Nassau Lawyer

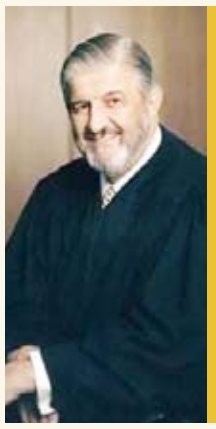
THE JOURNAL OF THE NASSAU COUNTY BAR ASSOCIATION

January 2025 www.nassaubar.org Vol. 74, No. 5

Follow us on LinkedIn

WHAT'S INSIDE

SAVE THE DATE



BRIDGE-THE-GAP WEEKEND
SATURDAY, FEBRUARY 1 AND SUNDAY, FEBRUARY 2
pg.13

DRESSED TO A TEA
THURSDAY, MARCH 20
pg.18

2025 DINNER GALA
SATURDAY, MAY 10
pg.21

Nominating Committee Seeks Candidates for NCBA Board of Directors

The Nominating Committee is seeking active NCBA Members who want to serve on the Nassau County Bar Association Board of Directors. The deadline to apply is Tuesday, January 21, 2025.

The NCBA Board of Directors consists of the President, President-Elect, Vice President, Treasurer, Secretary, twenty-four elected Directors, as well as the Dean of the Nassau Academy of Law, Chair of the New Lawyers Committee, NCBA delegates to the NYSBA House of Delegates, and all past presidents of the Bar Association. Officers serve for one-year terms and Directors hold office for three years.

Members who wish to be nominated must be a Life, Regular, or Sustaining Member of the Association for at least three consecutive years, and an active member of a committee for at least two consecutive years. The Nominating Committee also considers each applicant's leadership positions in the Nassau County Bar Association and other organizations, areas of practice, and the diversity of experience and background a candidate would bring to the Bar's governing body.

Interviews with candidates will begin in early February; the Committee will nominate eight Directors and one person for each Officer position— with the exception of the President—and issue its report at least one month prior to the 2025 Annual Meeting and Election to be held on Tuesday, May 13. Officers and Directors will be sworn in at the NCBA Installation on Tuesday, June 3, 2025.

In 2024, twelve NCBA Members applied for eight Director positions and six Members applied for Secretary. Directors are encouraged to financially support the Bar Association by becoming a Sustaining Member, purchasing or selling event tickets and sponsorships, or soliciting new members and corporate sponsorships.

The Nominating Committee consists of nine Members of the Association who previously served on the Board of Directors, NCBA Immediate Past President Rosalia Baiamonte "once removed," is Chair of the Committee and Immediate Past President Sanford Strenger serves as Vice Chair.

NCBA Members interested in applying to become a Director or Officer should forward a letter of intent, application, resume, or curriculum vitae no later than January 21 to Executive Director Elizabeth Post at epost@nassaubar.org or NCBA, 15th & West Streets, Mineola, NY 11501. The application can be downloaded on the Bar's homepage at www.nassaubar.org.

New Year's Resolution for 2025— Become an Author

The NCBA Publications Committee is seeking new article ideas for publication in *Nassau Lawyer* for 2025. All articles must be authored by an NCBA member and are submitted on speculation to be reviewed by the publication's Editor-In-Chief and edited by a member of the Publications Committee.

The content of articles should be of substantive and procedural legal interest to the members. It is not a forum for individual opinions or political viewpoints and should not serve as a promotion of products or services.

Below is the 2025 article submission deadline calendar. Submission Guidelines can be found at nassaubar.org/submission-guidelines.

Interested in writing an article on a particular topic? Contact NCBA Executive Director Elizabeth Post at (516) 747-4075 or email an article to epost@nassaubar.org for review.

2025 *Nassau Lawyer* Article Submission Deadlines

FEBRUARY **December 30**	MARCH **January 27**	APRIL **March 3**	MAY **March 31**	JUNE **April 28**
JULY / AUGUST **June 2**	SEPTEMBER **July 28**	OCTOBER **September 1**	NOVEMBER **September 29**	DECEMBER **November 3**

CONFIDENTIAL HELP IS AVAILABLE TO LAWYERS AND JUDGES
alcohol or drug use, depression or other mental health problems
Call Lawyer Assistance Program
(888) 408-6222

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
nassaulawyer@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. Contents copyright ©2022. Postmaster: Send address changes to the Nassau County Bar Association, 15th and West Streets, Mineola, NY 11501.

From the President

Daniel W. Russo

The New Year's resolution … a tradition that often offers an opportunity to accomplish something one has otherwise procrastinated about. Often these resolutions include commitments for self-improvement—promises to exercise more, eat healthier and take better care of one's mental health through stress reduction activities. Other resolutions commonly include re-connecting with a family member or an old friend that, for whatever reason, has been absent from your life. And some can be as simple as picking up that new hobby you've considered trying or sitting down to watch that TV series that everyone is always talking about. Whatever the resolution, New Year's Day can give us the extra motivation we need to do something, however big or small, that we have otherwise put off.

Recently, I read an article that talked about why New Year's resolutions are not a good idea—that, often, people are unsuccessful in meeting their resolutions and this can lead to the opposite of self-improvement: self-doubt and negative reinforcement. The article discussed how when people don't follow through on their New Year's resolutions they are failing to accomplish their first goal of the new year and, therefore, only reinforcing the feeling of failure.

After reading the article, I tried to remember some past New Year's resolutions of my own and my track record for success and failure. The easiest to recall would be the many times on New Year's Eve where I resolved to eat healthier and exercise more. Ironically, I would always add the caveat that the resolution started on January 2 because of huge family gatherings that would take place on New Year's Day. In hindsight, this was not the recipe for success and most years I came up short on this resolution. One year I recall I felt I was using four-letter words a bit too freely and resolved never to curse again. I can't be sure how quickly I broke that resolution, but I can assure you it did not last through the first quarter of the next Giants game.

I am sure there are more failures than successes in my New Year's resolution history but, unlike the author of that article, I am a firm believer in continuing to make them and in having some fun in trying to accomplish them. I think it's simple. If you accomplish your goal then great, you have bettered yourself in however you sought to do so but, if you come up a bit short, you are in no worse a spot you were before and you likely learned a little something about yourself for the next time. That's a win-win in my book.

If the fear of failure is just too overwhelming for some of you to commit to (i.e., giving up the cookie for the apple, I have failed on this one several times), then let me suggest a New Year's resolution with zero downside—a resolution that will leave you in no worse position if unfulfilled but with a tremendous upside for your community, your profession and your Bar Association if accomplished. Simply, resolve to convince one colleague, friend or co-worker, that is not already a member of the NCBA, to become one. Bring them to Domus for a committee meeting during lunch, take a CLE with them provided by the Academy of Law, or simply share a story involving the NCBA that will shed some light on why becoming a NCBA member is in their best interest.

It is no secret that membership in bar associations across the country is declining and, while the NCBA's numbers are declining at a slower rate than others, our numbers are nonetheless decreasing. If everyone reading this article were to commit to bringing aboard one new member, and half-succeeded in doing so, the impact on our membership would be profound. The numbers would increase, our membership would be strong and more would be accomplished in the name of our members and the community we, as attorneys, serve.

So, as January 1, 2025, approaches, and inevitably you are asked about your New Year's resolution, tell them you have chosen one with only upside and with the goal of bettering your community and your profession in mind. Recruit a new member to the NCBA in 2025 and I promise you will feel nothing but a sense of accomplishment. And, if you need to hear it from someone else, email me at drusso@lawdwr.com and I will shower you with thanks and praise for a job well done.

I wish you and your families the happiest and healthiest 2025.

FOCUS: LABOR AND EMPLOYMENT LAW

If Non-competes Go the Way of the Dodo—What Is an Employer to Do to Protect the Company?

Paul F. Millus

The Federal Trade Commission's ("FTC") proposed ban on non-competition agreements (the "ban") was scheduled to go into effect on September 4, 2024. However, on July 3, 2024, the District Court in the Northern District of Texas issued a preliminary injunction staying the proposed rule.[1] On August 20, 2024, the District Court granted summary judgment to plaintiff on the issue, primarily based on a determination that the FTC had exceeded its statutory authority in promulgating the Non-Compete Rule.[2] The effect was to enjoin enforcement of the ban nationwide. The FTC has appealed to the 5th Circuit.

The District Court in the Middle District of Florida also granted a preliminary injunction enjoining the FTC from enforcing the ban, likewise based on a determination that Commission has exceeded its statutory authority.[3] The FTC has appealed that decision to the 11th Circuit as well. However, in a contrary ruling on July 23, 2024 in the Eastern District of Pennsylvania, the District Court denied the request for a preliminary injunction against the FTC's enforcement of the ban.[4] The court found no irreparable harm and that plaintiff had failed to establish a likelihood of success on the merits. The court held that the FTC did have statutory authority to promulgate substantive rules as to unfair methods of competition noting that nowhere in Section 6 of the FTC Act is the FTC's power limited only to procedural rules. Yet, these developments do not affect the Texas District Court's set-aside of the rule. At present, the FTC cannot enforce the rule.

As for the likelihood that the Trump administration will continue the FTC appeals or even allow the rule to stand with new additions to the FTC, one would think that is unlikely. As such, on a federal level (at least for now), non-competes will live on.

The momentum, nevertheless, to ban non-competes on the state level remains high. In December 2023, New York Gov. Kathy Hochul vetoed the legislation passed by the New York State Legislature in June 2023 that would have prohibited future use of non-compete agreements in New York State. Also, in February 2024, the New York City Council tried to pass a bill that would have prohibited employers from entering new non-compete agreements with employees as well as rescinding any non-compete agreements that predate the effective date of the bill. That bill was sent to committee and nothing has come out of committee since. Furthermore, over the past two years multiple states sought extensive bans of non-compete agreements. As of now, however, only five states have fully banned non-compete clauses: California, Colorado, Oklahoma, North Dakota, and Minnesota. Thirty-three states have restrictions in place for the use of non-compete agreements—primarily in the health care field. Time will tell if these states are simply waiting for the FTC ban to clear the field, or if they are serious about going it alone now that the federal government does not have their backs.

The optimists in support of non-compete agreements may breathe a sigh of relief and go about the business of including such clauses in their employment contracts. There is no question that, as a matter of law, non-competes are permitted in New York, at least for now. Nevertheless, even though non-competes remain perfectly legal in New York, we are seeing chinks in the armor.

First, a few words on "blue penciling" as employers may believe that the court will invariably correct their error if their non-compete clause is overbroad. "Blue penciling" occurs when a court engages in paring down restrictive covenants, such as non-compete agreements, in a manner that will revise a restrictive covenant while maintaining its viability, i.e., modifying the duration and geographical scope.[5] It can be a savior of an overly-broad restriction. However, that does not mean the court will engage in the wholesale redrafting of restrictive provisions.[6]

Blue-penciling is not available where an employer seeking partial enforcement cannot demonstrate an "absence of overreaching, coercive use of dominant bargaining power … [and that it] has in good faith sought to protect a legitimate business interest."[7] Thus, while a court has the discretion to pare or "blue pencil" a restrictive covenant as to its duration and geographic scope in the context of granting injunctive relief, the question of reasonableness is one of fact and remains in the sound discretion of the court.[8] So drafting an restrictive covenant that borders or exceeds what would normally be permissible is a dangerous game with no guaranty the court will come to the rescue and preserve some or all of it.[9]

For now, with the understanding that non-compete covenants are still alive and well enough, employers should reexamine the terms of those covenants to assess them in light of prevailing law (and possible future changes) to have a covenant that can withstand scrutiny. Common sense should come into play.

The employer should ask themselves: What is the business really trying to prevent and protect? Is this employee leaving really going to impact the business in any meaningful way? How much time on the shelf does the business need to impose on this employee that will allow the business to deal with the employer's departure and eventual hiring of by a competitor? What are the company's protectable interests? And how long does it really need to protect them? But to be forewarned is to be forearmed. While employers may count their blessings that they can still include their favorite non-compete clause, a Plan B is in order if the non-compete agreement it previously relied on is found unenforceable in the future.

A Future Without Non-compete Covenants—Where Can an Employer Get the Best Bang for Its Buck?

In such a future, an employer will hire an employee after a costly search in terms of time and money, train that employee, expose that employee to very significant aspects of the employer's operations, introduce that employee to clients and allow that employee to build relationships with other employees. Then, after all that, the employee decides to leave. While an employee can terminate his/her employment at any time, the employer not only has to rinse and repeat with a new hire, the employer might find its former employee has that competitive spirit, and will seek to use all that knowledge and training gained to the former employer's detriment. What, if anything, can an employer do (or what could have been done) to soften the blow from the loss of a trusted member of its staff?

It should be noted that the complete proposed elimination of non-compete agreements by the FTC is not applicable to non-compete agreements entered into by a person pursuant to a bona-fide sale of a business entity; it does not prohibit employers from enforcing non-compete clauses where the cause of action related to the non-compete clause accrued prior to the purported effective date of the final rule; and it does not explicitly ban non-disclosure agreements, customer non-solicitation agreements, or employee non-solicitation agreements. As for the bill vetoed in New York—which still lurks beneath the waves—New York's proposed law also included three exceptions. First, employers would be permitted to enter into agreements to protect their trade secrets or their confidential/proprietary information from disclosure. Second, employers could also execute contracts with an employee for a "fixed term of service" (while the proposed law did not define a "fixed term of service," it is understood that this exception would cover "garden leave" agreements[10]). And third, employers could enter into agreements to prevent the solicitation of clients that developed a relationship with the departing employee during their employment as long as competition is not restricted. The vetoed bill did not contain any express exception for covered individuals who are sellers of a business (which is probably one of the primary reasons the Governor would not sign it) and also was silent regarding the treatment of employee non-solicitation provisions.

