

Nassau Lawyer

THE JOURNAL OF THE NASSAU COUNTY BAR ASSOCIATION

July/August 2018

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Vol. 67, No. 11

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NCBA COMMITTEE MEETING CALENDAR

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SAVE THE DATE

BBQ at the Bar

NCBA Annual BBQ
Thursday, September 6, 2018
5:30-7:30 p.m.
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JUDICIARY NIGHT

Thursday, October 18, 2018
5:30 p.m. at Domus
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OPEN HOUSE

Thursday, October 25, 2018
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UPCOMING PUBLICATIONS COMMITTEE MEETINGS –AT THE BAR ASSOCIATION

Thursday, September 6, 2018, 12:45 p.m.
Thursday, October 4, 2018, 12:45 p.m.

Shaping the Future of the Legal Profession NCBA Committees: A Members-Only Benefit

The Nassau County Bar Association committees are one of the most valuable benefits of membership. Committee members can take advantage of unmatched opportunities to meet top legal practitioners, judges, specialists and authorities, discuss issues and procedures with the judiciary; take meaningful positions on important issues that impact the practice of law; and learn how to increase business.

Firms of all sizes as well as solo practitioners find value in committee membership. Newer attorneys draw on the experience of their more established counterparts as lawyers work together on a plethora of issues and projects. Asked about the value of committee membership, NCBA President Elena Karabatos said, "Having robust committees is vital to the Bar Association. Our committees are the core of the mission of NCBA, helping our members remain successful in the practice of law, as well as running profitable businesses."

"Participating in committees broadens the fabric of what this Association does," noted NCBA President-Elect Rick Collins, who oversees all NCBA committees.

"Joining a committee is the easiest way for an attorney to become more involved in the legal community, stay on top of practice areas, develop new business resources, and participate in shaping the future of the profession."

There is no extra fee to join committees and most NCBA members belong to at least one. "Joining a committee in your field of practice keeps you current on the law and procedures in the local courts,"



On March 28, the NCBA Women in the Law Committee and Nassau Women's Bar Association held a joint meeting that featured a presentation by Heidi Krantz, a certified life coach, on "How You'll Become the Ideal Leader." Krantz spoke about how to use a seven-step leadership development system to improve leadership skills for women attorneys. She demonstrated how the right thoughts and small actions can help female professionals achieve their goals and inspire others to do the same. (Photo by Christie Jacobson)

said Collins. "Joining a committee in another legal field or one that helps the operations of the Bar Association itself provides the opportunity to network and develop referral business."

Committee membership is a way for attorneys to learn from each other. As Collins put it, "Instead of sitting in front of a computer or typing on a smart phone,

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RENEW YOUR MEMBERSHIP TODAY!

You must renew your membership and indicate your committee choices by August 15, 2018, to be included as a committee member in the annual NCBA Membership Directory.

To continue your participation and receive notices from Committee Chairs, you must renew your Committee membership every year. Indicate your choices on your membership renewal form or when you rejoin on line at www.nassaubar.org.

The calendar of Committee meetings is in every issue of Nassau Lawyer as well as on our website. The 2018-19 Committee descriptions and Committee Chairs are listed on **page 22**. For further information contact Stephanie Pagano in our Membership Department, (516)747-4070 or spagano@nassaubar.org.

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Education Law/Constitutional Law

A Clear Solution to Balancing Students' Expectation of Privacy?

Over the years, there has been a proliferation of intense surveillance in schools in an effort to keep students safe.¹ After the 1999 shooting at Columbine High School, schools around the country responded by increasing police presence, installing metal detectors, and other security measures.² The same reaction ensued in the wake of the 2012 Sandy Hook Elementary School shooting.³

Most recently, after the Parkland shooting on February 14, 2018, Marjory Stoneman Douglas High School (Stoneman Douglas) implemented several safety and security protocols for its students and staff. Students are now required to carry identification lanyards, and are subject to bag searches.⁴ Notably, since returning from their spring recess, students of the Florida school are only permitted to use clear backpacks on campus.⁵

Stoneman Douglas is not the first school to implement this type of policy.⁶ In 2007, a Dallas school district required students to use clear or mesh backpacks on campus.⁷ A Chicago high school adopted a clear backpack policy in 2013.⁸ The precaution is not unlike the one taken by the NFL, which went

into effect after the 2013 Boston Marathon Bombings, which requires attendees to use transparent bags in an effort to increase safety and security.⁹

Fourth Amendment Protection

These policies, though intended to fortify campus safety, raise issues of students' expectation of privacy. Every American is protected by the Fourth Amendment against "unreasonable" searches and seizures, and what can be classified as "reasonable" varies depending on the context. In schools, educators may generally search student property, if and only if, the educator has a good reason to believe that evidence exists therein which will reveal a violation of school policy.

For example, if a student is suspected of cheating during a biology exam, a search may be permissible. If that evidence is found, the offending student may be subject to an administrative sanction by the school, typically in the form of suspension,



Cynthia A. Augello

detention, and the like.

