Nassau Lawyer

THE JOURNAL OF THE NASSAU COUNTY BAR ASSOCIATION

April 2022 www.nassaubar.org Vol. 71, No. 8

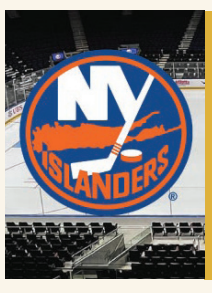
Follow us on Facebook

WHAT'S INSIDE

SAVE THE DATES

LAW DAY: TOWARD A MORE PERFECT UNION
MONDAY, MAY 2, 2022
See Insert

122ND ANNUAL DINNER GALA
SATURDAY, MAY 14, 2022
Pg. 7



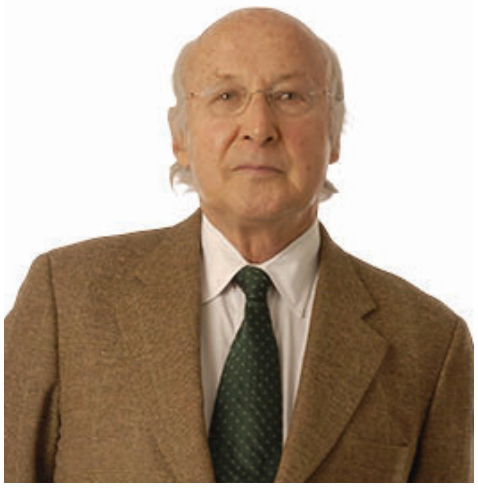
WE CARE NEW YORK ISLANDERS GOODS AND SERVICES AUCTION
SUNDAY, JUNE 5, 2022
Pg. 26

Law Day 2022: Toward a More Perfect Union—The Constitution in Times of Change

Ann Burkowsky

The Nassau County Bar Association (NCBA) is pleased to present this year's first in-person Law Day celebration in three years—*Toward a More Perfect Union: The Constitution in Times of Change* on Monday, May 2, 2022, at the NCBA.

The celebration will feature Keynote Speaker Professor Leon Friedman of Hofstra Law School and will acknowledge three honoree recipients for their dedication and commitment to the legal community.



Keynote Speaker

Professor Leon Friedman is the Joseph Kushner Distinguished Professor in Civil Liberties Law and Professor of Law at Hofstra University School of Law. A graduate of Harvard University, Professor Friedman received a BA in 1954 and an LLB in 1960.

Professor Friedman's extensive legal career began at the New York City law firm Kaye, Scholer, Fierman, Hays, & Handler. He later became general counsel of Chelsea House Publishers, served as Associate Director of the Committee on Courtroom Conduct for the New York City Bar Association, and Staff Attorney for the American Civil Liberties Union where he litigated cases dealing with national security, misuse of government power, the legality of the Vietnam War/draft, and the First Amendment.

An author of over 100 law journal articles and newspaper columns, Professor Friedman's work has appeared in the *New York Times, The Nation, The New Republic*, and the *American Scholar,* to name just a few. During his time serving as Associate Director of the Committee on Courtroom Conduct for the New York City Bar Association, he and Norman Dorsen of NYU Law School wrote *Disorder in the Court: Report of the Association of the Bar of the City of New York Special Committee on Courtroom Conduct* published in 1974. In addition, his book *The Justices of the United States Supreme Court* won the Annual Scribes Award for best book on a legal subject.

As a leading copyright lawyer, Professor Friedman has also represented numerous entertainers and authors, including Kathleen Turner, James Brown, John McPhee, I.B. Singer, Stephen Spender, Hunter Thompson, Susan Sontag, and Oscar Hijuelos, among others.

When not writing or representing clients, Professor Friedman lectures to federal judges across the country and at continuing legal education gatherings on subjects, including civil rights, civil procedure, criminal procedure, and the First Amendment.

Liberty Bell Award

The Liberty Bell Award is presented to a non-lawyer or organization who has strengthened the American system of freedom under the law by heightening public awareness, understanding and respect for the law. This year's Liberty Bell Award will be presented to Long Island Council on Alcoholism and Drug Dependence (LICADD), a nonprofit organization with the sole mission of assisting individuals and families struggling with substance use disorders and other mental health challenges since 1956.

LICADD proudly partners with local police departments to implement the Preventing Incarceration Via Opportunities for Treatment (PIVOT) program to provide a range of service to at-risk incarcerated Long Islanders. The objective of PIVOT is to divert individuals away from criminal justice and misdemeanor charges, towards opportunities to seek treatment and support for their substance use disorder.

In addition to programs like PIVOT, LICADD remains on the front lines of policy debate rooted in community education to combat the stigma long associated with substance use disorders. "The NCBA Lawyer Assistance Program has long recognized LICADD's tireless commitment to assisting individuals and families struggling with substance use disorder," said LAP Director Elizabeth Eckhardt, LCSW, PhD.

Peter T. Affatato Court Employees of the Year Award

The Peter T. Affatato Court Employee of the Year Award, named after the NCBA past president, is

See LAW DAY 2022, Page 5

For NCBA Members
Notice of
Nassau County Bar Association

Annual Meeting
May 10, 2022 • 7:00 p.m.
Domus
15th & West Streets Mineola
NY 11501

Proxy statement will be sent by electronic means to the email address provided by the Member and posted on the Association's website. The Annual meeting will confirm the election of NCBA Officers, Directors, Nominating Committee members, and Nassau Academy of Law Officers.

James P. Joseph
Secretary

Gassman Baiamonte Gruner, P.C.

Preeminence in Matrimonial & Family Law

Stephen Gassman

Rosalia Baiamonte

Joshua B. Gruner

Karen Bodner

Byron C. Chou

Dari L. Last

Adina L. Phillips

Gassman Baiamonte Gruner, P.C., has established itself as Greater New York's premiere matrimonial and family law firm, and it is one of the most respected and sought-after matrimonial law firms servicing Long Island and the greater New York Metropolitan area.

The firm's attorneys have devoted themselves exclusively to the highly specialized fields of matrimonial and family law, and have extensive experience dealing with a full range of matrimonial issues, among them: agreements (pre-nuptial, post-nuptial, and separation), custody and visitation, equitable distribution, spousal and child support issues, license and professional practice valuations, enforcement and modification proceedings, awards of counsel fees and experts fees, as well as an extensive family law appellate practice.

666 Old Country Rd. - Suite 801
Garden City, NY 11530
nydivlaw.com (516) 228-9181

Nassau Lawyer

The Official Publication
of the Nassau County Bar Association
15th & West Streets, Mineola, N.Y. 11501
Phone (516)747-4070 • Fax (516)747-4147
www.nassaubar.org
E-mail: info@nassaubar.org

Printed by Richner Printing, LLC
(516) 569-4000

Nassau Lawyer (USPS No. 007-505) is published monthly, except combined issue of July and August, by Richner Printing, LLC 2 Endo Blvd., Garden City, NY 11530, under the auspices of the Nassau County Bar Association. Periodicals postage paid at Mineola, NY 11501 and at additional entries. Postmaster: Send address changes to the Nassau County Bar Association, 15th and West Streets, Mineola, NY 11501.

Why Join the Nassau County Bar Association?

FROM THE PRESIDENT

Gregory S. Lisi

Are you a member of the Nassau County Bar Association (NCBA)? If not, you should be. Why, you might ask? Because there is something here for every attorney. Whatever reason you can think of to join, we can offer.

- Obtain new clients
- Network with colleagues
- Attend social events
- Receive free CLE credit with your membership
- Look for a new job
- Find new employees
- Learn about a new area of law
- Stay up to date in your area of practice
- Give back to the community
- Receive help from other attorney members
- Offer help to other attorney members
- Make a difference in the legal profession

These are just some of the wonderful things our members can do. Many of these benefits overlap, but let me provide some examples:

Get New Clients

There are so many ways to get new clients at the NCBA. I have personally received more clients from the Lawyer Referral Information Service and referrals from other members of the Bar than any other source in my career.

Lawyer Referral Information Service. The LRIS is promoted widely in public agencies, libraries, websites, as well as on plaques strategically placed inside all Nassau County courthouses.

LRIS is a service provided by the NCBA to refer members of the public to a member of the NCBA with knowledge in the area the person has a legal issue in. The attorneys on the panel are listed by practice area to give a potential client someone who is well versed in the field they need.

Clients who take advantage of the service come from all walks of life. They run the gamut of the economic spectrum and include individuals, small and large businesses, and even government entities. This is NOT a pro bono service. The potential clients are told the attorney will charge them fees. Many members will tell you they have received five and six figure cases from LRIS. This can become a cornerstone of any practice; it has always been of mine.

Referrals from Other Members. Another great avenue for clients is referrals from other attorneys. Many of our members practice in certain areas of the law, while not feeling comfortable in others. For example, I handle labor and employment law defense. Often, a member of the Bar who normally practices in matrimonial law or personal injury will not want to learn about a new area of law like labor and employment and will refer their client to me or another member who practices in that area, and vice-versa.

I will often refer my clients who need matrimonial, personal injury, criminal, or another area of law my firm does not practice, to another member of the NCBA. This is because when we refer our clients elsewhere, our reputation with them is still on the line. Many attorneys have told me that knowing the attorney from the Bar, instead of just looking them up online, makes a big difference in their comfort level.

As with all attorneys, it is important to get your clients the best representation possible. Members of the NCBA have attorneys at their fingertips who practice various areas of law, whom they know both personally and by their reputation at the Bar. This will make you feel more comfortable and confident in where you refer your clients.

Advertise in the *Nassau Lawyer* or at NCBA Events. Another way to obtain new clients is through advertising opportunities, either through the *Nassau Lawyer*, our monthly newspaper, which you are reading now, or by becoming a sponsor at NCBA events. Getting your name out to the people who can get you clients can be difficult. Here at the NCBA, you have nearly 4,000 members who have clients who may need someone in your practice area. By getting your name and areas of concentration out to fellow members, you will increase your visibility to the very people who can refer you clients.

Networking and Social Events

The NCBA hosts many networking events both big and small throughout the year, including quarterly Committee Chair Networking Cocktail Hours (approximately 40 attorneys from all different areas of law); Affinity Bar/Diversity and Inclusion Networking events (approximately 45 attorneys); Sustaining Members Networking Cocktail (about 30 attorneys); Annual Dinner Gala in May (approximately 300-500 attorneys and guests); Judiciary Night (more than 200 attorneys and judges); monthly buffet luncheons hosted by NCBA in-house caterer (about 100 attorneys at each); Holiday Celebration (almost 100 attorneys); and Lunch with the President (2-10 Members every Wednesday), to name just a few. As you can see, these events are big and small, for whatever your comfort level is.

Further, WE CARE, part of the Nassau Bar Foundation, the charitable arm of the NCBA, has wonderful networking events, including, but not limited to, the Annual Golf and Tennis Classic and Dinner; the New York Islanders Goods and Services Auction at UBS Arena; the Yankees vs. Mets game at Citifield; Dressed to a Tea; and my personal favorite, Las Vegas Night, which is held at Domus. Each of these events have wonderful entertainment and networking opportunities to grow your business—and they are fun!

Free Legal Education

There are many ways the NCBA can help keep you up to date on your chosen area of law, but two stand out:

Committees. The NCBA has over 50 committees in every area of law and are **exclusive to members only**. Free CLE credit is often offered at certain committee meetings each month for members. Most meet to discuss new cases or pressing issues in that area of law. I have not missed a Labor and Employment Law Committee meeting in over 25 years. I really feel that being a part of this committee gives me a real advantage over my adversaries. It not only keeps me up to date on the most current issues and case law but gives me the opportunity to ask about any issues I have in my cases so that another committee member will who has dealt with it before can help.

Nassau Academy of Law. As a member of the NCBA, your membership includes unlimited **free** live CLE and 12 free credits of on-demand CLE programs. CLEs are offered at lunch so you can learn while you eat and network, and most of the larger CLEs are offered at night. You can stay up to date on your chosen field or take classes outside of your practice area to learn about a new area of law.

I know when I started my firm, I was very happy with basic CPLR, real estate, and trust and estates classes—even though I was an employment law attorney. If it's included in your membership dues, why not? Even the Bridge-the-Gap Weekend, which allows you to earn up to 16 credits over one weekend, is free to members.

You can also teach a CLE course and earn speaker credit. This is a wonderful opportunity to showcase your expertise to the very attorneys who will be referring you clients.

Give Back to the Community

There are so many ways that the NCBA helps attorneys give back to the community. Through WE CARE, we distribute grants to many worthy charities throughout Nassau County.

Further, we are only one of two bar associations in the state with an on-staff mental health professional who facilities our confidential Lawyers Assistance Program to help attorneys, and often their families, in their time of need.

That's not all, however. Through our Mortgage Foreclosure Project, NCBA members can help Nassau County homeowners with their legal questions or issues.

The NCBA Access to Justice Committee sponsors two free Open House Clinics annually for members of the public to come to Domus to meet with an attorney in any and every field they need for 15 to 30 minutes and ask questions. Plus, we work very closely with the pro bono services in Nassau County such as Nassau Suffolk Law Services, the Volunteer Lawyers Project, and the Safe Center, to name a few. Volunteering is extremely satisfying. Good karma begets good karma.

We also have a Speakers Bureau, where organizations can call the NCBA and receive an attorney speaker for their event. This not only allows you to give back to the community, but to get your name out to potential clients.

Give Me a Call

If you have any questions, do not wait for one of our events to ask—give me a call. I am happy to tell you all about this wonderful place for the attorneys of Nassau County. I'll even introduce you around if you come to Domus for Lunch with the President.

There is so much happening down at the NCBA. I hope you'll choose to be part of it.

FOCUS:
REAL PROPERTY

Will Today's Millennial Trend Become Tomorrow's Partition Action?

Jacqueline A. Rappel and
Gabriella E. Botticelli

For better or worse, the millennial generation has been associated with many trends: avocado toast, high-waisted jeans, and rising student debt, to name a few. Now, as they approach their thirties and beyond, millennials are taking on a new trend together: home ownership. With the cost-of-living soaring, and the pandemic causing unforeseen economic hardships, the idea of owning a home has not only become more daunting, but also more desirable.

COVID-19, and the world's response to it, thrust a lot of change on our way of life; perhaps the most dramatic of which was forcing millions of workers into a work-from-home situation they were not accustomed to nor prepared for. For those in larger cities, this meant bringing the office (or in some cases, two or three offices) home to a tiny, 700-square-foot apartment. Consequently, the desire to escape the congested city to the spacious suburbs has grown tremendously alongside the rising costs of purchasing a home. In response, millennials are getting creative about how to make the American dream their reality: they are purchasing homes with friends. While it has never been uncommon for unmarried people to own real property together, the last few years have seen home ownership by unrelated individuals skyrocket.

Often dual ownership is harmonious and profitable for everyone, but what happens when it is not? What will happen a few years down the line when the now-childless millennials who bought homes together decide they want their own space to start a family? Or what if one owner receives a job offer in another state, but their co-owner friends refuse to sell the home and do not have the money to buy them out of their interest? The remedy may be a partition of the property pursuant to Article 9 of the Real Property Actions and Proceedings Law.

Attorneys representing unrelated co-buyers should educate their clients on partition actions prior to any joint purchase of property. While one client may be relieved to know that there may be a way out of the joint ownership down the line, another client may decide that they want to protect themselves against the possibility of a partition action in the future.

Partition Action as a Matter of Right

In the absence of an agreement prohibiting it, any party who no longer wishes to be a joint owner of property is entitled to a partitioning of the real property as a matter of right.[1] This right to partition is quite valuable in that it allows a person who holds an interest in the property as a joint tenant or tenant in common to dispose of his or her interest even when their co-owners do not consent. However, this right is not absolute because the appropriate remedy will always be subject to a balancing of the equities between the parties.[2]

In New York, there are two types of partitions. The first is a "partition in kind," where the property is physically divided and split amongst the co-owners so that each would own their newly-divided portion as a sole owner.[3] While this type of partition is generally preferred, it is most commonly utilized for properties that are vacant or comprised of multiple lots or units. The second type of partition is a "partition by sale," which is more common when property cannot be divided without great prejudice to owners,[4] such as a single-family dwelling. In a partition by sale, the property is sold and the proceeds are divided among the owners.

