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### Inside this issue:

President's Post  
Page 1

Nominations for Awards  
Page 2

Lawyer Referral Service  
Time to Renew  
Page 3 - 5

125th Anniversary Mugs  
Page 6

Commercial Litigations  
Issues of Interest  
Page 7 - 8

Mock Trial, CLE Time &  
Announcements  
Page 9 - 12

Committee Corner & CLE  
Page 13 - 14

The Practice Page  
Page 15

Classified Ads.  
Page 16

Sabrina Charles-Pierre,  
Editor

# ROCKLAND COUNTY BAR ASSOCIATION



# NEWSBRIEF

[www.rocklandbar.org](http://www.rocklandbar.org)

February 2019

## PRESIDENT'S POST

Dear Members,

I trust this message finds you well and staying warm from the recent arctic temperatures we have been feeling. It has been an enjoyable start to the new year, despite the cold and before we know it, we will be enjoying the sunshine and warmer weather. I had the distinct pleasure of presenting our newly elected Supreme Court Justice, Tom Zugibe with his Judicial Robe at his recent Swearing In. It was an honor for me to present this gift to him on behalf of our Association. I know that I speak for all of the members of the RCBA when I say, we wish him the best of luck in this new venture onto the Bench. Also, our committees continue to be hard at work as the year progresses. I would like to give a special shout out to our Mock Trial Committee! Mock Trial is well under way with its planning, coordinating and training. We have eleven dedicated Rockland County Schools participating in Mock Trial this season and we are very excited to see how the season unfolds. Please keep your eyes and ears open for the upcoming notices and details for the competitions! The RCBA is here to offer programming and services to its all its members. What are you passionate about? What programs would you like to see offered? Is there a committee that you would like to join? Is there an area of the law that our committees do not currently cover that you would like to see addressed? We welcome your input! Our strength and success as an Association is due in large part to the participation of members like you and the input we receive from you. We need to work together in maintaining our relevance in the legal community so that we can continue the success we have experienced over all of our many years. Let's work together to ensure this goal of success!

With best wishes,  
Andrea F. Composto, Esq.

## NOMINATIONS FOR AWARDS

**We have a membership of many outstanding attorneys. Each year we recognize those that are nominated by their peers. If you would like to nominate someone for one or more of our awards, please fill out this form and fax (845-634-1055) or e-mail [nancy@rocklandbar.org](mailto:nancy@rocklandbar.org). Final decisions are made by our Board of Directors at an upcoming Board Meeting. Please submit your nominations as soon as possible.**

**THE LIBERTY BELL AWARD** This award is presented on Law Day to a member of our Community for outstanding service in promoting a better understanding or respect for the Constitution, the Bill of Rights and our institutions of government. Generally this award is usually given to a non-lawyer.

**I wish to Nominate:**

---

**THE STERNS AWARD** Given in the memory of Richard Sterns to a RCBA member who has made significant contributions to the Bar Association and the People of Rockland County over the year - service above self on behalf of the association. This award is presented at the Installation Dinner in June.

**I wish to Nominate:**

---

**THE LIFETIME ACHIEVEMENT AWARD** Presented to an individual for exemplary achievements as an attorney or judge over a career. This award is presented at the Annual Dinner.

**I wish to Nominate:**

---

**THE JOSEPH G. BALSAMO AWARD** This award is presented at the June Installation Dinner in memory of Joseph G. Balsamo, Esq., to a RCBA member who has gained significant respect from the members of the Bar and the public for his personal and professional contributions to both, while maintaining the highest form of integrity and professionalism while advocating for each.

**I wish to Nominate:**

---

**THE NATALIE COUCH AWARD** This award is dedicated to the memory of Natalie Couch, a pioneering member and president of the Rockland County Bar Association, who was a voting rights advocate and an influential community leader. The honoree should be someone whose own accomplishments have served to inspire others to overcome prejudice and barriers in attaining their goals for the benefit of our community. This award is presented at the Annual Dinner.

**I wish to Nominate:**

---

Please print this page, complete Form & FAX to 845-634-1055,  
or scan and send to [office@rocklandbar.org](mailto:office@rocklandbar.org)



# LAWYER REFERRAL SERVICE

HAPPY NEW YEAR!

