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INSIDE THIS ISSUE:

President's Post

**RCBA 2023 24 Board of
Directors Election Results**
**2023 Awards and Installa-
tion Dinner**
RCBA Celebrates Law Day

**Comments by: Hon. Anne
E. Minihan, Yom Ha'Shoah
Commemoration**

**Our Professional Ethics
Spotlight**

**Employment Opportuni-
ties, State of New York Uni-
fied Court System**

Technology Tips
RCBA Photo

RCBA Membership Drive

**NYSBA House of Delegates
Report**

CJA Panel Notice
Commercial Litigation

Issues of Interest
The Practice Page
CLE Corner

Committee Corner
Classified Ads

Barbara Silverstone—Editor

ROCKLAND COUNTY BAR ASSOCIATION

NEWSBRIEF

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May 2023

President's Post

Holocaust Remembrance Day was a well-attended, meaningful and memorable experience. Our Administrative Judge, Hon. Anne Minihan's speech resonated with the over 150 attendees. She emphasized that the hallmark of justice is an independent judiciary, divorced from political influence as well as from implicit and explicit preconceived outcomes. Judge Minihan's words appear in their entirety in this issue.

I was honored to dedicate some brief comments to the memory of two Czechoslovakian Auschwitz survivors, Joe and Leo. They lived about 50 miles apart, Joe near the Hungarian border and Leo in the Carpathian Mountain region. In 1944, they were arrested, brutalized and loaded into cattle cars in route to the Auschwitz death camp. I'm not sure if they were both on the same train. Deprived of food and water before being herded onto the notorious "Auschwitz selection ramp", they left the stench of confinement staring at the infamous sign that greeted them, Arbeit Macht Frei (Work Sets You Free).

Joe and Leo, then 18 years old, were examined, perhaps by the demonic and sadistic Dr. Mengele, or one of his underlings. In an instant, there was a life and death determination whether the young men should go to the right to be murdered in the gas chamber or herded in another direction where the distinct honor of having their heads shaved, arms tattooed and slave labor await them. Miraculously, despite inhumane and barbaric treatment beyond description, months later as the Russian army marched from the East, their Nazi tormentors continued to brutalize and murder Jews. Next for Joe and Leo, and other inmates, was the infamous death march from Auschwitz as the Russians approached and the death camps were evacuated.

After being liberated and surviving the death march, Joe found his way to Israel and fought in its War for Independence. He then migrated to New York, becoming a citizen and settling in Brooklyn. Leo also miraculously survived, becoming a US citizen, moving to Brooklyn and then to Queens. From Leo's family of nine, only two survived. His sister immigrated to Jerusalem where she still resides. Incredibly, nine of Joe's 12 family members did not perish.

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After Joe and Leo emerged from an unthinkable ordeal, being alive after Auschwitz and the death march, Leo's son, Steven Hymowitz, my law partner, married Joe's daughter, Karen Katz. Now that is one unbelievable and incredible story!

For Steve to betroth Karen, both Joe and Leo needed to survive, unlike the 900,000 Jews arriving at Auschwitz who immediately were sent to their death in the gas chambers. Not only did these young men have to survive a death camp, a death march and then by coincidence, both migrate to the United States in proximity to each other. They had to marry and have children and then by miraculous coincidence, Leo's son, Steve, and Joe's daughter, Karen, became husband and wife. I marvel at all of the coincidences that had to occur to bring these two individuals together. This is truly fate, a union meant to be.

Since the last President's Post, Law Day was celebrated at the courthouse. It was another honor to present the Liberty Bell Award to Brooke Malloy, Founding Executive Director of the Rockland Pride Center. She is a role model and mentor to the LGBTQ+ community. By her efforts, she embodies the inspiration of the Liberty Bell and the mantra of the Bill of Rights as well as the Constitution's proclamation of "Life, Liberty and the pursuit of Happiness". Brooke, we appreciate all you have done on so many levels, advocating that no matter what one's gender, sexuality or orientation, there is the right to be all you can be.

I am proud of our Diversity, Equity and Inclusion Committee. We are in the process of planning a Juneteenth Essay Contest for Rockland County high school juniors and seniors. Members of our committee are looking forward to reading essays on the topic of "Why should people of all races take part in Juneteenth celebrations?" We will recognize the essay winner at our annual Awards and Installation Dinner at Woodmont Day Camp in New City on June 15th. Last year's installation of officers was, not only well-attended, but an enjoyable experience in an outdoor, bucolic setting.

Allow me to discuss what in the past may have been a subject long too often swept under the rug. There is, I believe, and others share this view, a mental health crisis in the legal profession according to Anxiety and Depression Association of America. Just under 7% of the adult population suffers from depression, but almost half of all lawyers do at some point during their career. We depend on lawyers to solve problems, advocate for us, but depressed lawyers are trying to effectively serve their clients despite suffering in silence. Depressed and anxious lawyers are in positions of power, having influence across the country, in Congress and in corporate suites.

According to previous Associate Dean and current Professor at Fordham Law School, Linda Suga, the mental health crisis starts in law school. Indeed, she says that numbers are worse for women and non-binary students as well as students of color. She questions the Socratic method and the prestige of striving to be on Law Review as creating undue emphasis on competition, subjecting law students to unnecessary stress. Indeed, legal education was initially designed for elite white men, according to the Professor, who no longer comprise the majority of the student body. She rails against the failure of legal education which threatens the integrity of the profession. She believes that we must create institutional structures in law schools, and for that matter I say in our profession as well, that encourage students and practitioners to flourish, as well as be able to reach out to others when experiencing mental health issues.

All of us must deal with the stress of being an attorney. There are always stressors but we have to recognize that stressors do not invariably have to cause stress, depression, anxiety or emotional impairment. How liberating it is for law schools to concentrate on the needs of students who feel overwhelmed and invisible. The same should be said about our fellow attorneys. They should not carry unnecessary emotional and mental health burdens and should understand that there is help and support. Both students and practitioners should be treated with dignity and kindness. This will promote a deeper sense of student learning and liberate law students and practitioners from unnecessary suffering.

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We have a Lawyer to Lawyer Committee. Pick up the phone at any time if you are in need to talk to someone, even if you just want to just vent. There is always light at the end of a tunnel of crisis. Don't suffer alone. Reach out for support and encouragement from a counselor or therapist, colleague, friend or relative. The topic of stress in our profession is never really discussed, openly. However, it is a burden we all carry to some degree. All of us at RCBA are here for each other. We are a community and we each must care and support each other. I know that our Board of Directors embraces the sentiment as does our Executive Director. Know that there will always be someone at RCBA to speak to, support you and unconditionally listen to you, whether in a time of crisis or when dealing with challenging life circumstances, which we all will inevitably confront.

Building a practice, hanging up a shingle is not an easy task for those of you who have the courage and fortitude to go solo. The Bar Association and its Committees can be a source of comfort, encouragement, advice and counsel, whether you practice at the Legal Aid Society, District Attorney's Office, County Attorney's Office or as a Public Defender. They are always brother and sister attorneys who you can reach out to, whether in the private or public sector. I suspect that I am writing about what has never really been discussed in any depth. Maybe that's why I've reached out to a colleague and endeavoring to present a program about stress reduction, meditation and holistic living. Let's see if we can make that happen.

Be on the lookout for the Restorative Mediation CLE on May 24, 2023 where we will discover that litigants essentially strive for the right to be heard, acknowledged, recognized and know that their positions and claims have meaning. Restorative mediation endeavors to accomplish this and I look forward to many of us learning more about it.

