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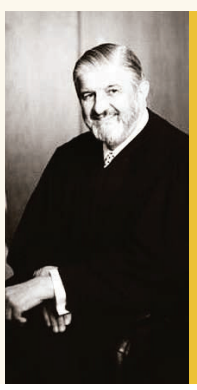
WHAT'S INSIDE

SAVE THE DATE

ANNUAL HOLIDAY CELEBRATION

THURSDAY, DECEMBER 14

See pg.19



BRIDGE-THE-GAP WEEKEND

SATURDAY, FEBRUARY 3– SUNDAY, FEBRUARY 4

pg.13

WE CARE Showcases Spirit of Giving this Holiday Season

For many years, the WE CARE Fund—part of the Nassau Bar Foundation, Inc., the charitable arm of the Nassau County Bar Association—hosted a luncheon at Domus on Thanksgiving Day for senior citizens who otherwise may spend the holiday alone. Due to the COVID-19 pandemic and concern about the the safety of the attendees, the luncheon was last held in 2019.

On November 23, WE CARE brought back the holiday luncheon. In addition to a full Thanksgiving meal with all the trimmings, including chocolate turkeys for each attendee, 80 seniors were treated to DJ entertainment, dancing, and a photo booth.

The luncheon is made possible because of the generosity of Esquire Catering, Inc., NCBA's in-house caterer, who provides the meals at no cost to the seniors or WE CARE. In addition, WE CARE Advisory Board members and their families volunteer their time on the holiday to serve and clean.

The day before the luncheon, on Wednesday, November 22, WE CARE donated 200 fully prepared Thanksgiving meals to families in need who otherwise would not be able to afford them. Local organizations—The Inn, Momma's House, Second House of LI, Hempstead Hispanic Civic Association, Hempstead CAP/EOC, Antioch Baptist Church, Dryden Street Elementary School, Powells Lane School, LI Links, FACE Family and Community Engagement, and 1 to the 1—distributed Thanksgiving baskets to families within their communities who need it most.

WE CARE is only able to provide these 200 meals thanks to NCBA Members who generously contribute towards the Thanksgiving Basket Drive. If you would still like to contribute to help defray the cost of providing meals to families in need, please contact Bridget Ryan at (516) 747-1361 or scan the QR code on this page to complete a donation form.

The WE CARE Fund was founded in 1988 by NCBA Past President Stephen Gassman and is supported through donations and fundraising efforts of the legal profession and the community at large. Over 25 years, WE CARE has donated more than $5 million to fund various programs. The money is disbursed through charitable grants to improve the quality of life for children, the elderly, veterans, and others in need throughout Nassau County. Since all administrative costs are generously absorbed by the Nassau County Bar Association, 100% of funds raised by the WE CARE Fund directly benefits those in need.

To learn more about WE CARE's mission, or to find out how to get involved, visit www.thewecarefund.com.

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From the President

Sanford Strenger

Since the October 7, 2023, attack by Hamas against Israel, the world, again, has shown us it is not as we believed it to be. Antisemitism is reported to be up 400%. Islamophobia is on the rise. Demonstrations have occurred in our cities and on college campuses.

Twenty-seven major U.S. law firms have called on the deans of the nation's top law schools to take an unequivocal stance against discrimination and harassment. Job offers to top ranking law students were retracted over the students' public statements which were viewed as incendiary hate speech, rather than statements of political opinion. Professionals are being removed from their prominent positions or being placed on probation for espousing views on social media that are claimed to violate their institutions' codes of ethics. There seems to be lack of understanding where the line between social discourse and hate speech lies. Not to mention religious institutions have been attacked with threats and hateful graffiti.

It is hardly the beginning of the festive season of joy and goodwill that we were all looking forward to. I did find an oasis of hope, however. It came from New Hampshire, from an Ivy League school where one professor and her colleagues found a novel way to approach the issues in a less charged atmosphere, talk about it and teach the students the complex history of the region from an academic perspective. Dartmouth Professor Susannah Heschel is quoted: "we wanted to explain to the students . . . that we can't be reductionist, we have to think in complexity, that this is not a single narrative. You can condemn but you also have to understand," Professor Heschel said. An event for 70 drew 600 participants. Dartmouth is building upon the lesson of tolerance and understanding to combat the fanning of hate.

As one of the largest suburban bar associations in this nation, NCBA has raised our collective voice to be heard to deplore acts of hate against all religious, ethnic, or racial groups. On a day-to-day basis we are doing more, and I ask you to join our efforts. Through our Community Relations Committee we have reached out to our fellow citizens in Nassau County to help educate them on issues of law. Our Diversity Committee has run programs exploring past acts of racial inequity in the law and society to educate us to not allow history to repeat. Our new Asian American Lawyers Section has put on programs to bring awareness to the biased treatment that Asian attorneys regularly receive, and how to curb this. Through the Karabatos Pre-Law Society, we have helped college students from disadvantaged groups achieve a goal they may have felt was too far away—going to law school—thereby encouraging diversity within the profession.

Additionally, we have members who are mentors in middle and high schools that assist and guide students in a more personal way. Our members act as coaches for the Nassau County High School Mock Trial program as well as elementary school mock trials. Through all these outreach programs we educate tolerance, the rule of law, and civics. Our members lead with dedication and kindness. In this coming holiday season, and through the new year, be a part of NCBA's efforts. To quote Past President Martha Krisel, "be the mentor you wish you had."

> "In the spirit of good cheer come join us at NCBA's Holiday Celebration on Thursday, December 14, and celebrate our hardworking staff by contributing to the Staff Holiday Fund."

While we may not be able to solve the world's problems, we can make it a better place and help teach our neighbors and our children about the rule of law and begin conversations of tolerance and goodwill during this holiday season.

In the spirit of good cheer come join us at NCBA's Holiday Celebration on Thursday, December 14, and celebrate our hardworking staff by contributing to the Staff Holiday Fund. From myself and my family to you and yours, may you have a peaceful and joyous holiday season. May the fears that have been evoked in each of us evaporate to hopeful thoughts that we together can make the world a better place when we show the way to be less reductionist and spread tolerance.

Happy Holidays!

FOCUS: CRIMINAL LAW

Possible Causes of Action By and Against the Grinch

Cynthia A. Augello

This is the season for Grinch lovers and haters to consider how the legal system could impact Mr. Grinch.

Who is the Grinch?

For many years, the Grinch has lived in a cave on the side of a mountain, immediately adjacent to Whoville.Whoville is inhabited by the Whos. Grinch cannot tolerate the noisy holiday preparations and joyful singing of the happy citizens of Whoville. Once he is sufficiently annoyed by the festivities in the town below him, the Grinch decides this merriment must stop. His *"wonderful, awful"* idea is to dress in a Santa outfit and strap heavy antlers on his poor dog Max, construct a sleigh, head down to Whoville, and steal Christmas.

In his makeshift getup, the Grinch slides down the chimneys of Whoville with empty bags and steals the Whos' presents, their food, even the logs from their fireplaces. He then takes his sleigh to Mt. Crumpit where he dumps it. The Grinch then anxiously awaits the sounds of sobbing when the Whos wake up to discover Christmas has disappeared. Sobbing, however, is not what the Grinch heard. What did he hear? Singing! This makes the Grinch realize that Christmas is not all about money and presents and his small, shriveled heart grew three sizes that day. He asked to take part in the festivities and, of course, the Whos let him.

As for potential causes of action against Mr. Grinch, there are several.

The Grinch's actions in the beloved Dr. Seuss story raise a number of legal issues. While this author is unaware of the laws of Whoville, in analyzing the facts in accordance with New York law, the Grinch has committed many crimes including:

Burglary

The Grinch breaks into every house in Whoville on Christmas Eve, without permission with the intent to commit a crime – stealing presents, trees, food, and firewood. Here, the Grinch likely committed the crime of Burglary in the Third Degree. Burlary in the Third Degree occurs when an individual knowingly enters or remains in a building without permission with the intent to commit a crime therein.[1] Burglary 3rd is a Class D felony.

Larceny

After unlawfully entering the homes of Whoville, the Grinch steals all of the Whos' Christmas presents, decorations, and food. The Grinch could be charged with a count of Larceny for each home he steals from. Larceny is defined as having the intent to either: 1) cause the property to be withheld from its owner permanently or for such an extended period as to significantly decrease its worth or benefit; or 2) to exercise control over the property (or enable a third person to do so) permanently or for such an extended period as to reap the major portion of its worth or benefit. The class of felony the Grinch could be charged with would depend on the value of the items stolen.[2]

Criminal Trespass

The Grinch enters the Whos' homes without permission, which is criminal trespass. Criminal Trespass in the Third Degree occurs when a persion knowingly enters or remains unlawfully in a building or upon real property which is fenced or otherwise enclosed in a manner designed to exclude intruders. Criminal Trespass 3rd is a misdemeanor.[3]

Criminal Impersonation

The Grinch impersonated Santa Claus in his endeavors to steal Christmas. He dressed in a Santa suit and represented himself as Santa. Cindy Lou Who even allowed the Grinch into her home because she believed he was Santa Claus. The Grinch wore the Santa suit in order to make the Whos believe he was Santa so no one would think twice about him entering their homes through the chimneys. A person is guilty of Criminal Impersonation in the Second Degree when he or she impersonates another and does an act in such assumed character with intent to obtain a benefit or to injure or defraud another.[4]

Animal Cruelty

Poor Max. The Grinch overworks and mistreats his dog, Max. This could be considered animal cruelty in New York.[5]

Criminal Mischief

The Grinch destroys the Whos' Christmas tree and other decorations. Although the value of the items and costs in Whoville are unknown, the Grinch's actions could be, at minimum, Criminal Mischief in the Third Degree. A Grinch is guilty of criminal mischief in the third degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she: 1) damages the motor vehicle of another person, by breaking into such vehicle when it is locked with the intent of stealing property, and within the previous ten year period, has been convicted three or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of criminal mischief in the fourth degree as defined in section 145.00, criminal mischief in the third degree as defined in this section, criminal mischief in the second degree as defined in section 145.10, or criminal mischief in the first degree as defined in section 145.12 of this article; or 2) damages property of another person in an amount exceeding two hundred fifty dollars. Criminal mischief in the third degree is a class E felony.[6]

Can the Grinch Present Any Defenses? Of Course!

