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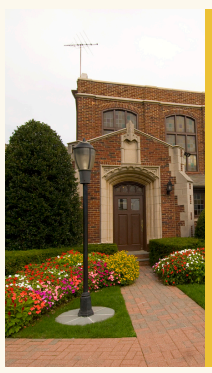

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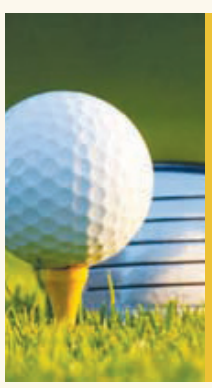

WE CARE GOLF AND TENNIS CLASSIC

MONDAY, SEPTEMBER 16

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Meet New President Daniel W. Russo

Prominent criminal defense attorney Daniel W. Russo will be introduced as the Nassau County Bar Association's 122nd President at the NCBA Installation Ceremony on Tuesday, June 4, 2024, at Domus.

As an NCBA Member for almost twenty years, Dan has served in several key positions, including Past Dean of the Nassau Academy of Law, former Chair of the Criminal Law and Procedure Committee, Past Editor in Chief of *Nassau Lawyer*, and a Director and Officer of the NCBA Board of Directors.

Education and Career

Dan received his Bachelor of Arts in Political Science from Hofstra University in 1996. At Hofstra, Dan excelled at both academics and athletics as a member of the Dean's List and a four-year player on the Hofstra Ice Hockey team. During his senior year, Dan was awarded a prestigious internship by Hofstra University, in conjunction with American University in Washington D.C., and spent a semester on Capitol Hill as an intern for a U.S. Congressman.

After graduating from college, Dan earned his Juris Doctor from Fordham University School of Law in 1999. During his time at Fordham Law, Dan achieved the position of Notes and Articles Editor of the Fordham Urban Law Journal and published a student article in the same publication in his third year of law school.

Dan began his legal career as an Assistant District Attorney in Kings County, New York, where he prosecuted

misdemeanors to violent felonies, up to and including trial. After his time in the Brooklyn DA's Office, Dan moved to private practice where he held associate and partner positions in boutique law firms focusing on criminal defense. In 2021, he founded the Law Office of Daniel W. Russo, LLC.

Dan has established himself as a leading criminal defense attorney, skillfully representing clients who have been charged with crimes in both state and federal courts, ranging from DWI to money laundering to homicide. Dan's practice also focuses on litigation arising out of disputes involving trusts and estates. As Of Counsel to the Law Office of Patricia Harold, he represents parties on a variety of issues in Surrogate's Court in both Nassau and Suffolk Counties.

Professional Associations and Memberships

Dan is licensed to practice in New York State and has been admitted to the Southern and Eastern Districts of New York since 2000. He actively participates in the Nassau County Criminal Courts Bar Association, the New York State Bar Association, and the Fordham University School of Law Alumni Association.

The Coming Year

As President for the 2024-2025 term, Dan plans to launch a concerted membership drive aimed at reversing the declining membership trend experienced since the pandemic by the NCBA and bar associations across the country. He is committed to updating and enhancing the technological infrastructure of the Bar, Nassau Academy of Law, and the Assigned Counsel Defender Plan—with the new NCBA website and cloud-based association management system launching early in his presidency. Additionally, Dan aims to promote membership participation in the Association's 125th Anniversary celebrations and fundraising events throughout the year; continue to support the programs that benefit NCBA members and the community—WE CARE, LAP and Mortgage Foreclosure Project; and explore professional fundraisers to support the NCBA and its various components.

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- Elder Abuse: Tackling Fraud in the Family

Day 2

- Navigating the Different Forms of Charitable Remainder Trusts and Using Trust to Defer the Gain on the Sale of an Asset
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From the President

Daniel W. Russo

I was in college the very first time I visited Domus. It was 1995 or 1996. A friend of my dad was a lawyer and an active NCBA member, and when he heard I was thinking about going to law school, he insisted I join him at Domus for lunch. I recall the main dining room being filled with attorneys and judges and my dad's friend was more than happy to introduce me to so many of them. Sitting here now, I wish I could remember specifically who I met that day. Are any of those lawyers still active members now? If so, it is very likely I unknowingly met men and women that day who I now consider friends.

While I don't remember all the details, I recall very clearly how welcoming everyone was and how intimidated I was being surrounded by seasoned attorneys and judges, as nice and as encouraging as all of them were. I'm sure I wondered if I'd ever have the opportunity to be a member of the Nassau County Bar Association. I am also sure the thought that I would one day be fortunate enough to be the 122nd President of the NCBA never, ever crossed my mind.

As I begin my year as President, the one prevailing thought I continue to have (and believe me there are many) is simply how fortunate I am to have been given this opportunity. To have the chance to lead the biggest suburban bar association in the country, with over 3,500 members, is a tremendous honor and privilege that I pledge to take as seriously as any professional endeavor I have ever undertaken. And I get to do so during the Association's 125th Anniversary Year!

Of course, this is not a one-person job, and I am so very fortunate to have an Executive Committee made up of hard-working and dedicated women and men who care so deeply about the membership of the NCBA, the NCBA staff, the legal profession, and the community that our bar association serves: Immediate Past President Sandy Strenger who I have had the privilege of following up the Executive Committee ladder and who has taught me so much about the devil being in the details; President-Elect James Joseph, a true friend and confidant who I have, and will continue to rely on for advice and a good, hearty laugh; Vice President, the Honorable Maxine Broderick, who's legal acumen is surpassed only by her kindness, common sense, and dedication to what is right; Treasurer, Sam Ferrara, who has a keen sense of business and whose willingness to tell it like it is, is a trait I admire, and; the newest member of the team, Secretary Deanne Caputo. Deanne and I came up through the NCBA together, working together on committees, the Board of Directors and co-editing *Nassau Lawyer* for two years. Her tenacity and ability to get things done simply amazes me. I am so happy that she is a part of this team.

I would be remiss if I didn't also thank the Past Presidents I had the distinct pleasure to serve under, Dorian Glover, Greg Lisi, and Rosalia Baiamonte. Each of them has left an enormous impression on me, both personally and professionally. More importantly, the NCBA is stronger, healthier, and more diverse and inclusive because of their leadership. Thank you.

Any good leader knows they are only as good as the men and women who handle the everyday nuts and bolts of any organization. There is no finer staff than that of the NCBA. Executive Director Liz Post never fails to amaze me with all that she juggles daily and never seems to miss a beat in getting the job done the right way. I've relied on Senior Membership Coordinator and Committee Liaison Stephanie Pagano since I became an active member at Domus and, unfortunately for Stephanie, I will rely on her more than ever this year. Alvarez, Carolyn, Emma, Han, Jody, Julie, Jose, Patti, Stephanie Ball and Stephanie Rodriguez, these are the men and women who make Domus what it is, and I speak for the entire Association when I say we are so very fortunate to have you at Domus. Of course, I can't forget the one and only Hector, a true Domus icon.

As for the upcoming year, my plan is to continue the great work of the men and women who have come before me. I will continue to work with Director Beth Eckhardt and her staff Dian and Sara to continue to grow NCBA's Lawyer Assistance Program, and with Madelline Mullane and her staff—Cheryl, Christina, Martha and Omar—to ensure the success of what is the statewide model Mortgage Foreclosure Program. I will continue to support Administrator Bob Nigro and Deputy Administrator Lindsay Boorman of the Assigned Counsel Defender Plan to assure that the professionals who serve indigent clients in Nassau County have the resources and technology to do so effectively and without delay. I will continue to work with the Nassau Academy of Law—under the leadership of incoming Academy Dean, Lauren Bristol—to provide cutting-edge CLE programs to our membership, and, it goes without saying, with the WE CARE Advisory Board under Co-Chairs Jeff Catterson and Barbara Gervase to support their charitable endeavors and exceptional work in providing grants to the children, elderly, and other Nassau County residents in need.

Except for about a decade (living in Manhattan while attending Fordham Law School and living in Brooklyn while working for the Brooklyn DA's Office), Nassau County has been home for my entire life. I was born here; I was educated in the public school system here and I strayed as far as Hofstra University for my undergraduate degree. My parents met in high school in Nassau County and my mom still lives in the house my sister and I grew up in. My dad spent 44 years installing gas service to the homes of Nassau County for the Long Island Lighting Company and later for National Grid. My beautiful wife Jennifer (a Brooklyn transplant who fell in love with Long Island) works as a government attorney for Nassau County. And my beautiful daughter Cate has one more year left in her south-shore Nassau County high school career.

I view the upcoming year as a tremendous opportunity for me to give back to the profession I love, in the place I have so happily called home my entire life. Will it be a lot of work? Definitely. Will there be times in the next twelve months when I wonder how or why I got myself into this? Probably. But I suspect those times will be far outnumbered by the moments I feel an incredible sense of pride, accomplishment, community, and love in my position as President of the Nassau County Bar Association. I can't wait to get started and I look forward to celebrating the 125th Anniversary of the NCBA with all of you.

2024 Installation of Nassau County Bar Association and Nassau Academy of Law Officers and Directors

Tuesday, June 4, 2024
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FOCUS:
LABOR AND EMPLOYMENT

Law Firms Can Now Be Criminally Liable for Wage Theft. Is Yours?

Joel M. Greenberg

When Governor Kathy Hochul signed an amendment to the New York Penal Law this past fall, designating "wage theft" as a form of criminal larceny, she and the State Legislature targeted "bad faith" employers who violate New York's Labor Law by improperly withholding timely payment of their employees' earned wages.

The most recent amendment to this statute—adding "wage theft" as a form of larceny under the criminal code—was signed into law by Governor Kathy Hochul on September 6, 2023 (Senate Bill S2832A). It became effective immediately. The new law does not include any carve-out provisions or exemptions for particular positions or industries and, as such, covers the legal profession.

Wage Theft as a Civil and Criminal Issue in New York

On December 13, 2010, Governor David Patterson signed into law the Wage Theft Prevention Act (Assembly Bill A11726). The Act became effective on April 9, 2011. It was aimed at addressing the problem of employers who fail to pay their employees what is owed them by requiring new notifications to employees, imposing heavy penalties on employers for non-compliance, and strengthening whistleblower protections. One such notification requirement provides that employers who violate the wage provisions in the statute must post a notice explaining their violations in an area visible to employees for up to one year.

Prior to passage of the new amendment, Section 155.05 of New York's Penal Law provided that a person commits the crime of larceny "when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains, or withholds such property from the owner thereof." Such larceny may be a felony or misdemeanor depending on the amount in question.

Interestingly, in 1989, the New York State Court of Appeals dealt with a very similar situation in its landmark decision in *Cohen v. Lord, Day & Day* (75 N.Y.2d 95). In that seminal case, the high court ruled that financial penalties imposed on a departing attorney violate both public policy and the New York Code of Professional Conduct.

In recognition of the adage that the law abhors the forfeiture of earned, but unpaid, revenues, the high court stated:

> While a law firm has a legitimate interest in its own survival and economic well-being and in maintaining its clients, it cannot protect those interests by contracting for the forfeiture of *earned revenues during* the withdrawing partner's active tenure and participation and by, in effect, restricting the choices of the clients to retain and continue the withdrawing member as counsel.

