

**BOARD OF DIRECTORS**  
**IRA S. SCHOEPS**  
President

**ROBERT L. FELLOWS**  
Vice President

**LAURA M. CATINA**  
Treasurer

**LAURIE A. DORSAINVIL**  
Secretary

**DIRECTORS**

**RICKI H. BERGER**  
**ANDREA F. COMPOSTO**  
**RICHARD A. GLICKEL**

**EDWARD KALLEN**  
**KEITH I. BRAUNFOTEL**  
**CHRISTOPHER J. EXIAS**

**AIIMEE POLLAK**  
**ROBERT L. PITKOFKY**  
**HERNAN CACERES**  
**MARC J. ACKERMAN**  
**AMY M. MARA**  
**BRIDGET GAUNTLETT**  
**ALICIA B. CEMBER**  
**LEONARD J. BIRBROWER**

**EXECUTIVE DIRECTOR**  
**NANCY LOW-HOGAN, Ph.D.**

**Inside this issue:**  
**President Post**  
Page 1

**Technology Tips for Attorneys**  
Page 2

**Law Day Flyer**  
Page 3

**RCBA Nominations and Mem-**  
**bership Drive**

Page 4

**FREE Surrogate's Court E-**  
**Filing Training**

Pages 5-6

**Yom Haschoa 2022**

Page 7

**Online Membership Directory**  
Page 8

**Spotlight and Spring Events**  
Pages 9-11

**Commercial Litigation**  
**Issues of Interest**  
Pages 12-13

**The Practice Page**  
Pages 14-15

**CLE, Committee**  
**Corner & Classified Ads**  
Pages 16-24

**Manuela Gomez,**  
Editor

# ROCKLAND COUNTY BAR ASSOCIATION

## NEWSBRIEF

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

April 2022

### President's Post

**Happy Spring to one and all. As the temperature warms up, the flowers start to bloom and the umpires shout "play ball," it is time to get out and get re-acquainted with our friends and colleagues in the legal community. There will be several opportunities coming up.**

**First, don't forget about Law Day. This year's event will be live and in person at the Courthouse on Friday April 29th at 9:30 AM. Law Day is always a wonderful celebration of the freedoms we enjoy. Please join us for this timeless tradition.**

**Next, we have arranged a Spring cocktail hour on May 12th at Growler and Gill in Nanuet. We have had several happy hours at this venue in the past, they have always proven to be fun and entertaining. Please join us for some tasty micro brews, delicious appetizers and few laughs. The event will be indoors with outdoor space on their patio so there will be plenty of fresh air. Our 2021-22 New Members will be our special guests.**

**Our annual Installation Dinner is set for June 23, 2022. This year the event will be outside in the fresh air at the beautiful Woodmont Day Camp in New City. We will install our new officers, bestow some well-deserved annual awards and honors, enjoy one another's company - and enjoy delicious food and drink. It promises to be a memorable evening and I hope to see you all there.**

**Finally, I have had the pleasure of attending a few of the Practitioners Chats that our Association has sponsored on Zoom. These sessions provide a wonderful opportunity for our members to have access to Judges, Elected Officials, Court Personnel and many others. In recent months the Chats have included guests like Hon. Teresa Kenny (Orangetown Town Supervisor), Hon. Leslie Kahn (Clarkstown Town Justice) and Tom Morrissey (Rockland County Court Chief Clerk). These programs are FREE and take place once a month during lunch hour. Best of all you only need to Zoom in and participate at your computer. I urge you all to take part in these informative and provocative Chats.**

**I hope to see you all soon at these wonderful events.**

**Ira S. Schoeps**  
President

## **Technology Tips for Attorneys**

**submitted by**

**Michael Loewenberg\***

So many things in the business technology landscape have changed. One thing that I think will remain a constant is that online meetings will continue to be the go-to way for people to communicate, even as the pandemic wanes into the new normal: Work from Home will remain prevalent, online meetings help reduce wasted time and travel costs and we've learned that we can get stuff done in brief, online meetings. For attorneys, that means client meetings, court appearances, business transactions, closings, and more will happen using an online platform.

It might be time to take a hard look at your online meeting equipment with an eye toward upgrading to improve your remote meeting experience. These suggestions are appropriate, independent of the online meeting platform you use: Teams, Meet, Zoom, WhatsApp, Facebook Messenger, Telegram Signal, Skype, FreeConferenceCall, Viber et. al.

### Microphone

The key to having the best online meeting experience is good quality audio. We've all heard people in meetings with lousy audio and it's a meeting killer: if those in your meeting can't clearly understand what you're saying, your effectiveness goes way down and the meeting is a waste of time. If you use the built-in microphone in your camera or the built-in microphone in your laptop for your online meetings, consider buying a stand-alone, external microphone. It makes a huge difference in your audio quality so people in your meeting can hear you when you talk. An inexpensive microphone is the Jounivo USB Microphone JV603 that's less than \$20 on Amazon. For even better audio, look at the Blue Yeti USB Microphone for \$100 on Amazon - it's bigger on your desk but the excellent audio is worth it. (side benefit - the mic is great for dictating on your computer and recording screencasts and podcasts). I have a Blue Yeti on my desk and I think it's great.

