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SATURDAY, MAY 13
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Take the Pledge—Take a “LAP”

By: Ann Burkowsky

The Nassau County Bar Association (NCBA) Lawyer Assistance Program (LAP) is pleased to announce the inception of its first ever walk-a-thon fundraiser: “Take the Pledge—Take a LAP” set to be held on Saturday, June 3, 2023, at 8:00 AM at the Hofstra University campus located in Hempstead.

Consistent with the theme of mental health and wellness, the goal of the LAP walk-a-thon is to encourage NCBA members, law students, and their family and friends to take a break from their everyday routine to get outside for a walk and some fresh air—all while supporting an important cause.

The course route will total three miles, and attendees will receive t-shirts and other refreshments throughout the course of the morning. Those who wish to sponsor and/or sign up for the walk-a-thon as an individual or team will be able to do so within the coming weeks.

“It is with great pride and inspiration that the Nassau County Bar Association, in partnership with Hofstra University School of Law, will host its first annual Walkathon to benefit the NCBA Lawyer Assistance Program. We encourage our members and their families to ‘Take the Pledge, Take a Lap,’” said NCBA President Rosalia Baiamonte.

Led by Program Director Dr. Elizabeth Eckhardt, the NCBA Lawyer Assistance Program provides a range of



services to lawyers, judges, law students, and their immediate family members who are struggling with alcohol or drug abuse, depression, anxiety, stress, as well as other addictions and mental health issues. Other LAP services include supportive counseling, stress management/wellness workshops, treatment referrals, and more.

LAP is here for you. All services are free and strictly confidential pursuant to Judiciary Law §499. Contact the LAP 24-hour helpline at (516) 512-2618 or eckhardt@nassaubar.org for more information.

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Introducing the NCBA Karabatos Pre-Law Society

In December 2022, the Nassau County Bar Association launched the NCBA Karabatos Pre-Law Society. The Pre-Law Society seeks to promote greater diversity in the legal profession and NCBA membership by assisting local college students (or recent graduates) from traditionally underrepresented groups to achieve law school admission.

Following an application process which involves a review of a student's academic and professional qualifications and personal statement, the Pre-Law Society identifies between three and five students who have an interest in pursuing a career in the legal field. To be considered a candidate for the Pre-Law Society, students are not required to have declared pre-law majors or minors, nor do they need to be currently enrolled in any legal classes. The Pre-Law Society only requires that they have an interest in pursuing a career in the legal profession.

The State University of New York College at Old Westbury was the ideal college for the Pre-Law Society launch. This public college of approximately 4,400 students has been regularly recognized by national ranking agencies for its academic excellence, dedication to service-learning and civic engagement, and its outstanding commitment to diversity and inclusion in its students, faculty, facilities, and programs. SUNY Old Westbury describes its student enrollment as 28% Hispanic/Latino, 30% White/Caucasian, 25% African American, 12% Asian, and 5% International and other diverse backgrounds.

For this 2022-2023 academic year, the Pre-Law Society identified a total of five students from SUNY Old Westbury to participate in this pipeline program. As a Pre-Law Society member, college students are provided with guidance and mentoring from law school students, practicing attorneys and judges. Program participants will receive assistance and ongoing support throughout the law school application process; and have the opportunity to maintain contact with their mentors during their law school experience. Additionally, program participants will have the opportunity to attend select NCBA programs and events which afford the unique opportunity to network with some of the most prominent attorneys and judges in Nassau County and NCBA membership engagement once enrolled in law school.

Upon successful completion of the program, at least one NCBA Pre-Law Society member each academic year will receive a Karabatos Family Scholarship to assist in defraying the cost of a recognized LSAT preparation course.

A welcome breakfast for the Pre-Law Society members and law student mentors was held at Domus on January 18. In addition to Executive Director Elizabeth Post and myself, the breakfast was attended by the Pre-Law Society Committee, chaired by Past President Elena Karabatos—whose generosity of spirit and creative vision propelled this program into existence—Deanne Caputo, Co-Chair of the WE CARE Fund, and NCBA Secretary Hon. Maxine Broderick. This breakfast was both inspirational and deeply moving, as the participants and law student mentors shared their unique personal stories, their motivations for pursuing



FROM THE PRESIDENT

Rosalia Baiamonte

a legal career, and the obstacles or roadblocks each has faced (or may continue to face) in this pursuit. Two additional breakfasts are currently being scheduled, and each participant has been provided with a calendar of events being held at Domus from which they are required to select at least two NCBA functions this winter and/or spring to attend free of charge.

Pre-Law Society participants will also be permitted to attend certain segments of a two-day CLE program held annually at Domus, Bridge-The-Gap, free of charge to introduce them to different areas of the law. The Pre-Law Society is also working with Dean Christopher Caruso at Hofstra Law to have our participants attend an in-person law class with their mentor this semester, and with Nassau County judges to allow participants to observe live trials and other proceedings in their courtrooms.

Introducing Our 2022-2023 Inaugural NCBA Karabatos Pre-Law Society Members

Nastassia Aniceta—A native West Indian hailing from the island of Jamaica, Nastassia studied at the Northern Caribbean University before transferring to SUNY Old Westbury to complete her B.A. in Politics, Economics and Law. During her hiatus from school, Nastassia founded a grassroots nonprofit for youth empowerment and social reform, and for the past several years, she has produced and hosted an educational podcast. Nastassia believes that “committed changemakers are those who use what they have and do what they can even when the odds appear unfavorable.” Nastassia writes that “my firsthand account of life as a West Indian immigrant woman of Afro-Caribbean descent allows me a perspective that is layered and authentic. I know how it feels to be underrepresented, undervalued, dismissed, underestimated, and overlooked. For me, serving in the legal field is more than just passion, it is my mission.” Nastassia’s pursuit of becoming a lawyer “is to be a part of the collective cause that fights for equality, justice, the betterment of humanity and the earth.”

Shanda Bruce—Shanda aspires to channel her passion for issues such as global warming and climate change into a legal career in the hopes of effectuating positive change. Shanda writes, “My interest in the legal field began very early on in my life. For as long as I can remember, it has always been my dream to become an attorney. My desire is driven by my passion to effect positive change in the world. I was born in a small town in the parish of Kingston & St. Andrew in Jamaica, and having experienced many manners of injustice, whether it be directly or indirectly, I feel compelled in my pursuit of a career in law.”

Brianna Escobar—Being raised in a household led by persevering women inspired Brianna from an early age to pursue an empowering career. Her interest in a legal career was cemented at the age of 12 by observing a television program showcasing a fictionalized female District Attorney. Brianna explains, “While I was a young girl, a television show enlightened me to the empowerment that could be found in a legal career. The older I got, and the more I studied, the clearer it became that my goal is to immerse myself in a career that can challenge the system and represent the unspoken for. The Pre-Law society,

allows me to be amongst professionals and peers who are as passionate about this career as I am.” Brianna continues, “Becoming a lawyer runs deep for me as it is also a way to follow in the footsteps of the village of women who raised me to make them proud.”

Essence Hightower—A Freeport native, Essence is a recent graduate of SUNY Plattsburgh, a small college located in upstate New York. Her strong academic history in critical thinking, problem solving, cross-cultural understanding, social problems, and intersectionality has undoubtedly catered to her growth as a young sociologist. In 2018 she was elected as the 57th President of the Student Association, making her the second Black woman President at her institution. Essence has been selected to serve as a Congressional Black Caucus Foundation Intern at the United States House of Representatives (52 out of 400 applications in the U.S.) where she worked alongside Congresswoman Yvette Clarke representing Brooklyn’s 9th Congressional District. “As the oldest of four girls, and the sole provider of her household, this 25 years old has much to prove coming from a low-income family. First stop Capitol Hill, next stop law school!”

Adrian Pinzon—While pursuing his bachelor’s degree in Political Science, Adrian also works as a patient transporter and lobby navigator at Northwell Health University Hospital, and also provides translation services to Spanish speaking patients and visitors. Adrian writes, “I want to be part of this up-and-coming generation of political figures, law makers, and lawyers... I want children to feel safe at school, parents to feel safe shopping for groceries, and I want all Americans to have pride in our justice system... I grew up watching many hardships and injustices, but with having parents who showed me that an honest living can and will bring you peace of mind and a better lifestyle. It is one of my biggest motivations to give back and help my community and country through law and politics.”

Introducing Some of Our Hofstra Law Student Mentors

Chanel Bowen—An aspiring criminal defense and immigration attorney, from Jamaica, West Indies. At Hofstra, Chanel is a Student Ambassador and a newly inducted member of the Hofstra Trial and Advocacy Association. Outside of school, Chanel is a paralegal for a Floral Park law firm that handles civil litigation, wills and estates, and real estate, among other areas. She is also a certified Zumba Instructor. As a Pre-Law Society Mentor, Chanel “seeks to help

build a community of resources that she was not afforded from the outset of her law school journey.”

Raoul Fray—“The hallmark of a good citizen is serving others, and that belief prompted me to serve sixteen years in the U.S. military and nine years in the New York City Police Department. Despite those years of service, I saw a need to continue that sense of service locally, which has led me to the Nassau County Bar. When I heard about the mentorship program, participating only made sense because it spoke to everything I stand for. Throughout the years, I have seen how mentorship can and has transformed lives, and I have aspired to be that catalyst, that spark that someone might need. As a first gen in many areas, I have experienced the difficulties of being the first. The first to go to college, to join the military, to become a police officer, and now to be in law school. I hope that the things I have learned along the way I’ll be able to share with someone can make their experience a little easier.... [P]articipating in the Pre-Law mentorship program is an honor in the hopes that my story inspires others to follow their dreams even when it seems daunting. I also hope to show that this profession is within reach. Many people from under-represented communities don’t always see this profession as an option for many reasons, so I hope that attending law school can bring some hope.”

Alexis Gooding—An aspiring criminal defense attorney, and a community advocate, from Brooklyn. Alexis is currently a paralegal for a civil litigation firm in New York City. At Hofstra, Alexis is a Child and Family Advocacy Fellow, a member of the Hofstra Trial Advocacy Association, a Student Ambassador, and a member of the Black Law Students Association. Alexis is also active in her community, having co-founded “Sisterhood in Me, Inc.,” a non-profit organization dedicated to uplifting women from underrepresented communities by connecting them to socio-economic resources, empowering them to seek leadership roles, and encouraging them to work cooperatively with other women.

Isaiah Jake Harris—“I thoroughly enjoy uplifting those around me and creating opportunities for others. I look forward to sharing meaningful resources and experiences with our mentees as they prepare for the next stages of their lives. Mentors have played a vital role in my accomplishments to date. Were it not for their guidance and direction, my life would be drastically different. The most important aspect of mentorship, to me, is working to ensure that more individuals from underrepresented or marginalized groups continue gaining access into spaces that were once foreclosed to us.”

Jaden Martin—Jaden explains, “My biggest goal with regard to this program is to help someone avoid the struggles that I went through as a first-generation law student. It can be a difficult world to navigate especially when you have no one to guide you, so if I can make even one person’s experience easier my goal will be accomplished.”

Additional mentors include **Shantay McIntosh**, **Daniel Ott**, and **Bradford Richardson**.

The NCBA Karabatos Pre-Law Society will be catalyst for profound change and have a meaningful and lasting impact in the legal community. The Pre-Law Society plans to expand its outreach and work with additional local colleges in the hopes of expanding NCBA membership to be more diverse, inclusive, and representative of the demographics of the legal profession practicing in this County. A further goal is to raise additional funds to be able to assist a greater number of students by awarding more scholarships. In fact, just days prior to concluding this article, NCBA received confirmation that Webster Bank is collaborating with NCBA to donate \$10,000 to the NCBA Karabatos Pre-Law Society scholarship fund!

I am immensely grateful to Past President Elena Karabatos for her vision and philanthropy which allowed this diversity initiative to come to fruition. For this (and many other reasons), the Board of Directors of the Nassau County Bar Association voted unanimously to approve my recommendation that Ms. Karabatos receive the Past President’s Award at the upcoming Annual Dinner Gala on May 13, 2023 at the Long Island Marriott.