In addition to the foregoing case law, Section 198 (1-a) of New York's Labor Law imposes civil penalties on employers who engage in wage theft. The statutory remedy available to victims of wage theft is set forth below:

> In any action instituted in the courts upon a wage claim by an employee or the commissioner in which the employee prevails, the court shall allow such employee to recover the full amount of any underpayment, all reasonable attorney's fees, prejudgment interest [at the rate of 9% per annum], and, unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total amount of the wages found to be due, except such liquidated damages may be up to three hundred percent of the total amount of the wages found to be due for a willful violation of section one hundred ninety-four of this article [which makes it unlawful for employers to pay employees of the opposite sex differently for equal work].

Expanding Liability for Wage Theft

The new amendment adds "compensation for labor or services" to the definition of "property," thereby establishing "wage theft" as another way in which an employer can commit the crime of larceny. Notably, the new wage theft larceny law is in addition to, and does not replace, existing criminal wage theft offenses in New York that apply to employers and their officers and agents for "failing to pay the wages of any of [their] employees."

This legislative action followed a 2023 announcement by the Manhattan District Attorney's Office that it had partnered with the New York State Department of Labor to create the Office's first-ever "Worker Protection Unit" to investigate and criminally prosecute wage theft charges against companies and executives that "steal" wages.

The Act, which passed with near unanimous majorities in both chambers of the Legislature, is the latest in an ongoing effort to combat wage theft in New York.

According to a co-sponsor of the new law, Assemblymember Catalina Cruz, wage theft "accounts for almost $3.2 billion in lost wages each year—affecting over 2 million New Yorkers…." The new law will allow prosecutors to seek stronger penalties against employers who steal wages from workers.

In recent years, a number of out-of-state law firms with satellite offices in New York have been accused of wage theft when they failed to pay accrued wages owed to a former employee under his productivity-based compensation formula. The employers claimed that upon the attorney's termination of employment, he automatically forfeited his percentage share of all post-termination collections—even those which were attributable to his pre-termination services on the employer's behalf. Such a financial penalty is intended to discourage employed attorneys from leaving the law firm.

For those employed attorneys who choose to leave nonetheless, the scheme enables the law firm to unjustly enrich its profit-sharing partners by allowing them to share among themselves the money that their law firm should have paid instead to their former employee as W-2 salary.

Conclusion

Law firms should review their payroll practices to make sure that their employees (and former employees) receive the compensation they are promised in a timely manner in order to avoid the significant penalties associated with wage theft in New York. Employers should also examine their wage payment practices to ensure: (1) that employees are paid the correct amount and on time; (2) that all statutorily-mandated notifications from the employer to its employees are adhered to; and (3) that accurate payroll records are maintained which establish that their employees have been paid properly.

Joel M. Greenberg, Esq. is Of Counsel with Rivkin Radler LLP in Uniondale, where he focuses his practice on health law. He can be reached at Joel.Greenberg@rivkin.com.

FOCUS: INTELLECTUAL PROPERTY

General Information on Patents

Frederick J. Dorchak

Intellectual Property is a term that covers a number of types of protective rights: utility patents, design patents, plant patents, trademarks, copyrights, and trade secrets.

Generally speaking, patents or "utility" patents protect inventions, such as a machine, a chemical composition, or a process of doing something.[1] A design patent protects the appearance of the device or product.[2] A plant patent protects asexually produced plants.[3] Trademarks generally protect, for example, brand names and logos.[4] Copyrights protect, for example, writings.[5] Trade secrets protect secret formulas and know-how.[6]

For example, a new MRI machine could be patented. The appearance of the MRI machine maybe could be protected by a design patent. The brand name of the machine, but not the machine itself, could be trademarked. The software that programs the machine, but not the machine itself, could be copyrighted. Knowhow or technical data that is used to run or make the machine that is not generally known could be protected as a trade secret.

Patents and copyrights are authorized by the same clause of the Constitution[7] but there are significant differences between the two forms of protection. Although copyright protection is significant, it is more limited than patent protection. Thus, one may come up with a new computer program and obtain copyright protection on the code or a book or article that sets forth the code or how the new computer program functions;[8] however, unless you obtain a patent on this new computer program, others are free to create software that performs the same function if the code is different.[9]

Similarly, copyright protection on a book or article that sets forth a new method of doing business does not prevent others from using that method so long as they do not write a book or some other publication that copies the manner in which this method of doing business was expressed in your book or article.[10]

Unlike patents, copyrights protect only the manner of expression, not facts or similar ideas.[11] For example, historians may obtain a copyright on a book setting forth their theory that Jesus and Mary Magdalene married and had a child, and that the bloodline continues to this day; however, a novel or motion picture that likewise sets forth this theory would not infringe the copyright in the book unless portions of the text of the book are copied.

The subject matter that can be patented by a utility patent is specified as "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, ..."[12] The term "process" means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.[13] The subject matter must be new,[14] useful[15] and nonobvious.[16]

To be *new*, the invention must never have been done before or described in a publication or publicly used or placed on sale one year before applying for the patent.[17] To be *useful*, the invention must have some specific benefit in currently available form.[18] To be *nonobvious*, the invention must be sufficiently different from what has been done before as to be considered "nonobvious" to one of ordinary skill in the art.[19]

In *KSR International Co. v. Teleflex Inc.*,[20] the Supreme Court considered whether a patent directed to a position-adjustable vehicle pedal assembly with an electronic pedal position sensor was invalid as obvious. The Court rejected the rigid application of the "teaching, suggestion or motivation" test by the Federal Circuit and advanced a more expansive, flexible approach to the determination of obviousness. In determining that the claimed invention was obvious and the patent claim thus invalid, the Supreme Court noted that the claimed improvement must be more than "the predicable use of prior art elements according to their established functions" in order to be considered non-obvious and patentable.[21]

The subject matter that can be patented by a design patent is specified as "any new, original and ornamental design for an article of manufacture."[22] The design must also be non-obvious.[23] The "new" and "nonobvious" requirements are similar to the requirements for utility patents.[24] The "ornamental" requirement means that the subject matter must not be governed solely by function, i.e., that this design is not the only possible form of the article that could perform its function.[25]

The subject matter that can be patented by a plant patent is specified as "any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state."[26] Asexual reproduction is required for a plant patent.[27] Asexual reproduction means reproduction via grafting, budding, cuttings, layering, division and the like, but not by seeds.[28] Otherwise, the requirements are generally the same for plant patents as for utility patents.[29]

Certain subject matter is not patentable, including perpetual motion machines,[30] abstract ideas,[31] and laws of nature[32] as distinguished from applications of such laws.[33] For many years, business methods were considered unpatentable subject matter; however, in recent years, business methods have been patented, particularly when associated with computerized technology.[34]

In *Bilski v. Kappos*,[35] the Supreme Court held that a method of hedging risk of price changes in commodities trading using a mathematical formula was not eligible for patent protection because it would effectively grant a monopoly over an abstract idea. The Court also indicated that business methods were not categorically excluded from qualifying for patent protection.[36]

Subsequently, in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*,[37] the Supreme Court held that generic computer implementation fails to transform what would otherwise an abstract idea into a patent-eligible invention.[38] Thus, it remains difficult to obtain patent protection on business methods.

In the United States, the individual or individuals who actually invented the invention must be named on the patent.[39] Thus, a corporation cannot be the inventor. In addition, an artificial intelligence (AI) software

system cannot be listed as an inventor on a patent application. An inventor must be a natural person.[40]

There are many other issues and considerations that arise in connection with patents, such as time deadlines for filing patent applications; the change in the law in 2013 changing United States Patent Law from a first to invent system to a first to file system; the patent application process in general, including the optional pre-filing search, the preparation, filing, and prosecution of the patent application in the United States Patent and Trademark Office (USPTO) and the types of Office Actions issued by the USPTO and the available responses thereto; the maintenance fees required to keep a granted patent in force; the time patent protection starts and how long patent protection lasts; the rights provided by a patent; types of patent infringement; patent enforcement in federal courts; and patent licensing. Due to space limitations, such topics are not addressed in this article.

1. See 35 USC § 101 "Whoever invents or discovers any new or useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor . . . .".
2. "To qualify for protection, a design must present and aesthetically pleasing appearance that is not dictated by function alone . . . ." *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 148 (1989).
3. 35 USC § 161.
4. See, e.g., U.S. Trademark Registration No. ____ for COCA-COLA® and U.S. Trademark Registration No. _____ (Golden Arches).
5. See 17 USC § 102(a)(1) ("literary works").
6. See, e.g., 18 USC § 1839(3); *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110 (2d Cir. 2009).
7. U.S. Constitution, Art. I, § 8, cl. 8.
8. *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 982 F.2d 693, 702 (2d Cir. 1992) ("It is now well settled that the literal elements of computer programs, i.e., their source and object codes, are the subject of copyright protection.") (citations omitted).
9. See 17 USC § 102(b) ("In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.").
10. *Id.*
11. See, e.g., *id.; Mazer v. Stein*, 347 U.S. 201, 217-18 (1954); *Arica Institute, Inc. v. Palmer*, 970 F.2d 1067, 1074 (2d Cir. 1992); *Bell v. Blaze Magazine*, 58 U.S.P.Q.2d 1464, 1466 (S.D.N.Y. 2001).
12. 35 USC § 101.
13. 35 U.S.C. § 100(b).
14. 35 USC 102.
15. 35 USC § 101.
16. 35 USC 103.
17. See 35 USC 102(a).
18. *Brenner v. Manson*, 383 U.S. 519, 534-35 (1966); *In re Fisher*, 421 F.3d 1365, 1371 (Fed. Cir. 2005).
19. See 35 USC 103 (A patent for a claimed invention may not be obtained . . . if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious . . . to a person having ordinary skill in the art to which the claimed invention pertains.").
20. 550 U.S.398 (2007).
21. *Id.* at 417.
22. 35 USC 117(a).
23. See 35 USC 117(b) ("The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided."); *OddzOn Products, Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1404 (Fed. Cir. 1997).
24. *Id.*
25. *Seiko Epson Corp. v. Nu-Kote International, Inc.*, 190 F.3d 1360, 1368 (Fed. Cir. 1999) (citation omitted); see *PHG Technologies, LLC v. St. John Cos.*, 469 F.3d 1361, 1365-66 (Fed. Cir. 2006).
26. 35 USC 161.
27. *Id.*; see *In re Beineke*, 690 F.3d 1344, 1347 (Fed. Cir. 2012).
28. *Imazio Nursery, Inc. v. Dania Greenhouses*, 69 F.3d 1560, 1569 (Fed. Cir. 1995).
29. 35 USC 161.
30. Perpetual motion machines are considered inoperable and therefore do not meet the utility requirement of 35 USC 101. See *CFMT, Inc. v. Yieldup Internat'l Corp.*, 349 F.3d 1333, 1339 (Fed. Cir. 2003); *Newman v. Quigg*, 877 F.2d 1575 (Fed. Cir. 1989).
31. *Alice Corp. v. CLS Bank Internat'l*, 573 U.S. 208, 212, 216, 218, 222-224, 226 (2014).
32. *Id.* at 216.
33. *Id.* at 217.
34. Section 101 precludes the broad contention that the term "process" categorically excludes business methods. *Bilski v. Kappos*, 561 U.S. 593, 606-608 (2010).
35. 561 U.S. 593 (2010).
36. *Id.* at 606-612.
37. 573 U.S. 208 (2014).
38. *Id.* at 212.
39. 35 U.S.C. 100(f), 100(g).
40. *Thaler v. Vidal*, 43 F.4th 1207, 1209, 1212 (Fed. Cir. 2022).

