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Barbara Silverstone—Editor

ROCKLAND COUNTY BAR ASSOCIATION

NEWSBRIEF

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May 2024

President's Post

An April article in the New York Law Journal indicated that nearly 10% of students begin law school depressed. This percentage climbs to 40% by graduation time. Mental health problems do not magically dissipate but follow lawyers into their careers. The author goes on to indicate that attorneys hold the record for being the most frequently depressed occupation in the United States. How do law students cope with depression? Unfortunately, many resort to alcohol and drugs which exacerbates mental health conditions. Many of my colleagues attended law school when emotional and mental health issues were not addressed and were swept under the rug. Law students are competitive and to show emotion or sensitivity is too often considered a sign of weakness. Unfortunately, this mindset has carried over to many of our colleagues who sadly conclude that seeking counseling or even expressing feelings about career issues exposes one to derision. This is absurd. To the contrary, acknowledging our strengths and weaknesses makes us more human. Thankfully, this is changing as Big Law now recognizes that mental health is necessary for a productive and fulfilling career. Now, it's time for this healthier mindset to migrate its way downward to mid-sized and small firms and to general practitioners as well as to counsel, whether governmental, judicial or corporate.

Frighteningly, lawyers also rank 5th in suicide by occupation. The article also advocates that the problem should be addressed, not by law students, but by schools themselves. I would go beyond that and say the issue of mental health and suicide prevention should be addressed in the open by Bar Associations and at all levels of our profession. A problem does exist and by ignoring it doesn't go away. Indeed, mental health and substance abuse are at crisis levels.

Does it not make more sense to have early intervention early rather than later on in our careers? Instead, why not provide law students with access to mental health treatment, counselors and therapists to cope with a wide range of issues, perhaps exacerbated these days from a contentious political climate, Covid, student debt and a variety of other factors that did not confront older practitioners. So, find someone to open up to if you are stressed, depressed or just plain pissed off. Don't keep it inside, but talk to someone, whether it be a friend, relative or therapist.

I am asking myself, "Am I rehashing the imperative of mental and emotional health and well-being which has been addressed in several of my earlier posts?"

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Perhaps so, but please allow me to continue. A 2023 mental health and substance abuse survey (ALM) found that mental health problems and substance abuse are now at a crisis level in the legal field. In 2019, 41% of respondents agreed and four years later, in 2023, 91% of respondents reported having anxiety the year before. Why not integrate well-being content into law school curriculum as part of a wellness initiative? Why not have Big Law incorporate into their “safe places,” counseling and group discussion initiatives of the mental health challenges faced by partners, associates, paralegals and staff members?

Why not provoke a dialogue as to how attorneys can better cope with stress and derive more joy from the practice of law?

For too long, there has not been a meaningful and sustained intention of addressing ongoing mental health issues in our profession. It's time to place mental health front and center, out of the shadows, and into the sunlight so that the problem can be dialogued, discussed and addressed. I am sure that there are members of our Association who struggle daily with a variety of mental health issues. There are many excellent counselors and therapists available to help. If one desires a more informal approach for brotherly or sisterly support, always feel free to reach out to our RCBA Lawyer to Lawyer Committee, co-chaired by Bridget Gauntlett and Amy Mara.

RCBA is enthusiastic about the formation of our new Pro Bono Committee. We have recruited new members and are very happy to announce that Jim Riley, Duncan Lee and Amanda Henderson have volunteered to serve co-chairs. Several attorneys have approached RCBA to serve on the Committee. I invite each of you to join. Pro bono representation, in my experience, has been very fulfilling and giving back to our community is a laudable endeavor.

RCBA is looking forward to our Awards and Installation Dinner on June 20th! It is always an enjoyable evening with many of our judiciary attending. We are thrilled to announce the 2024 Sterns Award will be presented to Alden Smith, and the 2024 Balsamo Award will be presented to Derek Tarson. The Juneteenth Essay Scholarship award winners will also be announced. Come on over to Granito Hall at Dominican University and taste some good barbeque, chat with members of the judiciary and colleagues and see the swearing in of our new Board of Directors.

I hope that some of you were able to attend Law Day. We bestowed a well-deserved award, our Liberty Bell, to Sabrina Vargas-Greco, Commissioner of Jurors. Rockland High School Mock Trial trophies were also presented to the winner, Clarkstown North and the runner-up, Ramapo High School. The Mock Trial Committee and attorney advisors for all the teams are to be commended for their dedication and hard work.

If you have not already done so, a good source of clients emanates from RCBA's Lawyer Referral Service. Attorneys are needed in the service in a variety of areas. To join, please either go to our website or email our Executive Director at nancy@rocklandbar.org

A new section of the *Newsbrief* gathers “Good News” from our members. We'd like to hear from you about any interesting experiences, accolades, accomplishments, anniversaries and births that you'd like to broadcast to our membership. Don't be too modest. I know that many of our members have been in the limelight or diffidently avoiding praise for doing great and important things, and receiving kudos about which we are unaware. We want to hear from you!

You know it is not too late to order your RCBA Anniversary composite photo at a very reasonable cost. The composites come in various sizes. Many of our members are framing them for conference rooms. This is a

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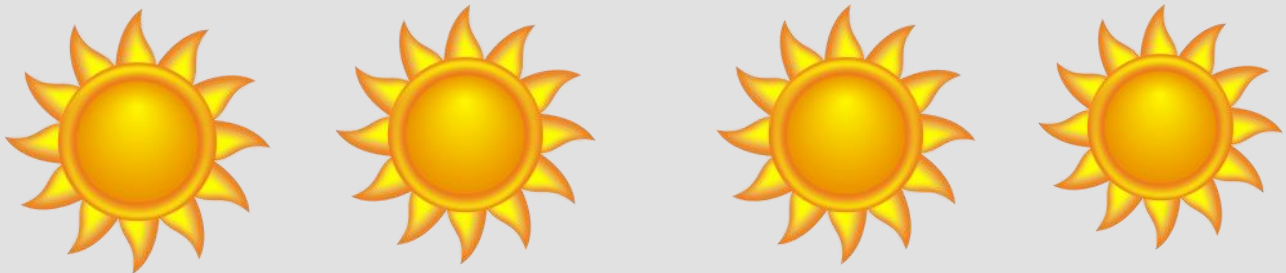
commemorative keepsake that can provoke interesting conversation among your brother and sister attorneys when they see it hanging in your office.