An employer may start there. Indeed, what is worse than an employee with a lot of knowledge leaving for a competitor? Answer: An employee taking multiple members of an employer's key staff to join him/her. A well-crafted non-solicitation clause pertaining to other employees can help stop the bleeding while allowing a departing employee to pursue his/her goals. Next, keeping record of an employee's contact with the employer's clients will provide a valuable measure of protection for the former employer.

An employer also has the benefits afforded by confidentiality agreements. Keep in mind, however, that an employer's interests justifying a restrictive covenant are limited "to the protection against misappropriation of the employer's

trade secrets or of confidential customer lists, or protection from competition by a former employee whose services are unique or extraordinary."[11] Employers should understand—not everything is a "trade secret."[12]

To prevail on a claim for misappropriation of trade secrets, an employer must demonstrate "'(1) that it possessed a trade secret, and (2) that the [employee] used that trade secret in breach of an agreement, confidential relationship or duty, or as a result of discovery by improper means.'"[13] For example, if the employer's clients are large and well-known companies around the world and their identities and key contacts are available in the public domain, these names and contacts would not constitute protectable trade secrets.[14]

Finally, employers should never forget that, even without an agreement, there are protections stemming from the common-law duty of loyalty owed by an employee to his employer. Also known as the "faithless servant doctrine," the duty of loyalty, while not a complete replacement for the protections afforded by a non-compete agreement, can provide the former employer some comfort. "The employer-employee relationship is one of contract, express or implied and, in considering the obligations of one to the other, the relevant law is that of master-servant and principal-agent."[15]

Fundamental to that relationship is the proposition that an employee must be loyal to his employer and is "prohibited from acting in any manner inconsistent with his agency or trust and is at all times bound to exercise the utmost good faith and loyalty in the performance of his duties."[16] An example of such a breach is the diversion of the employer's corporate opportunities to the employee.[17] The penalty for this breach is powerful, including forfeiture to the salary paid during the time period of disloyalty as well as disgorgement.[18] Of course, not every act that would seem disloyal constitutes such a breach. Such that, "[t]aking preparatory steps, while still in the employer's employ, to enter into a competing business is not a breach of an employee's duty of loyalty as long as the employee does not use the employer's time or resources to do so,"[19] "never lessen[s] his [or her] work" on behalf of the former employer, and "never misappropriate[s] to his[or her] own use any business secrets or special knowledge."[20]

In sum, employers, even if non-compete agreements do disappear, employers remain capable of pursuing their rights through a variety of means.

1. *Ryan, LLC v. Fed. Trade Comm'n*, 3:24-CV-00986-E, 2024 WL 3879954 at *1 (N.D. Tex. Aug. 20, 2024).
2. *Id.*, 2024 WL 3879954 at *14.
3. *Properties of the Villages v. Fed. Trade Comm'n*, 5:24-CV-316-TJC-PR, 2024 WL 3870380 at *9 (M.D. Fla. Aug. 15, 2024).
4. *ATS Tree Services, LLC v. Fed. Trade Comm'n*, CV-24-1743, 2024 WL 3511630 (E.D. Pa. July 23, 2024).
5. See e.g., *Wrap-N-Pack, Inc. v. Eisenberg*, 04CV4887 (DRH)(JO), 2007 WL 952069 at *7 (E.D.N.Y. Mar. 29, 2007) *citing S. Nassau Control Corp. v. Innovative Control Mgmt. Corp.*, 95-CV-3724(DRH), 1996 WL 496610 at *5, n.2 (E.D.N.Y. June 20, 1996); *Webcraft Techs., Inc. v. McCaw*, 674 F. Supp. 1039, 1047 (S.D.N.Y. 1987).
6. *Denson v. Donald J. Trump for President, Inc.*, 530 F.Supp.3d 412, 436 (S.D.N.Y. 2021).
7. *BDO Seidman v. Hirshberg*, 93 N.Y.2d 382, 394 (1999).
8. See, e.g., *Webcraft Techs*, 674 F.Supp. at 1047; BDO *Seidman v. Hirshberg*, 93 N.Y.2d at 390.
9. *ABH Nature's Product v. Supplemental Manufacturing Partner*, 19-CV-5637(LDH)(JRC), 2024 WL 1345228 at *7 (E.D.N.Y. 2024).
10. A garden leave clause, unlike a restrictive covenant, requires that the employee provide the employer with a specific, reasonably long period of notice before terminating the employment. During this time, the employer cannot force the employee to do any work, but the employee is paid his full salary and benefits. Since the employee remains an "employee," however, he cannot go to work for a competitor or do anything else to harm the employer.
11. *Power–Flo Technologies, Inc. v. Crisp*, 231 A.D.3d 1070 (2d Dep.t 2024) *citing R & G Brenner Income Tax Consultants v. Fonts*, 206 A.D.3d 943, 945 (2d Dep't 2022) *quoting BDO Seidman*, 93 N.Y.2d at 389; see *also Arthur J. Gallagher & Co. v. Marchese*, 96 A.D.3d 791, 792 (2d Dep't 2012).
12. *Poller v. BioScrip, Inc. Eyeglasses* 974 F.Supp.2d 204, 215 (S.D.N.Y. 2013) (A "trade secret" is any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.)
13. *Sentium, LLC v. Bloomberg Fin. L.P.*, 17-cv-7601(PKC), 2018 WL 6025864 at *3 (S.D.N.Y. Nov. 16, 2018) (*quoting Schroeder v. Pinterest Inc.*, 133 A.D.3d 12, 27 (1st Dep't 2015).
14. *Reed, Roberts Assocs., Inc. v. Strauman*, 40 N.Y.2d 303, 308 (1976).
15. *Western Elec. Co. v. Brenner*, 41 N.y.2d 291, 295 (1977), *citing 9 Williston, Contracts* [3d ed.], § 1012, p. 13; Restatement, Agency 2d, § 2, Comment a, subd. d).
16. *Lamdin v. Broadway Surface Adv. Corp.*, 272 N.Y. 133, 138 (1936); Western Elec. Co., 41 N.Y.2d at 295.
17. *Gomez v. Bicknell*, 302 A.D.2d 107, 112-13 (2d Dep't 2002).
18. *Design Strategies v. Davis*, 469 F.3d 284 (2d. Cir. 2006); see *also Diamond v. Oreamuno*, 24 N.Y.2d 494, 498 (1969) and *Gomez*, 302 A.D2d at 114 (internal citations omitted) ("As an alternative to an accounting of the disloyal employee's gain, a calculation of what the employer would have made of the diverted corporate opportunity is an available measure of damages. The choice of remedy belongs to the employer.")
19. *Jeremias v. Toms Capital LLC*, 204 A.D.3d 498, 499 (1st Dep't 2022).
20. *Feiger v. Iral Jewelry*, 41 N.Y.2d 928, 929 (1977).

Paul F. Millus is a Member at Meyer, Suozzi, English & Klein, P.C. and former chair of the NCBA Labor & Employment Law Committee. He can be reached at pmillus@msek.com.

FOCUS: CRIMINAL LAW

Explaining the Clean Slate Act

Christopher M. Casa

Section 160.57 of the Criminal Procedure Law—also known as the Clean Slate Act—became effective on November 16, 2024.[1] The statute provides for the automatic sealing of certain convictions under certain conditions. The purpose of the statute is to make it easier for persons with prior convictions who have been rehabilitated and otherwise led law-abiding lives to obtain employment, housing, and educational opportunities.[2]

How Are Convictions Sealed?

Unlike section 160.59 of the Criminal Procedure Law, which allows for the sealing of certain convictions upon motion to the court, sealing under section 160.57 is automatic. The burden is on the Office of Court Administration ("OCA"), not the defendant or the courts, to ensure that records of all eligible convictions are sealed.[3] The statute requires OCA to periodically check to ensure that records of all eligible convictions are sealed and to notify all appropriate law enforcement agencies when records are sealed.[4] Although a defendant need not make a motion to have the records of an eligible conviction sealed, the defendant may apply to OCA for sealing if records of an eligible conviction have not been sealed.[5]

The statute further requires OCA to make "diligent efforts" to promptly seal the records of all eligible convictions entered on or before the effective date of the statute, and OCA must seal the records within three years of the effective date.[6] Accordingly, OCA must seal the records of any eligible conviction that predates the effective date of this section no later than November 16, 2027.

What Are the Conditions for Sealing?

To qualify for sealing, the defendant and the conviction must first satisfy certain conditions. One condition is that a specified amount of time has passed since the prior conviction. A conviction for driving while ability impaired in violation of section 1192.1 of the Vehicle and Traffic Law is sealed after three years.[7] A conviction for a misdemeanor is sealed three years after the date of sentencing, unless a term of incarceration was imposed, in which case it is sealed three years after the defendant's release from incarceration.[8] Similarly, a conviction for a felony is sealed eight years after the date of sentencing, unless a term of incarceration was imposed, then it is sealed eight years after the defendant's release from incarceration.[9]

A defendant's detention for an alleged violation of parole or post-release supervision does not affect the time calculation for sealing unless and until a court revokes the supervision and reincarcerates the defendant.[10] However, if a defendant previously convicted of a crime is subsequently convicted of another crime before the prior conviction is sealed, then the calculation of time for sealing the prior conviction starts on the same date as the time calculation starts for the subsequent criminal conviction.[11]

The other conditions for the sealing of criminal convictions are: (1) the defendant does not have a pending criminal charge in the state of New York;[12] (2) is not currently under probation or parole supervision for the conviction eligible for sealing;[13] (3) the conviction is not for a sex offense or sexually violent offense;[14] (4) the conviction is not for a class A felony offense, other than class A felony offenses defined in article two hundred twenty of the penal law;[15] (5) the defendant is a natural person, rather than a corporate defendant;[16] and (6) the defendant does not have a subsequent felony charge pending or a conviction in another jurisdiction that is not related to reproductive or gender affirming care or the possession of cannabis which would not constitute a felony in New York.[17]

If a conviction is not eligible for sealing because the defendant has a pending criminal charge in New York, is currently under probation or parole supervision for the conviction eligible for sealing, or has a subsequent felony charge pending or conviction in another

jurisdiction that is not related to reproductive or gender affirming care or the possession of cannabis which would not constitute a felony in New York, then OCA must subsequently reevaluate the defendant's eligibility at least quarterly and seal the conviction once all of the conditions are satisfied.[18] These additional conditions do not apply to convictions for driving while ability impaired in violation of section 1192.1 of the Vehicle and Traffic Law, which are sealed after three years.[19]

In sum, after a certain amount of time has passed since a person's most recent conviction or release from incarceration, OCA will generally automatically seal the records of conviction if the person is not currently on parole, probation, or post-release supervision for that conviction, if the person does not have a pending misdemeanor or felony, and if the conviction is not for a class A felony other than a drug offense. Notably, the statute does not specify any limit on the number of convictions that may be sealed for a particular defendant.[20] In addition, a defendant cannot waive or be required to waive automatic sealing as a condition of any plea agreement.[21]

What Records Must Be Sealed?

The records that relate to the conviction that must be sealed include: (1) photographs of the defendant; (2) palmprints, fingerprints and retina scans of the defendant, except for any digital fingerprints on file with the division of criminal justice services for a conviction that has not been sealed; and (3) official records, papers, judgments, and orders relating to the sealed conviction, except for published court decisions or opinions or records and briefs on appeal.[22] DNA information and records maintained by the Department of Motor Vehicles are exempt from sealing.[23]

What Are the Effects of Sealing on Records of a Conviction?

Once records of an eligible conviction are sealed, they cannot be accessed or made available to any person or public or private agency, unless enumerated in one of the many exceptions in the statute.[24] Persons and agencies that may access the records under the exceptions include: the defendant and defense counsel;[25] any court or prosecutor in a pending criminal proceeding;[26] and federal, state, and local law enforcement agencies.[27] In addition, certain agencies and employers can access sealed records for employment and licensing purposes, including: (1) entities that are conducting fingerprint-based background checks for work with vulnerable populations like children, the elderly, and people with disabilities;[28] (2) the New York State Education Department;[29] (3) private transportation companies, including Uber and Lyft;[30] and (4) police officers, peace officers, and corrections officers.[31] In addition, federal, state, and local agencies responsible for conducting background checks for firearms licenses will have access to an applicant's sealed records.[32] However, unless one of the enumerated exceptions in the statute applies, employers are not permitted to inquire about or take action in response to a conviction that has been sealed.[33]

Sealed convictions are still included in the definition of a "conviction" for purposes of determining whether the defendant, in a subsequent criminal proceeding, is subject to an enhanced penalty, including whether the defendant will be sentenced as a multiple felony offender.[34] Moreover, nothing in the statute provides for the expungement of any convictions.[35]

How Does Sealing Under Section 160.57 Differ from Sealing Under Section 160.59?

Section 160.57 does not replace section 160.59, which was enacted in

2017 and enables persons convicted of certain crimes to move to seal the records of certain prior convictions.[36] Although both sections involve the sealing of criminal convictions, there are significant differences between the two, including the process by which convictions are sealed, which convictions are eligible for sealing, and who has access to sealed records.