A partition by sale can be voluntary, where the parties agree to market and sell the property, or perhaps one buys the other owner out, and the proceeds are divided amicably. When an amicable resolution is not feasible, a partition action must be commenced.[5] In that case, the court orders the sale of the property and determines the equitable distribution of the proceeds.[6] This process is not always easy because arrangements for home ownership can vary drastically.

For example, one owner may have contributed more to the down payment for the purchase of the property, while another pays the majority of the mortgage every month and a third owner pays the real estate taxes. For this reason, the court will often order an accounting

after the property is sold where each owner will have the opportunity to present evidence of their contribution to the expenses of the property and rental income received, if any. The splitting of the proceeds can get even messier when out-of-possession co-owners feel they are entitled to rent from an in-possession co-owner. Many may be surprised to learn that absent ouster or an agreement to the contrary, tenants in common are not entitled to rent from each other for use and occupancy.[7] Thus, parties thinking about joint ownership should be educated on, and discuss, these possibilities before making any commitments so that they can ensure that all owners are on the same page and potentially reduce their agreements to writing.

Ultimately, after all evidence is submitted, the court will determine how much each owner will receive from the proceeds of the sale, with only "necessary" expenses being reimbursable.

Protection from Partition

The most direct way to avoid a partition action is to simply draw up an agreement between the owners prohibiting it; however, there are other options available depending on the needs of the parties. For example, the potential joint owners could decide to form an LLC together that would be used to purchase the property.[8] The LLC's Operating Agreement can be written such that none of the LLC's property may be sold without approval from a majority of the members. In either scenario, the written agreement could prevent a single owner from forcing a partition upon the majority of dissenting co-owners, while still leaving the door open to a partition action when minority ownership withholds their consent to a sale.

While the new trend of friends buying homes together was utilized as a noteworthy example, partition actions are not limited to single-family homes. Any property that has multiple owners, commercial or residential, can be the subject of a partition action. It is essential that property owners be represented by experienced counsel in these matters in order to safeguard and protect their rights.

1. RPAPL §901.
2. *See Perretta v. Perretta*, 143 A.D.3d 878, 879 (2d Dept. 2016).
3. *See Graffeo v Paciello*, 46 A.D.3d 613, 614-15 (2d Dept. 2007).
4. *Id.*
5. *See, e.g., Khotylev v Spektor*, 165 A.D.3d 1088, 1089-90 (2d Dept. 2018).
6. *See, e.g., id.*
7. *See McIntosh v McIntosh*, 58 A.D.3d 814, 814 (2d Dept. 2009) (internal citation omitted).
8. *See Sealy v Clifton, LLC*, 68 A.D.3d 846, 847 (2d Dept. 2009).

Jacqueline A. Rappel is a Litigation Partner at Forchelli Deegan Terrana LLP in Uniondale and can be reached at jrappel@forchellilaw.com or (516) 248-1700.

Gabriella E. Botticelli is an attorney in the firm's Litigation practice group and can be reached at gbotticelli@forchellilaw.com or (516) 248-1700.

FOCUS: BOOK REVIEW

Business and Commercial Litigation in Federal Courts (5th Ed.)

Publisher: Thomson West

Copyright: 2021

ISBN: 9781668729533

Price: $2,088

John P. McEntee

Attorneys practicing in the Commercial Division of the New York State Supreme Court often rely heavily on the ten-volume treatise *Commercial Litigation in New York State Courts*, edited by one of New York's preeminent commercial litigators, Robert L. Haig. Its most recent iteration has 156 chapters on procedural and substantive topics relating to state court commercial litigation, including a chapter by Nassau County Commercial Division Justice Timothy S. Driscoll on motion practice.

But, of course, not all business and commercial litigation is practiced in the Commercial Division. For cases in federal court, commercial litigators have relied on another Haig-edited treatise, *Business and Commercial Litigation in Federal Courts*. For the recently-released Fifth Edition, Haig has assembled 373 of the nation's top federal judges and practitioners to author 180 chapters in 16 volumes covering a vast array of topics. There are chapters, as one might expect, on matters relating to the commencement of an action, including: Subject Matter Jurisdiction; Personal Jurisdiction and Service; Venue, Forum Selection, and Transfer; Complaints; Responses to Complaints; Removal to Federal Court; and Provisional Remedies. From there, the treatise has a variety of chapters on pre-trial matters, including: Discovery Strategy; Privileges; Motion Practice; Depositions; Document Discovery; ESI Discovery; Interrogatories; Expert Selection and Disclosure; Pre-Trial Conferences; Settlement; and Summary Judgment.

For cases that clear the summary judgment hurdle and proceed to trial, there are chapters on: Jury Selection; Use of Jury Consultants; Motions in Limine; Opening Statements; Litigation Technology; Presentation of the Case in Chief; Cross-Examination; Expert Testimony; and Closing Arguments. And, depending on the outcome of the trial, one may need the chapters on Enforcement of Judgments; Appeals to the Courts of Appeals; and Appeals to the Supreme Court.

There are three things that make the treatise invaluable.

First is the many chapters on substantive topics, including chapters on common litigation topics such as: Contracts; Partnerships; Joint Ventures; Fiduciary Duty Litigation; Director and Officer Liability; Negotiable Instruments; Misappropriation of Trade Secrets; Fraud; Sale of Goods; and Commercial Defamation and Disparagement. There are chapters on more specialized areas of practice, such as: Antitrust; Sports; Entertainment; Foreign Corrupt Practices Act; and Social Media. And, there are new chapters on emerging topics, such as: Artificial Intelligence; Space Law; Virtual Currencies; and Climate Change.

Second is the practice aids such as checklists. Aviation experts say that

one of the greatest contributions to airplane safety was the introduction of the written pre-flight checklist. Adopted in response to the crash of the inaugural flight of the B-17 bomber preceding World War II, a crash caused by the pilot's failure to release a critical lever prior to takeoff, the adoption of the written checklist was a recognition that reliance on memory alone was no longer prudent given the increasing complexity of aircraft.[1] While the stakes in law may not be as high as in aviation, there is nonetheless much complexity in law, and so the use, for example, of the detailed practice checklist for Subject Matter Jurisdiction, with its cross-references to relevant sections of the treatise, can reduce the likelihood of embarrassment or worse.

Third is the judgment and wisdom of the authors, which takes seasoning to acquire. When lawyers begin practicing, they often object at trial to objectionable questions simply because they were objectionable. With time, though, they recognize that trials are not a forum to showcase knowledge of evidentiary rules and learned to remain seated and silent if the answer to the question will not hurt their case. With the Haig federal treatise, practitioners have access to the accumulated judgment and wisdom of an outstanding array of authors, including Theodore J. Boutrous, Jr., one of the nation's preeminent Supreme Court practitioners and the co-author of the chapter on Constitutional Litigation, and David Boies, one of the nation's preeminent trial lawyers and the co-author of the chapter on Litigation Technology.

In sum, the expanded and updated Fifth Edition of *Business and Commercial Litigation in Federal Courts* will serve as an invaluable resource for anyone practicing business and commercial litigation in federal court.

1. https://www.airforcemag.com/article/0813checklist/.

John P. McEntee, the Co-Managing Shareholder of Greenberg Traurig's Long Island Office, is a Past President of the Nassau County Bar Association and a Past Chair of the Commercial Litigation Committee.

Law Day 2022...

Continued from Page 1

presented to Frank Kromer, Associate LAN Administrator of the Office of the District Administrative Judge. "Frank Kromer epitomizes the Peter T. Affatato Court Employee of the Year Award. His professional dedication to the court system is boundless, and he is exceptionally patient with and helpful to judicial and nonjudicial court personnel, members of the Bar, and the people served by all of our courts because he genuinely cares. Always going above and beyond as a facilitator, trouble-shooter, and problem-solver for our entire court system on every level, Frank Kromer is an unsung hero truly deserving of this prestigious Award," said NCBA Past President Hon. Susan Katz Richman.

Thomas Maligno Pro Bono Attorney of the Year Award

The Thomas Maligno Pro Bono Attorney of the Year Award will be presented to Scott R. Schneider, Esq., in recognition of his selfless commitment to the furtherance of the most noble traditions of the organized bar.

Over the past ten years serving as a dedicated member of the Volunteer Lawyers Project, Schneider has filed over 120 bankruptcy matters for Nassau County individuals, volunteering over 650 hours of his time. Schneider treats each client with respect and dignity. His patience and compassion for the clients enables him to relieve their emotional and financial burdens and help them gain a fresh financial start.

In addition to maintaining his Hicksville law firm focusing mainly on bankruptcy and foreclosure defense, Schneider was named Pro Bono Attorney of the Month by Nassau Suffolk Law Services and the Nassau County Bar Association in 2015 and feels strongly that attorneys should provide professional pro bono advice to clients in need.

Tickets and Sponsorships Available for Purchase!

The NCBA would like to congratulate this year's honorees and looks forward to a wonderful evening. The 2022 Law Day Annual Awards Celebration is chaired by Hon. Ira B. Warshawsky and will be held on Monday, May 2, 2022, at 5:30 PM at the NCBA.

Tickets are available for purchase at $75 per person and a special price of $60 for court staff. Special sponsorships are also available.

For additional information, see the insert in this month's issue. To register, contact Stephanie Pagano at spagano@nassaubar.org or (516) 666-4850.

FOCUS: GENERAL LAW

It's Illegal to Do What, Where? —Weird Laws Still on the Books Across the U.S.A.

Cynthia A. Augello

With summer quickly approaching and COVID restrictions finally being lifted, many are planning vacations to places within the United States. Some people may want to let their hair down and party after being couped up for over two years. Be sure to know these strange laws still on the books in various places in the country to avoid trouble while traveling.

Alaska—Don't Get Intoxicated in a Bar—Or Go to One Already Intoxicated

Going to a bar in Alaska? Make sure you are not already intoxicated when you walk in. If you go in sober, you must leave when you are no longer sober. 2015 Alaska Statutes, Title 4, Chapter 04.16 titled "Access of drunken persons to licensed premises" provides that "[a] drunken person may not knowingly enter or remain on premises licensed under this title."

In 2012, Alaskan police officers actually began enforcing the law which sent many bar patrons and owners to jail.[1] The reason for the law is that arresting excessively intoxicated individuals cuts down on other crimes as many crimes in Alaska are committed by the intoxicated.[2] To be fair, the officers allegedly only arrest people that are falling off bar stools and showing other signs of over intoxication.

Arizona—Do Not Feed the Pigs Garbage—Unless You Own the Pig and the Garbage

Yes, you read that correctly. The statute specifies that you must obtain a permit if you want to feed garbage to swine. However, if you're looking for a loophole, here it is: you may feed your own household garbage to a swine if you raise the animal for your own use.[3]

Delaware Channels Cruella De Ville

In Delaware, it is a misdemeanor to sell, barter, or offer the hair of a domestic cat or dog.[4]

Even more troubling is that the law also precludes the selling or bartering of the flesh of a domestic dog or cat or any product made therefrom.[5]

I Challenge You to a Duel—Not in Kentucky or Tennessee Well, Not if You Want to Hold Office

In Kentucky, because why not Kentucky, every legislator, public officer, and lawyer must take an oath stating that they have not fought a duel with deadly weapons. The oath states, among other things:

> [I] have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.[6]

This was originally intended to deter men (for whatever reason only men were targeted) who might aspire to public office from fighting in duels, a practice that was once rampant especially in the South until the Civil War basically left everybody all dueled out. Since 1849, the Kentucky Constitution has required anyone holding any "office of honor or profit" to swear that they have never fought or otherwise participated in a duel.

This provision was added because existing anti-dueling laws had failed to put an end to the practice, common among offended gentlemen of the day, of resolving disputes at gunpoint. The idea was to deter dueling by threatening the future political career of anyone who engaged in a duel. To this day, anyone entering public office—or simply taking the oath after passing the bar exam—must affirm that they have never dueled.

In 2010, a Kentucky legislator introduced a bill that would have removed the no-dueling pledge from the oath, partly because the language is outdated and partly because he was tired of people "snickering" about it when they were supposed to be taking a solemn oath.[7] It does not appear the bill passed and the no-dueling pledge is still part of the oath of office.

Likewise, in Tennessee, one cannot duel if he or she wants to hold office or any "office of honor or profit." This law only applies to in-state duels. Individuals are free to take their duel elsewhere and still hold office in Tennessee.[8]

Do You Want to Eat That?

In Louisiana, jambalaya prepared in "the traditional manner" is not subject to the state sanitary code.[9] You might want to know this before ordering jambalaya in Louisiana. The law provides that it shall be lawful to prepare jambalaya in the "traditional manner" for public consumption, including the use of iron pots, wood fires, and preparation in the open for service to the public at public gatherings. The law, however, states that it "shall not be construed to allow the sale or distribution of any unwholesome food."[10]

Good Thing the "Mastic Bull" Wasn't Loose in Missouri

In July 2021, the news was filled with stories about the bull that was seen running down Sunrise Highway and through Mastic, Long Island.[11] In fact, "Barney, the Mastic Bull" was on the lam for approximately two months before he was captured.[12] Had "Barney" been captured in Missouri, things may have been a little different.

In Missouri, if a bull or ram over the age of one year runs rampant for more than three days, any person may castrate the animal without assuming liability for damage. Free-running bulls is likely a bigger issue in Missouri than it is on Long Island, but if one catches a bull there, why castrate it?

Anyway, under the law in Missouri, three town residents must attest in writing that the animal is loose, and its owner must fail to reclaim or confine the animal after notice is given before the castration can occur.[13] Now that's some bull.

When the Kids Annoy You at Hershey Park—Don't Sell Them

Anyone who has children may possibly considered selling them at some point. Not seriously, of course. However, in Pennsylvania, state law stipulates that "a person is guilty of a misdemeanor of the first degree if he or she deals in humanity by trading, bartering, buying, selling, or dealing in infant children."[14] This law likely has more to do with improper child adoptions and/or trafficking and not people getting fed up with their kids on vacation.

Wyoming Might be Great for Skiing—Just Don't Do It Intoxicated

State law in Wyoming holds that "no person shall move uphill on any

passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any illicit controlled substance or other drug."[15]

Committing Murder in New Jersey? Leave the Bullet-proof Vest at Home

According to a New Jersey state law, it is a third-degree crime to wear a body vest while "engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit murder, manslaughter, robbery, sexual assault, burglary, kidnapping, criminal escape or assault."[16] This law assumes anyone committing such crimes is reading the laws to know such a thing is not permitted.

Another State, Another Intoxication Law

When traveling to Michigan on vacation or to see a college football game, people need to plan carefully how they will get back to the place where they are staying. While normally it is perfectly acceptable to take alternate transportation to avoid the possibility of a DWI, according to Michigan state law, it's illegal for a person in an "offensive state of intoxication" to "enter or be on or remain upon any railway train or interurban car as a passenger."[17] Thankfully, intoxicated individuals on the train who are not "offensive" are likely safe from this particular law.

When in Louisiana, Do Not Wrestle Bears

Someone looking for an adrenaline rush in Louisiana might want to avoid wrestling a bear. Louisiana law provides that individuals involved in "bear wrestling matches"—defined as "a match or contest between one or more persons and a bear for the purpose of fighting or engaging in a physical altercation"—are guilty of bear wrestling.[18]

Georgia Takes its Eating of Fried Chicken Very Seriously

When consuming fried chicken in Georgia, please note that no utensils are allowed. There will be no eating fried chicken with a fork. According to a Gainesville proclamation passed in 1961 designed to promote Gainesville as a poultry center, it's illegal to eat fried chicken with a fork. In 2009, a 91-year-old woman was arrested as a practical joke for violating the law, but she was later pardoned.[19]

When in Alaska, Don't Waste Moose

They don't mess around with a moose while hunting in Alaska. If a hunter takes a moose, certain parts of the animal—including the head, heart, liver, kidneys, stomach and hide—are legally required to be salvaged "for human use."[20]

Don't You Dare Send Surprise Pizza

Sending someone a pizza by surprise is the worst. If in Louisiana, don't try to send anyone a surprise pizza. Honestly, what kind of a person would do such a "despicable" thing? The price to pay for such an inappropriate gesture—is a $500 fine. That is an expensive pizza! Pursuant to Louisiana law, you could be fined $500 for sending a pizza delivery to someone's house without their permission.[21] It is apparently considered harassment since the sender is trying to make the receiver pay for something they did not request.