The Grinch could argue that he has a legal defense to the crimes he committed. For example, he could argue that he was insane at the time of the crimes. Perhaps, the incessant singing and cheer from Whoville drove him mad. However, it is important to note that these defenses are very difficult to prove in court.

Additionally, the Grinch could say he had consent to enter the home of Cindy Lou Who as she did welcome him in. However, Cindy

Lou Who believed she was inviting in "Santy Claus" and the Grinch gained consent under false pretenses.

Mr. Grinch may also want to cite his heart condition as a defense to his actions, although the growing of the heart occurred after the commission of the crimes.

The Grinch May Have a Cause of Action of His Own

The elements of a cause of action for defamation are a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se. The complaint must set forth the particular words allegedly constituting defamation, CPLR 3016(a), and it must also allege the time, place, and manner of the false statement and specify to whom it was made.[7]

Potentially Defamatory Statements

In the song, "You're a Mean One, Mr. Grinch" several unflattering statements are made about the Grinch.[8] Are they actionable? Let's break down the song.

You're a mean one, Mr. Grinch

Under the laws of defamation in New York, this would most likely be considered a statement of opinion and not actionable.

You really are a heel

This statement is also an opinion. Generally, under the law in New York, successful defamation claims arise from statements of fact.

You're as cuddly as a cactus, you're as charming as an eel, Mr. Grinch

These statements could be determined to be unkind or even a little mean. While it is probably theoretically possible to establish that you are, in fact, "more cuddly than a cactus" according to a the definition of cuddliness (softness, hugability, lack of thorns, etc.), there are additional elements of what constitutes "cuddly" that could make it difficult to convince a fact-finder were not ultimately subjective. The same is true of "charming."

You're a bad banana with a greasy black peel

The Grinch does not resemble a banana, not even an unripe banana so this could not possibly be intended to be taken literally. As such, the comparison is likely hyperbole which is not actionable.

Your brain is full of spiders, you've got garlic in your soul

This statement is also likely hyperbole. Could the Grinch prove his brain is not, in fact, full of spiders? He could have an MRI conducted to do so, but it would likely not be helpful. As for the garlic in his soul, what is wrong with that?

I wouldn't touch you with a 39 and a half foot pole

While the specific length of pole is suspicious, without knowing the reason for the length of the pole, there is likely no actionable defamation. Perhaps depositions would help.

You have termites in your smile

Perhaps the songwriter believes the Grinch has some sort of infestation in his mouth which is the result of some uncleanliness or poor hygiene. Perhaps a medical professional or a dentist could confirm or deny whether an individual can be infested in the mouth with termites. If so, this statement may be actionable.

You're a nasty wasty skunk

Like the banana, the Grinch does not resemble a skunk. Without a definition of "wasty", it is difficult to determine what the songwriter intended here. If the songwriter is stating that the Grinch smells bad or sprays foul smelling odors from his body, this could potentially be actionable.

Your heart is full of unwashed socks, your soul is full of gunk

See above commentary on brain spiders.

You're a three-decker sauerkraut and toadstool sandwich with arsenic sauce

Like many of the other statements made, this would also likely be considered hyperbole.

In sum, while many of the statements in the song are hurtful or insulting, they are likely not actionable. However, if the Whos press charges on their causes of action, Mr. Grinch will likely have time in prison to further research any potential defamation claims.

1. NY Pen §140.20.
2. NY Pen §155.00 et seq.
3. NY Pen §140.10.
4. NY Pen §190.25.
5. Agriculture and Markets Law §350 et seq.
6. NY Pen 145.05.
7. Arvanitakis v Lester, 145 AD3d 650, 650 (2d Dept 2016).
8. https://www.youtube.com/watch?v=35WgpMq6e3o.

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FOCUS: BANKRUPTCY LAW

Eastern District Bankruptcy Roundup

Jeff Morgenstern

In 2023, the U.S. Bankruptcy Court for the Eastern District of New York produced another set of interesting decisions. The following is a capsule summary of some of the highlights:

Debtor's Obligation to Provide Tax Return

In re: Reynoso,[1] a creditor requested a copy of the debtor's tax return about two weeks before the debtor's discharge was granted. The creditor moved to dismiss the case and to vacate the discharge, arguing that the debtor failed to meet his obligation of providing the tax return to a creditor requesting it, pursuant to §521(e)(2) of the Bankruptcy Code.

In applying that section, Judge Trust denied the motion in its entirety, concluding that the debtor has to furnish his or her latest return to the trustee at least seven days before the Section341 meeting of creditors, and at the same time, to a creditor who makes a timely request. Here, the creditor did not request the tax return until about a few months after the creditors' meeting, which was not considered to be timely.

Serial Filings

In *re: Velez, et al.*,[2] involved four pro se Chapter 13 cases where the trustee made simultaneous motions to dismiss with prejudice, which were unopposed.

All of the debtors failed to provide the "Mandatory Disclosure" to the trustee under §521(a) of the Code, and Bankruptcy Rule 1007(b), and failed to file a Chapter13 Plan or to make Plan payments. All of the debtors had filed at least two other cases in the prior two years, which were dismissed for failure to comply with basic bankruptcy requirements.

In analyzing the most recent filings, Judge Trust found that they were subject to automatic dimisal under §521(i)(1) for failure to file required documents within 45 days of the filing; that the "barebones" filings were abusive and lacking in good faith; and that they were presumptively not filed in good faith under §362(c)((3) or (4), which provide for the automatic stay to be lifted, or not in effect at all, due to dismissal of cases in the prior year.

Using the Court's power and discretion to bar refilings for more than the 180 day period provided for in §109(g), Judge Trust dismissed all of the cases and barred a refiling of a Chapter13 for one year.

Nondischargeability for Failure to Turn Over Insurance Monies

In *Long Island Minimally Invasive Surgery P.C. v. Orslini*,[3] the debtor went through elective surgery procedures with the plaintiff, an out-of-network provider who did not accept the debtor's insurance plan; she agreed to turn over all insurance monies she received to the plaintiff. All insurance monies went directly to the debtor. The debtor signed an "Assignment of Insurance Benefits," and the plaintiff agreed to accept those monies as payment in full (even though the total billing was reduced) as long as the debtor turned over all insurance monies she received; if she failed to do that, she would be liable for the full amount plus legal fees.

After plaintiff discovered that about $2,800 of insurance checks were not turned over to it, it sued the debtor in State Court and got a default judgment for about $37,000, plus legal fees and interest, totaling about $54,000.

After the debtor filed for bankruptcy, the plaintiff brought an adversary proceeding under §523(a)(2), (4), and (6) to declare its debt to be nondischargeable. Based upon the unrefuted evidence of the debtor's conversion of funds, whereby she obtained services and did not intend to pay for them, Judge Grossman found the debt to be nondischargeable under §823(a)(2), (4), and (6). The fact that some of the checks were turned over created a false impresion and induced the plaintiff to perform more services.

Revocation of Dischage

Ambriorix Polano, et al. v. Guillermo Dilone,[4] the debtor failed to list plaintiffs in his schedules, and when he added them, he failed to give them notice of his bankruptcy filing, along with the Court's deadlines set for objections to discharge or dischargeability. He also failed to list certain owned intellectual property- a patent and a trademark - in his schedules, claiming he mistakenly believed it was not necessary to do so. He added them to his schedules after the case was reopened and the adversary proceeding was commenced. He listed them as having a $0 value, but testified at trial that they were worth about $50,000.00.

Pursuant to §727(d)(1) a discharge can be revoked within one year, if it was obtained through the debtor's actual fraud and the moving party did not know of the fraud pre-discharge. Judge Grossman found that the debtor's failure to list the patent and trademark was intentional and done to conceal them from the creditors and the trustee, and the belated attempt to amend the schedules to add them did not cure that failure.

In addition, since the debtor did not give the plaintiffs proper notice of the preceeding, they had no notice of the contents of the bankruptcy petition and schedules and no opportunity to timely file a complaint to object to his discharge. On this basis, the discharge was revoked.

Reopening No Asset Chapter 7 Case

In *In re: Jackson*,[5] a no-asset Chapter7 case, the debtor was discharged in 2013. In 2022 he filed a motion to reopen the case to add a pre-petition debt that he was unaware of when he filed the bankruptcy in 2013. After the discharge, the debtor and the creditor entered into an agreement to settle a small claims matter for a payment of $5,000, in installments, which the debtor failed to comply with, resulting in a judgment against him. Judge Scarcella applied both a "mechanical approach" (when considering such a motion to reopen, which is that there is no purpose to serve in reopening a no-asset case, where there is no evidence to demonstrate that the omission of the debt was due to fraud, no evidence supporting nondischargeability of the debt, and there would be no assets for distribution to creditors, or prejudice to either party), and an "equitable approach" (motion should be ganted where the omission was the result of fraud, or other wrongdoing by the debtor, or reopening would prejudice the creditor's rights to participate in the case).

The equitable approach weighed in favor of reopening the case since there was no evidence of wrongdoing by the debtor to deprive the creditor of an opportunity to participate; in addition the debtor informed the creditor in 2013 that he had filed, and stated that he intended to repay the debt, which he was free to do.

In addition, the mehanical approach weighed in favor of granting the motion, since any prejudice to the creditor as to bringing a nondischargeability action could be remedied by reopening the case and allowing her time to do so; in addition, any prejudice to the debtor could be remedied by reopening the case to schedule the subject debt, and knowing that it is discharged.

The case was reopened and the creditor was given about sixty days to file a nondischargeability action, or the case would be closed.

Conveyance and Reconveyance of Property

In *In re: Kumar*,[6] the trustee sought to block the debtor's discharge based upon an alleged transfer of his residence, fraudulent statements, omissions on his schedules, and concealment of assets. About a year and a half before the bankruptcy filing, the debtor had made a no consideration transfer of his residence to his wife in connection with a refinancing of the property to reduce the interest rate. About six months prior to the filing title was reconveyed to the debtor and his wife thereby reinstating the tenancy by the entirety. The debtor's explanation for the initial transfer was that his tax business had deteriorated over the years and he had no credit with which to refinance his mortgage; at the lender's request, the only hope was to have his wife apply for the mortgage based upon her income and credit rating.

