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Inside this issue:

President's Post
Page 1

FREE Surrogate's Court
E-Filing Training
& Announcements
Page 2

Members' Literary
Corner
Page 3

Commercial Litigation
Issues of Interest
Pages 4-5

Technology Tips
Page 6

The Practice Page
Page 7

Announcement, Ads &
RCBA Membership Dues
Page 8 - 11

Attorney General Legal
Recruitment
Page 12

CLE, Committee
Corner & Classified Ads
Page 13 - 15

Manuela Gomez,
Editor

ROCKLAND COUNTY BAR ASSOCIATION

NEWSBRIEF

www.rocklandbar.org

December 2021

President's Post

Season's Greetings! I read an article recently in Reader's Digest that cited some bizarre holiday related laws and regulations that have been on the books through the years.

Apparently in New York City, there is a law prohibiting the display of natural (not artificial) Christmas trees in retail stores. For you collection attorneys, Louisiana adopted a law in 1837 that made Christmas Day a grace period with regard to bill paying, so if a debt came due on Christmas, the debtor would have until December 26th to pay it. In Michigan, if you buy a fresh Christmas tree, retain your receipt. That is because it is illegal for anyone there to transport a Christmas tree without having proof of the sale. In Nebraska, in 2018 an elementary school Principal banned candy canes in school because historically, the shape of the candy cane is a "J" for Jesus. Businesses in Mexico are required to pay their employees an annual holiday bonus. Payment must be made by December 20th and companies that fail to do so are subject to significant fines. In Arkansas the sale of alcoholic beverages is prohibited on Christmas Day.

Crazy laws aside, I want to take this opportunity to wish all of our members and their families a wonderful and healthy holiday season. If the last couple of years have taught us anything, it is that we should cherish our families and the holidays and moments we share together.

Ira S. Schoeps, Esq.
President

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To: Attorneys, professional staff & interested parties

ATTEND FREE SUPREME COURT

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10:30am - 12:30pm

January 12, 2022

February 16, 2022

March 16, 2022

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Where: Virtual - on-line via Microsoft Teams

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To register go to www.nycourts.gov/efile and click on the register for training link.

*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).

Introducing Odyssey, our new Members' Literary Corner.

In this space, Members can share their personal literary works, including poems and short stories. We hope to publish one Member's submission each month in Newsbrief.

Odyssey is a space for our Members to showcase their literary talents - because there is more to an attorney's life than work, and so much more to share with each other.

Introducing our Inaugural Poem, by Gary Lipton, Esq.

The Odyssey

**The odyssey starts at home
And then off to ports unknown
To faraway places
And many different faces
Until you have a family of your own
Your offspring smiles
Their earthly guiles
The way each played
The love they imparted
It's the simple things that matter
The little things of life
Quietly ruling out strife
The wonder of love's rapture
What I'm going to miss most of my journey
Is the everyday existence
The animated occurrences
The love of friends, family and descendants
As I watched a wave go out to the ocean deep
Like one's life goes out the door
To finally (crashing) back to the shore
Then returning to where it was ultimately meant to be**

**The inspiration for this poem is the sitcom *The Good Place*. From the book *Observations of a Gentleman*, by Gary Lipton, 2021.*

[December 2021]

COMMERCIAL LITIGATION ISSUES OF INTEREST
Submitted by Joseph Churgin, Esq. and Susan Cooper, Esq.*

Your client owns a two-family home fronting on a public road. The neighbor directly behind your client has no road frontage but owns a 15-foot wide by 140-foot-long access strip running alongside your client's property from the road to the neighbor's property. The two properties on the other side of the strip have the same arrangement, resulting in a 30-foot-wide paved driveway servicing all four properties. Your client has an express easement over his rear-neighbor's 15-foot-wide portion of the driveway to access your client's paved parking area in the rear of your client's property. Although the easement does not include parking on the driveway, your client has parked without objection on the edge of the driveway since 2005 for easy access to his home. He has also maintained the driveway near his property line, as well as the grass area between the driveway's edge and his property. Recently, the new owner of the property behind your client's property built a fence along the edge of the driveway to discourage your client and guests from parking on the edge of the driveway. You bring a claim for adverse possession and easement by prescription. The neighbor now moves for summary judgment.