When in New York—No Selfies with Tigers

As of late, there has apparently been a trend on dating sites of men posing with fish in their profile pictures. Perhaps this trend began because they could no longer pose with tigers or other large cats. New Yorkers found in violation of the law that makes posing for photos while "hugging, patting, or otherwise touching tigers" could face a fine of up to $500.[22]

While this article is intended to be light reading, it is amazing to see the kinds of laws that are still on the books in states all around the country. Whether or not they are taken seriously much less prosecuted is a different matter.

1. https://abcn.ws/3tDelB3.
2. *Id.*
3. AZ Rev Stat §3-2664.
4. 11 Del.C. §1325 - 1327.
5. *Id.*
6. https://bit.ly/3CjozQi.
7. https://n.pr/3HRfhvV.
8. https://www.capitol.tn.gov/about/docs/tn-constitution.pdf.
9. LA Rev Stat §40:4.2 (2021).
10. *Id.*
11. *See e.g.*, https://7ny.tv/3CpErAY.
12. *Id.*
13. MO Rev Stat §270.250 (2019).
14. https://bit.ly/3vL3VqS.
15. WY Stat §6-9-301.
16. NJ Rev Stat §2C:39-13 (2021).
17. MI Comp L §436.201 (2016).
18. LA Rev Stat §14:102.10 (2021).
19. https://bit.ly/3HV0FM6.
20. 5 AAC 92.220.
21. LA Rev Stat §14:68.6 (2018).
22. NY Env Cons L §11-0505 (2016).

Cynthia A. Augello is the Principal of the Law Offices of Cynthia A. Augello, PC handling primarily matters involving defense of employment law litigation and general commercial litigation. She is also the Vice-Chair of the Nassau County Bar Association Publications Committee.

FOCUS: EMPLOYMENT LAW

The Evolving Ministerial Exception to Employment–Related Claims Against Religious Institutions

Mark E. Goidell

The ministerial exception bars discrimination and retaliation claims arising from the employment decision of religious institutions regarding "ministers." The exception has its genesis in both the Free Exercise Clause and Establishment Clause of the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[1] The Free Exercise Clause safeguards religious institutions' "right to shape [their] own faith and mission through [their] appointments," and the Establishment Clause prohibits "government involvement in [ ] ecclesiastical decisions."[2] Together, they "bar the government from interfering with the decision of a religious group to fire one of its ministers."[3]

The reach of the doctrine has expanded over the past two years. The Supreme Court held that elementary school teachers in a parochial school were "ministers" and applied the ministerial exception to dismiss their state and federal discrimination claims arising from the termination of their employment in *Our Lady of Guadalupe v. Morrissey-Berru*.[4]

Whether the doctrine precludes hostile work environment and harassment claims in addition to tangible action claims is still undecided by the Supreme Court. The Court signaled in *Morrissey-Berru* that the ministerial exception may shield religious institutions from more than just tangible employment decisions, holding that "courts are bound to stay out of *employment disputes* involving those holding certain important positions with churches and other religious institutions."[5]

On July 9, 2021, the Seventh Circuit Court of Appeals applied the ministerial doctrine to dismiss hostile work environment claims regardless of whether the employer subjected a plaintiff to any tangible employment action in *Demkovich v. St. Andrew the Apostle Parish, Calumet City*.[6]

It thereby joined the Tenth Circuit Court of Appeals in precluding such claims. There is contrary authority from the Ninth Circuit Court of Appeals.

Before discussing these decisions, some background on the doctrine and its parameters is important.

Religious Institutions

The determination of whether an employer is a religious institution has not been very controversial. Of course, the term includes churches, mosques, synagogues, gurdwaras, and other places of congregational worship. The term also encompasses a "religiously affiliated entity [whose] mission is marked by clear or obvious religious characteristics."[7] Religious schools were therefore protected in *Morrissey-Berru* and many other cases.

The ministerial doctrine also shielded a Christian organization whose purpose is to advance the understanding and practice of Christianity on college campuses,[8] a nursing home which declared its mission to provide elder care to Jewish patients,[9] and the pastoral care department of a hospital with religious affiliation.[10]

Ministers

In *Morrissey-Berru*, the Supreme Court broadly defined employees who are within the ambit of "ministers." In determining whether employees at religious schools are ministers, the Supreme Court explained that the core consideration is their "role in conveying the Church's message and carrying out its mission."[11] "[E]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school."[12] Thus, the Supreme Court held that many teachers at religious schools qualified as "ministers" for the purposes of the exception even though they were not considered formal ministers.

Justice Alito, writing for the majority of the Supreme Court, set forth the rationale for holding that the plaintiffs-elementary school teachers were "ministers" whose employment discrimination claims were barred.

The religious education and formation of students is the

> very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission. Judicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate.[13]

Eight years earlier, in *Hossana-Tabor*, the Supreme Court applied four non-exhaustive factors to determine that the plaintiff-teacher there was a "minister": "the formal title given [plaintiff] by the Church, the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church."[14]

In *Morrissey-Berru*, the Court rejected an analysis limited to these four factors.[15] Instead, the duties and responsibilities of the teachers as set forth in the faculty handbooks and school mission statements were dispositive. The Court noted that "the academic requirements of a position may show that the church in question regards the position as having an important responsibility in elucidating or teaching the tenets of the faith."[16] "What matters, at bottom, is what an employee does."[17] The Court then recited the evidence implicating the ministerial exception:

> There is abundant record evidence that they both performed vital religious duties. Educating and forming students in the Catholic faith lay at the core of the mission of the schools where they taught, and their employment agreements and faculty handbooks specified in no uncertain terms that they were expected to help the schools carry out this mission and that their work would be evaluated to ensure that they were fulfilling that responsibility. As elementary school teachers responsible for providing instruction in all subjects, including religion, they were the members of the school staff who were entrusted most directly with the responsibility of educating their students in the faith. And not only were they obligated to provide instruction about the Catholic faith, but they were also expected to guide their students, by word and deed, toward the goal of living their lives in accordance with the faith. They prayed with their students, attended Mass with the students, and prepared the children for their participation in other religious activities… And both their schools expressly saw them as playing a vital part in carrying out the mission of the church, and the school's definition and explanation of their roles is important.[18]

Finally, the Court ended its decision with the following rule: "When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow."[19]

Hostile Work Environment and Harassment Claims

While there is no longer any doubt that the ministerial exception bars the adjudication of "employment disputes" arising from discrimination and retaliation claims by "ministers" against religious institutions for tangible employment actions, federal circuits are split as to whether the ministerial exception also applies to hostile work environment claims against religious institutions by "ministers." The Supreme Court's description of cases barred by the ministerial exception appears to be sufficiently broad to prohibit such claims.

The Tenth Circuit barred hostile work environment claims under the ministerial exception in *Skrzypczak v. Roman Catholic Diocese of Tulsa*.[20] On the other hand, the Ninth Circuit reached a different conclusion in *Elvig v. Calvin Presbyterian Church*.[21] In November 2021, however, the Ninth Circuit retreated somewhat from its position. It now applies the ministerial exception to hostile work environment claims that are "so intertwined with the employment decisions that the claims cannot be separated."[22]

On July 9, 2021, the Seventh Circuit issued its en banc decision in *Demkovich*,[23] which joined the Tenth Circuit in holding that the ministerial exception categorically bars employees who qualify as ministers from asserting hostile work environment claims against the religious organizations that employ them. The plaintiff served as a music director, choir director and organist for a church. He asserted hostile work environment claims against his employer based on derogatory comments his supervisor made about his physical conditions and sexual orientation. The court dismissed the hostile work environment claims on the grounds that "[a]djudicating Demkovich's allegations of minister-on-minster harassment would not only undercut a religious organization's constitutionally protected relationship with its ministers, but also cause civil intrusion into, and excessive entanglement with, the religious sphere."[24]

"The protected interest of a religious organization in its ministers covers the entire employment relationship, including hiring, firing and supervising in between."[25] The court held that "[a] religious organization's supervision of its ministers is as much a component of its autonomy as is the selection of the individuals who play certain key roles," and thus, "it would be incongruous if the independence of religious organizations mattered only at the beginning (hiring) and the end (firing) of the ministerial relationship, and not in between (work environment)."[26]

The *Demkovich* court held that the ministerial exception applies to hostile work environment claims by ministers regardless of whether or not religious doctrine is implicated by the allegations. The court explained that "[h]ow one minister interacts with another, and the employment environment that follows, is a religious, not judicial prerogative,"[27] and "[i]n these sensitive areas, the state may no more require a minimum basis in doctrinal reasoning than it may supervise doctrinal content."[28] The court therefore held that "[j]ust as a religious organization need not proffer a religious justification for termination claims, a religious organization need not do so for hostile work environment claims."[29]

The *Demkovich* court also rejected the assertion that applying the ministerial exception to hostile work environment claims would somehow permit sexual assault and other illegal treatment of the individuals the institution has hired. The court explained that while the ministerial exception applies to employment claims, it does not protect against criminal or personal tort liability.[30] The court stated that "analogies to tort law fail to recognize that a hostile work environment claim brings the entire ministerial relationship under invasive examination," and that "[t]ort liability—unlike liability for employment discrimination claims—generally does not arise as a direct result of the protected ministerial relationship."[31] Accordingly, Demkovich's employment claims based on offensive and derogatory comments by his supervisor were dismissed.[32]

Demkovich did not seek review by the Supreme Court and the action is therefore conclusively terminated in favor of the defendant religious institution. No other circuit court has published a decision addressing the issue since *Demkovich*. Neither the Second Circuit nor any New York state court has determined whether the ministerial exception bars hostile work environment or harassment claims by "ministers" against religious institutions.

Conclusion

Cases testing the limits of the ministerial exception are currently pending. Whether religious school employees such as guidance counselors or coaches are "ministers" is still to be determined. So too, the issue of whether the ministerial exception applies to claims for gender-based or other unlawful harassment under the New York State and New York City Human Rights Laws is undecided. The tension between these statutory protections and the Free Exercise Clause and Establishment Clause of the First Amendment will be the subject of evolving caselaw.

1. U.S. Const. Amend. I.
2. *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 181 (2012).
3. *Id.* at 188.
4. 591 U.S. __, 140 S. Ct. 2049, 2060 (2020).
5. *Id.*, 140 S. Ct. at 2060 (emphasis added).
6. 3 F.4th 968 (7th Cir. 2021).
7. *Condon v. Intervarsity Christian Fellowship*, 777 F.3d 829, 834 (6th Cir. 2015) (quotation marks omitted).
8. *Id.*
9. *Shaliehsabou v. Hebrew Home of Greater Washington, Inc.*, 363 F.3d 299, 310 (4th Cir. 2004).
10. *Penn v. New York Methodist Hospital*, 884 F.3d 416, 424 (2d Cir. 2018).
11. 140 S.Ct. at 2063.
12. *Id.* at 2064.
13. *Id.* at 2055.
14. *Hosanna-Tabor*, 565 U.S. at 192.
15. *Morrissey-Berru*, 140 S.Ct. at 2063-2064.
16. *Id.* at 2064.
17. *Id.*
18. *Id.* at 2066.
19. *Id.* at 2069.
20. 611 F.3d 1238, 1245 (10th Cir. 2010). Two other circuit court decisions are cited as cases that preclude hostile work environment claims under the ministerial doctrine, but both cases actually presented tangible action claims. *Gellington v. Christian Methodist Episcopal Church*, 203 F.3d 1299, 1300-1301 (11th Cir. 2000); *Combs v. Central Texas Annual Conference of United Methodist Church*, 173 F.3d 343, 350-351 (5th Cir. 1999).
21. 373 F.3d 941 (9th Cir. 2004).
22. *Orr v. Christian Brothers High School, Inc.*, __ F.3d __, 2021 WL 5493416, at *2 (9th Cir. Nov. 23, 2021).
23. The en banc decision reversed an earlier decision of a panel of the Seventh Circuit rejecting the ministerial exception for plaintiff's hostile work environment claims. *Demkovich v. St. Andrew the Apostle Parish*, Calumet City, 973 F.3d 718 (7th Cir. 2020).
24. *Demkovich*, 3 F.4th at 977-978.
25. *Id.* at 976-977.
26. *Id.* at 979 (quotation mark omitted).
27. Id. at 980.
28. *Id.* at 982 (quotation marks omitted).
29. *Id.* at 980.
30. *Id.* at 983.
31. *Id.*
32. *Id.* at 985.

Mark E. Goidell concentrates his practice in federal and state litigation with an office in Garden City. The author can be reached at mark@goidell.com.

FOCUS: DEFENDANT'S PERSONAL INJURY

Is What They Say About Assumption True?

Brian Libert

One fascinating thing in the law is the dynamic nature of how definitions can change over time. The result of such dynamism is subtlety, nuance, and sometimes paradox.

Assumption of the risk is so axiomatic in tort cases that we call it "black letter law." The idea that each person understands the risks undertaken when they participate in an activity is so central to the tenets of what we do as attorneys, that we often do not consider the practical applications.

To restate simply: Under the doctrine of assumption of risk, a voluntary participant in a sporting or recreational activity consents to those commonly appreciated risks that are inherent in and arise out of the nature of the sport. Plaintiff assumes the risks of all conditions on the play surface which are open and obvious.

Adding to this principle, there is a long line of cases holding that the assumption of risk doctrine also encompasses risks involving less than optimal conditions.[1] As attorneys, we often take what is common sense and describe it in a different way. In common parlance, people would say "forewarned is forearmed," and "No defendant should be held liable where the plaintiff could have easily avoided the injury by simply using their eyes or ears."[2]

Despite this common and understood principal, there is a paradox in the current case law. The dichotomy appears to defy common sense and logic, is still under debate in the Second Department, and may soon be resolved by the Court of Appeals.

This article aims to examine the current state of the "assumption of the risk" defense as it relates to the state of the playing surface with an eye towards best advice for defense clients. This article also addresses the issue looking at what may happen in the future: exactly what is meant by "less than optimal," and also, how much neglect is too much neglect?

In 2019, Michael Ninivaggi sustained injuries while playing football with some friends. Ninivaggi was an experienced football player, and he admitted that he was familiar with the field's poor topography because he had played on it in the past. The field was known by Ninivaggi and others to be ruddy, wavy, and uneven. The hole Ninivaggi fell in was not concealed.[3]

In deciding that case, the Appellate Division stated the doctrine of "assumption of the risk" applies to inherent risks related to the construction of the playing field or surface and "encompasses risks involving less than optimal conditions."[4]

The Ninivaggi court opined further "that the doctrine of primary assumption of risk does not exculpate a landowner from liability for ordinary negligence in maintaining a premises… Thus, the doctrine does not necessarily absolve landowners of liability where they have allowed certain defects, such as a hole in a net in an indoor tennis court, to persist."[5]

In the Ninivaggi dissent, Justice Maltese states, "The essence of the district's argument is that the users know the district [defendant] does not adequately maintain its ballfields in a reasonably safe condition, so they should not play upon them, and, if users choose to do so, as opposed to sitting around playing video games, they do so at their own risk."

This must be broken down to state the obvious. If assumption of the risk is a bar to plaintiff's recovery, what is plaintiff supposed to do upon arriving to a surface of play that is in such disrepair it is, for all intents and purposes, unplayable? Is plaintiff charged with the reason to simply go home, go somewhere else, or not engage there? And, if so, does that create an unreasonable public policy whereby defendant's best solution is to allow things to get so bad, they are in fact, readily obvious or even decrepit?