### Camera

If you're using a laptop for your meetings, your camera is likely sufficient for online meetings. If your laptop is older (3+ years old) however, a new, external camera could improve the way you look in online meetings. If your external camera on your computer is more than 3 years old, it might make sense to get a new camera so you can take advantage of the custom backgrounds and filters in many online meeting programs. For your new external camera, at a minimum, get one with 1080p HD; for example, look at the Nexigo N60 on Amazon for \$40. While not as critical as audio in impacting meeting effectiveness, a poor, blurry camera also detracts from your online presence in a meeting.

### Speakers

If you have trouble understanding what people say in online meetings, a new pair of speakers might help. You can get Amazon Basics USB speakers for \$20 and they sound great. Also consider wireless headphones that connect to your computer via Bluetooth. AirPods are excellent as 'speakers' and microphone if you're on an Apple device.

Since many of us will continue to meet remotely for the foreseeable future, it makes sense to have the most effective infrastructure possible so that the people you meet with can understand and see you and you can hear what they have to say. Shoring up your microphone, camera and speakers is a low-cost way to ensure your online meetings continue to be the best use of your time.

Stay safe!

---

\*Michael Loewenberg is the President of MESH Business Solutions, Inc., New City, NY, 10956 and he is also an Affiliate Member of the RCBA.  
April 2022



**Friday, April 29, 2022**

**9:30 a.m. - 11:30 a.m.**

**Rockland County Court House  
Jury Assembly Room - 2nd Floor**

**Save the date!**

*Light refreshments will be served*

### **The Constitution in Times of Change**

The Constitution is a dynamic document, as it not only outlines a blueprint for government, but also delegates power, articulates rights, and offers mechanisms for change. It is neither perfect, nor exhaustive, as our nation's history makes clear. Legislation, court rulings, amendments, lawyers, and "we the people" have built upon those original words across generations to attempt to make the "more perfect Union" more real. That effort continues today, as contemporary leaders and everyday citizens raise their voices as loud as ever to fulfill the promise of the Constitution. Defining and refining those words of the Constitution might be our oldest national tradition, and how each of us works—together—toward a more perfect Union.



## **NOTICE OF NOMINATIONS FOR THE 2022/23 BOARD OF DIRECTORS FOR THE ROCKLAND COUNTY BAR ASSOCIATION**

**Pursuant to Article V, Section 9 of the By Laws of the Rockland  
County Bar Association, the following candidates have been nominat-  
ed for election to the Board:**

**Leonard J. Birbrower – 3 year term  
Hernan Caceres – 3 year term  
Laura M. Catina – 3 year term  
Nicole DiGiacomo – 3 year term  
Laurie A. Dorsainvil – 3 year term  
Robert L. Pitkofsky – 3 year term**

**RCBA 2022-23 MEMBERSHIP DRIVE!**

**ATTENTION NEW MEMBERS!**

**GET 15 MONTHS OF MEMBERSHIP FOR THE PRICE OF 12!**

**START YOUR MEMBERSHIP NOW AND HAVE APRIL, MAY AND JUNE 2022 IN-  
CLUDED WITH YOUR 2022-23 MEMBERSHIP (JULY 1, 2022-JUNE 30, 2023)**

**DOWNLOAD A MEMBERSHIP APPLICATION FROM THE RCBA WEBSITE  
( [ROCKLANDBAR.ORG](http://ROCKLANDBAR.ORG) )**

**JOIN TODAY AND START ENJOYING THE BENEFITS OF RCBA MEMBER-  
SHIP!**

***\*CLE's\*Lawyer Referral Service\*Practitioners Chats\****

***\*E-Newsletter\*Rockland Bar CARES\****

***Current Members: Tell Your Friends!***



**To: Attorneys, professional staff & interested parties**

**ATTEND FREE SURROGATE'S COURT**

**E-FILING TRAINING\***

**10:00am - 12:00pm**

**March 17, 2022**

**April 14, 2022**

**May 19, 2022**

**June 16, 2022**

**July 14, 2022**

**August 18, 2022**

**Where: Virtual - on-line via Microsoft Teams**

Attend the free e-filing training in which the NYSCEF Resource Center staff will guide you through your first Surrogate' Court filing, review court rules, and provide helpful tips to avoid pitfalls and achieve success. Attorneys can receive 2 (free) CLE credits.

**PRE-REGISTRATION IS REQUIRED**

\*NYSCEF training classes provide 2.0 FREE Continuing Legal Education (CLE) credit hours. (1.0 credit in Professional Practice and 1.0 credit in Law Practice Management).

To register go to [www.nycourts.gov/efile](http://www.nycourts.gov/efile) and click on the register for training link.





