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ROCKLAND COUNTY BAR ASSOCIATION NEWSBRIEF

www.rocklandbar.org



February 2024

President's Post

Sonnet 116: Let me not to the marriage of true minds
By William Shakespeare

Let me not to the marriage of true minds
Admit impediments; love is not love
Which alters when it alteration finds,
Or bends with the remover to remove.
O no, it is an ever-fixed mark
That looks on tempests and is never shaken;
It is the star to every wand'ring bark
Whose worth's unknown, although his height be taken.
Love's not time's fool, though rosy lips and cheeks
Within his bending sickle's compass come.
Love alters not with his brief hours and weeks,
But bears it out even to the edge of doom:
If this be error and upon me proved,
I never writ, nor no man ever loved.

Love is not without challenges. We, as Valentine's Day approaches, should consider how do we overcome the travails of life and understand that our existence and its purpose really reduces itself to love. Certainly, it is difficult to fully and completely love another if one lacks self-love. Not in a narcissistic sense, but in the sense of acceptance of the universal notion that we all have flaws, imperfections as well as talents, negative and positive attributes in play. We are simply mortals, often at our desk crafting a brief, understanding that there will never be perfection but there can be competence. Think about why we practice law. Without some element of love for what we do, it is a hollow pursuit. There will be challenges, but ultimately, whether in the family or in our professions, true love does not alter, it finds a path to persist, to move on, to embrace the unknown. So as Valentine's Day approaches, think of what you love, who you love, how you love and why you love. Love can express itself as a general affection for human kind or, at times, directed towards a specific object

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of our affection whether it be opening a door for a person with a disability, smiling at someone in the elevator or just saying hello to a stranger. Embrace love for whatever it means to you, love of a spouse, parent, a grandparent, a sibling, or for that matter, a furry friend. It is astounding love abounds for our pets.

There is always some element to admire in all of us. Look to the positive and not to the negative, and more importantly, understand that forgiveness is a perhaps the greatest configuration of love as it frees us from negativity and allows us to move on with greater purpose and less emotional baggage. Happy Valentine's Day to my colleagues and friends, whether at the bench or bar, and whether working in solitary at our practices or within our homes and hopefully imbued with a sense of community, family and positive values.

For decades, the New York State Interest on Lawyer Account fund (IOLA) has funded scores of not-for-profit legal organizations throughout New York. Bench and bar alike, I believe, concur in the effectiveness of this program. IOLA funds have benefitted persons in need throughout the State. Proceeds have proved a lifesaver for those who face home loss, denial of life saving medical treatment or support that allows a family unit to function.

Why Gov. Hochul now proposes to place the hundred million of IOLA funding in a State general reserve account is problematic. Indeed, IOLA's Board of Trustees unanimously has opposed the transfer as does the New York State Bar Association. We must prioritize those in legal distress by continuing to fund not-for-profit legal organizations throughout the State. The proposal was not well received by the Office of Indigent Legal Services and its Director noted that the proposal would sweep 234 million from the indigent legal services fund to the State's general fund. He went on to say that the IOLA fund should be continued to improve the quality of public criminal defense and representation of parents in family court matters. The proposal is supported by Chief Administrator Judge Joseph Zayas who informs that there would be no impact on the Fund's allocation and that the proposal was aimed towards maximizing the Fund long term. To me it sounds like a bad idea as once the Funds get transferred into the State's general account you can well suspect that the intended allocations at some point will be impaired.

Speaking of funding for not-for-profit legal organizations to help those in need, I am delighted to report that RCBA has formed a Pro Bono Committee. This is a voluntary endeavor to assist those in need, not able to secure representation through the Legal Aid Society or Mid-Hudson Legal Services. Please consider joining the newly formed Committee, or for that matter, if you wish to serve as chairperson or co-chair of the Committee, reach out to our Executive Director, Nancy Low-Hogan (nancy@rocklandbar.org).

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We are all faced at time with many “tempests” in the practice of law. Some of the turbulence of our profession rears its ugly head in terms of time limitations, preparing for trial, deadlines, demanding clients and a host of other distractions which distance us from the love of what we do. Without love there is emptiness, a lack of purpose. Love fuels our relationships - the love of a client in need, and the love of our children as they mature, grow and hopefully flourish.

Happy Valentine’s Day to all.

Sincerely,

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

Happy
Valentine's
Day

THE PRACTICE PAGE

Hon. Mark C. Dillon *

THE LATEST PROCEDURAL AMENDMENTS

This is an annual topic for this column, taking note of recent amendments to statutes and rules that affect practitioners in New York.

