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Barbara Silverstone—Editor

ROCKLAND COUNTY BAR ASSOCIATION NEWSBRIEF

www.rocklandbar.org



June 2024

President's Post

Twenty-one President's Posts later, I arrive at the end of a two year journey as President of our esteemed Association. In retrospect, there is satisfaction in all that RCBA has accomplished during my tenure.

It was a privilege and honor to serve as President during our 130th Anniversary. Upon reflection, much has been achieved. I am of the strong belief that the best is yet to come as we continue to grow and evolve, especially under the leadership of our next President, Laurie Dorsainvil, Esq., our first woman of color President. This is a historic moment. Laurie is well-suited to lead our organization. She has the energy, intelligence, background, demeanor and commitment to well lead RCBA over the next year, or two.

What a fabulous and committed staff there is at RCBA. There is much gratitude to Dr. Nancy Low-Hogan who has provided valuable guidance, expertise and stellar editing during my tenure. Nancy, you have my ongoing gratitude. Thank you as well to Barbara Silverstone, Esq. and Manuela Gomez for your involvement, commitment and enthusiasm. Manuela, best of luck to you as you join our new County Court Judge, Hon. Djinsad Desir at the courthouse just down the block.

This is what comes to mind as I reflect from the beginning of my term to its conclusion.

- A memorable 130th Anniversary celebration at the site of RCBA's founding by its first President, Hon. Alonzo Wheeler at the St. George Hotel in Nyack. A stenographic record of the proceedings was created, presided over

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by the Hon. Thomas Zugibe. Our gathering then proceeded around the corner to the Broadway Bistro. Thank you Jim Reilly, Esq. for suggesting at the gathering that RCBA devise a unique flag for display at RCBA occasions. We are in the process of doing just that.

- There is great pride under the leadership of the Hon. James Hyer in establishing the Bar Association's first Pro Bono Committee. We already have members and an initial meeting is scheduled on June 17. This gives meaning to the adage of service over self.
- Invigoration of RCBA's Foundation with a commitment to donate to worthy causes consistent with our mission. We have transferred to Rockland Community Foundation for administration funds devoted to this purpose. The Foundation is now poised to give back to the community in a various respects consistent with its mission.
- As a member of the Diversity, Equity and Inclusion Committee, there is great pride in establishing a Juneteenth Essay Scholarship. This year we will be making two awards, one to the winner in the amount of \$1,250.00 and a second place winner receiving \$750.00.
- Thank you to my colleagues when I chaired the Fundraising Committee for Justice Berliner's portrait. Recently, there was a memorable and meaningful ceremony when his Honor's portrait was unveiled. It now sits directly over the jury box in his former courtroom.
- A new chapter has arrived involving the Assigned Counsel plan. The Bar Association is poised to administer the program in conjunction with the County of Rockland. We have had several meetings with the County Attorney and his assistants in framing a new assigned counsel plan protocol going forward. RCBA will continue its meaningful and leadership role.
- Our "Lunch with a Judge" program at the Sheriff's Training Facility has been an outstanding success. We enjoyed having lunch with many of our judiciary including Hon. Larry Schwartz, Hon. Paul Marx, Hon. Joseph Egitto, Hon. Linda Jamieson, Hon. Lewis Lubell, Hon. Linda Christopher, Hon. Thomas Zugibe, Hon. Christie D'Alessio, Hon. Amy Puerto and Hon. David Fried. I especially enjoyed taking out to lunch each of the new jurists assigned to Rockland County and answering any questions they may have about our hamlet, discussing the Bar Association's mission and directing them to good lunch venues.
- A restorative mediation CLE, an innovative concept implemented by Court of Claims Judge Debra Martin, was interesting and successful. The program introduced us to a new mode of mediation and collaboration in the realm of civil disputes.
- A presentation about affirmative action exploring recent decisions and discussion of bench and bar DEI was most informative. A special thanks to my friend Hon. Debra James, former President of the NYS Supreme Court Judge's Association, who participated with Hon. Alvin Yearwood, Hon. Djinsad Desir and Professor Randolph McLoughlin.

