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Ph.D.

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**Sabrina Charles-Pierre,  
Editor**

# ROCKLAND COUNTY BAR ASSOCIATION



# NEWSBRIEF

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

October 2018



ALONZO WHEELER.

*Co-Founder and first President  
of the Rockland County Bar Association*



**125<sup>th</sup> Anniversary Gala  
(ANNUAL DINNER)**

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

*Featuring*

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

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

*And*

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

*And*

***NATALIE COUCH AWARD RECIPIENT***  
***LAWRENCE A. CODISPOTI, ESQ.***

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

**SOUVENIR JOURNAL**  
**125<sup>th</sup> Anniversary Gala**

**Guest of Honor**

**Hon. Janet DiFiore**

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

The Lifetime Achievement Award:

**Richard A. Glickel, Esq.**

The Natalie Couch Award:

**Lawrence A. Codispoti, Esq.**

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(Please Check One)

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- INSIDE ~~FRONT~~/BACK COVER .... \$750.00                       HALF PAGE .....\$250.00
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Please insert my advertisement to occupy a page, as indicated above, in the 2018 125<sup>TH</sup> Anniversary Journal

For the sum of \$ \_\_\_\_\_

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

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

# History of the RCBA

**The Rockland County Bar Association was founded in December 1893 and is still going strong at 125 years old!**

The founders met at the Hotel St. George in Nyack (the building still stands today on Burd Street). Alonzo Wheeler and Abram Demarest were two of the founders. Alonzo Wheeler was elected as the first President of the Rockland County Bar Association. Later Board meetings were held in the Court House in New City during the lunch hour. The annual dues were set at \$1, payable at the Annual Meeting in September each year.

The By-Laws remain much the same today as they were written in 1893. The only Standing Committees at that time were the Judicial Committee and the Grievance Committee. Today we have twenty-six Standing Committees.

We have seen much growth and many changes in our Association since 1893, including the addition of women and minorities in the profession and more specialized practice for attorneys. We have increased the dues over the years, and in 2000 the Bar Association was able to purchase a condominium to house its offices.

The RCBA is the Rockland lawyer's true home base for honest discussion, and sometimes rancorous debate, about legal issues of importance to law practices and to the health of our community generally. The Association offers frequent professional development seminars and programs for attorneys and organizes charitable events and programs for the community.

Each year at its annual events, the Bar Association honors individual attorneys and community members who have made a contribution to either the Bar or the local community. At the Installation Dinner Meeting (June) and the Annual Dinner (October), the Bar gives named awards to those deserving individuals. The Liberty Bell Award is given at Law Day each year.

In 2016 the Bar Association established the first-ever Natalie Couch Award, named for Natalie Couch, a Rockland County native who was the first woman to practice law in Rockland County. Couch was also the first woman to vote in the County in 1918 and the first female President of the Rockland County Bar Association.

In 2017, the Bar Association reinstated the High School Mock Trial program in Rockland County. Five Rockland high schools participated, and we anticipate several more will join us as we launch Year 2 in 2018.

At 125 years old, the Rockland County Bar Association continues to be a living, breathing professional association with strong leadership from its all-volunteer Board of Directors and its all-volunteer Committee Chairs, Co-Chairs and Members; its growing and increasingly diverse membership; and its hardworking and committed staff.

We are pleased and honored to be celebrating our 125<sup>th</sup> Anniversary in 2018, and we thank the Historical Society of Rockland County for their assistance in the creation of this exhibition.

