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Rachael Candoni—Editor

# ROCKLAND COUNTY BAR ASSOCIATION

# NEWSBRIEF

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

January 2023

## President's Post

Our New Year's celebration recedes, as we anticipate the known but also the unknown that lies ahead. Optimistically, what comes to mind are four known satisfying developments, three of which tell us that help is on the way.

Two additional Supreme Court Justices have arrived at the Courthouse. A third, the Hon. Sherri Eisenpress, our Acting Supreme Court Justice, has been elevated by the electorate to full Supreme Court status.

Justice Christie D'Alessio, who with her principal court attorney, Angela DiBlasi, Esq., have migrated south from Poughkeepsie to the more bucolic hamlet of New City. You are entitled and invariably will receive a heartfelt welcome from bench and bar alike.

Welcome and congratulations on your election, Justice Amy Puerto, who brings her new robe and gavel to our 1929 Art Deco Main Street Courthouse. Did you know its antiquated predecessors have graced Main Street since 1774, when the Courthouse was established shortly after the Revolutionary War with iterations thereafter in 1827, 1846 and 1873?

Both of our new resident Justices each come with a wide breadth of experience. Justice Puerto was a former attorney in Westchester for 20 years as well as a Westchester County prosecutor and the principal court attorney for the Hon. Helen Blackwood. Justice Puerto arrives with her principal court attorney, Elizabeth Gazay, Esq. May the spirit and wisdom of Brandeis and Frankfurter percolate within each of our new principal court attorneys.

Justice D'Alessio, after being reassigned from Dutchess County to Rockland, presided in the Town of Greenburgh as Town Justice. She also litigated for over a decade on behalf of the Westchester County Attorney's Office. Fortunate are we to have these two jurists join our judicial community. They have the benefit of Justices Marx and Zugibe who invariably will provide both collegiality and insight to make their adjustment to Rockland a seamless one.

Justice Eisenpress, congratulations on your election. You are no longer "Acting," you now have, through your many well deserved auditions, assumed a leading role.

Let each of us when we first appear before Justices Eisenpress, D'Alessio and Puerto, place on-the-record, our congratulations and a warm and hospitable Rockland welcome.

What do I consider to be the fourth welcoming development? It is, in my view, the Alternative Dispute Resolution program (ADR) being implemented District Wide. Take a look at the Ninth District's new ADR Rules which can be accessed at <https://ww2.nycourts.gov/courts/gjd/ADR.shtml> Many litigators will concur with the program's purpose:

"Mediation is often faster, more convenient, less expensive and less acrimonious, and often results in a more mutually acceptable and durable resolution than the normal course of litigation."

*Continued...*



***...Continued from front page***

The ADR Rules provide for an ADR Coordinator to facilitate the assignment of court proceedings to mediation and to track results of the mediation program. The Ninth Judicial District's ADR Coordinator is Sharon Matthie, Esq. For more information about ADR in Rockland County, contact Ms. Matthie at [smatthie@nycourts.gov](mailto:smatthie@nycourts.gov). In addition, Lisa Denig is the Principal Settlement Coordinator for the Ninth Judicial District. She can be contacted at [ldenig@nycourts.gov](mailto:ldenig@nycourts.gov). Both Sharon and Lisa work in concert with the NYS Court's ADR Office. Either of these individuals are available to answer any questions or assist you concerning an interest in becoming a Court Mediator, attending a mediator training program, or the specifics of the ADR program being implemented in Rockland County. To serve as a court appointed mediator as part of Rockland County's Roster of Mediators you must participate and complete mediation training sessions, such as the one that occurred and was well attended on November 3, 4 & 5, 2022.

Hon. James L. Hyer, Supreme Court Justice, now sitting in White Plains, spearheads implementation of the ADR program. He informs that the District is working to prepare additional mediation trainings for this year. RCBA will provide notice of mediation training sessions when scheduled. In the interim, the NYS ADR Office has trainings listed at the following address: <https://ww2.nycourts.gov/ip/adr/Training.shtml> Furthermore, the District is planning a separate ADR training for small claims matters where recovery is \$6,000 or less. Training will be needed to join this Panel and training opportunities will be made available to Bar Associations in the District later in the year. This is an opportunity to provide alternative dispute resolution by arbitration for small claims matters.

What stands out in the Rules is that mediation is initiated at a Preliminary Conference unless a different time frame is provided for by the Court. Parties can seek an exemption from mediation if the Court determines, in its discretion, whether good cause exists to grant the exemption.