We have some new and returning members of our Board of Directors. Welcome, Gary Casella, Esq., Chief Counsel for many years to the 9th Judicial District's Grievance Committee. Welcome, Steve Beldock, Esq., premier personal injury litigator with Beldock & Saunders. Welcome Dave Castagna, tenacious criminal defender. Welcome back to Rick Glickel, Esq., consummate litigator, ethics maven and ongoing contributor to RCBA. Welcome back Amy Mara, Esq., whose enthusiasm and commitment are contagious. Welcome, the Hon. Will Warren, whose reputation for excellence, fairness and impartiality precedes him. I look forward, as do our other board members, to a reconstituted board advancing the mission of the Bar Association and infusing it with new energy, enthusiasm and rejuvenation.

The leaves are in bloom. The grass is turning greener. Days are longer. Birds are chirping. Motorcycles and convertibles are appearing. Enjoy spring knowing that summer is peering around the corner. Take time to pull back, reflect and enjoy each moment because the years pass by too swiftly. Pick up the phone a call a fellow lawyer that you haven't spoken to in a while. Find out how he or she is doing. Tell someone you love them, care about them and miss them because when they are gone, you will regret not having done so.

Since it is spring time, the words of Robert Louis Stevenson come to mind: "Don't judge each day by the harvest you reap, but by the seeds that you plant." May the seeds which we plant bear worthwhile fruit for ourselves and those whose privilege it is to represent.

Robert (Rob) L. Fellows, Esq.
President

News From the Executive Director:

RCBA 2023 - 24 Board of Directors ELECTION RESULTS

As per the RCBA By-Laws, the names of candidates for the Board of Directors were published to the Membership and Members voted (all ballots were received by May 1, 2023)

The ballots received were opened and counted by the Executive Director and then audited by the three most senior Directors who are not candidates for election. Pursuant to the By-Laws, Section 9, notice of the election results shall be published to the Membership by May 15.

The following candidates have been elected to the 2023-24 Board of Directors:

Steven H. Beldock - 3 year term

Gary L. Casella - 3 year term

David Castagna - 3 year term

Richard A. Glickel - 3 year term

Amy M. Mara - 3 year term

Hon. William Warren - 3 year term



AWARDS & INSTALLATION DINNER

JUNE 15, 2023

5 P.M.

WOODMONT DAY CAMP

SAVE THE DATE!

**2023 AWARDS
AND INSTALLATION DINNER**

JUNE 15, 2023

5:00P.M. – 8:00P.M.

~

**Join us as we swear-in our new 2023-24
Officers, and welcome our new Board
Members!**

**Woodmont Day Camp
Phillips Hill Road, New City**

~

BARBEQUE AND MORE!

RCBA CELEBRATES LAW DAY 2023

On May 1st the RCBA celebrated Law Day in the Jury Room at the Rockland County Courthouse in New City. The Law Day Committee was fortunate to have Marc O. Sheridan, Mediator, Trainer and partner at Marcus & Sheridan, LLP, as our keynote speaker. He addressed the room on this year's Law Day theme: *Cornerstones of Democracy: Civics, Civility & Collaboration*.

Dara Warren, president-elect of the Rockland County Women's Bar Association presented this year's Catherine M. Miklitsch Law Day Scholarship to Nyack High School senior Talia Reiss for her winning essay.

The 2023 Rockland Mock Trial Awards were presented by Mock Trial Committee co-chair, Bridget Gauntlett, Esq.

The runner-up team was from Nyack High School, Co-Captains: Talia Reiss and Sharon Varghese; attorney advisors: Duncan Rogers Lee, II, Esq. and Guilia Palermo, Esq.

Our 2023 Mock Trial Champions were Clarkstown North's team, Jessica Caivano, Captain; attorney advisors: Derek Tarson, Esq. and Kim Holstine, Esq.

The National Anthem, "God Bless America" and "This Land Is Your Land" were performed by the Veritas Choir of Albertus Magnus High School. Their presentation was stellar and we are grateful to the choir for brightening the morning with their performance.

Brooke Malloy, Founding Executive Director of the Phyllis B. Frank Rockland County Pride Center, received the Association's 2023 Liberty Bell Award as presented by RCBA President, Robert Felows, Esq.

RCBA and the Law Day Committee would like to thank Sabrina Greco, Rockland County's Commissioner of Jurors for allowing us to use her Jury Room to present this and other programs.

The RCBA Law Day Committee extends our heartfelt thanks to those supporters who sponsored this year's Program:

David's Bagels
Dennis Ryan, Morgan Stanley
Hudson United Title
Molinaro & Associates
Sichol & Hicks, PC
Abe Gruenwald, CLU, CLTC

*Comments by:**Hon. Anne E. Minihan, J.S.C.**Administrative Judge, Ninth Judicial District**Yom Ha'Shoah Commemoration**Rockland County Courthouse**April 17, 2023*

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 NINTH JUDICIAL DISTRICT
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HON. TAMIKO AMAKER
 Acting Chief Administrative Judge

HON. NORMAN ST. GEORGE, J.S.C.
 Deputy Chief Administrative Judge
 Courts Outside NYC

HON. ANNE E. MINIHAN, J.S.C.
 Administrative Judge
 Ninth Judicial District

JAMES M. McALLISTER
 District Executive

I am honored to be with you today.

The responsibility to remember and to preserve the memory of the Holocaust, and to truly internalize the costly lessons of it, belongs to each of us. As the years tick on and our precious archive of survivors' first-hand memories of the atrocities give way to second-generation remembrances, we must fully devote ourselves to the assumption of the primary obligation to fight the notion that the events of the Shoah belong to a distant history.

We must -- must -- acknowledge that antisemitism is not part of the distant past. Not a single day has passed in the two months it has taken me to write and rewrite these remarks when I haven't read about antisemitic attacks and antisemitic narratives that circulate in mainstream media, let alone social media. Of course, and not at all surprisingly, they are not only words of denial and distortion. Action follows words and those who would leverage deceptions and denial to foment and encourage violence are very much alive and flourishing. An audit by the Anti-Defamation League reports that antisemitic incidents in the US rose by 36% in 2022 -- and that is just reported incidents. For the third time in 5 years, the number of assaults, vandalism, harassments, and bomb threats against Jewish people, Jewish places of worship, and Jewish organizations are higher than have ever previously reported. In NY, antisemitic hate crimes in 2022 were up 125% from those reported in November of 2021. In the first two months of 2023, attacks on synagogues in the United States increased 71% from the same two month period of 2022. This is NOT a Jewish problem -- it's an American problem -- and it's the canary in the coal mine because the drastic rise in antisemitic attacks shows us with crystal clarity the normalization of hate in America today. So it is NOT enough to remember -- each of us are called upon to protect the truth and push back against the darkness of hate.

Without qualification, the Holocaust is the most thoroughly documented mass atrocity in human history -- there are photographs, documentaries, film depictions, and certainly there are survivors' testimonies, and first-hand eyewitness accounts -- not just from the survivors themselves but from soldiers and liberators of the death camps. There has been an extraordinary amount of serious scholarship, rich historical-based literature, and extensive educational resources devoted to the Holocaust. Denial and distortion

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persist notwithstanding and they are used every day to manipulate, and to deceive, and to radicalize.