At Stoneman Douglas, students criticized the transparent backpacks for only creating an illusion of a more secure campus while infringing on their privacy rights.¹⁰ Some of the objections indicate that the bags are particularly uncomfortable for girls carrying feminine products or for students with medication.¹¹ Additionally, the transparent bags raise concerns about theft among students,

because students' valuable possessions are clearly visible.

An argument could be made that by requiring clear backpacks, students are constantly subjected to searches, as a mere look at the backpack will tell educators exactly what the bag contains. A leading case concerning student privacy is *New Jersey v. T.L.O.*¹²

In *T.L.O.*, a 14-year-old high school student was suspected of smoking cigarettes in the bathroom along with another student. The other student confessed, where T.L.O. denied the accusation. Both students were sent

to the principal's office where an assistant vice principal searched T.L.O.'s purse and found cigarettes, from which it was determined that T.L.O. had, in fact, been smoking in the bathroom. The assistant vice principal further searched the purse and found more "incriminating" evidence, including marijuana and rolling papers.¹³ T.L.O. argued that her Fourth Amendment rights had been violated by the search. The State of New Jersey argued that students do not retain any reasonable expectation of privacy in school.

The U.S. Supreme Court held that the Fourth Amendment's prohibition on unreasonable searches and seizures applies to public school officials.¹⁴ However, instead of requiring probable cause or a warrant for a search by public school officials, the Court balanced the student's interest in privacy against the "substantial interest of teachers and administrators in maintaining discipline,"¹⁵ and held that a lesser standard of "reasonable suspicion" should apply.¹⁶

The Court held that what is rele-

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Appellate Counsel



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Get Involved at the Bar

It's summertime! While we are all thinking about sunny weather, beach days and barbecues, the Nassau County Bar Association is hard at work. As of July 1st, we have embarked on a new membership year which will be full of exciting opportunities to get involved. Our Bar Association, with all of its different facets, does so many wonderful things – here is just a sampling of what the Bar is working on and how you can get involved.

Right now we are gearing up to celebrate the 30th anniversary of the Association Foundation's charitable arm, WE CARE. Founded thirty years ago by then-President Stephen Gassman, WE CARE provides a way for attorneys to give back to their local communities. Today, WE CARE brings together the entire Nassau County Bar community, including attorneys, the judiciary, Court employees, local government, and our business partners, to fundraise and engage the community. This past year, WE CARE gave over \$300,000 in grants for those in need in Nassau County.



FROM THE PRESIDENT

Elena Karabatos

One of WE CARE's most important events is the annual Golf and Tennis Classic, which was founded by Stephen W. Schlissel. The Classic showcases the Foundation's hard work, fundraising efforts and, most importantly, the charitable grants it disburses to children, the elderly and others in need throughout Nassau County. This year's honoree at the Classic is the Honorable A. Gail Prudenti. It should be a wonderful event, so please attend. WE CARE also hosts a wide range of events for children and seniors. To learn more about WE CARE and how you can get involved, contact its current co-chairs, Christopher McGrath and Michael Masri.

The Nassau Academy of Law is the educational arm of the Bar Association, and with our "One Bar Association" initiative, starting with the new membership year that began on July 1, all of our live CLE programs are free and included in our dues, which is a true member benefit. The Academy produces cutting-edge and timely programming. Programs are held morning, afternoon, and night, and some will soon be offered on our newly updated website, set to roll out shortly. CLE programs at the Bar are also a great way to network and meet new colleagues.

Not only do we have exciting cutting-edge CLE programs, but members should take advantage of what our Bar Association membership offers by getting involved in one (or more) of our many committees. Our members have the opportunity to participate in more than 50 substantive committees which work to engage the

challenges and changing needs of the legal profession and the community at large. In fact, in response to membership feedback, we created an In-House Counsel committee. We look to committees to keep practitioners informed as to what is new and timely in the various areas of practice. Recently admitted attorneys draw on the experience of their more established counterparts as

Another great way to get involved is to write an article for the Nassau Lawyer, which is our monthly publication... Publishing in the Nassau Lawyer is a great way to demonstrate your expertise and enhance your practice.

lawyers work together on a wide array of projects. Large law firms as well as sole practitioners find value in membership and in committee activities. The Bar is always cognizant of our changing times, and our newly established committees, including LGBTQ, Mental Health, and Diversity & Inclusion Committees are becoming more popular each month.

Another great way to get involved is to write an article for the *Nassau Lawyer* which is our monthly publication. There are eleven issues of the *Nassau Lawyer* each year. Nine issues focus on specific practice areas, such as Real Estate Law, Criminal Law and Matrimonial Law. Two issues, in April and October, are widely distributed through the New York State Unified Court System, Office of Court Administration, to EVERY attorney registered in Nassau County. Publishing an article in the *Nassau Lawyer* is a great way to demonstrate your expertise and enhance your practice. Our nearly 5,000 members peruse each issue to see what's new in their area of practice and to find out what's happening at the Bar Association. Advertising in the *Nassau Lawyer* is also a great way to get your name out there.

Apart from our vibrant committees and CLEs, a myriad of programs are offered almost every day of the week at the Bar Association. Stressed? Sign up for a yoga class. Have a few hours to volunteer? Help out at a monthly mortgage foreclosure or senior clinic or mentor a middle school student. Learn more about and get involved with our Lawyers Assistance Program which helps lawyers in need. Looking for a way to get more involved? Coach a mock trial team or speak at a local library. There is sure to be something for everyone who wishes to lend a helping hand, so go for it!

