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Rachael Candoni—Editor

ROCKLAND COUNTY BAR ASSOCIATION

NEWSBRIEF

www.rocklandbar.org

December 2022

President's Post

The birth of a New Year is upon us. Minutes become hours, then days, weeks, years and decades. How can the passage of time be slowed so that we can live, not in the past or in the future, but in the present? That's what it is, a present if we strive to live in the here and now. 2023 is dawning, so why not step back and ask ourselves how we can evolve personally and professionally? How can relationships be enhanced with better communication, more empathy and less "it's all about me?" How can we experience more gratification in our professional realm, whether on the Bench or at the Bar? I say it's more about listening and observing, important skills for any attorney whether advocating inside a courtroom or counseling a client.

Mindfulness is just not a new age mantra but a way to better cope with the travails and pressures of our profession. We must not lose sight of our own well-being by taking care of ourselves, getting enough rest, eating well, reducing stress and picking and choosing our legal challenges. Do we have to take every case? Is it not better to ask the question, is this a matter that I can commit myself to handling? How do I feel about a relationship over several years with a new client?

We have an involved, committed and engaged Bar Association. It is active, alive and well. RCBA is here to address your needs and aspirations. There is always someone available to reach out to with whatever question you may have, whatever feedback you seek and whatever support you need. Some of my colleagues may be reading this and saying "what does this have to do with the practice of law?" I submit it has everything to do with life and lawyering is just another component of our existence, hopefully one that gives us meaning and a sense of purpose.

Think about coming out to our Holiday Party December 15th, if for no other reason than to get away from the office, decompress and spend some quality time with colleagues you care about. We are all in this together, a diverse, inclusive and engaging community. I would hope that as the year unfolds, there is more meaningful and greater communication between the Bench and Bar, addressing each of our concerns and sharing perspectives about which we might not be fully aware.

The years have flown by and now is the time to take inventory of where we have been and where we would like to be going over the next year. Let us create our own futures and not have the tragedies around us impair optimism while never diminishing compassion, understanding and empathy for whom we advocate. At the same time, let us sharpen our ethical compasses while striving not for perfection but for excellence.

May 2023 bring each of us greater joy and a perspective of what really matters in life.

Merry Christmas, Happy Hanukah and Happy Kwanzaa to you and your loved ones. 2023 will, we know, be a much better year.

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

RCBA Cares

The following article and resources are provided to you courtesy of the Lawyer to Lawyer Committee.

Holiday Eating

By Jennifer McGurk, Registered Dietitian and Owner of Eat With Knowledge (www.eatwithknowledge.com)

This time of year is filled with so many ups and downs. It's "the most wonderful time of the year", but also full of stress! Changes in routine, financial constraints, family worries, travel, obligations, holiday meals, and finding clothes to wear for holiday parties can create a sense of being overwhelmed.

While we can't totally decrease our holiday stress, we can follow some simple holiday survival strategies. Whether you're struggling with food and body image, undereating, overeating, or just feeling that your relationship with food needs some work, this list will cover mental and physical health for the holiday season.

1. Prioritize your "absolute must" list of essentials for the holidays and stick to it. This includes the FUN activities that really make your holidays shine and create the best memories. There is absolutely no way you can do it all over the holidays so you need to practice saying no, so you can say "yes" to the stuff that really matters.
2. Include structure AND flexibility in your holiday eating routine. Listening to internal hunger and fullness cues is a great tool for sensing what your body needs, but also knowing a loose time frame for when to eat is helpful when you're stressed. Give yourself a meal or snack every 3-4 hours and you will stay nourished and decrease the odds of mindless eating at night.
3. Give yourself permission to enjoy your favorite holiday foods. Focusing on your own desire of what, how much, and when to eat will help you find comfortable fullness and satisfaction. You may also give yourself permission to say "no" to things that are not your favorites. You get to decide what to eat and when based on what's best for you and your body.
4. You get to create your own definition of "health". Your health will have a range and will not be "perfect" all of the time. Be compassionate with yourself as you may have less time for movement and more days when you're enjoying fun foods. Know that each person's individual "health" depends on many variables including nutrition, movement, sleep, stress, access to healthcare and a healthy environment, etc.
5. This is THE time to amp up self-care. A daily self-care practice helps you stay connected to your body, reduce and manage stress, and cultivate joy. Ask for an early gift of yoga or massage! Don't forget to keep a book nearby to read, go for a walk or hike, host a small party with your favorite friends, and truly make holiday memories that will last a lifetime.