Where is the place for American justice in the conversation about antisemitism today? How do our courts protect democracy and push back antisemitism? As robust as American democracy is, if enough pressure is applied to its fault lines, the whole thing will collapse – and there is pressure being applied every day to these fault lines. The one that has been on my mind lately is the threat posed by what I think of as outcome-oriented justice.

Outcome-oriented justice occurs when the justice system essentially partners with those in executive or legislative branch of government in order to further the positions or the platforms of these other branches of government. I shouldn't speak in euphemism – by “partner” I mean collude. Collude is a word that has resonance to discussions about antisemitism and the rise of the Third Reich, right? I think we can recognize the context there and the part it plays in the slide towards autocracy.

We are all familiar with the depiction of Lady Justice – she is blindfolded and she holds a scale in one hand and a double-edged sword in the other. The courts are in the fairness business and she is the symbol of our brand. Her scales objectively weigh evidence presented, her doubleedged sword punishes injustice and is able to cut both ways in enforcement of the law. The blindfold that Lady Justice wears symbolizes the integrity of the justice system which demands impartiality in every case. When Lady Justice reaches up and adjusts her blindfold so she can see if there are any friends in the room, or potential friends, or people she doesn't want as her personal enemies – American democracy dies a little regardless of the ultimate outcome.

The American justice system deserves better than that – the American people deserve better than that. Judges should be chosen because they are smart, and efficient and fair and, above all, because they have integrity and moral courage. They should not be elected or appointed to advance a political platform. If we choose our judiciary with the sole qualification that judges align exactly with political tenets and beliefs, we view justice through an end-justifies-means lens and when that happens, we encourage our judges lift their blindfolds and deviate in our duty to dispense justice fairly and impartially in every case – no matter what the issue is or who the litigants are. Then, when the pendulum of politics swings, as it inevitably does, and those in power no longer advance a platform we agree with we who have been chosen for our political stance on issues – and not on our moral courage or integrity – will be replaced by those who *will* advance another agenda in that next iteration of outcome-oriented justice.

Should this happen, the fault will sit squarely on the shoulders of those who towed a Trojan horse filled with issues and platforms into a justice system that is supposed to be about litigants and cases. Outcome-oriented justice invites judges to betray their oaths, tangle the judicial branch with one or both of the other branches, and furthers a partisan political policy shift at the expense of the fair and impartial adjudication of disputes.

This is what I like to think of as “little justice.” “Big justice” is that long arc of the moral universe that Dr. Martin Luther King Jr. spoke of. Big justice is the belief that good will ultimately triumph over evil. Now that itself has its own problems, right – because if we rely on the idea that evil is predestined to lose, what personal obligation do we have to take affirmative action to stamp out antisemitism and cultural bias for example? I do believe in “big justice,” but this is a conversation for another day.

I think about “little justice” this way – if democracy were a human body, “little justice” would be the core muscles. It is the exact opposite of outcome-oriented justice because it requires that judges impartially and

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fairly consider every single case before them, one-by-one, from the most egregious criminal matters to the smallest of small claims. It calls on judges to preside over criminal cases fairly, to ensure that defendants' rights are protected despite what they are accused of. We must do that in service of anyone accused of a crime – regardless of who is the accused and despite how horrible the crime. We don't pick and choose those who should get treated fairly and impartially – because we remember that in Germany 80 years ago, how many Jewish people were accused of trumped up crimes by the government and then subjected to an outcome-oriented justice by judges who advanced Hitler's agenda – these judges lifted their blindfolds to see exactly who had come before them seeking justice. We remember what that set in motion.

When we look at the news and see the state of our broken world, many of us throw our hands up in the air and we shake our heads in frustration because it often feels that 80 years later we routinely see the kind of sentiment that, if translated into German, is indistinguishable from the rhetoric of an era that should be well and truly behind us. Is it that big of a jump to think that if we cut any corners on the oaths that we judges have taken to that we will again see the legal persecution of innocent people who are caught in the cross-hairs of politics?

Lest you think that it's just our judges who are solely responsible for building the core muscles of our American Democracy, you have a responsibility in all of this too. Attorneys, there are people out there who need justice and who can't afford to pay you – or pay you what you ordinarily charge. When they come to you, listen to them and maybe think twice before you turn them away because help you give to the underserved is your rent that pays for the privilege of knowing that you and ALL of your clients will find justice alive and well when you come to our courts.

To all of our citizens of this great country – here's the price of your rent and it's an incredible bargain. It's called jury duty. Now I've lost everyone in the room. It's true though. There is no person here or anywhere who can singlehandedly put an end to antisemitism but not being able to solve this problem on our own does not absolve us from doing what we can to keep "little justice" alive and kicking and the truth is that the willingness of our citizens to serve on juries ensures that litigants are treated fairly – it is really that simple.

Put in the context of today's event, I would point out that more than 31% of the population of Rockland County is Jewish – that's more than any other county in the United States. That's right – Rockland County has the largest Jewish population per capita in the United States. You have the opportunity, the duty, and potentially the honor of making sure that antisemitism does not enter the conversation of a deliberating jury. That's little justice in action. While you're at it, you can take the opportunity to make sure that prejudice and bias of any kind has no place in the jury room. That, in my view, is how the courts defend American democracy and suffocate antisemitism.

It's not glamorous and, like all core exercise its real impact is structural and it's how we defend our justice system to ensure that a stable democracy endures.

OUR PROFESSIONAL ETHICS

Richard A. Glickel, Esq.

A recently retired sole-practitioner asks whether she can properly receive referral fees for referred matters in retirement?

Rule 1.5(g) of the New York Rules of Professional Conduct (“Rules”) says:

A lawyer shall not divide a fee for legal services with another lawyer who is not associated in the same firm unless:

the division is in proportion to the services performed by each lawyer or, by a writing given to the client, each lawyer assumes joint responsibility for the representation;

the client agrees to employment of the other lawyer after full disclosure that a division of fees will be made, including the share each lawyer will receive, and the client’s agreement is confirmed in writing; and

the total fee is not excessive.

“An attorney is ‘retired’ from the practice of law when, other than the performance of legal services without compensation, he or she does not practice law in any respect and does not intend ever to engage in acts that constitute the practice of law” (*see* 22 NYCRR § 118.1[g]). Under OCA’s rule a “retired” lawyer may not receive compensation for legal services rendered while retired.

So, does payment of a referral fee to a retired lawyer constitute an impermissible fee-sharing arrangement under Rule 5.4(a), which forbids sharing legal fees with non-lawyers; or is the referral fee prohibited under Rule 1.5(g), which governs fee-sharing between unassociated lawyers?

Since only the courts can revoke an attorney’s license, a lawyer who elects to retire under the OCA rules is still a member of the bar. Rule 5.4(a) is pertinent only to sharing fees with non-lawyers; “an OCA retired lawyer is still a fully-licensed lawyer” (*see* N.Y. State 1201 ¶ 17 [2020]); and the payment of a referral fee to a retired lawyer is *not* fee-sharing with a non-lawyer.

Rule 1.5(g) proscribes the sharing of fees with an unassociated lawyer unless the division is in proportion to the services each lawyer provides or the unassociated lawyer assumes “joint responsibility” for the matter (*see* N.Y. State 1244 ¶ 11 [2022]). “[J]oint responsibility” for the representation means having “financial and ethical responsibility for the matter” as if the lawyers were associated in a partnership” (Rule 1.5, Comment [7]).

