



# OCTOBER 2016 NEWSBRIEF

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## President's Post

As we enter the final weeks of this truly unique and bizarre election season it is easy to forget the original concept of the free election of office holders. The Founding Fathers essentially adopted and modified the system which developed in England after Magna Carta in 1215 A.D. Of course, any system created by man (unfortunately women were given no voice in the process in this Country until about 100 years ago) incorporates both the strengths and weaknesses of our imperfect species.

At best, elected office, from local school boards all the way to the Presidency of the United States, can be seen as a noble calling to public service. At its worst, elected office is a trough for the feeding of those greedy for power and riches. What do we usually get? As Mel Brooks put it in his song in the movie "The Twelve Chairs", we "Hope for the Best, Expect the Worst".

As we members of the Bar well know, a majority of elected office holders come from our profession. Unfortunately, too many of our fellow attorneys forget the high ethical standards of our profession when they assume office. Just in the past year, here in New York State we have seen the Speaker of the New York State Assembly and Majority Leader of the New York State Senate, both lawyers, convicted of corrupting their public offices. Whether or not those convictions will stick in light of the Supreme Court decision this past June in the case of former Virginia Governor Bob McDonnell is really besides the point.

I do not wish to linger on such matters but to urge all of you, my colleagues, to consider another form of public service as an alternative to elected office. Although we live in one of the smallest Counties in the State of New York, we have within our borders thousands of not-for-profit corporations, companies, and associations. These range from giant entities such as United Way down to the smallest family foundations. In theory, at least, all of them operate as charities, designed to serve the public good. Now as we all know some are simply tax avoidance measures useful to wealthy individuals. That said, many, if not most, do exceptional work for our fellow citizens right here in Rockland County.

What you might not know is that many of these organizations are in need of board members with the special skill set possessed by attorneys. In other words, there is a need for lawyers to volunteer their time and expertise to serve the public good through these wonderful organizations. Many of the not-for-profits have banded together in an umbrella organization which helps connect those interested in serving with the entities in need of such service. If any of you are interested in giving back to your community, and serving the public good other than through the political process or elected office, this would be a wonderful opportunity for you. It also makes good business sense as it will provide you with the opportunity to market yourself to a captive audience, perhaps as the only lawyer in the group. Of course, if you simply wish to serve without any recompense, you will be rewarded in other ways.

It is my belief after having served on the boards of some of these organizations that the rewards from doing so are incalculable. I also firmly believe that it is the moral obligation of members of the bar to give back to the community and I can think of no better way than to serve in some capacity with a local not-for-profit organization. I urge all of you to get involved and stay involved.

With Best Regards,  
Robert B. Marcus, President

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*Submitted by:*

*Paul Savad, Esq.,*

*Susan Cooper, Esq.*

*Joseph Churgin, Esq.*

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1893 – 2016

## **ANNUAL DINNER**

**THURSDAY, OCTOBER 27, 2016**  
**6:00 P.M. – Patriot Hills Country Club**

*Featuring*

***GUEST OF HONOR***  
***HON. PREET BHARARA, ESQ.***

**United States Attorney, Southern District of New York**

*And*  
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337 NORTH MAIN STREET - SUITE 1  
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845-634-2149

**2016 Souvenir Journal**  
**Hon. Preet Bharara, Esq.**  
**Guest of Honor**

The Lifetime Achievement Award:

**Diana W. Rivet, Esq.**

The Inaugural Natalie Couch Award:

**Phyllis B. Frank**

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***DATE OF ANNUAL DINNER: THURSDAY, OCTOBER 27, 2016***

