



# JANUARY 2017 NEWSBRIEF

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*Paul Savad, Esq.,*  
*Susan Cooper, Esq.*  
*Joseph Churgin, Esq.*

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## \*\*\*IMPORTANT NOTICE\*\*\*

### SOLICITATION OF NOMINEES FOR UPCOMING VACANCIES ON THE RCBA BOARD OF DIRECTORS

Pursuant to Article V, Section 9(c) of the by By-Laws of the Rockland County Bar Association, applications are now being solicited for upcoming vacancies on the Association's Board of Directors. There will be 6 open vacancies on the Board of Directors for terms beginning on July 1, 2017.

Anyone wishing to be a candidate for election to the Board must express their interest, in writing, no later than February 1, 2017. The writing should include the reasons why the member believes he or she is qualified to serve on the Board.

The Nominating Committee will conduct in-person interviews of all candidates. Failure of the candidate to appear at their scheduled interview will disqualify that candidate from consideration.

Upon conclusion of all interviews, the Nominating Committee shall meet and select nominees. Selection of nominees will be completed no later than March 10, 2017. Notice of selected nominees will be sent to the entire membership no later than March 20, 2017.

Please submit your applications in writing  
to: Nancy Low-Hogan, Executive Director  
Rockland County Bar Association,  
337 North Main Street, Suite  
1 New City, N.Y. 10956

U.S. Postal submissions and E-mails to [nancy@rocklandbar.org](mailto:nancy@rocklandbar.org) will be accepted in addition to personal deliveries.

Deadline for responses is February 1, 2017.

Any member not selected by the Nominating Committee, whether or not he or she solicited nomination before the Nominating Committee, wishing to have his or her name placed in nomination for election to the Board, shall submit a petition to place his/her name before the membership. The petition must be signed by no fewer than 20 members in good standing with the Association, and must be submitted in person at the Bar Association offices no later than April 5, 2017.

**COMMERCIAL LITIGATION ISSUES OF INTEREST****January 2017****Submitted by Paul Savad, Esq.****Chair, Commercial and Corporate Law Committee,****Joseph Churgin, Esq., and Susan Cooper, Esq., of****SAVAD CHURGIN, LLP, Attorneys at Law**

Your new client is a renewable energy developer in Ontario, Canada. Six years ago, your client disclosed confidential and proprietary information to potential New York investors under a non-disclosure and confidentiality agreement that provided for the agreement to be “governed, construed, and enforced” according to New York law. The potential investors never invested, and were required by the non-disclosure agreement to destroy the proprietary information provided by your client. Your client recently learned that just three months after the agreement was signed, the potential investors entered into a secret memorandum of understanding with the Ontario government to develop a renewable energy project using your client’s proprietary information. You commence an action against the investors in New York within New York’s six-year statute of limitations for breach of contract. The potential investors move to dismiss your client’s case under Ontario’s two-year statute of limitations, despite the contractual provision for New York law to control.

Will you defeat the motion to dismiss?

The answer is *no*?

In *138747 Ontario, Inc. v. Samsung C & T Corp.*, 144 A.D.3d 122 (1<sup>st</sup> Dep’t 2016) (NYLJ 1202770030546, at \*1) the plaintiff, a Canadian corporation, was a creditor of SkyPower Corp., a Canadian developer of renewable energy. SkyPower’s claims against the defendants were assigned to the plaintiff by the trustee in bankruptcy of SkyPower in Canada.

SkyPower had entered into a non-disclosure agreement with potential New York investors in September of 2008. The agreement provided that it was “governed, construed and enforced” in accordance with New York law. A transaction between the parties never materialized. The agreement required the defendants to destroy the proprietary information. However, three months later, in December of 2008, the defendants entered into a secret memorandum of understanding with the Ontario government to develop a renewable energy project, allegedly using SkyPower’s proprietary information. The plaintiff did not learn of this until October of 2014, when the secret memorandum was made public.

The plaintiff commenced a breach of contract action in New York in October of 2014, just shy of New York’s six-year statute of limitations (CPLR 213[2]). The defendants moved to dismiss the claim under Ontario’s two-year statute of limitations.

The Court noted that it was “called upon to decide whether a broadly drawn contractual choice-of-law provision . . . precludes the application of New York’s borrowing statute (CPLR 202).”