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According to NYSBA’s Committee on Professional Ethics “both [OCA’s] own rules and our opinions allow an OCA-retired lawyer to continue to perform legal services.” (N.Y. State 1244).

“[I]f a retired lawyer wishes to receive a referral fee on matters now handled by successor counsel, the retired lawyer must continue to bear “joint responsibility” for the matters of which clients are informed and to which they consent.” (*Id.*).

And, “a lawyer may pay a referral fee to a lawyer who is retired within the meaning of the rules of the Office of Court Administration if the referring lawyer [assumes] joint responsibility for the referred matter.” (N.Y. State 1201).

While the question of continued professional liability insurance coverage is beyond the Committee’s realm, (*Id.*), in the opinion of this observer, any retired lawyer planning to receive referral fees and, therefore, assuming “joint responsibility” over the referred matter(s) – i.e., continued financial and ethical responsibility for those matters – would be well-advised to maintain LPL coverage for the duration of the referred representation.

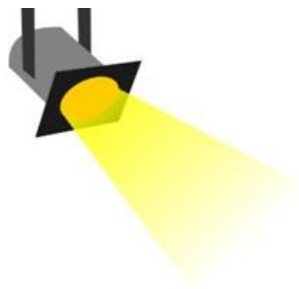
Finally, we are reminded that “[a] lawyer should refer a matter only to a lawyer who the referring lawyer reasonably believes is competent to handle the matter. *See* Rule 1.1.”

Respectfully submitted,

Richard A. Glickel, *Chair*

RCBA Committee on Professional Ethics

RCBA members may request an informal opinion on issues of ethical concern from the Association’s Committee on Professional Ethics by addressing their written question(s) to: rglickel@glickelaw.com .



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

SPOTLIGHT



Hon. Patricia Brimais-Tenemille

Hon. Christopher Exias

In anticipation of the upcoming Election Primary in June, the Committee on Diversity, Equity and Inclusion would like to re-share their past Spotlight Interviews of the Hon. Patricia Brimais-Tenemille and the Hon. Christopher Exias, candidates for Family Court Judge.

Hon. Patricia Brimais-Tenemille

Did you always want to be a lawyer?

No, I did not always want to be a lawyer, but I did always want to work in an area where I can be of service. I wanted to help people, specifically, children. I graduated as the Valedictorian of my High School in the Bronx. I entered Cornell University as a biology major, but I quickly realized that the best way for me to help people, and children, is to become a lawyer. I wanted to be an advocate, and a voice, for those who may be “voiceless.” I believed that the justice system is one of the most powerful tools affecting lives, and I felt that, by being part of the system, I could help people to have a “voice.” I believe that when justice is served, it can change the trajectory of someone’s life. And, with that belief, my path was sealed!



Did you go to law school right after college?

No, I delayed going to law school so that I could gain some work experience. Prior to going to law school, I worked in the entertainment industry as an Account Executive for a major radio station. In addition, I volunteered at several local community-based organizations, translating for Creole and French speaking individuals, as well as helping them locate community-based resources.

What was your legal experience prior to becoming a Support Magistrate?

Upon graduating from Pace Law School, I worked for a small Rockland Matrimonial boutique firm, Abel & Brustein-Kampel, P.C., for a few years. There, I also became a certified family and divorce mediator. I maintain my love for mediation, and currently, I am a member of the New York State Council on Divorce Mediation. After my time at the law firm, I worked at the Westchester/Putnam Legal Services, where I represented victims of Domestic Violence in Family Court and matrimonial proceedings. I later worked at the Westchester County Attorney’s Office in their Family Court Bureau, prosecuting Abuse and Neglect cases, as well as handling Child Support matters. I have also served as the Executive Director of the Office of Equal Employment Opportunity and Affirmative Action for Westchester County. In 2015, I was appointed as a Support

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Magistrate in Orange County Family Court, and now serve as a Support Magistrate in both Rockland and Putnam Family Courts.

Did you grow up in Rockland?

No I was born in Haiti, and my family migrated to the United States when I was seven years old. After college, I moved to Rockland and set up roots. I married my sweetheart and we are raising our sons in Rockland.

What is your biggest influence as a lawyer?

Being an African American woman and an immigrant has impacted every part of my life and career. I am often the only African American in the room, and sometimes in the whole courthouse. I find that there is a lack of diversity in the courtrooms and courthouses in the Ninth Judicial District. Thus, I know the importance of representation. I am acutely aware that my presence in the courtroom provides those who enter the opportunity to see a person/judge of color who understands their experiences and who can serve as a role model.

Best/worst part of your current job?

The best part of my job is helping families navigate through crises and ensuring that children are supported properly. The worst part of my job is when I see parties who appear to not have the best interests of their children in mind, and act in a manner that exacerbates family strife and division. I do my best to try to steer the parties away from that behavior and to encourage them to work together for the benefit of their children and families. Being a Support Magistrate is an honor and privilege that I take very seriously. I believe that I have a unique opportunity to let people know that justice is indeed blind, and that we are truly here to serve. In my courtroom, I strive daily to impart justice with integrity and compassion. I believe that everyone has a right to be heard. I find that even if I do not rule in someone's favor, at times, they are satisfied knowing that they had been heard, that they had a voice, and that they were treated fairly. I understand that what happens in Court helps to shape, not only the lives of individuals, but the community as well.

Less serious – what is your favorite junk food?

I love a Dairy Queen Blizzard, lots of chocolate, lots of Snickers.

What do you love to do with your free time?

I love a good mystery book!

What is the best advice that you have heard?

Everything that you do is a self-portrait of who you are. Do everything in excellence, and with a heart of service. Autograph your life with excellence.

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Hon. Christopher Exias

Did you always want to be a lawyer?

Actually, yes. As a young child, I was always arguing with my parents, siblings, the deli counter guy – and then I found out that attorneys actually get paid to make arguments and convince others of their position. I knew I had the perfect skill set to be a lawyer.

Did you go to law school right after college?

No. Although I really was interested in law since elementary school, when I graduated from Trinity College (Hartford, CT), I decided to get a law-related job to ensure that a career in law was right for me. The mother of a college friend of mine was employed in the NYS Court system in Westchester County, and she suggested that I apply for a job in Westchester Supreme & County Courts.



I was hired for a part-time Management Analyst position in 2004, reporting to the Chief Clerk and Administrative Judge for the Ninth Judicial District. In the Fall of 2005, I started my law school career at Western New England College School of Law, commuting from White Plains, New York to Springfield, Massachusetts each week. I then transferred to the University of Connecticut School of Law, graduating in 2009. Since then, I've worked as a law clerk to three Supreme Court Justices and one County Court Judge.

Did you grow up in Rockland?

No, I was born in New York City and grew up in Stamford, Connecticut. The first time I came to Rockland was in 2009 when I interviewed with Judge Weiner to be his Assistant =Law Clerk.

Who is the biggest influence in your life?

My parents. My mother is a 1st generation Chinese American. Her parents owned a laundromat in New York City. When she graduated from college, they hung her degrees in their store; they were so proud. My father put himself through trade school and started his own HVAC business, which my older brother continues today. I am so inspired by how much they accomplished and how they held nothing back in supporting my siblings and I. I want to be the same kind of parent for my children.

Tell me about your experience as a new Judge.

Being a new justice court judge is full of challenges and opportunities. One of the biggest changes I've had to adapt to is being "on call" for arraignments and emergency applications every three weeks. I've had weeks with over 10 calls, some as late as 1:00 AM.