NCBA New Members

We welcome the following new members

Attorney	Students		
Leslie Rosenstein <i>Schwartz, Fang & Keating, PC</i>	Melissa R. Bales	Caitlin M. Mahoney	Joseph R. Swanson
	Samantha Downey	Mahalia G. Mathelier	Connie Villon
	Jeremy Epstein	Sara M. Meyer	Emma L. Wardle
	Lauren Michelle Ferraro	Goidel Law Group PLLC	Kevin S. Yen
	Matthew J. Grasso	Michelle Marie Page	In Memoriam
	Victoria Lynn Sepe	Thomas P. Dougherty	

Nassau Lawyer welcomes articles written by members of the Nassau County Bar Association that are of substantive and procedural legal interest to our membership. Views expressed in published articles or letters are those of the authors alone and are not to be attributed to Nassau Lawyer, its editors, or NCBA, unless expressly so stated. Article/letter authors are responsible for the correctness of all information, citations and quotations.



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Phone (516)747-4070 • Fax (516)747-4147
www.nassauabar.org
E-mail: info@nassauabar.org

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September 2018

Real Estate/Municipal Law

October 2018

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November 2018

Criminal Law

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Joe Giametta

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Can Schools Limit Student Speech? Should They?

In the wake of so many recent tragedies involving school violence in this sharply divided political climate, it is no surprise that students across the country are testing the limits of their free speech rights. For example, on March 14, 2018, students across the country engaged in a walkout during school hours to protest gun violence and commemorate the 17 lives lost during the school shooting in Parkland, Florida. Less than two months later, on May 2, 2018, another nationwide student walkout took place in support of Second Amendment gun rights.

Are student protests even allowed during the school day? Should they be? What if the student protest supports something that the rest of the community does not? This article reviews the basics of student free speech rights, and explores the boundaries of those rights in the public school setting.

First Amendment Case Law

The law is clear that public school students enjoy a degree of First Amendment free-speech rights in the school setting. The general rule is that school districts may not prevent students from expressing their personal political or religious views or opinions on school premises, or discipline students for do-

ing so.¹

In *Tinker v. DeMoines*, the U.S. Supreme Court famously held that suspending high school students for wearing black armbands in protest of the Vietnam War violated their First Amendment rights. The Court explained that, while students do not shed their “constitutional rights to freedom of speech or expression at the schoolhouse gate,” student free speech rights must be “applied in light of the special characteristics of the school environment.”

Generally, four main types of student speech may be regulated, as set forth below.

Speech Leading to Material and Substantial Disruption

Notwithstanding the above, school districts may limit student speech if they reasonably believe that a student’s expression of such views is likely to – or actually does – “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school” or “impinge upon the rights of other stu-



Christie R. Jacobson

dents.”² For example, students may wear expressive clothing (e.g., armbands, bracelets and t-shirts) as long as it does not disrupt the school setting.

In one local case, *Saad-El-Din v. Steiner*, a student on school property stated that he was going to “blow the school up,” and recommended to other students and a teacher that they not “come to school on Friday.”³

The court rejected the parents’ argument that the school could not discipline the student because the statements were not a true threat. The court explained, “[t]he relevant inquiry focuses on whether the student’s conduct ‘might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities.’”⁴

Although witnesses testified that they did not think that the student was serious, “it was nevertheless reasonably foreseeable that such a threat to blow up the school would create a substantial disruption within the school.”⁵ In this regard, it is important to note the U.S. Constitution does not protect

true threats of violence, regardless of whether the speaker intends to carry out the threat.⁶

Vulgar, Lewd and Indecent Speech

The First Amendment does not protect vulgar, lewd or indecent speech, or speech that is “plainly offensive.”⁷ In *Bethel v. Fraser*, a student was suspended after giving a sexually suggestive speech at a school assembly. The U.S. Supreme Court explained that “[n]othing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions.” Rather, the “inculcation of these values is truly the ‘work of the schools.’”⁸

School-Sponsored Speech

Districts may exercise editorial control over the style and content of student speech that is “school-sponsored” if the school’s actions are reasonably related to legitimate pedagogical concerns.⁹ In *Hazelwood v. Kuhlmeier*, the school was permitted to prevent publication of articles in school newspaper regarding certain controversial issues. This case affirms that “First Amendment rights of students in the public schools ... must be applied in

See LIMIT, Page 12

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Education Law/Constitutional Law

Protecting Students and Creditors: Bankruptcy Reform for Colleges and Universities

Over the past few years, there has been a steady increase in the number of colleges in financial distress that have been forced to either close or merge with a larger institution.¹

Typically when a business is overwhelmed by debt, it has the option to file for bankruptcy protection. This allows the business to continue to operate while it re-organizes its debt obligations, in the hope or expectation that its future revenue will be greater than the amount it could receive through liquidation.²

As a result of a decades-old congressional mandate, however, colleges and universities who file for bankruptcy protection lose their eligibility for federal financial aid programs, including student loan programs. Because most higher education institutions get most of their operating funds from various forms of federal financial aid, their ineligibility for these programs makes it effectively impossible for them to continue to operate after a bankruptcy filing.

