

# ROCKLAND COUNTY BAR ASSOCIATION

# NEWSBRIEF

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Barbara Silverstone—Editor

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



August 2023

## President's Post

The “dog days” of summer have arrived - hot, sultry days that I hope are treating you well. I ask myself, where did this phrase come from? The Greeks attribute “dog days” to the rising star system, Sirius, and associate this time of the year with mad dogs, thunderstorms and bad luck. Let’s prove the Hellenist’s wrong. Instead, close out your “dog days” with relaxation, family and friends. A new beginning awaits as September looms.

Speaking of “dog days,” have any of you thought about adopting a cat? What a healthy diversion from our daily routine. The Hi-Tor Animal Shelter has a vast array of cats and also dogs for adoption. I have recently adopted Titus and Squishy who now happily reside in my barn. Reach out to Cheyenne at the shelter at [hitor.org](http://hitor.org) or you can call her at 914-482-7978.

The North Carolina Lawyer Assistant Program Director is warning that lawyers are using an addictive substance to “improve their edge”. The substance is Kratom, an unregulated herbal substance which could be posing a risk to lawyers who are consuming it. She notes that substance abuse in the legal profession is known but largely underreported. Her program is urging that attorneys and judges get educated about Kratom and its potential to be addictive and deadly. It is an alkaloid which lawyers can get hooked on. Indeed, the family of the Florida nurse who died after drinking Kratom with her coffee received a large damage award. There was a March negligence ruling in favor of a Washington man who also died after drinking Kratom with his tea. The generalized theme in these in these litigations is that distributors, manufacturers and retailers are failing to have adequate warnings on the substance with instructions on its packaging. Kratom is commonly sold at gas stations and smoke shops. Too frequently addiction starts in law school and then continues or accelerates during one’s career. Kratom for one lawyer started out as a 5 hour energy drink but morphed into something more addictive. Kratom is a substance taken to try to improve functioning without the feeling of euphoria. Some of us may be inclined to “improve our edge, stamina, productivity and focus” and that has driven some attorneys to this over the counter herbal substance. I am just throwing this out as a warning to my brothers and sisters at the Bar. All of our Lawyer Assistance Programs at RCBA and Statewide are always there for you should the need ever arise.

Of further note, the percentage of firms either recommending or requiring in-office attendance has increased since January 2023. Six out of ten firms are

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adopting or considering flexible office hours. About 90% of larger firms surveyed have implemented a policy regarding in-office attendance. It appears that a major trend is that firms are now recommending or mandating attendance. I have always felt that being in an office setting with fellow practitioners allows mentoring for younger attorneys, and for all practitioners allows us to share ideas and bounce concepts and strategy off of each other. This is a benefit of Covid on the run.

This October celebrates the 130<sup>th</sup> Anniversary of RCBA's founding. Our organization began at the Hotel St. George in Nyack in 1893. The building is still standing! We are reaching out to the owners and requesting permission to convene a 130th Anniversary Board of Directors meeting there, at 48 Burd Street. We will send out press releases. We will welcome all of our members to gather and reflect on our longevity which invariably will continue over the next 130 years when all of us will be memorialized, not in the courtrooms of the Hudson Valley but instead, perhaps, on our RCBA's last composite membership photo. We'll keep you informed as our Anniversary approaches.

Please mark your calendars for October 26<sup>th</sup>, our Annual Dinner Gala celebrating our 130<sup>th</sup> Anniversary and featuring the new Chief Justice of the Court of Appeals, the Hon. Rowan Wilson. My suggestion is to make a reservation as soon as you receive our invitation which will arrive right after Labor Day, as we anticipate a sold out evening at the beautiful View on the Hudson in Piermont. We are arranging for some creative and inspiring entertainment as well, so stay tuned!

For those of you who are not members of our Lawyers Referral Service, there is an opportunity to get referrals in several practice areas. At this moment, we need lawyers who are willing to accept referrals in the areas of civil appeals, commercial law, corporate law, education law, elder law, insurance law, landlord tenant, legal malpractice and zoning law, among others. This is an opportunity to join and obtain new clients.

We are moving forward with CLE's in the popular realm of mindfulness and stress reduction. In addition, we are also in the process of putting together a Surrogate's Court CLE Series. Surrogate Cornell will join an upcoming Personal Injury and Compensation Law Committee meeting to discuss Surrogate's Court practices as it relates to compromise orders.

The RCBA is establishing a Pro Bono committee. The Pro Bono initiative is being implemented district wide. There is much energy emanating from the Access to Justice Pro Bono Subcommittee upon which I serve. All counties in our district are gearing up to provide more robust pro bono services. As you may know there are indigent persons in need of legal services which are not now provided by Hudson Valley Legal Services or our own Legal Aid Society. We will be sending out requests to our membership for those who wish to give back some pro bono hours. Areas that we believe are in need are bankruptcy (not attached to foreclosure proceedings), some family matters (mostly support and custody), consumer credit transactions and immigration.

