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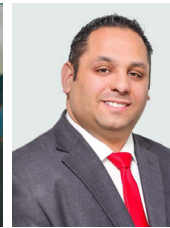
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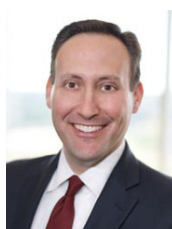


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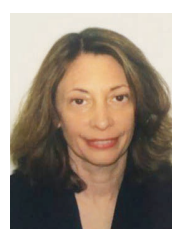
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2023 Nassau County Bar Association

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As September rolls in, I want to welcome you to an exciting and active year at Domus. We have been busy in the past couple of months preparing for the start of the Bar year. On September 7, we kick off with our annual BBQ at the Bar. I look forward to personally greeting you and enjoying the wonderful BBQ food prepared by Esquire Catering.

Speaking of Esquire Catering, lunch at Domus is getting a new menu and themed serving stations, such as an omelet station, carving station, and others. Stay tuned for our weekly eblasts announcing that week's theme. Those of you who have partaken in the themed lunches during the summer—Breakfast for Lunch, Taco Tuesday, and BBQ—will attest that having lunch at Domus with your peers and/or clients, is the place to be.

As you may recall from my summer article, on September 8, we will host a Veterans Rights Program. It has shaped up to be the first program in the state of its type. We are not only welcoming NYS Commissioner of Veterans Services Vivian DeCohen, but also Hon. David Goodsell of the Nassau County Veterans Court Part and the Hon. Terrence Murphy of the County Court as well for a panel discussion on Veterans Diversion programs. There will be other notable speakers and information provided that will enhance your ability to help those who have served our country. Please plan to attend all or part of the day's program.

On September 11 at noon, the NCBA Supreme Court Committee will be hosting Hon. Jeffrey A. Goodstein, the newly appointed Supervising Judge of the Nassau County Supreme Court, at an in-person meeting. Congratulations to Justice Goodstein on his appointment.

On September 14 at 12:30 PM, the NCBA Elder Law, Social Services & Health Advocacy Committee will host Justice David J. Gugerty, who will lead a meaningful discussion concerning guardian practice in Nassau County.

On September 18, WE CARE will hold its Annual Golf and Tennis Outing. Please come out to support NCBA's charitable arm. If you have never attended the dinner, you are missing what is our biggest networking event of the year. Sponsorships are still available.

On September 21, our new Cyber Law Committee and Ethics Committee will present "I



FROM THE PRESIDENT

Sanford Strenger

Robot Lawyer—Legal Ethics and AI," an original program that provides CLE credit for the cybersecurity requirement.

On Sunday, September 24, join me and other NCBA Members and their families at the 10th Annual Tunnel to Towers run and walk. If you have never experienced exiting a tunnel with thousands of people cheering you on and knowing you are supporting first responders and military heroes, now is your chance. Sign up information is on page 21 of this issue of *Nassau Lawyer*.

On September 27, join Corporate Partner Opal Wealth Advisors at "Wealthy Woman's Playbook," a comprehensive guide to building and maintaining financial security to empower women with tools and strategies. September 27 is also part one of the Nassau Academy of Law's program, "Breaking Up is Hard to Do: Law Firm Break-Ups and Retirements."

The above only scratches the surface of what will be happening at Domus in September. I do not want to slight other committees nor Academy programs; look at this month's centerfold for other programs

and the weekly eblasts for committee meetings. When in doubt, go to our website or call the NCBA for information. We are all busy, but you never know the contact you may make or the information you may glean at one of our programs that are sure to enhance your practice.

Your input and participation are vital to NCBA—we are not the gold standard of bar associations by happenstance. Please feel free to reach out to any committee chairperson, Board member, or myself

with any questions and ideas. We will have an updated NCBA Directory published this fall. It will be available on the members-only portion of our website.

The NCBA strives to be an inclusive organization that is a place for attorneys to enhance their practice of law through education, networking, and opportunities to serve their community. If you know of any attorneys who are not members, bring them to Domus. As I said above, we are hitting the ground running with exciting, innovative and first of its kind programing and events this Fall.

Lastly, if you can't get enough of me droning on, visit the website of Nassau Community College's radio station WHPC 90.3 FM and listen to my recent interview with NCBA Member Kenneth Landau on his podcast, "Law You Should Know." Ken is always open to new guests. Reach out to him if you, too, want to be on the radio show. 🎙️



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**FOCUS:
REAL PROPERTY LAW**



Thomas McKeivitt

In most real estate transactions, a seller and an interested buyer agree on a price for a particular piece of property, enter into a contract, and after a period upon which there is a title examination, obtaining financing, and in commercial contexts, a due diligence period which often included environmental investigation, a closing is set to transfer a deed.

Land owned by a government has different rules, with the purpose to provide protections due to the fact that it is public land. A town is not authorized to sell a piece of property, until a permissive referendum period has passed.¹ After the town has passed the resolution, residents have 30 days to follow a petition with the signatures of 5% of the number of voters who cast ballots in the last gubernatorial election.² Obtaining the required signatures in a large municipality can be challenging due to the high threshold, but it does happen from time to time. The most recent example is when the Town of Oyster Bay agreed to sell town property to Simon Property Group for \$32 million, which would also have helped thwart the development of a shopping mall by a rival.³ The voters in that situation overwhelmingly approved the sale. But there are instances where transfers have been stopped by such a referendum.⁴

Selling land that has been designated as parkland is particularly challenging to convey. Parkland is considered to be held in the public trust, and as such, is for the benefit of the public. Interestingly, this doctrine is not enshrined in the New York State Constitution. It is a common law principle that has long been recognized by the courts.⁵ Although such land is held in the public trust, it can be sold, or alienated by an act of the New York State Legislature.⁶

It is not always clear whether a piece of property is indeed parkland. Where land is explicitly acquired by a municipality for the purposes to be used as a park, it is considered to be a formal dedication of parkland. However, there are instances where

I Have a Park to Sell You

property is considered to be parkland by implication through the use of the property. One local example was when the Village of Garden City acquired by eminent domain the property of the former St. Paul's School that was operated by the Episcopal Diocese of Long Island. The court determined that since the property was acquired for recreational purposes that the public trust doctrine applied, although there was no formal dedication. Therefore, the Village could not lease a portion of the property for a privately-operated assisted living facility.⁷

When property is considered to be parkland, state legislation is required, even though there may arguably be no alienation, and that the proposed use would be for an important public purpose. In 1995, New York City was required by the New York State Department of Health and the Environmental Protection Agency to build a filtration plant to treat water for the Croton Watershed, one of three principal drinking sources for the city. It was determined that the best location for the treatment plant was at the Mosholu Golf Course and Driving Range in Van Cortlandt Park. This plant would cover 23 acres and filter 290 gallons of water each day, take five years to build and would require the temporary closure of the golf course and driving range. The New York State Attorney General and a citizen group sued the city on the grounds that state legislation was required. The city argued that because the plant would be constructed underground with park surfaces to be restored, and that the use was not inconsistent with park purposes, that there would be no alienation. The Court of Appeals disagreed, holding that legislative approval is required where there is substantial intrusion on parkland for non-park purposes whether title will be conveyed or whether the parkland will be restored.⁸

If a municipality acquires land for public purposes from a grantor that includes a reversionary interest, then the requirement for state legislation does not apply.⁹ The doctrine also does not apply to uses incidental or related to park purposes, such as a restaurants¹⁰ or golf courses.¹¹

There has recently been a dispute between the Village of Freeport and the Freeport School District regarding the Cleveland Avenue Fields. This property is owned by the Village of Freeport but had



been used for many years by the Freeport School District for athletic purposes. The Village sought to sell the property for a significant sum to a private entity for use as a warehouse.¹² The Senate and Assembly passed a bill authorizing the Village to sell the land.¹³ However, in an unusual move, Governor Kathy Hochul vetoed the bill upon the grounds that there was litigation between the school district and the village regarding the property, and that the New York Attorney General had commenced litigation regarding a purported violation of the State Environmental Quality Review Act related to the property.¹⁴

In order for a municipality to alienate parkland, it usually approaches the local state senator and assemblymember to have them introduce bills to accomplish the task. Steven Cohen, the owner of the New York Mets sought to develop land around Citi Field for a casino. However, some of this land is technically designated as part of Flushing Meadow-Corona Park. The local Assemblyman introduced a bill for the alienation.¹⁵ However, the local state senator did not, and the most recent legislative session ended without any action.¹⁶

Although the local state senator and assemblymember are traditionally the sponsors of the alienation bill, it is not a requirement. Equinor has proposed to build a windmill farm off the coast of the City of Long Beach. The electricity produced by the windmill would be transmitted through a subterranean conduit and electrical distribution cable system that would go through City parklands. The local state

senator and assemblymember both objected to a parkland alienation bill to be advanced. However, tucked inside the Planned Offshore Wind Transmission Act was a provision to alienate the land. The bills passed both houses of the legislature but have not yet been sent to the Governor.¹⁷

1. Town Law §64(2).
2. Town Law §91.
3. Bill Bleyer and Ted Phillips, "Oyster Bay Land Sale Approved," *Newsday*, August 20, 2013.
4. Steve Lieberman, "Patriot Hills Golf Course Deal is Off the Table After Stony Point Ballot Defeat," *Rockland/Westchester Journal News*, November 4, 2021.
5. *Brooklyn Park Comm'rs v. Armstrong*, 45 N.Y. 234 (1871); *Williams v. Gallatin*, 229 N.Y. 248 (1920).
6. *People v. New York & S.I. Ferry Co.*, 23 Sickels 71 (1877)(holding that title to lands underwater held in public trust may be conveyed by act of the legislature).
7. *Kenny v. Board of Trustees of Village of Garden City*, 289 A.D.2d 534 (2d Dept. 2001).
8. *Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623 (2001).
9. *Rappaport v. Village of Saltaire*, 130 A.D.3d 930 (2d Dept. 2015).
10. *795 Fifth Ave. Corp. v. City of New York*, 15 N.Y.2d 221 (1965).
11. *Ott v. Doyle*, 117 Misc.2d 491 (Sup. Ct. Monroe Cty. 1997).
12. John Asbury, "Governor Vetoes Bill Allowing Development on Cleveland Avenue Fields in Freeport," *Newsday*, December 26, 2022.
13. S.8541-A/A.10002-A.
14. *Veto Message 155 of 2022*.
15. A. 5688.
16. Carl Campanille and Kyle Schnitzer, "Sen. Jessica Ramos Blocks Steve Cohen's Casino Bid Next to Mets Ballpark," *New York Post*, May 21, 2003.
17. S.6218-A/A.7764.



Thomas McKeivitt is Special Counsel with Sahn Ward Braff Koblenz in Uniondale. He is also a member of the Nassau County Legislature and is the former Minority Leader Pro Tempore of the New York State Assembly.

**FOCUS:
COPYRIGHT LAW**


Sara M. Dorchak and
Bridget M. Ryan

Introduction

After receiving a copyright registration for the comic book, *Zarya of the Dawn*, the U.S. Copyright Office sent a letter to the author Kristina Kashtanova. The Copyright Office requested “additional information” about the authorship of the work.¹ The request was triggered after the Copyright Office became aware of statements made on social media by Kashtanova explaining that she used Midjourney, an artificial intelligence (“AI”) image generating program.

Kashtanova had used AI to create the images appearing in her work, a fact which was not disclosed in her

Artificial Intelligence Ushers in a Brave New World for Copyright

original copyright application.² As a result of her comments, the Copyright Office concluded the application was, at best, incomplete, and informed Kashtanova that the registration would be cancelled if she did not submit the requested information.³ This decision has sparked a debate regarding the future of copyright laws and the emerging technologies that impact new creative works.

