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Inside this issue:

President's Post Page 1

FREE Surrogate's Court
E-Filling Training
& Announcements
Page 2

Announcements Page 3

Commercial Litigation Issues of Interest Pages 4-5

> Technology Tips Page 6

The Practice Page Page 7

Announcement, Ads & RCBA Membership Dues Page 8 - 11

Attorney General Legal Recruitment Page 12

CLE, Committee
Corner & Classified Ads
Page 13 - 15

Manuela Gomez, Editor

ROCKLAND COUNTY BAR ASSOCIATION NEW YORK ASSOCIATION

www.rocklandbar.org

November 2021

President's Post November 2021

As we turn the calendar and enter into November we have much to celebrate. Veterans Day, Thanksgiving Day and even an early start to Channukah. At this time however I would like to focus upon Election Day. We, as Rocklanders, New Yorkers and Americans have so many trailblazers to thank as we enter the polls and cast our ballots. Let's take a moment to reflect upon a few of these individuals and some of their contributions to voting rights on the local, state and national level.

Natalie Couch was the first woman to practice law in Rockland County. She was the first woman to win election as President of the Rockland County Bar Association. But most relevant to this post is that when the right to vote was opened to women in Rockland County, Natalie Couch was the first woman to cast her vote. Our organization awards the Natalie Couch Award on an annual basis to honor her influence and accomplishments. This year's honor was given to Hon. Teresa M. Kenny, the first female town Supervisor in Rockland County.

John Lewis was a legendary Civil Rights Leader. Regrettably, he passed in July of 2020. In 1964, the Civil Rights Act became law. This however did not make it easier for African Americans to vote in the South. In March of 1965, in order to bring attention to this struggle, Lewis helped lead a march from Selma to Montgomery, Alabama. After crossing the Edmund Pettus Bridge, the marchers were attacked by state troopers. Lewis was severely beaten, suffering a fractured skull. These violent attacks were recorded and the images of that event which came to be labeled as "Bloody Sunday" sped up the passage of the 1965 Voting Rights Act. In 1970 John became the director of the Voter Education Project. During his tenure, the VEP helped to register millions of minority voters.

Stacey Abrams continues to be a driving force, fighting for everyone's right to vote. Abrams launched a 2018 bid for Governor and became the first black woman to earn a majority party's gubernatorial nomination in the US. She lost by just two percentage points amidst allegation of voter suppression efforts. Following her election loss, Abrams founded Fair Fight, a Georgia protection and education organization which aims to "promote fair elections in GA and around the country." Through her efforts, she helped register at least 800,000 new voters in Georgia prior to the 2020 general election.

Susan B. Anthony was a leading figure in the women's voting rights movement. She partnered with Elizabeth Cady Stanton and would lead the National American Woman Suffrage Association. In 1872 Anthony illegally voted in the presidential election. She was arrested for her crime, unsuccessfully fought the charges and was fined \$100. Legend is she never paid it. She never gave up her fight for women's suffrage. In 1905 she met with President Theodore Roosevelt to lobby for an amendment to give women the right to vote. While the 19th amendment, giving all adult women the right to vote passed in 1920, it was unfortunately 14 years after Anthony's death. While she was not alive to see it happen, no one can deny that her efforts helped bring about this monumental achievement.

We thank these individuals and the countless others who helped fight for voting rights of all our citizens.

I wish all our members and their families a Happy Thanksgiving. See you in December.

Ira S. Schoeps, Esq. - President



To: Attorneys, professional staff & interested parties

ATTEND FREE SURROGATE'S COURT

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September 16, 2021

October 14, 2021

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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 streamlined approach to Real Estate Transactions for us

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."

New York State Bar Attorney Professionalism Award 2022 Seeking Nominations

The Committee on Attorney Professionalism administers the annual New York State Bar Association Attorney Professionalism Award.

On behalf of the Committee on Attorney Professionalism, we are now seeking nominations for the Award.