The logic for this rule, however, may be now largely outdated and misplaced. In fact, with the proper safeguards in place colleges and universities, as well as their students and faculty, could greatly benefit from being able to file for bankruptcy protection.

Current Laws Effectively Preventing Bankruptcy in Higher Education Institutions

All colleges and universities that meet the definition of an "institution of higher education" are eligible to participate in federal student financial assistance programs outlined in Title IV of the Higher Education Act.³ These federal programs allow higher education institutions to provide financial aid to qualified students, and consequently are crucial for the financial success of most institutions.

However, in an effort to protect taxpayers and students, the HEA was amended in 1992 to include a provision that makes any college or university that files for bankruptcy immediately ineligible to participate in federal student financial assistance programs. Under 20 U.S.C. §1002(a)(4)(A), "[a]n institutional shall not be considered to meet the definition of an institution of higher education . . . if the institution, or an affiliate of the institution . . . has filed for bankruptcy." The HEA does not provide any exceptions to this rule, however, nor does it allow the Department of Education to grant any exemptions.⁴

As a result, while no law explicitly prevents higher education institutions from filing for bankruptcy, the reality is that filing for bankruptcy protection is a death sentence for colleges and universities. More than once, higher education institutions have looked



James G. Ryan

futilely to different sections of the Bankruptcy Code for protection from this rule when filing for bankruptcy.⁵

For example, in *In re Betty Owen Schools, Inc.*, a not-for-profit vocational school filed for Chapter 11 and was stripped of its eligibility to participate in HEA Title IV programs.⁶ The school attempted to argue that the "fresh start" provision contained in Section 525 of the Bankruptcy Code superseded

the HEA and protected the institution's eligibility to participate in HEA financial assistance programs during the bankruptcy process.⁷ The court ruled, however, that the Bankruptcy Code could not override Congress' clear and specific intent to prevent higher education institutions that have filed for bankruptcy from participating in federal financial assistance programs.⁸

More recently, a bankruptcy court in Texas made a similar ruling when Lon Morris College filed for bankruptcy.⁹ As one would expect, shortly thereafter Lon Morris College was liquidated. More recently and more locally, Dowling College on Long Island was forced to close its doors after 48 years when the school was forced to file for bankruptcy due to its financial difficulties.¹⁰

Congress's Justification for Current Law

The reasoning behind Congress' decision to essentially prevent higher education institutions from filing for bankruptcy is certainly laudable, but due to current economic realities may be now misplaced. The anti-bankruptcy provision was added to the HEA in 1992, but the accompanying Senate Report does not specifically address its addition.¹¹ The report instead made broad statements about issues with certifying financially weak schools to participate in HEA Title IV programs. The report also noted that many of these schools eventually filed for bankruptcy and left their students with large amounts of student loan debt without obtaining degrees.

Congress was therefore concerned about "unscrupulous profiteers" who would defraud students by establishing higher education institutions without the proper finances or administration and make fraudulent use of the funds they received through Title IV programs. By eliminating bankruptcy as a recourse for these fraudulent institutions, Congress believed it would put an end to these "fly-by-night" colleges, since they would no longer be able to fall back on debt reorganization through bankruptcy to save them from financial ruin.¹²

While this rationale was well-intentioned at the time of its enactment, the



Judiciary Night Thursday, October 18, 2018

5:30 p.m. at Domus

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as we salute
the Judges of our County

\$75 per person NCBA members

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Stronger Laws Against Sexual Harassment: How Higher Education May Avoid the Learning Curve

Emergence of the #MeToo Movement

In 2007, Tarana Burke created a non-profit organization to help victims of sexual assault and sexual harassment (collectively, “sexual misconduct”) in underprivileged communities. She referred to her undertaking as the “Me Too” movement¹ with the idea that there is strength in numbers. By commonly utilizing this phrase, the movement has allowed individuals to come forward with their stories and stand in solidarity.

Nearly ten years later, on October 15, 2017, after allegations of sexual misconduct were asserted against high profile Hollywood media mogul Harvey Weinstein, Alyssa Milano posted a tweet that stated: “If you’ve been sexually harassed or assaulted write ‘me too’ as a way to reply to this tweet.”² In response to her tweet, social media became flooded with stories of harassment and assault, igniting a nationwide conversation.