My term is about to expire. After serving as President for two years, it is time to pass the torch to my successor who will be well prepared to carry on our mission.

After 17 President's Posts which hopefully provoked some interest and reflection, I am looking forward to a final post next month.

How delightful it is that Spring has arrived with tulips blooming, trees sprouting leaves accompanied with satisfaction in knowing that we have the opportunity for rebirth, and continued growth both professionally and personally. I wish you a joyous new season with gratitude for your membership and your efforts and interests on behalf of our involved, passionate and well-respected Association.

Robert L. Fellows, Esq.
President



News From the Executive Director:

RCBA 2024-25 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, 2024).

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 2024-25 Board of Directors:

Jeffrey M. Adams - 3 year term

Judith Bachman - 3 year term

Alicia B. Cember - 3 year term

George G. Coffinas - 1 year term

Robert L. Fellows - 3 year term

Jay Golland - 3 year term

Helena Phillibert – 3 year term

RCBA 2024 AWARDS AND INSTALLATION DINNER

**THURSDAY, JUNE 20, 2024
5-8PM**

**GRANITO CENTER TERRACE
DOMINICAN UNIVERSITY
BLAUVELT, NY**

ANNOUNCING THESE 2024 AWARDS:

**THE STERNS AWARD -
ALDEN SMITH, ESQ.**

**THE JOSEPH G. BALSAMO AWARD -
DEREK TARSON, ESQ.**

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Please see Administrative Order AO/152/2024, amending Part 202 of the Uniform Rules for the New York State Trial Courts by adding a new Section 202.16-c, Rules Governing the Electronic Filing of Matrimonial Actions in Supreme Court, to the Uniform Civil Rules for the Supreme and County Court.

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend Part 202 of the Uniform Rules for the New York State Trial Courts by adding a new Section 202.16-c to the Uniform Civil Rules for the Supreme Court and County Court to read as follows, effective immediately (additions are underlined).

§ 202.16-c. Rules Governing the Electronic Filing of Matrimonial Actions in Supreme Court.

(a) Application

(1) Pursuant to 22 NYCRR § 202.5-b, documents may be filed and served by electronic means in matrimonial actions in the Supreme Court of authorized counties subject to the conditions set forth below. Except as otherwise required by this rule, the provisions of 22 NYCRR § 202.5-b shall apply.

(2) For purposes of this rule:

(i) "Matrimonial actions" shall mean those actions set forth in CPLR § 105(p) and DRL § 236, as well as plenary actions for child support, custody or visitation, an order of protection pursuant to the Domestic Relations Law or an application pursuant to the Child Parent Security Act, wherein:

(A) the action is contested, and addresses issues including, but not limited to, alimony, counsel fees, pendente lite, maintenance, custody and visitation, child support, the equitable distribution of property, or domestic violence, abuse, paternity, or parental rights; or

(B) the action is uncontested; or

(C) the action is a post-judgment application that was initiated electronically that addresses an underlying matrimonial action previously filed in hard copy or electronically.

(ii) A "party" or "parties" shall mean the party or parties to the action or counsel thereto (as set forth in 22 NYCRR § 202.5-b(a)(2)(viii)) and the attorney(s) for the minor child(ren).

(3) No paper or document filed by electronic means in a matrimonial action shall be available for public inspection on-line or at any computer terminal in the courthouse or the office of the County Clerk; provided that nothing herein shall restrict access by a party whether or not such party is self-represented or access by a party's attorney, to a paper or document in the matrimonial action in which the party is involved on-line or at any such computer terminal.

(4) Nothing in this section shall be construed to abrogate existing personal service requirements as set forth in the domestic relations law, family court act or civil practice law and rules.

(5) Unless otherwise directed by the court, evaluations or investigations of the parties or a child by a forensic mental health professional (including underlying notes), and reports by a probation service or a child protective service in proceedings involving custody, visitation, neglect or abuse, and other matters concerning children, shall not be filed electronically.

(6) Unless the Court authorizes service to be effectuated via NYSCEF, service of the initiating documents in post-judgment applications subject to consensual e-filing must be effectuated in hard copy and accompanied by a notice of electronic filing. Proof of hard copy service shall be filed by electronic means.

(7) In a matrimonial action, attorneys appointed by the court as attorneys for minor children of the parties may register as an authorized e-filing user of the NYSCEF site and consent to e-file.

(8) In a matrimonial action, attorneys for the parties or for minor children of the parties must remove their representation of such parties or such minor children from the NYSCEF record by following the instructions on the NYSCEF website for such removal in an e-filed action, within sixty (60) days after the earlier of:

(i) a judgment of divorce, separation, annulment or action to declare a marriage void or voidable has been signed and entered in the office of the County Clerk, with notice of entry also signed and served; and where any post-judgment or plenary proceedings before the Court in which the attorney represented the party have concluded by stipulation, final order or withdrawal of the post-judgment or plenary proceeding, and there are no other such proceedings pending; and where any Qualified Domestic Relations Orders or Domestic Relations Orders have been signed and served with notice of entry, and no notice of appeal has been filed in which attorneys for the parties or the minor children have been retained as counsel. If counsel is retained on an appellate issue, they may remain on NYSCEF for the duration of the appellate proceeding or as may be otherwise ordered by the Court; or

(ii) they cease to be the attorney of record in the action or cease to be associated with the law firm that is the attorney of record in the action; or

(iii) they have filed a properly executed consent to change attorney pursuant to CPLR 321(b)(1); or

(iv) an order of the Court authorizing the withdrawal or change of attorney has been filed and entered pursuant to CPLR 321(b)(2); or

(v) they have filed a notice of completion of limited scope representation in the action pursuant to CPLR 321(d).

