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Hon. Randall T. Eng to Receive Distinguished Service Medallion

The Honorable Randall T. Eng will be presented with the Nassau County Bar Association's Distinguished Service Medallion at its Annual Dinner Gala, to be held on May 9, 2026, at the Cradle of Aviation Museum in Garden City.

This prestigious award, the highest honor bestowed by the NCBA, recognizes individuals of exceptional moral character and integrity whose careers have enhanced the reputation and dignity of the legal profession. First presented in 1939 to U.S. Senator Carter Glass of Virginia, past recipients include U.S. Presidents, Supreme Court Justices, Governors, federal and state legislators and judges, and esteemed members of Nassau County's legal community.

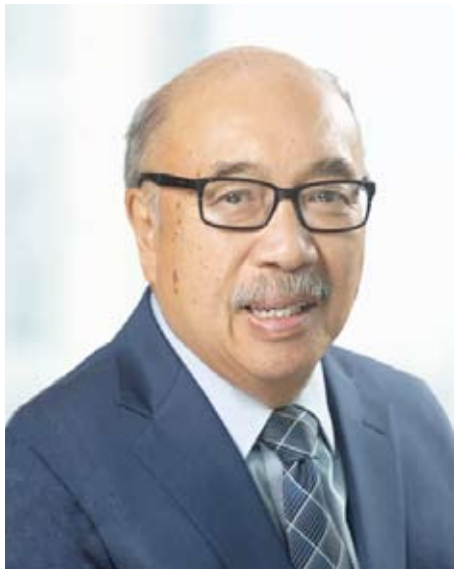
Justice Eng expressed deep appreciation upon learning of the honor, noting the significance of those who have come before him. "I was honored and flattered because of the great company that I'm in," he said. "When I look at your past recipients—what a distinguished group of leaders, legal scholars, practitioners, and public officials—it is a great honor to be among them."

Distinguished Judicial and Legal Career

Justice Eng served as Presiding Justice of the Appellate Division, Second Department, the busiest and largest judicial department in New York State, handling more than 9,000 appeals annually. As Presiding Justice, Justice Eng was responsible for overseeing all departmental operations while continuing to serve as a sitting appellate judge.

Justice Eng's judicial service spanned 34 years. As a trial judge, he presided over hundreds of cases, primarily criminal matters. He later served for a decade in the Appellate Division, including five years as Presiding Justice. Reflecting on that role, Justice Eng emphasized the breadth of responsibility it carried. "As presiding justice, I had responsibility not only for the operation of the court, but for all of the ancillary services that the Appellate Division has responsibility for," he explained, describing the experience as "very rewarding."

Born in Guangzhou, China and raised in New York City, Justice Eng earned his undergraduate degree from the State University of New York at



Buffalo and his Juris Doctor from St. John's University School of Law in 1972. He began his legal career in public service as an Assistant District Attorney in Queens County from 1973 to 1980, becoming the first Asian American appointed as an assistant prosecutor in New York State history. He later served as Deputy Inspector General and Inspector General of the New York City Department of Correction.

In 1983, Mayor Edward I. Koch appointed Justice Eng to the Criminal Court of the City of New York, making him the first Asian American judge in New York State history. He was designated an Acting Justice of the Supreme Court in 1988 and was elected and reelected to full 14-year terms in 1990 and 2004. In 2012, Governor Andrew Cuomo appointed Justice Eng as Presiding Justice of the Appellate Division, Second Department—again marking a historic first as the first Asian American to hold that position in New York State.

Justice Eng has also served as President of the Association of Supreme Court Justices of the City of New York, as a member of the Advisory Committee on Judicial Ethics, and as an adjunct professor at St. John's University School of Law. He currently serves on the Permanent Sentencing Commission for New York State and the New York State Judicial Institute on Professionalism in the Law.

Upon retiring from the bench, in January 2018, Justice Eng joined Meyer, Suozzi, English & Klein, P.C., where he is currently Of Counsel and a member of the firm's Litigation Department, including its Appellate Practice, and serves as a referee, receiver, and arbitrator within the firm's Alternative Dispute Resolution practice. He draws upon decades of judicial and legal experience to provide counsel on complex business, litigation, appellate, and dispute resolution matters.

Leadership, Service, and Diversity

Throughout his career, Justice Eng has been guided by a deep commitment to service—both individual and collaborative. Describing his judicial philosophy, he observed that service can take many forms. "As a trial judge, I was primarily responsible for the work product of my court alone," he said, "and then on the Appellate Division, I had to work in a collegial environment… achieving a consensus with the other judges on the panel."

See HON. RANDALL T. ENG Page 5

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Sound the Alarm

FROM THE PRESIDENT

James P. Joseph

Over the past several weeks here in Nassau County, we have marked moments that remind us who we are as a legal community and what we stand for. In December and January, we gathered to dedicate portraits honoring retired members of our judiciary. This month, our courts also hosted induction ceremonies for newly elected Supreme Court, County Court, and District Court judges, as well as our newly elected Surrogate.

I had the privilege of speaking at several of these events. On behalf of the Bar, I expressed our collective gratitude to First Deputy Chief Administrative Judge Norman St. George, District Administrative Judge Vito DeStefano, and all of the Supervising Judges for including us in these milestone events, for their ongoing support of the Nassau County Bar Association, and for their steadfast commitment to our judges, lawyers, court personnel, and litigants.

One constant throughout the Bar Association's history has been the outstanding working relationship we share with the judiciary of Nassau County—a relationship grounded in mutual respect, collegiality, and a shared commitment to ensuring that the residents of this county are afforded justice with professionalism, dignity, respect, and efficiency. That goal can only be achieved when members of the bench, court personnel, and the bar work together, something that is done exceptionally well in this County.

When new judges in Nassau County who are NCBA members ascend to the bench, the bar provides them with their first judicial robe—a symbol of independence, responsibility, and trust. And when an elected Supreme Court Justice retires, we commission a portrait to hang among the many jurists who came before, a visual reminder that our system is bigger than any one individual and that each generation inherits the responsibility to preserve it.

Those ceremonies are not merely traditions. They are affirmations. They remind us that the Constitution is not an abstraction, but a living set of promises—promises that only endure when the institutions charged with upholding them are respected, protected, and supported.

It is against that backdrop that I have been reflecting deeply on the moment we find ourselves in as lawyers.

In January, I attended the New York State Bar Association Annual Meeting in New York City, where I had the opportunity to hear NYSBA President Kathleen Sweet speak on multiple occasions. I also had the chance to spend time with her when she joined us for the Annual Joint Board Meeting of the Nassau and the Suffolk County Bar Associations. What struck me most was not only the substance of her remarks, but the clarity of her framing.

At the NYSBA Presidential Summit, President Sweet stated: "As lawyers, we have a responsibility to sound the alarm when the rule of law is under attack."

That sentence has stayed with me.

For many of us, this is a deeply uncomfortable space. Bar associations are—and must remain—nonpartisan. Our membership reflects a broad spectrum of political beliefs, and that diversity is a strength. At the same time, lawyers are not merely observers of our constitutional system; we are its daily stewards. The challenge, then, is how to speak in a way that is principled without being political, inclusive without being silent, and respectful without being passive.

What is helping me navigate that tension is focusing not on outcomes or personalities, but on principles.

Across the country, respected voices—including judges, scholars, historians, editorial boards, and bar leaders—have raised concerns about developments that implicate core constitutional norms. Among them are concerns about the politicization of law enforcement; rhetoric that blurs the line between dissent and disorder; threats or pressure directed at lawyers and judges because of the clients they represent or the decisions they render; questions surrounding accountability and checks and balances; and the erosion of long-standing procedural safeguards, including those embedded in the Fourth Amendment.

Reasonable people can disagree—sometimes strongly—about policy. But the rule of law depends on shared commitments that transcend policy preferences: that laws apply equally; that courts remain independent; that lawyers are free to advocate without fear; that warrants are issued by neutral judges; and that extraordinary powers remain constrained by constitutional limits. These are not liberal or conservative values. They are constitutional ones.

One example discussed recently by legal commentators involves the distinction between administrative authority and judicial oversight—particularly in the context of home entry. The Fourth Amendment's protection against unreasonable searches and seizures, and the requirement that warrants be issued by a neutral magistrate, is not a technicality. It is, as the Supreme Court once described, a safeguard against the "chief evil" the Amendment was designed to prevent. One need not take a position on any particular policy area to appreciate why that line matters.

Another recurring theme is the increasing pressure placed on lawyers and judges themselves. Around the world—and, increasingly, in our own public discourse—the intimidation or vilification of legal professionals for doing their jobs has been identified as a warning sign of democratic backsliding. A society in which lawyers fear professional or personal retaliation for representing unpopular clients, or judges are attacked for issuing lawful decisions, is a society in which constitutional guarantees become fragile.

This is why President Sweet's call to "sound the alarm" resonates so deeply. It is not a call to protest or partisanship. It is a call to professional responsibility; to uphold the oath we took to support the Constitution of the United States.

President Sweet shared with us that she carries pocket-sized copies of the Constitution, which she distributes and rereads herself. I have been thinking about that simple act ever since. There is something powerful—and grounding—about returning to the text itself. Not as a slogan or a prop, but as a shared foundation. Reading it reminds us that the document is both durable and delicate; strong enough to endure, yet dependent on the good faith of those entrusted with its care.

So, what is our call to action? I believe it is a modest but meaningful one. First, we should be willing to speak—calmly, respectfully, and clearly—when foundational legal principles are at risk. Silence, in moments that test the rule of law, is not neutrality. It is abdication.

Second, we should recommit ourselves to education and service: supporting pro-bono efforts, legal services organizations, and civic education initiatives that ensure access to justice and public understanding of our courts.

And third, we should model the professionalism we seek to preserve—defending judicial independence, treating disagreement with respect, and remembering that our oath is not to a party or a person, but to the Constitution.

The portraits on our courthouse walls, the robes worn by our judges, and the traditions we honor as a Bar all point to the same truth: the rule of law is not self-executing. It survives because generations of lawyers and judges choose, again and again, to uphold it.

May we be worthy of that trust—and unafraid to sound the alarm when it matters most.

FOCUS: MUNICIPAL LAW

A Legislative Prerogative: The Exercise of Eminent Domain by Municipal Government

Bryan Barnes

The power of eminent domain in its most basic definition is the right to take private property for public use and is "an inherent and unlimited attribute of sovereignty whose exercise may be governed by the legislature within constitutional limitations and by the legislature within its powers delegated to municipalities."[1] This power in New York State has generally been given to the municipal legislative authority, whether it be a town board, or in some cases, an agency granted the statutory authority to make such a determination, such as an Industrial Development Agency.[2] As will be discussed below, the determination of the municipality or municipal agency is usually upheld by the courts. The burden to overturn a determination, usually referred to as a condemnation determination, is confined to whether the determination has no legal basis or foundation, or that there was a failure to comply with statutory procedures.

Governing Law to Review Condemnation Determinations

The law governing the exercise of eminent domain powers through condemnation proceedings is found in Article 2 of the Eminent Domain Procedure Law (EDPL).[3] The primary purpose of Article 2 of the EDPL is to ensure that an appropriate public purpose underlies any condemnation.[4] To achieve this determination, a condemnor is required to hold a public hearing pursuant to EDPL §201, §202 and §203 before it may approve the acquisition.[5] Generally, a two-step process is required under the EDPL before a condemnor obtains title to property for public use. The condemnor first makes a determination to condemn the property after invoking the hearing and findings procedures of EDPL §203 and §204.[6] Thereafter, the condemnor must seek the transfer of title to the property by commencing a judicial proceeding known as a vesting proceeding pursuant to EDPL article 4.[7]

EDPL §204(b) states that the condemnor, when submitting its written determination, must consider: "1) the public use, benefit or purpose to be served by the proposed public project, 2) the approximate location for the proposed public project and the reasons for the selection of that location [and] 3) the general effect of the proposed project on the environment and residents of the locality."[8] This constitutes the general procedure for condemnation and the exercise of the power of eminent domain.

However, while EDPL §204(b) is the generally used procedure for the exercise of eminent domain, there is also an alternative pursuant to EDPL §206(c), which allows for the condemnor to use its own local statute if that local statute provides for notice and public hearings.[9] In *Matter of City of New York (Grand Lafayette Props. LLC)*, New York City used the Uniform Land Use Review Procedure in its condemnation of a 12,500-square-foot lot.[10] It was determined that New York City could use this alternate procedure applying its own local statute because the notice and hearing provisions were similar to the general procedure of EDL §204(b) and thus provided an acceptable equivalent process.[11]

State Environmental Quality Review Act

One of the elements of the condemnation determination under EDPL §204(b) or any statute with an acceptable equivalent procedure, is compliance with Article 8 of the State Environmental Quality Review Act (SEQRA). "The purposes of SEQRA, as stated by the Legislature, are to encourage productive and enjoyable harmony with our environment; 'to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state.'"[12] Compliance with SEQRA usually comes with the issuance of an Environmental Impact Statement (EIS), which is the report issued that the condemning agency must consider as part of its decision making process.[13]

The EIS statement is the document produced as a result of the SEQRA review and the Legislature has been given a significant amount of latitude to an agency or municipality in evaluating the statement and making its decision.[14] SEQRA determinations and interpretations themselves are reviewed only to a very limited extent of whether the SEQRA determination was made in accordance with the proper procedure and was not arbitrary, capricious or an abuse of discretion.[15]

Judicial Review of Legislative Determinations are Limited in Scope

EDPL §207 sets the procedure for judicial review of a determination made pursuant to EDPL §204, which pursuant to EDPL §207(a), must be commenced within 30 days "after the condemnor's completion of its publication of determination and finding."[16] It is an original proceeding brought in the Appellate Division.[17] In reference to the issue of standing, according to EDPL §207(a), only those "aggrieved by the condemnor's determination and findings" have the ability to seek a full review.[18] For those who do not meet statutory standing requirements as condemnees, the only question to be reviewed is whether there was a properly conducted condemnation hearing.[19]

The scope of the judicial review is limited in that "the Appellate Division must either 'confirm or reject the condemnor's determinations and findings, and its review is confined to whether (1) the proceeding was constitutionally sound; (2) the condemnor had the requisite authority; (3) its determination complied with SEQRA and EDPL article 2; and (4) the acquisition will serve a public use."[20] Using this criteria, the judicial review can only overturn a condemnation when it is found that the legislative or agency determination was baseless or without foundation.[21]

The burden is on the party challenging the determination, who must prove that the action by the condemnor "does not rationally relate to any conceivable public purpose."[22] This is a high burden to overcome since "public purpose" in the context of these proceedings is broadly defined as encompassing a wide range of projects that would confer a public benefit, utility or advantage.[23] Furthermore, public purpose also can "include any use, including urban renewal, which contributes to 'the health, safety, general welfare, convenience or prosperity of the community.'"[24]

Prior Public Use Doctrine

Besides judicial review, which as has been seen is largely deferential to the municipal or agency determination, the other potential way to overturn condemnation awards is the prior public use doctrine. The prior public use doctrine states that land already devoted to public use may not be condemned absent legislative authority allowing for the condemnation and acquisition.[25] However, separate legislative authority will not be needed where the new use does not materially interfere with the initial public use.[26]

In the case *Matter of JHK Dev. LLC v. Town of Salina*, the town authority decided to order the construction of an access road that the petitioner argued would interfere with the 20-foot drainage easement already existing on the property.[27] The Fourth Department rejected the petitioner's invocation of the prior public use doctrine since the petitioner failed to show that the access road would materially interfere with the easement.[28]

Compare this to the situation in *City of New York v. Yonkers Indus. Dev. Agency*, where the Second Department held that the condemnation plan by the Yonkers Industrial Development Agency would materially interfere with the subject property's current use as a bus depot.[29] Thus, the determinative issue between these two cases is whether the condemnation would materially interfere with an existing public use. If this is found not to be the case, the court will likely let the condemnation stand as an exercise of legislative authority.

