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Sabrina Charles-Pierre,
Editor

ROCKLAND COUNTY BAR ASSOCIATION

NEWSBRIEF

www.rocklandbar.org

April 2021

CLE'S COMING UP SOON!

**CLE ONLINE – Using A HECM Reverse Mortgage
To Stop A Foreclosure**

APRIL 20 – 12NOON – VIA ZOOM

**CLE ONLINE – The Voting Rights Act: From Rockland
County to Foley Square**

APRIL 28 – 12NOON – VIA ZOOM

**CLE ONLINE – The Impact of Covid-19 on Business
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COMMERCIAL LITIGATION ISSUES OF INTEREST

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

Your client is a nursing home that has not been paid for services provided to someone, now deceased, who many years ago founded a still-thriving local resort. After you commenced an action against the estate, the assigned judge mentioned at a court conference that his wife once worked at the resort. Based on that information, your client believes that the judge should be disqualified. Your client believes that the judge, through his wife, may have had, or has, an interest in the corporations that own and run the resort. Your client believes that the decedent's family held, or holds, a substantial interest in those corporations, and that the judge will not be impartial.

Should you make a recusal motion?

The answer is "no."

In *County of Warren v. Swan*, 3/18/21 NYLJ 1616014513NY53922 (Sup. Ct. Warren Co. March 15, 2021), Warren Co. Index No. 0053922/2016, the County sued on behalf of Westmount Health Facility seeking payment for nursing home services rendered to Joseph Garry, Jr., deceased.

Plaintiff's counsel moved, pursuant to Judiciary Law § 14 and 22 NYCRR § 103.3, to disqualify the assigned judge, alleging that 1) the decedent was one of two brothers who founded the Roaring Brook Resort and Conference Center in the Town of Lake George many years ago; 2) the decedent's son was employed as a manager at the Resort for many years; 3) the decedent's family trust owns or owned an interest in the corporations that own the land and operate the resort; 4) at a court conference on November 1, 2017, the Judge told counsel for the parties that the Judge's wife had "worked at the Resort for many years;" and 5) the Judge may have, or have had, through his wife, an interest in the corporations that own and operate the resort. This, according to plaintiff's counsel, required the Judge to disqualify himself from adjudicating a case involving the Garry family.

Defense counsel characterized the allegations of the wife's interests as a "Q-Anon absurdity" that "smacks of judge shopping." Defense counsel noted that the conference took place over three years ago, and that through discovery, the plaintiff had to have been aware of the ownership structure of the resort and the Garry family's interests.

At oral argument of the motion, plaintiff's counsel offered to withdraw the motion after the Judge stated his wife worked there many years ago for a brief period in 1976 when his wife was 17 or 18 years old. The Judge declined the offer to withdraw the motion, noting the seriousness of the allegations, the over 40-months of delay of the litigation, and the Court's obligation "to dispose of, and lay to rest all claims of impropriety generated by this motion."

Continued - COMMERCIAL LITIGATION ISSUES OF INTEREST**Submitted by Joseph Churgin, Esq. and Susan Cooper, Esq.***

The Court began by noting that the resort and its related corporations were not parties to the lawsuit. The Court stated that recusal of a judge “is a matter left to the personal conscience of the court,” quoting *SSAC, Inc. v. Infitec, Inc.*, 198 A.D.2d 903, 904 (4th Dep’t 1993). Nothing in the record before the Court supported the appearance of impropriety or bias warranting recusal. Indeed, noted the Court, a “judge has an obligation not to recuse himself or herself . . . unless he or she is satisfied that he or she is unable to serve with complete impartiality, in fact or appearance,” quoting *Silber v. Silber*, 84 A.D.3d 931, 932 (2d Dep’t 2011).

The Court then examined 22 NYCRR § 130-1.1(a) and (b), which allows a Court, in its discretion to award costs, including attorneys’ fees, and impose financial sanctions, where an attorney engages in “frivolous conduct.” Section 130-1.1(c) defines frivolous conduct, paraphrased as follows: (1) it is completely without merit in law with no reasonable argument to modify or reverse the existing law; (2) it is undertaken primarily to delay or harass; and 3) it asserts material factual statements that are false. Violation of any one of the three is grounds for imposition of sanctions, as held in *Nachbaur v. American Tr. Ins. Co.*, 300 A.D.2d 74, 75, (1st Dep’t 2002), *lv dismissed* 99 N.Y.2d 576 (2003), *cert denied* 538 U.S. 987 (2003).

