

# Nassau Lawyer

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## WE CARE's Hole in One—The Annual Golf and Tennis Classic

Bridget Ryan

The WE CARE Fund is part of the Nassau Bar Foundation, Inc., the charitable arm of the NCBA. Founded in 1988 by then NCBA President Stephen Gassman, WE CARE is supported through donations and fundraising efforts of the legal profession and the community at large. Over \$5 million has been raised by WE CARE to fund various programs to help those most in need throughout Nassau County. As the NCBA generously absorbs all of WE CARE's administrative costs, one hundred percent of the money that is raised is disbursed through charitable grants to improve the quality of life for children, the elderly, and others in need throughout Nassau County.

WE CARE's largest fundraising event, the Annual Golf and Tennis Classic, will be held on Monday, September 18, 2023. This year, the Classic will be held at Brookville Country Club and The Mill River Club. Founded in 1996 by Stephen W. Schlissel, the Classic brings the local legal and business community together for a day of fun and fundraising.

Don't be fooled by the title—the Classic has

something for everyone to enjoy. Attendees can play golf or tennis, or enjoy a day of wellness by the pool. Guests looking to learn the basics of golf are encouraged to join the Golf 101 session, where a professional teaches the ins and outs of the game as well as ways to improve one's skill. Attendees that know the basics but want a little extra instruction can join Golf 201, a more advanced event with on-course instruction to improve one's game. The Classic boasts a fun-filled day's worth of sports, activities, and an extravagant raffle room.

Each year, the WE CARE Fund honors local community members for their service to WE CARE, the legal profession, and the community at large. At this year's Classic, WE CARE is proud to honor Michael H. Masri, Esq., Partner at Meltzer, Lippe, Goldstein & Breitstone, LLP, and Jeffrey Mercado, CFP, MBA, Seniors Managing Director, Commercial Bank, Law Firm Banking at Webster Bank.

For more information regarding tickets, sponsorships, and journal ad opportunities, visit the WE CARE website at [www.thewecarefund.com](http://www.thewecarefund.com).

## SAVE THE DATE



**BBQ AT THE BAR**

**THURSDAY, SEPTEMBER 7**  
See insert



**WE CARE GOLF AND TENNIS CLASSIC**

**MONDAY, SEPTEMBER 18**  
See cover story and pg. 20



**JUDICIARY NIGHT**

**THURSDAY, OCTOBER 19**

## Your Membership Matters!

Whether you're looking to learn something new in your area of practice, earn CLE credit, or network, the NCBA has the tools that you need to succeed professionally. Did you know that your membership includes unlimited FREE live CLE, FREE committee CLE, FREE Bridge-the-Gap weekend, *and now even more exciting new benefits?*

### BBQ at the Bar

To kick off the new Bar year, the NCBA will host its annual BBQ at the Bar on the front lawn of Domus

on Thursday, September 7—open to NCBA Members, prospective members, and law students. We invite you to gather for a relaxing evening of networking and BBQ favorites. For additional information, see the insert within this issue.

### Renew Today!

The 2023-2024 Bar year began on July 1, 2023. Renew online today at [www.nassaubar.org](http://www.nassaubar.org) or call the NCBA Membership office at (516) 666-4850. We can't wait to welcome you back as a member.

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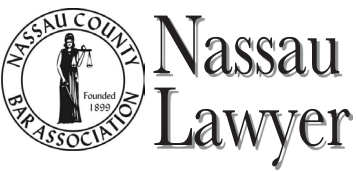
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2023 Nassau County Bar Association

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**A**t my Presidential Installation, I mentioned my goal to provide increased assistance to our nation's veterans. Within days of Installation, a program began taking shape regarding training attorneys with respect to legal issues facing veterans and how to address them. I'm proud to announce that on Friday, September 8, 2023, the NCBA will hold a day-long program, "Demystifying the Rights Available to Veterans," devoted to how attorneys can assist our veterans (See the centerfold).

This unique program is exemplified by the attendance of the Commissioner of the newly formed New York State Department of Veteran Services, Viviana DeCohen, affectionately known as "Mama V" for her staunch support of the veteran community, joining us that day. The seminar will feature a CLE program presented by the Chairperson of our Veterans and Military Law Committee, Gary Port, on the ins and outs of Form DD 214, the essential document issued to veterans on their separation from active service. The type of discharge a veteran receives not only has an impact on the benefits available, but also the type of civilian jobs that may be available to them. Mr. Port's CLE presentation will be followed by a seminar given by Deputy Commissioner of the NYS Department of Services Benjamin Pomerance, entitled "17 Commonly Repeated Veteran's Myths," which will provide the legal summation of the reality of each debunked myth.

In addition, there will be a panel discussion on legal issues and rights in mortgage foreclosure and landlord tenant proceedings faced by veterans, chaired by our Director of Pro Bono Services Madeline Mullane and Susanna Laruccia of the Veteran Rights Project of Nassau Suffolk Law Services. Additional panel discussions will be held on disabled veteran business certificates and more.

In addition to being open to NCBA Members, the program will be available to leaders of organizations that provide support to veterans, for them to learn about available legal services. We will also be joined by Nassau County's Director of Veterans Services Agency Ralph Esposito.

If that wasn't enough, a complimentary breakfast and lunch will be served. You don't want to miss this important program and the opportunity to learn from committed advocates and leaders who provide legal services to veterans. Gain the knowledge needed to help those who served our country and network with people on the ground helping our veterans. There is a justice gap that can be filled with your support. We are planning additional programs over the coming year that will focus on veteran's issues,



## FROM THE PRESIDENT

Sanford Strenger

rights in matrimonial actions and family law proceedings, and employment law as it specifically applies to veterans, including service animal concerns. If you have ideas for additional programs, wish to volunteer, or provide pro bono services to veterans, reach out to Mr. Port, the NCBA Staff, or myself.

One would think that as heat and humidity rise that the activities at the NCBA would taper. However, that is simply not the case; in late June, our new Cyber Law Committee held its inaugural and well-attended meeting as did our new

Asian Attorney Section.

The WE CARE Fund, the charitable arm of the NCBA, distributed \$140,000 in grants to worthy local charitable organizations and scholarships to high school students. Sign up for the Golf and Tennis Classic being held September 18.

Our Dinner Gala Committee led by President-Elect Dan Russo, began planning the 2024 Gala to be held at a new and exciting venue (stay tuned for future announcements).

The Nassau County Assigned Counsel Defender Plan began the installation of new technology to better serve its panel members and clients.

Our Lawyer Assistance Program received a major grant from the Nassau County, with great thanks to County Executive Bruce Blakeman and County Attorney Thomas A. Adams, both NCBA members, and the tireless efforts of immediate Past President Rosalia Baiamonte. The funds will be used to help meet the increased need for LAP services in the legal community.

We held an orientation for our new Chairs of our 50 plus committees. In conjunction with the Committee Chair orientation, we held the first networking cocktail hour of the 2023-2024 Bar year.

The Nassau Academy of Law presented a major Bankruptcy CLE program on the latest developments in Bankruptcy Law, which was attended by over 80 practitioners and two bankruptcy judges. A networking cocktail reception and complimentary dinner preceded the program thanks to the underwriting of La Monica, Herbst & Maniscalco, LLP, Rivkin Radler, LLP, and Ruskin Moscou Faltischek, P.C.

Our caterer, Esquire Catering Inc., held a fabulous and well-attended barbeque lunch as a part of its efforts to encourage Members to have lunch at Domus and utilize its catering services.

Folks, there was so much more. It was wonderful to see the halls of Domus alive with activity.

There are no words for me to adequately express the pride I feel every day in being President of the NCBA and having the privilege to work with such dedicated Members and Staff in each of our Association's arms. Enjoy your Summer and I look forward to seeing you in September at Domus. 🍷



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## WELCOMES Cheryl L. Katz-Erato



a partner in our  
Tax, Trusts & Estates Practice Group.

Our Trusts and Estates team represents clients in trusts and estates litigation matters, estate planning, gift and estate tax planning, asset protection planning, and in probate and administration of trusts and estates. In addition, our team represents clients in guardianship matters, federal and estate tax controversies and the formation and operation of not-for-profit corporations.

### MEET THE TAX, TRUSTS & ESTATES TEAM



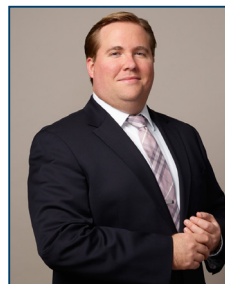
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**FOCUS:  
INSURANCE LAW**



**Jason A. Newfield**

**W**hen an insurance company refuses to accept a claim for disability insurance benefits, insureds often feel aggrieved and have a desire to find “bad faith” on the basis of the claim decision. Courts have been resistant to allowing insureds to pursue BOTH claims for breach of contract (failure to pay the disability claim) and for breach of the covenant of good faith and fair dealing, a concept which requires insurers to act in “good faith,” and for which, insureds often believe, any failure to conform with these obligations, permits a claim for “bad faith.” As courts have stated, “[I]mplicit in every contract is an implied covenant of good faith and fair dealing.” *East Ramapo Cent. Sch. Dist. v. N.Y. Schs. Ins. Recip.*<sup>1</sup>

Insurers often argue against such claims for bad faith, asserting that insureds are seeking to make more of a claim than a “garden variety” breach of the insurance contract. Many courts in New York, for many years, have embraced this argument put forth by insurers, and limited the relief afforded to insureds where a breach of the implied covenant of good faith and fair dealing has occurred in tandem with a breach of an insurance contract.

Courts are now appearing less resistant to pursuing both claims simultaneously based upon some recent case trends. However, there are unique circumstances which may be required, or appropriate pleading of remedies and facts, to achieve success on behalf of insureds. While cases in the disability insurance world have not yet succeeded on bad faith claims (although GBL §349 remains viable), the recent trend within New York may permit such pleadings to survive, where the circumstances serve to justify the dual remedies, or the facts support claim handling failures separate from the actual claim decision.

A fact pattern may help to illustrate the issues, and how courts have been recently considering the issues. A disabled chiropractor files a claim for benefits, having sold his practice and stopping working altogether. The insurance company,

## Can a Bad Faith Disability Insurance Claim Proceed In New York In Tandem with a Breach of Contract?

in conducting its investigation, determines that an examination is needed by an outside doctor. This determination occurred at the 90-day mark of the claim, when the insured’s elimination period had just been satisfied, and was entitled to start receiving payment of benefits.