For example, section 160.57 does not specify any limit on the number of convictions that may be sealed. In contrast, section 160.59 allows a person to seal a maximum of two criminal convictions, only one of which may be a felony, and a person who has been convicted of more than one felony or more than two crimes is ineligible for sealing.[37]

In addition, sealing under section 160.57 is performed automatically by OCA, while section 160.59 requires that an application to seal a conviction be made to the court. Moreover, the court has discretion to grant or deny the sealing application.[38] Generally, a person previously convicted of a crime is eligible for sealing under section 160.59 if: (1) at least ten years have passed since the sentencing for that crime and the person's release from any incarceration imposed at that sentencing; (2) the person has not been convicted of a crime after the last conviction for which sealing is sought; (3) the person does not have a pending criminal case; and (4) the person is not required to register as a sex offender.[39]

Even if the person applying for sealing satisfies those initial requirements, however, the court must consider certain enumerated factors before deciding to grant or deny the application.[40] Those factors include: (1) the circumstances and seriousness of the offense for which the person is seeking relief or any other offenses for which the person was convicted; (2) the person's general character and any efforts taken toward rehabilitation; (3) any statements made by the victim of the crime which the person seeks to seal; (4) the impact of sealing the person's record upon his or her rehabilitation and upon his or her successful and productive reentry and reintegration into society; and (5) the impact of sealing the person's record on public safety and upon the public's confidence in and respect for the law.[41]

Finally, a critical difference between sections 160.57 and 160.59 is that section 160.59 permits fewer entities to access sealed records than section 160.57. Section 160.57 has seventeen subsections permitting certain persons and agencies to access sealed records.[42] By comparison, section 160.59 includes only five such subsections, which limit the persons and agencies that can access sealed records to the defendant, law enforcement agencies, agencies responsible for issuing firearms licenses, and any law enforcement agency in which the defendant is seeking employment as a police officer or peace officer.[43]

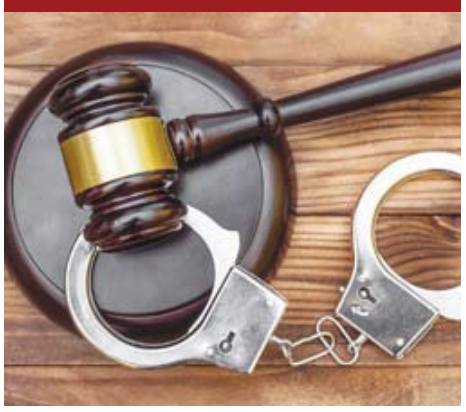
Accordingly, persons with prior convictions, defense attorneys, prosecutors, and courts should compare the effects of sealing under section 160.59 with the effects of automatic sealing under section 160.57 when deciding whether to file or grant a motion for sealing.

1. CPL § 160.57.
2. See What They are Saying: Governor Hochul Signs the Clean Slate Act, https://www.governor.ny.gov/news/what-they-are-saying-governor-hochul-signs-clean-slate-act (last accessed December 2, 2024).
3. See CPL § 160.57(1)(c), (e), (f); CPL § 160.57(2); CPL § 160.57(6).
4. See CPL § 160.57(1)(c); CPL § 160.57(2).
5. See CPL § 160.57(1)(e).
6. CPL § 160.57(6).
7. CPL § 160.57(1)(a).
8. CPL § 160.57(1)(b)(i).
9. CPL § 160.57(1)(b)(ii).
10. *Id.*
11. CPL § 160.57(1)(b)(i)-(ii).
12. CPL § 160.57(1)(b)(iii).
13. CPL § 160.57(1)(b)(iv).
14. CPL § 160.57(1)(b)(v).
15. CPL § 160.57(1)(b)(vi).
16. CPL § 160.57(1)(b)(vii).
17. See CPL § 160.57(1)(b)(viii)-(ix).
18. See CPL § 160.57(1)(c).
19. See CPL § 160.57(1)(a).
20. See *generally* CPL § 160.57.
21. CPL § 160.57(4).
22. CPL § 160.57 (2)(a)-(b).
23. See CPL § 160.57(3)(a)-(b).
24. CPL § 160.57(1)(d).
25. CPL § 160.57(1)(d)(i).
26. CPL § 160.57(1)(d)(ii).
27. CPL § 160.57(1)(d)(iii).
28. See CPL § 160.57(1)(d)(vii)-(viii).
29. See CPL § 160.57(1)(d)(vii), (xvi).
30. See CPL § 160.57(1)(d)(xv).
31. See CPL § 160.57(1)(d)(ix).
32. See CPL § 160.57(1)(d)(x).
33. See Executive Law § 296.16.
34. See CPL § 160.57(7).
35. See *generally* CPL § 160.57.
36. See CPL § 160.59.
37. See CPL § 160.59(2)(a); CPL § 160.59(3)(c), (h); CPL § 160.59(4).
38. See CPL § 160.59(2).
39. See CPL § 160.59(3), (5).
40. See CPL § 160.59(7).
41. See CPL § 160.59(7)(a)-(g).
42. See CPL § 160.57 (1)(d)(i)-(xvii).
43. See CPL § 160.59(9)(a)-(e); see *also* CPL § 160.59(8).

Christopher M. Casa is the Principal Law Clerk to the Hon. Robert A. Schwartz in Nassau County Court. He is the Co-Chair of the NCBA Criminal Court Law and Procedure Committee. He previously served as a Senior Assistant District Attorney in the Major Case Division at the Nassau County District Attorney's Office. He can be reached at chrismcasa@gmail.com.

FOCUS: CRIMINAL LAW

Challenging the Conviction in a Removal Proceeding



Michelle Caldera-Kopf and Jackeline Saavedra-Arizaga

When a client has been convicted of a crime and is charged with removal as a result of that conviction, immigration attorneys must move quickly and question their clients carefully to ensure that the underlying criminal process was fair and protected their client's right to effective assistance of counsel under the Sixth Amendment. Failures of counsel may serve as one basis for a Motion to Reopen and may undermine the charges in a Notice to Appear.

In October, the Second Circuit in *Farhane v. United States* reaffirmed *en banc* defense counsel's Sixth Amendment duty, first clearly articulated in *Padilla v. Kentucky*,[1] to provide immigration advice to non-citizens charged with criminal offenses [2] The court held that all immigrants, even a naturalized U.S. citizen, must be informed of the risk of denaturalization and deportation before entering a guilty plea that will trigger negative immigration consequences.[3]

In promulgating this rule, the Second Circuit reiterated a key principle: "the prospect of removal from the country may be more important to a defendant than time served behind bars, and counsel bears a duty at least to call to her client's attention the risk of such serious adverse immigration consequences."[4] Defense counsel must identify any client who faces a risk of removal as a result of criminal charges and advise accordingly.

The Sixth Amendment and New York law impose four relevant duties on criminal defenders who represent non-citizens. Failure to execute even one of these duties effectively will taint the criminal proceeding and can serve as a basis for vacating the conviction, and possibly avoiding removal. In New York, Motions to Vacate are filed in the court of conviction pursuant to CPL § 440.10.[5]

What Is Effective Assistance of Counsel?

In *Strickland v. Washington*, the Supreme Court articulated a two-part test for evaluating the effectiveness of defense counsel in criminal cases.[6] To prevail on a motion to vacate, a defendant must show both that counsel's performance was deficient, and that the defendant was prejudiced by this failure. The guarantee of effective assistance extends to guilty pleas.[7] To be considered effective, counsel must affirmatively advise about potential immigration consequences.[8] Prejudice lies where a decision to pursue trial would have been "rational" for the defendant; even the smallest chance of a different outcome satisfies the standard.[9] As the Court of Appeals held in *People v. Caban*, New York law offers even greater protection, requiring "meaningful representation" and a merely rational choice by defendant.[10]

Effective assistance requires defense counsel to: (1) investigate and properly identify a criminal defendant's immigration status;[11] (2) analyze the charges and identify any potential immigration consequences;[12] (3) seek to negotiate a safer alternative plea;[13] and (4) finally, accurately advise the non-citizen or naturalized defendant of any consequences of conviction or guilty plea.[14] In New York, a failure to effectively execute any of these duties is a valid basis to vacate the conviction under CPL 440.10(h).

Section 440.10 also outlines a number of bases unrelated to immigration or constitutional violations that may serve as a basis for vacatur of a conviction. Those bases for vacatur are beyond the scope of this article, but immigration attorneys should become familiar with the full potential of NY CPL § 440.10 to support vacatur of convictions where such motions may assist clients in avoiding removal.[15]

Duty to Investigate

Effective assistance of counsel includes counsel inquiring and identifying the defendant's current immigration status. In *People v. Picca*, the Second Department placed the burden on counsel to inform the defendant of any immigration concerns:

> to require that defendants apprehend the relevance of their non–citizenship status, and affirmatively provide this information to counsel, would undermine the protection that the *Padilla* Court sought to provide to noncitizen defendants. Indeed, it would lead to the absurd result that only defendants who understand that criminal convictions can affect their immigration status would be advised of that fact.[16]

Defense counsel must thus ask each client where he was born to begin to identify non-citizens; no other reliable method exists.

A client should recall his defense attorney specifically asking about his place of birth, his immigration history, and his current immigration status, including naturalization and any pending applications or removal proceedings. Prepare a careful affidavit recounting the non-citizen's priorities and the advice provided to support the vacatur motion.

Duty to Analyze

Merely asking the defendant about his immigration status is not sufficient. Criminal defense counsel must also accurately understand the legal consequences of any conviction their client faces.[17]

Litigation narrowing the grounds of deportability and inadmissibility has changed the legal consequences of criminal convictions for non-citizens significantly since the immigration law was last amended in 1996.[18] Immigrant defendants now have access to many more immigration-safe harbors. Appointed defense counsel can access an immigration expert through a Regional Immigration Assistance Center[19] to stay abreast of these legal developments and advise in individual cases.

It is important to begin documenting a motion to vacate by speaking collegially with defense counsel, and by seeking file records memorializing the immigration consequences at the time of the plea and any potential safe harbors.

Duty to Negotiate

The duty to negotiate an immigration safer plea to preserve immigration status or eligibility is at the same time very familiar to criminal defense counsel (negotiating plea deals is their bread and butter) and unfamiliar (because they may not know without consultation with experienced immigration counsel where the safe harbors are located). Nevertheless, this duty is well established.[20]

Proving the availability of an immigration-safe plea may require a discussion with the prosecuting attorney or other members of the defense bar to understand the landscape of plea offers that may have been available at the time of the plea.[21] Under *Frye* and *Padilla*, any plea offer that was extended by the ADA must have been conveyed to your client and the immigration consequences of the offer explained to him as well. The defense attorney and the ADA should have a record of any potential plea offered or sought by the defense. Where a safe harbor would have been available, but was not sought, defense counsel has fallen short of his duty.

Duty to Advise

Counsel's immigration advice must be accurate; mis-advice about immigration consequences will not fulfill counsel's duty.[22] Your non-citizen client should be familiar with the real immigration consequences of his plea and any offers made by the prosecution, and be able to tell you what they were. He should recall a conversation with his defense attorney and perhaps even immigration counsel who was brought in to advise, and his defense attorney should possess proof in his file of the advice that was provided.

An essential element of any motion to vacate is a focused affidavit from the client describing these discussions and his understanding of the advice given. Thus, it is very important to explore your client's experience with the criminal justice system and his defense attorney. Many attorneys simply tell their clients, "you will have immigration problems," but do not give the *specific* information required by the Court of Appeals in *McDonald*.[23]

Ask your client about the charges, any offers conveyed, his willingness at the time of his guilty plea to trade jail time for immigration protection if that trade were available, and his understanding of the consequences he had before entering his plea.

Establishing Prejudice

Would your client have pleaded guilty if he knew the real risks of removal associated with his plea? A decision not to plead guilty must have been "rational" under the client's particular circumstances.[24] But, where a defendant has received a favorable plea and did not have a possibility of avoiding removal regardless of any criminal conviction, the Bronx County Supreme Court has found no ineffectiveness.[25] A defendant must point to specific harmful immigration consequences that could have been avoided in order to make a prejudice showing.

Immigration attorneys are well placed to make compelling arguments on this prong of the *Strickland* test because a client's desire to remain in the United States is the very interest they serve. However, it is important to clearly articulate in plain language any specific immigration consequences and the legal pathway that has been blocked for a client by a particular conviction to a State Court judge unfamiliar with the intricate nature of immigration law.

Don't Let *Peque* Derail the Claim

In *People v. Peque*, the Court of Appeals held that the Fifth Amendment requires trial courts to inform criminal defendants about a risk of deportation.[26] But that obligation does not supplant criminal defense counsel's Sixth Amendment duties to provide effective assistance. Claims that the court has failed to provide the required warning should be brought in a direct appeal.[27] Ineffective assistance claims may be brought on either direct or collateral review.[28] Be sure to protect both rights your client holds.

Compensation for Filing 440.10 Motions

Assigned appellate attorneys are well-positioned to investigate and discover any potential *Padilla* issues in the underlying case. Appellate attorneys can examine the record, and if appropriate, file 440.10 motions on behalf of their noncitizen clients. Pursuant to County Law § 722, assigned appellate attorneys are eligible for compensation for their work during the preparation and filing of the 440.10 motion.