Will you defeat summary judgment in favor of the neighbor?

The answer is "no."

In *Rogers v. Melchiorre*, NYLJ 1633455349NYUEFCA201700, Case Number EFCA2017002497 (Sup. Ct. Broome Co. September 28, 2021), the plaintiff brought an action for adverse possession and other causes arising from the defendant constructing a fence between the parties' shared driveway and the plaintiffs' property. The shared driveway runs along the plaintiffs' property from the road to the defendant's property behind the plaintiffs' property, on a 15-foot wide by 140-foot-long strip owned by the defendant. The abutting properties on the other side of the strip also share their own 15-foot-wide strip, resulting in a 30-foot paved driveway serving all four properties.

The plaintiffs' deed includes an easement over the defendant's strip for access to a parking area in the rear of plaintiffs' property. The easement provides that "no portion" of the easement "shall be blocked at any time, including by vehicular parking." However, plaintiffs have parked on the side of the pavement nearest their property since 2005, until the defendants purchased the abutting property in about 2016 and then built a fence along the edge of the driveway along the plaintiffs' property to discourage the plaintiffs from parking there.

Continued

Plaintiffs commenced an action for adverse possession and other causes. Plaintiffs claimed that since 2005 they maintained the portion of the driveway near their home and maintained the grass between the driveway and their home, constituting adverse possession. Both parties moved for summary judgment.

The Court cited *Walling v. Przybylo*, 7 N.Y.3d 228, 233 (2006), requiring plaintiffs to show, by clear and convincing evidence, that their possession of the disputed property was 1) hostile and under a claim of right; 2) actual; 3) open and notorious; 4) exclusive; and 5) continuous for the required period (10 years). The Court ruled that plaintiffs' claim was neither hostile nor under a claim of right, because plaintiffs acknowledged that the disputed property was owned by the defendant and that plaintiffs' use was pursuant to an easement.

Moreover, plaintiffs unchallenged use of the driveway for parking before the defendant purchased the property merely demonstrated good rapport with the prior owner. The Court noted that neighborly cooperation and accommodation would negate hostility, citing *Barra v. Norfolk S. Ry. Co.*, 75 A.D.3d 821 (3d Dep't 2010).

Finally, although it appeared that the fence may have been within plaintiffs' 15-foot easement, there was no claim that the plaintiffs could not use the easement to access their parking area in the rear of their property, as provided in the easement. The Court noted, "a landowner burdened by an express easement of ingress and egress may narrow it, cover it over, gate it or fence it off, so long as the easement holder's right of passage is not impaired," citing *Sambrook v. Sierocki*, 53 A.D.3d 817, 818 (3d Dep't 2008, quoting *Lewis v. Young*, 92 N.Y.2d 443, 449 (1998).

The lesson? Use of an easement will not ripen into adverse possession, no matter how contentious the parties' behaviors may become. As long as an easement can be used for its stated purpose, the property owner is free to change its dimensions.

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

Technology Tips for Attorneys

submitted by

Michael Loewenberg*

It's Time To Update Your Technology

The end of the year and the inevitable slowdown of the holidays is a good time to look at the technology you use and make adjustments to improve your systems' stability and performance.

Update your Software – It's always a good idea to make sure the software on your computer is up-to-date. That means your computer's operating system, antivirus software, the programs you use to create and edit documents (like Microsoft 365 and Adobe Acrobat), all the browsers you use, photo editing software, etc. In general, automatic updates on your computer are safe to apply. Download and install the updates and reboot after each one.

IMPORTANT: Solicitations to update your programs that come to you in email are, in general, NOT safe so don't click links in email to do those! Rely on the in-application notifications you get on your computer to do your updates.