Since then, more than 80 women have come forward against Harvey Weinstein³ and claims of workplace harassment have also been brought against television host Charlie Rose, U.S. Senator Al Franken, comedian Bill Cosby and comedian Louis C.K., just to name a few.⁴ There has been a sharp increase in reporting of claims across many U.S. industries.⁵ Time Magazine named “the silence breakers” as its person of the year for 2017, referring to those women (and some men) who came forward with stories of sexual misconduct to help launch a nationwide reckoning.⁶

Governor Cuomo’s New Sexual Harassment Laws

The increase in public awareness also resulted in the New York State Legislature implementing stronger protections against workplace harassment.⁷

As many are aware, Title VII of the Civil Rights Act of 1964,⁸ the New York State Human Rights Law,⁹ and the New York City Human Rights Law¹⁰ prohibit discrimination and retaliation based on sex, which includes sexual harassment.¹¹ Specifically, these laws prohibit unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.¹²

Seeking to strengthen those existing protections, on April 12, 2018, New York Governor Andrew Cuomo, signed the 2018-2019 Executive Budget into law, which includes several additional measures aimed at tackling workplace claims. He refers to these changes as “the most aggressive sexual harassment legislation in the country.” Significant highlights include:

- Effective July 11, 2018, employers are prohibited from including mandatory arbitration clauses in employment agreements.¹³
- Effective July 11, 2018, non-disclosure provisions in settlement

agreements are prohibited unless the complainant prefers confidentiality and is provided 21 days to consider the terms and conditions of the agreement and a seven day revocation period.¹⁴

- The New York State Department of Labor must consult with the New York State Division of Human Rights to create a model sexual harassment prevention policy and training program for use by employers.¹⁵ All employers are required to implement or create their own written policies and training programs that meet or exceed these minimum standards by October 9, 2018.
- All employers are required to conduct annual interactive sexual harassment training for all employees.¹⁶
- Effective immediately, employers may be held liable for sexual harassment of a non-employee such as a “contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace” if they “knew or should have known” that the non-employee was being sexually harassed “in the employer’s workplace” and failed to take “immediate and appropriate corrective action.”¹⁷
- Public employers are now prevented from using taxpayer funds to settle claims. A public employee who has been found liable for intentional wrongdoing related to a claim of sexual harassment must reimburse the State.¹⁸

It is unsurprising that New York is leading the way in providing additional protections in this regard, as the new sexual harassment protections for employees are reminiscent of the protections that were passed by Governor Cuomo in 2015 to protect students in New York.

The Campus Sexual Assault Movement Predates the #MeToo Movement

Before the #MeToo movement, and long before the media coverage on Harvey Weinstein, colleges and universities were already grappling with the issue of campus sexual misconduct. In fact, the recent movement exemplifies what many higher education institutions have known, and been dealing with, for years. For many colleges and universities, the #MeToo movement actually happened a few years ago, and it is only now that the workforce is coming up to speed.

During President Obama’s administration, the federal government placed an inordinate amount of attention on the issue of sexual misconduct on college campuses. As a result, institutions were inundated with an overwhelming amount of federal guidance on how to properly recognize, pre-



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vent and address campus sexual assault and harassment. For example, in 2011, the U.S. Department of Education’s Office of Civil Rights (“OCR”) issued the Dear Colleague Letter, which expanded institutional oversight.¹⁹

Additional guidance was released by OCR in 2014 and 2015.²⁰ As a result, colleges and universities expanded Title IX offices, created intensive trainings, and revised policies. While some of this federal guidance was recently rescinded by Education Secretary DeVos,²¹ many state legislatures nonetheless codified many of the provisions outlined in the Obama-era guidance.

Furthermore, over the past few years, students have also become more vocal about how their campuses are handling allegations of campus sexual misconduct, as evidenced by the exceptional number of colleges and universities that have been accused, by both complainants and respondents, of mishandling complaints of sexual misconduct in violation of Title IX and state law.²²

In 2015, the growing awareness of sexual misconduct on college campuses led Governor Cuomo to sign Article 129-B of the New York Education Law (the “Enough is Enough” law) to ensure the safety of all students attending college in New York State.²³ Article 129-B protects students from sexual assault, dating violence, domestic violence and

must provide training to all students, including but not limited to first-year, transfer, international, online and distance education students, leaders and officers of student organizations and student athletes.²⁹ All those involved in the investigation and adjudication of claims must also receive training.³⁰ Article 129-B also sets forth a number of reporting requirements to New York State.³¹

In May 2017, Governor Cuomo ordered a comprehensive statewide review of compliance with Article 129-B which found: 95 institutions (38.9 %) were compliant, 29 institutions (11.9%) were non-compliant and 120 institutions (49.2%) were found to be significantly compliant.³²

Lessons Learned

While the changes to New York’s sexual harassment laws in the employment area may seem daunting at first glance, most, if not all higher education institutions in New York have been addressing these issues, at least in some context, over the last few years. Most institutions in New York faced a learning curve when adopting the new rigorous standards set forth in the federal guidance and Article 129-B; however, this experience can be used in implementing and addressing New York’s new anti-harassment laws. While all employers throughout the State are now required to revise policies and conduct training, colleges and universities, to a large extent, have already done so for at least a subset of the population and can modify

While the changes to New York’s sexual harassment laws in the employment area may seem daunting at first glance, most, if not all higher education institutions in New York have been addressing these issues, at least in some context, over the last few years.

stalking. While many provisions of Article 129-B reinforce or expand on existing obligations imposed on higher education institutions by federal law,²⁴ Article 129-B also imposes a number of requirements that impact how institutions respond to and investigate claims of campus sexual misconduct that go beyond the federal requirements.