The supportive fellowship which will exist among NCBA’s Pre-Law Society student members, law student mentors, attorneys and judges will provide invaluable tools for mentorship, professional guidance, education, and networking, which is vital to extending the bridge of opportunity for local college students from traditionally underserved and underrepresented communities to achieve law school admission in pursuit of a future career in the law.



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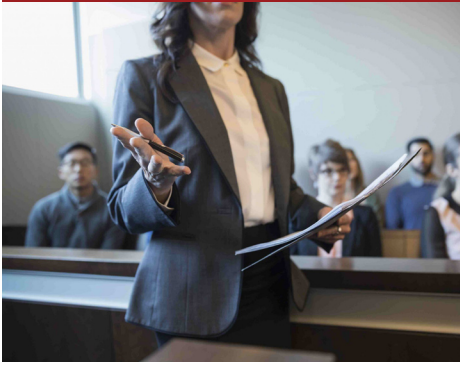
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**FOCUS:
WOMEN IN THE LAW**



**Seema Rambaran and
Ciara Villalona**

Elizabeth Holloway Marston—a lawyer born in 1893, is credited as part of the inspiration for the DC comic character, *Wonder Woman*, taking the statement “you can do anything with a law degree” to a different level. As our nation celebrates Women’s History Month, we reflect on the women who were “firsts” in the profession.

Nearly 137 years ago, on May 20, 1886, Katherine Stoneman became the first woman admitted to practice law in New York State. Stoneman was born in April 1841 in Lakewood, New York.¹ In 1864, Stoneman enrolled in the New York State Normal School at Albany, which, at the time, was the only state school training teachers to teach in public schools. While enrolled, to financially support herself, Stoneman worked as a copyist for the state reporter of the Court of Appeals. Stoneman graduated in 1866 and was hired by the Normal School to teach penmanship, drawing and geography.²

Meanwhile, Stoneman’s extra-curricular activities included reading law textbooks and advocating for women’s suffrage. After serving as the executor for her aunt’s estate, Stoneman decided to take the bar exam in 1886—without formal education and training in law. Stoneman became the first woman to pass the New York State Bar Examination.³

When Stoneman applied for admission to the bar, her application was denied because of her gender. Determined, Stoneman led a successful lobbying campaign to remove gender requirements for admittance to the bar. (It would take almost eight decades before sex discrimination in law schools would be prohibited starting with Duke University Law School’s proactive approach to admitting females into their entering class in 1970.)⁴

A History of Women Lawyers

After admission to the bar, Stoneman continued to teach while she pursued a formal legal education. In June 1898, at the age of 57, Stoneman became the first woman to graduate from Albany Law School. She continued her teaching career while simultaneously maintaining a law practice in Albany for forty years. On May 22, 1986, New York Governor Mario Cuomo declared the date “Katherine Stoneman Day,” honoring the 100th anniversary of Stoneman’s acceptance to the bar.

Stoneman’s story is one of many that continues to inspire women who choose to pursue a law degree. On March 3, 1879, Belva Lockwood became the first woman admitted to the Bar of the Supreme Court of the United States and, only a year later, she became the first woman to argue a case before the Justices.⁵ In 1899, Helen Z.M. Rodgers became the first female lawyer to try a case before the New York Court of Appeals.⁶ In 1993, Judith S. Kaye became the first woman to serve as New York’s Chief Judge.⁷

Moreover, since the formation of the Court in 1790, only six women have ever served on the nation’s highest Bench: Sandra Day O’Connor, Ruth Bader Ginsburg, Sonia Sotomayor, Elena Kagan, Amy Coney Barrett, and Ketanji Brown Jackson. For perspective, Chief Justice John G. Roberts is the 17th Chief Justice of the United States, and there have been 104 Associate Justices in the Court’s history.⁸

Holding a law degree today leads to varied opportunities. In 2000, Hillary Rodham Clinton, a Yale Law graduate, was elected to represent New York State in the U.S. Senate, simultaneously becoming the first woman to represent the state and the first First Lady elected to hold office in the U.S. Senate.⁹

In January 2021, Kamala Harris, a graduate of University of California Hastings College of the Law, became the first woman to serve as United States Vice President.¹⁰ Two years later, Kathy Hochul, holding a law degree from Catholic University in Washington, D.C., was sworn into office, making her the first woman elected to serve as New York State’s Governor.

Closer to home, in 1994, Grace D. Moran became the first woman installed as President of the Nassau County Bar Association.¹² In February 2002, Judge Gail Prudenti, current Dean of the Maurice A. Deane School of Law at Hofstra University, became the first woman appointed to serve as the Presiding Justice of the Appellate

Division for the Second Department in New York State. In 2006, Kathleen Rice became the first woman in Long Island’s history to be elected District Attorney.¹³

According to the 2022 American Bar Association (“ABA”) National Lawyer Population Survey, there are more than 1.3 million lawyers in the United States, approximately a third of which are women.¹⁴ The number of female law students has increased every year for the past five years, growing from 55,766 in 2016 to 64,861 in 2021.¹⁵ Women significantly outnumber men in law school.¹⁶

While more than half of law school graduates are women, however, the number of women in senior leadership roles at law firms is far less than half.¹⁷ In 2020, according to the ABA—citing the National Association for Women Lawyers—only 22% of all equity partners at U.S. law firms were women, with only 12% serving as managing partners, 28% serving as governance committee members, and 27% serving as practice group leaders.¹⁷ Additionally, while law firm pay among associates and non-equity partners has nearly evened out between men and women, a “sizable gap” remains at higher levels.¹⁸ On average in 2020, among equity partners, women received just 78% of the compensation of their male counterparts.²⁰

Hollywood has done its part to illustrate societal stereotypes, tensions, and contradictions rooted in culture and history that identify the legal profession as traditionally masculine. From *Legally Blonde* to *Partner Track*, *L.A. Law* to *The Practice*, and *The Good Wife* to *How to Get Away with Murder*, there is no shortage of leading legal ladies navigating the challenges associated with the profession, on the one hand, and those challenges uniquely female, on the other.

There continues to be some professional positions though that have yet to be held by a woman—President of the United States, Chief Justice of the United States Supreme Court, and Mayor of New York City—to name a few. The removal of barriers to entry into the profession was a long road lead by many determined women and supported by liberal thinking men. This same formula may prove essential to the coming era of women in the law. ⚖️

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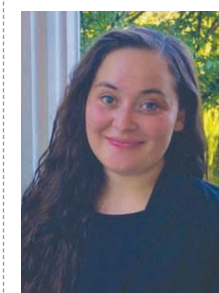
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Thomas McKevitt

In January, the Judiciary Committee of the New York State Senate failed to approve Governor Hochul's Nomination of Justice Hector LaSalle, the Presiding Justice of the Second Department of the Appellate Division, to be the next Chief Judge of the State of New York. The following month, the full Senate rejected LaSalle by a margin of thirty-nine to twenty.¹ This is the first time in the state's history that the New York Senate has rejected a governor's nomination to New York's highest court.²

There may be significant consequences for years to come from this action. After all, it concerns the relationship between the executive and legislative branches over the

A Historical Perspective on Selecting the Chief Judge

appointment of a judge to head the state's judicial branch. This may be an appropriate occasion to examine how New York State adopted and arrived at the current system.

New York's original 1777 Constitution created the Court for the Trial of Impeachment and Correction of Errors as the highest court in New York. It was composed of the entire New York State Senate, the chancellor, and three judges of the State Supreme Court. This court remained in place until the Constitution of 1846 created the Court of Appeals. One of the motivations for creating this Court was the fact that under the prior system, judges were allowed to hear a case in a lower court, and then participate in the appellate proceedings as well.³

The new Court of Appeals consisted of eight judges, four of which were popularly elected, and four were selected from the class of Supreme Court justices.⁴ By 1870, all judges were elected, which continued for over 100 years.⁵ Even Benjamin Cardozo, regarded as one of the greatest jurists in New York history,

was elected to the Court in 1917 and elected Chief Judge in 1926.

Although the judges were technically elected, this was not the actual practice. A system developed where the Democratic and Republican parties would cross-endorse candidates to the Court. This was enabled by the fact that statewide candidates were chosen in conventions where party leaders were able to designate the nominees. The title of Chief Judge would be assigned to the senior associate judge, notwithstanding the political affiliation of the person.

However, this system imploded in 1972 when state law was changed to allow for party primaries.⁶ In 1973, Chief Judge Stanley H. Fuld retired. Under prior practice, the next senior judge interested in the position, Charles D. Breitel, who had served on the Court for twelve years, would have become the new Chief Judge.

However, he only received the Republican nomination. There was a six-way primary for the Democratic nomination, which was won by Jacob D. Fuchsberg. Breitel and Fuchsberg engaged in a bitter election which was won by Breitel. The next year, Fuchsberg won the primary for an open seat as an associate judge of the court, defeating the Court's only African American judge, Harold A. Stevens. Fuchsberg won election to the Court, but the functioning of the court was strained by having both Breitel and Fuchsberg serve at the same time.⁷

It was also at this time that candidates for the Court started airing more aggressive television commercials when campaigning for judicial office. One of the most well-known was when then Nassau County Supreme Court Justice Sol Wachtler ran an advertisement where he shut a prison cell door promising to "get the thieves and muggers and murderers into these cells."⁸

Chief Judge Breitel and Governor Hugh Carey then advocated for changes to the court system. The New York State Legislature passed resolutions in 1976 and 1977 to amend the New York State Constitution to reform the judicial selection process. The proposition was on the general election ballot in 1977 and passed by the voters by a margin of 1,508,258 to 1,311,621.

Under this new system, a Commission on Judicial Nomination would be responsible to nominate judges for the Court of Appeals. The

commission would consist of a total of twelve members who would be nominated in the following manner:

- Four by the Governor, no more than two of whom shall be enrolled in the same political party, and two must be members of the bar and two shall not be members of the bar.
- Four by the Chief Judge of State of New York, no more than two shall be enrolled in the same political party, and two must be members of the bar and two shall not be members of the bar.
- One by the Speaker of the Assembly.
- One by the President Pro Tempore of the Senate.
- One by the Senate Minority Leader.
- One by the Assembly Minority Leader.⁹

In addition, no member shall hold or have held any judicial office or elected public office for which he or she receives compensation during his or her period of service, except that the Governor and the Chief Judge can appoint no more than one former judge of the unified court system. No member of the commission shall hold any office in any political party, nor shall any member be eligible for appointment to judicial office during the member's period of service or one year thereafter.¹⁰ "This elaborate distribution of appointment power was meant to prevent any one branch of government from dominating the commission, to prevent it from becoming partisan, and to ensure confidence in its independence and impartiality."¹¹

When a vacancy arises on the Court of Appeals, the Judicial Nomination Commission shall make its recommendation to the Governor within one-hundred twenty days of the notice from the clerk of the court that there is a vacancy.¹² The Commission must evaluate the qualification of candidates and prepare a written report to the Governor of those who by their "character, temperament, professional aptitude and experience are well qualified to hold such judicial office."¹³

For associate judges of the court, the Commission must recommend at last three but no more than seven

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individuals,¹⁴ but “in recognition of the unique responsibilities of the chief judge,” the Commission shall recommend to the Governor seven persons.¹⁵ Once the list is generated, the Governor has between fifteen and thirty days¹⁶ to make an appointment “with the advice and consent of the senate.”¹⁷ The only other qualification the Constitution requires for a judge of the Court of Appeals is that the person is a resident of the state and admitted to practice law in New York for at least ten years.¹⁸

For the most part, this nomination process has been without controversy and nominees have generally been

quickly confirmed. As an example, Michael Garcia was nominated by Governor Andrew Cuomo on January 21, 2016, and he was confirmed by the Senate immediately after his confirmation hearing before the Judiciary Committee on February 8, 2016.¹⁹

In the thirty-five vacancies which have occurred from 1977 to 2021, no nomination was ever defeated. This includes twenty-five nominees where the Governor and the majority of the State Senate were from different political parties. However, in 2021, Nassau County District Attorney Madeline Singas was confirmed by a

rather narrow vote of 37-26. Her nomination was opposed by many progressive senators on the grounds that she had the background of being a prosecutor.