Nominations must be submitted and postmarked **no later than** *December 15, 2021.*

Please click on the link below for more information and to download the nomination form:

2022 Attorney Professionalism Award

Melissa A. O'Clair, Assistant to the General Counsel



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COMMERCIAL LITIGATION ISSUES OF INTEREST Submitted by Joseph Churgin, Esq. and Susan Cooper, Esq.*

Your client is a tenant in an apartment building with many violations. You commenced a proceeding against the landlord to require correction of the violations and charged the landlord with harassment. You then notified the landlord's attorney that one of your paralegals will be a fact witness about the conditions she observed on visits to the building. The landlord moved *in limine* to disqualify your paralegal under the "witness-advocate" rule, which prohibits a lawyer from being an advocate in a case where the lawyer is likely to be a witness. You argue that the witness-advocate rule is merely guidance, and in any event, applies only to attorneys, not generally to the firm's employees.

Will you defeat the motion to disqualify your employee from testifying?

The answer is "yes."

In *LaSalle v.* 1777 *GC LLC*, NYLJ 1633542962NY196892019, 2021 WL 4434370, 2021 N.Y. Slip Op. 21257 (Civ. Ct. Bronx Co. September 24, 2021), petitioners occupied an apartment at 1777 Grand Concourse, Bronx, New York. Petitioners, represented by Legal Services of New York City, filed a petition to order the respondent landlord to correct building violations, and for a finding that petitioners had been harassed by the landlord, as defined in the Housing Maintenance Code. After issuing an order to correct the violations, the Court scheduled a hearing on the harassment claim. Petitioners' attorneys served notice that one of its paralegals would testify about the conditions she observed on visits to the property.

The landlord moved *in limine* to prevent the paralegal of Legal Services from testifying, arguing that such testimony would violate § 3.7(a) of New York's Rules of Professional Conduct, which prohibits an attorney from "acting as an advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact," except under certain inapplicable circumstances. The employee, according to the landlord, had involved herself in the litigation and acted as a "substitute" for the petitioners' attorneys, and should be disqualified from testifying.

The petitioners countered that the "advocate-witness" rule provides guidance only and does not bind the courts, and in any event, the rule applies only to attorneys, not to the firm's agents or employees. In that regard, argued the petitioners, a paralegal is no different from investigators routinely hired by law firms to testify to disputed facts.

The Court agreed that the Rules of Professional Conduct provides guidance and does not bind the courts in determining disqualification, citing *S&S Hotel Ventures Ltd. Partnership v. 777 S.H. Corp.*, 69 N.Y.2d 437, 439 (1987).

Continued

Continued. - COMMERCIAL LITIGATION ISSUES OF INTEREST Submitted by Joseph Churgin, Esq. and Susan Cooper, Esq.*

Turning to the purpose of the witness-advocate rule, the Court looked to the plain meaning of the words, and cited *Mulhern v. Calder*, 196 Misc. 2d 818, 823 (Sup. Ct. Albany Co. 2003), reasoning, "If § 3.7(a) was meant to apply to employees, it could have been so written." The Court noted that rule is intended to "avoid confusion and prejudice" when the testifying lawyer "offer[s] arguments about his own credibility . . ." "or where there may be an implication that the testifying lawyer is lying to benefit his client," quoting *M.K.B. v. Ellgeston*, 414 F. Supp2d 469, 470 (SDNY 1987).

The Court noted that no cases were cited by the landlord where employees of law firms were disqualified, except where there was an *actual* conflict of interest when a paralegal obtained confidential information while employed by one party's attorney's office and later was employed by the adversary's attorney's office.

The lesson? Attorneys should be careful when utilizing staff members in roles that could make them witnesses, as it could lead to disqualification or, at the very least, confusion by the trier of fact. On the other hand, you are likely to defeat a motion to disqualify your witness if the staff member is not an attorney.

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

Technology Tips for Attorneys

submitted by Michael Loewenberg*

Beware of Phishing, Smishing and Scams

We're moving into the holiday season when we tend to see a dramatic increase in the number of scams impacting our online lives. Increasing our awareness and improving our inspection skills can help keep us safe and secure.

