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Barbara Silverstone-Editor

# ROCKLAND COUNTY BAR ASSOCIATION NEWS BRIEF

www.rocklandbar.org



**March 2024** 

## **President's Post**

Spring is in the air! Announcing a new column in Newsbrief called "RCBA Members' Good News!" As often as possible we will publish a piece (or two) of uplifting news about one (or more) of our Members! Our new column appears in this month's edition on Page 15. We are thrilled to be able to announce the happy news of two of our Members, Daniella Pascaru and Joe D'Urso, whose "good news" is the birth of their daughter, Isabella. Please send in your Good News and tidings items and photos to Barbara at

Barbara@rocklandbar.org

Speaking of Spring and rebirth, RCBA celebrates the rebirth of our New Lawyers and Social Committee. This Committee is planning its first social event, which will embrace both new and "old" lawyers, and those in-between. The Committee wants to develop a cadre of experienced attorneys willing to mentor newly admitted attorneys. Another Spring celebration is the on-going interest in the newly established Pro Bono Committee. Since our announcement in last month's Newsbrief we have heard from several Members who will lead this new Committee. To get involved, email our Executive Director, Nancy Low-Hogan at Nancy@Rocklandbar.org.

On a different note, we have to be aware of the pitfalls of legal research created by ChatGPT or any other platform of artificial intelligence. There have been multiple attorneys facing discipline for fictional legal authority citations provided by generative artificial intelligence. Recently, two New York lawyers were sanctioned by a District Court Judge for submitting a brief with multiple fake citations. Another attorney admitted to the Second Circuit Court of Appeals that she relied on generative artificial intelligence in identifying precedents that might support her position but did not read or otherwise confirm the validity of what was cited. She was referred to the grievance panel.

A helpful admonition is if one uses artificial intelligence employ it as an adjunct to your own research or spring board for further inquiry. Make sure that no authority is cited without checking its applicability or lack thereof.

Empathy. I recently came across an article highlighting empathy as an important leadership skill. Leading with empathy has positive mental health benefits. It promotes innovation and retention. During the pandemic, one study indicated that over 40% of people experienced a decline in mental health and almost 70% of people encountered unhealthy and excessive stress with almost 60% having increased anxiety.

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Why empathy? It has been found to be a powerful palliative contributing experience for both individuals and teams. When leaders are empathic, there is more innovation. When leaders are empathetic, there is more engagement as well as retention of work force. Think about how we can be more empathetic to those we work with. Whether it's a paralegal or an associate, empathizing with their circumstances, their stress levels, workloads, and being considerate of difficulties others may be experiencing will reap benefits. We don't have to be an expert in mental health in order to show that we care and are paying attention. Just asking basic questions and taking clues from employees about what they want to share is important. Keep the door to communication open. Ask about an employee's spouse, their children, athletic endeavors and what's happening outside of work. Genuinely care. Empathy should not be something from left field. It is a real-life way of interacting and demonstrating that you are a concerned leader.

I am also musing about the importance of client communication as an integral necessity in the practice of law. Many grievances arise from the failure to return telephone calls. It is so very important to call clients back as soon as possible. If you are engaged in another matter, then assign the task to a paralegal or someone in the firm. Many complaints against lawyers emanate from the failure to communicate. Technology allows one to communicate by email or text messaging. We have to consider when too much time has elapsed. Merely calling a client and inquiring as to how they are doing or how you can help is particularly important. Client communication requires one makes sure that confidentiality is maintained especially when texting or emailing. A text message is probably the most efficient and rapid way of communicating. When you email, attempt to address the email to one's personal account rather than to a work issued email. If you decide to telephone and leave a voicemail, make sure it's on the client's personal line and not amenable to access by others. In the personal injury field, it is important to maintain ongoing contact to find out how the client's medical condition and treatment is progressing. I believe that our clients are appreciative when they get an unsolicited call inquiring about their current symptoms and complaints, especially during the weekend.

What I am conveying is the importance of an ongoing dialogue and meaningful interaction with our clients. If we produce a collaborative lawyer-client relationship the concomitant benefit obviously reduces the likelihood of a grievance.

I am very pleased to let you know that our Nominating Committee has completed their interviews for the 2024-25 RCBA Board of Directors. The names of those nominated will be announced this month and the Membership will vote in an election to be held this April.

May the wind be always at your back. May the sun shine warm upon your face.

Happy St. Patrick's Day to all.

Sincerely,

Robert (Rob) L. Fellows, Esq.— President













## NOTICE OF NOMINATIONS FOR THE 2024/25 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:

Jeffrey M. Adams (3-year term)

Judith Bachman (3-year term)

Alicia B. Cember (3-year term)

George G. Coffinas (1-year term)

Robert L. Fellows (3-year term)

Jay Golland (3-year term)

Helena Phillibert (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, 2024.

## **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 <a href="mancy@rocklandbar.org">nancy@rocklandbar.org</a>. 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 or her 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 Nancy@rocklandbar.org

## **OUR PROFESSIONAL ETHICS**

Richard A. Glickel, Esq.\*

Fans of classic cinema must remember actor Raymond Massey, ("Abe Lincoln in Illinois," "Arsenic & Old Lace" and "East of Eden," are some of his more memorable motion pictures over a career spanning five decades). In mid-career, the actor's personal life rendered an unusual, if not unique, post-divorce sidebar forever ensconced in New York legal lore, when, during 1939, Raymond Massey and his actress-wife, Adrianne Allen ended their 10-year marriage. Massey and Allen were each represented by husband-and-wife attorneys William and Dorothy Whitney. When the divorce proceedings concluded, the lawyers divorced and married their respective actor clients! Those subsequent nuptials lasted a lifetime for *both* pairs. The real-life divorce proceeding pitting lawyer-spouses in opposing corners, inspired the screenplay authored by husband and wife, Ruth Gordon & Garson Kanin (who, incidentally, were friends with the Masseys and the Whitneys) for the 1949 Hollywood Battle of the Sexes, "Adam's Rib," starring (for the sixth time in their storied careers), Spencer Tracy and Katherine Hepburn, (who were, also, famously romantically entwined), as husband and wife lawyers on opposite sides of a sensational homicide prosecution (he for the State, she for the defense).

