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Sabrina Charles-Pierre, Editor

ROCKLAND COUNTY BAR ASSOCIATION



www.rocklandbar.org

April 2019

President's Post

Warm Greetings and Happy Spring Everyone!

Something always seems to happen when we Spring Forward for Day Light's Savings. Yes, the daylight stays with us longer and everyone loves that.... But I often notice that people have an extra spring in their step, they smile a little broader as pleasantries are exchanged about the warmer weather and upcoming summer vacations. Who doesn't enjoy that? I know I do; but I digress.

I have been thinking about our Young and New Lawyers quite a lot this past month. High School Mock Trial is well under way and the students are extremely impressive: Passionate, Driven, Well Spoken and Fearless. They will make excellent Lawyers in the Future. As I watched the students compete through the various rounds, I wonder what our profession will be like when/if they graduate law school in a decade from now. The Law is an adversarial system. We, as attorneys, argue for a living. We zealously advocate for our clients and fight for what is just and right under the law. Sometimes it is easy to let our zeal get the best of us. We must remember, however, that we can advocate and be adversaries without being adversarial. We must not work with blinders on, seeing only the case in front of us. We must look around ourselves and see those walking with us, most importantly, the younger generation of attorneys who will learn and absorb all there is to see and hear. In addition to the hard-working students of Mock Trial, every year there is a new crop of attorneys eager to work in the trenches and embark upon their new legal journey. Let us be an example to them as to how to "lawyer" and how to advocate with zeal and with respect. Let's support the students and young lawyers, offering guidance, advice and mentorship. You can start by cheering the students on at the Mock Trial final round of competitions on April 15, 2019 at 5:30pm at our very own Rockland County Supreme Court. Also, the Young Lawyer's Committee will be hosting an upcoming social networking event on May 2nd at Tequila y Limon in New City. Let's meet them, get to know them and start showing them the ropes of our profession. By doing this for them, I know that they will teach us all a thing or two.

I look forward to see you at these upcoming events and I wish you well and Happy Spring.

Very truly yours,

Andrea F. Composto, Esq. President, RCBA

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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Presented by the Rockland County Bar Association's

New Lawyers Committee

Cinco de Mayo at *Tequila Sal Y Limon* 195 South Main Street, New City, NY 10956

Thursday, May 2, 2019 6:00 P.M. – 9:00 P.M.

ALL INVITED!

New Lawyers Will Receive Free Drink Ticket
Free Appetizers For All!
Join us for fun, food and networking!

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MOCK TRIAL ROCKLAND

THE FINAL ROUND:

NYACK VS. NORTH ROCKLAND

Monday, April 15, 2019 5:30 P.M.
Rockland County Courthouse
1 South Main Street, New City, NY 10956

Go Team!

Announcing the 2019-20 Rockland County Bar Association Delegates to the NYSBA House of Delegates:

Regular Delegates:

Timothy G. McNamara, Esq. Derek Tarson, Esq.

Alternate Delegate:

David Fried, Esq.

Technology Tips for Attorneys

submitted by

Michael Loewenberg*

5 Mistakes to Avoid When Starting a Website Redesign Project

Your firm's current website needs a serious facelift. The content is stale, information is difficult to find, the look and feel is outdated and inconsistent, and it is a chore to make simple changes or additions. You have done some research and realize that you barely have time to manage your law practice; you've got no time to deal with your website redesign.

As you think about selecting a website service provider, here are a few things to keep in mind:

Mistake #1: Website Tunnel Vision

Don't get enamored with a specific technology or a flashy web design. Web technology and capabilities are changing at a blinding rate. It would be a short-sighted approach, for instance, to limit your choices to a narrow set of systems alternatives. It also is a mistake to be dead set on a specific look and feel before the project begins. A smarter approach is to document the key website content, features, and functions you require and then get one or more website experts to provide you with possible solutions. A good website expert will have a tried-and-true process in place to gather the necessary information to support your redesign project. And since technology and tools change so rapidly, it is particularly important to keep an open mind to your solution options. Remember the old adage: when the only tool you have is a hammer, everything looks like a nail!