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- I think back to the Voir Dire CLE presented by New York stellar trial attorney, Evan Torgan, Esq., both well attended and insightful.
- RCBA has formed a new Immigration Committee co-chaired by Chrismelly Morales, Esq. and Ivon Anaya, Esq. The Committee is off to a robust start having convened two public informational meetings, one in Spring Valley and another in Haverstraw.
- There is particular delight thinking about our last two galas, the most recent of which honored the Hon. Rowan Wilson, our Chief Judge, and the 2022 honoring of Second Department's Chief Judge, the Hon. Hector LaSalle. A highlight for me was presenting Judge Wilson with a hat, t-shirt and sweatshirt bearing the logo of his Berkeley High School alma mater with the number "1" on the back of the sweatshirt, coincidentally the number worn by the New York Mets, Mookie Wilson.
- RCBA's role in the Holocaust Memorial ceremony was profoundly meaningful. I was honored at the 2022 ceremony to speak about my law partner Steve Hymowitz's father and father-in-law, survivors of Auschwitz, and to light a candle in their memory.
- Our Rockland County High School Mock Trial competition is robust, well-attended and most meaningful for the students that participate, and their faculty and attorney mentors.
- Our Personal Injury and Negligence Committee has been revitalized under the leadership of co-chairs, Jeffrey Adams, Esq. and Valerie Crown, Esq. They continue to have interesting guests and the Committee provides insight, advice and suggestions to personal injury litigators.
- Great pride is taken in addressing in several of my posts issues of attorney wellness, stress reduction, mindfulness and addiction. These ruminations highlight the need to bring such issues out into the sunlight for discussion and dialogue. Without this, problems which have been neglected for so long will not be fully addressed. Our Lawyer to Lawyer Committee under the leadership of co-chairs Amy Mara and Bridget Gauntlett will be there to dialogue in confidence, without judgment and with support, about any struggles or issues being encountered, no matter what they entail.
- We are in the process of designing RCBA t-shirts with our logo for purchase by members.
- Many of you have our 130th Anniversary composite photo hopefully hanging in your conference room or office. I am looking at mine right now framed in gold with a blue backdrop, a worthy addition to any law office wall.
- A privilege it was to collaborate with the Hon. David Fried in our first Courthouse gay pride celebration. A "Second Annual Pride Justice Awards" ceremony takes place on June 12, 2024 at 12:30 pm featuring Hon. Andrea Stewart-Cousins, Majority Leader of the New York State Senate. Legal Services of the Hudson Valley and the Hon. Michael Sonberg, AJSC, retired, will be honored as well. Come to the second floor Jury Department for the ceremony and a light lunch after.

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- Our Bar Association's composite photographs going back many decades will be on conspicuous display in our art deco courthouse on the 4th floor. This will be of interest to those having to wait to appear as we can reflect on the photographs of those we remember and who are no longer with us. One can personally experience the aging process from decade to decade.
- Gratified of the several new members I brought to the Association as well as our new Bronze Sponsor, Veritext.
- Enjoyable it was to sponsor Judge Berliner's retirement party at the Nyack Seaport. Arranging musical accompaniment at our galas and installations provided a soothing backdrop.
- We are in the process of amending RCBA By-laws and those of the Foundation.
- Certainly, I have overlooked several other meaningful achievements and leave it to our next President, Laurie Dorsainvil, to continue our mission of service to our members and the public.
- Our Judicial Screening Committee under the leadership of Brian Condon, Esq., again performed admirably in evaluating all of the judicial candidates who appeared before them over the last two years. I can report that Brian has passed the leadership mantle of this vital committee to Siobhan O'Grady, Esq., former President of the Rockland County Women's Bar Association.

I am particularly grateful to our Administrative Judge, Anne Minihan, who has been so supportive of RCBA efforts. She was always accessible and available. It was especially enjoyable supporting the Rockland County Women's Bar Association. Please think of joining. It is a vibrant organization addressing the special needs of our female practitioners but open to membership regardless of gender.

So, this is my 22nd and last President's Post. I hope I have well served RCBA, achieving some but not all of what I wanted to accomplish. In retrospect, I wish I was able to achieve the convening of public community forums where pressing legal issues of interest to the community might be discussed.

What I am most impressed about is the insight, intelligence, creativity and commitment of our Board of Directors. I could not have accomplished what was achieved without their unconditional support. I have always appreciated those instances where I have disagreed with a member or two on the Board but have never been disagreeable. How refreshing it was that several of my votes were changed after listening to my colleagues. It was very uplifting to be associated with my fellow board members who I have come to respect and admire.

I will stay involved with the Association and wish I could be there for the entirety of our Awards & Installation Dinner on June 20th. My granddaughter's high school graduation takes precedence.

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With our energized new Board of Directors and Executive Committee, under Ms. Dorsainvil's leadership, our Association is in able and committed hands. There is much gratitude for the opportunity of serving as President. I may have receded from the limelight but my commitment has not diminished to the wellness and continued vitality and growth of the Association and its mission to serve our members in the most cogent and meaningful way.

Thank you to all of those who have given me support and encouragement over the years. Gratitude to my brothers and sisters at the bar and on the bench. We have a well-respected judiciary about which we should all be proud.

May the summer bring more time for quality moments with our family, colleagues and friends. It was an experience of a lifetime to serve, never to be forgotten.

Robert (Rob) L. Fellows, Esq.
President



REMINDER
THE NEWSBRIEF IS NOT PUBLISHED IN JULY!
THE NEXT ISSUE WILL BE IN AUGUST

POSITION AVAILABLE

RCBA ASSIGNED COUNSEL/LAWYER REFERRAL PLANS COORDINATOR

The RCBA has an immediate opening for the Assigned Counsel/LRS Coordinator.

