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Sabrina Charles-Pierre,
Editor

ROCKLAND COUNTY BAR ASSOCIATION

NEWSBRIEF

www.rocklandbar.org

June 2020

President's Post

Dear Member,

Hope this edition of Newsbrief finds you and your family doing well and enduring these times to the best of your abilities. Great news, hope is around the corner! It appears that Rockland County is quickly approaching Phase 2 in the Reopening of New York Forward. Phase 2 is the long-awaited phase which allows law firms to reopen. While this is a small step forward towards rebuilding, it is a positive step towards the ultimate goal of a full reopening.

This has been a grim time for the practice of law and I do not know when we can expect full recovery or a semblance of what was prior to the closures. New York State has been a leader in fighting this insidious virus, and the actions our State has taken have saved lives. Unfortunately, these drastic steps to fight the virus have both helped and hurt many in the same step. The economy has been gravely damaged and our Members have, and will, suffer during this recovery. However, again, we must remind ourselves, we will recover!

The practice of law is inherently adversarial in nature, however, one of the greatest things about practicing the law in Rockland County is the comradery and civility that most of us, if not all, show towards one another. I am sure you all have noticed when practicing in other jurisdictions that you often long to return to practicing in Rockland. This civility and congeniality has been a long tradition in our County and it is deeply embedded in our DNA.

Over the next few months, this sense of community will be tested. I implore our Members to recognize the struggles ahead and to seek out help when needed and to be there for the other members of our community who may be struggling due to health, finance, and family issues. So, before you strike an adversarial tone with a colleague, please reflect. Take a moment and think about all that we have endured and let empathy, whenever possible, shine through.

The Bar Association has continued to provide useful resources to our members via the web. I implore you all to review and to use these tools (see our CARES portal on the home page of our site at www.rocklandbar.org). I personally have used this time to catch up on my CLE requirements. As an Association we are constantly evolving; our CLE's have transitioned from traditional in-person lectures to Zoom video. So now there is the convenience of taking these courses right from your home or office. I hope you take advantage of this opportunity.

As more information becomes available, the Bar will work diligently to make sure that each one of you is fully informed. From the bottom of my heart I wish you and your family good health and success during this next phase.

Respectfully,

Keith I. Braunfotel

Rockland Bar CARES.

COVID-19 RESOURCES FOR MEMBERS.

*Introducing a new online resource
for Members of the Rockland County Bar Association:*

GO TO OUR RCBA WEBSITE AT:

WWW.ROCKLANDBAR.ORG

**WELLNESS TIPS
MENTAL HEALTH INFORMATION
TECHNOLOGY TIPS
COMMUNITY UPDATES
COURT UPDATES
*and more!***

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

Your client asks you to sue another attorney, who charged your client \$400 for a consultation that consisted only of the attorney bragging about his skills. You file a summons with notice, without a complaint, to recover the fee paid, along with other damages caused by your client not receiving proper advice at the consultation. Although the defendant mailed you a demand for a complaint, you did not receive it, because illness kept you from going to the office. As a result, you served the complaint 24 days late. The defendant moved to dismiss the complaint pursuant to CPLR 3012(b), due to your failure to timely file a complaint in response to the demand. You oppose the motion and explain that you were “suffering from side effects of a surgery which kept me out of work for a while.”

Will the court accept your excuse as reasonable and deny the motion to dismiss?

The answer is *no*.

In, *Huang v. Spinnell*, NYLJ 1589291918NY160188201 (Sup. Ct. N.Y. Co. May 14, 2020), Index No. 160188/2019, Huang served attorney Spinnell with a summons with notice, which claimed breach of contract and other causes of action. Huang claimed that Spinnell charged her for legal services, which were not provided. Spinnell served a demand for a complaint. After the requisite time passed without receiving a complaint, he moved to dismiss the action pursuant to CPLR 3012(b), which provides, “The Court may dismiss the action if service of the complaint is not made as provided in this subdivision.” There is no dispute that the complaint was served 24 days late.