**To: Attorneys, professional staff & interested parties**

**ATTEND FREE SUPREME COURT**

**E-FILING TRAINING\***

**10:30am - 12:30pm**

**March 16, 2022**

**April 13, 2022**

**May 18, 2022**

**June 15, 2022**

**July 13, 2022**

**August 17, 2022**

**Where: Virtual - on-line via Microsoft Teams**

Attend the free e-filing training in which the NYSCEF Resource Center staff will guide you through your first Supreme Court filing, review court rules, and provide helpful tips to avoid pitfalls and achieve success. Attorneys can receive 2 (free) CLE credits.

**PRE-REGISTRATION IS REQUIRED**

\*NYSCEF training classes provide 2.0 FREE Continuing Legal Education (CLE) credit hours. (1.0 credit in Professional Practice and 1.0 credit in Law Practice Management).

To register go to [www.nycourts.gov/efile](http://www.nycourts.gov/efile) and click on the register for training link.

JUSTICE BRANDEIS LAW SOCIETY 9TH JUDICIAL DISTRICT  
IN COOPERATION WITH THE  
HOLOCAUST MUSEUM & CENTER FOR TOLERANCE AND EDUCATION

# YOM HASHOAH 2022

## AT THE COURTHOUSE

THOSE WHO STOOD UP AND THOSE WHO WILL STAND UP

Chairperson: Paul Adler Esq.

**April 28, 2022 | 2-3PM**

Rockland County Courthouse  
1 S Main St, New City, NY 10956

PROOF OF VACCINATION REQUIRED

For more information and to RSVP  
please contact [Holoctrcc@gmail.com](mailto:Holoctrcc@gmail.com) or 845-574-4099

**Holocaust Museum**  
& Center for Tolerance and Education



## Introducing Our New Online Membership Directory

Dear Colleagues,

The Lawyer to Lawyer Committee of the Rockland County Bar Association is happy to present RCBA Members with access to a brand new Online Membership Directory!

The Online Membership Directory is meant to foster greater collaboration and cooperation amongst RCBA Members. It will meet that goal by providing RCBA Members' contact information by alphabetical listing and by Practice Area.

RCBA Members can search for fellow Members in their Practice Area to confer on issues. RCBA Members can also more easily refer business to fellow RCBA Members. For example, a real estate attorney wishing to refer a client with a matrimonial matter to a matrimonial attorney can quickly pull up the Online Membership Directory, search for matrimonial attorneys by Practice Area and reach out to those RCBA Members directly. The Online Membership Directory is completely private and only accessible to RCBA Members as an attendant benefit of RCBA membership.

RCBA Members can self-edit their profile to correct address, email or contact numbers which may have changed since their membership application/renewal.

- To edit your profile: log-in to our website: [www.rocklandbar.org](http://www.rocklandbar.org). Once you log-in, click "Update Profile" located in the upper right corner. Demographic information can be updated, including name, email, telephone and address.
- Please note: changes you submit are not automatic; they may take a few days to process.

Prospectively, RCBA Members will be offered the opportunity to include additional Practice Areas, merit/professional awards/recognition in their Member profile. Additionally, Member headshots, coordinated by the RCBA, will be added. Truly, RCBA Members will be able to put a face to a name!

With best regards,

The Bar Association





# SPOTLIGHT



on

**Mary Lynn Nicolas-Brewster, Esq.**

Welcome to “Spotlight” – the new column by the Diversity Committee! Each month, we will select a member of the Rockland County Bar Association to interview so we can all get to know each other a bit better. This month we had the honor and privilege to interview Mary Lynn Nicolas-Brewster, the Executive Director of the Franklin H. Williams Judicial Commission!

## **Where is your hometown?**

I am of Haitian descent. My parents immigrated to the United States from Haiti in the 1960s. I was born in Brooklyn and then my family moved to Rockland County, where I was raised. I currently live in Rockland County, a few blocks from where I grew up. I have two wonderful sons, who are both high school students.

## **Where did you go to school/college/law school?**

I attended a Catholic primary school and then attended Clarkstown South High School. I hold a Bachelor of Arts degree in Literature from Binghamton University and a juris doctor from New York University School of Law. I am admitted to practice law in both New York and New Jersey. I am a founding member of the Black Bar Association of Rockland County and a member of the Rockland County Bar Association and the Westchester Black Bar Association. I am also a member of Alpha Kappa Alpha Sorority, Inc., the first intercollegiate historically African American sorority, founded at Howard University in January 1908, and a member of the National Sorority of Phi Delta Kappa, Inc., a national organization of women educators. I am currently also the President of the Rockland Orange Chapter of Jack and Jill of America, Inc., a national organization of mothers dedicated to raising the next generation of African American leaders while enhancing the lives of all children.