As for the future, the rejection of Judge LaSalle by first the Judiciary Committee and then the full Senate may be harbingers of things to come. A once routine process has become more contentious. Only time will tell if the semblance of the orderly method which has served New York State for more than forty-five years will be allowed to remain in place. ⚖️

1. Brian Lee, “NY Senate, in History-Making Vote Rejects Chief Judge Nominee”, NYLJ, February

16, 2023.
 2. Jimmy Vielkind, “N.Y. Gov. Kathy Hochul’s High-Court Pick, Hector LaSalle, Fails in Committee Vote,” Wall St. J., January 18, 2023.
 3. PETER J. GAILE, ORDERED LIBERTY: A CONSTITUTIONAL HISTORY OF NEW YORK 105-106 (1996).
 4. N.Y. Const. of 1846, art.VI, §2.
 5. Frederick Miller, “New York’s Judicial Article: A Word in Progress,” in DECISION 1997 116 (Gerald Benjamin & Henrik N. Dullea eds., 1997).
 6. *Id.*
 7. *Id.*
 8. Frank Lynn, “The 1972 Campaign,” N.Y. Times, October 30, 1972.
 9. N.Y. Const. art.VI, §2(d)(1).
 10. N.Y. Const. art.VI, §2(d)(1).
 11. PETER J. GAILE & CHRISTOPHER BOPST, THE NEW YORK STATE CONSTITUTION 166 (2012).
 12. N.Y. Jud. Law §68 (2).
 13. N.Y. Const. art.VI, §2(c).
 14. N.Y. Jud. Law §63 (2)(b).
 15. N.Y. Jud. Law §63 (2)(a).
 16. N.Y. Jud. Law §68(2).
 17. N.Y. Const. art.VI, §2(e).
 18. N.Y. Const. art.VI, §2(e).
 19. Associated Press “Michael Garcia Confirmed as Judge on the New York Court of Appeals,” N.Y. Times, February 8, 2016.
 20. State of New York Commission on Judicial Nomination, Candidates Nominated to the New York State Court of Appeals. 21. Yancy Roy, “State Senate OKs Singas for NY’s Top Court After Testy Hearing,” Newsday, June 8, 2021.



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**FOCUS:
TRUSTS AND ESTATES**


Stephanie M. Alberts and
Rebecca L. Stein

As our ability to work and conduct business remotely continues to expand and become more widely accessible, the likelihood that an individual will establish a financial footprint in more than one geographical location will increase. What happens if a non-domiciliary passes away with property located in New York or with significant ties to New York? How will a New York Surrogate's Court accept jurisdiction in the Estate and to what extent? This article is a primer on these issues.

The Surrogate's Court has jurisdiction over the estate of a non-domiciliary who owns real and/or personal property in New York or has a cause of action for wrongful death against a domiciliary of New York.¹ A non-domiciliary is a person whose permanent residence is somewhere other than New York (a "foreign" jurisdiction).

A proceeding relative to the administration of the estate of a non-domiciliary is governed by Article 16 of the Surrogate's Court Procedure Act (the "SCPA"). SCPA §1602 provides for the ancillary probate of a Will. SCPA §1605 provides the circumstances in which New York will entertain applications for the original probate of a Will of a non-domiciliary.

**SCPA §1602:
Ancillary Probate**

When a Will of a non-domiciliary has already been admitted to probate in the decedent's domicile jurisdiction, it can be submitted for ancillary probate in New York pursuant to SCPA §1602.² The only grounds for contesting an application for ancillary probate are that the conditions prescribed in SCPA §1602(1) have not been met or that the Will was denied probate in another jurisdiction.³

The Surrogate's Court's jurisdiction over these types of matters is based on the location of property in New York. A proceeding is required in New York to appoint a fiduciary to handle the administration of New York sourced assets and/or to prosecute

One Decedent, Multiple Jurisdictions: What's Your Next Step In New York?

the cause of action for wrongful death. Most often, an ancillary proceeding is sought when a non-domiciliary decedent owns New York real property. However, an ancillary proceeding may also be commenced if a non-domiciliary decedent owns a vehicle, a boat, or a bank or brokerage account at a financial institution with a principal place of business in New York.

While all Surrogate's Courts in New York have jurisdiction over an ancillary probate proceeding, the proper venue is one "(a) where the non-domiciliary decedent left property, ... (b) where personal property belonging to the non-domiciliary decedent has since his death, disappearance or internment come into and remains unadministered, or (c) of the domicile of the person against whom a non-domiciliary left a cause of action for wrongful death."⁴ If venue may lie in more than one county, for example, if the decedent owned several parcels of real estate in different counties in New York, the court in which the first proceeding is commenced has, and shall retain, jurisdiction for the purposes of all matters related to that decedent.⁵

If a petitioner attempts to commence a second ancillary proceeding, such proceeding will be dismissed. For example, in *Estate of Walsh*, petitioner attempted to seek ancillary probate in Bronx County after initially filing for ancillary probate in Westchester County because Westchester County requested additional documents prior to granting the petition.⁶ In support of its decision to dismiss petitioner's application, the Surrogate of Bronx County stated since petitioner already opted to proceed in Westchester County "it would constitute an inappropriate countenancing of forum shopping" for the Bronx County Surrogate's Court to entertain petitioner's application.⁷

A petition for ancillary probate may be made by "any creditor, public administrator, county treasurer or person interested or to whom letters may issue" under Article 16.⁸ The class of persons entitled to receive ancillary letters testamentary are, in the following order, (1) the person listed in the Will to administer the property located in New York, (2) the person who received letters in the domiciliary jurisdiction or the person designated in the Will to administer property wherever located, (3) the person acting in the domiciliary jurisdiction to administer to the estate, and if none of



such persons are available or qualify, (4) a person entitled to receive letters of administration c.t.a.⁹ The petition for ancillary probate must specify the property located in New York and the value and nature of such assets. The petition must also adequately identify the connection to the county in which the petition is being filed.

Exemplified copies of documents filed in the foreign jurisdiction must be presented with the application. This includes a copy of the Will, the Decree or Order admitting the Will to probate and the Letters issued in the foreign jurisdiction.¹⁰ It may be that the foreign jurisdiction requires different evidence or documents to establish the validity of the Will and who was appointed as fiduciary. For example, many foreign jurisdictions do not have "letters testamentary," but have a functional equivalent, such as a "Certificate of Executorship" which is issued in Germany. The Surrogate's Court may request an affirmation or affidavit from a non-interested party, such as an attorney licensed to practice law in the foreign jurisdiction, explaining the documents submitted or the lack thereof, and/or the general process and foreign statutes for establishing the validity of the Will in the foreign jurisdiction.

The New York State Department of Taxation and Finance ("NYS DTF") is a necessary party to an ancillary probate proceeding and for that reason, a Waiver and Consent must be obtained or the NYSDTF must be cited to complete jurisdiction. The reason for this requirement is that the NYSDTF wants to verify that the decedent was not a New York domiciliary at the time of death and to make sure that any New York State estate tax due on the decedent's assets located in New York is paid. The NYSDTF requests the following documents to issue a Waiver and Consent: documentation relative to the ancillary probate proceeding (i.e., death certificate, copy of the documentation related

to the original probate, and a copy of the proposed ancillary probate petition), a completed New York State Estate Tax Domicile Affidavit (Form ET-141) and Stipulations Reserving Domicile (Form ET-20).¹¹ If the documentation submitted is satisfactory, the NYSDTF will issue a Waiver and Consent to the ancillary probate of the Will.

Upon the issuance of ancillary letters, the fiduciary has the authority to administer and distribute the assets located in New York.

**SCPA §1605:
Original Probate**

There are certain situations where an original probate of the Will of a non-domiciliary may be sought in New York (rather than ancillary probate). SCPA §1605 bestows discretion on the Surrogate's Court to entertain such applications. When considering whether to exercise its discretion under this section and admit the Will of a non-domiciliary to original probate, the Court should consider:

"the nature of New York's contacts with the decedent and [the decedent's] estate, including (1) the location of decedent's assets; (2) the residence of the nominated fiduciaries and beneficiaries; (3) the expense of proving the will in the decedent's domicile; (4) the decedent's request, if any, for New York probate; and (5) the good faith of the proponents."¹²

Another factor routinely considered is whether the law of the decedent's domicile "discriminate[s] against New York fiduciaries named in the Will."¹³

In *Matter of Proios*, the Surrogate of Nassau County admitted the Will of a Colorado resident to original probate because the decedent did not leave any probate assets in Colorado and the cause of action on behalf of the decedent's estate

was situated in New York.¹⁴ In *Matter of Nelson*, the Will of a Pennsylvania domiciliary was admitted to original probate by the Surrogate of New York County because the propounded Will contained a provision which indicated the decedent contemplated New York probate, there was litigation related to the Estate pending in New York, the nominated fiduciaries and attesting witnesses resided in New York and all but one interested party consented to probate in New York.¹⁵

On the other hand, in *Matter of Nevai*, the Surrogate of Westchester County court refused to entertain original probate of the Will of a Florida domiciliary.¹⁶ In support of its decision to deny the application, the Court stated that while the Will nominated two of four fiduciaries that would not qualify to serve in Florida, there were two individuals that were eligible to serve.¹⁷ This fact, coupled with the fact that there was a pending proceeding in Florida, which was in the midst of being litigated, led the Court to conclude that it would be prejudicial to entertain the application for original probate in New York.¹⁸

If, on the other hand, a Will has been granted probate in another jurisdiction, original probate of that Will is not permitted in New York except under limited circumstances,

i.e. “(a) in a case where the court is satisfied that ancillary probate would be unduly expensive, inconvenient or impossible under the circumstances, (b) where the [decedent] has directed in such will that it shall be offered for a probate in this state or (c) where the laws of [the decedent]’s domicile discriminate against domiciliaries of New York either as a beneficiary or a fiduciary.”¹⁹

In summary, the decision whether to admit the Will of a non-domiciliary to original probate in New York is entirely discretionary and fact specific, and this should be taken into account when deciding the best avenue to pursue.

Estate Planning Considerations

While the SCPA permits New York courts to entertain jurisdiction over the estate of a non-domiciliary, these proceedings can prove to be both time consuming and expensive. Therefore, a practitioner representing a non-domiciliary with New York sourced assets (most often real estate) should address whether such New York sourced assets can be structured in a way such that original and/or ancillary probate need not be necessary.

Possible estate planning strategies include, but are not limited to, (1) establishing a revocable trust to hold

New York sourced assets, (2) titling the New York sourced assets such that they pass by operation of law (i.e., joint owners or transfer-on-death designations) and/or (3) creating an entity structure such as a limited liability company to own New York sourced assets. The determination as to which, if any, of these strategies work for must be made by the practitioner, following an evaluation of the client’s assets, wishes and desires.

Conclusion

In summary, proceedings related to the estate of a non-domiciliary of New York can be complex and fact-specific. It is important for trusts and estates practitioners to be well versed in these proceedings and the laws regarding the estate of a non-domiciliary in order to meet the needs of any such client. ⚖️

1. See SCPA §206; see also *In re Estate of Nevai*, 7 Misc. 3d 188, 190 (Sur. Ct., Westchester Co. 2005).
2. See SCPA §1602(1); see also *Matter of Obregon*, 91 N.Y.2d 591, 599 (1998).
3. See SCPA §1602 (2).
4. SCPA §206(1); see *Sheahan v. Rodriguez*, 753 N.Y.S.2d 664 (Sur. Ct., Bronx Co. 2002).
5. See SCPA §206(2).
6. See *Matter of Walsh*, 491 N.Y.S.2d 84 (Sur. Ct., Bronx Co. 1985).
7. *Id.*
8. SCPA §1609.
9. SCPA §1604.
10. See *Matter of Hahnel*, 88 Misc.2d 524, 524-530 (Sur. Ct., New York Co. 1976) (granting ancillary letters on German holographic Will based on Decrees and decisions of German court).