Huang’s attorney’s affirmation opposing the motion said the demand for a complaint was not served on him, and explained, “The undersigned was suffering from side effects of a surgery which kept him out of work for a while.” Plaintiff’s affidavit and the verified complaint were attached as exhibits. There was also an affidavit from Huang.

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

The Court noted that dismissing and action pursuant to CPLR 3012(b) is a matter of court discretion, citing *Hernandez v. Chaparro*, 95 A.D.3d 745 (1st Dep't 2012). To avoid dismissal, the plaintiff must demonstrate both a reasonable excuse and a meritorious claim. The Court dismissed the complaint, holding that no reasonable excuse for the delay was offered. The claim that the attorney's surgery kept him out of work was held to be conclusory, absent any substantiation. There was no medical documentation, and no dates provided for when counsel could not work. The affidavit of service demonstrated that the demand was properly served on Huang's attorney.

The Court did not examine the merits, as there was no reasonable excuse offered for the 24-day delay. Nonetheless, the Court noted that Huang's affidavit was purely conclusory, and that the complaint was also conclusory and, therefore, failed to state a cause of action

The lesson? Insufficient details and lack of substantiating documentation may result in a court finding that your (or your client's) proffered excuse for missing a filing deadline is merely conclusory. Include dates, names, and other details, as well as any documents or affidavits that can substantiate what you say. Otherwise, the court may find that your (or your client's) mere say so, without details, is conclusory and insufficient to constitute a reasonable excuse.

TECHNOLOGY TIPS FOR ATTORNEYS

submitted by

Michael Loewenberg***Miscellaneous Tips**

We're still working remotely and some will start to work in offices soon. Regardless of where you're sitting when you work, it's important to be careful with your technology. Some tips for the month:

Phishing and scammers – This is a reminder to be extra careful when you open emails and especially attachments. We are not the only ones staying home - bad actors are also at home in front of their computers with lots of time, thinking of new and better ways to trick us!

We have seen a dramatic increase in scamming and phishing attempts in our email accounts so it is very important that you don't open anything about which you are unsure. Hover over links before you click them so you can see the destination and make sure that attachments are indeed legit before you open them. If something doesn't look right, you're better off calling the sender to make sure it's real.

Passwords – Similar to scammers, there are bad actors who are constantly trying to break into our secure accounts: these can be email accounts, bank accounts or other places where we store valuable and private information. Now is the time to start using stronger passwords to protect yourself from being hacked. Longer, more complex passwords are inordinately safer. For example, an 8-character password with numbers and upper and lower case letters can be hacked in approximately 4 days with a botnet or a supercomputer. A 10-character password with numbers, upper and lower case letters and symbols (i.e., a complex password) would increase that time to 928 years. And for comparison, a 12-character complex password could take 5 million years to hack. So change your passwords, make them complex and protect yourself!

Ergonomics – It's easy to spend too much time sitting at our desks and not moving enough; I find that working remotely makes it worse. When we sit too long, it often manifests itself in neck pain, back pain and arm pain. One of the best things we can do is improve the ergonomics of our workspace. That means having a proper chair at the right height so that your eyes look straight at your screen; your screen(s) should be between 18" and 24" away as you sit upright. Your chair should support your back when you sit at a 90 degree angle and your arms should be 90 – 120 degrees to your keyboard. Ask the Google for information about the perfect ergonomic workspace.

The other thing we need to do is take a break at least every 25 minutes. Get up from your desk and walk around for a few minutes. If you have an Apple Watch, it will remind you to move when you have been sitting too long. You can use a timer in your browser to remind you to move if you need that kind of nudge (type 'google timer'). Your body needs to move, even if you have a well-optimized work area.

Popcorn – Yes, popcorn! Being home makes it easy to fall into bad snacking habits. I'm a huge fan of popcorn but the microwave popcorn bags have lots of chemicals in them so that gives me pause. I found an easy, quick, delicious way to make popcorn in the microwave with no chemicals whatsoever. I got the Hotpop Microwave Popcorn Popper; it takes plain kernels and uses no oil to cook. In less than 4 minutes, I have fresh, delicious chemical-free popcorn, ready to be seasoned. Give it a try.

