ROCKLAND COUNTY BAR ASSOCIATION

NEWSBRIEF

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INSIDE THIS ISSUE:

Jeanmarie DiGiacomo—Editor

President's Post

"I wish I could say that racism and prejudice were only distant memories. We must dissent from the indifference. We must dissent from the apathy. We must dissent from the fear, the hatred and the mistrust…We must dissent because America can do better, because America has no choice but to do better." Justice Thurgood Marshall

It is this quote from Justice Marshall that resonates with me as we celebrate Black History Month and reflect on the profound impact of Black trailblazers, too numerous to name, in the legal profession and what they have contributed to our justice system. Our esteemed jurists encompass every branch of government, such as Justice Thurgood Marshall, Judge Constance Baker Motley, Ambassador Franklin H. Williams, Representative Shirley Chisholm, Senator Carol Moseley Braun and President Barack Obama. All have strived and succeeded in their legal careers to provide "Equal Justice Under Law", the motto inscribed above the main entrance to the U.S. Supreme Court. Their commitment to equity and justice continues to inspire generations of legal professionals dedicated to upholding the rule of law. Their legacies especially remind us today of the enduring power of law as an instrument for societal change. Let us all continue to work for "Equal Justice Under Law".

It is fitting that in February we also celebrate love on Valentine's Day. I encourage you to reach out with gratitude to those who have made a difference in your professional and personal lives. A simple gesture of appreciation can have a lasting impact.

With much love and appreciation for all RCBA members,

Laurie A. Dorsainvil, Esq.
President

THE DIVERSITY EQUITY AND INCLUSION COMMITTEE OF THE ROCKLAND COUNTY BAR ASSOCIATION CELEBRATES

BLACK HISTORY MONTH

2025 BLACK HISTORY THEME
AFRICAN AMERICANS AND LABOR

The 2025 Black History Month theme, African Americans and Labor, focuses on the various and profound ways that work and working of all kinds - free and unfree, skilled, and unskilled, vocational and voluntary - intersect with the collective experiences of Black people. Indeed, work is at the very center of much of Black history and culture. Be it the traditional agricultural labor of enslaved Africans that fed Low Country colonies, debates among Black educators on the importance of vocational training, self-help strategies and entrepreneurship in Black communities, or organized labor's role in fighting both economic and social injustice, Black people's work has been transformational throughout the U.S., Africa, and the Diaspora. The 2025 Black History Month theme, "African Americans and Labor," sets out to highlight and celebrate the potent impact of this work.

Considering Black people's work through the widest perspectives provides versatile and insightful platforms for examining Black life and culture through time and space. In this instance, the notion of work constitutes compensated labor in factories, the military, government agencies, office buildings, public service, and private homes. But it also includes the community building of social justice activists, voluntary workers serving others, and institution building in churches, community groups, and social clubs and organizations. In each of these instances, the work Black people do and have done have been instrumental in shaping the lives, cultures, and histories of Black people and the societies in which they live. Understanding Black labor and its impact in all these multivariate settings is integral to understanding Black people and their histories, lives, and cultures.

Africans were brought to the Americas to be enslaved for their knowledge and serve as a workforce, which was super exploited by several European countries and then by the United States government. During enslavement, Black people labored for others, although some Black people were quasi-free and labored for themselves, but operated within a country that did not value Black life. After fighting for their freedom in the Civil War and in the country's transition from an agricultural based economy to an industrial one, African Americans became sharecroppers, farm laborers, landowners, and then wage earners. Additionally, African Americans' contributions to the built landscape can be found in every part of the nation as they constructed and designed some of the most iconic examples of architectural heritage in the country, specifically in the South.

Over the years to combat the super exploitation of Black labor, wage discrepancies, and employment discrimination based on race, sex, and gender, Black professionals (teachers, nurses, musicians, and lawyers, etc.) occupations (steel workers, washerwomen, dock workers, sex workers, sports, arts and sciences, etc.) organized for better working conditions and compensation. Black women such as Addie Wyatt also joined ranks of union work and leadership to advocate for job security, reproductive rights, and wage increases.

2025 marks the 100-year anniversary of the creation of Brotherhood of Sleeping Car Porters and Maids by labor organizer and civil rights activist A. Philip Randolph, which was the first Black union to receive a charter in the American Federation of Labor. Martin Luther King, Jr incorporated issues outlined by Randolph's March on Washington Movement such as economic justice into the Poor People's Campaign, which he established in 1967. For King, it was a priority for Black people to be considered full citizens.

The theme, "African Americans and Labor," intends to encourage broad reflections on intersections between Black people's work and their workplaces in all their iterations and key moments, themes, and events in Black history and culture across time and space and throughout the U.S., Africa, and the Diaspora. Like religion, social justice movements, and education, studying African Americans' labor and labor struggles are important organizing foci for new interpretations and reinterpretations of the Black past, present, and future. Such new considerations and reconsiderations are even more significant as the historical forces of racial oppression gather new and renewed strength in the 21st century.

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THE PRACTICE PAGE

THE LATEST PROCEDURAL AMENDMENTS

Hon. Mark C. Dillon *

This is an annual topic for this column, taking note of new or amended statutes and rules that affect practitioners in New York which have become effective during the past year.