11. See https://www.tax.ny.gov/pdf/current_forms/et/au67.pdf
12. See SCPA 1605(1); see also *In re Estate of Nevai*, 7 Misc. 3d 188, 190 (Sur. Ct., Westchester Co. 2005).
13. See *Matter of Gadway*, 123 A.D.2d 83, 86-87 (3d Dep’t 1987) (granting original probate to Will of Florida domiciliary because decedent had substantial assets in New York, the Will was executed in New York, a majority of beneficiaries resided in New York and Florida law prohibited Petitioner from serving as fiduciary); see also *Matter of Brown*, 107 Misc.2d 970, 971-973 (Sur. Ct., New York Co. 1981).
14. See *Matter of Proios*, 37 Misc. 3d 1230(A), at *3 (Sur. Ct., Nassau Co. 2012); see also *Matter of Goldstein*, 34 A.D.2d 764 (2d Dep’t 1970) (admitting Will of Florida domiciliary to original probate because all assets were located in New York, the Will was drafted and executed in New York, most beneficiaries preferred New York probate and fiduciaries would be disqualified from serving in Florida).
15. See *Matter of Nelson*, 125 Misc.2d 451, 454-455 (Sur. Ct., New York Co. 1984).
16. See *In re Estate of Nevai*, 788 N.Y.S.2d at 845.
17. *Id.*
18. *Id.*
19. SCPA §1605(2).



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Rebecca L. Stein is an associate with the firm in the firm’s Tax, Trusts and Estates Department.

Little Flower Welcomes Our Newest Board Member, Robert A. Abiuso, Esq.!

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**FOCUS:
LABOR AND EMPLOYMENT**



Cynthia A. Augello

It is estimated that approximately 83% of employers, including 99% of Fortune 500 companies, now use some form of automated tool as part of their hiring process, said the Equal Employment Opportunity Commission's chair Charlotte Burrows at a hearing on January 31, 2023, titled "Navigating Employment Discrimination in AI and Automated Systems: A New Civil Rights Frontier," part of a larger agency initiative examining how technology is used to recruit and hire people.¹

Certain AI May Introduce Bias

In October 2021, the EEOC announced it was launching an

Discriminatory Bots? Employers Beware!

initiative to ensure AI (Artificial Intelligence) and other emerging tools used in hiring and other employment decisions comply with federal civil rights laws that the agency enforces. Last year, the EEOC issued guidance concerning the issue of cutting-edge hiring tools and noted their shortcomings.² Resume scanners that prioritize keywords, "virtual assistants" or "chatbots" that filter candidates based on a set of pre-defined requirements, and programs that evaluate a candidate's facial expressions and speech patterns in video interviews can perpetuate bias or create discrimination, the agency found.³

Does AI Discriminate Against Individuals with Disabilities?

Employers have been advised that they should review their artificial intelligence tools to ensure they are not in violation of the Americans with Disabilities Act (ADA), according to the guidance released by the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) in May 2022.^{4,5}



For example, some video interviews analyze an applicant's speech patterns in order to determine their ability to solve problems. A person with a speech impediment might score low and automatically be screened out. Other software is programmed to reject job applicants with gaps in their resume. The bot may automatically turn down a qualified candidate who had to stop working because of treatment for a disability or because they took time off for protected leave such as childbirth.

The EEOC's guidance, "*The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees*," focused on preventing bias against applicants and employees with disabilities.

The guidance outlines issues that employers should consider when utilizing AI to ensure their software tools do not create disadvantages for workers or applicants with disabilities. It focuses on three primary concerns under the ADA:

- That employers should have a process in place to provide reasonable accommodations when using algorithmic decision-making tools. The EEOC provided as an example a situation where a job applicant has limited manual dexterity due to a disability and reports having trouble with a knowledge-based test that requires the use of a manual input device such as a keyboard or trackpad. If the company does not provide an accessible version of the test (e.g., a verbal test) as a reasonable accommodation, assuming such accommodation would not constitute an undue hardship on the employer, then the employer may be in violation of the ADA.

- Workers with disabilities may be screened out from consideration in a job or promotion even if they can do the job with or without a reasonable accommodation unless safeguards are put in place.

- Whether AI or algorithms may result in applicants or employees having to provide information about disabilities or medical conditions which could result in prohibited disability-related inquiries by potential employers.

The DOJ's guidance document, "*Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring*," explains how algorithms and AI can result in disability discrimination in the hiring process. The document issued by the DOJ:

- Offers examples of the types of tools that employers are using in making employment decisions.
- Explains that employers must consider how technological tools could impact individuals with various disabilities.
- Reminds employers of their obligations under the ADA when using algorithmic decision-making tools, including when an employer must provide a reasonable accommodation.
- Provides information for individuals on what to do if they believe they have experienced discrimination by technological tools in the employment context.

AI and Age Discrimination

In addition to disability discrimination, AARP senior advisor Heather Tinsley-Fix said in her testimony on January 31 that older workers may be disadvantaged by AI-based tools in multiple ways.⁶

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Companies that use algorithms to pull data from social media in searching for “ideal candidates” may overlook those who have smaller digital footprints, which often includes older individuals.

AI technologies can also discriminate against age: The EEOC has sued three integrated companies providing English-language tutoring services to students in China under the “iTutorGroup” brand alleging that they programmed their online software to automatically reject more than 200 older applicants.⁷

In 2020, iTutorGroup programmed their application software to automatically reject female applicants aged 55 or older and male applicants aged 60 or older, the EEOC claims. This conduct violates the Age Discrimination in Employment Act, which protects applicants and employees from age bias.⁸

EEOC May Have Issues Discerning Discrimination from Innocent Bot Activity

The EEOC may have difficulty determining what actually is discrimination—or stop it from taking place—when it may be deep inside an algorithm. In a lawsuit filed by the EEOC, a woman who applied for a job with a tutoring company only realized the company had set an age cutoff after she re-applied for the same job and supplied a different date of birth.⁹

The EEOC is considering the most appropriate ways to handle the problem. The panelists during the January 31 meeting included computer scientists, civil rights advocates, and employment attorneys. They agreed that audits are necessary to ensure that the software used by companies avoids intentional or unintentional biases. The issue arose concerning who would conduct the proposed audits. Would it be the EEOC, the companies themselves, or some third party?¹⁰

New York City’s Law on the Use of Automated Employment Decision Tools

Companies with candidates or employees in New York City also should be aware that the city enacted a law, which is scheduled to go into effect April 15, 2023, governing the use of automated decision tools in making hiring and other employment decisions (the “NYC AI Law”).¹¹

The New York City Department of Consumer and Worker Protection (“DCWP”), the agency responsible

for enforcing the law, has proposed rules to clarify certain provisions in the law which are currently in the public hearing and comment process.¹²

Overview of New York City’s Law

The NYC AI Law requires any company that uses an “automated employment decision tool” for candidates or employees in New York City to conduct a yearly “bias audit” of the tool and publish the results on the company’s website. A “bias audit” for these purposes is an impartial evaluation by an independent auditor that must include an assessment of whether the tool has a disparate impact on individuals based on race/ethnicity or sex. The proposed DCWP rules, if adopted, would add details regarding the bias audit, including requirements for calculating the selection rate and the impact ratio for each category.¹⁴

An “automated employment decision tool” means “any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making for making employment decisions that impact natural persons.” It does not include a tool that “does not automate, support, substantially assist or replace discretionary decision-making processes and that does not materially impact natural persons, including, but not limited to, a junk email filter, firewall, antivirus software, calculator, spreadsheet, database, data set, or other compilation of data.”¹⁵

Notice Requirements

The NYC AI law requires employers to provide notice to candidates and employees with specified information regarding the use of such tools. Specifically, employers who use an automated employment decision tool must, for each employee or candidate residing in New York City: (1) notify the employee or candidate of the fact that such tool will be used in connection with the assessment or evaluation of such employee or candidate; (2) notify the employee or candidate of the job qualifications and characteristics that such tool will use in the assessment; and (3) allow the employee or candidate to request an alternative selection process or accommodation.¹⁶

The notice must be provided at least 10 business days prior to the employer’s use of the tool. The DCWP proposed rules detail how the company may furnish the notice to candidates and employees, such as by including the notice in the job posting or mailing or emailing the notice to the individual. Further, upon written request by an employee or candidate, the employer must, within 30 days of the request, make available the type of data collected, the source of the data, and the company’s data retention policy.¹⁷

There are some details that remain fuzzy. Specifically, under the text of the NYC AI Law, it is unclear who is considered a “candidate” entitled to notice. For instance, if an employer uses a program that screens LinkedIn profiles for particular qualifications, it is not clear whether every individual in New York City whose profile was reviewed would be considered a candidate and must receive the notice. Under the DCWP proposed rules a candidate for employment is someone who has actually applied for a specific employment position.

Additionally, the NYC AI Law states that the notices must be provided to an employee or candidate who “resides in the city.”¹⁸ As a result, companies may be required to determine where candidates reside to understand the notice obligations, rather than providing notice only to candidates for job postings located in New York City. The focus on where the candidate resides likely means that employers outside of New York City must still comply with this law for any candidates or employees located in the city.

Penalties for Violations

Employers who violate the NYC AI Law can be liable for up to \$500 for a first violation and each additional violation that occurs on the same day as the first violation. Subsequent violations can result in penalties between \$500 to \$1,500 each. Each day an automated employment decision tool is used in violation of the law is considered a separate violation, and the failure to provide any required notice to an employee or candidate also is considered a separate violation.

What Should Employers Do Next?

Given the varied ways use of AI tools may violate employment laws, employers are advised to discuss with employment counsel the particulars of their situation. In

the meantime, employers should consider the following steps in light of the guidance from the EEOC and to prepare for the enactment of the New York City law, if applicable:

- Review the company’s current practices and use of AI tools to evaluate whether using such tools in making employment decisions could violate the anti-discrimination laws or fall under the purview of the NYC AI Law.
- Review any user interface that candidates are required to use to ensure that it is accessible to persons with disabilities and ensure that the AI tools make clear that reasonable accommodations are available for persons with disabilities and do not impermissibly screen out individuals as a result of their disability.
- If covered by the NYC law, conduct an audit of the use of any AI tools to determine whether such use may create a disparate impact on individuals based on race/ethnicity or sex, and make modifications to address any such disparate impact;
- If covered by the NYC law, prepare the requisite notice about the company’s use of AI tools in employment decisions, and determine how the notice will be provided to applicable candidates and employees; and
- Update data retention policies with a specific focus on the input and output of AI tools used in employment decisions. 🛠️

1. <https://bit.ly/3YjblYf>

2. <https://bit.ly/3YjblYf>

3. *Id.*

4. <https://www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence>

5. <https://www.ada.gov/resources/ai-guidance/>

6. <https://bit.ly/3RG9bFI>

7. <https://bit.ly/3YezCo0>

8. *Id.*

9. <https://www.eeoc.gov/newsroom/eeoc-sues-itutorgroup-age-discrimination>

10. <https://bit.ly/3RG9bFI>

11. <https://on.nyc.gov/3HHXcm8>

12. <https://bit.ly/3Jl1k8i>

13. <https://on.nyc.gov/3HHXcm8>

14. <https://bit.ly/3Jl1k8i>

15. <https://on.nyc.gov/3HHXcm8>

16. *Id.*

17. <https://bit.ly/3Jl1k8i>

18. <https://on.nyc.gov/3HHXcm8>



Cynthia Augello is a Partner with the Warren Law Group handling primarily matters involving defense of employment law litigation and general commercial litigation. She is also the Co-Chair of the NCBA Publications Committee. She can be reached at Cynthia@warren.law.com

NAL PROGRAM CALENDAR

March 8 (HYBRID)

Dean's Hour: Navigation of Electronic Filings Throughout the Appellate Division—2023 Update

Presented by NCBA Corporate Partner

PrintingHouse Press

12:30PM-1:30PM

1 credit in professional practice

Skills credits available for newly admitted attorneys.

