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**Rachael Candoni—Editor**

# ROCKLAND COUNTY BAR ASSOCIATION

# NEWSBRIEF

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

September 2022

## President's Post

Dear Colleagues,

Why not step back for a moment for a well-earned pause from our professional endeavors and visualize the coming of Fall? Slowly, we reacquaint ourselves to some degree of normalcy. There is a collective hope for continuation in the months ahead. Visualize children returning to school, athletes immersed in practice, the first big game, teachers returning to the classroom and the tapestry of autumn. Summer respites of tranquility and reflection are replaced by realities of life - making a living, providing for our families, new schedules, assignments, chores and more. To my brothers and sisters at Bar and those on the Bench, let us endeavor to carry with us the joys of Summer, time spent away from our practices, perhaps immersed in a good book, regaling together with loved ones, traveling to a new destination, pursuing novel interests, whether a jog on the beach, a hike on the Appalachian trail, learning a new language or whatever your passion during a season receding.

For many of us, the time has arrived to roll up our sleeves, prepare cases for trial, get ready for real estate closings, draft agreements, review leases, tweak estate plans and so much more. Some of us may be overwhelmed by the reality of acclimating to new routines, finding new clients, paying our overhead, continuing our legal education and balancing escrow accounts. Why not take a portion of the Summer we enjoyed and carry it with us throughout the year, hoping that COVID remains on the run?

For those of us who in a blink of an eye have sent a son or daughter off to college, keep the faith that the seeds planted and the values instilled will bode them well. Why not strive to be the "well-rounded" and grounded attorney, one who advocates creatively, thinks critically, but who lives well, balancing work life with family and professional attributes with avocations. Let us commit ourselves to sleep enough, eat more nutritiously, cope better with stress, strive for greater collegiality while understanding that we can be both competent and caring, aggressive but not egregious, accommodating but not callous, understanding that our mission is to help others while elevating service over self. Always remember that we work for our clients and not the converse. Their aspirations and objectives may differ from ours and we can benefit being mindful of that by lawyering in a more holistic way, achieving their goals while continuing to strive for excellence. Let's not lose sight of the attributes which nurture our own human spirit. We are here to support each other professionally and as friends and colleagues. There will always be someone at RCBA to listen, guide and help should the need arise. Our Practitioner's Chats might be something to consider in addition to RCBA's well received CLE programs covering a wide range of topics.

I am musing about rejuvenation as Fall approaches, recognizing our strengths while improving our imperfections and helping to both serve our clients in ways that infuses us with a sense of purpose and accomplishment. May the remaining days of Summer be with us throughout the year as we come to embrace the truism that being an advocate, an attorney, means evolving in our humanity, empathy, enthusiasm and compassion as guiding principles. Welcome the opportunities of a new Season!

Sincerely,

Robert (Rob) L. Fellows

## RCBA Cares

**The following resources are provided to you courtesy of the Lawyer to Lawyer Committee.\***

### **Lawyer Assistance Programs**

New York State Bar Association: 1-800-255-0569; [lap@nysba.org](mailto:lap@nysba.org)

New York City Bar Association: 212-302-5787; <https://nysba.org/attorney-well-being/>

### **Suicide Prevention**

National Suicide Prevention Lifeline: 1-800-273-TALK (8255) - National, Toll-Free, 24 Hours

Crisis Text Line: Need help? Text START to 741-74 1

### **Chemical Dependency and Self-Help Sites**

Alcoholics Anonymous (AA): 212-870-3400; [www.aa.org](http://www.aa.org)

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

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

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

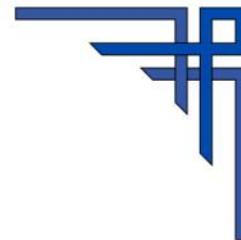
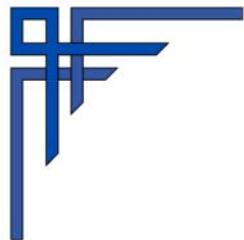
### **Mental Health**

Depressed Anonymous: [depressedanon.com](http://depressedanon.com)

National Mental Health Association (NMHA) - 1-800-273-TALK (8255) to reach a 24-hour crisis center; Text MHA to 741741 at the Crisis Text Line

Source: Andrew Denney, Bureau Chief of NYLJ and the New York State Association of Criminal Defense Lawyers.