In *Cruz v. City of New York*, Justice Duffy observed something substantially similar.[6] In Ninivaggi, where plaintiff played basketball on a court which was known to many people to be in poor shape. The surface contained "long-persisting" "deep cracks" including the one which caused plaintiff's injury.[7]

Justice Duffy states: "The doctrine of primary assumption of risk was

never intended to allow a landowner to permit a recreational facility to fall into a neglectful state of disrepair, completely relieving it of any duty to sports participants."[8] Justice Duffy continues, "while I concur in the result reached by my colleagues, I do so only under constraint of this court's precedent."[9] This is precisely the state of the law.

If assumption of the risk means that participants acknowledge the risk, what if the risk is *so* obvious, that to play on such a surface would be foolish, short-sighted, or even legitimately dangerous? Does that suggest that there is some defendant's benefit in allowing a court or play surface to wither into neglect? As noted by Justices Maltese and Duffy, the answer appears to be a resounding "yes."

It is worth noting of course that in some circumstances, assumption of risk is not an absolute defense, but a measure of the defendant's duty of care.[10] The dissent in *Franco v. 1200 Master Assn. Inc.* held that "a participant in a sporting or recreational activity does not automatically assume all the risks of injury while utilizing a sports or recreational facility that is not properly maintained for foreseeable users." Perhaps that is the most reasonable application going forward.

As defense counsel, we should always be asking how to best proactively protect our client. The general rule is that a landowner only owes a duty to protect others from unassumed, concealed, or unreasonably increased risks.[11] As it stands, now there is a second corollary rule: if playing surfaces are in a state of disrepair, it may be better to in fact let them decay further, because according to the law, there is actually strategic advantage to that.

As mentioned above, even things that appear to be well-established by law and "on firm ground" are subject to interpretation and change. This is one prime example of an area where things appear to be settled, but in fact are a continuing paradox. These legal paradoxes require careful analysis, zealous advocacy, reasoned judicial review, and, educated attorneys because, as they say, "knowing is half the battle."

1. *Bukowski v Clarkson Univ.*, 19 N.Y.3d 353 (2012) *citing, Sykes v County of Erie*, 94 N.Y.2d 912, 913, 728 NE2d 973, 707 N.Y.S2d 374 (2000); *Maddox v City of New York*, 66 N.Y.2d 270, 274, 487 NE2d 553, 496 NYS2d 726 (1985); *Martin v State of New York*, 64 AD3d 62, 64, (3d Dept 2009), lv denied 13 N.Y.3d 706 (2009).
2. See *Rowell v. Town of Hempstead, Binenstzok v. Marshall Stores*, 228 A.D.2d 441 (2d Dept. 1996).
3. *Ninivaggi v. County of Nassau*, 177 A.D.3d 981 (2019); see *also Gamble v. Town of Hempstead*, 281 A.D.2d 391 (2001), *Bukowski v Clarkson Univ.*, 19 N.Y.3d 353, 356, 971 N.E.2d 849, 948 N.Y.S.2d 568, *Ziegelmeyer v United States Olympic Comm.*, 7 N.Y.3d 893, 894, 860 N.E.2d 60, 826 N.Y.S.2d 598; *Sykes v County of Erie*, 94 N.Y.2d 912, 913, 728 N.E.2d 973, 707 N.Y.S.2d 374; *Maddox v City of New York*, 66 N.Y.2d 270, 277, 487 N.E.2d 553, 496 N.Y.S.2d 726.
4. *Id.*
5. *Id.*
6. *Cruz v. City of New York*, 197 A.D.3d 555 (2d Dept.).
7. *Id.*
8. *Id.*
9. *Id.* at 556.
10. *Franco v. 1200 Master Assn., Inc.* 177 A.D.3d 858 (2d Dept. 2019).
11. *Manoly v. City of New York*, 29 A.D.3d 649 (2d Dept. 2006).

Brian Libert is a Deputy County Attorney for Nassau County. He serves as trial counsel and outside counsel coordinator.

The author would like to thank **Ashley Akl** from Hofstra University for her contributions to this article.

FOCUS: ETHICS

Practicing From Another State? Attorney Obligations

Mitchell T. Borkowsky

Even before the onset of the pandemic in early 2020, an increasing number of New York lawyers and law firms were beginning to provide legal services to clients online, while physically located at home or in other states and jurisdictions. The pandemic exacerbated the situation, as professionals in all endeavors were forced to work remotely. Many lawyers, whether residing in New York or contiguous states, discovered that it was no longer necessary to commute to an office to perform their work effectively. Some, so determined to avoid the grind of a daily commute, resigned from positions to pursue other opportunities. Others took the opportunity to relocate to states with warmer climes, such as Florida or North Carolina, fully intending to continue their practices "virtually." Still other attorneys chose to retire but given technological advances hoped to keep a toe in the water and generate income for themselves through referrals and fee-sharing arrangements.

Although in most professions, working virtually may not pose ethical or compliance issues, lawyers and law firms need to be aware that their ability to engage in such virtual practices is circumscribed by rule and statute. Among the most significant of the rules bearing on virtual practice is Judiciary Law §470, which provides, as follows:

> A person, regularly admitted to practice as an attorney and counsellor, in the courts of record of this state, *whose office for the transaction of law business* is within the state, may practice as such attorney or counsellor, although he resides in an adjoining state (italics added).

Significantly, Judiciary Law §470 is on the cusp of being repealed. In 2021, the New York State Senate passed a bill repealing §470 with nearly unanimous support. The bill, however, did not get a vote in the Assembly before the session ended and was, thus, never presented to the Governor. On February 15, 2022, the Senate once again passed the bill, and, as of this writing, it is again awaiting action in the Assembly. Despite the momentum toward its repeal, Judiciary Law §470 remains the law in New York, and lawyers are cautioned to continue to heed its requirements.

Constitutionality of Judiciary Law §470

Judiciary Law §470 was enacted over a century ago (in 1909), at a time when only a New York resident could practice law in New York. In 1979, the Court of Appeals struck down as unconstitutional the requirement that all New York attorneys must reside in the State.[1] Since that time, New York courts have consistently interpreted the statute to apply to all nonresident members of the New York bar and make no distinction between non-resident attorneys residing in adjoining states and non-resident attorneys in general.[2] However, despite case law modifying the reach of Judiciary Law §470, the statute has remained on the books, as written, including the requirement that nonresident attorneys who wish to practice law in New York must maintain an "office for the transaction of law business within the state."

In 2015, as part of a federal case directly challenging the constitutionality of Judiciary Law §470 under the Privileges and Immunities Clause of the United States Constitution brought by a New Jersey resident, Ekaterina Schoenefeld, the New York Court of Appeals was asked by the Second Circuit Court of Appeals what constituted an "office for the transaction of law business" for purposes of the statute. The New York Court of Appeals responded by stating that the statute required nonresident attorneys to, at a minimum, maintain a "physical office" in New York.[3] Despite the vagueness and imprecision of the Court of Appeals' reference to a "physical office," the Second Circuit held that §470 was constitutional.[4] The question of what constitutes a "physical office" under §470 has, however, still not been definitively answered.

So, what does it mean to have a "physical office" and how does this affect the legions of New York attorneys who currently reside out-of-state or plan to do so in the future?

Physical Office

The existence or nonexistence of a physical law office is an issue of fact in each instance. In *Schoenefeld v. State*, the Court of Appeals suggested that compliance with §470 requires more than just an address or the designation of an agent for the receipt of service. In *Chupak v. Gomez*,[5] the court found a nonresident attorney to have made a sufficient showing of a New York law office under the statute where, among other things, he had access to one of the offices located on the second floor of a small building in Brooklyn whenever needed; there was a desk, telephone, fax machine, and computer available to him; and where the other tenant of the building was able to accept service of process of his behalf, immediately notify him of any calls, service of documents, or mailings, and promptly forward documents to him via email and post to his residence in California.

In recent years, the concept of what constitutes a law office in the United States has evolved because of technological advances and the proliferation of "virtual law offices." In one Maryland case, the court stated that, at a minimum, some physical presence sufficient to assure accountability of the

attorney to clients and the court is required.[6] In 2013, New Jersey's rules were amended to eliminate the requirement that attorneys maintain a "bona fide" office at a fixed physical location and, instead, require them to structure their practices to assure prompt and reliable communication with and accessibility by clients, other counsel, and judicial and administrative authorities, as well as to designate a more fixed physical location for file storage, mail receipt, and service of process relating to their practices.[7]

While the same practical and technological advances have led to the anticipated repeal of Judiciary Law §470, until it is ultimately repealed, the statute remains the law in New York. Thus, the requirement that nonresident attorneys wishing to practice here maintain "an office for the practice of law business" persists, as does the lack of guidance over what constitutes a "physical office." Indeed, the Committees on Professional Ethics of both the New York State Bar Association and the City Bar Association of New York have repeatedly declined to render opinions on the "legal question" of what constitutes a physical office under the statute.[8]

Virtual Law Offices

In what may be the closest thing to a stamp of approval on the use of "virtual law offices" by nonresident attorneys, the NYSBA Ethics Committee opined in its Opinion 1025 (2014) that attorneys are permitted under the advertising rules contained in the Rules of Professional Conduct (RPC)[9] to designate the street address of a "virtual law office" as their "principal law office address," but only if the virtual law office qualifies as an "office for the transaction of law business" under Judiciary Law §470. Paramount among the RPC's advertising rules and a recurring theme throughout the RPC, generally, is the admonition to avoid dishonest, deceitful, and misleading conduct.[10] Therefore, out-of-state attorneys who wish to maintain a virtual law office to establish a physical presence in New York must ensure that they are not misleading their clients, the courts, or the public about their circumstances. In *Marina District Development Co., LLC v. Toledano*,[11] the court rejected a nonresident attorney's claim that his membership at a "virtual office" at the New York City Bar Association (offering telephone message service and meeting rooms, if needed) qualified as an office under Judiciary Law §470, as there was no evidence that the lawyer ever used the available facilities and, in fact, by his actions, affirmatively steered all correspondence and clients to his Philadelphia office. The court dismissed the action brought by the lawyer without prejudice.

Compliance with Judiciary Law §470 frequently becomes an issue in litigated matters where an attorney of record is sought to be disqualified due to the lack of a physical office in this state.[12] The Court of Appeals has held that a violation of Judiciary Law §470, does not render the actions taken by the offending attorney in a case a nullity.[13] Rather, the client may cure the violation with the appearance of compliant New York counsel or by the offending attorney applying for admission *pro hac vice*.[14] This permissive approach toward curing a §470 violation promotes the goal of permitting clients to be represented by attorneys of their choosing and avoids punishing unwitting clients for an attorney's failure to comply with the statute.[15]

Attorney Registration and Fee Implications

Another rule impacting non-resident attorneys who wish to practice New York law virtually, particularly bearing on the issue of entitlement to receive fees, is the requirement that attorneys register with the Office of Court Administration (OCA) under Judiciary Law §468-a and 22 NYCRR 118.1. These provisions require all New York attorneys—resident or nonresident—and even those certified as "retired," to register with OCA biennially. Attorneys who have ceased practicing, whether residing in New York or elsewhere, must be aware of the limitations registering as "retired" will have on their ability to continue to practice law or charge or share fees with practicing attorneys. While attorneys who certify to OCA that they are "retired" are exempt from paying the biennial registration fee and from compliance with mandatory CLE requirements, such "retired" attorneys may only perform legal services without compensation. In effect, a "retired" lawyer is deemed, for all intents and purposes, a nonlawyer, and with few exceptions, practicing lawyers and law firms may not share legal fees with a non-lawyer.[16] Thus, if you are considering retirement and/or relocating, you should consider whether certifying to OCA that you are "retired" is right for your circumstances.

Significantly, there is nothing in either Judiciary Law 468-a or 22 NYCRR 118.1 that requires a nonresident attorney to register a New York office address to comply with Judiciary Law §470. All that is required is that the attorney list an office address, which can be the attorney's principal out-of-state address. However, merely because there is no correlation between the attorney registration requirements and Judiciary Law §470 does not mean that compliance with §470 is unnecessary. The attorney must still maintain a "physical office" if he or she wants to work on New York legal matters or share fees with a New York attorney.

To that end, if a non-resident New York attorney, properly registered with OCA and possessed of a valid physical office in this state, wishes to share fees with another attorney, the attorneys must still comply with the rules on fee sharing.[17] Essentially, RPC, rule 1.5(g) states that lawyers cannot share fees with lawyers who are not associated in a firm unless each performs services on the matter or each assumes joint responsibility for the matter, and the client agrees to the arrangement in writing. This is the case regardless of where the attorneys are physically located. RPC, rule 1.5(g) provides a roadmap for fee sharing arrangements, and attorneys should strive to comply with its mandates to avoid fee disputes with clients and colleagues.

Disciplinary Issues

Notwithstanding that a violation of Judiciary Law §470 is curable, if a violation is determined to have occurred, the offending lawyer may have to contend with a disciplinary inquiry for the violation of the statute. A lawyer is required to comply with applicable laws, and a violation of the requirements of Judiciary Law §470, applicable to the practice of law, could be seen as a violation of RPC, rule 8.4(b), which proscribes a lawyer from engaging in "illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as lawyer." RPC, rule 8.4(b) is a catchall rule of professional conduct for otherwise uncategorizable conduct that is "illegal" or in violation of a statute. Each matter is addressed by the disciplinary authorities on its own merits, and an inquiry based on a violation of Judiciary Law §470 may not result in disciplinary charges or the imposition of serious discipline, but it is easily avoidable.

Conclusion

In conclusion, attorneys residing out-of-state or who are considering relocating and/or "retiring" from the practice of law should consider the current state of the law in New York with respect to practicing and maintaining a physical office in this state and the implications of registering as "retired." Until Judiciary Law §470 is ultimately repealed, it remains in full force in effect.

1. *In re Gordon*, 48 N.Y.2d 266 (1979).
2. *Lichtenstein v. Emerson*, 251 A.D.2d 64 (1st Dept. 1998); *Parvis v. Rakower*, 2019 NY Slip Op. 31885[U] (Sup. Ct., N.Y. Cty 2019) (North Carolina); see, also, *Schoenefeld v. State*, 25 N.Y.3d 22 (2015) and *Barker v. Broxton*, 78 N.Y.S.3d 624 (1st Dept. 2018)(making no distinction under §470 between non-resident attorneys residing in adjoining states and non-resident attorneys in general).
3. *Schoenefeld v. State*, 25 N.Y.3d 22 (2015).
4. *Schoenefeld v. Schneiderman*, 821 F.3d 273 (2d Cir. 2016).
5. 2016 N.Y. Slip Op. 30051[U] (Sup. Ct., N.Y. Cty. Jan. 8, 2016).
6. *NYC Op. 2019-2* (2019)(citing *In re Application of Carlton*, 708 F.Supp.2d 524 (D. Md. 2010).
7. *Id.*
8. NYSBA Op. 1236 (2022), 1223 (2021), and 1025 (2014), and NYC Bar Op. 2019-2 (2019).
9. 22 NYCRR 1200, rule 7.1(h).
10. RPC, rules 3.3, 4.1, 7.1, 8.2.
11. 60 Misc.3d 1203(A), 109 N.Y.S.3d 833 (Table) (Sup. Ct., N.Y. Cty. 2018).
12. *Arrowhead Capital Fin., Ltd. v Cheyne Specialty Fin. Fund L.P.*, 32 NY3d 645, 650 (2019); *Stegemann v. Rensselaer County Sheriff's Off.*, 153 A.D.3d 1053 (3d Dept. 2017).
13. *Id.*
14. *Arrowhead*, 32 NY3d at 650; *Parvis v. Rakower Law P.C.*, 2019 NY Slip Op 31885[U]. (*Pro hac vice* eligibility requirements are governed by §520.11 of the Rules of the Court of Appeals and require an attorney who is a member of good standing of the bar of another state, territory, district or foreign country to, among other things, associate with an attorney who is a member in good standing of the New York Bar and who will act as the attorney of record in the matter).
15. *Parvis*, 2019 NY Slip Op. 31885[U].
16. RPC, rule 5.4.
17. RPC, rule 1.5(g).