## A Romantic Relationship Presents a Personal Interest Conflict.

1940's screenwriters wouldn't know of, nor have concern for, New York's yet-to-be promulgated Rules of Professional Conduct ("Rules") and prohibited lawyer conflicts of interest. And, while "the heart wants what the heart wants," a criminal defense lawyer's romantic relationship with opposing counsel may still result in the attorneys' disqualification as well as the imputed disqualification of the attorneys' office(s).

Rule 1.7 (a)(2) provides that a lawyer may not represent a client if a reasonable lawyer would conclude that "there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own . . . personal interests" unless the conflict is consentable under Rule 1.7(b) and the conflicted lawyer obtains the client's informed consent, confirmed in writing.

Comment [11] to Rule 1.7, addresses instances where related lawyers are involved on opposite sides of a case:

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers, before the lawyer agrees to undertake the representation. Thus, a lawyer who has a significant intimate or close family relationship with another lawyer ordinarily may not represent a client in a matter where that other lawyer is representing another party, unless each client gives informed consent, as defined in Rule 1.0(j).

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Under Rule 1.7(b), a conflict is sometimes unconsentable. "Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients consent to representation burdened by a conflict of interest" (Comment [15]); and, determining whether a conflict is nonconsentable will depend on the facts and circumstances. But a romantic relationship between a prosecutor and the defense attorney would be a *noncontestable* conflict.

In N.Y. State 660 (1994), NYSBA's Committee on Professional Ethics reviewed the close personal relationship between a criminal defense associate and an assistant district attorney in the county in which the associate's firm was located. The Committee concluded that "[u]nder the circumstances, it would not be unreasonable to assume that they each had a personal interest in one another's reputation, success and welfare" that "ordinarily would operate to disqualify the lawyers from undertaking an adverse representation without the consent of their respective clients."

Noting that a "scintilla of partiality, which might be waivable by private parties in other contexts, is intolerably suspect and prejudicial to the public's regard for the criminal justice system," the Committee stated:

Irrespective of the subjective intent of the prosecutor and defense counsel, and regardless of howsoever scrupulous they may be in the conduct of their professional obligations, the appearance of partiality in the administration of justice is so strong that a couple who date frequently should not be permitted to appear opposite one another in criminal cases.

N.Y. State 660.

If the personal conflict is nonconsentable under Rule 1.7(b), and there are no exceptions to disqualification, there is imputed disqualification to the lawyer's entire firm under Rule 1.10(a). We note that New York's Rules differ from the ABA's Model Rules on whether personal interest conflicts are imputed within an entire law firm, which specifically provide that personal conflicts of interest of one lawyer in a firm are not imputed to other lawyers in the firm unless the conflict presents a significant risk of materially limiting representation by the other lawyers in the firm.

It was, no doubt, in consideration of the Model Rule's different language that the Committee recently partially modified N.Y. State 660, to the extent that it concludes whether other lawyers in a firm will be automatically disqualified as follows: "If the lawyer is disqualified in circumstances where the conflict is nonconsentable, the disqualification is imputed to the lawyer's firm, but the imputed conflict may be waived with client consent even if the conflict is nonconsentable as to that lawyer, so as to allow other lawyers in the firm to accept or continue the representation." So, "if another lawyer in the disqualified lawyer's firm reasonably believes he or she will be able to provide competent and diligent representation to the client and the client gives informed consent, confirmed in writing, then that other lawyer may undertake the representation. In other words, the client may waive the conflict imputed to other lawyers in the disqualified lawyer's firm even if the lawyer's own conflict would be unconsentable." N.Y. State 1255.

I love old movies.

\*Chair, RCBA Committee on Professional Ethics

RCBA members may request an informal opinion on issues of ethical concern from the Association's Committee on Professional Ethics by addressing their written question(s) to: <a href="mailto:rglickel@glickelaw.com">rglickel@glickelaw.com</a>

## THE PRACTICE PAGE

## THE NYS "LEMON LAW"... NOT APPLICABLE TO LEMONADE

Hon, Mark C. Dillon \*

Let's talk cars, whether owned or leased. And motorcycles. And while we're at it, motor homes.

The New York "Lemon Law" (GBL 198-a) provides special consumer protections if a vehicle is covered by an express manufacturer's warranty at the time of its original delivery. It applies to vehicles registered in New York for a period of two years from the original delivery or for 18,000 miles, whichever occurs first. The law requires that the manufacturer, agent, or dealer perform warranty repairs for the consumer for no charge, so long as the vehicle is within the statutory two-year/18,000 mile window. While that portion of the law merely enforces many repairs that should be made under warranty anyway, the statute has an important kicker: the manufacturer has a duty to replace or repurchase the vehicle if the warranty repair cannot be made after four or more attempts or if the vehicle is out of service thirty or more calendar days as a cumulative result of one or more repair attempts. In the event that a consumer chooses to receive a replacement vehicle rather than its repurchase price, the vehicle provided is to be comparable --- meaning the same year, model, and approximate odometer mileage.