Primary responsibilities:

Day-to-day coordination of the Assigned Counsel Plan assignments, including working closely with all Courts and the Public Defender's Office; intake of 18-B cases, submission in case management database system and follow-up. Processing Assigned Counsel vouchers submitted by 18-B attorneys in timely manner; maintenance of voucher records. Works closely with the Assigned Counsel Plan Administrator and assists the Administrator with program planning.

Lawyer Referral Service (LRS) coordination: maintains LRS attorney database, makes assignments, issues invoices and provides follow-up.

RCBA office management: performs receptionist duties, maintains office supplies, assists with meeting scheduling and set-up. Assists with all RCBA scheduled events.

This is a fulltime position, with hours M-F, 9am-5pm. Experience/knowledge of courts and/or law, helpful. Strong computer skills essential: knowledge of Microsoft Word, Excel required. Spanish a plus. No health benefits. Salary commensurate with knowledge and experience.

For complete Position Description and/or to apply send cover letter and resume to Nancy Low-Hogan, Ph.D., Executive Director, Rockland County Bar Association, via email at nancy@rocklandbar.org

The first meeting of the newly established

Pro Bono Committee

will be on Monday, June 17 at 5PM on Zoom

This new RCBA 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.

Please join this new innovative Committee and help us blaze new trails in the spirit of facilitating access to justice. All are invited to attend this first meeting and to join the Committee. Please reach out to our Executive Director, Nancy Low-Hogan and let her know of your interest (email: nancy@rocklandbar.org).

Why not make a meaningful difference in someone’s life?

Let us hear from you!

NOTICE OF PROPOSAL TO AMEND RCBA BY-LAWS AND SPECIAL MEETING

Please be advised of the following notice: A proposal to amend the By-Laws has been made in the following manner:

Article XI, Section 1 (g): By proposal of the Committee on By-Laws subscribed by at least two-thirds (2/3) of the active and life members of the Board of Directors.

Article XI, Section 2: Notice of proposals to amend the By-Laws shall be given in writing to each active member by notice setting forth in full the present By-Law, if any, and the proposed amendment. Said notice shall be sent at least ten (10) days before the annual general membership or special meeting of the Association at which such proposal shall be presented for vote.

SPECIAL MEETING: Thursday, June 20, 2024, 5:00 PM

Annual Awards & Installation Dinner

Granito Terrace, Dominican University

470 Western Highway, Orangeburg, NY 10962

Proposed By-Laws Amendment

Article V – Section 6(a) – TERMS OF OFFICERS

Current wording:

“Each Officer shall be elected for a term of one (1) year, however any member of the Board of Directors may be elected to and hold the same office for no more than three (3) one-year terms, consecutive or otherwise. **No person may be elected an Officer of the Association without having first served as a member of the Board for no less than three (3) years prior to election as an Officer.**”

Proposed Amendment wording:

“Each Officer shall be elected for a term of one (1) year, however any member of the Board of Directors may be elected to and hold the same office for no more than three (3) one-year terms, consecutive or otherwise. **No person may be elected an Officer of the Association without having first served as a member of the Board for no less than three (3) years as of the start of the upcoming fiscal year. If there is an insufficient amount of candidates eligible or willing to serve as an Officer, the Board may elect a person(s) who has served as a member(s) of the Board for no less than two (2) years as of the start of the upcoming fiscal year.**”

This proposed Amendment will be voted on at the Special Meeting to be held on June 20, 2024 as stated above.



RCBA 2024 AWARDS AND INSTALLATION DINNER

**THURSDAY, JUNE 20, 2024
5-8PM**

**GRANITO CENTER TERRACE
DOMINICAN UNIVERSITY
470 WESTERN HIGHWAY
ORANGEBURG, NY 10962**

ANNOUNCING THESE 2024 AWARDS:

**THE STERNS AWARD -
ALDEN SMITH, ESQ.**

**THE JOSEPH G. BALSAMO AWARD -
DEREK TARSON, ESQ.**

**PRIMARY SPONSOR
M&T BANK**

**BEER & WINE BAR SPONSOR
STENO COURT REPORTING AGENCY**

FOOD PROVIDED BY BAILEY'S SMOKEHOUSE

RCBA MEMBERS: \$65.00

NON-MEMBERS: \$75.00

RSVP HERE!

THE PRACTICE PAGE

ARE ADD-ON TIMES FOR MAILING PAPERS STILL RELEVANT WITH E-FILING?

Hon. Mark C. Dillon *

Are add-on times for mailing papers still relevant with e-filing? The answer, as we sometimes see elsewhere in the law, is that it *depends*.

CPLR 2103(b)(2) provides that when the period prescribed by law is measured from the service of a paper and the service is by mail, five days are added to the prescribed period if the mailing is made within New York State. If the mailing is made from outside of the state but within the United States, six days are added.

