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Ph.D.

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Sabrina Charles-Pierre,
Editor

ROCKLAND COUNTY BAR ASSOCIATION



NEWSBRIEF

www.rocklandbar.org

March 2019

MOCK TRIAL ROCKLAND

PRELIMINARY ROUNDS:

Wednesday, March 6 and Monday, March 11, 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!

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. 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

NEWS from the Executive Director

NOTICE OF NOMINATIONS FOR THE 2019/20 BOARD OF DIRECTORS FOR THE ROCKLAND COUNTY BAR ASSOCIATION

Pursuant to Article V, Section 9 of the By Laws of the Rockland County Bar Association, the Nominating Committee has nominated the following candidates for election to the Association’s Board of Directors:

- Martin Butcher – 3 year term**
- Hernan Caceres – 3 year term**
- Laura M. Catina – 3 year term**
- Laurie A. Dorsainvil – 3 year term**
- Robert L. Pitkofsky – 3 year term**
- Ira S. Schoeps – 3 year term**

Any member of the Association not selected by the Nominating Committee who wishes to have his or her name placed in nomination for election to the Board, whether or not he or she solicited nomination from the Nominating Committee, shall submit a petition to place his or her name before the membership. The petition must be signed by no fewer than twenty (20) members in good standing with the Association and must be submitted in person at the offices of the Bar Association, 337 N. Main Street, Suite 1, New City, NY, 10956, no later than April 5, 2019.

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COMMERCIAL LITIGATION ISSUES OF INTEREST

March 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, an architect, asks you to sue for the balance due under a contract to provide renovation design services for a homeowner. Your client's letter proposal, which was countersigned by the homeowner, contained a fixed amount for the initial work, and incorporated a three-page AIA rider that was required to be signed before work began. The rider was not signed by either party, but work proceeded. The rider provided for payment of \$100 per hour for any additional work, other than architectural drawings, and provided for arbitration of all disputes. You commence an action to recover the balance due for the fixed amount, plus \$100 per hour for the additional work. The homeowner moves to compel arbitration.

Will you defeat the motion to compel arbitration?

The answer is no.

In *Young v. Brim*, NYLJ 1547531632BT651908201, Index No. 651908/2018 (Sup. Ct. N.Y. Co., January 11, 2019), plaintiff sued for architectural fees pursuant to a contract for design services she performed for the renovation of defendants' home. Plaintiff's one-page letter proposal was signed by the defendants. The letter proposal provided for a fixed fee of \$7,000 for specified work, and incorporated a rider that was required to be signed before work would begin. Although the rider was never signed by either party, work commenced. The rider provided for payment of an additional \$100 per hour for all additional work, other than architectural drawings, and provided for arbitration of all disputes before the American Arbitration Association. The defendants paid \$5,500 before a dispute arose and payments stopped. The complaint seeks \$39,051 in unpaid fees.

The defendants moved to dismiss the complaint and to compel arbitration before the AAA. The plaintiff opposed the motion, claiming the defendants refused to sign the rider because they did not consent to its terms, making the rider unenforceable. The defendants claim the plaintiff never asked them to sign the rider, and they did not object to its terms. The defendants produced emails that indicated the parties treated various provisions of the rider as binding and enforceable. Moreover, the fees the plaintiff billed in excess of \$7,000 were billed pursuant to the terms of the rider.

The Court noted that the question of whether parties accepted terms of a rider through "acquiescent conduct" was an issue of fact that could not be determined on a motion addressed to the pleadings, quoting *Nwauwa v. Mamos*, 53 A.D.3d 646, 649 (2d Dep't 2008).

Nonetheless, the Court stayed the action and ordered the plaintiff to arbitrate her claims, ruling that the complaint itself constituted documentary evidence that refutes the plaintiff's claim, citing *Warshaw Burstein Cohen Schlesinger & Kuh, LLP, v. Longmire*, 106 A.D.3d 536, 537 (1st Dep't), lv. dismissed, 21 N.Y.3d 1059 (2013). The complaint referred to the rider as part of the "Young Agreement," and sought to enforce the \$100 per hour provision contained in the rider, thus conceding that the rider is enforceable.

