, it is my goal to increase the speed with which uncontested matters are processed and to bring contested matters to as early and equitable a resolution as possible. We are fortunate to have a great group of dedicated court employees handling the daily mass of petitions and litigation filings. Unfortunately, as many in the Bar know, the Rockland Surrogate's Court has been understaffed for a few years, causing a significant backlog to develop. I am very pleased to report that we will soon be hiring a deputy chief clerk to join the office. We look forward to improved efficiency on our end.

To assist in shortening the time that it takes the Court to review the many matters on our docket, we have made a list of few of the areas where we frequently see mistakes that cause delay. Hopefully, by providing some clarity as to the Court's requirements and expectations, it will help you serve your clients and assist the Court in serving the public.

First and foremost, please review your papers carefully prior to filing and ensure that they comply with all applicable rules. For those lawyers not regularly practicing in Surrogate's Court, it is essential to become conversant with the SCPA, the EPTL, the Uniform Rules of the Surrogate's Court (Part 207 of Rules of the Chief Administrator of the Courts) and Rockland's local part rules. On the New York State Unified Court System's website (www.nycourts.gov) there are checklists for probate proceedings, administration proceedings, accountings (both informal and judicial), voluntary administration (SCPA Article 13 small estate), wrongful death compromise settlement proceedings, among others. These checklists are an excellent source of guidance. Currently, the clerks spend a great deal of time on the phone giving attorneys basic directions on how to file. Fielding these questions only delays the staff from processing the applications that have been properly submitted. Please try to find answers to your questions online or by consulting other practitioners before calling the Court.

Second, until the Court has complete jurisdiction over a matter, only limited relief can be granted. Obtaining proper jurisdiction is the sine qua non of the Surrogate's Court. The petitioning party is responsible for understanding precisely how to perfect jurisdiction. Attorneys frequently overlook the direction to provide proof of first class mailing by submitting a Certificate of Mailing from the USPS (PS Form 3665). The form is available to download from the USPS website. An affidavit of first class mailing alone is not a substitute for this form and jurisdiction cannot be obtained without this form, if the service order so directs. When the Court issues a service order, please read it carefully and follow the requirements exactly.

Finally, the Rockland Surrogate's Court rules have recently been up-dated and simplified. Here are a few specific reminders that will both help you with your filings and assist the clerk's office:

1. Everything is scanned upon receipt. Therefore, except for original wills, stapled or velobound documents will not be accepted for filing. Backs are not required, and if submitted, the Court cannot scan dark blue or grey backs or any back wider than 8 1/2 inches. Exhibits should be bottom tabbed, not side tabbed.
2. Please do not submit original receipts of the proofs of service. Green return receipt cards, certified and registered mail receipts, and U.S. postal mailing certificates should be photocopied onto letter sized paper and clipped to the affidavit of service.
3. More than the names of the parties must be included in the caption. Because the matters in Surrogate's Court are special proceedings, the caption describes the relief requested. For example, if you are filing a petition to judicially settle an account, the caption would contain those words, identify the section of the SCPA that authorizes the petition (2211 in this case), the name of the petitioning executor or administrator, and the name of the estate. It is improper to simply caption the matter as "Estate of Mary Smith." Improper captioning will delay proper docketing of the petition.
4. ALL SUBMISSIONS FOR TUESDAY CALENDAR CALL SHALL BE FILED NO LATER THAN 5 P.M. ON THE FRIDAY PRECEEDING (Court Rule 207.7). Please do not attempt to file affidavits of service, reports, requests for supplemental citations, etc. on Tuesday mornings before the calendar call. If proofs are submitted on Monday or Tuesday morning, the matter will be re-calendared for the Tuesday of the following week.
5. A list of filing fees is found in SCPA Article 24. Please calculate filing fees by referring to SCPA § 2402 instead of calling the clerk's office.
6. PLEASE DO NOT CALL TO CHECK ON THE STATUS OF A FILING. All filings are reviewed in the order received. Calling does not change the order in which filings are reviewed. Calling does delay the clerks from doing their jobs, which in turn delays review of all filings. If there is something wrong with something that you filed that can be addressed on the phone, don't worry, we'll call you.
7. Adjournment requests must be in writing. The process for requesting adjournments is detailed in the local court rules and must be followed (consent of all attorneys and/or unrepresented parties must be sought; all attorneys and/or unrepresented parties must be copied on the request, etc.). The clerk (not the Surrogate's chambers) may be contacted by letter, fax or email after the proper procedures have been followed. The request to adjourn cannot be made by phone call to the clerk.