CPLR 2106

There has been a lot of legislative activity on CPLR 2106, as it has been amended *twice* within weeks. The earlier version of the statute permitted licensed attorneys, as well as physicians, osteopaths, and dentists, to file affirmations with the court, rather than affidavits, so long as such persons were not parties to the action. Certainly, affirmations are more convenient than affidavits, as they dispense with the need to utilize the services of a notary public.

The first amendment to CPLR 2106, effective October 25, 2023, expanded the scope of the statute so that affirmations could be used by “health care practitioners” licensed under title 8 of the state Education Law (2023 Sess. Law of N.Y., Ch. 585, sec. 1) .

The second amendment to the statute became effective on January 1, 2024 and is even more sweeping. It provides that the affirmation of “any person” may be used in lieu of an affidavit (2023 Sess. Laws of N.Y., Ch. 559, sec. 1). The affirmation may be used “wherever made,” meaning within or without of New York (*Id.*). Now, affirmations will predictably become the litigation norm as they are represented to be true under the penalties of perjury, but without the inconvenience of notarization.

Where does that leave CPLR 2903(c), which was not repealed or amended? CPLR 2903(c) requires that an oath or affirmation taken without the state shall be treated as if taken within the state if it is accompanied by such certificate or certificates as would be required to entitle a deed acknowledged outside the state to be recorded within the state if such deed had been acknowledged before the officer who administered the oath or affirmation. In other words, 2903(c) requires a “certificate of conformity” for out-of-state affidavits and affirmations. Unclear from the most recent amendment of CPLR 2106 is whether an affirmation executed by an out-of-state person must still be accompanied by a certificate of conformity. *Arguably*, since an affirmation pursuant to CPLR 2106 is not “taken” or “acknowledged before the officer who administered the oath or affirmation” within the language of CPLR 2309(c), CPLR 2309(c) will not apply to affirmations executed out-of-state. But unless the legislature repeals CPLR 2903(c) or until courts resolve the now-conflicting provisions of CPLR 2106 and 2309(c) for out-of-state affirmations, counsel might consider using the affidavit procedure with the certificate of conformity out of an abundance of caution. This is a procedural question that should be resolvable by legislative attention or by future case law.

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ATTORNEY REGISTRATION

Part 118.1 and 118.3 of the Rules of the Chief Administrator have been amended to require that attorneys register, or re-register, on line. Paper registration ended as of December 1, 2023. The purpose behind the amendment is to render the registration procedures more efficient and improve the accuracy of data collection. Until now, 80% of attorneys have filed their biannual registration online. Now, it will be 100%.

The required \$375 registration fee must be paid online using a credit or debit card (with a 2.99% service fee) or an e-Check (with a \$1.00 service fee). From each attorney's registration fee, \$60 is paid to the Lawyers' Fund for Client Protection, \$50 to the Indigent Legal Services Fund, \$25 to the Legal Services Assistance Fund, and the balance to the Attorney Licensing Fund. Attorneys who are "retired," as defined, continue to be exempt from payment (Part 118.1[g]).

GOVERNOR HOCHUL'S VETOES

In my opinion, the end of last year's legislative session is more notable for Governor Hochul's vetoes of acts passed by the legislature than by what was actually signed into law. For civil practitioners, the vetoes include these subjects:

1) The legislature wished to enact a new CPLR 301-a and amend BCL 1301, to provide that a foreign corporation's application to do business in New York qualifies for as consent to the assertion of general jurisdiction for all actions against the corporation, and a revocation of the corporation's registration would concomitantly revoke the state's general jurisdiction over it. The legislation was intended to nullify a holding by the Court of Appeals in *Aybar v Aybar*, 37 NY3d 274 (2021) whereby, under still-continuing law, a corporation is subject to New York's general jurisdiction only if it is incorporated within the New York or maintains its principle office within the state, or under exceptional circumstances (see also *Daimler AG v Bauman*, 571 U.S. 117 [2014]). None of the foregoing affects the assertion of specific jurisdiction over out-of-state entities under the longarm statute (CPLR 302).

2) The governor vetoed a bill to amend CPLR 902, which would have prohibited courts from denying class certification solely on the ground that the action involves governmental operations (S5137, A4721).

3) The governor vetoed amendments to EPTL 5-4.1, 3, 4, and 6, which would have expanded potential damages for wrongful death to include emotional loss. The existing law only permits damage awards for pecuniary loss (S6636, A6698).

4) Governor Hochul vetoed a repeal of Judiciary Law 470 which, if signed into law, would have permitted attorneys maintaining law offices outside of New York to practice law in New York, without a physical law office here (S3261, A2218).