Frederick J. Dorchak is a Principal in the Intellectual Property Law Firm of Collard & Roe, P.C., Roslyn, and Chair of the NCBA Intellectual Property Law Committee. He can be contacted at fdorchak@collardroe.com.

FOCUS: MEDICAL MALPRACTICE

Medical Expert Affirmations Done Right, Every Time

Christopher J. DelliCarpini

Virtually every medical malpractice case entails a motion for summary judgment, and those motions almost invariably rise or fall on the parties' respective medical expert affirmations.[1] The Second Department has found that defendants failed to prove prima facie their entitlement to summary judgment based on insufficient expert opinions,[2] and the court has elsewhere expressly stated: "To rebut the defendant's prima facie showing, a plaintiff must submit an expert opinion that specifically addresses the defense expert's allegations."[3]

These expert affirmations, however, need only be sufficient to meet each side's burden on motion for summary judgment. "Summary judgment is not appropriate in a medical malpractice action," the Second Department has held, "where the parties adduce conflicting medical expert opinions."[4] So our expert affirmations need not defeat the other side's proof as at trial, but rather need only either prima facie rebut the allegations of malpractice or show a triable issue of fact on those points where the movant has met their burden.[5]

Case law and the common sense principles that guide legal writing generally point to several principles and practices that should guide counsel in preparing medical expert affirmations to reliably meet their burden every time. Indeed, these points largely apply to expert affirmations in any case.

Identify the Issues

It may seem obvious that "the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's bill of particulars."[6] This requires defendants, after perhaps years of discovery, to go back to the pleadings and thoroughly review all allegations.

The nonmovant need "raise a triable issue of fact, but only as to those elements on which the defendant met its prima facie burden of proof,"[7] but this may require a closer reading of the movant's affirmation than one might anticipate. Where the movant's expert does not clearly identify each opinion, counsel must carefully parse the affirmation and do the work for them before rebutting each opinion.

Structure the Affirmation

This article consistently refers to affirmations rather than affidavits because, with the recent amendment of CPLR 2106, there is no reason to bother with affidavits in litigation anymore. Now anyone—not just lawyers and physicians—can submit an affirmation whenever an affidavit was previously required. The new CPLR 2106 even provides sample language for affirmations, a far cry from the ambiguity that surrounded certifying conformity of an out-of-state expert's affidavit.

A few practical tips should shape your expert affirmation template. Perhaps most important is to insert headings for each section:

- Qualifications
- Bases for opinions
- Opinions on alleged departures
- Opinions on alleged causation
- Rebuttal of opposing experts' opinions [as needed]

It will be much more difficult for your adversary to claim that your expert failed to rebut the opposing expert's opinion, for example, if your expert's opinion has a heading identifying exactly where they did so. For that matter, pre-set headings helps us ensure that we provide every element of admissible expert opinion.

A few other formatting tips will make for a more effective affirmation. Caption it as "Expert Affirmation" to make it easier to spot in a pile of court filings, virtual or otherwise. Use numbered paragraphs—and if you don't know how to do that automatically in your word processing software, then take five minutes to Google it. And in addition to the signature block from CPLR 2106, be sure to tack on the certificate of word count.[8]

Show Their Qualifications

After the usual preliminary paragraphs identifying the expert and the purpose of the affirmation, set forth in detail the expert's qualifications to testify in this particular case.

The best expert is one who has been in the defendant's shoes—one who knows what the defendant should have done in this case because the expert has faced the same situation. A physician need not be a specialist in a particular field to qualify as a medical expert; any alleged lack of knowledge in a particular area of expertise goes to the weight and not the admissibility of the testimony.[9] Even a board-certified physician, however, who lacks experience with the plaintiff's condition or the treatment or procedure at issue could end up offering opinion that is stricken for lack of foundation or familiarity with the applicable standard.[10]

This means that an expert's CV well might not suffice to show particular qualifications in your case. While attaching the CV cannot hurt, some specific statements in the affirmation about particularly relevant experience could definitely help.

Detail the Bases for Opinions

The next section should list every piece of record evidence that the expert reviewed, with enough detail that someone could review the evidence alongside the expert's affirmation. You can even refer to exhibits in the attorney's affirmation—where you can and should authenticate the evidence, ensuring that it is in admissible form.[11]

This section is also the perfect place to state, once and for all, that all opinions are given to a reasonable degree of medical certainty. Those magic words need not be repeated with every opinion.

Stop the Tape: Opinion on Departures

If summary judgment motion is "a procedure for determining whether there exist material issues of fact requiring a trial,"[12] then the expert affirmation can be thought of as a substitute for expert trial testimony—and can be structured as we would structure an expert's direct testimony.

The common way to structure such trial testimony, after qualifying the expert, is to ask their opinion on departure and then ask the bases for that opinion—which will prompt the expert to relate the relevant treatment up to the moment of departure, then restate the standard of care at that moment and then explain how the defendant's treatment did or did not meet that standard.

The same structure works well in an affirmation. Have the expert restate the treatment leading up to the moment of decision, and then "stop the tape," freeze the narrative to set forth the standard of care at that moment. Then "press play," recounting how the defendant physician responded to the situation and explaining why that did or did not meet the standard of care. Where multiple departures are alleged, feel free to separate each discussion with headings or sub-headings as necessary for clarity.

It is also good practice to annotate this narration with cites to record evidence. The Second Department has stated that "expert opinions in opposition should address specific assertions made by the movant's experts, setting forth an explanation of the reasoning and relying on specifically cited evidence in the record."[13]

Step by Step: Opinion on Causation

Neither a defense nor a plaintiff's expert will get away with an opinion on causation that is "conclusory, speculative, and unsupported by the evidence."[14] After setting forth departures, however, it can be all too

easy to shorthand an expert's opinion on causation in a single summary paragraph.

The best way to avoid this is, in the section of the affirmation devoted to causation, to continue step by step from the treatment at issue to the injuries evident in the record. This entails playing the tape again, as it were, to show when each complaint first arose and any evidence of prior or subsequent causes, or the absence thereof. A plaintiff's expert might call back to their opinions on departures, showing how the consequences of the defendant's conduct illustrate the expert's reasons why that conduct was a departure.

Rebut the Opposing Expert's Opinions—Each of Them

The surest way for a plaintiff to create a "prototypical battle of the experts"[15] that will preclude summary judgment is to show that their expert rebuts each and every one of the defense expert's opinions. By the same token, the best way for a defendant in reply to defeat that characterization is to identify an opinion of their expert that the plaintiff's expert overlooked.

The most thorough approach is for a nonmovant's expert to restate or quote each and every one of the movant's expert's opinions and then either rebut it or refer to where their affirmation has already addressed the issue.

Your Questions, Their Answers

Just like at trial the expert answers the attorney's questions, so in an affirmation the expert provides the substance of each opinion but the attorney gives it form.

The attorney then should draft the affirmation—but only after sharing all relevant materials and thoroughly discussing with the expert their opinions. The attorney then should review the draft with the expert in detail, encouraging the expert to share any concerns and assert the proper phrasing for each opinion.

Execution

The quickest and most reliable procedure is to send the expert a PDF of the affirmation and have them return a scan of the executed signature page, which you then insert into a copy of the "original" PDF, which will be more readable than any scan. A graphical image of their "physical signature" is acceptable, though a typed signature is not.[16]

And if you redact the expert's name for e-filing,[17] be sure to immediately deliver to chambers an unredacted copy for in camera review. Merely adding in your attorney affirmation that an unredacted copy is available at the court's request will not suffice![18] In fact, an e-filed affirmation of service on the court of the unredacted affirmation might be the most prudent measure.[19]

Clear and Simple

These suggestions will lead to affirmations that look noticeably different from the typical affirmation—and wouldn't that be a good thing?

Would you rather read an affirmation with an undifferentiated mass of numbered paragraphs that reiterate the treatment and then rattle off opinions, or one that identifies topics with easy-to-spot headings, details the record evidence supporting the opinions, and sets forth each opinion within a narrative about treatment—in other words, a good story?

More importantly, which would the court deciding the summary judgment motion want to read? Courts may have to read our submissions, but the easier you can make it for them to follow your experts' opinions, the easier it will be for courts to find that those opinions meet your burden.

1. *See Rivers v. Birnbaum*, 102 A.D.3d 26, 42 (2d Dep't 2012).
2. *Id.* at 46.
3. *Daniels v. Pisarenko*, 222 A.D.3d 831, 832–33 (2d Dep't 2023)(quoting *Pirri-Logan v. Pearl*, 192 A.D.3d 1149, 1150 (2d Dep't 2021)).
4. *Kielb v. Bascara*, 217 A.D.3d 756 (2d Dep't 2023)(quoting *Clarke v. NYCHHC*, 210 A.D.3d 631, 633 (2d Dep't 2022)(quoting *Feinberg v. Feit*, 23 A.D.3d 517, 519 (2d Dep't 2005))).
5. *Cf. Kielb*, 217 A.D.3d at 756–57.
6. *Sheppard v. Brookhaven Mem. Hosp. Ctr.*, 171 A.D.3d 1234, 1235 (2d Dep't 2019).
7. *Id.*
8. 22 NYCRR § 202.8-b.
9. *See Moon Ok Kwon v. Martin*, 19 A.D.3d 664 (2d Dep't 2005).
10. *See Montanari v. Lorber*, 200 A.D.3d 676, 681 (2d Dep't 2021); *Sobirov v. Tetsoti*, 214 A.D.3d 838, 838–39 (2d Dep't 2023).
11. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986).
12. N.Y. Jur. 2d Cir. Summary § 2 n.1 (citing *Rivers*).
13. *Bamaman v. Bishop Hucles Episcopal Nursing Home*, 213 A.D.3d 896, 899 (2d Dep't 2023).
14. *Shivprashad v. Patel*, 81 Misc. 3d 1207(A), *3 (Sup.Ct., Kings Co. 2023).
15. *Owens v. Ascencio*, 210 A.D.3d 686, 688 (2d Dep't 2022)(quoting *Rivera v. City of New York*, 80 A.D.3d 595, 596 (2d Dep't 2011).
16. 22 NYCRR § 202.5-b(e).
17. *See McCarty v. Community Hosp. of Glen Cove*, 203 A.D.2d 432, 433 (2d Dep't 1994).
18. *See Richter v. Menocal*, 216 A.D.3d 823, 824–25 (2d Dep't 2023).
19. *See id.*

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FOCUS: LAW AND AMERICAN CULTURE

The Curious Case of Dr. Sam Sheppard

Rudy Carmenaty

A haze of nostalgia shades most people's impressions of the 1950s. Often characterized as a carefree time of opulence and optimism, the reality was far more complicated. Cold War fears and repressed sexual tensions masked tensions that provided the times with a disquieting subtext.

Those years also saw an explosion in communications and the coming of the media culture that has come to dominate American life. Reality became defined by what audiences read in print or experienced on the new medium of television. For most people back then, seeing was believing.

The most sublime example of this phenomenon was the Sam Sheppard murder case. Dr. Samuel Sheppard was an osteopathic neurosurgeon. He became famous or infamous for a crime which he may or may not have committed. The conviction of Sheppard for the killing his wife struck at the nation's collective psyche.