The lesson? If your client wants to enforce only certain terms of an unsigned rider that is incorporated into a signed contract, your client must expect to be bound by all of the terms of the unsigned rider. Simply put, an unsigned rider to an agreement is likely to be enforceable against a party who claims the benefit of any of the terms of the rider.



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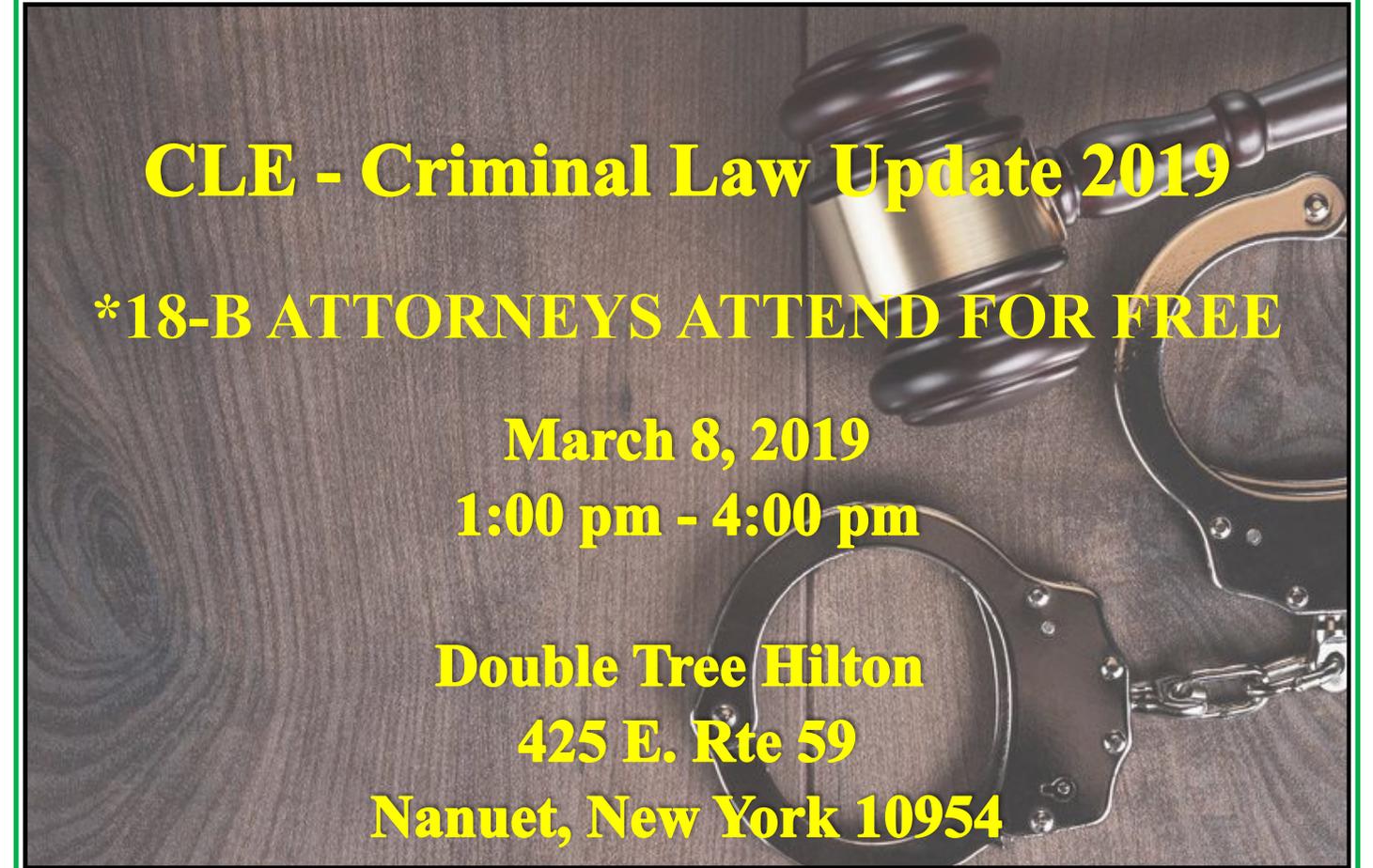
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*For Attorneys admitted 5 years or less cost is only \$75. Annual fee includes up to 3 panels. Additional panels up to 8 panels available for additional \$20 fee per panel.