## **What is your occupation?**

I currently serve as Executive Director of the Franklin H. Williams Judicial Commission, the first court-based commission in the country whose mission is to ensure racial and ethnic fairness within the court system and legal community. In keeping with the legacy of its namesake, Franklin H. Williams, the Williams Commission has served as a beacon of racial equity and justice to the legal profession and the community alike. The Williams Commission has been at the forefront in addressing systemic racism and bias in the New York State Courts and ensuring that the judiciary and the court workforce is more diverse and inclusive. The mission of the Williams Commission is to promote full and equal participation and inclusion in the legal profession and in the court system. The Commission is comprised of judges, attorneys, court administrators and private practice attorneys appointed by the Chief Judge of the state of New York. As Executive Director, I supervise a staff of attorneys and administrators and work with the Commission to address issues of diversity, equity and inclusion in the courts through programming for judges, court personnel and the legal community. The Williams Commission also consistently meets and collaborates with legislators, court leaders, bar associations and community organizations to bring awareness to these important issues and to execute initiatives that promote our mission. Visit our website at [www.nycourts.gov/FHW](http://www.nycourts.gov/FHW) to learn more about the important work of the Williams Commission.

## **What has been your career path?**

Upon graduating from NYU Law School, I served as Staff Attorney with the United States Court of Appeals for the Second Circuit. Thereafter, I served as Senior Appellate Court Attorney for the New York State Appellate Division, Second Judicial Department; Assistant Solicitor General for the New York State Attorney General's Office; and Associate County Attorney for the Westchester County Law Department. Prior to my current position, I served as Court Attorney-Referee for the New York State Supreme Court, Ninth Judicial District, and was the first Black attorney to serve in that position in Rockland County. I have also served as Village Justice of the Village of Spring Valley. I am currently a member of the adjunct faculty at SUNY-Rockland Community College in the Legal Studies Department.

## **What is your favorite thing about Rockland?**

### **How did you get here?**

I have achieved my accomplishments through the grace of God. I am very blessed. Throughout my career, I have seen the opportunities and the path which God has laid before me. I am grateful for that. Additionally, I would not be where I am today without my amazing parents. Both arrived in the United States in the 1960s with simply each other and a dream of a better life for themselves and their children. They had to learn a new language, adapt to a new culture, find employment, and establish roots in a foreign land. However, they always stayed true to their mission which was to ensure that their children achieved their greatest potential. They always instilled in me and my brother the importance of education and social justice. They were always very supportive of my goal of becoming an attorney. My parents' sacrifices and their sheer determination and grit inspire me every day to be the very best in all that I do. It is my parents' emphasis on excellence in all that I do that remains my compass on my path to success.

### **Who is your inspiration/hero?**

My heroes are Judge Ketanji Brown Jackson and Judge Shirley Troutman, both brilliant and well-qualified judges. Judge Ketanji Brown Jackson, when confirmed, will be the first Black woman to serve on the United States Supreme Court in its 233-year history. Judge Shirley Troutman was confirmed this past January to this State's highest court and is only the second Black woman to serve as an Associate Judge of the New York Court of Appeals in its over 175-year history. Senator Cory Booker said it best. They are our country's "harbinger of hope." Our judiciary should reflect the rich diversity of this country. The decisions from the courts are better when there is a diversity and breadth of perspectives. Our country is better when it lives up to its promises of justice and equality for all.

### **What good advice have you received?**

"To whom much is given, much is required." My parents would often quote this Bible verse and impress upon me the importance of not only giving back but holding open the door and reaching back to bring someone through that door so they too can succeed and achieve their fullest potential.

### **Favorite TV or streaming show or book?**

My favorite TV show is *Elementary*. I love watching reruns of this television series that presented a contemporary update of the character Sherlock Holmes.

### **What is your guilty pleasure?**

I love strawberry cheesecake!! But I also love seeing the fruits of the Williams Commission's efforts to serve as a pipeline for students of color to the legal profession and attorneys of color to the judiciary. Since the summer of 2020, the Williams Commission has paired over 125 attorneys with judicial mentors. In the last year, the Williams Commission has seen fourteen of its judicial mentees ascend to the bench, creating a more diverse judiciary. Recently, the Williams Commission, along with WNED PBS (Buffalo), announced the launch of digital curriculum resources for middle school through high school educators and students to complement the award-winning documentary, *"A Bridge to Justice: The Life of Franklin H. Williams,"* examining the life of Ambassador Williams, a trailblazing attorney, civil rights leader and Commission's namesake. In addition to lesson plans, WNED PBS created a discussion guide to educate middle and high school students and community members about Franklin Williams' lifelong pursuit of equal justice, including his impact as the first chair of this State's judicial commission dedicated to racial and ethnic fairness. The curriculum resources are designed to encourage young people's civic participation and spur their interest in the law, including careers in the law and the courts, and in the pursuit of equal justice. View the documentary and curriculum resources [here](#).