ADR has been well-received, is nimble and restorative to litigants and is now considered an expanding litigation feature, a vital component of the mediation process. In years to come, I suspect it will be expanded statewide. Why not mediate before you litigate? Exploration of settlement is cost effective and certainly a viable option before jury selection or trial.

Let us begin the New Year with optimism, commitment and enthusiasm for what we will accomplish on behalf of our clients and community. Think about getting involved with a not-for-profit near and dear to you. Let's give back to Rockland County what it has provided us, an opportunity to earn a living in a County with so much to offer and the benefit of garnering respect and admiration of those who we have been privileged to represent.

There are many not-for-profits which would benefit from the experience and insight of our RCBA members. Here are a few that come to mind: United Way of Rockland, Center for Safety & Change, Volunteer Counseling, Rockland Conservatory of Music, Big Brothers Big Sisters of Rockland County, PTA's, Girls Scouts, Boys Scouts, Little League, Rockland Center for the Arts, Holocaust Museum and Study Center, Jewish Federation Foundation of Rockland County, Rivertown Film Society, Rockland County Volunteer Firefighter's Association, Montefiore Hospital Foundation, Rockland Community Foundation, Rockland County Pride Center, United Hospice of Rockland, Catholic Charities Community Services of Rockland, Konbit Neg Lakay, Immigration Advocacy and Research Group, People to People, Your House of Worship, Nyack and Spring Valley NAACP and so many more philanthropic and service organizations.

Get involved. Give back. The non-monetary rewards will provide a deeper and more meaningful gratification than any fee.

As we peer into a crystal ball, who knows what is ahead in 2023. We can only hope that COVID remains on the run and there is a rebirth from our communal hibernation. This will reinvigorate our professional relationships, which have for too long been dormant by necessity.

Best wishes for a New Year in health, with greater happiness, gratitude and meaning.

Welcome Justices D'Alessio and Puerto. We commit ourselves to making your stay here an enjoyable and productive one. Congratulations to Rockland's own Justice Eisenpress.

A Happy New Year to our membership, from our Staff and Board of Directors.

Robert (Rob) L. Fellows, Esq.  
President

# IMPORTANT NOTICE!

## **SOLICITATION OF NOMINEES FOR UPCOMING VACANCIES ON THE RCBA BOARD OF DIRECTORS**

Pursuant to Article V, Section 9(c) of the By-Laws of the Rockland County Bar Association, applications are now being solicited for upcoming vacancies on the Association's Board of Directors. There will be 5 open vacancies on the Board of Directors for terms beginning on July 1, 2023.

Anyone wishing to be a candidate for election to the Board must express their interest, in writing, no later than February 1, 2023. The writing should include the reasons why the member believes he or she is qualified to serve on the Board.

The Nominating Committee will conduct in-person interviews of all candidates. Failure of the candidate to appear at their scheduled interview will disqualify that candidate from consideration.

Upon conclusion of all interviews, the Nominating Committee shall meet and select nominees. Selection of nominees will be completed no later than March 10, 2023. Notice of selected nominees will be sent to the entire membership no later than March 20, 2023.

Please submit your applications in writing to:

Nancy Low-Hogan, Ph. D.  
Executive Director  
Rockland County Bar Association,  
337 North Main Street, Suite 1 New City, N.Y. 10956

U.S. Postal submissions and E-mails to [nancy@rocklandbar.org](mailto:nancy@rocklandbar.org) will be accepted in addition to personal deliveries.

Deadline for responses is February 1, 2023.

Any member not selected by the Nominating Committee, whether or not he or she solicited nomination before the Nominating Committee, wishing to have his or her name placed in nomination for election to the Board, shall submit a petition to place his/her name before the membership. The petition must be signed by no fewer than 20 members in good standing with the Association, and must be submitted in person at the Bar Association offices no later than April 5, 2023.



# The Rockland County Bar Association

*Lunch with a Judge*  
resumes in person with

**Hon. Christie L. D'Alessio, JSC**  
Visiting Judge from Westchester County



**JANUARY 24, 2023**

**12:30pm - 2:00pm**



Sheriff's Training Facility,  
49 New Hempstead Road, New City, NY

The lunches are casual and a chance to catch up with our local judges in an informal atmosphere. A light lunch will be provided at no charge.