CPLR 2106

Last year's column discussed the amendment to CPLR 2106, which allowed for affirmations to be used in lieu of an affidavits by any person, wherever made. That amendment, which became effective January 1, 2024 (2023 Sess. Law of N.Y., Ch. 585, sec. 1), widened the use of affirmations from the previous versions of the statute which had been restricted to use by attorneys, physicians, dentists, osteopaths, and other health care professionals. The affirmation language must substantially conform with language set forth in the then-amended statute for the affirmation to be effective. The CPLR uses the term "affidavit" over five dozen times, and questions have arisen over whether the affirmation procedure may be used in *every* instance in which the swearing of an oath is otherwise directed. For instance, Professor Patrick Connors of Albany Law School has questioned whether an Affidavit of Corrections to a deposition transcript must still be executed in affidavit form, to be consistent with the sworn oath administered to the witness by the stenographer at the outset of the same deposition. Aside from that, when public officials sign their oaths of office, may they merely affirm their loyalty to the federal and state constitutions and the execution of duties to the best of their abilities? May the amended version of CPLR allow for affirmations where "verifications" are called for, such as in pleadings? These questions, perhaps prickly but well-intentioned, first arose in the courts in an election proceeding last year given the expedited nature of the state's election calendar. The Appellate Division, Second Department, held in *Sweet v Fonvil*, 227 AD3d 849 (2d Dep't. 2024) that an election petition was properly "affirmed" under CPLR 2106 as amended.

Because of ongoing questions involving the earlier amendment, the state legislature has once again amended the law regarding the use of affirmations, though not in CPLR 2106 itself. The amendments were signed into law by Governor Hochul on Dec. 21, 2024. One is to State Administrative Procedure Act 302 , which now allows affirmations to be used instead of affidavits at administrative proceedings. Another is to CPLR 3020(a), allowing for affirmations in verifying pleadings. That amended statute requires the pleading be stated by the affirmant to "be true to the knowledge of the deponent, except as to matters alleged on information and belief, and that as to those matters such deponent believes it to be true." Since verified pleadings may be used as affidavits under CPLR 105(u), and affirmations may now be used in lieu of affidavits under CPLR 2106, the logical syllogism is that affirmed pleadings may now be used as affidavits as well. By extension, affirmations may likely be used for verifying bills of particulars.

Many attorneys will love this. The procedure is liberalized. The only concern is whether the lessening of the formalities might reduce the level of truthfulness and solemnity when making averments in litigation documents. The late Professor Siegel was never a fan of sworn affidavits, believing them to be no deterrent to the potential utterance of falsehoods. Tongue-in-cheek, he observed in 1978 that "[e]arlier in our legal history the requirement of swearing may have been underwritten by a genuine fear of Hell, but Hell has had little impact on New York practice. Quite the contrary." More clarifying legislation about the use of affirmations might be expected in the future.

Executive Law 297(5)

The statute of limitations for unlawful discrimination claims in the courts is three years (Executive Law 290; CPLR 214[2]). Yet, until last year, the statute of limitations for administrative claims of unlawful discrimination at the NYS Division of Human Rights was one year (the former Executive Law 297[5]). That anomaly has been corrected by an amendment to Executive Law 297(5), raising the limitations period for claims at the Division of Human Rights to three years. The amendment is effective only for claims which arose after the effective date of the statute.

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Labor Law 201-i

An amendment to Labor Law 201-i should be of interest to employers, including law firms and other entities which employ attorneys (L.2023, c. 367, sec. 1). Labor Law 201-i, which became effective in 2024, provides that employers are permitted to research a job applicant on social media. However, they are not permitted to request or require from the applicant user names, passwords, or similar login information to access *private* social media accounts. If the person is already an employee, the employer is permitted to demand and have access to the employee's user name and passwords for accessing employee accounts on the employer's own computer or information systems. The statute also permits employers to restrict employees from accessing certain sites from employer-provided computer resources. The law attempts to balance the right of employers to investigate or monitor the activities of actual or potential employees from public sources, while protecting employee privacy where deserved. Exempted from this law is law enforcement, fire departments, corrections departments, and employers complying with other federal, state, or local laws.

Grieving Families Act

On December 22, 2024, Governor Hochul vetoed the third legislative version of the Grieving Family Act (A9232-b, S8485-b). The Act, if signed, would have updated the state's 177-year-old wrongful death statute to allow close family members to sue for emotional damages arising from their loved-one's death. Currently, compensatory damages are limited to economic or pecuniary loss resulting from the death, the related medical and funeral costs, and the value of parental guidance. The proposed law would have also expanded the statute of limitations from two years to three years measured from the decedent's death. The bill passed by the state legislature had strong support from the NYSBA. The Governor wrote in her veto message, "For the third year in a row, the legislature has passed a bill that continues to pose significant risks to consumers, without many of the changes I expressed openness to in previous rounds of negotiations." Perhaps, there will be a fourth proposed bill in 2025 addressing more of the Governor's concerns.

Executive Law 135-C(2)(b)

When the legislature adopted new statutes enabling notarizations to occur by remote electronic means, there was an expectation that new stringent notarial record-keeping standards, imposed to protect consumers and litigants availing themselves of technological advancements, were to be applied only to *remote* notarization procedures. But when Executive Law 135-C(2)(b) was passed into law and became effective in mid-2023, its strict recordkeeping language applied to all notarizations, including traditional in-person ink versions. The NYSBA supported amendatory legislation that would have relaxed the recordkeeping standards for in-person notarizations, which the state legislature passed last year (A7142-a, S8663). However, the amendment was vetoed by Governor Hochul in late November 2024 on the ground that stringent recordkeeping for all notarizations were in the public interest.