The Court found that the initial transfer of the debtor's interest in the residence was outside the statutory one-year lookback period in §727(a)(2)(A), and there was no evidence that he continuously concealed his interest from creditors during that one-year period. As to the reconveyance, the trustee argued that this allowed the debtor to claim a homestead exemption to the detriment of creditors. The Court rejected this, because no objection to that exemption was made, no action was brought to set aside the transfers as a fraudulent conveyance, and the reconveyance to the debtor was not per se improper to take advantage of the homestead exemption.

As to the failure to disclose transfers to and from a creditor, the trustee was able to trace the funds in question which resulted in a relatively small unanticipated, post-petition refund to the debtor, which was amicably resolved thereafter.

Similarly, the failure to disclose in the Statement of Financial Affairs, payments made to a creditor within ninety days of the filing did not warrant a denial of discharge as the payment of $250.00 was below the $600.00 threshold for required disclosure.

The omissions were treated as being inadvertent, and not due to any decision or scheme to hide assets or information from the trustee.

The trustee's complaint was found to be insufficient under the various subsections of §727, and the debtor's discharge was granted.

1. In *re: Reynoso,* Case No. 23-71044, 3/10/23, amended by Order dated 3/15/23.
2. In *re: Velez, et al.* Case No. 23-70362 - 4/10/23.
3. *Long Island Minimally Invasive Surgery P.C. v. Orslini*, 649 B. R. 427 - 1/30/23.
4. *Ambriorix Polanco v. Guillermo Dilone* (In re: Dilone) 2023 Bankr. Lexis 1429 - 6/1/23).
5. *In re: Jackson Case* No. 13-70806 - 3/20/23.
6. *Mendelsohn, as Trustee v. Kumar* 2023 Bankr. Lexis 1639 - 6/26/23.

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FOCUS: TAX LAW

2023/2024 Taxpayer Alert—New Federal Tax Form Is Coming Your Way

Alan E. Weiner

Author's Note: This article was written with the author's intelligence and not artificial intelligence.

Subsequent to the submission of the following article to the *Nassau Lawyer*, the Internal Revenue Service amended the rules. Of primary importance is that the new 1099-K requirements previously announced (as described below) will be postponed for one year.[1] Accordingly, 1099-Ks will be required to be issued for 2023 if the transactions with the online retailer exceeded $20,000 (not more than $600 as originally imposed). Nevertheless, it's possible that some online systems will erroneously issue 1099-Ks under rules that no longer exist. Whether or not a 1099-K is received, taxpayers must report transactions that resulted in income. Also, the IRS is planning a threshold in 2024[2] of $5,000 for 1099-Ks. Other than the aforementioned, the article below remains correct.

In January, when taxpayers receive tax forms, you, your family, your friends and your clients may be receiving a Form 1099-K (titled Payment Card and Third Party Network Transactions) either electronically or in the mail. Do not ignore it!

Every reader of this article knows that 1099 forms (for investment income, compensation, etc.) and W-2s (for wages) must be reported on their income tax returns. As a result of the American Rescue Plan Act of 2021,[3] in January 2024 taxpayers who received proceeds in 2023 in excess of $600 through a third-party network are likely to receive a Form 1099-K. Previously the benchmark was proceeds in excess of $20,000.

Third-party networks include online retailers like Amazon and Etsy, services like Uber and Airbnb, and online payment sites like Venmo, Square, and Stripe. Unlike the previous

threshold, there is no requirement for the number of transactions. Beginning in 2022, third-party networks began requiring additional information from sellers, including the seller's social security number, in order to be able to file the sales proceeds' information for form 1099-K with the IRS. Zelle says that it is not required to issue a Form 1099-K because it says that it does direct bank transfers between users and these transactions are not subject to the Internal Revenue Service's Form 1099-K reporting requirements.

The background for the prior reporting threshold (online transactions over $20,000) and the current reporting threshold (online transactions over $600) has to do with tax compliance. As was said by the Congressional Research Service in its report issued May 3, 2022, "IRS studies suggest that a substantial portion of uncollected taxes are the result of underreported business and self-employment income that is not subject to third-party reporting to the IRS".[4]

In short, most virtual transactions resulting in proceeds of more than $600 will generate the Form 1099-K. The AICPA and other professional organizations have concerns about the $600 threshold:

> We are concerned about the possibility of the IRS instituting a matching program for 2023 Forms 1099-K that could result in significant taxpayer misunderstanding, and lead to a growth in the IRS correspondence and processing backlog that still haunts the tax system.
>
> Because of the concerns expressed above, the AICPA believes the current law $600 Form 1099-K threshold is not workable and must be raised. The $10,000 threshold in S. 1761 represents a reasonable solution to the current situation.[5]

In November, the Internal Revenue Service Advisory Council issued its Public Report. The Advisory Council lists many issues with the lowered benchmark and provides many suggestions to be considered by Treasury and the IRS.[6] The IRS has issued many notices regarding the new rules for Form 1099-K; however, it is unlikely that anyone other than tax professionals and their clients have read them.[7]

Even if the proceeds listed on Form 1099-K will not result in taxable income, the proceeds must be reported on the tax return. The proceeds can be reduced or eliminated based on the cost of the item generating the proceeds.

As is true with any Form 1099, the payor files a report of the proceeds with the IRS. The income or proceeds reported by the payor will be compared to the taxpayer's tax return via its computer software. If the 1099 income is missing from the taxpayer's tax return, the IRS will issue a notice asking why it was omitted followed by a bill for the tax due if the IRS is not satisfied.

Here are some examples of what will generate the Form 1099-K:

- Sale of collectibles
- Sale of Taylor Swift (or Billy Joel or any concert) tickets
- Sale of used furniture (most likely sold at a loss but if a Form 1099-K is received, the proceeds must be reported even though the loss is not deductible)
- Sale on an auction site
- Car sharing or ride-hailing platform
- Crowdfunding platform

The best advice, however, is to access and read the IRS material. It is very understandable (i.e., not technical).

Some transactions should not trigger a 1099-K. Gifts or reimbursement of personal expenses from friends or family members are not reportable on Form 1099-K but that does not mean that they might not be reported in error. As to GoFundMe, generally, contributions made are considered to be personal gifts, and as such are not taxed as income to the recipient. A brick-and-mortar store will not issue a Form 1099-K because the transaction is not conducted through an online marketplace.

A seller is required to report a gain on the sale. In the case of a loss, the seller will want to report the loss if the item sold was held for investment and was not used personally.

Here it gets tricky. Does the seller need to report each item separately or can the group of items sold be reported as one transaction? This is from IRS *Understanding Your Form 1099-K*: "If you sold a mix of personal items at a loss and a gain, report them separately." The aforementioned instruction provides the IRS view on reporting. Such a requirement will be very time consuming and expensive if the tax return is prepared by a tax professional.

Put this article, either electronically or hard copy, in your tax file for your 2023 tax return. It is likely that you will receive a Form 1099-K from an electronic marketplace if you made a sale online of more than $600.

1. IRS released Notice 2023-74 https://www.irs.gov/pub/irs-drop/n-23-74.pdf.
2. Fact Sheet 2023-27, Nov. 2023 https://www.irs.gov/newsroom/irs-announces-2023-form-1099-k-reporting-threshold-delay-for-third-party-platform-payments-plans-for-a-5000-threshold-in-2024-to-phase-in-implementation.
3. 26 USC §6050W(e).
4. *Payment Settlement Entities and IRS Reporting Requirements*, Congressional Research Service (May 3, 2022), available at https://bit.ly/47q2HBH.
5. Letter from AICPA to Hon. Sherrod Brown & Bill Cassidy (June 6, 2023), available at https://bit.ly/3FQ093u.
6. IRS Publication 5316 (Rev. 11-2023), available at https://bit.ly/3svxAFu.
7. *Understanding Your Form 1099-K*, available at https://bit.ly/3sgbiHL. *About Form 1099-K, Payment Card and Third Party Network Transactions*, available at https://bit.ly/465INKs. *Form 1099-K Frequently Asked Questions*, available at https://bit.ly/3FNn5Ak.

Alan E. Weiner, CPA, JD, LL.M. was the founding tax partner of Holtz Rubenstein Reminick (1975), which was merged into an international CPA firm in 2013. He is active on the tax committees of the Bar Association of Nassau County and the New York State Society of CPAs, for which he served as the 1999-2000 President and also as a Chairman of its Tax Division Executive Committee and its Partnership/LLC Tax Committee.

FOCUS:
CIVIL PRACTICE LAW AND RULES

A Signature Achievement: New York Abolishes Civil Notarization

Christopher J. DelliCarpini

On October 25, Governor Hochul signed into law a radical amendment to CPLR 2106. Effective January 1, affirmations by anyone, anywhere, will be accepted "with the same force and effect as an affidavit."[1]

Civil litigators should eagerly embrace this change and dispense with the complicated conditions that attached to affidavits. To do that, however, we must understand what the new rule allows—and what it still requires.

The Patchwork Privilege of Affirmations

CPLR 2106 was an improvement over prior practice, but it always a limited improvement.

Before the rule's adoption in 1962, New York law required admissible statements to be in the form of an affidavit—made under oath before a person authorized to take an oath.[2] As first enacted, CPLR 2106 only accepted affirmations—unsworn statements made under penalty of perjury—from licensed New York attorneys who were not parties to the action. A decade later, the exception was extended to nonparty physicians, osteopaths, and dentists licensed to practice in New York. A 2014 amendment permitted persons outside the United States to affirm under penalty of perjury; persons within the country but outside New York, however, would have to complete an affidavit that also met the requirements of CPLR 2309(c).

The half-measures in CPLR 2106 were never tenable. Of all the professions licensed in New York, why were only attorneys, physicians, osteopaths, and dentists trusted with affirmations? And why did these particular professionals lose their trustworthiness when they were parties

to a lawsuit—plaintiff or defendant? And why were foreigners exempt from the requirement of an affidavit while American citizens in other states remained under suspicion?

Compliance with the requirements for out-of-state witnesses was not only onerous but ambiguous. Their affidavits also had to comply with CPLR 2309(c), which required "accompanied by such certificate or certificates as would be required to entitle a deed acknowledged without the state to be recorded within the state if such deed had been acknowledged before the officer who administered the oath or affirmation." But the rule did not even tell attorneys where to find those requirements—Real Property Law §299-a(1)—much less spell out the form of "such certificate or certificates." And it certainly did not explain when or why more than one certificate would be necessary.

