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Rachael Candoni
Editor

ROCKLAND COUNTY BAR ASSOCIATION

NEWSBRIEF

www.rocklandbar.org

May 2022

President's Post

This month, in the space where we usually place the President's Post, we present an article from Justice Paul Marx. I thank Justice Marx for taking the time to put this together and for sharing his thoughts with our members.

Ira Schoeps

President

FOOD FOR THOUGHT

BY

Hon. Paul I. Marx, JSC

On Tuesday, April 12, 2022, I attended a Practitioners Chat hosted by the Lawyer to Lawyer Committee of the Rockland County Bar Association. For those who don't know, Practitioners Chats are monthly informal (and informative) sessions hosted by the Bar Association designed to improve communication and discussion between and among RCBA members, with the ultimate goal of improving the quality of lawyering in the County and the quality of life of the lawyers. I rarely miss attending these events.

Often, guests with relevant information of the procedures and practices in the Rockland Courthouse or timely knowledge of the law attend to share what they know. Guests at prior sessions have included: Tom Morrissey, the recently elevated Chief Clerk of the Supreme and County Courts, and Teresa M. Kenny, the Supervisor of the Town of Orangetown, who, along with the Hon. Leslie Kahn, Clarkstown Town Justice, jointly highlighted a focus on successful women leaders. Topics discussed have included "Civility and the 24 Hour Rule", a way to reduce conflict and personal animosity with your adversary, pointers on collaboration in the law, and "The Attorney/Client Relationship -- Billing and Beyond", a self-explanatory subject, lead by Richard Glickel, Esq.

One of the more notable things about these Chats is the paucity of attendance. Each month, a small but solid cadre of lawyers attend, striving to improve their practice, enhance their base of knowledge and connect with other members in a collegial setting. Each month, I am struck by the number of lawyers who could benefit from attending these sessions but who fail to do so. Being unable to control my tongue this month caused me to mutter, not so *soto voce*, "Why is it that those who would most benefit from these sessions are the very ones not likely to attend?"

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This is an observation I have made with respect to Continuing Legal Education programs in the past as well. Upon hearing my comment, Bar Association President, Ira Schoeps, Esq, invited me to write his introduction to this month's Newsletter. Having accepted the challenge, I submit the following for your consideration – call it food for thought.

Why is it that those who might best benefit from increased involvement in Bar Association sponsored programs are the least likely to attend? Is it because they are so busy in their practice that they cannot spare an hour to participate in a discussion that might help their practice or enhance their knowledge? Whatever the justification, those who miss the Chats and CLE's are missing out.

I have spoken at various CLE presentations over the years on such subjects as evidence, foreclosures and how to write better motions. Conspicuous by their absence from many of these CLEs are those lawyers who might have most benefitted from attendance. The lawyers who routinely submit disorganized and poorly written papers could certainly have gained something from a CLE on effective writing. The lawyers who submit papers citing to law that was statutorily overruled years ago, would have benefitted from attending a CLE; but, yet again, are usually absent. In short, the CLE which you did not attend may have highlighted a recent change in law that you missed. Such omissions may have adversely affected your work product and ability to represent your client. In addition, attending a CLE on a topic outside of your usual field of practice might re-ignite a waning interest in the law.

I fear that many don't attend because they think that the Bar Association cannot assist them in their endeavors. Yet, often, these are the same individuals who lament that their Bar Association does little for them. It is those people who should step up and participate and those people – you know who you are – to whom this article is directed.

Of note, the April topic was "What more can your Bar Association do for you?" Issues discussed were a mentorship program for newer lawyers or those seeking to expand their practices, assembly of and access to a form database maintained by the Bar Association, attorney wellness programs, shared access to legal research software (like Westlaw) and ways of expanding the social and educational aspects of the association – including a possible golf outing to benefit the Bar Association. The number of ideas that were not voiced is probably equal to the number of members who did not attend.

And so, I continue my own lament – why is it that those who don't participate avoid the opportunity to improve themselves and their practice? Let's face it – the practice of law is hard and demanding. Staying abreast of substantive changes in the law -- either statutorily or via case law-- or procedurally – via court rule, administrative order or executive order – is time consuming. In person interactions with other lawyers dwindled due to the pandemic and transition of the court system to a virtual based format in the last two years. As lawyers return to the courthouse, more and more complain of being isolated and refer to their work as drudgery; searching for a "way out". Perhaps it is time for a change in your approach to address these feelings. Perhaps it is time for you to expand yourself and participate more and build the connections that can support you personally and professionally.