Until next year...

*Mark C. Dillon is a Justice of the Appellate Division, 2nd Judicial Dep't., an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author to the CPLR Practice Commentaries in McKinney's.

There is always something happening at the Rockland County Bar Association!

CLE PROGRAMS

- Foreclosure
- CPLR Update
- Jury Selection
- Substance Use Testing
- Immigration
- And many more....

COMMUNITY ACTIVITIES

- High School Mock Trial Competition
- Law Day Ceremony
- DEI High School Essay Contest

EVENTS

- Awards and Installation Dinner
- Annual Dinner Gala
- Holiday Party
- Lunch With a Judge

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WWW.ROCKLANDBAR.ORG TO STAY
INFORMED**



COMMERCIAL LITIGATION ISSUES OF INTEREST

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

Your corporate client stores its electronic files in the “cloud” in a DropBox business account instead of using an in-house server. As part of a lawsuit brought by your client, defendant’s counsel subpoenaed documents from your client’s non-party financial consultant, who then produced electronic documents and emails. Unbeknownst to you, the emails contained “live” links to your client’s entire electronic files, including confidential information shared with the financial consultant, which the defendant reviewed. Defendant’s counsel then threatened to use the information at an upcoming deposition and to make damaging information available in publicly filed court papers. The defendant demanded that your client dismiss the lawsuit with prejudice. The court granted your motion to temporarily and preliminarily enjoin the defendant’s use of and access to the files, and awarded your client counsel fees of \$156,000 for the motion, which involved extensive discovery and a hearing. The defendant moved to stay enforcement of the judgment pending appeal.

Will you defeat the motion for a stay of enforcement of the fee award pending appeal?

The answer is *no*.

In *Pursuit Credit Special Opportunity Fund LP v. KrunchCash LLC*, NYLJ 1703102912NY651070202 (Sup. Ct. N. Y. Co. November 28, 2023) (Case No. 651070/2022), the defendants moved to reargue the Court’s earlier decision and order, dated October 4, 2023, which granted plaintiff counsel fees of \$155,977 on a discovery motion. The defendants also sought a stay of enforcement of the fee award pending appeal. The defendants argued that the amount of the fee was improperly awarded without a hearing. The Court denied reargument, noting that the fee application was properly supported by a detailed affirmation. The defendants did not contest the fee application, or request a hearing on the amount of the fee, or seek additional documents.

However, the Court granted a stay of enforcement pending appeal without an undertaking, pursuant to CPLR 5519(c), conditioned on defendants’ appeal being perfected in 45 days. The Court explained that its prior order of October 2023 noted that no cases directly address the “vexing and concerning fact pattern” at issue.

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The Court held that the “novelty of the issue” provides grounds for awaiting appellate review, citing 10A Carmody-wait 2d §70:269 and *Pierne v. Valentine*, 179 114, 116 (Sup. Ct. 1942), *revd on other grounds*, 26 A.D. 70 (2d Dep’t 1943), which granted a stay because the question presented was one of first impression.

The reported decision sheds no light on just what was the vexing fact pattern that raised a novel issue. However, the 18-page decision and order of October 2023 (available on NYSCEF) is well worth the read. Here is what happened.

The defendants subpoenaed documents from plaintiff’s non-party financial consultant. The consultant produced responsive documents containing emails, which, unknown to plaintiff and its counsel, contained “live” links to all of the plaintiff’s files stored in the cloud in a non-public DropBox business account used by the plaintiff in lieu of an in-house server. The consultant produced its files electronically via a link accessible to counsel for both parties. Plaintiff’s counsel, without knowing about the live links, immediately designated all files produced by the financial consultant as confidential. When additional documents were produced by the consultant three days later, plaintiff’s counsel, still unaware of the live links, provisionally designated all documents produced by the consultant as “attorneys’ eyes only.” For approximately one week, the defendants and their counsel accessed the links to download, review, and analyze what the Court described as plaintiff’s *unproduced* electronic documents.”

Defense counsel then informed plaintiff’s counsel by letter that the DropBox links were live and that plaintiff had waived all privileges by making the links available to plaintiff’s consultant. The letter advised that the defendant intended to use the files at an upcoming deposition, that the defendants would make purportedly damaging information from the files publicly available in court papers, and demanded that the plaintiff dismiss the lawsuit with prejudice.