This left the courts to decide on an ad hoc basis when noncompliance with the affidavit requirements was excusable or correctable. In *Delfina v. Daniel*, for example, the Second Department held that the plaintiff in a personal injury action should have been allowed to renew her opposition to summary judgment by resubmitting her chiropractor's statement after getting it notarized.[3] But should the Appellate Division have to deal with such issues, and should litigants have to wait for an appellate decision on such a technicality?

Affirmations for All

The drive to lessen the admissibility requirements for written statements has been building for decades. In 1976 a federal statute permitted generally statements made under penalty of perjury.[4] In 2004 the Advisory Committee on Civil Practice in its report to the Chief Administrative Judge recommended, in line with a 1995 New York State Bar Association proposal, "to replace the use of an affidavit for all purposes in a civil action by the use of an affirmation." The Committee noted the burden the current rule imposed:

> In many circumstances, notaries are hard to find by persons wanting immediately to make an affidavit, occasioning many unnecessary delays. It is increasingly difficult to find notaries outside of central business districts, and when found, usually in banks, they often refuse to notarize for anyone not known to a branch officer. For the poor especially, this often results in unnecessary cost and delay. In addition, the Committee is advised that some persons have religious objections to swearing but have no such objections to affirming.

And now, only nineteen years later, New York has caught up with federal practice.

Compared to its predecessor, the new version of CPLR 2106 is a model of simplicity and convenience:

> The statement of any person wherever made, subscribed and affirmed by that person to be true under the penalties of perjury, may be used in an action in New York in lieu of and with the same

force and effect as an affidavit. Such affirmation shall be in substantially the following form: *I affirm this ___ day of _____, ____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.*
(Signature)

Affirmative Action

The new rule does not take effect until January 1, but we can take steps now to maximize the advantage of this new rule.

The first thing that we must do is understand where an affirmation is now acceptable. Perhaps the greatest change will be in motion practice—attorneys, witnesses, and experts may all use the same form affirmation, with the same simple language above their signature. Affidavits of service—which are not even required where service is made on all parties via NYSCEF[5]—may also be replaced by affirmations.

In at least one instance, however, it is less than clear whether an affidavit is no longer required. CPLR 3020 sets forth when a pleading must be verified, and it defines verification as "a statement under oath that the pleading is true to the knowledge of the deponent, except as to matters alleged on information and belief, and that as to those matters he believes it to be true." The statute does not mention affidavits, but a statement under oath is essentially an affidavit. Indeed, a verification used to be called an "affidavit of verification,"[6] an affidavit appended to a pleading and swearing to the truth of the allegations therein.[7]

Given that the effect of verifying a pleading is that it may be used as an affidavit, there seems little reason why it could not now be verified by a mere affirmation. The Legislature could clean this up by amending CPLR 3020 to speak of "a statement made under penalty of perjury," but given how long it took to get CPLR 2106 amended, Your Author would not hold his breath for the next bit of housekeeping.

To ensure compliance with the new rule, counsel should immediately replace their old templates for affirmations and affidavits with one template that tracks the language of CPLR 2106. No longer need we begin with a declaration that the affirmant is a New York-licensed attorney or health care practitioner. Indeed, the rule expressly does not require verbatim adherence to the model language in the paragraph that immediately precedes the affirmant's signature, as long as it contains:

- the date of signature
- the acknowledgement of the penalty of perjury, which brings the affirmant under New York's criminal jurisdiction[8]
- the averment that the document's contents are true
- the acknowledgement of the document's purpose in litigation

Of course, you could still do what you've been doing and insist on affidavits with notarized signatures. But why put yourself, your staff, your clients, and your witnesses through the expense and inconvenience of obtaining notarized signatures for affidavits when affirmations will do? It took over sixty years for common sense to prevail in New York; don't delay in benefitting from this bit of progress.

1. 2023 Sess. Law News of N.Y. Ch. 559 (A. 5772). Another amendment, currently in effect but only until December 31, 2023, extends the privilege of affirmations to every "health care practitioner licensed, certified, or authorized under Title Eight of the Education law."
2. *E.g., Kelly v. Schramm*, 197 A.D. 377 (2d Dep't 1921).
3. 140 A.D.3d 825 (2d Dep't 2016).
4. 28 USC §1746.
5. *Electronic Filing in the New York State Courts: Report of the Chief Administrative Judge to the Legislature, the Governor, and the Chief Judge of the State of New York* (2018) at 15, available at https://bit.ly/45PeqYK.
6. *Patterson v. City of Brooklyn*, 6 A.D. 127, 128 (2d Dep't 1896).
7. *Van Alstyne v. Erwine*, 11 N.Y. 331 (1854).
8. *See US Bank Nat'l Ass'n v. Langer*, 168 A.D.3d 1021, 1023 (2d Dep't 2019).

Christopher J. DelliCarpini is an attorney with Sullivan Papain Block McGrath Coffinas & Cannavo P.C. in Garden City, representing personal injury plaintiffs on appeal. He is also an Assistant Dean of the Nassau Academy of Law. He can be reached at cdellicarpini@triallaw1.com.

NASSAU ACADEMY OF LAW

December 6, 2023 (HYBRID)

Dean's Hour: Introduction to SORA Hearings and Appeals

With the NCBA Criminal Court Law & Procedure Committee and the Nassau County Assigned Defender Plan

12:30 pm – 2:00 pm

1.5 CLE credits in areas of Professional Practice

Skills credit available for newly admitted attorneys

New York State's Sex Offender Registration Act (SORA), enacted in 1996, imposes significant, life altering registration and verification requirements on thousands of New Yorkers who have been convicted of a covered sex offense. This CLE presentation aims to demystify the contours of the law and provide instruction and guidance to attorneys handling such matters. It will include an overview of SORA, including who is covered by it, what those covered are obligated to do, and for how long; how risk levels are determined; and avenues for future relief, such as post-hearing appeals and risk-level modification petitions.

Guest Speakers:

Nicole Geoglis, Esq., Supervising Attorney, Center for Appellate Litigation (CAL) and Director of CAL's SORA Practice

Ava Page, Esq., Supervising Attorney, Appellate Advocates

NCBA Members and 18B Panel Members—FREE

Non-Member Attorney—$50

December 7, 2023 (HYBRID)

Dean's Hour: The Impact of Forensic Entomology in Medico-Legal Investigations

With the NCBA Criminal Court Law & Procedure Committee and the Nassau County Assigned Defender Plan

12:30 pm – 2:00 pm

1.5 CLE credit in areas of Professional Practice

Skills credit available for newly admitted attorneys

Forensic entomology is a field of forensic sciences focused on those insects and arthropods that, because of their behavior, can provide potentially useful information during forensic investigations. Certain groups of insects are attracted to decomposing organic matter (i.e., a dead body) to eat or lay eggs. This CLE presentation will discuss the general principals and practice of forensic entomology, highlighting the potential and the limitations of the field through real criminal cases. The presentation will also discuss how forensic entomological evidence has been presented in court by experts, who the experts are, and what impact it has had in sentences and exonerations.

Guest Speaker:

Denise Gemmellaro, PhD, D-ABFE, Assistant Professor, Kean University Department of Biological Sciences, and Member, American Board of Forensic Entomology (promoted to Diplomate in 2023)

NCBA Members and 18B Panel Members—FREE

Non-Member Attorney—$50

December 8, 2023 (IN PERSON ONLY)

Dean's Hour with Hon. Timothy S. Driscoll: The Future Is Now—A Discussion of Artificial Intelligence and the Legal Profession

With the NCBA Catholic Lawyer' Guild

1:00 pm – 2:00 pm

1.0 CLE credit in Cybersecurity, Privacy & Data Protection–Ethics

Skills credit available for newly admitted attorneys

This presentation will include a basic primer on Artificial Intelligence (AI) and Generative Intelligence (GAI). The presentation will include a discussion of how lawyers use AI and GAI; concerns that judges have expressed about their use; legislative and administrative proposals regarding use of AI and GAI; and ethical issues surrounding use of AI and GAI.

Guest Speaker:

Justice Timothy S. Driscoll, Supreme Court of New York and Nassau County Commercial Division. Judge Driscoll is also an adjunct professor at Brooklyn Law School and has served as a teaching team member at the Harvard Law School's Trial Advocacy Workshop. Judge Driscoll is a graduate of Harvard Law School, Hofstra University and Holy Trinity High School in Hicksville. He is a Past President of the Catholic Lawyers' Guild of Nassau County.

NCBA Members—FREE

Non-Member Attorney—$35

December 12, 2023 (HYBRID)

Dean's Hour: Qualified Retirement Plan Design for Law Firms

12:30 pm – 1:30 pm

1.0 CLE credit in Areas of Professional Practice

Skills credit available for newly admitted attorneys

This presentation will discuss ways law firm partners can withstand the headwinds generated by the current environment while maintaining the ideal qualified retirement plan design for their law firm.

Guest Speaker:

Andrew Roth, Esq., Partner Danziger & Markhoff LLP

NCBA Members—FREE

Non-Members—$35

PROGRAM CALENDAR

January 8, 2023 (IN PERSON ONLY)

Fireside Chat and Book Signing with Kenneth J. Kunken— *I Dream of Things That Never Were the Ken Kunken Story*

6:00 pm – 7:00 pm

1.0 CLE credit in Diversity, Inclusion and Elimination of Bias

Join us at the Nassau County Bar Association with retired Nassau County prosecutor Ken Kunken as he tells his inspiring story about overcoming diversity and achieving your dreams. Almost totally paralyzed as a result of a spinal cord injury incurred during a college football game in 1970, Ken Kunken battels back from the depths of depression and despair, earns four college degrees and becomes a well-respected assistant district attorney. But *I Dream of Things That Never Were* is about more than overcoming adversity.

It is a love story that leads Ken to marry the woman of his dreams and become the father of triplet boys. Books will be available for purchase and signing by Ken after the program.