Conclusion

In summary, condemnation and the exercise of eminent domain is largely treated similarly to an administrative decision, particularly in terms of deference. As has been seen, the condemnation determination exercised by the legislative body, or an agency granted equivalent statutory authority, can only be overturned if the determination is baseless or if the proper procedures were not followed. This presents a very high burden of proof for a litigant trying to use the courts to overturn a condemnation determination.

1. *Matter of Mazzone*, 281 NY 139, 146-147 [NY 1939].
2. *See Generally Matter of Mazzone* at 146-147.
3. *Hargett v. Town of Ticonderoga*, 13 NY 3d 325, 328 [NY 2009].
4. *Matter of City of New York (Grand Lafayette Props. LLC)*, 6 NY 3d 540, 546 [NY 2006].
5. *Grand Lafayette Props.*, 6 NY 3d at 546.
6. *Town of Ticonderoga*, 13 NY3d at 328.
7. 13 NY3d at 328.
8. 6 NY 3d at 546, *quoting* EDPL §204(b).
9. *Id.* at 546.
10. *Id.* at 547.
11. *See Id.* at 547.
12. *Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 777 [NY 1991], *quoting* ECL 8-0101.
13. *See Matter of Ceder St. Comm. v. Board of Education of the E Hampton Union Free School District*, 223 AD 3d 738, 740 [2nd Dept. 2024].
14. *See Generally Matter of Cedar St. Comm.*, 223 AD 3d at 740.
15. *Matter of JHK Dev., LLC v. Town of Salina*, 233 AD 3d 1496, 1501 [4th Dept. 2024].
16. *Id.* at 328.
17. *Id.* at 328.
18. *Matter of Hart v. Town of Guilderland Indus. Dev. Agency*, 228 AD 3d 1049, 1051 [3rd Dept. 2024].
19. *Hart*, 228 AD 3d at 1051.
20. *Matter of Bowers Dev., LLC v. Oneida County Indus. Dev. Agency*, 40 NY 3d 1061, 1063 [NY 2023], *quoting* EDPL §207(c).
21. *Matter of Abklir Realty Co., Inc. v. Nassau Regional Off-Track Betting Corp.*, 234 AD 3d 843, 844 [2nd Dept. 2025].
22. *Town of Salina*, 233 AD 3d at 1498, *quoting Matter of HBC Victor LLC v. Town of Victor*, 212 AD 3d 121, 125 [4th Dept. 2022].
23. *Town of Salina*, 233 AD 3d at 1498.
24. 233 AD 3d at 1498, *quoting Matter of Goldstein v. New York State Urban Dev. Corp.*, 64 AD 3d 168, 181 [2nd Dept. 2009].
25. *City of New York v. Yonkers Indus. Dev. Agency*, 170 AD 3d 1003, 1005 [2nd Dept. 2019].
26. *Yonkers Indus. Dev. Agency*, 170 AD 3d at 1005.
27. *Id.* at 1500.
28. *Id.* at 1501.
29. *Id.* at 1005.

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Hon. Randall T. Eng

Continued from Page 1

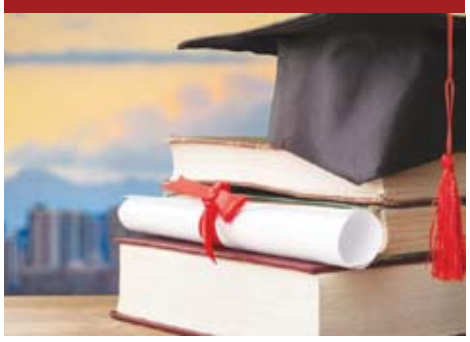
Justice Eng's legacy is also defined by his role as a trailblazer. "I'm very proud of having been able to pioneer the participation of Asian Americans in law, in both practice and in governmental service and in the judiciary," he noted. Today, he takes particular pride in the growing diversity of the profession and the many judges and attorneys who have followed.

His service extended beyond the judiciary through more than 30 years in the New York Army National Guard, where he retired as a Colonel after serving as State Judge Advocate. "I got great satisfaction out of military service as well as judicial service," Justice Eng said, reflecting on the parallel paths of his public career.

A longtime resident of Nassau County, Justice Eng has been actively involved with the Nassau County Bar Association, including his support of the Asian American Attorney Section and other initiatives promoting inclusion and professional excellence. "I find everyone welcoming in the NCBA," he shared, expressing hope for continued engagement and broader participation across the legal community.

The NCBA Annual Dinner Gala, one of the Association's most highly attended events of the year, will celebrate Justice Eng's remarkable career and enduring legacy of service, along with honoring members who have achieved milestone years of service to the legal profession. For more information, visit www.ncbadinnerdance.com, or contact the NCBA Special Events Department at events@nassaubar.org or (516) 747-4071.

FOCUS: EDUCATION LAW



Public Schools and Off-Campus Student Speech: The Second Circuit's New Standards

Daniel Levin and Dennis O'Brien

On October 30, 2025, the Second Circuit Court of Appeals issued a decision in *Leroy v. Livingston Manor Central School District* which overturned a public-school student's one-month out-of-school suspension for off-campus conduct.[1] At issue was a highly controversial photograph of the suspended student appearing to recreate the murder of George Floyd in 2021. The court's decision should cause school administrators to carefully consider whether a suspension should be imposed for a code of conduct violation that occurs off campus.

Background

In April 2021, twelfth-grade student Case Leroy was suspended by the high school principal for posting a photograph on the social media platform, Snapchat, that made it appear he was reenacting the murder of George Floyd. The photograph was taken with Leroy's smartphone and disseminated on Snapchat. According to the hearing record, Leroy was in an off-campus parking lot when his friends asked him to look under his car after reporting a scraping sound from the vehicle. As Leroy bent down to look under his car, another student put his knee on Leroy's neck and posed for the photograph.[2] As the photo was taken, the other student gave the "thumbs up" sign, and smiled. Leroy posted the photo to Snapchat with the caption "Cops got another."[3]

The same day that the photograph was posted, jury deliberations were conducted in the *State of Minnesota v. Derek M. Chauvin*.[4] Minneapolis Police Officer Derek Chauvin stood accused of murdering George Floyd while arresting him for attempted use a counterfeit $20 bill.[5] After Mr. Floyed was pinned to the ground, Chauvin was accused of placing his left knee onto Mr. Floyd's neck and his right knee on his back, and holding them there while using most of his body weight for a period of nine minutes and 29 seconds.[6] Chauvin did not remove his knee from Mr. Floyd's neck despite hearing that he could not breathe. Mr. Floyd's voice became "thicker and slower," until he ultimately ceased pleading and became non-responsive.[7]

At the student discipline hearing, Leroy testified that he did not stage the photograph and was not aware of its resemblance to the murder, despite posting it to Snapchat.[8] The hearing evidence showed that the photograph was posted to Leroy's social media account for seven minutes, which another student reposted on other social media platforms.[9] During that time, Leroy received threatening messages about his post, and was made aware of the photo's resemblance to the George Floyd case. He asked his friends to take down the posts, but by that time it had been reposted multiple times to the school community.

New York State Law

Under New York State Education Law §3214, students can be suspended by a building principal for up to five school days. Such conduct must violate the school district's code of conduct and/or is insubordinate, disorderly, violent, or disruptive, or endangers the safety, morals, health or welfare of others.[10] Parents of the suspended student are entitled to written notice of the suspension, and the opportunity for an informal conference with the principal prior to the suspension being imposed. At the informal conference, the parents have the right to question complaining witnesses and to present their side of the story, allowing the principal to reconsider the contemplated suspension. The informal conference constitutes the full extent of due process to which a student suspended five school days or fewer is entitled. A principal cannot suspend a student for more than five school days.

For suspensions longer than five school days, the due process rights of students and parents are increased.[11] Prior to imposing the suspension, the school district must provide the parents and student with a written notice of charges describing the misconduct. At a disciplinary hearing, the school district must prove through competent and substantial evidence that the student's misconduct violated the code of conduct and/or was insubordinate, disorderly, violent, or disruptive or endangered the safety, morals, health, or welfare of others. The school district may establish its case through witness testimony and documentary evidence. The hearing must be recorded, usually by a stenographer or audio-recording device, creating a reviewable record. Students and their parents have the right to counsel, to confront and cross-examine witnesses, and to present their own witnesses in the student's defense.[12]

Strict rules of evidence do not apply in these hearings, and hearsay is generally permitted. The superintendent or appointed hearing officer presides over the hearing. At its conclusion, the hearing officer makes findings of fact regarding the student's conduct and guilt, and if the student is found guilty, recommends an appropriate penalty.

Parents can appeal the superintendent's determination to the board of education, in accordance with the district's code of conduct and state law. Parents dissatisfied with the board's decision can submit an appeal to the Commissioner of Education within 30 calendar days of the decision.[13]

Procedural History

In *Leroy*, the principal suspended Leroy for five school days. A superintendent's hearing was subsequently held which found him guilty of violating the code of conduct for posting racially offensive material on social media.[14] The hearing officer recommended that Leroy be suspended through May 21 of his senior year, and the superintendent adopted that recommendation. The superintendent also barred Leroy from participating in all extracurricular activities for the balance of the school year, including sports teams, senior class trip, senior breakfast, senior program, and graduation.[15] Leroy appealed the superintendent's determination to the board, which affirmed the determination.

Leroy appealed the board's decision to New York State Supreme Court in Sullivan County, which granted injunctive relief on a limited basis to enable Leroy to attend his high school graduation ceremonies.[16] Leroy's parents amended their complaint in State Supreme Court seeking an order that the school district's actions were unconstitutional; for Leroy's suspension to be expunged from school records; and for the district to change its disciplinary policies. The district removed the case to federal court in the Southern District of New York, and moved for summary judgment, which the court granted.[17] In granting the district's motion, the court found that Leroy's conduct caused a substantial disruption to the school learning environment, and that the district had an interest in maintaining order, tolerance, and respect within its schools. As such, the court found that the school district's suspension did not violate Leroy's First Amendment free speech rights.[18] Leroy appealed the decision to the Second Circuit Court of Appeals.

Second Circuit's Decision

The Second Circuit reviewed the criteria for disciplining students for off-campus speech established by the U.S. Supreme Court in 2021 in *Mahanoy Area School District v. B.L.*[19] In *Mahanoy*, the Court noted that when considering discipline for off-campus student speech, schools rarely stand *in loco parentis*. As such, courts must be more skeptical of a school's efforts to regulate student speech occurring off campus. The school district also has an interest in protecting a student's unpopular expression, even when occurring off-campus.[20] The Court identified three key factors that should be analyzed when considering discipline connected to off-campus student speech: (1) the nature of the speech; (2) when, where, and how the student spoke; and (3) the school's interest in regulating speech.[21]

In *Leroy*, the Second Circuit noted that the social media post did not rise to the level of a "true threat" to the health and safety of other students (something *Mahanoy* indicated could clearly be regulated by schools) despite students expressing their view that the social media post made them feel unsafe. Further, Leroy's conduct took place outside of school hours, off school grounds, and did not identify the school or directly target any member of the school community.[22] The court noted that a social media post made off campus

is not equivalent to speech made on campus. Although the mass audience that views a social media post may strengthen the school's argument for imposing discipline for off-campus speech that disrupts the school environment, the court noted that it was "skeptical" of the school's efforts to regulate the off-campus speech found here.[23]

The district's "interest in teaching racial sensitivity was not sufficient to overcome Leroy's interest in free expression off campus."[24] The district had other non-restrictive means of teaching racial sensitivity, which the district implemented, such as classroom discussions, a school assembly, and facilitating a student demonstration. The degree of in-school disruption, which was a school-wide assembly, implicit bias training, and a nine-minute student demonstration, did not justify restricting the student's speech.

Finally, the court stated that a line must be drawn "between speech that is deeply offensive to other students—even reasonably so—and speech that threatens their sense of security."[25] Leroy did not intend to threaten, bully, or harass any other students. He quickly took the post down when he learned of the impact his post was creating within his school community. As such, the court concluded that the suspension for Leroy's off-campus conduct was not justified in light of his First Amendment protections, and the case was remanded to the District Court.[26]

Recommendations

The Second Circuit's decision in *Leroy* demonstrates the competing interests at play when school districts impose discipline for a student's off-campus conduct. When behavior or speech occurs off campus, outside of regular school hours, school districts have far less authority to regulate student conduct than when it occurs on school grounds, during regular school hours. Students who engage in off-campus speech that is merely offensive, even racially offensive, will be difficult to discipline based on the student's First Amendment rights to freedom of speech, if challenged on appeal.

Disruption to the school environment from a student's off-campus speech, overt or not, may be insufficient to overcome a student's First Amendment rights, even if other students feel uncomfortable and are outraged by such conduct. However, districts still have the clear legal right to impose discipline for off-campus speech that directly targets the safety of another student, staff member, or the district as an entity.