CLE - Criminal Law Update 2019

***18-B ATTORNEYS ATTEND FOR FREE**

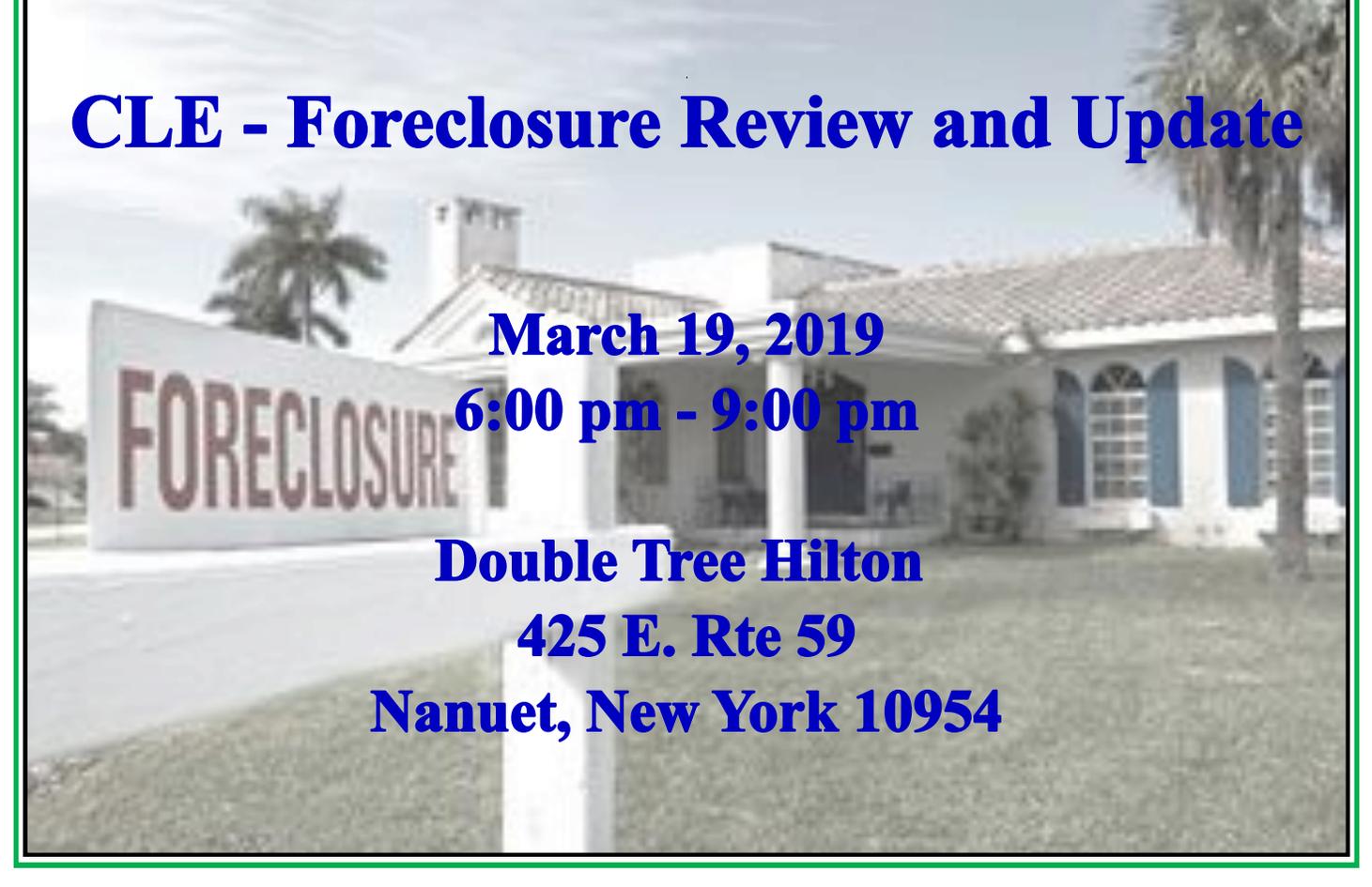
March 8, 2019

1:00 pm - 4:00 pm

Double Tree Hilton

425 E. Rte 59

Nanuet, New York 10954



CLE - Foreclosure Review and Update

March 19, 2019

6:00 pm - 9:00 pm

Double Tree Hilton

425 E. Rte 59

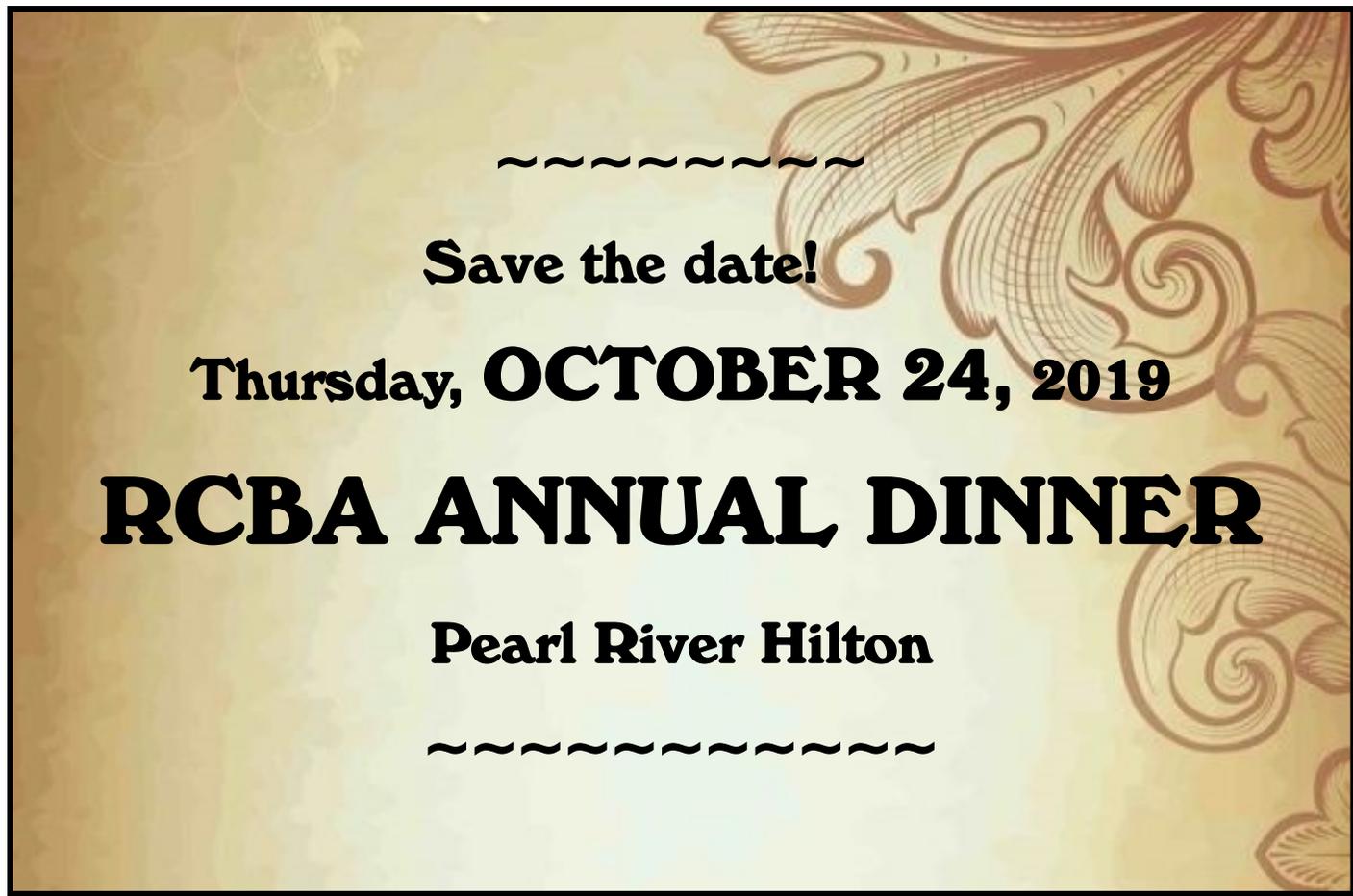
Nanuet, New York 10954



LAW DAY 2019

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

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



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**Save the date!**

**Thursday, OCTOBER 24, 2019**

# **RCBA ANNUAL DINNER**

**Pearl River Hilton**

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of the

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Tuesday, March 26 – 6PM

Bar Association Offices

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Upcoming Events!

THE PRACTICE PAGE
WHEN WITNESSES NEED NOT ANSWER QUESTIONS AT DEPOSITION
Hon. Mark C. Dillon*

Most of us can relate to circumstances where, while taking depositions, counsel for the witness directs his/her client to not answer a question posed. It can be frustrating if the tactic is merely for obstruction, but there are six situations where witnesses may properly refuse to answer deposition questions.