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(9) Counsel shall promptly comply with any requirements in CPLR 321 for counsel to provide notices to parties or self-represented litigants or attorneys or anyone else directed by the Court as to a change in or authorized withdrawal of representation or as to completion of limited scope representation in the action. Counsel shall also promptly provide notice of any consent to change attorney or notice of completion of limited scope representation to the Court, unless otherwise directed by the Court.

(10) In a matrimonial action, attorneys for non-parties to the action must remove their consent from NYSCEF and the right to receive notices in an e-filed action by following the instructions for such removal on the NYSCEF website within ten (10) days after the matters before the Court related to the non-party application or any cross application have concluded, except in the event of a pending appeal on the issue.

(11) Notwithstanding anything contained in this rule or in Part 202 containing the Uniform Rules for Supreme and County Courts, counsel may apply to the court before whom proceedings are filed, on notice to all parties and counsel, for an order pursuant to DRL 235(1) granting permission:

(i) not to remove their representation of the parties or the minor children from the NYSCEF record if they have a pending application or order of the court for the recovery of legal fees and expenses, including but not limited to a charging lien, fee award, security interest, judgement, or other judicially recognized acknowledgement of such fees and expenses owed to counsel; or

(ii) to apply or reapply for access to seek enforcement; or

(iii) until further order of the court.

(12) Any issue regarding non-compliance with the provisions of this rule shall be addressed to the assigned Judge handling the matter on notice to all parties and counsel.



Chief Administrative Judge of the Courts

Date: April 23, 2024

AO/152/24

THE PRACTICE PAGE

THE MECHANICS OF TAKING PROCEEDINGS UNDER CPLR 3215(c)

Hon. Mark C. Dillon *

CPLR 3215(c) requires that courts shall dismiss an action, even where defendant has failed to answer, if the plaintiff has failed to “take proceedings” for the entry of a judgment within one year from when the answer was due. It can be a dangerous statute for plaintiffs. The plaintiff’s counsel avoids the pitfalls of CPLR 3215(c) by properly calendaring the dates and deadlines of the action including not only when an answer is due, but the anniversary of that date by which proceedings must be taken.

The stated legislative intent behind CPLR 3215(c) is to prevent the plaintiff from unreasonably delaying the determination of an action (*HSBC Bank USA, Nat. Ass’n v Grella*, 145 AD3d 669, 670). It also serves as valid administrative purpose, that dead wood not be permitted to remain too long on the judicial tree.

While we often think of answers being due either 20 or 30 days depending on the manner of service, the statute measures the plaintiff’s one year deadline for taking proceedings from the defendant’s “default.” The default is not necessarily 20 or 30 days from service. Service by suitable age and discretion and by “nail and mail,” for instance, is not completed until 10 days after the affidavit of service is filed with the court (CPLR 308[2], [4]) which, by definition in those instances, extends the answer date, the default date, and the anniversary date of the default, accordingly. If the plaintiff serves an amended complaint, the one-year deadline is measured from when the defendant’s answer is due from the amendment (*NYCTL 2017-A Trust v Ghiselli*, 215 AD3d 427, 428).

CPLR 3215(c) defines the conduct that the plaintiff must undertake within one-year from the defendant’s default as the taking of proceedings. The term “take proceedings” does not appear elsewhere in the CPLR and is not listed among the multiple definitions listed in CPLR 105. “Taking proceedings” is certainly satisfied when a plaintiff files a motion for a default judgment, but is not necessarily limited to that activity. The term refers to a conduct which evidences the plaintiff’s intention to not abandon the action, including a bank’s motion in a foreclosure action for an order of reference (*Deutsche Bank Natl. Trust Co. v Ford*, 183 AD3d 1168; *U.S. Bank, N.A. v Duran*, 174 AD3d 768). The statutory requirement of taking proceedings is met in that context even if an application for an order of reference is withdrawn (*CitiMortgage, Inc. v Lottridge*, 143 AD3d 1093). Proceedings have been taken if a plaintiff’s motion for a default judgment is denied (*Wells Fargo Bank, N.A. v Lilley*, 154 AD3d 795), and even if an order to show cause for that relief is not signed upon its presentment to the court because of defects with the paperwork (*Citibank, N.A. v Kerszko*, 203 AD3d 42; *Brown v Rosedale Nurseries*, 259 AD2d 256). The relevant inquiry is not the *form* of the application or how it was filed, nor its substantive

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result, but the *intent* that can be inferred from the making of an application to “proceed” at least a step toward a judgment (*Citibank, N.A. v Kerszko*, 203 AD3d at 52-53).

The one year deadline for taking proceedings is itself subject to tolls and stays. The covid-related extension of court deadlines by the Executive Orders of Governor Andrew Cuomo, covering a 228-day period between March 20, 2024 and November 3, 2024, tolled the one year statutory deadline for applicable cases. In residential mortgage foreclosure actions, where CPLR 3215(c) is often seen, the time during which the plaintiff participates in settlement conferences mandated by CPLR 3408, when no motions are permitted (CPLR 3408[n]), tolls the one-year deadline for the taking of proceedings by that amount of time (*U.S. Bank National Association v Penate*, 176 AD3d 758, 760). Stays likewise extend in any type of action the one-year deadline for taking proceedings such as the death of a party (CPLR 1015[a]), the death, suspension, or disbarment of counsel (CPLR 321[c]; *Myoung Ja Kim v Wilson*, 150 AD3d 334), and the defendant’s filing for bankruptcy protection which is later dismissed (11 U.S.C. 362[a]).