NCBA Members—FREE
Non-Members—$35

NASSAU ACADEMY OF LAW FUNDRAISER FOR NEW IT EQUIPMENT

Enriching lives, one meal and one memory at a time! Pampered Chef is known for its distinctive, high-quality kitchen tools that help you bring food to the table! In this VIRTUAL party, you can learn recipes and tips to help get delicious meals quickly on your table for the holiday season, as well as learn about the many products that Pampered Chef has to offer! A portion of the party sales will go to the Nassau Academy of Law.

The party is open now through December 18.

Contact the Party Host at (646) 477-8757.

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Hon. Joseph Goldstein Bridge-the-Gap Weekend

FEBRUARY 3 AND 4, 2024
SNOW DATES: MARCH 2 AND 3, 2024

NEWLY ADMITTED ATTORNEYS:
7 CLE credits in professional practice,
6 in skills, 3 in ethics

EXPERIENCED ATTORNEYS:
11 CLE credits in professional practice, 3 in ethics,
1 in cybersecurity, privacy and data protection–general,
1 in diversity, inclusion and elimination of bias

Sign up for the full weekend, a day, or individual programs! Breakfast, lunch, and written materials will be provided each day to attendees.

FREE FOR NCBA MEMBERS

Bridge-the-Gap Chair: Lauren B. Bristol, Esq.
Nassau Academy of Law Associate Dean
Kerley, Walsh, Matera & Cinquemani, P.C.

please join us in person only

2024 ANNUAL SCHOOL LAW CONFERENCE

MARCH 22, 2024

Sign-in begins 8:00 am
Program 9:00 am–2:30 pm
Breakfast and Lunch Included
CLE credits TBD

NCBA Members—**$100**
Non-Member Attorneys—**$250**
School Personnel—**$250**
Purchase orders accepted from school districts

FOCUS: LAW AND AMERICAN CULTURE

Was It Love or Treason?

Rudy Carmenaty

On December 11, 1936, Edward VIII, the King of the British Empire, renounced the crown.[1] The abdication was precipitated by his impending marriage to Wallis Warfield Simpson, an American divorcee. Long before there was Megan Markle, there was Wallis Simpson.

Mrs. Simpson was by any measure inappropriate as Edward's queen. Nonetheless, he was determined to marry Wallis as soon as her divorce from her second husband was secured. Many have questioned whether she ever really loved him. There is no doubt that he was obsessed with her.

When it comes to royalty, the personal is political. Royal marriages are not necessarily affairs of the heart, but rather affairs of state. So long as George V was alive, Edward could not wed without his father's permission.[2] Once the old King died, Edward hypothetically could marry anyone other than a Catholic.[3]

Still other factors limited Edward's choice of a consort. The sovereign's freedom to marry is contingent on the advice of Parliament and the Cabinet had no intention of approving the marriage. Indeed, nearly the whole of the British establishment objected to Edward and Wallis' courtship.

Only Winston Churchill supported the King. A foolish gesture on the great man's part.[4] A constitutional crisis almost ensued which would have pitted the King against the elected government of the day. This conflict presented an eminent threat to the stability of the political order and, ultimately, the security of the realm.

The British Empire at the time dominated a quarter of the Earth's land surface and possessed the world's largest navy. The stakes could not have been higher. More menacingly, the abdication involved diplomatic relations between Britain and Nazi Germany on the eve of World War II.

History might have turned-out differently if Edward had remained on the throne. His and Wallis' German affinities were troubling to say the least. Had he not abdicated or, worse yet, had Hitler managed to restore Edward as king in a Nazi occupied Britain, World War II could have been lost.

The abdication was a pivotal moment in the history of the British nation. Although it upended a dynasty, it solidified the House of Windsor.[5] As well, it replaced a monarch sympathetic to the Nazis with his brother who became an avatar of World War II patriotism. In the end, the British Constitution somehow worked.

As the Prince of Wales, Edward was the most eligible bachelor in the world. But he was a sexual nonconformist with a restless sex-life. Never comporting himself as expected, Edward pursued the company of married women. He thought nothing of seducing the wives of colonial officials while he was abroad on tour.

Edward preferred married women, thus avoiding a serious or binding commitment. The British public knew nothing about Edward's penchant for salacious company. Edward's womanizing was kept secret, though common knowledge at court. George V was disgusted by his son's many affairs.

Royalty was accorded considerable deference then. Fleet Street at that time refrained from exposing the peccadillos of the Royal Family. Foreign newspapers entering the country were censored to excise any mention of Wallis. Most Britons knew nothing about Edward and Wallis until about ten days before his abdication.

When the British press finally reported the story, Wallis went from a relatively obscure American expatriate to the most hated woman in England. A reviled figure, she was blamed for seducing the King and taking him away from his duty. Wallis' life was threatened, and she fled to the South of France.

Once the story broke and the scandal ensued, Wallis was willing to leave Edward. He told her no matter where she went, he would find her. Edward was devoted to Wallis and desperate to marry her. Having committed the ultimate sacrifice for her hand, Wallis felt she had no alternative but to go ahead with the wedding.

In the United States, Wallis was depicted as the heroine of a fairy tale come to life. An American who could have become the Queen of England. A woman whose real-life prince gave up the throne for her. No doubt their relationship almost brought down the monarchy. The truth however was far more complicated.

Although not a great beauty, Wallis was chic and clever. She was a Baltimore belle who possessed a certain charisma, and she knew how to use it. Wallis aspired to a life of privilege and position, desiring all the things she believed she rightfully deserved. Things which Edward could provide in abundance.

Being an American, Wallis stood outside the rigid English class system. She was a nouveau riche social climber with little respect for tradition or custom. Edward found her refreshing, as she spoke to him in an informal manner as any woman would speak to any man. In fact, it was Edward who came to defer to her.

Edward's fixation for Wallis defies all explanation. Dismissed at first as an infatuation, it was always a great deal more than that. Edward willingly gave up everything to marry her. Edward was completely possessed by Wallis, body and soul. So, what was her power over him?

Among the spicy myths concerning Wallis was that she had spent time in Chinese brothels.[6] Her first husband was an American naval officer stationed in the Far East. There, Wallis supposedly acquired an expertise in certain unmentionable sexual techniques which gave her a psycho-sexual hold on Edward.[7]

Wallis' affair with Edward garnered the attention of MI6, which compiled a dossier on Wallis and her proclivities at the behest of Prime Minister Stanley Baldwin.[8] The long-rumored *China Dossier* is perhaps a myth.[9] But the story speaks to the deep-seated need to understand Edward's inner-motivations.

Wallis was herself quite promiscuous. She carried on with numerous relationships, even after she met Edward. Among her many liaisons was one with Mussolini's foreign minister and son-in-law Count Galeazzo Ciano. Purportedly, Wallis became pregnant by Ciano, resulting in an abortion which left her unable to conceive.[10]

Another of her purported lovers was Joachim von Ribbentrop, who was Hitler's special envoy to London in the mid-1930s and was later named Germany's Foreign Minister. Wallis was close to von Ribbentrop, and she is alleged to have provided von Ribbentrop confidential information given to her by Edward.

That an American divorcee, with a questionable past and dubious associations, was having an affair with Edward was cause for concern not only to his courtiers but to the government as well. No member of the royal family had ever before been in such a compromising situation. The couple was placed under surveillance.

A decree nisi (an order which would subsequently take effect) was granted Wallis by the Court in Ipswich on October 27, 1936.[11] The decree absolute, meaning that her divorce would become final, would be issued six months hence.[12] Wallis would be free to marry Edward in

April 1937. His coronation was set for the following month, on May 12.[13]

Baldwin, for his part, was willing to look the other way if Wallis were to remain Edward's mistress. Being a Victorian in manners and morals, he drew the line at marriage. The idea of the King marrying this calculating American and making her his Queen was anathema, both morally and constitutionally.

The Prime Minister refrained from advising the King until the decree nisi was granted. Circumstances forced his hand. Baldwin proceeded gingerly, but firmly, as Edward had his heart set on her. Baldwin delicately made the case that the British people expected certain standards of conduct from their King.

Baldwin made the point that Parliament was elected, and it determined the voice of the people. Baldwin informed the King his proposed marriage was objectionable to the government, as well as to the opposition. The Prime Minister also provided Edward with an accurate assessment of his position vis-à-vis the Dominions.[14]

Baldwin handled the matter flawlessly. The Prime Minister asked the King to have Mrs. Simpson put-off her divorce. The King said rather disingenuously he could not interfere in the lady's private matters. Yet it was the King who had directed Wallis to procure the divorce in the first place.

Edward then suggested a morganatic marriage, where he would remain king, but Wallis would not become queen.[15] Morganatic marriages, though common in Europe, were unrecognized in Britain and would require both Westminster and the Dominions to pass legislation to permit it. This proposal was likewise rejected.

The King, in marrying Wallis, a divorcee with two living ex-husbands, was placing himself in jeopardy by his own actions and decisions. It was critical Edward be permitted to make up his own mind. Baldwin did not want it said that Parliament had rushed the King off the throne

This left only two options: either Edward give-up Wallis or he relinquish the crown. Accordingly, Edward was checkmated by the conventions of the United Kingdom's unwritten constitution. It was Edward, having made up his mind to marry Wallis, who informed Baldwin he had decided to abdicate.

On December 10, 1936 the Abdication Act was introduced in the House of Commons.[16] The legislation was adopted without amendment in both the Commons and the House of Lords, taking effect on December 12.[17] Similar legislation was passed by the Dominion governments.

On December 11, Edward made a BBC broadcast from Windsor Castle to a nation stunned by his decision. In language worthy of soap opera dialogue, Edward stated he could no longer serve as King without Wallis:

> *But you must believe me when I tell you that I have found it impossible to carry the heavy burden of responsibility and to discharge my duties as King as I would wish to do without the help and support of the woman I love.*[18]

Edward's decision provided a neat resolution. On stepping-down, his younger brother George VI and his wife Elizabeth were coronated at Westminster Abbey in Edward's place. George VI was the father of the late Queen Elizabeth II. A constitutional crisis was averted.

Parliament was not dissolved, and an election predicated on Edward's marriage was not held. The King as well did not follow through on Churchill's suggestion of a King's party. Edward also did not encourage any faction to take up arms on his behalf, as was proposed by Oswald Mosley of the British Union of Fascists.