The lawyer who did not attend the recent Practitioners Chat missed the opportunity to weigh in and make a suggestion for how the Bar Association could better serve its members. Life, it has been said, is a participation sport.

Join in. Participate. Who knows, you may learn something along the way, or teach someone else something. A relationship you may develop through participation could enhance your practice or your outlook.

The RCBA Board is actively seeking to identify ways to provide more services to its members and improve the organization. What have you done to support the RCBA? What can you do? Is there a subject you would like discussed at a Chat?

Food for thought ...

Join the Bar at the bar and help
us Welcome our New Members!

Spring Happy Hour
Thursday, May 12, 2022
5:30-7:30PM

Growler & Gill

148 Route 59

Nanuet, NY 10954

Includes beer, wine, soda and appetizers

RCBA Members/Guests - \$10

New Members - FREE!

Indoor seating and outdoor patio
available (weather permitting)





DONNA G. SILBERMAN
Rockland County Clerk

COUNTY OF ROCKLAND
OFFICE OF THE COUNTY CLERK

One South Main Street, Suite 100
New City, New York 10956-3549

Phone # (845) 638-5070

Fax # (845) 638-5647

rocklandcountyclerk@co.rockland.ny.us

www.rocklandcountyclerk.com

Deputy Clerks

Jamie Graham

Joseph Alongi

William Phillips

**New Option for Local Title Companies and Attorneys for Receiving
Recorded or Rejected Documents**

WHY WE'RE DOING THIS ➡ This new & elective "on-hold pickup" option was created as a customer convenience to eliminate the wait often experienced when mailing rejected or newly recorded documents to recorders. Unfortunately, we have no control over the post office or other mailing companies and are unable to predict mail transport times or lost items once documents leave our office.

HOW IT WORKS ➡ Each participant will be assigned a personal folder that will be placed in a locked and secure file cabinet which will be located in the "employee-only" area of our office. All paper documents which require corrections or original recorded documents will be placed in participant folders. To access documents, participants may appear personally at our back customer service counter Monday through Friday from 7:00 a.m. to 6:00p.m. Participants may call our office at any time to inquire if there are rejections/documents waiting to be picked up.

HOW TO OPT-IN ➡ To set up a folder and begin having your documents be converted to "on-hold" pickup, contact our office at (845) 638-5069.

REMINDER...Document pickup may be completely avoided by eRecording!

Technology Tips for Attorneys

submitted by

Michael Loewenberg*

When dealing with technology in your law firm, here are some things to keep in mind.

Learn to let go. Technology changes. Performance improves and features are added. Often there are new hardware and software products that, when deployed properly, can make a significant positive difference in your firm's operation. Unfortunately, many of us have a hard time letting go of our existing technology platforms. We're used to them, we think they are good enough, we're afraid of the challenges of absorbing new technology tools and techniques and, perhaps, we don't want to spend the money. Learn to let go. New computers, more effective programs, more robust network gear, quicker, reliable backups: all these things are worth looking at but you first have to let go of the legacy technology so you can embrace the things that can improve your firm's operation.

Delegate. We often think of delegation in terms of assigning tasks to people. You can also delegate to technology. Two quick low or no-cost examples: use an online calendar program so that clients and prospects can make appointments with you directly without going through your secretary or office manager. Check out Calendly; the free version might work well for you. Also look at setting up online payments for your firm so your clients can pay you with a credit card on the web. Check payments are a hassle, from a fraud perspective and an administrative perspective. Taking credit cards online makes your firm's payment process secure and convenient for your clients.

Text messaging is the new email. We are all seeing the proliferation of text messaging as a major form of communication. Our doctor's appointments are confirmed with text messages; our restaurant reservation reminders are texted to us. It might be attractive for you to look at messaging solutions that allow you to confirm meetings, court dates and other important information with your clients via text message. Please be careful about sharing confidential client information over text messages but there's nothing wrong with keeping in contact with your client via texts as helpful reminders that you're on top of their situation.

Embrace electronic signatures. Yes, there are very sophisticated electronic signature systems available for various aspects of the law. If you're not familiar with sending a document to a client for their electronic signature, a good, easy way to learn, practice and get started is to look at Adobe Acrobat Sign. You already know about PDFs; leverage your knowledge and find out about Sign.