### **Is there anything we didn't cover that you would like the bar association to know about you?**

I was born about two weeks after Rev. Dr. Martin Luther King, Jr., was assassinated, and throughout my childhood I knew and felt the impact that he, Thurgood Marshall, Rosa Parks, Constance Baker Motley, Franklin H. Williams and others like them had on my life, and the opportunities that I was being afforded. I wanted to follow in their footsteps in the quest for social justice. I am committed to working on issues of diversity, equity, inclusion and justice and I am grateful to now serve in a position where I can do so and make an impact. Ambassador Franklin H. Williams put our charge simply. He said, "We must not stop now. We have come too far to turn back. A nation that has progressed beyond the sweat and blood of thousands of Blacks; a nation that first tolerated slavery, then outlawed it; that accepted separate but equal as a valid Constitutional concept, then rejected it; a nation that has slowly, painfully, tragically evolved...a nation that has come so far, must not now give up the struggle to rid itself of racism." This fight is a worthy one, which must be continued with determination and hope, knowing that justice will ultimately prevail. Rev. Dr. Martin Luther King, Jr., reminded us that "[t]he arc of the moral universe is long, but it bends toward justice." Real change and progress require all our combined efforts to bend the arc towards inclusion and equity and ultimate triumph. I am honored to be part of the charge and to follow in the footsteps of the distinguished Franklin H. Williams as the Commission that proudly bears his name continues as an agent for change in the courts.

**COMING THIS SPRING!**

~

**SPRING HAPPY HOUR**

**GROWLER AND GILL, NANUET, NY**

**THURSDAY, MAY 12, 2022**

**5:30-7:30PM**

**Special Guests: Our New Members  
(indoors and outdoor patio)**

---

**INSTALLATION DINNER**

**INDUCTION OF NEW OFFICERS**

**+**

**AWARDS**

**THURSDAY, JUNE 23, 2022**

**5:00-8PM**

**Outdoors at beautiful Woodmont Day Camp, New  
City, NY**



[April 2022]

COMMERCIAL LITIGATION ISSUES OF INTEREST

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

Your client owns real property on Long Island in the Hamptons. During a 10-year romance, your client's boyfriend paid to build a home on your client's property. When the relationship ended, your client told the boyfriend that the house belongs to her as "palimony." The boyfriend then commenced an action for breach of an oral agreement giving him an interest in the property, and, alternatively, for unjust enrichment. At trial, the former boyfriend testified that the two orally agreed that he would pay to build a home on her property and they each would have an interest in the property based on their respective contributions. However, he conceded that they never discussed her paying him back if they broke up. The jury found that there was no oral contract but awarded the former boyfriend \$2.5 million dollars for unjust enrichment, based on his detailed records of his expenditures. You moved to set aside the verdict as contrary to the jury instructions, which included, in part, "If you decide that the plaintiff did not have a reasonable expectation of being repaid for the expenditures for the construction of the house, then you will find for the defendant."

Will you win the motion to set aside the verdict?

The answer is "no."

In *Swift v. Rappaport*, NYLJ March 15, 2022, case no. 3140/2012 (Sup. Ct. Suffolk Co. March 4, 2022), Swift and Rappaport had a romantic relationship beginning in 2000 for ten years. During the time they were engaged from 2002 until 2010, Swift paid to construct a home on property owned by Rappaport and her mother in the Hamptons. In 2010, the relationship ended, and Rappaport claimed the home as "palimony." Swift commenced an action for, among other things, breach of their oral agreement for Swift to have an interest in the property based on his contributions, or, in the alternative, for unjust enrichment. Swift kept extensive detailed records of his expenditures, which he testified he kept in order to support his interest in the property. Swift conceded that they never discussed him being paid back for his construction costs.

The jury found that there was no oral agreement but found that Rappaport and her mother were unjustly enriched, and awarded Swift over \$2.5 million, based on Swift's undisputed records of construction costs between 2002 and 2010. In addition, the Court awarded prejudgment interest of over \$3.6 million, pursuant to CPLR 5001(a).

After the verdict, the Rappaports moved, among other things, for a determination that Swift was not entitled to prejudgment interest on the unjust enrichment claim, and to set aside the verdict as inconsistent with the unjust enrichment charge. They argued that prejudgment interest was not a matter of right on an equitable claim and that the verdict was contrary to the jury instruction, which included, "If you decide that the plaintiff did not have a reasonable expectation of being repaid for the expenditures for the construction of the house, then you will find for the defendants."

The Court noted that a jury verdict may be set aside as a matter of law only when the trial court determines that, upon the evidence presented, there is "no rational process by which the jury could find in favor of the nonmoving party," citing *Stancati v. Gunzburg*, 159 A.D.3d 1011 (2d Dep't 2018).

Although the evidence was undisputed that the parties never discussed repaying Swift for his expenditures, the Court found that there was ample evidence consistent with the entire jury charge on unjust enrichment, specifically one portion of the charge – “If however you decide that it would be unjust for the defendants to retain the house on the property, based on plaintiff’s contributions to the property you will find that the defendants are liable to the plaintiff, and you will go on to consider the value of the benefit that the defendants or either defendant obtained.”

The Court upheld prejudgment interest as a matter of right under CPLR 5001(a), reasoning that a claim for unjust enrichment is a claim in quasi-contract, entitling Swift to prejudgment interest, as held by three of New York’s four Appellate Divisions and discussed in *Stillman v. InService Am., Inc.*, 455 Fed. Appx. 48, 51 (2d Cir. 2012). The Court rejected a contrary Third Department case, *Precision Founds v. Ives*, 4 A.D.3d 589, 593 (3d Dep’t 2004), which held that prejudgment interest on a quantum meruit claim is discretionary. The Court noted that the 2d Circuit in *Stillman* opined that “we are not persuaded that the New York Court of Appeals would reach that same conclusion” as reached in *Precision*.