March 10 (ZOOM ONLY)

Guardian Ad Litem: Part 36 Certified Training

8:30AM-12:30PM

3.5 credits in professional practice; .5 in ethics

Registration fees: NCBA Member \$150;

Non-Member Attorney \$250

Part 36 training is excluded from the free

CLE offer included with NCBA Membership

March 16 (HYBRID)

Dean's Hour: What's on Tap for New York's Alcohol and Beverage Laws

12:30PM-1:30PM

1 credit in professional practice

Guest speakers: **Omid Zareh, Esq.**, *Nassau Academy of Law Advisory Board*; Weinberg Zareh Malkin Price LLP, New York; **Seth B. Weinberg, Esq.**, Weinberg Zareh Malkin Price LLP, New York

March 22 (HYBRID)

Dean's Hour: Abuse in the Family Lecture Series Part 3—Guardianships

With the NCBA Criminal Court Law and Procedure Committee, NCBA Elder Law, Social Services, and Health Advocacy Committee, and the Nassau County Assigned Counsel Defender Plan, Inc.

12:30PM-1:30PM

1 credit in professional practice.

Skills credits available for newly admitted attorneys.

March 24 (IN PERSON ONLY)

2023 Annual School Law Conference

Sign-in begins 8:00AM; Program 9:00AM-2:30PM

CLE credits TBD

Program will take place at Jacob D. Fuchsberg Touro Law Center, 225 Eastview Drive, Central Islip, NY

Registration Fees: NCBA Member \$75;

Non-Member Attorney \$225;

School Personnel \$225

Purchase orders accepted from school districts.

March 29 (HYBRID)

Dean's Hour: Understanding the Recent Changes to New York's Notary Law

Program sponsored by NCBA Corporate Partner Maximus Title

With the NCBA Real Property Law Committee, NCBA Medical-Legal Committee, NCBA Condemnation Law and Tax Certiorari Committee, and the NCBA Surrogate's Court Estates and Trusts Committee

12:30PM-1:30PM

.5 credits in professional practice; .5 credits in ethics

Skills credits available for newly admitted attorneys.

Guest speaker: **Paul F. Bugoni, Esq.**, Senior Agency Counsel, Stewart Title Insurance Company

April 5 (HYBRID)

Dean's Hour: Abuse in the Family Lecture Series Part 4—Financial Abuse

With the NCBA Criminal Court Law and Procedure Committee, NCBA Elder Law, Social Services, and Health Advocacy Committee, and the Nassau County Assigned Counsel Defender Plan, Inc.

12:30PM-1:30PM

1 credit in professional practice.

Skills credits available for newly admitted attorneys.

EVENING CLE SERIES (IN PERSON ONLY)

HOW TO GET THE KITCHEN SINK INTO EVIDENCE: EVIDENCE FROM OPENINGS TO CLOSINGS AND EVERYTHING IN BETWEEN

Join retired Supreme Court Judge **Arthur M. Diamond** for an interactive practical series that will teach you how to get things into evidence...from voir dire, emails, expert opinions to hearsay.

Program coordinator: **M. Kathryn Meng, Esq.**, Past President, Nassau County Bar Association; First Dean, Nassau Academy of Law

Series moderators: **Rudy Carmenaty, Esq.**, **Cynthia A. Augello, Esq.**, **Michael P. Guerriero, Esq.**, and **Lee Rosenberg, Esq.**

March 9 *Opening the Door; Habit, Examining Witnesses*

March 15 *Impeachment; Opinion Evidence; Business Records*

April 3 *Hearsay, Closings, Demonstrative Evidence, Social Media*

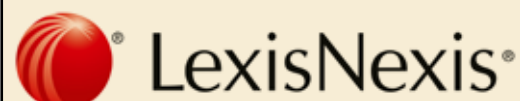
Sign-ins: 4:45PM; Programs: 5:30PM-7:30PM

Each seminar is 2 credits in professional practice.

Skills credits available for newly admitted attorneys.

Series will be recorded and available on demand at a future date.

Series sponsored by NCBA Corporate Partner



NAL PROGRAM CALENDAR

April 20 (HYBRID)

Dean's Hour: Into the Weeds on the Marijuana Industry

With the NCBA Intellectual Property Law Committee

12:30-1:30PM

1 credit in professional practice

Guest speakers: Brooke Erdos Singer, Esq., Davis+Gilbert LLP, New York; **Louis DiLorenzo, Esq.,** Davis+Gilbert LLP, New York

In 2021, New York legalized marijuana for recreational use, becoming the largest state to do so since California legalized marijuana in 2016. However, because marijuana is still a Schedule 1 controlled substance under the U.S. Controlled Substances Act, the sale or distribution of marijuana (as well as aiding and abetting the same) remains a federal felony. This presentation will provide an overview of the federal and state legal framework applicable to marijuana and discuss some hot topics—including advertising and intellectual property issues—impacting the industry today.

April 26 (HYBRID)

Dean's Hour: Abuse in the Family Lecture Series Part 5— Spousal Abuse

With the NCBA Criminal Court Law and Procedure Committee and the NCBA Elder Law, Social Services, and Health Advocacy Committee

12:30PM-1:30PM

1 credit in professional practice.

Skills credits available for newly admitted attorneys.

April 26 (IN PERSON ONLY)

Legal History: Chief Justice John Jay and the Earliest Momentous Cases of the U.S. Supreme Court

With the NCBA Appellate Practice Committee

6:00PM-8:00PM

2 credits in professional practice.

This program examines the nature of the practice of law in the latter 1700s, and the personal, professional, political, and diplomatic, endeavors that led John Jay being the First Chief Justice of the Supreme Court, and the influence he had upon the institution. The program also examines three of the earliest crucial cases handled by the Supreme Court that have been enduring influences on the law we know today.

The subject matter comes from Dillon's published book, *The First Chief Justice: John Jay and the Struggle of a New Nation*.

Guest speaker: Hon. Mark C. Dillon, Associate Justice of the Appellate Division, Second Judicial Department.

May 2 (IN PERSON ONLY)

An Evening with the Guardianship Bench 2023 (RECEPTION AND PROGRAM)

With the NCBA Elder Law, Social Services, and Health Advocacy Committee

5:30PM-6:30PM Sign-in and cocktail hour/buffet dinner (Kosher options available)

6:30PM-8:30PM Program

2 credits in professional practice

Back by popular demand and bigger and better than ever! Jurists from six counties will participate in an hour-long meet and greet, followed by a round-table discussion of guardianship practice and procedure. The program will be held in-person only here at the Nassau County Bar Association and space will surely be limited. Pre-registration required for headcount purposes.

Registration fees:

NCBA Member \$65

Non-Member Attorney \$75

Non-Attorney \$45

May 3 (HYBRID)

Dean's Hour: A Tutorial on Bookkeeping and Reconciling Escrow Accounts

12:30PM-1:45PM

1.5 credits in ethics

Guest speaker: Mitchell T. Borkowsky, Esq., Law Offices of Mitchell T. Borkowsky, Melville; Former Chief Counsel to the NYS Grievance Committee for the Tenth Judicial District of the Supreme Court, Appellate Div., Second Dept.

Attorneys know all too well the consequences of mishandling escrow funds and accounts. Poor or nonexistent bookkeeping practices are frequently the cause and always an aggravating factor. This presentation will provide a tutorial on basic escrow account bookkeeping practices that will help practitioners comply with the rules and avoid grief.

May 9 (IN PERSON ONLY)

Long Island 10th Annual Trusts and Estates Conference

Presented in conjunction with the American Heart Association



Continental breakfast: 8:00AM—8:30AM

Program: 8:30AM-11:00AM

2.0 credits in professional practice

*This is a complimentary program for NCBA Members and non-members.

**FOCUS:
CHARITABLE GIVING**



Charlene J. Thompson

On January 24, the Nassau Academy of Law, under the leadership of Dean Susan Katz Richman, joined with the WE CARE Fund and the Lawyer Assistance Program for an unprecedented collaboration to build upon the Nassau County Bar Association's legacy of giving. Along with a delicious dinner provided through the generosity of CLE sponsors, more than 50 attendees were privy to an information-packed CLE, "Planned Charitable Giving: What You Need to Know." Recognizing there are many ways to give gifts to support individuals and organizations, this program provided an overview of the vehicles for giving to individuals and organizations, tax considerations and

Supporting a Legacy of Giving

planning ideas to help charities, donors, and their advisors.

During this hour and a half session, subject matter experts Stephanie M. Alberts, Esq., of Forchelli Deegan Terrana LLP, Christina Lamm, Esq. of Makofsky Law Group, P.C., and NCBA Corporate Partner Jesse Giordano of Opal Wealth Management, covered topics including: (1) understanding targeted giving; (2) the pros and cons of gifting through a trust; (3) donor advised funds; (4) private foundations; (5) gifts from retirement plans; and (6) other types of gifts that pass upon death. Sample documents and testamentary language were also provided. If you missed out on the live CLE, be sure to check out the recording of this wealth of knowledge.

This CLE was jointly developed with the intention of providing invaluable information, while promoting and supporting NCBA's philanthropic endeavors—the WE CARE Fund, including the WE CARE Endowment, and the Lawyer Assistance Program. The WE CARE Fund is the nationally-recognized charitable arm of the Nassau County Bar Association, part of the Nassau Bar Foundation, Inc. WE CARE hosts various fundraising events throughout the year and distributes the

funds raised through charitable grants to improve the quality of life for low-income families, at-risk children, the elderly, and others in need throughout Nassau County. The Nassau County Bar Association generously absorbs all administrative costs associated with WE CARE, meaning 100% of the net proceeds go directly back to the community. With the financial support and personal efforts of so many, WE CARE has been able to serve the community in a myriad of ways providing grants totaling in excess of \$5,000,000 over its thirty-four (34) year history.

The WE CARE Endowment was established to raise capital for the health and longevity of the charity. The Endowment allows WE CARE to diversify its income, become better prepared to weather economic downturn, better support planned giving, and creates a solid foundation for WE CARE's future.

The Nassau County Bar Association Lawyer Assistance Program (LAP) provides education and confidential assistance to attorneys, judges, and law students (and their immediate families) who are struggling with drug and/or alcohol abuse, stress, depression,

or other mental health problems including gambling, eating disorders, family issues, unexpected/sudden illnesses, and death. LAP assists in the prevention, early identification, and intervention when challenges arise that affect professional conduct and quality of life. The WE CARE Fund provides annual support for the Lawyer Assistance Program.

Legacy gifts can be made during one's lifetime or as part of an estate plan. Legacy gifts may be earmarked to support specific programs within an organization. Please consider the WE CARE Fund in your gifting plans. 🗡️



Charlene J. Thompson is a 25+ year member of the Nassau County Bar Association, having served in various leadership roles. She currently serves on the Advisory Boards

of both the WE CARE Fund and the Nassau Academy of Law. She is Vice-Chair of the Endowment Committee under the WE CARE Fund. Charlene is Of Counsel to the Freeport-based law firm of Comrie & Associates, PLLC and is also an Adjunct Professor the Maurice A. Dean School of Law at Hofstra University.

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- ▶ Born in Queens and Raised in Port Jefferson
- ▶ Attended Stony Brook for Undergraduate Studies
- ▶ Favorite Places on Long Island: Colosseo Pizza (Port Jeff) & Cappelletti's (Sag Harbor)

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FOCUS: LEGAL RESEARCH



Ian Bergström

Legal professionals are expected to perform skilled legal research. The evolution of electronic legal research is intended to enhance the efficiency and effectiveness of research. The judiciary chastises the litigation strategy of personally attacking litigants and attorneys, rather than performing skilled legal research. Litigants and attorneys are the vehicle to advocate their respective legal positions.

The judiciary condemns the notion that court staff are the appropriate individuals tasked with legal research and advocacy furthering the objectives of litigants. Although legal research expenses can be costly, the expenses are potentially recoverable by means of attorney fee applications. New York State courts hold that legal research expenses are not recoverable regarding attorney fee applications pursuant to CPLR §5003-a(c).