Get help. New technology can be very useful but challenges abound in absorbing that technology and helping users be comfortable and trained. To get the most out of your technology investment, consider hiring a consultant who can help smooth the process and reduce the friction of implementing and utilizing new technology in your firm. Jump starting the process with someone who knows the tools and techniques can really help a lot.

Stay safe!

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

News From the Executive Director:

RCBA 2022-23 Board of Directors ELECTION RESULTS

As per the RCBA By-Laws, the names of candidates for the Board of Directors were published to the Membership and Members voted (all ballots were received by May 2, 2022.)

The ballots received were opened and counted by the Executive Director and then audited by the three most senior Directors who are not candidates for election. Pursuant to the By-Laws, Section 9, notice of the election results shall be published to the Membership by May 15.

The following candidates have been elected to the 2022-23 Board of Directors:

Leonard J. Birbrower - 3 year term

Hernan Caceres - 3 year term

Laura M. Catina - 3 year term

Nicole DiGiacomo - 3 year term

Laurie A. Dorsainvil - 3 year term

Robert L. Pitkofsky - 3 year term

RCBA 2022-23 MEMBERSHIP DRIVE!

ATTENTION NEW MEMBERS!

GET 15 MONTHS OF MEMBERSHIP FOR THE PRICE OF 12!

START YOUR MEMBERSHIP NOW AND HAVE MAY AND JUNE 2022 INCLUDED WITH YOUR 2022-23 MEMBERSHIP (JULY 1, 2022-JUNE 30, 2023)

**DOWNLOAD A MEMBERSHIP APPLICATION FROM THE RCBA WEBSITE
(ROCKLANDBAR.ORG)**

JOIN TODAY AND START ENJOYING THE BENEFITS OF RCBA MEMBERSHIP!

****CLE's*Lawyer Referral Service*Practitioners Chats****

****E-Newsletter*Rockland Bar CARES****

Current Members: Tell Your Friends!



To: Attorneys, professional staff & interested parties

ATTEND FREE SURROGATE'S COURT

E-FILING TRAINING*

10:00am - 12:00pm

March 17, 2022

April 14, 2022

May 19, 2022

June 16, 2022

July 14, 2022

August 18, 2022

Where: Virtual - on-line via Microsoft Teams

Attend the free e-filing training in which the NYSCEF Resource Center staff will guide you through your first Surrogate' Court filing, review court rules, and provide helpful tips to avoid pitfalls and achieve success. Attorneys can receive 2 (free) CLE credits.

PRE-REGISTRATION IS REQUIRED

*NYSCEF training classes provide 2.0 FREE Continuing Legal Education (CLE) credit hours. (1.0 credit in Professional Practice and 1.0 credit in Law Practice Management).

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



To: Attorneys, professional staff & interested parties

ATTEND FREE SUPREME COURT

E-FILING TRAINING*

10:30am - 12:30pm

March 16, 2022

April 13, 2022

May 18, 2022

June 15, 2022

July 13, 2022

August 17, 2022

Where: Virtual - on-line via Microsoft Teams

Attend the free e-filing training in which the NYSCEF Resource Center staff will guide you through your first Supreme Court filing, review court rules, and provide helpful tips to avoid pitfalls and achieve success. Attorneys can receive 2 (free) CLE credits.

PRE-REGISTRATION IS REQUIRED

*NYSCEF training classes provide 2.0 FREE Continuing Legal Education (CLE) credit hours. (1.0 credit in Professional Practice and 1.0 credit in Law Practice Management).

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



PRACTITIONERS CHAT

with
Jeffrey M. Adams, Esq.

Lawyering in a Virtual Age and Post Covid Issues

Tuesday, May 10, 2022

12:45 p.m. – 1:45 p.m.

No Charge

★ ★ ★

RSVP to Manuela Gomez
manuela@rocklandbar.org
to receive the Zoom link

*Informal and confidential virtual roundtable discussions
for RCBA members*

Sponsored by:
RCBA Gold Sponsor M&T Bank

New York State Bar Association House of Delegates Meeting

The New York State Bar Association House of Delegates meeting was held on Saturday, April 2, 2022. The meeting was held in-person at the New York City Hilton with a remote option via Zoom. As Vice President for the Ninth Judicial District, I attended the meeting and the preparatory executive committee meeting held the day before.