Found guilty in the courtroom of popular opinion, Sam stood little chance in a court of law. The press unfortunately played a critical role in this twisted drama. Newspapers became fixated on every salacious aspect of the case, with rumor and inuendo being printed as fact.

All of which conspired to deny Sheppard any possibility of receiving a fair trial. A federal judge would later declare, "If ever there was a trial by newspaper, this is a perfect example … that newspaper [the Cleveland Press] took upon itself the role of accuser, judge and jury."[1]

In a triumph of circumstantial evidence, the prosecution, in two trials over a twelve-year span, never presented any tangible evidence unequivocally linking Sheppard to the crime. Still, the fact that the press had branded him the culprit proved sufficient, at least the first time in 1954.

It would take more than a decade for Sheppard to be acquitted, and only after a 1966 retrial brought about by a landmark U.S. Supreme Court decision. At issue were the rights of the press under the First Amendment, juxtaposed against Sam's rights as a criminal defendant under the Fifth, Sixth, and Fourteenth Amendments.

Absurdly, popular culture played a role in Sheppard's travails. Likewise, it played a role in his vindication. Influences similar to those that led to his imprisonment, would revive Sheppard's fortunes. The saga of Sam Sheppard illustrates that a man can be both prosecuted and exonerated by the mass media.

In the early morning hours of Independence Day, 1954, Marilyn Sheppard was brutally killed with a blunt instrument. Her semi-nude body was strewn upon her blood-stained bed. Her own blood outlined her corpse. An autopsy would reveal that Marilyn's head was bludgeoned over thirty-times, and that she was pregnant.[2]

Before this horrific incident, Marilyn, by all accounts, appeared to be the last person anyone would want to harm. Sam and Marilyn Sheppard seemed to be the perfect couple. Their idyllic life captured the zeitgeist of the era. They lived in a lake-front home in Bay Village, Ohio, an upscale Cleveland suburb.

Sam Sheppard came from a family of physicians. The virile, young doctor, with his all-American good looks, could have served as the model for *Dr. Kildare*. Instead, Sheppard, by a perverse twist of fate, became the real-life progenitor of *The Fugitive*.

On the night of the killing, Sam was asleep on a sofa on the first floor of his home. Marilyn was in their upstairs bedroom. Aroused by Marilyn's screams, Sam rushed upstairs into a darkened room. There he fought with an individual Sam would later describe as a "bushy-haired" intruder.[3]

After being struck in the back of the head, Sam awoke to find Marilyn's lifeless body. Sheppard and the "bushy-haired" intruder would grapple a second time on the shores of Lake Erie. The doctor found himself once again unconscious after this encounter.

Sheppard's story immediately raised suspicions. One man convinced of his guilt was Cuyahoga County Coroner Sam Gerber. Finding no sign of forced entry, the coroner quickly concluded: "It's obvious that the doctor did it."[4] Gerber's investigation retrieved evidence which only favored his preconceived bias.

Authorities soon discovered Sam had engaged in a series of extramarital affairs, including one with an attractive lab technician named Susan Hayes. When questioned by the police, Sam denied the relationship. This was an outright lie, a lie that would have devastating consequences.

Sam's promiscuity provided fodder for the press and ammunition for the prosecution. The morality of the 1950s was strait laced. This was particularly true in a close-knit suburban community. This is not to say people were not doing things behind closed doors. They were. After all, this was the era of *Peyton Place*.

The ensuing trial was something of a farce. Judge Edward Blythin allowed reporters free range of his courtroom. The judge was running for re-election that year. Also on the ballot was the prosecutor, John Mahon, himself running for a judgeship. Each man would win handily come November.

Before the trial began, Judge Blythin told columnist Dorothy Kilgallen, a panelist on the popular TV quiz show *What's My Line?*, he thought Sheppard was "guilty as hell."[5] Kilgallen would not disclose this information for another decade. When she did reveal it, the statement formed the basis of Sheppard's appeal.

Judge Blythin denied motions for a change of venue and for a continuance.[6] Predictably, the judge later denied a motion for a directed verdict. As for the jury, the newspapers published each of the jurors' names and addresses along with their photos.[7] During the trial the jury was not sequestered, only during deliberations.

When he took the stand, Sam's haughty demeanour made him an unsympathetic witness in his own defense. He seemed arrogant and aloof, rather than a man who had lost his wife. At trial, two critical moments took place which effectively sealed Sheppard's fate.

The first was the coroner's testimony that Marilyn was killed with a "surgical instrument."[8] Gerber's testimony was predicated on a claw-like impression left on Marilyn's blood-stained pillow. Being a neurosurgeon, Sam would be familiar with just such an implement.

Equally damaging was the testimony of Susan Hayes. Having previously denied the relationship, it was, on Sam's part, a self-inflicted wound that provided a motive for murder. This deception would expose him as a liar, and, for the jury, it wasn't a big leap to conclude he was a killer as well.

The jury found Sam guilty of second-degree murder.[9] Because he was not convicted of murder in the first degree, the death penalty was off the table. Judge Blythin sentenced him to life in prison, with eligibility for parole in ten years. Sheppard was confined to the Ohio State Penitentiary, a maximum-security prison.

The year after Sam's trial, his family hired Dr. Paul Kirk, a forensic criminalist from California, to examine the crime scene. After an exhaustive analysis, Dr. Kirk deduced from the pattern of blood droplets that Marilyn's killer had to be lefthanded, and that the murder weapon was most likely a flashlight.

Sam was right-handed. In July 1955, three months after Dr. Kirk's report was issued, a swimmer who lived near the Sheppard home found a dented flashlight in Lake Erie. Also of note, Dr. Kirk reported finding blood in the bedroom that came neither from Sam nor from Marilyn.

Five years later in 1959, a possible suspect emerged. A handyman named Richard Eberling, who had washed windows at the house a week prior to Marilyn's death, was picked up by the police. A search of Eberling's room found rings that once belonged to Marilyn.

On a lark, the officer questioning Eberling asked him why his blood had turned up in the Sheppard home in 1954 (in fact, no such finding had been made). Eberling shocked his interrogator by explaining that he had cut himself while removing some storm windows and that his blood had dripped throughout the house.[10]

Eberling was a sadist diagnosed with schizophrenia. He admitted to being obsessed with Marilyn. The way in which Marilyn's body was left on the bed is indicative of a sexual assault. Eberling could have surreptitiously entered the residence on July 4, 1954, and waited in the cellar for an opportune moment.

In 1989, a jury convicted Eberling of first-degree murder for an unrelated offence. While in prison, Eberling boasted to a fellow inmate that he had killed Marilyn. When Eberling died in 1998, he made a near-death confession to a prison informant.

One further note, Eberling went bald as a young man. Eberling took to wearing a shaggy toupee to mask his male pattern hair loss. This fact coincides with Sam's claim of struggling with a bushy-haired intruder. Eberling had motive, opportunity, and was psychotic.

Curiosity in the Sheppard case did not wane after Sam's trial. In fact, if anything, interest grew as members of the media suddenly began to take up Sam's cause. The press that had been calling for his blood in the 1950s, by the 1960s was making the case that he was an innocent man unfairly imprisoned.

Kilgallen cast the first stone. She wrote in her column that she was "astounded" Sam was convicted on such a "paucity of evidence."[11] Yet it would be Chicago newspaperman Paul Holmes' best-selling expose of the trial, *The Sheppard Murder Case*, which systematically examined the evidence, that set the wheels in motion.

The most important consequence of the book was that it attracted the attention of a young lawyer from Boston named F. Lee Bailey. Bailey made his reputation with the Sheppard case, first by successfully appealing in the federal courts and then by securing Sam's acquittal at the second trial.

Interest in Sheppard was also enhanced by a divorcee from West Germany named Ariane Tebbenjohanns. Tebbenjohanns learned of Sam's story and contributed money to help pay for his legal bills. They became pen pals and their correspondence blossomed into a romance.

Sam and Ariane became engaged after their first in-person meeting. The couple married three days after Sam's initial release in 1964. Ariane was a beautiful lady with an unusual and disturbing history. As a youngster, she had been a member of the Hitler Youth.

If that were not bad enough, Ariane's older half-sister was the notorious Frau Magda Ritschel. Ritschel was known as the unofficial "first lady" of Nazi Germany and was married to Hitler's vicious propaganda minister, Dr. Joseph Goebbels.[12] When the press got wind of these affiliations, the tabloids had a field day.

Another reason Sam remained in the public's consciousness was the popular television program *The Fugitive*. Actor David Janssen played Dr. Richard Kimble. A doctor sentenced to death for the murder of his wife, the fictional Dr. Kimble professes his innocence and claims a one-armed man was responsible.

The Fugitive was "inspired" by the Sheppard case.[13] Week after week, the show presented viewers with a sympathetic doctor who was wrongly convicted. Kimble embarks on an existential odyssey in search of the real killer after escaping from the gallows. The series always made the point that Kimble was indeed innocent.

The program provided a recurring commentary on the legal system's deficiencies which influenced the way many Americans came to see the application of the law. Bailey believed *The Fugitive* created a receptive climate that contributed to his efforts on Sheppard's behalf.[14]

This was the heyday of the Earl Warren Supreme Court. Each term the high court would issue a new decision expanding the rights of the accused. Including, as it turned out, Sam Sheppard himself. *The Fugitive*, as it entertained, made the point that the law is imperfect.

In 1963, Bailey filed a federal habeas corpus petition. Bailey argued, among numerous contentions of law and fact, that the actions of the press denied Sheppard due process. Judge Carl Weinman of the U.S. District Court for the Southern District of Ohio agreed.

Judge Wineman's decision was a point-by-point refutation of the trial and the manner in which Judge Blythin had conducted it. Taking no position on Sam's guilt or innocence, Weinman found five specific violations of Sheppard's constitutional rights.[15] Sheppard was freed on a $10,000 bond.[16]

The Sixth Circuit Court of Appeals then reversed Judge Weinman reinstating the original conviction. Bailey appealed to the Supreme Court. In 1966, the Supreme Court reversed the Sixth Circuit and agreed with the district court's findings, citing Judge Blythin's failure to protect Sheppard from excessive press coverage.

Justice Tom Clark ruled that "the massive, pervasive, and prejudicial publicity attending the prosecution prevented [Sheppard] from receiving a fair trial consistent with the Due Process clause of the 14th Amendment."[17] These back-and-forth decisions resulted in Sheppard being tried once again for Marilyn's death.

Judge Francis Talty, unlike his predecessor, maintained a tight rein on the matter before him. Seeking to avoid the recurrence of a circus-like atmosphere, the press was ordered to maintain a respectful distance and the prosecution's circumstantial case was presented without the amplification of an intrusive media.

Sam's retrial was markedly different in other ways. Susan Hayes was not called to testify. Bailey wisely kept Sheppard off the stand. Most significantly, Baily, during cross-examination, got Gerber to admit that he had not found a surgical instrument that confirmed his testimony from a dozen years prior.[18]

Sam was found not guilty on November 16, 1966.[19] Now a free man, he was scarred by what had happened. Sam became addicted to alcohol and barbiturates.[20] His attempt to resume his former professional life faltered after two of his patients died on the operating table. Malpractice suits were filed ending his career.