If you follow these instructions and guidelines, we are sure that your Surrogate's Court matters will move more smoothly, you will endear yourself to the clerks, and your clients will be impressed with your efficiency.

Dear Colleagues,

We hope you will be able to join us for the Presentation of the Portrait of:

Honorable Margaret Garvey
Justice of the Supreme Court, Retired

Thursday, September 20, 2018
3:00 p.m.
Rockland County Courthouse

With best regards,

The Bar Association

2018 - 19

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125th Anniversary Gala

October 25, 2018
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Michael E. Zall
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Mike@Zall-Law.com

MEMO

TO ALL RCBA COMMITTEE CHAIRS & VICE- CHAIRS

The Association is seeking articles from your committee for publication in the Bar's monthly Newsletter. The membership would greatly benefit from your input and would appreciate it. The article does not have to be complicated or long - a succinct piece of general interest and importance would be best.

If you are able to submit an article for the Newsletter it should be sent via email to sabrina@rocklandbar.org by the 15th of the month so that the Executive Board may review it.

Thank you!



Monthly
 Newsletter



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SUSAN COOPER, ESQ.

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SusanCooperEsq@gmail.com

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News from the Executive Director

RCBA STAFF UPDATE

Below please find a break-down of major areas of responsibility for the

RCBA Staff:

ASSIGNED COUNSEL COORDINATOR – MANUELA GOMEZ

LAWYER REFERRAL SERVICE COORDINATOR – MANUELA GOMEZ

CLE COORDINATOR – SABRINA CHARLES – PIERRE

ADVERTISING/NEWSLETTER – SABRINA CHARLES – PIERRE

EXECUTIVE DIRECTOR – NANCY LOW – HOGAN, Ph.D.

Contact us anytime at 845 634-2149. Direct lines: Assigned Counsel – 845 634-1761; Lawyer Referral Service – 845 708-5719

RCBA MEMORIAL RECOGNITION CEREMONY

for those who left us in 2017-18

Friday, October 5, 2018

3:00 PM

Ceremonial Courtroom

Rockland County Courthouse

The Honorable Robert M. Berliner, JSC, Presiding



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COMMITTEE CORNER

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CLE CORNER

HOW DO YOU PROTECT AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT?

September 6, 2018
12:00pm - 2:00pm

Paramount Country Club
60 Zukor Road
New City, New York 10956

1 Ethics
1 Diversity, Inclusion, and Elimination of Bias

FREE

NEW CLE REQUIREMENT

In addition to ethics and professionalism, skills, law practice management, and areas of professional practice, a new category was added for diversity, inclusion and elimination of bias courses. This category of credit is effective January 1, 2018.

Experienced attorneys due to re-register on or after July 1, 2018 must complete at least one credit hour in the Diversity, Inclusion and Elimination of Bias CLE category of credit as part of their biennial CLE requirement. The transitional CLE requirement for newly admitted attorneys remains unchanged. For more information about the CLE Rules, visit nycourts.gov/Attorneys/CLE.

CLE REQUIREMENTS

Newly admitted attorneys must complete 32 credit hours of accredited “transitional” education within the first two years of admission to the Bar. Sixteen (16) credit hours must be completed in each of the first two years of admission to the Bar as follows: 3 hours of Ethics and Professionalism; 6 hours of Skills; 7 hours of Practice Management and/or areas of Professional Practice.