The borrowing statute requires that when a nonresident plaintiff sues on a cause of action accruing outside of New York, the cause of action must be timely under the limitations period of *both* New York *and* the jurisdiction where the cause of action accrued, citing *Global Fin. Corp. v. Triarc Corp.*, 93 N.Y.2d 525, 528 (1999). The purpose of CPLR 202 is to prevent forum shopping by nonresident plaintiffs who come to New York to take advantage of a more favorable statute of limitations than available elsewhere.

The plaintiff argued that the broad language of the choice-of-law provision reflects the parties’ intent to apply both New York substantive and procedural law, and that application of CPLR 202 would defeat the parties’ purpose in choosing the law to be applied. The Court agreed that the language used by the parties, especially using the word “enforce”, was broad enough to include both substantive and procedural law, citing *Matter of Smith Barney, Harris Upham & Co. v. Luckie*, 85 N.Y.2d 193, 2020 (1995). However, the borrowing statute is itself a procedural rule, which the Court held could not be ignored.

The Court stated that it need not decide whether a provision expressly agreeing to only apply New York’s six-year statute of limitations would be an unenforceable extension of the otherwise applicable statute of limitations.

The Court affirmed the appealed order dismissing the plaintiff’s claims as time-barred, noting however that applying the borrowing statute may be inconsistent with New York’s current policy to encourage businesses to use New York courts. That policy issue is, according to the Court, is best left to the legislature.

*The lesson?* When your New York client contracts with an out-of-state party, include a broad provision that the contract is governed, construed, and enforced according to New York law. If it benefits your client, include a provision that New York’s statute of limitations applies. However, don’t count on any such provision to give your client the benefit of New York’s statute of limitations if challenged in court.

Thank You  
to  
*Elements Behavioral Health*  
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our Holiday Party!

## *NEWS from the Executive Director*

Dear Colleagues,

Happy New Year! On December 15 we celebrated the holidays at Nyack Seaport with 100 of our friends and colleagues. A good time was had by all!

For 2017 we are planning ahead. Please make a note of these dates in your calendar:

RCBA Installation Dinner – June 22, 2017

RCBA Annual Dinner – October 26, 2017

Also, in this issue of Newsbrief, we have included a chart that lists all of the dates of the upcoming CLE programs from now through June. Hopefully this will help you as you organize your CLE plan for 2017.

*Plus, we promise some informal social events for 2017, thanks to our newly energized New Lawyers and Social Committee, so stay tuned...*

Best wishes to you and your families for a happy and healthy 2017!

Sincerely,

*Nancy*

**Nancy Low-Hogan, Ph.D.**  
**Executive Director**

## PLAN OF THE LAWYER REFERRAL SERVICE

The Rockland County Bar Association under the guidance of the American Bar Association, has established a Lawyer Referral Service (“The Referral Service”) on a County-wide basis. The office is located at the Rockland County Bar Association, 337 North Main Street, Suite 1, New City, New York 10956.

The willing participation and continued support of lawyers practicing in Rockland County is crucial to the smooth operation of the Referral Service.

### **The purposes of the Referral Service are:**

- To be a public service, available to assist the general public by providing an alternative source for any person who can afford to pay a reasonable fee for legal services and who does not have a lawyer by providing a referral to a lawyer who practices in Rockland County.
- To provide a vehicle for persons who need a legal representative but whose earnings or assets are too high for the standards set by Rockland County Legal Aid Society or Pro Bono New York; and
- To establish a better rapport between the public and the legal profession.

The Referral Service Plan is not designed to take clients away from attorneys. In fact, a cardinal principle will be to establish whether a prospective client has a present attorney. The Referral Service will not refer the client to a panel attorney of the Referral Service if we learn that a prospective client has seen other attorneys in an effort to bargain on fees. Additionally, a prospective client shall not be referred to a panel attorney if the prospective client has previously engaged the services of a lawyer on the same matter unless the original lawyer-client relationship has been properly terminated in writing.

1. Membership on the Referral Service Panel is by **individual attorney and not by law firm.**
2. A panel attorney must abide by all of the rules of the Referral Service and will in no way hold, or claim to hold, the Rockland County Bar Association, the Referral Service or any of the members, officers or employees liable in connection with any referral made.