Under the Copyright Act, creative works may be registered if they are “original works of authorship fixed in any tangible medium of expression.”⁴ The U.S. Supreme Court has defined “original” to mean that the work must be created independently by its author, and not taken from another source, and that the work must possess some level of creativity in its origination, though only a minimal level is required.⁵ In cases where “the creative spark [in a work] is utterly lacking or so trivial as to be virtually nonexistent” that work cannot be granted copyright protection.⁶

As technology has advanced, the limitations of copyright protection



have had to grow to cover an ever-expanding technological frontier.⁷ In 1884, the Supreme Court in the matter of *Burrow-Giles Lithographic Co. v. Sarony* was challenged by the question of whether copyright should apply to photographs.⁸ Ultimately, the Court ruled that a photograph taken of Oscar Wilde was copyrightable because it was representative of the author’s intellectual conception.⁹

The Court further explained that if a photograph was the result of a “merely mechanical” process, then that work would not be copyrightable as it does not contain enough creativity to be considered an original work of authorship.¹⁰ To qualify as an “original work of authorship,” the Copyright Office has consistently ruled that work must have been created by a human being.¹¹

More specifically, the Copyright Office will not register any work that is “produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author.”¹² While this may seem obvious, AI programs are generating works ranging from written material to images, all of which, if they were created by a human author, would no doubt be considered copyrightable. The human users behind these AI-generated works are applying for copyright registration in what is literally a brave new world for copyright protection.

**Artificial Intelligence and
Generative Programs**

AI programs are no longer only available to the government or large, wealthy corporations utilizing

supercomputers. As consumer technology gets more and more sophisticated, so too is the accessibility of AI programs to the average person. For example, users of the popular and free social media application, TikTok, can apply an AI-powered filter to their video content that completely re-imagines the user’s face by re-creating facial features in real time.¹³

Similarly, the online design platform Canva provides an AI tool which helps users create personalized designs using the user’s own media.¹⁴ There seems to be no question that generative AI is the most popular thing on the internet right now, particularly as more and more programs find ways to utilize this technology.

Most generative AI programs work by processing human-produced inputs (generally text) and generating some type of output (text, images, animations, and other data).¹⁵ Depending on its level of sophistication, outputs can even include gene sequencing, essays, music, and 3D models.¹⁶ As part of its initial programming, AI is presented with training data until the user input generally provides the user with the expected output.¹⁷ This newly created “output” is then added to the AI’s database and used in the creation of still future outputs.¹⁸

Zarya of the Dawn

While this may sound like a way to speed up the creative process, generative AI can lead to a multitude of issues, particularly in the world of copyright. Can output generated by AI from human user input be considered an original work of authorship for the purpose of granting copyright

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protections? Is the true “author” of the work seeking copyright protection the human user of the software or the non-human AI program?


In Kashtanova’s case, the Copyright Office sided against the human user.¹⁹ Kashtanova admitted to using the AI program Midjourney to create the images that appear in *Zarya of the Dawn*. Midjourney uses Graphic Processing Units (GPUs) to process prompts inputted by program users.²⁰ In response to the Copyright’s Office’s request, Kashtanova argued that Midjourney “serv[ed] merely as an assistive tool” and that her “selection, coordination, and arrangement” of the work met the low threshold for originality and creativity for the purpose of copyright protection.²¹

After reviewing the additional information, the Copyright Office determined that while Kashtanova was the sole author of the comic book’s text and the arrangement of its images, she could not be considered the author of the images because they were “not the product of human authorship.”²² In particular, it was noted that Midjourney’s generation of images is unpredictable, meaning users do not have sufficient creative control over the generated images.²³

In addition, although Kashtanova had modified some of the images after

they were generated by Midjourney, the Copyright Office ruled that the edits were “too minor and imperceptible to supply the necessary creativity for copyright protection.”²⁴ Ultimately, the Copyright Office cancelled the original registration and issued a new registration and certificate covering only the material that was expressly created by Kashtanova (the text and its arrangement of images to tell the story).²⁵

Although this result may seem harsh for AI software users, the Copyright Office did not completely rule out the possibility that AI generated content could ever be copyrightable. In Kashtanova’s case, while her edits were not enough, the Copyright Office did imply that sufficient edits made to a generated work *could* provide sufficient human authorship.²⁶

In addition, AI software that provides the user with more control over the generated content, rather than a completely random generation based on text, may also be entitled to copyright protection. Only time will tell how much creative input and control is needed for AI generated content to meet what is supposed to be the extremely low threshold of a creative work of original authorship. 

1. See U.S. Copyright Office, Letter re: *Zarya of the Dawn* (Registration # Vau001480196) (Feb.

21, 2023), available at <https://copyright.gov/docs/zaryaofthedawn.pdf> (“Decision”).
 2. *Id.* at 2.
 3. *Id.* at 3.
 4. 17 U.S.C. §102(a).
 5. See *Feist Pub’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991).
 6. *Id.* at 359.
 7. S. Rep. No. 105-190, at 2 (1998) (“Copyright laws have struggled through the years to keep pace with emerging technology.”). See also Paul Goldstein, *Copyright’s Highway: From Gutenberg to the Celestial Jukebox* 24-25 (rev. ed., Stanford Univ. Press 2003); Jessica Litman, *Digital Copyright* (2d ed. 2006); Jane C. Ginsburg, *Copyright and Control Over New Technologies of Dissemination*, 101 Colum. L. Rev. 1613, 1613 (2001).
 8. See *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884).
 9. *Id.* at 59.
 10. *Id.* at 59.
 11. See COMPENDIUM (THIRD) §313.2 (explaining that “to qualify as a work of ‘authorship’ a work must be created by a human being”). See also *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. at 58.
 12. See COMPENDIUM (THIRD) §313.2.
 13. See Bobby Allyn, *A New AI-Powered TikTok Filter is Sparking Concern*, NPR (Mar. 9, 2023, 7:32 AM) <http://bit.ly/3YXm55A>.
 14. See *Visualize Your Design Ideas*, CANVA, <https://www.canva.com/magic-design/> (last visited August 10, 2023).
 15. See *What is Generative AI?*, NVIDIA, <https://bit.ly/3OXHRRM>. (last visited Aug. 6, 2023).
 16. *Id.*
 17. *Id.*
 18. *Id.*
 19. See U.S. Copyright Office Letter at 3.
 20. See *Fast, Relax, & Turbo Modes*, MIDJOURNEY, <https://docs.midjourney.com/docs/fast-relax>.
 21. See U.S. Copyright Office Letter at 3.
 22. *Id.* at 1.
 23. *Id.* at 9.
 24. *Id.* at 11.
 25. *Id.* at 1.
 26. See *id.* at 12 (noting “to the extent that Ms.

Kashtanova made substantive edits . . . those edits could provide human authorship and would not be excluded from the new registration certificate”).



Sara M. Dorchak is counsel at Barclay Damon and has over 10 years of experience working closely with domestic and international clients to assist them in all stages of trademark

and copyright prosecution and enforcement. In addition to her legal practice, Sara is an adjunct professor at St. John’s University School of Law, where she teaches a course on trademark drafting and prosecution. She currently serves as the Chair of the IP Committee at the Nassau County Bar Association and is on the Advisory Board for the Nassau Academy of Law.



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**FOCUS:
ENVIRONMENTAL LAW**

John Parker

We are witnessing the impacts of a changing climate. It is more than hot summer weather. The data shows extreme weather and extreme heat in the United States and throughout the world. Two highly visible examples include the record setting streak of 110 degree plus days in Phoenix, Arizona and a heat dome that has been contributing to high temperatures in large sections of the country.¹

Here in New York, smoke from forest fires in Canada brought troubling orange skies this summer showing that impacts from climate change will not be limited by international borders.² Indeed, researchers are learning more

Summer of 2023: Long Island Reacts to the Impacts of a Changing Climate

about the significant impacts of the temperature increases. When looking at ice cores collected from a former military site in Greenland, researchers found that underneath the current 4,500 foot ice sheet, some 400,000 years ago, there was once a thriving ecosystem that began melting during a time when temperatures were slightly above today's anticipated future increases. If that ice was to melt under moderate temperature increase scenarios in the centuries to come, sea level rise could be irreversible and be expected to exceed over four feet.³

New York is blessed with over 2,600 miles of shorelines and over 500 miles of salt-water coastline, including the Atlantic Ocean and the Long Island Sound.⁴ Long Island communities will undoubtedly be significantly impacted in the coming years and decades by even moderate changes in temperature and sea level, prompting the urgency for climate action now. Undoubtedly, the world will survive a changing climate as

it has in the past, however, our communities and our lifestyle as we understand them, may not if urgent and important actions are not taken. We are now all climate lawyers and must advise our clients accordingly.

New York's Legislative Response to Climate Change

New York State, however, has been at the forefront of addressing a changing climate. In 2019, the Community Leadership and Climate Protection Act became state law and it set ambitious goals to address climate change. Article 75 of the Environmental Conservation Law, codifies these legal mandates that include a 40% reduction in greenhouse gases by 2030 and an 85% reduction by 2050. The law requires that 70% of the State's energy is to come from renewable energy sources by 2030, and 100% emission free electricity by 2040. Six gigawatts of energy storage will now be required by 2030. For context, a single gigawatt of constant electricity can power approximately 750,000 homes each year.⁵

The permitting and approval process for these renewable energy systems can take a number of years to complete. The time necessary for approvals authorizing construction, and the construction process itself can also be costly. Some larger scale renewable energy projects, such as off-shore wind turbines, and likely other larger scale installations of renewable systems, are running into cost concerns.⁶ These cost issues are resulting in companies seeking renegotiation or adjustments to existing contracts for the construction and operation of these systems.⁷

Nonetheless, given the significant impacts and risk to Long Island and other communities, the State's legal commitment to aggressive installation targets remains state law. In fact, State leaders continue to emphasize the need to accelerate the efforts to increase renewable energy capacity.⁸ The State Comptroller has noted that additional efforts to streamline the permitting and interconnection process are necessary and that in terms of reaching the State's legal mandates, in 2022, approximately 29% of electricity in New York was from renewables breaking down to 25% wind and solar and 75% hydroelectric.⁹

The scope and scale of the efforts to transition to a renewable energy-based economy are often focused on wind turbines in the New York Bight south of Long Island.¹⁰

In fact, there has been considerable progress in the approval of some of the infrastructure needed for these turbines, but the permitting and review process is ongoing for others. For example, the South Fork Wind Farm in East Hampton recently installed its first turbine foundation, and when completed will bring substantial economic benefits to the communities hosting transmission lines.¹¹ Other communities, such as in Long Beach, are still involved in the applicant review process, addressing environmental issues and concerns of the local communities which are vital and necessary parts of the approval process.¹² There has also been issues regarding the installation and operation of wind turbines, raised by some, regarding impacts to the ocean environment.¹³

A key area of the renewable energy transition involves the need for storage of energy which will be part of the larger energy system and the electrical grid, allowing wind and solar energy to be stored for use during intermittent periods of power generation from these systems, or situations where additional energy is needed to meet peak energy demand. Battery energy storage will be a major component of the future energy system powering Long Island homes, schools, government, and businesses.

The State has not only made a commitment to the installation of these systems in communities throughout Long Island, but it has also made an ongoing commitment to ensure that battery safety issues are addressed and resolved. There have been local community concerns regarding safety in battery siting issues, and larger battery storage system companies, continue to focus on education concerning fire safety during the siting and permitting process. Although safety incidents such as fire have been rare with these storage systems, there have been incidents, such as one recently in East Hampton, which have raised concerns even though it was safely addressed and contained.¹⁴ Governor Hochul is convening an interagency Fire Safety Working Group in response to fire incidents at these facilities this summer.¹⁵

Highlighting Long Island's Renewable Energy Developments at the NCBA

Earlier this year, the Environment Committee and the Municipal Law and Land Use Committee of the Nassau

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County Bar Association held an event to address the developing area of approval, installation and operation of battery systems issues on Long Island. The very successful Dean’s Hour event was titled “Meeting The Challenges of Battery Storage for the Renewable Energy Needs of Long Island Communities.” It brought together leaders in the renewable energy industries to discuss the local municipal and state permitting and approval processes for these technologies and to discuss the technical aspects of these systems.