If the assigned appellate attorney does not feel comfortable filing the 440.10 motion, they should contact their Assigned Counsel administrator to request a different trial attorney to be assigned to prepare and file the 440 motion.[29]

1. 559 U.S. 356 (2010).
2. 121 F.4th 353 (2d Cir. 2024).
3. *Id.* at 357.
4. *Id.* at 358.
5. While CPL § 440.10 contains at least twelve bases for motions to vacate, for immigration purposes, § 440.10(h), ineffective assistance of counsel, is most likely to be effective. See *Matter of Pickering*, 23 I & N Dec.621 (BIA 2003)(requiring a procedural or Constitutional defect in criminal proceeding for recognition of vacatur under immigration law).
6. 446 U.S. 668 (1984).
7. *Lafler v. Cooper*, 566 U.S. 156 (2012); *Missouri v. Frye*, 566 U.S. 134 (2012)(counsel must convey any plea offer).
8. *Padilla v. Kentucky*, 559 U.S. 356 (2010).
9. *Jae Lee v. U.S.*, 582 U.S. 357 (2017).
10. 5 N.Y.3d 143 (2005).
11. *People v. Picca*, 97 A.D.3d 170 (2d Dep't 2012).
12. *People v. Garcia*, 907 N.Y.S.2d 398 (Sup.Ct., Kings Co. 2010).
13. *Lafler v. Cooper*, 132 S.Ct. 1376 (2012); *Missouri v. Frye*, 132 S.Ct. 1399 (2012).
14. *Padilla*, 559 U.S. at 373; *Farhane*, 559 U.S. at 357; *People v. Acosta*, 202 A.D.3d 447 (1st Dep't 2022).
15. For further resources, see Post-Conviction Litigation Resources | New York State Office of Indigent Legal Services and https://www.immigrantdefenseproject.org/what-we-do/padilla-post-conviction-relief/.
16. *Picca*, 97 A.D.3d at179.
17. *People v. Bernard*, 195 A.D.3d 740 (2d Dep't 2021)(vacatur for failure to communicate clear immigration consequences).
18. *See, e.g., Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013) (categorical approach); *Borden v. U.S.*, 593 U.S. 420 (2021)(narrowing the "crime of violence" aggravated felony to exclude reckless offenses); *Gill v. INS*, 420 F.3d 82 (2d Cir. 2005)(reckless mens rea cannot support crime involving moral turpitude finding); *Jack v. Barr*, 966 F.3d 95 (2d Cir. 2020) (narrowing deportability for New York firearms offenses), *Harbin v. Sessions*, 860 F.3d 58 (2d Cir. 2017)(first in a series of decisions narrowing "controlled substance offense" and "drug trafficking" aggravated felony classifications), *Matter of Pougatchev*, 28 I & N Dec. 719 (BIA 2023)(circumscribing burglary removal grounds).
19. https://www.ils.ny.gov/node/204/riac-general-information#ILSRegionalImmigrationAssistanceCenters.
20. *Vartelas v. Holder*, 566 U.S. 257 (2012); *People v. Guzman*, 150 A.D.3d 1259 (2d Dep't 2017) (pre-Padilla duty to negotiate).
21. *People v. George*, 183 A.D.3d 436 (1st Dep't 2019)(reasonable possibility people would offer desired plea).
22. *Kovacs v. US*, 744 F.3d 44 (2d Cir. 2014); *People v. McDonald*, 1 N.Y.3d 109, 115 (2003).
23. 1 N.Y.3d at 113–15.
24. *Jae Lee v. U.S.*, 582 U.S. 357 (2017))(prioritizing immigration concerns in decision to plead guilty); *Picca*, 97 A.D.3d at 183–84).
25. *People v. Clemente*, 58 Misc.3d 266 (Sup.Ct., Bronx Co. 2017).
26. *People v. Peque*, 22 N.Y.3d 168 (2013).
27. *People v. Samaroo*, 205 A.D.3d 822, 825 (2d Dep't 2022)(relevant facts appear in the record and were therefore subject to review on direct appeal).
28. *People v. Gomez*, 186 A.D.3d 422 (1st Dep't 2020).
29. https://www.ils.ny.gov/sites/ils.ny.gov/files/440.10_INSTRUCTIONS_032823.pdf.

Michelle Caldera-Kopf is the *Padilla* Attorney for the Suffolk County 18(b) Panel. Michelle has practiced, taught, and advised clients, attorneys, and criminal defenders on immigration issues for many years. Most recently Michelle served as the Managing Attorney for the Long Island Office of the Safe Passage Project, assisting young immigrants facing deportation in family and immigration courts. She can be reached at mcaldera-kopf@nclas.org.

Jackeline Saavedra-Arizaga is a *Padilla* Attorney at the Legal Aid Society of Suffolk County. Prior to joining Legal Aid, Jackeline was an immigration attorney at Empire Justice Center and Make the Road New York.

THANK YOU TO DONORS

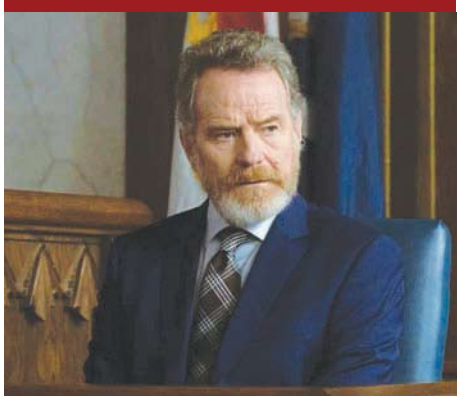
to our 125th Anniversary Fund

HOWARD ADELSBERG
E. KEVIN AGOGLIA
MARY ANN AIELLO
DENNIS AND CHARLOTTE ALLEN
MARK E. ALTER
EDWARD A. ANDREWS
GINA ARNEDOS
MICHAEL ARONOWSKY
HON. LEONARD AUSTIN, RET.
RAYMOND J. AVERNA
ROSALIA BAIAMONTE
BRYAN BARNES
ERNEST T. BARTOL
JARED S. BEHR
HEIDI BERNSTEIN
JOHN F. BERRY JR.
JAY S. BINDER
GINA BITSIMIS
WILLIAM BODKIN
MITCHELL BORKOWSKY
MARY W. BOSSART
HON. ANTONIO BRANDVEEN, RET.
CATHERINE BREIDENBACH
PETER BREITSTONE
HOWARD BRILL
LAUREN BRISTOL
DAVID A. BYTHEWOOD
JOSEPH G. CAIRO, JR.
JAMES CAMMARATA
LOUIS CANNIZZARO
DEANNE M. CAPUTO
WALTER J. CARROLL
ALAN CLARK
DANNY BRUNDAGE AND CHERYL CLARK
SELMA CLARK
MICHAEL COCO
RICHARD D. COLLINS
MICHAEL COMERFORD
HON. JOSEPH R. CONWAY
SEAN M. CRONIN
EDWARD F. CUNNINGHAM
PATRICIA DALMAZIO
CHRISTOPHER DELLICARPINI
THOMAS DE MARIA
NICHOLAS DESIBIO
TOBY DESIMONE
MICHAEL DIFALCO
MAUREEN DOUGHERTY
KAREN DOWD
RICHARD H. DREWITZ
JONATHAN E. EDWARDS
HON. ANDREW ENGEL
CLARA EROMOSELE
GEORGE ESERNIO
JAIME D. EZRATTY
NAN FABER
FLORENCE M. FASS
STEVEN FEINBERG
JOSEPH FERENCIK
SAMUEL J. FERRARA
JOHN H. AND LESLIE FLYNN
BERNADETTE K. FORD
MELISSA FORGAS-GARTLAND
PETER J. GALASSO
MARC C. GANN
STEPHEN GASSMAN
MARK GOIDELL
DOUGLAS J. GOOD
DOROTHY L. GOOSBY
CHARLES R. GOULDING
MARK A. GREEN
ELENA GREENBERG
ROBERT GROSSMAN
AMY C. HABER
JACQUELINE HAROUNIAN
ROBERT F. HARPER
HON. PATRICIA A. HARRINGTON
JOANNE M. HAWTHORNE
CHARLES O. HEINE
JOHN HERCHENRODER
ALAN B. HODISH
PAUL ISRAELSON
RYAN M. JENNINGS
ALLISON JOHS
LEWIS JOHS
JAMES P. JOSEPH
DARREN KAPLAN
ROSS KARTEZ
JARED KASSCHAU
SHAWN P. KELLY
HON. SUSAN T. KLUEWER
ANDREW KRESS
MARTHA KRISEL
S. ROBERT KROLL
DEBRA S. KELLER LEIMBACH
PAUL KENNY
SCOTT KESTENBAUM
JENNIFER L. KOO
JOHN F. KUHN
STEVEN LABONTE
REBECCA LANGWEBER
CHARLES E. LAPP III
ROBIN LAVEMAN
A. THOMAS LEVIN
DEBORAH LEVINE
MARILYN M. LEVINE
DAVID LEVY
PETER H. LEVY
JAMIE LEWIS
DOUGLAS M. LIEBERMAN
EDWARD L. LIEBERMAN
DAVID LIRA
GREGORY S. LISI
ROY LIST
FRANK LIVOTI
LISA A. LOCURTO
MEGAN LONG
DANIEL G. LOONEY
MICHAEL G. LORUSSO
ROBERT J. LOUTTIT
MARY T. LUCERE
SIGHLE LYNCH
JAMES LYONS
KAREN MANCUSO
ALEXANDER MANGANO
ADAM MARGULIES
MICHAEL A. MARKOWITZ
KENNETH L. MARTEN
RUSSELL D. MAURO
ELENI MAVROS PANAGOS
HEATHER MCCLINTOCK
THOMAS MCKEVITT
PATRICK MICHAEL MCKENNA
DIANE M. MEMMOLI
OSCAR MICHELEN
BRUCE R. MILLMAN
TANYA MIR
ANTHONY J. MONTIGLIO
HON. JONATHAN A. MOORE
KEVIN J. MURTAGH
HON. VINCENT T. MUSCARELLA
GLENN W. NICK
WILLIAM P. NOLAN
TERESA OMBRES
CHRISTOPHER J. OSTUNI
HON. ANTHONY W. PARADISO
PATRICIA M. PASTOR
GREGORY P. PETERSON
LAURA PETROCELLI
HON. LISA PETROCELLI
YALE POLLACK
GREGORY RABINOWITZ
HENRY E. RAKOWSKI
DENNIS REISMAN
MARIAN C. RICE
KATHARINE RICHARDS
JOHN RIORDAN
JENNIFER ROSENKRANTZ
ADAM S. ROSS
ROBERT P. ROVEGNO
DANIEL W. RUSSO
SHERWIN F. SAFIR
JEROME A. SCHAROFF
HON. FRANK N. SCHELLACE
ROSS L. SCHILLER
STUART H. SCHOENFELD
WANDA L. SELINGER
HON. DENISE L. SHER
ANDREW J. SIMONS
HON. PETER B. SKELOS
HAROLD SOMER
MATTHEW SPERO
BRUCE STAVITSKY
SUSAN I. STEIN
HARRIETTE M. STEINBERG
LOUIS D. STOBER JR.
STEVEN. W. STUTMAN
HON. DAVID P. SULLIVAN
VICTORIA TAN
ROMINA J. TENEMBAUM
CHARLENE J. THOMPSON
DARLENE T. TRESTON
ALLEN UNDERWOOD
KAREN J. UNDERWOOD
LISA R. VALENTE
ROBERT F. VAN DER WAAG
MATTHEW VIVERITO
HARVEY WEINBERG
RONALD D. WEISS
STEVEN WEITZ
ANN C. WENK
JOHN H. WHITCHETT
JEREMY D. WISS
KATHLEEN WRIGHT
PATRICIA WRIGHT
SEAN WRIGHT
OMID ZAREH
CATHERINE ZHANG
WILLIAM H. ZIFF

DONATE $125 TODAY TO HELP RETIRE THE DOMUS MORTGAGE!

FOCUS: ENTERTAINMENT

Your Honor: A Deep Dive into a Moral Minefield



Cynthia A. Augello

Your Honor, a gripping legal drama starring Bryan Cranston, delves into the complexities of morality, justice, and the lengths a parent will go to protect their child. The series, adapted from the Israeli show *Kvodo*, is a masterclass in suspenseful storytelling, exploring the dark underbelly of the legal system and the devastating consequences of one fateful decision.

A Judge's Descent into Darkness

Cranston portrays Michael Desiato, a respected judge whose life takes a cataclysmic turn when his son, Adam, is involved in a hit-and-run accident that results in the death of a young man. Faced with a moral dilemma, Desiato must navigate a treacherous path, making a series of increasingly desperate choices to shield his son from the law.

The series expertly weaves together elements of courtroom drama, crime thriller, and family saga, creating a compelling narrative that keeps viewers on the edge of their seats. As Desiato becomes entangled in a web of lies and deceit, he is forced to confront his own sense of morality and the boundaries of justice.

A Stellar Cast and Gripping Performances

Your Honor boasts a talented ensemble cast that delivers powerful performances. Hunter Doohan shines as the troubled Adam, capturing the character's vulnerability and internal conflict. Michael Stuhlbarg is equally impressive as Jimmy Baxter, a ruthless crime boss whose world intersects with Desiato's.

Cranston's portrayal of Desiato is nothing short of extraordinary. The actor masterfully conveys the character's internal turmoil, his growing desperation, and his unwavering love for his son. Cranston's performance is a tour de force, showcasing his range and depth as an actor.

A Moral Examination

At its core, *Your Honor* is a moral examination of a man pushed to his limits. Desiato's descent into darkness raises profound questions about the nature of justice, the lengths to which parents will go to protect their children, and the consequences of our actions.

The series also explores the corrupting influence of power and the blurred lines between right and wrong. As Desiato becomes increasingly involved in the criminal underworld, he is forced to compromise his principles and make difficult choices that have far-reaching implications.

A Tense and Thought-Provoking Drama

Your Honor is a tense and thought-provoking drama that will leave you questioning your own moral compass. The series is a masterclass in suspenseful storytelling, with each episode building upon the previous one, culminating in a shocking and satisfying conclusion.

Whether you're a fan of legal dramas, crime thrillers, or character-driven stories, *Your Honor* is a must-watch program. It's a show that will stay with you long after the credits roll, leaving you pondering the complexities of human nature and the consequences of our choices.

While *Your Honor* is a captivating drama, it takes significant liberties with legal accuracy for the sake of dramatic effect. Here are some of the most glaring inaccuracies:

1. **Judge's Active Involvement.** A judge, especially in a high-profile case, would not be actively involved in the investigation or manipulation of evidence. Their role is strictly impartial, and any such actions would be considered highly unethical and likely subject to disciplinary action.

2. **Witness Tampering.** The show frequently depicts characters tampering with witnesses, intimidating them, and even orchestrating false testimony. In reality, witness tampering is a serious crime with severe consequences. Such actions would be thoroughly investigated and prosecuted.

3. **Implausible Trial Strategies.** The courtroom scenes, while dramatic, often deviate from real-world legal procedures. The cross-examinations, objections, and arguments sometimes seem overly theatrical and unrealistic.