# Rockland County Bar Association

## Presidents

1893	Alonzo Wheeler	1980-81	Loring K. Manley
1907	Abram A. Demarest	1981-82	Gerard M. Damiani
1921-30	Frank Comesky	1982-83	Martin Hurwitz
1930-34	Mortimer B. Paterson	1983-84	Robert P. Lewis
1934-35	Thomas Gagan	1984-85	David Greenberg
1935-37	A. J. Bryant	1985-86	Patrick M. Cambell
1937-39	Natalie F. Couch	1986-88	Sanford Cohen (d. 2009)
1939-41	Wallace B. Lydecker	1987-88	Anthony Montalbano
1941-42	Morton Lexow	1988-89	Patrick J. Finnegan
1943-45	Pierre H. DePew	1989-90	Joseph P. McGlenn (d. 2000)
1945-47	Henry H. Haire	1990-91	Paul M. Demcio
1948-50	Edmond L. Mann	1991-92	Catherine M. Miklitsch
1950-51	William E. Miele Sr.	1992-93	Sanford Dranoff
1951-52	Orville H. Mann	1993-94	Linda Christopher
1952-54	Jerome Trachtenberg	1994-95	Michael H. Fury (d. 2016)
1954-56	Daniel T. Brucker	1995-96	Benjamin Selig
1956-57	Irving F. Dillon	1996-97	Leonard Schwall
1957-58	Clifford J. Freund	1997-98	James K. Riley
1959-60	Marshall Rooney	1998-99	Reuben Ortenberg
1960-61	George S. Writer Jr.	1999-2000	Stephen M. Fromson
1961-62	Jacob Pesner	2000-01	James F. Leopold
1962-63	Richard Sterns	2001-02	William Frank
1963-64	David Coral	2002-03	Philip Furgang
1964-65	Gilbert R. McCormack (d. 1995)	2003-04	James H. Mellion
1965-66	Jacob K. Wexler	2004-05	Alden Smith
1966-67	Eugene N. Cavallo Jr.	2005-06	Bridget Casey
1967-68	Clarence A. Baracks (d. 1994)	2006-07	David Klein
1968-69	J. Martin Cornell (d. 2001)	2007-08	Marilyn P. Davis
1969-70	Belle Mayer Zeck (d. 2005)	2008-09	Stephen B. Lowe
1970-71	Nicholas Lopes	2009-10	Glenn W. Kelleher
1971-72	Jerome Johnson	2010-11	Lynne Hilowitz
1972-73	Everett J. John (d. 2009)	2011-12	Keith J. Cornell
1973-74	Irving A. Garson	2012-13	Alan E. Goldstein
1974-75	Orville H. Mann Jr.	2013-14	Larry Codispoti
1975-76	Edward J. Flynn	2014-15	Alan Rosenblatt
1976-77	Bertram P. Krashes	2015-17	Robert B. Marcus
1977-78	James J. Freeman	2017-19	Andrea F. Composto
1979-80	Sidney Schwartz		

THE PRACTICE PAGE  
AVOIDING PITFALLS OF THE NOTICE TO ADMIT  
Hon. Mark C. Dillon \*

Of all the discovery devices contained within CPLR Article 31, the Notice to Admit is an odd duck in a lake of swans.

CPLR 3123 provides that a party may serve upon another party a written request for admitting the genuineness of papers or documents, or the correctness or fairness of photographs, or the truthfulness of any matter for which there should “be no substantial dispute at the trial.” The time frame for service a Notice to Admit is twenty days from the service of the summons or from the defendant’s answer, whichever is sooner, but not later than twenty days before trial.

Simple enough? Not entirely.

The Notice to Admit is the only discovery device where the CPLR provides a menu of responses from which the responding party must choose an answer. There are only three possible answers on the menu: admit, deny, or set forth why the requested admission can be neither admitted or denied. Responses must be straight-forward, without words of equivocation such as “upon information and belief” (*Rosenfeld v Vorsanger*, 5 AD3d 462, 463). Any Response that is given is subject to objections to its admissibility at trial (CPLR 3123[b]).

Simple enough? No, not entirely.

A response to the Notice to Admit must be served within twenty days of its service, otherwise the requested information is “deemed admitted,” and can even serve as a basis for summary judgment (CPLR 3123[a]; *Callaghan v Curtis*, 82 AD3d 816, 817). In other words, the statute includes a self-enforcement mechanism. It is for this reason that CPLR 3124, which permits a court to compel discovery, expressly excludes the Notice to Admit from its scope, since a non-response to a Notice to Admit is deemed an admission and there is no response to then compel. A party receiving an improper Notice to Admit may move for a protective order, but should do so within the Notice’s twenty-day response time (CPLR 3101; *Ramcharran v New York Airport Services, LLC*, 108 AD3d 610). Attorneys receiving a Notice should not miss the response deadline through inadvertence or otherwise, as doing so allows the document, photograph, or statement to be deemed admitted, which might be genuinely adverse to the the client’s interests. For this reason, a Notice to Admit should be placed upon its receipt at or near the top of an attorney’s in-box, and responded to timely.

Simple enough? No.

Complicating matters further is the requirement that the Response to the Notice to Admit cannot be signed by the attorney like certain other discovery responses, but must be signed by the *client*, and under *oath* (*Rosenfeld v Vorsanger*, 5 AD3d at 463). The tight twenty-day response period appears even tighter, considering that time is required for coordinating with the client the drafting, review, and execution of the original Response. Attorneys requiring more time for responding may, absent a stipulation of the parties, request an extension from the court (CPLR 3123[a]).

The purpose of a Notice to Admit is to remove issues from trial that ought not be disputed. If a party denies a request that should be admitted, the propounding party may recover the reasonable expenses incurred in proving the truth or accuracy of the document, photograph, or statement at issue, including attorneys’ fees (CPLR 3123[c]). This is not a subject that any attorney will want to explain to a payor client after-the-fact, when it is too late to deal with the Notice correctly.