If you have an email account and a smartphone, you'll likely get some messages (or a lot of them!) that coax you to click links or call a phone number. We always need to be careful - and especially now - when clicking links in emails sent from those we don't know. And we need to look carefully at all emails, even from people we know.

Spam and Phishing emails are so well-designed these days that they often look like the real thing. Clicking on bad links can load a virus on your computer (your network and, in turn, all the computers and servers on your network) or take you to a rogue site designed to steal your account and identity,

We're getting bad text messages (called Smishing from SMS phishing), asking you to click a link that can put malware on your phone, steal your contacts and more. Bad actors are using all the tools at their disposal to get you to let your guard down: email, phone calls, text messages and voicemails.

Here are some hints on what you can do to protect yourself.

If you don't know the email sender, never click on a link in the email. Look carefully at the email content. Are there misspellings? Is the grammar unusual? Is the email format and layout messed up? Is the email sending address close to real but wrong? Those are telltale signs of a bad email. Delete it, please.

And if the sender looks legit but you're still not sure, don't click. There are ways you can tell about a link without clicking it. You can <u>hover</u> your mouse over the link to see the destination without clicking. If the destination website address looks unfamiliar, it's phishing for your click...so don't!

Here are some recent examples of bad emails, SMS and voicemails we've seen:

- A notice that you you've received an efax (especially weird when you don't have an efax account).
- An email informing you that your package is waiting for you at UPS/Fed Ex/DHL. All you need to do is pay the storage fee
- An urgent notice that your email account has been hacked. All you have to do is 'click here' to keep your email ad dress from being closed.
- A note from Amazon that your TV is about to ship so please click to confirm your address (of course you didn't order a television).
- We're still seeing emails promising millions when you assist the sender in providing a way to launder the money. Remem ber, there is no Nigerian Prince waiting to make you rich!

Sometimes, especially on a mobile phone, you can't hover on links in the body of the mail so another good thing to inspect is the sender's email address. There are two parts of the sender's email address you can look at. The display name can be obviously wrong; for example, if Citibank is spelled Citibank, that's a dead giveaway! Another way to safely check a suspect email is to look at the underlying email address itself: click to reply to the email so you can see the sender's address (don't actually reply; look at the address and then delete the draft). If that email address looks weird, you know the email is spam.

A common phishing email comes from what appears to be your bank or credit card processor, alerting you to a fraudulent transaction they want you to confirm. These scams want you to click a link or call a phone number to verify your account - you'll be prompted to speak or type your account number. Don't do it!

To be safe, if you get an email or a text about a fraud alert from your bank or credit card company, call your bank directly or the number on the back of your card to ensure you're talking to the right place.

Scammers can spoof their sending number in a text message so you think the message is coming from a legitimate source. If it's unusual to get a message from your bank or credit card company, delete the text message and call your provider directly. It's always better to be cautious because one errant click can yield bad results for you!

Please be safe. And be careful out there!

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

November 2021

THE PRACTICE PAGE

CPLR "SECTIONS" VERSUS CPLR "RULES"

Hon. Mark C. Dillon *

Most of the provisions of the CPLR are denominated as "Sections" of the statutes. But many of the most prominent provisions of the CPLR, such as 2214, 2221, 3116, 3122, 3211, 3212, 3216, 3404, 5015, and others, are denominated as "Rules." Why the difference? Is there is substantive or procedural distinction between Sections and Rules of the CPLR?