A key to the remedies of the Lemon Law is that there be a non-conforming defect with the vehicle which cannot be repaired despite the reasonable attempts required by the statute. That requirement was central in the case of *Matter of BMW of North America, LLC v Dean*, 215 A.D.3d 746 (2023), which warrants some discussion. The respondent, Avery Dean (Dean), custom ordered a 2019 BMW X3 with standard features and other carefully-selected upgrades, which rendered that BMW an expensive but desirable quality vehicle. One of the vehicle's features was a "Comfort Access System." A Comfort Access System automatically unlocks the doors and starts the engine when the owner merely walks within a certain proximity of the vehicle. The owner need not use a key or even press any button on a fob. The vehicle transmits a constant signal seeking the owner's fob, and when the fob comes within sensor range, the owner can enter the vehicle and drive away without the inconvenience of unlocking any door or turning the ignition. In Dean's case, the system sometimes worked. But there were other occasions when the owner would walk toward the vehicle intending to drive it, and contrary to the promise of the Comfort Access System, was forced to use his fob to push a button to unlock the car door and to then manually activate the engine.

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Dean brought his BMW to the petitioner, BMW of North America, Inc. (Dealer), on five occasions for warranty repairs to address the issue. The Dealer failed to correct the problem. As a result, Dean requested an arbitration required by the Lemon Law seeking a refund of the vehicle's value. Ultimately, the arbitrator's determination became the subject of a CPLR 7511 proceeding and its appellate review. Here, Dean failed to establish that there was any actual defect in the materials or workmanship covered by the vehicle's express warranty. Rather, the Comfort Access System was specifically designed to enter a sleep mode if not operated for approximately two days, so that its constant search signal would not drain and kill the car's battery which powered it. Once the Comfort Access System entered its sleep mode, it could not operate when the owner's fob came within range without the vehicle first being manually started to re-activate the search feature. Thus, while the owner's enjoyment of the automatic unlock and ignition feature was spotty, there was no "defect" in the design or manufacture of the car which was instead performing as specifically designed and intended. The Appellate Division further found that the shortcomings of the Comfort Access System did not affect vehicular safety, nor did it substantially impair the value of the vehicle.

The bottom line for the Lemon Law is that there must actually be a bitter lemon to trigger the statutory remedies, and not lemonade intentionally sweetened with sugar.

\*Mark C. Dillon is a Justice of the Appellate Division, 2<sup>nd</sup> Dep't., an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author of CPLR Practice Commentaries in McKinney's.

# There is always something happening at the Rockland County Bar Association!

## **CLE PROGRAMS**

- Foreclosure
- CPLR Update
- Jury Selection
- Substance Use Testing
- Immigration
- And many more....

## **COMMUNITY ACTIVITIES**

- High School Mock Trial Competition
- Law Day Ceremony
- DEI High School Essay Contest

## **EVENTS**

- Awards and Installation Dinner
- Annual Dinner Gala
- Holiday Party
- Lunch With a Judge

WATCH YOUR EMAIL AND VISIT
WWW.ROCKLANDBAR.ORG TO STAY
INFORMED

JOIN US! We look forward to seeing you

## **COMMERCIAL LITIGATION ISSUES OF INTEREST**

Submitted by Joseph Churgin, Esq. and Susan Cooper, Esq.\*

Your client contracted to purchase three properties from the same seller and made downpayments totaling \$600,000, to be held in escrow. Each of the three contracts provided that your client's "sole and exclusive remedy" for seller's failure to convey the properties was to either terminate the agreement and recover the deposit, or seek specific performance. The seller set a time of the essence closing date but failed to obtain assignments of mortgages on the properties, as required by the contracts. Your client terminated the contracts, but the seller did not return the deposits. You sued for return of the downpayment plus pre-judgment interest. The court granted your client judgment for the return of the downpayment but denied pre-judgment interest, holding that the "sole and exclusive" remedy provision constituted a waiver of pre-judgment interest otherwise authorized by CPLR 5001(a). You appealed.

Will you prevail on appeal and be awarded pre-judgment interest?

The answer is *yes*.

In *IHG Harlem I LLC v. 406 Manhattan LLC*, 2024 WL 157301 (1<sup>st</sup> Dep't, January 16, 2024) (NYLJ 1705500098NY16186315, Case No.161863/15), the plaintiff sued the defendant for breach of three contracts to purchase real property, seeking return of the escrowed downpayment of \$626,250 plus pre-judgment interest. The contracts each provided for the plaintiff to choose, "as its sole and exclusive remedy," either termination of the contracts and the return of its deposits, or specific performance. On a prior appeal decided in 2021 (200 A.D.3d 417, 418), the First Department held 1) that the defendant breached the contract by failing to obtain the contractually required assignment of mortgages on the properties; and 2) "As the plaintiff has elected not to seek specific performance, its sole remedy is the return of its deposits."

After the first appeal, the plaintiff presented a proposed judgment to Supreme Court for signature for the amount held in escrow *plus* statutory pre-judgment interest. The Supreme Court signed defendants' counter-proposed judgment, which directed return of the escrowed funds *without* interest. The Supreme Court

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reasoned that *J. D'Addario and Sommer v. General Bronze Corp.* (28 A.D.2d 981 [1<sup>st</sup> Dept 1967], aff'd 21 N.Y.2d 775 [1968]) constituted precedent requiring denial of interest. In that case, the seller was denied an award of statutory interest on the deposit it had returned to the purchaser, because the contract provided the seller would have no further rights once the downpayment was paid as liquidated damages. The Supreme Court also explained that denying interest was consistent with the Appellate Division's decision on the earlier appeal, which did not award a judgment with interest.