However, the insurance company, searching for the “right” doctor, takes three months to schedule an examination, and after the doctor needed to reschedule, the examination occurred almost four months after the elimination period had been satisfied. The insured had demanded payment of benefits, alleged to have satisfied his proof of loss, but no benefits were paid.

Following the examination by the doctor, the insurance company denied the claim. In litigation, three causes of action were asserted. The first was breach of contract, the second was GBL §349 for Deceptive Acts and Practices, and the third was for breach of the covenant of good faith and fair dealing (“bad faith”). The facts which supported the bad faith claim included the lengthy delay in scheduling the doctor examination, which occurred at the expiration of the elimination period. The argument made was that the insurer’s conduct and cavalier approach toward the time sensitivities breached the duty of good faith, as the insured had paid a special premium for a shortened elimination period. This was separate and distinct from the ultimate conclusion but represented a breach of the implied duty of good faith to act in a timely manner.

While the court did not embrace the claim, finding the issues were intertwined such that no separate cause of action was permitted for bad faith, based upon recent cases, this fact pattern, and attendant requests for relief, might support such a claim. Thus, the court dismissed the breach of the covenant of good faith and fair dealing claim, and its claim for consequential damages, and permitted the breach of contract (and allowing the GBL §349 to proceed), finding it duplicative and not permissible to proceed, at the motion to dismiss stage.

Cases decided recently, albeit at the motion to dismiss stage, have appeared to be more willing to allow such claims to proceed in litigation. In *Phase I Group, Inc. v. Burlington Ins. Co.*,<sup>2</sup> a recent case from the Supreme Court New York County,



the court permitted the dual pursuit of a breach of contract claim and a claim for breach of the implied duty of good faith. That case involved construction litigation and coverage issues pertaining thereto. Finding that different types of damages, contract versus consequential, were sought under each cause of action by the plaintiff, the court permitted the claims to proceed, finding them not duplicative, and denying the motion to dismiss.

Another recent case carried a broader analysis of the issues and determined that a cause of action for breach of the implied duty of good faith was allowed to proceed, where allegations were made concerning the insurer’s failure to investigate the underlying claim, conduct which deviated from industry practices and actions in gross disregard of the issues. *East Ramapo Cent. Sch. Dist. v. N.Y. Schs. Ins. Recip.*<sup>3</sup> This case was an insurance coverage dispute involving a denial of coverage of a duty to defend an underlying lawsuit arising out of the school district dispute. There, the Appellate Division, Second Department, reversed a decision from the lower court, which had denied the ability to pursue a claim for bad faith. The court held that the complaint allegations for the two causes of action were not duplicative and sought different types and/or categories of damages.

Most recently, a lower court was presented with this issue where both breach of contract and bad faith claims were alleged. In *Koffler v. Cin. Ins. Co.*,<sup>4</sup> the court permitted tandem claims to proceed, finding that every contract implicitly includes and requires good faith and fair dealing. That case was a fire damage case, with attendant claims for bad faith relating to the adjudication of the claim. Noting that acting in a manner

that would deprive a party of its rights might support such a claim, and following the Second Department’s guidance in *East Ramapo*, the court in *Koffler* denied the motion to dismiss the cause of action for bad faith, permitting potential recovery of consequential and punitive damages and attorney’s fees.

Where do we go from this recent judicial trend? It seems to be a significant advancement towards permitting bad faith claims to proceed in tandem with breach of contract claims.

While none of these cases were in the disability insurance contract sphere, it seems that as with the disabled chiropractor, under current Second Department law, combing both causes of action would survive a motion to dismiss, and permit broader recovery than permitted under the garden variety breach of contract. The claims brought by the disabled chiropractor would likely survive such a motion, as he was seeking different forms of relief and would have relied upon different facts for the underlying claims—in line with the recent expansion of available relief. ⚖️

1. *East Ramapo Cent. Sch. Dist. v. N.Y. Schs. Ins. Recip.*, 199 A.D.2d 881 (2d. Dep’t 2021).

2. *Phase I Group, Inc. v. Burlington Ins. Co.*, 2022 Misc. LEXIS 10620 (Sup.Ct. N.Y. Cty. 2022).

3. *Id.*

4. *Koffler v. Cin. Ins. Co.*, 2023 N.Y. Misc. LEXIS 2283 (Sup. Ct. Suff. Cty. 2023).



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**FOCUS:  
LABOR LAW**

**Adam Browser and  
Brian Passarelle**

In 2017, New York City passed the Freelance Isn't Free Act, which established certain requirements for contracts between freelance workers and hiring parties.<sup>1</sup> These requirements apply to contracts or a series of contracts worth \$800 or more, entered into within 120 days of each other. It also imposes penalties for non-compliance and failure to pay the freelance worker, as well as an administrative mechanism for enforcement. That law, only six years old, has spawned additional, similar legislation in other cities and states across the country. Cities like Los Angeles, Seattle, Minneapolis, and Columbus, Ohio, have passed their own laws safeguarding freelance workers. Additionally, states such as New York, Illinois, Kansas, and Missouri have pending bills aimed at providing similar protections.<sup>2</sup>

Why is this now a thing?

### **The Rise of Freelance Work**

According to Upwork, the rise of freelance work has been significant, with 60 million Americans engaging in freelancing in 2022, comprising 39% of the total workforce. Upwork reports that freelance workers contributed \$1.35 trillion to the US economy last year. This growing trend is expected to continue due to technological advancements, economic factors, and societal changes.<sup>3</sup>

### **Bills Passed in the State Legislature**

Using New York City's law as a model, in 2022, the New York State legislature passed Senate Bill 8369, also called the "Freelance Isn't Free Act." The bill proposed the addition of a new section, 191-d, to New York's Labor Law, establishing state-wide requirements similar to those already in place in New York City. Governor Hochul vetoed that bill. However, the bill was reintroduced in February of this year as Senate Bill 5026 and Assembly Bill A6040. It has successfully passed through both chambers of the legislature and

## **Freelance Isn't Free**

now awaits further action by the Governor.

When the bill was introduced, the sponsor highlighted the following points:

- Between 2018 and 2019, 1,191 cases were filed with the New York City Department of Consumer and Worker Protection regarding freelance work;
- Over \$1.3 million was recovered in restitution and penalties as a result; and
- In 2020, 490 complaints were filed.<sup>4</sup>

The sponsor also noted that freelance workers lack the protections that employees have with respect to wage theft and intentionally sought to replicate those protections. Governor Hochul, in her veto of the similar bill the previous year, cited two reasons for her decision: First, she expressed that it would cost several million dollars annually and require an increase of Department of Labor staff, and those costs were not accounted for in the state budget. Second, she stated it would make the Department of Labor responsible for a form of regulation of private contracts between companies and non-employees, which is outside the Department's statutory charge to enforce labor protections for employees.<sup>5</sup>

### **The Text of the Legislation**

The bill is loosely organized into several sections, including definitions, contract requirements, penalties, and miscellaneous provisions.

The bill defines a freelance worker as:

any natural person or organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for an amount equal to or greater than \$800, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding 120 days.

The definition excludes sales representatives who solicit orders in New York State, persons engaged in the private practice of law, licensed medical professionals, and construction workers. The last item,



the exclusion of construction workers from the scope of the proposed act, is a key difference between the New York City law and New York State bill. However, the same low \$800 threshold for the act applies, including that contracts between the same parties that are entered into within 120 days of each other can be aggregated together to reach the \$800 threshold.

The bill defines a hiring party as any person who retains a freelance worker to provide any service. All governmental entities at the state, local, federal, and foreign levels are explicitly excluded from the definition of a hiring party. This definition aligns in substance with the definition used in the New York City law.

The bill requires that the contract must be reduced to a writing and provided to the freelance worker. The contract must include:

- (a) the name and mailing address of both parties;
- (b) a list of all services to be provided by the freelancer;
- (b) the value of the services to be provided and the rate and method of compensation;
- (d) the date or mechanism when payment will be made;
- (e) the date by which the freelancer must submit a list of services rendered to meet any internal processing deadlines of the hiring party; and
- (f) additional terms as required by the Commissioner of Labor.

### **Protections for Freelancers**

The bill requires that the hiring party must pay the freelance worker the agreed-upon compensation as per their contract. If the contract does not

specify a time frame, the hiring party must pay the freelancer within 30 days of the freelancer's services. Each party is required to retain a copy of the contract, with the hiring party keeping it for at least six years. The freelancer is not subject to a specific time frame for maintaining the contract. Furthermore, if the hiring party fails to produce the contract upon request of the Commissioner of Labor, it gives rise to a presumption that the contract terms the freelancer presented to the Commissioner are what was agreed upon by the parties.

The bill declares that any provision in a contract attempting to waive rights under the proposed statute is void as against public policy. Section 4 of the bill prohibits the hiring party from engaging in actions that penalize or deter a freelance worker from exercising their rights under the proposed law or obtaining future work opportunities. This encompasses actions such as threatening, intimidating, disciplining, harassing, or discriminating against the freelance worker.

### **Penalties for Violations**

Violations, or potential violations, of the statute can be pursued by the freelance worker, the Commissioner of Labor, and the New York State Attorney General. The freelancer can file a complaint with the Commissioner of Labor and can file a civil action in court. If a civil lawsuit is commenced, the freelancer is required to serve a copy of the Complaint on the Commissioner of Labor but failure to do so is not a bar or defense to the action. A freelancer who alleges only that the hiring party violated the contractual requirements of the legislation must prove that he or she requested a copy of the contract before beginning work.

The Commissioner of Labor can investigate claims and seek an equitable resolution between the parties. It can also take an assignment of claims and sue hiring parties civilly. The Commissioner can aggregate any number of claims that are lodged against a hiring party and join them in a single action.

The Commissioner of Labor can also enter into reciprocal agreements with the labor departments of other states and pursue civil claims against hiring parties in those other states or assign claims to the other state's labor department for enforcement. Similarly, provided it is in the reciprocal agreement, the Commissioner is authorized to take an assignment of claims from a labor department of another state and pursue civil actions in New York courts to collect that foreign state's claim.