A split appears to have developed between the Second and Third Departments over whether the filing of a Request for Judicial Intervention, required of plaintiffs in residential mortgage foreclosure actions for scheduling and conducting mandated CPLR 3408 settlement conferences, qualifies as a taking of proceedings. The Second Department says yes (*Citimortgage, Inc. v Zaibak*, 188 AD3d 982; *Federal National Mortgage Association v Edmund-Henry*, 188 AD3d 652). The Third Department says no, at least implicitly (*Bank of N.Y. v Richards*, 192 AD3d 1228; *Carrington Mortgage Services, LLC v Fiore*, 206 AD3d 1306, 1307-08). In *Richards*, the Third Department held that a defendant’s participation in the required conference was not a formal or informal appearance in the action, as the conference did not litigate the action’s merits, and therefore was not a waiver of the defendant’s right to seek a dismissal of the action where the plaintiff’s default motion was untimely (*Bank of New York v Richards*, 192 AD3d at 1231). The difference between the two departments’ approach on this issue appears to be centered upon where the focus belongs -- the conduct of the plaintiff in participating in settlement conferences (Second Department) or the conduct of the defendant in failing to appear and answer (Third Department). Practitioners should be guided by whatever law controls in their own judicial department. The First and Fourth Departments do not appear to have yet had an occasion to address this procedural question.

If the plaintiff fails to take proceedings within the year from the defendant’s default, the court “shall dismiss the complaint as abandoned” on its own initiative or upon motion. While the term “shall” is one of mandate, “shall” does not necessarily mean “shall” in this context, as the statute simultaneously vests the court with discretion to *not* dismiss the action if there is sufficient cause for not doing so (CPLR 3215[c]). In order for the plaintiff to avoid a dismissal that is otherwise mandatory, the plaintiff must establish to the court’s satisfaction

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both a reasonable excuse for failing to timely take proceedings under the statute *and* the merits of its claim (e.g. *BAC Home Loan Servicing, L.P. v Kirnon*, 184 AD3d 547). But rather than having to get out from under the failure to timely take proceedings and being at the mercy of the court, the optimal goal should be the calendaring of dates and deadlines at the law office – as to when answers are due, when defaults are reached, and when the one-year deadline for taking proceedings expires --- to assure that proceedings are undertaken in furtherance of the best interests of the client.

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



The Rockland County Bar Association has a [Facebook page](#) where we announce upcoming events and other issues of interest to the local community.

Visit and follow the page and “Like” the postings to help your association be seen!



**ROCKLAND COUNTY
BAR ASSOCIATION**

HELPING ATTORNEYS AND THE PUBLIC

Join Today!



The Lawyers' Fund for Client Protection of the State of New York

Highlights from the 2023 Annual Report of the Board of Trustees

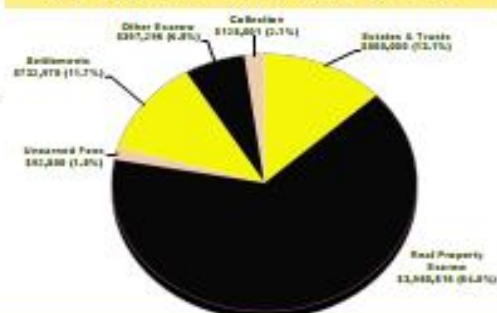
The Annual Report of the Lawyers' Fund for Client Protection focuses on the Fund's activities in calendar year 2023, the 41st year of operations of the Lawyers' Fund. The Lawyers' Fund is an independent public trust, financed by New York's legal profession, that reimburses law clients for financial losses caused by the dishonest conduct of lawyers in the practice of law. No other profession provides such protection to its clients. The Lawyers' Fund is administered by a Board of Trustees appointed by the Judges of the Court of Appeals. The Trustees serve renewable three-year terms as a public service without compensation.

There are 353,738 registered lawyers in New York State. Over the 41 years of our existence, a small number of former lawyers each year have been responsible for the dishonest conduct resulting in the Fund's awards. In 2023, the Trustees approved 72 awards providing \$6.1 million in total reimbursement to eligible law clients for losses caused by the dishonest conduct of former New York State lawyers. The Lawyers' Fund is able to reimburse up to \$400,000 per law client loss.

Purpose of Law Client Protection and Trustees' Recommendations

The mission of the Lawyers' Fund is to protect law clients from dishonest conduct in the practice of law, maintain the integrity and protect the good name of the legal profession, and promote public confidence in the administration of justice in New York State. The Fund's primary focus is the reimbursement of client losses caused by dishonest conduct in the practice of law. The Trustees also fulfill the Fund's mission by recommending changes in legal practice and policy. The full text of the Trustees' Recommendations is published in the complete 2023 Annual Report, which is available on our website.

Amount of 2023 Awards by Type of Theft: \$6.1 Million



Lawyers Involved in Awards, 1982 to 2023

In 41 years, 1,359 former members of the bar have been responsible for the 9,398 awards granted by the Fund. A complete list of these former lawyers is available on the Fund's website, www.nylawfund.org. There are over 353,000 registered lawyers in New York State. The Trustees' awards in 2023 were attributable to dishonest conduct by 23 now suspended, disbarred or deceased lawyers.

Court Programs & Public Information

The Dishonored/Overdraft Check Notice Rule is a client protection device instituted at the request of the Fund's Trustees. The Lawyers' Fund acts as a statewide clearing house for reports of bounced/overdrawn checks on attorney trust, special and escrow accounts. The majority of these notices result from innocent mistakes in law office banking practices. However, these reports have identified upwards of 354 lawyers who had misused escrow funds. In 2021, the Administrative Board of the Courts adopted the Trustees' proposal to expand the Rule to include notice of overdrafts on reportable accounts and prohibit attorneys from carrying overdraft protection on client funds accounts.