***Won't you consider joining this important service? Find out more. Go to: [rocklandbar.org](http://rocklandbar.org), scroll all the way down and click on Attorney Resources, then click on Lawyer Referral Service Plan Description and Full Application.***



**LAWYER REFERRAL SERVICE (LRS)****TIME TO RENEW OR JOIN FOR 2017**

**The Lawyer Referral Service (LRS) program year runs from  
January 1 – December 31.  
It is time to renew or join!**

**TO JOIN:**

- 1. Go to the homepage on our website, [rocklandbar.org](http://rocklandbar.org), scroll all the way down the page to the very bottom, see link for “Attorney Resources,” click on that link, scroll all the way down again, see “Lawyer Referral Service Plan Description and Full Application,” and click on this link for a complete description of the program plus an Application Form.*
- 2. Complete the Application Form and mail or drop off to the RCBA Offices, 337 N. Main Street, Suite 1, New City, NY 10956, along with a check for the Annual Fee.*
- 3. You will be contacted by Staff at the RCBA with a confirmation of your enrollment in the LRS program!*

**TO RENEW:**

- 1. Go to the homepage on our website, [rocklandbar.org](http://rocklandbar.org), scroll all the way down the page to the very bottom, see link for “Attorney Resources,” click on that link, scroll all the way down again, see “Lawyer Referral Service 2017 Renewal Form,” and click on this link for the 2017 LRS Renewal Form.*
- 2. Complete the Renewal Form and mail or drop off to the RCBA Offices, 337 N. Main Street, Suite 1, New City, NY 10956, along with a check for the Annual Fee.*

**We are happy to announce we have added a NEW PANEL to the LRS program called the “Hospice/End-of-Life Panel.” LRS Members can join this new panel *at no additional charge* to their regular LRS membership. Please see the Plan Description/Full**

**Application for complete details.**

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We thank our members for their continued support and wish everyone a 2017 filled with happiness and success!

The Rockland County Bar Association's Board of Directors & Staff

Supporting our communities is important.

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## PLAN YOUR YEAR OF CLE'S NOW

2017 CLE Title	Date and Time
Buying or Selling a Law Practice Ethical Considerations and New York Rules	Tuesday, January 10 - 12noon-2pm
Legal & Ethical Considerations for Attorneys Working with Investigators	Wednesday, January 25 - 6pm-9pm
Mediation is Here to Stay!	Tuesday, March 14 - 12noon-2pm
Mortgage Foreclosure 2017 Update	Thursday, March 30 - 6pm-9pm
Criminal Practice in Justice Court	Friday, April 7 - 1pm-4pm
2017 Ethics Update	Wednesday, April 19 - 12noon-2pm
2017 CPLR Update	Friday, May 5 - 1pm-4pm
View from the Bench	Monday, May 15 - 6pm-9pm
2017 Elder Law Update	Wednesday, June 7 - 6pm-6pm

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Trial and Appellate Courts

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Oral Argument**SUSAN COOPER, ESQ.**

845-304-2969

[SusanCooperEsq@gmail.com](mailto:SusanCooperEsq@gmail.com)**Debt Collection, Bankruptcy and  
Creditors' Rights Committee Meeting****January 23, 2017 @ 5:30 p.m.  
at****Rockland County Bar Association Offices  
337 N. Main St - Suite 1  
New City, N.Y. 10956****ALL ADVERTISEMENTS  
AND ARTICLES MUST BE  
REVIEWED BY THE  
EXECUTIVE COMMITTEE  
FOR CONTENT.****JOSEPH H. ADAMS, ESQ., P.C****Mediation of Commercial & Business Related Disputes:  
Strictly Confidential***Formerly mediator for New York County Supreme  
Court, Commercial Division**Formerly Acting Justice, Village of Grandview**"ONE GUY WINS & ONE GUY LOSES.... OR NOT."*76 Burd Street | Nyack, NY 10960  
[joelawesq@gmail.com](mailto:joelawesq@gmail.com) | [joelaw.com](http://joelaw.com) | 845.353.6934 fax**845.353.2320****SAVE THE DATE-FRIDAY,  
MARCH 3, 2017****13th Annual Columbian Lawyers  
Association Dinner/Dance****Honoring: Hon. Kevin F. Russo &  
Hon. Larry J. Schwartz  
Lifetime Achievement Award:  
Hon. Victor J. Alfieri, Jr.****Nyack Seaport  
21 Burd Street, Nyack, NY 10960****ASSIGNED COUNSEL  
PANEL MEMBERS  
PLEASE NOTE:****THE 2016 FISCAL YEAR IS COMING  
TO A CLOSE.  
PLEASE SEND IN YOUR VOUCHERS FOR  
CASE COMPLETED.  
DO NOT HOLD YOUR VOUCHERS FOR THE  
2017 BILLING CYCLE.**