The topics and participants included:

Battery Energy Storage Systems: Technology Overview and Use Cases

Phil Denara, Senior Manager of Development, Key Capture Energy

Mr. Denara discussed battery energy storage systems and how New York’s legal mandate for reduction of climate impacts will rely upon these systems. Battery systems, he noted, will support Long Island’s clean energy transition. He also discussed key siting considerations for municipalities including, but not limited to, where can battery storage be best located and what are some of the difficulties encountered during the site selection and approval process.

Environmental Issues with Battery Storage Systems Siting

Scott McBurney, Senior Project Manager, Environmental Design & Research, Landscape Architecture, Engineering and Environmental Services, D.P.C.

Mr. McBurney discussed permitting issues and their complexities for battery storage projects through state permitting processes. He discussed the recently created Office of Renewable Energy Siting process created specifically for larger renewable facilities, the Department of Public Service process, the issues associated with the State Environmental Quality Review Act

review process and permitting processes under local laws.

Legal Issues: State and Local Context; Zoning Issues for Battery Storage Systems

James Muscato, Partner, Environmental and Energy Law, Young/Sommer LLC

Mr. Muscato discussed local zoning issues that could directly apply to the regulation of battery energy storage projects in addition to State permitting rules under the Public Service Law. Battery energy storage systems can differ in terms of size and capacity, but they can face common zoning and land use issues. The presentation also reviewed the model local law prepared by the New York State Energy, Research, and Development Authority for energy storage and common zoning questions.

Public Health and Safety Issues: Addressing Fire Safety Considerations for Battery Storage Systems

Paul Rogers, Co-Founder, Energy Safety Response Group (ESRG) Nicholas Petrakis, Senior Consultant, Energy Safety Response Group (ESRG)

Mr. Rogers and Mr. Petrakis focused on public safety, and particularly fire safety as key components for community consideration in the battery energy storage systems siting process. They note, however, that there remain concerns with local residents and town officials. The ability of safety features associated with these systems are well known in the industry, but not publicly, and need to be explained and articulated for successful permitting processes. They explained fire safety testing, and the regulatory approach to address fire safety issues and stressed that these issues need to be properly explained at local board meetings for timely consideration of battery storage systems. ⚡

1. Phoenix ends 31-day streak of highs at or above 110 degrees — by reaching 108, NPR (Aug. 1, 2023),

available at <https://tinyurl.com/5fsspf5n>; Heat dome’s scorching temperatures in Texas expected to expand across US, The Guardian (June 27, 2023), available at <https://tinyurl.com/54hkd4k>; At least a dozen dead as heat dome bakes southern US, BBC News (June 29, 2023), available at <https://tinyurl.com/4fu2xkpj>.

2. Canada’s Wildfires Are a Warning of the East Coast’s Smoky Future, Scientific American (June 13, 2023), available at <https://tinyurl.com/5c4mxux8>; Canada wildfire season is now the worst on record, BBC News (June 29, 2023), available at <https://tinyurl.com/478b63m7>.

3. If completely melted, the increase could be 20 feet. “Long-lost Greenland ice core suggests potential for disastrous sea level rise,” July 20, 2023, available at <https://tinyurl.com/2p8smw4r>.

4. Shoreline Mileage Of the United States, NOAA Office for Coastal Management available at <https://tinyurl.com/5bmjy9x2>; ; Life both big and small, returns to NYC’s 500 miles of coastline, National Geographic, available at <https://tinyurl.com/5n873ffp>.

5. Gigawatt: The solar energy term you should know about, CNET.com (Nov. 16, 2021), available at <https://tinyurl.com/43cz73fe>.

6. BP and Equinor Could Cancel US Offshore Wind Projects, OffshoreWIND.biz (Aug. 1, 2023), available at <https://tinyurl.com/3c5vfeff>.

7. Offshore wind developers ask for more money from ratepayers, Politico.com (July 7, 2023), available at <https://tinyurl.com/2wkv4kk>.

8. DiNapoli: State Needs to Supercharge Efforts to Meet Renewable Electricity Goals Office of the New York State Comptroller (Aug. 1, 2023), available at <https://tinyurl.com/4p8tvxs>.

9. Renewable Electricity in New York State: Review and Prospects, August 2023, available at <https://tinyurl.com/458bjer2>.

10. U.S. offshore wind auction draws record \$4.37 billion in bids, Reuters (Feb. 28, 2022), available at <https://tinyurl.com/2rjtpje4>.

11. South Fork Wind Installs First Offshore Wind Turbine Foundation and U.S.-Built Substation in New York State, NYS Energy Research and Development Authority (June 23, 2023), available at <https://tinyurl.com/ycoxfs78>; East Hampton Town Reaches Payment Agreement with South Fork Wind Farm Developers, Dan’s Papers (Sept. 10, 2020), available at <https://tinyurl.com/hbv2pa87>; South

Fork Wind Farm, Town of East Hampton, available at <https://tinyurl.com/bdhd9dah>.

12. Residents in the Five Towns express their concerns over Equinor Wind project, LIHerald.com Five Towns (July 23, 2023), available at <https://tinyurl.com/ytrnckm9>.

13. Addressing Misinformation on Offshore Wind Farms and Recent Whale Mortalities, Energy.gov (Apr. 28, 2023), available at <https://tinyurl.com/3n63bxw2>.

14. After Fire at Substation, New Battery Worries, The East Hampton Star (July 6, 2023), available at <https://tinyurl.com/5n8pxy6z>.

15. A number of state agencies will be involved in the Fire Safety Working Group, including the Division of Homeland Security and Emergency Services, Office of Fire Prevention and Control, the New York State Energy Research and Development Authority, the New York State Department of Environmental Conservation, the Department of Public Service, and the Department of State. Governor Hochul Convenes Inter-Agency Fire Safety Working Group Following Fires In Jefferson, Orange, And Suffolk Counties, NYS Energy Research and Development Authority (July 28, 2023), available at <https://tinyurl.com/5n6r7eyr>.



John Parker is Partner at the law firm of Sahn Ward Braff Koblenz, PLLC, Uniondale, where he leads the Environmental, Energy, and Resources Practice Group which provides legal services to clients on environmental remediation and

brownfield cleanup matters, energy law and siting issues, and environmental compliance matters. He also serves as Chair of the Legislation Committee and on the Executive Committee of the Environment and Energy Law Section of the New York State Bar Association. He can be reached at jparker@sahnward.com.

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**FOCUS:
REAL PROPERTY LAW**

Michael P. Guerriero

In 2019, the New York State Legislature enacted the Climate Leadership and Community Protection Act (“CLCPA”), which requires New York State to rapidly decrease greenhouse emissions and scale up renewable energy capacity.¹ Specifically, the CLCPA mandates that 70% of statewide electric generation be supplied by renewable energy by 2030 and that 100% be supplied by zero-emission sources by 2040.²

In 2020, as part of the Enacted State Budget for fiscal year 2021, the New York State Legislature amended the Real Property Tax Law by creating a new Section 575-b and amending Section 487, and Article 18 of the General Municipal Law.³ The Budget amendments materially affected the valuation of renewable energy projects for real property tax and assessment purposes and for eligibility of financial assistance from industrial development agencies (“IDAs”) which rely on such valuations. Collectively, these amendments are intended to foster a rapid buildout of wind and solar facilities as one essential component of the State’s overall goals under the CLCPA, while also shifting the burden away from taxing jurisdictions to owners and developers.

Newly enacted Section 575-b established a process by which the New York State Department of Taxation and Finance (the “Department”) would develop a uniform appraisal method for valuing solar and wind energy systems, for real property tax purposes, that local assessors are required to adopt Statewide.⁴ Whereas, Section 487 was amended to (1) modify the “Pre-Construction Notice” that a developer must give a taxing jurisdiction prior to commencing construction of a wind or solar energy project,⁵ and (2) provide taxing jurisdictions an alternative way to notify developers that it will impose a payment-in-lieu of taxes (“PILOT”) agreement.⁶ Additionally, GML Article 18 was amended to unequivocally qualify

Real Property Taxation of Solar and Wind Energy Systems in New York State

renewable energy projects for IDA financial assistance by expressly including a definition of “renewable energy project” and incorporating such defined term within the broader definition of “project.”⁷ Further, IDAs may now consider “the contribution of the project to the state’s renewable energy goals and emission reduction targets” under the CLCPA, among other criteria for financial assistance.⁸

A key component of the Budget amendments, newly enacted Section 575-b now governs the method of assessment for energy systems.⁹ Crucial to an understanding of Section 575-b, is Section 487(9)(a) which provides that PILOT payments may not exceed the amount that would otherwise be payable in taxes absent the Section 487 exemption. The law was enacted in response to widespread variation in methods of assessment for wind and solar projects, with the aim of providing certainty by establishing a uniform assessment methodology to standardize the valuation of energy projects for property tax and assessment purposes, and by extension, calculation of RPTL §487 PILOT payments.

RPTL §487: Tax Exemption for Solar and Wind Energy Systems

Section 487 generally provides a 15-year exemption from real property taxation for the increase in value of real property resulting from the installation of a solar or wind energy system.¹⁰ The exemption is automatically effective within a taxing jurisdiction unless it has adopted a local law, ordinance or resolution opting out of the Section 487 exemption program.¹¹ In taxing jurisdictions that do opt out, the project is taxable in the same way any other real property improvements are and the assessments levied by the local assessor are subject to RPTL Article 5 administrative review¹² and Article 7 judicial review.¹³ In jurisdictions that have not opted out the exemption remains, however, Section 487 authorizes a taxing jurisdiction to demand from the project developer a PILOT agreement during the 15-year exemption term which requires payments in an amount not to exceed what the otherwise applicable taxes would have been absent exemption.¹⁴

A developer must provide a “Pre-Construction Notice” of its intent to commence project development, which triggers the notice period for a taxing jurisdiction to initiate



a PILOT demand. Prior to the amendments, the taxing jurisdiction was required to provide a PILOT notice within 60 days of receiving the written notification.¹⁵ A taxing jurisdiction’s failure to strictly adhere to the statutory procedures for a PILOT notice has been held to be fatal, resulting in a windfall for the developer.¹⁶ Now, section 487 defines Pre-Construction Notice as a hard copy letter addressed to the highest ranking official of a taxing jurisdiction, which must include a specific reference to Section 487(9) and a clear statement of the effect of failing to respond within the 60 day timeframe.¹⁷ Alternatively, a taxing jurisdiction may now adopt a local law or resolution announcing its ongoing intent to enter into PILOT agreements instead of responding to each Pre-Construction Notice directly.¹⁸

PILOT Agreements for Solar and Wind Energy Systems

Under Section 487, a single project could be subject to more than one PILOT agreement on PILOT schedules and payments negotiated with each affected taxing jurisdiction and for a term not to exceed 15 years.¹⁹ Whereas, the same project may now be eligible for financial assistance with a local IDA which, under Article 18 of the GML, are commonly authorized to negotiate a single PILOT agreement on behalf of all taxing jurisdictions affected by the project and for a term of 15 years or more.²⁰

Section 487 also provides that payments made pursuant to a PILOT agreement may not exceed the amount that would otherwise be payable in taxes if the project were not exempt.²¹ A key provision that asserts the estimated assessed value as the financial linchpin of a prospective project for all parties involved. The Budget amendments enacted Section 575-b to ensure a standard and uniform method of assessment for all projects in the State with an aim to provide certainty to all parties involved: developers, lenders, investors, and taxing authorities, concerning the assessment of such facilities and the property taxes derived therefrom. The standard assessment methodology will impact negotiated PILOT amounts which, as required by Section 487, may not exceed the corresponding assessed value of the project.