Plaintiff moved pursuant to CPLR 3103 for a protective order, for return of its confidential information, and for sanctions against the defendants and their counsel. Discovery, including depositions, and a hearing were held on the motion. The Court could find no precedential guidance on the fact pattern presented, which the

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Court described as “counsel using a hyperlink that permits unauthorized review of a litigation adversary’s live electronically-stored corporate files.” The Court distinguished this from cases involving an email referencing a specific document by hyperlink instead of physically attaching the specified document to the email. The Court ruled, “Those cases do not stand for the proposition that when an e-mail contains a link to an entire cloud-based file directory to facilitate the recipient’s provision of services, . . . that automatically means that the producing party’s entire cloud-based file directory becomes fair game for discovery. The implications of such a rule could be staggering and, in the Court’s view, is not what CPLR Article 31 envisions.”

Nor is this fact pattern covered by Rules of Professional Conduct (22 NYCRR 1200.0) Rule 4.4(b), governing inadvertently produced documents. Here, the documents in the linked files were not produced. The links, said the Court, “should have raised professional alarm bells – loud ones.” Under the circumstances, “counsel should have notified opposing counsel and/or sought guidance from the Court as to what, if any, use could legitimately be made of the documents to which counsel had obtained access via the DropBox links.”

The Court ordered the defendants to return to plaintiff all documents within five days, to immediately destroy all copies, descriptions, and summaries of the documents, and to reimburse the plaintiff \$155,977 as reasonable attorneys’ fees and costs in bringing the motion.

The lesson? Don’t play with fire. If you suspect that documents you received from your adversary in discovery contain material that was not meant for you to see, notify your adversary immediately (per Rule 4.4 [b] of the Rules of Professional Conduct). Do likewise, or ask the Court for advice, if the documents produced give you access to what appears to be confidential information not typically discoverable. Otherwise, you may be subject to discipline or sanctions.

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



**The Committee on Diversity,
Equity & Inclusion presents...**

SPOTLIGHT



As we celebrate Black History Month, the Diversity, Equity and Inclusion (“DEI”) Committee shines its spotlight on Venita Whidbee-Jordan, Esq., Principal Assistant County Attorney with the Rockland County Attorney’s Office.

On behalf of the [DEI Committee](#), I’m happy to interview you for RCBA’s NewsBrief Spotlight. Let’s start off with you telling us where you grew up?

I was born in Nyack, and grew up in Central Nyack, and currently live in South Nyack. My family’s roots in Rockland County go back to my maternal great-great grandmother, who lived in Upper Nyack, then moved to Central Nyack and owned land. Both of my parents were born and grew up in Nyack. My grandmother graduated from Nyack High School in 1936; my mother, me and my four daughters are also alumnae.



Tell us about your Educational Background.

I attended college at SUNY Albany, New York, graduating in 1994. I then attended Albany Law School, graduating in 1997. Last year I obtained my LLM in Human Resources Law, Leadership and Policy from Albany Law. One of my proudest moments from law school was participating in the Post Conviction Remedies Clinic, where I worked on the petition for clemency filed by Charline Brundidge. Mrs. Brundidge was the first survivor of domestic violence in New York to receive executive clemency from Governor Pataki.

Did you always want to be a lawyer?

Originally, I wanted to be a pediatrician. However, when I was in 10th grade, I took Chemistry and did not do well, so I decided to change my career path to law.

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This leads us to learning about your legal career.

I was inspired to pursue a legal career by my maternal great grandfather, Charles Spencer, who worked in the Rockland County District Attorney's Office and was also the President of Rockland Negro Democrats. After graduating from law school and taking the bar exam, I briefly worked for Susan Smith, Esq. I then began work with the Rockland Family Shelter, now known as The Center for Safety and Change, as their first Coordinator for African American Services. After I was admitted to the Bar in 1998, I held a job-shared staff attorney position for the same organization until 2004. In February, 2004, I joined the Rockland County Attorney's Office, where I have worked continuously since. I am currently assigned to the following County departments/agencies: the Board of Elections, Personnel Department, Rockland Community College, Office of Aging, and Economic Development and Tourism. I am honored to be a public servant.

What would you like to share with us about your personal life? My husband and I have four daughters who have launched themselves into adulthood.

Who is your Inspiration or Hero? My grandmother, Elnora Spencer Minniefield, although no longer with us, is my hero. She was a very active member of the Central Nyack Community where she and her sister, several other African American women, and famed architect, Win Perry, formed the Central Nyack Civic Association (CNCA). The CNCA was instrumental in the building of the Central Nyack Community Center and preservation of Buttermilk Falls.