The answer is that there once was a difference between sections and rules, but the difference is no longer meaningful to us today. When the CPLR was first enacted in 1962, portions were denominated as "sections" that could only be amended or rescinded by the state legislature. Other portions were denominated as "rules" which could be changed by the then-existing Judicial Conference of the judiciary, outside of the purview of the legislative branch of government, pursuant to the authority contained in Judiciary Law 229. That provision of the Judiciary Law was later repealed, leaving the state legislature as the sole means for amending or rescinding both the statutes *and* rules of the CPLR (Joseph M. McLaughlin, Practice Commentaries, McKinney's Cons. Laws of NY, C102:1). In 1978, Judiciary Law 212, which defines the authority of the state's chief administrator of the courts, was also amended to provide in subdivision (1)(g) that the chief administrator "[r]eceive and consider proposed amendments to the civil practice law and rules..., and conduct studies and recommend changes therein" (Sess. Laws of N.Y. 1978, ch. 156, sec. 7). As a result, the chief administrative judge was reduced to an advisory role about the contents of the CPLR, with the state legislature retaining the final say about all of its actual statutory language. That advisory role has been constructively invoked on an as-needed issue-by-issue basis from then until now, and will undoubtedly be invoked in the future as well. Today, CPLR 102, which may be one of the least-quoted provisions of civil practice, provides that "[a]ny rule in this chapter may be amended, or rescinded, or additional practice rules may be adopted, not inconsistent with the constitution, by act of the *legislature*" (emphasis added).

Although the state legislature divested the courts of the authority to self-amend rules in the CPLR, the judiciary found a clever means to do so anyway, at least in effect. The Uniform Rules for the New York State Trial Courts for Supreme and County Courts, and the Uniform Rules for the various specialized state courts (Parts 202, 205, 206, 207, 208, 212, and 214), were promulgated for the first time on January 6, 1986. By virtue of the Uniform Rules, certain provisions of the CPLR have been, in effect, "amended" without parallel enactments by the state legislature. For instance, CPLR 3402(a) requires the filing of a note of issue to place an action upon the court's trial calendar, while Uniform Rule 202.21 sets forth the information that the document must contain, as well as directing a 20-day deadline for seeking to vacate the note of issue. The Uniform Rules do not typically *conflict* with the CPLR as much as they procedurally *supplement* its procedures. However, one example where the CPLR and the Uniform Rules appear to conflict is in the realm of applications for temporary injunctive relief. CPLR 6311(a) plainly provides that a temporary restraining order (TRO) may be obtained *ex parte*. In contrast, Uniform Rule 202.7(f) requires proof that a good faith effort has been undertaken to notify the adversary party of time, date and place an application for a TRO, absent a demonstration that "significant prejudice" would result from giving such prior notice. In essence, Uniform Rule 202.7(f) has amended the broader provisions of CPLR 6311 in the many cases where mere prior notice of an application does not cause significant prejudice, but without there being an actual amendment to the CPLR itself.

Oddly, while the legislature has erased any meaningful distinction between civil practice "statutes" and "rules," the CPLR was never amended to re-designate its provisions to either all sections or to all rules. The mishmash of both sections and rules continues, though harmlessly so, while the entire body has retained its original 1962 title of Civil Practice Laws and Rules.

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

Happy Thanksgiving To You and Yours From the Staff And Board of Directors Of The Bar Association



L'S DUES TIME!

This is a friendly reminder that it is time to pay your 2021-22

RCBA Membership Dues.

Annual Dues for 2021-22 for regular Members are \$185.00.

Renew and pay online by clicking here, or send in the Renewal Form with your check.

After September 30, 2021 Dues amount increases to \$200.00!

If you have any questions about your Membership, please contact

Manuela Gomez

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COVID-19 RESOURCES FOR MEMBERS

RCBA Cares

Go to: www.rocklandbar.org

"Member Resources"

for:

Professional Practice tips
Wellness articles
Community updates

Here's to a happy and healthy 2021!

discussions for RCBA members





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!



UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ANNOUNCEMENT FOR BANKRUPTCY JUDGESHIP

The United States Court of Appeals for the Second Circuit invites applications from qualified candidates for a 14-year appointment as United States Bankruptcy Judge for the Southern District of New York, with a duty station in either Manhattan or White Plains, New York. The selection process will be confidential and competitive. Applicants will be considered without regard to race, color, religion, sex, national origin, age, sexual orientation, or disability.

The current annual salary of a United States Bankruptcy Judge is \$201,112.