This is a remedy that is not available under the New York City law and can have far wider consequences than New York City's version. There are questions about the geographical scope and applicability of the New York City law. However, based on the language of the New York State proposed law, it applies to any situation where either the hiring party or the freelancer is a New York resident.

If it appears that a hiring party is consistently violating the provisions of the proposed act, the New York State Attorney General has the authority to initiate legal action. The commencement of an action by the Commissioner of Labor or the Attorney General does not prevent a freelancer from pursuing their own civil action, and vice versa.

### Damages

The damages or penalties that can be awarded differ depending on the type of claim asserted and by whom it is brought. In an action brought by the Attorney General, a court may impose a civil penalty of no more than \$25,000, which gets paid to New York State. The Attorney General is also authorized to seek injunctive relief and obtain other appropriate relief.

A freelancer can recover:

- a) actual damages measured as the value of the underlying contract, double damages, reasonable attorneys' fees and injunctive relief on a compensation-based claim;
- b) statutory damages equal to the value of the underlying contract for a violation based on discrimination, harassment, or intimidation; and
- c) statutory damages of \$250

based on the absence of a written contract or omission of required information in the contract.

Compensation-based claims should not be treated lightly. The availability of double damages and recovery of attorney's fees gives the bill real bite and what makes it attractive as a source of business for contingency-based lawyers.

The applicable statutes of limitations depend on the type of violation alleged. Claims based on violations of the contractual requirements must be brought within two years after the violation occurred. Claims based on violations of the payment requirements must be brought within six years after the acts or omissions occurred. An action based on the hiring party's discrimination, harassment, intimidation, or the like of the freelancer must also be brought within six years after the act occurred.

If passed, the bill goes into effect 180 days after it becomes law. It applies to contracts entered into after the effective date and is not retroactive. It would not supersede or preempt the New York City law but would be in addition to. Thus, a hiring party could be investigated simultaneously by the labor departments of New York State and New York City.

Violation of the proposed statute does not invalidate the contract between the freelance party and the hiring party. A hiring party can still enforce the contract. It is no defense by a freelance worker that the contract violates the statute. Of course, a hiring party should think long and hard about the possible collateral consequences of attempting to enforce a contract that violates the statute.

### Department of Labor Involvement

The Department of Labor is required to conduct a public awareness campaign about the obligations and rights that exist under the statute and provide assistance via phone and email. It is also required to survey freelance workers that file claims and gather data about how claims are being resolved. On the first anniversary of passage of the statute and every five years thereafter, the Commissioner of Labor must issue a report about the effectiveness of improving freelance contracts and payment practices, including recommendations for changes to the statute.

### Other States' Freelance Laws

Other states, Illinois, Kansas, and Missouri have also introduced

bills that are modeled on the New York City law.<sup>6</sup> Surprisingly, some provisions of those bills provide greater protections than those of the New York City law or the New York State bill. For example, the Illinois and Kansas bills apply to contracts with a value of \$500, while Missouri's threshold is \$250.<sup>7</sup> Furthermore, Illinois would impose criminal penalties for willfully refusing to pay or falsely denying the amount or validity of the claim.<sup>8</sup> The Kansas bill grants standing to non-profit organizations to bring an action on behalf of freelance workers.<sup>9</sup>

### Conclusion

To conclude, New York City's law and New York State's proposed law carry significant risk for the uninformed business owner or lawyer who renders advice without knowing the consequences for violations of the freelance law. Recovery of double damages and attorneys' fees make the New York City law and New York State bill a powerful tool for freelancers to ensure they get paid. Moreover, those provisions are attractive for contingency lawyers seeking new litigation opportunities. ⚖️

- 1. See NYC Admin Code §20-927 et seq.
- 2. See Freelance Worker Protection Act, 2023 Illinois

- Senate Bill No. 2041; Freelance Isn't Free Act, 2023 Kansas House Bill No. 2399; and Freelance Isn't Free Act, 2023 Missouri House Bill No. 1331.
- 3. See Upwork, 2022, December 13, Freelance Forward 2022, <https://www.upwork.com/research/freelance-forward-2022>.
- 4. See Sponsor Memo to 2022 New York Senate Bill No. S8369B.
- 5. See Hochul, Kathy, 2022, December 23, Veto #170 of 2022, Senate Bill Number 8369-B.
- 6. Illinois' Freelance Workers Protection Act (HB 122); Kansas' Freelance Isn't Free Act (HB 2399); Missouri's Freelance Isn't Free bill (HB1331).
- 7. See Section 5 of Illinois Senate Bill No. 2041; section 3(a) of Kansas House Bill No. 2399; and section 2(4) of 2023 Missouri House Bill No. 1331.
- 8. See Section 35 of 2023 Illinois Senate Bill No. 2041.
- 9. See Section 8(a)(2) of the 2023 Kansas House Bill No. 2399.



**Adam L. Browser** is of counsel at Ruskin Moscou Faltischek and a member of the firm's litigation, financial services, banking, and bankruptcy departments, and the insurance litigation and construction practice groups.



**Brian Passarelle** is an associate at the firm and a member of its commercial litigation department and insurance practice group.

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**Christopher J. DelliCarpini**

In *Scurry v. New York City Housing Authority*, the Court of Appeals recently held that where a plaintiff alleges that negligent security measures allowed an assault, the fact that the assault was “targeted” does not necessarily preclude a finding that faulty security proximately caused the assault.<sup>1</sup>

The decision makes it more difficult for premises owners to avoid liability, but no more difficult than in any other negligence case—indeed, the Court made clear that the burden is no different than in any other negligence case, particularly on summary judgment. But *Scurry* does not reduce the plaintiff’s burden below that in any other premises liability case. Indeed, the decision should clarify how counsel can

## In Scurry, the Court of Appeals Rejects the Targeted-Attack Defense to Premises Liability

address issues of liability in premises security cases.

### The Rule, and An Exception (In The First Department)

The seminal premises security case is *Nallan v. Helmsley-Spear, Inc.*, where the Court of Appeals recognized “an obligation on the part of the building’s owner and manager to take reasonable steps to minimize the foreseeable danger to those unwary souls who might venture onto the premises.”<sup>2</sup> The Court in *Nallan* reversed the Second Department and reinstated the verdict for the plaintiff, finding that the jury could have inferred that the absence of an attendant in the lobby to deter the assailant was a proximate cause of the plaintiff’s injury.<sup>3</sup>

In *Burgos v. Aqueduct Realty Corp.*, the Court rejected a requirement that in premises security cases the plaintiff prove that the assailant was in fact an intruder.<sup>4</sup> Rather than create any special rule for such cases, the court held that a plaintiff could prove

proximate cause at trial even where the assailant remains unidentified, “if the evidence renders it more likely or more reasonable than not that the assailant was an intruder who gained access to the premises through a negligently maintained entrance.”<sup>5</sup>

Nevertheless, the First Department had carved out a special rule for premises security cases involving a targeted attack. Starting in *Rednour v. Hilton Hotels Corp.*, the court had held that a targeted attack in a hotel, under the circumstances, constituted a superseding cause of the plaintiff’s injury.<sup>6</sup> Within less than a decade, however, the court was holding “it that regardless of circumstances, “it is well settled that a targeted attack on a resident of an apartment building does not give rise to liability on the part of the landlord for a failure to provide security.”<sup>7</sup>

### Conflict in the Appellate Division

In *Scurry* the Court considered Appellate Division rulings in two similar cases with contradictory holdings.

The first of these was *Estate of Murphy by Holston v. New York City Housing Authority*. Tayshana Murphy was murdered inside the Grant Houses, a NYCHA residence in Manhattan. Pursued by members of a rival gang from a neighboring NYCHA property, Murphy entered the Grant Houses through a side door. That door did not lock behind her as it should have, however; surveillance footage showed it bounce open and shut behind Murphy and her associates—and then showed her killers walk right through moments later.<sup>8</sup>

Murphy’s mother sued NYCHA, who obtained summary judgment on the grounds that Murphy was the “target of a preplanned attack,” which was supposedly “an unforeseeable superseding intervening cause” that would defeat proximate cause even in NYCHA had notice of the defective side door.<sup>9</sup> The First Department affirmed, finding that “it does not take a leap of the imagination to surmise that [Murphy’s killers] would have gained access to the building by following another person in or forcing such a person to let them in,” which, the court held, “negates the unlocked door as a

proximate cause of the harm that befell Murphy.”<sup>10</sup>

In *Scurry v. New York City Housing Authority*, a case tragically similar to *Murphy*, the Second Department declined to follow the First Department’s reasoning. Bridget Crushshon was murdered in the hallway outside her apartment in the Cypress Hill Houses, another NYCHA residence.<sup>11</sup> Her killer was her former fiancé, and while just how he entered the building was unclear from the record, the plaintiff (Crushshon’s son) testified that the street-level door to the residence had lacked a working door lock for months before.<sup>12</sup> NYCHA moved for summary judgment, as in *Murphy*, on the grounds that this too was a targeted attack. The trial court denied the motion and the Second Department affirmed, rejecting the First Department’s approach:

The problem with basing a conclusion as to liability on the distinction between “targeted” and “random” attacks is that the binary dichotomy between those two categories of crime, by mechanically focusing on the perpetrator’s intent, fails to account for the myriad of facts that may be present in a given case. Indeed, there may be more than one proximate cause of an occurrence or injury.<sup>13</sup>

### Scurry: The Court of Appeals Rejects the Exception

The Court of Appeals resolved both cases in one decision, affirming the Second Department in *Scurry* and reversing the First Department in *Murphy*.<sup>14</sup>

The Court first established that NYCHA, like any other landlord, had “a common-law duty to take minimal precautions to protect tenants from foreseeable harm.”<sup>15</sup> The Court then noted that in both actions the plaintiffs had demonstrated issues of fact as to whether NYCHA breached that duty.