Please note that **SPACE IS LIMITED!**

RSVP to the Bar Association Office at 845-634-2149  
or email [office@rocklandbar.org](mailto:office@rocklandbar.org)

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\*Justice D'Alessio was assigned to the Rockland County Supreme Court in 2023.



## RCBA Cares

### 5 Tips to Reset Your Diet This Year

By Suzanne Gerdes Fultz, MS, RD, CSOWM, CDN

Registered Dietitian and Weight Management Specialist

Suzanne Fultz Nutrition, PLLC [www.designyourfoodspace.com](http://www.designyourfoodspace.com)

For many of us, the New Year is synonymous with a new diet, starting back at the gym, or another health and wellness goal. These good intentions often end up backfiring the moment life gets busy or hard – which, let's be honest, it's not an if, but a when.

So, rather than using 2023 as the *year* to make wide sweeping changes to come out as a new you, why not reframe your mindset around your nutrition and wellness goals.

#### Tip 1: Make a game plan

Stress and stress eating derails even the best of healthy eating plans. Rather than flailing when it happens, be conscious that it will happen and take some steps to prepare yourself for how you will respond. During stressful times, your perception of how much time you have for preparing healthy decreases. *Solution:* keep some easy to prepare healthy items on hand.

- [Tabatchnick frozen soups](#)
- Frozen salmon burgers paired with a bag of frozen edamame
- Frozen smoothie packets

#### Tip 2: Focus on progress over perfection

Following through with healthy eating habits, such as eating 5 servings of fruits and vegetables per day, or choosing whole grains over refined grains, or just limiting eating out, does not happen overnight. Our eating habits were developed over years, so it will take time before you can run on healthy eating autopilot. As Voltaire said, "Don't let the perfect be the enemy of the good." Instead of throwing everything out the window when you have a slip-up, learn from moments when you revert to your old habits.

- Problem: Picking up takeout on the way home from work.  
Fix: Prep a few options on the weekend.
- Problem: Grazing on treats throughout the day.  
Fix: Put healthy snacks like apples or oranges in eye-view.
- Problem: Mindlessly munching on snacks at night.  
Fix: Try eating more at meals so you feel more satisfied.



### Tip 3: Create a swarm of B's

Stanford's behavior-change expert and author, BJ Fogg, explains that three things can create lasting behavior change – an epiphany, an environment change, or taking baby steps. Focusing on small, positive change leaves you feeling good and like you can make yet another positive change. Here's how to do it:

1. Choose desired outcome, such as, eating less sugar.
2. List small behaviors that can help you reach your outcome.
3. Frame behaviors like this:  
After I (insert prompt here), I will (insert behavior here)  
After I finish my coffee, I will fill up my water bottle.  
After I finish my lunch, I will take a walk outside.
4. Celebrate your successes, no matter how small.

### Tip 4: Reward all successes

All too often, all the focus is placed on the scale. All success is defined by whether the scale goes down or not. There are so many other successes to be celebrated when you are working to improve your diet and health. Whether you have picked up a new cooking skill or find that you have more energy, these victories will also help to keep you motivated if you start to pay attention to them. Here are some examples:

- You feel stronger during your favorite activities.
- You fall asleep faster and wake up less during the night.
- Your medication dose to manage your health condition was lowered.

### Tip 5: Take action

Are you confused about all the diets and nutrition advice from family, friends, social media and the rest of the world? There is a lot of information and misinformation available at your fingertips, but good advice doesn't change. Choose one of these habits to get started on resetting your diet in the new year:

- Make half the food on your plate be fruits or vegetables at each meal.
- Choose whole grains for at least half of your meals and snacks.
- Pay attention to your hunger signals - eat when you are hungry, stop when you are satisfied.
- Favor water over sugar-sweetened drinks.
- Aim to eat lean meats over high fat meats, or eat meatless meals at least once per week.

Behavior change, whether it's a nutrition goal, or something else, comes down to your mindset if you are to achieve sustainable, lasting change. The five tips above can be built upon each other to reset eating habits in the new year. Follow these five tips and you will find that changing your diet does not have to be painful or leave you feeling deprived of good tasting food.

After all, food is meant to fuel you, but it is also meant to be enjoyed!