At the House of Delegates, we heard from Hon. Hector D. Lasalle, the Presiding Justice of the Appellate Division Second Department. He detailed the Second Department's response to numerous issues at the Court caused by the Pandemic. Additionally, the House received a finance report from Treasurer Domenick Napaletano. As with most bar associations, membership retention was shown to be a critical issue. The House also received a report from the President of the Bar Foundation and a final report from President Andrew Brown. Andrew has served the Association well in his year as President. He struggled through the multitude of problems caused by the Pandemic and did more than just keep the ship afloat. He handled his year with grace and poise. We owe him a large debt of gratitude.

The House of Delegates also received reports from the Task Force on Racism, Social Equity and Law; The Committee on Families and The Law, and The Committee on Law Youth and Citizenship. Also, the First Ruth Bader Ginsberg Memorial Scholarship was given to Ms. Sierra Sanchez, a student from Hofstra Law School.

The report of the Committee on Families and the Law was eye-opening. It recommended a series of reforms aimed at preventing the breakup of African American families. The recommendations included more assistance for employment, housing, food and legal services for families living in poverty. The report, "Racial Justice and Child Welfare," presented historical and statistical data to support the proposition that the child welfare system in New York State is inherently racist and works to prevent families of color from staying together.

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The report calls for aggressive, immediate action at all levels of government.

The Executive Committee endorsed the “Clean Slate Act” proposed legislation, which would automatically seal the records of those convicted of crimes. The argument in favor is that, once someone pays their debt to society, they should not be further punished by the conviction. Having a conviction on your record impacts future housing, employment and a panoply of other civil matters.

Those convicted of misdemeanors and traffic offenses, under the proposed statute, will have their files sealed three (3) years after completion of their community service or prison time. The time period for felonies would be seven (7) years. Conviction of sexual offenses would not be eligible for sealing. The sealed records would only be available to a Court, law enforcement agencies or in some cases when the person whose records are sealed becomes a trial or hearing witness in a subsequent matter. All reports are available on the New York State Bar Association’s website.

Once again, it was a pleasure to represent the Ninth Judicial District at the meeting.

Respectfully submitted,
Adam Seiden
Vice President, Ninth Judicial District

RCBA ONLINE CLE PROGRAMS PRESENT

CPLR UPDATE

FEATURING PROFESSOR PATRICK M. CONNORS

Angela and Albert Farone Distinguished Professor of Law

in New York Civil Practice, Albany Law School

Friday, May 6, 2022

9:30 A.M. - 12:30 P.M.

WEBINAR VIA ZOOM

SPOTLIGHT

on

Hon. Christopher J. Exias

In recognition of Asian Pacific Heritage Month, we had the chance to sit down with the Hon. Christopher J. Exias, Spring Valley Village Justice and Principal Law Clerk to the Hon. Robert Berliner, J.S.C. Justice Exias is the first Asian-American-Latinx Justice in Spring Valley Court history.

Did you always want to be a lawyer?

Actually, yes. As a young child, I was always arguing with my parents, siblings, the deli counter guy – and then I found out that attorneys actually get paid to make arguments and convince others of their position. I knew I had the perfect skill set to be a lawyer.

Did you go to law school right after college?

No. Although I really was interested in law since elementary school, when I graduated from Trinity College (Hartford, CT), I decided to get a law-related job to ensure that a career in law was right for me. The mother of a college friend of mine was employed in the NYS Court system in Westchester County, and she suggested that I apply for a job in Westchester Supreme & County Courts.

I was hired for a part-time Management Analyst position in 2004, reporting to the Chief Clerk and Administrative Judge for the Ninth Judicial District. In the Fall of 2005, I started my law school career at Western New England College School of Law, commuting from White Plains, New York to Springfield, Massachusetts each week. I then transferred to the University of Connecticut School of Law, graduating in 2009. Since then, I've worked as a law clerk to three Supreme Court Justices and one County Court Judge.



Did you grow up in Rockland?

No, I was born in New York City and grew up in Stamford, Connecticut. The first time I came to Rockland was in 2009 when I interviewed with Judge Weiner to be his Assistant Law Clerk.

Who is the biggest influence in your life?

My parents. My mother is a 1st generation Chinese American. Her parents owned a laundromat in New York City. When she graduated from college, they hung her degree in their store; they were so proud. My father put himself through trade school and started his own HVAC business, which my older brother continues today. I am so inspired by how much they accomplished and how they held nothing back in supporting my siblings and I. I want to be the same kind of parent for my children.

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Tell me about your experience as a new Judge.