The Second Circuit uses an open and competitive selection process. All applications are screened by a Merit Selection Committee. The Committee will review applicants using the following criteria: legal competence evidenced by experience with complex legal issues; an aptitude for legal scholarship and writing; familiarity with the courts and court processes; commitment to equal justice under the law; characteristics indicative of a sound judicial temperament; a reputation for integrity, good character and ethical behavior; and physical and mental health sufficient to meet the demands and tenure of the position. The Merit Selection Committee will select a limited number of applicants for interview and will conduct appropriate due diligence inquiries into the candidates' backgrounds and qualifications. Upon a majority vote of the Second Circuit Judicial Council, the Council will forward the Merit Selection Committee's Report with any recommendations or comments to the active judges of the Court of Appeals. The selected nominee will be required to satisfy FBI and IRS background investigations prior to appointment.

Basic qualifications for consideration include:

- 1. Membership in good standing of at least one state bar, the District of Columbia bar, or the Commonwealth of Puerto Rico bar, and never other than membership in good standing of every bar of which the applicant has been a member; and
- 2. A minimum of five years of legal practice experience.

Application forms are posted on the Court's website at http://www.ca2.uscourts.gov or may be obtained by calling (212) 857-8700.

Completed application packages must be in the format required by the Second Circuit and received no later than December 3, 2021.

ASSISTANT DISTRICT ATTORNEY

ROCKLAND COUNTY DISTRICT ATTORNEY'S OFFICE

The County of Rockland is seeking a candidate to perform professional and legal work of a complex nature involving the responsibility for representing the people in criminal court cases and in the performance of other legal work. General supervision is received from the District Attorney and/or a higher-level Assistant District Attorney. The work requires the incumbent to be on call at night and on weekends. Does related work as required.

Candidates must possess good knowledge of criminal law and court procedures; ability to perform legal research and prepares written documents (e.g. briefs); ability to express arguments of the law by written and spoken word; ability to deal effectively with people.

MINIMUM QUALIFICATIONS: Possession of a license to practice law in the State of New York or formal approval under the Rules of the Court of Appeals, Part 520.9 (e) (3), to practice law in New York State. Approval under the latter is for an 18-month period only.

NOTE: Must provide a current certificate of good standing.

SPECIAL REQUIREMENT: License to practice law in the State of New York must be maintained throughout the course of employment in this title.

Please email resume to: bulusanc@rocklandda.org

RCBA ONLINE CLE PROGRAMS PRESENT Navigating Jewish Divorce

Tuesday, November 2, 2021 12:00 P.M. - 1:00 P.M.

WEBINAR VIA ZOOM

SYNOPSIS

An overview and history of the Jewish court system and how it works in conjunction with the legal system. Followed by a discussion on the intersection of religion and culture in custody disputes. We will tackle the sensitive topic of domestic abuse within the ultra-orthodox community.

CLE CORNER

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CLE ONLINE -Navigating
Jewish Divorce

Tuesday, November 2, 2021 12:00 - 1:00 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, visitnycourts.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 confinuing 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.

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College Student Looking for an Unpaid Shadowing Opportunity My name is Jenny Dorlus and I am a 21-year-old political science major at Long Island University. I am currently in search of shadowing opportunities at a local law firm - preferably a short term, unpaid opportunity where I'd be able to learn firsthand what it takes to work at a law firm/in the field. I am willing to assist with projects and take on basic day to day operations. However, I would appreciate anything that you are capable of offering! If you would like to contact me, my return email is jennydorlus@gmail.com and my mobile number is (845)-300-5635.

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Paralegal for plaintiff's personal injury law firm. Experienced all phases of litigation from intake through discovery and trial preparation. Bilingual a plus. Computer Savvy with good interpersonal skills. Send resume to lawyers@pilaw.com

SEARCHING FOR LAST WILL & TESTAMENT

Search for Last Will & Testament of Carmela Lamparelli Medvinsky of Congers, NY. Please contact Sean Hobbs 845.634.2752 sean@kfhobbslaw.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 ahurwitz@sunyrockland.edu