***\*For more information about the Lawyer to Lawyer Committee, please email Manuela Gomez at [manuela@rocklandbar.org](mailto:manuela@rocklandbar.org)***



1893-2022

## *Annual Dinner*

Thursday, October 20, 2022  
6:00 P.M. - The View on the Hudson

*Honoring:*

*Lifetime Achievement Award Recipient*

Hon. William P. Warren

*Natalie Couch Award Recipient*

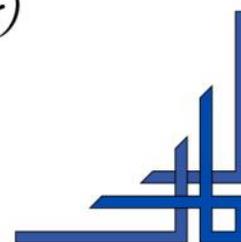
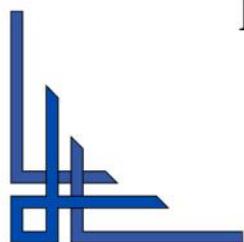
Mary Lynn Nicolas-Brewster, Esq.

*Sterns Award Recipient*

Amy M. Mara, Esq.

*Joseph G. Balsamo Award Recipient*

David I. Goldstein, Esq. (*posthumously*)



Save the Date! Invitations Coming Soon!



PLEASE JOIN US AT A RECEPTION  
IN HONOR OF  
**Judge Robert Berliner**  
ON HIS  
**RETIREMENT**

FRIDAY, SEPTEMBER 30, 2022  
6:00 PM TO 10:00 PM

OPEN BAR, SIT DOWN DINNER, DJ

THE NYACK SEAPORT  
21 BURD STREET  
NYACK, NY 10960

COST \$120.00  
GIFT ONLY \$20.00  
CASH OR CHECKS MADE OUT TO CASH

KINDLY RSVP TO  
CINDY DILLON, 845-483-8303  
ROCKLAND SUPREME  
BY SEPTEMBER 10TH

HON. SAM D. WALKER

Retiring



After 34 Years

OF HARD WORK & DEDICATION TO JUSTICE

PLEASE JOIN US AT JUDGE WALKER'S RETIREMENT CELEBRATION

THURSDAY NOVEMBER 10, 2022

MULINO'S LAKE ISLE  
660 WHITE PLAINS ROAD EASTCHESTER, NY 10709

6:00pm-10:00pm

\$100 PP - Dinner, Wine, Beer Soda  
Cash Bar

RSVP By October 21, 2022

Lhinson@nycourts.gov (914) 824 5427  
cash or checks payable to cash

COME MEET AND GREET THE SDNY'S NEW

CHIEF  
PROBATION  
OFFICER,  
***JOSHUA SPARKS***

PLEASE JOIN US IN WELCOMING  
JOSHUA TO THE DISTRICT

*Thursday, September 15, 2022 /*

*8:30 - 10:00 am*

*DPM Conference Room 850*

LIGHT REFRESHMENTS WILL BE SERVED

## “Save the Date”



### **The Rockland County Bar Association and The Rockland County Women’s Bar Association’s Basic Mediation Training**

**Presented by the 9th Judicial District Access to Justice Committee ADR Subcommittee**

**When:** November 3, 4 & 6, Thursday, Friday & Sunday  
**Where:** Clarkstown Town Hall  
**Time:** 9:00 am – 6:00 pm  
**RSVP:** Registration information will be forthcoming

The RCBA and RCWBA cordially invite you to join us for a three (3) day Basic Mediation Training Program at the low cost of \$100 to members. Lunch is included. This mediation training course is pending approval under Part 146 by the New York State Unified Court System’s Office of ADR Programs.<sup>1</sup>

Participants who complete this three-day course will not only receive their Basic Mediation Certification, they will also receive 24 hours of Continuing Legal Education by the Rockland County Bar Association.

Take advantage of this opportunity to expand your skills and your practice!

Thank you,

Robert (Rob) L. Fellows,  
President RCBA

Siobhan O’Grady,  
President RCWBA

<sup>1</sup> Pursuant to 22 NYCRR Part 146.4(b), “Mediators who wish to qualify for appointment to a court roster must have successfully completed at least 40 hours of approved training [including] at least 24 hours of training in basic mediation skills and techniques; and at least 16 hours of additional training in the specific mediation techniques pertaining to the subject area of the types of cases referred to them.”

Participation in a course does not guarantee placement on a local court roster. Some Courts may require additional training and experience beyond the enumerated Part 146 requirements. Acceptance on court rosters may depend on a court’s need for mediators at any given time and may include a particular court’s need for mediators with specific case-type training or experience. Final placement on any court roster is at the discretion of the local Administrative Judge.

- >> Final placement on any court roster is at the discretion of the local Administrative Judge;
- >> Participation in a course does not guarantee placement on a local court roster;
- >> Some courts may require additional training and experience beyond Part 146’s requirements; ;
- >> Acceptance on court rosters may depend on a court’s need for mediators at any given time and may include a particular court’s need for mediators with specific case-type training or experience.