Administrators should clearly document each instance of disruption to the school environment prior to considering a disciplinary consequence for off-campus speech. Should a disciplinary hearing be held, efforts should be made to provide specific details in the hearing record as to the nature of the disruption, the impact it caused on any particular students or the district as a whole, and what efforts were required to respond to and stop the disruption.

Evidence at the hearing should include the number of staff members and time allocated to responding to the disruption. Testimony should be elicited as to any re-training or assemblies held to minimize the likelihood that such conduct would recur or to eliminate the hostile environment created by the conduct. In sum, school districts should approach off-campus incidents on a case-by-case basis and carefully consider whether the misconduct outweighs First Amendment rights.

1. *Leroy v. Livingston Manor Centr. Sch. Distr.*, 158 F.4th 414, 428 (2d Cir. 2025).
2. *Leroy v. Livingston Manor Cetr. Sch. Dist.*, 2024 WL 1484254, at *2 (S.D.N.Y. 2024).
3. *Leroy*, at *1.
4. *State of Minnesota v. Derek Michael Chauvin*, 27-CR-20-12646 (2023).
5. See *State of Minnesota v. Derick Michael Chauvin*, A21-1228 (2023).
6. *Id.*
7. BBC, *George Floyd death: Chauvin 'trained to stay away from neck'*. Apr. 6, 2021.
8. *Leroy*, 158 F.4th at 428.
9. *Id.* at 419.
10. N.Y. Educ. Law §3214.
11. *Id.*
12. *Id.*
13. N.Y. Educ. Law §310.
14. *Leroy*, at *3.
15. *Id.*
16. *Leroy*, 2024 WL 1484254, *4.
17. *Id.* at *11.
18. *Id.*
19. *Mahanoy*, 594 U.S. 180, 185 (2021).
20. *Id.* at 181.
21. *Leroy*, at *5.
22. *Id.* at *6.
23. *Id.* at *5.
24. *Id.* at *8.
25. *Id.* at *9.
26. *Id.* at *7.

Dennis O'Brien is a Partner with Frazer & Feldman, LLP, a law firm on Long Island that serves as counsel to public school districts. He is focused on all aspects of employee and student discipline and general litigation. He can be reached at dobrien@ffedlaw.com.

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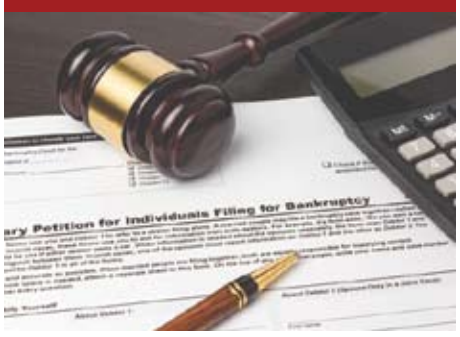
FOCUS: BANKRUPTCY



Understanding Subchapter V Small Business Bankruptcy: Eligibility, Process and Keys to a Successful Outcome

Thomas Weiss

When Congress passed the Small Business Reorganization Act of 2019 (SBRA),[1] it introduced Subchapter V of Chapter 11 of the U.S. Bankruptcy Code—an innovative and cost-effective restructuring path for small businesses. Codified at 11 U.S.C. §§ 1181–1195,[2] Subchapter V addresses the unique challenges small businesses face in reorganization, offering a streamlined process with fewer procedural hurdles, lower administrative costs, and quicker resolution.

As the U.S. economy continues to grapple with inflation, interest rate volatility, and post-pandemic disruptions, Subchapter V has become an increasingly vital tool for financially distressed small businesses seeking to reorganize while maintaining control over their operations.

What Is Subchapter V?

Subchapter V is a modified form of Chapter 11 designed specifically for small business debtors. It was enacted to provide a more accessible, efficient reorganization option compared to traditional Chapter 11, which is often prohibitively expensive and time-consuming for small enterprises. Key features of Subchapter V include:

- No creditor committee unless ordered by the court[3]
- No requirement for disclosure statements[4]
- Ability for only the debtor to file a plan[5]
- The confirmation standards are more debtor-friendly: acceptance by an impaired class is not required, and the court may confirm a plan over creditor objection if the plan is "fair and equitable" and satisfies the disposable-income and feasibility requirements[6]
- Retention of equity by owners even if unsecured creditors are not paid in full per the abrogation of the absolute priority rule[7]

Who Qualifies?

To be eligible for Subchapter V, a debtor must: (1) be engaged in commercial or business activity; (2) have aggregate noncontingent liquidated secured and unsecured debts as of the petition date not exceeding $7.5 million of which not less than 50 percent arose from the commercial or business activities of the debtor;[8] (3) not be a single-asset real estate business;[9] and (4) elect to proceed under Subchapter V in the Chapter 11 petition.

The definition of "engaged in commercial or business activities" has been interpreted broadly. In *In re Wright*,[10] the court held that a debtor who had ceased operations but was still involved in winding down business affairs could still qualify under Subchapter V.

New York courts have begun to flesh out what these statutory terms mean in practice. In particular, they have focused on (1) when an individual or entity is "engaged in commercial or business activities" as of the petition date, and (2) how to calculate "noncontingent liquidated" debt for purposes of the $7.5 million cap. Those decisions are discussed in more detail below.

The Process

The Subchapter V process is intended to be fast-tracked:

- A Subchapter V trustee is appointed immediately upon filing,[11] not to operate the business, but to facilitate the development of a consensual plan.
- An initial status conference must be held within 60 days[12] and a report must be filed 14 days beforehand.
- The debtor must file a plan of reorganization within 90 days of filing,[13] unless extended due to circumstances beyond the debtor's control.

Plans under Subchapter V must include: a brief history of the business; a liquidation analysis; and projections showing the ability to make payments under the proposed plan.[14]

Unlike traditional Chapter 11, Subchapter V does not require acceptance by an impaired class for plan confirmation.[15] Instead, the court can confirm a non-consensual plan if it is fair and equitable, does not discriminate unfairly, and provides that all projected disposable income will be applied to plan payments for 3–5 years;[16] see *Hal Luftig Company, Inc.*[17]

New York Case Law: How Courts Are Shaping Subchapter V

Because Subchapter V is still relatively new, judicial interpretation is evolving. A recent decision by U.S. Bankruptcy Judge Robert E. Grossman addressing counsel's duties in small business reorganizations has already become a touchstone.

In *In re Deirdre Ventura*,[18] Judge Grossman confronted whether an individual operating a bed and breakfast out of her home could proceed under Subchapter V and potentially modify her home mortgage.

The debtor purchased a six-bedroom historic mansion, lived there with her child, and operated a licensed bed and breakfast ("The Harbor Rose") at the property. The mortgage appeared residential on its face, and the creditor argued it was pure "consumer debt" that could not satisfy the 50% "business debt" requirement for a "small business debtor."

Judge Grossman rejected a purely formalistic approach and applied a "substance-over-form" test: a debt is business debt if it is "incurred with an eye toward profit," and courts should "look at the substance of the transaction and the borrower's purpose in obtaining the loan, rather than merely looking at the form of the transaction."[19] On the record before him, he found the "primary purpose" of purchasing the property was to own and operate a bed and breakfast, not merely to obtain a residence, and held that the debtor met the 50% business-debt requirement.

Ventura is equally important for its treatment of the new mortgage-modification provision in § 1190(3). That section allows a Subchapter V plan to modify a mortgage secured only by the debtor's principal residence if the loan proceeds were "not used primarily to acquire the real property" and were used "primarily in connection with the small business of the debtor." 11 U.S.C. § 1190(3).

Observing that pre-SBRA law took an "all-or-nothing" approach to

home mortgages, the court held that § 1190(3) instead directs a qualitative inquiry into the "primary purpose of the debt" and proposed a multi-factor framework for determining whether a mortgage may be modified, including whether: the mortgage proceeds were used primarily to further the debtor's business, the property is integral to the business, the property is necessary to run the business, customers enter the property to utilize the business, and the business uses employees or local vendors in its operations.

Ventura thus illustrates both eligibility analysis for owner-occupied businesses and the powerful, but carefully cabined, mortgage-modification tool unique to Subchapter V.

In *Christina Fama-Chiarizia*,[20] Judge Garrity addressed whether an individual was "engaged in commercial or business activities" on the petition date where the underlying business had stopped operating years earlier and the debtor was primarily dealing with legacy litigation and a substantial judgment.

The court adopted the now-prevailing view that "engaged in" is "inherently contemporary in focus," and that eligibility turns on whether the debtor is presently engaged in such activities as of the petition date.[21] But it also read "commercial or business activities" broadly, holding that:

> "Addressing residual business debt through Chapter 11, pursuing and defending litigation arising from former business operations, and actively marshaling business-related assets (including through pending state-court actions) can satisfy the engagement requirement, even though the underlying operating business (a construction company) had long since ceased trading." The court also found that the debtor's longstanding rental of a portion of her two-family home constituted a separate qualifying business activity, and it expressly rejected any requirement of a "nexus" between current business activities and the particular debts sought to be restructured.[22]

For practitioners, Fama-Chiarizia is a useful roadmap for individuals with "legacy business debt" who are no longer operating a going concern but are still actively dealing with its financial fallout.

Debt Limits and "Noncontingent Liquidated" Claims

In *Zhang Medical P.C.*,[23] U.S. Bankruptcy Judge Philip Bentley in the Southern District of New York tackled the gatekeeping question of the $7.5 million debt cap. The landlord objected to the debtor's Subchapter V designation, arguing that the debtor's noncontingent liquidated debts exceeded the statutory limit.

Relying on Second Circuit precedent interpreting "noncontingent" and "liquidated" in the Chapter 13 context, the court held that a debt is noncontingent if "all of the events giving rise to liability" occurred prepetition, and it is liquidated if the amount is readily ascertainable "by reference to an agreement or by a simple computation."[24] Applying that framework, the court treated most components of the landlord's large lease claim—unpaid rent, a rent-credit "clawback," a required replenishment of the security deposit, and related charges—as noncontingent and liquidated, even though future lease obligations remained open.

Adding the scheduled debts and the higher amounts reflected in proofs of claim, the court concluded that the debtor's noncontingent liquidated debts far exceeded $7.5 million and sustained the objection.[25] *Zhang* underscores two practical points: eligibility disputes are highly fact-driven, and the debtor bears the burden of showing that the statutory cap is not exceeded.

Keys to a Successful Subchapter V Case

Preparation is crucial. The debtor must make ongoing filings with the court concerning its profitability and projected cash receipts and disbursements through a monthly operating report. Debtors should engage experienced bankruptcy counsel early, ensure accurate financial records, and prepare realistic projections. Courts have been skeptical of plans lacking credible financial data.[26]

Use the trustee effectively. While the trustee's role is more limited than in Chapter 13 or 7, the debtor is nonetheless subject to significant oversight by the trustee. Engaging early and timely complying with the trustee's investigation can help build consensus with creditors and avoid contested confirmation.

Move quickly. Subchapter V's expedited deadlines mean debtors must act decisively. The inability to meet the 90-day plan deadline without valid justification can lead to dismissal or conversion.

Address creditor concerns proactively. Even though creditor consent is not required, consensual plans avoid litigation and allow for smoother confirmation. Open communication and transparency with key creditors can facilitate this.

Understand the plan requirements. The plan must commit all of the debtor's disposable income for the applicable plan period and must be feasible. *In re Body Transit, Inc.*[27] emphasized that feasibility is key—even under Subchapter V, courts require realistic plans based on sound financial forecasting.

Conclusion

Subchapter V offers a powerful lifeline for small businesses burdened by debt but seeking to remain operational. Its streamlined procedures, reduced costs, and flexible plan requirements make it a compelling option for debtors who qualify.

However, successful outcomes depend on rigorous preparation, effective use of the trustee and legal counsel, and careful plan formulation. Courts have shown a willingness to support honest, diligent debtors—but will also dismiss or convert cases where the debtor fails to meet statutory obligations or attempts to misuse the Subchapter V process.

As the legal landscape continues to evolve, Subchapter V stands as one of the most debtor-friendly reorganization tools available—one that legal practitioners should fully understand and strategically deploy for qualifying clients.

1. Small Business Reorganization Act of 2019.
2. 11 U.S.C. §§1181-1195 Subchapter V of Chapter 11.
3. 11 U.S.C. § 1181(b).
4. 11 U.S.C. § 1181(b).
5. 11 U.S.C. § 1189(a).
6. 11 U.S.C. § 1191(b) and (c).
7. 11 U.S.C. § 1191(c).
8. 11 U.S.C. § 101(51D)(A).
9. As defined in 11 U.S.C. § 101(51B).
10. 2020 WL 2193240 (Bankr. D. S.C. May 5, 2020).
11. 11 U.S.C. § 1183.
12. 11 U.S.C. § 1188(a).
13. 11 U.S.C. § 1189(b).
14. 11 U.S.C. § 1190(1).
15. 11 U.S.C. § 1191(b).
16. 11 U.S.C. § 1191(c).
17. Docket No. 22-11617 (Bankr. S.D.N.Y. Dec 7, 2023).
18. Docket No. 8-18-77193 (Bankr. E.D.N.Y. Apr 10, 2020).
19. *Id.*
20. Docket, No. 1-21-42341 (Bankr. E.D.N.Y. Sep 15, 2023).
21. *Id.*
22. *Id.*
23. 655 B.R. 403 (Bankr. S.D.N.Y. 2023).
24. *Id.*
25. *Id.*
26. *In re Ellingsworth Residential Community Ass'n, Inc.*, 619 B.R. 519 (Bankr. M.D. Fla. 2020).
27. 613 B.R. 400 (Bankr. E.D. Pa. 2020).

Thomas Weiss heads the Bankruptcy practice at Vishnick McGovern Milizio LLP and is a key member of the Commercial Litigation, Real Estate Litigation, and Matrimonial & Family Law practices. He can be reached at tweiss@vmmlegal.com.

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FEBRUARY IS AMERICAN HEART MONTH

This month serves as a reminder for individuals to prioritize their heart health and take the proper steps to reduce cardiovascular-related risks. If you haven't already made your new year's resolution, explore some options to start the year right and keep your heart healthy.

Here are a few heart-healthy resolutions for a "heartier" you.

Diet: Eat foods that promote heart health such as salmon, whole-grains, blueberries, broccoli, avocados, beans, nuts, and more. Whatever your preferences are, it's important to look for a variety of foods that contain fiber, antioxidants, potassium, phytonutrients and omega-3 fatty acids.