If your core software version is way behind and too old to be updated, it likely makes business sense to spend the money to buy the latest version and keep yourself current and safe – out-of-date software is a major vulnerability that opens your system to hackers. It's cheaper to buy a current, supported version of a program than to recover from a hack or pay a ransom to (maybe) get your data back.

Make a special effort to review the pending software updates on your computer this month. You might have deferred some updates; now's the time to apply them. Update your antivirus definitions and keep them up to date. Make sure your browsers are current; that's frequently the first line of defense against bad actors.

Update your Hardware – Modern computer equipment can support us for longer periods of time than our earlier machines; you might be satisfied with your computer's performance and that's ok. If you find yourself waiting for your computer to complete regular tasks, if you frequently see errors or if you're forced to reboot because your computer hangs, it might be time to update your hardware.

Sure, a new computer would be amazing – the latest in hardware and software would bring a smile to your face. It might make sense, however, to look at updating components to give your computer a performance boost rather than buying a new rig. Here's where to look:

- If you haven't already, convert your main hard drive to a solid state disk (SSD). And if you already have an SSD, get a bigger one with more free space to give your system more 'breathing room'. (pro tip: if you replace an existing SSD, keep the old, retired SSD as an available drive in your computer for additional, fast storage).
- Add more memory to your system. More memory will make your system faster.
- Update your graphics card and monitor to make it easier on your eyes. Better graphics cards and monitors generate beautiful displays. And if you aren't using two monitors yet, it's time for you to do that. Really!

Think of keeping your hardware and software up to date as a process, not an event. From now on, act on your system's notifications as they come in to make sure your technology platform is secure and 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.

December 2021

THE PRACTICE PAGE**Hon. Mark C. Dillon *****A CHARLIE BROWN CHRISTMAS**

As a point of personal privilege, this month's column avoids issues of New York Practice and instead shares observations about the annual tv program, *A Charlie Brown Christmas*. No doubt, everyone knows it well.

Charles Schultz, the creator of the Peanuts comic strip, held deep Protestant religious beliefs. When CBS expressed interest in 1965 of having Shultz create a 30-minute Christmas special based on Peanuts, to compete with the success that NBC had enjoyed the previous year with *Rudolph the Red Nosed Reindeer*, Shultz refused to do so unless CBS agreed that the program include a message about the true religious meaning of Christmas. An animated Christmas program based on an existing comic strip was described by Val Adams in the August 8, 1965 edition of the *New York Times* as "a big gamble." The program had many unusual ingredients including the voices of amateur children instead of trained adults, jazz music by Vince Guaraldi, bible readings, colorization of a black-and-white strip, no laugh track, and it was planned to air for children at night. It risked ruining Peanuts. CBS sensed disaster when it saw a preview of the show and wished to cancel it, expecting a flop. But it was too late to change the tv schedule. The show aired on December 9, 1965. To CBS's surprise it attracted 15 million viewers, which was tremendous for that time.

The religious meaning of the holiday was delivered by Linus in an iconic scene toward the end of the program, on a stage where the Peanuts gang had been rehearsing a Christmas play. Linus explained the true meaning of Christmas to everyone present. He told the story of the birth of Jesus in a manger and of Jesus' mission to bring peace and good will to all. Significantly, and brilliantly, Shultz had Linus deliver his short speech while standing alone on a stage, with all other Peanuts characters excluded from the screen. For extra emphasis, Linus gave his remarks about the meaning of Christmas while illuminated by a spotlight – the only scene where any character had the viewers' exclusive and extended attention. Linus spoke in that scene for Charles Schultz himself, not as a cartoonist, but as a religious believer.

Why did Schultz select Linus as his all-important message-giver? After all, Linus was merely one of many characters to choose from, and Charlie Brown was the main character of the Peanuts comic strip.