The burden of the statute is not entirely placed on the recipient party. Parties serving the Notice may not seek admission to any matters outside the permissible scope of the statute. Admissions cannot be sought as to ultimate questions of fact or law (*Meadowbrook-Richman, Inc. v Cicchiello*, 273 A.D.2d 6). An improper Notice, even if not responded to timely or properly, will admit nothing (*Williams v City of New York*, 125 AD3d 767).

Notices to Admit should be taken seriously. The Notices and their Responses should be timely and properly drafted. Failure to do so invites peril that can be easily avoided.

---

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

**COMMERCIAL LITIGATION ISSUES OF INTEREST**

October 2018

**Submitted by Paul Savad, Esq.****Chair, Commercial and Corporate Law Committee,****Joseph Churgin, Esq., and Susan Cooper, Esq., of****SAVAD CHURGIN, LLP, Attorneys at Law**

You commenced an action against Uber on behalf of your physically disabled client charging a violation of New York's Executive Law and Human Rights law for failure to provide disabled passengers with accessible vehicles. Uber has moved to compel arbitration, as provided in its Terms and Conditions, which were allegedly agreed to during the mobile phone registration process. Uber has provided an employee's affidavit showing a screenshot of the "add payment" screen, below which appears the following text: "By creating an Uber account, you agree to the Terms & Conditions and Privacy Policy." Before clicking "DONE," the applicant could review the Terms & Conditions. Another employee's affidavit includes a copy of the Terms & Conditions.

Will you defeat Uber's motion to compel arbitration?

The answer is yes.

In *Ramos v. Uber Tech. Inc.*, NYLJ 1530003834NY51309116, Index No. 513091/16 (Sup. Ct. Kings Co., May 31, 2018), Ramos used Uber's application, "UberWAV," for disabled passengers to connect with accessible taxicabs throughout New York City. Ramos filed an action charging violation of Executive Law § 296(2), Human Rights Law, and the City's Administrative Code § 8-107, after she made three unsuccessful attempts over an hour to hail an accessible vehicle.

Uber moved to compel arbitration, claiming Ramos agreed to its Terms & Conditions, which provides for arbitration. An affidavit of an employee, who described himself as a Technical Lead Manager responsible for developing, implementing, and maintaining the rider account-creation process, included three screenshots of the registration process. The third screen was the "ADD PAYMENT" screen for providing payment information, below which the following text: "By creating an Uber account, you agree to the Terms & Conditions and Privacy Policy." The third screen also included a rectangular box with the words "Terms & Conditions and Privacy Policy." Before clicking "DONE," the applicant could click the rectangular box to see the Terms & Conditions.

Another employee, who was described as a manager and paralegal, provided an affidavit including a copy of the Terms & Conditions. No evidence of Ramos' registration process was offered.

The Court denied the motion noting that in order for a court to compel arbitration, the agreement to arbitrate must be "clear, explicit and unequivocal," citing *Sutphin Retail One, LLC v. Sutphin Airtrain Realty, LLC*, 143 A.D.3d 972, 973 (2d Dep't 2016). The Court found that the language on the third screen advising that the applicant was agreeing to the Terms & Conditions was ambiguous. A reasonable applicant could reasonably believe the phrase "Terms & Conditions" referred to allowing Uber to use the registrant's Facebook account, email and mobile numbers to send bills and receipts, as mentioned on the first screenshot. The Court also rejected the unexplained claim that placement of "Terms & Conditions" in a rectangular box gives reasonable notice to anyone that it is a "clickable" button.

The lesson? If your client's website requires users of the website to agree to terms and conditions that provide for arbitration of disputes, advise your client to ensure that the user is given clear access to the terms and conditions, and that the button the user clicks unambiguously notifies users of their agreement to all terms. Any doubt will allow a court to find that the user did not agree to arbitrate.

A photograph of a courtroom with wooden paneling, desks, and an American flag.

# **CLE TRYING CASES - THE SECRET**

**October 4, 2018  
6:00pm - 9:00pm**

**Double Tree Hilton  
425 E. Rte 59  
Nanuet, New York 10954**

A blue background with a globe and white circuit-like lines representing technology or cryptocurrency.