Exercise: Set a goal to get fit. Regular exercise is beneficial to heart health by strengthening the heart muscle, improving circulation, and reducing the risk of cardiovascular disease. Set realistic goals for yourself and focus on your own journey. Aim for 30 minutes of movement a day; take the stairs, a long walk, join an exercise class, or try a new sport.

Stress Management: Engage in healthy coping strategies like mindfulness that include deep breathing, yoga, and meditation. These methods help reduce the negative impacts that stress has on your mind and body that impair healthy functioning.

Self-care: Combat the winter blues by connecting with family, friends, and your significant other. Take a warm bath, explore a new hobby, get enough sleep, practice self-acceptance, prioritize your well-being, and treat yourself with kindness, love, and respect.

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Nassau County Bar Association Lawyer Assistance Program

Elizabeth Eckhardt, LCSW, PHD, Director, Lawyer Assistance Program

To schedule a presentation in the new year on wellness for lawyers, contact LAP at 516-512-2618 or gpirozzi@nassaubar.org. LAP is supported by funding from the NYS Office of Court Administration, the WE CARE Fund, and Nassau County Boost.

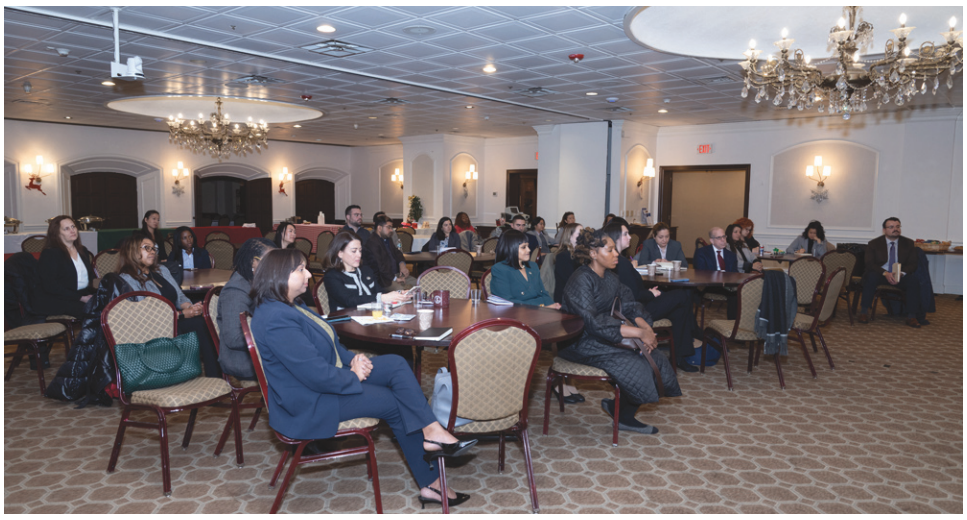
An Intimate and Insightful Evening: "How to Become a Judge in Nassau County" Offers Rare Candid Guidance

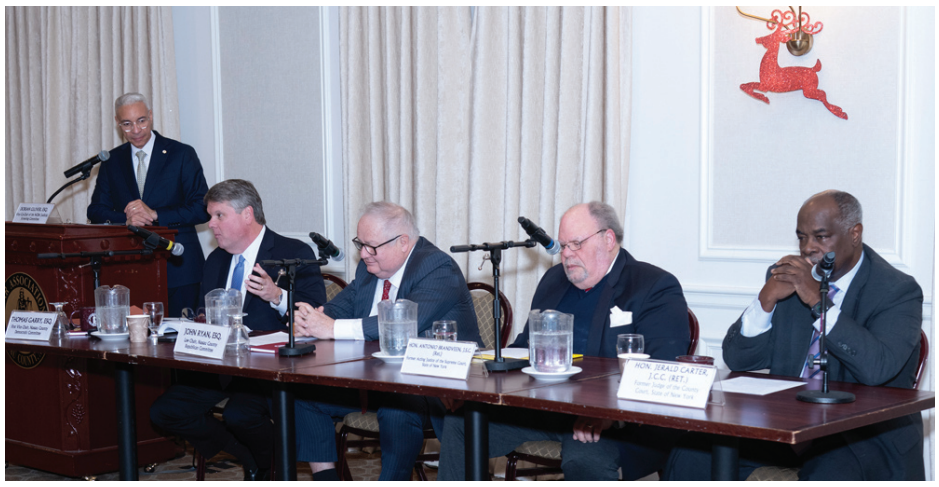
Hon. Linda K. Mejias-Glover

On December 17, the Nassau County Bar Association hosted a uniquely intimate program, "How to Become a Judge in Nassau County," co-sponsored by the NCBA Diversity & Inclusion Committee, Asian American Attorney Section, New Lawyers Committee, and Law Student Committee. Attendance was intentionally capped at 25 participants to create a small, conversational setting that encouraged candor, fostered trust, and allowed panelists to speak openly about the judicial nomination process in a way rarely shared in larger public forums.

The evening was expertly moderated by Dorian Glover, NCBA Past President and the current Vice Chair and former Chair of the NCBA Judiciary Committee. His deep institutional knowledge, practical insight, and thoughtful guidance set the tone for a meaningful discussion. Mr. Glover offered clear, actionable advice on what the Judiciary Committee looks for in candidates, emphasizing what aspiring and potential candidates should begin doing now and what they should avoid in order to position themselves for future consideration. His perspective grounded the conversation and provided attendees with a roadmap rooted in real experience.

The panel featured Nassau County's party leaders, John Ryan, Esq., Law Chair of the Nassau County Republican Committee, and Thomas Garry, Esq., First Vice Chair of the Nassau County Democratic Committee, alongside two distinguished retired jurists, Hon. Antonio Brandveen, J.S.C. (Ret.), and Hon. Jerald Carter, J.C.C. (Ret.). Together, they delivered a candid, multifaceted look at the path to the bench.





Panelists discussed the types of activities that meaningfully support a judicial trajectory, including sustained political engagement, consistent community involvement, and the cultivation of a strong professional reputation. They also spoke openly about the characteristics that define an excellent judge—integrity, humility, patience, preparedness, and the ability to listen with intention.

The retired judges offered some of the most compelling moments of the evening, sharing their personal journeys to the bench. Their reflections—which spanned political, community, and professional experiences—provided attendees with a rare and unfiltered understanding of the practical steps, challenges, and commitments that shaped their careers. Their lived experiences underscored that the path to a judgeship is not linear but is built over time through service, credibility, and authentic engagement.

The program also highlighted the NCBA judicial screening process and ongoing efforts to support diversity within the judiciary. Attendees left with a clearer understanding of how to begin preparing for judicial service long before submitting an application, and with renewed motivation to engage meaningfully in their communities and professional circles.

Though small by design, the program's impact was significant. The intimate format, candid dialogue, and exceptional leadership of the moderator made this one of the most substantive and empowering conversations of the season for attorneys considering a future on the bench.

Relaunched Section to Advance Judicial Excellence

Hon. Linda K. Mejias-Glover

The Nassau County Bar Association Judicial Section formally relaunched at a well-attended meeting on January 14, in the North Dining Room at Domus. Opening remarks by NCBA President-Elect Hon. Maxine S. Broderick underscored the Association's strong support for a revitalized and engaged Judicial Section.

The Section, co-chaired by Judges Linda Mejias-Glover and Ellen Tobin, welcomed attendees, noted the broad judicial representation present, and outlined the Section's mission to promote integrity, professionalism, collegiality, and excellence within the judiciary, guided by the theme "Advancing Judicial Excellence through Integrity, Education, and Public Trust."

The relaunch reflects a renewed vision for the Judicial Section as an active, forward-looking forum for Nassau County judges. The co-chairs emphasized goals of expanding engagement, fostering meaningful dialogue, and providing a dynamic platform for professional development and leadership. Strategic priorities for the year include high-impact programming, judicial wellness initiatives in partnership with the New York State Judicial Wellness Committee, peer learning and mentorship, technological literacy, and efforts to strengthen public trust through outreach, cultural competency, and civic education.

Attendees were presented with a robust slate of proposed programming spanning judicial practice and ethics, legal updates, wellness, court management, innovation, and public trust. Highlighted offerings include programs on implicit bias and decision-making, judicial ethics in the digital age, recent developments in New York civil procedure, evidentiary trends, courtroom technology, artificial intelligence, pro se engagement, and language access. Wellness initiatives, including "Behind the Robe" and programming addressing judicial stress and work-life boundaries, generated strong interest.

The meeting concluded with an open forum for feedback and a call for volunteers to serve as presenters and planning partners. Closing remarks reaffirmed the Section's commitment to collaboration, education, and outreach, setting the stage for an active year dedicated to strengthening the judiciary and public confidence in the administration of justice.

Hon. Linda K. Mejias-Glover is a Judge of the New York Court of Claims and sits in Hauppauge. She was previously a Nassau County Family Court Judge. She is a past president of the Long Island Hispanic Bar Association and the Nassau County Women's Bar Association. Judge Mejias-Glover can be contacted at lmejias@nycourts.gov.

NASSAU ACADEMY OF LAW

February 4 (Zoom Only)

Dean's Hour: Everything You Need to Know About the Lawyers' Fund for Client Protection
12:30PM
1.0 CLE Credit in Ethics & Professionalism
NCBA Member FREE; Non-Member Attorney $35

The Lawyers' Fund for Client Protection, which is financed by a portion of each attorney registration fee, reimburses law clients for losses caused by dishonest conduct in the practice of law. Learn about the Fund's role in protecting clients and the integrity of the legal profession, the basics of attorney escrow accounts, a lawyer's fiduciary obligations in handling client funds, and the Fund's role in important court rules.

Guest Speaker: **Gabriel Huertas,** Executive Director, NYS Lawyers' Fund for Client Protection

February 5 (Hybrid)

Dean's Hour: Improving Outcomes for Families—How Co-Parenting Apps Can Prevent Families from Returning to Court and Keep Them on Track for Success
With NCBA Family Court Law, Procedure & Adoption Committee and complimentary lunch buffet sponsored by
12:30PM
1.0 CLE Credit in Professional Practice
NCBA Member FREE; Non-Member Attorney $35
Communication problems plague families in divorce or separation. While more correspondence is moving to email and texting, from the court's perspective, these forms of communication are often unreliable and easy to manipulate. Dockets are overloaded with cases coming back to court due to communication breakdowns. Practitioners will learn about court-ordered communication technology in high-conflict custody and visitation cases, how to stay informed of co-parent communication using online tools, and examples of agreements and court orders to specify parent and practitioner use of OurFamilyWizard.

Moderator: **Joy Bunch, Esq.**
Guest Speaker: **Katrina Volker,** OurFamilyWizard

February 10 (Hybrid)

Dean's Hour: Entity Formation and Equity Incentives
With NCBA Labor & Employment Law Committee
12:30PM
1.0 CLE Credit in Professional Practice
NCBA Member FREE; Non-Member Attorney $35
Attendees will learn about different types of business entities and types of non-cash compensation. This program will also introduce attendees to the intricate and exciting world of equity-based (and equity-like) compensation. Attendees will gain important and pragmatic practice tips for spotting key issues in compensation structure and design.

Guest Speaker: **Marc N. Aspis,** Phillips Lytle LLP

February 11 (Hybrid)

Dean's Hour: The Spirit Which Prizes Liberty—American Law in the Age of Lincoln
12:30PM
1.0 CLE Credit in Professional Practice
NCBA Member FREE; Non-Member Attorney $35

Hear about the life and impact of Abraham Lincoln and how he became a force of mythical proportions. While he played the part of a humble country lawyer, he was a brilliant, self-taught man and the consummate statesman. Indeed, it was his grounding in the law that enabled President Lincoln to meet the daunting constitutional crisis arising from the Civil War. Yet, as effective a lawyer as he was, it was his role as President that reaffirmed the true meaning of the Constitution.

Guest Speaker: **Rudy Carmenaty,** Nassau County Department of Social Services

February 18 (Hybrid)

Dean's Hour: Top 10 Myths About Patent Law
With NCBA Intellectual Property Committee
12:30PM
1.0 CLE Credit in Professional Practice
NCBA Member FREE; Non-Member Attorney $35

The program will provide an introduction to patent law by discussing certain misconceptions about the practice.

Guest Speaker: **Frederick J. Dorchak,** Collard & Roe, P.C.

February 23 (In Person Only)

Civil Rights Then, Now, And Always—Black History Month Commemorative CLE
With NCBA Civil Rights and Diversity & Inclusion Committees
6:00PM—7:30PM
1.0 CLE Credit in Diversity, Inclusion and Elimination of Bias* and 0.5 CLE Credit in Professional Practice
NCBA Member FREE; Non-Member Attorney $50

PROGRAMS CALENDAR

From Justice Thurgood Marshall to Justice Ketanji Brown Jackson, Black attorneys continue to serve as architects—not just advocates—of the civil rights movements and laws that protect us all. During Black History Month, join us to commemorate these significant contributions with a CLE on this important legacy, current civil rights challenges, and what every attorney can do to help protect and preserve the civil rights protections and enforcement mechanisms Black attorneys built and fought for.

February 24 (In Person Only)

Demystifying Artificial Intelligence in the Practice of Law

With NCBA Surrogate's Court Estates & Trusts Committee and Long Island Hispanic Bar Association and sponsored by WebsterBank

5:30PM: Dinner; 6:00PM—8:00PM: CLE Program
1.0 CLE Credit in Skills and 1.0 CLE Credit in Ethics & Professionalism
NCBA Member FREE; Non-Member Attorney $75

Artificial intelligence is here to stay. Its use in the practice of law will only continue to grow. This program will discuss the ethical use of AI in law and provide hands-on examples of using AI in legal research, document drafting, and law firm management.

Moderator: **Maribel Gomez,** Grey & Grey LLP
Guest Speakers: **Oscar Michelen,** Michelen Law P.C. and **Jonathan Weiss,** Forchelli Deegan Terrana LLP

February 26 (Hybrid)

Dean's Hour: Word Processing Tips for Appellate Attorneys (and Everyone Else!)

With NCBA Appellate Practice Committee
12:30PM
1.0 CLE Credit in Skills
NCBA Member FREE; Non-Member Attorney $35

Every lawyer can benefit from using styles in their word processing software. We'll show how to create and use styles to ensure that appellate briefs and other complex documents are organized and presented for maximum effectiveness.