Cheers to a healthy holiday season!

RCBA Cares

The following resources are provided to you courtesy of the Lawyer to Lawyer Committee.*

Lawyer Assistance Programs

New York State Bar Association: 1-800-255-0569; lap@nysba.org

New York City Bar Association: 212-302-5787; <https://nysba.org/attorney-well-being/>

Suicide Prevention

National Suicide Prevention Lifeline: 1-800-273-TALK (8255) - National, Toll-Free, 24 Hours

Crisis Text Line: Need help? Text START to 741-74 1

Chemical Dependency and Self-Help Sites

Alcoholics Anonymous (AA): 212-870-3400; www.aa.org

International Lawyers in A.A. (ILAA): www.ilaa.org

Narcotics Anonymous (NA): 818-773-9999; www.na.org

Nicotine Anonymous (NA): 1-877-TRY-NICA; nicotine-anonymous.org

Mental Health

Depressed Anonymous: depressedanon.com

National Mental Health Association (NMHA) - 1-800-273-TALK (8255) to reach a 24-hour crisis center; Text MHA to 741741 at the Crisis Text Line

Source: Andrew Denney, Bureau Chief of NYLJ and the New York State Association of Criminal Defense Lawyers.

****For more information about the Lawyer to Lawyer Committee, please email Manuela Gomez at manuela@rocklandbar.org***

RCBA

Holiday Party

Thursday, December 15
6PM - 8:30PM

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THE PRACTICE PAGE

SHORT SERVICE --- JURISDICTIONAL DEFECT, OR EXCUSABLE ERROR?

Hon. Mark C. Dillon

CPLR 2214 sets forth the math for moving parties to follow when setting return dates on notices of motion. The options vary depending on the manner the moving papers are served upon the opposing party. The now-common use of NYSCEF e-filing removes many of the vagaries of mail service and delivery. That said, math errors sometimes occur, and when they do, the return date might provide less time than the responding party is entitled to under the CPLR, even with e-filing.

An adjournment of a return date will normally resolve the problem of “short service,” and for that reason reduces the instances where short service is a true issue. Service of an amended notice of motion may do the trick as well. When short service occurs and is not corrected, is the defect a jurisdictional one where the court has no authority to decide the motion on its merits? Or, does the court have discretion to render a decision on it so long as there is no prejudice to the opposing party? Decisional authority appears to be split on this topic.

The Second Department has held that courts are without jurisdiction to entertain motions on their merits when papers are short served (*Bianco v Ligreci*, 298 AD2d 503). However, *Bianco* cited in support cases from the First, Second, and Third Departments where the underlying motions were defective not in terms of the number of days of notice, but from the manner of their service (*Adames v NYCTA*, 126 AD2d 462 [1st Dep’t.]; *Welsh v State*, 261 AD2d 537 [2nd Dep’t.]; *Burstin v Public Serv. Mut. Ins. Co.*, 98 AD2d 928 [3rd Dep’t.]). In all of the foregoing cases, including *Bianco*, improper service provided a basis for vacating the motion default of the opposing party.

Where short service is the only defect in a notice of motion, the Third Department views it as a non-jurisdictional defect, allowing the trial court to reach the merits so long as the adversary party has submitted opposition papers and is not otherwise prejudiced (*Capolino v Goren*, 155 AD3d 1414). The Fourth Department agrees, having found that a trial court has discretion to disregard even the absence of a return date, if there is no prejudice to the opposing party (*Harrington v Brunson*, 129 AD3d 1581).