Section 575-b: Assessment Model for Solar or Wind Energy Systems

Section 575-b mandates that solar and wind projects of at least one megawatt must be assessed for real property tax values under the Discounted Cash Flow methodology using a model formula (the “Model”) and discount rates established by the Department of Taxation and Finance. Pursuant to Section 575-b, the Department must consult with the New York State Energy Research and Development Authority (“NYSERDA”) and the

New York State Assessors Association (“NYSAA”) to annually develop the standardized Model, while applying a discount rate to the Model that is published by the Department.²² The Discounted Cash Flow (“DCF”) is a form of analysis that attempts to project and forecast future cash flows that are then discounted to a net present value.

Following a 60-day comment period ending in October 2020, the Tax Department promulgated the final model for the 2022 fiscal year, which was updated from time to time. As of the 2022 assessment rolls, all local assessors were required to use the Model for solar and wind energy systems with a nameplate capacity of at least one megawatt. However, implementation of the Model was halted by Albany County Supreme Court Justice Christina L. Ryba in *Town of Blenheim v. Hiller*,²³ which granted a temporary restraining order enjoining the Department “from taking any actions, official or otherwise, to implement, or to direct or induce the implementation of the Model by DOTF or any assessor assessing unit.”²⁴

***Town of Blenheim v. Hiller:* Temporary Restraining Order Halts Assessment Model for Wind and Solar Projects**

In *Town of Blenheim*, a group of nine Towns collectively commenced a hybrid CPLR Article 78 and CPLR 3001 Declaratory Judgment action seeking to enjoin and nullify the official action of the Department of Taxation and Finance in developing and promulgating the Model under Section 575-b based, among other things, on the Department’s failure to put the Model through the State Administrative Procedure Act (“SAPA”) process.²⁵ The petition was brought by order to show cause with an application for a temporary restraining order enjoining the Department from further implementing the Model and preserving the status quo, which the Court granted.²⁶

In opposition to the petition, the State explained that in enacting the statute the Legislature intended to create a uniform method of assessment for all taxing authorities to rely on so that developers of renewable energy facilities can better anticipate the associated tax burden.²⁷ The law was enacted in response to widespread variation in methods of assessment for wind and solar projects, with the aim of providing certainty as to potential cost for developers and investors, informing the discussions on PILOTs as to the tax obligation, and reducing

the potential for litigation.²⁸ The legislation was considered a necessary component of reaching New York State’s goals of reducing greenhouse gas emissions by 40% (from 1990 levels) by 2023, and generating 70% of the State’s electricity from renewable energy sources by 2030.²⁹

The Towns asserted they would suffer irreparable injuries as the implementation of the assessment Model for wind and solar projects would displace the tax burden borne by solar and wind energy systems onto all other real property taxpayers in each assessing unit and cause corresponding cuts to services offered by that assessing unit.³⁰ The Towns asserted the Model promulgated by the Department results in a vastly reduced value on solar and wind generating properties resulting in depressed property tax revenues from the project than would otherwise be raised, and the difference would be spread among all other Town taxpayers.³¹

In a decision rendered April 29, 2022, the Court held that Petitioner’s proof was sufficient to demonstrate a likelihood of success that the Model was promulgated in violation of SAPA.³² The Court also found irreparable harm would result if a TRO was not granted in that implementation of the Model would result in decreased tax revenue and a corresponding reduction of municipal services available to the affected communities.³³ The petition would later withstand a motion to dismiss on December 6, 2022, where the Court specifically held it could not, on the record before it, determine whether the Model was a policy as defined by SAPA.³⁴

The Legislature Trumps Town of Blenheim Litigation: Section 575-b Governs

After a year of delay and uncertainty, the Legislature enacted Part N of Chapter 59 of the Laws of 2023.³⁵ Part N of the budget legislation amends Section 575-b so that the Model is not subject to the SAPA, and likewise amends SAPA to exempt appraisal models and discount rates from the requirements of SAPA.³⁶ A Stipulation of Discontinuance in *Matter of Town of Blenheim* was so ordered by Supreme Court, Albany County, on May 5, 2023.³⁷ The temporary restraining order issued on April 29, 2022 has been lifted and newly enacted RPTL 575-b is effective, a crucial piece of the State’s legislation intended to alleviate the property tax impediments to developing Energy Projects. In accordance with section 3 of Part N, the Department

of Taxation and Finance has implemented the 2022 appraisal models and discount rates for use in 2023 by all local assessors.³⁸

Finally, assessments determined under the Model remain subject to Sections 512 and 524 of the RPTL in that, assessments promulgated by 575-b and appearing on the assessment roll may be contested by an aggrieved party.³⁹ However, the grounds for review of an assessment determined under RPTL 575-b “shall be limited to the accuracy of the appraisal model inputs made by the assessor.”⁴⁰ ⚖️

1. N.Y. Pub. Serv. Law §66-p(2)(a), (b).
2. *Id.*
3. See 2021 McKinney’s Sess. Law News of N.Y. Ch. 59 (S. 2509-C).
4. RPTL §575-b(1)(a)(b)&(c).
5. RPTL §487(8)(b).
6. RPTL §487(9)(a).
7. GML §854(4)&(21).
8. GML §859-a(5)(b).
9. RPTL §575-b(1)(a).
10. RPTL §487(2).
11. RPTL §487(8)(a).
12. See RPTL §524(1).
13. See RPTL §704(1).
14. RPTL §487(9)(a).
15. *Id.*
16. See, e.g., *Laertes Solar, LLC v. Assessor of Town of Harford*, 182 A.D.3d 826, 829 (3d Dept. 2020), *lv. to appeal dismissed in part, denied in part*, 35 N.Y.3d 1119 (2020).
17. RPTL §487(9)(a).
18. RPTL §487(9)(b).
19. RPTL §487(9)(a).
20. GML §854(17).
21. RPTL §487(9)(a).

22. RPTL §575-b(1)(a)(b).
23. *Town of Blenheim, et. al. v. Hiller*, Index No. 903157-22, Albany Co.
24. *Town of Blenheim*, Index No. 903157-22, Order to Show Cause and Decision and Order dated April 29, 2022 at NYSCEF 10 at 2-3.
25. *Id.*, Verified Petition at NYSCEF 1 at 2.
26. *Id.*, Order to Show Cause at NYSCEF 10 at 1-3.
27. *Id.*, Affirmation in Support at NYSCEF 16 at 2-4.
28. *Id.*
29. *Id.*
30. *Id.*, Affirmation in Support at NYSCEF 3 at 3-4.
31. *Id.*
32. *Id.*, Decision and Order at NYSCEF 10 at 7-8.
33. *Id.*
34. *Id.*, Decision and Order at NYSCEF 34.
35. New York State Assembly Bill A03009C and Senate Bill S04009-C, Part N, signed into law May 3, 2023, available at <https://tinyurl.com/y4vv4pnd>.
36. *Id.*
37. *Town of Blenheim*, Index No. 903157-22, at NYSCEF 81.
38. Appraisal methodology for solar and wind energy projects, NYS Department of Taxation and Finance, available at <https://tinyurl.com/nhk595fr>.
39. RPTL §575-b(4)(a)-(d).
40. RPTL §575-b(4)(d).



Michael P. Guerriero is a Tax Certiorari and Condemnation Partner at Farrell Fritz, P.C. in Uniondale and current Chair of the NCBA Condemnation Law and Tax Certiorari Committee. Mr. Guerriero is also a member of the Committee on Offshore Wind for the Long Island Association.

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NAL PROGRAM CALENDAR

September 8 (IN PERSON ONLY)

Military Justice Instruction:

Discharge from Service

9:30AM – 10:30AM

1 credit in professional practice

The Department of Defense form 214 is the Discharge Certificate. This is the last document that a service member receives and the most important. The type of Discharge received will determine not only the types of benefits available but can also have an impact on the type of civilian jobs available. This CLE will de-mystify DD 214 and provide all the information you need to know about military discharges.

Guest Speaker:

Gary Port, Chair, NCBA Veterans Committee

NCBA Members Complimentary – Non-Members \$35

September 20 (HYBRID)

Dean's Hour: Elder Abuse—Navigating and Advocating for Victim/Survivors through the Criminal Justice System

With the Nassau County Counsel Defender Plan 18B

12:30PM – 2:00PM

1 credit in professional practice & .5 credit in ethics and professionalism

This interactive workshop teaches civil attorneys how to assist elder abuse survivors navigate the criminal justice system, including how to file criminal complaints and advocating for victims' rights. Further, it will address how to obtain concurrent family and criminal orders of protection. This program will also discuss ethical issues with clients that may have decision-making issues due to disease as well as issues attorneys face when their client is at risk of serious physical injury or death and won't accept their attorney's advice.

Guest Speakers:

Arlene M. Markarian, Esq., Family and Children's Association Safe Observant Seniors Program Coordinator

Dianne O. Woodburn, Esq., Supervising attorney, JASA | Legal Services for Elder Justice and Adjunct Professor at St. John's University School of Law

NCBA Members Complimentary – Non-Members \$50
Members of the Nassau County 18B Panel are free!

September 21 (HYBRID)

Dean's Hour: I, Robot Lawyer—Legal Ethics and AI *With the NCBA Ethics Committee*

12:30PM – 1:30PM

1 credit in Cybersecurity, Privacy Data Protection-Ethics

Emerging generative AI technologies like ChatGPT have the potential to revolutionize legal practice. However, this new technology may present its own ethical challenges. Do lawyers have a duty to "supervise" work produced by AI? Could AI engage in the unauthorized practice of law? Is client information kept confidential when shared with an AI program? This CLE will explore the intersection of AI technologies with the Rules of Professional Conduct and analyze how ethics rules may be applied to new scenarios as a result of AI technologies.

Guest Speakers:

Avigael C. Fyman, Esq., Rivkin Radler

Robert S. Grossman, Esq., Winter & Grossman

NCBA Members Complimentary – Non-Members \$35

September 26 (HYBRID)

Dean's Hour: To Value or Not to Value? That is the Question: The Laws Around Professional Valuations

Sponsored by Complete Advisors

12:30PM – 1:30PM

1 credit in professional practice

There is a lot of confusion around when it is necessary—or required by law—to engage a qualified appraiser to conduct a professional valuation. This session program will provide clarity on the laws around professional valuations, what the IRS does and does not require, and how to make the best decision for your specific situation. This program will be of interest to anyone who provides financial, legal or tax advice to high-net-worth clients with closely held business and non-marketable securities.

Guest Speakers:

Michael J. Borger, Esq., Associate at Moritt Hock & Hamroff LLP

Nainesh Shah, CFA, CVA, Founding partner of Complete Advisors

NCBA Members Complimentary – Non-Members \$35

September 27, September 28, October 4 (HYBRID)

NCBA Dean's Hour Series—BREAKING UP IS HARD TO DO: Law Firm Break-Ups and Retirements

12:30pm – 1:30pm

This course will be presented in three parts.

1 credit in professional practice for each part

Skills credit for newly admitted attorneys

Part 1: September 27— Session 1 will concentrate on tax and financial considerations of Law Firm partnership division/retirement including LLP, LLC, and PLLC. PCs will be included for comparison. A recent Tax Court decision provides guidance and highlights tax traps to avoid. We will analyze practice goodwill and client based intangible assets. The special partnership provisions applicable to sales and retirements will be addressed.