4. **Lack of Procedural Safeguards.** The show often glosses over the numerous procedural safeguards that exist in the legal system. For example, evidence is typically subject to strict admissibility rules, and judges play a crucial role in ensuring fair trials.

5. **Unrealistic Timelines.** The rapid pace of events in the show, with trials and investigations concluding within a short timeframe, doesn't reflect the reality of the legal system where cases can drag on for months or even years.

6. **Judge's Impunity.** Despite the judge's involvement in questionable activities, there seems to be little fear of repercussions. In reality, judges are subject to strict ethical codes and can be removed from the bench for misconduct.

7. **Oversimplified Legal Concepts.** The show often simplifies complex legal concepts, such as plea bargaining, sentencing guidelines, and evidentiary rules, for the sake of clarity. However, this can lead to misunderstandings and inaccuracies.

It's important to remember that *Your Honor* is a work of fiction designed to entertain, not to provide a realistic portrayal of the legal system. While it offers a thrilling and thought-provoking story, viewers should be aware of its creative liberties and not mistake it for a factual account of legal proceedings. It is, however, a show worthy of binge-watching.

Cynthia A. Augello is the founding member of the Augello Law Group, PC, where she practices education law. She is also the Editor-in-Chief of the *Nassau Lawyer* and Chair of the NCBA Publication's Committee. Cynthia can be contacted at caugello@augellolaw.com.

NASSAU ACADEMY OF LAW

January 14 (Hybrid)

Dean's Hour: An Unprecedented Verdict—Expanding Parental Liability for Children's Violent Crime

With Nassau County Assigned Defender Plan 18B

12:30PM

1.0 CLE Credit in Professional Practice

NCBA Member FREE; Non-Member Attorney $35

This presentation will focus on the historic criminal trial of *Michigan v. Jennifer and James Crumbley* (2024), the first parents to be convicted of a homicide offense (manslaughter) in connection with their son's intentional commission of a school shooting at his high school. Jolie Zangari will provide a brief analysis of *Georgia v. Colin Gray* (which is the second prosecution of a parent in connection to a child's school shooting), relevant caselaw, and implications that this new theory of criminal liability may have on future cases.

Guest Speaker:

Jolie Zangari, MA, JD, Asst. Professor, SUNY Nassau Community College Criminal Justice Dept.

January 15 (In Person Only)

Title Insurance Endorsements Residential Transactions (TIRSA Manual Seventh Revision)

With NCBA Real Property Law Committee

Dinner Sponsored by NCBA Corporate Partner Abstracts Incorporated

Dinner 5:00 PM; CLE Program 6:00 PM—8:00 PM

2.0 CLE Credits Professional Practice

NCBA Member FREE; Non-Member Attorney $70

The NYS Department of Financial Services (DFS) must review and approve all title insurance policy forms, endorsements and rates filed with the Department of Insurance. The Title Insurance Rate Service Association, Inc. (TIRSA)—licensed as a Rate Service Organization by the Superintendent of Insurance pursuant to Article 23 of the Insurance Law—makes all such filings to the Department. The TIRSA Title Insurance Rate Manual (rev. October 1, 2024) contains all rules, definitions, classifications of risk, rates for policies of title insurance and approved forms of policies, endorsements and other forms for use by the members of TIRSA.

Guest Speaker:

Paul F. Bugoni, Esq., Senior Agency Counsel and VP, Stewart Title Insurance Company

January 16 (Hybrid)

Dean's Hour: John Marshall—The Man Who Would Make the Court and the Constitution Supreme

12:30PM

1.0 CLE Credit in Professional Practice

NCBA Member FREE; Non-Member Attorney $35

The first in a 4-part series chronicling the four most impactful chief justices, this program will focus on John Marshall (1755-1835), the fourth Chief Justice, who is considered to be the "Great Chief Justice." The U.S. Supreme Court, and the federal judiciary as a co-equal branch of the federal government, were the products of the labors and fertile imagination of John Marshall. During the 34 years he served as Chief Justice from 1801 to 1835, he crafted landmark decisions that gave meaning and texture to the Court's Article III jurisdiction. Marshall's lasting achievement was establishing the supremacy of the Constitution during those early formative years of the Republic.

Guest Speaker:

Rudy Carmenaty, Esq., Deputy Commissioner of the Nassau County Department of Social Services and the Department of Human Services

January 23 (In Person Only)

Insights from the Federal Bench: Appellate Advocacy with Second Circuit Judge Eunice Lee

With NCBA Appellate Practice Committee

Complimentary Dinner Sponsored by NCBA Corporate Partner Printing House Press (PHP)

Dinner 5:00 PM; CLE Program 5:30 PM—6:30 PM

1.0 CLE Credit in Professional Practice

NCBA Member FREE; Non-Member Attorney $35

Join us for an exclusive conversation with Circuit Judge Eunice C. Lee as she shares her invaluable perspectives from the Second Circuit bench. Gain practical insights into effective appellate advocacy, understand what resonates with judges during oral arguments and briefings, and learn strategies to elevate your practice. Whether you're a seasoned appellate attorney or new to the appellate arena, this program offers a rare opportunity to enhance your skills and gain first-hand advice from one of the judiciary's most respected voices.

Guest Speaker:

Hon. Eunice C. Lee, Judge, U.S. Court of Appeals, Second Circuit, the longest-serving public defender to serve as a judge on any U.S. Court of Appeals

PROGRAM CALENDAR

January 28 (Hybrid)

Dean's Hour: EDR Update—If Your Case Involves a Car, What Can the Car Tell You?

With Nassau County Assigned Defender Plan 18B

12:30PM
1.0 CLE Credit in Professional Practice
NCBA Member FREE; Non-Member Attorney $35

Most vehicles now have the capability to provide data about what the car (and hence the driver) was doing seconds before it "crashes." If you handle any matter that involves a car, this overview helps you learn about all the evidence that may be available to assist you in assessing your case; how to determine whether your car has an Event Data Recorder (EDR); how to access the EDR; and how to interpret the data so that you can best utilize it in your case.

Guest Speaker:
Dawn Flower, JD, an accident reconstructionist and a former Kings County prosecutor

In person only

2025 ANNUAL SCHOOL LAW CONFERENCE

MARCH 21, 2025

Touro University Jacob D. Fuchsberg Law Center, 225 Eastview Drive, Central Islip, NY

Sign-in begins 8:00AM
Program 9:00AM—2:30PM
Registration fee includes continental breakfast, lunch and written materials.

CLE Credits
4 Professional Practice; 1 Cybersecurity, Privacy & Data Protection—Ethics;
1 Diversity, Inclusion & Elimination of Bias

NCBA Member—**$150**
Non-Member Attorney—**$250**
School Personnel—**$250**
Purchase orders accepted from school districts.

Hon. Joseph Goldstein Bridge-the-Gap Weekend

FEBRUARY 1 AND 2, 2025
SNOW DATES: FEBRUARY 22 AND 23, 2025

NEWLY ADMITTED ATTORNEYS' CLE CREDITS

7 Professional Practice; 6 Skills; 3 Ethics

EXPERIENCED ATTORNEYS' CLE CREDITS

11 Professional Practice; 3 Ethics; 1 Cybersecurity, Privacy & Data Protection—Ethics; 1 Diversity, Inclusion & Elimination of Bias

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

Bridge-the-Gap Chair Christopher J. DelliCarpini, Esq.
Nassau Academy of Law Associate Dean Sullivan Papain Block McManus Coffinas & Cannavo, P.C.

CALL FOR VOLUNTEER JUDGES FOR MOCK TRIAL TOURNAMENT

The annual New York State High School Mock Trial Tournament provides thousands of students statewide with hands-on opportunities to further their understanding of the legal system while honing their speaking, listening, and reasoning skills. Every year, Nassau County lawyers volunteer to encourage local high school students to consider a career in the law by giving them support and advice to argue a real case in a real courtroom during Mock Trial.

The 2025 Nassau County Mock Trial Tournament runs from February to April. Trials are held at the Nassau County Supreme Court from 4:30PM to 7:00PM as follows:

February 5	Preliminary Round 1
February 12	Preliminary Round 2
March 3	Intermediate Round
March 12	Sweet 16
March 18	Quarter Finals
April 2	Semi Finals
April 9	Nassau County Final
May 18–20	State Finals in Albany

Contact Nassau Academy of Law Director Stephanie Ball at sball@nassaubar.org or (516) 747-4077 to volunteer as a mock trial judge.

FOCUS:
LABOR AND EMPLOYMENT LAW

Labor and Employment Laws: 2025 Updates

Sharon N. Berlin, Richard K. Zuckerman, Adam S. Ross, Alyssa L. Zuckerman and Gianna L. Gualtieri

Happy 2025! To start the year off in the right direction, it is important to be aware of the newest laws affecting both public and private employers in 2025.

Minimum Wage, Credit and Salary Threshold Changes

In 2023, Governor Hochul signed legislation adopting a three-year period of annual increases to thes New York State's minimum wage rates. As a result, effective January 1, 2025, the State's annual minimum wage[1] increases to $16.50 for New York City, Westchester and Long Island,[2] and to $15.50 per hour for the remainder of the State.[3] The minimum wage rules apply only to private sector employees and those public employees of school districts and board of cooperative educational services ("BOCES") that are employed in a non-teaching capacity.[4]

The minimum wage rate for home care aides for New York City, Westchester and Long Island will increase to $19.10 per hour,[5] and to $18.10 per hour for the remainder of the State.[6]

For service employees[7] in New York City, Westchester and Long Island, the cash wage rate will increase to $13.75, the tip credit will increase to $2.75, and the tip threshold will increase to $3.55.[8] For the remainder of the State, the cash wage rate will increase to $12.90, the tip credit rate will increase to $2.60, and the tip threshold will increase to $3.30.[9]

For food service workers[10] in New York City, Westchester and Long Island, the cash wage rate will increase to $11.00, and the tip credit rate will increase to $5.50.[11] For the remainder of the State, the wage rate will increase to $10.35, and the tip credit will increase to $5.15.[12]

Further, in New York City, Long Island and Westchester, meal credits to employees will increase to: (1) $3.95 for food service workers; (2) $4.60 for service employees; and (3) $5.65 for other non-service employees.[13] For the remainder of the State, credits will increase to: (1) $3.95 for food service workers; (2) $4.25 for service employees; and (3) $5.35 for other non-service employees.[14]

Furthermore, on January 1, 2025, the new weekly state salary threshold for bona fide executive, administrative and professional employees to be exempt from overtime will increase from $1,200 ($62,400 per year) to $1,237.50 ($64,350 per year) in New York City, Westchester and Long Island.[15] For the rest of the State, the weekly minimum salary threshold will increase from $1,124.20 ($58,458.40 per year) to $1,161.65 ($60,405.80 per year).[16] Note that for an employee to be exempt from overtime rules, they will also need to continue to satisfy a job duties test.

Paid Prenatal Leave

New York's Labor Law will now require private sector employers to provide paid prenatal leave for employees receiving healthcare services during or relating to their pregnancy. This leave is in addition to any paid sick leave entitlements required of private sector employers pursuant to the New York State Paid Sick Leave Law.

Effective January 1, 2025, employers will be required to provide twenty hours of paid prenatal personal leave during any 52-week calendar period.[17] The Labor Law defines "paid prenatal personal leave" as:

> leave taken for the health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy. Paid prenatal leave may be taken by the employee in hourly increments.[18]

The employee must be paid at their regular rate of pay or the applicable minimum wage, whichever is higher.

New York State Paid Family Leave Rate Increases

2025 also brings changes to the benefit and employee contribution rates applicable to private sector employers as well as to those public sector employers who have elected to provide New York State Paid Family Leave to their employees.

Generally, employees taking paid family leave receive 67% of their average weekly wage, up to a cap of 67% of the New York State Average Weekly Wage (NYSAWW). Effective January 1, 2025, the NYSAWW increases to $1,757.19 (from $1,718.15 from 2024), and the maximum weekly benefit increases to $1,177.32 (from $1,151.16 in 2024).

In addition, in 2025, employee payroll contributions toward Paid Family Leave benefits increases to 0.388% of employees' gross wages per pay period (from 0.373% in 2024) with the maximum employee contribution increasing to $354.53 (from $333.25 in 2024). Employees earning less than the $1,757.19 NYSAWW will contribute less than the annual cap of $354.53.

Expansions to the Equal Rights Amendment

As a result of the State's adoption of the Equal Rights Amendment ("ERA"), effective January 1, 2025, Article I, Section 11 of the New York State Constitution will include protections against discrimination made "by any other person or by any firm, corporation, or institution, or by the state or any agency"[19] based on "race, color, ethnicity, national origin, age, disability, creed, religion, or sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy."[20] Previously, the ERA only protected against discrimination based on race, color, creed and religion.

In addition to the new protected categories, the amended ERA clarifies that it does not invalidate or prevent any future law, program or practice from preventing or dismantling discrimination (such as the New York State Human Rights Law).