The concept of adding five extra days to account for mail service is also reflected in CPLR 2214(b). That sets forth the amount of notice that a party must provide to an adversary about a motion prior to its return date. If the motion is personally served upon the adversary, there must be at least eight days to the return date, with answering papers to be served not later than two days before the motion is returnable. This method of notice is not used much by practitioners for two reasons --- the personal service of motion papers is less convenient than using mail or overnight delivery, and the statute makes no provision for a reply in the event the moving party wishes to submit one. CPLR 2214(b) provides a further option where, if motion papers are personally delivered at least 16 days before the return date, the moving party may demand that answering papers be served at least seven days and reply papers at least one day before the return date. This method of serving motions is also not optimal and not frequently used, as it perpetuates the inconvenience of personally serving the motion upon the adversary. Fortunately, CPLR 2214(b) provides a final option where, if the motion papers are served by mail at least 21 days before the return date, demand can be made that opposition papers be served at least seven days, and reply papers at least one day, before the motion is returnable. The math demonstrates that where the mail option is used, five additional days are added in calculating return dates. For cross-motions, CPLR 2215(a) makes provision for additional time where mail service is used for the cross-moving papers.

CPLR 2103, 2214, and 2215 were enacted in their initial forms in 1962, long before any notion that documents would someday be filed electronically. The mechanisms of e-filing are not set forth in the CPLR but instead appear in the Uniform Rules. Where all parties are subject to e-filing, the electronic filing of the papers

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automatically effects service upon the other parties (Uniform Rule 202.5-b[f][2][ii]; 205.5-bb[a][1]; *Grassetto v Sartore*, 75 Misc.3d 1208[A] *3). The simultaneity of filing and service is assured by the NYSCEF protocol which transmits an electronic notification to all other parties who have appeared in the action that the document has been filed. In these circumstances, mailing becomes a thing of the past, and the corresponding provisions of the CPLR which add five days to defined deadlines become irrelevant.

There are two categories of civil litigations exempted from mandatory e-filing. One involves *pro se* parties, who are not required to consent to electronic procedures but who may do so at their option, and the second involves attorneys who can certify that they are not technologically capable of complying with the e-filing procedures (Uniform Rule 202.5-bb[e][1] and [2]). The latter should be rare given that even technologically-challenged attorneys will typically have associates, paralegals, secretaries, or others who can assist with the e-filing protocols. There are also certain categories of actions where consent of the parties is required for e-filing, such as matrimonials, election law proceedings, Article 78s, mental hygiene proceedings, and certain residential foreclosure and consumer credit actions (Uniform Rule 202.5-bb[a][2][i–vi]). Where actions are outside of NYSCEF, traditional mailing is used instead, and the statutes which add five days to prescribed deadlines, to account for mailings, remain applicable.

If parties consent to and use the e-filing system for filing and serving papers, but a party thereafter duplicatively mails a hard copy of a document to adversary counsel, the First Department has held that five days are *not* added from the mailing for the response time (*Woodward v Millbrook Ventures, LLC*, 148 AD3d 658 [2017]). The court reasoned that by participating in the e-filing system, parties are bound to the rules, procedures, and deadlines of NYSCEF, which control. There is a seemingly-contrary ruling on this issue from the Supreme Court, Westchester County in *Global Custom Integrations, Inc. v JDP Wholesale Enterprises, Inc.*, 40 Misc.3d 909 (Sup. Ct. 2023) (Giacomo, J.). There, the court noted that Uniform Rule 202.5-b(f)(2)(ii) expressly authorized parties under consensual e-filing to utilize other methods for the of service of documents as permitted by the CPLR, and that when a party duplicatively uses the mail method of CPLR 2103, five additional days *are* added to the response time (*Id.*, at 911). Notably, this issue might go away as the more recent *mandatory* e-filing procedures of Uniform Rule 202.5-bb, which replaced the earlier *consensual* e-filing rules of Uniform Rule 202.5-b, do not allow for the general optional use of CPLR service methods in addition to the electronic method. Going forward, if an action is in the mandatory NYSCEF system, counsel has no basis for using the mail duplicatively, and the addition of five days for mailing should become irrelevant.

There is an important word of caution for older e-filed cases: While filing and service are simultaneously accomplished by e-filing under Uniform Rule 202.5-b(f)(2)(ii) (consensual) and 202.5-bb(c)(1) (mandatory), that rule is subject to exemptions under the *consensual* e-filing rules of Uniform Rule 202.5-b(h)(2), to the extent still applicable. Exempted is the notice of the *entry* of orders and judgments. The e-filing and e-service of an order or

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judgment does *not*, under the consensual e-filing procedures, simultaneously serve notice that those documents have been entered. A separate transmittal of the notice of entry must be made to trigger whatever response time is required for a further motion or an appeal as measured from the entry (*JBBNY, LLC v Dedvukaj*, 171 AD3d 898, 901). Uniform Rule 202.5-b(h)(2) confers upon the party giving notice of entry the option of doing so by either e-filing the separate notice, or by using mail. If the mail method is used, proof of serving the document with notice of entry must then be e-filed (Uniform Rule 202.5-b[h][2]). By mailing the notice of entry, five days are added to any prescribed deadlines for pursuing remedies measured from the entered order or judgment (*Matter of Estate of Lowry*, 225 AD3d 964 [2024]). However, under the more-recent *mandatory* e-filing rules of Uniform Rule 202.5-bb, the exemption provisions for notices of entry were not carried forward from the earlier consensual version, and those exemptions should no longer apply to actions filed under mandatory e-filing.