A special word of caution is in order for CPLR 3213 motions for summary judgment in lieu of a complaint. In a CPLR 3213 “motion-action,” the return date has a double significance --- the date opposition papers are due, and also, the date by which the defendant must appear in the action. The time to appear on the motion can never be less than that provided for by CPLR 320(a), either 20 or 30 days depending on the manner of service of process. Therefore, a stronger argument may exist that short service of a CPLR 3213 motion should prohibit the trial court from entertaining the motion’s merits (e.g. *Segway of New York, Inc. v Udit Group, Inc.*, 120 AD3d 789 [2nd Dept.] [short service coupled with incorrect courthouse address]; *Goldstein v. Saltzman*, 13 Misc.3d 1023). Yet, it is often impossible for plaintiffs to know exactly when service will be accomplished by a process server so that pre-selecting a CPLR 3213 return date is tricky to compute, and provides at least an arguable discretionary basis for the court to reach the motion’s merits (*Brooklyn Fed. Sav. Bank v Crosstown W. 28 LLC*, 29 Misc.3d 1237[A]). Statewide authority is split on these issues as well. When discretion is exercised in favor of reaching the CPLR 3213 merits despite short service, the key factors appear to be whether the defendant has opposed motion and whether there is prejudice (e.g. *Imbriano v Seaman*, 189 Misc.2d 357).

CPLR 7804(c) requires that a notice of petition and petition be served at least 20 days before they are returnable. Short service of a petition is a jurisdictional defect in the Second Department (*Stream v Beisheim*, 34 AD2d 329) but not in the Third Department (*Brown v Casier*, 95 AD2d 574), further underscoring the split authorities. The law is unclear in the Fourth Department given conflicting decisions there (compare *Stoddard v Town Bd. of Town of Marilla*, 52 AD2d 1091 with *Harrington v Brunson*, *supra*).

The bottom line is to be careful of the math when calculating return dates, correct any error that may occur, and to otherwise be guided by the law of the department where the case is venued. If expedited return dates are needed, they may be obtained by order to show cause (CPLR 2214[d]) without complication, if the court is inclined to agree.


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


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

SPOTLIGHT

On

Crismelly Morales, Esq.



This month, the Diversity, Equity and Inclusion Committee had the honor and privilege to interview Crismelly Morales, Esq., a young attorney who just started her own Immigration Law practice in New City.

Where did you grow up?

I was born and grew up in Haina, Dominican Republic, a small municipality in the south of the island, which is close to the capital Santo Domingo. At 20 years old, my paternal grandmother's immigrant visa petition on behalf of my father was finally granted, and that created the opportunity for me to also immigrate to the United States. I had never dreamed of moving to the U.S., but this was a lifetime opportunity. On December 9, 2009, I boarded a JetBlue flight to New York, leaving the country where I was born and raised, and leaving behind my friends, my culture, and most of my family. My emotions were jumbled. I was both excited and anxious!

When I arrived at JFK Airport, I was greeted by chilly 28-degree weather and my first snowfall. The blast of cold air reminded me that now I was in a new country where I had to quickly become more independent. My aunt, Blasina, and her husband, Jose, welcomed me into their home in Haverstraw, NY, and helped me register for English classes and find a job.

What is your educational background?

I received my education up through college in the Dominican Republic. When I left in 2009, I had been attending Universidad Autonoma de Santo Domingo, where I studied law and had nearly completed my degree. Becoming a lawyer was my dream for as long as I could remember. It was difficult knowing my dream would have to wait when I came to the U.S., but I kept going. After I arrived here, I discovered that I had to start college all over again, beginning with courses in English at BOCES. I had studied English in the Dominican Republic, but I was not completely fluent.

After I completed the English courses, I enrolled at Rockland Community College ("RCC") and earned an Associate Degree in Paralegal Studies in December 2012. I later completed my undergraduate studies at SUNY Purchase, earning a Bachelor of Arts in Legal Studies in December 2014. These degrees brought me closer to my goal of becoming a lawyer. I attended New York Law School and obtained my Juris Doctor in May 2021. That was the proudest moment of my life! I became the first in my family to graduate law school.

...Continued

What was your career path and where are you currently working?

In 2012, during my second year at RCC, I started working as a paralegal for Stanley Teich, Esq. a solo practitioner with an Immigration Law practice in New City, NY. I worked with him on a full-time and part-time basis at different times, until he passed in 2020. From 2013 through 2017, I worked as a paralegal for Ellen Holtzman, Esq., whom I consider to be my mentor, on a full-time basis in the area of Matrimonial and Family Law. After Mr. Teich passed in 2020, his son-in-law, Marc Ackerman, Esq., took over the firm, and I worked with him as a paralegal until I completed law school in 2021.