Being a new Justice Court judge is full of challenges and opportunities. One of the biggest changes I've had to adapt to is being "on call" for arraignments and emergency applications every three weeks. I've had weeks with over 10 calls, some as late as 1:00 AM.

However, I've also had the opportunity to work directly with litigants for the first time in my career. As a Supreme Court and County Court law clerk, I've almost always worked on cases where everyone was represented by counsel. In Justice Court, many of the parties are unrepresented, so I have the opportunity to work with litigants directly and see the effects my determinations have on their everyday lives. Given this, I am grateful to be able to take a very active role in making sure that justice is served.

Recently, I had the incredible experience of signing my first Decision and Order. As a law clerk since 2009, I've written hundreds of decisions, but this one was the first one that I signed with my name.

Less serious – what is your favorite junk food?

I love baked goods, especially with a citrus flavor. I just ate a lemon poppy seed muffin. It was delicious.

Favorite down time activity?

I have young children, so I've really come to appreciate sipping hot coffee by myself, first thing in the morning before anyone else is awake. It's the simple pleasures in life that I have come to cherish.

RCBA ONLINE CLE PROGRAMS PRESENT

**ADVANCING DIVERSITY AND INCLUSION IN
HIGHER EDUCATION AND THE LAW**

**FEATURING SUPREME COURT JUSTICES ALVIN
YEARWOOD AND DEBRA JAMES, TOWN JUSTICE
DJINSAD DESIR AND PROFESSOR RANDOLPH
MCLAUGHLIN**

**Wednesday, May 18, 2022
1:00 P.M. - 3:00 P.M.**

WEBINAR VIA ZOOM

[May 2022]

COMMERCIAL LITIGATION ISSUES OF INTEREST

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

During a natural break in your deposition of the defendant in a civil case brought on behalf of your client in federal district court, you observed defense counsel speaking to his client. There was no question pending at the time of the break. When the deposition resumed, you questioned the witness about his conversation with his counsel. Defense counsel directed the witness not to answer, on the ground of attorney-client privilege. There was no claim that the witness changed his testimony after the break, or that there was any other impropriety. You requested the court to order the witness to reveal the substance of the conversation.

Will the court require the witness to answer?

The answer is “yes.”

In *Pape v. The Suffolk Cnty. Soc’y for the Prevention of Cruelty to Animals*, plaintiff sued the defendant for failure to pay minimum and overtime wages, and for sex-based discrimination and retaliation. During a break at the deposition of the defendant’s representative, defense counsel spoke with his witness. The break was natural, not one taken at the request of the witness or his attorney. No question was pending. After the break, the witness was asked about the conversation. Defense counsel directed the witness not to answer on the ground of attorney-client privilege. In response to plaintiff’s request that the Court direct the witness to answer, the Court ordered the parties to file letters on their respective positions on whether the conversation that occurred during the break, when no question was pending, was protected by attorney-client privilege. Only the defendant filed a letter.

The Court looked first at Fed. R Civ. P. Rule 30(c)(1) (which provides that the examination and cross-examination of a witness at deposition proceed as they would at trial under the Federal Rules of Evidence) and Local Rule 30.4 of the Southern and Eastern Districts of New York (which provides, “[a]n attorney for a deponent shall not initiate a private conference with the deponent while a deposition question is pending, except for the purpose of determining whether a privilege should be asserted.”).

The Court then examined conflicting case law in various federal district courts, beginning with *Hall v. Clifton Precision, A Division of Litton Systems, Inc.*, 150 F.R.D. (E.D.Pa. 1993), which held that private conferences during a deposition are not permissible, irrespective of whether a question is pending. The *Hall* Court reasoned that a deposition is akin to a trial, where a lawyer is not permitted to confer at their pleasure during breaks in the witness’ testimony. Some courts have followed *Hall*. But others find *Hall* too restrictive, resulting in a chilling effect of discouraging attorneys from giving permissible non-testimonial advice.

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The Court was persuaded by the case law in other district courts in the Second Circuit, which generally declined to follow *Hall*. The Court noted that the Eastern District decisions appear to depend on the context and precise nature of the question asked. As an example, the Court cited *Gibbs v. City of New York*, No. CV-06-5112 ILGVVP, 2008 WL 789838, at *2 (E.D.N.Y. Mar. 21, 2008), where the witness clarified his testimony after discussing his testimony with his counsel. The *Gibbs* Court found the following question permissible: “I’m asking you when you walked out the door to go to lunch before you had a conversation with your attorney about the deposition on your own, did it suddenly come to you that you made a mistake and needed to make a clarification?” The *Gibbs* Court ruled that the question did not invade the contents of the conversation with counsel but rather sought to exclude from consideration any such communication with a simple “yes” or “no.” No privileged content would be disclosed. The witness in *Gibbs* was ordered to answer the question.