If you wish to serve on the new Pro Bono Committee, let Barbara at our offices know and when we convene the first committee meeting, we will let you know.

In saying goodbye to summer, I defer to Henry David Thoreau:

"It is the glistening autumnal side of summer. I feel a cool vein in the breeze, which braces my thought, and I pass with pleasure over sheltered and sunny portions of the sand where the summer's heat is undiminished, and I realize what a friend I am losing."

**Sincerely,**

**Robert (Rob) L. Fellows, Esq.— President**

## OUR PROFESSIONAL ETHICS

Richard A. Glickel, Esq.\*

One of my pet peeves when dining out these days is reading a message at the bottom of the restaurant check (or the little sign at the cash register) stating that patrons who choose to pay by credit card incur a 4% charge for that convenience, which is the restaurants' (and other retailers) now common practice of moving the cost of the credit card companies' fees onto the customer.

Lawyers who offer payment by credit card to their clients for their legal services are charged a "merchant processing fee" by the credit card companies which fee customarily represents a percentage, e.g., 3.5% - 4% of the amount charged. As payment by credit card becomes more widely accepted within the legal profession a question arises whether lawyers – like restaurants and other retailers – can ethically pass along the credit card "merchant processing" fee to their clients?

In Opinion 1258 (06/05/2023), NYSBA's Committee on Professional Ethics answers the question in the affirmative, citing the Committee's earlier opinion allowing lawyers to pass on to a client the credit card company's processing fee for payment of the firm's advance payment retainer by credit card. In N.Y. State 1050, the Committee stated:

A lawyer may, as an administrative convenience, charge a client a nominal amount over the actual processing fees imposed on the lawyer by a credit card company in connection with the client's payment by credit card of the lawyer's advance payment retainer, as long as (i) the client receives disclosure of the up-charge and consents to it before the lawyer imposes it, (ii) the amount of the up-charge is nominal, and (iii) the total amount of the advance payment retainer and the processing fees charges (including the up-charge) are reasonable under the circumstances.

N.Y. State 1050, ¶18. The Committee reasons that the same principles apply with respect to merchant processing fees assessed on legal fees that a client pays by credit card *after* the advance retainer.

**ANSWER:** *A lawyer may pass on merchant processing fees to clients who pay for legal services by credit card provided that both the amount of the legal fee and the amount of the processing fee are reasonable, and provided that the lawyer has explained to the client and obtained client consent to the additional charge in advance.*

\*Chair, RCBA Committee on Professional Ethics

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

**COMMERCIAL LITIGATION ISSUES OF INTEREST**

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

You are taking the deposition of a non-party witness pursuant to a subpoena you issued as counsel for plaintiff. The defendant's attorney is making speaking objections, cutting off the witness' answers, calling you incompetent, insulting the witness, and otherwise being obstructive and unprofessional. You attempt to push back by telling the attorney to stop, saying the speaking objections are improper, telling the witness not to take the attorney's comments seriously, and threatening to call the court on multiple occasions. After the deposition, which was just the most recent of discovery abuses by your adversary, you move to prevent defendant from engaging in abusive discovery tactics, and for sanctions, with costs and attorneys' fees for having to make the motion.

Will your motion be granted?

The answer is *yes* [*but you too bear some of the blame*].

In *Constantina Bacopoulou DDS PC v. Carnegie Dental PC*, NYLJ 16883585123NY650010202, (Sup. Ct. N.Y. Co., June 20, 2023) (Case No.650010/2022), plaintiffs sued for \$900,000 in damages for the defendants' misconduct following the sale of defendants' dental practice to the plaintiffs, alleging breach of contract, defamation per-se, and other torts. During a 9-hour deposition of a non-party dentist subpoenaed by plaintiffs, the defendants' attorney made constant speaking objections, repeatedly cut off the witness' answers, lectured plaintiffs' attorney, called her names, and admitted that he did so because she was a woman.

Plaintiffs moved pursuant to 22 NYCRR 130-1.1(a) to sanction defendants and their counsel for, among other things, "egregiously obstruct[ing] the deposition of a non-party witness by repeatedly interjecting speaking objections and colloquy intended to coach the witness, cutting off the witness' answers, and seeking to intimidate opposing counsel with snide remarks and uncivil attacks on counsel's character and competence to conduct the deposition."

The Court granted the motion, noting that such unprofessional conduct is sanctionable, citing *Principe v. Assay Partners*, 154 Misc.2d 702, 704 (Sup. Ct. N.Y. Co., 1992) and the Commercial Division rules barring speaking objections.