Mistake #2: Website frugality – choosing the lowest cost option

A well designed website costs money and you get what you pay for. While it is important to get a good deal on anything you buy, it is a mistake to make the decision on cost alone. Don't ask yourself "Can I afford this?" Instead, ask yourself "Can I afford to not get this right?" Website redesigns are a strategic investment for law firms of all sizes. Your website is usually the first contact point a prospective client sees about your firm and that usually happens on a mobile phone. A well-designed, content-rich single page site may be all your firm needs. Your decision on a solution should not be strictly cost-based. If you think a professional is expensive, imagine the 'costs' of using an amateur!

Mistake #3: Website implementations driven by technology instead of the business

Your website redesign decisions should not be based on technology alone. Your decisions should be driven by your firm's business requirements and focused on communicating to your target audience. No question: technology IS important. It matters most, however, that you have a solid foundation for delivering your firm's key business messages. It's all about making it easy for your website visitors (i.e., your potential clients) to access your meaningful, targeted content.

Mistake #4: Building your website solution on a house of straw instead of a house of bricks

Building a web solution for your firm is a strategic investment. You need to be sure that your website redesign is based on a framework that that is robust and supportable. The goal should be to build a website that can accommodate changes to your firm's practice areas as well as changes to the technology landscape. When choosing a web technology, be sure that it's an established market-place leader that is sustainable for years to come.

Mistake #5: Hiring a web guy

A law firm's website represents the firm and, in many instances, is the first contact a prospective client has with the attorney. Accordingly, you should select a website implementation partner who has proven experience in building websites as well as a demonstrated ability to understand the business of the law and translate that into a winning web design. Choose a web partner that has well-rounded expertise in both the business of law firms and web technologies and you are likely to get a better end result. Most prospective clients ask a friend for a referral and then visit the law firm's website. Don't underestimate the importance of getting it right!

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

WE ARE VERY HAPPY TO ANNOUNCE:

THE RCBA LIBERTY BELL AWARD

Presented on Law Day, May 1

To a member of our Community for outstanding service in promoting a better understanding and respect for the Constitution, the Bill of Rights and our institutions of government,

This year will be presented to:

Elizabeth Santiago

Executive Director, Center for Safety & Change

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SAVE THE DATE

INSTALLATION DINNER AND SWEARING-IN OF NEW OFFICERS

Thursday, June 20, 2019 6:00 P.M.

DOUBLE TREE HILTON

425 E. Rte 59, Nanuet, New York 10954

6:00 P.M. – Cocktails (cash bar)

7:00 P.M. – Dinner

CLE - Ethics Update

April 10, 2019 12:00 pm - 2:00 pm

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

CLE - CPLR

May 3, 2019 1:00 pm - 4:00 pm

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

[April 2019]

COMMERCIAL LITIGATION ISSUES OF INTEREST Submitted by Joseph Churgin, Esq.*

Your client owns 49% of the shares of a corporation whose sole asset is a building in midtown Manhattan. The other shareholder owns 51% of the shares. The shareholder agreement requires unanimous consent on all matters. The property is now unmanaged, vacant, and unable to generate income, because the two shareholders cannot agree on anything. The deadlock prevented the retention of a new management company when the prior management agreement expired. The two shareholders failed to agree on a price to sell the building, resulting in loss of a \$15 million offer. Each accuses the other of voting in his own self-interest to harm the other. You commenced a proceeding under BCL § 1104 for dissolution due to deadlock. The 51% shareholder moved to dismiss the proceeding for lack of standing, because your client does not hold shares representing one-half of the votes. You argue that the statute focuses on equal power, not equal ownership, and that the corporation has ceased to function.

Will you defeat the motion to dismiss for lack of standing?

The answer is no.

In Balkind v. Nickel, NYLJ 1532983875NY656594201, 656594/2017, August 2, 2018 (Sup Ct. N. Y. Co.), Balkind petitioned pursuant to BCL § 1104 for dissolution of the corporation based on deadlock. The corporation's sole asset was real property located at 242 East 58th Street in Manhattan. Balkind owned 49% of the stock, while Nickel owned 51%. The parties' shareholder agreement provides effectively for unanimous consent (55%) for most decisions.