Edward was named Duke of Windsor. Once Edward and Wallis were married on June 3, 1937, she became his Duchess.[19] Although George VI granted the titles, the new King did not extend the honorific of "*Her Royal Highness*" (HRH) to Wallis, which was hers by right.[20] Edward and Wallis resented the snub all their lives.

Depicted as a sacrifice for 'love', the abdication also involved international relations at a critical juncture before England and Germany went to war. The course of history would have been different if Edward had remained as king with Wallis his consort. Wallis continues to be an enigmatic figure.

The most disturbing aspect of Wallis' character concerns her long-standing affinity for fascism. Wallis stirred the suspicions of British authorities for her political views and the sorted company she kept. Wallis' opinions were pronounced, and she took few pains, if any, to hide them.

The King, for his part, shared Wallis's sympathies. Edward favored an Anglo-German alliance with Hitler. Edward believed that as King he had the right to intervene in foreign policy. Edward had little respect for the bounds that traditionally conscript a constitutional monarch. The King reigns, but does not rule.

In October 1937, the Windsors made an infamous visit to Germany at the invitation of the Third Reich.[21] Edward and Wallis toured numerous sites, with Edward giving the infamous '*Heil Hitler*' salute.[22] Receptive to Hitler's overtures, these sentiments may well have manifested themselves in treason and espionage.

It has been asserted, though never conclusively proven, that Edward posed a security risk while serving in France at the outset of the war. The Windsors then remained on the continent long after the British evacuation at Dunkirk. In due course, Edward and Wallis were shipped off to the Bahamas for the duration.

In Hitler, the Windsors possibly saw their path to power. The scheme was to use Edward so as to undermine British morale. It should be noted that by 1940, France had fallen, the USSR was allied with Germany, and the U.S. was officially neutral. Britain, with Churchill now Prime Minister and George VI as king, stood alone against the Nazi menace.

If Hitler had won the war, it is believed the Germans would have installed Edward as a puppet-ruler in England much like Marshal Petain in Vichy France. This idea gained broader currency when the Germans bombed Buckingham Palace during the Blitz. George VI could have been killed.

This lends credence to the belief that Wallis provided the British establishment with a convenient excuse to hustle Edward off-stage because of his Nazi sympathies. So, was it a love story or was it a matter of international intrigue or was it a mixture of both? Whatever the reason, it was a case of good riddance.

On the surface, it appears Edward and Wallis lived a fabled romance with tragic overtones. Each was absorbed by their own passions. Edward, as a jaded prince, was at last able to find contentment in a devotion which knew no bounds. And for Wallis, she achieved the status and privilege she craved.

Their idyll, nevertheless, was improper and dangerous. And not just because of social conventions or the unsuitability of their love. Edward and Wallis failed to be faithful to democratic institutions. An abdication might well have been inevitable. The requisites of parliamentary government demand nothing less.

Thankfully, Edward was not king for long. Had he been on the throne during World War II, the world would now be a very different place. The Windsors' well-documented attraction for the Third Reich should discount the fairy tale that has repeatedly been told. There are dark shadows behind the glamourous myth.

It is long since time to look at Edward and Wallis as they truly were. In a very real sense, Wallis unconsciously served the cause of history. She provided a palatable rationale for Edward's abdication. In so doing, she inadvertently preserved the British monarchy and perhaps the freedom of the world.

1. Arnaldo Teodorani, *Wallis and Edward VII: The Marriage that Changed History*, July 21, 2021, at https://biographics.org.
2. Such unions are governed under the Royal Marriages Act of 1772.
3. The Act of Settlement of 1701 prohibits a British sovereign from marrying a member of the Roman Catholic faith in order to guarantee a Protestant succession.
4. Churchill said he believed that the King would move on, that duty would outweigh his obsession for Wallis. Others speculated Churchill, in the 'political wilderness', saw the issue as a means of acquiring power. Churchill's support of Edward damaged his own reputation. Deemed unreliable, his prophetic warning regarding Hitler were also ignored until it was almost too late.
5. George V in 1917 renamed the royal family the House of Windsor in light of pressure stemming from his German origins.
6. Anna Seeba, *Was Wallis Simpson all woman? There's been always been speculation about her sexual make-up. Now in a major reassessment her biographer uncovers new evidence*, August 6, 2011, at https://www.dailymail.co.uk.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Where did Wallis Simpson obtain her divorce before marrying the Duke of Windsor?* September 6, 2016, at https://ask.funtrivia.com.
12. *Id.*
13. Martin Delgado, Seen for the first time... Edward VIII posing for the coronation that never was, October 15, 2011 at https://www.dailymail.co.uk.
14. The self-governing Dominions who recognized the British monarch as their sovereign were Australia, Canada, the Irish Free State, New Zealand, and the Union of South Africa.
15. L. Reitzer, *Why was King Edward VIII not allowed to marry Wallis Simpson?* November 15, 2021 at https://neutralhistory.com.
16. Tim Ott, *Why Edward VIII Abdicated the Throne to Marris Wallis Simpson*, June 6, 2020 at https://www.biography.com.
17. *Id.*
18. *American Rhetoric: King Edward Abdication Speech* at https://www.americanrhetoric.com.
19. Teodorani, *supra.*
20. Reitzer, *supra.*
21. Teodorani, *supra.*
22. *Id.*

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FOCUS: BANKRUPTCY LAW

2023 Bankruptcy Update

Matthew V. Spero, Alexandria E. Tomanelli and Mirielle Nezamy

The United States Supreme Court decided a bankruptcy case this year that could have far-reaching consequences for partners in business together. The Supreme Court also granted certiorari to hear two additional bankruptcy cases that address fees owed to the Office of the U.S. Trustee. In addition, we anticipate that the Supreme Court will grant certiorari to decide the legality of the controversial "Texas Two-Step" bankruptcy strategy that allows seemingly solvent entities to benefit from the automatic stay of mass tort litigation.

Bartenwerfer v. Buckley: The Supreme Court Says Claims Arising From Business Partner's Fraud Are Non-Dischargeable

In *Bartenwerfer v. Buckley*, the U.S. Supreme Court resolved the issue of whether a debtor can discharge a claim incurred by a fraud committed by the debtor's business partner or agent without the debtor's knowledge or participation. The Supreme Court, resolving a circuit split and issuing a unanimous decision, held that such claim is not dischargeable in bankruptcy, despite the debtor's lack of knowledge of the fraud.[1]

The dispute involved the interpretation of Bankruptcy Code §523(a)(2)(A), which allows debtors to discharge debts other than those obtained by "false pretenses, a false representation, or actual fraud."[2] Kate and David Bartenwerfer (the "Debtors") renovated a home that they jointly owned. Kate's husband, David, oversaw the home's renovations, and Kate remained uninvolved in the renovation process. The Debtors then sold the house to Kieran Buckley.[3] Prior to selling the home, the Debtors signed disclosure statements making certain representations to Buckley. These representations included that they had disclosed all the material facts and defects concerning the property's condition.[4]

After Buckley purchased the home, he discovered several defects, including a leaky roof, defective windows, a missing fire escape, and permit problems. Buckley then sued the Debtors, alleging that they failed to disclose material facts regarding the home's condition. The jury found the Debtors liable for failing to make material disclosures and Buckley was awarded over $200,000 in damages. The Debtors, unable to pay the judgment, filed for bankruptcy.[5] Buckley filed an adversary proceeding against the Debtors, arguing that his judgment was not dischargeable in their bankruptcy because the Bankruptcy Code excludes from discharge "any debt...for money... to the extent obtained by...false pretenses, a false representation, or actual fraud."[6] The Bankruptcy Court held for Buckley and determined that neither Debtor could discharge the debt, and, despite Kate's lack of knowledge, the fraud was imputed to her because she was in a legal partnership to sell the property.[7]

The Debtors appealed the decision, and the Ninth Circuit's Bankruptcy Appellate Panel disagreed that David's actions could prevent Kate's debt from being discharged. The Court found that the only way toexcept the discharge of Kate's debt was if Kate knew or had reason to know of David's fraud, and it remanded the case to the Bankruptcy Court.[8]

The Bankruptcy Court then concluded that Kate lacked the knowledge required to impute David's fraud to her. The Bankruptcy Appellate Panel subsequently affirmed. However, the Ninth Circuit Court of Appeals later held that despite Kate's lack of knowledge, her debt could not be discharged, even though it was a result of David's fraud.[9]

The question presented to the Supreme Court was whether a debt incurred by the fraud of one partner may be discharged by the second partner's bankruptcy or whether 11 U.S.C. §523(a)(2)(A) barred the discharge of the debt by imputation and without any act, omission, intent, or knowledge of the second partner.[10]

The Supreme Court unanimously affirmed the lower court's ruling and held that §523(a)(2)(A) of the Bankruptcy Code does not allow even an "innocent debtor" who lacked knowledge to discharge a debt incurred by her partner's fraud.[11]

Certiorari Granted in Two Bankruptcy Cases

Office of the US Trustee v. John Q. Hammons Hotels & Resorts: Supreme Court to Consider the Appropriate Remedy Following Siegel

The Supreme Court has agreed to review the Office of the U.S. Trustee's ("UST") appeal from the Tenth Circuit Court of Appeals holding that the UST should refund overpayments made by Chapter 11 debtors under the Bankruptcy Judgeship Act of 2017 (the "2017 Act"), which the Supreme Court held violated the uniformity requirement of the Bankruptcy Clause of Article I, §7, cl. 4 of the U.S. Constitution.