After my graduation from law school and admission to the New York and New Jersey Bar, I worked as an Associate with the Law Office of Lloyd E. Bennett in Union City, New Jersey. I practiced Immigration Law in Mr. Bennett's office until September 2022.

In October 2022, I opened my own practice in New City, providing legal services primarily in Immigration Law. My passion for Immigration Law is rooted in my own immigrant story, and my deep commitment to helping my community. Opening my own practice is the culmination of my lifelong dream!

Would you like to share anything about your personal life?

I live in Pomona with my wonderful husband of six years, Yesting Morales, who is completing a Physician Assistant Program at Mercy College.

Who is your inspiration/hero?

My hero is my mother, Maria Geronimo, who raised me as a single parent. She worked tirelessly to make sure I was always safe and got a good private education. More importantly, my "mami" always gave me her unconditional love and care. She is my inspiration because she taught me that I could accomplish any goal I set my mind to if I worked hard and never gave up. She gave me the strength and support to try my wings by taking the flight to New York that began my journey in this incredible country. Coming to the U.S. is one of the best decisions I've made.

What good advice have you received?

My mother always told me not to let my fears, doubts or insecurities keep me from pursuing my dreams. She also taught me that anything you want to accomplish is possible with hard work and determination. I am living proof of that!

What is your favorite TV or streaming show or book?

My favorite book is **Dominicana** by Angie Cruz, a Dominican author. I love this novel about a 15-year-old Dominican girl who immigrates to New York, because it is an homage to the strong women who left their home countries for the promise of a better future. I'm sure you can see there are some parallels to my own story.

What is your guilty pleasure?

Chocolate, chocolate, and more chocolate!

Is there anything else you would like the bar association to know about you?

I am passionate about helping the Latino community in Rockland County and in other parts of New York and the U.S. While I was in law school, I volunteered as a Spanish interpreter for multiple non-profit immigration organizations that provide free legal services to foreign nationals, such as CUNY Citizenship Now, Make the Road NY, and Al Otro Lado. I interned at Safe Passage Project, a non-profit organization that represents children throughout their immigration process. I'm happy and proud to say that some of those children are now lawful permanent residents. I will continue to serve my community, and all others who seek lawful immigration in the U.S., through my legal practice and advocacy.

[DECEMBER 2022]

COMMERCIAL LITIGATION ISSUES OF INTEREST

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

Your client purchased a motel, added kitchenettes to each of the rooms, and advertised them for longer stays. Residents complained, leading the Village code enforcer to issue a violation of the special use permit granted to the prior owner four years earlier for 12 motel rooms and 5 efficiency apartments. You filed an appeal with the Zoning Board of Appeals. Instead of considering the appeal, the ZBA referred the matter to the Planning Board to determine whether the special use permit should be revoked for violating the terms of the permit. After the Planning Board revoked the special use permit, you again appealed to the ZBA, and simultaneously commenced an Article 78 proceeding with declaratory judgment action. The ZBA tabled the appeal until the outcome of the court litigation. The Village moved to dismiss the petition and complaint for lack of standing and ripeness, arguing that your client did not suffer direct harm different from the public at large, and that the determination was not final.

Will you defeat the motion to dismiss?

The answer is *yes*.

In *East Pine Apts., LLC v. Village of Cambridge Planning Board* Sup. Ct. Washington Co., October 25, 2022 – Case No. EC2021-33496), NYLJ 1667144281NYEC2021334, the petitioner purchased a motel that had a special permit for 12 motel rooms and five efficiency apartments. After adding kitchenettes to each of the rooms and advertising the rooms for longer term stays, complaints (which the petitioner believed were made by the Mayor) lead to the Village Zoning Enforcement Officer issuing a notice of violation of the special use permit and directing compliance within 30 days.