The Court found the filing of the motion to constitute frivolous conduct, and stated it was inclined to impose costs and/or financial sanctions upon counsel for plaintiff. But first, counsel must be provided with a reasonable opportunity to be heard on the issue prior to the imposition of costs or sanctions, pursuant to 22 NYCRR § 130-1.1(d). Accordingly, a briefing schedule on whether costs and/or sanctions should be awarded for the frivolous conduct, and if so, in what amount.

The lesson? Moving for disqualification of a judge must be based on confirmed facts, not conjecture, and those facts should be clear and convincing. Even if there are confirmed facts suggesting a possible bias or appearance of impropriety, counsel should proceed with great caution. Carefully weigh the potential benefits and risks. You do not want to be left litigating the case before a judge you have insulted.

*Joseph Churgin, Esq. and Susan Cooper, Esq. of Savad Churgin Attorneys at Law

TECHNOLOGY TIPS FOR ATTORNEYS

submitted by
Michael Loewenberg*

Two Tactical Tools

This month, I want to talk about some specific tactical tools you can use to help you manage your work days. I'm talking about technology tools and techniques you can use now, at no cost, to help you better manage your activities in your business. Keep in mind that there are many tools and programs available to perform the functions described in this month's article. My goal here is to give you a high-level overview so you can jump in, try them in your practice, learn about alternatives if you need and, overall, improve your work effectiveness.

Time Management

Recording your time is one of those things you either love or you hate. I know many attorneys, consultants, solo-preneurs and independent workers who were surprised at the way that they actually spent their time during the day versus how they thought they did when they kept track of their time. Even in today's technology-heavy workplace, there are many who still track their time with a lined pad and pen. The only way you can *really* know how you spend your work hours is to use a timer program. In the technology world, it's very common for developers to charge by the hour so there are some really simple tools to let them record their time and assign hours to projects. I suggest that you can do that exact same thing in your firm so you can get a good sense of how you spend your time and then, of course, think about how you might adjust your efforts. Take a look at toggl.com. It's a free time tracking program that you can use on your phone or computer. You click a button to start the timer and click it again when you're done. It's that simple. Looking at the reports of what you did during the week can help you see areas you can improve on. I use toggl.com every day.

Project management

There are times when you are very busy that things could fall through the cracks, leaving lost opportunities and disappointed clients in their wake. I want to tell you about a project management application that allow you to record tasks, mark when they are due, assign tasks to others on the team and provide a place for updates for those tasks that are done in multiple steps. You can build project plan templates so if you get a new case similar to one you've managed before, you can assign it to a template and be prompted to do the steps that you need to do to properly service that client. Take a look at asana.com, free project management web-based software. It's pretty cool and I use it every day.

So there you go. Two quick tips that you can implement today to help increase your effectiveness and your efficiency in your day-to-day work.

Stay safe!

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

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HOSTED BY THE ROCKLAND COUNTY BAR ASSOCIATION

NOTICE OF NOMINATIONS FOR THE 2021/22 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 following candidates have been nominated for election to the Board:

**Ricki H. Berger– 3 year term
Keith I. Braunfotel – 3 year term
Alicia B. Cember – 3 year term
Robert L. Fellows – 3 year term
Bridget Gauntlett – 3 year term
Aimee Pollak – 3 year term**

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THE PRACTICE PAGE

Hon. Mark C. Dillon *

PUTTING REPLY PAPERS IN PERSPECTIVE

Reply papers are usually not the central focus of attorneys engaged in motion practice. The reason is obvious — that the parties' main evidence and arguments have already been placed before the court in the initial moving papers and opposition. This is not to say that reply papers do not have a valuable purpose. They can, and sometimes motions cannot be won without them.