Continued...

Continued...

However, I've also had the opportunity to work directly with litigants for the first time in my career. As a Supreme Court and County Court law clerk, I've almost always worked on cases where everyone was represented by counsel. In Justice Court, many of the parties are unrepresented, so I have the opportunity to work with litigants directly and see the effects my determinations have on their everyday lives. Given this, I am grateful to be able to take a very active role in making sure that justice is served.

Recently, I had the incredible experience of signing my first Decision and Order. As a law clerk since 2009, I've written hundreds of decisions, but this one was the first one that I signed with my name.

Less serious – what is your favorite junk food?

I love baked goods, especially with a citrus flavor. I just ate a lemon poppy seed muffin. It was delicious.

Favorite down time activity?

I have young children, so I've really come to appreciate sipping hot coffee by myself, first thing in the morning before anyone else is awake. It's the simple pleasures in life that I have come to cherish.



UCS-23

EMPLOYMENT
OPPORTUNITY
ANNOUNCEMENT
STATE OF NEW YORK
UNIFIED COURT SYSTEM

PLEASE POST
ANNOUNCEMENT NO. 9315

POSITION TITLE: PRINCIPAL LAW CLERK TO JUDGE **JG: 31**

LOCATION: 9th JUDICIAL DISTRICT
WESTCHESTER COUNTY SUPREME COURT

BASE SALARY: \$122,603 + LOCATION PAY \$4,635

CLASSIFICATION: EXEMPT/CONFIDENTIAL

QUALIFICATIONS: Admission to the New York State Bar and two (2) years of service in the Associate Law Clerk to Judge title; or five (5) years of relevant legal experience, including up to 18 months of pre-admission experience.

DISTINGUISHING FEATURES OF WORK: Principal Law Clerks to Judge are responsible for researching and analyzing uniquely intricate, complex and sensitive legal issues and questions for individual judges. They also provide other personal and confidential assistance to an individual judge or judges. Principal Law Clerks to Judge are appointed by judges of all Supreme Courts, the Court of Claims, and in the following courts in accordance with staffing needs: County Courts with two (2) or more full-time judges or with one (1) full-time judge and combined annual filings of indictments and Supreme Court civil actions exceeding 650; and Surrogate's Courts with ten (10) or more non-judicial employees (excluding Chief Clerks and Judges' personal appointees). Principal Law Clerks to Judge are personally appointed by the judge or judges for whom they work and serve at their pleasure.

ASSIGNMENT: This position will be assigned to Hon. Keri A. Fiore, Supreme Court Justice, in Westchester County Supreme Court. Duties include but are not limited to: researching and analyzing legal issues and questions; drafting opinions, decisions, orders, jury charges, correspondence, and other written material; conferring with lawyers on unusual or complex proceedings and reviewing legal documents; reviewing and verifying citations; conferring with and advising the judge on legal issues; arranging the judge's calendar and scheduling meetings and conferences; and conducting discovery, pre-trial, and settlement conferences.

The candidate must possess: knowledge of the laws and rules governing civil and criminal practice; the ability to read and comprehend complex legal and other technical data; the ability to analyze legal issues and identify relevant case opinions and facts; the ability to establish work priorities; and the ability to handle sensitive matters on a confidential basis.

GENERAL INFORMATION: The above statements are intended to describe the general nature and level of work performed by persons assigned to this title. They do not include all job duties performed by employees in the title, and every position does not necessarily require these duties. All applications received from this announcement may be used to fill any vacancies in this title that may occur in this court or agency within the next six (6) months. Position(s) available at the present time: 1.

APPLICATION PROCEDURES: All interested persons meeting the minimum qualifications are encouraged to submit a UCS-5 Application for Employment form (obtainable from any administrative office in a court building or on the web at www.nycourts.gov/careers/UCS5.pdf) a cover letter, a resume, law school transcript and writing sample by email to kfiore@nycourts.gov

APPLICANTS ARE ENCOURAGED TO COMPLETE THE EQUAL EMPLOYMENT OPPORTUNITY DATA COLLECTION FORM.

POSTING DATE: April 26, 2023

APPLICATIONS MUST BE POSTMARKED OR RECEIVED BY: May 24, 2023

The New York State Unified Court System is an equal opportunity employer, and does not discriminate on the basis of race, color, religion, gender (including pregnancy and gender identity or expression), national origin, political affiliation, sexual orientation, marital status, disability, age, membership in an employee organization, parental status, military service, or other non-merit factor.



UCS- 23

EMPLOYMENT
OPPORTUNITY
ANNOUNCEMENT
STATE OF NEW YORK
UNIFIED COURT SYSTEM

PLEASE POST
ANNOUNCEMENT NO. 1325

POSITION TITLE:	STUDENT AIDE I (Internship Opportunity)	JG: NS
LOCATION:	Multiple positions are available throughout New York State	
BASE SALARY:	\$18.00 Hourly	
CLASSIFICATION:	Full-time - Temporary (July 6 to August 16)	
QUALIFICATIONS:	High school students and recent high school graduates (within the last year) 17 years or older at the time program starts, and college students. Those under the age of 18 must obtain an employment certificate, also called working papers, in order to hold a job in NYS.	

ASSIGNMENT: The mission of the NYS Unified Court System is to deliver equal justice under the law and to achieve the just, fair and timely resolution of all matters that come before the courts. To promote civic education and readiness we have developed an Internship Program for High School and Undergraduate College Students that enhances students' fundamental understanding of the court system and the role of courts in the function of government. Interns are provided the opportunity to integrate classroom education and theory with practical and relevant career experience. Interns will have the opportunity to experience the work of judges, attorneys, court clerks, court reporters, court officers, interpreters, and other professionals and receive hands-on experience in the work of the courts.

We are committed to providing an interactive program where participants are involved in various aspects of court operations and will develop a concrete understanding of the of the Judiciary, the civil, family and criminal justice systems, and the role of various professionals working in service of our mission. Participants will be exposed to various court processes; educated on applicable laws, rules, and protocols; and informed about various careers available within the Judiciary. Students will also acquire an understanding on ethical and professional practices and Code of Conduct for employees; receive hands-on experience under the supervision of experienced professionals; and gain civic knowledge to serve the public good as members of a culturally diverse, democratic society.

There are multiple opportunities available throughout the state and interns will be assigned to a District Office (Albany, Malta, Syracuse, Binghamton, Rochester, Buffalo, White Plains, Mineola, and Central Islip), a NYC Chief Clerk's Office, or the Office of Court Administration (NYC or Albany). The Internship program will run from July 6 through August 16. Candidates should have an interest in working and learning about the justice system and/or legal profession. Students who are economically disadvantaged or come from under-served communities are encouraged to apply.

GENERAL INFORMATION: The above statements are intended to describe the general nature and level of work being performed by persons assigned to this title. They do not include all job duties performed by employees in the title, and every position does not necessarily require these duties. All applications received from this announcement may be used to fill any vacancies in this title that may occur in this court or agency within the next six (6) months.

APPLICATION PROCEDURES: All interested persons meeting the minimum qualifications are encouraged to submit a UCS-5 Application for Employment form www.nycourts.gov/careers/UCS5.pdf and a written statement/essay with the answers to 3 questions (1 page max) to the Hon. Edwina Richardson-Mendelson, Deputy Chief Administrative Judge for Justice Initiatives at ucsintern@nycourts.gov :

- In which location would you be interested in participating?
- Why do you want to participate?
- Describe an obstacle you faced in life or school and how you addressed it?