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However, the Court held that plaintiffs' counsel "contributed to the delay with unnecessary bickering with [defense counsel] and engaged in some speaking objections as well," including "Stop it, Mr. Porter;" "Mr. Porter, stop it, it's not your testimony;" saying to the witness, "you're a Harvard grad, you don't have to take what he is saying seriously;" "[w]hat he is doing is making speaking objections to try to coach you;" "[i]t is completely improper." The Court noted that plaintiffs' counsel "repeatedly threatened to call the court evolving into a hollow threat," and had "antagonized" defendants' counsel from the start of the deposition. The Court said there was "no reason" to warn defense counsel "against speaking objections since the law and stipulations included such a provision," citing 22 NYCRR 221.1, CPLR 3113 and 3115.

The Court quoted other portions of the deposition where plaintiffs' counsel "engaged in gratuitous colloquy" in which both counsel engaged in "[u]nnecessary and childish arguments," which delayed the deposition.

The Court appointed a special discovery master "who can give the attorneys the time their repeated and excessive requests for attention and objections demand," noting that the Court does not have time to conduct the comprehensive review of discovery objections, including the alleged production of 746 documents that yielded only 56 relevant documents. Defendants were sanctioned and ordered to pay the cost of the motion attributable to the deposition. The fee of the special master's regular hourly fee was ordered to be paid 25% by plaintiffs' attorney and 75% by defendants' counsel "as a sanction for their conduct. The clients shall not pay this fee."

*The lesson?* What are you to do when the adverse attorney repeatedly acts improperly at a deposition? It would appear that the only proper response is to simply object, resisting the temptation to say anything more, even something as simple as "stop." If the conduct continues, call the court. Do not just *threaten* to call the court. Anything other than that may result in dragging you down in the mud with the adverse attorney and may backfire.

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

## 2023 AWARDS & INSTALLATION DINNER

On June 15, over 100 people attended RCBA's 2023 Installation Dinner held at Woodmont Day Camp.

The 2023-2024 Board and President were sworn in.

Congratulations to our Board and award winners:

Leonard J. Birbrower, Esq.—The Joseph G. Balsamo Award

Laura M. Catina, Esq.—The Sterns Award

Andrea F. Composto, Esq & Laurie A Dorsainvil, Esq.—The Committee Chair(s) of the Year Award

The DEI Committee presented its first scholarship award winner to Karina Jarrin, a student at North Rockland High School (See essay on pg 8)



RCBA's Diversity, Equity & Inclusion Committee has established an essay contest open to all Rocklanders attending high school in or out of the county. The topic was: **"Why should people of all races take part in Juneteenth celebrations?"** The winner, Karina Jarrin is a rising senior at North Rockland High School. She received her scholarship award and presented her winning essay at the Installation Dinner.

# juneteenth

## CELEBRATE FREEDOM

*Karina  
Jarrin*

*People of all races should actively participate in Juneteenth celebrations for several compelling reasons. Juneteenth, also known as "Freedom Day" or "Emancipation Day", commemorates the emancipation of enslaved African Americans in the United States. It holds significant historical and cultural importance, making it a crucial occasion for people from all racial backgrounds to engage in.*

*Firstly, Juneteenth represents a shared history and struggle for freedom. By acknowledging and participating in this celebration, people of all races can honor the progress made towards racial equality and justice. It serves as a reminder that the fight for freedom and equality is a collective effort that transcends individual backgrounds. Recognizing and commemorating Juneteenth promotes unity and fosters empathy among diverse communities.*

*Secondly, Juneteenth is an opportunity to educate and raise awareness about the history of slavery and its enduring impacts. By engaging in Juneteenth celebrations, individuals can deepen their understanding of the struggles faced by African Americans throughout history. It provides a chance to reflect on the injustices of the past and consider their contemporary implications. Participating in educational activities, discussions, and events during Juneteenth can promote dialogue, empathy, and a commitment to combating racism and inequality.*

*Moreover, Juneteenth celebrations offer a platform for cultural exchange and appreciation. African American culture has had a profound influence on various aspects of American society, including art, music, literature, and cuisine. By taking part in Juneteenth festivities, people from all racial backgrounds can engage with and appreciate the rich heritage and contributions of African Americans. This cultural exchange fosters inclusivity, respect, and a deeper appreciation for the diversity that enriches our society.*

*Additionally, participating in Juneteenth celebrations demonstrates solidarity and allyship. It sends a powerful message of support to the African American community, affirming that their struggle for equality is shared by others. By showing up and actively engaging in Juneteenth events, people of all races can demonstrate their commitment to equality, justice, and dismantling systemic racism. This collective involvement helps build bridges, break down barriers, and forge stronger relationships among diverse communities.*