## 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](mailto: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](http://www.aa.org)

International Lawyers in A.A. (ILAA): [www.ilaa.org](http://www.ilaa.org)

Narcotics Anonymous (NA): 818-773-9999; [www.na.org](http://www.na.org)

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

### **Mental Health**

Depressed Anonymous: [depressedanon.com](http://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](mailto:manuela@rocklandbar.org)***



**HON. BRYAN E. ROUNDS  
COUNTY COURT CHAMBERS  
ULSTER COUNTY COURTHOUSE  
285 WALL STREET  
KINGSTON, NY 12401  
(845) 481-9393**

**William C Ghee, Esq.  
Principal Law Clerk**

**Lindsay M. Shands  
Confidential Secretary**

December 15, 2022

Robert L. Fellows, Esq.  
Rockland County Bar Association  
337 N Main Street, Suite 1  
New City, NY 10956

Dear Mr. Fellows,

The Ulster County Court seeks qualified attorneys who may be interested in undertaking assigned work under County Law Art. 18 for post-conviction CPL Art. 440 motions and direct appeals from the local and city courts.

If any of your members may be interested, please have them contact chambers at their earliest opportunity, so that I may briefly discuss the Court's expectations and place their name on our list of available attorneys.

Sincerely

A handwritten signature in blue ink, appearing to read "W.C. Ghee", with a long horizontal flourish extending to the right.

William C. Ghee  
Principal Law Clerk  
Hon. Bryan E. Rounds



## **New York State Law Limiting Debt Collection**

### **Remedies Against Patients**

In case you missed the recent Rockland County Journal News article regarding medical/dental debts, on November 23, 2022 Governor Hochul signed into law Chapter 648 of the laws of 2022, which legislation is effective immediately. The new law prevents hospital and health care professionals from utilizing a “property lien” against the patient’s primary residence or using wage garnishment against the patient as a means of satisfying a judgment arising out of a medical or dental obligation. The legislation amends Section 5201(b) of the Civil Practice Law and Rules stating that, “No property lien shall be entered or enforced against a debtor’s primary residence in an action arising from a medical debt and brought by a hospital licensed under article twenty-eight of the public health law or a health care professional authorized under title eight of the education law.” The legislation further provides that where a judgment debtor is receiving or will receive money from any source, and an income execution is issued and delivered to the sheriff in the county (or to the City Marshall in the City of New York) in which the judgment debtor resides, or where the judgment debtor is a nonresident, the county in which he/she is employed, no amount shall be withheld from the judgment debtor’s earnings to satisfy the judgment arising from a medical debt action by a hospital or health care professional.

Also, in case you missed it, back on April 3, 2020, New York State Governor Andrew Cuomo signed into law an amendment to New York Civil Practice Law and Rules Section 213-d, which states in part, that an action on a medical debt by a hospital or health care professional shall be commenced within three (3) years of treatment. Previously medical debts were covered under the standard six (6) year statute of limitations covering contracts. The three (3) year statute of limitation reduction was effective immediately upon the Governor signing the legislation. The statute of limitation is tied to the date of the patient’s date of treatment and not the traditional statute of limitation trigger date of contact breach (i.e. failure to pay on the due date of an obligation or on the date that a party omits the performance of a contractual obligation).

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Respectfully submitted,

Alden B. Smith, Esq.,

Co-Chairperson Debt Collection, Bankruptcy and Creditors Right’s Committee of the  
RCBA



**THE PRACTICE PAGE****DISCONTINUANCES OF LITIGATION****Hon. Mark C. Dillon\***

The discontinuance of litigation is like a see-saw. The earlier it is sought in a litigation, the easier it is for the plaintiff to obtain. The later it is sought, the more is required. The discontinuance statute is CPLR 3217 and should be thought of as consisting of three stages.

Stage One. If the defendant has not yet served a responsive pleading, or if none is required, the plaintiff may discontinue an action by mere unilateral notice (CPLR 3217[a][1]; *Bayview Loan Servicing, LLC v Windsor*, 172 AD3d 799, 801). At that earliest stage of litigation, a discontinuance is easy as the adversary party and the court have not yet invested time, effort, or expense on the case.

Stage Two. This stage involves the time between the responsive pleading at the front end and the submission to the case to a judge or jury for fact finding at the back end. Discontinuances between that expanse of time may be accomplished one of two ways. The first is by written stipulation signed by counsel for all of the parties, so long as no party is an infant, incompetent, or conservatee, and no non-party has an interest in the litigation (CPLR 3217[a][2]; *HSBC Bank USA., National Association v Rini*, 202 AD3d 945, 947). Alternatively, a discontinuance may be granted without a stipulation by court order, upon a notice motion, upon conditions the court deems proper (CPLR 3217[b]; *Tucker v Tucker*, 55 NY2d 378, 383-84).