Mitchell T. Borkowsky provides representation to lawyers being investigated or prosecuted by the state grievance committees for alleged ethical or professional misconduct, and guidance to lawyers and law firms on their ethical obligations. He is the former Chief Counsel to the New York State Grievance Committee for the Tenth Judicial District of the Supreme Court, Appellate Division, Second Department, and a member of the New York State and Nassau and Suffolk County Bar Associations' Committees on Professional Ethics, and the New York State Bar Association's Task Force on Attorney Well-Being: Public Trust and Ethics Working Group. Mr. Borkowsky can be reached at mitch@myethicslawyer.com.

NAL PROGRAM CALENDAR

Pre-registration is REQUIRED for all Academy programs. Go to nassaubar.org and click on CALENDAR OF EVENTS to register. CLE material, forms, and Zoom link will be sent to pre-registered attendees 24 hours before program. All programs will be offered via HYBRID unless otherwise noted. Please RSVP to academy@nassaubar.org 24 hours before program date to attend in person.

APRIL 4
12:30 PM – 1:30 PM
Dean's Hour: Nuts and Bolts of Foreclosure Defense
With the NCBA Mortgage Foreclosure Project
Presented by NCBA Corporate Partner
Tradition Title Agency Inc.
1 Credit in Professional Practice
Skills Credits Available for Newly Admitted Attorneys

APRIL 5
12:30 PM – 1:30 PM
Dean's Hour: Defense Counsel's Guide to Padilla Compliance (In Bite Size Chunks!)—Part 2: Responsibilities Under *Padilla v. Kentucky*
With the NCBA Immigration Law Committee and the Nassau County Assigned Counsel Defender Plan
1 Credit in Professional Practice
Skills Credits Available for Newly Admitted Attorneys

APRIL 5
5:30 PM – 7:30 PM
Know Your Rights: You and Your Pet in a Changing World—The Good, the Bad and the Unknown
With the NCBA Committee Relations and Public Education Committee and the NCBA Animal Law Committee
2 Credits in Professional Practice
Skills Credits Available for Newly Admitted Attorneys

APRIL 6
12:30 PM – 1:30 PM
Dean's Hour: Contract That Changed Baseball—Branch Rickey, Jackie Robinson, Brooklyn and America (Law and American Culture Lecture Series)
With the NCBA Diversity and Inclusion Committee
Program sponsored by NCBA Corporate Partner
Champion Office Suites
1 Credit in Diversity, Inclusion, and Elimination of Bias

APRIL 6 (IN PERSON ONLY)
Reception 5:30 PM – 6:30 PM;
Program 6:30 PM – 8:00 PM
An Evening with the Guardianship Bench: Reception and Program
With the NCBA Elder Law Committee
1.5 Credits in Professional Practice
Back by popular demand! Jurists from across the tri-county area will participate in an hour-long meet and greet reception, followed by a roundtable discussion of guardianship practice and procedure that will provide attendees 1.5 credits in professional practice. Pre-registration required for headcount purposes.

PANEL SLATED TO ATTEND:
Hon. Miriam Cyrulnik, Kings County
Hon. Wyatt N. Gibbons, Queens County
Hon. David J. Gugerty, Nassau County
Hon. Chris Ann Kelley, Suffolk County
Hon. Gary F. Knobel, Nassau County
Hon. Lee Mayersohn, Queens County
Hon. Bernice D. Siegal, Queens County
Hon. Marian R. Tinari, Suffolk County
Hon. Charles M. Troia, Richmond County
Special presentation honoring
Hon. Arthur Diamond, (Ret.) Nassau County

REGISTRATION FEES:
NCBA Member: $50
Non-Member Attorney: $75
Support Staff: $25

NAL PROGRAM CALENDAR

APRIL 8 (IN PERSON ONLY)

10:00 AM – 3:30 PM

2022 Annual School Law Conference

With the NCBA Education Law Committee, the Suffolk County Bar Association Education Law Committee, and the Suffolk Academy of Law

4 Credits in Professional Practice; 1 Credit in Ethics

REGISTRATION FEES:
NCBA Member: $35
Non-Member Attorney: $225
School Personnel: $225

APRIL 14

12:30 PM – 1:30 PM

Dean's Hour: Defense Counsel's Guide to Padilla Compliance (In Bite Size Chunks!)
Part 3: Different Forms of Immigration Status and Immigration Relief

With the NCBA Immigration Law Committee and the Nassau County Assigned Counsel Defender Plan Program sponsored by NCBA Corporate Partner Champion Office Suites

1 Credit in Professional Practice
Skills Credits Available for Newly Admitted Attorneys

APRIL 25 (IN PERSON ONLY)

12:45 PM – 1:45 PM

Dean's Hour: Everything You Always Wanted to Know About E-filing and the New Virtual Evidence Courtroom and Didn't Know Who to Ask

1 Credit in Professional Practice
Skills Credits Available for Newly Admitted Attorneys

GUEST SPEAKERS:
Hon. Vito M. DeStefano, Administrative Judge, Nassau County Courts
Hon. Jeffrey A. Goodstein, Supervising Judge, Nassau County Supreme Court, Matrimonial Center
Hon. Timothy S. Driscoll, Justice, Nassau County Supreme Court, Commercial Division
Jeffrey Carucci, Statewide Coordinator for Electronic Filing of the Unified Court System of the State of New York
Christopher Gibson, Deputy Statewide Coordinator for Electronic Filing of the Unified Court System of the State of New York

APRIL 26

12:30 PM – 1:30 PM

Dean's Hour: Defense Counsel's Guide to Padilla Compliance (In Bite Size Chunks!)
Part 4: Review of the Criminal Grounds of Inadmissibility

With the NCBA Immigration Law Committee and the Nassau County Assigned Counsel Defender Plan

1 Credit in Professional Practice
Skills Credits Available for Newly Admitted Attorneys

APRIL 26 (ZOOM ONLY—THIS PROGRAM WILL NOT BE RECORDED)

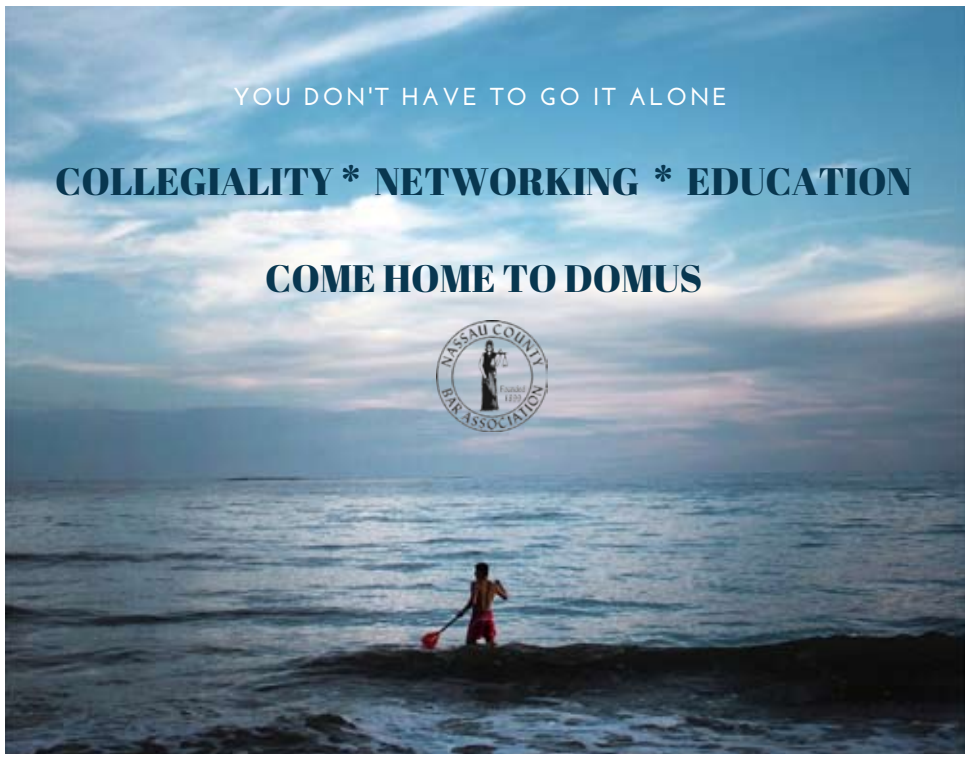
6:00 PM – 8:00 PM

Holocaust Memorial and the Legal Profession: Learning from Nazi Lawyers (Steven J. Eisman Lecture Series)

With the Jewish Lawyers Association of Nassau County
Underwritten by Abrams Fensterman, LLP

2 Credits in Ethics
This CLE program offered in conjunction with the Holocaust Memorial and Tolerance Center of Nassau County, will draw on the extreme failure of legal professionals in Nazi Germany to highlight lessons related to legal ethics for practicing attorneys in the United States today.

ABRAMS | FENSTERMAN, LLP
ATTORNEYS AT LAW



FOCUS: MEDICAL MALPRACTICE

Pain and Suffering Awards in Recent Medical Malpractice Cases

Ira S. Slavit

The amount of damages to be awarded to a plaintiff for personal injuries is a question for the jury, and its determination will not be disturbed unless the award deviates materially from what would be reasonable compensation under CPLR 5501(c).[1] Courts "look to similar appealed verdicts and exercise judgment to promote greater stability in the tort system and greater fairness for similar situated defendants."[2]

Prior damages awards in cases involving similar injuries are not binding upon the courts; however, they "guide and enlighten them in determining whether a verdict constitutes reasonable compensation."[3] Factors that may bear on an analysis of pain and suffering damages include the existence of pre-existing injuries or comorbidities, the plaintiff's remaining life expectancy (and whether it is reduced), and the difference between pre-and post-accident quality of life.

It is therefore imperative to develop the record so that these factors can be examined and a comparison to similar cases can be made. It is also imperative that an adequate record on appeal be filed to allow a review of a pain and suffering award. In *Luppino v. Flannery*, plaintiff's counsel failed to include the full trial transcript or any relevant exhibits and testimony of certain defense experts, drawing a sharp rebuke from the court.[4]

Although CPLR 5501(c) and its "materially deviates" language does not apply to the federal courts, the federal courts employ similar standards as New York State courts and will look for guidance to prior awards involving similar torts and/or similar injuries.[5] Federal courts review the nature and measure of its Federal Tort Claims Act damages award according to the law of the state in which the tort occurred.[6]

A jury's failure to award any damages for past pain and suffering and future pain and suffering can be held to deviate materially from reasonable compensation.[7] Being the province of the jury, it is important for a court reviewing damages award give great deference to the jury's interpretation of the evidence so as to identify the "upper limit" for such an award.[8] It has been held that "reduction only to the highest amount that the jury could properly have awarded" "is the only theory that has any reasonable claim of being consistent with the Seventh Amendment."[9]

Notable 2019-2021 Decisions

The Appellate Division, First Department, had occasion to consider many of these principles in *Redish v. Adler*.[10] In that case, a 40-year-old plaintiff claimed that a failure to properly treat an asthma attack resulted in permanent brain injury. She was hospitalized, on and off, for 384 days and claimed that she is confined to a wheelchair and is totally disabled, needing 24-hour care. She is fully aware of the limitations her brain injury imposes and has a normal life expectancy of 34.5 years.

The jury returned a verdict of $60,000,000 for past pain and suffering and $30,000,000 for 34.5 years of future pain and suffering. The trial court reduced the award to $7,000,000 for past and $23,000,000 for future pain and suffering. The Appellate Division reduced the award to a total of $10,000,000—$3,000,000 past and $7,000,000 future—the highest amount the Appellate Division has allowed for pain and suffering in a medical malpractice case.

In *Correa v. Abel-Bey*, the jury awarded $1,500,000 for past pain and suffering and $10,000,000 for future pain and suffering to an infant who suffered significant injuries during her delivery.[11] The Second Department affirmed the trial court's reduction of a total pain and suffering award of $5,000,000. The injuries included brain damage, spastic cerebral palsy, blindness, the inability to walk, global developmental delays, neurological/cognitive deficits, and motor delays.

In *Yu v. New York City Health and Hospitals Corporation*,[12] a sixty-seven-year-old plaintiff was involved in a hit-and-run car crash sustaining a fractured ankle and a head injury. The plaintiff claimed the hospital failed to timely address an acute subdural hematoma that eventually rendered him functionally paraplegic. The Second Department reduced damages for past pain and suffering from $10,000,000 to $4,000,000, and future pain and suffering from $11,500,000 to $5,000,000, for a total of $9,000,000.

In other cases, a jury award of $1,000,000 for an eighty-one-year-old decedent's one-month duration of pain and suffering, fear of death and/or pre-death terror was affirmed where the decedent died from rhabdomyolysis that caused profound weakness, loss of bladder control and kidney failure.[13] As her condition worsened, she was also aware that she was dying.

A jury verdict in the sum of $300,000 for the decedent's conscious pain and suffering was affirmed where the decedent choked on a piece of meat, suffered asphyxiation for 12 minutes, went into cardiac arrest, lapsed into a comatose state. The person died several weeks later at age 73.[14]

In another case, a 46-year-old plaintiff sustained a small intestine perforation during an endoscopy resulting in a bowel obstruction, hernias, bacterial overgrowth in the small intestine, and an approximately seven-and-one-half-inch scar on her abdomen. The verdict for past pain and suffering was reduced from $1,500,000 to $550,000, and future pain and suffering from $1,000,000 to $100,000.[15]

Where a 27-year-old suffered a fourth-degree perineal laceration during childbirth and a subsequent rectovaginal fistula, jury awards of $800,000 for four years of past pain and suffering and $120,000 for 12 years of future pain and suffering were affirmed.[16] Also affirmed was an award to her husband damages in the principal sum of $100,000 for past loss of services.

Although a 2016 decision, no review of pain and suffering awards in medical malpractice cases can be considered complete without including *Hyung Kee Lee v. New York Hosp. Queens*. In this case, the Second Department held that the jury's award of $3,750,000 for three and one-half days of conscious pain and suffering did not deviate materially from what would be reasonable compensation.[17]

Relevant federal court decisions in 2020 and 2021 include *Gonzalez v United States*. Here upon reviewing the facts of and damages awarded in these cases, a judge in the Southern District found that $850,000 was an appropriate award for the decedent's pain and suffering for approximately three years following a delayed diagnosis of lung cancer.[18]

In *Viera v. United States*, the decedent passed away 22 months after being diagnosed with breast cancer and was survived by a single child roughly eight years of age.[19] The court awarded $1,000,000 for pain and suffering and $1,000,000 to the son to compensate him for the loss of his mother's parental guidance, less the percentage she was negligent.

The court noted that the decedent experienced considerable pain and suffering, including pain associated with bone metastases that required her to take morphine and ultimately prevented her from walking on her own. The court considered the mental anguish as well of being a young mother facing a deadly disease and the fear of leaving her young child without a mother.

In *Coolidge v United States*, a case with three reported decisions,[20] the 64-year-old decedent underwent an endovascular abdominal aortic aneurysm repair ("EVAR") at a Veteran's Administration Hospital. The malpractice alleged was that the stent intended to be placed at the site of the aneurysm was negligently placed such that it occluded blood flow to both renal arteries.

Before the EVAR, both of the decedent's kidneys functioned. After the EVAR, he required kidney dialysis and remained hospitalized at the VA until his death four months after the surgery. During his hospitalization, he developed sepsis and several bedsores, including a large one near his buttocks, which witnesses testified seemed painful. He was intubated from the outset of his hospitalization and never used his mouth again to eat or drink.