What is one piece of good advice that you have received/learned? There have been so many pieces of great advice I have received over my lifetime. I have had so many impactful mentors, friendships, books, movies, plays and pieces of music that fill up the wellspring of advice by which I live, and by which I advise others in my life. They showed me with their lives, and their words: *"Build the frame of your life out of self-discipline. Build the walls of your life out of service to others. Build the roof of your life out of prayer and quiet times. Build a garden around your life out of serenity and a sure faith."* Other advice that comes to mind is the importance of consistently practicing gratitude, charity, joy, patience and laughter.

What is your favorite thing about Rockland? My favorite thing about Rockland is my family's 140-year history in Nyack and the surrounding villages and hamlets: Hillburn, Piermont, Orangeburg, and our

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Native American lineage. I treasure my cultural connection to the County as my forebearers were instrumental in various community groups. Of course, I also love the proximity to all the sights, sounds and tastes New York City has to offer.

What is your favorite TV or streaming show, or favorite book? My new favorite book is *Between Two Kingdoms: A Memoir of a Life Interrupted* by Suleika Jaouad. This book “broke” what I refer to as my pleasure-reading drought caused in part by the pandemic. It was so deeply impactful that I was moved to write to the author in praise and gratitude for this work. A deeply human experience of living between all of the worlds that make up our one life. A beautiful piece of work, I highly recommend it.

Tell us one of your guilty pleasures. There are so many to choose from but the one I enjoy on a leisurely day off is the chocolate croissants and a café au lait from Didier Dumas Pâtisserie in Nyack.

Is there anything else we didn’t cover that you would like the Bar Association to know about you? Yes. This year I have decided to direct my personal charitable giving for 2024 to the Martin Luther King Jr. Multipurpose Center located in Spring Valley (<https://www.mlkmpc.org/>). Founded in 1964 as the Community Reading Room, and incorporated in 1978, the Center has grown to serve its community through an abundance of services and programs. I encourage those who read this piece to consider visiting the Center’s website to learn more about this important community organization.



COMMUNITY ANNOUNCEMENTS

NEW LAWYER SEEKING PRO BONO WORK

Clark Alexandre passed the New York State Bar exam and is looking to fulfill the 50 hours of law-related pro bono service required for bar admission. He graduated from Pace Law school in 2001. Since then, he has worked for New York State in a non-law related capacity. In addition to the required pro bono hours, Clark would like to continue to assist a firm on a part time basis. A few areas of interest include, Immigration, Trust and Estate, Property, Personal injury and municipal law. If you have an opportunity for Clark, please contact him directly at (845) 641-4606 or c2ipres@gmail.com

LOOKING FOR A WILL

Susan Kalage is looking for an attorney who may have prepared a will for Stephen Francis Caglione of 24 West Broadway, Central Nyack, NY. If you have any information, please contact her directly at suehwy105@yahoo.com or 914-980-0572 .



Technology Tips for Attorneys



submitted by

Michael Loewenberg*

For the past few months, we've been exploring how to use technology effectively in your practice. Here are five additional tips to enhance your law firm's technology infrastructure:

1. Implement Virtual Receptionist Services: Say goodbye to missed calls and hello to round-the-clock client support with virtual receptionist services like Smith.ai or Ruby Receptionist. These platforms offer professional call answering, appointment scheduling, and message forwarding at a fraction of the cost of hiring a full-time receptionist. By providing a seamless client experience and improving responsiveness, you'll foster trust and loyalty while freeing up valuable time for your team to focus on billable work.
2. Explore Open-Source Software Solutions: Dive into the world of open-source software to access powerful tools and resources without the hefty price tag. Platforms like LibreOffice, GIMP, and OpenOffice provide free alternatives to proprietary software suites for word processing, graphic design, and document management. Additionally, explore open-source legal software like Open-Advocate or LegalServer for case management and client collaboration. By harnessing the collective wisdom of the open-source community, you'll unlock cost-effective solutions tailored to your firm's unique needs.
3. Embrace Remote Collaboration Tools: In an era of remote work and virtual meetings, robust collaboration tools are essential for staying connected and productive. Explore platforms like Slack, Microsoft Teams, or Zoom for seamless communication, file sharing, and video conferencing. Leverage features like channel-based messaging, screen sharing, and document collaboration to foster real-time collaboration and streamline workflow. Whether your team is working from home or spread across multiple offices, these tools will keep everyone connected and aligned toward common goals.
4. Optimize Website and Online Presence: Your firm's website is often the first point of contact for

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potential clients seeking legal services. Ensure it makes a memorable impression by optimizing its design, content, and functionality. Invest in user-friendly website builders like WordPress to create a professional and responsive website without the need for coding expertise. Incorporate search engine optimization (SEO) best practices to improve visibility and attract organic traffic from potential clients. Additionally, leverage social media platforms like LinkedIn, Twitter, and Facebook to amplify your firm's online presence and engage with your target audience.