Turning to proximate cause, the Court first held that “A defendant’s negligence qualifies as a proximate cause where it is a substantial cause of the events which produced the injury.”<sup>16</sup> The Court then restated the plaintiff nonmovant’s minimal burden: rather than prove proximate cause by even a preponderance of the evidence, the plaintiff



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“need only raise a triable issue of fact regarding whether defendant’s conduct proximately caused plaintiff’s injuries.”<sup>17</sup>

The Court then rejected the notion that the targeted nature of an assault affects proximate cause: “Indeed, the risk that an intruder will enter the building and harm residents is the very risk that renders a landlord negligent for failing to provide locked exterior doors.”<sup>18</sup> The Court further clarified the burdens on motion for summary judgment in such cases:

[W]here the defendant fails to demonstrate on its motion for summary judgment that, as a matter of law, minimal security measures would not have deterred the intruder, the defendant is not entitled to summary judgment on proximate cause.<sup>19</sup>

NYCHA had argued that once it proved that an attack was targeted, the burden should shift to the plaintiff to prove that a locked door would have deterred the assailant. The Court found “That reasoning mistakes a patently factual question—whether a locked door would have prevented an attack—for a legal one—*i.e.*, that an attacker’s intent is a superseding cause as a matter of law.”<sup>20</sup> Superseding causes are generally for the jury, but not “where the risk of the intervening act occurring is the very same risk which renders the actor negligent.”<sup>21</sup> While a targeted attack could be so sophisticated that it did sever the causal chain, the Court noted that “neither *Scurry* nor *Murphy* approaches that level.”<sup>22</sup>

An interesting evidentiary issue arose in *Murphy* regarding notice, an element of NYCHA’s duty. NYCHA argued that it lacked notice that the door in issue had a broken lock, and pointed to its maintenance records that the door was working the day after the murder. Supreme Court had noted that the door was obviously not working the day of the killing, however, and there was no record of a repair between the

assault and the next day. “Far from demonstrating the absence of triable fact questions as to breach,” the Court stated, “NYCHA’s submissions raise issue of fact regarding the accuracy of its maintenance records.”<sup>23</sup>

### Premises Security Liability After *Scurry*

The immediate import of *Scurry* is that defendants in premises security cases can no longer defeat proximate cause merely by proving that the assault was targeted. Evidence of a targeted attack still could constitute a superseding cause of an assault, but defendants will have to prove that the assailant would not have been deterred had the allegedly defective door or other security measure been working properly. *Scurry* even suggested an example of such an assault.<sup>24</sup>


Defendants will only have to prove this *prima facie* to earn summary judgment on causation, but if they do not then the court should deny the motion without considering the opposition.

The Court also evoked the First Department’s “leap of imagination” in *Murphy*, making clear that “Hypotheticals about what would have occurred if the side door had been locked ... are quintessentially questions of fact to be resolved by the jury.” In *Murphy* NYCHA had submitted an affidavit from a security expert, who opined that no security device would have deterred the attackers. Given the Court’s view of such questions as usually for the jury, though, future experts will be hard-pressed to support such opinions.

The Court quoted *Burgos* in restating that proximate cause in such cases may be “established only if the assailant gained access to the premises through a negligently maintained entrance.”<sup>25</sup> This suggests that other means of entry will not support a negligence claim. The Court quoted *Burgos* here merely to settle that a jury could infer proximate cause from such circumstances, however, not

to bar such inference from other circumstances.

Another lesson from these cases is the importance of prompt action to preserve and recover evidence, particularly surveillance video. Against NYCHA’s maintenance records in *Murphy* the plaintiff offered testimony that the door had been not working for some time. But the Court also noted the surveillance video evidence that, if anything, undermined the credibility of NYCHA’s records. Practitioners should know that such video is periodically erased, therefore a prompt litigation hold

letter or subpoena for such evidence may be critical to proving one’s case. 

1. 2023 N.Y. Slip Op. 02752 (May 23, 2023).
2. 50 N.Y.2d 507, 518 (1980).
3. *Id.* at 521.
4. 92 N.Y.2d 544 (1998).
5. *Id.* at 551.
6. 283 A.D.2d 221 (1st Dep’t 2001).
7. *Flynn v. Esplanade Gardens, Inc.*, 76 A.D.3d 490, 494 (1st Dep’t 2010).
8. *Murphy*, 193 A.D.3d 503, 504–06 (1st Dep’t 2021).
9. *Id.* at 507.
10. *Id.* at 509.
11. 193 A.D.3d 1 (2d Dep’t 2021).
12. *Id.* at 3–4.
13. *Id.* at 8.
14. *Scurry*, *supra* n.1, at \*1.
15. *Scurry*, *supra* n.1, at \*3.
16. *Id.* at \*3 (quoting *Turturro v. City of New York*, 28 N.Y.3d 469, 483 (2016)).
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* at \*4.
21. *Id.* (quoting *Derdiarian v. Felix Contr. Corp.*, 51 N.Y.2d 308, 316 (1980)).
22. *Id.*
23. *Id.* at \*6.
24. *Id.* at \*4 (citing *Buckeridge v. Broadie*, 5 A.D.3d 298 (1st Dep’t 2004)).
25. *Id.* at \*3 (quoting *Burgos*, 923 N.Y.2d at 550).



**Christopher J. DelliCarpini** is an attorney with Sullivan Papain Block McGrath Coffinas & Cannavo PC in Garden City, representing personal injury plaintiffs on appellate matters. He is also an Assistant Dean of the Nassau

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**FOCUS:  
LITIGATION**


**Andrew P. Nitkewicz and  
Mattie Curry**

Reaching a legal determination regarding the ability of a person—alive or dead—to make and understand a specific decision for themselves, at the time the decision is made, can be an extraordinarily complex feat. The legal analysis required to determine mental capacity is oftentimes like the human mind itself—multifaceted, complicated, and intricate. This article will address some of the different issues which arise in proving or disproving testamentary capacity in New York.

### The Proponent's Burden

Most often, lack of capacity claims arise in connection with litigation surrounding the validity of testamentary instruments such as wills. In this arena, more than any other, litigants assert capacity claims and defenses based solely upon their non-medical perceptions of various behavior of the decedent—sometimes crafted to meet their desired outcome. The law requires much more, however, therefore litigating counsel become familiar with the vast burden they are facing.

It is the indisputable rule in a will contest that:

[T]he proponent has the burden of proving that the testator possessed testamentary capacity and the court must look to the following factors: (1) whether she understood the nature and consequences of executing a will; (2) whether she knew the nature and extent of the property she was disposing of; and (3) whether she knew those who would be considered the natural objects of her bounty and her relations with them.<sup>1</sup>

The court added: “When there is conflicting evidence or the possibility of drawing conflicting inferences from undisputed evidence, the issue of capacity is one for the jury.”<sup>2</sup> The capacity required to make a will, however, is less than any other contract.<sup>3</sup>

# Litigating Testamentary Capacity (or Lack Thereof) in New York

While this burden may seem hefty at first glance, the Proponent benefits from some well-settled presumptions. First, there is a presumption that the testator possesses the requisite testamentary capacity to make a valid will until it is proven otherwise.<sup>4</sup> Second, where the will is drafted by an attorney and the drafting attorney supervises the will's execution, there is a presumption of regularity that the will was properly executed in all respects.<sup>5</sup> Third, when the will is accompanied by a self-proving affidavit of the attesting witnesses, where each witness declared that the decedent “was suffering no defect of sight, hearing or speech, or from any other physical or mental impairment that would affect [her] capacity to make a valid Will,” a presumption of testamentary capacity is created.<sup>6</sup>

While these presumptions satisfy the Proponent's *prima facie* burden, Proponent's counsel on their laurels. When faced with a will contest or potential will contest, Proponent's counsel should proactively collect as much evidence as possible to demonstrate testamentary capacity. Counsel should speak to the drafting attorney and witnesses to the execution, review video of the execution. Counsel may also need witness statements and medical proof, and if possible speak to family members, treating physicians, mental health providers, and home healthcare attendants and nurses, in order to be prepared for and get in front of potential claims of incapacity.

### The Objectant's Burden

Once the Proponent has satisfied their initial burden, the burden then shifts to the Objectant to raise a genuine issue of fact as to testamentary capacity.<sup>7</sup> It is at this point where Objectant's counsel must carefully use discovery to probe into decedent's mental acuity at the time the will was executed, so as to proffer a comprehensive picture evidencing lack of testamentary capacity.

Too often Objectant's counsel seize upon one notation of dementia in medical records to prove lack of capacity. This is a mistake. Testamentary capacity only concerns a person's mental condition at the moment of execution.<sup>8</sup> Evidence relating to the condition of the testator before or after the execution is only significant insofar as it bears upon the strength or weakness of the testator's mind at the exact moment of the execution.<sup>9</sup> A testator needs only a

“lucid interval” of capacity to execute a valid will, and this interval can even occur contemporaneously with an ongoing diagnosis of mental illness, including depression,<sup>10</sup> or progressive dementia.<sup>11</sup>

To be clear, a finding or a diagnosis of dementia, in-and-of-itself, is insufficient to demonstrate lack of testamentary capacity. According to the Second Department, “[O]ld age, physical weakness and senile dementia are not necessarily inconsistent with testamentary capacity as long as the testatrix was acting rationally and intelligently at the time the instrument was prepared and executed.”<sup>12</sup> In *In re Martinico*, the Second Department held that the testator possessed sufficient testamentary capacity to execute her will, despite an episode of confusion that she experienced prior to her admission to the hospital and a reference to dementia in an unexplained “do not resuscitate” order.<sup>13</sup>

Also insufficient is expert witness testimony by non-treating physicians and mental health professionals based solely upon the expert's review of medical records and testimony. While such expert testimony is generally admissible, such opinions are afforded very little weight. Opinion testimony of a non-treating physician constitutes “the weakest form of proof” as to capacity,<sup>14</sup> based as it is on secondary sources rather than direct observation of and interaction with the subject. Such testimony is also “insufficient to raise a question of fact when it contradicts the testimony of persons who observed and interacted with the testator during the relevant time period.”<sup>15</sup>

Any communication or documentation tending to show that at the time the proposed will was executed the decedent lacked capacity should be obtained. Objectant's counsel should therefore likewise depose the Proponent, the drafting attorney, treating healthcare providers, witnesses to the execution, family members, home healthcare attendants, and friends. Financial records may show unusual financial activity by the decedent at or around the time of the will execution. Counsel should also investigate whether police reports of unusual activity by the decedent exist, especially those indicating

“wandering,” where the decedent became lost or confused about their location. All of the evidence collected—in conjunction with medical proof—should be utilized to provide the Court or jury with a complete picture tending to show lack of testamentary capacity.