Stage Three. Once an action proceeds to the submission of the trial evidence to a judge or jury for deliberative fact-finding, an action may only be discontinued if there is a stipulation by all parties and a court order permitting it (CPLR 3217[b]; e.g. *Madison Acquisition Group, LLC v 7614 Fourth Real Estate Dev., LLC*, 134 AD3d 683, 685). After all, by that time, the parties and the court have invested in a trial, subject merely to a verdict by the trier of fact, which should render tactical discontinuances more difficult to obtain. As a practical matter, any party's refusal to stipulate to a discontinuance operates as a veto on the issue, as the court cannot exercise its discretion to order a discontinuance without the unanimous stipulation of the parties (*Emigrant Bank v Solimano*, 209 AD3d 143 [decided Sept. 28, 2002]).

What if an action is referred by the court to a referee to hear and report, as permitted by CPLR 4311 and 4320? Does the deliberative process that would require both a fully-executed stipulation and a court order trigger upon the conclusion of the referee trial, or the issuance of the referee's report, or the filing of a motion to the Supreme Court to confirm the report, or the return date of the motion to confirm? The answer to this question of first impression was provided very recently by the Second Department in *Emigrant Bank v Solimano*, supra. In *Solimano*, the court noted that the referee's report and recommendations are not conclusive as they are subject to the review of the Supreme Court. The motion to confirm solicits the parties' due process rights to be heard, similar to closing arguments at a trial. The point in time most akin to the commencement of the post-evidentiary deliberative process is the return date of a party's motion to confirm, reject, or modify the report, when the Supreme Court possesses all of the papers needed to render an informed and conclusive determination of the matter.

Contrastingly, as noted in *Solimano*, if a matter is referred to a referee to hear and "determine" as authorized by CPLR 4301, the point at which the plaintiff must have a unanimous stipulation of the parties and a court order for a discontinuance is the conclusion of the evidentiary portion of the trial and the closing arguments of all counsel, when the final deliberative phase of the action commences. After all, a referee determining the matter "shall have all the powers of a [trial] court" in determining issues (other than the very limited exception of holding a party in contempt).

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\*Mark C. Dillon is a Justice of the Appellate Division, 2nd Department, an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author to the CPLR Practice Commentaries in McKinney's.



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

**SPOTLIGHT**

**On**

**Laurie Dorsainvil, Esq.**

**I am very excited to sit with our DEI co-chair for this month's RCBA Spotlight Interview. I know we are all looking forward to learning a little more about you. Why don't we start by telling us where you grew up?** I was born in Long Island City, Queens and lived there until the first grade. I then lived in Canarsie, Brooklyn until my early twenties.

**Tell us about your Educational Background.** I graduated from Canarsie High School in Brooklyn and then graduated from Long Island University (LIU), Downtown Brooklyn Campus with a BA in Sociology. I received my Juris Doctorate from the University of North Carolina at Chapel Hill, School of Law.

**Did you always want to be a lawyer?** No. I really didn't know what I wanted to do, even after I graduated college. After graduating from LIU, I worked for the NYC Board of Education, Special Education Personnel Office for approximately three years. I then went back to LIU and obtained a Paralegal Certificate. Thereafter, I worked for the NYC Economic Development Corporation in their Legal Department. I was bitten by the legal bug and off to law school I went! I graduated from the University of North Carolina at Chapel Hill, School of Law. It was the first time I lived anywhere besides NYC. Needless to say, it was a big adjustment and a culture shock!! It was so quiet and dark at night that I had trouble sleeping the first few weeks. In hindsight, it prepared me for life here in Rockland, as my neighborhood is very quiet and dark at night as well. I came to love North Carolina and made some dear friends.

**Tell us about your legal career transitioning from law school to being an Attorney.** I would come home every summer to work and volunteer...and to see my fiancé, now husband, Hubert. I met Hubert while I was a paralegal, volunteering with the Legal Aid Society in Harlem. Ironically, we fell in love helping people obtain uncontested divorces. He was president of the Manhattan Paralegal Association at the time. My first full time job as an attorney was with a small commercial litigation firm in Manhattan called Lennon & Klein, PC. I then went on to work for Cantor, Epstein & Degenshein, LLP, handling D&O defense work for co-ops and condos. I worked at this firm for about four years.