In 2016, the parties agreed to sell the property for \$20 million. In 2017, the corporation failed to accept an offer to purchase the property for \$15 million. Each party blames the other for that failure, and for the inability to agree to a purchase price. Balkind alleges that Nickel is using the sale price to pressure him into waiving his right to reimbursements of a \$2.8 million loan to the corporation. Nickel claims that Balkind is trying to sell below market value to achieve his personal goals at her expense.

The petition alleges that the parties' deadlock resulted in the property having no manager after the management agreement expired. The property remained vacant and unable to generate income due to the parties' deadlock, satisfying the criteria for dissolution under BCL § 1104.

Nickel moved to dismiss the petition for Balkind's lack of standing, because Balkind held less than 50% of the corporation's total voting stock, as required by statute. Balkind countered that BCL § 1104 focusses on equal power, not equal ownership. He argued that he has standing, because he effectively had equal power with Nickel on the votes necessary for the corporation to function.

Without addressing any of the factual disputes, the Court granted the motion to dismiss, holding that BCL § 1104 clearly requires the petitioner to be "the holders of shares representing one-half of the votes of all outstanding shares of a corporation entitled to vote in an election of directors. . . ." Citing In re Sakow, 297 A.D.2d 229, 230 (1st Dep't 2002), the Court held, "Under the plain meaning of the statute, Balkind, as the holder of 49 percent of the voting stock, does not have standing. . . ."

The lesson? If your client does not hold shares representing at least 50% of the votes, even crippling deadlock will not support a petition under BCL § 1104. If your client is a minority shareholder with at least 20% of the votes, consider whether your client has grounds under BCL § 1104-a, which provides for involuntary dissolution where the majority shareholders are guilty of illegal, fraudulent or oppressive actions towards the minority, or where corporate assets are being looted, wasted, or diverted for non-corporate purposes. If neither section applies, do not ignore an arbitration clause in the stockholder agreement. It may be your best option.

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

DO YOU PRACTICE IN THE AREA OF FORECLOSURE?

ARE YOU INTERESTED IN LEARNING ABOUT A NEW ROCKLAND COUNTY FORECLOSURE INITIATIVE?

PLEASE JOIN
HON. ROBERT M. BERLINER
AND MEMBERS OF THE
NINTH JUDICIAL DISTRICT
ADMINISTRATIVE JUDGE'S OFFICE AT

A MEETING TO DISCUSS THE ROCKLAND FORECLOSURE COURT

WEDNESDAY, APRIL 10, 2019
3:00 P.M.
CENTRAL JURY ROOM
ROCKLAND COUNTY COURTHOUSE



Wednesday, May 1, 2019

9:30 a.m. - 11:30 a.m.

Rockland County Courthouse

Jury Assembly Room - 2nd Floor

Save the date!

Light refreshments will be served

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In the United States and around the world, freedom of speech and the press are among the most important foundations for a free society. Free speech and free press are prominent topics in public discourse and litigation. It is impossible to imagine a free society without these individual liberties, yet historical and current debates surrounding them continually challenge us to consider their boundaries and resilience. Changes in technology have reshaped how free speech and free press work in the everyday world.

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THE PRACTICE PAGE

SERIOUS INJURY THRESHOLD FOR "LOSS OF A FETUS" UNAFFECTED BY NY REPRODUCTIVE HEALTH ACT OF 2019

Hon. Mark C. Dillon*

On January 22, 2019, Governor Cuomo signed into law New York's Reproductive Health Act ("RHA"), which amended Public Health Law Article 25-A. The enactment of the bill was and remains controversial, but whether it was wise or not is beyond the scope of this article. The legal question that is raised and answered here is whether the language of the new statute affects the "serious injury threshold" of Insurance Law 5102(d), which, since 1984, has recognized "loss of a fetus" as a predicate for automobile-related personal injury actions.