### Conclusion

In sum, counsel for the Proponent and counsel for the Objectant must be prepared to engage in a lengthy, and sometimes emotional discovery, so as to be able to meet their respective burdens in a manner which provides the Court or jury with the most comprehensive view of the Decedent's mental capacity, without limiting inquiries only to medical records and non-treating expert opinion. 🗡️

1. *Est. of Kumstar*, 66 N.Y.2d 691, 692 (1985).
2. *Id.*
3. *In re Coddington*, 281 A.D. 143, 146 (2d Dept. 1952).
4. *Matter of Van Horn*, 68 Misc.3d 1217(A), \*2 (N.Y. Surr. Ct., Oswego Co. 2020).
5. *In re Moskowitz*, 116 A.D.3d 958, 959 (2d Dept. 2014); *In re Farrell*, 84 A.D.3d 1374, 1374 (2d Dept. 2011).
6. *In re Jacobs*, 153 A.D.3d 622, 622 (2d Dept. 2017). See also *In re Curtis*, 130 A.D.3d 722, 722–23 (2d Dept. 2015).
7. *In re Estate of Cameron*, 126 A.D.3d 1167, 1168–69 (3d Dept. 2015); *In re Scaccia*, 66 A.D.3d 1247, 1251 (3d Dept. 2009).
8. *In re Will of Li*, 72 Misc.3d 988, 998 (Surr. Ct., Queens Co. 2021).
9. *In re Hedges*, 100 A.D.2d 586, 588 (2d Dept. 1984).
10. See *In re Esberg*, 215 A.D.2d 655, 656 (2d Dept. 1995).
11. See *In re Friedman*, 26 A.D.3d 723, 725 (3d Dept. 2006).
12. *In re Martinico*, 177 A.D.3d 882, 884 (2d Dept. 2019).
13. *Id.* at 885.
14. *In re Slade*, 106 A.D.2d 914, 915 (4th Dept. 1984).
15. *Estate of MacGuigan*, No. 2012-1344, 2015 WL 1756205, at \*1 (Surr. Ct., N.Y. Co. 2015) (quoting *In re Redington*, NYLJ, Jul. 18, 2014 at 24, col. 1). See also *In re Katz*, 103 A.D.3d 484, 484 (1st Dept. 2013).



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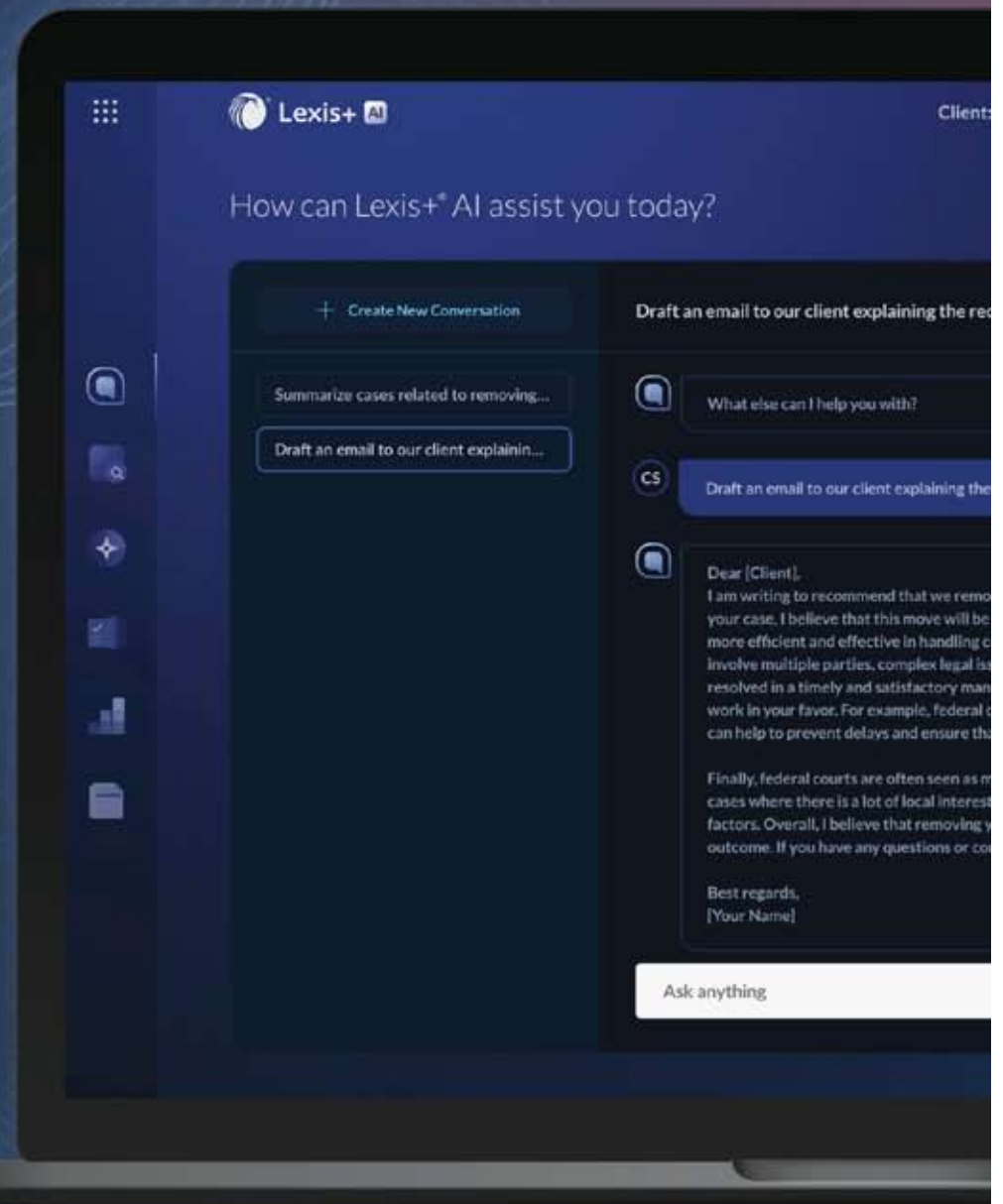
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# NAL PROGRAM CALENDAR

## September 8 (IN PERSON ONLY)

### Military Justice Instruction: Discharge from Service—DD 214

by Gary Port, Esq, Port & Sava

10:00AM–11:00AM

1.0 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 impact 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.

## September 20 (HYBRID)

### Dean's Hour: Elder Abuse—Navigating and Advocating for Victims/Survivors Through the Criminal Justice System

With Nassau County Assigned Counsel Defender Plan

12:30PM-2:00PM

1.0 credit in professional practice

.50 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, e.g., to get stay away OP against their abuser/loved one.

#### Guest Speakers:

**Arlene M. Markarian, Esq.**

**Dianne O. Woodburn, Esq.**

#### Registration Fees:

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

1.0 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**

#### Registration Fees:

NCBA Members Complimentary, Non-Members \$35

## September 27 (IN PERSON ONLY)

### Wealthy Women's Playbook

Presented and Sponsored by NCBA Corporate Partner  
Opal Wealth Advisors

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 Woman's Playbook."

"The Wealthy Woman'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.

## 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.

#### Learning Objectives:

- Compare methods including sales and redemptions
- Identify and avoid tax traps
- Apply capital account rules and valuations
- Analyze and distinguish partnership agreement provisions

**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.

#### Learning Objectives:

- Analysis of Lawyer Transition issues
- Partnership Break Up and the Rules of Professional Conduct
- What to consider when retiring or transitioning

**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. Please send your questions to [Academy@nassaubar.org](mailto:Academy@nassaubar.org)

#### Guest Speakers:

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

# NAL PROGRAM CALENDAR

**Omid 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

## October 5 (IN PERSON ONLY)

**Fireside Chat: *This Light Between Us* with Andrew Fukuda Interviewed by 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

1.0 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. Born in New York and raised in Hong Kong, he graduated from Cornell University with a BA in history, and his law degree from Benjamin N. Cardozo School of Law. He has since lived in Kyoto and New York City, and now calls Long Island.

**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.

## 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, Solutions Consultant, LexisNexis**  
 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

1.0 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 Nassau County Bar Association 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 Activities and Mortgage Foreclosure Assistance Project, Nassau County Bar Association

Cheryl Zalenski, Director of the ABA Center of Pro Bono, Counsel to the ABA Standing Committee on Pro Bono and Public Service

Professor Richard Klein—Professor Emeritus Touro Law School

Thomas Maligno, Former Executive Director of Nassau Suffolk Law Services, Former Executive Director of Touro Law School Public Advocacy Center and Founder of the Pro Bono Projects of the Nassau and Suffolk Bar Associations

### Registration Fees:

NCBA Members Complimentary, Non-Members \$35



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# NAL PROGRAM CALENDAR

## Meet the New Dean: Michael E. Ratner

On June 6, 2023, Michael E. Ratner was installed as Dean of the Nassau Academy of Law (NAL) for the 2023-2024 membership year. Ratner has a strong background within the NAL, having previously served as Associate Dean, Assistant Dean, Secretary, and Advisory Board Member. This past year, he also chaired the Honorable Joseph Goldstein “Bridge the Gap” Weekend.

In addition to his role in the NAL, Dean Ratner is a Partner at Abrams Fensterman, LLP, where he specializes in family law, divorce, and other litigation matters. He has garnered recognition in his field, being elected as a Fellow in the American Academy of Matrimonial Lawyers in 2016 and serving as a member of its Board of Managers. Ratner has also been designated as a *Super Lawyer* since 2014, an honor bestowed

upon only five percent of lawyers in the state.

Ratner’s involvement in legal associations began early in his career when he became a part of the Jewish Lawyers Association of Nassau County. He quickly rose through the ranks, serving as an officer in 2005 and eventually becoming the youngest president in the association’s history in 2010.