**Commission to Reimagine the Future of New York's Courts—**

**Pandemic Practices Working Group**

On behalf of the Commission to Reimagine the Future of New York's Courts – Pandemic Practices Working Group (PPWG), we are writing to invite you to attend a Remote Listening Session focused on obtaining input from local and specialty Bar Associations on the technology, practices, and policies adopted by the state courts in response to the Covid-19 pandemic. The PPWG is charged to evaluate and make recommendations to the Unified Court System regarding the adoption of practices implemented during the pandemic that will benefit the administration of justice in New York State courts going forward. Additional information regarding the mission and work of the PPWG can be found at: <http://ww2.nycourts.gov/reimagine-the-future/pandemic-practices.shtml>.

To obtain broad input from lawyers practicing in different settings across the State, the PPWG is holding multiple in-person hearings and a series of virtual listening sessions. We are holding a listening session designed specifically to obtain input from local bar associations about courts **outside of NYC**, which will take place on **September 21, 2022 at noon to 1:30 p.m.** over Microsoft Teams. We invite you to attend through your bar executive, president, or a member of your board who practices in the New York state courts. **Please confirm who will attend the session.** We will then forward you a calendar invite that includes the Teams link. We greatly appreciate your participation.

To give you an idea of what we expect to discuss, below is a list of sample questions we may explore during the session:

1. How do you think the New York State courts fared in adapting to the challenges of the pandemic?
2. Are there practices employed by the courts during the pandemic that you think should be continued?
3. Are there practices that were employed (or are still in effect) that should not be continued? Why?

Are there other practices or modifications to existing practices that you think would help the courts operate more effectively going forward?

Please note that, in an effort to hear from as many stakeholders as possible, we will be operating on a tight timeframe. The listening session will last **90 minutes**. The PPWG will also hold public hearings on October 6, 2022 in Buffalo and on October 31, 2022 in New York City. The Hearing Notices can be found at: <https://www.nycourts.gov/LegacyPDFS/reimagine-the-future/public-hearing-revised.pdf>.

Thank you again for your willingness to participate, and we look forward to hearing from you regarding your ability to attend the session on September 21.

Best,  
Carolyn Nussbaum, Lilian Moy, and Vincent Tennant  
Pandemic Practices Working Group Members

**Vincent Tennant**  
Associate

[Proskauer](http://www.proskauer.com)  
Eleven Times Square  
New York, NY 10036-8299  
d 212.969.3504  
f 212.969.2900  
[VTennant@proskauer.com](mailto:VTennant@proskauer.com)

**What You Need To Know If Your Client Is Buying A Cooperative Apartment  
In Rockland County – Local Law No. 4 of 2022 Amending the “Timely Co-op  
Application Decision Law”**

**Respectfully submitted,  
Alden B. Smith, Esq.,  
Chairperson Rockland County Bar Association Condominium and Co-op Committee**

On March 3, 2022, County Executive Ed Day signed into law Local Law No. 4 of 2022 amending the County’s existing Timely Co-op Application Decision Law to require, among other things, Co-op Boards to disclose the reason or reasons for denial of a prospective purchaser’s application to purchase a cooperative apartment in Rockland County. The law became effective on June 10, 2022.

By passing this legislation, the Rockland County Legislature sought to prevent discrimination in the cooperative housing application process by requiring that all cooperative housing applications must disclose in a clear and concise manner the following: all application-related timelines and any minimum financial qualification that a prospective applicant needs to meet to qualify. If the Cooperative does not have any mandatory financial qualifications, they must provide to a prospective purchaser, at a minimum, the Co-op’s preferred minimum income, total assets, credit score, debt-to-income ratio and percentage of purchase price being financed. The Co-op Board may exercise its discretion in weighing factors when making its final determination on an application.

Under the existing law prior to this Amendment, it provided that within ten (10) days of receipt of a completed purchase application, the Cooperative shall provide an applicant with written acknowledgement of receipt of the purchase application. After initial or subsequent review, if the purchase application is determined to be incomplete or completed incorrectly, the cooperative must notify the applicant in writing within ten (10) days of such determination of the deficiencies to be corrected and what is required to render the purchase application complete. Within forty-five (45) days of receipt of a fully completed purchase application, the cooperative board shall either reject or approve the application and provide the applicant with written notice.

Failure of the Co-op Board to act on a duly completed purchase application within forty-five (45) days of receipt of the application, shall result in the application automatically being deemed approved [1]. Delays due solely to the applicant’s unavailability to appear for an interview shall not be counted in the forty-five (45) day period.

The Amendment to the existing “Timely Co-Op Application Decision Law” has added a new Section 289-14 to Chapter 289, Article 2 of the laws of Rockland County entitled “**Rejections**”. In the case of a rejection of an application by a Cooperative Board, written notice is to be provided by the Board to the applicant(s) and it must include sufficient detail to fully inform the applicant of the reason or reasons for the rejection of their application, including, but not limited to, the reason or reasons the application did not meet the minimum financial qualifications and/or any other determinative factors.