Part 2: September 28— Session 2 will focus on the practicalities of transitioning lawyers and their ethical considerations. Among other considerations, we will discuss obligations to clients and to the retiring lawyer, as well as professional commitments such as Escrow & IOLA accounts, and restrictive covenants. Potential pitfalls will be highlighted, including conflict checks. Finally, lawyer competence and fitness to continue practicing law will be explored.

Part 3: October 4—Session 3 will summarize the prior issues and then coordinate with important insurance considerations for all parties. This final day will have time for detailed Q&A and recent cases and rulings will be discussed and analyzed. Questions can be submitted during and after each session to be answered in Session 3.

NAL PROGRAM CALENDAR

Please send your questions to

Academy@nassaubar.org

Guest Speakers:

Robert S. Barnett, Esq., Partner at Capell Barnett Matalon & Schoenfeld LLP

Omit Zareh, Esq., Partner at Weinberg Zareh Malkin Price LLP

Regina Vetere, Executive Vice President, NCBA Corporate Partner Assured Partners, Insurance for Lawyers

Registration Fees:

NCBA Members Complimentary – Non-Members \$35 per session

September 27 (IN PERSON ONLY)

Wealthy Woman's Playbook

Presented and Sponsored by NCBA Corporate Partner Opal Wealth Advisors

Wine and Cheese Reception and Program: 5:30PM-7:30PM

THIS PROGRAM IS NOT FOR CLE CREDIT!

Join your fellow women attorneys for an informative evening with Katherine M. Dean, CFP. Katherine is a Certified Financial Planner with our Nassau County Bar Association Corporate Sponsor Opal Wealth Advisors. Katherine will present "The Wealthy Women's Playbook," a comprehensive guide to building and maintaining financial security. Our event aims to empower women by providing them with the tools and strategies they need to take charge of their finances and achieve their financial goals.

This is a complimentary program.

October 5 (IN PERSON ONLY)

Fireside Chat: *This Light Between Us* with Andrew Fukuda and Ching-Lee Fukuda

With the NCBA Asian American Attorney Section and the NCBA Diversity & Inclusion Committee

Cocktail Reception hosted by Sidley Austin LLP

5:00PM – 6:00PM

CLE Program 6:00PM – 7:00PM

1 credit diversity, inclusion, and elimination of bias
Come join us for a networking cocktail hour and Fireside Chat by Andrew and Ching-Lee Fukuda. Ching-Lee will interview Andrew. Andrew will speak about his journey to becoming a traditionally published author of five novels, with a special focus on his most recent historical fiction work, *This Light Between Us*, which details the varied experiences of Japanese Americans during World War II. Andrew will speak on the unique challenges that face Asian Americans in the publishing industry, and how some of those challenges overlap (or don't) in the legal industry.

Guest Speakers:

Andrew Fukuda: Andrew is an ADA with the Nassau County DA's office. He is the author of five books, including *Crossing*, which was selected as a Booklist Top Ten First Novel and Top Ten Crime Novel, and *The Hunt* series, which has been translated into ten languages.

Ching-Lee Fukuda: Ching-Lee is a partner and the head of Sidley's IP Litigation Practice in New York and a member of the firm's Global Life Sciences Leadership Council.

NCBA Members Complimentary – Non-Members \$35

October 12 (IN PERSON ONLY)

Dean's Hour Lunch and Learn: The Law Firm Experience through the Lens of Technology—Start to Finish

12:30PM – 1:30PM

Complimentary lunch provided by NCBA Corporate Partner LexisNexis.

1 credit in professional practice. Skills credits available for newly admitted attorneys.

The many ways technology can aid attorneys in locating the best and most on point statutes, caselaw, secondary materials and all relevant materials can be overwhelming. The comments to the model rules of professional conduct governing attorneys state that "to maintain competency a lawyer should keep abreast...[of] the benefits and risks associated with relevant technology." The goal of this course is to assist attorneys in navigating online legal research, so they feel more confident and competent when researching subjects important to their work. This CLE course considers the daily tasks that attendees may be required to perform.

Guest Speaker:

Donna Baird: Donna Baird has been with LexisNexis since 1993 as a Solutions Consultant and Team Lead. During her tenure at Lexis, she has partnered with law firms of all sizes, federal and state agencies, and courts, as well as corporate legal departments. She is a graduate of the College of William & Mary and currently lives in Ashland, Virginia. LexisNexis has arranged for Donna to travel to visit us at Domus and present this program in person. You won't want to miss cutting edge research through the lens of technology CLE program!

Registration Fees:

NCBA Members complimentary

Non-Member Attorney \$35

Court Support Staff \$20

October 16 (HYBRID)

Dean's Hour: Pro Bono—A History of Pro Bono in Nassau County

With the NCBA Access to Justice Committee

12:30PM – 1:30PM

1 Credit in professional practice

Come join us for a program on how lawyers have and continue to "do good" in Nassau County. Learn more about the history of pro bono as well as current opportunities for pro bono through programs currently being run by NCBA and other pro bono legal service providers.

Guest Speakers:

Judge Vito M. DeStefano, District Administrative Judge
10th Judicial District – Nassau County

Madeline Mullane, Esq., Director, Pro Bono Attorney
NCBA

Cheryl Zalenski, Director of the ABA Center of Pro Bono, Counsel to the ABA

Professor Richard Klein, Professor Emeritus Touro Law School

Thomas Maligno, Former Executive Director of Nassau Suffolk Law Services and former Executive Director of Touro Law School Public Advocacy Center

NCBA Members Complimentary – Non-Members \$35

**FOCUS:
MUNICIPAL LAW**

Michael Sahn and Meaghan Hassan

In the ever-evolving landscape of legal practice, artificial intelligence (“AI”) has emerged as a powerful tool that will transform how attorneys approach their work. This includes land use and municipal attorneys, who are tasked with either presenting development projects to municipal boards or representing governmental agencies and boards in considering such applications and in the even broader range of municipal governance issues. AI technologies offer capabilities that can streamline processes, supplement research resources, and provide valuable insights into complex land use and municipal issues. By harnessing the potential of AI, land use and municipal attorneys can enhance their efficiency, accuracy, and overall effectiveness in representing their clients and navigating the intricacies of land use law, including environmental and real estate development issues. However, given the local nature of municipal and land use law and unknown reliability of AI materials, attorneys must use AI with caution to supplement traditional legal expertise.

Accelerating Research and Analysis

It is now well known that AI can significantly reduce the time and effort required for legal research. Westlaw Edge and LexisNexis, both longstanding research platforms in the legal community, have been providing AI assisted legal research to attorneys for decades.¹

However, recent advances in AI capabilities and natural language processing (NLP) allow AI platforms to perform more than legal research. Tools such as GPT-3 and others on the horizon can quickly sift through vast volumes of legal documents and reports. In the context of land use and municipal law, these platforms can analyze and summarize lengthy documents, such as a municipality’s comprehensive plan or zoning code, traffic analyses, or economic impact analyses generated for a specific land use project.

AI can enable land use and municipal attorneys to pinpoint relevant information and draw valuable insights

Leveraging the Power of AI: A Municipal and Land Use Attorney’s Guide to Enhanced Efficiency and Effectiveness

promptly and concisely. Using AI, land use and municipal attorneys can ascertain whether a proposed project complies with the local zoning code. Further, AI can gather and process information about specific properties, including the history of the property, its ownership, and potential restrictions on the use of land.² AI can also recommend new land use regulations. Saving time in the due diligence period of a development project is also important to the client and overall outcome of the case.

Predictive Analytics for Informed Decision-Making

One of the most compelling benefits of AI in land use and municipal law is its ability to employ predictive analytics.³ By analyzing historical data and patterns, AI algorithms can predict the potential consequences of various land use scenarios. This empowers attorneys to assess the viability of different uses of land, evaluate risks, and advise their clients on the best course of action based on the application’s likelihood of success. By using the predictive analytics of AI, land use and municipal attorneys may effectively assess different land use options, empowering the attorney to make informed decisions on how projects are presented or assessed.

However, attorneys should keep in mind that AI platforms can only produce a predictive analysis based on the data it has access to.⁴ One drawback to the AI database specific to land use and municipal attorneys is that many municipal boards typically file their decision in the office of the municipal clerk. Most municipalities do not electronically publish their decisions or the record that a decision is based off, unlike court decisions. AI platforms would not have access to these prior decisions to analyze them in the context of a new application unless the decisions were manually obtained and uploaded to the AI platform. An additional concern with the accuracy of predictive analytics of land use determinations is that different elected and/or appointed officials may have different policy perspectives and goals which may veer from prior decisions. Changing tides in policies may throw a wrench into AI’s predictive analysis function.

Document Automation

In addition to research, AI-powered tools can automate the drafting of legal documents, which



should be used with caution when filing those documents with a court or administrative agency. On the development side, AI tools can assist in preparing and filing land use applications, such as applications for site plan approval, variances, or for a parcel of land to be re-zoned. On the municipal side, AI tools can automate the review of land use applications to expeditiously ensure that all application requirements have been met before an application can be heard.⁵

By using AI document automation, land use and municipal attorneys may save substantial time and effort on preparing legal arguments to support or disapprove land use applications and in drafting of decisions and orders for municipal boards. AI-driven solutions also can assist in ensuring that documents comply with relevant regulations and requirements, enhancing the efficiency of the legal practice and enabling attorneys to focus on the nuances of each case.

Environmental Impact Assessment and Compliance

Environmental considerations are integral to land use determinations. AI can be invaluable in assessing potential environmental impacts of proposed developments. Pursuant to the New York State Environmental Quality Review Act (“SEQRA”), municipalities are required to assess all potential environmental impacts of a project under a strict regulatory framework.⁶ AI can flag numerous environmental concerns that are attached to a specific land use or other project that must be studied and potentially mitigated by an applicant. AI can also assist in identifying mitigation measures to incorporate in a negative SEQRA findings statement.

Additionally, AI can assist in analyzing and summarizing vast amounts of data, such as data collected from traffic studies, air quality

studies, noise studies, and others. This can assist in forming arguments to present to a municipal board, as well as help municipal attorneys and boards interpret data submitted by an applicant in accordance with SEQRA.

GIS Visualization

AI-driven Geographic Information Systems (“GIS”) allow land use and municipal attorneys to visualize land parcels, zoning districts, and proposed developments in a spatial context.⁷ This can aid in understanding the implications of proposed land use changes, facilitating more effective communication with clients and local municipalities about their vision for the use of a parcel of land. Drone imaging can also be used to assess changes in land use cover and intensity and depict such changes visually.⁸ By presenting data in visual formats, AI-powered GIS makes complex information more accessible, allowing land use attorneys to present persuasive arguments with clarity and confidence, and allowing municipal boards to envision what their locality will look like if an application is approved or denied.

Understanding Concerns Associated with AI

The use of AI raises concerns with data verification and citing to AI sources. Just last month a New York attorney made national headlines for submitting litigation papers citing to caselaw that AI Platform ChatGPT made up.⁹ From an ethical perspective, attorneys should disclose to any decision-making authority when AI software is employed to generate their arguments or other documents, and that the information was individually verified. Further, attorneys should be cautious of ethical confidentiality requirements when deciding what information to share with the AI software.¹⁰

The future use of AI in all these scenarios may hinge on a question that the courts have yet to face: whether AI generated reports, analysis, or recommendations can serve as a “rational basis” to uphold the decision of a municipal administrative agency, official, or board, such as a Zoning Board of Appeals or Planning Board, or whether a decision based on AI generated material will be annulled as arbitrary and capricious, or lacking substantial evidence in the record. In Article 78 proceedings commenced against a body or officer seeking to challenge an action or decision rendered, the court is limited in its analysis to whether the decision making authority had a rational basis for the exercise of its discretion or whether the decision was based on substantial evidence in the record.¹¹ Under those standards, courts will not disturb a decision unless the record shows that the action taken was arbitrary or capricious or not based on substantial evidence in the record.¹²

No doubt, courts will have to decide lawsuits regarding whether AI resources can support administrative decision making. A party aggrieved by an administrative decision that relies on AI generated information as “evidence in the record” as a rational basis for the decision may well seek to overturn the decision, arguing that AI is not competent “evidence” to support an administrative decision. Until then, land use and municipal attorneys must be careful to disclose and double-check materials gathered through AI platforms, and independently verify and validate the materials.