Sometimes the devil is in the details. Be careful with the particulars of the rules governing e-filing.

*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 of the CPLR Practice Commentaries in McKinney's.



**The Rockland County Bar Association
thanks Manuela Gomez for her 8 years of
dedicated service. It has been a pleasure
working with her and we wish her the
best on her future endeavors.**

**Please join us on June 14, 5:00 at
Norcina, 186 N. Main Street, New City to
send her off in style!**



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

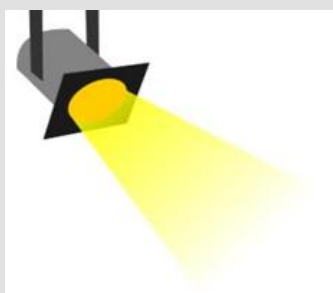
Visit and follow the page and “Like” the postings to help your associa-



**ROCKLAND COUNTY
BAR ASSOCIATION**

HELPING ATTORNEYS AND THE PUBLIC

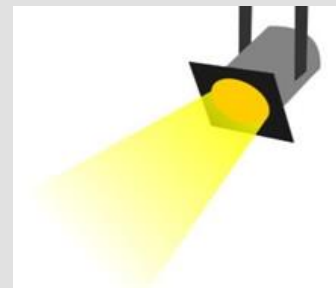
Join Today!



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

SPOTLIGHT

Helena Phillibert, Esq.



Thank you so much for talking with me today! We are looking forward to learning a little bit about you in today's Spotlight Interview. Why don't we start by telling us where you grew up? Sure! I grew up just across the river in Westchester.

Tell us about your Educational Background. I am a graduate of Princeton University. I majored in Politics with a minor in Political Theory. I earned my JD from NYU School of Law.

Did you always want to be a Lawyer? Actually, I started my college education in Pre-Med. Both of my brothers are doctors, and my father is a doctor, so I thought that I wanted to be a doctor as well. However, that was short lived, and I quickly changed my major to Politics. I actually rebelled at the thought of being an attorney. My Father always said I would go to Princeton and become an attorney, and well, I guess he knew best. But at the time, and even after I graduated, I wasn't certain if I was going to be an attorney. I took two years off after college and accepted a fellowship in working for a disability rights law firm in Oakland, California. We worked on a case involving a deaf man who wanted to attend a school to be a motorcycle mechanic, but the school refused his entry due to his deafness. Working on this case piqued my interest in the law and got me excited about advocacy and I decided I wanted to pursue this as a career. From there I came home to Westchester and attended NYU.



Tell us about your legal career. My first job out of law school was for a big firm in New York City, Fried, Frank Harris Shriver and Jacobson, LLP. I quickly realized that big firm law was not my path. I worked for

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this firm for about one year and left to join the Court System. My first job was as an Assistant Law Clerk for Judge Colleen Duffy in the Bronx when she was an Acting Supreme Court Judge sitting in a Criminal Part. I then transferred to Judge Sam D. Walker in Westchester and stayed there for three years. When my time as an Assistant Law Clerk came to an end, I tried my hand again in the world of big law back in New York City and just as quickly as the last time, I realized it wasn't for me. However, this time I had the opportunity to travel to different Courts throughout the state and that is when I fell in love with Rockland County. As fate would have it, I saw a job posting for a staff attorney at the Legal Aid Society of Rockland County. I interviewed and started working for Legal Aid in August 2015 in their children's rights division as an Attorney for Children. I worked with Legal Aid for four years when I left to join the Center for Safety and Change as their Legal Director. During my tenure with the Center for Safety and Change I became a mom and while on maternity leave, I made the decision to branch out and start my own private practice

How are you enjoying Private Practice? I love it! I center my practice around family and matrimonial law as well as handling general civil litigation matters. I am also on the Rockland County Bar Association's Assigned Counsel 18-b Panel. Private practice still allows me to advocate in ways that are meaningful both for my clients and myself.

Thank you for sharing your professional life with us, can you tell us a little bit about your personal life? I am married to my husband David, and we have a daughter Victoria, who is two years old. We live in Rockland... yes, I am happy to report that I made the move from Westchester when I started my job with Legal Aid in 2015. I am also a sister to two brothers, who have families of their own, but are proud uncles to their niece Victoria.

Who is your Inspiration or Hero? My Mother, Audrey. I see her as a superwoman who can accomplish anything. She is a wonderful, resilient, and smart woman.

Finally, Helena, tell us one of your guilty pleasures! I am a T.V. Junkie! I watch it all. I will even watch a teen drama and love it!!