**Continued...**

**Continued...**

[1]  
Back in October 2015, my committee was asked by the Rockland County Bar Association then President, Robert Marcus, Esq., to contact the then Chairperson of the Rockland County Legislator, Alden Wolf, Esq., regarding potential legislation to be taken up by the Rockland County Legislature relating to Cooperative Board procedures for sales/purchases of coop shares of stock. The Rockland County Bar Association Condominium and Co-op Committee was asked to review and comment on an existing local law adopted by the NYS Village of Hempstead in October 2009. While the Committee was generally in favor of the Hempstead time frames for acknowledging receipt of the Co-op application and the approval/rejection of the application, the Committee was generally not in favor of providing grounds for any rejection of the Co-op purchase application. Hence, I wrote to Mr. Wolf telling him that the part of the Hempstead local law requiring the co-op to provide reasons for rejection of a purchaser's application is not something the Committee would endorse. The Committee believed that such requirement would have a chilling effect on the Boards' deliberation process and could give rise to potential lawsuits filed by purchasers who were rejected by a Co-op board. This would have the unintended consequence of driving shareholders away from participating as Board members in a cooperative. Our committee was also not in favor of the part of the Hempstead law relating to sanctions against the Cooperative for its failure to act within the time frame set forth in the legislation. The Committee's suggestion at that time was that the failure of the Co-op board to provide their rejection within a forty-five (45) day period of receipt of the completed application should be akin to the right of first refusal that exists for condominiums. Instead of placing sanctions against the co-op for failing to act within the prescribed time from when the completed application was received, the application should be considered automatically approved if they do not act within that prescribed timeframe. This suggestion was included in the legislation that was adopted on February 6, 2018 and can be found in Rockland County's Housing Act Section 289-13, Subdivision C.

Rejection of an applicant based on discrimination, as defined in Section 261-2 of the Rockland County Fair Housing Law is prohibited and any aggrieved person may file a claim with the Rockland County Commission on Human Rights pursuant to the Rockland County Fair Housing Law.

Rejection of an application after failing to provide required disclosures required by Local Law No. 4 (Chapter 289 Article II of the Laws of Rockland County) may constitute prima facie evidence of discrimination in a claim filed under the Fair Housing Law of Rockland County.

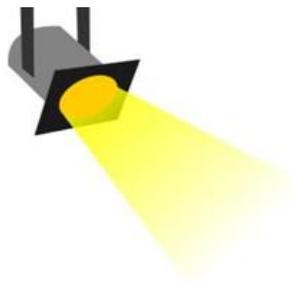
Finally, Chapter 289 Article II of the Rockland County Law states that, if there is any statewide or federal legislation that goes into effect that incorporates either the same or substantially the same provisions as are contained in Article II Chapter 289 of the Housing Code of Rockland County, or in the event that the appropriate state or federal administrative agencies issues or promulgates regulations preempting such action by the County of Rockland, Article II shall be rendered null and void on the date that the legislation or regulations are effective.

***RCBA ONLINE CLE PROGRAMS PRESENT***

**ANOTHER CRITICAL UPDATE ON NEW YORK'S  
NEW DISCOVERY LAW**

**Wednesday, September 21, 2022  
12:30 P.M. - 1:30 P.M.**

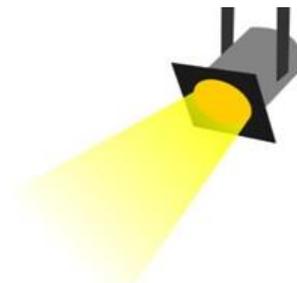
**WEBINAR VIA ZOOM**



## **SPOTLIGHT**

**On**

## **Derek Tarson**



The Committee on Diversity, Equity & Inclusion shines their spotlight this month on Derek Tarson, Deputy Director at the Legal Aid Society of Rockland County, Inc.

### **Did you always want to be a lawyer?**

No, not at all. When I graduated from Colby College, I wanted to be a teacher or a mathematician.

### **So, I take it you did not go to law school right after college?**

No, I worked as a math and science teacher in a private school in Brooklyn for two years. I knew that was not the right career for me, so I applied to graduate schools. I wound up getting a job in an office, and my life set off on a totally different trajectory.

### **What kind of office and how did that lead to law school?**

I became an office manager and ended up working for a process serving firm. I was working there for about six months when I knew that a law related career was the right fit for me, but I still did not imagine that I would be attending law school one day. Instead, I moved to Trenton, New Jersey and I opened my own process serving, court filing, and document retrieval firm. At its height, I had six employees. Eventually, I sold the operation to one of my clients. Then, I worked for a branch of their firm in New York for two years.