For over twenty years, Ratner has been an administrator for the Nassau County Parent Education and Custody Effectiveness program (P.E.A.C.E), which educates parents going through custody issues in relation to divorce or separation. His accomplishments have not gone unnoticed, as he was presented with



the Rising Star Award from the Queens Courier in 2013 and was selected to the 2013 *Super Lawyers* New York Lawyer Rising Stars list. Ratner has also been recognized by *Long Island Business News* as “One to Watch” in 2011.

As the newly appointed Dean, Ratner’s primary goal is to offer innovative and cutting-edge Continuing Legal Education (CLE) programs that are relevant and engaging to NCBA members. Quality is of utmost importance to him, and he intends to update the law store to enhance user-friendliness and better serve the NCBA members. Ratner is dedicated to providing high-quality and timely CLE programs to both newly admitted and experienced attorneys, benefiting the NCBA members and the legal profession as a whole.

Starting July 1, 2023, all New York attorneys are required to complete one CLE hour in the new Cybersecurity, Privacy, and Data Protection category as part of their CLE requirement. Ratner is actively collaborating with the NAL Advisory Board and the newly formed Cyber Law Committee to develop and present CLE programs that address the rapidly evolving landscape of Cyber Law, AI, ChatGPT, and new technologies that have the potential to revolutionize legal practice.

Dean Ratner also places great emphasis on Diversity, Equity, and Inclusion initiatives within

the NCBA. He is working closely with the Diversity and Inclusion and LGBTQ Committees and the Asian American Attorney Section to promote and advance the full and equal participation of diverse attorneys through CLE programs focused on DEI topics. As part of these efforts, Andrew Fukuda, an ADA with the Nassau DA’s Office, and an accomplished author, will be speaking at the NCBA in October for the Asian American Attorney Section. Fukuda will share his experiences growing up in Hong Kong, his career as an ADA, his path to becoming an author, and the biases he encountered as an Asian individual.

Recognizing the importance of Continuing Legal Education and Professional Development, Dean Ratner is dedicated to assisting NCBA members at all stages of their careers. Throughout his tenure, he aims to help members define and achieve their career goals by leveraging the valuable resources offered by the Nassau Academy of Law.”

In addition, the following attorneys were elected to Nassau Academy of Law leadership positions for the 2023-2024 membership year: Lauren B. Bristol, Associate Dean, Matthew V. Spero, Assistant Dean, Christopher J. DelliCarpini, Assistant Dean, Omid Zareh, Secretary, Charlene Thompson, Treasurer, Sara Dorchak, Counsel. ✍️

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## Court Resource Center at District Court

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### **VOLUNTEERS NEEDED**

**Volunteer attorneys needed at the new Court Resource Center located in Hempstead, Monday - Friday, 10:30am to 1:30pm. Volunteers will provide basic legal information and guidance on Family Court and District Court matters to self-represented litigants.**

**If interested, please contact Madeline Mullane, NCBA Director of Pro Bono, at (516) 747-4070 x 1228.**

# Installation of NCBA and NAL Officers and Directors

## June 6, 2023

On Tuesday, June 6, 2023, Sanford Strenger, Partner of the firm Salamon Gruber Blaymore & Strenger, P.C., was installed as the 121st President of the Nassau County Bar Association (NCBA) by the Honorable Denise Sher of Nassau County Supreme Court. President Strenger was installed alongside the following NCBA Officers: Daniel W. Russo, President-Elect; James P. Joseph, Vice President; Hon. Maxine S. Broderick, Treasurer; and Samuel J. Ferrara, Secretary.

Among the evening's special guests, Nassau County Administrative Judge Hon. Vito M. DeStefano was invited to install the new officers of the NCBA Board of Directors and Nassau Academy of Law.



Photos by: Hector Herrera

**FOCUS:  
ARTS AND  
ENTERTAINMENT**



Ira S. Slavit

Many *Nassau Lawyer* readers are familiar with television shows such as *Impractical Jokers* and *Candid Camera* in which unsuspecting people are surreptitiously recorded while being put in awkward and potentially embarrassing situations. The perpetrators of these pranks are often wearing an earpiece to receive instructions from their behind-the-scenes cohorts.

Others have seen the movie “*The Truman Show*,” in which the main character does not know that everything in his life is part of a massive TV set. Now imagine a television show about a jury trial where everyone is an actor. Everyone, the judge, the lawyers, witnesses, jurors and the court officer, are actors.

Everyone, that is, except one unsuspecting juror. That scenario is *Jury Duty*, a courtroom comedy on Amazon Prime and Freevee. The so-called ‘trial’ in *Jury Duty* takes place in a courthouse in southern California. The show was recently nominated for four Emmy Awards, including Outstanding Comedy Series. It is well worth watching.

*Jury Duty* follows a fake jury trial of a phony civil case where one of the twelve jurors is the only person involved in the trial who believes that the trial is real. The rest of the cast are actors, many of whom are wearing earpieces and are receiving in-scene instructions from the production team located in an adjacent courtroom that has been turned into a production room.

*Jury Duty* consists of eight episodes, each running roughly thirty minutes in duration. The episodes go through each phase of a trial, from jury selection to jury deliberations. The series was filmed over a seventeen-day span.

As title cards at the beginning of each episode explain, “*The following series explores the American judicial process as seen through the eyes of a jury. During a normal trial, jurors are forbidden from discussing the case. But this is not a normal*

## Review of the TV Comedy *Jury Duty*: Reality TV Meets a Jury Trial

*trial. It’s fake. Everyone involved is an actor. Except for one person...*”

That lone juror is Ronald Gladden, a solar contractor from San Diego. He got the gig by responding (with about 2,500 other people) to a Craigslist posting seeking people interested in taking part in a documentary-style film that takes viewers inside a court case through the eyes of the jurors. Applicants could not have served on a jury before.

The jurors were sequestered and deprived of their cell phones during the entire trial. The show’s producers wanted to ensure that there would be no outside influences on Mr. Gladden. The producers were interested in monitoring not only how Mr. Gladden was viewing the trial, but also in observing how he interacted with the other jurors during the trial’s downtime.

There are courtroom scenes, and scenes from other locations outside of the courthouse including the hotel where the jurors are sequestered. The courtroom scenes are outrageously funny.

The first episode, “*Voir Dire*,” is especially humorous. The prospective jurors (actors) offer the typical excuses lawyers hear jurors use to try to get out of jury duty, but in comically exaggerated ways. One juror tried playing the childcare card, telling the judge he has thirty-six children. An elderly woman simply says, “*It’s just not my thing, this jury duty stuff.*”

Personal injury lawyers of all stripes will chuckle over the prospective juror who tells the judge that he cannot sit for long because he was injured in a car accident requiring the *Jaws of Life* to save him. He earnestly explains that he ruptured C4-C5 in his low back. The judge noted that C4-C5 is in his neck, and he made it onto the jury.

Advertising the role in Craigslist as being for a documentary allows the producers to interview Mr. Gladden, either alone or with other jurors, throughout the trial without arousing his suspicion about the trial. Disclosing to the audience right off the bat that the trial is not real frees the viewers, especially lawyers, to suspend belief when the trial takes absurd twists.

The one well-known actor in the show is James Marsden. He plays not his actual self, but rather a ridiculously narcissistic



version of himself. One of the heartwarming outcomes of *Jury Duty* is the friendships forged between Mr. Gladden and Mr. Marsden and others in the cast that continue to this day.

Viewers will recognize similarities in the filming style of *Jury Duty* and the television show *The Office*. This is because the creators of *Jury Duty* are Lee Eisenberg and Gene Stupnitsky, who also were writers on *The Office* and co-executive produced and directed two episodes of the show.

The actor/jurors all have character quirks reminiscent of *The Office*’s characters. *Jury Duty* began as an attempt to make a sitcom similar to *The Office* but about a trial. The twist being that a real person is at the center of the show who doesn’t know that he’s surrounded by actors.

Attorneys may enjoy *Jury Duty* more than non-lawyers because the comically far-fetched courtroom scenes seem like inside jokes. Interestingly, the persons playing the judge and the plaintiff’s as well as defendant’s attorneys are both professional actors and also real-life attorneys.

Attorneys might also be buoyed observing how Mr. Gladden faithfully discharges his duties as a juror even with all the seeming craziness around him. The judge appoints him jury foreman (though he’s “Juror #6”), and Mr. Gladden takes his responsibilities very seriously.

It is fascinating to see how, as jury foreman, he handles deliberations

when his fellow “jurors” state their interpretations of the evidence and their rationales for how they are voting. Ultimately, he guides the jury to a unanimous verdict as the judge instructed is required.

We learn in *Jury Duty*’s final episode that in the name of Mr. Gladden’s character in the show’s script is “*Hero*.” Marsden says that when he was approached about being in the show, the producers told him:

“We’re surrounding him with this cast of bizarre, eccentric weirdos and hopefully carving out a path for him to become the leader at the end, and have his *12 Angry Men* moment, where he inspires us all and unites us and then we pull the curtain back and celebrate him as a human being.”<sup>1</sup>

At the conclusion of the trial, the judge commends Mr. Gladden for resisting temptations to betray his oath when he easily could have done so on the multiple situations that he was put in. Mr. Gladden turns out to be a good juror and a good guy, sometimes taking the blame for others’ misdeeds during the trial. It began with a Craigslist ad, now he’s up for an Emmy.

Fans of improvisational comedy will appreciate the show. The actors have extensive backgrounds in improvisational performing, which is important as they must quickly adjust to Mr. Gladden’s unexpected reactions to events. They impressively stay in character, even off-screen, throughout the weeks-long trial.



Marsdon called being in the show “a pressure cooker.”<sup>2</sup>

The final episode is a slow reveal of the experiment to Mr. Gladden and his realization of the extent of the ruse that followed his “*smile, you’re on Candid Camera*” moment. He learns the true names of his fellow jurors and that events inside and outside of the courtroom that he thought were spontaneous were in fact planned. Mr. Gladden, and the viewers, are treated to a backstage view of how the show was orchestrated and how

close it came to him figuring out that the trial was not real. Indeed, viewers might wonder how Mr. Gladden did not realize that the trial was not real, with all the bizarre goings on.

At one point, he exclaims that this is like a reality TV show. Viewers learn in the final episode, that he kept a journal so that after the trial he could tell his friends about his experiences on jury duty.

*Jury Duty* has comical moments throughout the show. The reveal of the ruse to Mr. Gladden is dramatic.