New York Retail Worker Safety Act

In September 2024, Governor Hochul signed the New York Retail Worker Safety Act into law, which takes effect on March 4, 2025.[21] The Act requires the N.Y.S. Department of Labor to create and publish a model retail workplace violence prevention policy for a covered retail employer to adopt. It also requires a covered retail employer to develop and implement the model policy, develop programs to prevent workplace violence and provide workplace violence training programs.[22]

The Act requires that the model policy: (1) outline a list of situations that may place a retail employee at risk of workplace violence (including, but not limited to, working late/early, exchanging money with the public, working alone or in small groups); (2) outline methods that employers may use to prevent workplace violence (including, but not limited to, establishing reporting systems for workplace violence incidents); (3) include information concerning federal, state, and local laws concerning violence against retail employees, with available remedies; and (4) clearly state that retaliation for reporting workplace violence, or assist in any proceeding involving workplace violence is unlawful.[23]

In addition, the Act requires that, effective January 1, 2027, retailers with over 500 employees, must install a "panic button" to provide employees with immediate assistance from law enforcement to the workplace. The panic button may be in a physically accessible location in the retail establishment, a wearable device, or a mobile phone-based device.[24]

Workers' Compensation Act Amendments

Amendments to the Workers' Compensation Act will also take effect in 2025. New York Workers' Comp. Law § 10(3)(b) allows a police officer, firefighter, emergency medical technician, paramedic or other medically certified emergency personnel to file a workers' compensation claim for mental injury premised upon extraordinary work-related stress incurred in a "work-related emergency."[25]

Effective January 1, 2025, § 10(3)(b) is expanded to allow any worker to file a claim for mental injury premised upon extraordinary work-related stress,[26] which must be incurred at work but no longer has to be incurred in a "work-related emergency."[27]

Expiration of New York State Paid Emergency Leave

On July 31, 2025, the law requiring New York State Paid Emergency leave for COVID-19 will expire. Thereafter, employees will need to use their existing paid leave, including, but not limited to, New York State's Paid Sick Leave, for COVID-19-related absences.

Clean Slate Act

The Clean Slate Act took effect on November 16, 2024, amending New York's Criminal Procedure Law ("CPL") § 160.57.[28] The Act requires that, by not later than November 16, 2027, the New York State Office of Court Administration seal all eligible conviction records. These include records of certain misdemeanor convictions,[29] which become eligible for sealing three years after the defendant's release from incarceration or the imposition of a sentence (if incarceration was not imposed), and for felony convictions, which become eligible for sealing eight years after the date the defendant was last released from incarceration for the sentence or from the imposition of a sentence

(if incarceration was not imposed).[30] A conviction that is or becomes sealed by the Act is not expunged, but access to those records—including photographs, palmprints, fingerprints, retina scans, and court judgments and orders— is prohibited.[31] Published court decisions, opinions, records and briefs on appeal relating to a sealed conviction will not be sealed.[32]

The conviction records of individuals convicted of sex crimes, murder, or other Class A felonies may not be sealed pursuant to the Act.[33] In addition, an individual must not be on parole, probation, post-release supervision, or have another pending misdemeanor or felony at the time sealing is requested.[34]

The Act shields against the access, use, and disclosure of sealed conviction records, unless required by law. This means that employers will be unable to request and receive conviction records in connection with employment, except: (1) where they are authorized by local, state, or federal law or regulation to request or receive a fingerprint-based check of an individual in relation to that individual's fitness to have responsibility over the safety and well-being of children, adolescents, the elderly, individuals with disabilities, or any other vulnerable population;[35] (2) transportation network companies that are required by state law to request the information in connection with employment as a transportation network company driver;[36] and (3) prospective employers of police or peace officers.[37]

In addition, the New York State Human Rights Law ("NYSHRL") was previously amended so that it is an unlawful discriminatory practice for an employer to inquire about a conviction that is sealed pursuant to the Act unless, among other exceptions, the inquiry is required pursuant to CPL § 160.57(d)(viii), for individuals or entities that are required to obtain this information in connection with the employment of individuals who are responsible for the well-being and safety of children, adolescents, the elderly, individuals with disabilities, or other vulnerable groups.[38] The NYSHRL also prohibits adverse actions against an individual with a conviction that is sealed pursuant to the Act.[39]

1. N.Y. Lab. Law § 652(1-a); 12 N.Y.C.R.R. § 142-2.1.
2. *Id.*
3. *Id.*
4. N.Y. Lab. Law § 651(5).
5. N.Y. Pub. Health Law § 3614-f(c)(i).
6. Id. § 3614-f(c)(ii).
7. A "service employee" is defined in 12 N.Y.C.R.R. § 146-3.3(a).
8. 12 N.Y.C.R.R. § 146-1.3(a)(1).
9. *Id.*
10. A "food service worker" is defined in 12 N.Y.C.R.R. § 146-3.4(a).
11. *Id.* § 146-1.3(b).
12. *Id.*
13. 12 N.Y.C.R.R. § 146-1.9(a)(1)(i).
14. *Id.* § 146-1.9(a)(1)(ii).
15. 12 N.Y.C.R.R. § 142-2.1.
16. *Id.*
17. N.Y. Lab. Law § 196-b(4-a).
18. *Id.*
19. N.Y. Const. art. I, § 11.
20. *Id. See also* Brad Hoylman-Sigal, *Proposal 1: Equal Rights Amendment* (Sept. 10, 2024), https://www.nysenate.gov/newsroom/articles/2024/brad-hoylman-sigal/proposal-1-equal-rights-amendment.
21. N.Y. Lab. Law § 27-e(2).
22. *Id.*
23. *Id.*
24. *Id.* § 27-e(5).
25. *See* N.Y. Workers' Comp. Law § 10(3)(b).
26. *See* 2024 N.Y. Laws Chap. 546.
27. *Id.*
28. *See* N.Y. Crim. Proc. Law § 160.57. *See also Governor Hochul Expands Economic Opportunity for New Yorkers, Protects Public Safety by Signing the Clean Slate Act* (Nov. 16, 2023), https://www.governor.ny.gov/news/governor-hochul-expands-economic-opportunity-new-yorkers-protects-public-safety-signing-clean.
29. *See id.* § 160.57(1)(b)(i).
30. *Id.* § 160.57(1)(b)(ii).
31. *Id.* § 160.57(2)(a)-(b).
32. *Id.* § 160.57(2)(b).
33. *Id.* § 160.57(1)(b)(v)-(vi).
34. Id. § 160.57(1)(b)(iii)-(iv).
35. *Id.* § 160.57(1)(d)(viii).
36. *Id.* § 160.57(1)(d)(xv). *See also* N.Y. Veh. & Traf. Law § 1699.
37. *Id.* § 160.57(1)(d)(ix).
38. N.Y. Exec. Law § 296(16). *See also* N.Y. Crim. Proc. Law § 160.57(d)(viii).
39. *Id.*

Sharon N. Berlin is a Member of Keane & Beane, P.C., where she represents management in public and private sector labor and employment matters and serves as general counsel to school districts and private schools. She can be reached at sberline@kblaw.com.

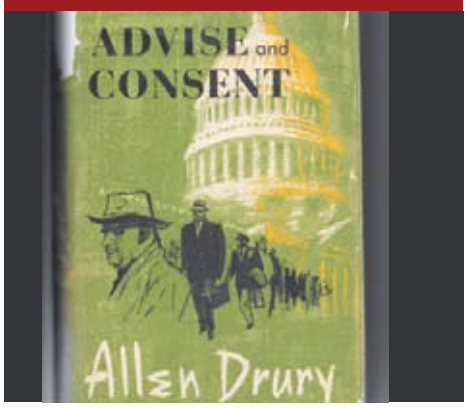
Richard K. Zuckerman is a Member of Keane & Beane, P.C., where he represents management in all public and private sector labor and employment law areas. He can be reached at rzuckerman@kblaw.com.

Adam S. Ross is a Member of Keane & Beane, P.C., with extensive experience in education law, labor and employment law, municipal law and litigation. He can be reached at aross@kblaw.com.

Alyssa L. Zuckerman is a Member of Keane & Beane, P.C., where she represents employers in both the public and private sectors in labor, employment and education law matters. She can be reached at azuckerman@kblaw.com.

Gianna L. Gualtieri is an Associate of Keane & Beane, P.C., where she practices in the Firm's Education Law, Labor Relations & Employment Law and Litigation & Alternative Dispute Resolution practice groups. She can be reached at ggualtieri@kblaw.com.

FOCUS: LAW AND AMERICAN CULTURE



Personalities, Peccadillos and Polemics on the Potomac

Rudy Carmenaty

With President Trump's cabinet picks up for confirmation, it is a good time to revisit the multimedia sensation that was *Advise and Consent*. Allen Drury's best-selling novel provides a vivid depiction of life on Capitol Hill. Not long after its publication, the book was adapted for Broadway and became a hit film by Otto Preminger.

In 1959, Drury, a correspondent for the *New York Times*, garnered the nation's attention with his fictional account of the inner workings of Washington. He had spent more than a decade covering the capital during the presidencies of Franklin Roosevelt, Harry Truman and Dwight Eisenhower.

Snagging a Pulitzer Prize for his labors, Drury illustrated in the pages of *Advise and Consent* the countless machinations that take place during the confirmation process. More than anything, readers got the impression that intramural feuds and personal failings dictate the tenor of the senate's business.

The basic outline of the tale told, in its many incarnations, is of an ailing president, wishing to secure his achievements in foreign affairs, appointing a controversial, left-wing intellectual as his secretary of state. The prospective nominee is soon under fire from both sides of the aisle.

Drury, a Cold War conservative, was not writing a roman à clef. The novel is a thinly veiled, hard-hitting critique of the prevailing liberal establishment's foreign policy. The author goes to great lengths to scold the Democrats for being far too accommodating to the Soviets.

Contemporary audiences certainly surmised which side of the ideological divide the author favored. Indeed, readers at the time engaged in a parlor game of sorts speculating which real-life politicians were mirrored in the figures inhabiting Drury's story.

The ailing President resembles Franklin Roosevelt. Another character is a sure ringer for John F. Kennedy during his senate days. Majority leader Munson could have been drawn from Lyndon Johnson. Shades of Joe McCarthy, Alger Hiss and Whittaker Chambers can be found among the personalities portrayed.

Tennessee Senator Kenneth McKellar was the likely inspiration for South Carolina Senator Seab Cooley. McKellar and David E. Lilienthal, who headed the Tennessee Valley Authority and the Atomic Energy Commission, were enemies as much as Cooley and the president's designee, Robert A. Leffingwell, are in the book.[1]

The story arc involving Utah Senator Brig Anderson, who commits suicide under threat of having a past homosexual liaison revealed by his political nemeses, is evocative of the story of Wyoming Senator Lester Hunt. Anderson, like his real-life counterpart, kills himself in his senate office rather than risk exposure.

What precipitated Hunt's self-inflicted demise was blackmail, pure and simple. Two of his senate colleagues were pressuring him to resign or they would make public that Hunt's son has been convicted on a morals charge for soliciting sex with a man.[2] Drury, who never married, writes of Anderson's dilemma with considerable empathy.

Washington, D.C. is an excessively cosmopolitan place these days. Back when, it had something of the feel of an insulated company town. Political squabbling was the order of the day, but politicians were on more intimate terms with one another after hours.

Drury, with all his purple prose, offers a gritty portrait of American governance. Far from the hallowed halls or marble statues, Drury renders the political class as "very human people," who are "subject to the ills and uncertainties of human flesh as all the rest of us."[3]

Drury provided those of us removed from the corridors of power a rare glimpse of back-stage Washington. "This was how their government worked," Drury wryly noted, "it had great strengths and great weaknesses, and that although the weaknesses sometimes seemed to predominate the strengths usually won out."[4]

This all has little to do with the procedures outlined by the Founding Fathers. Senate confirmations are not opportunities for elevated discussions of public policy. Instead, they are raw exercises in political clout emanating from both ends of Pennsylvania Avenue.

The elements that remain unchanged since 1787 are the actual

powers and prerogatives apportioned under the Constitution. The President is granted the authority to appoint ambassadorial, judicial, or executive officers, only with the advise and consent of the Senate.[5]

The President has the plenary power to nominate. The Senate has the plenary power to approve or reject the nominee. The Senate, under our system of checks and balances, has the final say on the composition of the president's cabinet.

In the case of Robert A. Leffingwell, nominated to be Secretary of State in *Advise and Consent*, the passions aroused by his appointment are at a fever pitch. It is the carrying out of this constitutional responsibility by the senators that gives the material its enduring resonance.

Drury's narrative was adapted for the stage by Loring Mandel and directed by Franklin J. Schaffner.[6] The play ran for 212 performances at the Cort Theatre, from November of 1960, on the heels of JFK's election, to May 1961 as his cabinet was in place.[7]

Because of contractual stipulations, the film version had to wait until June 1962 to be released in movie houses. This delay was the result of Preminger being sued by Mandel and Drury because the road company of the stage play was still touring, thus pushing back the premiere.[8]

The finished product, now retitled *Advise & Consent*, is wholly a reflection of the views of director/producer Preminger and screenwriter Wendell Mayes. The filmmakers transform Drury's conservative tome into a middle-of-the-road political drama wherein all partisan labels go unmentioned.

The book and the film are different in tone, in treatment, and in storytelling. Preminger used Drury's text as a starting point, having bought the rights to the material outright. Preminger "eliminated everything in the book [he] considered reactionary."[9]

Drury, for his part, "hated the picture."[10] Preminger, a liberal Democrat, was known for acting like an autocrat on his filmsets, with a well-deserved reputation for abusing his actors. The irony was not lost on him: "This is the first time a movie about the democratic process has been made by an absolute dictator."[11]

Preminger was an independent filmmaker who worked outside the studio system. He insisted his films be exhibited as he, and he alone, intended. He even went to court when his film *Anatomy of a Murder* was shown on television.[12] Preminger objected to the commercial breaks.

On *Advise & Consent*, Preminger had final cut. This meant he secured the contractual right with Columbia, the film's distributor, to determine the final edited version of the finished motion picture when it was shown to the movie going public.

In Preminger's version, the President nominates Leffingwell who runs afoul of a senate subcommittee chaired by Senator Anderson. Senator Cooley gets a low-level, mentally unstable bureaucrat named Gellman to accuse Leffingwell of being a communist. The charge alone is sufficient to disqualify the nominee.

Leffingwell manages to discredit Gelman's testimony at the hearing. The truth is that both were members of a communist cell years earlier. The ever-manipulative Cooley unearths Leffingwell's deception. Anderson learns the truth and demands the President withdraw Leffingwell's appointment. The President refuses.