**MEMO****TO ALL RCBA COMMITTEE CHAIRS & VICE- CHAIRS**

The Association is seeking articles from your committee for publication in the Bar's monthly Newsletter. The membership would greatly benefit from your input and would appreciate it. The article does not have to be complicated or long - a succinct piece of general interest and importance would be best. If you are able to submit an article for the Newsletter it should be sent via email to [Manuela@rocklandbar.org](mailto:Manuela@rocklandbar.org) by the 15th of the month so that the Executive Board may review it. Thank you!

**READ A GOOD BOOK?**

**If anyone has read a book that they would like to recommend, please write a short review for publication in our Newsletter.**

**Need a Place to Meet in New City?**

RCBA Conference Rooms available for rent.

**MEMBER PRICES:**

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

**NON-MEMBER PRICES:**

**\$50/hour**

**Half Day (4 hours) = \$150.00**

**Full Day (8 hours) = \$300.00**

**LAWYER REFERRAL SERVICE****SIGN UP NOW FOR 2017!**

**IF ANY MEMBER IS INTERESTED IN JOINING THE REFERRAL SERVICE PLEASE CALL RCBA @ 845-634-2149 ask for Manuela FOR AN APPLICATION. THE APPLICATION CAN ALSO BE FOUND ON OUR WEBSITE [WWW.ROCKLANDBAR.ORG](http://WWW.ROCKLANDBAR.ORG) IN THE ATTORNEY RESOURCES SECTION.**

**Michael E. Zall**

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# CLE Corner

## BUYING OR SELLING A LAW PRACTICE ETHICAL CONSIDERATIONS AND THE NEW YORK RULES

**Synopsis:** Selling a Law Practice is not an easy thing to do. However, with thoughtful planning, buying or selling a Law Practice can be a viable option for retiring attorneys and growing firms.

**Date:** Tuesday, January 10, 2017  
**Time:** 12:00 p.m.– 2:00 p.m. (Registration 11:30 a.m.) (lunch)  
**Level:** Transitional/Non-Transitional  
**Speaker:** Nat Wasserstein, JD, M.B.A., C.F.E., Lindenwood Associates, LLC, Upper Nyack, NY  
 Howard Fielstein, CPA/ABV/CFF, CFE, ASA, CIRA, CTP, Citrin Cooperman, NY, NY  
 Deborah A. Scalise, Esq., Scalise & Hamilton, LLP, Scarsdale, NY  
**Place:** Italiana's, 253 South Little Tor Road, New City, NY  
**Cost:** \$50.00 in advance; \$75.00 at the door; \$85.00 Non-Members;  
 \$20.00 paralegals and students  
**Credits:** 2 CLE Credits: 1 Professional Practice/Skills; 1 Ethics

*Sponsored by Sterling National Bank*

## LEGAL & ETHICAL CONSIDERATIONS FOR ATTORNEYS WORKING WITH INVESTIGATORS

**Synopsis:** Almost every litigated matter (and many non-litigated legal matters) today will require some form of investigation. From gathering digital evidence, to interviewing witnesses and collecting information about parties and events that are relevant to the case, there are numerous legal and ethical pitfalls for the unwary / uninformed and the potential liabilities for attorneys may not be obvious. Cases of improper investigative conduct causing legal and ethical problems are on the rise and it is imperative for attorneys to know the boundaries of permissible investigative conduct to avoid these potential liabilities.

- Is it legal to track a party's whereabouts / movements using GPS?
- Is it legal to surreptitiously record in person conversations or telephone calls in New York?
- Is that evidence admissible? What about calls between New York and other states?
- Is it legal to obtain a party's financial records without a subpoena?
- Can you legally obtain a party's phone records without a subpoena?
- When is it legal to obtain Motor Vehicle Records on a party?
- Can you legally obtain a party's credit report?
- When can a witness be contacted and interviewed? What about an employee of a business that is party to the litigation?
- When and how can digital evidence be legally obtained from a party (outside of formal discovery)?
- What are the ethical rules surrounding collection of Social Media evidence?
- What is required to ensure that the work of investigators and other consultants remains legally privileged?