Guest Speaker: **Christopher J. DelliCarpini,** Sullivan Papain Block McManus Coffinas & Cannavo, P.C. and Dean, Nassau Academy of Law

March 2 (Hybrid)

Dean's Hour: From Barrier Breaker to Family Law Pioneer—Judge Jane M. Bolin's Legacy and Impact

With NCBA Diversity & Inclusion and Women in the Law Committees
12:30PM
0.5 CLE Credit in Diversity, Inclusion and Elimination of Bias* and 0.5 CLE Credit in Professional Practice
NCBA Member FREE; Non-Member Attorney $35

This program explores the life and legacy of Judge Jane Matilda Bolin, the first Black woman judge in the United States, and her transformative impact on Family Court. Through biographical context and key case law, the program examines how Judge Bolin's trial-level decisions advanced due process, rejected racial and socioeconomic bias, and shaped modern family law practice and procedure. The panel also discusses practical applications of her principles in contemporary Family Court proceedings.

Moderator: **Hon. Linda K. Mejias-Glover,** New York State Court of Claims
Guest Speaker: **Jacqueline Harounian,** Wisselman Harounian Family Law, and **Joy Bunch, Esq.**

March 3 (Hybrid)

Preserving Tricky Issues for Appeal in Family Court

With Nassau County Assigned Counsel Defender Plan and the NYS Office of Indigent Legal Services
1:00PM—3:00PM
2.0 CLE Credits in Skills
NCBA Member FREE; Non-Member Attorney $25

Even the most compelling legal issue will almost always go undecided by an appellate court if not properly preserved at the trial level. This session will cover preserving issues for appeal in Family Court cases, including: the elements of preservation; other necessary components of a viable Family Court appeal; and specific Family Court scenarios presenting challenges for preservation.

Guest Speaker: **Carolyn Walther,** NYS Office of Indigent Legal Services

These programs are appropriate for newly admitted and experienced attorneys. Newly admitted attorneys should confirm that the format is permissible for the category of credit.

*CLE Credit in this category is available only for experienced attorneys.

The Nassau Academy of Law provides CLE financial aid and scholarships for New York attorneys in need of assistance. For more information, email academy@nassaubar.org at least five business days prior to the program.

FOCUS: CIVIL LITIGATION

CAMP Conferences: Advice from Mediators and Litigators

Melissa A. Danowski and Christopher J. DelliCarpini

The Second Department Appellate Division's Civil Appeals Management Program, or CAMP, schedules hundreds of appeals each year for mediation. While not every conference leads to resolution, parties and their attorneys can still make progress through CAMP in understanding the issues and their opponents.

Last November, the Nassau Academy of Law and the NCBA Appellate Practice Committee hosted a panel, "CAMP Conferences: Advice from Mediators and Litigators." Attendees heard from two of the four CAMP Special Referees, Hon. Joseph Covello and Anne Pope, Esq., about the program's inner workings and how parties can make the most of the experience. The panel emphasized that CAMP is far more than a procedural formality. It is a valuable opportunity to resolve a case early, obtain insight into the opposing side's position, and save clients the substantial expense of perfecting an appeal.

A Half-Century of Bringing Parties Together

CAMP was established in 1974 and is enshrined in the Second Department's rules.[1] It offers two opportunities for mediation: one for appeals that have yet to be perfected,[2] and Mandatory CAMP (or MCAMP) for appeals that have been perfected.[3]

The rules and requirements for each stage of CAMP are virtually identical. For pre-perfection CAMP, the court may require attendance of the parties "as well as any other individual whose attendance the court may require," such as insurers, lienholders and even other parties not involved in the appeal, if a global settlement is possible.[4] For MCAMP, "Counsel with knowledge of the matter on appeal and who is prepared to engage in meaningful settlement discussions and parties who are natural persons are required to attend the mediation in person."[5]

Adjournments are available for CAMP conferences,[6] but unless the parties agree on a resolution, "the appeal will proceed in accordance with the regular processes of the court and will be heard and determined."[7] As with appeals, the death or bankruptcy of any party will toll CAMP arguments until appropriate parties can be substituted in. Though in-person attendance was required for many years, since the COVID-19 pandemic, all conferences are now conducted virtually, making it convenient for all interested parties to participate.

A central theme of the discussion was how essential CAMP has become in light of the Second Department's significant backlog. With civil appeals often taking years to be perfected, calendared, and decided, CAMP provides one of the few opportunities to avoid the cost and uncertainty of long appellate delays.

The program's success rate reflects its value: a substantial percentage of cases selected for CAMP settle before briefing, and the settlement rate far exceeds that of private mediation. In 2024, CAMP scheduled 2,254 cases for conference. Of those, 1,005 resolved, either by settlement or withdrawal of the appeal; 20% of those resolved before the conference date. Of the 1,601 cases conferenced, 352 of them settled.

Different case types settled at different rates. The most likely to settle were mortgage foreclosure (44%), torts (37%), and real property (31%). Less likely were contract, commercial and business cases (21%), matrimonial (20%), and trusts and estates (8%). Non-monetary factors, such as personal disagreements among the parties, can make it more difficult to reach any compromise. But rising jury awards also appear to frustrate settlement opportunities.

CAMP Process and Its Possible Outcomes

CAMP's success is due in part to the credibility of the special referees—frequently retired appellate justices—who understand both appellate law and the dynamics of settlement.

Judge Covello, who retired from the bench after decades in District Court, Supreme Court, the Appellate Term and the Appellate Division, now works as a private mediator and also handles over a third of CAMP's conference each year, seven on a typical day. Ms. Pope, the CAMP Administrator and a former senior litigator for insurance companies, handles almost 40% of conferences in addition to selecting and scheduling cases. Their perspective was invaluable, but your authors joined the panel to offer advice from years of representing parties in CAMP.

Ms. Pope selects cases for CAMP based on several factors. The area of law involved is a prime factor, given the disparate chances of success. The cases more likely to be selected are:

- General negligence
- Medical malpractice, if the defendant has taken the appeal
- No-fault
- Uninsured Motorist/Supplemental Uninsured Motorist
- Property subrogation
- Mortgages
- Foreclosures

Less likely to be selected are cases involving service or jurisdiction, statutes of limitation, declaratory judgments, administrative review, pro se parties, and defamation.

The special referees' familiarity with areas of law can also factor into selection, and particularly into assignment of cases among the special referees. But when certain types of cases have surged, as have foreclosure cases in recent years, the special referees have made it a point to familiarize themselves with the area.

The attorneys and firms involved are also a factor—another example of our reputation preceding us. And litigants whose cases have not been selected for a CAMP conference can request one, so parties who see opportunity for settlement should not hesitate to contact Ms. Pope.[8]

The obvious goal of CAMP conferences is resolution, but parties can come away with other benefits. Where parties participate in good faith, CAMP is an opportunity to learn from your adversaries. You can gain insight into their perspective on the issues on appeal, and in the larger litigation. You can also learn about the obstacles to settlement, both monetary and non-monetary. Lastly, parties are likely to benefit from the special referees' perspective on the appeal. While the special referees do not communicate with the Appellate Division judges, their perspective on the court and an appeal's chances can be valuable.

Practical Advice

Counsel attending these conferences must arrive fully prepared, with clients and insurers who have authority to settle, and with a realistic understanding of the strengths and weaknesses of their case and pending appeal. The referees expect thorough preparation and candor, and the panelists stressed that meaningful participation can dramatically increase the likelihood of resolution.

The panel spoke at length about appeals from a denial of summary judgment. In *Bonczar v American Multi-Cinema, Inc.*,[9] the plaintiff sued under Labor Law § 240 (1) and obtained summary judgment, but the Appellate Division reversed, and at trial the jury found for the defense. The plaintiff appealed not just the judgment after trial but also the denial of summary judgment. The Court of Appeals held that the denial "did not remove any issues from the case" and the parties had the opportunity to litigate them at trial, therefore the denial did not affect the final judgment and was beyond appellate review. In *Stanescu v Stanescu*,[10] the Second Department applied *Bonczar* to hold that after judgment, the plaintiff could no longer directly appeal a discovery order, and that the court could not even review the denial of summary judgment.

Bonczar and *Stanescu* should guide parties when considering whether to perfect interlocutory appeals. Parties in the Second Department may well find that their case goes to trial before their appeals are decided. This means that appeals from denials of summary judgment will be mooted, one way or another, by a judgment after trial. Parties therefore should consider withdrawing an appeal of a denial of summary judgment or other decision that will not affect the final judgment.

Attorneys could benefit from another insight from the special referees. In their weekly preparation, the special referees review the notices of appeal but may not review the briefs or record; indeed, in some CAMP conferences there are no briefs or record yet to review.

This means that the informational statement is not just some perfunctory form but an opportunity to advocate. Where the statement asks for "the issues proposed to be raised ... the grounds for reversal, or modification to be advanced and the specific relief sought on appeal," we need not simply declare that we will argue all issues that present themselves on review of the record. Rather, we should take the time and space to explain the appeal's context and articulate for the special referee the issues that we see on appeal. And though the form nowhere invites an addendum, some attorneys do refer to a separate sheet that they attach, and where they take the space to explain themselves.

Your authors shared their perspectives on preparing for the conference, but their advice was more notable for the commonalities. Counsel for plaintiffs and defendants must inform their parties of the conference, explain the possible outcomes, and advise them of their obligation to at least be available if not attend—and with all CAMP conferences conducted virtually these days, there is almost no excuse for a party to be absent.

Counsel also need to evaluate and explain the appeal and the chances of different outcomes, which can differ for different sides of the litigation. Counsel for plaintiffs need to confirm their liens and reimbursement obligations and understand their client's expectations and requirements from any settlement. Defense counsel need to verify the "tower" of coverage on this incident and their exposure on cross-claims and counterclaims, which may require a global strategy with co-parties. They will also need to clarify their settlement authority and ensure that insurance companies have someone present with settlement authority—and again, in the era of teams conferences, having senior adjusters from across the country or across the ocean is merely a matter of scheduling.

A recurring theme during the program was the importance of preparation. Arriving unprepared or without decision-makers can waste a valuable opportunity and even invite sanctions. Approaching the conference with a thoughtful strategy, a clear narrative, and a willingness to engage in good-faith negotiation not only respects the process but also advances the clients' interests. Know the claims, the damages, and the procedural history in the trial and appellate court. Also understand the history of negotiations, such as may be. And be prepared to at least outline your position on the issues on appeal. Do not miss an opportunity to educate others about your perspective, or to learn the perspective of your adversaries and the neutral special referee.

You Get Out What You Put In

Taken together, the insights shared by the panel highlight that effective appellate advocacy begins well before an appeal is perfected. Many cases cannot settle, for reasons that have nothing to do with the parties' intentions. Yet as the panel made clear, the special referees come into each conference looking to resolve each appeal, therefore the parties should make a good faith effort to explain what it would take for them to settle, or at least why settlement is not possible at this time. A dismissive attitude, or an unrealistic set of expectations, wastes everyone's time. But an attitude of openness and honesty is bound to benefit all sides, either in settlement at the conference or in resolution down the road.

Understanding how to leverage CAMP, preparing clients to engage meaningfully, negotiating realistically, and preserving issues carefully at the trial level are essential components of successful appellate practice. The program underscored that strategy and preparation are critical at every stage, and that CAMP remains one of the most valuable tools available to litigators practicing in the Second Department.

1. See 22 NYCRR § 670.3. The First Department has an analogous program. See 22 NYCRR § 600.3.
2. See 22 NYCRR § 670.3 (c).
3. See 22 NYCRR § 670.3 (d)
4. 22 NYCRR § 670.3 (c) (1).
5. 22 NYCRR § 670.3 (d) (2) (ii).
6. 22 NYCRR § 670.3 (c) (2), (d) (2) (iv).
7. 22 NYCRR § 670.3 (3).
8. Ms. Pope's contact information is contained on the Second Department's website under the Ancillary Programs tab.
9. 38 N.Y.3d 1023 (2022).
10. 206 A.D.3d 1031 (2d Dept 2022).

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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.

Capell Barnett Matalon and Schoenfeld LLP is proud to announce that Founding Partner, **Robert S. Barnett**, received the Leon Alpern Leadership award from the Nassau/Suffolk Chapter of the National Conference of CPA Practitioners in recognition of his many years of service and guidance to NCCPAP and the CPA community, and Partner **Yvonne R. Cort** received the Samuel Dyckman Excellence in Education Award in recognition as an Outstanding Discussion Leader.

Rivkin Radler congratulates Partner **Brian Schlosser** on being appointed as a member of the Nassau County Bar Association (NCBA) Lawyer Assistance Committee, which administers the NCBA Lawyer Assistance Program (LAP). Rivkin Radler also congratulates partner **Stuart Gordon** who was elected as secretary of the Board of Directors of the Developmental Disabilities Institute (DDI). Rivkin Radler additionally offers their congratulations to **Elizabeth Sy** and **Philip Nash** on being elected Partners.

Sahn Ward congratulates their Partners who took leading roles at the Annual Meeting of the New York State Bar Association, serving as program chairs and sitting as panelists. Firm Partner **Danielé** (**"Danny"**) **De Voe**, who heads the Firm's Labor and Employment Law Practice Group, served as Panel Leader for a Labor and Employment Law Committee Panel at the Annual Meeting. Additionally, Partner **John Parker**, who heads the Firm's Environmental, Energy and Resources Practice Group, serves as the Secretary of the Environmental and Energy Law Section, a member of its Executive Committee, Chair of the Legislation Committee, and was also selected to serve as Program Chair for the Section at the Annual Meeting.

NCBA Past President **Marc C. Gann** of Collins Gann McCloskey & Barry PLLC in Mineola received the Charles F. Crimi Memorial Award from the NYSBA Criminal Justice Section on January 13. The award recognizes the professional career of a defense lawyer in private practice who embodies the highest ideals of the Criminal Justice Section.

FOCUS: LAW AND AMERICAN CULTURE

A Woman for All Seasons

Rudy Carmenaty

This article is dedicated to the Hon. Maxine Broderick, the President-Elect of the Nassau County Bar Association, who as an outstanding jurist is emblematic of the virtues that Judge Motley stood for.

Constance Baker Motley was a woman for all seasons. Her life was marked by a remarkable series of firsts. She was the first African-American woman to be elected to the New York State Senate. She was the first elected Manhattan Borough President. She was the first confirmed to the federal bench.

A strategist and litigator for the NAACP Legal Defense & Education Fund (LDF), Motley became the first African-American woman admitted to the Bar of the United States Supreme Court. There she won nine of the ten cases she argued and contributed to a further sixty matters that reached the high court.[1]

It should be noted the one case she lost, *Swain v Alabama*, was later reversed.[2] The Court ruled against her on race-based preemptory challenges. The justices in due course saw it her way, subsequently holding peremptory challenges cannot be used to dismiss jurors on account of race alone.[3] So, in actuality, she batted a thousand at the Supreme Court.