*Lastly, Juneteenth celebrations offer an occasion for healing and hope. While recognizing the painful legacy of slavery, Juneteenth also symbolizes resilience, liberation, and progress. It is a time to celebrate achievements and acknowledge the contributions of African Americans to society. By participating in Juneteenth, people of all races can contribute to the healing process, promoting a future where racial harmony, equality, and justice prevail.*

*In conclusion, people of all races should actively engage in Juneteenth celebrations to honor shared history, promote education and awareness, foster cultural exchange, show solidarity and contribute to healing and progress. By coming together and celebrating Juneteenth, we can advance the values of equality, justice, and unity, creating a more inclusive and equitable society for all.*

*Karina Jarrin, 11th Grader at North Rockland High School, is the recipient of the Juneteenth Essay Scholarship from the Diversity, Equity and Inclusion Committee of the Rockland County Bar Association*

# SAVE THE DATE

**Guest of Honor**  
**Hon. Rowan D. Wilson**  
**Chief Judge of the Court**  
**of Appeals**  
**and the State of New**  
**York**

**Also honoring:**  
**Michael E. Bongiorno, Esq.**  
**2023 Lifetime**  
**Achievement Award**

**Nikki B. Hines**  
**President -NAACP Nyack Branch**  
**2023 Natalie Couch Award**

**Rockland County**  
**Bar Association**  
**130th Anniversary**  
**Annual Dinner**  
**GALA**

**Celebrating**  
**130**  
**Years!**

**Thursday, October 26, 2023**  
**6:00 pm**  
**The View on the Hudson,**  
**Piermont, NY**



**ROCKLAND COUNTY**  
**BAR ASSOCIATION**

[WWW.ROCKLANDBAR.ORG](http://WWW.ROCKLANDBAR.ORG)  
845-634-2149





## Technology Tips for Attorneys submitted by Michael Loewenberg\*



Microsoft Word is a powerful tool that can be used to create a variety of legal documents. However, many attorneys only use a fraction of its features. Here are five (possibly little-known) tips for using Microsoft Word that can help you save time and improve the quality of your work.

### 1. Use the Navigation Pane to Stay Organized

The Navigation Pane is a great way to stay organized when working with long documents. It displays a list of all the headings in your document, so you can easily jump to any section you need. You can also use the Navigation Pane to rearrange the order of your sections or to create new sections.

To enable the Navigation Pane, go to the **View** tab and check the box next to **Navigation Pane**.

### 2. Use Styles to Automatically Format Your Documents

Using Styles can ensure that your documents are consistently formatted. They allow you to define the look of different elements of your document, such as headings, paragraphs, and lists. Once you have defined a style, you can apply it to any text in your document with a single click.

To create a style, go to the **Home** tab and click the **Styles** button. Then, click **New Style (or Create a Style)** and enter a name for your style. You can then define the formatting for your style by selecting the font, font size, line spacing, and other options.

### 3. Use Quick Parts to Insert Frequently Used Text

Quick Parts are the secret to inserting frequently used text into your documents. They allow you to save blocks of text as templates, so you can insert them with a single click. This can save you a lot of time when you need to insert the same text into multiple documents. Think about your letters, briefs, contracts and riders that often include boilerplate text.

To create a Quick Part, select the text you want to include, go to the **Insert** tab and click the **Quick Parts** button. Then, click **Save Selection to Quick Parts Gallery** and enter a name for your Quick Part.

### 4. Use the AutoCorrect Feature to Avoid Typos

The AutoCorrect feature can help you avoid typos in your documents. It allows you to define a list of common typos and their correct spellings. When you type a typo that is in your AutoCorrect list, Word will automatically correct it.

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To add a word to your AutoCorrect list, go to the **File** tab and click **Options**. Then, click **Proofing** and select the **AutoCorrect Options** button. In the AutoCorrect dialog box, enter the word you want to correct and its correct spelling.

### **5. Use the Find and Replace Feature to Quickly Find and Change Text**

The Find and Replace feature is a powerful tool that can help you quickly find and change text in your documents. It's also one that's often overlooked. You can use it to find specific words or phrases, to replace text with different text, or to change the formatting of text.

To use the Find and Replace feature, go to the **Home** tab and click the **Find** button. Then, enter the text you want to find in the **Find what** box. You can also use the **Find and Replace** dialog box to specify more advanced search criteria.

These are just a few of the many little-known (or lesser used) tips that can help you use Microsoft Word more effectively. By learning these tips, you can save time and improve the quality of your work.

#### **Here are some additional tips that you may find helpful:**

Use keyboard shortcuts to save time. There are keyboard shortcuts for just about everything in Word, so take some time to learn them.