5. Conduct Regular Technology Audits: Stay proactive and vigilant by conducting regular technology audits to identify areas for improvement and mitigate potential risks. Assess your firm's hardware, software, network infrastructure, and data security protocols to ensure they align with industry best practices and regulatory compliance standards. Leverage free tools like Microsoft's Security Compliance Toolkit or the National Institute of Standards and Technology (NIST) Cybersecurity Framework to evaluate your firm's cybersecurity posture and implement necessary safeguards. By prioritizing transparency, accountability, and continuous improvement, you'll safeguard your firm's assets and reputation in an ever-evolving digital landscape.

Incorporating these additional tips into your technology strategy will further empower your firm to thrive in today's fast-paced legal environment while maximizing efficiency and client satisfaction.

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

See our NEW listing of Affiliate and STAR Members on our RCBA website. Scroll down on the homepage to view.





SAVE THE DATE

THE STAY HAS BEEN LIFTED-BACK BY POPULAR DEMAND: AN EVENING WITH THE SURROGATES

MAY 2, 2024 | 5:30PM - 8:30 PM

LONG ISLAND MARRIOTT

Honored Speakers to Date:

Honorable Hilary Gingold, Honorable Bernard J. Graham,
Honorable Michael G. Hayes, Honorable Peter J. Kelly,
Honorable Timothy P. McElduff, Jr., Honorable Rita Mella,
Honorable Vincent J. Messina, Jr., Honorable Margaret C. Reilly,
Honorable Brandon R. Sall

Honored Moderators:

Honorable John M. Czygier, Jr. &
Honorable A. Gail Prudenti

*Presented by the
Trust, Estates, Wills and Guardianships Committee of the New York State Bar Association's Dispute
Resolution Section*

*Co-Sponsored by the
Nassau County Bar Association & Suffolk County Bar Association*

CLE will be available



SUCCESSION

A new Newsbrief column

BY JUDITH BACHMAN, ESQ.

How Do You Exit Your Law Practice?



While building my law practice, I have struggled with two competing thoughts: how to continue to grow my firm and how to eventually exit it. In grappling with these seemingly divergent ideas, I have come to realize two important things: (1) not enough of us are thinking about these issues, and (2) the two ideas, growth and exit, are mirror images of each other, and lessons from one can inform the other. Alarmed by our collective failing to give these issues enough consideration, I want to share what I have learned to encourage you to confront these issues in your own practice.

Before jumping further into the discussion, though, while I love practicing law, you should know that my goal in doing this planning is to build the value of my firm so that on exit, I can realize that value. Several years ago, I had a business mid-life crisis. I had been working in my solo practice for about twenty years, after big firm life. I realized then that if I got hit by a bus, no one would pay my family a dollar for all of the work that I had done. From that day on, I have striven to build a law firm and grow its value.

This idea was made possible with the evolution of ethical rules regarding the sale of a law firm. “Standards governing the sale of law practices are of comparatively recent origin. Before . . . 1996 . . . a lawyer in New York could not sell a law practice. See EC 4-6 (as in effect prior to 1996); N.Y. State 707 (1998). The theory, still reflected in Comment [1] to Rule 1.17, was that ‘[c]lients are not commodities that can be purchased and sold at will.’” NYSBA Ethics Committee Opinion 1168 (5/13/2019).

New York Rule of Professional Conduct 1.17(a) now provides: “A lawyer retiring from a private practice of law . . . may sell a law practice, including goodwill, to one or more lawyers or law firms, who may purchase the practice”

Even though, as practitioners, we are now on equal footing with other business owners looking to exit, I know that many local practitioners do not take advantage of that opportunity. I have seen many colleagues simply choose to retire and close up their office. While that may be your expectation for your own exit, I am hoping that by sharing what I have learned in my own efforts, you will give more forethought to your own plans.

The options that I have explored include law firm purchases, mergers, lateral moves, and hiring and internal succession. In future articles, I will share what I have learned about each one of these choices. While none of these options is perfect, it behooves each one of us to make deliberate choices about both our present practices and our law firm exit.

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

Andre Joseph Aries, Esq.

Danielle Gonzalez, Affiliate Member

Justin Sweet, Esq.

**WE LOOK FORWARD TO SEEING YOU AT OUR MANY CLE PROGRAMS AND
OTHER ACTIVITIES**

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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information and an application.**

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THREE MONTHS!

~ ~ ~

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MEMBER* AND GET
A FREE HALF-PAGE AD FOR 3
MONTHS IN NEWSBRIEF.