On plaintiff's appeal from the judgment, the Court stated, "The sole remaining issue, and the subject of this appeal, is whether plaintiff is entitled to statutory interest on the return of its deposit, or, by the language in the contracts, it waived its right to collect prejudgment interest." The Court noted that CPLR 5001(a) provides that interest "shall" be awarded for breach of contract, and explained that awarding statutory interest on escrowed amounts "is not to punish the breaching party, but rather to compensate the wronged party for the loss of use of their money," citing numerous cases. It noted that that the statutory right to interest can be waived only by a clearly manifested intent to do so, as required for waivers in other contexts, citing *Navillus Tile v. Turner Const. Co.*, 2 A.D.3d 209, 211 (1st Dep't 2003).

The Court agreed with plaintiff that Supreme Court employed too broad a reading of *D'Addario*, where, in addition to the contract using the terms "sole remedy," "sole obligation," and "no further rights," the contract also provided that the escrowed funds were required to be placed in an interest-bearing account. Compensation for deprivation of the use of the money was provided in the form of bank-accrued interest, clearly establishing that the parties did not contemplate interest paid at the statutory rate.

By contrast, the contracts under review here made no such provision for the plaintiff's lost use of its money. Although the contract did provide for the funds to be held in an IOLA account, the interest accrued in that type of account is paid to the state IOLA fund, not to the prevailing party. There was no provision for compensation to the plaintiff for lost use of the funds.

### ... Continued

As to the prior appeal, the Court ruled that the direction to return the deposits to plaintiff as liquidated damages does not preclude statutory prejudgment interest.

The Court held that interest should be computed at the statutory rate of 9% from the date of the breach (the time of the essence closing date fixed by the seller) through the date the downpayment was finally returned seven years later.

The lesson? To protect your client against having to pay anything more than the amount provided in a liquidated damages clause, there should be an express waiver of all other damages, including loss of use of deposited funds. If you represent a seller, be sure to provide for purchaser's deposits to be placed in an interest-bearing account that is not an IOLA account. Otherwise, statutory prejudgment interest of 9% could be added to a judgement for breach of contract.

\*By Joseph Churgin, Esq. and Susan Cooper, Esq. of SAVAD CHURGIN, LLP, Attorneys at Law



## **DID YOU KNOW?**

The Rockland County Bar Association has a <u>Facebook page</u> where we announce upcoming events and other issues of interest to the local community.

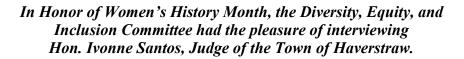
Visit and follow the page and "Like" the postings to help your association be seen!

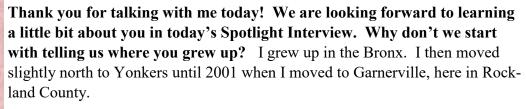




## The Committee on Diversity, Equity & Inclusion presents...

## **SPOTLIGHT**





**Did you always want to be a Lawyer?** Actually, no. I wanted to be a doctor. After graduating from Lehman High School in the Bronx, I went to NYU and majored in pre-med. Shortly thereafter, I realized that medicine wasn't my calling and I left NYU. I started working for a real estate company as a receptionist. At that time, I was a single mother of two young girls, ages four and five years old. I really enjoyed the real estate industry, and I soon obtained my salesperson license. After a few years I realized that I wanted to strive for something more and build a career for myself and my family.

**Did you consider going back to school at that time?** Yes. I attended Iona college in New Rochelle. Even though I worked in the real estate industry I majored in Criminal Justice. The Criminal Justice field always interested me, and I knew that there was a possibility I could make a career in this area. After gradu-

ation, I was accepted into Pace University School of Law. I attended the day-program and worked as a Mortgage Loan Officer at night. While working as a Mortgage Loan Officer, I made many connections in the Real Estate industry and after graduation, I decided to build a career in real estate law. I started out my practice renting a desk from a mortgage loan officer and now I have my own thriving real estate law firm. I have always been a solo practitioner and I am very proud of that.

**Tell us more about your career?** I have been practicing law since 2000. I started out in the East Tremont section of the Bronx where I practiced Real Estate Law. A few years after moving to Rockland County I opened a second office here in Rockland County. My Real Estate law practice continued to thrive and in 2008 I had the honor of becoming a Special Prosecutor for the Town of Haverstraw. In 2010, I was asked to be a Special Prosecutor for the Village of West Haverstraw as well. I served in both positions until 2017, when I was appointed as Town Justice to the Town of Haverstraw and then elected to this position the following year.



## Continued...

It looks like your criminal justice major from college came full circle! Yes, absolutely. I am so grateful to be in this position and to have had the support from so many people in our community and in our Town. I am always open and willing to learn, and I am grateful every day I am in this position. I also feel a great sense of pride in knowing that the people that come into my courtroom see someone that looks like them. It is their community looking back at them. I am so very proud of that. I am also so proud to be the first woman to sit as a Judge in the Town of Haverstraw.

Thank you for sharing your professional life with us, can you tell us a little bit about your personal life? Of course! I am a mom to three amazing daughters: Ashley, Amy, and Felicia. Ashley is a Nurse Manager in Labor and Delivery at New York Presbyterian Hospital. Amy is a Bilingual Secondary math teacher and Felicia is in her third year at St. Thomas Aquinas College, here in Rockland. I am also a grand-mother of five grandchildren, with one on the way!