President Lyndon Johnson appointed her to a judgeship in the Southern District of New York (SDNY) in 1966. Judge Motley would serve until her death in 2005, having assumed senior status in 1986 after concluding her tenure as Chief Judge. Her becoming Chief Judge was but another milestone in a storied career.

Judge Motley brought to her courtroom a mind well-versed in the law and honed by her work at the trial and appellate level. She also brought her perspective as both a woman and an African American. But above all, she brought her commitment to equal justice under law. Unfortunately, her triumphs have long been neglected.

In recent years, however, there has been renewed interest in the woman and the jurist. In 2024, the Postal Service issued a stamp in her honor as part of its Black Heritage series. And in 2022, Tomiko Brown-Nagin published a full-length biography, *Civil Rights Queen: Constance Baker Motley and the Struggle for Equality*.

Constance Baker was born in New Haven, literally a stone's throw from the Yale campus. Her parents were immigrants from Nevis in the West Indies. During her youth in Connecticut, Motley was sparred the more egregious aspects of bigotry. Yet prejudice circumscribed her future.

She wanted to be a lawyer. She was told she should be a hairdresser. Then one day she spoke at the Dixwell Community House, and her life was forever changed. Clarence Blakeslee, a local philanthropist, was so impressed with her demeanor and public speaking abilities, he agreed to finance her education.[4]

Were it not for this random act of kindness, Constance Baker's genuine legal ability might have gone unrealized. Blakeslee lived long enough to see her admitted to the bar. Unaccustomed to Southern racism, it would be at Fisk University that she first came face-to-face with her entrenched nemesis—Jim Crow.

Segregation reared its ugly head when she was forced to move to a 'colored' train car on her way to Nashville. "I was the kind of person who would not be put down," she recalled, "I rejected the notion that my race or sex would bar my success in life."[5] She left Nashville for New York City when she transferred to NYU.

Earning her law degree at Columbia Law School in 1946, she aspired to work at a Manhattan law firm, but that was unlikely given the hiring climate in New York legal circles at the time. In 1945, during her 2L-year, Thurgood Marshall first hired her at the LDF.

Following her graduation from Columbia, Marshall brought her on as a staff attorney. On reflection, she said "had there not been a Thurgood Marshall no one would have heard of [me]."[6] For the next twenty years, Motley would appear in Southern courthouses to do battle with the scourge that was legally sanctioned discrimination.

A woman of stature, in more ways than one, she was tall, elegant and she always retained her poise. A brilliant tactician, her bearing was part of her craft. She spoke in a melodious voice, regal in tone. Motley's dignified manner came as a shock to many southerners who had never encountered a Black woman attorney before.

Motley faced countless indignities in courtrooms down South. This appalling conduct manifested itself in the form of condescension from the bench, indifference from opposing counsel, and taunts from those about the courthouse. The way in which Motley carried herself served as an affirmation of her own dignity.

It also bespoke of the dignity that was denied to others who happen to look like her. Motley was a stately warrior. She was as well a fierce one. Colleague Jack Greenberg observed, "When she got ahold of a case, pity the lawyer on the other side."[7] The *Norfolk Journal & Guide* first recognized her as "The Civil Rights Queen."[8]

In 1961, Marshall was named to a judgeship on the Second Circuit Court of Appeals. When he resigned from the NAACP, Motley was deemed a likely successor. Marshall, though, named Greenberg as the LDF's next Director-Counsel. Motley knew her being bypassed was because she was a woman.

She dealt with her disappointment quietly but purposely, achieving her most significant victories during the first half of the 1960s. Motley valued the role that learning had played in her life. She dedicated much of her energies to expanding educational opportunities so Blacks could attend public universities in Southern states.

Motley advocated on behalf of James Meredith's admission to the University of Mississippi in 1961. Considered an intractable bastion of racism, the legal campaign Motley waged on Meridith's behalf precipitated riots at Ole Miss. Federal troops were needed to restore order. Merdith called it "the last battle of the Civil War."[9]

Into this maelstrom, Motley asserted the university rejected Meredith because of his race.[10] The District Court for the Southern District of Mississippi ruled Motley had failed to prove Ole Miss had a policy of denying admission to Blacks. The Fifth Circuit Court of Appeals disagreed, reversing the decision and ordering Meredith's admission.[11]

Icons such as Martin Luther King, Jr. and Medgar Evers, both of whom were assassinated, were clients of Motley. Merdith himself was shot in 1965. Motley put her life at risk during these sojourns in the Deep South. Such was the danger she faced, she stayed in private homes protected by armed Black men.

Evers' murder in 1963 left Motley overwhelmed. She had grown close to Medgar and his wife Myrlie during the Meridth case. Motley stayed in the Evers home, as did her son Joel who played with the Evers children. She couldn't bring herself to attend his funeral. The assassination proved a turning point.

She embarked on a new chapter by seeking public office in New York State. As she entered the political arena, Motley broke barriers as a state senator and Manhattan Borough President. Still, her time in electoral politics would prove all too brief, a little more than two years. As an opportunity to join the federal judiciary beckoned.

In 1966, Motley underwent a contentious confirmation in order to once again make history. She persevered despite opposition from the left and right flanks of the Democratic party. Opposition came from her home state senator Robert F. Kennedy and from Senate Judiciary Committee Chair James Eastland of Mississippi.

Motley ran afoul of Bobby Kennedy in 1965, when RFK proposed his designee become leader of the Democratic caucus in the NYS Senate. Motley sided with the incumbent. Kennedy, in retaliation, blocked Motley's contemplated nomination to the Second Circuit. A year later, RFK nearly derailed her appointment to the SDNY.

From his position as committee chair, Eastland deliberately held up Motley's confirmation. A White supremacist, Eastland resented Motley and accused her of being a "Communist."[12] There was also an element of personal animus involved. Motley argued the court case that integrated the senator's alma mater, namely Ole Miss.

Interestingly enough, the American Bar Association rated her as being only 'qualified,' as opposed to its top rating of 'well qualified.' The ABA defended its assessment in that her experience was limited to civil rights cases, which in their view did not sufficiently prepare her for the federal bench in Manhattan.[13]

She never litigated a commercial case, nor had she appeared in a New York federal courtroom. It was believed she was not quite up to snuff, considering the high-end cases which make up the docket at the SDNY. Motley's two decades of litigating before federal trial and appellate judges counted for little in the eyes of some.

Once confirmed, Motley's background was weaponized against her. Among the reservations were that as a civil rights lawyer she could not be impartial in matters involving claims of discrimination. Motley

would not stand idly and allow her past to dictate the kind of cases she could hear going forward.

Parties tried, but failed, to use Motley's race, gender and professional experiences as a basis for disqualification. The best-known instance was *Blank v Sullivan & Cromwell*.[14] In Blank, an associate filed suit under Title VII of the 1964 Civil Rights Act charging Sullivan & Cromwell with discrimination in hiring and promoting women.

The firm asserted that Motley, as a Black woman, could not possibly be neutral to a respondent accused of gender bias. Sullivan & Cromwell sought to preempt Motley from hearing the case. In response, the Judge, by then having sat on the bench for nearly ten years, had earned a well-deserved reputation for fairness.

Motley adroitly rebuffed the presumption she was unable to render a just decision according to the law:

> "[I]f background or sex or race of each judge were, by definition, sufficient grounds for removal, no judge on this court could hear this case."[15]

This case became a landmark, establishing a much-heralded precedent due to Motley's refusal to recuse.

By not recusing herself, she articulated in her decision a standard that is universal in its application. For all judges come from a specific ethnic origin, each has had events in their lives which have shaped their outlook, and all have handled particular cases before they assumed the bench. This insightful approach set the standard.

If identity equates with bias resulting in an automatic recusal, then no jurist would be permitted to hear any matter. After all, every human being has an identity or past involvements which could be subject to question. Known as the Blank Principle, this rationale is invoked when lawyers seek a judge's recusal due to race, gender, sexual orientation or past practice.

In 1978, Motley rendered an opinion in a case which was a breakthrough for women journalists in particular, and for women professionals in general. *Ludtke v Kuhn*, pitted Melissa Ludtke, a reporter for *Sports Illustrated*, against Major League Baseball (MLB).[16]

Ludtke sued in a §1983 action naming Commissioner Bowie Kuhn, American League President Leland MacPhail, and city officials over a ban which kept accredited female reporters from entering the Yankees' locker room during the 1977 World Series. Ludtke asserted her rights under the 14th Amendment were being violated.

Plaintiff sought an injunction keeping the Yankees from enforcing this policy. Post-game clubhouse interviews are the 'meat-and-potatoes' of sports reporting. Nonetheless, MLB argued the clubhouse should be a space guaranteeing player privacy and that having women in a men's locker room might appear unseemly.

The court first had to decide whether the policy constituted state action under the 14th Amendment. Motley found it did, as the Yankees leased the stadium from the city. Ludtke and her employer, Time-Life, also asserted freedom of the press under the 1st Amendment. Judge Motley ruled in Ludtke's favor.

The judge saw this gendered policy as a denial of equal protection and declared the players had a choice if women enter their locker room: "let them wear towels."[17] Motley ruled Ludtke's fundamental right to pursue her chosen profession were being infringed. A female reporter cannot be denied equal access to a locker room.

Motley's labors enabled women and African Americans to participate in vast swaths of American life which had been previously foreclosed. During three distinct phases—as advocate, office holder, federal judge—she paved a path toward a more perfect union.

Motley left behind a towering legacy, one worthy of celebrating. In her youth, her ambition was that she would change the world for the better. In fact, and in law, Constance Baker Motley did just that, and she did so on every occasion, during her nearly sixty years as a lawyer and a judge.

1. United States Courts, *Constance Baker Motley: Judiciary's Unsung rights Hero*, (February 20, 2020) at https://www.uscourts.gov.
2. 380 U.S. 202 (1965).
3. *Batson v Kentucky*, 476 U.S. 79 (1986).
4. United States Courts, *supra*.
5. *Id.*
6. Karen Grigsby Bates, *The life of a 'Civil Rights Queen'*, National Public Radio (February 2, 2022) at https://www.npr.org.
7. Columbia Law School, *Celebrating the Life of Constance Baker Motley '46*, at https://www.law.columbia.edu.
8. *Id.*
9. Denny Chin and Kathy Hirata Chin, *Constance Baker Motley, James Meredith, and the University of Mississippi*, *Columbia Law Review* Vol. 117, Iss. 7 (Oct. 2017) 1741-1777.
10. *Meredith v Fair*, 199 F. Supp. 754 (S.D. Miss. 1961).
11. *Meredith v Fair*, 631 F.2nd 696 (1962).
12. Jennifer Szalai, *'Civil Rights Queen,' the Story of a Brave and Brilliant Trailblazer, New York Times* (January 26, 2022) at https://www.nytimes.com.
13. Tonya Mosely, *Often Overlooked, civil rights advocate Constance Baker Motley gets her due*, National Public Radio (February 16, 2022) at https://www.npr.org.
14. 418 F. Supp. 1 (S.D.N.Y. 1975).
15. *Id.*
16. 461 F. Supp. 86 (S.D.N.Y. 1978).
17. Bates, *supra*.

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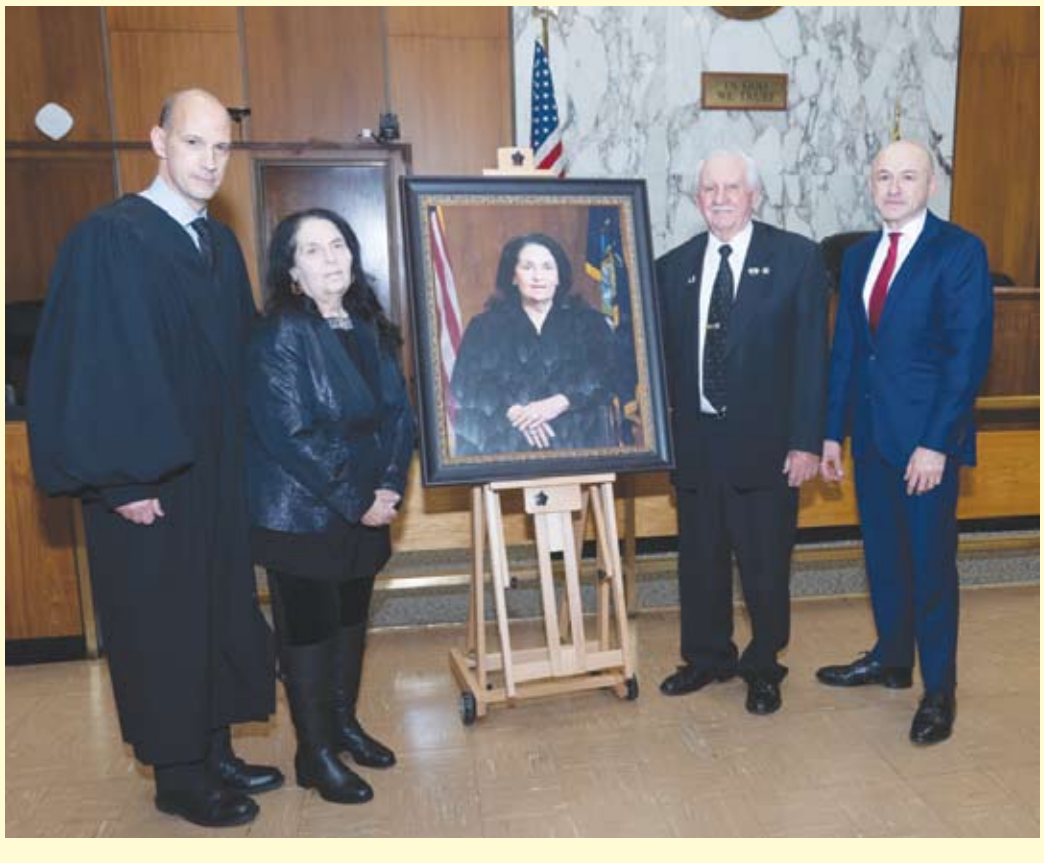
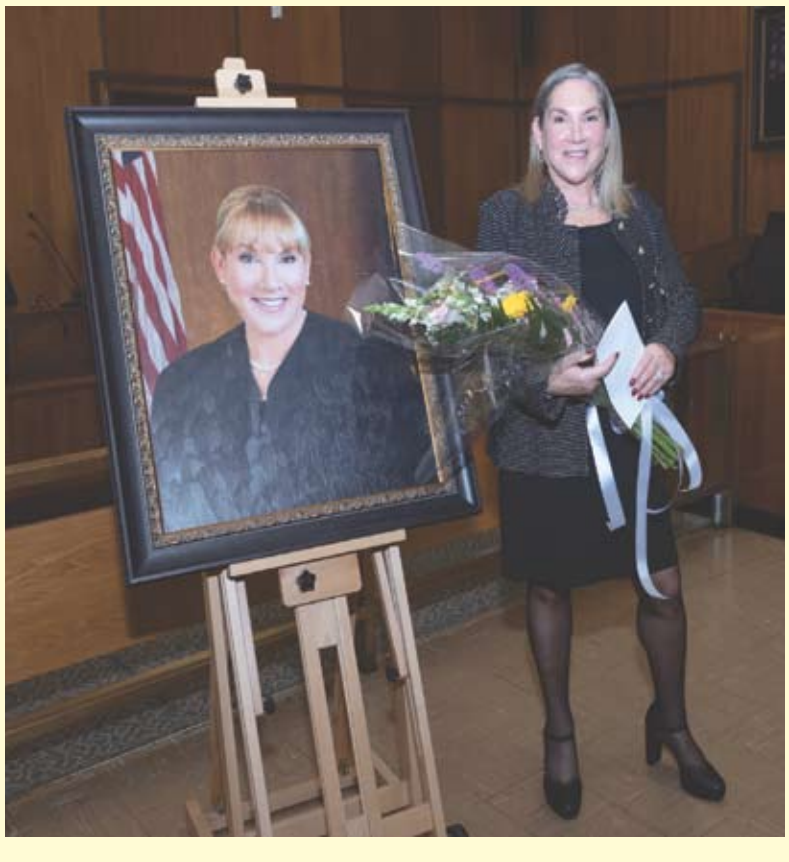
Portrait Dedication Ceremonies