The person referred must not be a current RCBA member, and they must meet the eligibility criteria for membership. The person must complete the Membership Application and pay the Dues in advance by either check or online. For the online Membership Application, use the link below

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STATEMENT BY THE IOLA FUND BOARD OF TRUSTEES OPPOSING THE TRANSFER OF \$100 MILLION FROM THE IOLA FUND TO THE GENERAL FUND

January 24, 2024 – The IOLA Board of Trustees unanimously opposes the Governor’s FY25 Executive Budget, which would transfer \$100 million from the IOLA Fund to the State General Fund. The IOLA Board further urges all New Yorkers who care about the provision of civil legal aid to those who face the loss of their home, denial of life saving medical treatment, or financial support that holds a family together, to voice their opposition.

Mission of the IOLA Fund

Recognizing the importance of funding civil legal services for the most vulnerable New Yorkers, the Legislature created the IOLA Fund in 1983. With the strong support of the New York State Bar Association and the wider legal community, a funding stream derived solely from the interest on attorney escrow accounts – **with no taxpayer monies** – was created. The legislation made clear that **"the purpose of this act is to provide funding for the providers of civil legal services** in order to ensure effective access to the judicial system for all citizens of the state to the extent practicable" and further provided that "the beneficial interest in [the revenue generated from IOLA accounts] will be held by the IOLA fund **exclusively** for charitable purposes" L 1983, ch 659, §1 (emphasis added).

Throughout its 40-year history, IOLA funding has been a vital source of support for the civil legal aid community and currently funds 81 non-profit legal organizations in every region of New York State. In FY2023, these IOLA Grantees closed over 307,000 cases benefitting more than 639,000 New Yorkers, the vast majority of whom faced challenges involving the "essentials of life" – housing, family matters, access to health care and education, income support, and consumer debt relief. Financial analyses have demonstrated substantial economic benefits to New York State and its communities that go far beyond the people directly served by civil legal aid. For example, federal benefits secured for New Yorkers including SSI, SSD, and Medicare and Medicaid totaled over \$973 million. The overall economic benefit, when including the "economic multiplier effect," from all IOLA Grantee work to the New York economy topped \$2.8 billion dollars and included the creation of 8,000 jobs. All told, for each dollar invested in civil legal aid, the return on investment has been estimated to be nearly ten dollars.

Enduring Need for a Dedicated Fund for Civil Legal Aid

Revenue generated from IOLA accounts is tied to interest rates, resulting in great volatility in the amount of IOLA funds available to distribute to its Grantees. For example, when the economic crisis hit in 2008, funds available for distribution from IOLA dropped dramatically and remained flat for over 12 years with interest rates and revenues rising again only recently.

Now, for the first time since 2007, IOLA is poised to substantially increase funding for its grantees and launch a multi-year Justice Infrastructure Project to improve the delivery system through economies of scale and address gaps created by years of underfunding. IOLA also seeks to ensure that vital services will still be provided for when interest rates inevitably fall, as is already projected for 2024. IOLA’s increased revenue has not kept pace with the civil legal needs of vulnerable New Yorkers. In fact, in December 2023, the New York State Permanent Commission on Access to Justice reported to the Chief Judge that an additional \$1 billion in annual funding would be needed to close the justice gap in New York.

In the 40 years of IOLA’s existence, New York State has faced many crises including housing, education, financial and a global pandemic. Despite these challenges, IOLA’s funds cannot and should not be diverted to the General Fund and must be used exclusively for the provision of civil legal services for low-income New Yorkers, in accordance with its mission and governing statute. The IOLA Board of Trustees believes that the Governor lacks the legal authority to transfer funds from IOLA to the General Fund. The IOLA Fund should remain as intended – a dedicated "fiduciary fund" to support the civil legal needs of vulnerable New Yorkers. SFL §97-v (1).

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

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

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

CLE CORNER

SAVE THE DATE FOR THESE CLE PROGRAMS!

March 13, 2024. 6:00 p.m. —9:00 p.m. Foreclosure Update 2024

Speakers will be Judge Mark Dillon, Suzanne Berger, Esq., David Marcus, Esq. Derek Tarson, Esq. This program will be presented on Zoom.

March 19, 2024. 1:00 p.m.—2:00 p.m. Jury Selection with the

Commissioner of Jurors. Speakers will include Sabrina Greco, Commissioner of Jurors, and local attorneys and judges. This program will be presented on Zoom.

April 18, 2024. 12:30 p.m.—1:30 p.m. A Primer on Estate Practice

Speakers will be Courtney Boniface, Esq. and Amanda Henderson, Esq. This program will be presented on Zoom.