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<b>EVENT SPONSORSHIPS</b>	<b><u>Components/Benefits</u></b>	<b><u>Cost</u></b>	<b><u>Notes</u></b>
<b>ANNUAL DINNER CO-SPONSOR</b> – multiple sponsorships available including “Co-Sponsor;” “Cocktail Hour Sponsor;” and “Dessert Sponsor” **	-Free attendance for one (1) to Annual Dinner (value = \$150+) -Signage at event -Name listing in event program journal	\$500 - \$1500 – various options available depending upon Sponsorship type	October 27, 2016  **Limitations exist – inquire to RCBA
<b>INSTALLATION DINNER CO-SPONSOR</b> – multiple sponsorships available including “Co-sponsor;” “Cocktail Hour Sponsor;” and “Dessert Sponsor”**	-Free attendance for one (1) to Installation Dinner (value = \$75+) -Signage at event -Name listing in event program	\$350 - \$1200 – various options depending upon Sponsorship type	June, 2017  **Limitations exist – inquire to RCBA
<b>CLE SPONSOR</b> -Multiple Sponsorships available	-Free attendance for two (2) at the CLE you sponsor -Opportunity to speak briefly at the CLE -Name listing on all event advertising	\$1000-\$5000 depending upon CLE topic	Typically 12-16 CLE’s offered each year; multiple sponsorship discounts available
<b>HOLIDAY PARTY – SPONSOR</b> – one Sponsorship only available for this event	Free attendance for two (2) to Holiday Party (value = \$110+) -Signage at event -Name on all event advertising, including website	\$750	December 15, 2016
<b>INFORMAL SOCIAL EVENTS</b> – one Primary Sponsor only per Social Event	Free attendance for up to six (6) people at the social event -Signage at event -Name on all event advertising, including website	\$350-\$1000 – depending upon costs of social event and venue	Typically 4-6 informal social events per year
<b>NEW MEMBERS WELCOME SOCIAL Primary Sponsor</b> – One Sponsorship only available for this event	-Free attendance for up to six (6) people at the New Members Social Event -Signage at event -Name listing on all event advertising, including website	\$750-\$1000	This Sponsorship could be expanded beyond one event to the “RCBA New Members Official Sponsor” of New Members Orientation

**RCBA SPONSORSHIP, MEMBERSHIP AND ADVERTISING  
OPPORTUNITIES – July 1, 2016-June 30, 2017**  
**QUESTIONS? CONTACT MANUELA GOMEZ, [manuela@rocklandbar.org](mailto:manuela@rocklandbar.org)**

<b>ADVERTISING OPPORTUNITIES</b>	<b><u>Components/ Benefits</u></b>	<b><u>Cost</u></b>	<b><u>Notes</u></b>
<b>WEBSITE SPONSOR</b> —three (3) Primary Sponsors on Main Page of RCBA website**	-Your ad on RCBA website main page	\$500-\$4500 – depending on length of time ad is on website	Ads available for 1, 3 and 6 mos. and 1 year  <b>**Please note: this option will be available on or about February 15, 2017</b>
<b>NEWSLETTER SPONSOR</b> —various ads of different sizes in monthly <i>Newsbrief</i>	-Your ad in RCBA monthly <i>Newsbrief</i> newsletter	\$75-\$400 /mo -- depending upon size of ad	Ads available every month for 11 mos. (we do not publish in July) 10% discount available for 6 mos. and 20% discount for one year.
<b>E-NEWS SPONSOR</b> – One sponsor per monthly RCBA E-News	-Your name listed as Sponsor of the RCBA E-News	\$150/mo	Check with RCBA Offices for E-News publication dates
<b>ANNUAL DINNER JOURNAL</b>	-Your ad in Annual Dinner Journal – our largest event	Various ad sizes and costs	October 27, 2016 – Preet Bharara Guest of Honor
<b>CLE BOOKLET SPONSOR</b> – one (1) Primary Sponsor	-Free attendance for one (1) person for six (6) CLE's -Your ad prominently displayed in the annual CLE Schedule Booklet	\$1000	CLE Schedule Booklet is published on the RCBA website annually

**COMMERCIAL LITIGATION ISSUES OF INTEREST**  
**Submitted by Paul Savad, Esq.**  
**Chair, Commercial and Corporate Law Committee,**  
**Joseph Churgin, Esq., and Susan Cooper, Esq., of**  
**SAVAD CHURGIN, LLP, Attorneys at Law**

**October 2016**

Your client retained a management agent for its residential apartment buildings. Recently, your client discovered that its accountant, in cahoots with the management agent, failed to report several substantial self-serving transactions made by the agent over the last six years. You sued the accountant for malpractice, fraud, and other causes of action. The accountant moved to dismiss all claims, including the malpractice claims that accrued more than three years ago, which is the statute of limitations for non-medical malpractice under CPLR 214(6). You argue that the “continuous representation” exception tolls the statute, protecting the malpractice claims for all years.

Will you defeat the motion to dismiss claims accruing more than three years ago?

The answer is *no*.

In *The Jefferson Apartments, Inc. v. Mauceri*, 7396/2015, NYLJ 1202765831463 (Sup. Ct. Queens Co. July 25, 2016), Jefferson retained Tribor Management Inc. to act as managing agent for Jefferson’s cooperative apartments commencing in October of 2008. A Tribor employee was a signatory on Jefferson’s bank account. In June 2009, Jefferson hired Mauceri as a consultant on financial matters and to audit Jefferson’s balance sheets and statements of operations and earnings, to issue independent financial statements, and to prepare annual tax returns.