For example, Article 129-B requires higher education institutions to adopt a uniform definition of “affirmative consent”²⁵ and a statewide uniform alcohol and/or drug use amnesty policy as part of their codes of conduct.²⁶ Article 129-B further requires institutions to include in their codes of conduct, and distribute annually, a prescribed statewide uniform Students’ Bill of Rights²⁷ and mandates that institutions conduct biennial anonymous campus climate assessments.²⁸

Pursuant to Article 129-B, every institution must implement a student onboarding and ongoing education plan to educate the campus community about sexual misconduct. Institutions

these already existing documents and programs.

Moreover, Article 129-B details specific protections for complainants and respondents insofar as both parties must be afforded equal opportunities to present evidence and have witnesses speak on their behalf.³³ Additionally, the respondent must be provided with adequate notice of the allegations and both parties may appeal the determination.³⁴ At this point, the new workplace legislation is distinguished from Article 129-B because it does not address respondent rights. Here, once again, experience may serve as a blueprint. Even with these express provisions in Article 129-B, there has been a recent increase in respondent lawsuits. Employers should also anticipate a rise in respondent claims and, with this in mind, draft their new policies and conduct investigations accordingly.

As the new sexual harassment laws come into effect quickly over the next

The Conundrum of Homeschooling

Home instruction, commonly known as homeschooling, occurs when children are instructed at home by their parent or other private instructor arranged by the parent. Home instruction is not a new concept; it has existed since the 1700s and is legal in every state. It is a topic in the news today due in part to reported cases of abuse of homeschooled students by their parents.

These reports raise debate about homeschooling in general, and the lack of standardized homeschooling laws. However, the debate is more nuanced; it involves a balancing of a parent's right to homeschool children free from government interference with a state's right (and obligation) to track abused and neglected children and ensure that all children receive a proper education.

According to the U.S. Department of Education, in 2012, approximately 3.3% of the school age population was homeschooled. It is believed that in recent years, this number has remained steady. Of parents surveyed, 91% indicated that the school environment (drugs, safety, negative peer pressure) was an important factor in the decision to homeschool, while another 77% of parents expressed a "desire to provide moral instruction," and 64% wished to provide religious instruction.¹

Home Instruction in New York State

Parents who homeschool their children do not have a right to educate them free from all government regulation. Indeed, New York State regulations in this area are among the more rigorous in the nation. New York State has a legitimate and compelling interest in assuring that its resident children receive an education to prepare them to be productive members of society, and "to see that they are not left in ignorance."²

The compulsory education law and the Commissioner's Regulations were enacted to promote that interest.³ The State's compulsory education law derives from legislation dating back to 1894.⁴

The New York State Education Law provides that if instruction is given to a minor other than at the public school, it must be "substantially equivalent to the instruction given to minors of like age and attainments at the public school," and it must be provided by a "competent teacher."⁵ An individualized home instruction plan (IHIP) that complies with the Regulations of the Commissioner of Education (Commissioner's Regulations) is deemed to be substantially equivalent.⁶

In New York, parents do not have to register their child in public school if they plan to provide homeschooling, and local school districts cannot establish their own policies and procedures which add to the parent's obligations, differ or contradict the Commissioner's Regulations.⁷ There are no specific qualifications required for the individual providing the home instruction.⁸ Parents are not required to meet with school officials prior to or during the period of home instruction.⁹ Further, the Regulations make no mention of child safety or welfare.

School District Review of IHIPs/ Assessments

When parents opt to homeschool a child of compulsory school

age (between ages 6 and 16 years of age), they must provide written annual notice of the intent to educate their child at home to the Superintendent of the school district of residence by July 1 of each school year.¹⁰ Within 10 business days of receipt of the notice of intention to instruct at home, the school district must send certain documents to the parents, including a copy of §100.10 of the Commissioner's Regulations and a form on which parents may submit an IHIP.¹¹ In turn, the parents must submit a completed IHIP for each child of compulsory school age who is to be taught at home.¹² The IHIP contains certain required information related to the child's instruction and attendance requirements.

Parents must submit quarterly reports, which contain certain required information related to the material covered in the IHIP, the child's progress and grade in each subject or a written narrative evaluating the child's progress.¹³ Further, at the time of filing the fourth quarterly report each year, parents must file an annual assessment which includes either: (1) the results of a commercially published norm referenced achievement test that meets the requirements of §100.10(h)(1); or (2) an alternative form of evaluation that meets the requirements of §100.10(h)(2).

For children in grades one thru eight, parents may submit a "written narrative" evaluation in lieu of submitting a commercially published norm-referenced achievement test. However, for children in grades four thru eight, parents may only choose this alternate option every other school year. The written narrative is prepared by either: a New York State-certified teacher; a home instruction peer group review panel; or "other person, who has interviewed the child and reviewed a portfolio of the child's work."

Of note, the "certified teacher, peer review panel or other person shall be chosen by the parent with the consent of the Superintendent."¹⁴ Therefore, the school district has discretion to determine whether the person or panel chosen by the parent is appropriate. The mutually selected person or panel must certify either that the child has made adequate academic progress or that the child has failed to make adequate progress.