Class Actions

For the second time, Governor Hochul vetoed legislation which would have, if signed, amended CPLR 902 to prevent courts from denying class action certifications solely on the ground that a case involves governmental operations (A8609, S9518). In her veto message on December 21, 2024, the Governor explained that courts have the discretion to address the issues contemplated by this legislation, which should not be disturbed.

On balance during 2024, more legislation affecting state procedural statutes was vetoed by the governor than signed into law.

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As a service to Rockland County Bar Association members and the public, the Bar is pleased to sponsor this "Ethics Corner" column. To suggest future column topics, please email David Evan Markus at davidevanmarkus@gmail.com.

Reciprocal Discipline, Part I: Dispelling Common Misperceptions

By David Evan Markus, Esq.

This "Ethics Corner" column tips a hat to multi-jurisdictional practice trends. As remote technology and interstate harmonization of bar admission standards more readily invite New York attorneys to undertake non-New York representations, attorneys must be ever mindful of their corresponding New York ethical obligations and disciplinary implications.

Of course, "nobody expects the Spanish Inquisition."(1) What attorney begins an out-of-state representation expecting to face discipline there, much less thereafter in New York? Yet the Appellate Division reports dozens of reciprocal discipline cases annually,(2) many depicting attorneys in the shadow of foreign sanctions who fail to heed the prompt and the potential long-term implications for reciprocal discipline in New York.

The phrase "reciprocal discipline" itself can lead the unfocused attorney astray. In the heat of the moment, they might believe that they need not report foreign sanctions because any New York discipline will happen automatically (or, conversely, won't happen at all if local authorities are left unawares). Foreign-sanctioned attorneys also might undervalue their incentive to address the matter in New York, believing that "reciprocal" discipline means merely rubber-stamping the foreign sanction.

These perceptions are incorrect and can compound the attorney's woe or jettison precious opportunities to show good cause for leniency.

Foreign Discipline Always Triggers a Reporting Mandate

Within 30 days of receiving an attorney discipline sanction from another jurisdiction, including a federal court, an attorney admitted to the New York Bar must report the sanction in writing to the "appropriate" Appellate Division department and local grievance committee, and attach the sanction order.(3) Attorneys whose Office of Court Administration ("OCA") registration lists a New York address must report to the Appellate Division department and grievance committee having jurisdiction at that address,(4) regardless where the attorney practices or has a law office. New York attorneys whose OCA registrations list out-of-state addresses must report to the department where they were admitted to the New York Bar.(5)

This reporting duty attaches immediately upon receipt of a foreign sanction order, including an interim sanction pending final adjudication in the foreign disciplinary proceeding.(6) This duty also applies to all sanctions without exception including mere reprimand, and courts will not credit good-faith belief to the contrary.(7)

Sanctioned attorneys have every incentive to self-report. At minimum, failure to report can be an aggravating factor as to the attorney's ultimate New York sanction, and may bear on the judicial perception of candor before a tribunal.(8) For attorneys subject to Third Department discipline, failure to report also can "demonstrate [the attorney's] disregard for his [or her] fate as an attorney in New York"(9) – a perception that no New York attorney wishing to remain one would desire. Even where the Appellate Division does not treat the failure to report as an aggravating factor, failure to report can cause non-disbarment sanctions to resurrect in New York long after the proverbial coast seems clear.

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A longstanding Ninth Judicial District attorney recently discovered how. In 2016, the Southern District of New York's Committee on Grievances suspended a local attorney for six months after he violated a standing order against taking photographs and videos in the White Plains federal courthouse. The attorney did not report the sanction to New York authorities. Fully five years later, the Second Department found out and served on the attorney an order to show cause why reciprocal discipline should not be imposed. In 2022, the court suspended the attorney for six months effective immediately, not *nunc pro tunc* to the 2016 federal suspension.(10) Rather than promptly reporting the matter to address it once and for all, the attorney lived through it twice.(11)

As in most crisis communications contexts, the better part of valor after foreign discipline is candor: tell it first, tell it completely and tell it yourself.

Reciprocal Sanctions Need Not Be Identical

Whether the Appellate Division learns of foreign discipline by an attorney's self-report, or by other means (*e.g.* directly from the foreign jurisdiction, or from a Grievance Committee investigation), the court will order a New York attorney subject to foreign disciplinary sanction to show cause why New York should not impose reciprocal discipline.(12)

The balance of this column rebuts the fallacy that New York sanctions on reciprocal discipline are "reciprocal" in the sense that they must be identical to the foreign penalty. They need not be. To the contrary, all four Appellate Division departments claim their right to decide a reciprocal sanction independent of the jurisdiction of original discipline, and such determinations generally are insulated from Court of Appeals review.(13)

To be sure, the stated policy reasons and legal formulations shaping reciprocal sanction determinations vary slightly between the departments. The First and Second Departments "generally accord significant weight to the sanction[s] imposed by the jurisdiction where the misconduct occurred," based on the public policy that "such foreign jurisdiction has the greatest interest in fashioning [those] sanctions."(14) This policy, however, is not ironclad: recent Second Department cases also assert that "the jurisdiction in which the [foreign-sanctioned attorney] resided, and practiced law, at the time of the charged misconduct" has the greatest interest in the issue of sanction."(15) These disparate policy narratives do not appear to turn on where the attorney resides or principally practices, or whether one or another narrative might guide a particular sanction determination.