In 1969, he tried his hand at professional wrestling. Branding himself "Killer" Sheppard, Sam's signature move in the ring was named the "Mandible Claw."[21] After his divorce from Ariane was final, Sam married the teen-age daughter of his tag-team partner George Strickland.[22]

Consumed by his own demons, Sheppard's life was spiralling out-of-control. The years in prison, the stigma of his conviction, the collapse of his medical practice, the failure of his second marriage, and the unresolved trauma from Marilyn's grisly murder, all took their toll.

Sheppard died on April 6, 1970.[23] Age forty-six, the official cause of death was listed as liver failure.[24] But the actual cause may have been something more profound. The Samuel Sheppard who existed before July 4, 1954, died on the morning his wife was killed. Whether he really murdered Marilyn will never be known.

What is known is that Sheppard did not receive a fair trial as guaranteed him under the Constitution. No doubt, the machinations of the media and the abject failure of Judge Blythin to secure Sam's rights were complicit in his conviction and, later-on, his inevitable self-destruction.

The Sam Sheppard murder case is a legal as well as a cultural milestone. Its import can be seen in a U.S. Supreme Court decision, the launching of F. Lee Bailey's celebrated career, and in having inspired *The Fugitive*. It also demonstrates that the line that separates American law from American culture is a fine one indeed.

1. *Sheppard v Maxwell*, 231 F.Supp. 37 (1964).
2. Marilyn Shepard Autopsy Report at engagedscholarship.csuohio.edu.
3. Charles Montaldo, *The Tragic Life & Murder Case of Dr Sam Sheppard* at www.thoughtco.com.
4. Douglas Linder, *Dr Sam Sheppard Trials: An Account* at www.famous-trials.com.
5. *Id.*
6. *Law School Case Brief Sheppard v Maxwell* at www.lexisnexis.com.
7. *Id.*
8. Linder, *supra.*
9. *Id.*
10. *Id.*
11. *Id.*
12. Paul Hehn, Dr Sam Sheppard Murder Trials, November 16, 2011 at www.who2.com.
13. Arnie Rosenberg, *F. Lee Bailey says 'Fugitive' was Sam Sheppard*, (August 7, 1993) at http://www.baltimoresun.com.
14. Allen Pussey, *April 13, 1963: Sam Sheppard seeks a new trial*, (April 1, 2018) at https://www.abajournal.com.
15. Sheppard v Maxwell, 231 F.Supp. 37 (S.D. Ohio 1964).
16. *Id.*
17. *Sheppard v Maxwell*, 384 U.S. 333 (1966).
18. Sam Sheppard Trials: 1954 and 1966 at law.jrank.org.
19. Linder, *supra.*
20. *Id.*
21. Sam Sheppard Wrestler Database at www.cagematch.net.
22. Linder, *supra.*
23. *Id.*
24. Shepard Murder Case/Encyclopedia of Cleveland at wwwcase.edu.

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NASSAU ACADEMY OF LAW

June 7 (IN PERSON ONLY)

Long Island Labor & Employment Relations Association Annual Conference 2024
8:30AM – 3:30PM
4.5 CLE credits (3.0 Professional Practice, 1.0 Diversity, Inclusion & Elimination of Bias, .5 Ethics)

Panel 1: Workshop Transformation and Return to Work Issues in 2024
Panel 2: Employment and Labor Law Update
Panel 3: Trending HR Topics Boot Camp
Panel 4: Wage & Hour Issues Deep Dive

ALL ATTENDEES $258.08 (includes breakfast, lunch, course materials and CLE credits)

June 11 (HYBRID)

Dean's Hour: Addressing Anti-LGBTQ Bias in the Courtroom: A Practical Conversation
With the NCBA Access to Justice, Diversity & Inclusion and Law Student Committees; Nassau Suffolk Law Services; The Richard C. Failla LGBTQ Commission of the NYS Courts; and Volunteer Lawyers Project, a joint venture of NSLS and NCBA
12:30PM
1.0 CLE credit in Diversity, Inclusion & Elimination of Bias and .5 credit in Ethics

Attendees will gain practical tools for interrupting anti-LGBTQ bias in the courtroom and practice of law, including best practices when working with members of the LGBTQ community, how to preempt and defuse uncomfortable situations, whether to address issues administratively versus through appeal, and what systemwide initiatives and resources are available to LGBTQ court users, attorneys, judges, and employees.

Moderator:
Charlie Arrowood, Esq., Senior Counsel, The Richard C. Failla LGBTQ Commission of the NYS Courts

Guest Speaker:
Hon. Edwina G. Richardson, Deputy Chief Administrative Judge for Justice Initiatives
Hon. Jeffrey A. Goodstein, Supervising Judge, Supreme Court and Matrimonial Center Parts of Nassau County
Antonio Seda, Esq., Managing Inspector General for Bias Matters, NYS Office of Court Administration

FREE for all attendees

June 13 (HYBRID)

Dean's Hour: Trust Planning to Reduce Income and Estate Taxes
12:30PM
1.5 CLE credit in Professional Practice

Speakers will discuss various types of well-known drafting clauses in various trusts, and what the trusts do and, as importantly, what they don't do. Discussion will include charitable gifting, deferred compensation, irrevocable life insurance trusts and other types of trusts and agreements that use life insurance as funding tools for saving individual income and estate taxes. Updated information on the sunset provision will also be addressed. Speakers will use mini case studies that will bring these topics and agreements to life.

Guest Speakers:
Aaron E. Futterman, CPA, Esq., established the Law Firm of Futterman, Lanza, & Pasculli with his partner Ronald Lanza. His experience as a CPA enhances his ability to resolve the complex tax and legal issues that arise in his estate planning, tax, and elder law practice.
Henry Montag, CFP, Managing Director, The Toli Center East

NCBA Members FREE; Non-Member Attorney $50

June 20 (HYBRID)

Dean's Hour: Form 7203, S Corporation Basics, and Loan Repayments
12:30PM
1.0 CLE credit in Professional Practice

S corporations are very popular, and lawyers must be aware of underlying rules and requirements. This lecture will focus on S corporations basis calculations and new Form 7203, including: calculating beginning stock basis; proper order for basic calculations; loan basis and reporting; open account debt regulations in coordination with Form 7203; tax traps to watch; and S distribution and reporting.

Guest Speaker:
Robert S. Barnett, Esq., CPA., is a Partner at Capell Barnett Matalon & Schoenfeld LLP. His practice is highly concentrated in the areas of taxation, trusts, estates, corporate and partnership law, and charitable planning. His experience includes Surrogate's Court practice, tax dispute resolution, Tax Court representation, and structuring financial transactions and charitable gifts.

NCBA Members FREE; Non-Member Attorney $35

June 24 (IN PERSON ONLY)

Legal Pot! Now What?
With NCBA Community Relations & Public Education Committee and Lawyer Assistance Program (LAP)
6:00PM
2.0 CLE credits in Professional Practice

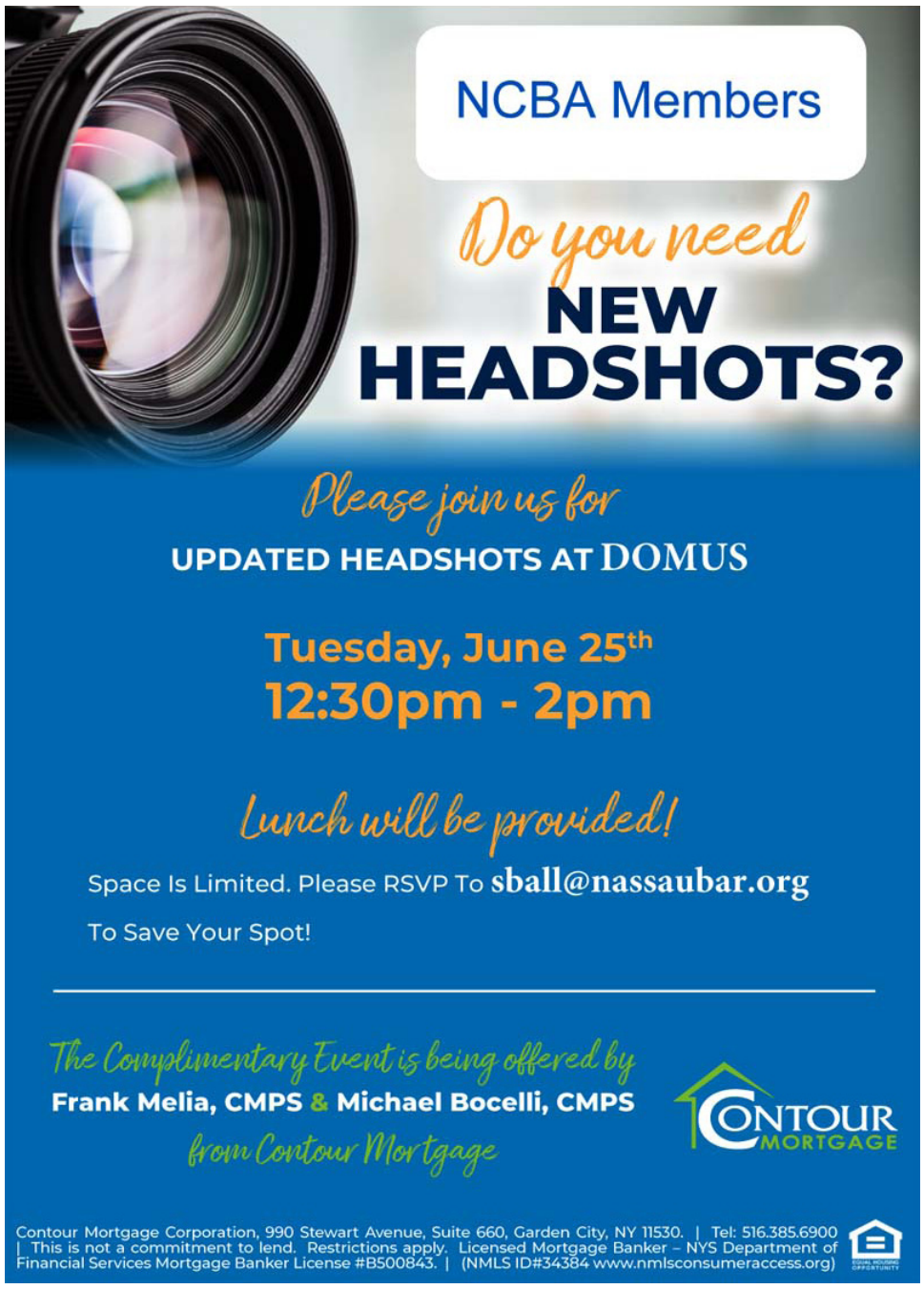
This contemporary seminar for attorneys and the public about New York's newly implemented cannabis law—the Marijuana Regulation and Taxation Act (MRTA)—will discuss the creation of a legal retail market for adult-use recreational cannabis sales;

PROGRAMS CALENDAR

the enduring contradiction between state vs. federal cannabis laws; its impact on the workplace; criminal ramifications upon driving and possession; and examination of the health and safety concerns surrounding cannabis since its legalization.