By contrast, the Court in *Pape* noted that there was no claim of impropriety or coaching of the witness during the natural break taken while no question was pending. Indeed, the Court remarked, there was not even an indication that questions were asked of the witness about whether the conversation with counsel refreshed the witness’ recollection. “If it did, then the questioner could explore further to determine whether there was a waiver of the privilege. If not, then the inquiry ends.”

The Court ruled, in the absence of a claim of impropriety or coaching, a deponent is not protected from disclosing the content of their conversation with counsel during a natural break in a deposition while there is no question pending.

The lesson? When adverse counsel instructs a deposition witness not to answer questions about a conversation the witness had with counsel during a natural break in the deposition, probe further to create a record upon which the court may allow questions about the sum and substance of the conversation. Ask yes/no questions aimed at determining the circumstances of the conversation, such as whether anyone else was present for the conversation (which will waive the privilege); or whether counsel gave him advice about his testimony (which would be improper); or whether the conversation refreshed his recollection, or reminded him of anything, or clarified his thoughts.

Editor’s note: Consider *Brightman v. Corizon, Inc.*, 72 Misc.3d 1213(A) (Sup. Ct. N.Y. Co. July 29, 2021), for analysis of this issue under New York State Court Rules 22 NYCRR 221.1(a) and 221.2(a)-(c).

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

SAVAD CHURGIN, LLP, Attorneys at Law



Save the Date!

*Installation Dinner
Induction of New Officers & Awards*



Thursday, June 23, 2022

5:00p.m. - 8:00p.m.

*Outdoors at beautiful Woodmont Day Camp
New City, NY*



THE PRACTICE PAGE**Hon. Mark C. Dillon *****EVIDENCE OF HABIT**

Any time when getting dressed, I place my left foot through my pants, followed by the right. This routine has occurred without variation, all these years, perhaps 45,000 times. It is a habit — left, then right.

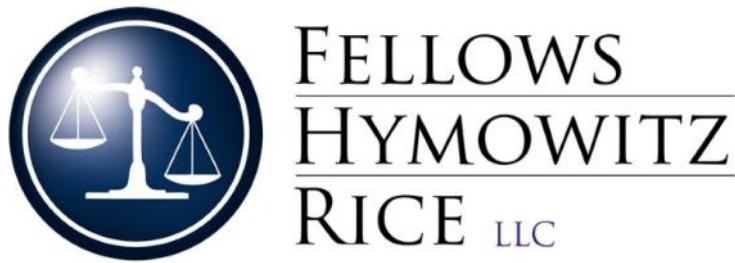
There are circumstances when habit is admissible as evidence and other circumstances when not. Knowing the difference is key. The Court of Appeals provided guidance in *Halloran v. Virginia Chems.*, 41 NY2d 386. It explained that habit evidence is generally admissible to prove conformity with conduct on specified occasions, because “one who has demonstrated a consistent response under given circumstances is more likely to repeat that response when the circumstances arise again” (*Id.*, at 391). The proof must demonstrate “a deliberate and repetitive practice” by a person “in complete control of the circumstances,” as distinguished from “conduct however frequent yet likely to vary from time to time depending upon the surrounding circumstances” (*Id.*, at 389, 392; NY Evid. Guide Rule 4.13). If these conditions are satisfied, “a party should be able, by introducing evidence of such habit or regular usage, to allow the inference of its persistence on a particular occasion” (*Id.*, at 392; *Rivera v Anilesh*, 8 NY3d 627, 634). In other words, a line exists between deliberate and repetitive practices that are not likely to vary, which are admissible, and other repetitive practices that may occasionally vary, which are not. A proffer of habit evidence is dependent upon its unique facts and circumstances.