Use the commenting feature to collaborate with others on your documents. This can be a great way to get feedback on your work and to track changes.

Use the track changes feature to keep track of changes you make to your documents. This can be helpful if you need to revert to a previous version of your document or if you need to share your document with others.

Use the version history feature to keep track of all the different versions of your documents. This can be helpful if you need to go back and find a previous version of your document or if you need to compare different versions of your document.

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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 ROCKLAND COUNTY BAR ASSOCIATION  
WELCOMES THE FOLLOWING NEW MEMBERS  
WHO HAVE JOINED SINCE JUNE 2023**

Amanda Asala, Esq.

Jillian Burke, Esq.

Terrence Cortelli, Esq.

Edward Cigna, Esq.

Victor Daly-Rivera, Esq.

Ronnie Gonzalez, Esq.

Gary Lee Heavner, Esq.

Mark Licker, Esq.

Jennifer Mele

Noah Mittman, Esq.

Lester J. Marks, Esq.

Madelin Pereira, Esq.

Simcha Silverstein, Esq.

Ira Treuhaft, Esq.

Ellen O'Hara Woods, Esq.

**We look forward to seeing you at our many CLE Programs and at the  
Annual Dinner in October!**

**RENEW YOUR RCBA MEMBERSHIP NOW!**

Renewal notices have been emailed to all members for the 2023-24 membership year. Annual Dues for regular Members are \$185.00. Please make sure your contact information is correct and let us know your practice area and if you'd like to serve on any committees.

[Renew and pay online](#) or send in the Renewal Form with your check. After October 15, 2023 the dues amount increases to \$200.00!

Don't miss out on the benefits of RCBA Membership

*\*CLEs\* Lawyer Referral Service \* Practitioners Chats\* Monthly E-Newsletter\* Rockland Bar CARES\**

If you have any questions about your Membership, please contact Barbara Silverstone, Program Coordinator, at

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

# **Are you looking for more clients? Join RCBA's Lawyer Referral Service**

**We receive several calls each day from clients looking for local representation. We welcome all members to participate but are especially in need of attorneys in these practice areas:**

**Civil Appeals**

**Commercial law**

**Consumer law, including small claims court**

**Constitutional and Human Rights**

**Corporate Law including business formation, dissolution & franchises**

**Education law**

**Elder law**

**Environmental Law**

**Insurance Law, including automobile, home, disability, longt erm care**

**Intellectual Property**

**Landlord Tenant Law, including residential and commercial**

**Legal Malpractice**

**Zoning Law**

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**Visit our [webpage](#) or contact  
[office@rocklandbar.org](mailto:office@rocklandbar.org) for more information  
and an application.**

*Editor's Note: This was posted on a local Facebook page. Thank you to Adam Kurland and all the other RCBA members for representing our neighbors in need. To join the referral service, please visit <https://www.rocklandbar.org/member-resources/join-the-lawyer-referral-service/> or contact us at [office@RocklandBar.org](mailto:office@RocklandBar.org)*

I'm sorry this is happening to you. I had a similar situation happen a few years ago and found a lawyer via the Rockland County Bar Association, as I had a very hard time finding any lawyers who dealt with rental issues who weren't exclusively representing landlords. The lawyer we found (Adam Kurland) was very helpful and we were able to negotiate a reduced rent increase and some other problematic elements of the lease without litigating. As someone noted above, a lot of the two-family houses in Nyack don't fall under NYS tenant protection laws because the building has to have more apartments to qualify, but even without that legal protection (we were in a 2-family house), the lawyer was very helpful. We ended up spending \$700 on the lawyer but saved more than that in what we were able to negotiate down on the rent increase. Good luck. <https://www.rocklandbar.org/find-a-lawyer/>

## THE PRACTICE PAGE

### LAW CLARIFIED ON PROXIMATE CAUSE OF NEGLIGENT SECURITY

Hon. Mark C. Dillon \*

Judicial departments within the state differed on a salient point of law regarding proximate cause in negligent security cases. Recently, the Court of Appeals resolved these differences in *Scurry v. NYCHA* and *Estate of Murray v NYCHA*, \_\_ NY3d \_\_, 2023 WL 3588692, jointly decided on May 23, 2023. Both cases were similar, as they involved mortal crimes in NYCHA buildings where there were alleged defective door locks permitting intruders' with criminal intent easy access into the premises. One was the death of a plaintiff's decedent by flammable immolation. The other was by a gang-related shooting. The stakes in these cases are understandably high. Negligent security cases against landowners are not uncommon, rendering the *Scurry/Murphy* holdings noteworthy for the bar.