APPLICANTS ARE ENCOURAGED TO COMPLETE THE EEO DATA COLLECTION FORM.

POSTING DATE: April 26, 2023

APPLICATIONS MUST BE POSTMARKED OR RECEIVED BY: May 24, 2023

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Technology Tips for Attorneys submitted by Michael Loewenberg*



Technology is constantly evolving and it can be hard for non-technical attorneys to keep up. That's where technology newsletters and websites come in. These newsletters and sites provide a curated selection of news and information about technology and the law, written in a way that's easy for non-technical readers to understand. Here are some easy-to-read resources:

The Legal Geek Newsletter: This newsletter is written by two attorneys who are also technology enthusiasts. It covers a wide range of technology topics, from legal technology to cybersecurity. <https://www.legalgeek.co/read/> (newsletter signup at the bottom of the page)

The ABA Journal Technology website: This site is curated by the American Bar Association and covers legal technology news and trends. <https://www.abajournal.com/topic/technology>

Law Technology News: This website is part of ALM Media's Law.com and covers legal technology news and analysis. <https://www.law.com/legaltechnews/>

TechnoLawyer: TechnoLawyer is a popular technology newsletter that caters specifically to lawyers. It covers a wide range of topics, from legal technology trends to software reviews and practice management advice. Here's a sample; sign up at the bottom: <https://www.toplaw.news/samples/growthlaw-sample.html>

LawSites: LawSites is another excellent technology newsletter for non-technical attorneys. The newsletter covers a wide range of legal technology topics, including legal software, artificial intelligence, and cybersecurity. Sign up on the site: <https://www.lawnext.com/>

Subscribing to a technology newsletter, regularly visiting a website and following a blog can be a valuable investment for non-technical attorneys looking to stay up-to-date with the latest technological developments. By doing so, attorneys can ensure they are aware of the most up-to-date technology and staying ahead of the curve in an increasingly technology-driven world.

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



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April 2023

New York State Bar Association House of Delegates

The New York State Bar Association held quarterly meetings of the Executive Committee (March 31, 2023) and House of Delegates (April 1, 2023) at the Bar Center in Albany, New York. As Vice President for the Ninth Judicial District, I attended the meetings. A financial report was presented by Treasurer Domenick Napolitano to both meetings as was a report by President Sherry Levin Wallach about the many accomplishments of her year in office to date.

Informational reports were presented by the Committee on Continuing Legal Education, the Committee on Legislative Policy, the Governmental Relations Department, the Task Force on Mental Health and Trauma Informed Representation, the Membership Committee and the Task Force on Modernization of Criminal Practice. These informational reports required no action by the Executive Committee or House of Delegates. They did, however, update those present on several important matters which included:

The Association's activities in trying to amend the new notarization record keeping rules.

The Association's pending litigation to raise 18b attorney pay rates outside New York City.

The Association's State and Federal legislative priorities.

Many of these informational reports from committees and Task Forces will soon be presented as action items to advance policy and action by the Association.

One of the action items presented came from the Business Law Section and dealt with changing the definition of and geographical scope of Franchising under New York State Law. The purpose is to bring New York State to conform closer to that of other states regarding presale registration and to define a franchise more closely to that found in the Federal Trade Commission Regulations.

Another action item was presented by the Legal and State Government Law Section and the Task Force on Ethics of Local Public Sector Lawyering. The recommendations call for the Association to support and lobby for legislation which will suggest training for local ethics boards. There is currently a bill before the State Legislature (S4067/A3438) to accomplish this goal. To prevent this request from becoming another unfunded mandate, localities have the right to opt out of the mandate. The purpose of the legislation is to

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inspire public confidence in local government and guide public officials in avoiding ethical violations.

The action item which resulted in the most review was presented by The Task Force on Emerging Digital Finance and Currency. The Task Force has been working on this project for almost a year presenting informational sessions and reports. They have studied digital assets, digital currency, non-fungible tokens, Web 3 and the Metaverse. They have detailed how these issues will impact the legal profession. Two resolutions were presented calling for:

The Association to encourage the growth of well-regulated digital finance, that the Association support consistent universal regulation of same and that the constantly changing landscape in these areas be continually explored and studied.

The Association begin to use Web 3 and other emerging digital technologies to provide value to its members.

All three of the above action items were approved by both the Executive Committee and House. All of the above noted reports and more are available on the Association's website. I highly suggest you review those that impact your area of practice. Many great lawyers have worked very hard to prepare them.

Once again, it was a privilege to represent our district at the meetings.

Respectfully submitted,

Adam Seiden
Vice President, Ninth Judicial District



**United States District Court
SOUTHERN DISTRICT OF NEW YORK
Office of the District Court Executive**

Laura Taylor Swain
Chief Judge

Edward A. Friedland
District Executive

COURT NOTICE TO THE BAR

April 6, 2023

CONTACT

Karen Van Outryve, 212-417-8741

SOUTHERN DISTRICT OF NEW YORK SEEKING CANDIDATES FOR CRIMINAL JUSTICE ACT PANEL

The United States District Court for the Southern District of New York is seeking applicants for the SDNY Criminal Justice Act (CJA) Panel. Applications are available on the court's website at www.nysd.uscourts.gov/cja.php. **Completed applications must be addressed to David Patton, Executive Director of the Federal Defenders of New York, and submitted electronically by May 31, 2023 to karen_van_outryve@fd.org; no paper applications will be accepted.**

The CJA Panel is comprised of private attorneys who are authorized to serve as appointed defense counsel pursuant to 18 U.S.C. § 3006A. To qualify for a position on the CJA Panel, attorneys must be members in good standing of the bar of the Southern District and have proven experience and competency in the field of federal criminal defense work. Applications will be reviewed by a committee of attorneys that will forward its recommendations to the Southern District Board of Judges' Defender Services Committee. The Court is committed to increasing the diversity of the applicant pool and encourages qualified female and minority lawyers to apply for positions.

Candidates can apply to be a member of the Foley Square Panel or the White Plains Panel or both. CJA Panel attorneys commit to being "on duty" one day every four to six months if a member of the Foley Square panel and approximately one day every month if on the White Plains panel. On that "duty day," CJA attorneys represent clients when the Federal Defender has a conflict; the hours of duty are from 9:00 a.m. until the closing of the Magistrate Judge's Office, which is sometimes after 5:00 p.m. CJA Panel members serve a three-year term and are reimbursed at the rate of \$164/hour for in-court and out-of-court time.

"We are fortunate to have such skilled and experienced lawyers dedicated to the critical work of providing indigent defendants with the representation to which they are constitutionally entitled," said United States District Judge Cathy Seibel who leads the Southern District's Defender Services Committee.

Southern District Chief Judge Laura Taylor Swain said, "Our panel of outstanding CJA attorneys is integral to our court's ability to protect defendants' Constitutional rights and provide equal justice under the law. They provide exemplary representation and we look forward to being able to invite additional outstanding practitioners to join them in this important work."

Attorneys can also apply for membership on panels that represent defendants in capital cases and in non-trial work, primarily habeas corpus proceedings. In addition, the Southern District also sponsors a mentoring program that helps identify and prepare experienced state court practitioners for appointment to the Panel. While the mentorship program is aimed at increasing the diversity of the Panel, the program is open to all. Contact Peter Quijano at 212-686-0666 or Anthony Ricco at 212-791-3919 for more information on the mentorship program.