### **And then you went to law school?**

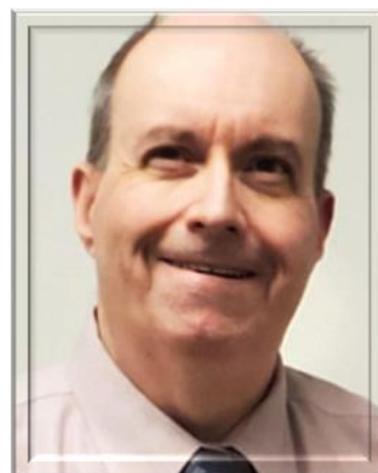
No. I got a job at the managing attorney's office at Debevoise & Plimpton. It was basically an in-house filing and records retrieval job. Then at the age of 38, I decided to apply and attend Rutgers Law School.

### **Did you continue working at Debevoise & Plimpton while attending law school?**

No, I was a full time student. I was considering going part time, but then I got advice from a blind date that I should go full time. He said that I would always wonder if I could have done better if I went full time. I never saw him again, but he definitely impacted my legal career.

### **Were you a summer associate at Debevoise & Plimpton?**

Yes. I think I'm the only person who ever worked in the managing attorney's office and returned as a summer associate. Then I was there for five years as a litigation associate in the insurance practice.



*Continued...*

**...Continued**

**When did you come to Legal Aid? How did that happen?**

It was 2010 and I saw the position at the Rockland County Legal Aid Society posted on some website. I found it through a Google search, I believe. I was ready to move on from big firm practice and the position at the Legal Aid Society gave me the opportunity to move back home to Rockland.

**So you grew up in Rockland?**

Yes, Rockland born and bred. I grew up in Nyack and graduated from Nyack High School, Class of 1980.

**Who or what is your biggest influence as a lawyer?**

Frank Askin and Penny Venetis, the professors at the Rutgers Constitutional Law Clinic, have had the most profound impact on my practice. I was in their clinic during my second and third year of law school. I actually found out about the clinic from an associate at Debevoise and Plimpton during my interview for my summer associate position. The associate was a Rutgers graduate and he was involved with the clinic at school and then at Debevoise (where they were co-counsel for the case I eventually worked on.).

**What case(s) did you work on in the clinic?**

I worked extensively on a case involving 9 detainees at an Elizabeth, NJ facility. The matter was active from 1997-2010. Among other things, there was a 7 week long federal jury trial. You can read some of the opinions if you search Jama v. Esmor Corr. Servs. The last part of the case resolved a few months after I started at Legal Aid.

**Best/worst part of your current job?**

The best part of my job is the satisfaction I get from helping people save their homes. I am also grateful that this job has allowed me to become an expert in foreclosure law. The worst part, of course, is when we cannot stop someone from losing their home.

**What do you love to do with your free time?**

Theater! I've been a member of Elmwood Playhouse in Nyack for 42 years. I am producing a Cole Porter review, "Night and Day" that will show at Elmwood from September 16th through October 8th. Tickets are only \$30! After that, I will be acting in a Sherlock Holmes mystery at Lyndhurst Mansion. In that show, the audience follows the cast around. And then I will be in a show called "Insignificant," which is about early female astronomers.

**What is the best advice that you have heard?**

Take every opportunity that is offered to you.

[September 2022]

COMMERCIAL LITIGATION ISSUES OF INTEREST

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

Your client, an attorney employed by a government department, tells you that her neighbor defamed and harassed her after your client's construction workers allegedly caused damage to the neighbor's property. The neighbor later sent an email to your client's work supervisor falsely alleging that your client unprofessionally called the neighbor a rat using the employer's email. The neighbor also spoke at a Village hearing in front of the Mayor, the Board of Trustees, and dozens of neighbors, accusing your client of cyber-bullying and harassment. The local police opened an investigation after the neighbor complained to them of your client's cyber bullying and harassment. You commenced an action for defamation, seeking \$300,000 for damage to your client's reputation and emotional distress. The neighbor moved to dismiss the action under New York's recently amended anti-SLAPP statute (Strategic Lawsuit Against Public Participation – Civil Rights Law §§ 70-a and 76-a). You argue that the new anti-SLAPP amendments do not apply because they were enacted after the action was commenced and because the neighbor's defamatory statements were a private dispute between neighbors and not a matter of public interest.

Will you defeat the motion to dismiss?

The answer is *no*.