Conclusion

Incorporating AI into the land use and municipal legal practices offers a myriad of benefits, from accelerating research and analysis to facilitating more informed decision-making and enhancing communication with clients and municipalities. As the legal profession continues to embrace technological advancements, AI stands out as a potent tool for land use and municipal attorneys seeking to improve efficiency, effectiveness, and client representation.

With that said, it’s crucial for land use and municipal attorneys to recognize that AI should complement, and not replace, their legal expertise. The human analysis, research, and professional judgment are indispensable in navigating the complexities of land use and municipal law and providing tailored solutions to clients’ unique challenges. For instance, this article was prepared with the help of AI platform ChatGPT, and then independently researched and verified by attorneys.

By embracing AI as a supportive tool, land use and municipal attorneys can position themselves at the forefront of legal practice, delivering exceptional value to their clients while adapting to the demands of the AI age. 🏠

1. “Our Timeline,” Thomson Reuters, available at <https://www.thomsonreuters.com/en/artificial-intelligence/ai-timeline.html#two>; “LexisNexis Launches Lexis Answers, Infusing New Artificial Intelligence Capabilities into the Company’s Flagship Legal Research Platform, Lexis Advance,” LexisNexis (June 26, 2017), available at <https://bit.ly/3QVUIQQ>.
2. Bex Mizes, “Eight Ways AI Will Impact Commercial Real Estate,” CREXI (June 26, 2023), available at <https://www.crexi.com/insights/eight-ways-ai-will-impact-commercial-real-estate>.
3. Rhys Dipshan, “With Analytics Tools, Law Firms Are Adding Predictive Power to Their Advice,” *The American Lawyer*, Law.com (June 3, 2022), available at <https://www.law.com/americanlawyer/2022/06/03/with-analytics-tools-law-firms-are-adding-predictive-power-to-their-advice>.
4. Joe McKendrick, “Artificial Intelligence Without The Right Data Is Just... Artificial,” *Forbes* (Dec. 30, 2022), available at <https://www.forbes.com/sites/joemckendrick/2022/12/30/artificial-intelligence-without-the-right-data-is-just-artificial/?sh=4e9019b3181b>.
5. “7 key benefits of legal document automation,” Thomson Reuters, available at <https://legal.thomsonreuters.com/en/insights/articles/benefits-of-document-automation>.
6. See, 6 NYCRR Part 617, State Environmental Quality Review.
7. Greg Andoll, et al., “The Astonishing, Spooky, Imprecise, Evolving, Uncharted World of AI-Generated Designs and Renderings. Are you Ready?,” *AI A Baltimore* (June 1, 2023), available at <https://www.aibaltimore.org/2023-06-01/the-astonishing-spooky-imprecise-evolving-uncharted-world-of-ai-generated-designs-and-renderings-are-you-ready/>.
8. Marcin Frackiewicz, “The Role of Artificial Intelligence in Sustainable Land Management,” *TS2 Space* (April 24, 2023), available at <https://ts2.space/en/the-role-of-artificial-intelligence-in-sustainable-land-management/>.
9. Dan Mangan, “Judge sanctions lawyers for brief written by A.I. with fake citations,” *CNBC* (June 22, 2023), available at <https://www.cnn.com/2023/06/22/judge-sanctions-lawyers-whose-ai-written-filing-contained-fake-citations.html>.
10. Janine Cerny et al., “Legal Ethics in the Use of Artificial Intelligence,” *SQUIRE PATTON BOGGS* (May 20, 2020), available at https://www.squirepattonboggs.com/-/media/files/insights/publications/2019/02/legal-ethics-in-the-use-of-artificial-intelligence/legaethics_feb2019.pdf.
11. See, *Pell v. Board of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck*, 34 N.Y.2d 222 (1974).
12. See, *In Re Retail Property Trust*, 98 N.Y.2d 190 (2002); *Matter of North Shore Steak House v. Board of Appeals of Inc. VII. of Thomaston*, 30 N.Y.2d 238 (1972).



Michael H. Sahn is the managing member of Uniondale law firm Sahn Ward Braff Koblenz PLLC, where he concentrates on zoning and land-use planning, real

estate law and transactions, and corporate, municipal, and environmental law. He also represents the firm’s clients in civil litigation and appeals.



Meaghan Hassan is an associate of Sahn Ward Braff Koblenz PLLC, where she concentrates on zoning, land-use planning, municipal and environmental law, and real estate law.



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The NCBA is grateful for these individuals who strongly value the NCBA's mission and its contributions to the legal profession.

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**FOCUS:
TAX LAW**


Lisa LoCurto

In the recent decision, *Tyler v. Hennepin County*,¹ the United States Supreme Court ruled that Hennepin County's retention of proceeds above the tax owed on the taxpayer's home to satisfy a prior tax debt was a Fifth Amendment constitutional violation. The Court reasoned that without proper due process, the Minnesota county had no right to retain more than what was necessary to satisfy the tax debt.

The Unconstitutional State Ordinance

The property owner, Geraldine Tyler owned a condominium in Hennepin County, Minnesota, that accumulated about \$15,000 in unpaid real estate taxes along with interest and penalties. The County seized the condo and sold it for \$40,000, keeping the \$25,000 excess over Tyler's tax debt for itself.² Ms. Tyler filed suit, alleging that the County had unconstitutionally retained the excess value of her home above her tax debt in violation of the Takings Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment. The District Court dismissed the suit for failure to state a claim, and the Eighth Circuit affirmed.

The Minnesota ordinance did not absolutely preclude an owner from obtaining the surplus proceeds of a judicial sale, but instead simply defined the process through which the owner could claim the surplus. Minnesota's statute, in comparison to other states' laws, provided no opportunity for the taxpayer to recover the excess value from the State. This was what the Supreme Court found to be unconstitutionally acceptable. Due process is key to a local municipal government's attempts to satisfy delinquent taxes while balancing the homeowner's rights to excess proceeds.

New York State Legislation Following the Tyler Decision

Considering the recent *Tyler* decision, New York state legislation was passed this year declaring a

Tyler v. Hennepin: How Far Can Municipalities Go to Satisfy Delinquent Taxes?

moratorium on foreclosures and sales of tax deeds to satisfy delinquent taxes.³ The moratorium will remain in effect until June 30, 2024. The purpose of the moratorium is to give local governments time to develop a way to reimburse homeowners for any excess proceeds if the local municipality lacks such procedures. Foreclosures initiated by mortgage lenders were not affected by this bill. This means *in rem* proceedings may continue to proceed for mortgage lenders. *In rem* proceedings make up a small percentage of cases compared to lender foreclosures when a person has stopped making mortgage payments. To protect their interest in the real property, banks and other lenders typically continue to pay real property taxes. Most often local governments are involved with *in rem* proceedings when there is no mortgage on the property and the ownership of the real property passes to family members with the delinquent taxes attached to the property or when the property has a negative value due to contamination or other issues with the real property.

Counties That Issue and Sell Tax Liens

In Nassau County, the Treasurer's Office collects the payments on delinquent real property taxes in Nassau County. This includes the General and School Taxes of the county's three Towns (Hempstead, North Hempstead, and Oyster Bay) and the Cities of Long Beach and Glen Cove. However, the County only collects delinquencies for the General portion of the School Taxes for the City of Long Beach. The City of Glen Cove handles its own School Tax delinquencies.

After a specific deadline, if a homeowner has not paid his or her real estate taxes, Nassau County will issue a tax lien on the homeowners' property. The County can then either keep the lien itself or auction it off to the highest bidder. Nassau and Suffolk Counties regularly sell off their tax liens to third-party investors. Only two counties in New York State sell tax lien certificates: Nassau County and Suffolk County.

However, New York is also a tax deed state. The term "tax deed" refers to a legal document granting ownership of a property to a government body when the



owner fails to pay any associated property taxes. A tax deed gives the government agency the authority to sell the property to collect the delinquent taxes. Once sold, the property is then transferred to the purchaser. These transactions are called "tax deed sales" and are usually held at auctions. At tax deed sales in New York, you can purchase real estate for substantial discounts. Most counties hold tax deed sales in New York.

Local Governments and Tax Lien Sales

Local governments are constantly trying to balance the needs of the many with the rights of the individual. When homeowners fail to pay their real estate taxes, it falls to the local governments to make up the shortfall to satisfy the tax levies. This is particularly difficult in Nassau County because not only does the County guaranty the collection of taxes for all the taxing authorities in the county, i.e., county, towns, cities, school and special districts, the County must guaranty the tax refund of successful tax certiorari cases for all those jurisdictions.⁴

Through the sale of tax liens, the local municipalities can recover the monies that were not collected but are still required to provide for services that these local municipalities provide to its citizens. If the local government does not have the liquid cash available, it must take or borrow through tax anticipation notes and/or bonds to infuse money to keep the local municipality running.

At the same time, homeowners struggling in these difficult economic times to pay their taxes and satisfy

debts should be given due process and only be required to pay what they owe. How local municipalities balance the proceeds of excess value of property will be a difficult discussion. While the government cannot take more than it is entitled to take, the loss of the tax revenues after years of the governments' burden of carrying delinquent taxes, will require careful and thoughtful consideration.

The Legal Principle

The principle that a government may not take from a taxpayer more than what is owed is rooted in our nation's common law and codified by our U.S. Constitution through the Fifth and Fourteenth Amendments as well as by state and local laws. This principal of law traces its origins to Chapter 39 of King John's Magna Carta, which provides that "no freeman will be seized, dispossessed of his property, or harmed except *"by the law of the land,"* [emphasis added] as was the practice of English courts."⁵ While the king was entitled to his "tribute" or taxes, the sovereign had to provide the individual due process or else the "taking" is unjust. The phrase "due process of law" first appeared as a substitute for Magna Carta's "the law of the land" in a 1354 statute of King Edward III that restated the Magna Carta's guarantee of the liberty of the subject.⁶

Due process is guaranteed under the Fifth and Fourteenth Amendments of the U. S. Constitution. Regarding real property taxes specifically, the Act of July 14, 1798, §13, 1 Stat. 601, affirmed that the government could seize and sell only "so much of [a] tract of land . . . as may be necessary to satisfy the

taxes due thereon.” Today almost every state government has adopted statutes that a government cannot take more property than it was owed, and this principle is applied through the ratification of the Fourteenth Amendment. Today, most States require excess value to be returned to the taxpayer whose property is sold to satisfy outstanding tax debt. The federal and state courts have long recognized that a taxpayer is entitled to the surplus in excess of the debt owed.⁷

Various states have laws to safeguard the homeowners’

constitutionally protected property interests when collecting delinquent taxes. Unlike Minnesota, the majority of states protect a homeowner’s right to the surplus equity in a house after that house is sold to satisfy a past-due tax.⁸ Most states require the foreclosing government unit to return surplus funds from a property tax foreclosure sale to the previous property owner. Those states demonstrate a willingness to provide several opportunities for homeowners to pay their debts and recover any excess profits if a house must be sold as collateral. With

less than a year before New York State’s moratorium on foreclosures to collect delinquent taxes expires, local county and municipal governments will have to determine what are the best procedures to put into place that protect all the citizens they serve, individuals and communities. ⚖️

1. 143 S. Ct. 1369 215 L. Ed. 2d 564 (2023).
2. Minn. Stat. §§281.18, 282.07, 282.08.
3. S75949, Passed Assembly June 16, 2023 and Senate June 20, 2023. (Waiting signature of Governor Hochul).
4. The City of Glen Cove refunds its own school taxes; and certain Villages that assess their own properties are responsible for the tax certiorari refund.
5. Magna Carta – Muse and Mentor, Library of

Congress.
6. *Id.*

7. See, *United States v. Taylor*, 104 U.S. 216, 1881, *United States v. Lawton*, 110 U.S. 146, 1884; *Nelson v. City of New York*, 352, U.S. 103, 1956.