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COMMERCIAL LITIGATION ISSUES OF INTEREST

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

Your client owns 50% of a family corporation that owns valuable commercial property. A contract to sell the property for \$5 million was stalled by another family member claiming to be a shareholder, creating a cloud on title. There was also a tax lien foreclosure action pending for taxes that your client cannot afford to pay. You brought an action to declare that the defendants do not own any shares of the family corporation, and for a mandatory preliminary injunction allowing sale of the property. After the Court granted the preliminary injunction, you moved to cancel the lis pendens filed by the family member claiming to be shareholder, and later moved for summary judgment, which was denied. You now move to compel the defendants to participate in arbitration, pursuant to the corporation's stockholder agreement. The defendants argue that your client waived arbitration by engaging in litigation. You argue that there was no waiver because the litigation was brought to preserve the status quo to prevent a tax foreclosure.

Will you succeed in compelling arbitration?

The answer is *no*.

In *Worbes Corp. v. Sebrow*, NYLJ 1679335271NY80058322E, (Sup. Ct. Bronx Co. March 17, 2023) (Case No. 800583/2022E), Worbes was a family corporation founded by the Sebrow family to own, hold, and operate real property on East 135th Street in Bronx, New York. Plaintiff Zvi Sebrow ("Zvi") owns 50% of the shares of Worbes. When Zvi commenced this action, there was a pending tax foreclosure action against the property, and a contract to sell the property to a buyer for \$5.5 million.

However, there was a cloud on title from an unresolved separate action brought by Betty Sebrow ("Betty") claiming that she and her deceased husband's estate own 50% of Worbes, notwithstanding contrary provisions in the Worbes Shareholder's Agreement. Although Betty's separate action to declare her rights was dismissed, her appeal of the dismissal and her motion to reargue was still pending.

The plaintiffs commenced this action to declare that Betty and her deceased husband's estate do not own any shares in Worbes, and for a mandatory preliminary injunction to permit the sale of the property, along with claims for tortious interference with prospective business relations, abuse of process, malicious

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prosecution, and breach of fiduciary duty. After the Court granted a mandatory preliminary injunction permitting sale of the property, Zvi moved to cancel the lis pendens filed by Betty. Zvi's subsequent motion for summary judgment was denied, followed by motions to quash subpoenas and stay discovery pending summary judgment.

Plaintiffs then moved to compel the defendants to participate in arbitration pursuant to the shareholder's agreement. The defendants opposed, arguing that the plaintiffs waived their contractual right to arbitrate by initiating and extensively litigating the action. Plaintiffs argued that the action was not a waiver because it was necessary to preserve the status quo of the property and save it from tax foreclosure.

The Court's decision contains a thorough analysis of the law governing motions to compel arbitration pursuant to CPLR Article 75, citing scores of cases distinguishing which litigation steps will result in a waiver of arbitration rights, and which steps will not. The specific inquiry, according to the Court, "is whether the proponent of arbitration, by his actions, has elected to proceed and/or resolve the otherwise arbitral dispute between the parties in a 'judicial arena,'" citing *Spirs Trading Co., Ltd. v. Occidental Yars, Inc.*, 73 A.D.2d 542, 543 (1st Dep't 1979).

The Court agreed with plaintiff that the commencement of the action did not constitute a waiver, as judicial intervention authorizing the sale of the property was necessary to forestall the tax foreclosure. This required "immediate action which cannot await the appointment of arbitrators," quoting *Sherril v. Grayco Builders, Inc.*, 64 N.Y.2d 261, 273 (1985). Nor was the subsequent motion to cancel the lis pendens a waiver, as it was necessary to sell the property, as authorized by the mandatory preliminary injunction.

However, the plaintiffs did not assert arbitration rights until one year after the injunction was granted, and seven months after the property was sold. Instead of proceeding to arbitration, plaintiffs sought dispositive and tactical relief, procedurally prejudicing the defendants by "egregious" delay, which caused the defendants to incur unnecessary litigation expenses of \$136,416.60. The Court ruled that plaintiffs' application for summary judgment at a point when they could have moved to compel arbitration was "tantamount to a waiver of their right to arbitrate the issues." The additional motions for dispositive and tactical relief were inconsistent with the claim that the parties were obligated to settle their differences by

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arbitration. The Court likened these circumstances to *Hart v. Tri-State Consumer, Inc.*, 18 A.D.3d 610 (2d Dept' 2005), where the plaintiff did not seek arbitration until after settlement efforts failed.

The Court denied the motion to compel arbitration, holding that the plaintiffs cavalierly “sought to have their cake, and when it became clear that things were not going to go their way, now seek to eat their cake as well.” This, said the Court, is proscribed by prevailing applicable law, quoting *De Sapio v. Kohlmeyer*, 35 N.Y.2d 402, 406 (1974), “The courtroom may not be used as a convenient vestibule to the arbitration hall so as to allow a party to create his own unique structure combining litigation and arbitration.”

The lesson? While every foray into court will not constitute a waiver of a contractual right to arbitrate, efforts to go beyond preserving the status quo will generally constitute a waiver. Check case law before proceeding, as the totality of circumstances that constitute a waiver may vary.

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

THE PRACTICE PAGE

NEW YORK'S NEW ELECTRONIC NOTARY LAW

Hon. Mark C. Dillon*

New York now allows for the remote notarization of documents through the enactment of Executive Law 135-C, which became effective on February 1, 2023. It keeps notarization procedures current with developing technologies, as usable for commercial and other transactions and, as particularly relevant to us, for litigation documents.

The statute provides that New York notaries may use audio-visual communication technology to interact with a principal at a remote location, subject to certain conditions. First, the notary must file a prescribed registration form with the Secretary of State confirming the ability to perform electronic notarizations. The form elicits the notary's name, address, e-mail address, the expiration date of the notary's commission, an exemplar of the notary's signature, and the type of electronic technology the notary intends to use. The exemplar signature on file shall only be used for notarial acts (Executive Law 135-C[5][a], [b], [c]). Any change that may occur in the notary's e-mail address must be reported to the Secretary of State within five days of the change (Executive Law 135-C[7]).

Second, at the electronic meeting, the notary shall confirm in the normal course the identity of the person who is to sign the written instrument, in the electronic view of the notary. The notary must also confirm that the instrument to be executed is the same as that which the signatory attests to signing (Executive Law 135-C[4][a]).

Third, the notary must attach his or her electronic signature to the instrument in such manner that its alteration or removal would be technologically detectable and render evidence that would invalidate the notarial act. The notary's electronic certificate must disclose that the oath or acknowledgement was obtained through electronic communication technology (Executive Law 135-C[5][a], [d]).

Fourth, the notary must retain for at least ten years an electronic copy of any video or audio recording of the notary's confirmation of the document signer's identity (Executive Law 135-C[2][b]).

Fifth, the notary may perform notarial acts where the signer of the instrument is elsewhere in New York State or in another state. The requirement that the signer of the instrument "personally appear" before the notary is statutorily satisfied. If the signer of the instrument is outside of the United States, the electronic notarization is permitted only if the subject matter of the instrument is to be recorded in a U.S. jurisdiction or involves U.S. property (Executive Law 135-C[4][a], [b]).