In the event that a child has failed to make adequate progress (if a child does not receive an adequate score on an annual assessment),¹⁵ or where the child's annual assessment fails to meet the requirements of §100.10(h), the homeschooling program must be placed on probation for a period of two school years.¹⁶ The parent then must submit a plan of remediation to be reviewed by the school district. If the objectives of the remediation plan are not met, the Superintendent will issue a notice of noncompliance, subject to board of education review, and require that the parents enroll the child in a public or other school that meets the requirements of the Education Law.¹⁷

If a dispute arises between the parents and Superintendent, including



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disputes over the administration of a commercially published norm-referenced achievement test or the use of alternative evaluation methods, the parents may appeal the Superintendent's decision to the board of education. If the parents disagree with the determination of the board of education, they may appeal to the Commissioner of Education.¹⁸

Home Visits

A school district may require home visits, upon three days' written notice to the parents, *only* if the home instruction program is on probation.¹⁹ Under any other circumstances, a school official may request a home visit, but parents are *not* required to consent to the request.²⁰

Failure to Submit Assessments/ Quarterly Reports

According to the State Education Department's (SED) Q&A on its website for Home Instruction, where parents do not cooperate in submission of evaluations/assessments: If phone calls or letters do not elicit the information, the district should notify parents by registered mail that the evaluation is due and set a reasonable date for its

Parents who homeschool their children do not have a right to educate them free from all government regulation.

submission. If the information is not forthcoming, the district is without evidence that instruction has been taking place. In that case, the district would be *obligated* to report the case to the central registry as a *case of suspected educational neglect*.²¹

The Commissioner of Education has explained, "where district officials are unable to elicit information from parents regarding home instruction and have insufficient evidence to conclude that appropriate instruction has been taking place, the district is obligated to report the case to the central registry as a case of suspected educational neglect pursuant to NY Social Services Law §413."²²

More Oversight and Minimum Standards?

The unanswered question is the extent to which these recent tragedies will change the way states monitor the practice of homeschooling. While many school districts engage in a limited amount of oversight, New York State requires that parents have at least written contact with the school district (in person contact is not required). Other states have gone so far as to prevent convicted child abusers and sex offenders from homeschooling children.

However, there is still little direct oversight or contact with a homeschooled student. States do not bar

individuals with a history of instability, substance abuse or mental illness from homeschooling their children. Background checks for homeschooling parents are not required.

Perhaps states should consider establishing minimal requirements for the individual conducting the homeschooling. Some degree of contact between the homeschooled student and the local school district officials, at least on an annual basis, may be a solution, as would a requirement of home visits. While such provisions will not completely eradicate child abuse, they may at least uncover indications of at-risk, abused or neglected homeschooled children.

Finally, the U.S. Department of Education could choose to issue regulations which set a baseline for states to follow establishing minimum standards of quality and oversight for homeschooling programs, taking into account the relative rights of both the homeschooling parents and the homeschooled children, and the state's responsibilities.

Laura A. Ferrugiari is a Partner at Frazer and Feldman, LLP, Garden City and Past President of the NCBA Education Law Committee. Her practice is devoted to representing school districts.

1. See Parent and Family Involvement in Education Survey of the National Household Education Surveys Program of 2012 at <https://www2.ed.gov/about/offices/list/oii/nonpublic/statistics.html>. Note, the U.S. Department of Education is currently collecting data for a new survey to be published in 2019. <https://www.federalregister.gov/documents/2018/05/02/2018-09328/agency-information-collection-activities-comment-request-national-household-education-survey-2019>.

2. See *Blackwelder v. Safnauer*, 689 F. Supp. 106, 123 (N.D.N.Y.), appeal dismissed 866 F.2d 548 (2d Cir. 1989); *In re Falk*, 110 Misc.2d 104, 107 (Fam. Ct., Lewis Co. 1981).

3. Educ. Law § 3205(1); 8 NYCRR 100.10. See also *Appeal of Brown*, 34 Ed. Dept., Rep., Decision No. 13,225 (dismissing petitioner's claim that 8 NYCRR §100.10 violates the Religious Freedom Restoration Act (RFRA) and denying claim that the RFRA guarantees her the right to educate her child at home without any supervision by the local school district).

4. See 1947 N.Y. Laws ch. 820; 1894 N.Y. Laws ch. 671 (imposing substantial equivalent instruction requirement).

5. Educ. Law § 3204(2).

6. See New York State Education Department (SED) Home Instruction Questions and Answers (SED Q&A), <http://www.p12.nysed.gov/sss/homeinstruction/homeschoolingqanda.html>, last updated on April 3, 2018.

7. See *Id.*

8. See SED Q&A.

9. See *Id.*

10. 8 NYCRR § 100.10(b)(a).

11. 8 NYCRR § 100.10(c)(1).

12. 8 NYCRR § 100.10(c)(2).

13. 8 NYCRR §100.10(g).

14. 8 NYCRR § 100.10(h)(2).

15. Adequate progress is defined as a composite score above the 33rd percentile on national norms, or one academic year of growth as compared to a test administered during or subsequent to the prior school year.

16. 8 NYCRR § 100.10(h)(2)(iii).

17. 8 NYCRR § 100.10(i)(2); 8 NYCRR § 100.10(c)(7).

18. 8 NYCRR § 100.10(h)(3).

19. 8 NYCRR § 100.10(i)(3).