The Supreme Court's decision to review the UST's appeal begins with its prior decision in *Siegal v. Fitzgerald*. In *Siegal*, the Supreme Court resolved the issue of fee disparities imposed by a 2017 statute that increased UST fees in 48 states, but not Alabama or North Carolina, which utilizes an Administrator Program rather than a UST program. The Supreme Court reversed the Fourth Circuit's ruling and held that the UST fee hike in the 2017 Act violated the uniformity requirement of the Constitution's Bankruptcy Clause. While the Supreme Court declared the 2017 Act unconstitutional and that debtors were entitled to refunds, it did not address what remedies were available to Chapter 11 debtors for overpayments of quarterly fees previously paid to the UST. That issue was left to be addressed by lower courts.[12]

In 2016, seventy-six Chapter 11 debtors affiliated with John Q. Hammons Hotels and Resorts filed for bankruptcy in the District of Kansas. Because the proceedings took place in Kansas, the Debtors paid UST fees. In 2020, the Debtors sought a partial refund on the ground that the discrepancy between the fees for the UST program and the Administrator program violated the Constitution. The bankruptcy court rejected that request, but the U.S. Court of Appeals for the Tenth Circuit reversed, agreeing that charging debtors in UST districts higher fees than Administrator districts was unconstitutional.[13]

Following the decision in *Siegel*, in August 2022, the Tenth Circuit issued an order reaffirming its decision in *Hammons*, which held that the disparate fee increase under the UST system was unconstitutional, and ordered the UST to refund more than $2.5 million in UST fees that the John Q. Hammons Hotels debtors had paid in excess of those fees that would have been paid over the same time period had the case been pending in a Bankruptcy Administrator district.[14]

Both the Supreme Court's decision in *Siegel* and the Tenth Circuit's 2022 decision in *Hammons* uphold uniformity, however, neither decision addresses the appropriate remedy for the constitutional violation.

A petition for a writ of certiorari from the *Hammons* decision was filed on June 23, 2023, by the UST,

which asked the Supreme Court to decide whether the $2.5 million refund of UST overpayments is the appropriate remedy.

The Supreme Court will now decide whether the appropriate remedy is to require the UST to grant refunds period covering a of disuniformity, or instead require the collection of additional fees from debtors in Bankruptcy Administrator districts.

Truck Ins. Exch. v. Kaiser Gypsum Co. (In re Kaiser Gypsum Co.): Supreme Court to Consider Standing of Insurers in Chapter 11 Cases

The Supreme Court agreed to review a Fourth Circuit decision that denied an insurer standing to object to an asbestos producer's Chapter 11 plan.

Section 524(g) of the Bankruptcy Code allows a Chapter 11 debtor with significant asbestos liabilities to channel all current and future asbestos claims into a trust funded by the debtor, typically with proceeds of its insurance policies. For a debtor to obtain §524(g) relief, several statutory criteria must be met, most of which are designed to safeguard the due process rights of claimants, including future claimants.

In 2016, Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. (collectively, "Kaiser") filed for Chapter 11 to address their environmental and asbestos-related tort liabilities. Kaiser's Plan aimed to establish a 542(g) trust for present and future asbestos liabilities. The Plan also proposed that Kaiser would assign its rights under policies issued by Truck Insurance Co. ("Truck") to the trust. Accordingly, the trust would be funded by the limits in policies Truck issued to Kaiser from the 1960s to the 1980s.[15]

Truck opposed the Plan and Truck objected to Kaiser's request for a judicial declaration that Kaiser did not violate the assistance and cooperation obligations in its policies or breach the implied covenant of good faith and fair dealing in connection with bankruptcy plan negotiations. Truck argued that if Kaiser's request was granted, Truck could potentially be exposed to millions of dollars in fraudulent claims, and that the plan appeared to be collusive in its policies. Truck also argued that the plan was not proposed in good faith and did not comply with section 524(g).[16]

The district court confirmed the Plan over Truck's objections, finding Truck lacked standing to challenge the Plan because it was not a "party in interest" under 11 U.S.C §1109(b). The Fourth Circuit affirmed, finding that the cooperation clause was inapplicable to the insured's conduct in proposing a bankruptcy plan, and that because the plan was "insurance neutral", Truck lacked standing to object to confirmation of the Plan.[17]

On October 13, 2023, the Supreme Court granted certiorari. The question presented is whether an insurer with financial responsibility for a claim against the Debtor is a "party in interest" that may object to a plan of reorganization.

Is Supreme Court Intervention on the Horizon? The Texas Two-Step Litigation Strategy and its Role in Mass Tort Litigation

In recent months, mass-tort bankruptcy cases have been capturing bankruptcy headlines because household names like Johnson & Johnson have sought bankruptcy protection to deal with mass-tort litigation claims.

Large companies are using a strategy called the "Texas Two-Step." This strategy occurs when a corporation divides itself into two organizations and allocates its assets to one organization and liabilities to the other, which then files for bankruptcy.

These companies prefer to use Chapter 11 to handle mass tort claims because they obtain the benefit of the automatic stay and can avoid litigating claims on a case-by-case basis. Tort claimants have been pushing back on these tactics, arguing that these cases are filed in bad faith because the debtor is not insolvent and the tort claims belong in state court.

In 2021, Johnson & Johnson engaged in a divisive merger and created a company named LTL Management ("LTL"). At that time, Johnson & Johnson faced thousands of lawsuits by consumers who were diagnosed with cancer. These claimants alleged that their illnesses were caused by talc, an ingredient in the baby powder that Johnson and Johnson sold.

After the divisive merger, LTL carried all of the mass tort liabilities and filed for Chapter 11 bankruptcy protection, staying the pending talc claims.

In January 2023, the LTL bankruptcy was dismissed by the Third Circuit and found to be a "bad faith filing." Shortly after dismissal, LTL filed a second bankruptcy case, which was again dismissed by the Third Circuit for the same reasoning.

The LTL cases are the first "Texas Two-Step" bankruptcy cases dismissed as bad faith filings. However, similar cases are pending in different jurisdictions. Whether they likewise will be dismissed as bad faith filings is unknown, but it is likely that the controversy will only be resolved with Supreme Court intervention.

1. *Bartenwerfer v. Buckley*, 143 S. Ct 665 (2023).
2. 11 U.S.C. §523(a)(2)(A).
3. *Id.* at 670.
4. *Id.*
5. *Id.*
6. 11 U.S.C. §523(a)(2)(A).
7. *Id.* at 671.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.* at 676.
12. *Siegel v. Fitzgerald*, 142 S.Ct 1170 (2022).
13. *In re John Q. Hammons Fall 2006, LLC*, 15 F.4th 1011 (10th Cir. 2021).
14. *Id.*
15. *In re Kaiser Gypsum Co.*, 60 F. 4th 73 (4th Cir. 2023).
16. *Id.* at 80.
17. *Id.*at 88.

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FOCUS: ARTIFICIAL INTELLIGENCE

Artificial Intelligence in Contract Drafting: Evolution, Challenges, and the Future

Joseph Cuomo and Robert Ricigliano

Introduction

Artificial intelligence (AI) has caused significant changes in various industries, reshaping how we live and work. In the field of contract drafting, AI technologies are making important advancements, improving the efficiency of this important legal task. This article explores the role of AI in contract drafting, highlighting its potential to revolutionize the legal landscape.

How is AI Being Used in Drafting?

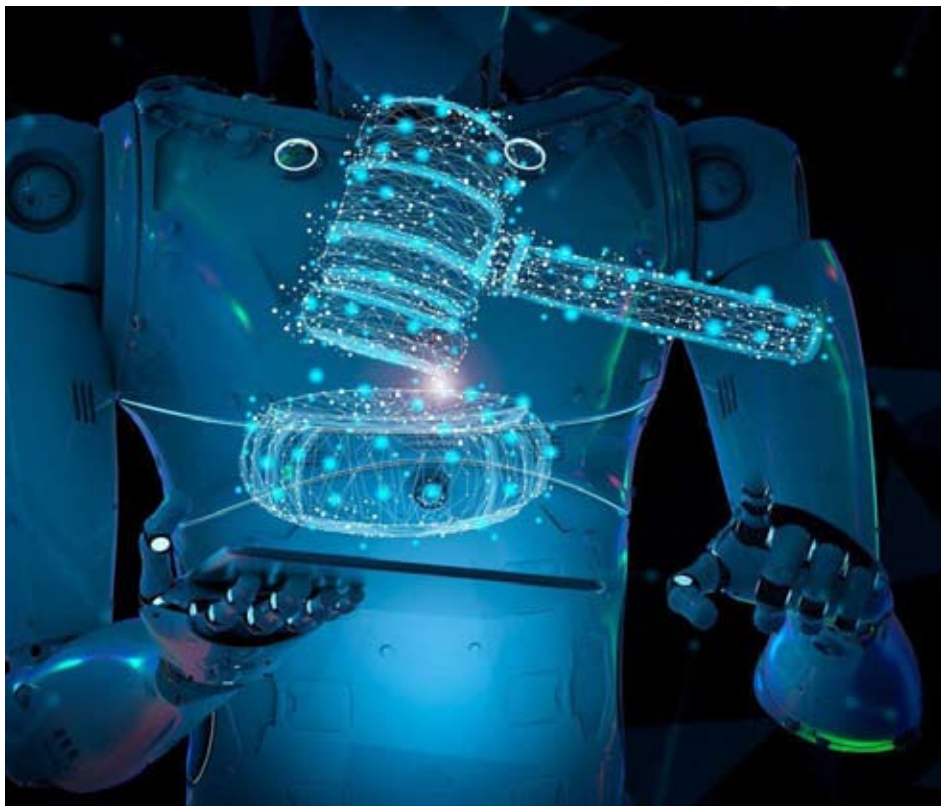
AI applied to contract creation uses advanced machine learning and language understanding techniques to increase the precision of the task. This technology not only speeds up the production of contracts, but also helps ensure that they adhere to standards, customs and regulations through scanning and analyzing existing contracts. In addition, AI can be used to assist with contract negotiation by providing real-time feedback on proposed changes and identifying areas where there may be potential conflicts, as noted by *Forbes*. This feedback mechanism can help parties negotiate more efficiently and effectively, ensuring that the final contract is clear and unambiguous. AI can cross-reference these contracts with current regulations to ensure compliance. The upsides of this approach include savings in time and money, enhanced precision, and lessened risk exposure. The obstacles faced in this approach are ensuring the quality of data, overcoming interpretation constraints, and addressing ethical issues. Despite these difficulties, AI presents considerable benefits in the drafting of contracts by refining operations and equipping lawyers with crucial insights.

How Prevalent is AI?

Despite the significant potential AI holds, its implementation in contract drafting within the United States is still in a preliminary phase. This notion is supported by the 2023 State of Practice survey from *Bloomberg Law*, highlighting that, while an increasing number of firms are aware of the emerging growth of generative AI, its actual application remains relatively uncommon. Most of the survey participants had a basic understanding of the technology, but AI had not yet become a routine part of their work processes. A mere 7% of respondents claimed to have used AI in their professional lives or to accomplish a task at work. This data highlights a clear gap between awareness and utilization of AI in the legal sector. Consequently, the data emphasizes the potential for a more extensive uptake and deployment of AI in contract drafting across the nation, given its numerous advantages.