In *Torres v. Marrero*, NYLJ 1660316330NY154253202, 22 N.Y. Slip Op. 32586 (Sup. Ct. N.Y. Co. August 2, 2022) (Index No. 15453/2020), Torres sued her neighbor, Marrero, for defamation and emotional harm. Torres, an attorney who worked for the NYC Department of Education, hired contractors to work on her property in Pelham. The contractors allegedly caused damage to Marrero's property. Torres sent a conciliatory email to Marrero, which Marrero allegedly "doctored" to falsely make it look like Torres called Marrero a "rat." Marrero sent the doctored email to Torres' work supervisor complaining that Torres sent the unprofessional email from Torres' work email, and asked for an investigation. Marrero also complained to the local police that Torres cyber-bullied and harassed her, resulting in an investigation. Those same complaints were repeated by Marrero at a Pelham Village public meeting attended by the Mayor, the Board of Trustees, and neighbors.

Torres commenced an action alleging libel and slander *per se*, seeking \$300,000 for damage to her reputation and for emotional harm. Marrero moved to dismiss the complaint arguing, among other things, that accusing Torres of cyber-bullying and harassment to the police and at a public hearing were protected speech, requiring dismissal under New York's anti-SLAPP laws (Civil Rights Law §§ 70-a and 76-a, effective November 10, 2020).

***Continued...***

**Continued...**

The Court reviewed the relevant provisions of the anti-SLAPP law, which applies to lawsuits based upon "any communication in a public place open to the public or a public forum in connection with an issue of public interest" or based upon "any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest . . . ." The term "public interest" should be "construed broadly, and shall mean any subject other than a purely private matter."

Unlike typical motions to dismiss, courts are empowered under the anti-SLAPP statute to consider facts and documents supported by affidavits by both parties. Once the defendant demonstrates that the lawsuit is based on free-speech conduct, the plaintiff must demonstrate that the claim has a "substantial basis in law" (CPLR 3211[g]). If the lawsuit is dismissed, the court *must* award the defendant attorneys' fees.

The Court ruled that the statute is retroactive and applies to actions pending when the law became effective, citing *Sackler v. Am. Broadcasting Companies, Inc.*, 71 Misc.3d 693, 695 (Sup. Ct. N.Y. Co., 2021). The Court rejected the plaintiff's claim that the matter was purely private, noting that the statute provides for "public interest" to be broadly construed.

In dismissing the action, the Court noted that the plaintiff's claims are general, and do not allege any specific statements made by the defendant. The Court opined, "If this Court allowed plaintiff to continue with this defamation action there would be a flood of litigation for defamation claims based on mere 'puffery,' or opinion."

*The lesson?* If your client is a defendant in a defamation action for making statements that are arguably of public interest and made in a public place or forum, make a motion to dismiss under the anti-SLAPP law. The plaintiff will be obliged to submit evidence to demonstrate the merits of the claim. If the action is dismissed, the court must award attorneys' fees and costs.

*Editor's note:* The Court of Appeals has not ruled on whether the anti-SLAPP statute is retroactive. While most cases rule that the statute is retroactive, one First Department case ruled that it is *not* retroactive. New legislation has been recently proposed to clarify that it is. Read the statute itself, and do not rely on the case discussed above for the statute's provisions. The case includes at least one incorrect statement of the statute's requirements.

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

# Technology Tips for Attorneys

submitted by

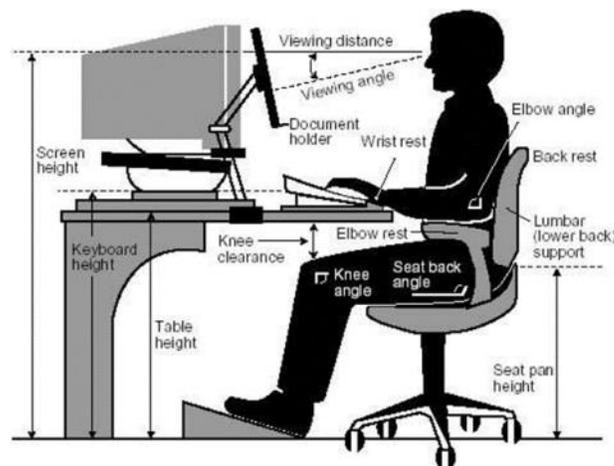
Michael Loewenberg\*

We spend too much time at our desks, sitting in front of our computer screens and doing desk work. Having an ergonomically correct workspace can be the difference between working comfortably and having neck, back, arm and hand pain. There is much written about physically-optimized workspaces. Let's review some easy things we can do to improve where we spend a lot of our time.

Here are some overall guidelines for setting up our desks and technical tools so we can sit/stand and work without pain and undue fatigue.

Chair – Your chair may be the most important component of your workspace setup. Make sure it supports your lower back and lets you set the correct height and angle for your arms. I got a new chair at my house during the Covid lockdown and it made a huge difference in how I felt at the end of those long days working remotely.

Desk – Your desk should have enough clear space so you can readily see and access the materials you need as your work. Having easy access to the things you need improves your efficiency but it's also important that you don't have to strain and reach for things as you do your work. If your desk is really crowded and cramped, take 15 minutes each morning and purge things you don't need. Within a couple of weeks, you should have a clean acceptable workspace on your desktop.