Guest Speakers:
Moderator Todd Houslanger, Esq., Managing Attorney, Houslanger & Associates, PLLC
Dana Walsh Sivak, Esq., Partner at Falcon Rappaport & Berkman LLP, is Chair of the firm's Elder Law Practice Group and a member of its Cannabis & Psychedelics Practice Group. She will discuss MRTA, the anticipated rescheduling of cannabis in the Controlled Substance Act, and their impact on the state's medical cannabis program and its new retail market for recreational cannabis.
Jeffrey N. Naness, Esq., Partner, Naness Chaiet & Naness, has over a decade's experience representing management in labor relations, employment law, and related litigation. He will discuss employment and human relations law as it applies to cannabis law.
Marc Gann, Esq., Partner at Collins Gann McCloskey & Barry PLLC, handles criminal cases of all shapes and sizes, from simple traffic or DUI cases to the most serious major felonies. He will discuss criminal law as it applies to cannabis law.
Elizabeth Eckhardt, LCSW, PhD, NCBA Lawyer Assistance Program Director, provides professional, confidential counseling services to lawyers, judges, law students and their families struggling with mental health and substance use issues.
Steve Chassman, LCSW, CACAC, Executive Director, LI Council on Alcoholism & Drug Dependence, will discuss with Dr. Eckhardt cannabis health risks, use vs. abuse, prevention, what to look for, and available resources.

FREE for all attendees



July 17 (IN PERSON ONLY)

This Year's Most Significant Bankruptcy Decisions with the U.S. Bankruptcy Judges for the Eastern District of New York
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FOCUS: EDUCATION

The 2024 Title IX Regulations: An Overview and Analysis of Major Changes Effective August 1

Jennifer McLaughlin and Nicole Donatich

On April 19, 2024, the U.S. Department of Education (the "Department") published the unofficial version of its final Title IX regulations (the "2024 Final Rule") governing how elementary schools, secondary schools, postsecondary institutions or other entities that operate education programs or activities and receive federal funds from the Department (collectively, "institutions") must address allegations of sex discrimination in accordance with Title IX of the Education Amendments of 1972 ("Title IX").[1] Along with the unofficial version of the 2024 Final Rule, the Department also published a Fact Sheet,[2] Summary of Major Provisions,[3] and a Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures[4] to assist institutions in understanding their obligations under the 2024 Final Rule. The 2024 Final Rule amends the Title IX regulations found at 34 C.F.R. § 106.1 et seq. The 2024 Final Rule is effective August 1, 2024, and will apply to complaints of alleged sex discrimination that occurs on or after that date.

The 2024 Final Rule presents a significant departure from the Department's 2020 amendments to the Title IX regulations (the "2020 Final Rule"), which only became effective August 1, 2020.[5] The Department received and reviewed more than 240,000 comments from the public in response to the proposed regulations released in July 2022. The release of the 2024 Final Rule was delayed several times, which presented practical challenges to institutions in their efforts to plan for implementation.[6]

Expanded Protections

The 2024 Final Rule specifies that Title IX's prohibition on sex discrimination includes "discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity."[7] This coincides with the Department's newly expanded definition of "sex-based harassment," which is "a form of sex discrimination" and includes harassment on the basis of sex (including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity) that constitutes *quid pro quo harassment* or *hostile environment harassment.*[8] The 2024 Final Rule also redefines *hostile environment harassment*, previously required to be "severe, pervasive, *and* objectively offensive," under the 2020 Final Rule, to now include "unwelcome sex-based conduct that … is subjectively and objectively offensive and is so severe *or* pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity."[9] The specific offenses of sexual assault, dating violence, domestic violence, and stalking also continue to independently constitute sex-based harassment under the 2024 Final Rule.[10]

By expanding the definitions of sex discrimination and sex-based harassment, the Department clarified what conduct is encompassed within Title IX's scope and, thus, what conduct is subject to the requirements of the 2024 Final Rule. This is a significant expansion, as institutions must now apply the grievance procedures outlined in 34 C.F.R. § 106.45 to all complaints of sex discrimination, whereas, previously, institutions were only required to apply Title IX grievance procedures to conduct which met the definition of "sexual harassment" under the 2020 Final Rule. Institutions that maintain separate policies and procedures for sexual misconduct and non-discrimination will likely need to revise both policies to comply with the 2024 Final Rule.

The 2024 Final Rule also expands protections for pregnant and parenting students. For example, 34 C.F.R. § 106.40 will now require that any employee that is informed of a student's pregnancy or related condition promptly provide the student with the Title IX Coordinator's contact information and notify the student that the Title IX Coordinator "can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity."[11] Once notified, the institution must take "specific actions" to "promptly and effectively prevent sex discrimination and ensure equal access to the recipient's education program or activity…"[12] These "specific actions" include providing specified information about the institution's Title IX obligations and its notice of nondiscrimination, providing reasonable modifications to its policies, practices and procedures, providing voluntary access to separate and comparable portions of its program or activity, providing voluntary leaves of absence and providing lactation space.[13] Institutions are also prohibited from requiring supportive documentation for these actions, unless it is "necessary and reasonable" to effectuate said actions.[14]

More Inclusive Protections

The 2024 Final Rule also adds significant protections for LGBTQI+ students, employees, and others who participate in an institution's educational programs or activities. In doing so, the Department relies on the U.S. Supreme Court's reasoning in *Bostock v. Clayton Cnty.*,[15] which provided that sex discrimination—as prohibited by Title VII of the Civil Rights Act of 1964—encompasses discrimination based on sexual orientation and gender identity.

The 2024 Final Rule states that a recipient must not separate or treat any person differently based on sex in a manner that subjects them to "more than de minimis harm…"[16] and, moreover, "adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex."[17] Preventing a student from participating in a recipient's education program or activity consistent with their gender identity is, therefore, an express violation of Title IX.

This provision, amongst others, has invited significant controversy and criticism, as the issue of allowing transgender athletes to compete on sex-separate athletic teams continues to dominate headlines.[18] The 2024 Final Rule's Preamble includes a

lengthy discussion on the preemption of laws which conflict with Title IX's nondiscriminatory mandate.[19] The Department will issue a separate rule addressing Title IX's application to athletics at later date.

Requirement to Respond "Promptly and Effectively"

The 2020 Final Rule required an institution to respond when it had "actual knowledge" of allegations of "sexual harassment," and "only in a manner that is not deliberately indifferent." In doing so, the Department sought to align the Department's administrative enforcement of Title IX with the liability standards applied in Title IX litigation. The 2024 Final Rule, however, requires that an institution "respond promptly and effectively" whenever it has "knowledge of conduct that reasonably may constitute sex discrimination."[20] In the Preamble to the 2024 Final Rule, the Department stated, in explaining an institution's duty to address sex discrimination, "The Department has concluded that Title IX does not permit a recipient to act merely without deliberate indifference and otherwise allow sex discrimination to occur. Rather, in the administrative enforcement context, in which the Department is responsible for ensuring that its own Federal funds are not used to further discrimination, the Department expects recipients to fully effectuate Title IX."[21]

Returning the Keys to Institutions to Drive Their Own Grievance Procedures

The 2020 Final Rule took a one-size-fits-all approach to Title IX decision making by requiring processes with quasi-legal elements, particularly for post-secondary institutions. While well-intentioned and designed to ensure parties, mainly respondents, received adequate due process, oftentimes, meeting those quasi-legal elements presented challenges for institutions with limited resources.[22]

Institutions can now channel their resources in a way that is most efficient and effective for their campus community which, for some, may be through a single investigator model (i.e., allowing a single individual to both investigate and adjudicate allegations of sexual misconduct).[23] Under the 2020 Final Rule, post-secondary institutions were required to utilize quasi-legal hearings to adjudicate Title IX matters.

Moving away from quasi-legal hearings, however, presents challenges. Institutions might find it difficult to explain to parties that their rights may be better protected by one well trained and experienced investigator, as opposed to a hearing panel of well-intentioned, but inexperienced individuals. Effective communication will be key to garnering trust in any new processes.

Attempts to Block Implementation

Several states are suing the Department to, amongst other requests for relief, postpone the effective date of the 2024 Final Rule. In its Complaint, filed April 29, 2024, Texas alleged that the Department "has attempted to effect radical social change in our Nation's schools by purporting to 'interpret' Title IX…to prohibit discrimination based on sexual orientation and gender identity."[24] The same day, Alabama, Florida, Georgia and South Carolina filed a Complaint making similar arguments to those made by Texas.[25] Both lawsuits allege that the 2024 Final Rule violates the Administrative Procedure Act and impermissibly expands the reach of the U.S. Supreme Court's decision in *Bostock*. As of the date of this writing, neither court has granted the respective plaintiffs' requests to postpone the effective date of the 2024 Final Rule.

Other states have filed similar lawsuits to block the 2024 Final Rule's implementation.[26] More legal challenges are expected in the coming months; however, unless directed by a court of appropriate jurisdiction, institutions should prepare and plan to implement the 2024 Final Rule by August 1.

Looking Ahead

Institutions will have to race against the clock to make the necessary updates to their policies to ensure compliance with the 2024 Final Rule. Institutions must also update annual trainings provided to community members. It is imperative that institutions work closely with legal counsel and campus Title IX stakeholders to craft a plan for compliance well before the August 1 effective date.

1. U.S. Department of Education Releases Final Title IX Regulations, Providing Vital Protections Against Sex Discrimination, U.S. Department of Education, Apr. 19, 2024, https://www.ed.gov/news/press-releases/us-department-education-releases-final-title-ix-regulations-providing-vital-protections-against-sex-discrimination (last accessed May 6, 2024).
2. FACT SHEET: U.S. Department of Education's 2024 Title IX Final Rule Overview, U.S. Department of Education, Apr. 19, 2024, https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf?bcs-agent-scanner=719a0372-4aea-3043-a225-d932334e16f8 (last accessed May 6, 2024).
3. Brief Overview of Key Provisions of the Department of Education's 2024 Title IX Final Rule, U.S. Department of Education, Apr. 19, 2024, https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf?bcs-agent-scanner=4ab35e09-592b-6d48-8c6c-45ac8a2e851d (last accessed May 6, 2024).
4. Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures Under 2024 Amendments to the U.S. Department of Education's Title IX Regulations, U.S. Department of Education, Apr. 19, 2024, https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf?bcs-agent-scanner=b6733dcd-0f4c-664b-a2db-4b937597e891 (last accessed May 6, 2024).
5. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026 (May 19, 2020)(to be codified at 34 CFR 106).
6. Dina Vespia, Jennifer McLaughlin, Nicole Donatich and Ciara Villalona-Lockhart, *U.S. Department of Education Submits Final Title Ix Rule to the Office of Management and Budget*, Cullen and Dykman LLP, Feb. 6, 2024, https://www.cullenllp.com/blog/u-s-department-of-education-submits-final-title-ix-rule-to-the-office-of-management-and-budget/ (last accessed May 6, 2024).
7. 34 C.F.R. § 106.10 (Effective Aug. 1, 2024).
8. 34 C. F.R. § 106.2 (Effective Aug. 1, 2024).
9. *Id.*
10. *Id.*
11. 34 C.F.R. § 106.40 (Effective Aug. 1, 2024).
12. 34 C.F.R. § 106.40(b)(3) (Effective Aug. 1, 2024).
13. *Id.*
14. 34 C.F.R. § 106.40(b)(3)(vi) (Effective Aug. 1, 2024).
15. *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020).
16. 34 C.F.R. § 106.31(a)(2) (Effective Aug. 1, 2024).
17. *Id.*
18. Nassau County Bans Transgender Athletes from Some Teams, Events at County Facilities, News 12 Long Island, Feb. 22, 2024, https://longisland.news12.com/nassau-county-bans-transgender-athletes-from-some-teams-events-at-county-facilities (last accessed May 6, 2024).
19. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33542 (Apr. 29, 2024).
20. 34 C.F.R. §106.44(a)(1)(Effective Aug. 1, 2024).
21. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33561 (Apr. 29, 2024).
22. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33486 (Apr. 29, 2024).
23. 34 C.F.R. § 106.45(b)(2)(Effective Aug. 1, 2024).
24. Complaint, *State of Texas v. The United States of America; Miguel Cardona, in his official capacity as Secretary of Education; United States Department of Education; Catherine Lhamon, in her official capacity as Assistant Secretary for Civil Rights, Department of Education; Randolph Wills, in his official capacity as Deputy Assistant Secretary for Enforcement, Department of Education*, 2:24-cv-00086-Z (N.D. Texas Amarillo Div.).
25. Complaint, *State of Alabama; State of Florida, State of Georgia; State of South Carolina; Independent Women's Law Center; Independent Women's Network; Parents Defending Education; and Speech First, Inc. v. Miguel Cardona, in his official capacity as the U.S. Secretary of Education; and the U.S. Department of Education*, 7:24-cv-00533-GMB (N.D. Alabama Western Div.).
26. Naaz Modan, *15 States Now Suing Over Final Title IX Rule*, Higher Ed Dive, May 2, 2024, https://www.highereddive.com/news/15-states-attorneys-general-title-ix-lawsuits-department-of-education/715004/ (last accessed May 6, 2024).