Technology Tips for Attorneys



submitted by

Michael Loewenberg*

Building Your Reputation: The Power of Client Reviews

In today's digital world, online reviews hold immense power. Imagine a potential client searching for an attorney – their first stop is likely the internet. Positive reviews can be the warm welcome that convinces them to choose you. So, how can you encourage satisfied clients to leave a review? Here are some tips to get you started!

Why Reviews Matter:

Think of online reviews as digital word-of-mouth recommendations. Positive reviews not only build trust, but also:

- **Increase Visibility:** Reviews on platforms like Google My Business elevate your search ranking, making it easier for potential clients to find you.
- **Showcase Expertise:** Satisfied clients highlighting your skills and results speak volumes about your work.

Build Credibility: A consistent stream of positive reviews builds trust and demonstrates your commitment to client satisfaction.

4 Ways to Request Reviews:

- 1. Personal Request:** After a successful case resolution, express your gratitude to your client and politely ask if they'd be willing to leave a review on a specific platform. A handwritten note or a quick email can go a long way!
- 2. Email Follow-Up:** Set up an automated email to be sent after a case closes, thanking the client and including a link to your preferred review platform. Keep it concise and friendly.
- 3. QR Code Convenience:** QR codes are those square, barcode-like images. Create one that links directly to your review page. Display it prominently in your office – reception area, brochures, and maybe your business card. Clients can easily scan it with their smartphones and leave a review.

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4. Website Integration: Add a dedicated "Reviews" section to your website where you showcase the positive feedback you've received. Include links to the platforms where clients can leave new reviews.

Responding to Reviews – Building Relationships:

Reviews aren't a one-way street! Responding to them shows you value your clients' feedback, good or bad. Here's how:

- **For Positive Reviews:** Express your appreciation for the kind words and highlight the client's positive experience. This further strengthens their trust.

For Negative Reviews: Don't shy away! Respond professionally, acknowledging their concerns and outlining any steps you've taken to address them.

Starting Your Review Journey:

We understand asking for reviews may feel unfamiliar. Start small! Talk to colleagues who've successfully implemented review systems and get ideas.

Here's a gentle approach. Begin with established Clients: reach out to clients you've had positive experiences with and request a review. Their positive feedback can pave the way for others.

Remember, the goal is to cultivate trust and build a strong online presence. By requesting reviews and engaging with them, you're building strong client relationships.

Bonus Tip: Keep your review process simple and user-friendly. Choose platforms familiar to your client base like Google, Facebook and LinkedIn and avoid bombarding them with multiple requests.

By following these friendly tips, you can harness the power of online reviews to showcase your dedication and expertise!

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

COMMERCIAL LITIGATION ISSUES OF INTEREST

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

Your client retained you to foreclose a residential mortgage. Your client is the successor to the original mortgagee bank, which had commenced a foreclosure action in early 2012 but later voluntarily discontinued the action in 2014 without prejudice. In late 2018, more than six years after commencement of the bank's discontinued action, you commenced a new foreclosure action on behalf of your client. The defendant moved to dismiss your foreclosure action as time-barred. You countered that the law at the time of the discontinuance of the first action and the later commencement of the second action paused the statute of limitations from the discontinuance until the commencement of the second action, pursuant to a 2021 Court of Appeals case that clarified the common law. According to the Court of Appeals, although the commencement of a foreclosure action accelerated the full debt that was otherwise payable in monthly installments, a voluntary discontinuance decelerated and revoked the acceleration of the debt, pausing the statute of limitations. The defendant countered that the Court of Appeals case was superseded and nullified by the subsequent passage of CPLR 3217(e) in 2022, which expressly provides that a voluntary discontinuance of a residential foreclosure action does *not* pause the statute of limitations. You assert that the Court may not retroactively apply the new statute without violating your client's Constitutional procedural due process and contract rights.

Will you defeat the statute of limitations defense?

The answer is *no*.

In *MTGLQ Investors, LP v. Foshee*, NYLJ 1714087292NY622765201, Case Number 622765/2018 (Sup. Ct. Suffolk Co. April 23, 2024), plaintiff, the successor in interest to a residential mortgage, brought a foreclosure action in November of 2018, more than six years after plaintiff's predecessor commenced a foreclosure action in May of 2012. The action was discontinued by the predecessor, without prejudice, in 2014. Plaintiff in this second foreclosure action moved for summary judgment and the defendant cross-moved to dismiss the action, arguing that the action was time-barred.

The plaintiff argued that the law at the time the first foreclosure action was commenced in 2012 and then discontinued in 2014 provided that the acceleration of the debt effected by commencement of the first action was revoked by the discontinuance, thereby pausing and resetting the statute of limitations. The plaintiff relied on *Freedom Mtge. Corp. v. Engel*, 37 N.Y.3d 1, 19, 22, (2021), which held, "where the maturity of the

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debt has been validly accelerated by commencement of a foreclosure action, the noteholder's voluntary withdrawal of that action revokes the election to accelerate, absent the noteholder's contemporaneous statement to the contrary.”