NCBA President James Joseph was proud to participate in the January 8, 2026 Nassau County Courts Portrait Dedication Ceremony for Hon. Anna Anzalone, Justice of the Supreme Court (ret.), and Hon. Julianne Capetola, Justice of the Supreme Court (ret.). The NCBA commissions portraits for elected Nassau County Supreme Court justices upon their retirements from the Bench. The portraits hang in the Calendar Control Room Courtroom of the Supreme Court.





FOCUS: EMPLOYMENT LAW

New Year—New Wage Minimums (and Some Additional Reminders for New York Employers)

Cynthia A. Augello

As New York's minimum wage continues to rise, employers must ensure not only that hourly rates are compliant, but also that payroll deductions are lawful and do not undermine minimum wage or overtime obligations. Improper deductions remain one of the most common and costly sources of wage-and-hour liability under both state and federal law.

Minimum Wage Rates and Regional Requirements

On January 1, 2026, New York's new minimum wage requirements became effective. In New York City, Westchester County, and Long Island, the minimum wage rose to $17.00 per hour.[1] In all other areas of New York State, the minimum wage rose to $16.00 per hour.[2]

These rates were established pursuant to New York Labor Law § 652 and implementing regulations issued by the New York State Department of Labor (NYDOL).[3] [4] Employers must apply the correct rate based on the location where the employee performs the work, consistent with NYDOL guidance.

Paying Employees in Cash: What New York Employers Must Know

New York law does not prohibit employers from paying wages in cash. However, employers who choose to do so face heightened compliance obligations and increased enforcement risk. Cash payments are closely scrutinized by the New York State Department of Labor and the U.S. Department of Labor, particularly in investigations involving minimum wage and overtime compliance.

Paying employees in cash is lawful only if the employer fully complies with all applicable wage and hour requirements. New York Labor Law permits cash payment of wages provided that the employer pays at least the applicable minimum wage in accordance with Labor Law § 652,[5] pays overtime when required under Labor Law § 650[6] and its implementing regulations at 12 NYCRR Part 142[7], maintains accurate payroll records as required by Labor Law § 195,[8] and 12 NYCRR Part 195,[9] and provides all required wage notices and itemized wage statements.

Importantly, paying wages in cash does not excuse compliance with tax withholding, payroll reporting, recordkeeping, or notice obligations. Employers remain responsible for meeting all state and federal requirements regardless of the method of payment, and failure to do so can result in significant liability even where employees were paid in full.

Wage Notice and Wage Statement Requirements Still Apply

Even when wages are paid in cash, employers must comply with the Wage Theft Prevention Act. New York Labor Law § 195 requires employers to provide employees with a written wage notice at the time of hire and upon any change in pay rate.[10] Employers must also issue itemized wage statements with each payment of wages, regardless of the method of payment. These wage statements must accurately reflect the dates of work covered by the payment, the employee's rate or rates of pay, the number of hours worked including overtime hours, gross wages, any deductions taken, and net wages paid.

Failure to provide required wage notices or accurate wage statements can result in statutory damages, even where the employee was fully paid all wages owed. These notice and statement violations are frequently asserted as standalone claims and can significantly increase exposure in wage and hour litigation.

Employers who pay wages in cash must also comply with strict recordkeeping requirements. Under New York Labor Law § 195(4)[11] and 12 NYCRR § 195-2.1[12], employers are required to maintain payroll records for at least six years. These records must include hours worked each day and week, rates of pay, gross wages paid, deductions taken, and net wages paid. In enforcement proceedings, the New York State Department of Labor routinely treats missing, incomplete, or inconsistent records as evidence supporting employee claims regarding hours worked and wages owed.

Paying wages in cash does not eliminate tax compliance obligations. Employers remain responsible for withholding and remitting federal, state, and local payroll taxes, paying employer-side payroll taxes, and reporting wages to the appropriate taxing authorities. Failure to properly report cash wages can result in wage and hour liability, tax penalties, and personal liability for owners and officers. Cash payment practices are also a common trigger for joint investigations by labor and tax authorities.

Both the New York State Department of Labor and federal regulators often view cash payment arrangements as a red flag for potential minimum wage violations, overtime violations, off-the-books employment, and employee misclassification. When payroll records are incomplete or unreliable, the burden frequently shifts to the employer to disprove employee testimony regarding hours worked or wages paid, making defense of such claims particularly difficult.

Employers who choose to pay wages in cash should take heightened precautions. Best practices include providing written wage notices and itemized wage statements, obtaining signed acknowledgments of payment, maintaining meticulous time and payroll records, ensuring that cash payments never reduce wages below minimum wage or required overtime rates, and consulting counsel before implementing or continuing cash payment practices.

Payroll Deductions: What Employers May (and May Not) Deduct

New York Labor Law strictly regulates payroll deductions. Under Labor Law § 193(1), employers may deduct wages only in limited circumstances.[13] Permitted deductions include those required by law, such as federal, state, and local taxes, Social Security and Medicare contributions, and court-ordered child support or wage garnishments.

Employers may also make deductions that are expressly authorized in writing by the employee and made for the employee's benefit. Common examples include health, dental, or vision insurance premiums, retirement or pension contributions, union dues or agency fees, transit benefits such as pre-tax commuter programs, voluntary charitable contributions, and certain meal or cafeteria plans.

New York State Department of Labor regulations require that any written authorization for voluntary deductions clearly specify the amount of the deduction or the method by which it will be calculated, as well as the purpose of the deduction, as set forth in 12 NYCRR § 195-4.2.[14] Employees generally must be permitted to revoke such authorizations in writing, and employers should maintain these authorizations as part of their payroll records.

New York law also expressly prohibits deductions that shift business losses or operating expenses to employees, even where the employee has purportedly agreed. Prohibited deductions include deductions for cash shortages or register discrepancies; breakage, spoilage, or damaged merchandise; lost or damaged equipment, tools, uniforms, phones, or laptops; customer theft or walk-outs; fines or penalties; disciplinary charges; and errors, mistakes, or alleged poor performance.

These prohibitions are codified in Labor Law § 193(2) and reinforced through consistent enforcement guidance issued by the New York State Department of Labor.[15] Employers may not require employees to bear the cost of doing business through payroll deductions under any circumstances.

Even where a deduction is otherwise lawful, it may not reduce an employee's wages below the applicable minimum wage or required overtime rate, except for deductions that are required by law. This principle is enforced under New York Labor Law §§ 652[16] and 663[17], as well as under the Fair Labor Standards Act, including 29 U.S.C. §§ 206 and 207.[18] Both the New York State Department of Labor and the U.S. Department of Labor take the position that deductions resulting in sub-minimum wages or unpaid overtime are unlawful regardless of employee authorization.

Failure to comply with minimum wage, overtime, or payroll deduction rules can expose employers to substantial financial liability under both New York law and the Fair Labor Standards Act. Under New York Labor Law § 663,

employees who prevail on wage-and-hour claims may recover unpaid wages, including minimum wage and overtime, liquidated damages equal to one hundred percent of the unpaid wages, pre-judgment interest, and reasonable attorneys' fees and costs.[19] Liquidated damages are presumed unless the employer can establish a good-faith basis for believing that its pay practices complied with the law, a standard that New York courts construe narrowly.

In addition to private litigation exposure, the New York State Department of Labor may assess civil penalties under Labor Law §§ 218 and 218-b, impose interest, and pursue personal liability against owners, officers, and certain managers who qualify as employers under Labor Law § 190(3).[20] These enforcement tools significantly increase the potential cost of noncompliance.

Employers may also face liability under the Fair Labor Standards Act. Pursuant to 29 U.S.C. § 216(b), employees may recover unpaid minimum wages or overtime, liquidated damages equal to one hundred percent of the unpaid wages, and attorneys' fees and costs. For willful violations, the statute of limitations extends from two to three years under 29 U.S.C. § 255(a), which can materially increase damages exposure.[21]

Employees frequently assert parallel claims under New York law and the Fair Labor Standards Act. While double recovery of the same wages is not permitted, employers often face broader discovery obligations, increased litigation costs, and heightened settlement pressure when defending simultaneous state and federal claims. New York courts routinely permit these claims to proceed together.

Given these risks, employers should conduct periodic wage and hour audits, review all payroll deductions for compliance with Labor Law § 193, confirm that deductions do not reduce wages below minimum wage or overtime thresholds, maintain compliant written deduction authorizations consistent with 12 NYCRR § 195, train human resources and payroll staff using New York State Department of Labor guidance, and address compliance issues proactively.

With higher minimum wages now in effect, wage and hour compliance failures carry greater financial risk than ever. Employers should ensure that pay rates, payroll deductions, and overtime practices fully comply with New York Labor Law, applicable regulations, and the Fair Labor Standards Act in order to minimize liability and enforcement exposure.

Recent Wage and Hour Decisions and Enforcement Developments in New York

Recent decisions from New York courts and enforcement actions by state agencies continue to shape the wage and hour landscape for employers. In particular, courts have been closely scrutinizing pay frequency, recordkeeping, minimum wage compliance, and employer defenses to wage claims, while the New York State Department of Labor and the Attorney General have expanded enforcement efforts.

One significant development arose from the Appellate Division, Second Department's decision in *Grant v. Global Aircraft Dispatch, Inc.*, where the court held that manual workers do not have a private right of action to enforce the weekly pay requirement under New York Labor Law § 191. This ruling diverged from earlier decisions in other departments and created uncertainty regarding exposure for employers who pay manual workers on a biweekly or semi-monthly basis. While the decision offers some relief to employers facing private lawsuits, the split among appellate courts means that pay frequency practices remain an area of risk and should be monitored closely.[22]

The New York Legislature has also responded to the wave of pay frequency litigation by amending the Labor Law to limit damages for certain first-time violations. Under the amendment, employers who pay wages on a regular semi-monthly schedule may face interest rather than liquidated damages for an initial violation of the weekly pay requirement, with full liquidated damages applying to repeat violations. This change reflects an effort to curb excessive penalties while preserving wage protections, but it does not eliminate exposure entirely.[23]

New York courts have also continued to allow minimum wage and overtime claims to proceed where employees plausibly allege unpaid hours, insufficient wages, or failure to pay required premiums. In *Reyes v. Seaqua Delicatessen, Inc.*, the court sustained claims alleging violations of minimum wage, overtime, and spread-of-hours pay under the Hospitality Wage Order. The decision illustrates that courts remain receptive to fact-specific wage claims, particularly where employers fail to maintain accurate time and payroll records.[24]

Federal wage and hour developments also continue to affect New York employers. In early 2025, the U.S. Supreme Court clarified in *E.M.D. Sales, Inc. v. Carrera* that employers must establish Fair Labor Standards Act exemptions by a preponderance of the evidence rather than a heightened standard.[25] While not a New York decision, the ruling influences how employers defend exemption classifications in federal cases brought by New York employees and underscores the importance of well-documented job duties and pay practices.

Taken together, these developments highlight an increasingly complex wage and hour environment for New York employers. Courts remain focused on compliance with minimum wage, overtime, and recordkeeping requirements, while enforcement agencies continue to pursue wage theft aggressively. Employers should regularly review their pay practices, payroll records, and compliance policies in light of evolving case law and enforcement trends to mitigate risk and avoid costly disputes.

1. https://www.ny.gov/new-york-states-minimum-wage/new-york-states-minimum-wage.
2. *Id.*
3. https://www.nysenate.gov/legislation/laws/LAB/652.
4. https://dol.ny.gov/minimum-wage.
5. N.Y.L.L. § 652.
6. N.Y.L.L. § 650.
7. 12 N.Y.C.R.R. Part 142.
8. N.Y.L.L. § 195.
9. 12 N.Y.C.R.R. Part 195.
10. N.Y.L.L. § 195.
11. N.Y.L.L. § 195(4).
12. 12 N.Y.C.R.R. § 195-2.1.
13. N.Y. Lab. Law § 193(1).
14. 12 N.Y.C.R.R. § 195 (4.2).
15. N.Y.L.L. § 193(2).
16. N.Y.L.L. § 652.
17. N.Y.L.L. § 663.
18. 29 U.S.C. §§ 201–219.
19. N.Y.L.L. § 663.
20. N.Y.L.L. §§ 218, 218(b), 190(3).
21. 29 U.S.C. §§ 216(b), 255(a).
22. *Grant v. Global Aircraft Dispatch, Inc.*, 223 A.D.3d 712 (2d Dep't 2024).
23. N.Y.L.L. § 198(1-a).
24. *Reyes v. Seaqua Delicatessen, Inc.*, 2024 NY Slip Op 05562 (2d Dep't. 2024).
25. *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45 (2025).