In the end, though, the show is more than a comedy. It is a case study in human nature, individual character, and group dynamics.

The show concludes with this priceless line by Mr. Gladden he gave in an exit interview: “*Oh, wait! Actually, I suppose that because this isn’t real, I could potentially be called again for jury duty. Dammit!!!*” 🗑️

1. <https://www.npr.org/2023/05/02/1173271968/jury-duty-james-marsden-ronald-gladden>.  
2. *Id.*



**Ira S. Slavit** is an NCBA Director, Chair of the NCBA Community Relations and Public Education Committee, and immediate past Chair of the Plaintiff’s

Personal Injury Committee. He is co-chair of the Community Outreach and Programs Subcommittee of the Nassau County Equal Justice in the Courts Committee. An attorney with Levine & Slavit, PLLC, he can be reached at [islavit@newyorkinjuries.com](mailto:islavit@newyorkinjuries.com) or (516) 294-8282.

## NEW MEMBERS:

### We Welcome the Following New Members Attorneys

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Christopher James Biggin  
Sarah A. Bogen  
Francesca Nicole Bravo  
Stephen Breidenbach  
Jonathan Daniel Brooks  
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Christopher Ray Castor  
Ashley Croker

Mattie Curry  
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Diego E. Dotres  
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Ms. Kelly Fitzgerald  
Ari Friedman  
Nicoletta Gasparis  
Samuel David Gaudet  
Jeffrey Ian Greenwood  
Elizabeth Grun  
Gianna Leigh Gualtieri  
Guri M. Hecht  
Diana Hedayati  
Suman Sreyankar Home  
Austin Horowitz  
Brendan Francis Illnitzki  
Alexa Danielle Jeacoma

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Janelle Ashley Jerome  
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Jonas S. Kerner  
Jessica A. Kohn  
Jessica Kovac  
Stephanie A. LaPlante  
Andrew Laurino  
Jennifer Lee  
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Maria Janella Loaiza  
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**FOCUS:  
LAW AND AMERICAN  
CULTURE**



**Rudy Carmenaty**

*I've had this feeling ever since I graduated.*

*This kind of compulsion that I have to be rude all the time...*

*It's like I was playing some kind of game,*

*but the rules don't make any sense to me.*

*They're being made up by all the wrong people.*

*I mean no one makes them up.*

*They seem to make themselves up.*

**Benjamin Braddock in  
*The Graduate* (1967)**

*My wife used to always say to me:*

*'Why can't a woman have the same ambitions as a man?'*

*I think you're right. And maybe I've learned that much.*

*But by the same token, I'd like to know, what law is it*

*that says that a woman is a better parent simply by virtue of her sex?*

**Ted Kramer in *Kramer v. Kramer* (1979)**

In 1968 Tammy Wynette had a hit song with D-I-V-O-R-C-E, the actual word needing to be spelled-out because the topic of divorce was not one to be mentioned in polite conversation. A mere ten years later, marital break-up had become common place. The 1970s were “the defining decade for divorce” in the United States.<sup>1</sup>

Fittingly, the Oscar for Best Picture of 1979 went to *Kramer v Kramer* with Dustin Hoffman winning as Best Actor. Twelve years earlier, Hoffman achieved stardom in Mike Nichols’ *The Graduate*. Taken together, these two films chart the

## Where Have You Gone...Dustin Hoffman?

arc of American courtship, marriage, and marital dissolution during a tumultuous time.

Hoffman in *The Graduate* plays Benjamin Braddock. Ben is a nebbish who returns to Los Angeles after graduating from a prestigious Eastern college. Preoccupied with his future prospects, a future that by every indication seems assured, Ben comes off as something of a cipher.

*The Graduate* is comedy of manners, if not of morals, which skewers the so-called *Affluent Society*.<sup>2</sup> As social satire, it is clever and on occasion biting. The film is often recalled as a paean to the rebellious youth of the 1960s. That impression is not entirely accurate.

Even after the story shifts to Berkeley, a hotbed of campus demonstrations, neither Vietnam nor the protests against the war are ever mentioned.<sup>3</sup> Hoffman’s character, being upper-class, privileged, and at university, is never in any danger of being drafted.

The film does speak to the sense of alienation felt by the post-war baby boom, a theme which is accentuated by the evocative soundtrack by Simon & Garfunkel. But Ben’s rebellion is entirely internal, confined to a narcissistic rejection of his parents’ values. All the while, he lives off his parents’ money.

Hoffman was thirty years old when the film was released in 1967. Ironically, the mantra among the young in the late Sixties was “don’t trust anyone over thirty.”<sup>4</sup> As such, the cinematic embodiment of youthful rebellion was a just tad too old for the part.

If that were not enough, Hoffman was only a few years younger than Anne Bancroft who played the aging temptress Mrs. Robinson. Elizabeth Wilson, who played Ben’s mother Mrs. Braddock, wasn’t that much older than Bancroft. Evidently, sexism in Hollywood knows no bounds, then or now.

Seduced by Mrs. Robinson, Ben hesitatingly succumbs to her advances out of either boredom or frustration. Ben’s life comes to revolve around his half-hearted but sexually charged affair with the wife of his father’s law partner. Their nightly trysts provide much of the movie’s bedroom humor.

Their relationship, such as it is, also presents a reversal of traditional roles. For it is the inexperienced Ben who wants something more substantive from their encounters. While the manipulative Mrs. Robinson, whose given name is never revealed, seeks only an outlet from her



loveless marriage.<sup>5</sup>

Mrs. Robinson is, in all actuality, the film’s true rebel. A dramatic departure from traditional representations of American women, she is confident in her sexuality. Fully liberated, Mrs. Robinson goes after what she wants and remains defiant in the face of social convention.

Interestingly enough, Doris Day was initially offered the part but turned it down because “it offended my sense of values.”<sup>6</sup> Ronald Reagan, of all people, it is said was offered the part of Mr. Robinson. But by then he had been elected Governor of California and was retired from acting.

Ben and Mrs. Robinson come into conflict over Elaine (Katherine Ross), Mrs. Robinson’s daughter. Ben’s parents and Mr. Robinson are constantly pressuring Ben to ask Elaine out. Mrs. Robinson, acting from a maternal instinct or maybe it’s merely jealousy, wants Ben to stay as far away from Elaine as possible.

Ben, acquiescing to the pressure, reluctantly agrees to take Elaine on a date. Ben acts boorish at first, but as they get to know each other he impulsively and compulsively falls for Elaine. In effect, this oedipal situation is suddenly turned right-side up. He becomes frantic to marry the daughter of his older mistress.

Ben crisscrosses California, going from Los Angeles to Berkeley, and back again, in a mad pursuit of Elaine’s hand. The movie in its latter half succumbs to the old Hollywood formula of boys meets girl, boy loses girl, boys gets girl back, albeit set amidst the panorama of the then burgeoning sexual revolution.

When the Robinsons decide to marry Elaine off, the film comes to a rousing climax. After the I Do’s have

been exchanged between Elaine and her parent’s preferred suitor, Ben disrupts the ceremony. Ben ‘rescues’ Elaine from her wedding vows by running-off with her after an all-out brawl in church.

Told by Mrs. Robinson that it’s too late, Elaine defiantly responds “not for me” as the two women slap each other. Ben and Elaine make their escape to the dismay of her parents, her newly minted husband, and the assembled congregation. They jump on a bus, she still wearing her bridal gown, as they make their getaway.

Ben and Elaine are impressed by their own audacity. They begin to laugh as they see the stunned expressions on the faces of their fellow passengers. But after a few awkward moments, the euphoria quickly begins to fade. With Elaine at minimum facing an annulment, reality is about to set in.

When asked what became of them, director Mike Nichols responded: “I think Benjamin and Elaine will end up exactly like their parents.”<sup>7</sup> A sardonic answer, no doubt, nonetheless it is also quite realistic. All couples no matter how hard they try, sooner or later become like their parents to a greater or lesser degree.

*Kramer v Kramer*, written and directed by Robert Benton, depicts a divorced couple’s heart-wrenching custody battle. A subtle film which lacks the verve of *The Graduate*, in many ways it is more satisfying. And like Ben and Elaine, Ted and Joanna Kramer are also a couple involved in a troubled relationship.

Ted Kramer is a successful advertising man on Madison Avenue. He comes home one night, and his wife Joanna (Meryl Streep) tells him that she is leaving him. Joanna’s sudden departure leaves Ted with the sole

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responsibility of caring for his six-year-old son Billy (Justin Henry).

Ted, having ignored his son as well as his wife, finds the adjustment difficult. Billy longs for his mother's affection. The child blames himself for what happened. One of the film's more touching moments is when Ted comforts Billy, telling him it was Ted's fault that Joanna left.

The film shows Ted's many difficulties juggling his professional life with his newly acquired childcare responsibilities. With Joanna no longer there to look after Billy, Ted's career declines precipitously. He is ultimately fired from his high-paying job on account of his being distracted from his work.

Ted winds-up taking a less demanding position at a reduced salary. The trade-off of being with Billy, more than justifies the loss in income. As such, the movie makes the point implicitly that new arrangements between the sexes as well as between home and office need to be negotiated.

When Joanna re-enters in the picture, she feels a new confidence thanks to therapy and her success in the business world. She wants Billy to live with her. Her case is straightforward, the boy should be with his mother. One point that hits home for Ted later at trial is that Joanna now makes more money than he does.

The film's most compelling scenes take place in New York State Supreme Court in Manhattan. Ted's lawyer John Shaunessy (Howard Duff) is a matrimonial law professional. He tells Ted, and the audience, upfront just how rancorous child custody proceedings can be. Shaunessy plays hardball as does Joanna's lawyer.

The judge grants Joanna's petition. She is awarded custody. Ted is given visitation rights every other weekend and dinner one night a week. The truth is that Ted and Joanna are each fit parents, both can provide Billy a loving home. The film, a product of its time, has the judge's ruling rely on the *Tender Years Doctrine*.

*The Tender Years Doctrine* automatically favored the mother in these matters. Forty years later, things have changed. In New York presently, "neither the mother nor the father has a *prima facie* right to custody" as the trial court must determine custody "in the best interest of the child" considering "the totality of the circumstances."<sup>8</sup>

Ted contemplates an appeal but thinks better of it once Shaunessy tells him an appeal means putting Billy on the stand. Notwithstanding the judge's determination, it is understood that the boy would be happier with his father. Certainly, the sympathies of the audience are with Ted and Billy remaining together as a family unit.