An Overview of Legal Research

Historically, legal research is considered one of the fundamental skills in “practic[ing] ... law.”¹ Legal research furthers “an attorney’s preparation of a case.”² During the 20th Century, the legal profession transitioned to “[c]omputerized legal research” enabling attorneys to access research “database[s],” thereby reviewing legal materials intended to lessen the reliance of physical “law libraries” and materials.³ Further, the concept of computerized legal research is intended to enhance the “efficien[cy]” of legal research.⁴

The Westlaw and LexisNexis databases are considered the primary legal research mechanisms throughout America.⁵ Law students and attorneys utilize Westlaw and LexisNexis to accomplish legal research tasks.⁶ The “Shepardizing” feature is declared to be “fundamental to legal research,” and legal professionals are expected to cite sound authority.⁷ The professional standard is “[c]ompetent legal research ...”⁸ Appellate attorneys have the professional obligation to “thoroughly research the law[.]”⁹ Attorneys may be liable for legal malpractice because

Precedent—The Concept of Legal Research

of their inability to perform competent research.¹⁰

The Gravity of Legal Research

Courts disapprove of litigants that do not “practice greater diligence in ... legal research” regarding the lack of citing governing and/or persuasive “precedent ...”¹¹ Attorneys are expected to cite analogous authority.¹² The judiciary disapproves of litigants presenting unacceptable “legal research and writing” work product.¹³ Attorneys should be cautious about citing inaccurate propositions viewed as “misrepresentation[s].”¹⁴ Although the judiciary may exercise restraint, the litigation tactic of misleading the judiciary about the applicable legal standards warrants the imposition of “sanctions.”¹⁵

Supreme Court of Queens County condemns the litigation tactic of personal “spear-throwing,” rather than performing “real legal research” facilitating the court to adjudicate the legal issues.¹⁶ Attorneys that believe their task of performing legal research can be shifted to the presiding judge and principal law secretaries are mistaken.¹⁷ Litigants and attorneys are charged with performing legal research and construction of legal arguments to potentially acquire relief.¹⁸ For instance, Supreme Court of New York County did not have the skill set and/or patience to perform “independent legal research” adjudicating the dispute involving Moroccan nationals because the “Moroccan law” was drafted “in Arabic” and the parties disputed the “meaning” of the law(s).¹⁹

Attorney Fee Applications

Legal research is financially compensable as “a legal service ... to ... client[s].”²⁰ Legal research expenses are “recoverable solely as counsel fees,” compared to “taxable cost[s].”²¹ To clarify, United States District Court for the Southern District of New York declared that legal research fees are compensable “where it is clear that [the attorney] regularly charge[s] paying clients separately” for the legal research services.²² Legal research expenses are potentially recoverable by means of “an attorneys’ fee application” permissible under statutory authority and/or contractual agreements.²³

The United States District Court for the Southern District of New York upholds recovery of legal research expenses within the confines of attorney fee awards.²⁴ Attorney fees are not “recover[able]” if the request is more than “the agreed upon contingent fee for legal research[.]” United States District Court for the Eastern District advises the



movant to assert clarity regarding the nature of legal research performed, timeframe(s) of the legal research performed, and explanation as to whether the legal research expense(s) should be recoverable as an attorney fee award.²⁶

In *Muhammad v. Garcia*, the parties settled the personal injury lawsuit regarding the rear-end car accident at issue.²⁷ Plaintiffs asserted that the defendant did not timely complete the necessary paperwork and remit payment.²⁸ Consequently, plaintiffs filed the order to show cause demanding, inter alia, payment of attorney fees incurred to perform legal research enforcing the settlement agreement.²⁹ Supreme Court of Bronx County denied the request for repayment of legal research expenses regarding the attorney fee application pursuant to CPLR §5003-a(c).³⁰ Notably, Second Department reinforces the proposition that attorney fees are not recoverable pursuant to CPLR §5003-a(c).³¹

1. See generally *Matter of Fant (Rosa-Myers)*, 63 Misc. 3d 251, 254 (Sur. Ct., Queens County 2019); see generally *Palmer v. Rice*, 2005 U.S. Dist. LEXIS 13677, No.: 76-1439 (HHK) (JMF), *40 (Dist. Ct., D.C. 2005); see generally *Elting v. Shawe (In re Transperfect Global, Inc.)*, 2021 Del. Chancery LEXIS 86, No.: 9700-CB, No.: 10449-CB, *81 (Ct. Chancery, Delaware 2021); see generally *Doe v. Ward*, 282 F. Supp. 2d 323, 334 (W.D., Pennsylvania 2003).
2. See *Friedlander v. Nims*, 583 F. Supp. 1087, 1089 (N.D. Atlanta Div., Georgia 1984).
3. See generally *Haroco, Inc. v. American National Bank & Trust, Co.*, 38 F. 3d 1429, 1440 (7th Cir. 1994); see generally *Frazin v. Hanyes & Boone, LLP*, 2017 Bankr. LEXIS 4378, *123-4, No.: 02-32351-BJH-13, 08-3021-BJH (Bankr. N.D. Dallas Div., Texas 2017).
4. See generally *In re UnitedHealth Group Shareholder Derivative Litigation*, 631 F. 3d 913, 919 (8th Cir. 2011); see generally *Arbor Hill Concerned Citizens Neighborhood Association v. County of Albany*, 369 F. 3d 91, 98 (2d Cir. 2004); see generally *Amerisource Corp. v. RX U.S.A. International, Inc.*, 2010 U.S. Dist. LEXIS 52424, *24, No.: 02-CV-2514 (E.D.N.Y. 2010) (J. Azrack) (see footnote number nine (9)).
5. See *Chinn v. Jenkins*, 2018 U.S. Dist. LEXIS 8548, No.: 02-CV-512, *11 (S.D. West. Div., Ohio 2018).
6. See *id.*
7. See *Meadowbrook, LLC v. Flower*, 959 P. 2d 115, 120 (Sup. Ct., Utah 1998) (see footnote number eleven (11)).
8. See *Bonilla v. State*, 62 So. 3d 1233, 1234 (5th Dist. Ct. App., Florida 2011) (see footnote number one (1)).
9. See *McCoy v. Court of Appeals*, District 1, 486 U.S. 429, 438 (1988); see also *Giovanni S. v. Jasmín A.*, 89 A.D.3d 252, 256 (2d Dept. 2011).
10. See *Shopsin v. Siben & Siben*, 268 A.D.2d 578 (2d Dept. 2000); see also *McCoy v. Tepper*, 261 A.D.2d 592, 593 (2d Dept. 1999).
11. See *Boone v. Allaben*, (2022 U.S. Dist. LEXIS 74899, No.: C21-1562 (JLR), *1 (W.D. Washington 2022) (see footnote number three (3)).
12. See *Tuckett v. Wavecrest Management Team, LTD.*, 55 Misc. 3d 1218(A) (Sup. Ct., Queens County 2017) (J. Modica).
13. See *Frazier v. UPS*, 2005 U.S. Dist. LEXIS 13894, No.: 02-CV-6509 (OWW) (DLB) (E.D., California 2005) (see footnote number one (1)).
14. See generally *Vinova v. Henry County Board of Education*, 2015 U.S. Dist. LEXIS 159492, No.: 15-37-GFVT (E.D. Central Div., Kentucky 2015) (see footnote number four (4)).
15. See *Davis v. Peoria County*, 2009 U.S. Dist. LEXIS 94107, No.: 08-CV-1118, *61 (C.D. Peoria Div., Illinois 2009).
16. See *Tuckett*, 55 Misc. 3d 1218(A).
17. *Id.*; *Gomez v. Home Depot U.S.A., Inc.*, 2016 Ill. App. (1st) 151229-U, No.: 1-15-1229 (App. Ct. 1st Dist. 2nd Div., Illinois 2016); *Halliburton v. Liberty County School District*, 2018 U.S. Dist. LEXIS 54036, No.: 414-CV-179, *6 (S.D. Savannah Div., Georgia 2018); *Moss v. Panama Yellow Taxi, Inc.*, 58 Misc. 3d 1231(A) (Sup. Ct., Queens County 2018) (J. Modica); *Dykes v. Lane Trucking*, 652 So. 2d 248, 251 (Sup. Ct., Alabama 1994); *Sanchez v. Miller*, 792 F. 2d 694, 703 (Ct. App., 7th Cir. 1986).
18. *Tuckett*, 55 Misc. 3d 1218(A); *Gomez*, 2016 Ill. App. (1st) 151229-U, No.: 1-15-1229; *Halliburton*, 2018 U.S. Dist. LEXIS 54036, No.: 414-CV-179, *6.
19. See *Kotbi v. Najjar*, 2015 N.Y. Slip. Op. 30487(U), *4-5, Index No.: 153147/2013 (Sup. Ct., N.Y. County 2015) (J. Singh).
20. See generally *id.*; see generally *Bobrow Palumbo Sales, Inc. v. Broan-Nutone, LLC*, 549 F. Supp. 2d 274, 286 (E.D.N.Y. 2008); see generally *Fernandez v. North Shore Orthopedic Surgery & Sports Medicine, P.C.*, 2000 U.S. Dist. LEXIS 5285, *26, No.: 96-CV-4489 (E.D.N.Y. 2000).
21. See generally *Village of Port Chester to Acquire Title to Certain Real Property*, 30 Misc. 3d 1210(A) (Sup. Ct., Westchester County 2011) (J. La Cava); see generally *Marisol A. v. Giuliani*, 111 F. Supp. 2d 381, 402 (S.D.N.Y. 2000); see generally *U.S. ex rel. Evergreen Pipeline Construction Co. v. Merritt Meridian Construction Corp.*, 95 F. 3d 153, 173 (2d Cir. 1996); see generally *County of Albany*, 369 F. 3d at 98.
22. See generally *Rahman v. Smith & Wollensky Restaurant Group, Inc.*, 2009 U.S. Dist. LEXIS 3510, *1, 06-CV-6198 (LAK) (JCF) (S.D.N.Y. 2009).
23. See generally *DiBella v. Hopkins*, 407 F. Supp. 2d 537, 539 (S.D.N.Y. 2005); see generally *Frazin v. Hanyes & Boone, LLP (In re Frazin)*, 2017 Bankr. LEXIS 4378, *124, Nos. 02-32351-BJH-13, 08-3021-BJH (Bankr. N.D., Texas 2017).
24. See generally *Patsy's Brand, Inc. v. I.O.B. Realty, Inc.*, 2022 U.S. Dist. LEXIS 64255, *18, No.: 99-CV-10175 (KMW) (S.D.N.Y. 2022); see generally *Inter-American Dev. Bank v. Senti S.A.*, 2016 U.S. Dist. LEXIS 19327, *1, 15-CV-4063 (PAE) (S.D.N.Y. 2016); see generally *Banco Cent. Del Para. v. Para. Humanitarian Foundation, Inc.*, 2007 U.S. Dist. LEXIS 17366, *9 (S.D.N.Y. 2007).
25. See *In re Estate of Sykes*, 161 Misc. 2d 978, 979 (Sur. Ct., Bronx County 1994) (J. Holzman).
26. See *Fernandez*, 2000 U.S. Dist. LEXIS 5285, *27-8, No.: 96-CV-4489.
27. See *Muhammad v. Garcia*, 34 Misc. 3d 1238(A) (Sup. Ct., Bronx County 2012).
28. See *id.*
29. See *id.*
30. See *id.* (citing CPLR §5003-a(e)).
31. See *Liss v. Brigham Park Coop. Apartments Sec. No. 3, Inc.*, 264 A.D.2d 717, 718 (2d Dept. 1999) (citing CPLR §5003-a(e)).



Ian Bergström is a civil litigation attorney assigned to the litigation section with the Office of the Nassau County Attorney. Ian Bergström is also a Sustaining Member of the Nassau County Bar Association.

**FOCUS:
HIGHLIGHTS OF THE
NYSBA ANNUAL MEETING**



Michael A. Markowitz

The Executive Committee and House of Delegates of the New York State Bar Association (NYSBA) met in New York City for its annual meeting held on January 19 and 20, 2023. The following are highlights from its meeting.

CPLR Amendments

The NYSBA Executive Committee approved a report by the Committee on Civil Practice Law and Rules (CPLR Committee) to propose changes to several laws and rules concerning civil judicial proceedings. The first proposed amendment is for the use of remote audio-visual technological means at a hearing or trial.