The First and Second Departments both also hold that generally "when the sanction prescribed by the foreign jurisdiction is not inconsistent with the sanction for similar conduct in this jurisdiction, [New York] should impose the same sanction."(16) Where the sanction in the foreign jurisdiction "deviates substantially from [New York] precedent," both departments will depart "from the general policy of deference and impose[] a more severe penalty where warranted."(17) The First Department has narrated explicitly that it "[o]nly rarely" departs from its general deference to the sanction decision of the original jurisdiction of discipline;(18) in one case, the First Department remarked that it will disfavor departure "even if greater or lesser sanctions have been imposed in New York for similar conduct."(19)

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For its part, the Second Department has issued no such blanket declaration and has demonstrated significant latitude in both upward and downward adjustments to foreign sanctions. In numerous reciprocal discipline cases in which the foreign sanction was mere reprimand, the Second Department instead ordered suspension; likewise, the Second Department has markedly increased the duration of relatively brief foreign suspensions.(20) Conversely, upon compelling mitigating factors, the Second Department has reduced foreign disbarment to suspension, (21) reduced or eliminated suspension time,(22) and/or let suspensions to run *nunc pro tunc* from the original discipline.(23)

The Third Department uses different language to describe a similar posture of discretion. That court regularly disclaims any "oblig[ation] to impose the same sanction that was imposed by the foreign tribunal," and instead crafts "a sanction that protects the public, maintains the honor and integrity of the profession or deters others from engaging in similar conduct."(24) In early 2024, however, the Third Department remarked that "[d]espite having this discretion, we have nonetheless routinely imposed the same sanction as imposed in the foreign jurisdiction, unless some additional mitigating or aggravating factor warrants a lesser sanction or an upward departure."(25)Whether this remark presages a prescriptive policy statement to that effect remains to be seen, though the Third Department – like its downstate counterparts – has not hesitated, in proper cases, to depart from foreign sanctions upward(26) or downward.(27)

Policy language may vary, but the implications do not: judicial discretion as to sanction gives a foreign-disciplined attorney every reason to fully and timely engage with the Appellate Division and present factors to mitigate the conduct or contextualize potential aggravators. The professional duty to report in the first instance, and the chance to put a "best foot forward" in substantive response, therefore should not be lightly disregarded in the heat of the moment and especially in a mistaken belief that a reciprocal sanction is a mere rubber stamp of the original discipline. Put simply, it is not.

The most effective call to action begins with awareness, hence this first "Ethics Corner" column to inoculate attorneys against misperceptions about reciprocal discipline that might lead them astray. Attorneys subject to foreign discipline should let nothing impede their prompt and good-faith report to the Appellate Division, and then their timely and proper response to the ensuing order to show cause why reciprocal discipline should not be imposed. A future "Ethics Corner" column will address the defenses to reciprocal discipline, factors in aggravation and mitigation of sanction, and recent cases illustrating both best practices and pitfalls to avoid.

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(1)The Spanish Inquisition," *Monty Python's Flying Circus*, season 2, episode 2 (Sep. 22, 1970).

(2)Between 2019 and 2023, the Appellate Division reported an average 39 reciprocal discipline matters annually.

(3)22 NYCRR [Joint Rules of the Appellate Division] ("Joint Rules") § 1240.13(d).

(4)*See id.*

(5)*See id.*

(6)*See e.g. Matter of Carillo* (219 AD3d 1 [1st Dept 2023]); *Matter of Radshaw* (213 AD3d 1193 [3d Dept 2023]); *Matter of Bacotti* (196 AD3d 37 [2d Dept 2021]).

(7)*See e.g. Matter of Bank* (206 AD3d 77 [2d Dept 2022]).

(8)*See Matter of Lee* (217 AD3d 11 [1st Dept 2023]); *Matter of Fogle* (200 AD3d 1546 [3d Dept 2021]); *Matter of Gonzalez* (194 AD3d 152 [2d Dept 2021]); *Matter of Bernstein* (193 AD3d 162 [2d Dept 2021]); *Matter of Rosales* (184 AD3d 250 [2d Dept 2020], *app dismissed sub nom Rosales v Grievance Comm. for the Second, Eleventh & Thirteenth Jud. Dists.*, 35 NY3d 1102 [2020]).

(9)*Matter of Kahn* (210 AD3d 1236, 1237 [3d Dept 2022]); *see Matter of Fogle* (200 AD3d at 251); *Matter of Harmon* (191 AD3d 1149, 1450 [3d Dept 2021]); *Matter of Park* (188 AD3d 1550, 1551 & n2 [3d Dept 2020]).

(10)*See Matter of Deem* (208 AD3d 89 [2d Dept 2022]).

(11)Recently the attorney was disbarred for further violations (*see Matter of Deem*, __ AD3d __, 204 NYS3d 594 [2d Dept 2024]).

(12)*See* Joint Rules § 1240.13(a).

(13)On review of Appellate Division disciplinary determinations, the Court of Appeals has "no power to rule upon the facts, in the absence of an abuse of discretion as a matter of law, or to determine the severity of the punishment" (*Hallock v Grievance Comm. for the Tenth Jud. Dist.*, 37 NY3d 436, 442 [2021], *quoting Matter of Del Bello*, 19 NY2d 466, 472 [1967]).

(14)*Matter of Liebowitz* (__ AD3d __, 2024 NY Slip Op 01309, *11 [2d Dept 2024]); *Matter of Rosenbaum* (221 AD3d 90, 105 [2d Dept 2023]); *In re Houston* (139 AD3d 34, 38 [1st Dept 2016]); *In re Sirkin*, 77 AD3d 320, 323 [1st Dept 2010]).