Stay safe out there!

THE PRACTICE PAGE

Hon. Mark C. Dillon *

SERVICE OF PROCESS BY CPLR 312-a

CPLR 312-a is the most recent addition to the various available methods for serving process, but since time flies, it is already past its 21st anniversary.

Everyone in the legal community agrees that service of process is a technical endeavor. Even process servers who make their living performing these tasks, and who are well versed in the statutory details, are not infallible. If there was infallibility, there would be no such things as Traverse hearings and the dismissal of actions for improper service of process upon defendants. In the 1980s, there were well-founded concerns that the technicalities of the traditional methods for serving process were onerous, not to mention there being instances of “sewer service” where the process described in affidavits of service did not actually occur (*Shaw v Shaw*, 97 AD2d 403, 404).

Personal service, which sounds straight-forward, involves technicalities such as whether the description of the person served in the affidavit of service matches that of the defendant (*Ismailov v Cohen*, 26 AD3d 412, 413). Service by suitable age and discretion spawns litigation over whether the person receiving the summons was in fact of a suitable age and/or discretion (*Room Additions, Inc. v Howard*, 124 Misc.2d 19). The “nail and mail” method generates litigation over whether the process server exercised “due diligence” in first attempting service personally (CPLR 308[1]) or by suitable age and discretion (CPLR 308[2]) (*E.g.*, *McSorley v Spear*, 50 AD3d 652, 653-54). All methods generate cases over the process server’s compliance with statutory mechanics. Alternate methods of service that may be permitted upon application to the court, such as service by publication (CPLR 316), unrealistically assumes that target defendants read the Legal Notices of newspapers. I don’t do so. Do you?

Enter CPLR 312-a in 1989. The statute represented a well-intentioned effort to avoid the vicissitudes of serving process under the traditional methods, by instead using a new method that is simple, cheap, and verifiable. It has not been the panacea that was hoped, but is used by *some* attorneys to good effect. The idea behind CPLR 312-a is simple, but is afflicted by its own technicalities. The plaintiff’s summons with notice, summons and complaint, or notice of petition and petition, is served upon the defendant by mail, properly addressed and posted. The mailing may be addressed to any location where the defendant is at, whether a residence, domicile, place of business, or other. The mailing is accompanied by two copies of a Statement of Service by Mail (“Statement”), one of which is to be executed by the defendant and returned to the plaintiff’s counsel, and the second copy kept by the defendant. CPLR 312-a provides a template of the language that is to be used in the Statement. Defendants are to execute the Statement within 30 days of its receipt. Service is deemed complete upon the defendant’s execution of the Statement, and the Statement has the same force and effect as an affidavit of service (CPLR 312-a[c]). To facilitate matters, the plaintiff is required to include with service a properly-addressed, postage pre-paid return envelope. Service by this method is defective if two copies of a proper Statement are not provided, or if the service documents fail to include the required pre-addressed return envelope with its 55-cent stamp.

Continued - THE PRACTICE PAGE**Hon. Mark C. Dillon *****SERVICE OF PROCESS BY CPLR 312-a**

The problem with CPLR 312-a, beyond its simple technicalities, is that its success depends entirely upon the cooperation of the defendant. If the defendant fails or refuses to execute and return the Statement, the plaintiff must use another method of service from scratch, and hopefully has enough time left under CPLR 306-b to do so without need of a time extension (*Komanicky v Contractor*, 146 AD3d 1042). The only penalty for a defendant's non-compliance is to reimburse the plaintiff for the reasonable expenses of service by another method (CPLR 312-a[f]). That expense may be minor compared to the overall costs of the litigation, or when damages are sought in the tens or hundreds of thousands of dollars, or millions. Defendants have little incentive to comply.