*The lesson?* Business dealings with romantic partners and family are best memorialized in a writing that clearly states the parties’ understandings. Although reducing the agreement to a writing may be difficult in such circumstances that is far better than leaving it to a judge or jury to decide what was agreed to and what is fair and reasonable after the relationship deteriorates.

\*By Joseph Churgin, Esq. and Susan Cooper, Esq. of

SAVAD CHURGIN, LLP, Attorneys at Law

## High School Mock Trial Tournament Winner!

**Clarkstown North and Nyack High Schools faced off on April 4, 2022 in the Final Round of the 2022 Rockland County Mock Trial Tournament before presiding judge Hon. Paul I. Marx, J.S.C.**

**The teams were well matched and they performed exceptionally! All of the students reflected their excellent preparation and outstanding coaching by their faculty coaches and attorney advisors.**

**Nyack High School was named the winning team. They will advance to the Regionals, which will be hosted by the Westchester County Bar Association beginning the week of April 25, 2022.**

**The Nyack High School team will receive a trophy at the Law Day ceremony on April 29, 2022.**

**The Mock Trial Committee congratulates Nyack High School on its victory and all of the nine high schools that participated in the 2022 Rockland County Mock Trial Tournament! It has been a joy and a privilege to work with all of the students, faculty coaches and attorney advisors who dedicated themselves to this wonderful program!**

**RCBA Mock Trial Committee**

**THE PRACTICE PAGE****ASSUMPTION OF THE RISK**

Hon. Mark C. Dillon \*

A new sports season is upon us, raising the connection between baseball practice on the fields and New York Practice in the courts.

Until 1975, a plaintiff's assumption of risk was a bar to the recovery of damages. CPLR 1411, effective on September 1, 1975, directed that in actions for personal injury, injury to property, or wrongful death, the plaintiff's assumption of risk no longer barred the recovery of damages, but merely diminished the damages proportionally in relation to all culpable conduct. The statute was part of the legislative reforms triggered at that time after the 1972 Court of Appeals' decision in *Dole v Dow Chemical Co.*, which collectively transitioned New York to the pure comparative negligence state we know today.

Notwithstanding the broadly-worded language of CPLR 1411, assumption of the risk continues to bar the recovery of damages in many actions involving sporting and recreational activities. That bar is a creature of decisional law, not statute. The reason given by the Court of Appeals for this carve-out from the general rule is that "by freely assuming a known risk, a plaintiff commensurately negates any duty on the part of the defendant to safeguard him or her from the risk." In other words, a property owner's duty that would otherwise exist is limited by the plaintiff's prior implied consent to engage in activities that have known and inherent risks. In that sense, sports-related assumption of the risk is not so much a defense based on the nature of the particular plaintiff's conduct, but on the suspension of any duty owed by the defendant toward the plaintiff when the conduct is undertaken.

"Primary" assumption of the risk applies in the classic context of sporting events. A baseball player who is injured by tripping on the bag at second base has consented to that risk, as it is comprehended or obvious at all times, and is implicitly assumed by the athlete's election to play in the game at the outset. Spectators assume the risk of being struck and injured by foul baseballs, subject to the defendant's compliance with screening regulations. A football player

---

<sup>1</sup> 30 NY2d 143.

<sup>2</sup> *Trupia v Lake George Cent. School Dist.*, 14 NY3d 392.

<sup>3</sup> *Turcotte v Fell*, 68 NY2d 432.

<sup>4</sup> *Morgan v State of New York*, 90 NY2d 471.

<sup>5</sup> *Akins v Glens Falls City School Dist.*, 53 NY2d 325.

assumes the risk that there may be natural bumpiness to the ground. The property owner's duty is to merely make conditions as safe as they appear to be for the sporting purpose intended to be conducted there. These principles are applied universally to all sporting and recreational activities, including hockey, basketball, soccer, skiing, ice skating, canoeing, gymnastics, and even skydiving where there is an assumed risk that the parachute may fail to open.



The owners and operators of sports facilities may still be liable for injuries where the conditions caused by their own negligence are “unique and create[ ] a dangerous condition over and above the usual dangers that are inherent in the sport.” Those unique conditions must themselves be actually or constructively known to the defendant, and must be assessed against the background and skill of the particular plaintiff. Thus, a defendant whose negligent maintenance of a playing facility creates risks and conditions that are not ordinarily associated with the sporting activity, or which are latent, may be found liable despite the athlete’s decision to play there.

Outside the context of sporting or recreational activities, plaintiffs’ general risk-assuming conduct is treated as a factor of comparative negligence which does not bar the recovery of damages, but which proportionally reduces the damages in relation to the percentage of negligence assessed to all parties culpable.