Who is your inspiration or Hero? My mother. My mom was a single mother and she worked very hard to provide for our family. We always had suitable housing, neat clothes for school and we never went without. As a child, I never realized all those sacrifices, but as a mother, I understand now. I, too, made those sacrifices and will always make those sacrifices for my family. I learned this from my mom. She was strict and had high expectations of me and I never wanted to let her down because I knew how hard she worked for me. The way she raised me made me the person and mother I am today.

What is one piece of good advice that you have received or learned? The phrase "You got this". You must believe that you have it within you, you just must learn how to get it out of yourself! You must always believe in yourself and your abilities. You must always tell yourself "You got this!"

Tell us one of your guilty pleasures. Chocolate! I love chocolate!!

Is there anything else we didn't cover that you would like the Bar Association to know about you? Being involved in the community that I live in is very important to me. I regularly attend events and help coordinate Community outreach for the holidays in the Village of Haverstraw. For the past several years, I have worked alongside other community members and organized events for Christmas and Thanksgiving. These events provide food and toys to families. These opportunities have allowed me to give back to the wonderful community I work and live in. I am also involved with Girl Scouts. While my daughters are no longer in this phase of their lives, I continue to be passionate about advocating for future generations of girls to know their worth, as well as educating them about how to present themselves in this world. It is important to instill values and knowledge in our youth. Girl Scouts affords me the opportunity to teach young women that they matter and the importance of placing value on themselves. Girl Scouts is a wonderful organization and I really enjoy being a part of it and helping shape the lives of young girls in my community.

## RCBA MEMBERS' GOOD NEWS!

INTRODUCING OUR NEW MONTHLY COLUMN ANNOUNCING
OUR MEMBERS' GOOD NEWS



CONGRATULATIONS TO RCBA MEMBERS DANIELLA PASCARU AND JOSEPH D'URSO ON THE BIRTH OF THEIR DAUGHTER, ISABELLA, ON JANUARY 27, 2024. DANIELLA IS AN ASSOCIATE AT BRAUNFOTEL & FRENDEL, LLC IN NEW CITY AND JOE WORKS AT THE PATON LAW FIRM IN NEW JERSEY. ALSO PICTURED IS ISABELLA'S OLDER SISTER GIANNA WHO IS TWO.

SEND YOUR GOOD NEWS TIEM TO BARBARA SILVERSTONE AT BARBARA@ROCKLANDBARORG PHOTOS WELCOME!















## **RCBA MEMBERS' 2023 HISTORIC 130<sup>TH</sup> ANNIVERSARY COMPOSITE GROUP PHOTO**

## COMPOSITE PHOTO IS NOW AVAILABLE FOR SALE!

## To purchase the 130<sup>th</sup> Anniversary Historic Composite:

Go to: https://igorlacertisphotography.shootproof.com/gallery/23962558

Click on "Gallery" in the lower right hand corner Password is "RCBA" When the page opens click on "View Gallery" Then click on the small photo in the lower left hand corner Click on "Buy Photo" in the top right of the page

## **Price List**

## **Composite:**

16"X20"- \$85

24"X30" - \$175

30"X40" - \$250

## **Prints of Headshots:**

High Resolution Digital File of Individual Photo - \$30

Retouching (per file) - \$20

5"X7" Print - \$25

8"X10" Print—\$35

## To purchase prints of your own photo:

Go to: www.lacertisphoto.com

- Click on CLIENT LOG IN
- Click on CONTINUE TO GALLERY PAGE
- Click on Rockland County Bar Association
- Click on VIEW GALLERY
- Enter your email address and the Gallery Password which is RCBA
- Select Your Day (the day you had your photos taken)
- See your name in alphabetical order by last name and click on it
- Enter your password which is your last name View your photos and enjoy!























## **Technology Tips for Attorneys**



## submitted by

## Michael Loewenberg\*

For the past few months, we've been exploring how to use technology effectively in your practice. This month let's review some lesser-known features of the staple tool, Microsoft Word. Its full potential often remains untapped beyond the basics. These features within Word can significantly streamline legal work and enhance productivity.

Open Word on your computer and let's dive into some of these hidden gems:

## 1. Document Navigation Pane:

Navigating lengthy legal documents can be cumbersome, especially when searching for specific sections or references. The Document Navigation Pane in Word acts as a roadmap, allowing you to easily move between headings, pages, and sections with a simple click. By activating this feature through the View tab, you can efficiently traverse complex documents, saving valuable time during review and editing.

## 2. Document Comparison:

Legal professionals frequently deal with document revisions and versions, often requiring meticulous comparison between drafts. Word's built-in document comparison tool simplifies this process by highlighting differences between two documents side by side. Accessed through the Review tab under Compare, this feature enables you to identify changes, track edits, and ensure document accuracy with ease.

## 3. Table of Authorities:

Crafting comprehensive legal briefs often involves citing numerous cases, statutes, and regulations.

Word's Table of Authorities feature automates the tedious task of creating and updating citation indexes.

By marking citations using the References tab, you can generate a dynamic table of authorities with a few simple clicks, facilitating accurate referencing and enhancing document organization.

Continued...

## ...Continued

## 4. Quick Parts:

Legal documents frequently contain repetitive content such as boilerplate clauses, signature blocks, and disclaimers. Word's Quick Parts feature (it's in the Insert tab) allows you to save and insert frequently used text snippets quickly and easily. By selecting and saving content to the Quick Parts Gallery, attorneys can expedite document assembly, minimize errors, and maintain consistency across their work.