As a general matter, property owners have a duty to take at least minimal precautions to protect tenants from foreseeable harm, including harm that may arise from the criminal conduct of third persons (*Burgos v Aqueduct Realty Corp.*, 92 NY2d 544, 548). Negligence includes the separate concepts of duty and foreseeability --- once a duty is found to exist, foreseeability determines the scope of the efforts that must reasonably be undertaken to fulfill the duty (*Maheshwari v City of New York*, 2 NY3d 288, 294). A tension naturally exists when criminal conduct occurs within a premises --- it might arguably be an intervening cause severing the nexus between an occurrence and an injury, or alternatively, be criminal conduct that is foreseeable as to expose the landowner to potential liability (*Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 520). Liability may exist where intervening acts are a natural and foreseeable consequence of circumstances created by the defendant, but not where the acts are not foreseeable (*Derdiarian v Felix Constr. Corp.*, 51 NY2d 308, 315).

That all said, the First Department has had a long line of cases distinguishing between "targeted" criminal acts against a particular victim within a premises, *versus* opportunistic crimes at a premises against random victims. If a crime is targeted against a specific person such as murder, the First Department held that the proximate cause between an occurrence and an injury is essentially broken by the intervening criminal event, on the theory that no amount of building security can foreseeably prevent a planned and targeted crime (*Estate of Murphy v NYCHA*, 193 AD3d 503 [1<sup>st</sup> Dep't. 2021]; *see also Roldan v. New York City Hous. Auth.*, 171 AD3d 418, 419; *Estate of Faughey v New 56-79 IG Assoc., L.P.*, 149 AD3d 418, 418; *Flynn v Esplanade Gardens, Inc.*, 76 AD3d 490, 492; *Cynthia B. v 3156 Hull Ave. Equities, Inc.*, 38 AD3d 360; *Flores v Dearborne Mgt., Inc.*, 24 AD3d 101, 101-02; *Buckeridge v Broadie*, 5 AD3d 298-300; *Cerda 2962 Decatur Ave. Owners Corp.*, 306 AD2d 169, 169-70; *Rivera v New York City Hous. Auth.*, 239 AD2d 114, 115; *Harris v New York City Hous. Auth.*, 211 AD2d 616, 616-17). Under many of those cases the defendant landlords were entitled

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to summary judgment. By contrast, where the criminal act was perpetrated in the First Department in a “random” manner, the causal nexus between the plaintiff’s injury and the landowner’s duty of care raised triable issues of fact about the adequacy of the building security (*Gonzalez v Riverbay Corp.*, 150 AD3d 535, 536 [sexual assault by perpetrator who entered building by “piggybacking” a tenant who entered at the door using a key]; *Gonzalez v 231 Ocean Assoc.*, 131 AD3d 871, 871-72 [random intruder in defendant’s building]; *Foreman v B&L Props. Co.*, 261 AD2d 301 [random sexual assault in elevator with evidence of broken front door lock]).

The Second Department took an entirely different approach to the issue in *Scurry v NYSHA*, 193 AD3d 1 (2<sup>nd</sup> Dep’t. 2021). The Second Department specifically rejected the distinction between “targeted” and “random” attacks at a premises for legally defining issues of foreseeability and the reasonable security measures that should be undertaken by landlords. This is particularly true, said the court, as there may be more than one proximate cause of an occurrence such as, in *Scurry*, the criminal intent of the perpetrator and the premises’ broken door lock facilitating the crime. Therefore, in the Second Department, a landlord could not receive summary judgment in its favor by merely establishing that a crime at a premises was “targeted,” but rather, had to prove *prima facie* that any alleged security deficiencies were *not* a proximate concurrent cause of the occurrence (*Scurry v NYCHA*, 193 AD3d at 10).

The Third and Fourth Departments do not appear to have directly addressed the dichotomy between “targeted” and “random” crimes, if any such dichotomy should even be recognized. The closest any Third Department case came to the issue was in *Haire v Bonelli*, 107 AD3d 1204 (2013). There, the plaintiff was a victim of a 2005 mass shooting by an individual at a shopping mall using a semiautomatic weapon. The Third Department held that such an event was not reasonably predictable or foreseeable. As such, the reasonableness of the shopping mall’s security measures did not need to be reached given the difference between duty and foreseeability.

The Court of Appeals joined the appeals of *Murphy* from the First Department decided in 2021 with *Scurry* from the Second Department, also decided in 2021, for oral argument and a joint opinion. In a 6-0 opinion authored by Chief Judge Rowan Wilson (Judge Halligan not taking part), the Court of Appeals resolved the differences between the two departments in favor of the approach of the Second Department. The Court of Appeals held that the First Department’s conclusion in *Murphy*, that the broken condition of the door lock at the premises would not have prevented a targeted attack, mistakes a factual determination for a legal one. In other words, the question of whether a targeted attacker’s intent qualifies as a superseding cause of an occurrence is a matter of proximate cause and foreseeability that belongs to a trier of fact, rather than being a question of law for the court on summary judgment. This is now the law statewide.