WON'T YOU CONSIDER  
JOINING THE

RCBA

## **LAWYER REFERRAL SERVICE?**

A new year begins January 1, 2019.

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Go To: [www.rocklandbar.org](http://www.rocklandbar.org)

Click on "Member Resources"

Click on "Join the Lawyer Referral Service"

**IT'S TIME TO JOIN OR RENEW.**

Grow your practice today!

\*For Attorneys admitted 5 years or less cost is only \$75. Annual fee includes up to 3 panels. Additional panels up to 8 panels available for additional \$20 fee per panel.



**NEW! Now you can pay with a credit card online!**

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**LAWYER REFERRAL SERVICE (LRS)**

**TIME TO RENEW OR JOIN FOR 2019**

The Lawyer Referral Service (LRS) program year runs from

January 1 – December 31.

It is time to renew or join!

**TO RENEW:**

Go to homepage on our website, [www.rocklandbar.org](http://www.rocklandbar.org), and go to “Member Resources.”

1. Click on “Join the Lawyer Referral Service”
2. Log-in to your account
3. Click on “2019 Renewal Form”

**TO JOIN:**

Go to homepage on our website, [www.rocklandbar.org](http://www.rocklandbar.org), and go to “Member Resources.”

4. Click on “Join the Lawyer Referral Service”
5. Log-in to your account
6. To Sign-up for the first time: click on “Plan Description and Full Application”

**Join or Renew!**

**CLICK HERE**

**NEW! Now you can pay with a credit card online!**

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## **PLAN OF THE LAWYER REFERRAL SERVICE**

The Rockland County Bar Association under the guidance of the American Bar Association, has established a Lawyer Referral Service (“The Referral Service”) on a County-wide basis. The office is located at the Rockland County Bar Association, 337 North Main Street, Suite 1, New City, New York 10956.

The willing participation and continued support of lawyers practicing in Rockland County is crucial to the smooth operation of the Referral Service.

### **The purposes of the Referral Service are:**

- To be a public service, available to assist the general public by providing an alternative source for any person who can afford to pay a reasonable fee for legal services and who does not have a lawyer by providing a referral to a lawyer who practices in Rockland County.
- To provide a vehicle for persons who need a legal representative but whose earnings or assets are too high for the standards set by Rockland County Legal Aid Society or Pro Bono New York; and
- To establish a better rapport between the public and the legal profession.

The Referral Service Plan is not designed to take clients away from attorneys. In fact, a cardinal principle will be to establish whether a prospective client has a present attorney. The Referral Service will not refer the client to a panel attorney of the Referral Service if we learn that a prospective client has seen other attorneys in an effort to bargain on fees. Additionally, a prospective client shall not be referred to a panel attorney if the prospective client has previously engaged the services of a lawyer on the same matter unless the original-lawyer-client relationship has been properly terminated in writing.

1. Membership on the Referral Service Panel is by individual attorney and not by law firm.
2. A panel attorney must abide by all of the rules of the Referral Service and will in no way hold, or claim to hold, the Rockland County Bar Association, the Referral Service or any of the members, officers or employees liable in connection with any referral made.

***Won't you consider joining this important service? Find out more. Go to: [www.rocklandbar.org](http://www.rocklandbar.org). Go to “Member Resources.”***

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**125<sup>TH</sup> ANNIVERSARY**

**ROCKLAND COUNTY BAR ASSOCIATION**

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[www.rocklandbar.org](http://www.rocklandbar.org), or call us 845-634-2149

## COMMERCIAL LITIGATION ISSUES OF INTEREST

February 2019

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 recently purchased property with an old office building, and wants to construct a new self-storage facility. However, the adjacent property owners have used a vacant portion of your client's property for almost forty years for tractor trailers to maneuver into and out of the warehouse loading bays. Your client wants to build a fence to secure the area, but needs to know the precise dimensions of any easement. At trial, the neighbor presented conflicting trial testimony and diagrams of the path used by the tractor trailers, evidencing that the drivers did not all use the same single line of travel, and that the path of travel was either 78-foot long, 85-foot long, or 95-foot long. You argue that there can be no easement, because the neighbor cannot establish a sole defined path used by the trucks.