Court rules designate the Lawyers' Fund the depository for money owed to missing law clients and escrow beneficiaries. 22 NYCRR Part 1200 (Rule 1.15 (f)). Deposits of \$1,000 or less will be accepted without court order in order to prevent the depletion of nominal deposits with the cost of court proceedings. The Fund's staff attempts to identify these clients to enable the return of their money to them. As of December 31, 2023, staff successfully located 752 missing clients and restored \$2.37 million to them. This court rule and sample pleadings can be found on the Fund's website at www.nylawfund.org in the escrow and ethics material section. The Fund's internet site is a source of detailed information about the Fund and helpful advice for consumers and the legal community. The site contains frequently asked questions on the Fund and its procedures; the Trustees' Regulations; reimbursement claim forms; recent Annual Reports; consumer publications; and press releases.



Technology Tips for Attorneys



submitted by

Michael Loewenberg*

Imagine potential clients searching for legal help in your area. Wouldn't it be fantastic if your law firm appeared at the top of their search results? A Google Business Profile (GBP) is a free and powerful tool that can help you achieve just that.

What is a Google Business Profile?

Think of your GBP as your law firm's online storefront on Google. It showcases essential details like your address, contact information, website, and areas of practice. It also allows you to display high-quality photos of your office and team, making a positive first impression on potential clients.

How Does a GBP Improve Search Engine Rankings?

Google prioritizes local businesses in search results, especially for map-based searches. By claiming and optimizing your GBP, you significantly increase your chances of appearing at the top of local searches for relevant legal terms. This translates to more qualified leads walking (or clicking) through your door.

The Power of Google Reviews

Your GBP is a hub for client reviews. Positive reviews not only build trust and credibility but also influence search engine rankings. Potential clients are more likely to choose a law firm with glowing reviews, making a strong GBP essential for attracting new business.

How Can a GBP Benefit Your Law Firm's Operations?

Streamlined Communication: A GBP allows you to display multiple phone numbers and a website link, making it easy for clients to get in touch.

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Appointment Scheduling: Some GB features let you manage appointments online, streamlining your scheduling process.

Showcase Your Expertise: You can use your GBP to share posts about your areas of practice, legal wins, or community involvement, keeping your firm at the forefront of clients' minds.

Getting Started with Your Google Business Profile

Visit Google Business Profile: <https://www.google.com/business/> and sign in with your Google account.

Search for your law firm's name to see if a profile already exists. If not, click "Add your business to Google."

Enter your law firm's details accurately and completely.

Verify your business using a postcard or phone call.

Maintaining and Optimizing Your GBP

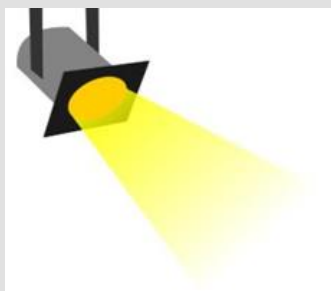
Regularly update your profile with any changes in business hours, contact information, or areas of practice.

Encourage satisfied clients to leave positive reviews. Respond to all reviews, both positive and negative, in a professional and timely manner. (Pro tip: put a sign in your office with a QR code, encouraging your clients to leave a review).

Regularly update your profile with fresh content, such as posts about your team, legal tips, or community events.

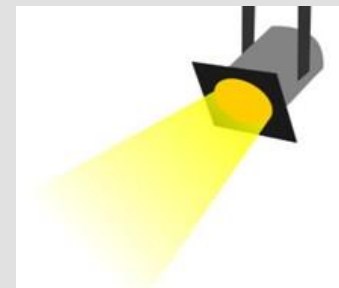
By creating and maintaining a Google Business Profile, you're making a significant investment in your law firm's online presence. It's a no-cost, user-friendly and effective way to attract new clients, build trust, and ultimately grow your practice.

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



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

SPOTLIGHT



In honor of Asian American and Pacific Islander Heritage Month, the DEI Committee shines its spotlight on

Nabeela McLeod,

Executive Assistant District Attorney, Rockland County.

Where did you grow up and what is your current hometown?

It's a little complicated. My parents came to the United States in the 1970s as students from Bangladesh and went to school in Illinois. They went back to Bangladesh when I was 7 years old and traveled back and forth between Bangladesh and the United States. I attended high school in Bangladesh and then came back here to attend college at Pace University. My uncle, a doctor, had already been living permanently in New City. My parents have lived in Nanuet since 1999.

I currently live in New City and have lived in the Town of Clarkstown since 1998.

Did you always want to be a lawyer?

No. I was an environmental studies major in college. I happened to take a legal class which then started me thinking about a possible career in environmental law. After graduating college, I took a gap year before attending law school to save money and to make sure that I really wanted to be a lawyer. During that year, I worked for a civil practice firm for a few months. I then attended Western New England School of Law in Springfield, Massachusetts.



What has been your career path and what are your career goals?

After I took my first criminal class in law school, I knew that criminal practice was for me. I took as many criminal classes in law school as I could. I interned at the Rockland County District Attorney's Office as a 1L and 2L. I was hired right out of law school as a Rockland County Assistant District Attorney and have been working here ever since. I am proud that my reputation and passion for being an ADA have kept me here through four administrations.

I am currently the Justice Court Supervisor for the District Attorney's Office which means that I supervise Assistant District Attorneys that are assigned to each Town and Village Justice Court in Rockland County. I am also currently assigned to the Major Crimes Bureau and handle my own cases which are mostly homicides and other violent crimes. I have tried many felony cases.

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I was very fortunate to try two homicide cases, People v. Eric Ross in March 2022 and then People v Robert Williams, a week later in April 2022. Eric Ross was convicted of killing someone at a car wash in West Nyack. Robert Williams was convicted of killing his infant daughter's mother and grandmother in Valley Cottage. This was a very tragic case.