For the record: There is no intramural competition between the judicial departments. The justices of each department render opinions that they each sincerely deem correct, and in the event of differences of opinion, genuflect to the ultimate determinations of the Court of Appeals that set forth statewide standards. The *Scurry/Murphy* opinion from the Court of Appeals is an example of how the statewide system “works” in practice, providing the bench and bar from Montauk to Buffalo with a uniform legal standard that will guide similar issues in the future. That role is clearly recognized by the Court of Appeals, as evidenced by that court’s joinder of the *Murphy* and *Scurry* appeals and the publication of a joint opinion resolving the differences between the judicial departments on the issue presented. Well done.

**REFERRAL SERVICE MEMBERS—Have you noticed a change?**

We're now able to email the referral to you immediately. This can let you know that a potential client has been referred to you by the RCBA, often even before they call you. We know that some of you want the referral sent to more than one address and we're working out the process to be able to do that.

**Thank you for your participation in the RCBA Lawyer Referral Service!**



# ODYSSEY

## OUR MEMBERS' LITERARY CORNER

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

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**PLEASE NOTE:**

**NEWSBRIEF IS NOT PUBLISHED IN JULY**

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**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.**

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

# **CLE CORNER**

## **PLAN YOUR YEAR OF CLEs NOW!**

**COMING THIS FALL**

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### **COERCIVE CONTROL**

Presented by the Center for Safety and Change

September 7, 2023. on zoom. Time TBD

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### **OPENING STATEMENTS (originally scheduled for June)**

Presenters will be Jeffrey Adams, Esq., Alan Brill, Esq., and Barry Kantrowitz, Esq

September 11, 2023 on Zoom. 1.5 hours 1:00 p.m.- 2:30 p.m.

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### **UNDERSTANDING THE BETH DIN & MATROMONIAL LAW**

A free program presented by the 9th Judicial District Access to Justice Initiative

September 20, 2023, 12:30 p.m. - 2:30 p.m. In person and streaming. Derech Shalom Center it Montebello

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### **A 3 PART SERIES ON SURROGATE COURT PRACTICE**

September 12, October 10 and November 8. 12:30 p.m. - 2:00 p.m.

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

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

***The Rockland County Bar Association is an approved CLE provider for live, videoconference and webconference participation***

# CLE REQUIREMENTS

## CLE REQUIREMENTS

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

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

### NEW CLE REQUIREMENT - CYBERSECURITY:

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

In addition to ethics and professionalism, skills, law practice management, areas of professional practice, and diversity, inclusion and elimination of bias courses, there is a new category for cybersecurity, privacy and data protection. This category of credit is effective January 1, 2023.

Experienced attorneys due to re-register on or after July 1, 2023 must complete at least one credit hour in the Cybersecurity, Privacy and Data Protection CLE category of credit as part of their biennial CLE requirement. Newly admitted attorneys need not comply if admitted prior to July 1, 2023 in their newly admitted cycle, but must comply in future reporting cycles. Attorneys admitted on or after July 1, 2023, must complete the 1 CLE credit hour in Cybersecurity, Privacy and Data Protection as part of their new admitted attorney cycle. For more information about the CLE Rules, visit [nycourts.gov/Attorneys/CLE](http://nycourts.gov/Attorneys/CLE).

See [CLE Program Rules 22 NYCRR 1500.22\(a\)](#).

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

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

### FINANCIAL HARDSHIP POLICY:

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

# CLE UPDATE

## CYBERSECURITY REQUIREMENT

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

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

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

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

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

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

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

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# COMMITTEE CORNER

The Rockland County Bar Association has twenty-six active committees, plus several *ad hoc* committees. Our Members participate by joining the committees of their choosing, and they volunteer their time and expertise for the good of the Bar Association, their colleagues and the public.

The available committees are: Assigned Counsel, Commercial and Corporate Law, Condominium and Co-op, Continuing Legal Education, Criminal Law, Debt Collection, Bankruptcy and Creditors' Rights, Diversity, Elder Law, Employment Law, Family Law, Grievance, Immigration, Internship and Mentoring, Judiciary Liaison, Judiciary Review and Screening, Law Day, Lawyers Helping Lawyers, Membership and Public Relations, Memorials, Mock Trial, New Lawyers and Social Committee, Personal Injury and Compensation Law, Professional Ethics, Real Estate, Surrogate's Court and Estate Planning Practice, Zoning.