(15)*Matter of Baconti* (214 AD3d 34, 42 [2d Dept 2023]); *In re Esposito* (126 AD3d 93 [2d Dept 2015]).

(16)*Matter of Wolman* (__ AD3d __, 203 NYS3d 408, 424 [2d Dept 2024]); *Matter of Rosenbaum* (221 AD3d at 105).

(17)*Rosenbaum* (221 AD3d at 105); *Matter of Megaro* (215 AD3d 67, 84 [2d Dept 2023]); *Matter of Baconti* (2014 AD3d at 42); *In re Jean-Pierre* (136 AD3d 88, 91 [1st Dept 2016]); *In re Munroe* (89 AD3d 1, 8 [1st Dept 2011]).

(18)*Matter of Kort* (224 AD3d 15, 20 [1st Dept 2024]); *Matter of Jordan* (217 AD3d 21, 27 [1st Dept 2023]); *see Matter of Karambelas* (203 AD3d 75, 80-81 [1st Dept 2022]); *In re Frank* (113 AD3d 92, 95-96 [1st Dept 2013]).

(19)*In re Jaffe* (78 AD3d 152, 158 [1st Dept 2010]).

(20)*See e.g. Matter of Krame* (222 AD3d 59 [2d Dept 2023]); *Matter of Salem* (194 AD3d 20 [2d Dept 2021]); *Matter of Ehrlich* (181 AD3d 57 [2d Dept 2020]); *In re Baranowicz* (154 AD3d 15 [2d Dept 2017]); *In re Falco* (150 AD3d 469 [2d Dept 2017]).

(21)*See Matter of Morris* (195 AD3d 74 [2d Dept 2021]); *Matter of Ruiz* (184 AD3d 133 [2d Dept 2020]).

(22)*See e.g. Matter of Stavin* (198 AD3d 97 [2d Dept 2021] [suspension reduced to censure]); *Matter of Reich* (195 AD3d 95 [2d Dept 2021] [three-year suspension reduced to six months]); *Matter of Kurzman* (165 AD3d 48 [2d Dept 2020] [suspension reduced to censure]); *Matter of Meier* (163 AD3d 134 [2d Dept 2020] [same]); *Matter of Collihan* (171 AD3d 96 [2d Dept 2019] [same]).

(23)*See e.g. Matter of Gitler* (184 AD3d 105 [2d Dept 2020] [*nunc pro tunc* suspension for false material misstatements and forgery where client was unharmed]).

(24)*Matter of Renna* (__ AD3d __, 2024 NY Slip Op 01376 [3d Dept 2024]); *Matter of Jenkins* (222 AD3d 1319, 201 NYS3d 804, 806 [3d Dept 2023]); *Matter of Durkin* (220 AD3d 1046, 1048 [3d Dept 2023]); *Matter of Hankes* (210 AD3d 1282, 1282-1283 [3d Dept 2022]).

(25)*Matter of Renna* (__ AD3d __, 2024 NY Slip Op 01376, at *2 [internal citations omitted]).

(26)*See e.g. Matter of Tobias* (210 AD3d 1181 [3d Dept 2022] [six-month suspension increased to three years for foreign domestic violence conviction]); *Matter of Caraco* (197 AD3d 1391 [3d Dept 2021] [90-day suspension increased to six months]).

(27)*See e.g. Matter of Anderson* (206 AD3d 1431 [3d Dept 2022] [home-state disbarment reduced to one-year suspension in New York]); *Matter of Spechler* (198 AD3d 1098 [3d Dept 2021] [45-day suspension reduced to censure]); *Matter of Hoover* (196 AD3d 994 [3d Dept 2021] [30-day suspension reduced to censure]); *Matter of Petigara* (186 AD3d 940 [3d Dept 2020] [lengthy suspension reduced to censure]).

COMMERCIAL LITIGATION ISSUES OF INTEREST

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

Your client is a corporation that manufactures computers. In 2014, it entered into an agreement with another company to develop, manufacture, and supply two next-generation high performance semiconductor chips (chip A and chip B) for your client's computers. The agreement contained a broad jury waiver clause, as did multiple related and subsequently amended agreements concerning the technology and supply of the new chips. Immediately after the transaction closed, the chip company indicated it wanted to amend the agreements to abandon development of Chip B and instead develop Chip C – a different "more advanced chip." Your client refused to release the chip company from its contractual obligations. However, a year later, your client said it would cooperate with plans for chip C, but reserved all of its rights under all agreements. Your client paid what was owed that year and the next, whereupon the chip company promptly abandoned development of chip C, but continued to develop, manufacture, and supply chip A. In 2021, your client received the last of chip A promised under the agreements, but never received chip B or C.

You commenced an action against the chip company seeking damages for breach of contract, fraudulent inducement, and promissory estoppel. The defendant moved to strike your jury demand. You opposed, arguing that the contractual jury waiver provision cannot be applied to claims for fraudulent inducement and promissory estoppel, because those claims challenge the very validity of the contract.

Will you defeat the motion to strike the jury demand?

The answer is *no*.

In *Int'l Bus. Machs. Corp. v. Global Foundries U.S. Inc*, 2024 WL 5161387, 2024 Slip Op. 06425 (App. Div. 1st Dep't 2024-12-19), IBM closed, In July 2015, on an agreement for a collaborative venture with defendant, Global. IBM agreed to transfer its microelectronics business, including its technology, engineers, and employees, to Global, and would pay Global $1.5 billion. In return, Global would develop, manufacture, and supply next generation 14nm and 10nm high-performance semiconductor chips for IBM. The parties' master agreement and related agreements concerning technology, supply, and cooperation each contained a broad jury-trial waiver for proceedings "arising out of, under or in connection with" their various agreements, including claims "now existing or hereafter arising . . . whether in contract, tort, equity or otherwise."