### 5. Document Protection:

Confidentiality and data security are paramount in legal practice. Word's document protection features offer robust safeguards to prevent unauthorized access and modifications. You can restrict editing, enforce password protection, and apply digital signatures to safeguard sensitive information, ensuring client confidentiality and regulatory compliance. You can find the settings under File > Info.

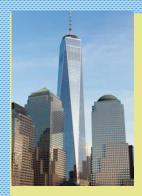
## 6. Document Metadata Removal:

Protecting client privacy extends beyond document content to include hidden metadata such as author details, revision history, and document properties. Word's metadata removal tool enables you to scrub sensitive information from documents before sharing or distributing them externally. By accessing the Inspect Document feature under File > Info > Inspect Document, you can review and remove potentially compromising metadata, safeguarding client confidentiality and mitigating privacy risks.

Microsoft Word offers a treasure trove of features beyond its basic word processing capabilities, providing powerful tools to streamline legal workflows, enhance document precision, and safeguard client confidentiality.

\*Michael Loewenberg is the President of MESH Business Solutions, Inc., New City, NY, 10956 and he is also an Affiliate Member of the RCBA.





## SUCCESSION

A new Newsbrief column

## BY JUDITH BACHMAN, ESQ.



Moving Laterally to the Next Exit?

In our continuing discussion of the topic of succession and how to exit your law practice, one possibility is to make a lateral move to a larger firm. As the owner and managing partner of my small law firm, I have been approached numerous times by both headhunters and larger firms (ranging from 10 person shops to Am Law 100 firms) about moving laterally to another firm.

There are several enticements for moving laterally. Being part of a larger firm would offer a former firm owner access to more associate attorneys. A bigger firm, obviously, has significant advantages in its ability to recruit, train, retain, and manage staff. Also, a larger firm would provide marketing resources and brand identity that would enable a lateral to expand their reach.

Even with those advantages, though, there are reasons to hesitate.

First, clients may not follow their lawyer to a larger firm. "[C]lients are completely free to choose which firm will best serve them." Gibbs v. Breed, Abbott Morgan, 271 A.D.2d 180, 710 N.Y.S.2d 578 (1st Dep't 2000) citing Graubard Mollen v. Moskovitz, 86 N.Y.2d 112, 653 N.E.2d 1179, 629 N.Y.S.2d 1009 (1995). "As a matter of ethics, departing partners have been permitted to inform firm clients with whom they have a prior professional relationship about their impending withdrawal and new practice, and to remind the client of its freedom to retain counsel of its choice." New York City Bar Association, Formal Opinion 2023-1, Ethical Obligations of Lawyer and Law Firm Relating to Attorney Departures (June 30, 2023). That means that, when making a lateral move, lawyers are required to notify their clients of the right to go with the moving lawyer or not. Since clients have this freedom, moving to another firm raises the risk of losing clients, as for instance, the new firm may have higher billing rates, be geographically inconvenient, etc.

This risk of client loss looms large when viewing the likely compensation arrangement for a lateral move. Compensation for someone moving laterally ultimately could be an 'eat what you kill' formula, e.g., the lateral gets 20% collections for work that they bring in, 35% of collections for the work that they do for other clients of the firm, and 55% of collections of the work that they bring in and perform. This compensation formula could mean that a lateral is doing the same amount of work for less money and still bears the risk of collection as they do as a law firm owner. By some calculations, a lateral would have to grow their book of business by about 30% as a lateral partner just to get the same amount of pay that they have as a law firm owner.

So why would someone that owns their own firm make a lateral move? This move makes sense for lawyers that no longer want the headaches of running their own firm. They are willing to, essentially, pay the firm they are moving to, to handle all of the ownership chores, e.g., HR, marketing, IT, etc. For someone who wants to eventually exit their firm, a lateral move might be a good interim step as part of a succession plan.

Judith Bachman, Esq. is the owner of The Bachman Law Firm in New City, NY

## THE ROCKLAND COUNTY BAR ASSOCIATION WELCOMES THE FOLLOWING NEW MEMBERS WHO HAVE JOINED SINCE FEBRUARY 2024

Andrew Michael Finkiel, Esq.

William Joseph Gallagher, Esq.

Barbara Gionta, Esq.

Mark Housman, Esq.

Joshua Nathanson, Esq.



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To register go to www.nycourts.gov/efile and click on the desired training date.

## REQUEST FOR PUBLIC COMMENT

The Administrative Board of the Courts is seeking public comment on proposed amendments to Parts 623 and 680, and the addition of new Parts 825 and 1024, of the Rules of the Appellate Division, relating to mental health professionals panel.

This request will be posted on the OCA website at <a href="https://ww2.nycourts.gov/rules/comments/index.shtml">https://ww2.nycourts.gov/rules/comments/index.shtml</a> in the next few days, and comments are due no later than Friday, April 4, 2024.



HON, NORMAN ST. GEORGE

DAVID NOCENTI

### MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on a proposed amendment to 22 NYCRR § 202.72

authorizing the Chief Administrative Judge to grant exemptions from the current mandate that all Child Victim Act (CVA) cases be assigned to specific CVA parts

Date: February 13, 2024

The Administrative Board of the Courts is seeking public comment on a proposed amendment to 22 NYCRR § 202.72, authorizing the Chief Administrative Judge to grant exemptions from the current mandate that all cases commenced under the New York State Child Victim Act (CVA) be assigned to specific CVA parts.