In response, the defendant argued that the subsequent passage of CPLR 3217(e) in 2022 superseded and revoked the ruling in *Engel* by specifically providing that a voluntary discontinuance of a residential foreclosure action does not “waive, postpone, cancel, toll, extend, revive or reset” the statute of limitations. This section was enacted as one of many statutory amendments under the Foreclosure Abuse Prevention Act (FAPA).

The plaintiff countered that the retroactive application of CPLR 3217(e) would impair its rights under *Engle*, which plaintiff asserted was the controlling law in 2014 when the first action was discontinued and in 2018 when the second action was commenced. Retroactive application of the statute would, according to plaintiff, be a violation of its procedural due process and contract rights under both the State and US Constitutions.

The Court ruled that the defendant met its prima facie burden on summary judgment by showing that the bank accelerated the debt by declaring the full mortgage due when it commenced the action in 2012. The burden then shifted to the plaintiff to demonstrate the tolling of the statute of limitations.

The Court found that the Court of Appeals determination in *Engel* in 2021 was not the law at the time the first action was discontinued in 2014 and the second action was commenced in 2018. Rather, the law in effect in 2014 and 2018 was the holding of the Second Department in *Engel* (163 A.D.3d 631 [2d Dep’t 2018]), along with other cases that were abrogated by the Court of Appeals ruling in *Engel*, and then effectively restored in 2022 by passage of the superseding statute. The Second Department’s decision in *Engel* and other cases held that revocation of an acceleration of the mortgage debt required an “affirmative act” that was a “clear and unambiguous” revocation of the previous demand for full payment. A bare discontinuance that is silent about revoking the acceleration was not an affirmative act of revocation.

The Court cited cases holding that CPLR 3217(e) restored, rather than altered, the law as it existed when the action was discontinued in 2014. The plaintiff’s predecessor, therefore, could not have had an expectation that the voluntary discontinuance reset the statute of limitations. As to Constitutional due process and contractual rights, the Court cited cases holding that there is no vested property interest in any rule of common law. The Court found no contractual provision in plaintiff’s mortgage that provided for a right to revoke acceleration of the debt.

The action was dismissed as time-barred.

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The lesson? The question of the constitutionality of the retroactive application of FAPA is still working its way to and through appellate courts. Therefore, if the statute of limitations is at issue in a residential foreclosure action where your client is the successor to a mortgagee that discontinued a prior foreclosure action before the enactment of CPLR 3217(e) in 2022, preserve your client's rights by arguing that retroactive application of CPLR 3217(e) is unconstitutional. *See, Hon. Mark C. Dillon's 2023 McKinney's Supplemental Practice Commentaries, C3217:5:*

Future Supplemental Practice Commentaries for CPLR 3217 will no doubt address the development of decisional law on the issues [including retroactivity] discussed here, as they wind their way from trial courts through the appellate processes. CPLR 3217(e) will be receiving a lot of exercise in the coming months and years.

*By Joseph Churgin, Esq. and Susan Cooper, Esq. of

SAVAD CHURGIN, LLP, Attorneys at Law

Note: No Appellate Division has yet addressed the constitutionality of the retroactive application of FAPA. *See Deutsche Bank Natl. Trust Co. v. Deluca*, 225 A.D.3d 91, fn. 4 (3d Dept. 2024) (declining to reach constitutionality arguments); *Geneovese v. Nationstar Mtge. LLC*, 223 A.D.3d 37 (1st Dept. 2023) (declining to consider constitutional challenge to FAPA due to failure of foreclosing party to notify Attorney General per CPLR § 1012(b)); *ARCPE 1, LLC v. DeBrosse*, 217 A.D.3d 999 (2d Dept. 2023) (declining to reach issues raised for first time on appeal); *Johnson v. Cascade Funding Mtge. Trust 2017-1*, 220 A.D.3d 929 (2d Dept 2023) (remitting matter to Supreme Court, Putnam County, for consideration of constitutional arguments).

Many trial level courts have extensively addressed this issue in recent decisions.

The following decisions have concluded that retroactive application of FAPA is constitutional. *See, e.g., 195-197 Hewes LLC v. Citimortgage Inc.*, 2023 NY Slip Op 33931(U) (Sup. Ct. Kings Co.); *Ditech Fin. LLC v. Naidu*, 2023 NY Slip Op 23370 (Sup. Ct. Queens Co.); *U.S. Bank Trust, N.A. v. Miele*, 80 Misc.3d 839 (Sup. Ct. Westchester Co. 2023); *Wells Fargo Bank NA v. Haq*, 2023 NYLJ LEXIS 1431, NYLJ, Jun. 14, 2023 at p.17, col.3 (Sup. Ct. Richmond Co.); *HSBC Bank USA, N.A. v. IPA Asset Mgt., LLC*, 79 Misc 3d 821, 824-826, (Sup. Ct. Suffolk Co. 2023); *Deutsche Bank National Trust Company v. Dagrin, et al.*, 2023 NY Misc. LEXIS 13056 (Sup. Ct. Queens Co.); *Pennymac Corp. V. Erneste*, ___ Misc 3d ___, 2023 NY Slip Op 23411 (Sup. Ct. Queens Co.); *Bayview Loan Servicing, LLC v. Dalal*, 80 Misc 3d 1100 (Sup Ct. Bronx Co. 2023).