Immediately after the transaction closed, Global indicated it did not intend to develop the 10nm chip and wanted instead to develop "a more advanced" 7nm chip. IBM refused to release Global from its contractual obligations. Between the closing and March 2016, after the dispute arose concerning the 10nm chip, the parties amended the related agreements, which continued to contain the broad jury waiver provision. In September of 2016, IBM notified Global it would cooperate with plans for the 7nm chip, but reserved all rights under all the agreements. In December 2017 and December 2018, IBM paid what was then owed under the agreements. In 2021, after receiving the last of the 14nm chips promised in the agreements, IBM sued Global for damages for fraud, breach of contract, fraudulent inducement, and promissory estoppel.

The trial court granted Global's motion to strike IBM's jury demand on its claims. On appeal, the Appellate Division addressed the question of "whether a broad contractual jury waiver provision applies to plaintiff's claims for fraudulent inducement and promissory estoppel." The Court noted there is little debate that the jury waivers were broad enough to include IBM's fraud claim. However, "where a claim of fraudulent inducement challenges the validity of the agreement, a provision waiving the right to a jury trial in litigation arising out of the agreement may not apply," citing *Cina Dev. Indus. Bank v. Morgan Stanley & Co. Inc.*, 86 A.D.3d 435, 436-3-437 (1st Dep't 2005).

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The Court examined cases where the primary claim was fraudulent inducement challenging the entire contract (citing *Ambac Assur. Corp. v. Countrywide Home Loans Inc.*, 179 AD3d 518, 520-521 [1st Dep't 2020]), and *MBIA Ins. Corp. v. Credit Suisse Sec. [USA], LLC*, 102 A.D.3d 488 [1st Dep't 2013]). In those cases, the misrepresentations upon which the contracts were based were the central issue, with *repeated allegations* that the agreement was obtained through various frauds. The alleged breaches of contractual representations and warranties were only alternatives to the claims of fraudulent inducement.

The Court found that IBM's complaint was more like cases that seek to enforce the underlying contract by obtaining damages for fraudulent inducement, rather than challenging the validity of the contract (citing *Zohar CDO 2003-1 Ltd. v. Xinhua Sports & Entertainment Ltd.*, 158 AD3d 594, 594-595 [1st Dept 2018]). "It is clear from IBM's complaint that its primary claim is not fraudulent inducement but rather breach of the agreements." IBM, said the Court, has repeatedly elected to affirm or stand on the contract after it knew of Global's alleged fraud. "IBM has chosen to affirm the agreements and maintain an action at law for compensatory and consequential damages," not to disaffirm or rescind the contract.

The lesson? If you want to avoid a broad contractual jury waiver, make sure your complaint (or counterclaim) primarily seeks to rescind the fraudulently induced contract. An action at law for damages for fraudulent inducement will not avoid the jury waiver.

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

The Rockland County Bar Association

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or email office@rocklandbar.org

2025 Judges' Swearing-in Ceremonies

Judge David Ascher

Judge Keith Braunfotel

Judge Rachel Tanguay

Judge Andrea Composto

Judge Alejandra Silva

Judge Djinsad Desir

Presentation of RCBA's gift of judicial robes to County & Family Court Judges by President Dorsainvil

Credit: Dan-Obed Henry

Hon. Donna Silberman-County Clerk

Congratulations!

Technology Tips for Attorneys

Submitted by

Michael Loewenberg*

Unlocking the Power of Adobe Acrobat Pro for Attorneys

In any legal practice, efficiency and precision are paramount. Managing a mountain of paperwork and ensuring every document is in perfect order can be daunting. This is where Adobe Acrobat Pro comes in, offering a suite of powerful tools designed to streamline your workflow and enhance your practice. Here are four essential functions of Adobe Acrobat Pro that make it a worthwhile investment for any law firm. (*note*: Acrobat Reader is free. Acrobat Pro has an annual license and can be used on up to two devices simultaneously. The functions described here are associated with Acrobat Pro).

1. Document Conversion and Editing

One of the standout features of Adobe Acrobat Pro is its ability to convert various file types into PDFs and vice versa. Whether you receive documents in Word, Excel, or even image formats, Acrobat Pro can seamlessly convert them into PDFs, preserving the original formatting. This is particularly useful for attorneys who need to ensure that documents look the same on any device.

Benefits:

- **Consistency:** Ensures that all documents maintain their formatting, which is crucial for legal documents.
- **Ease of Use:** Simplifies the process of sharing documents with clients and colleagues, as PDFs are universally accessible.
- **Editing Capabilities:** Allows you to make quick edits to PDFs without needing to revert to the original file format.

2. Optical Character Recognition (OCR)

OCR can be a game-changer for attorneys dealing with scanned documents. This feature converts scanned images of text into editable and searchable data. For example, you can have a stack of scanned contracts and the recognized text can allow you to search for specific clauses or terms instantly.

Benefits:

- **Searchability:** Quickly find relevant information within large documents, saving valuable time and minimizing errors.
- **Editability:** Make changes to scanned documents as if they were originally created digitally.
- **Efficiency:** Reduces the need for manual data entry, minimizing errors and speeding up document processing.