In the film's final scene, Joanna

unexpectedly decides to leave Billy in Ted's care. This denouement does have a *deus-ex-machina* quality that does not entirely ring true. Nevertheless, the audience eagerly embraces Joanna's change of heart. As in many custody disputes, there are no heroes or villains.

If we were to transpose Meryl Streep with Katherine Ross and swap New York for Los Angeles, *Kramer v Kramer* can be seen as a sequel of sorts to *The Graduate*.<sup>9</sup> In both instances, we have people coping with a plethora of societal changes in attitudes, values, and norms that have impacted inter-personal relationships.

For his part, Hoffman was able to draw from his own personal experiences. During production, Hoffman's divorce from his first wife was being finalized. Like Ben Braddock before him, Ted Kramer is a "generational hero" whose "once -hopeful plans for marriages more pure than their parents' had long since crumbled."<sup>10</sup>

Hoffman wanted to further "feminize" his character, and have Ted testify in court that he should retain custody of Billy "because I'm his mother."<sup>11</sup> Hoffman improvised this line during filming, but it did not make the movie's final cut as the producers thought it was a bit much.<sup>12</sup>

In *Kramer v Kramer*, as with *The Graduate*, Dustin Hoffman and his collaborators have etched fascinating cinematic portraits of individuals confronting the fallout from an ever-changing cultural landscape. Both films illustrate the various ramifications which occur when romance does not work out as initially desired. ⚖️

1. Fred Otto, *The divorce rate over the last 150 years* at [www.insider.com](http://www.insider.com).

2. The film's screenplay was by Buck Henry and Calder Willingham, adapted from a novel by Charles Webb.

3. The Berkley campus was the site of the Free Speech movement in 1964 and anti-war protests by 1967.

4. The adage is attributed to a Berkley graduate student Jack Weinberg, who was twenty-seven at the time of the film's release.

5. The given names of the Robinsons and of Ben's parents, the Braddocks, are never revealed in the film.

6. Mason Wiley and Damien Bona, *Inside Oscar* 405 (1st Ed. 1986).

7. Douglas Brode, *The Films of the Sixties*, 192 (1st Ed. 1980).

8. Justine Borer and Rosalind Ting, *How New York State Courts Make Child Custody Determinations* at [www.justineborer.com](http://www.justineborer.com).

9. Douglas Brode, *The Films of Dustin Hoffman*, 208 (1st Ed. 1983).

10. *Id.*

11. Dustin Hoffman Dialogue on Film in *American Film* 26 (April 1983).

12. *Id.*



**Rudy Carmenaty** is the Deputy Commissioner of the Nassau County Department of Social Services.



## NCBA Sustaining Members 2023 - 2024

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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## IN BRIEF

**Jared Kasschau**, partner of Harris Beach, co-presented “Cybersecurity, Privacy and Data Protection,” at the County Attorney’s Association of the State of New York (CAASNY) 2023 Annual Meeting on May 23.

**Joseph Milizio**, managing partner of Vishnick McGovern Milizio LLP (VMM) welcomes three new attorneys to the firm: **Lori A. La Salvia**, an associate in the firm’s Personal Injury practice; **Salvatore A. Candela**, an associate in the Wills, Trusts, and Estates, Trust and Estate Litigation, Trust and Estate Accounting, and Fiduciary Accounting practices; and **Patricia Colgan**, Of Counsel in the Wills, Trusts, and Estates practice. Joseph Milizio is proud to announce that the firm was named 2023 “Top Law Firm of Long Island” in its size category by the *LI Herald* (Herald Community Newspapers). Three VMM attorneys were also named “Top Lawyers of Long Island:” partner **Avrohom Gefen** was named in the Labor and Employment category. Partner **Constantina Papageorgiou** was named in the Elder Law category. Managing Partner Joseph Milizio received the Philanthropist of the Year Award, for his tireless support and work on behalf of the LGBTQ community. VMM is also proud to congratulate three of the firm’s attorneys for being named Top 3 finalists for the 2022 Long Island Choice Awards. Managing Partner Joseph Milizio was named a Top 3 Real Estate Attorney, partner **Joseph Trotti**, was named a Top 3 Divorce Attorney, and partner **James Burdi** was named a Top 3 Estate Planning Attorney. VMM’s LGBTQ Representation practice was proud to sponsor the CUNY 2023 Lavender Graduation, celebrating LGBTQIA+ student

graduates. Partner Joseph Trotti represented the firm, reading the names of QC graduates. Joseph Milizio led a webinar on March 24 on “Contingent Liabilities when Buying a Business” together with The NYBB Group and The Rainmakers’ Forum.

**Ronald Fatoullah** of Ronald Fatoullah & Associates was selected to the 2023 *Long Island Press Power List* sponsored by Schneps Media and honored on June 29 at The Heritage Club in Bethpage. Mr. Fatoullah was recognized for his excellence in business and commitment to the community. In addition, he collaborated with Northwell Health, Dementia Solutions, and Family First Home Companions for a CEU event for social workers entitled “*Understanding Gender Issues in Dementia Care.*”

**Joseph C. Packard**, partner of Schroder & Strom, LLP has been recognized by the *Long Island Herald* as a “Rising Star” for 2023.

**Stephanie M. Alberts** of Forchelli Deegan Terrana LLP was elected to the Nassau County Bar Association’s Board of Directors.

**Karen Tenenbaum** was recently named the Chair of the Relations with IRS Committee for the NYS Society of CPAs. Karen and members of her legal team hosted a “Residency Town Hall,” via Zoom and answered questions and discussed the intricacies of residency and how “It’s Not 6 Months and a Day and Other Things You Should Know About NYS Residency.” Karen was featured in *Living Athena: The 8*



Marian C. Rice

*Principles of Athena Leadership*, a book that celebrates and profiles women leaders. Karen was recently named on the Long Island Press Power List by *Schneps Media*. Karen and members of her legal team hosted a “Collection

Town Hall,” via Zoom and answered questions and discussed the intricacies of collections in a webinar titled, “OMG! My Client Owes \$\$\$—What Can I Do to Help Them.” Karen was also named to the Long Island Business News Business Influencers List as a Most Dynamic Women Leader. Karen was also interviewed by Dr. Jean Oursler as part of a Ph.D. research study.

**Marc Hamroff** of Moritt Hock & Hamroff is pleased to welcome Sidney Balaban, Danielle Halevi, Mary Johnson, Juliette Matchton, Sam Tanenbaum, and Isaiah Williams to its 2023 Summer Associates and Legal Interns Program.

**Jaspreet S. Mayall**, partner of Certilman Balin Adler & Hyman, LLP, was unanimously appointed as the next president of the board of the Nargis Dutt Memorial Foundation of New York. **Donna-Marie Korth** was named by *Crain’s New York Business* as one of the 2023 Notable Women in Law. Managing Partner Howard M. Stein has been named to the *Long Island Press Power List*.

On Thursday, June 8, **Allison C. Johs, Hon. Gail A. Prudenti**, and three other Long Island lawyers, founders of Mediation Solutions of NY, celebrated its business launch at its Islandia office.

**Judy L. Simoncic** of Forchelli Deegan Terrana LLP was selected

by *Long Island Business News* to be featured in the 2023 Long Island Business Influencers: Most Dynamic Women Leaders on Long Island issue.

**Stuart H. Schoenfeld** of Capell Barnett Matalon & Schoenfeld LLP has been named one of *Long Island Herald’s* 2023 Top Lawyers.

**Jeffrey D. Forchelli**, partner of Forchelli Deegan Terrana, LLP is proud to announce that the firm will be recognized as Top Property Tax Assessment Firm; Top Industrial Project—Nassau | Meadowbrook Logistics Center in Garden City; as well as Partners **Daniel P. Deegan** and **William F. Bonesso** at the *Long Island Business News* 2023 Real Estate, Architecture and Engineering Awards. **Julia J. Lee** has joined the firm’s Tax Certiorari practice group.

**Leslie Berkoff**, partner of Moritt Hock & Hamroff LLP has been recognized by *Lawdragon* as 500 Leading U.S. Bankruptcy and Restructuring Lawyers for 2023.

**Simone M. Freeman**, partner of Jaspert Schlesinger Narendran LLP has been elected for a second term as Vice President of the Women’s Bar Association of the State of New York (WBASNY).

The IN BRIEF column is compiled by Marian C. Rice, a partner at the Garden City law firm L’Abbate Balkan Colavita & Contini, LLP, where she chairs the Attorney Professional Liability Practice Group. In addition to representing attorneys for 40 years, Ms. Rice is a Past President of NCBA.

Please email your submissions to [nassaulawyer@nassaubar.org](mailto:nassaulawyer@nassaubar.org) with subject line: IN BRIEF

The *Nassau Lawyer* welcomes submissions to the IN BRIEF column announcing news, events, and recent accomplishments of its current members. Due to space limitations, submissions may be edited for length and content.

PLEASE NOTE: All submissions to the IN BRIEF column must be made as WORD DOCUMENTS.

### NCBA Committee Meeting Calendar August 3, 2023– September 7, 2023

Questions? Contact Stephanie Pagano at (516) 747-4070 or [spagano@nassaubar.org](mailto:spagano@nassaubar.org).  
Please Note: Committee meetings are for NCBA Members.

Dates and times are subject to change.  
Check [www.nassaubar.org](http://www.nassaubar.org) for updated information.

THURSDAY, AUGUST 3  
PUBLICATIONS  
12:45 PM  
Cynthia A. Augello

THURSDAY, AUGUST 3  
COMMUNITY RELATIONS AND  
PUBLIC EDUCATION  
12:45 PM  
Ira S. Slavitt

WEDNESDAY, AUGUST 9  
ASSOCIATION MEMBERSHIP  
12:30 PM  
Jennifer L. Koo

THURSDAY, SEPTEMBER 7  
PUBLICATIONS  
12:45 PM  
Cynthia A. Augello

THURSDAY, SEPTEMBER 7  
COMMUNITY RELATIONS AND  
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