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These courts concluded that FAPA violates vested property rights: See, e.g., MTGLQ Invs., L.P. v Gross, 79 Misc 3d 353 (Sup Ct. Westchester Co. 2023); Deutsche Bank Natl. Trust Co. v. Warren, 2023 NY Slip Op 33504(U) (Sup. Ct. Queens Co.); U.S. Bank v. Johns, 2023 NYLJ LEXIS 2080 at *5 (Sup. Ct. Queens Co.) (“Retroactive application in this instance would deprive the mortgagee of their right to enforce their claim against the mortgagor in violation of its federal and state constitutional rights to due process of law.”). These Courts have declined to apply FAPA to cases like the one before this Court.

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SUCCESSION

A new Newsbrief column

BY JUDITH BACHMAN, ESQ.

LAW FIRM FOR SALE



Can you sell your law firm? Will anybody buy it? How do you get the highest price?

In previous columns, we have explored various ways to exit a law practice. We have discussed the possibility of a firm merger, internal succession, and plain retirement. Now, in addition to these traditional pathways to exit, there is a growing trend of selling a firm.

New York Rule of Professional Conduct 1.17(a) 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 . . .”

This was not always the case. “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). . . .” NYSBA Ethics Committee Opinion 1168 (5/13/2019).

In conjunction with this evolution in the ethical rules, other industry changes also make selling a law practice more realistic.

There is a budding effort by various companies to help facilitate law firm sales. Some are trying to build a sort of multiple listing service of law firms for sale, or to otherwise facilitate law firm exits. Examples can be found at thelawpracticeexchange.com/marketplace or www.seniorattorneymatch.com.

There is also a trend toward permitting non-lawyer firm ownership. This change would enhance the ability to sell a law practice as it would widen the pool of potential buyers to other entities such as private equity firms. Non-lawyer firm ownership is already permissible in Arizona, Washington D.C. and Utah and may eventually spread across the country.

Even with these widening sale channels, though, selling a law practice and getting the highest price at sale will largely depend on how the firm will operate after the owner exits. Will the clients stay with the firm? Can the firm continue to draw new clients? Is there a team in place to carry on the work? Are there operating systems and procedures that ensure consistency? In short, can the firm continue to operate and grow without the selling attorney?

With these questions, it behooves an attorney who is eventually planning to try to sell (or, perhaps, exit at all) to structure their practice long beforehand in a way that ensures that the practice can carry on without them. That

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means, right now, building transferable client relationships, establishing brand value, hiring a team, and setting up operating systems. There are many benefits to putting these things in place now. Not only does it make a practice more saleable, but it also makes the practice easier to operate and more profitable, well before exit. Some of these steps may seem daunting or foreign so we will delve into them in coming articles. With a bit of understanding and effort, we can all put some of these pieces in place long before we actually exit

Judith Bachman, Esq. is the owner of The Bachman Law Firm in New City, NY

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## CLE CORNER

### SAVE THESE DATES FOR CLE PROGRAMS!

**June 6, 2024 . 12:30 p.m.—2:00 p.m.** The Impact of Recent US Supreme Court Decisions on Affirmative Action in the workplace.

Join us for this important program and earn your Diversity Credits. This program will be presented on Zoom. [Register Here.](#)

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**June 18, 2024 12:15 p.m.—1:30 p.m.** Critical Issues facing Senior Clients. This program will be presented on Zoom. This program is sponsored by ZK Appraisals. [Register Here.](#)

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**Date TBA**—Learn about the Drug Court as an alternative to Incarceration. More information coming soon.

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# 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](https://nycourts.gov/Attorneys/CLE).

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

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

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

### FINANCIAL HARDSHIP POLICY:

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



# CLE UPDATE

## CYBERSECURITY REQUIREMENT

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

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

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

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

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

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

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

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# COMMITTEE CORNER

The Rockland County Bar Association has 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.

If you are interested in joining this reinvigorated Committee, please email Nancy at [Nancy@rocklandbar.org](mailto:Nancy@rocklandbar.org)

## PRO BONO COMMITTEE

This newly established Committee will be meeting on June 17 at 5 pm on Zoom. This new RCBA 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](mailto: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](mailto:Ianaya@centersc.org) and Crismelly at [Crismelly@cmoraleslaw.com](mailto: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:

June 17, 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](mailto:Barbara@rocklandbar.org) by the 15th of the month so that the Executive Board may review it.

Thank you!



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