Standing desks - Standing is certainly better for your body than sitting and having a desk that allows you to stand in front of it can help your body feel better as you work throughout the day. Choose your standing desk carefully to ensure that it has the space necessary to accommodate all your equipment as it adjusts and that it also can easily change its height to meet your needs. Standing desks can have powered lift mechanisms (electric lifts, for example), hydraulic lifts or manual controls.

Computer Monitors – Your computer screens should be at eye level so you don't have to look down at them. Proper monitor height will save your neck and upper back. And if you do not have two monitors on your desktop, it's time to set that up! Most modern computers and laptops support two monitors and I promise you will love having two (unless you really want three!). Pro tip: If you wear glasses with progressive lenses, get a pair of glasses with a fixed distance to match the distance from your head to your screens. Your eyes will be much less tired at the end of the day because they won't have to work so hard using the progressive lenses.

For more information, check out this article in the New York Times “7 Things You Need for an Ergonomically Correct Workstation” <https://www.nytimes.com/wirecutter/blog/7-things-you-need-for-an-ergonomically-correct-workstation/>

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

**THE PRACTICE PAGE****Hon. Mark C. Dillon \*****REVISITING VENUE SELECTION**

There was an amendment to the venue-selection statute, CPLR 503(a), in 2017 (L.2017, ch. 366, sec. 1), which widened the venue selection options for plaintiffs. Previously, venue was to be placed in a county where any party resided at the time of an action's commencement, and if a party was a corporation, the county of its principal office (CPLR 503[c]). There are boutique exceptions to those general rules for the enforcement of contracts, municipal defendants, the location of real property for actions *in rem*, the location of contested personalty, and others (CPLR 501, 503[b], [d], [e], [f], 504, 506, 507, 508, Unconsol. Laws 7405).

The 2017 amendment to CPLR 503(a) expanded the venue choices to also include "the county in which a substantial part of the events or omissions giving rise to the claim occurred." The amendment primarily helps plaintiffs in choosing the most plaintiff-friendly venue possible. But the amendment has no real effect if the substantial events or omissions occur in a county where a party already resides.

Now that the amendment to CPLR 503(c) has been on the books for over five years, we can examine how the amendatory language has worked in practice. Does the statutory phrase "substantial part of the events or omissions" refer only to the situs of the liability, or potentially, to damages if elsewhere? If an injurious event occurs in one county but hospital and medical treatment is administered in another, may an action be commenced in the latter? If a defective product is manufactured in one county, sold in a second, and causes injury in a third, which county(ies) qualify for a "substantial part of the event"? In an earlier Practice Page, I predicted that the 2017 amendment allowed for ambiguities, and that the courts would be required to parse some of the new language's meaning.

One such case is *Harvard Steel Sales, LLC v Bain*, 188 AD3d 79 (4<sup>th</sup> Dep't. 2020). The plaintiff, of Cleveland, was in the business of selling galvanizing steel, and contracted for the galvanizing process to be performed by Galvstar, LLC, at a facility in Buffalo (Erie County). The defendant, Bain, was the principal of Galvstar and resided in New York County. The plaintiff's complaint sounded in fraud in the inducement, for Galvstar's alleged misrepresentation of its ability to galvanize steel meeting certain requirements. The defendant claimed the representations were made in Cleveland, while the defendant maintained in opposition that the parties' "meetings" were in Buffalo. Defendant Bain was the only named party with a residence in the state. The plaintiff commenced the action in Erie County and the defendant moved to change venue to New York County. The Appellate Division affirmed the change of venue to New York County, as the defendant's averments that specific representations were made in Cleveland were not necessarily contradicted by the plaintiff's opposition that non-specific "meetings" were held in Buffalo, as to qualify as a substantial part of the events for CPLR 503(c) venue there. The lesson from the case is the value of specificity.

In *Vereen v Flood*, 184 AD3d 758 (2<sup>nd</sup> Dep't. 2020), the plaintiff's decedent was admitted to a hospital for treatment in Orange County and then transferred to another hospital in Bronx County, where she died. The plaintiff's estate commenced an action against all of the medical providers in Bronx County, and certain Orange County defendants moved to change venue to Orange based on their residences. The plaintiff sought to retain venue in the Bronx based on that county being where a substantial part of the events or omissions occurred. The Appellate Division found insufficient evidence in the record for concluding where the substantial events or omissions occurred, and remitted the matter to the trial court for a framed-issue hearing. Again, the lesson of the case is the need for specificity in the papers.

The bottom line of these cases is that if a party is relying upon the substantial events prong of CPLR 503(c), the more evidentiary facts that can be presented on the issue by a party, the better for that party.