Summary judgment motions have a special rule for replies. As is well known, the proponent of summary judgment on a cause of action or defense must tender evidence in admissible form establishing its *prima facie* entitlement to judgment as a matter of law. All of the qualifying evidence must be contained in the initial moving papers. The mission of the opposing party is to raise a question of fact requiring trial. Reply papers cannot be used to establish, for the first time, the party's *prima facie* burden of proof, as any failure to establish it cannot be cured by later reply submissions (*Vanderbilt Mortgage and Finance, Inc. v Ammon*, 179 AD3d 1138 [2d Dep't. 2020]; *American Transit Insurance Company v Longevity Medical Supply, Inc.*, 131 AD3d 841 [1st Dep't. 2015]). Reply papers are intended to voice a rebuttal to new issues raised in the opposition papers that immediately precede them, and should present new matter only to the extent of addressing the *opponent's* evidence or arguments (*Kennelly v Mobius Realty Holdings LLC*, 33 AD3d 380 [1st Dep't. 2020]; *Jones v Castlerick, LLC*, 128 AD3d 1153 [3rd Dep't. 2015]).

Parties opposing summary judgment, absent the filing of their own cross-motion, do not have the benefit of a sur-reply (CPLR 2214). However, the courts have discretion to permit a sur-reply that addresses an issue or evidence raised by the movant for the first time in reply (*Rolling Acres Developers, LLC v Montinat*, 166 AD3d 696 [2d Dep't. 2018]). Arguments raised by the movant in favor of summary judgment for the first time in reply, while technically improper, may still be considered by the court if it permits the opposing party a sur-reply to address them and which cures the defect (*Pizarro v Dennis James Boyle, Inc.*, 180 AD3d 596 [1st Dep't. 2020]).

An opponent of summary judgment who makes a cross-motion for summary judgment is entitled under CPLR 2215 to submit a reply in further support of its cross-motion, but once again, all proof needed to meet the *prima facie* burden of proof must be tendered in the original cross-moving papers.

Reply papers may also be used to correct technical imperfections with the initial moving papers, regardless of the relief being sought. For instance, if a deposition transcript is submitted without a signature page and would be inadmissible, the signature page may be provided in reply to cure the defect (*Mazzarelli v 54 Plus Realty Corp.*, 54 AD3d 1008 [2d Dep't. 2008]). Similarly, where a certificate of conformity is needed for the admissibility of an out-of-state affidavit in support of the initial motion, any defect with the certificate can be rectified in reply (*Olmeur Medical, P.C., Nationwide General Ins. Co.*, 41 Misc.3d 143[A] [App. Term 2d, 11th, 13th Jud. Dists.]). Where a foreign language witness submits an affidavit without a corresponding one from a translator, that defect may be cured with a translator's affidavit in reply (*Tavaras v Cayot Realty, Inc.*, 125 AD3d 754 [2d Dep't. 2015]). If the pleadings are not attached to the moving papers as required by CPLR 3212(b) for summary judgment, and the opposing party argues for the denial of the motion on that basis, the moving party may cure the defect by attaching the pleadings in reply (*Pandian v New York City Health and Hospitals Corporation*, 54 A.D.3d 590, 863 N.Y.S.2d 668 [1st Dep't. 2008]). In other words, as long as the *prima facie* evidence is submitted in the substance of the initial papers, admissibility or other technical defects may be corrected in the reply.

Attorneys should be mindful of the time frames within which reply papers are due, as set forth in CPLR 2214(b) for motions and CPLR 2215 for cross-motions.

* Mark C. Dillon is a Justice of the Appellate Division, Second Department, an Adjunct Professor of New York Practice at Fordham Law School, and an author of CPLR Practice Commentaries in McKinney's.



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2021 ROCKLAND COUNTY HIGH SCHOOL MOCK TRIAL

This year all competitions will be via Zoom Webinar.

***Congratulations to North
Rockland High School and
Nyack High School for making it
to the Final Round!***

Final Round:

Monday, April 12 – 5:30PM

***To watch, email Manuela by noon
on April 12 for Zoom link –
manuela@rocklandbar.org***

~

2021 Participating teams:

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*discussions
for RCBA members*



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MEMO

TO ALL RCBA COMMITTEE CHAIRS & VICE- CHAIRS

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

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

Thank you!