8. See Jenna Foos, Comment, *State Theft in Real Property Tax Foreclosure Procedures*, 54 Real Prop. Tr. & Est. 4 L.J. 93, 99-103 & n. 38 (2019).



Lisa LoCurto is the Bureau Chief of the Property Assessment Litigation Bureau of the Nassau County Attorney’s Office. Her views do not necessarily reflect those of the County Attorney’s Office.

IN BRIEF

Jamie Rosen has joined Meister Seelig & Fein PLLC as a Partner in the Firm’s Taxation and Estates and Litigation Groups.

Robert S. Barnett, Gregory L. Matalon, and Erik Olson, of Capell Barnett Matalon and Schoenfeld LLP presented at the Chinese American Society of CPAs, First Annual Tax Symposium, on gift reporting, trust and estate taxation, and partnership/S corp-related taxation. Gregory was quoted in the *Investment News* article “Aretha Franklin’s Estate Planning Deserves No Respect.” **Yvonne R. Cort** was featured in the *Investment News* article, “Audits on the rise amid a resurgent IRS.” Yvonne also spoke at the Divorce Directions Summit on the topic of innocent spouses.

Greg S. Zucker of Westerman Ball Ederer Miller Zucker & Sharfstein, LLP has been named Co-Managing Partner of the Firm.

On June 4, 2023, **Sharon N. Berlin**, of **Lamb & Barnosky, LLP**, co-presented on a panel on the topic “Deal or No Deal”—Navigating the Impasse Resolution Process” at the 22nd Annual School Attorney Law Conference sponsored by the NYS Association of School Attorneys at The Sagamore Hotel in Bolton Landing, New York.

Stephen Gassman participated with Hon. Jeffrey S. Sunshine and Hon. La Tia W. Martin in the “Evidence in Matrimonial Actions—An Interactive Approach” at the NYS Judicial Institute’s 2023 Judicial Summer Seminar.

Brian E. Shulman has joined The Law Offices of Alan J. Schwartz, P.C. as an Associate.

Karen Tenenbaum and members of her legal team presented “Changing State Residency for Tax Purposes” for Strafford Webinars. She was interviewed by Frank Demming for his podcast “Marketing Solutions for Local Businesses.” For the NYSSCPA Relations with the IRS Committee,

Tenenbaum, Chair, had Joe McCarthy, IRS Stakeholder Liaison, speak to the committee about “How to Read an IRS Transcript.”

Vishnick McGovern Milizio LLP (VMM) partners **James Burdi** and **Constantina Papageorgiou** and associate **Lauren Block** are proud to announce a new service offered by the firm’s Wills, Trusts, and Estates practice group, “Adulthood 101SM: Life Preparedness for Young Adults.” The VMM team proudly congratulates managing partner **Joseph Milizio** for being named one of Crain’s New York Business “2023 Notable LGBTQIA+ Leaders” on June 5. On June 20, VMM partner Constantina Papageorgiou was also named one of *Crain’s New York Business* “2023 Notable Women in Law.” On June 13, Joseph Milizio and the firm’s LGBTQ Representation practice sponsored the PFY (Pride for Youth) “Passion for Pride” 30th anniversary fundraiser. From June 3 to 5, the firm sponsored a charity fundraiser held by Cosmic Con NY and Draw for Life. On June 6, Joseph Milizio published an article in *Long Island Press Business* on “5 Legal Tactics Every Business Owner Should Know.” Mr. Milizio also published an article in *Best Lawyers* magazine on the new Florida state law granting courts temporary emergency jurisdiction over transgender minors.

Michael J. Antongiovanni of Meyer Suozzi, is proud to announce that the firm presented the 2023 Judge Bernard S. Meyer Scholarship to Morgan Hylton-Farrington for authoring the winning paper that earned a \$5,000 scholarship toward her third year of law school.

Harris Beach Partner **Jack Martins** was recently honored by Circulo de la Hispanidad at the Spring Gala. Partner **Jared Kasschau** was recognized in the *New York Real Estate Journal’s* 2023 Ones to Watch Industry Leader.



Marian C. Rice

Stephen J. Silverberg was named to the 2024 Edition of *The Best Lawyers in America*[®] in the practice area of elder law. Scott B. Silverberg was named to the 2024 edition of *The Best Lawyers in America: Ones to Watch*[®] in the practice areas of elder law and trusts and estates for the first time.

Terry O’Neil of Bond Schoeneck & King was named 2024 Lawyer of the Year in Labor Law Management. The following attorneys from the firm were named *2024 Best Lawyers in America*: **Andrea Hyde** (Trusts and Estates and Trust and Estates Litigation); **Craig L. Olivo** (Employment Law Management and Labor and Employment Litigation); and Terry O’Neil (Employment Law Management, Labor Law Management and Labor and Employment Litigation). **Jacqueline A. Giordano** was recognized in the *2024 Best Lawyers in America: Ones to Watch* list in the fields of Labor and Employment Law Management and Labor and Employment Litigation.

The following Forchelli Deegan Terrana LLP (FDT) attorneys were appointed to NCBA Committees as Chairs and Vice Chairs: **Gerard L. Luckman** (Chair, Bankruptcy); **Danielle B. Gatto** (Co-Chair, Litigation); **Robert L. Renda** (Vice Chair, Condemnation Law and Tax Certiorari); **Lisa M. Casa** (Vice Chair, Labor and Employment); **Gregory S. Lisi** (Chair, Lawyer Referral and Nominating); **Erik W. Snipas** (Vice Chair, Municipal Law and Land Use); **Michael A. Berger** (Co-Chair, New Lawyers); and **Cheryl L. Katz-Erato** (Vice Chair, Surrogate’s Court Estates and Trusts.) FDT Chairman and Co-Managing Partner, **Jeffrey D. Forchelli**, was selected by his peers for inclusion in the 30th Edition of *The Best Lawyers in America*[®] for Land Use and Zoning Law. Partner **Gregory S. Lisi** was recognized for a fourth consecutive year for his work in Litigation—Labor &

Employment. Partner **Kathleen Deegan Dickson** was listed for the second time for her work in Cannabis Law. The following partners were named to *The Best Lawyers in America*[®] list for the first time: **Joseph P. Asselta** (Construction Law); **Daniel P. Deegan** (Real Estate Law); and **Keith J. Frank**, Employment Law—Management. The following partners were included in *The Best Lawyers in America: Ones to Watch*[™] 2024 Edition: Cheryl L. Katz-Erato, (Litigation—Trusts and Estates); **Lindsay Mesh Lotito** (Banking and Finance Law); **Robert L. Renda** (Tax Law); **Danielle E. Tricolla** (Business Organizations including LLCs and Partnerships, Closely Held Companies and Family Businesses Law, Commercial Litigation, Litigation—Labor and Employment and Litigation—Real Estate); **Lisa M. Casa** (Commercial Litigation and Labor and Employment Law—Management); and **Erik W. Snipas** (Land Use and Zoning Law).

Lisa S. Hunter, Paul S. Linzer, Douglas E. Rowe, and Donna J. Turetsky of Certilman Balin Adler & Hyman, LLP have been named to the 2024 *Best Lawyers* list. **Carrie Adduci** was named to the 2024 *Best Lawyers Ones to Watch* list.

Hon. Gail Prudenti, former Chief Administrative Judge for the State of New York, has become a new partner at Burner Prudenti Law, P.C., formerly known as Burner Law Group, P.C.

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@nassauab.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.

**FOCUS:
LAW AND AMERICAN
CULTURE**



Rudy Carmenaty

The murder of Selena in 1995 was an event that the Mexican American community will never forget. Embraced by her millions of fans as the ‘*Mexican American Madonna*’ and the ‘*Queen of Tejano Music*,’ Selena, nearly thirty years after her untimely death, holds a unique place in Latino culture.¹

‘Tejano’ is a lively fusion of Mexican vocal styles blended with dance rhythms taken from polka and country music. Selena, with all her talent and charisma, made this Spanish language music genre popular on both sides of the Rio Grande. But she was more than a celebrity.

Selena had an ability to embody the aspirations of her audience. Selena was unpretentious and had the common touch. She could have been your sister, your daughter, your friend. Mexican Americans felt personally invested in her success, as she “*proved you could assimilate and have your culture too.*”²

Selena, it seemed had everything, except time. She grew up in a loving home. Overcoming her father’s objections, she was happily married to guitarist Chris Pérez. Professionally, she was a chart topper who had just won a Grammy. On the cusp of breaking through to mainstream stardom, her future appeared unlimited.

Surrounded by her close-knit family, Selena lived a sheltered life. Abraham Quintanilla, her father as well as her manager, saw to it that she was protected. Perhaps that is what made her so vulnerable, she trusted too readily. Her naivete contributed to her untimely death. She put her faith in someone who would kill her.

The Murder of the Mexican American Madonna

Selena was murdered by Yolanda Saldívar. A few years prior, Saldívar approached the singer’s family with the idea of starting a fan club. Saldívar quickly worked her way into Selena’s inner circle. She became the president of the fan club and went on to manage Selena’s boutiques. For her part, Selena came to rely on Saldívar.

Saldívar seemed totally devoted to Selena. In fact, Selena became an all-abiding obsession. Selena became a crucial element of Saldívar’s identity, her one claim to fame. Whatever status Saldívar had acquired derived from her association with the singer. Saldívar became jealous of anyone who got between her and her idol.

Suspicious were aroused that Saldívar was stealing. Inquiries by Selena’s father unearthed discrepancies approximating \$60,000.³ Convinced of Saldívar’s malfeasance, he fired Saldívar and banned her from contacting Selena again. Saldívar blamed Mr. Quintanilla for separating her from the one person who mattered most to her.

Until it was too late, Selena never believed Saldívar would ever harm her. On March 31, 1995, Selena went to the Day’s Inn in Corpus Christi to retrieve financial records Saldívar had failed to return.⁴ April 15 was approaching, and Selena needed these materials to file her taxes.

The night before, Saldívar claimed she had been raped while on business in Mexico. The morning of the 31, Selena drove her to a nearby hospital where Saldívar’s medical examination proved inconclusive. Selena felt misled by Saldívar and decided then to cut all ties. They returned to the Day’s Inn.

Words were exchanged and Saldívar pointed a revolver at Selena. As Selena tried to leave the motel room, Saldívar shot her in the back at point-blank range. The bullet “*shattered her right shoulder, tearing one lung, her veins and a major artery,*” causing her to bleed profusely.⁵

A fatally wounded Selena staggered to the motel’s lobby, leaving behind a trail of blood. Selena identified Saldívar as her assailant with her last conscious breath. An ambulance took Selena to Corpus Christi Memorial Hospital where Selena Quintanilla-Pérez was pronounced “*clinically brain dead*” at 11:48 am that morning.⁶



Word soon spread of Selena’s death, prompting collective mourning among the people of Corpus Christi and her fans around the world. From that moment on, a media frenzy would accentuate every element of the events that followed in both the English and Spanish language press.