As a starting point, discovery is liberally construed under CPLR 3101(a), and for pre-trial depositions, questioning is necessarily broader than what may be admissible at trial (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406). Attorneys typically agree at the commencement of depositions to the “usual stipulations” that all objections are waived and reserved for the trial, except as to the form of the question (CPLR 3115[a]). Therefore, subject to limited exceptions, depositions are to be wide open and witnesses must be responsive. Notwithstanding the usual stipulations, witnesses need not answer questions if they involve:

1) 5th Amendment Rights. The constitutional right against self-incrimination extends to all phases of pre-trial discovery (CPLR 4501). The privilege cannot be invoked by a corporation (*United States v White*, 322 U.S. 694), nor when the witness has already been granted immunity from criminal prosecution (*June Fabrics v Teri Sue Fashions*, 194 Misc. 267, 268). If a question is not answered on the basis of privilege, the trier of fact may draw a discretionary negative inference from the refusal (PJI 1:76; *Marine Midland Bank v Russo Produce Co.*, 50 NY2d 31, 42-43; Uniform Rule 221.2).

2) Statutory Privileges. The CPLR is replete with statutory privileges from disclosure. These include the attorney-client privilege of confidentiality (CPLR 4503[a]), though fee arrangements are discoverable in actions involving disputed legal fees (*Matter of Priest v Hennessy*, 51 NY2d 62, 69). Doctor-patient and psychologist-patient communications are also privileged (CPLR 4504[a] and 4507) except where the treatment history is material to the party’s claims or defenses (*Prink v Rockefeller Center, Inc.*, 48 NY2d 309, 314). Additional codified privileges include communications between the witness and a spouse (CPLR 4502[b]), clergy (CPLR 4505), social workers (CPLR 4508), rape crisis counselors (CPLR 4510[b]), and interestingly, library records (CPLR 4509).

3) Custody in Matrimonials. Deposition questions regarding issues of custody are generally not permitted (*Garvin v Garvin*, 62 AD2d 699), as divorced spouses are parents for life and disagreeable custody questions could render co-parenting more difficult (P., Plaintiff v D., Defendant, 93 Misc.2d 704, 706).