May 10, 2024. 9:30 p.m.—12:30 p.m. CPLR Update 2024. Mark your calendar for the popular annual program. The speaker will be Professor Patrick Connors. This program will be presented on Zoom.

Watch your emails for additional information and registration.

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

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.

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

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.

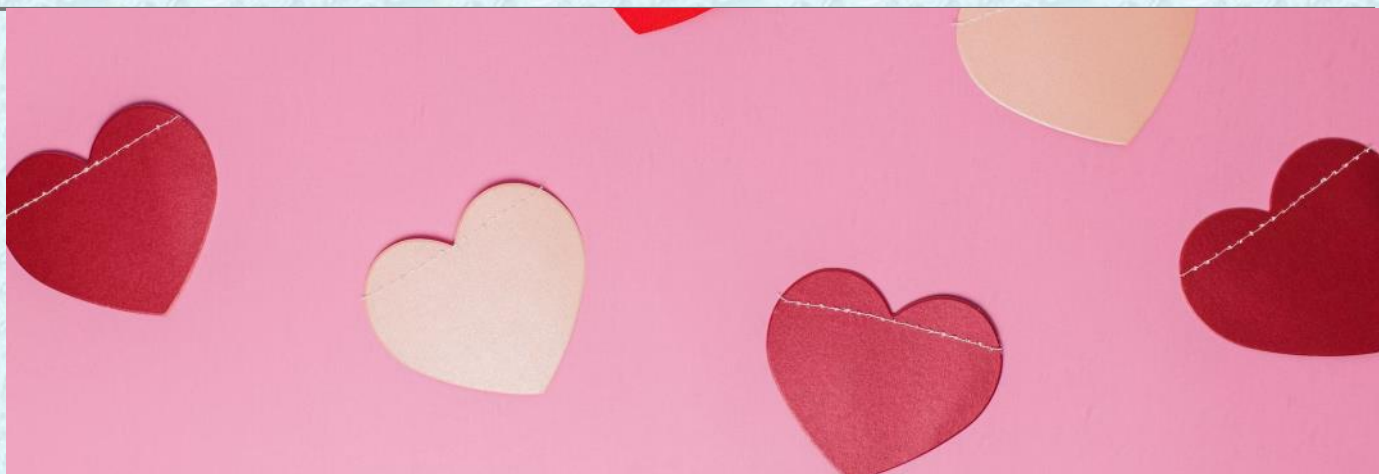
Effective July 1, 2023 - Change to Experienced Attorney Biennial CLE Requirement to Include One

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.



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, Lawyer to Lawyer, 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 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.

IMMIGRATION LAW COMMITTEE

"Immigration Law is a critical component of our system of laws. We are pleased to announce that the Rockland County Bar Association is relaunching the Immigration Committee. The committee is being co-chaired by two experienced immigration attorneys, Ivon Anaya, Esq. and Crismelly Morales, Esq. Given the recent influx of Immigration in our community, we are excited to provide insight and updated information about Immigration Law to the members of the Bar Association and our community.

We are looking for new members! If you are interested in joining our committee, please email Ivon at ianaya@demoyalaw.com and Crismelly at crismelly@cmoraleslaw.com to express your interest. Stay tuned for our future meetings and events!

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:

February 12, 2024, 5:00 p.m. The committee meeting will be held on Zoom.

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)

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 by the 15th of the month so that the Executive Board may review it.

Thank you!



Monthly
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¹ Judges who appoint an Assistant Law Clerk agree to forego the appointment of a Secretary and waive the right to such an appointment under section 36 of the Judiciary Law for the period of service for the Assistant Law Clerk.

ASSIGNMENT: This position is assigned to the Hon. Elena Goldberg Velazquez, Supreme Court Justice, Orange County. Duties include, but are not limited to: preparing confidential legal memoranda, conducting legal research, drafting orders and opinions, proofreading opinions, resolving scheduling issues with attorneys and conducting discovery conferences. Additional responsibilities include administrative tasks, responding to telephone calls, scheduling cases and monitoring the court's docket.

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APPLICATION PROCEDURES: All interested persons meeting the minimum qualifications are encouraged to submit a UCS-5 Application for Employment form (obtainable from any administrative office in a court building or on the web at www.nycourts.gov/careers/UCS5.pdf) and a resume and cover letter by email to egoldber@nycourts.gov

APPLICANTS ARE ENCOURAGED TO COMPLETE THE EQUAL EMPLOYMENT OPPORTUNITY DATA COLLECTION FORM.

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