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Observationally, the enactment of Executive Law 135-C makes life easier for attorneys obtaining affidavits from out-of-state witnesses, as it bypasses the need to obtain a “certificate of conformity” attesting that an oath taken in a foreign state conforms with the laws of that jurisdiction or of New York, as otherwise required by CPLR 2309(c) (*e.g. Midfirst Bank v Agho*, 121 AD3d 343, 348-49). The wide use of remote technology for the New York notarization of instruments executed by out-of-state signers means that the bench and bar may be seeing less of CPLR 2309(c) in the future. Since the practicing bar has sometimes found the acquisition of certificates of conformity to be a cumbersome and sometimes-complicated nuisance, any parting from CPLR 2309(c) will not be with sweet sorrow.

Sixth, if an original document must exist for recording, a printed copy of the electronically-notarized document suffices so long as all of the foregoing requirements of the statute are satisfied (Executive Law 135-C[6][a]). A physical or electronic image of a stamp, impression, or seal need not accompany the electronic signature if the notary has attached an electronic notarial certificate meeting the requirements of the statute (Executive Law 135-C[6](c)). The notary must certify that the paper version of the document and its signatures accurately reflect the electronic version, and if so, the municipal recording officers must accept the paper version for filing. The statute provides notaries with a template of the certification language that is to be used on the paper copy for filing (Executive Law 135-C[6][d][i], [ii], [iii]).

Seventh, the statute reserves to the notary the right to decline in any instance the performance of notarial acts through electronic means, including but not limited to circumstances where the notary is not satisfied that the signatory is competent or has the capacity to execute the instrument, or where the signatory’s signature may not be knowingly or voluntarily made (Executive Law 135-C[9]). This provision assures that notwithstanding the geographic distance between the signatory and the notary, the *de jure* propriety of the notarial procedure is still guarded. Conversely, no notary is permitted to provide notarial services exclusively through electronic means (Executive law 135-c[8]).

And finally, notaries may charge up to \$25 for each of their remote electronic notarial services (19 NYCRR 182.11[g]).

The Secretary of State is specifically authorized to promulgate rules that establish standards, practices, procedures and forms (Executive Law 135-C[5][e]). Therefore, notary publics, including attorney notaries, should stay abreast of relevant communications from the Secretary of State going forward.

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

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CPLR UPDATE

May 12 ,9:30 am—12:30 pm

RESTORATIVE MEDIATION

May 24, 12:30 pm—1:30 pm

OPENING STATEMENTS

June 6, 12:30 pm —1:30 pm

WHEN TIME REALLY MATTERS—

THE 15 MINUTE VOIR DIRE

June 14, 12:00 pm—1:30 pm

COMING THIS FALL

- A 3-part series on Surrogate Court practice
- Running a paperless office
- And more!

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.

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

CLE UPDATE

CYBERSECURITY REQUIREMENT

Effective January 1, 2023 - New Category of CLE Credit - Cybersecurity, Privacy and Data

Protection: A new category of CLE credit - Cybersecurity, Privacy and Data Protection - has been added to the CLE Program Rules. This category is defined in the [CLE Program Rules 22 NYCRR 1500.2\(h\)](#) and clarified in the [Cybersecurity, Privacy and Data Protection FAQs](#) and [Guidance document](#). Providers may issue credit in Cybersecurity, Privacy and Data Protection to attorneys who complete courses in this new category on or after January 1, 2023.

Effective July 1, 2023 - Change to Experienced Attorney Biennial CLE Requirement to Include One

Credit Hour in Cybersecurity, Privacy and Data Protection: Experienced attorneys due to re-register on or after July 1, 2023 (birthday is on or after July 1st) must complete at least 1 CLE credit hour in Cybersecurity, Privacy and Data Protection as part of their biennial CLE requirement. See [CLE Program Rules 22 NYCRR 1500.22\(a\)](#).

Effective July 1, 2023 - Change to Newly Admitted Attorney CLE Requirement to Include One

Credit Hour in Cybersecurity, Privacy and Data Protection: Newly admitted attorneys whose admission to the NY Bar is on or after July 1, 2023 must complete at least 1 CLE credit hour in Cybersecurity, Privacy and Data Protection as part of their CLE requirement. See [CLE Program Rules 22 NYCRR 1500.12\(a\)](#).

Attorneys may apply a maximum of three (3) credit hours of cybersecurity, privacy and data protection-ethics to the four-credit hour ethics and professionalism requirement.



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

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

Thank you!



Monthly
Newsletter



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COMMITTEE CORNER

ANNOUNCEMENT FROM THE PERSONAL INJURY & COMPENSATION LAW COMMITTEE

We are now regularly meeting via Zoom and would like you to attend. If you are on the Committee and have not been receiving notices, please check/update your contact details with the Bar. If you are not a member, we would like you to join. The Bar Association will facilitate this process.

Our next meeting is Wednesday, May 10, 2023, at 5:00 p.m.

Jeff Adams, Chair and Valerie Crown, Co-Chair.

ANNOUNCEMENT FROM THE CRIMINAL LAW COMMITTEE

The next meeting of the Criminal Law Committee Meeting will be:

May 17, 2023, 5:15 p.m. – 6:30 p.m.

Place: Rockland County Bar Association

ATORNEY POSITION AVAILABLE

Feerick Nugent MacCartney seeks attorney interested in local government, municipal law, labor law, municipal prosecution work in the justice courts. The position requires evening work for Board meetings and court appearances in local Justice Courts. Position is full time. Benefits are available. Salary depending on qualifications beginning at \$70,000 - \$110,000. To apply, contact Shannon at [shanond@fnmlawfirm.com](mailto:shannonond@fnmlawfirm.com)

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Contact: jeff@injurylaw-ny.com

OFFICE SPACE AVAILABLE

Fully furnished, newly renovated, single office rental in my Suite at **10 Esquire Rd. Suite 10, New City**, for \$600 per month inclusive of everything and free WiFi. No security required. Can be a month to month arrangement. Please contact David Castagna, Esq. at (845)-638-2889.

ATTORNEYS SEEKING PARALEGALS

Rockland Community College ABA approved Paralegal program can assist attorneys with filling their open job positions for both part and full time employment opportunities. We have students that range from entry level to experienced Paralegals. Paralegals are not permitted to practice law, which means they cannot give legal advice, represent clients in court, set a legal fee or accept a case. All RCC students are trained to work virtually and proficient in virtual computer programs. Contact Amy Hurwitz-Placement Coordinator at (845) 574-4418 or email at

OFFICE SPACE AVAILABLE

The Stevens Law Office in the heart of Suffern has available office space including access to conference room. Rent and terms are flexible depending on level of services needed. Possible over-flow 'of counsel' work. Could be a good opportunity for a lawyer beginning his or her independent practice. Call Kevin @ 845-357-9144, or email: kevin@kstevenslaw.com.

OFFICE SPACE AVAILABLE

Furnished 12' x 10' corner office with adjacent secretarial space and storage cabinet outside office in large suite (personal injury/malpractice law firm) with 3 conference rooms available to tenants, a kitchen and reception service-additional space potentially available if needed. Office located at 151 N. Main Street, New City, NY. Contact Susan Convissar at (845) 267-4878.

OFFICE SPACE AVAILABLE

Beautiful, spacious and modern office available for immediate occupancy. Located at One Blue Hill Plaza, Pearl River.

If interested, call (845) 356-4600

OFFICE SPACE AVAILABLE

Office space available in New City. One or two offices and reception area available. Bright open area plan with shared conference room and kitchen area. Congenial working environment with solo practitioners. Please call 845-639-2411 or email robert@magrinolaw.com.

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