---

\* Mark C. Dillon is a Justice of 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.

## ***Odyssey, our Members' Literary Corner***

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

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

### FATHERHOOD

By Seth H. Schlanger

What can a father say  
to help to melt your tears away,  
to ease the blows of yesterday,  
and take you to tomorrow.

What can a father do  
to help to make your dreams come true,  
though some may fall as they will do,  
as you walk into tomorrow.

Doubts may linger in your mind  
and fear may find its mark in time,  
but somehow you will always find  
that ever-burning spark inside you.

What magic can I weave  
to stand by you as you achieve,  
to guide you on but not deceive,  
as you venture to tomorrow.

Why does a daffodil rise upon a yonder hill;  
by the grace of God and someone's will  
it grows into tomorrow.

Sometimes the world can seem quite wrong  
or that at times you don't belong;  
just face it squarely and be strong  
and march on to tomorrow.

The seasons change their course and go  
and fly about you to and fro,  
but may you somehow always know  
I'll never be away from you.

Wonders of the world behold  
that I shall never be too old  
to ever be there as you grow  
and face your new tomorrows.

## **IT'S DUES TIME!**

This is a friendly reminder that it is time to pay your 2022-23 RCBA Membership Dues. Annual Dues for 2022-23 for regular Members are \$185.00.

Renew and pay online or send in the Renewal Form with your check. After October 15, 2022 the dues amount increases to \$200.00!

If you have any questions about your Membership, please contact Rachael Candoni, Program Coordinator, at [rachael@rocklandbar.org](mailto:rachael@rocklandbar.org), or call Rachael at 845-634-2149.

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A logo for the 2022 RCBA Lawyer Referral Service. It features a green starburst with the text "still not a member? JOIN NOW!" inside. Below the starburst is a green scale of justice icon. To the right of the icon, the text "2022 RCBA" is in red, "Lawyer" is in large blue font, and "REFERRAL SERVICE" is in smaller blue font below it.

A graphic of a storefront for the "RCBA STORE". The sign above the entrance says "RCBA STORE". Above that, it says "VISIT US ONLINE". Below the storefront, it says "OPEN FOR BUSINESS". There is a "Click here" link pointing to the store.

**MEMO**

**TO ALL RCBA COMMITTEE CHAIRS & VICE – CHAIRS**

The Association is seeking articles from your committee for publication in the Bar's monthly Newsletter. The membership would greatly benefit from your input and would appreciate it. The article does not have to be complicated or long- a succinct piece of general interest and importance would be best.

If you are able to submit an article for the Newsletter it should be sent via email to [rachael@rocklandbar.org](mailto:rachael@rocklandbar.org) by the 15th of the month so that the Executive Board may review it.

Thank you!



## CLE CORNER

### PLAN YOUR YEAR OF CLEs NOW!

2022 CLE TITLE	DATE & TIME
Another Critical Update on New York's New Discovery Law	September 21, 2022 12:30 p.m.—1:30 p.m.

#### NEW CLE REQUIREMENT

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

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

#### CLE REQUIREMENTS

Newly admitted attorneys must complete 32 credit hours of accredited “transitional” education within the first two years of admission to the Bar. Sixteen (16) credit hours must be completed in each of the first two years of admission to the Bar as follows: 3 hours of Ethics and Professionalism; 6 hours of Skills; 7 hours of Practice Management and/or areas of Professional Practice.

Experienced Attorneys must complete 24 credit hours of CLE during each biennial reporting cycle: 4 credit hours must be in Ethics and Professionalism. The other credit hours may be a combination of the following categories: Ethics and Professionalism, Skills, Practice Management or Professional Practice.

#### FINANCIAL HARDSHIP POLICY:

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

# COMMITTEE CORNER

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

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



**ANNOUNCEMENT FROM THE RCBA REAL ESTATE COMMITTEE**

*Please be advised, that after many months of work and coordination between the RCBA, the Real Estate Committee, its Co-Chairs and Members; we are pleased to announce that the RCBA Real Estate Committee has created, voted-on and Approved an updated Real Estate Contract for the first time in Decades!*

*Co-Chairs Jeff Yanowitz and David Ascher took notes and comments from the Real Estate Committee members over many months to provide this updated Contract to the entire RCBA! We look forward to utilizing this Contract throughout Rockland County and providing a more modern and stream-lined approach to Real Estate Transactions for us all.*

Please find two updated contracts (single family home and condominium) on our RCBA website at [www.rocklandbar.org](http://www.rocklandbar.org). Scroll down to the bottom of the homepage and find links under “Helpful Links.”

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If anyone knows the whereabouts of Anthony (Tony) Occhipinti's files, please contact Manuela at the Bar Association. Anthony passed away in 2017.  
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