On June 17, 2015, Jefferson commenced this action seeking damages against Tribor for mismanagement and for a series of unauthorized withdrawals of Jefferson’s funds by Tribor from January of 2010 through May 14, 2012. Additional causes of action were pleaded against Mauceri for accountant malpractice, aiding and abetting Tribor’s torts, negligent misrepresentation, breach of contract, and fraud, all arising from Mauceri’s failure to identify Tribor’s unauthorized transactions in the financial statements prepared for each fiscal year ending on June 30, 2007, through June 30, 2013.

Mauceri moved to dismiss those causes of action that accrued more than three years before the action was commenced, pursuant to CPLR 314(6). Jefferson countered that the statute was tolled by Mauceri’s continuing representation.

The Court noted that continuous representation tolls the statute of limitations on claims arising from professional services, but only so long as the defendant continues to advise the client “in connection with the particular transaction which is the subject of the action and not merely during the continuation of a general professional relationship,” quoting *Zaref v. Berk & Michaels*, 192 A.D.2d 346, 348 (1st Dep’t 1993). The transactions here were “a series of discrete and severable transactions,” citing *Parlato v. Equitable Life Assur. Socy. of U.S.*, 299 A.D.2d 108, 115 (1st Dep’t 2002), *lv. den.*, 99 N.Y.2d 508 (2003). Thus, Mauceri’s continuation of general accounting services did not toll the statute for the financial statement issued on February 7, 2011, for the year ending June 30, 2010. The claims for the services rendered by Mauceri before June 17, 2012, were therefore dismissed.

However, Mauceri had recertified the 2011 financial statement in another financial statement dated September 28, 2012. The recertification “constituted an undertaking to perform further work on the 2011 audit.” Thus, the motion to dismiss claims for services performed in 2011 through 2013 was denied.

The motion to dismiss all other causes of action were denied, except the claims for negligent misrepresentation and breach of contract, which were held to be duplicative of the professional malpractice claim.

The lesson? The three-year statute of limitations for a claim of malpractice against an attorney, accountant or other professional is not tolled merely because the professional continues to provide general professional services to the client. If the particular matter complained of is “discrete and severable” from the other transactions handled by the professional, the statute is not tolled.



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**INAUGURAL NATALIE COUCH AWARD**  
**TO BE GIVEN AT ANNUAL DINNER**

*The Natalie Couch Award was created by the RCBA Board of Directors in July, 2016. The first recipient of this prestigious award will be Phyllis B. Frank, Associate Executive Director of VCS, Inc.*

Natalie Couch was, among other things, a trailblazer. She was the first woman to practice law in Rockland County. She was also the first woman to win election as President of the Rockland County Bar Association.

And when the initiative to extend the right to vote to women passed in Rockland County in 1918, Natalie Couch cast the first vote.

Almost 100 years later, the RCBA Board of Directors, at their July 2016 Board Meeting, passed a resolution creating the Natalie Couch Award.

The Award description reads:

*"This award is dedicated to the memory of Natalie Couch, a pioneering member and president of the Rockland County Bar Association, who was a voting rights advocate and an influential community leader. The honoree should be someone whose own accomplishments have served to inspire others to overcome prejudice and barriers in attaining their goals for the benefit of our community."*

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*Of Counsel*  
**Mandel, Katz & Brosnan LLP**  
 210 Route 303  
 Valley Cottage, New York 10989

**COMMITTEE CORNER**  
**Grievance Committee Meeting**

**October 17, 2016 @ 6:00 p.m.**

**at**

**Rockland County Bar Association Offices**  
**337 N. Main St—Suite 1**  
**New City, N.Y. 10956**

**Debt Collection Committee Meeting**

**November 2, 2016 @ 5:30 p.m.**

**at**

**Rockland County Bar Association Offices**  
**337 N. Main St—Suite 1**  
**New City, N.Y. 10956**

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**MEMO****TO ALL RCBA COMMITTEE CHAIRS & VICE- CHAIRS**

The Association is seeking articles from your committee for publication in the Bar's monthly Newsletter. The membership would greatly benefit from your input and would appreciate it. The article does not have to be complicated or long - a succinct piece of general interest and importance would be best. If you are able to submit an article for the Newsletter it should be sent via email to [Manuela@rocklandbar.org](mailto:Manuela@rocklandbar.org) by the 15th of the month so that the Executive Board may review it. Thank you!