My career goal is to become a judge. During my tenure as an ADA, I ran the Grand Jury Bureau for a number of years. In that role, I had to make sure that the evidence was fairly presented to the Grand Jury. In essence, you are the referee/judge in that situation. As an ADA, you have a direct impact on your community. You are tasked with balancing the needs of the victim with the rights of the accused. I find it to be very meaningful work. I try to be mindful that for a victim, when the crime occurred, it was the worst day of their life and for the accused, if it was their first time being arrested, it was the worst day of their life.

Judges are in the neutral position to follow the law and ensure that everyone is treated fairly. Becoming a judge would be the natural extension of my role as ADA.

What is your favorite thing about Rockland and/or place in Rockland?

My favorite thing about Rockland is that it is a close-knit community. It has a beautiful small town feel but the City is so close. Also, all of my family live here including my parents, my brother and his family, my uncle, my cousin and my grandmother.

My husband and I love Rockland and that's why we have laid down roots and are raising our two daughters here.

My favorite place in Rockland County is the New City Library. I studied for the bar exam there and I took my two daughters there when they were little to participate in the many programs that the library offers. I really missed the library when it was being renovated. I recently gave a Financial Scam Prevention presentation to senior citizens in one of the beautiful new conference rooms. It really warms my heart to be in the library.

Would you like to share anything about your family life?

I live in New City with my husband and two middle-school age daughters. I met my husband in college and we have been together ever since!

Continued...

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What is your favorite TV or streaming show or book?

Due to the heavy nature of my job, I like anything as far removed from reality as possible. I love Marvel/Avenger movies and science fiction movies. I also love the Harry Potter series. My girls and I have bonded over reading the books and watching the movies together.

What is your guilty pleasure?

I have a terrible sweet tooth. Sometimes I eat dessert before a meal!

Who is your inspiration/hero?

My parents. When they came here from Bangladesh, they didn't have anything. They gave my brother and I a better life and instilled in us a strong sense of morals and values.

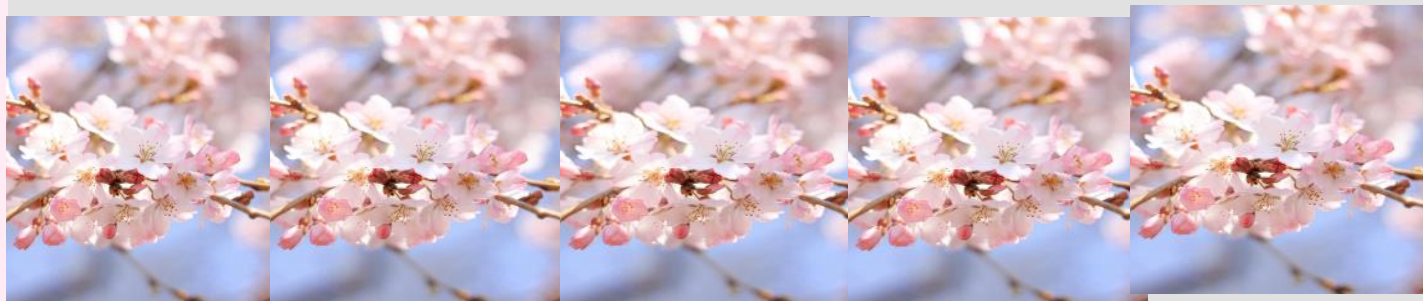
Careerwise, my inspiration was Stephen Moore. He was a career prosecutor. I always wanted to be just like him. He assisted me in the Eric Ross trial and he was supposed to help with me the Robert Williams trial but was too ill. I received the news that Stephen passed away the day before I gave my summation in the Williams trial. I am not sure how I got through my summation but I hope I made him proud.

What good advice have you received?

Don't let the highs get you too high and the lows get you too low. This advice always helped me stay grounded when I was running for Clarkstown Town Justice.

Is there anything we didn't cover that you would like the Bar Association to know about you?

No, but I would like to thank the Committee for selecting me to be interviewed. I am honored.



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COMMERCIAL LITIGATION ISSUES OF INTEREST

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

SAVAD CHURGIN, LLP, Attorneys at Law

After litigating your client's claims for two years, you discover that your client has not been honest with you about his claims. You decide to bring an order to show cause to withdraw. Since it would be improper for you to allow the defendant to learn the real reason for your withdrawal, you support your application for an order to show cause with an affirmation stating only that you will provide the Court with the grounds for withdrawal in camera.

Will the court grant your motion?

The answer is *no*.

In *Marte v. 2013 Amsterdam LLC*, NYLJ 1711042352NY153931202, 24 WL 1186568, Case No.153931/2021 (Sup. Ct. N.Y. Co. March 19, 2024), plaintiff's attorneys, Subin Associates, LLP, moved by order to show cause to withdraw as counsel. The supporting affirmation requested an ex parte conference, saying the firm "cannot continue to litigate this matter due to reasons to be disclosed in further detail at a hearing deciding the request to withdraw to be held [] 'in camera' . . . at which movant expects to establish 'justifiable cause.'"

The Court first reviewed its authority to consider ex parte applications, citing Rules Governing Judicial Conduct (22 NYCRR) § 100.3(6), which prohibits ex parte communications with a judge, except under five specified limited circumstances, four of which did not apply. The fifth exception (subsection [e]) allows a judge to "initiate or consider" an ex parte application "when authorized by law to do so."

Because the Court knew of no legal authority for a court to hold the requested hearing, it requested an informal opinion from the Advisory Committee on Judicial Ethics. A member of the Committee advised that it was the movant's obligation to articulate any relevant subsection (e) authority.

The Court noted that the only authority cited by the movant was CPLR 321 (governing attorney appearances, withdrawals, removals, etc.) and 22 NYCRR § 6404(1)(d) (requiring permission of the court with justifiable cause and reasonable notice to the client for an attorney to withdraw). The movant also referred to a "Statement of Client's Responsibilities," which was adopted by the New York State Bar Association, arguing that plaintiff's failure to adhere to those responsibilities would support granting the motion, evidence of which would be provided ex parte.