# **CLE Cryptocurrency**

**October 17, 2018  
6:00 pm - 9:00 pm**

**Double Tree Hilton  
425 E. Rte 59  
Nanuet, New York 10954**





## ANNOUNCING A NEW BENEFIT FOR RCBA MEMBERS

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**SUSAN COOPER, ESQ.**

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**RCBA MEMORIAL RECOGNITION CEREMONY**

*for those who left us in 2017-18*

**Friday, October 5, 2018**

**3:00 PM**

**Ceremonial Courtroom**

**Rockland County Courthouse**

**The Honorable Robert M. Berliner, JSC, Presiding**



**AFTER OCTOBER 5, 2018 DUES AMOUNT INCREASES TO \$200.00!**

**This is a friendly reminder that it is time to pay your 2018-19 RCBA Membership Dues. Annual Dues for 2018-19 for regular Members is \$185.00. Please send in your Membership Renewal Form now if you have not done so already. If you have any questions about your Membership, please contact Sabrina Charles-Pierre, Program Coordinator, at [sabrina@rocklandbar.org](mailto:sabrina@rocklandbar.org), or call Sabrina at 845-634-2149. RCBA**

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Attorney At Law  
[Mike@Zall-Law.com](mailto:Mike@Zall-Law.com)

## MEMO

### TO ALL RCBA COMMITTEE CHAIRS & VICE- CHAIRS

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

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

Thank you!



Monthly  
Newsletter

# COMMITTEE CORNER

## New Lawyers & Social Committee

Wednesday, October 17, 2018 @ 5:30pm Office of the RCBA

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

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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

## Trying Cases - The Secret

October 4, 2018  
6:00pm - 9:00pm  
**Double Tree Hilton**  
425 E. Rte 59  
Nanuet, New York 10954

**Cryptocurrency: The Law and How to Find it/Track it in a Divorce (or other) Litigation & Digital Defense 101: What Every Attorney Should Know about Protecting Digital Information, Electronic Communications and Client Privacy**

October 17, 2018  
6:00pm - 9:00pm  
**Double Tree Hilton**  
425 E. Rte 59  
Nanuet, New York 10954

## What to do when the Feds/Police Come Knocking and Raise the Age

October 30, 2018  
6:00pm - 9:00pm  
**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, [visitnycourts.gov/Attorneys/CLE](http://visitnycourts.gov/Attorneys/CLE).

### CLE REQUIREMENTS

Newly admitted attorneys must complete 32 credit hours of accredited “transitional” education within the first two years of admission to the Bar. Sixteen (16) credit hours must be completed in each of the first two years of admission to the Bar as follows: 3 hours of Ethics and Professionalism; 6 hours of Skills; 7 hours of Practice Management and/or areas of Professional Practice. Experienced Attorneys must complete 24 credit hours of CLE during each biennial reporting cycle: 4 credit hours must be in Ethics and Professionalism. The other credit hours may be a combination of the following categories: Ethics and Professionalism, Skills, Practice Management or Professional Practice.

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THE  
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### OFFICE SPACE

Office Space available in Nyack. 9 Units 93 SF- 232 SF. All utilities included (except phone & internet), parking included, card access for security, individual mailboxes, conference room, furniture available & walk to Main Street. Please call Jason Horowitz at 845-323-9177.

### OFFICE SPACE

Office Space available in Bardonia. 2 Units - \$850 & \$950/month. All utilities included, turn key office space, parking, located on 304, shredding and coffee included, conference rooms, furnished for the right terms and basement storage available.  
Please call Jason Horowitz at 845-323-9177.

### OFFICE SPACE FOR RENT

Haverstraw - one, two or three offices available. Waiting room, receptionist area, large parking lot, large conference room, with or without furniture. Possible overflow.  
email: [lawoffice10927@gmail.com](mailto:lawoffice10927@gmail.com)

### OFFICE SPACE FOR RENT

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[akurland@akkpc.com](mailto:akurland@akkpc.com)

### 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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### 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](mailto:lauren@garyliptonlaw.com) or fax to 845-624-0288.

### 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.

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

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

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

Salary: flexible

Strong communication and organization skills, multitasking, Microsoft Word, attention to detail and basic computer skills are essential.  
Please send cover letter and resume via email to Valeria Palacios at [koenigmgmt@gmail.com](mailto:koenigmgmt@gmail.com) or fax it to 845-639-0433.

### ATTORNEY WANTED

We are looking for an experienced personal injury attorney who is capable of paper work, depositions and court appearances. We are a pre-eminent Rockland County personal injury law firm. Contact us at: [mneimark@neimarklaw.com](mailto:mneimark@neimarklaw.com). FAX resumes to: 888-471-1702.

### LEGAL ASSISTANT WANTED

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

### ATTORNEY WANTED FOR EXPANDING LAW FIRM

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

Please fax resume to 845.639.4610 or  
E-mail: [michael@demoyalaw.com](mailto:michael@demoyalaw.com)

### 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

### 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)

### 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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