A classic illustration of the difference regards looking both ways before crossing a street or railroad track. Ideally, we all should do so every time as we were taught in our earliest youth. Yet, we are imperfect beings, and looking both ways might not occur if a person is distracted, absent-minded, on a prescription medication that dulls the senses, or is rushing a bit too much. Personal injury attorneys would be out of business were it not for the vicissitudes of human nature. In *Ferris v Harris*, 55 NY2d 285, evidence that a mother had taught her young daughter not to cross the street without looking for cars, in an action where the daughter was struck by a car, was not admissible as evidence of habit, as the mother made no showing of the habitual practice by the child in controlling her conduct that way. A mere “teaching” is insufficient to establish the evidentiary predicate. In *Parsons v Syracuse, B. & N.Y.R. Co.*, 133 AD 461, the Third Department found error in admitting evidence from a trial witness that a decedent who crossed railroad tracks twice a week for a year looked each way before doing so, as care undertaken on earlier occasions was not evidence that similar care was taken on the date of the occurrence. The threshold for habit evidence in state court is therefore high.

Once admissible, the trier of fact decides whether to credit the habit evidence (*Ortega v Ting*, 172 AD2d 1217). Federal Rule of Evidence 406 allows evidence of a person's habit or an organization's routine practice to prove that on a particular occasion, the person or organization acted in accordance with that habit or practice, regardless of corroboration or the existence of an eyewitness. The instances must be sufficiently numerous for inferring systematic conduct (*Strauss v Douglas Aircraft Co.*, 404 F.2d 1152 [2nd Cir.]). Admissibility in the federal courts appears simpler than the state standard.

Habit evidence also sometimes appears in medical malpractice actions, where physicians lack a recollection of medical procedures performed upon specific patients, but provide evidence of *trained* habits that define their conduct. In such cases, the physician must show that the medical procedure is a deliberative and repetitive practice (*Heubish v Baez*, 178 AD3d 779) which never varies from patient to patient despite the surrounding circumstances (*Martin v Timmons*, 178 AD3d 107, 110). An expert's opinion based upon the physician's habit may be considered if the foundation is laid of the underlying habit (*Guido v Fielding*, 190 AD3d 49). Habit may also admitted to establish invariable instructions to patients on informed consent (*Rigie v Goldman*, 148 AD2d 23).

* Mark C Dillon is a Justice of the Appellate Division, 2nd Judicial Department, an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author of CPLR Practice Commentaries in McKinney's.



Legal Assistant/Paralegal – Premiere lower Hudson Valley personal injury law firm is seeking a talented and experienced paralegal to assist attorneys with all aspects of case management.

Full Job Description:

- Assist attorneys with various aspects of case management during all stages of litigation for personal injury and medical malpractice cases
- Prepare all legal documents including pleadings, motions, discovery demands and responses, stipulations etc.
- Draft standard correspondence
- Serve and file legal documents, including e-filing (knowledge of NY ECF and PACER is beneficial)
- Coordinate with calendar clerk and other staff to maintain key dates and deadlines
- Communicate with clients, court personnel, and adversaries

Skills and Abilities:

- Strong knowledge of litigation processes (i.e. NY CPLR)
- Proficient with MS Outlook, Word, Excel
- Highly organized
- Ability to prioritize, take initiative, and multitask in a fast-paced environment
- Excellent communication skills
- Detail oriented
- Ability to work in a team environment
- Foreign language skills a plus (Spanish)

Software:

- Microsoft Outlook and Office Suite
- LexPI - helpful, but not required

Contact: Tara Barton—Bookkeeper/Office Manager
845-639-9300, ext. 112



ANNOUNCEMENT FROM THE RCBA REAL ESTATE COMMITTEE

Please be advised, that after many months of work and coordination between the RCBA, the Real Estate Committee, its Co-Chairs and Members; we are pleased to announce that the RCBA Real Estate Committee has created, voted-on and Approved an updated Real Estate Contract for the first time in Decades!

Co-Chairs Jeff Yanowitz and David Ascher took notes and comments from the Real Estate Committee members over many months to provide this updated Contract to the entire RCBA! We look forward to utilizing this Contract throughout Rockland County and providing a more modern and stream-lined approach to Real Estate Transactions for us all.

Please find two updated contracts (single family home and condominium) on our RCBA website at www.rocklandbar.org. Scroll down to the bottom of the homepage and find links under "Helpful Links."

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Interested in ADR Training?

Dear Colleagues,

On behalf of the Courts, we are interested in ascertaining if you have already participated in ADR training and/or if you are interested in participating in ADR training.

Kindly respond to us and let us know:

Have you participated in any ADR Training and obtained certification under the rules of Part 146 of the Chief Administrative Judge (the “Roster of Neutrals”)?