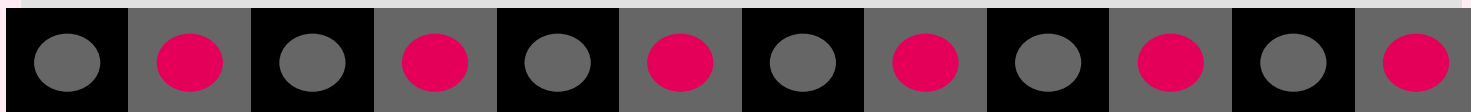
The motion was denied because no legal authority was cited permitting the court's consideration of the ex parte communications, and further failed to articulate good and sufficient cause for withdrawal. In addition, there was no proof that the plaintiff was given reasonable notice of the application. The affidavit of service of

Continued...

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the order to show cause did not indicate that the address where the plaintiff was served was the plaintiff's "actual place of business, dwelling place or usual place of abode" or "last known residence," as required by CPLR308(2).

The lesson? When you learn that your client has not been honest with you about his or her claims, you are in a difficult spot. You cannot suborn perjury but you also cannot prejudice your client's rights by publicly disclosing what you know. The Court however is not going to blindly issue a stay and let you out. Under these circumstances, the best thing to do is state in the papers that there is a breakdown in communication which you are willing to detail "in camera".



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SUCCESSION

A new Newsbrief column

BY JUDITH BACHMAN, ESQ.

CLOSING THE DOOR



In our continuing series about law firm exit planning, we have explored some alternatives already - lateral firm movement and internal succession. We now turn to the possibility of simply retiring from practice.

To some lawyers, the idea of closing their office door for one final time, never to return to the workday grind, is a tempting thought. I had a suitemate who was so anxious to retire that on his last day at the office, he left his suit jacket hanging on the back of his chair and his briefcase on his desk. When the office manager called him to ask him what to do with the suit jacket and briefcase, the suitemate told her to 'just burn it.'

To make the retirement dream a reality, though, does take planning. Like all of the other succession pathways that we have discussed, retirement, too, requires a lot of forethought and preparatory work.

The planning mandate stems, in part, from the New York Ethical Rules 1.3, that require a lawyer to diligently complete a client matter. In the case of a retiring lawyer, that means that for matters that will continue past their tenure, they will have to transition their active projects to new counsel. This will have to be done with the consent of the client, of course, and in coordination with a substitute attorney.

Additionally, retiring attorneys will need to deal with the disposition of their escrow accounts and client files. The fate of these items could prove nettlesome as it will require methodical communication with both current and former clients. If the clients are not reachable, arrangements will need to be made as to what to do with escrow monies and files.

Retiring attorneys also need to make arrangements for continued professional liability coverage. Most malpractice policies are 'claims made' policies, meaning that coverage is for claims made during the policy term. Of course, clients or former clients can bring claims after a lawyer stops practicing, for acts done previously. In order to be covered, retiring attorneys should consider getting tail coverage, i.e., continued coverage, for some period after their retirement.

If simply closing your practice is an option you might consider, you should check out various retirement planning guides including the one at nysba.org/app/uploads/2019/12/NYSBA-Planning-Ahead-Guide-Second-Edition2-1.pdf. The guides, like the one from the New York Bar Association, provide checklists and to do's that a soon to be retiree can utilize to plan their next phase. As with other law firm exit plans, retirement requires forethought (but not suit jackets).



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OFFICE OF COURT ADMINISTRATION

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CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on proposed amendments to Section 202.67 and Section 207.38 of the Uniform Civil Rules for the Supreme Court and County Court relating to litigation financing agreements

Date: April 12, 2024

=====

The Administrative Board of the Courts is seeking public comment on proposed amendments to Sections 202.67 and 207.38 of the Uniform Civil Rules for the Supreme Court and County Court (22 NYCRR §§ 202.67 & 207.38), to require disclosure of information relating to litigation financing agreements in certain circumstances.

As noted in the attached memorandum from the Advisory Committee on Civil Practice (Exhibit A), litigation financing agreements (also known as “litigation loans”) are arrangements through which an entity agrees to cover all or a portion of the non-litigation expenses of a party (usually a plaintiff in a wrongful death or personal injury action), with repayment contingent on the outcome of the litigation. These agreements have been the subject of substantial public discussion in recent years, with proponents arguing that the agreements allow parties to maintain lawsuits that they otherwise would not be able to pursue, and opponents asserting that the agreements often include exorbitant interest rates, fees and other charges that vastly reduce the recovery of injured parties.

There have been a variety of legislative proposals on this topic going back at least to 2017.¹ Unlike the legislative proposals, which often propose to place restrictions on the use

¹ Bills currently pending in the State Legislature on this topic include A.115 (Magnarelli), A.2702 (Dilan), S.2594 (Comrie), and A.7655-A (Walker)/S.4146-A (Cooney).

and/or scope of these agreements, the amendments being proposed by Advisory Committee on Civil Practice instead simply require disclosure of such arrangements in a limited set of cases – most notably, requests for judicial approval of settlements in wrongful death actions, and in personal injury actions involving an infant or a judicially-declared incapacitated person.

The proposed amendments to the Uniform Civil Rules are attached to the Advisory Committee memorandum.

Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than May 24, 2024.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

**For more information and to view the proposed regulations visit the
[New York State Unified Court System.](#)**

RCBA MEMBERS' GOOD NEWS!

OUR MONTHLY COLUMN ANNOUNCING OUR MEMBERS' GOOD NEWS

RCBA MEMBERS JONATHAN RIPPS, ESQ. AND ROB FELLOWS, ESQ. ARRANGED FOR NEW YORK YANKEES RETIRED CENTER FIELDER AND CONSUMMATE GUITAR PLAYER, BERNIE WILLIAMS, TO PERFORM FOR THE CHILDREN RECEIVING TREATMENT AT THE CHILDREN'S HOSPITAL AT MEMORIAL SLOAN-KETTERING IN NEW YORK CITY, ON APRIL 10TH.