NYSBA Highlights

Presently, CPLR 4013 states, “Upon stipulation of the parties, the judge who is to preside at the trial of an issue may direct trial in whole or in part at a specified place other than the courthouse.” The proposed amendment would add the following language:

(b) *Trial or evidentiary hearing by audio-visual technological means.* Upon stipulation of the parties, the court may direct that a trial or evidentiary hearing be held in whole or in part using remote audio-visual technological means.

(c) *Use of audio-visual technological means over a party’s objection.* If a party withholds consent to the use of remote audio-visual technological means for the trial of an issue, the court, upon the request of any party, may exercise discretion to direct that a jury trial proceed in part, or a non-jury trial or evidentiary hearing proceed in whole or in part, with the use of remote audio-visual technological means over the party’s objection, provided that:



(1) circumstances prevent all or part of the trial or evidentiary hearing from being timely conducted in person, and the witness is unable to attend and testify in person because of difficulty related to significant distance from the place of trial, age, sickness, infirmity, or imprisonment, and

(2) either consent is withheld unreasonably by the party, or there would be undue prejudice or hardship to another party or witness.

(d) *Conduct of trial or evidentiary hearing by remote audio-visual means:*

(1) A trial or evidentiary hearing held in whole or in part by remote audio-visual technological means must be conducted so as to permit the participants to see and hear each other and to assure public access to the proceedings in compliance with section 4 of the Judiciary Law. The court may, in its discretion, exclude prospective witnesses who are not parties from the courtroom and from access to the proceedings by remote audio visual technological means.

(2) An oath or affirmation may be administered to a witness using remote audio-visual technological means by a person authorized by subdivision (a) of section 2309 of this act, and the oath or affirmation shall be deemed to be taken, and the testimony shall be deemed to be given, in the place where the action is pending.

(3) the chief administrator of the courts may adopt rules further regulating the conduct of the trial

or evidentiary hearing by remote audio-visual technological means. The court may provide additional directions in a particular trial consistent with the rules of the chief administrator.

The CPLR committee explained that the proposed amendment is an exception to the general rule that trials be held in person. The proposed CPLR revision contemplates that whenever the court uses its newfound authority to direct a remote proceeding over a party’s objection, it must set forth its reasons on the record or in a written order, a provision included to facilitate an informed appellate review.

The Executive Committee also approved the CPLR Committee’s recommendation for a new law concerning when writings, objects, or other materials used to refresh the witness’ recollection while testifying or before testifying must be produced to an adverse party.

The proposed statute (CPLR 4551) will have three subsections. Subdivision (a) will restate current New York law that an adverse party is entitled to inspect the writing, object, or other material used to refresh the witnesses’ recollection while testifying. Subsection (b) will set forth the factors that the court shall consider in determining whether an adverse party is entitled to inspect the writing, object, or other materials used to refresh the witnesses’ recollection before the witness testifies. Subdivision (c) will set forth the terms of the production and use of the writing, object, or other material required to be produced.

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Of note is proposed language concerning use of privileged communication to refresh witness recollection. Subdivision (b) will include the following language, “the privileged or protected nature of the material sought to be produced shall not bar production, but the court may consider any applicable privilege or protection as a factor in that determination.”

Finally, the Executive Committee approved the CPLR Committee’s recommendation to amend Uniform Rule 202.12 (Preliminary Conference) to require attorneys to (i) exchange information and confer with each other about organizing the case before the preliminary conference with the Court, (2) encouraging early and active judicial intervention to assist litigants to focus on the principal factual and legal issues in dispute, and (3) to consider alternative dispute resolution.

The proposed rule will have language requiring use of email, necessitating attorneys to meet and confer before the conference, directing a virtual conference if the attorneys are unable to sign and return a preliminary conference stipulation, and allowing any party to request additional conferences as are deemed appropriate.

LGBTQ+ Bench Cards

The NYSBA House of Delegates approved a resolution by the LGBTQ+ Committee to approve New York’s Unified Court System’s Bench Card to help judges use LGBTQ+ inclusive language and pronouns. The bench card explains how a judge is to use gender neutral pronouns, defines terms such as LGBTQ+ and Transgender, gives examples of inclusive language to use in court and words to avoid such as hermaphrodite, transvestite, and tranny.

Constitutional Amendment

In April 2022, the NYSBA committee on the New York State Constitution reviewed and made recommendations concerning the procedure by which a lieutenant governor could be appointed or otherwise selected upon a vacancy of the position.

A constitutional issue arose when Kathy Hochul became Governor upon Andrew Cuomo’s resignation. To fill the vacancy, Governor Hochul unilaterally appointed Brian Benjamin as the new Lieutenant-Governor. Upon being indicted for a crime, Brian Benjamin resigned eight months after his appointment. Governor Hochul then appointed Anthony Delgado who became the Lieutenant-Governor. From this

fiasco, the NYSBA recognized that a lieutenant-governor may ascend to the governorship without an election or approval by the Legislature.

The NYSBA House of Delegates approved and recommended amending the New York State Constitution. Upon vacancy of the office of Lieutenant-Governor, the Governor would have 60 days to nominate a successor. The Legislature would then have 60 days to confirm the appointment. If the Governor fails to nominate within 60 days, the Lieutenant-Governor’s vacancy is filled by the Legislature.

If the Legislature fails to vote within 60 days, the Governor’s nomination becomes the Lieutenant-Governor. If the Legislature votes against confirmation, the Governor will have 30 days to submit a new nominee that must be approved by the Legislature in 30 days.

Racism, Social Equity, and the Law

The NYSBA House of Delegates approved an extensive series of recommendations submitted by the Task Force on Racism, Social Equity, and the Law. Recommendations included changing the rules for jury service and selection that would increase the number of people of color, having the NYS Department of Health require owners of multifamily buildings to annually sample drinking water for lead, and requiring the NYS Department of State to change appraiser recruitment and training to increase diversity and eliminate devaluing real estate based on the racial composition of the neighborhood.

Future Reports and Recommendations

The House of Delegates received information concerning various task forces and upcoming reports and recommendations. Reports and information included a presentation given by the task force on Mental Health and Trauma Informed Representation and the task force on Emerging Digital Finance and Currency.

The next House of Delegates meeting is scheduled for April 1, 2023, to be held in Albany, New York. ⚖️



Michael A. Markowitz is a Vice President for the New York State Bar Association representing the 10th Judicial District, covering Nassau and Suffolk Counties.



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2022 - 2023

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**FOCUS:
LAW AND AMERICAN
CULTURE**



Rudy Carmenaty

The large courtroom set where More is sentenced to death was conceived by us as a kind of bullring, to convey the feeling that the final outcome had been decided long before the victim entered through a dark, narrow passage.

Fred Zinnemann

Fred Zinnemann's adaption of Robert Bolt's *A Man For All Seasons* (1966) is a perfectly realized film. It is meticulously directed from a script that manages to improve upon its original source material. The story concerns one man's commitment to his conscience, juxtaposing sincere religious belief against the power of the state.

His Majesty's Good Servant

Bolt, a former schoolteacher, originally wrote *A Man For All Seasons* as a radio drama.¹ He expanded the text for the stage and then six years later recrafted his play for the screen. Bolt was a thoughtful, dedicated writer, who, though a non-believer, authored a compelling rendering of More's Catholic faith in sixteenth-century England.

Paul Scofield portrays Sir Thomas More, reprising the role he enacted on both the London stage and Broadway. The brilliant cast assembled around him consists of Wendy Hiller as his wife Lady Alice, Susannah York as his daughter Meg, Robert Shaw as Henry VIII, John Hurt as Richard Rich, Leo McKern as Cromwell, and Orson Welles in a cameo as Cardinal Wolsey.

Much of the film's majesty is the director's handiwork. Fred Zinnemann was born to a Jewish family in Austria and both his parents perished in the Holocaust.² He had once studied law at the University of Vienna.³ In Scofield's estimation, "*Fred Zinnemann was a jewel. A calm, rational man, quietly authoritative and in perfect control of the myriad aspects of filmmaking.*"⁴

The unifying thread that runs throughout his oeuvre is that of an individual undergoing a sublime ordeal. An ordeal that will present the ultimate moral or spiritual trial. As Zinnemann once noted, "*I have always been concerned with the problems of people who struggle for their self-respect as human beings.*"⁵

Zinnemann was as honorable and as courageous as the characters he presented on the screen. His films, regardless of genre, were highly literate, uplifting efforts presented in a refined, graceful manner. Zinnemann sought to inspire as well as to entertain. His name may not be widely remembered, but his movies are treasured the world over.⁶

The world must construe according to its wits; this court must construe according to the law.

Sir Thomas More (Paul Scofield),
in *A Man For All Seasons*

Thomas More, evidenced by his integrity and intellect, was one of the truly noteworthy figures of British history. First and foremost, he was a brilliant lawyer and a learned scholar. More, by any measure, was a great man. He was also a good man. A rare thing, then as now. Four centuries later, his words and deeds still resonate.

Henry VIII named More Lord Chancellor of England. This triumph was the culmination of his public career, a well-deserved recognition for his service to the nation. More's downfall was precipitated by the King's desire to divorce his Queen, Catherine of Aragon. Henry, bereft of a son, wanted to marry his mistress, Anne Boleyn.

This was not a mere mid-life crisis. Henry desperately needed to have a male heir to continue the dynasty. His marriage to Catherine had produced a daughter, Mary Tudor who would later reign as Mary I. The marriage to Anne Boleyn would also produce a daughter, Elizabeth I, whose name is emblematic of an entire epoch in English History—the Elizabethan Era.

When it came to the maintenance of the realm, the personal was political. The divorce from Catherine would in fact result in a contest between church and state. The spark which Henry lit quickly escalated into an epic conflict across the whole of Europe. Henry was unequivocally challenging the authority of the Pope in Rome.

More was a devout Catholic. An authority on Cannon Law, for him any break with the Vatican would prove a

step too far. When the King declared himself the Supreme Head of the Church in England, More rightfully resigned his post as chancellor. But, in so doing, he turned his back on everything the world values in order to remain steadfast to his religion.

More turned to silence to keep at bay those who would do him harm. He retreated completely from public life. This was a well-thought out, highly formulistic legal strategy. His ingenious defense quite literally called for him to maintain his own counsel, so he could not be charged with treason against the crown. It would turn out to be a moral act with mortal consequences.

Yes, I'd give the Devil benefit of law, for my own safety's sake.

Sir Thomas More (Paul Scofield),
in *A Man For All Seasons*

Henry uses every means at his disposal to sway More to come around to his side. The King wanted More's ascent. Being above reproach, More's acquiescence would validate the King's actions in the public's mind. For Henry had the power, if not the right, to cast his wife aside. By withholding his consent, More undercut the King's position.

More's defiance could not go unanswered. All kinds of pressure was applied. From the beginning, More is keenly aware that his own life ultimately hangs in the balance. More plays his hand with considerable skill and wit. Step by step, he manages to keep his head while losing everything he possesses: the prestige of his high office, his lands and wealth, his very liberty.