Saldívar tried to flee the motel. Police spotted her and an officer ordered Saldívar out of her truck. Saldívar refused, pointing her revolver to her head threatening suicide. It should be noted that as Saldívar held the murder weapon cocked and ready to shoot, the gun never fired. This salient point would come up later at trial.

A stand-off ensued at the Day’s Inn. The authorities, local police, and the FBI, tried to persuade Saldívar to surrender. During these marathon negotiations, it was suggested to Saldívar that the shooting may have been an accident. Saldívar picked up on this riff claiming hysterically that the gun went-off by mistake.

Saldívar gave herself up nine hours later, as the crowd that gathered at the motel cheered and cried. The conversations between negotiators and Saldívar were taped. The contention of the shooting being an accident, captured on audio tape, would form the basis of her defense.

Saldívar was interrogated at the Corpus Christi police station. Although she was informed of her Miranda rights, she nonetheless continued speaking to the police without counsel being present. This questioning resulted in a signed confession which Saldívar agreed to.

Previously during the stand-off, Saldívar had been asked if she wanted a lawyer. She answered yes. Yet she was not given one then nor did she stop talking to the authorities. Questions were raised about a possible constitutional violation, but none were found sufficient on review warranting a new trial.⁷

Upon her arrest, Saldívar was placed in isolation for fear of reprisals. Gang members purportedly took up collections for bail money, so Saldívar could be killed on release. The Mexican Mafia placed a bounty on her head. While awaiting trial and throughout her prison term, Saldívar has been held in protective custody.

Saldívar was indicted on a sole charge of Capital Murder. First-degree murder (known as ‘Capital Murder’) in Texas is punishable by a prison term of not more than ninety-nine years or less than five years, as well as a fine of up to \$10,000.⁸ Carlos Valdez, the District Attorney of Corpus Christi, led the prosecution.

The only question was who would step forward to defend Yolanda Saldívar. The court had difficulty securing suitable counsel. Any defense lawyer taking Saldívar’s case could face death threats. Many refused out of fear of reprisals for representing such an unpopular client.

Presiding Judge Mike Westergren assigned the case to Douglas Tinker. A seasoned defense attorney, Tinker received numerous threats. When Saldívar was convicted, Tinker, no doubt, felt some measure of relief. Calls for revenge were common. Saldívar had to be brought to trial

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each day under armed escort for her own safety.

Even though the trial was not televised, there was saturation coverage by the media. Saldívar’s lawyers argued effectively for a change of venue from Corpus Christi to Houston. Even in Houston, crowds could be heard crying out for “*Justicia*” [Justice] and “*Cien años*” [100 years].⁹

Judge Westergren exerted a firm hand which prevented this matter from deteriorating into a circus like the O.J. Simpson trial in Los Angeles. Jury selection in Saldívar’s case began a week after the O.J. verdict was announced. It was for Latinos, in Texas and beyond, their ‘trial of the century.’

Two distinct theories emerged at trial. The prosecution contended that it was a straight-forward instance of premeditated murder. Saldívar, not being able to let go, killed Selena in cold blood. The defense asserted it was all an unfortunate accident. Was it premeditated murder or an accidental killing? A jury would decide.

The prosecution argued that Selena had rejected Saldívar. At the motel, Selena removed a friendship ring that Saldívar had given her.¹⁰ This act symbolized her complete break with Saldívar. It was a fateful and fatal move. Realizing their relationship was over, Saldívar, who lured Selena to her motel room, killed her.

For District Attorney Carlos Valdez, everything was riding on this case. On the job less than two years, he had limited trial experience.¹¹ Further complicating matters, he was second-guessed at every step by the media. He not only needed to secure a conviction, but for Saldívar to receive the maximum penalty—life in prison.

The autopsy performed concluded that Selena’s death was a homicide, not an accident. The medical examiner so testified, and autopsy pictures of Selena were introduced into evidence. They were quite graphic. Saldívar sat impassively when the pictures were shown in open court as jurors were seen weeping.

The prosecution called a firearms expert. The expert testified the weapon was in good working condition. He attested the weapon did not have a hair-trigger, any person pulling the trigger would need to deliberately apply pressure to fire the gun. The fact the weapon did not go off during the stand-off was used against Saldívar.

At her interrogation the police had obtained a confession from Saldívar, wherein she admitted to shooting Selena after being accused of stealing. But during the stand-off with

the police, Saldívar repeated over and over again that it was an accident. Her signed statement was silent as to this aspect of her subsequent defense.

This was the core of her case. Texas Ranger Robert Garza told the jury that at the Corpus Christi police station, he overheard Saldívar claim the shooting was accidental and recordings made during the negotiations have Saldívar calling the shooting a mistake.

Detective Paul Rivera, who had ‘Mirandized’ Saldívar at the station, was asked on cross-examination as to why Rivera had not provided her with a lawyer. Rivera responded she had not asked for one after being informed of her rights and continued with the interrogation.

The testimony of Ranger Garza was effectively countered by the prosecution with Detective Rivera noting that the accused had every opportunity to amend the confession or not sign it in the first place. Saldívar did neither. The confession was admitted by the Court.

To no avail, defense counsel Tinker countered that prosecution witnesses either inflated their testimony or fabricated elements entirely. The defense postulated its own theory. Tinker argued Saldívar bought the gun not to hurt Selena, but rather to kill herself.

She invited Selena to her room to sacrifice herself in front of her obsession. Saldívar said when she put the gun to her head, Selena told her not to go through with it. After Selena opened the door to leave, Saldívar said the gun somehow misfired. Saldívar incredulously claimed she didn’t even know if Selena was shot.

However, the floor just outside Saldívar’s motel room at the Day’s Inn was a pool of blood. She stated that when she went to her truck, she was not trying to escape but instead was looking for Selena. A nurse by profession, Saldívar made no effort to help Selena. Nor did she call 911 to aid her injured ‘friend.’

Tinker’s strategy tried to have the jury’s attention focus on Mr. Quintanilla and how he pushed Saldívar over the edge. Saldívar on the stand affirmed that it was Mr. Quintanilla’s actions that led to her frenzied state. Somehow it was the victim’s father who was responsible, not the twisted devotee who pulled the trigger.

In its closing arguments, the defense reiterated it was an accident, accused the prosecution of enflaming the jury’s emotions, and spoke of the community’s desire for revenge. In its summation, Valdez doubled down that Saldívar deliberately killed Selena and it could not have been an accident given the circumstances.

That same day, the jury began their deliberations. The trial had lasted only three weeks. Jurors deliberated for about two hours, finding Saldívar guilty. She was afterward sentenced to life in prison with the possibility of parole in thirty years. She will first become eligible in 2025.

Questions linger about the trial of Yolanda Saldívar. Was Saldívar’s confession properly obtained by the police? Could she receive a fair trial in a media environment punctuated by threats of violence? Most troubling of all is Saldívar’s lack of remorse. She has never acknowledged any culpability for Selena’s death.

What can be said is that Judge Westergren fulfilled his function admirably. The proceedings went relatively smoothly, often under trying conditions. Saldívar was given every opportunity to mount a credible defense. Despite the media and public interest, a fair trial was conducted that, by all indications, arrived at a proper verdict.


Selena achieved still greater fame in death than she did in life. The fact that she was murdered, adds an element of poignancy to her story that compounds the loss of a beloved icon. Selena, like other stars who died tragically in their prime, will remain

forever young, forever treasured by her public. 🗡️

1. Sue Ann Pressley, *Singer Selena Shot to Death in Texas*, *Washington Post* (April 1, 1995) at <https://www.washingtonpost.com>.
2. Joe Nick Patoski, *The Sweet Song of Justice*, *Texas Monthly* (December 1995) at <https://www.texasmonthly.com>.
3. Jennifer Neid, *Why Did Yolanda Saldívar Kill Selena Quintanilla, And Where Is She Now?*, *Women’s Health* (April 30, 2021) at <https://www.womenshealthmag.com>.
4. Pressley, *supra*.
5. Esme Mazzeo, *Things We Learned About Selena After her Death*, *Niki Swift* (January 31, 2023) at <https://www.nikiswift.com>.
6. Neid, *supra*.
7. *Id.*
8. *Texas First Degree Murder Laws* at <https://www.findlaw.com/state/texas-law/texas-first-degree-murder-laws.html>.
9. Patoski, *supra*.
10. Mazzeo, *supra*.
11. The conviction of Yolanda Saldívar secured Valdez’ reputation. Valdez served as district attorney for Nueces County from 1993 to 2010 and in 2019 he was elected to a district court judgeship. He also wrote the book *Justice for Selena*.



Rudy Carmenty is the Deputy Commissioner of the Nassau County Department of Social Services. He can be reached at rudolph.carmenty@hhsnassaucounty.ny.us.



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Questions? Contact Bridget Ryan at (516) 747-1361.

**NCBA Committee Meeting Calendar
September 6, 2023–
October 5, 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.

WEDNESDAY, SEPTEMBER 6

Real Property Law
12:30 PM
Suzanne Player

THURSDAY, SEPTEMBER 7

Hospital & Health Law
8:30 AM
Douglas Stern

THURSDAY, SEPTEMBER 7

Publications
12:45 PM
Cynthia A. Augello

THURSDAY, SEPTEMBER 7

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

TUESDAY, SEPTEMBER 12

Education Law
12:30 PM
Syed Fahad Qamer/Joseph Lilly

TUESDAY, SEPTEMBER 12

Labor & Employment Law
12:30 PM
Marcus Monteiro

WEDNESDAY, SEPTEMBER 13

Medical Legal
12:30 PM
Bruce Cohn

WEDNESDAY, SEPTEMBER 13

Commercial Litigation
12:30 PM
*Christopher J. Clarke/
Danielle Gatto*

WEDNESDAY, SEPTEMBER 13

Matrimonial Law
5:30 PM
Karen L. Bodner

THURSDAY, SEPTEMBER 14

Elder Law, Social Services & Health Advocacy
12:30 PM
*Lisa R. Valente
Mary Beth Heiskell*

FRIDAY, SEPTEMBER 15

Criminal Court Law & Procedure
12:30 PM
Christopher M. Casa

TUESDAY, SEPTEMBER 19

Intellectual Property
12:30 PM
Sara M. Dorchak

TUESDAY, SEPTEMBER 19

Asian American Attorney Section
12:30 PM
Jennifer L. Koo

WEDNESDAY, SEPTEMBER 20

Association Membership
12:30 PM
Jennifer L. Koo

WEDNESDAY, SEPTEMBER 20

Construction Law
12:30 PM
Anthony DeCapua

WEDNESDAY, SEPTEMBER 20

Ethics
5:30 PM
Mitchell T. Borkowsky

WEDNESDAY, SEPTEMBER 20

Diversity & Inclusion
6:00 PM
Sherwin Safir

THURSDAY, SEPTEMBER 21

Women in the Law
12:30 PM
*Melissa P. Corrado
Ariel E. Ronneburger*

THURSDAY, SEPTEMBER 21

Surrogate's Court Estates & Trusts
5:30 PM
*Michael Calcagni
Edward D. Baker*

TUESDAY, SEPTEMBER 26

Plaintiff's Personal Injury
12:30 PM
Giulia R. Marino

THURSDAY, SEPTEMBER 28

Access to Justice
12:30 PM
*Hon. Conrad D. Singer
James P. Joseph*

FRIDAY, SEPTEMBER 29

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

TUESDAY, OCTOBER 3

Women in the Law
12:30 PM
*Melissa P. Corrado
Ariel E. Ronneburger*

WEDNESDAY, OCTOBER 4

Real Property Law
12:30 PM
Suzanne Player

THURSDAY, OCTOBER 5

Hospital & Health Law
8:30 AM
Douglas Stern

THURSDAY, OCTOBER 5

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

THURSDAY, OCTOBER 5

Publications
12:45 PM
Cynthia A. Augello

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Abigail DeMonte
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