The RHA changed the state's law to permit abortions beyond the 24th week of gestation if, beyond that time, the fetus is not viable, or to protect the life or health of the mother. It decriminalized Abortion in the First and Second Degrees and Self-Abortion in the First and Second Degrees (former Penal Law 125.40 through 125.60). The RHA also removed the requirement that only physicians perform abortions, by now permitting them to also be performed by nurse practitioners, physician assistants, and other health care professionals such as midwives (PHL 2599-bb).

Controversy over the RHA was heightened this past February as a result of well-publicized events that occurred in Queens County. There, Jennifer Irigoyen, who was five months pregnant, was stabbed to death in a stairwell, and which also caused death to her unborn child. On February 8, 2019, Irigoyen's boyfriend, Anthony Hobson, was charged with two counts of Murder in the Second Degree -- one count for the death of Irigoyen and the other count for the death of the unborn child. Two days later, Queens District Attorney Richard Brown dropped the second murder count on the ground that under the new RHA, the loss of the child no longer qualified to support that murder charge (Ashley Southall, "Prosecution Drops Abortion Charge in Queens Murder Case, Stirring Debate, NY Times, Feb. 10, 2019, https://www.nytimes.com/2019/02/10/nyregion/abortion-murder-queens.html).

While the RHA tangibly affected Hobson's criminal case, will there be a corresponding impact on future automobile-related personal injury action's based on a woman's loss of a fetus? Civil practitioners can recite the various categories of automobile threshold injuries in their sleep, such as death, fractures, dismemberments, permanent or significant limitations, loss of use of body parts, and the "90/180" category. Judges too. Is the portion of Insurance Law 5102(d), which recognizes the "loss of a fetus" as a free-standing threshold injury, still "good law?"

The serious injury threshold that is met by a woman's loss of fetus should be unaffected by the RHA. The difference between the RHA's impact on criminal cases, versus the civil threshold injury provisions in the Insurance Law, is this: In the Hobson criminal case, the "second" count of murder addressed the death of the unborn child as an independent victim. By contrast, under the language of Insurance Law 5102(d), the loss of a fetus never authorized a personal injury claim in favor of the child in the womb, nor a wrongful death claim for the parents from the loss of the child. The Insurance Law only went so far as to bestow upon the mother a cause of action for personal injuries to herself, predicated upon her loss of an unborn child (Leach v Ocean Black Car Corp., 122 AD3d 587, 589; Sponsor's Mem., Bill Jacket, L. 1984, ch. 143). Thus, the implications of the RHA are substantively different in the criminal context compared to the civil context. The "loss of fetus" threshold of Insurance Law 5102(d) should remain on the books unaffected by the recent amendments to the Public Health Law.

The instant subject matter is not pleasant and this article is hopefully written with sensitivity to all readers. Fortunately, a review of Westlaw reveals that personal injury cases based on a woman's loss of a fetus as a result of automobile accidents, which are always unfortunate, represent the least utilized of the various serious injury thresholds.

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.



Save the date!

Thursday, OCTOBER 24, 2019

RCBA ANNUAL DINNER

Pearl River Hilton

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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 <a href="mailto:sabrina@rocklandbar.org">sabrina@rocklandbar.org</a> by the 15th of the month so that the Executive Board may review it.

Thank you!



## **COMMITTEE CORNER**

Surrogate's Court Committee Monday, April 8, 2019 5:15pm @ the RCBA Offices

Assigned Counsel Committee Thursday, April 18, 2019 12:30pm @ the RCBA Offices

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## **CLE CORNER**

#### PLAN YOUR YEAR OF CLE'S NOW

| 2019 CLE TITLE                                                       | DATE & TIME                                  |
|----------------------------------------------------------------------|----------------------------------------------|
| <b>Ethics Update</b>                                                 | Wednesday, April 10, 2019 - 12:00pm - 2:00pm |
| CPLR Update                                                          | Friday, May 3, 2019 - 1:00pm - 4:00pm        |
| Managing Communications and Increasing Inclusivity in Legal Practice | 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.

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.

#### **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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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: valeriecrown.com

Call 845.598.8253. email: vcrownlaw@aol.

OFFICE POSITION AVAILABLE
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

#### LEGAL SECRETARY WANTED

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

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

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ahurwitz@sunyrockland.edu

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

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