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I enjoyed my time with this firm very much because I handled a diverse case load, from employment discrimination cases to commercial landlord/tenant cases. In 2002, Hubert and I moved to Rockland from Westchester. After commuting to Manhattan for two years, I decided that I wanted to continue my legal career in Rockland. I started working for Daniel Bertolino, Esq. as an associate until 2012 when I went out on my own. I still handle many civil cases on an of counsel basis for Dan. The best part of owning my own practice is the flexibility it gives me with my children.

**Thank you for sharing your professional life with us, can you tell us a little bit about your personal life?** Of course! I am married to my husband, Hubert, and we have two children, Ryan who is 18 and Marissa who is 16. Ryan just completed his first semester of college and Marissa is a junior in high school.

**Who is your Inspiration or Hero?** My mother Cheryl. My mother was a single mom to three children. She worked a full-time job during the day and attended college at night to earn her bachelor's degree. It took her eight years to earn her bachelor's degree and another two and half years to earn her master's degree! She became an elementary school teacher with the NYC Board of Education and taught in Brooklyn. She had a tremendous amount of perseverance and I strive to be like her.

**What is one piece of good advice that you have received/learned?** There is a Bible Quote that is really important to me: "To Whom much is given, much is expected" Luke 12:48. I try to live my life by this verse. I feel very fortunate to be in the position that I am in. I feel particularly fortunate to give my children a different experience living here in Rockland than the one I had growing up in Brooklyn.

**Tell us one of your guilty pleasures.** Chocolate Chip Cookies. I love them. **Do you have a favorite brand or bakery?** There is a kiosk at the Kings Plaza Mall in Brooklyn, and they had the BEST chocolate chip cookies. I can't remember their name, but they were so good! I haven't had a better tasting chocolate chip cookie since I left Brooklyn. I wonder if they are still in business. I see a road trip in my future!

**Is there anything else we didn't cover that you would like the Bar Association to know about you?** Yes. I really enjoy learning different areas of law and using my law license for purposes other than litigating cases. I became an adjunct professor in the Legal Studies Department at Rockland Community College in January 2020. I also work as a hearing officer for the Rockland County Law Department.

[JANUARY 2023]

**COMMERCIAL LITIGATION ISSUES OF INTEREST**

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

Your client purchased a property with multiple dwelling units. After the closing, your client discovered that there was a tenant with a 15-year lease signed just one month before the closing. You sued the seller and its attorney claiming fraud in failing to disclose the tenancy. The seller moved to dismiss the action based on a signed release of the seller and its attorney from all claims “from the beginning of the world to the date of this release.” You countered that the release was intended to cover only the mortgage and the discontinuance of the then-pending foreclosure action, not claims arising from the sale, as evidenced by contemporaneous emails and affidavits.

Will you succeed in defeating the motion to dismiss?

The answer is *no*.

In *179-94 St LLC v. Hassan*, Nov.30, 2022 NYLJ 1669722679NY155214201 (Sup. Ct. NY Co. Nov. 16, 2022) (Case No.155214/2015), the plaintiff purchased a multi-unit dwelling on October 6, 2014. After the purchase, the plaintiff learned that a unit was occupied by someone who entered into a 15-year lease with the seller just one month before the sale. The plaintiff sued, claiming the seller and its attorney defrauded the plaintiff by failing to disclose the new tenancy and making misrepresentations concerning the sale.

The seller’s attorney, Brian Limmer, moved for summary judgment dismissing the plaintiff’s claims. Limmer argued that the plaintiff’s claims are barred by a release signed after the closing, which states that the purchaser “hereby releases and discharges [the seller and] its . . . attorneys . . . from all actions, causes of action . . . from the beginning of the world to the day of the date of this release.”

The plaintiff argued that the release was intended to cover only the assignment of the mortgage and the discontinuance of the pending foreclosure action, not any claims arising from the sale. The plaintiff submitted contemporaneous emails relating to the release, as well as affidavits explaining the intended scope of the release.

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The Court first noted that interpretation of the release is governed by general principles of contract law. Citing *Wells v. Shearson Lehman/Am. Exp., Inc.*, 72 N.Y.2d 11, 19 (1988), the Court rejected the emails and affidavits, explaining that courts must look to the language of the release itself to determine intent without resorting to extrinsic evidence, unless the court concludes as a matter of law that the contract is ambiguous. The release was, according to the Court, clear and unambiguous, demonstrating the parties' intent to settle all claims. The Court noted that the parties were sophisticated real estate developers represented by attorneys who should have explicitly limited the release if that was their intent, instead of executing a broad release for all claims.