Cynthia A. Augello handles all aspects of Labor and Employment Law representing employers of all types and sizes. She is also the Editor-in-Chief of the *Nassau Lawyer*. She can be reached at cynthia@augellolaw.com.

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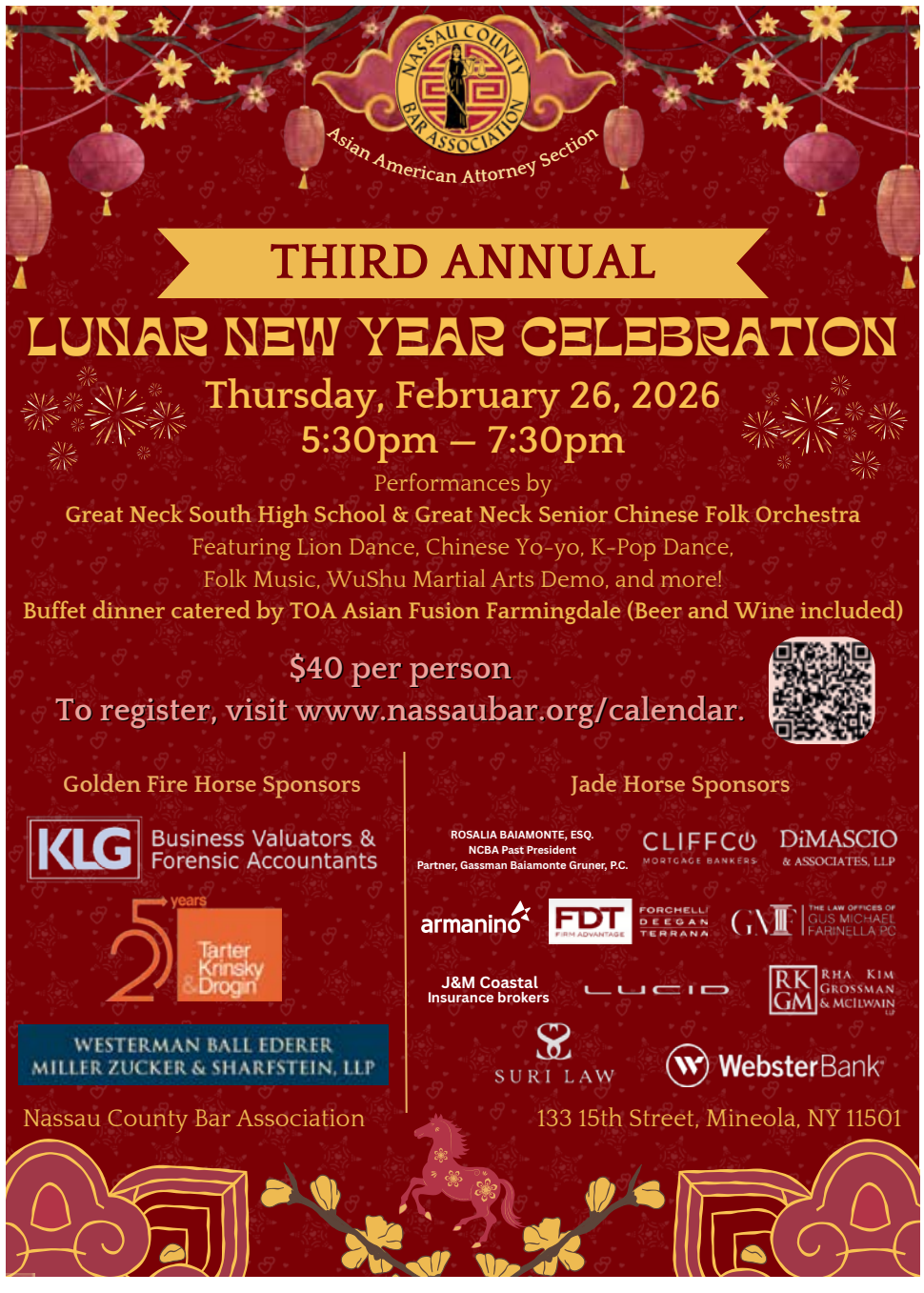

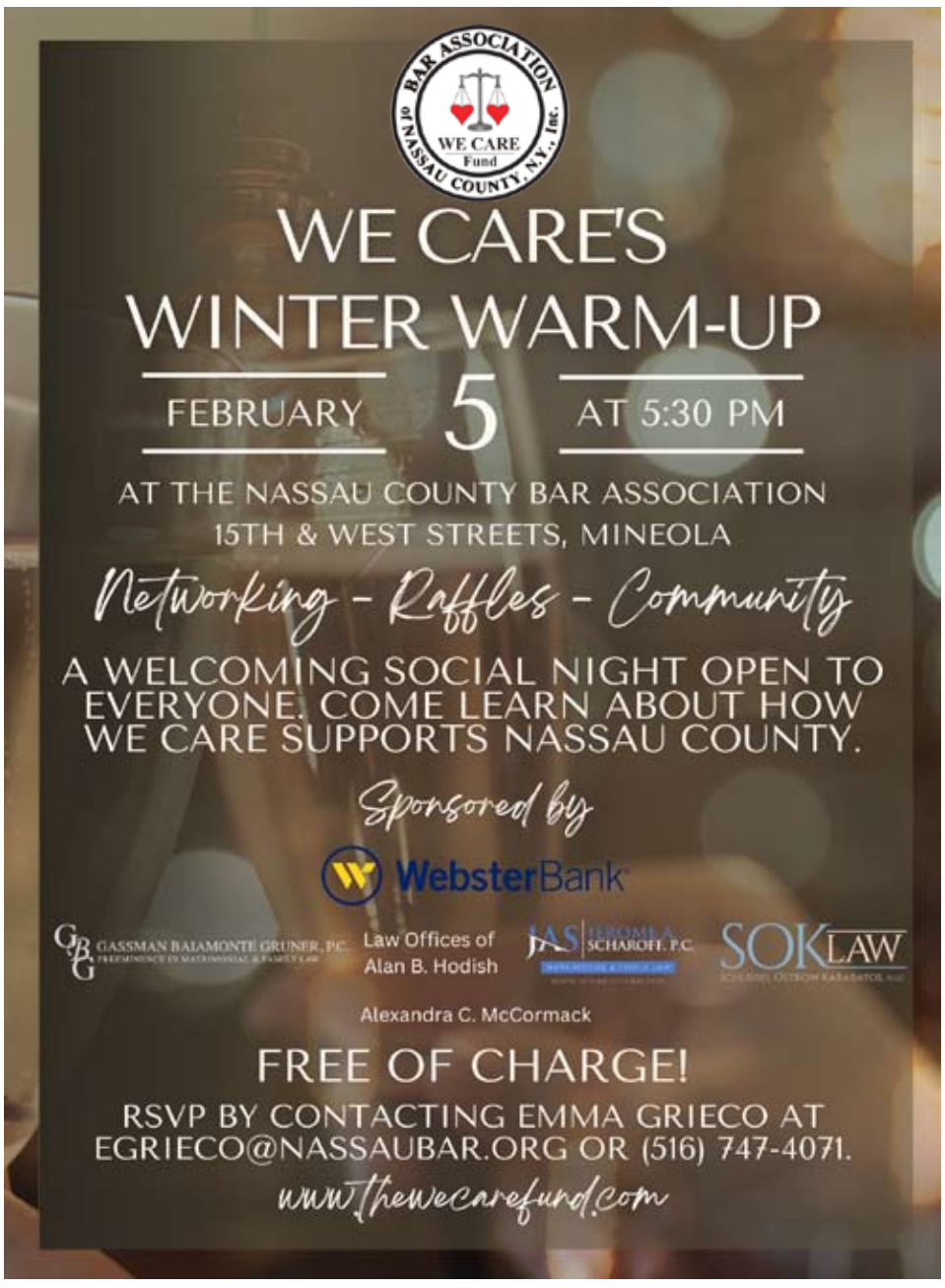

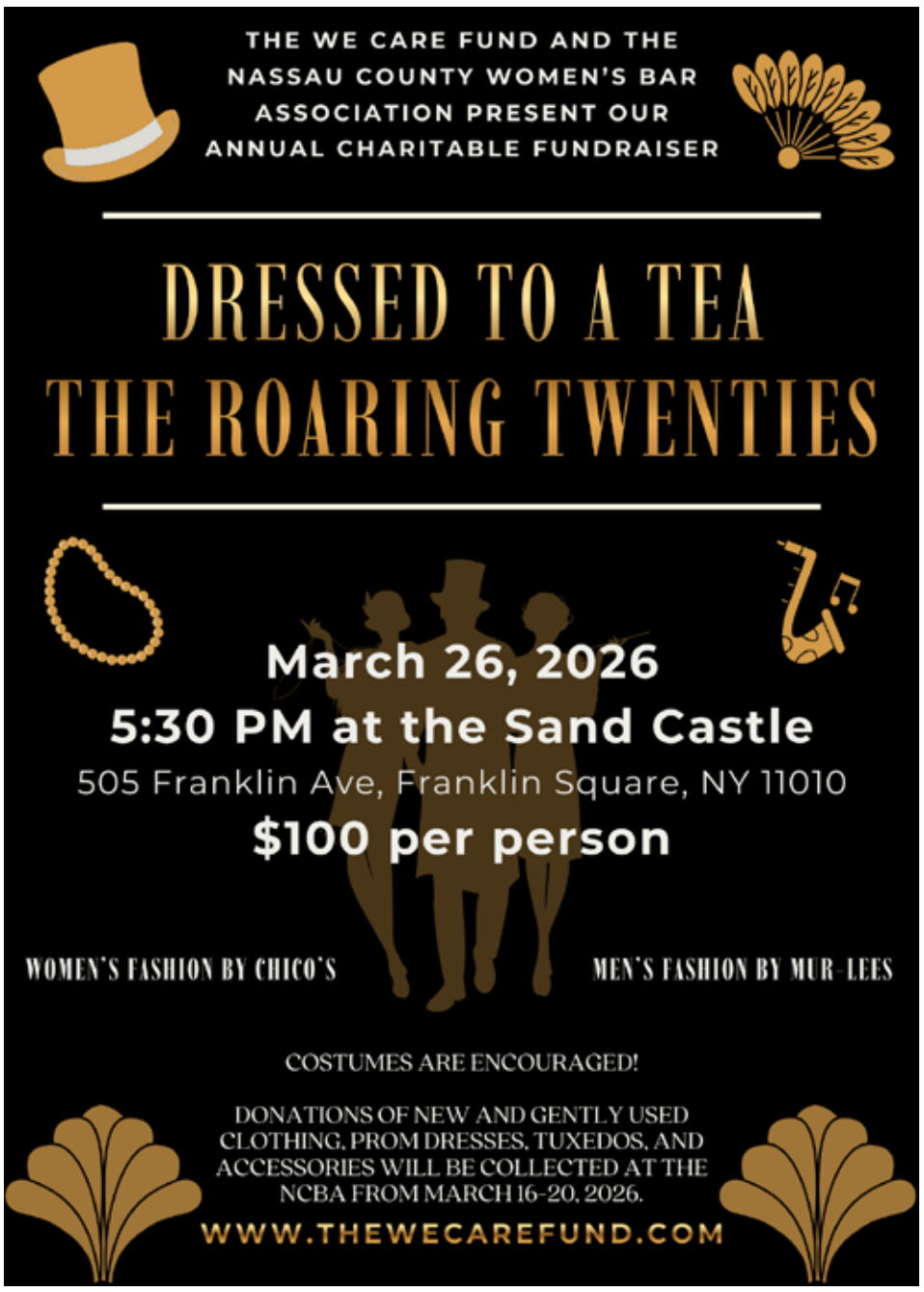

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WEDNESDAY, FEBRUARY 4
Real Property Law
12:30 p.m.

Paul F. Bugoni, Esq. and Tom Turano will speak on "The FinCEN AML Rule: Anti-Money Laundering Regulations for Residential Real Estate Transfers."

THURSDAY, FEBRUARY 5
Publications
12:45 p.m.

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

WEDNESDAY, FEBRUARY 11
Plaintiff's Personal Injury
Defendant's Personal Injury
Law Students
New Lawyers Committees
12:30 p.m.

Guest speakers, Hon. Denise L. Sher and Hon. Randy Sue Marber, will co-present regarding the courthouse, their backgrounds, and their parts.

TUESDAY, FEBRUARY 17
Women in the Law
12:30 p.m.

Newly appointed New York State Regent Felicia Thomas-Williams will be the guest speaker.

Diversity & Inclusion
5:30 p.m.

FRIDAY, FEBRUARY 20
Bankruptcy Law
12:30 p.m.

TUESDAY, FEBRUARY 24
Construction Law
Immigration Law
12:30 p.m.

Commercial Litigation
12:30 p.m.

Matrimonial Law
6:00 p.m.

Come represent Nassau County in the Battle of Matrimonial Bars at Croxley's Farmingdale. The NCBA Mat Committee competes against the Suffolk County Matrimonial Bar Association and SCBA Matrimonial and Family Law Committee.

WEDNESDAY, FEBRUARY 25
Association Membership
12:30 p.m.

District Court
1230 p.m.

Law Student
5:30 p.m.

WEDNESDAY, MARCH 4
Real Property Law
12:30 p.m.

Intellectual Property
12:30 p.m.

THURSDAY, MARCH 5
Publications
12:45 p.m.

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

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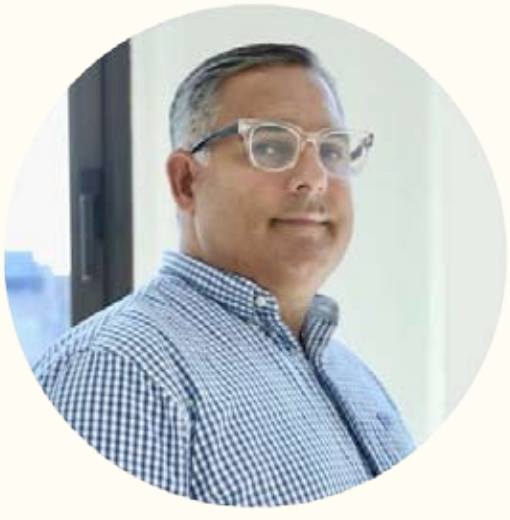

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