Will see you at Yankee stadium ...unless you are scheduled to be in court. Do not conduct a virtual court conference from your laptop while behind the dugout, as that assumes a much different kind of risk.

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

---

<sup>6</sup> *Ninivaggi v County of Nassau*, 177 AD3d 981.

<sup>7</sup> *Turcotte v Fell*, 68 NY2d at 439.

<sup>8</sup> *Nutley v SkyDive the Ranch*, 65 AD3d 443.

<sup>9</sup> *Owen v R.J.S. Safety Equip.*, 79 NY2d 967.

<sup>10</sup> *Maddox v City of New York*, 66 NY2d 270.

<sup>11</sup> E.g. *Wyzykowski v State of New York*, 162 AD3d 1705; *Herman v Lifeplex, LLC*, 106 AD3d 1050.

<sup>12</sup> CPLR 1411.

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



### 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."

### Bank Statement:

Know the  
**ECONOMIC CLIMATE**  
and the  
**BUSINESS OF LAW.**



Where the brightest bankers live.



**Joseph A. Ruhl**  
Regional President Westchester County



**914-422-3100**  
**orangebanktrust.com**



Trusts, securities, and insurance products are not FDIC insured or insured by any Federal Government entity. Not bank guaranteed. Not a deposit. May lose value. \*Investment management services provided by our affiliate, Hudson Valley Investment Advisors, Inc., a wholly-owned subsidiary of Orange County Bancorp, Inc.



Introducing...

# ODYSSEY

## OUR NEW MEMBERS' LITERARY CORNER

We hope to publish a literary piece, written by one of our Members, each month in *Newsbrief*. Please email your submission in a Word document to: [office@rocklandbar.org](mailto:office@rocklandbar.org)

**WE WANT TO HEAR FROM YOU!**

**We've all had a tough year.**

**Introducing...**

**20% discount**

**on all ads**

**in *Newsbrief*.**

**Book your ad now**

**and get 20% off through 2022.**

**Call or email Manuela for ad size and price details:**

**[manuela@rocklandbar.org](mailto:manuela@rocklandbar.org), or call 845-634-2149**

**Ad deadline: 1<sup>st</sup> of each month.**



The Law Offices of

**Allen A. Kolber, Esq.**

134 Route 59  
Suffern, NY 10901

Tel: 845-918-1277  
email: [akolber@kolberlegal.com](mailto:akolber@kolberlegal.com)  
[www.KolberLegal.com](http://www.KolberLegal.com)

- Bankruptcy Law and Litigation
- Chapters 7, 13, and Corporate Chapter 11
- Representing Debtors and Creditors

Over 30 Years Experience

**Blue Horizon**  
**TRANSCRIPTION SERVICE**

Accurate ■ Professional ■ Fast ■ Confidential  
845-634-1149 | [wordproc1@juno.com](mailto:wordproc1@juno.com)

We convert audio recordings to text. All audio formats transcribed.

<b>Legal:</b>	<b>Corporate:</b>	<b>Medical:</b>
Court Hearings,	Meetings & Zoom	Psychological &
Depositions,	Meetings,	Forensic Evaluations,
Expert Witness	Conferences &	Reports
Statements,	Conference Calls,	
Arbitration Hearings,	Interviews,	
Pleadings, Dictation	Engineering	
	Evaluations	

We are on the NYS Unified Court System list of transcription services.





# Banking built for lawyers



**You went to law school to be a lawyer,  
not an accountant.**

Take advantage of Nota - a no-cost IOLTA management tool that helps solo and small law firms track client funds down to the penny.<sup>1</sup> **Enjoy peace of mind with one-click reconciliation, automated transaction alerts, and real-time bank data.**



Visit

[trustnota.com/rockland](https://trustnota.com/rockland)

to learn how Nota can help.

**Andrew Atkinson**

Nota | Account Executive



 (716) 861-3816

 [andrew@trustnota.com](mailto:andrew@trustnota.com)

[1] M&T Bank's standard deposit account and service fees may apply.

Banking services powered by M&T Bank, Member FDIC.

Nota is a product offered by M&T Bank. It is available to attorneys whose offices are located in and who are practicing law in NY, NJ, MD, PA, DE, CT, VA, DC, FL, and WV and to whom the rules and regulations for IOLTA accounts are applicable. The advertised product and its features and availability are subject to change at any time and without notice. Use of the product is subject to and governed by certain terms, conditions, and agreements required by M&T Bank.

Use of the product will be subject to and governed by certain terms, conditions, and agreements required by M&T Bank.

© 2021 M&T Bank. All Rights Reserved.

## **Interested in ADR Training?**

Dear Colleagues,

On behalf of the Courts, we are interested in ascertaining if you have already participated in ADR training and/or if you are interested in participating in ADR training.

Kindly respond to us and let us know:

Have you participated in any ADR Training and obtained certification under the rules of Part 146 of the Chief Administrative Judge (the “Roster of Neutrals”)?

Are you interested in participating in ADR Training in the future?

Thank you for your response.