Schultz chose Linus to explain the true meaning of Christmas deliberately. Linus was the character who held a security blanket day and night which he relied upon for courage. He dropped the blanket on the floor before delivering his iconic remarks on stage, symbolizing unusual personal fortitude during those crucial moments. Linus was the character who, elsewhere in the Christmas special, wrapped his blanket around the base of a scrawny Christmas tree selected by Charlie Brown to straighten its trunk, explaining, "Maybe it just needs a little love." In the Peanuts Halloween special which first aired in 1966, Linus was the character who steadfastly kept faith in the Great Pumpkin despite pressure from other characters who mocked his sincerely-held beliefs. Linus often stood for his principles in the face of adversity, and always looked at the bright side of bad situations occurring around him. Schultz must have liked the Linus character, as no one else in the Peanuts strip was better suited to stand for up for religious convictions, charity, and meaning. When Schultz needed to choose a character to deliver a message about the true meaning of Christmas, the selection of Linus might have been easy.

The message of the holiday that Linus delivered in a short, simplistic, and animated form accomplished the religious messaging that Schultz insisted upon for the program. The Christmas special, which has been broadcast to three generations every year since 1965, would not be the same without it. The message is universal to us all, including our non-Christian colleagues, that there is glory in the creation that is around us and of which we are each a part.

* Mark C. Dillon is a Justice at the Appellate Division, 2nd Judicial Dept., an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author of the 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. Scroll down to the bottom of the homepage and find links under "Helpful Links."

New York State Bar Attorney Professionalism Award 2022 Seeking Nominations

The Committee on Attorney Professionalism administers the annual New York State Bar Association Attorney Professionalism Award.

On behalf of the Committee on Attorney Professionalism, we are now seeking nominations for the Award.

Nominations must be submitted and postmarked **no later than December 15, 2021.**

Please click on the link below for more information and to download the nomination form:

[2022 Attorney Professionalism Award](#)

Melissa A. O'Clair, Assistant to the General Counsel

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RCBA Cares

Go to: www.rocklandbar.org

“Member Resources”

for:

Professional Practice tips

Wellness articles

Community updates

Here's to a happy and healthy 2021!

*discussions
for RCBA members*



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MEMO

TO ALL RCBA COMMITTEE CHAIRS & VICE- CHAIRS

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

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

Thank you!



ASSISTANT DISTRICT ATTORNEY
ROCKLAND COUNTY DISTRICT ATTORNEY'S OFFICE

The County of Rockland is seeking a candidate to perform professional and legal work of a complex nature involving the responsibility for representing the people in criminal court cases and in the performance of other legal work. General supervision is received from the District Attorney and/or a higher-level Assistant District Attorney. The work requires the incumbent to be on call at night and on weekends. Does related work as required.

Candidates must possess good knowledge of criminal law and court procedures; ability to perform legal research and prepares written documents (e.g. briefs); ability to express arguments of the law by written and spoken word; ability to deal effectively with people.

MINIMUM QUALIFICATIONS: Possession of a license to practice law in the State of New York or formal approval under the Rules of the Court of Appeals, Part 520.9 (e) (3), to practice law in New York State. Approval under the latter is for an 18-month period only.

NOTE: Must provide a current certificate of good standing.

SPECIAL REQUIREMENT: License to practice law in the State of New York must be maintained throughout the course of employment in this title.

Please email resume to: bulusanc@rocklandda.org

Happy New Year! 2022!



CLE CORNER

New CLEs Coming Soon in 2022!

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.

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:

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My name is Jenny Dorlus and I am a 21-year-old political science major at Long Island University. I am currently in search of shadowing opportunities at a local law firm — preferably a short term, unpaid opportunity where I'd be able to learn firsthand what it takes to work at a law firm/in the field. I am willing to assist with projects and take on basic day to day operations. However, I would appreciate anything that you are capable of offering! If you would like to contact me, my return email is jennydorlus@gmail.com and my mobile number is (845)-300-5635.

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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

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

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.

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

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