Are you interested in participating in ADR Training in the future?

Thank you for your response.

Please send your response to:

Manuela Gomez
Assigned Counsel Coordinator
manuela@rocklandbar.org

With best regards,

The Bar Association



MEMO

TO ALL RCBA COMMITTEE CHAIRS & VICE– CHAIRS

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

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

Thank you!



CLE CORNER

PLAN YOUR YEAR OF CLEs NOW!

2022 CLE TITLE	DATE & TIME
Advancing Diversity and Inclusion in Higher Education and the Law	Wednesday, May 18, 2022 1:00 p.m.—3:00 p.m.
Ethics – Escrow, File Retention and Retainer Agreements	Thursday, June 2, 2022 12:30 p.m.—1:30 p.m.

NEW CLE REQUIREMENT

In addition to ethics and professionalism, skills, law practice management, and areas of professional practice, a new category was added for diversity, inclusion and elimination of bias courses. This category of credit is effective January 1, 2018.

Experienced attorneys due to re-register on or after July 1, 2018 must complete at least one credit hour in the Diversity, Inclusion and Elimination of Bias CLE category of credit as part of their biennial CLE requirement. The transitional CLE requirement for newly admitted attorneys remains unchanged. For more information about the CLE Rules, visit nycourts.gov/Attorneys/CLE.

CLE REQUIREMENTS

Newly admitted attorneys must complete 32 credit hours of accredited “transitional” education within the first two years of admission to the Bar. Sixteen (16) credit hours must be completed in each of the first two years of admission to the Bar as follows: 3 hours of Ethics and Professionalism; 6 hours of Skills; 7 hours of Practice Management and/or areas of Professional Practice.

Experienced Attorneys must complete 24 credit hours of CLE during each biennial reporting cycle: 4 credit hours must be in Ethics and Professionalism. The other credit hours may be a combination of the following categories:
Ethics and Professionalism, Skills, Practice Management or
Professional Practice.

FINANCIAL HARDSHIP POLICY:

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

COMMITTEE CORNER

Your Committee Chair will contact you regarding any upcoming remote meetings.

Need a Place to Meet in New City?

RCBA Conference Rooms available for rent.

MEMBER PRICES:

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

NON-MEMBER PRICES:

\$50/hour
Half Day (4 hours) = \$150.00
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John Jay graduate and young CSI-to-be is interested in a few months of unpaid Criminal Law exposure. If interested, please contact Shannon at 845-480-6284 or email splynn7@gmail.com

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OFFICE SPACE FOR RENT

New City- four offices and one secretarial area available within a law office. Includes conference room, waiting room, large parking lot, room with or without furniture. E-mail: sherry@davisanddavis.com

**ATTORNEY'S FILES SOUGHT
ANTHONY OCCHIPINTI**

If anyone knows the whereabouts of Anthony (Tony) Occhipinti's files, please contact Manuela at the Bar Association. Anthony passed away in 2017. Manuela@rocklandbar.org

OFFICE SPACE FOR RENT

Haverstraw - one, two or three offices available. Waiting room, receptionist area, large parking lot, large conference room, with or without furniture. Possible overflow. email: lawoffice10927@gmail.com

ATTORNEY NEEDED

Small but growing firm in New City, is looking for a Contracts/Commercial Real Estate Attorney with 3 years direct relevant experience for part-time work (flexible hours). Position can be partially remote. If interested please submit resume to newcitylawhiring1@gmail.com

PART-TIME PARALEGAL

Looking for a part time paralegal or legal secretary for estate work for local practitioners with computer skills for a few hours a week - flexible hour. Please contact Tom O'Connell at 845-729-4460 or email him at 8457294460@gmail.com

ATTORNEY NEEDED

NYS funded Immigration Organization serving clients with immigration and citizenship issues seeks part-time immigration attorney to collaborate with Dept. of Justice accredited staff. Organizational activities are in both Rockland and Westchester counties. If interested, please submit resume in confidence to agency Pres/CEO at: patricia.rajala@gmail.com

LEGAL ASSISTANT PART-TIME

Legal/administrative assistant for small law firm in New City. This is a part-time entry level position suitable for someone interested in gaining practicable and invaluable job experience in the legal area. Good computer skills, detailed oriented, knowledge of basic office procedures and Internet savvy candidate preferred. Students are encouraged to apply. Please fax resume to 845-517-0671.

ATTORNEYS SEEKING PARALEGALS

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

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