… Continued

… Continued

3. E-Signatures and Form Filling

In the legal field, signatures are a daily necessity. Adobe Acrobat Pro simplifies this process with its e-signature capabilities. You can send documents for signature, track their status, and store signed documents securely. Additionally, Acrobat Pro allows you to create and fill out forms digitally.

Benefits:

- **Convenience:** Clients can sign documents from anywhere, eliminating the need for in-person meetings.
- **Security:** E-signatures are legally binding and secure, ensuring the integrity of signed documents
- **Form Automation:** Streamlines the process of filling out and managing forms, reducing paperwork and administrative burden.

4. Document Security and Redaction

Confidentiality is critical in legal practice. Adobe Acrobat Pro offers robust security features, including password protection, encryption, and redaction tools. You can control who has access to your documents and ensure sensitive information is protected.

Benefits:

- **Confidentiality:** Protects client information and sensitive data from unauthorized access.
- **Compliance:** Helps meet legal and regulatory requirements for document security.
- **Redaction:** Allows you to permanently remove sensitive information from documents, ensuring privacy.

Investing in Adobe Acrobat Pro is a smart business decision for any law firm. Its powerful features enhance productivity and can contribute to your practice runing smoothly and securely. From converting and editing documents to leveraging OCR, managing e-signatures, and securing sensitive information, Acrobat Pro is an invaluable tool for attorneys.

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

SUCCESSION

Luddites Beware

A new Newsbrief column

BY JUDITH BACHMAN

As I continue to focus on building firm value, to reap the benefits now and on exit, I must resist my luddite tendencies and embrace technology in my law practice.

First, we, as attorneys, have an ethical obligation to do so. "To maintain the requisite knowledge and skill, a lawyer should … (ii) keep abreast of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information." New York Rules of Professional Conduct 1.1, Comment 8. "Because of the speed at which technology is advancing, the lawyer's duty of competence must evolve with the technologies." Anthony E. Davis and Steven M. Puiszis, An Update on Lawyers' Duty of Technological Competence: Part 1, New York Law Journal, March 01, 2019 available at https://www.law.com/newyorklawjournal/2019/03/01/an-update-on-lawyers-duty-of-technological-competence-part-1/.

Beyond our ethical obligations, utilizing technology makes good business sense. Clients expect efficient representation that is, in part, aided by technological tools. These tools can make our practice more cost effective. They can also make our own work lives easier and take some of the drudgery out of the everyday.

For purposes of this column, though, I want to look beyond the operational benefits of technology and emphasize that technology also contributes to the value of a law firm. "Buyers [and managing partners in existing firms] want to see technology investments in three main places: financials, operations, and marketing. . . . [If you have technology well integrated into your firm] it gives you data to demonstrate the value of your firm, and you'll be able to sell it for a higher price. . . ." Brooke Lively, Exit on Top: Sell Your Law Firm to the Right Person at the Right Time for the Right Price, at 148 -153.

And the inverse is true, lack of technological infrastructure "can easily dampen the appeal of an otherwise green-lighted [law firm] merger." Key Technology Considerations For Merging Law Firms available at https://www.theaccessgroup.com/en-gb/blog/ams-key-tech-considerations-for-merging-law-firms/. At one time, I was evaluating the potential acquisition of another law practice but was put off when I asked for client lists and was given an old-school paper rolodex. Needless to say, I did not make an offer to purchase the practice.

While I am not advocating for turning your practice over to Chatgpt (please do not do that), burying our heads in the sand regarding technology is equally ill-advised. To smooth operations now and maximize the value of our firms, we must embrace technology.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Office of the District Court Executive

LAURA TAYLOR SWAIN
Chief Judge

EDWARD A. FRIEDLAND
District Court Executive

February 3, 2025

PUBLIC NOTICE FOR

RE-APPOINTMENT OF INCUMBENT MAGISTRATE JUDGE

The current term of the office of United States Magistrate Judge Robert W. Lehrburger is due to expire on October 29, 2025. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of a magistrate judge to a new eight-year term.

The duties of a magistrate judge position include the following: (1) conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; and (4) trial and disposition of civil cases upon consent of the litigants.

Comments from members of the bar and the public are invited as to whether the incumbent Magistrate Judge Robert W. Lehrburger should be recommended by the panel for reappointment by the court, and should be directed to:

Edward Friedland
District Executive
U.S. Courthouse
500 Pearl Street, Room 820
New York, NY 10007-1312

Comments must be received by 30 days from date of notice.

The Rockland County Bar Association has a Facebook page where we announce upcoming events and other issues of interest to the local community.

Visit and follow the page and "Like" the postings to help your association be seen!

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If you have a favorite business, please let us know.

Contact Jeanmarie @rocklandbar.org with their contact information so we can reach out to them about these opportunities.

NEW INCENTIVE FOR YOU! As an added incentive, when a business you referred becomes a Sponsor or places an ad with us, you will be given one free online CLE session. So… review your contacts now and help us promote their business!

Contact: Jeanmarie DiGiacomo

Jeanmarie@rocklandbar.org

845-634-2149

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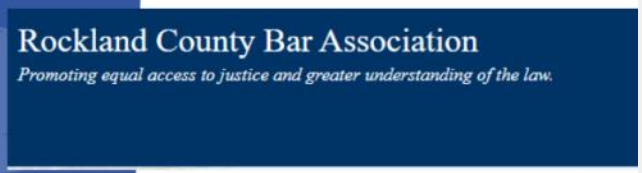

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MORE INFORMATION

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www.rocklandbar.org

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, long term care

Intellectual Property

Landlord Tenant Law: residential and commercial

Legal Malpractice

Zoning Law

Visit our webpage or contact office@rocklandbar.org for more information and an application.