Another Senator named Van Ackerman—having discovered Anderson had a gay relationship while serving in the military—threatens Anderson if he doesn't allow Leffingwell's nomination to go forward. This gay subplot has in the years since given *Advise & Consent* a certain historical cachet.

Advise & Consent dealt explicitly with homosexuality in an age when the subject matter was not yet permitted under the MPAA Production Code.[13] Preminger explored the issue to a greater degree in the film than Drury did in the novel. Drury may have been closeted, but Preminger was iconoclastic.

When Anderson flies to New York to confront his former lover, the film became first to have a gay bar as a setting. The scene that takes place at Club 602, tame by today's standards, was quite an eye-opener in 1962. Don Murray took a risk with his career playing Anderson; many actors refused the part for this very reason.[14]

There is some debate as to whether Anderson is so repelled by what he sees at Club 602 that he is driven to suicide.[15] Another interpretation is that he is so attracted to gay life that he acknowledges something profound within himself, something which he can't live with, despite marrying and having a child.[16]

However Anderson's actions are interpreted, this element of the film remains a hotly debated cinematic milestone touching upon Hollywood's portrayal of LGBT characters. Today, with openly gay members of Congress serving, this aspect of the film appears somewhat out-of-date.

In 1965 Preminger refused to have the film shown on broadcast television. CBS insisted the gay bar scene be cut when the film aired on the network. Preminger stood firm and his principled stand, an affirmation of his artistic vision and an exercise of his legal rights, cost him $250,000 in licensing fees.[17]

After Anderson's suicide and the recriminations which follow, Leffingwell's nomination is brought to the senate floor. In the novel, the nomination is soundly defeated. I won't spoil for you the outcome of the vote taken in the movie. That being said, the final resolution is the product of Preminger's fertile imagination.

And it can't be called a typical Hollywood ending. Yet it is a fitting climax to the story the director sought to unfold. In Preminger's telling, "the Senate itself—our remarkable system of Checks and balances," is "the hero" of the tale. See for yourselves, *Advise & Consent* is available for free on YouTube.[18]

Preminger's cast and crew were granted unprecedented access during production. Able to film on the Capitol grounds, nothing was off-limits except for the Senate chamber which had to be recreated on the backlot in Hollywood. Sets from Frank Capra's 1939 classic *Mr. Smith Goes to Washington* were reassembled for those scenes.[19]

The Russell Office building is prominently featured, this is where the Army/McCarthy and later the Watergate hearings were held. If that were not authentic enough, former Iowa Senator Guy Gillette, current Washington Senator Scoop Jackson, congressional staff, and members of the press corps were all used as extras.[20]

Some inspired casting can be found in the hiring of Peter Lawford to play a roving playboy senator from Rhode Island. Lawford's brother-in-law was President Kennedy. Lawford almost secured for Preminger access to the White House, but the arrangement fell through at the last minute.

It seemed that Hollywood and Washington were smitten with one another. They basked in and were awed by each other's star power. Because of all of the commotion, the Senate afterwards adopted a rule it would "restrict filming and prohibit commercial use of Senate spaces unless authorized by a resolution."[21]

Location work for *Advise & Consent* occurred during the early days of JFK's New Frontier. This salient timing speaks volumes about the intersection of movies and politics. Gene Tierney, who returns to the screen after an absence of many years, had starred for Preminger in the legendary film noir *Laura* in 1944.

Around that time, she was involved with a young Navy lieutenant named John Kennedy. In the movie she plays a Washington hostess having a back-alley love affair with the Senate majority leader, a case of Hollywood replicating life. In reality, Ms. Tierny was a Republican who supported Richard Nixon in the 1960 election.

Nixon was offered a part, but he wisely turned it down. And Dr. Martin Luther King, Jr. was purportedly set to play a senator from Georgia in the film. The casting, with $5000 to be contributed to King's civil rights organization, was more the product of a misunderstanding than anything concrete.[22]

Preminger, throughout his career, championed free expression on and off screen. *Advise & Consent* proved to be no exception. Prospective censors chimed in, and the knives came out, with the film's release. As Life magazine reported: "Preminger had all Washington at his feet when filming; now he has a good part of Washington at his throat."[23]

Idaho Senator Henry Dworshak thought the movie "painted an evil picture of America."[24] Ohio Senator Stephen Young was so agitated, he wanted legislation to prohibit the film from being seen abroad.[25] Preminger went so far as to take a print to Paris if in fact Congress tried to suppress the film.[26]

Perhaps the most sanguine observation came from South Dakota's Karl Mundt. As Senator Mundt saw it, *Advise & Consent* "is fictionalized entertainment with a touch of reality, while the United States Senate is a lot of reality with a touch of entertainment."[27]

The final word on the subject, however, rightfully belongs to Preminger. "I feel that our weapon is truth", he stated, adding that "showing America as it is… not hiding our problems, not hiding our criticism of our own institutions, will make it clear to foreign countries, to people all over the world, that we have freedom of expression."[28]

Therein lies the real value of Drury's *Advise and Consent* as well as Preminger's *Advise & Consent*. Whether from the right or the left, it is the birthright of every American to be able to air his views freely, whether they be on the senate floor or on the movie screen. Long live the U.S. Constitution.

1. Ray Hill, *Senator McKellar and the TVA*, Knoxville Focus at https://www.knoxfocus.com.
2. Marc C. Johnson, *The Shocking Death of Senator Lester Hunt*, The Blue Review (June 20, 2016) at https://www.boisestate.edu.
3. Ivan Maisel, *What We Can Learn from 'Advise and Consent'*, Stanford Magazine (December 2021) at https://stanfprdmag.org.
4. *Id.*
5. Article II, Section II, the Advise and Consent Clause: *He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.*
6. IBDB, *Advise and Consent – Broadway play – Original*, at https://www.ibdb.com.
7. *Id.*
8. Paul Fujiwara, *The World and it's Double*, (1st ed. 2008), 357.
9. Foster Hirsh, *The Man Who Would be King*, (1st ed. 2007) 281.
10. *Id.*
11. *Id.* 354.
12. See *Preminger v Columbia Pictures*, 267 N.Y.S.2d 594 (N.Y. Sup. Ct. 1966).
13. See Fujiwara, 284.
14. Hirsh, 351.
15. *Id.* s 282.
16. *Id.* 283.
17. *Id.* 363.
18. See *Advise and Consent 1962* at www.youtube.com.
19. Senate Historical Office, *Senate Stories/ Hollywood on the Hill: The Filming of "Advise and Consent"* U.S. Senate (October 5, 2021) at https://www.semnate.gov.
20. *Id.*
21. *Id.*
22. David W. Dunlap, *Starring Martin Luther King Jr. (and Henry Fonda)*, New York Times (January 18, 2016) at https://www.nytimes.com.
23. Hirsh, 358.
24. *Id.*
25. Fujiwara, 289.
26. Hirsh, 358.
27. *Id.* 359.
28. Gerald Pratley, *The Cinema of Otto Preminger*, (1st ed. 1971) 138.

Rudy Carmenaty is Deputy Commissioner of the Nassau County Department of Social Services. He is the President-Elect of the Long Island Hispanic Bar Association. Rudy can be reached at Rudolph.Carmenaty@hhsnassaucountyny.us.

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

DONOR	ON A SPEEDY RECOVERY
DiMascio & Associates	Kenneth Weinstein
Frank and Joanne Gulotta	Stephen Gassman

DONOR	IN MEMORY OF
Dorothy Baker	Robert E. Baumann, Jr.
Helen Hughes	Robert E. Baumann, Jr.
A. Thomas Levin	Eugene Ginsberg
Gregory S. Lisi	Eugene Ginsberg
Hon. Marie McCormack and Faith Getz Rousso	Jeff Yusko, brother-in-law of Debra Keller Leimbach
Hon. Denise L. Sher	Pastor Novella Harris, mother of Hon. Darlene D. Harris
Elise Wolf	Virgina Lee Oliver

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.

Forchelli Deegan Terrana LLP (FDT) is pleased to announce that Partner **Elbert F. Nasis**, Co-Chair of the firm's Litigation practice group, was unanimously elected to the Board of the Long Island Metro Business Action. FDT welcomes **Jad S. Sayage** to the firm's Real Estate practice group as an Associate.

Following a historic decision by New York State's highest court, personal injury attorney and road safety advocate **Ira Slavit** of Levine & Slavit, PLLC is reminding Uber riders that they cannot sue the company for personal injuries they suffered during the ride, but rather, they must submit their claims to an arbitrator.

Hansen & Rosasco LLP Founding Partner **Troy Rosasco** has been selected as member of the 2024 New York Metro Super Lawyers list, his tenth year being selected for the list.

Rivkin Radler is proud to announce that **Elizabeth Sy** was named to the *Long Island Business News* 40 Under 40 list. She was recognized at an awards ceremony on December 10 at the Crest Hollow Country Club. The 40 Under 40 awards recognize Long Island's leaders who are younger than 40 years old based on their professional accomplishments, community service, and commitment to inspiring change.

WE CARE Thanksgiving Luncheon

On Thanksgiving Day, the WE CARE Fund hosted its annual Senior Luncheon, bringing warmth, community, and a hot meal to seniors across Nassau County. Designed for those who might otherwise spend the holiday alone, the luncheon featured a traditional Thanksgiving feast provided by the Bar's in-house caterer, Taki Mattheos. Adding to the festive atmosphere, DJ Tim Aldridge filled the room with music, ensuring smiles and joyful moments for everyone in attendance. This year's event was made possible by an extraordinary team of volunteers, guided by WE CARE Thanksgiving Committee Chair Hon. Andrea Phoenix.

Photos by Hector Herrera

NCBA Committee Chair Networking

On November 21, Domus hosted the NCBA Committee Chair Networking Cocktail reception that brought together committee chairs and esteemed Corporate Partners to foster connections and collaborations. Corporate Partners Joseph Valerio (Abstracts, Incorporated), Raj Wakhale (LexisNexis), Leigh Pollet (Pollet Associates, ltd.), and Jeffrey Mercado and Monica J. Vazquez (Webster Bank) were in attendance. Thank you to NCBA Past President Gregory Lisi of Forchelli Deegan Terrana LLP for sponsoring the reception.

Photos by Hector Herrera

NCBA Annual Holiday Celebration

On December 5, the NCBA celebrated its cherished holiday traditions at Domus. NCBA President-Elect James Joseph shared his "real" Tale of Wassail; NCBA Past Presidents prepared the Wassail bowl; and Ingrid Villagran, Adina Phillips, Rasheim Donaldson and Hector Herrera served this year's log carriers. A heartfelt thank you to all attendees who made the evening festive and warm.

Photos by Hector Herrera

THE NCBA LAWYER ASSISTANCE PROGRAM ALONG WITH THE NASSAU ACADEMY OF LAW ARE EXCITED TO ANNOUNCE THIS WEEKLY ADHD SKILLS MANAGEMENT WORKSHOP

DEAN'S HOUR: ADHD EDUCATION MANAGEMENT SKILLS—UNDERSTANDING AND WORKING WITH THE ADHD BRAIN

ADHD IS A DEVELOPMENTAL IMPAIRMENT OF THE BRAIN'S ABILITY TO MANAGE ITSELF. ADHD AFFECTS APPROXIMATELY 4.4% OF ADULTS IN THE UNITED STATES AND THAT NUMBER ALMOST TRIPLES AMONG ATTORNEYS AT 12.5%.

LAP LAWYER ASSISTANCE PROGRAM

THURSDAYS | 12:30 PM—1:30 PM

JANUARY 9
JANUARY 16
JANUARY 23
JANUARY 30
FEBRUARY 6
FEBRUARY 13
FEBRUARY 20

1.0 CLE CREDIT IN ETHICS WILL BE GIVEN TO EACH PART OF THIS SERIES ATTENDED. PARTICIPANTS WHO ATTEND ALL SEVEN WORKSHOPS WILL RECEIVE A SPECIAL CERTIFICATE OF COMPLETION.

NCBA MEMBER FREE; NON-MEMBER $35 ACADEMY@NASSAUBAR.ORG

NASSAU COUNTY BAR ASSOCIATION Founded 1899

SAVE THE DATE

ANNUAL DINNER GALA

SATURDAY
MAY 10, 2025

HON. JOHN GLEESON, RET.
DISTINGUISHED SERVICE MEDALLION

THE CRADLE OF AVIATION MUSEUM

Happy New Year!

Get a head start on a healthy, strong 2025 with these LAP Wellness Programs:

- ADHD Management Skills—A 6-Part Dean's Hour CLE Workshop
- ADHD Support Groups
- Weekly Sharing Balance Support Group to promote lawyer well-being
- Monthly Wellness Programs

ADHD Management Skills—A 6-Part (plus Introduction) Dean's Hour CLE Workshop

In collaboration with the Nassau Academy of Law, this CLE workshop was developed to be taken as a whole program. Participants who attend all seven workshops will receive a certificate of completion. Each one-hour session will focus on a different skill and provide takeaways and practical skills to help attendees manage their ADHD symptoms.

The weekly workshops are held on Thursdays from 12:30pm to 1:30pm.

- January 9—Introduction to ADHD
- January 16—Part 1
- January 23—Part 2
- January 30—Part 3
- February 6—Part 4
- February 13—Part 5
- February 20—Part 6

Sharing Balance—An Ongoing Virtual Support Group

Do you struggle to maintain work/life balance? Join the conversation in our weekly support group on Tuesdays from 1:00pm to 1:45pm (via Zoom). Complete our brief, one-time registration form at https://bit.ly/LAPSupportGroupReg.

ADHD Support Group Series—COMING THIS SPRING

This group will meet every other Thursday at 12:00pm on Zoom (schedule TBA). These will be drop-in meetings, no registration required, no cost to attend, and all are welcome.

For more information about any of our programs, contact Dian Mills O'Reilly at doreilly@nassaubar.org or Beth Eckhardt at eeckhardt@nassaubar.org.