Please send your response to:

Manuela Gomez  
Assigned Counsel Coordinator  
[manuela@rocklandbar.org](mailto:manuela@rocklandbar.org)

With best regards,

The Bar Association



## **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!



Monthly  
Newsletter

# CLE CORNER

## PLAN YOUR YEAR OF CLEs NOW!

2022 CLE TITLE	DATE & TIME
<b>CLE - Online</b>  <b>CPLR</b>	<b>Friday, May 6, 2022</b>  <b>9:30 a.m. - 12:30 p.m.</b>

### 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.*

## Need a Place to Meet in New City?

RCBA Conference Rooms available for rent.

### MEMBER PRICES:

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

### NON-MEMBER PRICES:

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

**ALL ADVERTISEMENTS  
AND ARTICLES MUST BE  
REVIEWED BY THE  
EXECUTIVE COMMITTEE  
FOR CONTENT.**

## NEWSBRIEF ADVERTISING RATES

FULL PAGE (7.5x10.25)	\$400.00
1/2 PAGE (7.5x5):	\$250.00
1/4 PAGE (3.75x5):	\$200.00
1/8 PAGE (3.75x2.5):	\$125.00
BUSINESS CARD:	\$75.00

### Announcing New Discounts:

10% for 6 mo. bookings

20% for 1 year bookings

### PLEASE NOTE:

NEWSBRIEF IS NOT PUBLISHED IN JULY  
CALL MANUELA @ 845-634-2149  
TO ADVERTISE IN NEWSBRIEF

Advertising & articles appearing in the RCBA Newsletter does not presume endorsement of products, services & views of the Rockland County Bar Association.

## CLASSIFIED ADS



### John Jay Criminal Investigation Grad Seeks Short-Term Unpaid In- ternship

John Jay graduate and young CSI-to be is interested in a few months of unpaid Criminal Law exposure. If interested, please contact Shannon at 845-480-6284 or email [splynn7@gmail.com](mailto:splynn7@gmail.com)

### OFFICE SPACE

New City -3 contiguous office suites, totaling approximately 1,200 sq. ft.; Can combine/divide to suit individual user(s) needs- South Main Street, walk to courthouse, restaurants, gov't buildings, ample parking. Call Arthur 845-359-3560

### PART TIME BOOKEEPPER (1-2 days per week)

Track and manage financial data: Document transaction details: General bookkeeping (knowledge of PC Law): Bank Reconciliations and uploads: Tracking payroll data

### WE HAVE MOVED

Schlosss & Schloss PLLC  
55 Old Turnpike Road, Suite 211  
Nanuet, NY 10954

### WE HAVE MOVED

Schulman & Kissel, P.C.  
4 Executive Blvd, Suite 101  
Suffern, NY 10901  
Marc I. Kissel  
Julian Alan Schulman, Of Counsel  
Same old phone numbers!

### OFFICE SPACE FOR RENT

New City- four offices and one secretarial area available within a law office. Includes conference room, waiting room, large parking lot, room with or without furniture. E-mail: [sherry@davisanddavis.com](mailto:sherry@davisanddavis.com)

### ATTORNEY'S FILES SOUGHT ANTHONY OCCHIPINTI

If anyone knows the whereabouts of Anthony (Tony) Occhipinti's files, please contact Manuela at the Bar Association. Anthony passed away in 2017. [Manuela@rocklandbar.org](mailto:Manuela@rocklandbar.org)

### OFFICE SPACE FOR RENT

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

### ATTORNEY NEEDED

Small but growing firm in New City, is looking for a Contracts/Commercial Real Estate Attorney with 3 years direct relevant experience for part-time work (flexible hours). Position can be partially remote. If interested please submit resume to [newcitylawhiring1@gmail.com](mailto:newcitylawhiring1@gmail.com)

### PART-TIME PARALEGAL

Looking for a part time paralegal or legal secretary for estate work for local practitioners with computer skills for a few hours a week - flexible hour. Please contact Tom O'Connell at 845-729-4460 or email him at [8457294460@gmail.com](mailto:8457294460@gmail.com)

### ATTORNEY NEEDED

NYS funded Immigration Organization serving clients with immigration and citizenship issues seeks part-time immigration attorney to collaborate with Dept. of Justice accredited staff. Organizational activities are in both Rockland and Westchester counties. If interested, please submit resume in confidence to agency Pres/CEO at: [patricia.rajala@gmail.com](mailto:patricia.rajala@gmail.com)

### LEGAL ASSISTANT PART-TIME

Legal/administrative assistant for small law firm in New City. This is a part-time entry level position suitable for someone interested in gaining practicable and invaluable job experience in the legal area. Good computer skills, detailed oriented, knowledge of basic office procedures and Internet savvy candidate preferred. Students are encouraged to apply. Please fax resume to 845-517-0671.

### ATTORNEYS SEEKING PARALEGALS

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

# OUR RCBA 2021-22 MAJOR SPONSOR

**M&T** Bank

Understanding what's important®

**GOLD SPONSOR**

*Thank you*  
to our Sponsors!