The CVA, which was adopted in 2019, authorized a two-year re-opening of the statute of limitations for individuals who were sexually assaulted or abused prior to reaching 18 years of age. The legislation was signed into law on February 14, 2019, with the two-year re-opening period scheduled to commence on August 14, 2019. See CPLR § 214-g.

In order to prepare for the potentially large influx of new CVA cases into the court system, on July 16, 2019, the Administrative Board approved the adoption of a new Section 202.72 of the Rules of the Chief Administrator, which provided that all CVA actions in each judicial districts "shall be assigned" to specific court parts created for the purpose of hearing the CVA cases.

Although this system has worked well in most areas, a large number of CVA cases have been filed in the 9<sup>th</sup> and 10<sup>th</sup> Judicial Districts, which has created an undue burden on the Regional CVA for those districts. As a result, it is clear that the interests of a fair and timely administration of justice would be furthered by having some or all of those cases be returned to

counties where they were filed, for the completion of outstanding discovery, pre-trial motions and trial.

The Administrative Board therefore is proposing to amend Section 202.72(1) to give the Chief Administrative Judge discretion to grant exemptions from the current mandate that all CVA cases be assigned to specific CVA parts, which will allow CVA cases pending in the Regional CVA Part to be returned to individual courts as appropriate. Moreover, granting this discretionary authority will not impact the cases in the CVA parts elsewhere in the State where the system currently is working efficiently.

The proposed amendment is as follows [proposed deletions are stricken and additions underscored]:

## Section 202.72: Actions Revived Pursuant to CPLR 214-g

There shall be a dedicated part(s) of Supreme Court in for each
Judicial District which shall be assigned all actions revived pursuant to CPLR
214-g ("214-g Part"); provided that the Chief Administrative Judge, following
consultation with the Administrative Judge of the applicable Judicial District,
shall have the authority to exempt any action or group of actions from the
requirements of this section.

Persons wishing to comment on the proposal should e-mail their submissions to <a href="mailto:rulecomments@nycourts.gov">rulecomments@nycourts.gov</a> or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10<sup>th</sup> Fl., New York, New York, 10004. Comments must be received no later than March 15, 2024.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

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## PLEASE NOTE:

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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.

All advertisements and articles must be reviewed by the Executive Committee for content.

## CLE CORNER SAVE THE DATE FOR THESE CLE PROGRAMS!

March 13, 2024. 6:00 p.m. -9:00 p.m. Foreclosure Update 2024

Speakers will be Judge Mark Dillon, Suzanne Berger, Esq., David Marcus, Esq. Derek Tarson, Esq. This program will be presented on Zoom. Register here.

March 19, 2024. 1:00 p.m.—2:00 p.m. Jury Selection with the Commissioner of Jurors. Speakers are Sabrina Greco, Commissioner of Jurors, and local civil and criminal attorneys. This program will be presented on Zoom. Register here.

**April 18, 2024. 12:30 p.m.—1:30 p.m. A Primer on Estate Practice** Speakers will be Courtney Boniface, Esq. and Amanda Henderson, Esq. This program will be presented on Zoom.

April 26, 2024. What to do when Divorce Leads to Bankruptcy (Can I Still Collect My Attorneys' Fees?) Speakers will be Elizabeth Haas, Esq. and Dawn Kirby, Esq. This program will be presented on Zoom.

May 10, 2024. 9:30 p.m.—12:30 p.m. CPLR Update 2024. Mark your calendar for the popular annual program. The speaker will be Professor Patrick Connors. This program will be presented on Zoom.

May 21, 2024. The Life of a Workers' Compensation Claim, presented by Valerie Crown, Esq. This program will be presented on Zoom.

Watch your emails for additional information and registration.

Remember, RCBA Members receive a discounted registration fee for all CLE programs

## **CLE REQUIREMENTS**

## **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.

## **NEW CLE REQUIREMENT - CYBERSECURITY:**

Effective January 1, 2023 - New Category of CLE Credit - Cybersecurity, Privacy and Data Protection: A new category of CLE credit - Cybersecurity, Privacy and Data Protection - has been added to the CLE Program Rules. This category is defined in the <u>CLE Program Rules 22 NYCRR 1500.2(h)</u> and clarified in the <u>Cybersecurity, Privacy and Data Protection FAQs</u> and <u>Guidance document</u>. Providers may issue credit in Cybersecurity, Privacy and Data Protection to attorneys who complete courses in this new category on or after January 1, 2023.

In addition to ethics and professionalism, skills, law practice management, areas of professional practice, and diversity, inclusion and elimination of bias courses, there is a new category for cybersecurity, privacy and data protection. This category of credit is effective January 1, 2023.

Experienced attorneys due to re-register on or after July 1, 2023 must complete at least one credit hour in the Cybersecurity, Privacy and Data Protection CLE category of credit as part of their biennial CLE requirement. Newly admitted attorneys need not comply if admitted prior to July 1, 2023 in their newly admitted cycle, but must comply in future reporting cycles. Attorneys admitted on or after July 1, 2023, must complete the 1 CLE credit hour in Cybersecurity, Privacy and Data Protection as part of their new admitted attorney cycle. For more information about the CLE Rules, visit nycourts.gov/Attorneys/CLE.

See CLE Program Rules 22 NYCRR 1500.22(a).

Effective July 1, 2023 - Change to Newly Admitted Attorney CLE Requirement to Include One Credit Hour in Cybersecurity, Privacy and Data Protection: Newly admitted attorneys whose admission to the NY Bar is on or after July 1, 2023 must complete at least 1 CLE credit hour in Cybersecurity, Privacy and Data Protection as part of their CLE requirement. *See* CLE Program Rules 22 NYCRR 1500.12(a).