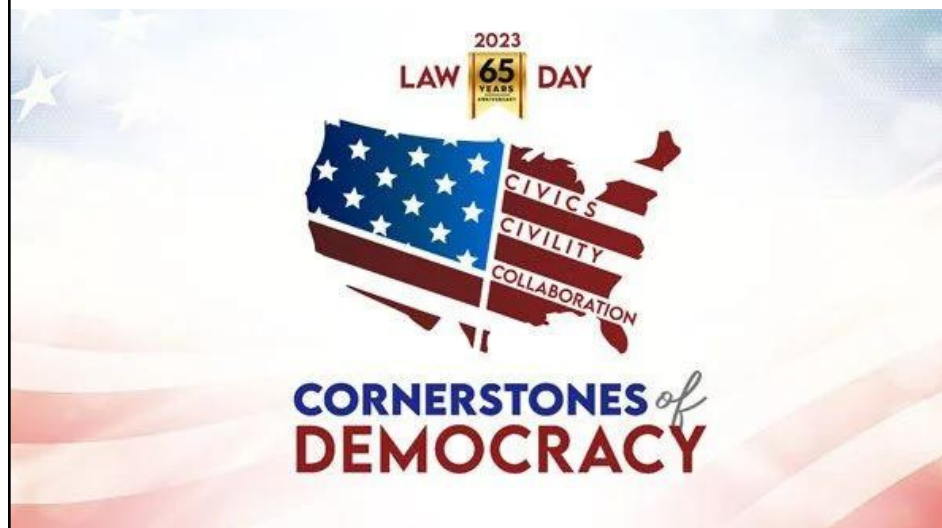
More is taken to the Tower of London. At trial he is brought down by the perjured testimony of a former acolyte Richard Rich. Rich has been named Attorney General for Wales in exchange for his lying under oath. On cross examination, More's revealing rejoinder to Rich's prevarications has reverberated through the centuries:

*For Wales? Why Richard, it profit a man nothing to give his soul for the whole world ... But for Wales!*⁷

More's tactic of silence was doomed from the start. His silence is universally construed as his disapproval of the King's marriage. More argues to the contrary, citing the Latin legal maxim: *Qui tacet consentire*—silence gives consent. Still, he will not swear an oath that recognizes the legitimacy of the King's newly minted ecumenical title or acknowledges the validity of the marriage to Ann Boleyn.

The court's verdict is thus a

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Additional details to follow.



foregone conclusion. Cromwell, acting as prosecutor, insists the jury deliberate in public so as to intimidate them even further. With nothing left to lose, More finally breaks his silence. He affirms that Henry is in violation, not only of Cannon Law, but of his own coronation oath. More's legal stance is rooted in Magna Carta and rights long granted to the Catholic Church.

The courtroom is transformed into a confessional as More, once sentence is passed, finally is free to speak his mind. Condemned to death, he goes to the gallows at peace and with dignity. As commendable as his legal arguments are, it is More's moral posture which is unassailable. Throughout his ordeal,

More remains unsoiled, uncompromised, and quietly triumphant.

I am commanded by the King to be brief, and since I am the king's obedient subject; brief I will be. I die His Majesty's good servant, but God's first.

Sir Thomas More (Paul Scofield),
in *A Man For All Seasons*

The real-life Thomas More was "a man of an angel's wit and singular learning ... a man of marvelous mirth and pastimes, and sometime of as sad gravity. A man for all seasons."⁸ In 1935, four hundred years after his execution, More was canonized by the Roman Catholic Church. He

is recognized as the Patron Saint of lawyers, public servants, and statesmen.

Scofield's characterization captures More's temporal and spiritual life in a performance that earned him a Tony for the play and an Oscar for the film. The film received a total of six Academy Awards, including for Best Picture, for Bolt's script, and for Zinnemann's direction. Zinnemann and Scofield were similarly recognized by the New York Film Critics Circle.

In spite of its sixteenth century setting, the film spoke to contemporary audiences. Not long after its release, viewers drew parallels between the character of More and Minnesota Senator Eugene McCarthy. McCarthy, a devout Catholic himself, stood in opposition to President Lyndon Johnson's Vietnam War policies.⁹ For defying Johnson, McCarthy was denied the presidential nomination at the 1968 convention and within two years was out of political office altogether.

A Man For All Seasons serves as a testament to one person's moral courage and his adherence to his Catholic faith. It evocatively asks the audience what price is an individual willing to pay when principle is at

stake? This telling of the trials of Sir Thomas More offers a moving depiction of devotion and virtue by a man of character. That is why the film is to be savored and the artistry of Robert Bolt, Fred Zinnemann, and Paul Scofield to be treasured. 🏛️

1. *A Man For All Seasons* at <https://www.encyclopedia.com/arts>.
2. Fred Zinnemann, *A Life in the Movies*, 55 (1st Ed. 1992).
3. *A Man For All Seasons*, 8 (Columbia Pictures 1966).
4. Gary O'Connor, *Paul Scofield An Actor for All Seasons*, 198 (1st Ed. 2002).
5. *A Man For All Seasons*, *supra*, 8.
6. Among his movies were *High Noon* (1952), *From Here to Eternity* (1953), *The Nun's Story* (1959), *The Day of the Jackal* (1973); his films received twenty-five Oscars out of sixty-five nominations, with Zimmermann himself receiving five statuettes during his career.
7. Robert Bolt, *A Man For All Seasons*, 158 (1st Ed. 1960).
8. Robert Whittinton quoted in *A Man For All Seasons*, *supra*, 4.
9. Douglas Brode, *The Films of the Sixties*, 172 (1st Ed. 1980).



Rudy Carmenaty is the Deputy Commissioner of the Nassau County Department of Social Services. He also serves as Co-Chair of the NCBA Publications Committee and Chair of the Diversity and Inclusion Committee.

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2023 Nassau County Judicial Induction Ceremonies

January 19 Judicial Induction Ceremony



(L—R) Deputy Chief Administrative Judge for Courts Outside New York City, Hon. Norman St. George; Supreme Court Justice Fran Ricigliano; Supreme Court Justice Lisa Cairo; County Court Justice Rhonda Fischer; Family Court Justice Sylvia Cabana; Supreme Court Justice Stacy Bennett; NCBA President Rosalia Baiamonte; Nassau County Administrative Judge, Hon. Vito M. DeStefano.

January 25 Judicial Induction Ceremony



(L—R) District Court Justice Norman A. Sammut; District Court Justice Joseph Nocella Jr.; Nassau County Administrative Judge, Vito M. DeStefano; NCBA President Rosalia Baiamonte; District Court Justice Geoffrey N. Prime; District Court Justice Arie D. Schulman.

Photos by: Hector Herrera

January 26 Judicial Induction Ceremony



(L—R) District Court Justice Michael A. Montesano; Glen Cove City Court Justice Joseph Capobianco; Supervising Judge of Nassau County Matrimonial Center, Hon. Jeffrey A. Goodstein; NCBA President Rosalia Baiamonte; Nassau County Administrative Judge, Hon. Vito M. DeStefano; District Court Justice Jaclene Agazarian; and District Court Justice Marie F. McCormack.

NCBA Committee Meeting Calendar
March 7, 2023–
April 6, 2023

Questions? Contact Stephanie Pagano at (516) 747-4070 or spagano@nassaubar.org. Please Note: Committee meetings are for NCBA Members. Dates and times are subject to change. Check www.nassaubar.org for updated information.

TUESDAY, MARCH 7

Women in the Law
 12:30 PM
 Melissa P. Corradol/
 Ariel E. Ronneburger

WEDNESDAY, MARCH 8

Association Membership
 12:30 PM
 Jennifer L. Koo

WEDNESDAY, MARCH 8

Medical Legal
 12:30 PM
 Christopher J. DelliCarpini

WEDNESDAY, MARCH 8

Surrogates Court Estates & Trusts
 5:30 PM
 Stephanie M. Alberts/Michael Calcagni

THURSDAY, MARCH 9

Access to Justice
 12:30 PM
 Daniel W. Russo/Hon. Conrad D. Singer

TUESDAY, MARCH 14

General, Solo & Small Law
 Practice Management
 12:30 PM
 Scott J. Limmer/Oscar Michelen

TUESDAY, MARCH 14

Labor & Employment Law
 12:30 PM
 Michael H. Masri

WEDNESDAY, MARCH 15

Construction Law
 12:30 PM
 Anthony P. DeCapua

WEDNESDAY, MARCH 15

Family Court Law & Procedure
 12:30 PM
 James J. Graham

WEDNESDAY, MARCH 15

Ethics
 5:30 PM
 Avigael C. Fyman

THURSDAY, MARCH 16

Government Relations
 12:30 PM
 Nicole M. Epstein

THURSDAY, MARCH 16

Diversity & Inclusion
 6:00 PM
 Rudolph Carmenaty

TUESDAY, MARCH 21

Appellate Practice
 12:30 PM
 Amy E. Abbandonelo/
 Melissa A. Danowski

TUESDAY, MARCH 21

Plaintiff's Personal Injury
 12:30 PM
 David J. Barry

TUESDAY, MARCH 21

New Lawyers
 12:30 PM
 Byron Chou/Michael A. Berger

WEDNESDAY, MARCH 22

Environmental Law/
 Municipal Law & Land Use
 12:30 PM
 Kenneth L. Robinson/
 Judy L. Simoncic

MONDAY, MARCH 27

Sports Entertainment &
 Media Law
 12:30 PM
 Ross L. Schiller

TUESDAY, MARCH 28

District Court
 12:30 PM
 Bradley D. Schnur

TUESDAY, MARCH 28

Immigration Law
 5:30 PM
 Pallvi Babbar/Patricia M. Pastor

WEDNESDAY, MARCH 29

Business Law Tax & Accounting
 12:30 PM
 Varun Kathait

WEDNESDAY, MARCH 29

Commercial Litigation
 12:30 PM
 Jeffrey A. Miller

WEDNESDAY, MARCH 29

Matrimonial Law
 5:30 PM
 Jeffrey L. Catterson

MONDAY, APRIL 3

Surrogates Court Estates &
 Trusts 5:30 PM
 Stephanie M. Alberts/
 Michael Calcagni

TUESDAY, APRIL 4

Hospital & Health Law
 8:30 AM
 Douglas K. Stern

TUESDAY, APRIL 4

Community Relations & Public
 Education
 12:45 PM
 Ira S. Slavit

TUESDAY, APRIL 4

Women in the Law
 12:30 PM
 Melissa P. Corradol/
 Ariel E. Ronneburger

WEDNESDAY, APRIL 5

Real Property
 12:30 PM
 Alan J. Schwartz

WEDNESDAY, APRIL 5

Association Membership
 12:30 PM
 Jennifer L. Koo

THURSDAY, APRIL 6

Publications
 12:45 PM
 Rudolph Carmenaty/
 Cynthia A. Augello

IN BRIEF

Stephanie M. Alberts of Forchelli Deegan Terrana LLP was recently appointed as a Vice-Chair of the Continuing Legal Education Committee of the New York State Bar Association's Trusts and Estates Law Section.

A. Thomas Levin has been re-elected to a two year term on the Executive Committee of the New York State Bar Association Local and State Government Law Section and a one year term as Counsel to the Historical Society of the New York Courts.

Ronald Fatoullah of Ronald Fatoullah & Associates presented "Elder Law and Estate Planning Updates for 2023" on the Project Independence and You Radio Show, sponsored by the Town of North Hempstead. In addition, the firm hosted two webinars, one for professionals and one for the community regarding the end of attestation of resources for Medicaid benefits in New York.

Karen Tenenbaum was in the *Long Island Business News's* "Book of Long Island in



Marian C. Rice

Business Influencers" as one of the most powerful women on Long Island. Karen was joined by a panel of professionals interested in financial literacy on Bonnie Graham's Technology Revolution: The Future of Now; "The Future of Financial Literacy: Can We Raise Kids' Money IQ?"—Part 2. Karen and her team presented for the Suffolk County Women's Business Enterprise Coalition (SCWBEC) group on "Best Practices for a Successful Business."

Henry S. Shapiro of Jackson Lewis has been elevated to Principal.

Daniel B. Rinaldi has been appointed Of Counsel to Meyer, Suozzi, English & Klein, P.C.

Gregory Matalon, Capell Barnett Matalon & Schoenfeld LLP Partner, was interviewed for *InvestmentNews* on the topic of estate planning before 2026. Partner **Yvonne Cort** was interviewed on *The Confident Retirement* podcast where she discussed residency audits, IRS audits, and misconceptions about tax matters. Partner **Robert Barnett** spoke for the Chinese American Society of CPAs on the topic of S Corporation shareholder stock and debt basis limitations. Robert also presented the webinar "Partnership Basis Elections Update and Making a Section 754 Election" for the National Business Institute.

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

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.

NEW MEMBERS

We Welcome the Following New Member Attorneys:

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- David Aminov
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- Karen H. Charrington
- Noreen Chen
- Victoria Eva Ciminera
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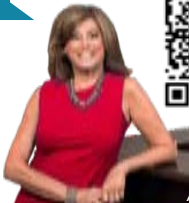
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