Petitioner filed an appeal with the ZBA, which was designated by the local code as the only authority to hear an appeal of the determinations of the code enforcement officer. However, the ZBA did not consider the appeal, referring it instead to the Planning Board to determine if the special use permit should be revoked. The local code gave authority to the Planning Board to revoke special permits for violations. The Planning Board held a hearing presided over by the Mayor in the absence of the Board chair, and revoked the special use permit.

...Continued

Petitioner appealed to the ZBA and simultaneously filed a combined Article 78 petition with a declaratory judgment action, containing seven causes of action, including a request for counsel fees for gross negligence and malice, particularly for the Mayor acting as chair of the Planning Board, and for violation of constitutional rights under 42 USC 1983. The ZBA tabled the appeal pending the outcome of the court action.

The Village moved to dismiss the proceeding arguing, among other things, lack of standing for having no direct harm distinct from the public at large, as held in *Matter of Barnes Rd. Area Neighborhood Assn. v. Planning Bd. Of the Town of Sand Lake*, 206 A.D.3d 1507, 1508 (3d Dep't 2022), and for lack of ripeness in that the determinations were not final. The Court denied the motion to dismiss in its entirety, holding that the direct harm to petitioner, as sole owner of the motel, was entirely different from the public at large.

As to ripeness, the Court noted that the ZBA's failure to consider the appeal from the notice of violation was sufficiently final, as the special permit was revoked by the Planning Board based on the violation. The Court explained that a "determination as to whether a controversy is ripe for review requires a court 'first to determine whether the issues tendered are appropriate for judicial resolution, and second to assess the hardship to the parties if judicial relief is denied,'" citing *Sullivan v. New York State Joint Commn. On Pub. Ethics*, 207 A.D.3d 117, 130-131 (3d Dep't 2022), quoting *Church of St. Pay & St. Andrew v. Barwick*, 67 N.Y.2d 510, 519 (1986). The Court held that the matter was ripe and that there will be substantial hardship to the petitioner if judicial relief is denied.

The Court found that all causes of action were properly pleaded, noting that counsel fees may properly be awarded in the context of a combined CPLR article 78 proceeding and declaratory judgment action, citing *Matter of Brown v. City of Schenectady*, ___ AD3d ___, 2022 NY Slip Op 05245, *1 (2022).

The lesson? If you represent a client waiting for an overdue decision on an administrative appeal to the ZBA or other final municipal authority, commence an Article 78 proceeding and demonstrate that the determination is appropriate for judicial resolution and hardship if judicial relief is denied. Seek counsel fees if the facts support a claim that the municipality acted in bad faith.

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

Technology Tips for Attorneys submitted by Michael Loewenberg*

There are some people who don't want to give their cell phone number to their clients for privacy or time management reasons. Wouldn't it be nice to allow your clients to send you a text message without them knowing your cell phone number? You can!

Google Voice lets you choose a phone number in whatever area code you'd like and it's like a new phone mobile line. You can send and receive text messages and you can make and receive calls. You use Google Voice to get calls and messages on your cell phone or your computer, so your real number is hidden from your clients. And your text messages can be sent to your Gmail so you can read them in your email.

Some possible business scenarios in your law firm:

- You can offer text messaging to your clients so they can contact you in case of an emergency.
- You can send text reminders about upcoming events to your clients (appointments, court dates, closings etc.)
- You can text a link to make a payment to give your clients an option to make a payment on their phone (requires that you're set up to take online payments) and
- You can exchange text messages with your clients for quick answers and updates.

Google Voice messaging includes an auto reply feature. This would allow you to offer text messaging to your clients and also have an auto response sent at certain times when you will not reply. Or, for example, you could turn on the auto reply so that your clients' texts are automatically acknowledged.