The court reviewed past awards in similar cases and averaged those awards to calculate reasonable compensation for conscious pain and suffering at a daily rate of $30,000 per day for the full 118 days of his hospitalization, totaling $3,540,000. Employing a similar methodology to calculate an award for the decedent's fear of his own impending death, the court used a rate of $33,333 per day to find that reasonable compensation for the last 11 days of his life totaled $366,663.

In an interesting discussion, the court distinguished between damages for the decedent's fear of impending death and his awareness of the extent of his injury. Compensation for the former is for contemplation of one's impending death, not when one becomes aware of the extent of the injury and eventual mortality or possible death.[21] It is plaintiff's burden to establish when the decedent first becomes aware of his/her imminent mortality.

Current Trends

Though not involving medical malpractice cases, it is notable that in 2021 the First Department made multiple consecutive record-breaking holdings pertaining to the sustainable value of pain and suffering damages. A $35,000,000 total award for pain and suffering award was reduced to $13,000,000 for a 46-year-old plaintiff who suffered a significant brain injury after she was struck by a shopping cart thrown over a fourth-floor railing in a shopping mall.[22]

In November 2021, the First Department set a new appellate court record, reducing the jury's $59,170,000 pain and suffering award to $29 million to a 16-years-old who caught on fire during a chemistry class demonstration. The young man suffered burn injuries to 31% of his body, mainly his upper extremities and face. He required numerous skin grafts and his face was unrecognizable.[23]

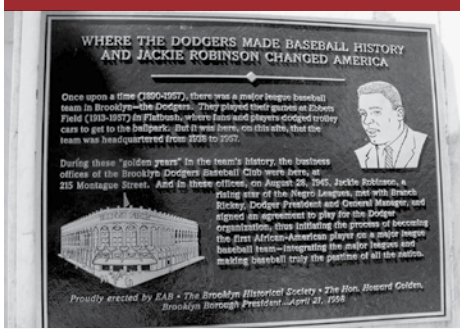
Pain and suffering awards in medical malpractice cases have not yet exceeded $10,000,000. It may be noteworthy that the Second Department evaluated the value of future pain and suffering for the severe brain injuries sustained by the newborn in *Correa* and the 67-year-old in *Yu* at the identical amount of $5,000,00, indicating the possible existence of room in the future for significantly higher recoveries where the plaintiff is a newborn or a relatively young child.

1. *Nieva-Silvera v Katz*, 195 AD3d 1035 (2d Dept. 2021).
2. *Donlon v. City of New York*, 284 A.D.2d 13, 14 (1st Dept. 2001).
3. *Fortune v New York City Hous. Auth.*, 201 AD3d 705 (2d Dept. 2022).
4. 186 A.D.3d 1082 (4th Dept 2020).
5. *Gonzalez v United States*, 17CIV3645GBDOTW, 2020 WL 1548067, at *8 (SDNY Mar. 31, 2020).
6. *Richards v. United States*, 369 U.S. 1, 11, 82 S.Ct. 585, 592, 7 L.Ed.2d 492 (1962); *Malmberg v United States,* 816 F3d 185, 197 [2d Cir 2016].
7. *Larkin v. Wagner*, 170 A.D.3d 1145 (2d Dept. 2019).
8. *Okraynets v Metro. Transp. Auth.*, 555 F Supp 2d 420, 436 (SDNY 2008); *Cullen v Thumser*, 178 AD3d 895, 896 (2d Dept 2019); *Abar v Freightliner Corp.*, 208 AD2d 999, 1002 (3d Dept 1994).
9. *Rangolan v. County of Nassau*, 370 F.3d 239, 244 (2d Cir. 2004), *quoting* 11 C. Wright, A. Miller M. Kane, Federal Practice and Procedure §2815, at 167-68 (2d ed. 1995); *see also Malmberg v United States*, 506CV1042FJSTWD, 2020 WL 611503, at *3 (NDNY Feb. 6, 2020); *Saladino v Stewart & Stevenson Services, Inc.*, 01-CV-7644 SLT JMA, 2011 WL 284476, at *5 (EDNY Jan. 26, 2011), *aff'd sub nom. Saladino v Am. Airlines, Inc.*, 500 Fed Appx 69 (2d Cir 2012), as amended (Nov. 19, 2012), as amended (Mar. 19, 2013); *Johnston v. Joyce*, 192 A.D.2d 1124, 1125-26 (4th Dep't 1993); *Kirschhoffer v Van Dyke*, 173 AD2d 7, 11 (3d Dept. 1991).
10. 195 A.D.3d 452 (1st Dept. 2021).
11. 188 A.D.3d 641 (2d Dept. 2020).
12. 191 A.D.3d 1040 (2d Dept. 2021).
13. *Mancuso v. Kaleida Health*, 172 A.D.3d 1931 (4th Dept. 2019).
14. *Wasserberg v. Menorah Center for Rehabilitation and Nursing Care*, 197 A.D.3d 1130 (2d Dept. 2021).
15. *Garzon v. Batash*, 184 A.D.3d 807 (2d Dept. 2020).
16. *Arcos v. Bar–Zvi*, 185 A.D.3d 882 (2d Dept. 2020).
17. 118 A.D.3d 750 (2d Dept. 2014).
18. 2020 WL 1548067 at 8.
19. 2020 WL 5879035, No. 18-cv-9270 (KHP) (S.D.N.Y. October 01, 2020).
20. 10-CV-363S, 2015 WL 5714237, at *1 [WDNY Sept. 29, 2015]; 10-CV-363S, 2020 WL 3467423, (WDNY June 25, 2020), *amended in part*, 10-CV-363S, 2021 WL 1206514 (WDNY Mar. 31, 2021).
21. 1B N.Y. PJI 2:320.
22. *Hedges v. Planned Security Service Inc.,* 190 A.D.3d 485 (1st Dept. 2021).
23. *Yvonne Y. v. City of New York*, 199 A.D.3d 551 (1st Dept. 2021).

Ira S. Slavit is chair of the NCBA Community Relations and Public Education Committee and immediate past chair of the plaintiff's Personal Injury Committee. He is an attorney with Levine & Slavit, PLLC with offices in Manhattan and Mineola, and can be reached at islavit@newyorkinjuries.com or at (516) 294-8282.

FOCUS: LAW AND AMERICAN CULTURE

The Contract That Changed Baseball: Branch Rickey, Jackie Robinson, Brooklyn, and America



Rudy Carmenaty

I'm not concerned with your liking or disliking me.
All I ask is that you respect me as a human being.
I am not ashamed of my dark skin.
You and every other white American should understand that we believe our color is an asset.
Your dislike of my aggressiveness has no effect on me.
I'm after something much more important than your favor or disfavor.
You should at least respect me as a man who stands up for what he believes in.
I am not an Uncle Tom. I am in this fight to stay.

—Jackie Robinson

Jacques Barzun once said, "*Whoever wants to know the heart and mind of America had better learn baseball.*"[1] Baseball is more than a game played with bat and ball. Enshrined as the "*National Pastime*," baseball occupies a unique place in the American imagination.

On April 15, 1947, baseball took a dynamic step forward and the nation was forever changed by the experience. On that day at Ebbets Field in Brooklyn, Jackie Robinson broke the color barrier in Major League Baseball. The man who orchestrated Robinson's debut was Brooklyn Dodger General Manager and Club President Branch Rickey.

Before 1947, the national pastime was racially segregated. W.E.B. DuBois once observed that: *The problem of the 20th Century is the problem of the color line.*[2] The color line as applied to baseball in the United States excluded players of African descent (not only African Americans but also Afro-Latinos).

The color line was the product of a gentlemen's agreement. This is a euphemism for what was an informal but universally accepted arrangement among the sixteen teams that formed the National and American leagues and their affiliates. This practice resulted in the creation of the Negro Leagues. America's national game, like the nation itself, had been divided by race.

The biggest obstacle to ending the gentleman's agreement was Baseball Commissioner Kenesaw Mountain Landis. A former U.S. District Court Judge, Landis restored the game's legitimacy after players on the Chicago White Sox conspired with gamblers during the 1919 World Series. Landis rigidly maintained baseball's color line. It was not until his death that integration finally became possible.

When Robinson shattered the color line, he was heralding a new era that forever altered the landscape of both baseball and America. It all began with two contracts, one agreed to in 1945 and the other in 1947. Beyond what was signed, there was also an oral promise exchanged between Rickey and Robinson that was an integral part of their endeavor.

Taken together, these two contracts along with the understanding between Rickey and Robinson, form baseball's equivalent of Lincoln's Emancipation Proclamation.[3] The color line was initially broken with Robinson's first minor league contract on October 23, 1945, to play the 1946 season in Montreal.[4] It called for $600 a month and a $3,500 signing bonus.[5] Robinson integrated the big leagues with the contract he signed on April 11, 1947.[6]

But the triumph of Jackie Robinson did not come with the mere stroke of a pen. Rather it was an ordeal of epic proportions predicated on Robinson's pledge to Rickey not to respond to the entrenched prejudices he would face on the field and off. Robinson's courage would be profoundly tested.

Branch Rickey was the premier American sports executive of the first half of the 20th century. His most consequential innovations were the creation of the farm system (wherein franchises would develop talent with their owned and operated minor league clubs) and the abolishing of the color line.

Rickey was known as the *Mahatma*. He was a shrewd judge of baseball talent. He had been scouting the Negro Leagues since he first arrived in Brooklyn in 1942. For Rickey's plan to work, he needed the right man.[7] In fact, he needed a special kind of man, a man who possessed more than just athleticism and baseball skill. Rickey needed a man of character and conviction.

Rickey acted quite deliberately so as not to attract unwanted attention. He used the ruse that he was creating a new Negro League team—the Brooklyn Brown Dodgers—to mask

his true objective.[8] Rickey believed that integration would improve the game, promote American values, and serve his bottom line.

Rickey stood alone among owners and executives. In a vote taken in 1946, fifteen of sixteen clubs voted not to integrate.[9] Rickey cast the sole dissent. More than bigotry was behind the gentleman's agreement. Owners made substantial revenues by leasing their stadiums to Negro League teams.[10]

Thankfully, the Dodgers were then in Brooklyn. Rickey found in Brooklyn the ideal market for his grand experiment in baseball democracy, a diverse community devoted to its ballclub. No fans were more devoted. Founded in 1876, the Dodgers, or "dem Bums" where the heart and soul of the borough until the club left for Los Angeles after the 1957 season.

On August 28, 1945, Rickey summoned Robinson to his office at 215 Montague Street for an interview.[11] Robinson had no idea he was there for a shot at integrating the game. Rickey told him outright, he was looking for a player for Brooklyn's International League AAA farm club, the Montreal Royals, and if successful there, then to the big club in Brooklyn.

Rickey questioned Robinson about his background and spiritual beliefs. He was trying to assess the younger man's character. He took Robinson through various scenarios because he wanted to make sure Robinson had a complete picture of what he was getting into. Rickey, a very moral man, used abusive, bigoted language so Robinson would get a taste of what awaited him.

Rickey had to be confident that Robinson could take the inevitable racial invective and not respond in kind. Robinson asked: *Are you looking for a Negro who is afraid to fight back?*[12] Rickey's answer was he was looking for a black man *with guts enough not to fight back.*[13]

Their meeting ended with a promise that Robinson would check his pride for three years and not 'fight back' when provoked.

Robinson would endure a lonely struggle, but he wasn't alone. Among the first questions Rickey asked Robinson was if he had a steady girl. He did, her name Rachel Isum. They first dated as students at UCLA. Rachel married Robinson in 1946 and they remained together until his death in 1972. She endured the hardships alongside him. He could not have done it without her.[14]

Spring Training 1946 in racially segregated Florida would be Robinson's first trial. He was not allowed to stay with his teammates at the hotel. Some teams refused to play against him, and local officials prevented games from taking place. To avoid the issue, the Dodgers would also train in Cuba. For Robinson and the black players who followed, Spring Training would be a torment for seasons to come.

At Montreal, Robinson was named the league's MVP and led the Royals to victory in the Junior World Series.[15] By 1947, nothing was going to stop Rickey and Robinson. On April 10, the Dodgers announced they had bought Robinson's contract from Montreal. Five days later, Robinson made his debut against the Boston Braves. Although Robinson didn't get a hit in the game, he walked and scored a run in the Dodgers' 5–3 win.[16]

It would be the first of many triumphs. During his ten-year career

with the Dodgers, Robinson was named the Rookie of the Year in 1947, the Most Valuable Player in 1949, played on six All-Star teams, and was a World Series champion in 1955.[17] He was also the most exciting player on the base paths.[18] He brought the "Negro League" style of play to the National League.

But Robinson's success did not come easy. Opposing players were not only hurling racial epithets, but pitchers would throw at his head or baserunners would run into him while he was covering a base to cause injury. Robinson received numerous death threats. The strain was almost unbearable, but Robinson did not break.

There was also racial tension in his own clubhouse. Several Dodgers, among them Dixie Walker, were southerners. A petition circulated among players who preferred to be traded rather than play with Robinson. Rickey obliged those who objected. One who stayed, catcher Bobbie Bragan, changed his mind about Robinson and later acknowledged: *He (Rickey) made me a better man, and I was grateful to him*.[19]

"Pee Wee" Reese, the Dodgers' shortstop, was one who refused to sign the petition. During warmups at Crosley Field in Cincinnati, Reese put his arm around Robinson's shoulder demonstrating his support. This rather human gesture silenced a hostile crowd. When Robinson moved to second base, they proved a potent double play combination and a metaphor for racial integration. All the more telling because Reese was a native of Kentucky.

Ben Chapman, manager of the Philadelphia Phillies, was perhaps the worst offender. Yet Chapman's racist taunts precipitated Robinson's teammates to rally behind him. As Rickey recalled, Chapman *did more than anybody to unite the Dodgers. When he poured out that string of unconscionable abuse, he solidified and united thirty men, not one of whom was willing to sit by and see someone kick around a man who had his hands tied behind his back—Chapman made Jackie a real member of the Dodgers*.[20]

On his shoulders, Robinson, in countless ways, carried the aspirations of an entire race on his back. Essential to Rickey's grand design was the involvement of the African American community. Black churches, civic groups, and the Negro press all had a vital role to play. Fans were encouraged to come to the ballpark well-dressed and be on their best behavior.

A four-sport athlete at UCLA, Robinson was a fiercely competitive man. He was proud of his race and appreciated the cross he was bearing. In 1949, after fulfilling his promise to Rickey, he was at last free to be himself. Robinson was uncompromising, winning the MVP that season while insisting that Blacks be treated fairly. He called out teams that were slow to integrate and individuals he thought racist.

Rickey and Robinson changed the world in 1947. Fifty years later, Robinson's #42 would be retired by all of Major League Baseball. Quite fitting, after all, before President Truman desegregated the military or Thurgood Marshall argued *Brown v Board of Education*, there was Jackie Robinson.[21] Before there was Martin Luther King, Jr. or Barack Obama, there was Jackie Robinson. As Dr. King himself said: *Jackie Robinson is the founder of the civil rights movement*.[22]

1. Jacques Barzun, *God's Country and Mine*, 159 (1st ed. 1954).
2. Melvin Banks, *What Did Dubois Say About the Color Line?* at www.urnamfaith.com.
3. Bob Nightingale, *Rare Jackie Robinson contract gets national tour, deserve permanent home*, USA Today (Aug. 29, 2016) at https://www.usatoday.com.
4. Lowell Reidenbaugh, The Sporting News Selects Baseball's Fifty Greatest Games, 230 (1st ed. 1986).
5. *Id.*
6. *Id.*
7. Branch Rickey, "One Percent Wrong Club" at https//:www.loc.gov.
8. John Thorn, *How Did the South React to Jackie Robinson's signing?* (July 13, 2020) at https://ourgame.mlblogs.com.
9. Richard Griffin, *Baseball Owners Vote 15-1 against allowing Jackie Robinson to play for the Dodgers*, Toronto Star (June 120, 2010) at https//:www.thestar.com.
10. *Breaking the Color Line:* 1940 to 1946 at https//:www.loc.gov.
11. Reidenbaugh, *supra*, 229.
12. Larry Schwartz, *Robinson has the guts not to fight back,* ESPN (November 19, 2003) at https://www.espn.com.
13. *Id.*
14. In 2017, Rachel received the Buck O'Neil Lifetime Achievement Award making her and Jackie the first married couple to be recognized by the Baseball Hall of Fame in Cooperstown.
15. Reidenbaugh, supra, 231.
16. *Id.,* supra, 232.
17. Robinson hit 141 homers with 761 RBI's, and had a .311 lifetime batting average, a .409 career on-base percentage, a .474 slugging percentage.
18. Robinson stole home 19 times out of a total of 197 stolen bases.
19. *Bobbie Bragan and Jackie Robinson* at https//:www.bobbiebragan.org.
20. *History v Hollywood* 42 at https//:www.historyvhollywood.com.
21. *Breaking the Color Line: 1940 to 1946*, supra.
22. *Jackie Robinson's first Major League Baseball Contract goes up for auction*, CBS News (Jan. 26, 2019) at https://www.cbsnews.com.