Experienced Attorneys must complete 24 credit hours of CLE during each biennial reporting cycle: 4 credit hours must be in Ethics and Professionalism. The other credit hours may be a combination of the following categories: Ethics and Professionalism, Skills, Practice Management or Professional Practice.

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Storage space for legal files available. 180 square foot storage space. 24/7 access. Currently used by local lawyers for storage. Premises are located in Route 303 in Orangeburg and are sprinklered. \$225.00/month, no lease required.
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email: lawoffice10927@gmail.com

OFFICE FURNITURE FOR SALE

Priced to sell. Vertical and lateral file cabinets, storage units, desks, chairs, conference table, book cases, credenza, tables, dividers, bulletin boards, white board. Please call Madelon at 914-527-2400 for information. Items are located in New City.

ENTRY LEVEL ASSOCIATE WANTED

A solo criminal, commercial and personal law office is looking to hire a part or a full-time entry level associate. The salary and hours are negotiable. Please forward resume to lauren@garyliptonlaw.com or fax to 845-624-0288.

RECEPTIONIST/ADMINISTRATIVE ASSISTANT - TEMPORARY (Approximately 2 Months) - Fulltime

General office duties, including but not limited to: Greet visitors and answer the phone, Check emails, Type letters, memos, emails, leases, extensions, rent increases, etc.

Schedule: Monday through Friday from 9 am to 5 pm.

Salary: flexible

Strong communication and organization skills, multitasking, Microsoft

Word, attention to detail and basic computer skills are essential.

Please send cover letter and resume via email to Valeria Palacios at koenigmgmt@gmail.com or fax it to 845-639-0433.

POSITION AVAILABLE

Hudson Valley Justice Center has two positions available: [Executive Director](#) & [Staff Attorney - General Practice](#).

Please click on the position to apply.

LEGAL ASSISTANT WANTED

Entry level position available for part-time bilingual assistant. Located in New City, NY. Please call 845 709-6800

ATTORNEY WANTED FOR EXPANDING LAW FIRM

Boutique law firm in Rockland County, NY specializing in matrimonial (divorce) and family law, bankruptcy law, immigration and real estate is seeking a full-time associate to join its growing practice. This office serves a diverse and expanding range of clientele consisting of individuals, families and small businesses. Ideal candidate will have superior writing skills, trial experience, fluency in Spanish, and the ability to thrive in a dynamic environment. Unique opportunity to partner with highly-motivated, entrepreneurial professionals.

Please fax resume to 845.639.4610 or

E-mail: michael@demoyalaw.com

ASSOCIATE ATTORNEY NEEDED

3-5 years litigation experience for busy Rockland County firm. Please forward resume to phabas@barpc.com or fax to 845-359-5577

ATTORNEY SEEKING PART-TIME

Attorney with 7+ years of commercial litigation and real estate experience interested in part time and/or per diem work, including but not limited to, legal research, commercial/residential leasing, legal briefs/memoranda, e-filing. If interested, please call 914-260-1266.

ATTORNEYS SEEKING PARALEGALS

Rockland Community College ABA approved Paralegal program can assist attorneys with filling their open job positions for both part and full time employment opportunities. We have students that range from entry level to experienced Paralegals. Paralegals are not permitted to practice law, which means they cannot give legal advice, represent clients in court, set a legal fee or accept a case. Contact Amy Hurwitz-Placement Coordinator at (845) 574-4418 or email at

ahurwitz@sunyrockland.edu

SPANISH INTERPRETER

I'm interested in offering my services as a Spanish interpreter to the attorneys of the Rockland Bar Association.

I have interpreted in Kings County Criminal Court and I am presently interpreting in Haverstraw Justice Court.

I can interpret to help prepare for hearings and trials. I am willing to accompany attorneys to interpret in prisons or jails. I am available to meet interpretation needs professionally an affordably.

I can be reached at (845) 743-1151 or joanneconde7@gmail.com

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