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RCBA Members – free, up to 50 words; 51 to 100 words, cost is $75.00.

Non-Members, cost is $50 for up to 50 words; 51 to 100 words, cost is $100.

PLEASE NOTE:

NEWSBRIEF IS NOT PUBLISHED IN JULY

CALL Jeanmarie @ 845-634-2149 or send email to Jeanmarie@Rocklandbar.org

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

We are working on a ROBUST 2025 CLE Schedule

Please continue to check for updates!

Date of Program	Time	Program Title
In Process of Being Rescheduled	Virtual 12:15 pm-1:30 pm	An Overview of Supplemental Needs Trusts Drafting, Practical Applications and Practice Tips
Thursday February 27, 2025	In-Person 6:00 pm-8:00 pm Details to Follow	Attorney Escrow Account Refresher and Fraud Prevention Measures to Protect Your Escrow Account
Friday March 7, 2025	Virtual 12:45 pm-1:45 pm	Court Evaluator and the Guardianship Hearing— Roles and Rules
Tuesday March 18, 2025	Virtual 6:00 pm-9:00 pm	Mortgage Foreclosure

Missed a CLE program? You can earn credit by watching the video replay.

Contact Jeanmarie@Rocklandbar.org to receive the recording.

***Please note: Not all CLEs have been recorded.**

Payment by check only.

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

CLE REQUIREMENTS

CLE REQUIREMENTS

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.

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.

ADDITIONAL CLE REQUIREMENT - CYBERSECURITY

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 now a category for cybersecurity, privacy and data protection. This category of credit is effective January 1, 2023.

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.

See CLE Program Rules 22 NYCRR 1500.22(a).
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 1500.12(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.

COMMITTEE CORNER

The Rockland County Bar Association has 26 active committees, plus several *ad hoc* committees. Members may join these committees and volunteer their time and expertise for the good of the Bar Association, their colleagues and the public. Here are some of the activities! We look forward to seeing you!

NEW LAWYERS AND SOCIAL COMMITTEE

Nicole DiGiacomo is the new Co-Chair of this Committee and she is looking for new members. The Committee will engage newly admitted attorneys as well as seasoned attorneys who are interested in mentoring those newly admitted.

PRO BONO COMMITTEE

This newly established Committee embraces the spirit of "pro bono" by connecting with Bar Association practitioners from all areas to create a centralized corps of volunteers who will assist those in need who are unable to be assisted by the Legal Aid Society or Legal Services of the Hudson Valley. If you are interested in joining this Committee, please email Nancy at **Nancy@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@centersc.org 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.

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 Jeanmarie@rocklandbar.org by the 15th of the month so that the Executive Board may review it.

Thank you!

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LOOKING TO RETIRE OR SELL YOUR PRACTICE?

If you are a solo or small firm attorney considering retirement or selling your practice, contact Judith Bachman, 845-639-3210 or judith@thebachmanlawfirm.com. As a professional courtesy and seeking colleague to colleague conversations, she will help you evaluate options and talk about practice acquisition.

ATTORNEY

Neimark Coffinas & Lapp LLP (New City) seeking attorney with 3 to 5 years' experience in personal injury litigation. Salary commensurate with experience. Generous benefits package.

E-mail resume to: ggc@ncl.law

ASSOCIATE ATTORNEY

Feerick Nugent MacCartney (South Nyack) seeking NYS admitted attorney 3-4 years experience. Work entails General, Land Use, Personal Injury Litigation – State/Federal Court and familiarity with motion practice, rules of evidence, drafting complaints, discovery responses, memorandum of laws. Salary: $120,000-$150,000. Benefits. Higher salary commensurate with experience. Email re-

Matrimonial/Family Law Attorney

Rockland County, NY law firm specializing in matrimonial and family law is seeking a full time associate. Excellent writing skills, trial experience and fluent Spanish speaking a plus. Starting salary range is $55,000.00 to $85,000.00+. Please call 845.639.4600 or fax resume to 845.639.4610 or E-mail: michael@demoyalaw.com

OFFICE SPACE AVAILABLE

Beldock & Saunders, PC, located in New City, has 3 offices with 3 separate workstations, for support staff, available to sublet. Access to conference rooms, reception area, kitchen & plenty of parking. Rent terms are flexible. Contact Steve at 845-267-4878 or email

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PARALEGALS AVAILABLE

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 amy.hurwitz@sunyrockland.edu

Part Time Paralegal / Legal Assistant

In person and/or virtual; Surrogate filings personal injury matters; complex personal injury matters; salary commensurate with experience.

Contact: jeff@injurylaw-ny.com

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MUNICIPAL ATTORNEY

Feerick Nugent MacCartney (South Nyack) seeking NYS admitted attorney with 2-3 years experience, interest in local government, municipal, labor law. Full-time, requiring attendance at municipal nightly meetings. Starting salary is $120,000 to $150,000 - higher starting salary commensurate with experience. Benefits available.

Email resume: shannond@fnmlawfirm.com

IMMIGRATION ATTORNEY WANTED

Rockland County, law firm is seeking a full time associate with immigration experience. Trial experience, Spanish speaking, admitted to SDNY and willingness to assist with bankruptcy and loan modifications a plus. Starting salary range is $55,000.00 to $85,000.00+.

Call 845.639.4600 or fax resume to 845.639.4610 or

E-mail: michael@demoyalaw.com .

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