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

FOCUS: LAWYER WELL-BEING

How Can the Lawyer Assistance Program Help? You've Asked the Questions, Here Are the Answers

Beth Eckhardt, LCSW, PhD.

As Director of the Lawyer Assistance Program (LAP), I get lots of questions about what LAP is and what we do. Often, after a LAP presentation or workshop, lawyers tell me they had no idea how many services LAP provides. We are one of only three lawyer assistance programs in New York State. LAP services are free, confidential, and available to lawyers, judges, law students, and their immediate family members. Part of LAP's mission is to make sure that attorneys are aware of LAP services. LAP does this through workshops and programs at law firms and law schools, in articles published in the Nassau Lawyer and with the support and assistance of the Lawyers Assistance Committee (LAC) members. Below I have answered real questions from attorneys about LAP.

What is the difference between the Lawyer Assistance Program (LAP) and the Lawyer Assistance Committee (LAC)?

LAP Programs are directed by clinical professionals and provide many of the direct services to lawyers, including up to six sessions of professional counseling, treatment, assessment, intervention, evaluation, and guidance. The LAP Director also supervises monitoring agreements and organizes programs related to the LAP mission. Members of the LAC provide support to the LAP Director, by speaking at events, providing monitoring services, providing peer support, and assisting with the creation and implementation of programs. LAC members also chair meetings, interact with lawyers in need of assistance and plan the annual Nassau Retreat. Many LAC members are also members of the NYS Lawyers Assistance Committee as well as National and International Lawyers Assistance Programs.

How can LAP help lawyers like me who are just drowning in work and have no time to enjoy life… you know, just the typical lawyer?

LAP is very concerned with lawyer well-being, and we know that work-life balance is essential to well-being. LAP works hard to provide programs that offer practical and obtainable strategies that lawyers can use within their hectic schedules. LAP recently held a CLE titled, *Achieving Work-Life Balance in the Age of COVID*. The lawyers who facilitated this CLE provided tips on time management, peer support, setting boundaries, and signs and symptoms of healthy and unhealthy stress. LAP also hosts programs such as Mindfulness Mondays which are held the second Monday of each month and facilitated by a certified yoga and mindfulness teacher. Each Mindfulness Monday session focuses on mindfulness-based stress reduction and the importance of healthy nutrition and movement.

Why would I seek out help if I am functioning and getting done what I need to get done?

If you are functioning, getting things done AND feeling content and stable, you may not need to seek help. Functioning and getting things done are necessary parts of a healthy life but alone are not enough to thrive in your combined professional and personal lives. Taking care of your physical and mental health, being aware of when you are getting overwhelmed, and knowing when and how to wind down and refuel are key to maintaining a healthy life. Seeking out help in the form of peer support or through LAP programs can help you maintain a conscious awareness of the importance of your own well-being.

How can I feel confident that my colleagues and my firm won't find out I am getting help from LAP or LAC?

All LAP communications are privileged pursuant to Judiciary Law Section 499 (expressly coextensive with attorney-client privilege) New York Rule of Professional Conduct (RPC) 8.3(c)(2) (exempting LAP personnel from mandatory reporting requirements).

In addition, communication or work with any member of the LAC is also covered by the confidentiality provided by that same rule.

Sometimes I need support, but I don't think I need ongoing counseling?

Members of the Lawyer Assistance Committee volunteer their time to provide support to lawyers in need and being lawyers themselves they can relate to many of the stressors you may be experiencing. LAP Director Beth Eckhardt is also available to meet with you for up to six professional counseling sessions. It is not uncommon for Beth to meet with lawyers for only one or two sessions, sometimes even just a phone call.

What do I do if I think my colleague is struggling with substance use or depression? I don't want her to know that I called you.

LAP often receives calls from lawyers who are concerned about a colleague. We also get calls from judges, professors, and family members. Some callers are concerned that a colleague is drinking too much, others see a change in behavior and appearance suggesting that the lawyer may be depressed. Some are asking LAP to do an intervention for a family member or law partner whose professional and personal relationships and job performance have suffered due to substance use. Often these individuals want to remain anonymous. In such instances, a member of the LAC or the Director reach out to the attorney and offer assistance. LAP can also facilitate interventions and inpatient and intensive outpatient referrals.

One of my partners is struggling with substance use and I am concerned that he is acting unethically. What can I do? What is our obligation to intervene? How can we feel confident that they will get the help they need and be competent to practice when they return?

It is the ethical responsibility of legal professionals to provide the highest quality legal services to clients. Impairment due to the use of alcohol or drugs or due to mental health conditions can lead to potential incompetence and/or misconduct.

It is a professional responsibility and ethical obligation to report concern regarding an impaired attorney's competence to practice law. LAP consults with law firms and legal departments on the use of *the Model Policy for Law Firms/Legal Departments Addressing Impairment*. The Model Policy was developed by the New York State Bar Association in April of 2010 and adopted by the Nassau County Bar Association in November of the same year. Early intervention and treatment are fundamental goals, and the adoption of the policy helps to maintain the integrity of the legal profession and the viability of the law firm/legal department, while protecting clients. The Model Policy includes the following information: Defining the problem; Professional Responsibility; Confidentiality; Available Resources; Prohibitions and Consequences; Voluntary Monitoring; and Return to Work Agreements.

I am considering leaving law altogether but am not sure, can you help?

Lawyers have higher rates of attrition than many other professions. Since COVID, these numbers are rising—especially among female attorneys who struggle disproportionally with work-life conflict, which include responsibility for childcare, remote education, health concerns, and more. In many cases, this work-life conflict leads to stress and burnout. This is a critical decision that should not be made impulsively or during a personal or professional crisis. To make sure that you make a well thought out and measured decision, LAP can help identify factors contributing to your concerns and make sure that you have taken advantage of all available assistance. LAP can also provide referrals to career coaches to

further assist in the decision making and transition strategies.

I really think I need to go into an inpatient rehabilitation program, I just can't stop drinking on my own or with the outpatient help I have been getting. I am a solo practitioner and have lots of active cases, how can I manage to leave my practice for a month or more?

LAP understands how difficult it is to make the decision to go into an inpatient rehab program, worrying about your law practice can make this decision much more difficult. The Lawyer Assistance Committee is the backbone of LAP. While LAP can assist in finding an inpatient rehabilitation program that meets your specific needs, LAC members can help make the transition into rehab less stressful. Members of the committee have assisted attorneys with organizing their caseloads, asking for extensions, seeking assistance from other attorneys to work with clients, and providing the peer support necessary to make this difficult decision. LAC members are also there for you when you finish rehab to provide individual support and access to a supportive community comprised of lawyers in recovery. LAP also holds an Annual Recovery Retreat where attorneys at all levels of recovery come together for a weekend of reflection, education, and peer support.

My husband was an attorney. He just passed away and I am stuck closing his practice. I have no idea what to do.

Several members of the Lawyer Assistance Committee have been trained to assist in law office closings on an ad hoc basis when there are special or extenuating circumstances. This is not a paid service, or a service funded or financed by the Bar Association.

I am a judge and I am concerned about an attorney that has come before me. There appears to be some cognitive impairment that is influencing his work. Can you help with that?

Cognitive impairment has become a growing concern within the legal profession. LAP recognizes the need for relevant education and outreach on this topic. In October of 2020 LAP facilitated a CLE entitled, Aging in the Legal Profession: Be Aware and Be Prepared. This program included information on: The neurological aspects of cognitive impairment: How it may manifest in a law practice and tips for prevention; the Ethical Obligations of Legal Employers; How to prepare your practice; and How to Approach a Colleague including relevant resources.

I am about to graduate law school and I have a pretty shady past. I am worried that Character and Fitness is going to think I do not have the character to practice law.

Law schools require applicants to be completely forthcoming about their backgrounds and to disclose behavior that may have a bearing on their qualification to study law and their character and fitness to become a member of the legal profession. Failure to disclose information on a law school application may have serious consequences, including discipline, expulsion, and reporting to the Board of Law Examiners. Bar examiners may review an applicant's law school application when an application is made to the bar.

It is not uncommon for LAP to receive calls from law students, Bar applicants, and the Committee on Character and Fitness. When a law student contacts LAP with concerns about past behaviors, a consultation is conducted and in some cases the student volunteers to participate in LAP's Monitoring Program. To participate in the Monitoring Program, the law student must agree to meet with a LAC member who has been trained to become a monitor and to all criteria for participation. Monitoring Agreements are typically one year and include a comprehensive psychological or substance use evaluation, participation in substance use or mental health treatment if indicated, recovery meetings, weekly meetings with their monitor, and random drug testing if indicated. Participation in the Monitoring Program allows students to demonstrate a commitment to their mental health, character, and fitness to practice law.

I just got a DWI and I had a DUI a few years ago. My law firm found out and the Managing Partner wants me to get help.

If a lawyer reaches out to LAP after receiving a DWI because their employer is asking them to get help, they are often encouraged to participate in the LAP Monitoring Program. Participating in the Monitoring Program helps the attorney assess the extent of the substance use problem, obtain treatment, and demonstrate to their law firm that they are serious about practicing law professionally and competently.

The LAP Monitoring Program is also a diversion program established to provide an alternative to discipline when substance use or mental health issues have been identified as mitigating factors in an attorney's behaviors that have led to disciplinary actions.

LAP is committed to providing services that improve the well-being of attorneys by offering peer and professional counseling services, assessment and referrals, monitoring and diversion services, recovery support, education, and outreach. We are always interested in your feedback and suggestions for programming. Please do not hesitate to contact LAP with any suggestions for programming or if you would like LAP to present to your law firm or legal department.

If you are struggling, know of an attorney who is struggling, or if you would like to participate in LAP's programs, please contact Dr. Beth Eckhardt, Director of the Lawyer Assistance Program at 516-512-2618

or eeckhardt@nassaubar.org, or Jackie Cara, Esq, Chair of the Lawyer Assistance Committee, at jc32412@gmail.com.

In Brief

Alyssa R. Danziger, an associate at Katz Chwat, PC, has been promoted to Senior Associate Attorney. This promotion acknowledges Alyssa's exceptional legal skill and high level of service to to her clients. She has practiced law at Katz Chwat, PC since 2016, working predominantly in the areas of trusts and estates and corporate law.

Marc Hamroff of Moritt Hock & Hamroff is pleased to announce that The Maurice A. Deane School of Law at Hofstra University has named Nicholas Tramposch as the recipient of the 2021-2022 Moritt Hock & Hamroff Business Law Honors Fellowship and Rachel November as the recipient of the 2021-2022 Marc Hamroff Annual Scholarship.

Partner **Loretta M. Gastwirth** at Meltzer, Lippe, Goldstein & Breitstone, LLP has been appointed to serve on the American Arbitration Association (AAA) Construction Master Mediator Panel.

Robert L. Dougherty was honored by the Little Sisters of the Poor as their Man of the Year at their October 25, 2021, golf outing in recognition of his 30 years of dedicated service.

Ronald Fatoullah of Ronald Fatoullah & Associates presented a two-part lecture series for the New York City Library, "Trust in Trusts." **Marilyn Q. Anderson** also presented "Avoiding Estate Litigation—What You Need to Know" for the Nassau County Association of Retired Police Officers.

Hanna E. Kirkpatrick of Jaspan Schlesinger is now a partner in the firm's litigation practice. **Matt L. Zafrin** is now a partner in the firm's lending department. **Sophia A. Perna-Plank**, an associate attorney at the firm, has joined the Paralegal Advisory Committee at Maurice A. Deane School of Law at Hofstra University. **Sandra N. Busell** has joined Jaspan Schlesinger as Of Counsel in the Trust and Estates, Estate Litigation, and Real Estate practice groups.

Marian C. Rice

A.Thomas Levin of Meyer Suozzi has been named as a Top Business Leader of Nassau County 2021 by *Blank Slate Media*. Managing Attorney Patricia Galteri has been recognized by *Long Island Business News* in their Power 25 in Law section as a Power Professional. **Paul Millus** was featured as a panelist in the 25th Annual Ellen P. Hermanson Memorial Symposium.

Karen Tenenbaum LL.M. (Tax), CPA, tax attorney, **Marisa Friedrich**, and other members of the Tenenbaum Law, P.C. legal team presented "Hot Tax Topics in a Post-COVID World: Personal Liability for Business Taxes and NYS Residency" at a meeting for the Network of Allied Professionals. Karen's article, "Preparing for a Successful New York State Audit Defense," was recently featured in the *TaxStringer*, a publication by the NYS Society of CPAs. Karen provided an update with the latest changes to New York State's nonresident audit guidelines for the NYS Society of CPAs, Taxation of Individuals Committee. As Chair, Karen moderated "Legal, Financial, and Tax Considerations in Divorce Matters" at the Suffolk County Bar Association Tax Law Committee. She also moderated "Cryptocurrency" at the Suffolk Academy of Law.

Anthony Forzaglia, of Harrison, NY has joined the tax certiorari law firm of Schroder & Strom, LLP as an Associate Attorney.

Joseph Milizio, managing partner of Vishnick McGovern Milizio LLP (VMM) and head of the firm's Business and Transactional Law practice, was named one of the "Top Business Leaders of Nassau County 2021" by *Blank Slate Media*. Partner **Joseph Trotti,** head of the firm's Litigation Department and Matrimonial and Family Law practice, was a guest speaker at St. John's University School of Law externship seminar class on March 15, sharing practical insights into client counseling, negotiation, and mediation. Mr. Trotti also published an essay in the spring 2022 issue of the parenting magazine "MASK: Mothers Awareness on School-Age Kids," on how to minimize the trauma of divorce for children and the family. VMM partner **Constantina Papageorgiou**, a member of the firm's Wills, Trusts, and Estates and Elder Law practices, was featured in a five-page cover interview in the *National Herald* (Kírykas), the premier Greek-language newspaper in the United States on March 12.