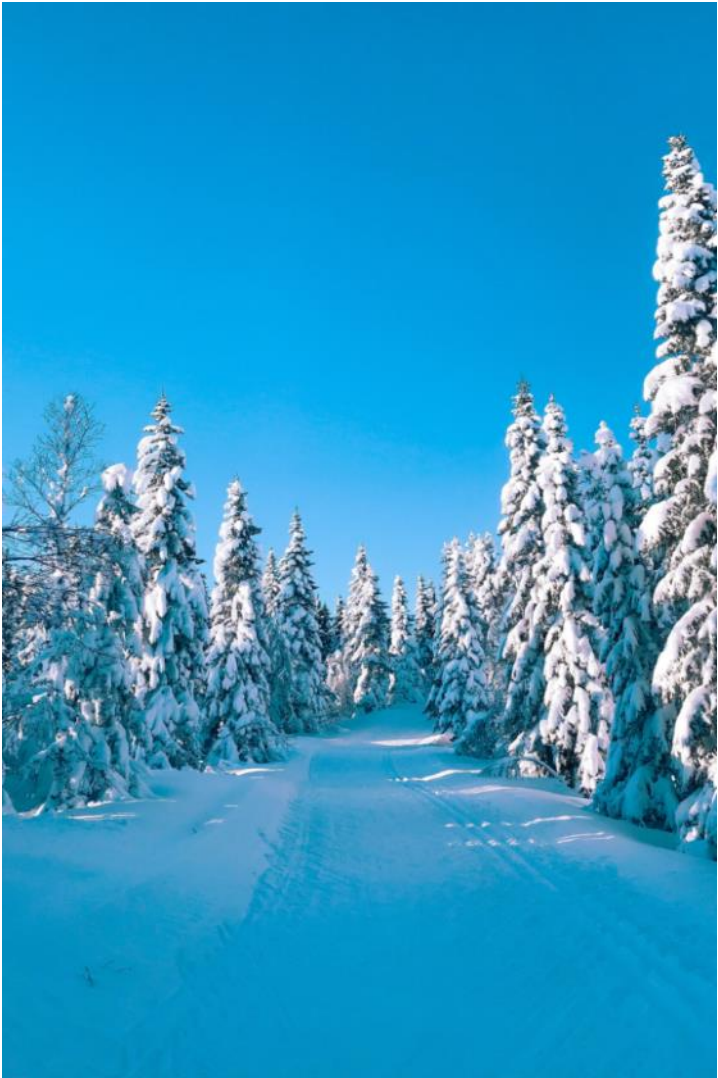
You can send and receive messages on your computer on the Google Voice website and you can use the Google Voice app on your phone. Using the app on your phone has nothing to do with your regular cell number; all the Google Voice calls and messages are in the app. You now have another phone number!

Google Voice is free, and you can sign up on the website. You can use your Gmail account for your Google Voice account, or you can set up a new Gmail account for your Google Voice business. It's quick and easy to do and you could be offering text messaging to your clients today. Check out Google Voice here <https://voice.google.com/>


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

Happy Holidays from the RCBA Board of Directors & Staff

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Tuesday, December 13, 2022

12:00 P.M. - 2:00 P.M.

WEBINAR VIA ZOOM



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

Thank you!



Monthly
Newsletter

CLE CORNER

PLAN YOUR YEAR OF CLEs NOW!

2022 CLE TITLE	DATE & TIME
<p style="text-align: center;">December 13, 2022 12:00pm—2:00pm</p>	<p style="text-align: center;">Legal History: Chief Justice John Jay and the Earliest Momentous Cases of the U.S. Supreme Court</p>

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 infor-

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:

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

COMMITTEE CORNER

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ANNOUNCEMENT FROM THE RCBA REAL ESTATE COMMITTEE


Please be advised, that after many months of work and coordination between the RCBA, the Real Estate Committee, its Co-Chairs and Members; we are pleased to announce that the RCBA Real Estate Committee has created, voted-on and Approved an updated Real Estate Contract for the first time in Decades!

Co-Chairs Jeff Yanowitz and David Ascher took notes and comments from the Real Estate Committee members over many months to provide this updated Contract to the entire RCBA! We look forward to utilizing this Contract throughout Rockland County and providing a more modern and stream-lined approach to Real Estate Transactions for us all.


Please find two updated contracts (single family home and condominium) on our RCBA website at www.rocklandbar.org. Scroll down to the bottom of the homepage and find links under "Helpful Links."

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LOOKING FOR ATTORNEY OF ROBERT MARTIN MCLAUGHLIN

The RCBA is currently trying to locate an attorney who worked for Robert Martin McLaughlin of Thiells, NY.

The family is unaware of who his lawyer was. Please contact Rachael at Rachael@rocklandbar.org with any information

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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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