**Date:** Wednesday, January 25, 2017  
**Time:** 6:00 p.m.– 9:00 p.m. (Registration 5:30 p.m.) (dinner)  
**Level:** Transitional/Non-Transitional  
**Speaker:** Nicholas G. Himonidis, Esq., CFE, CCFS, T&M Protection Resources, LLC, New York, NY  
**Place:** Italiana's, 253 South Little Tor Road, New City, NY  
**Cost:** \$75.00 in advance; \$85.00 at the door; \$95.00 Non-Members; \$40.00 paralegals and students  
**Credits:** 3 CLE Credits: 3 Ethics

## 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.



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**OFFICE SPACE—NYACK**

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Beautiful windowed offices in law suite. New paint and carpeting in October 2016. All amenities, including fax, color copier/scanner, high speed internet, wi-fi, conference room, phone/voice mail system, kitchenette. Convenient to courts, train, bus and restaurants. (914) 684-1200 x 101. FREE GARAGE PARKING - DOWNTOWN WHITE PLAINS

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**SITUATION WANTED**

Experienced transaction paralegal seeks a part-time position.

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Immigration Attorney Wanted: New City Law Office seeking an attorney with immigration experience, full time, trial experience a plus, Spanish speaking a plus, admitted to Southern District of NY a plus. Also willing to assist with family law/bankruptcy/collections and loan modifications a plus. Call 845.639.4600 or fax 845.639.4610 or E-mail: [michael@demoyalaw.com](mailto:michael@demoyalaw.com)

**MATRIMONIAL ATTORNEY WANTED**

Attorney Wanted: New City Law Office seeking an attorney with matrimonial and family law experience, full time, trial experience a plus, Spanish speaking a plus, admitted to Southern District of NY a plus. Call 845.639.4600 or fax 845.639.4610 or E-mail: [michael@demoyalaw.com](mailto:michael@demoyalaw.com)

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Dr. B.Sherman I can be reached at : [BShermanDDS@gmail.com](mailto:BShermanDDS@gmail.com) or 845-634-6755.

**Domestic Violence Staff Attorney-Temporary 6 months-White Plains, NY office; Legal Services of the Hudson Valley**

This position includes intakes and individual case work, litigation in state courts including appellate practice and education and outreach efforts at community members, advocates and service providers. Qualifications include three or more years of legal experience including litigation or its equivalent, and understanding of the dynamics of domestic violence. Please apply through our website: [www.lshv.org](http://www.lshv.org), under the **Get Involved** link.

**Staff Attorney General Practice-Public Benefits, Social Security & Housing- Poughkeepsie, NY office; Legal Services of the Hudson Valley**

This is a general practice position focusing on working on the Disability Advocacy Program (DAP) and assisting disabled clients with housing matters, at Administrative Hearings before the Social Security Administration and in Federal Court. A willingness to be admitted to the Federal Bar, one or more years of legal experience including litigation and administrative hearings. Please apply through our website: [www.lshv.org](http://www.lshv.org), under the **Get Involved** link.

**Part-Time (.6 FTE) General Practice Staff Attorney – Newburgh, NY office; Legal Services of the Hudson Valley**

This position focuses on work on social security, public benefits and other matters, serving clients living in Orange County with matters such as SSI/SSDI, Medicaid, Food Stamps, Public Assistance, consumer, disability discrimination, landlord/tenant, advanced planning and other housing issues. Three or more years of legal experience including litigation or its equivalent. Please apply through our website: [www.lshv.org](http://www.lshv.org), under the **Get Involved** link.

**The Big Brothers Big Sisters Mentoring Program**

is considered one of the model substance abuse prevention programs by the Federal Government and New York State as per its OASAS Work plan. In addition to its primary 1 – 1 mentoring program and the Court Ordered Supervised Visitation program, the organization provides School Based and Site Based Programs that measurably impact the quality of life of our county's children and youth by improving their odds for succeeding in school, behaving nonviolently, avoiding drugs and alcohol and breaking negative cycles. Interested in learning more? Interested in serving its mission? Then please consider joining the Board of Directors by contacting: [gballard@bbbsofrc.com](mailto:gballard@bbbsofrc.com).