IT WAS AN UPLIFTING EXPERIENCE!

THANK YOU BERNIE FOR YOUR TIME AND GENEROSITY.
CONGRATULATIONS TO JONATHAN AND ROB FOR ARRANGING THIS!



Thank you, Robert!
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**THE ROCKLAND COUNTY BAR ASSOCIATION
WELCOMES THE FOLLOWING NEW MEMBERS
JOINED IN APRIL 2024**

Fredric Michael Lehrman, Esq.

Sebastian Simon, Esq.



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**All advertisements and articles must be reviewed by the Executive Committee for content.**



## CLE CORNER

### SAVE THE DATE FOR THESE CLE PROGRAMS!

**May 10, 2024. 9:30 p.m.—12:30 p.m. CPLR Update 2024.**

This popular program returns with Professor Patrick Connors. This program will be presented on Zoom. [Register Here.](#)

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**May 14, 2024 . 6:00 pm.—8:00 p.m.** A Virtual Evening with the Justices of the Appellate Division, Second Department. Sponsored with Westchester County Bar Association Appellate Division and Dutchess County Bar Association. [Register Here.](#)

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**May 15, 2024. 12:00 p.m — 2:00 p.m. Challenging and Controverting Search Warrants.** The speaker will be Hon. Michael Bongiorno. This program will be presented at the JCC Rockland. Lunch is included! [Register Here.](#)

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**May 21, 2024. 12:00—1:30 pm** The Life of a Workers' Compensation Claim--What Every Personal injury and Medical Malpractice Attorney Should Know  
presented by Valerie Crown, Esq. This program will be presented on Zoom.

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**June 6, 2024** Ripple Effect of Affirmative Action decisions in the Supreme Court

**Watch your emails for additional information and registration.**

*Remember, RCBA Members receive a discounted registration fee for all CLE programs*

# CLE REQUIREMENTS

## 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.

### NEW CLE REQUIREMENT - CYBERSECURITY:

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.

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](https://nycourts.gov/Attorneys/CLE).

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.

### FINANCIAL HARDSHIP POLICY:

RCBA members and non-members may apply for tuition assistance to attend Association continuing legal education programs based on financial hardship. Any member or non-member of our Association who has a genuine financial hardship may apply in writing, no later than five working days prior to the program, explaining the basis of his/her hardship, and, if approved, may receive tuition assistance, depending on the circumstances.



# CLE UPDATE

## CYBERSECURITY REQUIREMENT

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### **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.

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# COMMITTEE CORNER

The Rockland County Bar Association has 26 active committees, plus several *ad hoc* committees. Members may join these committees and volunteer their time and expertise for the good of the Bar Association, their colleagues and the public. Here are some of the activities! We look forward to seeing you!

## NEW LAWYERS AND SOCIAL COMMITTEE

Nicole DiGiacomo is the new Co-Chair of this Committee and she is looking for new members. The Committee will engage newly admitted attorneys as well as seasoned attorneys who are interested in mentoring those newly admitted.

If you are interested in joining this reinvigorated Committee, please email Nancy at [Nancy@rocklandbar.org](mailto:Nancy@rocklandbar.org)

## PRO BONO COMMITTEE

This newly established Committee will be meeting soon. If you are interested in joining this Committee, please email Nancy at [Nancy@rocklandbar.org](mailto:Nancy@rocklandbar.org)

## IMMIGRATION LAW COMMITTEE

Immigration Law is a critical component of our system of laws. We are pleased to announce that the Rockland County Bar Association is relaunching the Immigration Committee. The committee is being co-chaired by two experienced immigration attorneys, Ivon Anaya, Esq. and Crismelly Morales, Esq. Given the recent influx of Immigration in our community, we are excited to provide insight and updated information about Immigration Law to the members of the Bar Association and our community.

We are looking for new members! If you are interested in joining our committee, please email Ivon at [Ianaya@centersc.org](mailto:Ianaya@centersc.org) and Crismelly at [Crismelly@cmoraleslaw.com](mailto:Crismelly@cmoraleslaw.com) to express your interest. Stay tuned for our future meetings and events!

## PERSONAL INJURY & COMPENSATION LAW COMMITTEE

Your Rockland County Bar Association Personal Injury & Compensation Law (Negligence) Committee regularly meets via zoom. If you are not yet a member and wish to join our committee, please contact the association. If you have a topic that you think may be of interest to the committee, please let us know.

Upcoming Meetings:

May 20, 2024, 5:00 p.m. The committee meeting will be held on Zoom.

If you are not on the committee and are interested in participating in one of these meetings, please contact us.

Thank you, [Jeffrey Adams](#) (Chair) & [Valerie Crown](#) (Co-Chair)

## 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](mailto: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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**ATORNEY POSITION AVAILABLE**

**Feerick Nugent MacCartney** (South Nyack) seeking NYS admitted attorney with at least 18 months experience with interest in local government, municipal and labor law. Position is full-time, requiring attendance at nightly municipal board meetings (Town/Village). Benefits available. Starting salary depends on applicant's qualifications - \$90,000 to \$120,000. Will consider higher starting salary commensurate with experience. To apply, contact Shannon at

[shannond@fnmlawfirm.com](mailto:shannond@fnmlawfirm.com)

**Matrimonial/Family Law Attorney**

Rockland County, NY law firm specializing in matrimonial and family law is seeking a full time associate. Excellent writing skills, trial experience and fluent Spanish speaking a plus. Starting salary range is \$55,000.00 to \$85,000.00+. Please call 845.639.4600 or fax resume to 845.639.4610 or E-mail: [michael@demoyalaw.com](mailto:michael@demoyalaw.com)

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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

[amy.hurwitz@sunyrockland.edu](mailto:amy.hurwitz@sunyrockland.edu)

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