Some committees are highly active, holding meetings once every month. Other committees are called upon based on the needs of the Association, or based on the calendar. For example, the *Judiciary Review and Screening Committee* meets only when there are judicial candidates to be screened. The *Grievance Committee* meets only when there are Grievance cases to be discussed.

Some committees require approval of the Board of Directors; others are open to the entire membership. For more information, or to join a committee, please contact us at [office@rocklandbar.org](mailto:office@rocklandbar.org).

## **PERSONAL INJURY & COMPENSATION LAW COMMITTEE**

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

### **Upcoming Meetings:**

**September 6, 2023 at 5:00 p.m. The guest speaker will be Hon. Keith Cornell, Rockland County Surrogate and Acting Justice of the Family Court.**

**October 4, 2023, 5:00 p.m. The guest speaker will be Hon. David Fried, Judge of the New York State Court of Claims & Acting Justice of the Supreme Court.**

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

**Thank you, Jeffrey Adams (Chair) & Valerie Crown (Co-Chair)**

## Job Openings

The **Center for Safety and Change** is hiring two attorneys, a Family & Matrimonial Law Attorney and a Staff Attorney. Both positions are full time, in person in New City, NY and require admission to the New York State Bar.

**The Family & Matrimonial Law Attorney** represents victims/survivors of domestic violence, sexual assault, family offenses and coercive control. The Attorney should be committed to the mission of the agency, and provide clients with high standards of legal services in a way that is client-centered. The attorney should have strong oral and written advocacy skills; be proactive, organized and responsive to deadlines; be culturally competent; and collaborate well with other departments within the organization, in addition to external partners and stakeholders. This position is a full-time, exempt position that reports to the Director of Family, Matrimonial & Sexual Assault Legal Services.

**The Staff Attorney** represents adult and minor victims/survivors of sexual assault/abuse, sexual harassment, and gender-based discrimination. The Gender-Based Violence Attorney represents survivors who have been victimized in educational and workplace settings, in dating, intimate and family relationships, and because of sex trafficking, sex crimes and internet ruses. The Staff Attorney should be committed to the mission of the agency and provide clients with high standards of legal services in a way that is client centered. The attorney should have strong oral and written advocacy skills; be proactive, organized, and responsive to deadlines; be culturally competent; and collaborate well with other departments within the organization, in addition to external partners and stakeholders. This position is a full-time, exempt position that reports to the Director of Family, Matrimonial and Civil Legal Services.

For more information about these and other career opportunities visit <https://www.centerforsafetyandchange.org/careers/>



### Career Opportunities with the Appellate Division, Third Department

**LOCATION: Appellate Division, Third Department, Decision Department, Albany, NY**

#### Senior Appellate Court Clerk

**Qualifications:** Two years of service in any title in the Unified Court System; or a Bachelor's degree from an accredited college or university; or an equivalent combination of education and experience.

#### Appellate Court Clerk

**Qualifications:** Two years of service in any title in the Unified Court System; or An equivalent combination of education and experience.

#### Appellate Law Typist

**Qualifications:** One year in the Principal Appellate Office Typist or Principal Appellate Office Stenographer title; or Two years in the Senior Appellate Office Typist or Senior Appellate Office Stenographer title; or High school diploma or the equivalent and three (3) years of relevant typing and clerical experience; or An equivalent combination of education and experience.

#### NYS Court Attendant, Appellate Division

**Qualifications:** Two years of experience as a New York State Court Officer; or an equivalent combination of education and experience. Candidates must be legally eligible and qualified to carry firearms. New York State residency is required for appointment. Candidates must be citizens of the United States. Candidates must possess a valid New York State driver's license.

#### NYS Senior Court Attendant, Appellate Division

**Qualifications:** Two years of experience as a New York State Court Attendant, Appellate Division title; or an equivalent combination of education and experience. Candidates must be legally eligible and qualified to carry firearms. New York State residency is required for appointment. Candidates must be citizens of the United States. Candidates must possess a valid New York State driver's license.

For more information and to apply to these and other jobs in the NYS Court system, visit <https://ww2.nycourts.gov/careers/opportunities.shtml>

## MEMO

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

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

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

Thank you!



Monthly  
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**ATORNEY POSITION AVAILABLE**

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**OFFICE FURNITURE AVAILABLE**

A New City based law office has closed, with lots of office furniture available for sale. All pieces in excellent, like-new condition (file cabinets, desks, chairs, sofas, conference tables, etc). Photos available. All pieces must go. Priced to sell.

Please email: [adam@dfjustice.com](mailto:adam@dfjustice.com)

**OFFICE SPACE AVAILABLE**

The Stevens Law Office in the heart of Suffern has available office space including access to conference room. Rent and terms are flexible depending on level of services needed.

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