*The lesson?* When drafting releases, whether you represent the releasee or releasor, explicitly provide what your client needs the release to include or exclude. If the release language is broad and unambiguous, your client will not be able to present extrinsic evidence of an intent to include or exclude anything not explicitly stated.

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



# Odyssey

## Our Members' Literary Corner

We hope to publish a literary piece, written by one of our Members, each month in Newsbrief.

Please email your submission in a Word document to [rachael@rocklandbar.org](mailto:rachael@rocklandbar.org)

**WE WANT TO HEAR FROM YOU!**

## ***Odyssey*, our Member's Literary Corner**

In this space, Members can share their personal literary works,  
including poems and short stories.

We hope to publish one Member's submission each month in Newsbrief. *Odyssey* is a space for our Members to showcase their literary talents—because there is more to an attorney's life than work, and so much more to share with each other.

### **Losing You in Congers – by Margie S.H.**

I always knew that sooner or later,

That this couldn't go on forever,

That sooner or later,

I would lose you in Congers.

Eventually we would lose the signal,

Miss each other's messages

Leave the calls unfinished.

I'm not even sure anymore

If we define heartbreak on the same day,

Or if we pronounce heartache the same way,

All I know is someday

I will lose you, and all that you meant to me,

in Congers.



## **Technology Tips for Attorneys**

### **submitted by Michael Loewenberg\***

When we email a client's personal information, we have an obligation to protect it and keep it confidential. Personally Identifiable Information (PII) is information that can identify a specific individual. Some examples of PII: social security number, passport number, driver's license number, taxpayer identification number, patient identification number, financial account number, credit card number, personal address information: street address, or email address, personal telephone numbers, date of birth and place of birth.

This kind of information, in the hands of unscrupulous individuals, can form the foundation for identity theft, fraud, unauthorized purchases, and more.

When sending email to and from and about clients and their transactions, if the content includes PII, the email should be confidential and encrypted.

There are a dizzying amount of encryption and protection utilities and programs for processing sensitive content. This month's article is intended to get you to think about how you and your firm treat your client's PII to ensure that adequate protections are in place. And, of course, you need to ask for outside help if you need to upgrade your security activities to protect your client's data and meet the requirements for your cybersecurity policy (you do have one, right?).

One of my clients uses Microsoft 365 to automatically encrypt emails when the word "encrypt" is in the subject line or content of the mail. If you don't have that level of processing set up, here's an easy way to start if you use one of the two major email providers, Microsoft and Google.

If you have a Microsoft 365 subscription or you use Outlook.com, the email function includes encryption features that let you share confidential and personal information while ensuring that your email message stays encrypted and doesn't leave Microsoft 365.

To do it, in a message that you are composing, click File > Properties > Security Settings and then select the Encrypt message contents and attachments check box. Compose your message, and then click Send.

In Google's Gmail, send messages and attachments confidentially:

1. On your computer, go to Gmail.
2. Click Compose.
3. In the bottom right of the window, click turn on confidential mode (it's the lock icon).
4. Set an expiration date and passcode.
5. Click Save

Compose and send your mail.

Protecting your and your client's PII is important. Make sure you're on top of it!

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

**RCBA ONLINE CLE PROGRAMS PRESENT**

**REMOTE NOTARIZATION**

**Wednesday, January 11, 2023**

**12:00 P.M. - 1:00 P.M.**

**WEBINAR VIA ZOOM**

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# Odyssey

## Our Members' Literary Corner

We hope to publish a literary piece, written by one of our Members, each month in Newsbrief.

Please email your submission in a Word document to [rachael@rocklandbar.org](mailto:rachael@rocklandbar.org)

**WE WANT TO HEAR FROM YOU!**



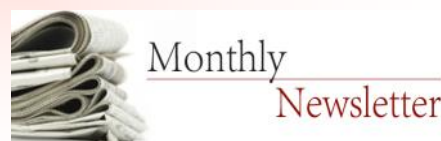
## MEMO

### 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](mailto:rachael@rocklandbar.org) by the 15th of the month so that the Executive Board may review it.

Thank you!