CALENDAR | COMMITTEE MEETINGS

COMMITTEE CHAIRS

Access to Justice	Hon. Maxine Broderick and Rezwanul Islam
Alternative Dispute Resolution	Ross J. Kartez
Animal Law	Harold M. Somer and Michele R. Olsen
Appellate Practice	Amy E. Abbandondelo and Melissa A. Danowski
Asian American Attorney Section	Jennifer L. Koo
Association Membership	Adina L. Phillips and Ira S. Slavit
Awards	Sanford Strenger
Bankruptcy Law	Gerard R. Luckman
Business Law Tax and Accounting	Raymond J. Averna
By-Laws	Deanne M. Caputo
Civil Rights	Patricia M. Pastor
Commercial Litigation	Christopher J. Clarke and Danielle Gatto
Committee Board Liaison	James P. Joseph
Community Relations & Public Education	Ingrid J. Villagran and Melissa A. Danowski
Conciliation	Salvatore A. Lecci
Condemnation Law & Tax Certiorari	Robert L. Renda
Construction Law	Adam L. Browser
Criminal Court Law & Procedure	Christopher M. Casa and Amanda A. Vitale
Cyber Law	Thomas J. Foley and Nicholas G. Himonidis
Defendant's Personal Injury	Jon E. Newman
District Court	Bradley D. Schnur
Diversity & Inclusion	Sherwin Safir
Education Law	Liza K. Blaszcyk and Douglas E. Libby
Elder Law, Social Services & Health Advocacy	Lisa R. Valente and Christina Lamm
Environmental Law	John L. Parker
Ethics	Mitchell T. Borkowsky
Family Court Law, Procedure and Adoption	Tanya Mir
Federal Courts	Michael Amato
General, Solo & Small Law Practice Management	Jerome A. Scharoff
Grievance	Robert S. Grossman and Omid Zareh
Government Relations	Michael H. Sahn
Hospital & Health Law	Kevin P. Mulry
House (Domus)	Steven V. Dalton
Immigration Law	Pallvi Babbar
In-House Counsel	
Insurance Law	Michael D. Brown
Intellectual Property	Sara M. Dorchak
Judicial Section	Hon. Gary F. Knobel
Judiciary	Dorian R. Glover
Labor & Employment Law	Marcus Monteiro
Law Student	Bridget M. Ryan and Emma P. Henry
Lawyer Referral	Gregory S. Lisi
Lawyer Assistance Program	Daniel Strecker
Legal Administrators	
LGBTQ	Jess A. Bunshaft
Matrimonial Law	Karen L. Bodner
Medical Legal	Bruce M. Cohn
Mental Health Law	Jamie A. Rosen
Municipal Law and Land Use	Elisabetta Coschignano
New Lawyers	Byron Chou and Michael A. Berger
Nominating	Rosalia Baiamonte
Paralegal	
Plaintiff's Personal Injury	Giulia R. Marino
Publications	Cynthia A. Augello
Real Property Law	Suzanne Player
Senior Attorneys	Stanley P. Amelkin
Sports, Entertainment & Media Law	Ross L. Schiller
Supreme Court	Steven Cohn
Surrogate's Court Estates & Trusts	Michael Calcagni and Edward D. Baker
Veterans & Military	Gary Port
Women In the Law	Melissa P. Corrado and Ariel E. Ronneburger
Workers' Compensation	Craig J. Tortora and Justin B. Lieberman

WEDNESDAY, JANUARY 8

Asian American Attorney Section
12:30 p.m.

Real Property Law
12:30 p.m.

Matrimonial Law
5:30 p.m.

THURSDAY, JANUARY 9

Commercial Litigation
12:30 p.m.

Publications
12:45 p.m.

Community Relations & Public Education
12:45 p.m.

WEDNESDAY, JANUARY 15

Business Law, Tax & Accounting
12:30p.m.

Ethics
5:30 p.m.

Insurance Law
6:00 p.m.

Law Student
6:00 p.m.

THURSDAY, JANUARY 16

Hospital & Health Law
8:30 a.m.

Association Membership
12:30 p.m.

Workers' Compensation
5:30 p.m.

TUESDAY, JANUARY 21

Plaintiff's Personal Injury
12:30 p.m.

Surrogate's Court Estates & Trusts
5:30 p.m.

WEDNESDAY, JANUARY 22

General, Solo & Small Law Practice Management
12:30 p.m.

THURSDAY, JANUARY 23

Education Law
12:30 p.m.

Intellectual Property
12:30 p.m.

Lawyer Assistance Program
12:30 p.m.

FRIDAY, JANUARY 31

Appellate Practice
12:30 p.m.

TUESDAY, FEBRUARY 4

Women in the Law
12:30 p.m.

WEDNESDAY, FEBRUARY 5

Asian American Section
12:30 p.m.

Real Property Law
12:30 p.m.

Law Student
6:00 p.m.

THURSDAY, FEBRUARY 6

Commercial Litigation
12:30 p.m.

Publications
12:45 p.m.

Community Relations & Public Education
12:45 p.m.

Civil Rights
5:30 p.m.

New Members

Aneth Valeria Caicedo Esq.
Brandon Dayan Esq.
Ashley Alexandra Fischer Esq.
Liliana Lissett Martinez Esq.
Joseph H. Mizrahi Esq.
Leisa Ruth Rockelein Esq.
Lior Roth Esq.

LAW STUDENTS
Lorrie DellaCroce
Sarah Abraam Gerges
Corvasse Lumar Hudson
Sarina Kushmakova
Michelle Mullin
Shi'Ann A. Ottley-Cleveland
Anna Pinos
Jack D. Prochner
Val Tooma

NCBA 2024-2025 Corporate Partners

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

ABSTRACTS, INCORPORATED™
COMMERCIAL & RESIDENTIAL TITLE INSURANCE SINCE 1964
100 Garden City Plaza Suite 201, Garden City, NY 11530
123 Maple Avenue, Riverhead, NY 11901


Thomas Turano
(516) 683-1000 ext. 218
tturano@abstractsinc.com


Sal Turano
(516) 683-1000 ext. 223
sturano@abstractsinc.com


Joseph Valerio
(516) 683-1000 ext. 248
jvalerio@abstractsinc.com

www.abstractsinc.com

COMPLETEADVISORS

181 South Franklin Avenue
Suite 303
Valley Stream, NY 11581

Evan M. Levine
Founding Partner
Head of Valuation Engagements and Advisory

t : 516.231.2977
c : 917.696.0674
e : Evan@completeadvisors.com

LexisNexis® | Legal & Professional

Raj Wakhale
Territory Manager

raj.wakhale@lexisnexis.com
631.827.9661 Direct
800.543.6862 Customer Service

LexisNexis
19 Blair Drive
Huntington 11743

lexisnexis.com

JOHN MCGORTY
Executive Vice President
of Business Development

212-719-0990
212-624-9983
www.phpny.com
jmcgorty@phpny.com
10 East 39th Street, 7th Floor, New York, NY 10016

PHP

POLLET ASSOCIATES, ltd.
professional real estate appraisers & land use consultants since 1980

Leigh Pollet, MA, MNAA, CSA-R
Principal

p: 516.476.3185
email: appraze111@gmail.com
website: www.polletassociates.com

Covering Metropolitan New York from Montauk - Westchester

Realtime Reporting, Inc.
National Court Reporting Services


Ellen Birch, Founder and CEO

26 Railroad Avenue, Suite 346
Babylon, NY 11702
626 RXR Plaza
Uniondale, NY 11556
O: 516.938.4000 | 800.373.7172
C: 516.356.4512
24/7
ebirch@realtimereporting.com
realtimereporting.com

TITAN AGENCY

Titan Agency
Michael Schiller
Property & Casualty Insurance
Professionals Businesses Individuals

Office: 201-210-9775
Cell: 973-280-1177
michael@titanagency.com
www.titanagency.com

vdiscovery

MICHAEL WRIGHT
Senior Vice President
michaelw@vdiscovery.com

(Direct) 212.220.6190
(Mobile) 917.681.6836
(Main) 212.220.6111

10 East 39th Street, 6th Floor
New York, NY 10016
https://vdiscovery.com/

vdiscovery is a Manhattan-based provider of proprietary and best-in-breed solutions in computer forensics, document review, and electronic discovery, bringing deep expertise, efficient solutions, and an exceptional client experience to corporations and law firms.

WebsterBank®

Proud supporter of Nassau County Bar Association and WE CARE FUND


Jeff Mercado
212.575.2887
jemercado@websterbank.com


Monica Vazquez
212.309.7649
mvazquez@websterbank.com

NCBA Corporate Partner Spotlight

IT Group
Technology Consulting

Managed service provider and full service IT company

ADAM SCHULTZ
Partner
631-358-5030
adam@itgroup-ny.com

KEN HALE
Partner
631-358-5030
ken@itgroup-ny.com

IT Group New York partners with its clients to ensure they're getting the most out of their technology. IT Group New York goes beyond just scheduled maintenance and emergency repairs and offers a full analysis of your tech environment. From hardware options to your online presence, IT Group New York ensures your company is streamlined, efficient, and making money.

LAWYER TO LAWYER

CONSTRUCTION LAW

THE LAW OFFICES OF
JOHN CARAVELLA, P.C.
A CONSTRUCTION LITIGATION AND ARBITRATION FIRM

Member FL and NY Bars; Assoc. AIA

John Caravella, Esq.
Email: John@LIConstructionLaw.com
Website: www.LIConstructionLaw.com

Nassau Office
626 RexCorp Plaza
(6th Floor West Tower)
Uniondale, NY 11556
Tel.: (516) 462-7051
Fax: (888) 475-5162

Suffolk Office
68 South Service Road
(Suite 100)
Melville, NY 11747
Tel.: (631) 608-1346
Fax: (888) 475-5162

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 | arbmail@costellalaw.com

PERSONAL INJURY

LEVINE & SLAVIT PLLC

IRA S. SLAVIT, ESQ.

Past-Chair of NCBA Plaintiff's Personal Injury Committee

350 Willis Avenue Mineola, NY 11501
516.294.8282

60 E. 42nd St., Suite 2101 New York, NY 10165
212.687.2777

islavit@newyorkinjuries.com

Fee division in accordance with Rule 1.5(g) of the Rules of Professional Conduct

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**

MARSHAL/CITY OF NEW YORK

Charles Kemp
Marshal #20
City of New York
254-10 Northern Blvd
Little Neck, NY 11362
www.nycmarshal.com

T: 718.224.3434
F: 718.224.3912

Judgment Enforcement
Landlord Tenant
Asset Seizures

GRIEVANCE AND DISCIPLINARY DEFENSE

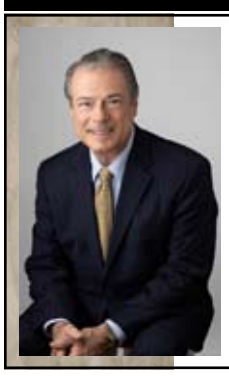
Law Offices of Mitchell T. Borkowsky

Former Chief Counsel 10th Judicial District Grievance Committee
30 Years of Experience in the Disciplinary Field
Member Ethics Committees - Nassau Bar (Chair), Suffolk Bar

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

516.855.3777 • mitch@myethicslawyer.com • myethicslawyer.com

REAL ESTATE



Assisting Attorneys And Their Clients In The Selling And Buying Process

"The Attorney's Realtor"
Anthony Calvacca
Lic. Assoc. R. E. Broker
O 516.681.2600 | M 516.480.4248
anthony.calvacca@elliman.com

DouglasElliman elliman.com

110 WALT WHITMAN ROAD, HUNTINGTON STATION, NY 11746. 631.549.7401.
© 2024 DOUGLAS ELLIMAN REAL ESTATE. EQUAL HOUSING OPPORTUNITY.

LAWYER REFERRALS

JOIN THE LAWYER REFERRAL SERVICE INFORMATION PANEL

The Nassau County Bar Association Lawyer Referral Information Service (LRIS) is an effective means of introducing people with legal problems to attorneys experienced in the area of law in which they need assistance. In addition, potential new clients are introduced to members of the Service Panel. Membership on the Panel is open exclusively as a benefit to active members of the Nassau County Bar Association.

LRIS Nassau County Bar Association

(516) 747-4070
info@nassaubar.org
www.nassaubar.org

LEGAL WRITING

JONATHAN C. MESSINA, ESQ.
ATTORNEY AND COUNSELOR AT LAW
Do you need assistance with your legal writing projects?
Available for New York motions, briefs, pleadings, and other legal research and writing endeavors.
Reasonable rates.
Call for a free initial discussion.
68 Summer Lane
Hicksville, New York 11801
516-729-3439 **jcmlegalrw@gmail.com**

NCBA MEMBER BENEFIT

The Bristal
ASSISTED LIVING
We see you here

Independent Living | Assisted Living | Memory Care

For more information about member discounts contact Kerri Winans Kaley at kwkaley@thebristal.com

thebristal.com

HEALTHCARE LAW

Advising hospitals, group practices, skilled nursing facilities, and specialty pharmacies

corporate transactions | license defense | accreditation | third-party audits | strategic plans, compliance, and regulatory analysis

Frank A. Mazzagatti, Ph.D., Esq.
212.471.6203 | fmazzagatti@hinshawlaw.com

HINSHAW | hinshawlaw.com

Contact hxu@nassaubar.org for details about Business Card ads.

LOOKING FOR EXPEDITIOUS, TIMESAVING, AND COST-EFFECTIVE SOLUTIONS TO RESOLVE DISPUTES?

LOW-COST MEDIATION AND ARBITRATION THROUGH HIGHLY-SKILLED MEDIATORS AND ARBITRATORS IS AVAILABLE THROUGH THE NCBA ADR PROGRAM!

NASSAU COUNTY BAR ASSOCIATION Founded 1899

CONTACT (516) 747-4126 TODAY.