Legal Recruitment

[Division of Economic Justice - Antitrust Bureau – New York City - Special Assistant Attorney General](#)
[Reference No. ANT NYC SA 3339](#)

Application Deadline is April 14, 2021

The New York Attorney General's Office is seeking an experienced, senior attorney to join the leadership team of a multistate group that is litigating a cutting-edge, high profile antitrust action in federal court. The key responsibility will be to help manage the day-to-day activities of the multistate team through discovery and trial, ensuring that significant issues are identified and addressed, that all deadlines are met, that discovery is structured and managed efficiently, and that the team is focused on trial preparation.

To apply, please click on the following link: [ANT NYC SA 3339](#)

[Division of Economic Justice - Antitrust Bureau –New York City - Special Litigation Counsel](#)
[Reference No. ANT NYC SLC 3338](#)

Application Deadline is April 14, 2021

The New York Attorney General's Office is seeking an experienced, senior attorney to serve as a key leader on a multistate team that is litigating a cutting-edge, high-profile antitrust action in federal court. The key responsibility will be to manage the day-to-day activities of the multistate team through discovery and trial, ensuring that significant issues are identified and addressed, that all deadlines are met, that discovery is structured and managed efficiently, and that the team is focused on trial preparation.

To apply, please click on the following link: [ANT NYC SLC 3338](#)

[Division of Criminal Justice - Public Integrity Bureau – New York City - Assistant Attorney General](#)
[Reference No. PIB NYC AAG 3328](#)

Application Deadline is April 23, 2021

The New York State Office of the Attorney General is seeking an experienced prosecutor for the [Public Integrity Bureau \(PIB\)](#) in New York City. PIB Investigates and prosecutes crimes committed by public employees, elected officials, candidates for public office, and people and entities that steal from the government.

To apply, please click on the following link: [PIB NYC AAG 3328](#)





Legal Recruitment

[Division of Economic Justice - Antitrust Bureau – New York City - Assistant Attorney General](#)
[Reference No. ANT NYC AAG 3342](#)

Application Deadline is April 30, 2021

The New York State Office of the Attorney General is seeking an attorney to join its [Antitrust Bureau](#) in New York City as an Assistant Attorney General (AAG). The Antitrust Bureau's mission is to enforce federal and state antitrust laws on behalf of New York and its citizens, and to promote and protect the competitive process and the New York economy.

To apply, please click on the following link: [ANT NYC AAG 3342](#)

[Division of Criminal Justice - Medicaid Fraud Control Unit – New York City - Special Assistant Attorney General](#)
[Reference No. MFCU SAAG NYC 3283](#)

Application Deadline is April 30, 2021

The New York State Office of the Attorney General's (OAG) Medicaid Fraud Control Unit is seeking experienced prosecuting attorneys to serve as Special Assistant Attorney General in its New York City office. Utilizing various state laws, including the New York State Penal Law, the False Claims Act, Social Services Law §145-b, and the Executive Law, the Unit brings civil causes of action or criminal proceedings to stop fraud by healthcare providers, to protect the integrity of the State Medicaid program and to protect the health and well-being of residents of residential care facilities.

To apply, please click on the following link: [MFCU SAAG NYC 3283](#)

[Division of State Counsel - Claims Bureau – Medical Malpractice Section - Assistant Attorney General - New York City](#)
[Reference No. CLA/MM NYC AAG 3344](#)

Application Deadline is May 7, 2021

The New York State Office of the Attorney General's [Claims Bureau](#) in New York City is seeking a trial attorney to defend Medical Malpractice cases. The Claims Bureau represents the State of New York and its agencies in the Court of Claims and its employees in State Supreme Court. The selected candidate will defend the State in medical malpractice actions, from commencement through trial, with post-trial briefs often required.