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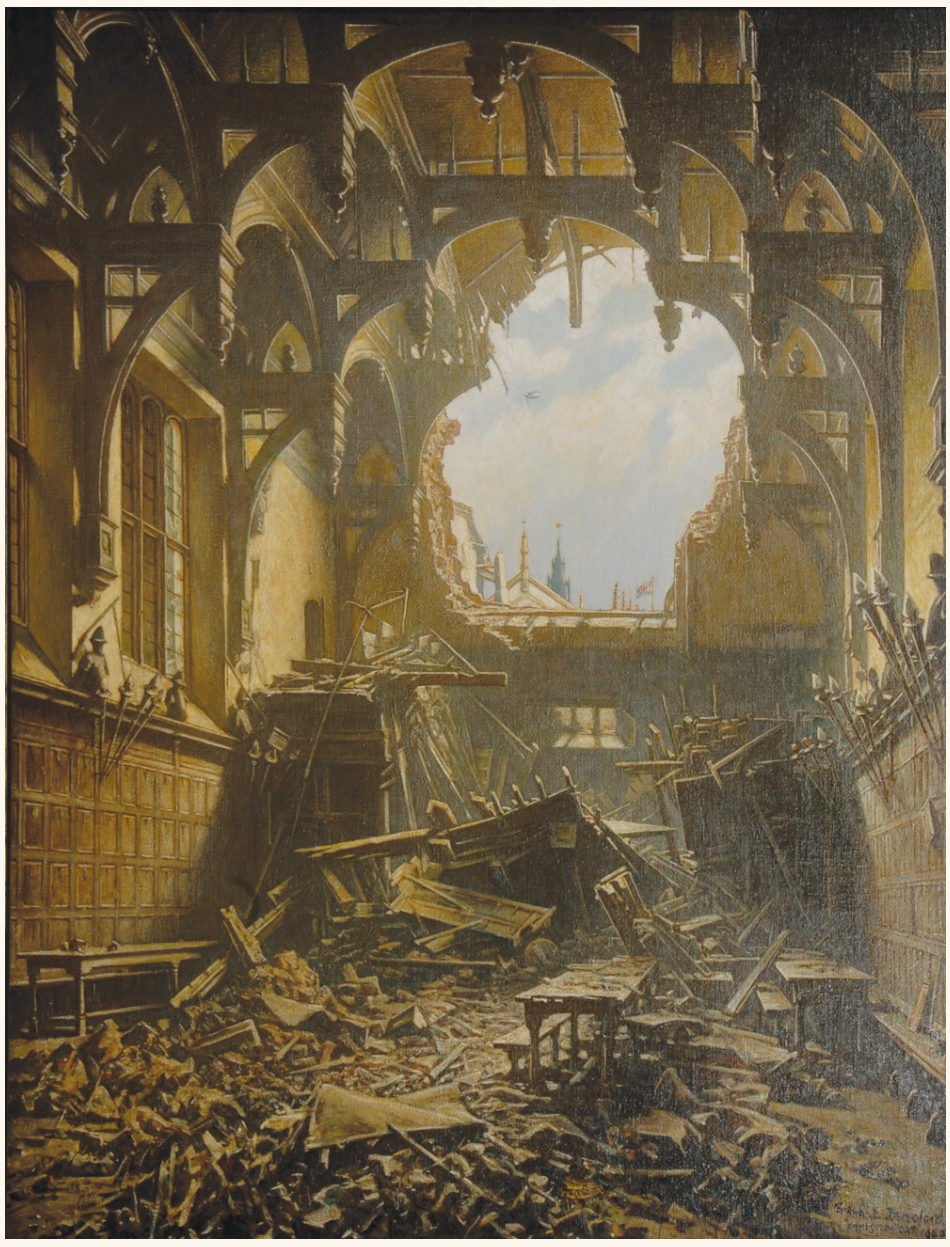
A Toast to Domus: The Legacy of the Nassau County Bar Association (Part 4)

In tribute to the 125th anniversary of the Nassau County Bar Association's founding in 1899, throughout 2024, Nassau Lawyer will publish excerpts from the history book, A Toast to Domus: The Legacy of the Nassau County Bar Association, to familiarize readers with the NCBA's past. An online copy of A Toast to Domus, published in 2020, can be found at NassauBar.org under the About Us dropdown menu.

The relationship between the Nassau County Bar Association and the lawyers of London's Middle Temple goes beyond mere architecture, but the strength and security of the structure certainly symbolizes the majesty of the law. It was at Middle Temple that William Blackstone wrote his commentaries, the volume that the lawyers and judges of the early republic carried with them. The decision to "dissolve the political bonds" did not necessitate the disruption of legal tradition. At the dedication, John W. Davis remarked, "No man who has visited the Inns of Court of course can fail to be sensible of their age, and find himself unimpressed by the maturity and the tradition by which he is surrounded. And if he comes from Anglo-Saxon stock and heritage, he cannot forget the great battles of human liberty that have been fought there, and of which those ancient buildings are the very font and origin." Forgiving Davis his dated comment about "Anglo-Saxon stock," we must still admire the traditions of law and justice which flourished at Middle Temple, and it is that tradition which the Nassau County Bar honored by designing its home in the "scholastic gothic" style.

During the War, Middle Temple, like much of London, was badly damaged. Responding to this tragedy, the Nassau County Bar awarded its Distinguished Service Medal in 1948 to the Inns of Court and contributed $200 toward their reconstruction. At the annual dinner, C. Walter Randall noted that this was the most satisfying award of all because it was dedicated to an ideal, rather than an individual. Speaking at the dinner, Davis, a former ambassador to Great Britain and chairman of the American Bar Association's committee for The Restoration of the Inns of Court, said:

> I went to the Inns first in 1942 and on every succeeding visit to London I made it a point to visit that hallowed shrine of English justice and freedom before I did anything else. It is the center and focus of my affection and admiration for English law. It became my spiritual home. The news of the destruction of the Inns at the hands of the Germans was to me the most unpalatable news of the war.
>
> In those Inns were hammered out the principles of law which we endeavor to apply. The English feel about the Inns just as we feel about Independence Hall. There is an enormous psychological teaching value in such physical shrines and monuments.



"Armistice Day 1940," a painting of Middle Temple Hall by Frank E. Beresford (www.middletemple.org.uk)

On September 28, 1950, Davis's committee sent a check for £15,454.16.4 ($43,292.81) to their English colleagues.

The Great Depression and After

The stock market crash of October 1929 brought the country's economy to a standstill. Lawyers who had prospered through the real estate boom of the previous decade saw their once flourishing practices shrivel. Those with practices on Wall Street found they could no longer bill corporate clients at the dizzying rate they had just months before. In the early years of the Depression two serious problems confronted the Bar Association. First, they had to complete their building by convincing those who subscribed to the building fund to make good on their pledges. A month before the formal dedication in March 1931, the treasurer reported that there remained $12,005 in unpaid subscriptions. Plans for Domus had been made in prosperity; now, a year into the Depression, the Association found that the use of their home was far below expectations. Only twenty-three persons dined in the restaurant, for example, far below the breakeven point of thirty-five a day.

In February 1932 the salary of the couple managing the restaurant was reduced by $250, or about 20% (the same percentage other private clubs in the county had reduced the salaries of their staffs) because, the Board claimed, "the deficiency in running the restaurant" had resulted in a decline in the number of guests; they also reduced the price of the luncheon from $1 to 75¢.[20]

An equally pressing problem was the decline in membership as a startling number of lawyers found themselves in financial difficulties. From a high of 345 members on the eve of the crash, the rolls fell below 300 in 1932, and only reached the pre-depression level in 1937. In January 1931 unpaid dues amounted to $5,200, forcing the Association to borrow $3,000 from Glen Cove Trust to tide the mover until more checks arrived.

In 1932 the treasurer reported the 53 members were in arrears, and 47 of them were only one or two years behind; by comparison, in 1925 only eighteen members were one or two years behind.[21] In the face of this crisis, the Directors voted to suspend the initiation fee until membership topped 400, and then voted to accept non-interest-bearing notes in lieu of payment from attorneys in "present difficulty." In 1937 they took the further step of reducing dues to $20, and $10 for junior members.[22]

Not all lawyers suffered during the Depression, of course, and for some the high living of the '20s continued untrimmed. In May 1937 Howard Osterout hosted the Directors at the Long Island Country Club for a golf and fishing outing. The minutes recorded that "Incidentally and markedly, liquid refreshments were taken in the club house in varying intervals and added considerable to the festive occasion. Dinner was served at 6:30 with champagne followed by liqueurs at the end." In 1939, the Committee on Social Activities announced a series of "maids' night out dinners," at a modest cost of 75c for dinner, cocktails included: "Because of the fact that most lawyers and their wives are the least busy on Thursday night, and because those that engage maids have to let them go on Thursday nights."[23]

20. Minutes of the Board of Directors, Feb. 10, 1931; Feb. 9, 1932.
21. Minutes of the Board of Directors, January 13, 1931; May 12, 1932. Members one or two years behind in their dues in 1932 amounted to about 16% of the membership; the percentage for 1925 was 11%. In terms of the total number in arrears, however, the percentage for 1932 was 18%, for 1925 22%.
22. Minutes of the Board of Directors, Nov. 21, 1937; June 12, 1939.
23. Minutes of the Board of Directors, May 11, 1937; June 15, 1939.

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May 4, 2024 Annual Dinner Gala

Cradle of Aviation Museum

On May 4, more than 350 Members and guests had an out-of-this-world experience as they gathered for the NCBA 124th Annual Dinner Gala at the Cradle of Aviation Museum to enjoy an evening filled with gourmet food and live music. NCBA Past President Lance D. Clarke received the 2024 Distinguished Service Medallion, the highest honor bestowed by the Bar, for enhancing the reputation and dignity of the legal profession, and eleven Members were recognized for their fifty, sixty and seventy years of admittance to the bar.