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

Please email your submissions to nassaulawyer@nassaubar.org with subject line: IN BRIEF

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

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

NCBA Committee Meeting Calendar
April 6, 2022 – May 5, 2022

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

WEDNESDAY, APRIL 6
REAL PROPERTY LAW
12:30 PM
Alan J. Schwartz

WEDNESDAY, APRIL 6
GENERAL SOLO AND SMALL LAW PRACTICE MANAGEMENT
12:30 PM
Scott J. Limmer/
Oscar Michelen

THURSDAY, APRIL 7
PUBLICATIONS
12:45 PM
Andrea M. DiGregorio/
Rudolph Carmenaty

THURSDAY, APRIL 7
COMMUNITY RELATIONS & PUBLIC EDUCATION
12:45 PM
Ira S. Slavit

FRIDAY, APRIL 8
DISTRICT COURT
12:30 PM
Roberta D. Scoll

MONDAY, APRIL 11
IN-HOUSE COUNSEL
12:30 PM
Michael DiBello

TUESDAY, APRIL 12
WOMEN IN THE LAW
8:30 AM
Edith Reinhardt

TUESDAY, APRIL 12
CIVIL RIGHTS
12:30 PM
Bernadette K. Ford

TUESDAY, APRIL 12
COMMERCIAL LITIGATION
12:30 PM
Jeffrey A. Miller

WEDNESDAY, APRIL 13
MEDICAL-LEGAL
12:30 PM
Christopher J. DelliCarpini

WEDNESDAY, APRIL 13
EDUCATION LAW
12:30 PM
John P. Sheahan/
Rebecca Sassouni

WEDNESDAY, APRIL 13
BUSINESS LAW, TAX & ACCOUNTING
12:30 PM
Jennifer L. Koo/
Scott L. Kestenbaum

WEDNESDAY, APRIL 13
ALTERNATIVE DISPUTE RESOLUTION
12:30 PM
Michael Markowitz/
Suzanne Levy

WEDNESDAY, APRIL 13
MATRIMONIAL LAW
5:30 PM
Jeffrey L. Catterson

THURSDAY, APRIL 14
INTELLECTUAL PROPERTY
12:30 PM
Frederick J. Dorchak

THURSDAY, APRIL 21
APPELLATE PRACTICE
12:30 PM
Jackie L. Gross

TUESDAY, APRIL 26
LABOR & EMPLOYMENT/ NEW LAWYERS
12:30 PM
Matthew B. Weinick/
Steven. V. Dalton

TUESDAY, APRIL 26
ETHICS
4:30 PM
Avigael C. Fyman

TUESDAY, APRIL 26
ANIMAL LAW
6:00 PM
Florence M. Fass

THURSDAY, APRIL 28
SURROGATES COURT ESTATES & TRUSTS
5:30 PM
Brian P. Corrigan/Stephanie M. Alberts

MONDAY, MAY 2
GENERAL SOLO AND SMALL LAW PRACTICE MANAGEMENT
12:30 PM
Scott J. Limmer/
Oscar Michelen

WEDNESDAY, MAY 4
REAL PROPERTY LAW
12:30 PM
Alan J. Schwartz

THURSDAY, MAY 5
PUBLICATIONS
12:45 PM
Andrea M. DiGregorio/
Rudolph Carmenaty

THURSDAY, MAY 5
COMMUNITY RELATIONS & PUBLIC EDUCATION
12:45 PM
Ira S. Slavit

New Members

We Welcome the Following New Members Attorneys

Jamie Bakleh

Laura Brancato
Meltzer Lipper Goldstein & Breitstone LLP

Debra Ann Cleary
The Safe Center LI

James Dolan

John J. Frederico

Bryant Gordon

Lambros Y. Lambrou

Olivia Ashley Lewis

Casey E. Murphy
Certilman Balin Adler & Hyman, LLP

Ashana K. Nandram

Nicole M. Smith
Kim Smith Law Group PLLC

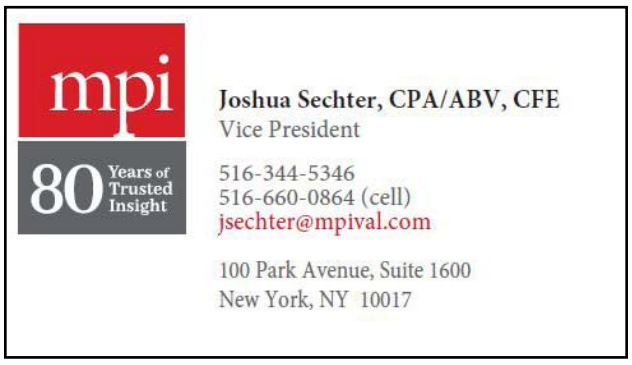
Johnathan F. Snider
Snider Law PLLC

Jeffrey C. Tyler
Legal Aid Society of Nassau County

Amanda A. Vitale
Collins Gann McCloskey & Barry PLLC

NCBA 2021-2022 Corporate Partners

Nassau County Bar Association Corporate Partners are committed to provide members with the professional products and services they need to succeed. Contact the Corporate Partner representatives directly for personalized service.



NCBA Corporate Partner Spotlight

LexisNexis® Legal & Professional is a leading global provider of legal, regulatory, and business information and analytics that help legal professionals increase productivity, improve decision-making and outcomes, and advance the rule of law around the world. As a digital pioneer, the company was the first to bring legal and business information online with its Lexis® and Nexis® services. LexisNexis Legal & Professional, which serves legal professionals in more than 130 countries with 10,000 employees worldwide, is part of RELX Group, a global provider of information and analytics for professional and business customers across industries.

Meet New NCBA Corporate Partner

Raj Wakhale
LexisNexis® Legal & Professional
(631) 827-9661
raj.wakhale@lexisnexis.com

Committee on Committees Networking Event at Domus

The February 23rd Committee on Committees Networking Event—one of many now held throughout the Bar year—provide NCBA Committee Chairs and Vice Chairs, Executive Committee Officers, and Corporate Partners the opportunity to network and make invaluable connections.

Photos by: Hector Herrera

NCBA Leaders Meet Senator Schumer

NCBA President Gregory S. Lisi and President Elect Rosalia Baiamonte with Senate Majority Leader Charles Charles Schumer at the "What's New in Washington" breakfast presented by the Long Island Association on Friday, March 4. Special thanks to NCBA Corporate Partner Investors Bank for inviting the NCBA as its guest.

NCBA Mortgage Foreclosure Assistance Project Update

The NCBA Mortgage Foreclosure Project is preparing for what should be a busy spring helping Nassau County homeowners. The Project has recently undergone some personnel changes, with Madeline Mullane, Esq., being promoted to Director of Pro Bono Attorney Activities, and paralegal Cheryl Cardona assuming the position of Project Coordinator. Paralegal Omar Daza continues his vital work enhancing the Project's bilingual service and outreach to local Spanish speaking communities and homeowners.

The Project has been operating within the fluctuating court calendars of the COVID-19 Pandemic, providing homeowners with direct, pro bono legal assistance for mandated foreclosure settlement conferences at the Nassau County Supreme Court. The Project also conducts monthly legal clinics at Domus where residents can sit confidentially one-on-one with a volunteer attorney and have their questions answered and gain insight and direction on their matter.

Project staff is also readily available to answer questions over the phone. After initially speaking with these homeowners, the staff coordinate placements with other agencies that provide free on-going legal services and housing counseling.

The 250th Mortgage Foreclosure's clinic will be held on June 6, 2022. Project staff and its many long-standing volunteers are incredibly proud of the assistance and information that has been provided for the community over the years.

The Project has increased its outreach efforts and adopted cutting edge data management technology to help serve the public in need. With foreclosure filings projected to increase significantly in the coming months, the Project expects to have many homeowners to serve and will be well prepared to do so.

The Project is seeking interns and volunteer attorneys to assist in providing these services. For more information regarding volunteer opportunities with the Mortgage Foreclosure Project, contact Madeline Mullane at mmullane@nassaubar.org or 516-666-4857.

VOLUNTEER ATTORNEYS NEEDED FOR THE

250TH MORTGAGE FORECLOSURE CLINIC

Monday, June 6, 2022
3:00 PM to 6:00 PM
at Domus

Attorneys from all practice areas are welcome.

Training on the newest foreclosure laws and procedures is provided.

TO VOLUNTEER:
Contact Madeline Mullane at mmullane@nassaubar.org or (516) 747-4070.

NCBA Sustaining Members 2021-2022

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

Jamie Alpern
Mark E. Alter
Michael J. Antongiovanni
Ernest T. Bartol
Howard Benjamin
Jack A. Bennardo
Hon. Maxine S. Broderick
Neil R. Cahn
Jeffrey L. Catterson
Hon. Lance D. Clarke
Bruce M. Cohn
Richard D. Collins
Hon. Chris J. Coschignano
Hon. Eileen Catherine Daly
Joseph Gerard Dell
Michael DiFalco
John P. DiMascio
John P. DiMascio Jr.
Samuel J. Ferrara
Ellen L. Flowers
Thomas J. Foley
Lawrence Gaissert
Marc C. Gann
Frank Giorgio, Jr.
John J. Giuffre
Douglas J. Good
Hon. Frank A. Gulotta Jr.
Alan Hodish
Warren S. Hoffman
Joseph L. Hunsberger
James P. Joseph
Elena Karabatos
Hon. Richard S. Kestenbaum
Hon. Susan T. Kluewer
Abraham B. Krieger
Martha Krisel
Lambros Y. Lambrou
Donald F. Leistman
Marilyn M. Levine
Peter H. Levy
Gregory S. Lisi
Michael G. LoRusso
Mili Makhijani
Peter J. Mancuso
Michael A. Markowitz
Michael H. Masri
Tomasina Cuda Mastroianni
John P. McEntee
Christopher T. McGrath
Oscar Michelen
Anthony J. Montiglio
Hon. Michael L. Orenstein
Hon. Lisa M. Petrocelli
Michael E. Ratner
Marc W. Roberts
Troy G. Rosasco
Leonard M. Rosenberg
Faith Getz Rousso
Daniel W. Russo
William Savino
Jerome A. Scharoff
Stephen W. Schlissel
Matthew Seidner
Hon. Denise L. Sher
Hon. Peter B. Skelos
Ira S. Slavit
Jill C. Stone
Sanford Strenger
Terrence L. Tarver
Craig Tortora
Thomas A. Toscano
Danielle M. Visvader
Hon. Joy M. Watson

To become a Sustaining Member, please contact the Membership Office at (516) 747-4070.

We Care

We Acknowledge, with Thanks, Contributions to the WE CARE Fund

DONOR	IN HONOR OF
Jared Kasschau	Danielle Gatto, Esq.'s Professionalism and Collegiality
Adrienne Hausch	The People of Ukraine
	IN MEMORY OF
Gregory S. Lisi	Lenny and Susan Leeds
Gregory S. Lisi	Barbara O'Brien, Grandmother of Chris Casa, Esq.

IN MEMORY OF MICHAEL RICIGLIANO, FATHER OF HON. FRAN RICIGLIANO

Hon. Denise L. Sher
Alan Hodish
Hon. Andrea Phoenix
Hon. Carnell T. Foskey
Adrienne Hausch

IN MEMORY OF HON. DOROTHY EISENBERG

Hon. Marilyn K. Genoa
Hon. Denise L. Sher
Hon. Ira B. Warshawsky
Hon. Andrea Phoenix
Emily F. Franchina
Kathleen Wright

IN MEMORY OF ANN HARRINGTON, MOTHER OF HON. PATRICIA HARRINGTON

Hon. Angelo Delligatti
Adrienne Hausch
Hon. Andrea Phoenix

LAWYER TO LAWYER

CONSTRUCTION LAW

- Construction Contract preparation, review and negotiation
- Defective / Incomplete construction
- Post-Sandy House Raisings
- Non payment - Lien filings - Bond Claims
- Lien Foreclosures
- Union Hearings
- Construction Arbitrations, Mediation, Litigation

THE LAW OFFICES OF JOHN CARAVELLA, P.C.
A CONSTRUCTION LITIGATION AND ARBITRATION FIRM
Member FL and NY Bars; Assoc. AIA

www.LIConstructionLaw.com
(516) 462-7051
Offices Uniondale, Melville, Ft Lauderdale

DISABILITY INSURANCE LAW

FRANKEL & NEWFIELD, PC
Practice Exclusive to Disability Insurance Matters

Martindale-Hubbell AV PEER RATED Peer Rated for Highest Level of Professional Excellence 2021

- Pre-Disability Filing Strategy
- Disability Claim Management
- Appeals for Denied or Terminated Disability Claims
- Disability and ERISA Litigation
- Lump Sum Settlements

516.222.1600 • www.frankelnewfield.com
ATTORNEY ADVERTISING

IRS AND NYS TAX ATTORNEY

Tenenbaum Law, P.C.
Representing Taxpayers in IRS and New York State Tax Matters
We Make Taxes Less Taxing!

For over 25 years, our attorneys have been assisting taxpayers with:

- IRS & NYS TAX MATTERS
- NYS & NYC RESIDENCY AUDITS
- NYS DRIVER'S LICENSE SUSPENSIONS
- SALES AND USE TAX
- LIENS, LEVIES, & SEIZURES
- NON-FILERS
- INSTALLMENT AGREEMENTS
- OFFERS IN COMPROMISE

631-465-5000
taxhelpline@litaxattorney.com
Learn more: www.litaxattorney.com

GRIEVANCE AND DISCIPLINARY DEFENSE

Law Offices of Mitchell T. Borkowsky

Former Chief Counsel Tenth Judicial District Grievance Committee
25 Years of Experience in the Disciplinary Field
Member Ethics Committees - NYSBA, Nassau Bar, Suffolk Bar

- Grievance and Disciplinary Defense
- Ethics Opinions and Guidance
- Reinstatements

516.855.3777 • mitch@myethicslawyer.com • myethicslawyer.com

APPELLATE COUNSEL

NEIL R. FINKSTON, ESQ.

Benefit From a Reliable and Knowledgeable Appellate Specialist

Former Member of Prominent Manhattan Firm
Available for Appeals, Motions and Trial Briefs
Experienced in Developing Litigation Strategies

Free Initial Consultation • Reasonable Rates

Law Office of Neil R. Finkston
8 Bond Street Suite 401 Great Neck, NY 11021
(516) 441-5230
Neil@FinkstonLaw.com **www.FinkstonLaw.com**

NO-FAULT ARBITRATION

NEW YORK'S #1 NO FAULT ARBITRATION ATTORNEY

ANDREW J. COSTELLA, JR., ESQ.

CONCENTRATING IN NO-FAULT ARBITRATION FOR YOUR CLIENTS' OUTSTANDING MEDICAL BILLS AND LOST WAGE CLAIMS

SUCCESSFULLY HANDLING THOUSANDS OF NO-FAULT CLAIMS

Proud to serve and honored that NY's most prominent personal injury law firms have entrusted us with their no-fault arbitration matters

Law Offices of Andrew Costella Jr., Esq., PC
600 Old Country Road, Suite 307
Garden City, NY 11530
(516) 747-0377 I arbmail@costellalaw.com

Contact nassaulawyer@nassaubar.org to place a Lawyer-to-Lawyer ad.

LAND USE & ZONING
Chair: Jeffrey D. Forchelli

TAX CERTIORARI
Chair: John V. Terrana

REAL ESTATE
Co-Chairs: Jeffrey D. Forchelli &
Brian R. Sahn

IDA BENEFITS & GOVERNMENT INCENTIVES
Chair: Daniel P. Deegan

BANKING & FINANCE
Co-Chairs: James C. Ricca &
Steven G. Gaebler

BANKRUPTCY & CORPORATE RESTRUCTURING
Chair: Gerard R. Luckman

CANNABIS
Co-Chairs: Kathleen Deegan Dickson &
Danielle E. Tricolla

CONDOMINIUM, COOPERATIVE & HOA
Chair: Brian R. Sahn

CONSTRUCTION
Chair: Joseph P. Asselta

CORPORATE AND M&A
Co-Chairs: Joseph V. Cuomo &
Robert H. Groman

EMPLOYMENT & LABOR
Chair: Gregory S. Lisi

ENVIRONMENTAL
Chair: Aaron Gershonowitz

LITIGATION
Co-Chairs: Andrew E. Curto &
Russell G. Tisman

TAX, TRUSTS & ESTATES
Co-Chairs: Robert H. Groman &
Stephanie M. Alberts

RESTAURANT & HOSPITALITY
Co-Chairs: David J. Borkon &
James P. Rosenzweig

VETERINARY
Chair: Mary E. Mongioi

THE WHOLE IS ALWAYS GREATER THAN THE SUM OF ITS PARTS.

A full-service law firm, Forchelli Deegan Terrana's top-tier attorneys are known problem solvers who work together across all practice areas to develop innovative, practical solutions that deliver real-world results. It's the firm advantage our clients count on.

FDT® FIRM ADVANTAGE

FORCHELLI DEEGAN TERRANA

333 Earle Ovington Blvd., Suite 1010 | Uniondale, NY 11553
516.248.1700 | forchellilaw.com