To apply, please click on the following link: [CLA/MM NYC AAG 3344](#)



CLE CORNER

2021 CLE TITLE	DATE & TIME
CLE ONLINE - Using A HECM Reverse Mortgage To Stop A Foreclosure	Tuesday, April 20, 2021 12:00 PM - 1:00PM VIA ZOOM
CLE ONLINE - The Voting Rights Act: From Rockland County to Foley Square	Wednesday, April 28, 2021 12:00 PM - 1:00PM VIA ZOOM
CLE ONLINE - The Impact of Covid-19 on Business Valuations	Monday, May 3, 2021 12:00 PM - 1:00PM VIA ZOOM
CLE ONLINE - Managing a client with Mental Health Problems	Thursday, June 10, 2021 12:00 PM - 1:00PM VIA ZOOM

NEW CLE REQUIREMENT

In addition to ethics and professionalism, skills, law practice management, and areas of professional practice, a new category was added for diversity, inclusion and elimination of bias courses. This category of credit is effective January 1, 2018.

CLE REQUIREMENTS

Newly admitted attorneys must complete 32 credit hours of accredited “transitional” education within the first two years of admission to the Bar. Sixteen (16) credit hours must be completed in each of the first two years of admission to the Bar as follows: 3 hours of Ethics and Professionalism; 6 hours of Skills; 7 hours of Practice Management and/or areas of Professional Practice.

Experienced Attorneys must complete 24 credit hours of CLE during each biennial reporting cycle: 4 credit hours must be in Ethics and Professionalism. The other credit hours may be a combination of the following categories: Ethics and Professionalism, Skills, Practice Management or Professional Practice.

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.

COMMITTEE CORNER

Your Committee Chair will contact you regarding any upcoming remote meetings.

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CLASSIFIED ADS



SHADOWING OPPORTUNITY

College Student Looking for an Unpaid Shadowing Opportunity
My name is Jenny Dorlus and I am a 21-year-old political science major at Long Island University. I am currently in search of shadowing opportunities at a local law firm — preferably a short term, unpaid opportunity where I'd be able to learn firsthand what it takes to work at a law firm/in the field. I am willing to assist with projects and take on basic day to day operations. However, I would appreciate anything that you are capable of offering! If you would like to contact me, my return email is jennydorlus@gmail.com and my mobile number is (845)-300-5635.

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

Office building for sale on 44 South Main Street in New City near the Rockland County Courthouse. The first floor, 1326 sqf is suitable for an attorney's office. The second level, 967 sqf, is a residential 2 bedroom apartment. Call Moses Schwartz at KW Realty 845-783-0313, moses@mosesthebroker.com

OFFICE SPACE

Office within law office suite for rent at 10 Esquire Road, New City. Includes use of free Wifi, conference room, restroom and waiting area. One level building and ample parking.
Available September 1, 2019.
No security or fee required.
Call Dave at 638-2889

OFFICE FURNITURE FOR SALE

Priced to sell. Vertical and lateral file cabinets, storage units, desks, chairs, conference table, book cases, credenza, tables, dividers, bulletin boards, white board. Please call Madelon at 914-527-2400 for more information. Items are located in New City.

OFFICE SPACE

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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

TRIAL ATTORNEY WANTED

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

ATTORNEY NEEDED

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LEGAL ASSISTANT NEEDED – PART-TIME

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Paralegal for plaintiff's personal injury law firm. Experienced all phases of litigation from intake through discovery and trial preparation. Bilingual a plus. Computer Savvy with good interpersonal skills.
Send resume to lawyers@pilaw.com.

ENTRY LEVEL ASSOCIATE WANTED

A solo criminal, commercial and personal law office is looking to hire a part or a full-time entry or newly established associate. The salary and hours are negotiable. Please forward resume to
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ATTORNEY NEEDED

NYS funded Immigration Organization serving clients with immigration and citizenship issues seeks part-time immigration attorney to collaborate with Dept. of Justice accredited staff. Organizational activities are in both Rockland and Westchester counties. If interested, please submit resume in confidence to agency Pres/CEO at: patricia.rajala@gmail.com.

LEGAL ASSISTANT PART-TIME

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

ASSOCIATE ATTORNEY NEEDED

3-5 years litigation experience for busy Rockland County firm. Please forward resume to 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. All RCC students are trained to work virtually and proficient in virtual computer programs. Contact Amy Hurwitz-Placement Coordinator at (845) 574-4418 or email at ahurwitz@sunyrockland.edu

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