Will you defeat the neighbor's claim of an easement by prescription?

The answer is no.

In *Bedik Corp. v. Herrick Rd. Holdings*, NYLJ 1547462517NY004517201, 28 NY Slip Op 28402, Index No. 004517/2016 (Sup. Ct. Nassau Co. December 14, 2018), Bedik sued the adjacent property owner, defendant "HRH," for a declaration of a prescriptive easement over HRH's property for large tractor trailers to maneuver into and out of Bedik's loading bays. The cited decision was part 2 of a non-jury trial. The first trial decision (which can be found on e-Courts) held that Bedik, which operated a factory warehouse, established a prescriptive easement based on use since at least the early 1970's of a vacant portion of HRH's property, which contained an old office building where HRH wanted to construct a new self-storage facility. Due to equitable considerations, the Court gave the parties an opportunity to present further evidence of the easement's dimensions.

The evidence presented in part 2 of the trial included the testimony of Bedik's owner and manager, Bedik's architect, and various diagrams of the easement area. The owner testified that in his 38 years of observation, the delivery trucks always generally followed the same path. The architect testified about visiting the site on two or three occasions and witnessing the path taken by the drivers. Three different diagrams made at different times showed three different lengths of the path taken – 78 feet, 85 feet, and 95 feet. The architect explained that the 85-foot dimension was based on his observations of the actual path he observed the drivers take. The 95-foot dimension was to allow the trucks to maneuver more easily. The 78-foot dimension was drawn first, after the architect observed a truck successfully making the required maneuvers to and from the loading bay. The 78-foot dimension was used in Bedik's bill of particulars.

## COMMERCIAL LITIGATION ISSUES OF INTEREST

February 2019

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

HRH argued that there could be no easement, because Bedik cannot identify a sole path utilized by the trucks, citing *Zutt v. State*, 50 A.D.3d 1133 (2d Dep't 2008), which denied an easement where the party failed to show what portion of the land was actually used.

The Court rejected this argument, explaining that Bedik established by clear and convincing evidence that the trucks used “a substantially identical path for the identical purpose: to back into and out of Bedik’s loading bays.” The Court opined that it is not surprising that drivers of varying skills would not follow a single line of travel in attempting to back a 75-foot rig into a narrow loading bay.

Although the Court found no New York prescriptive easement cases with similar facts, it noted that the concept of fair notice “of another’s adverse use underlies the requirement that an easement by prescription have determinate boundaries.” The Court quoted Restatement (Third) of Property (Sevitudes) § 2.17, commenting (emphasis added by the Court), “Claims for rights of way must be based on uses that are substantially confined to a regular route.” The Court cited cases from the courts of other states upholding easements under similar circumstances, including: California’s Supreme Court (involving truck drivers following a definite course and pattern with slight deviation due to the varied ability of the drivers, although California law requires proof of a definite and certain line of travel); Vermont’s Supreme Court (absolute precision not necessary, only general outlines consistent with pattern of use); Massachusetts appellate court (easement measured by general pattern formed by adverse use); and Connecticut and Rhode Island with similar holdings.

However, without assuming that New York would adopt the “pattern of use” or “substantial identity” or “definite line of travel” test, the Court held that Bedik had established its right to the easement. The Court noted that the deviations were only slight, and the discrepancies on the diagrams were not substantial, given the size of the vacant lot. The Court limited the easement to the 78 feet reflected in the earliest diagram, which was based on observing a single driver successfully maneuvering into and out of the loading bays using 78 feet.

The lesson? If your client needs to prove the dimensions of a prescriptive easement, make sure at the outset that you document the broadest dimensions of the use. Increasing the claimed dimensions later will create problems of credibility, and may support a finding that the dimensions of use are not sufficiently definite to create an easement by prescription.