Should Contract Lawyers Use AI?

Determining whether contract lawyers should adopt AI involves careful consideration of ethical factors. Although AI technology is progressing rapidly, "hallucinations"—instances where the program generates non-existent items—remain an issue. As quoted from *jdsupra.com*, "While artificial intelligence is rapidly advancing, it presently has serious issues with 'hallucinations', where the program invents things that do not exist. Recent news stories confirm that relying on artificial intelligence for legal brief writing has problems, such as citing to nonexistent cases." This indicates that AI can sometimes create or refer to things that are not real or factual, potentially leading to misinformation, particularly in the sensitive domain of law. Therefore, it is critical for lawyers to weigh the benefits of AI against these current faults and the related ethical considerations. If AI is used, it must be implemented carefully, with a solid understanding of both its abilities and limitations.



What is the Future Going to Look Like?

Predictions for the future of AI in contract drafting suggest substantial improvements. We can anticipate AI tools evolving to not only facilitate routine drafting, but also identify potential risks and propose necessary amendments. This could significantly restructure the process, leading to time efficiencies and enhanced quality.

This shift might also influence the principal billing model in legal practices, which is largely time-based. As AI accelerates contract drafting, the traditional hour-based billing may not accurately reflect a lawyer's value. In response to AI efficiency, it is possible that we may see a transition towards product-based billing, as AI could drastically cut down the time spent on contract drafting.

However, this progression does not come without potential hurdles. As AI becomes more involved in the drafting process, it could give rise to further legal and ethical dilemmas. These potential issues may include having to take accountability for AI errors and how to maintain client confidentiality in an AI environment. Legal practitioners and policymakers will need to confront these emerging challenges despite AI's benefits in contract drafting.

Conclusion:

The integration of AI into contract drafting promises exciting advancements and efficiencies. However, AI is still in the early stages and is not without challenges. AI's potential is recognized within the legal industry, yet has limited practical adoption at this point in time. The prudent use of AI requires awareness of its strengths and weaknesses, including some ethical and practical considerations. As we look to the future, the role of contract lawyers is likely to shift, and new billing models may emerge to better reflect the value delivered. Additionally, the legal sector will need to brace for potential ethical and legal questions that come with a more advanced application of AI. However, in balancing these factors, it is evident that there is little doubt that the future holds immense promise for AI in reshaping contract drafting.

Joseph V. Cuomo is a partner at Forchelli Deegan Terrana LLP in Uniondale. He chairs the firm's Corporate and Mergers & Acquisitions practice group.

Robert Ricigliano is a student at New York Law School and a law clerk at at Forchelli Deegan Terrana LLP.

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Questions? Contact Stephanie Pagano at (516) 747-4070 or spagano@nassaubar.org.
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Check www.nassaubar.org for updated information.

TUESDAY, DECEMBER 5
Women in the Law
12:30 p.m.
Melissa P. Corrado
Ariel E. Ronneburger

WEDNESDAY, DECEMBER 6
Real Property Law
12:30 p.m.
Suzanne Player

WEDNESDAY, DECEMBER 6
Government Relations
6:00 p.m.
Michael H. Sahn

THURSDAY, DECEMBER 7
Hospital & Health Law
8:30 a.m.
Douglas K. Stern

THURSDAY, DECEMBER 7
Community Relations & Public Education
12:45 p.m.
Ira S. Slavit

THURSDAY, DECEMBER 7
Publications
12:45 p.m.
Cynthia A. Augello

MONDAY, DECEMBER 11
Access to Justice
12:30 p.m.
Hon. Conrad D. Singer
James P. Joseph

MONDAY, DECEMBER 11
District Court
12:30 p.m.
Bradley D. Schnur

TUESDAY, DECEMBER 12
Education Law
12:30 p.m.
Syed Fahad Qamer
Joseph Lilly

TUESDAY, DECEMBER 12
Labor & Employment Law
12:30 p.m.
Marcus Monteiro

WEDNESDAY, DECEMBER 13
Medical Legal
12:30 p.m.
Bruce M. Cohn

WEDNESDAY, DECEMBER 13
Elder Law, Social Services & Health Advocacy
Estates & Trusts Holiday Luncheon
12:00 p.m.
Lisa R. Valente and MaryBeth Heiskell—Elder Law
Michael Calcagni and Edward D. Baker—Surrogates Court

WEDNESDAY, DECEMBER 13
Matrimonial Law
5:30 p.m.
Karen L. Bodner

THURSDAY, DECEMBER 14
Municipal Law & Land Use
12:30 p.m.
Elisabetta Coschignano

THURSDAY, DECEMBER 14
Asian American Section
12:30 p.m.
Jennifer L. Koo

FRIDAY, DECEMBER 15
General, Solo, and Small Law Practice Management
12:30 p.m.
Scott J. Limmer
Oscar Michelen

TUESDAY, DECEMBER 19
Intellectual Property
12:30 p.m.
Sara M. Dorchak

TUESDAY, DECEMBER 19
Family Court, Law, Procedure & Adoption Holiday Luncheon
12:45 p.m.
James J. Graham, Jr.

TUESDAY, DECEMBER 19
Surrogate's Court Estates & Trusts
5:30 p.m.
Michael Calcagni
Edward D. Baker

WEDNESDAY, DECEMBER 20
Ethics
12:30 p.m.
Mitchell T. Borkowsky

WEDNESDAY, DECEMBER 20
Association Membership
12:30 p.m.
Jennifer L. Koo

THURSDAY, DECEMBER 21
Ethics/In-House Counsel
12:30 p.m.
Mitchell T. Borkowsky—Ethics
Michael DiBello—In-House Counsel

WEDNESDAY, JANUARY 3
Real Property Law
12:30 p.m.
Suzanne Player

THURSDAY, JANUARY 4
Hospital & Health Law
8:30 a.m.
Douglas K. Stern

THURSDAY, JANUARY 4
Community Relations & Public Education
12:45 p.m.
Ira S. Slavit

THURSDAY, JANUARY 4
Publications
12:45 p.m.
Cynthia A. Augello

In Brief

The *Nassau Lawyer* welcomes submissions to the IN BRIEF column announcing news, events, and recent accomplishments of its current members. Due to space limitations, submissions may be edited for length and content. PLEASE NOTE: All submissions to the IN BRIEF column must be made as WORD DOCUMENTS.

Gregory S. Lisi, Partner at Forchelli Deegan Terrana LLP, is proud to announce **Judy L. Simoncic** has been selected by *Long Island Business News* as one of the 60 Most Influential Long Islanders of 2023. In addition, **Kathleen Deegan Dickson** has been selected as a *Long Island Business News* "2023 Long Island Business Hall of Fame" inductee.

Eugene R. Barnosky, Partner at Lamb & Barnosky, LLP, is proud to congratulate **Alyssa L. Zuckerman** on her nomination to the office of Member-At-Large of the New York State Bar Association's Executive Committee, for a two-year term commencing on June 1, 2024.

Richard N. Tannenbaum of Richard N. Tannenbaum, P.C., has been named to the 2023 Super Lawyers List for the twelfth consecutive year.

Thomas Garry, Managing Partner of Harris Beach PLLC Long Island, has been named to City & State's Long Island Power 100.

Alan J. Schwartz, of the Law Office of Alan J. Schwartz, P.C., was selected to the New York Metro Super Lawyers List for 2023.

Karen Tenenbaum of Tenenbaum Law, P.C., was recognized as a Top 100 Attorney in the New York State Metro Area, a Top 50 Women Lawyer in the New York State Metro Area, and as a Super Lawyer for the tenth year. Karen was also honored upon Blank Slate Media's 2023 Nassau County Women of Distrinction. She presented "NYS & IRS Taxes" for the Institute of Culinary Education, and was interviewed by Gary Mitchell for the LawBiz Podcast and by Sydney Steinhardt for the NYSSCPA, Trusted Professional.

William M. Savino, Partner at Rivkin Radler LLP, is proud to announce that **Sean Simensky** received the Associate Award from Long Island Business News.

Robert S. Barnett, Patner at Capell Barnett Matalon and Schoenfeld LLP, is proud to announce that he, along with **Gregory L. Matalon**, **Stuart H. Schoenfeld**, **Yvonne R. Cort**, **Erik Olson** and **Jaime Linder**, presented at multiple lectures at the ATS 2023 Accounting and Tax Symposium. Barnett's lectures included *CPA Firm Divorce–Avoid Tax Disasters, S Corporation Update & Form 7203, and Interest Tracing and Debt Financing*. Barnett and Matalon participated in a session titled *Don't Trust Your Computer*. Schoenfeld and Barnett presented on the topic of *Tax Planning Considerations for Elder Care and Special Needs*. Olson and Matalon presented Estate Administration for CPAs. Cort and Linder presented *IRS Audit and Collection Appeals: Tips and Techniques for Taking It to the Next Level*. In addition, Damianos Markou presented on the topic of *Advanced Estate Administration: Final Accounting Mistakes, Disputes, and Final Steps* for the National Business Institute.

Denise R. Langweber, Partner at Langweber Law Group LLP, welcomes **Sarah Schick** as an Associate, concentrating in real estate transactions. Schick graduated from Touro College Jacob D. Fuchsberg Law Center in 2022.

The IN BRIEF column is compiled by **Marian C. Rice**, a partner at the Garden City law firm L'Abbate Balkan Colavita & Contini, LLP, where she chairs the Attorney Professional Liability Practice Group. In addition to representing attorneys for 40 years, Ms. Rice is a Past President of NCBA. Please email your submissions to nassaulawyer@nassaubar.org with subject line: IN BRIEF

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Opal Wealth Advisors is an independent registered investment advisor (RIA) providing financial and professional development services for both individuals and businesses. Founded by longtime partners Lee A. Korn, Jesse Giordano, and Joseph N. Filosa, Opal Wealth Advisors offers independent advice coupled with fully integrated services, support, and technology. With a comprehensive focus on both financial planning and leadership development, Opal Wealth Advisors goes beyond traditional advice, inspiring clients to take action to achieve true financial freedom and fulfillment.

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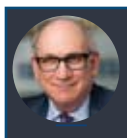

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