# CLE CORNER

## PLAN YOUR YEAR OF CLEs NOW!

2023 CLE TITLE	DATE & TIME
<b>Remote Notarization</b>	<b>January 11, 2023 12:00pm—1:00pm</b>

### NEW CLE REQUIREMENT:

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

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

### 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.***

***20% "Covid Discount" on All Ads—Still in Effect***

## **NEWSBRIEF ADVERTISING RATES**

<b>FULL PAGE (7.5x10.25)</b>	<b>\$400.00</b>
<b>1/2 PAGE (7.5x5):</b>	<b>\$250.00</b>
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**Classified Ad: RCBA Members – free, up to 50 words; over 50 words, cost is \$75.00.**

**Non-Members, cost is \$50 for up to 50 words; up to 100 words, cost is \$75.**

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**PLEASE NOTE:**

**NEWSBRIEF IS NOT PUBLISHED IN JULY**

**CALL RACHAEL @ 845-634-2149**

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**Advertising & articles appearing in the RCBA Newsletter does not presume endorsement  
of products, services & views of the Rockland County Bar**

**Association.**

**All advertisements and articles must be reviewed by the Executive Committee for con-  
tent.**





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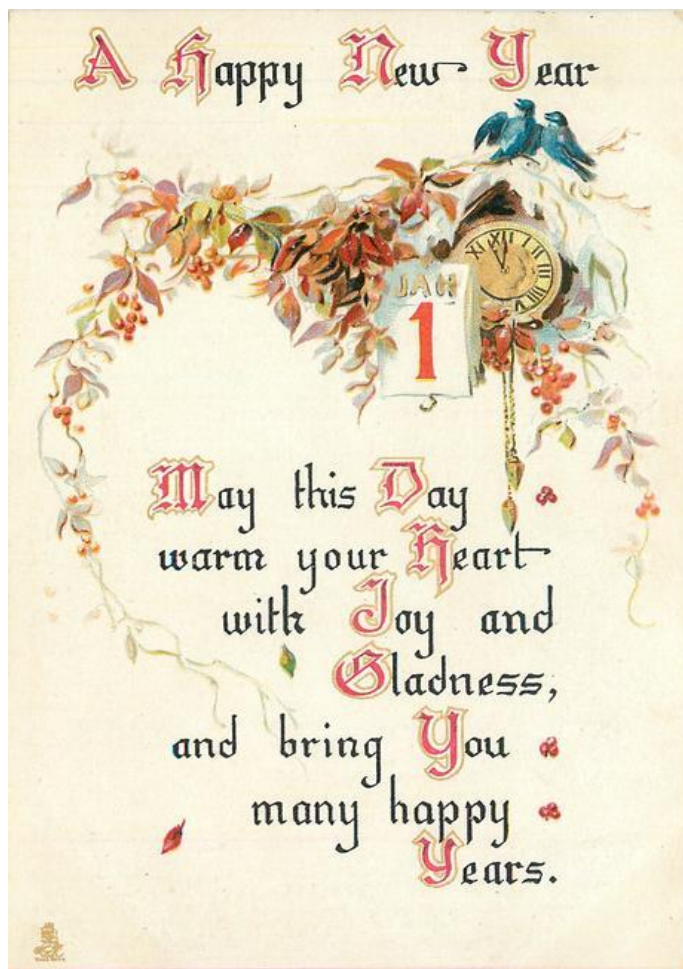
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#### **ANNOUNCEMENT FROM THE RCBA REAL ESTATE COMMITTEE**

*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](http://www.rocklandbar.org). Scroll down to the bottom of the homepage and find links under "Helpful Links."



**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](mailto:Rachael@rocklandbar.org) with any information

**ATTORNEY'S OFFICE SEEKING PARALEGAL**

Rapidly growing lower Hudson Valley personal injury law firm seeks a talented and experienced paralegal to assist with all aspects of case management.

Medical malpractice experience preferred.

Send Resumes to [tbarton@pilaw.com](mailto:tbarton@pilaw.com)

**PART-TIME PARALEGAL**

Looking for a part time paralegal or legal secretary with computer skills for estate work- flexible hours. Please email Tom O'Connell at [7294460@gmail.com](mailto:7294460@gmail.com)

**PERSONAL INJURY FIRM SEEKING PARALEGAL**

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Contact: [jeff@injurylaw-ny.com](mailto:jeff@injurylaw-ny.com)

**ATTORNEYS SEEKING PARALEGALS**

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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](mailto:ahurwitz@sunyrockland.edu)

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