Attorneys may apply a maximum of three (3) credit hours of cybersecurity, privacy and data protectionethics to the four-credit hour ethics and professionalism requirement.

## FINANCIAL HARDSHIP POLICY:

RCBA members and non-members may apply for tuition assistance to attend Association continuing legal education programs based on financial hardship. Any member or non-member of our Association who has a genuine financial hardship may apply in writing, no later than five working days prior to the program, explaining the basis of his/her hardship, and, if approved, may receive tuition assistance, depending on the circumstances.

## CLE UPDATE CYBERSECURITY REQUIREMENT

**Effective January 1, 2023 - New Category of CLE Credit - Cybersecurity, Privacy and Data Protection:** A new category of CLE credit - Cybersecurity, Privacy and Data Protection - has been added to the CLE Program Rules. This category is defined in the <u>CLE Program Rules 22 NYCRR 1500.2(h)</u> and clarified in the <u>Cybersecurity, Privacy and Data Protection FAQs</u> and <u>Guidance document</u>. Providers may issue credit in Cybersecurity, Privacy and Data Protection to attorneys who complete courses in this new category on or after January 1, 2023.

Effective July 1, 2023 - Change to Experienced Attorney Biennial CLE Requirement to Include One Credit Hour in Cybersecurity, Privacy and Data Protection: Experienced attorneys due to re-register on or after July 1, 2023 (birthday is on or after July 1st) must complete at least 1 CLE credit hour in Cybersecurity, Privacy and Data Protection as part of their biennial CLE requirement. See CLE Program Rules 22 NYCRR 1500.22(a).

Effective July 1, 2023 - Change to Newly Admitted Attorney CLE Requirement to Include One Credit Hour in Cybersecurity, Privacy and Data Protection: Newly admitted attorneys whose admission to the NY Bar is on or after July 1, 2023 must complete at least 1 CLE credit hour in Cybersecurity, Privacy and Data Protection as part of their CLE requirement. See CLE Program Rules 22 NYCRR 1500.12(a).

Attorneys may apply a maximum of three (3) credit hours of cybersecurity, privacy and data protectionethics to the four-credit hour ethics and professionalism requirement.



## **COMMITTEE CORNER**

The Rockland County Bar Association has 26 active committees, plus several *ad hoc* committees. Members may join these committees and volunteer their time and expertise for the good of the Bar Association, their colleagues and the public. Here are some of the activities! We look forward to seeing you!

## **NEW LAWYERS AND SOCIAL COMMITTEE**

Nicole DiGiacomo is the new Co-Chair of this Committee and she is looking for new members. The Committee will engage newly admitted attorneys as well as seasoned attorneys who are interested in mentoring those newly admitted.

If you are interested in joining this reinvigorated Committee, please email Nancy at Nancy@rocklandbar.org

## PRO BONO COMMITTEE

This newly established Committee will be meeting soon. If you are interested in joining this Committee, please email Nancy at <a href="Mancy@rocklandbar.org">Nancy@rocklandbar.org</a>

## **IMMIGRATION LAW COMMITTEE**

Immigration Law is a critical component of our system of laws. We are pleased to announce that the Rockland County Bar Association is relaunching the Immigration Committee. The committee is being co-chaired by two experienced immigration attorneys, Ivon Anaya, Esq. and Crismelly Morales, Esq. Given the recent influx of Immigration in our community, we are excited to provide insight and updated information about Immigration Law to the members of the Bar Association and our community.

We are looking for new members! If you are interested in joining our committee, please email Ivon at <a href="mailto:lanaya@centersc.org">lanaya@centersc.org</a> and Crismelly at <a href="mailto:Crismelly@cmoraleslaw.com">Crismelly@cmoraleslaw.com</a> to express your interest. Stay tuned for our future meetings and events!

## PERSONAL INJURY & COMPENSATION LAW COMMITTEE

Your Rockland County Bar Association Personal Injury & Compensation Law (Negligence) Committee regularly meets via zoom. If you are not yet a member and wish to join our committee, please contact the association. If you have a topic that you think may be of interest to the committee, please let us know.

**Upcoming Meetings:** 

March 18, 2024, 5:00 p.m. The committee meeting will be held on Zoom.

If you are not on the committee and are interested in participating in one of these meetings, please contact us.

Thank you, <u>Jeffrey Adams</u> (Chair) & <u>Valerie Crown</u> (Co-Chair)

## **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 Barbara@rocklandbar.org by the 15th of the month so that the Executive Board may review it.

Thank you!





## **Matrimonial/Family Law Attorney**

Rockland County, NY law firm specializing in matrimonial and family law is seeking a full time associate. Excellent writing skills, trial experience and fluent Spanish speaking a plus. Starting salary range is \$55,000.00 to \$85,000.00+. Please call 845.639.4600 or fax resume to 845.639.4610 or

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## **OFFICE SPACE AVAILABLE**

The Law Office of L'Tanya M. Watkins located in New City has several offices available in large suite with conference area and kitchen space. Rent terms are flexible. Great opportunity for an attorney looking to downsize office space or share space. Call L'Tanya @845 -721-3327, or email:

<u>lwatkinsesq@optonline.net</u>.

## IMMIGRATION ATTORNEY WANTED

Rockland County, law firm is seeking a full time associate with immigration experience. Trial experience, Spanish speaking, admitted to SDNY and willingness to assist with bankruptcy and loan modifications a plus. Starting salary range is \$55,000.00 to \$85,000.00+.

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E-mail: michael@demoyalaw.com.

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