As litigators, you will do as you wish for serving process. CPLR 312-a represents a good concept but has not worked out over its two decades quite as well as originally hoped, as challenges to the service of process continue to be seen frequently in the courts.

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It's DUES Time!

**Bar Association Dues for 2020-21 are due
starting July 1, 2020.**

**Watch for your
Renewal Form, coming soon
To your email box!**

Thank you!

**If you have any questions about your Membership,
please contact Sabrina at Sabrina@rocklandbar.org**

We are pleased to present to you the Rockland County Bar Association's

Officers for 2020-21:

Keith I. Braunfotel – President

Robert L. Fellows – Vice President

Laura M. Catina – Treasurer

Aimee Pollak – Secretary

These Officers will be sworn in virtually at the June Board of Directors' Meeting on June 10, 2020.

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is important.

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2. Dues Time (page 9)



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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!



Monthly
Newsletter

CLE CORNER

PLAN YOUR YEAR OF CLEs NOW

All in-person CLE's have been postponed until further notice. We are working on offering online CLE's very soon!

NEW CLE REQUIREMENT

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

Experienced attorneys due to re-register on or after July 1, 2018 must complete at least one credit hour in the Diversity, Inclusion and Elimination of Bias CLE category of credit as part of their biennial CLE requirement. The transitional CLE requirement for newly admitted attorneys remains unchanged. For more information about the CLE Rules, visit 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.

COMMITTEE CORNER

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

Need a Place to Meet in New City?

RCBA Conference Rooms available for rent.

MEMBER PRICES:

1st two hours FREE, then \$25/hour
Full Day (8 hours) = \$140.00

NON-MEMBER PRICES:

\$50/hour
Half Day (4 hours) = \$150.00
Full Day (8 hours) = \$300.00

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REVIEWED BY THE
EXECUTIVE COMMITTEE
FOR CONTENT.**

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NEWSBRIEF IS NOT PUBLISHED IN JULY

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CLASSIFIED ADS



OFFICE SPACE

Located in the Heart of New City, this spacious office is available for rent on December 1, 2019. Rent \$650.00. Includes copy machine and available conference area for meetings. Please contact Attorney Arnold Blatt at 845-638-0660.

OFFICE SPACE

Negotiable price. Please call Gary Lipton at 845-624-0100

OFFICE SPACE

Office in shared service building- North Main Street, New City. Westlaw included. Call Lynn at 638-4718.

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 information. Items are located in New City.

OFFICE SPACE

Office for rent - 254 South Main Street, New City - Furnished office in existing practice - complete with filing space and use of conference room. \$750.00 per month. Possible overflow work. Contact opportunityunique2019@gmail.com

OFFICE SPACE

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

OFFICE SPACE FOR RENT

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

PART-TIME OFFICE - NEW CITY

Office in New City available to use on your letterhead, accept packages, meet with clients, hold conferences, send faxes, accept mail, meetings at day or night, receptionist, waiting area for clients, very ample free parking, private bathroom. Perfect for practitioner with home office who needs a public presence. Low monthly fee. Call Bill at 845-300-9168.

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.

ATTORNEY WANTED

I am looking for a full time plaintiff personal injury attorney with at least 2 years of experience in the field of personal injury law (plaintiff or defense). Please have them contact me at 845-638-3012 or mneimark@neimarklaw.com.

PARALEGAL WANTED

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 lauren@garyliptonlaw.com or fax to 845-624-0288.

ATTORNEY WANTED

New City, NY Law Office seeks attorney with interest in a career with a law firm practicing in the areas of Personal Injury, Malpractice, and Nursing Home Neglect. No experience necessary. Salary and Benefits to be discussed. Call 845.598.8253. E-mail: vcrownlaw@aol.com. Applicants can learn more about the Law Firm of Valerie J. Crown by visiting our website: valericcrown.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 email resume to: tcavallucci@lawampm.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. Contact Amy Hurwitz-Placement Coordinator at (845) 574-4418 or email at ahurwitz@sunyrockland.edu

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