4) A Defendant-Physician’s Opinion of a Co-Defendant’s Medical Malpractice. In medical malpractice actions, a defendant physician cannot be compelled to provide opinions about the quality of professional services rendered by a co-defendant, if the question bears solely on the alleged malpractice of the co-defendant and not on the practice of the witness (*Carvahlo v New Rochelle Hospital*, 53 AD2d 635). Defendant physicians cannot be forced to provide what would amount to expert opinion.

5) The “Palpably Improper” Question. This discovery exception is less clear-cut than others as it is defined by subjective, rather than objective, criteria. Witnesses need not answer questions that are so improper that doing so would cause substantial prejudice or which are palpably or grossly irrelevant (*Ferraro v New York Telephone Co.*, 94 AD2d 784; *White v Martins*, 100 AD2d 805; Uniform Rule 221.2). Context matters. The proverbial question of “Why did you beat your spouse?” would be palpably improper in a typical personal injury or contract action, but might be appropriate in a contested matrimonial action based on cruel and inhuman treatment. The burden of establishing a question as palpably improper is high, such as inquiring into the prior sexual history of a plaintiff seeking civil damages from a sexual assault (E.g., *Andersen v Cornell University*, 225 AD2d 946).

6) Protective Orders. Questions need not be answered if doing so would contravene an existing protective order (Uniform Rule 221.2).

An appropriate record should be made by all counsel of disputes in the transcript, in the event that post-deposition motions fly to compel answers or for protective orders (CPLR 3103[a], 3124). Given the importance of depositions to litigation, these rules are important as well.

* 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.

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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 by the 15th of the month so that the Executive Board may review it.

Thank you!



COMMITTEE CORNER

**Law Day Committee
Friday, March 15, 2019
12:30pm @ the RCBA Offices**

**New Lawyers and Social Committee
Tuesday, March 26, 2019
6:00pm @ the RCBA Offices**

Need a Place to Meet in New City?

RCBA Conference Rooms available for rent.

MEMBER PRICES:

**1st two hours FREE, then \$25/hour
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NON-MEMBER PRICES:

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Half Day (4 hours) = \$150.00
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EXECUTIVE COMMITTEE
FOR CONTENT.**

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

CLE CORNER

PLAN YOUR YEAR OF CLE'S NOW

2019 CLE TITLE	DATE & TIME
Criminal Law Update 2019	Friday, March 8, 2019 - 1:00pm - 4:00pm
Foreclosure Review and Update	Tuesday, March 19, 2019 - 6:00pm - 9:00pm
Ethics Update	Wednesday, April 10, 2019 - 12:00pm - 2:00pm
CPLR Update	Friday, May 3, 2019 - 1:00pm - 4:00pm
Mediation	Monday, May 13, 2019- 12:00pm - 2:00pm
Elder Law	Tuesday, June 4, 2019 - 6:00pm - 9:00pm

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.

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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OFFICE SPACE

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OFFICE SPACE FOR RENT

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STORAGE SPACE - ORANGEBURG

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. Contact Bruce : 845-359-5400

OFFICE FURNITURE FOR SALE

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OFFICE SPACE

Office space available in New City. One or two offices and reception area available. Bright open area plan with conference room. Congenial working environment. Please call 845-639-2411 or email robert@magrinolaw.com.

ENTRY LEVEL ASSOCIATE WANTED

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

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New City, Rockland County, NY Law Office seeks attorney with experience in Personal Injury, Dental Malpractice, Nursing Home Neglect, and/or Workers' Compensation. Prefer minimum of 5 to 10+ years' experience in some or all of these areas. Deposition and Trial experience a plus. Salary and Benefits to be discussed. Applicants can learn more about the Law Firm of Valerie J. Crown by visiting our website: valericrown.com
Call 845.598.8253. email: vcrownlaw@aol.com.

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Personal injury law office looking for full or part time legal assistant. Some flexibility as to hours/days may be available. Job entails phones, client interaction, documents and more. Experienced and/or bi-lingual definite asset. For a fairly busy office the atmosphere is pleasant and friendly. If interested, please call 845-638-6800 or email resume to jeff@injurylaw-ny.com

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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.

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