**READ A GOOD BOOK?**

**If anyone has read a book that they would like to recommend, please write a short review for publication in our Newsletter.**

**Need a Place to Meet in New City?**

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**IF ANY MEMBER IS INTERESTED IN JOINING THE REFERRAL SERVICE PLEASE CALL RCBA @ 845-634-2149**

**FOR AN APPLICATION. THE APPLICATION CAN ALSO BE FOUND ON OUR WEBSITE [WWW.ROCKLANDBAR.ORG](http://WWW.ROCKLANDBAR.ORG) IN THE ATTORNEY RESOURCES SECTION.**

**Michael E. Zall**

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# CLE Corner

## Cybersecurity and Your Practice October 20, 2016

### Synopsis:

Law firms are often favorite targets of cyber criminals. This course will help you understand the risks and the ramifications of a cyber-attack. We will explore strategies for defending your firm and your clients from these threats, with advice on how to best respond if breached.

### Highlights:

- Discuss recent developments related to cyber-security.
- Offer realistic approaches that will help you minimize risks and loss of client information and firm reputation.
- Proactive and reactive measures a law firm must take to protect its clients' sensitive information.
- A law firm's ethical obligation to adopt proactive security measures to protect client information.
- ETHICS 20/20 changes to the Model Rules as well as ABA, state and local bar ethics opinions that have addressed cloud computing, outsourcing portable devices, and other similar topics.
- What a law firm must do when it believes it may have suffered a breach of client information.
- The expanding legal obligations of every company and lawyer to protect corporate data and minimize cyber-security liabilities.
- What is required—legally and practically—to protect confidential, sensitive, and valuable data from cyber-attacks.
- The two primary data security legal obligations.
- What a legally required written information security program should contain.
- How to meet the standard of "reasonable security."
- What the duty to disclose requires.

### Details

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

(Registration 11:30 a.m.) Includes lunch

**Level:** Transitional/Non-Transitional

**Speakers:** Edward M. Shanker: President, Meeting Tree Computer, Corp., Salisbury Mills, NY  
James Sexton, Esq., New City, NY.

**Place:** Italiana's Restaurant, 253 South Little Tor Road, New City, NY

**Cost:** \$50.00 in advance; \$65.00 at the door; \$75.00

Non-Members; \$20.00 paralegals and students

**Credits:** 2 CLE Credits: 1.5 Professional Practice/Skills; .5 Ethics

## 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.



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Experience necessary, salary negotiable. Please provide cover letter and resume to the Rockland County Bar Association.

**RETIRING ATTORNEY**

With office in New City seeks a Successor Attorney for his General Practice consisting primarily of Real Estate, Wills, Trust and Estates. Please call (845) 623-8055 Fax (845) 623-2219

**OFFICE FURNITURE FOR SALE**

Priced to sell. Vertical and lateral file cabinets, storage units, desks, chairs, conference table, book cases, credenza, tables, dividers, bulletin boards, white board. Please call Madelon at 914-527-2400 for information. Items are located in New City.

**NEW CHAPTER**

We are pleased to announce the beginning of a new chapter in a distinguished career: ADAM K. KURLAND, ATTORNEY AT LAW, P.C. has opened its offices in the space formerly occupied by Fenster & Kurland LLP, conveniently located at 337 N. Main Street, Suite 11, New City, New York. Adam K. Kurland, Esq., a lifelong Rockland resident, continues to offer his expertise in commercial and residential real estate, business and corporate matters as well as civil litigation. Mr. Kurland and his professional, courteous staff combine steadfast attention to detail with the ability to treat their clients' needs with the care and compassion they would afford their own family. Call or email Adam today: (845) 638-4700 / [akurland@akkpc.com](mailto:akurland@akkpc.com).

**ASSOCIATE ATTORNEY WANTED**

Seeking an associate attorney to join the firm's Ramsey, New Jersey office. Successful candidates must have a Juris Doctor, admission to the New Jersey and New York bars, 1-4 years of commercial litigation experience, strong oral and written communication skills, comfort with public speaking, and superior academic credentials. Construction law related experience a plus.

Those who are interested should submit a resume, writing sample and salary requirements to Stephen Bialkowski at [Stephen@NY-NJLaw.com](mailto:Stephen@NY-NJLaw.com).

The Rockland County Department of Law is seeking candidates for a part-time Collection Attorney. Approximately 20 hours per week required in the County Attorney's office. Must be a Rockland County resident. Minimum 3 years' experience in debt collection or litigation. Anticipated compensation is flat fee with bonus structure and no out of pocket expenses. Office telephone and support staff to be provided. Please send resume, to:

**G. Mercedes Felix**  
**Confidential Secretary to County Attorney**  
**Rockland County Department of Law**  
**11 New Hempstead Road**  
**New City, New York 10956**  
**[felixm@co.rockland.ny.us](mailto:felixm@co.rockland.ny.us)**