# **MOCK TRIAL ROCKLAND**

## **PRELIMINARY ROUNDS:**

**Tuesday, Feb. 26 and Wednesday, Feb. 27, 2019 5:30 P.M.  
Clarkstown Justice Court**

## **PRELIMINARY ROUNDS:**

**Monday, March 4 and Wednesday, March 6, 2019 5:30 P.M.  
Clarkstown Justice Court**

## **QUARTER-FINAL ROUNDS:**

**Monday, March 18, and Wednesday, March 20, 2019 5:30 P.M.  
Clarkstown Justice Court**

## **SEMI-FINAL ROUND:**

**Monday, April 1, 2019 5:30 P.M.  
Clarkstown Justice Court**

## **FINAL ROUND:**

**Monday, April 15, 2019 5:30 P.M.  
Rockland County Courthouse**

*Participating schools: Albertus Magnus, Clarkstown North,  
Clarkstown South, Green Meadow Waldorf, Nanuet, North Rockland,  
Nyack, Pearl River, Ramapo, Rockland BOCES, Spring Valley*

*All are welcome to attend and cheer your favorite team, but please do not inform the Judges of the school you are  
supporting.*

**GO TEAM!**



**Please see these important announcements inside this issue of Newsbrief:**

1. Solicitation of Nominees for Upcoming Vacancies on the RCBA Board of Directors (page 2).
2. Lawyer Referral Service (LRS) - time to renew instructions (page 3)



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 [ahs@hungscanga.com](mailto:ahs@hungscanga.com)

# **CLE - Ethics Credits!**

## **Gun Ownership for New Yorkers: A Brief Overview**

**February 20, 2019**

**12:00 pm - 2:00 pm**

**Double Tree Hilton**

**425 E. Rte 59**

**Nanuet, New York 10954**





# LAW DAY 2019

**Wednesday, May 1, 2019  
9:30 - 11:30 a.m.**

**Rockland County Courthouse  
Jury Assembly Room - 2nd Floor  
Save the date!**

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Big Brothers Big Sisters is the oldest, largest, and most effective youth mentoring organization in Rockland and throughout the United States.

We have been the leader in one-to-one youth service for more than a century, developing positive relationships that have a direct and lasting impact on the lives of young people ages 7 to 18 throughout all of Rockland's communities.

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Lawyer  
REFERRAL SERVICE**

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## 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](mailto:sabrina@rocklandbar.org) by the 15th of the month so that the Executive Board may review it.

Thank you!





# COMMITTEE CORNER

**Law Day Committee**

**Monday, February 4, 2019**

**12:30pm @ the RCBA Offices**

## **Need a Place to Meet in New City?**

RCBA Conference Rooms available for rent.

### **MEMBER PRICES:**

**1<sup>st</sup> two hours FREE, then \$25/hour  
Full Day (8 hours) = \$140.00**

### **NON-MEMBER PRICES:**

**\$50/hour  
Half Day (4 hours) = \$150.00  
Full Day (8 hours) = \$300.00**

**ALL ADVERTISEMENTS  
AND ARTICLES MUST BE  
REVIEWED BY THE  
EXECUTIVE COMMITTEE  
FOR CONTENT.**

## **NEWSBRIEF ADVERTISING RATES**

<b>FULL PAGE (7.5x10.25)</b>	<b>\$400.00</b>
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**TO ADVERTISE IN NEWSBRIEF**

**Advertising & articles appearing in the RCBA Newsletter does not presume endorsement of products, services & views of the Rockland County Bar Association.**

# CLE CORNER

## **GUN OWNERSHIP FOR NEW YORKERS: A BRIEF OVERVIEW**

February 20, 2019  
12:00pm - 2:00pm  
**Double Tree Hilton**  
425 E. Rte 59  
Nanuet, New York 10954

## **CRIMINAL LAW**

March 8, 2019  
1:00pm - 4:00pm  
**Double Tree Hilton**  
425 E. Rte 59  
Nanuet, New York 10954

## **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](http://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.

**THE PRACTICE PAGE****A CONVERSATION ABOUT THE UNIFORM BAR EXAMINATION****Hon. Mark C. Dillon\***

Effective July of 2016, our state adopted the Uniform Bar Examination (“UBE”) for persons seeking admission to practice law in New York. The UBE has three multistate components, the largest of which tests standard subjects similar to those taught to students during their first year or two of law school. A second component is a series of short essays that test the same standard subjects, plus an additional list of defined subjects typically offered to law students as electives during the second or third year of law school. A third component requires analysis of a practical fact pattern answerable within a tight time constraint. Scores are portable for admission to other UBE-member states. Of the 32 other member states, District of Columbia, and territories, 17 of them require a minimum score higher than the 266 score required by New York, 10 require minimum scores equal to that of New York, and 5 require less (<http://www.ncbex.org/exams/ube/score-portability/minimum-scores/>).