Photos By Hector Herrera

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Appellate Practice	Amy E. Abbandondelo and Melissa A. Danowski
Asian American Attorney Section	Jennifer L. Koo
Association Membership	Adina L. Phillips and Ira S. Slavit
Awards	Sanford Strenger
Bankruptcy Law	Gerard R. Luckman
Business Law Tax and Accounting	Raymond J. Averna
By-Laws	Deanne M. Caputo
Civil Rights	
Commercial Litigation	Christopher J. Clarke and Danielle Gatto
Committee Board Liaison	James P. Joseph
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Criminal Court Law & Procedure	Christopher M. Casa and Amanda A. Vitale
Cyber Law	Thomas J. Foley and Nicholas G. Himonidis
Defendant's Personal Injury	Jon E. Newman
District Court	Bradley D. Schnur
Diversity & Inclusion	Sherwin Safir
Education Law	Liza K. Blaszcyk and Douglas E. Libby
Elder Law, Social Services & Health Advocacy	Lisa R. Valente and Christina Lamm
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Grievance	Robert S. Grossman
Government Relations	Michael H. Sahn
Hospital & Health Law	Kevin P. Mulry
House (Domus)	Steven V. Dalton
Immigration	Pallvi Babbar and Patricia M. Pastor
In-House Counsel	Brian P. O'Keefe
Insurance Law	Michael D. Brown
Intellectual Property	Sara M. Dorchak
Judicial Section	Hon. Gary F. Knobel
Judiciary	Dorian R. Glover
Labor & Employment Law	Marcus Monteiro
Law Student	Bridget M. Ryan and Giro M. Maccheroni
Lawyer Referral	Gregory S. Lisi
Lawyer Assistance Program	Daniel Strecker
Legal Administrators	
LGBTQ	Jess A. Bunshaft
Matrimonial Law	Karen L. Bodner
Medical Legal	Bruce M. Cohn
Mental Health Law	Jamie A. Rosen
Municipal Law and Land Use	Elisabetta Coschignano
New Lawyers	Byron Chou and Michael A. Berger
Nominating	Rosalia Baiamonte
Paralegal	
Plaintiff's Personal Injury	Giulia R. Marino
Publications	Cynthia A. Augello
Real Property Law	Suzanne Player
Senior Attorneys	Stanley P. Amelkin
Sports, Entertainment & Media Law	Ross L. Schiller
Supreme Court	Steven Cohn
Surrogate's Court Estates & Trusts	Michael Calcagni and Edward D. Baker
Veterans & Military	Gary Port
Women In the Law	Melissa P. Corrado and Ariel E. Ronneburger
Workers' Compensation	Craig J. Tortora and Justin B. Lieberman

TUESDAY, JUNE 4
Women in the Law
12:30 p.m.

WEDNESDAY, JUNE 5
Real Property
12:30 p.m.

THURSDAY, JUNE 6
Hospital & Health Law
8:30 a.m.

Publications
12:45 p.m.

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

TUESDAY, JUNE 11
Education Law
12:30 p.m.

Labor & Employment Law
12:30 p.m.

WEDNESDAY, JUNE 12
Intellectual Property
12:30 p.m.

Commercial Litigation
12:30 p.m.

Matrimonial Law
5:30 p.m.

THURSDAY, JUNE 13
Diversity & Inclusion
6:00 p.m.

THURSDAY, JUNE 20
Association Membership
12:30 p.m.

FRIDAY, JUNE 21
Sports Entertainment and Media Law
12:30 p.m.

TUESDAY, JUNE 25
Plaintiff's Personal Injury
12:30 p.m.

NEW MEMBERS

We Welcome the Following New Members

Julie C. Amadeo Esq.

Andrei Bicknese
Law Student

William E. Bird Esq.

Reid Olexa Bloom Esq.

Maria Boultadakis, Esq.

Tiffani Cao
Law Student

Melanie Wynne Castillo
Legal Administrator

Nikolas Blaze Colak Esq.

Katuria D'Amato, Esq.

Austin M. David
Law Student

Brian T. Deveny, Esq.

Bianca Dilan, Esq.

Yvonne Ganley
Law Student

Emily Giardina
Law Student

Jeremy Steven Glicksman Esq.

Keanna Haynes
Law Student

Niya Henry
Law Student

Samantha Lau Hunt Esq.

Emily Rose Hurni Esq.

Charles Kemp Esq.

Haydar I. Ketabchi Esq.

Yarin Kourehjan
Law Student

Youngseon Kwon
Law Student

Brian A. Lacoff, Esq.

Lisa Lin Esq.

Guanhong Liu
Law Student

Joshua R. Lumsden
Law Student

Natalie R. Marchesiello
Law Student

Darielle Matthews
Law Student

Patrick A. McGlashan Esq.

Jennifer A. McLaughlin, Esq.

Matthew Joseph Meyers
Law Student

Francine Rose Michel Esq.

Caraline Mikkelsen
Law Student

Kenneth C. Murphy Esq.

Alexia Nicole O'Brien
Law Student

Erin A. O'Brien, Esq.

Brian P. O'Keefe, Esq.

Saradja Paul Esq.

Hon. Danielle M. Peterson

Donald Pius Esq.

Olivia Porter, Esq.

Manoranjan Rai Esq.

Suzanne Vivian Razeq
Law Student

Taylor Marie Reidy Esq.

Ashley Nicole Romeo
Law Student

Marianne Rosner
Paralegal

Alexandra Sanchez Esq.

Mariann C. Sarraf Esq.

Caitlin Macrae Scott
Law Student

Maria Jaqueline Sleefe
Law Student

Rebecca Sloan
Law Student

Edward Daniel Tantleff Esq.

May Theobalt
Law Student

Lucy Titone, Esq.

Lloyd Weinstein, Esq.

Ashley Yevdosin
Law Student

Farrah D. Zaidi
Law Student

Are You OK?

As spring evolves into summer this month, why not take a moment to check on yourself?

If you answer YES to any of the following questions, we can help.

1. Are my clients, associates or family saying that my behavior has changed or I don't seem like myself?
2. Is it difficult to maintain a routine and stay on top of my responsibilities?
3. Have I experienced memory loss or the ability to concentrate?
4. Am I having difficulty managing emotions such as anger and sadness?
5. Have I missed appointments or appearances or failed to return phone calls and/or correspondence?
6. Have my sleeping and eating habits changed?
7. Am I experiencing a pattern of relationship problems with significant people in my life (spouse, parents, children, associates)?
8. Does my family have a history of alcoholism, substance abuse or depression?
9. Do I drink or take drugs to deal with my problems?
10. Have I recently taken more drinks or drugs than I had intended, or felt I should cut back or quit, but could not?
11. Is gambling making me careless of my financial responsibilities?
12. Do I feel so stressed, burned out and depressed that I have had thoughts of suicide?

ONGOING SUPPORT GROUPS

SHARING BALANCE: Tuesdays from 1:00-1:45p.m. (via Zoom, link provided upon registration). Open to members of all aspects of the legal profession and their families. Just fill out a brief, one-time registration form (https://forms.gle/QnkhtJN14Tq9CJKM9), then attend as many sessions as you like. There's no obligation or limit. We hope to see you there!

ADHD: Every other Thursday (June 6 & 20) at 12:00p.m. via Zoom. These are drop-in meetings, no registration required. There is no cost to attend. To join us, use the following link: https://bit.ly/NCBA-LAP-ADHD

If you would like to make a donation to LAP or learn about upcoming programs, please visit nassaubar.org and click our link under the "For Members" tab.

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The NCBA Lawyer Assistance Program is directed by Beth Eckhardt, PhD, and the Lawyer Assistance Committee is chaired by Dan Strecker, Esq. LAP is supported by funding from the NYS Office of Court Administration, the NY Bar Foundation, Boost Nassau, and the WE CARE Fund of the Nassau County Bar Foundation. *Strict confidentiality protected by Section 499 of the Judiciary Law.

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.

Schwartz Ettenger, PLLC, a boutique law firm in Melville, is pleased to announce the promotion of **Marci Goldfarb, Esq.**, from Senior Counsel to Partner, on May 1, 2024.

Harris Beach PLLC—a national law firm with a strong presence across New York State, including Long Island—and Murtha Cullina LLP—a mid-sized firm with offices in Connecticut, Massachusetts and New York—has announced plans to combine firms. The new firm, to be known as **Harris Beach Murtha**, will have more than 250 attorneys across 15 offices in several states, and more than 250 years of combined legal experience. Together, Harris Beach Murtha will offer greater strength and reach throughout an expanded geographical footprint on the Northeast Corridor and throughout Upstate and Western New York, accelerating the growth strategy of both firms. The firms will continue to operate separately until the merger takes effect on January 1, 2025.

Anthony A. Nozzolillo, Esq. was named "Best Real Estate Law Attorney" at the 2023-2024 HERALD "Long Island Choice Awards" held at the Crest Hollow Country Club on May 14.

Vishnick McGovern Milizio is proud to announce that the *LI Herald* has named VMM "Top Boutique Law Firm of Long Island" for the sixth consecutive year. In addition, Managing Partner **Joseph Milizio** was named "Top Lawyer of Long Island 2024" in the Business & Transactional category; Partner **Joseph Trotti** in the Matrimonial & Family Law category; and Associate **Meredith Chesler** in the Rising Star category. Milizio wrote an article for the *Long Island Business News* titled, "FTC Noncompete Bans: What Does This Mean for Employers/Employees?"; was interviewed by CBS' Moneywatch on "When does a home equity loan make sense?"; and spoke to the NYS Society of CPAs Nassau Chapter titled, "The Success in Succession: A comprehensive Look at Exit & Succession Planning from Personal and Business Perspectives." Trotti—head of the firm's Litigation Department and the Matrimonial and Family Law practice—spoke on the St. John's Family Law & Child Advocacy Society panel on March 12.

Robert Barnett, founding Partner of Capell Barnett Matalon and Schoenfeld, LLP, presented "Calculating S Corp Stock and Debt Basis: Avoiding Loss Limitations and Excess Distributions" for Strafford and lectured on "Preparing Form 1041 and Estate Planning—After TCJA And CARES Act" for EStudyinfo on May 22. In June, he will speak on buy/sell planning for the National Life Symposium in Las Vegas and present a Nassau Academy of Law Dean's Hour on "Form 7203, S Corporation Basics, and Loan Repayments." Partner **Yvonne Cort** is speaking on New York State and New York City residency, discussing domicile and statutory residency for individuals, for TRTCLE, and presenting "Corporate Transparency Act/New York LLC Transparency Act" for the 2024 NYU Tax Controversy Forum. On May 22, Partner **Stuart Schoenfeld** presented a webinar on "Everyone Says I Need a Trust. What's a Trust?"

May 9, 2024 Law Day Awards Dinner

The Liberty Bell Award presented to NYS Department of Veterans' Services Commissioner Viviana M. DeCohen by NCBA President Sanford Strenger.

The Peter T. Affatato Court Employee of the Year Award was presented to District Court Senior Court Clerk Lisa St. Rose by Hon. Tricia Ferrell, Supervising Judge, Nassau County District Court.

The Thomas Maligno Pro Bono Attorney of the Year Award was presented to Scott Stone by Roberta Scoll, Nassau Suffolk Law Services Staff Attorney and Community Legal Help Project Coordinator.

Howard Schneider, Executive Director of the Center of News Literacy at Stony Brook University School of Journalism, gave the keynote speech on Voices of Democracy.

Photos By Hector Herrera

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