There is a fourth test component unique to persons seeking admission to the New York Bar called the New York Law Examination (“NYLE”). It is comprised of 50 multiple choice internet questions. The NYLE is open-book and tests a variety of areas of New York legal topics. In my view, the questions are exceedingly simple. The NYLE questions for the exams administered for July 2016 through July 2018 are available for review on-line at <http://www.nybarexam.org/Content/NYLESampleQuestions.pdf>. I invite you to review their ease.

This is my eleventh year teaching New York Practice at Fordham. Prior to the adoption of the UBE, my spring semester classes had 90 third-year students each year, the maximum number permitted in the classrooms under the building’s fire code limitations. Some years, students were turned away. The robust enrollment reflected the fact that 3-L students wanted to take courses that would later appear in the essay portion of the “old” New York State bar examination. Starting in 2016, when the UBE was adopted, my class enrollment dropped in consecutive years from 90 to 28, to 24, to 19, but rebounded to 32 now. There is nothing different about the course or its subject matter -- the same school, professor, teaching style, and textbook. What changed was that New York Practice, and the New York peculiarities to Wills and Domestic Relations, ceased having any emphasis for passing the bar exam. Colleagues who teach the same course elsewhere within the state report similar declines in their enrollments. Bar review courses are said to be urging students to steer clear of New York courses during law school. In my view, the UBE has incentivized students to strategically avoid New York-specific subjects.

Is this unintended consequence a good development for our profession? A significant portion of new attorneys entering our profession will, during some portion of their careers, advise clients and litigate in courts about a variety of New York subjects and procedures. Now, fewer of them will enter the profession with any meaningful or working knowledge of New York-specific law. Is this in our collective best interests? Or the firms’ clients for whom young associates work? Or the courts that must review the associates’ work products? Or the associates themselves during the maiden years of their careers?

One might argue that the law firms are responsible for teaching young attorneys the nuts and bolts of our state’s laws and procedures. That is true only partially. In my own days as a litigator in state and federal courts, I learned volumes at the elbows of experienced legal mentors in the workplace. Yet, with the cost of law school educations in New York running several tens of thousands of dollars a year, we should not be content offering professional licensure that misses a key piece of a well-rounded legal education. The current method of testing for the bar is, in my observational opinion, a disincentive to choosing the very New York grounded subjects which will, for many students, have the greatest practical utility early in their legal careers. Kudos to students whose resumes still reflect New York subjects.

---

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



# CLASSIFIED ADS

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## OFFICE SPACE

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email: [lawoffice10927@gmail.com](mailto:lawoffice10927@gmail.com)

## OFFICE SPACE FOR RENT

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## 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.

## ATTORNEY WANTED

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## LEGAL SECRETARY WANTED

Legal Secretary with 5 + years of experience primarily in Trust and Estates. Extensive client contact, heavy phone coverage, calendar management. Highly proficient in Word and Excel. Extensive document preparation and editing. Full time position located in New City, NY. If interested, please email resume to [mgoodman@mcfnylaw.com](mailto:mgoodman@mcfnylaw.com).

## TRIAL ATTORNEY WANTED

Finkelstein & Partners is seeking to hire a TRIAL ATTORNEY to cover Orange, Rockland and Westchester County personal injury cases. Candidates must be licensed to practice in New York and have 3 to 5 years of litigation experience. To be considered please your email resume to: [tcavallucci@lawampm.com](mailto:tcavallucci@lawampm.com)

## LEGAL ASSISTANT PART-TIME

Legal/administrative assistant for small law firm in New City. This is a part-time entry level position suitable for someone interested in gaining practicable and invaluable job experience in the legal area. Good computer skills, detailed oriented, knowledge of basic office procedures and Internet savvy candidate preferred. Students are encouraged to apply. Please fax resume to (845) 517-0671.

## 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](mailto:ahurwitz@sunyrockland.edu)

## ASSOCIATE ATTORNEY NEEDED

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

## 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](mailto:joanneconde7@gmail.com)



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