20. In *Matter of Kilroy*, 121 Misc.2d 98 (Fam. Ct., Cayuga Co., 1983), a case decided prior to implementation of Part 100.10, the court found that the requirement of prearranged visits by school officials prior to approval of a homeschooling program did not violate the parent's constitutional rights.

21. See SED Q&A (emphasis added).

22. *Appeal of the Board of Education of the Lynbrook Union Free Sch. Dist.*, 41 Ed. Law Rep. 174, Decision No. 14654 (2001); *In re William AA*, 24 A.D.3d 1125 (3d Dept. 2005) (finding of educational neglect where the parent, *inter alia*, failed to maintain appropriate records, file required reports, perform a required annual assessment or comply with other mandatory requirements).

Current Interpretations of Title IX Raise Due Process Concerns

A clash between advocacy groups that want to protect students from sexual assaults on campus and those who want schools to respect the due process rights of students facing expulsion for alleged violations of Title IX continues to make headlines. The laudable goal of removing sexual assailants from schools is perfectly consistent with the constitutional imperative that every person accused of wrongdoing is entitled to due process before being punished — even if the punishment consists of expulsion by a public university or college.

Unfortunately, the right to due process may have been jeopardized by a guidance letter that the U.S. Department of Education's Office of Civil Rights (OCR) sent to colleges and universities in April 2011.¹ The letter instructs school administrators concerning steps they should take to comply with the prohibition against sex discrimination in Title IX of the Education Amendments of 1972.

The instructions that OCR provided do not appear in Title IX and, in some instances, may infringe on accepted understandings of the rights that public educational institutions must provide to students before depriving them of an education. OCR recently rescinded the letter, but educational institutions that relied on its guidance may be continuing to follow policies that may put innocent students at risk of an unfair expulsion.

Title IX

Title IX states: “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”² Title IX prohibits sex discrimination at schools that receive federal dollars, including funding through federal financial aid programs that their students use to pay tuition.³ Sexual harassment and sexual violence are forms of sex discrimination. (For purposes of this article, “sexual harassment” is generally used for both forms.)

Title IX clearly applies to sexual harassment committed by an employee of a college or university. As interpreted by OCR, federal regulations implementing Title IX also make educational institutions responsible for sexual harassment committed by another student if the institution was (or should have been) aware of the harassment and failed to take reasonable steps to prevent it.⁴ The obligations imposed by Title IX include investigating allegations of sexual harassment (including sexual violence) and taking “immediate and appropriate” corrective action to end the harassment and to prevent its recurrence.⁵

Guidance Letter

The Guidance Letter advises schools that they have an obligation to protect students from sexual harassment that creates a hostile environment. “If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment,” the Letter says, “Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.”⁶

In particular, the Guidance Letter

requires schools to adopt a “grievance procedure” to resolve sexual harassment complaints. The grievance procedure may resolve complaints by using student disciplinary procedures. In particular, the Letter requires schools to:

- Investigate all complaints of sexual misconduct, even if the police have already conducted a thorough investigation
- Apply a “preponderance of the evidence” standard at any disciplinary hearing when determining whether the alleged act occurred, rather than a “clear and convincing evidence” standard that is more protective of the accused’s rights
- Resolve the accusation promptly, usually within 60 days
- Prohibit the use of mediation to resolve an accusation of sexual assault, even if the accuser would prefer to resolve the accusation informally. In addition, the Letter condones hearing procedures that prohibit the accused’s lawyer from participating in the proceeding. The accuser is represented by the school’s Title IX Office or Coordinator, who presents the case against the accused, so the Guidance Letter may effectively allow disciplinary proceedings to stack the legal deck against the accused student.

The Letter suggests that schools should protect students from off-campus sexual harassment, even if the alleged harassment is unrelated to their status as students. That suggestion is surprising, given the Supreme Court’s recognition that Title IX imposes a duty to protect students from sexual misconduct that “occurs during school hours and on school grounds,” but imposes no obligation to protect students from conduct that the school is not in a position to control.⁷

*As interpreted by OCR, federal regulations implementing Title IX also make educational institutions responsible for sexual harassment committed by another student if the institution was (or should have been) aware of the harassment and failed to take reasonable steps to prevent it.*⁴

The Guidance Letter recognizes that public institutions have an obligation to provide due process to the accused student, but states that due process should not “restrict” Title IX protections. Should due process take a back seat to the requirements specified in the Guidance Letter?

According to the Guidance Letter, OCR also “strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing.” Yet cross-exam-



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ination is permitted in court precisely because it is the most effective way to test an accusation and to expose a lie. The right to confront and cross-examine an accuser has long been regarded as a fundamental due process protection, as is the right to meaningful representation by counsel at a hearing that may result in serious discipline.⁸

The Guidance Letter was criticized by individuals and organizations who are concerned about the constitutional rights of students, including the American Association of University Professors, the Foundation for Rights in Education, and more than twenty law professors because they believed the procedures mandated by OCR failed to protect the due process rights of the accused.⁹

By 2014, three years after the Guidance Letter was issued, 85% of educational institutions had adopted a “preponderance of the evidence standard.”¹⁰

Student Lawsuits

After being expelled for misconduct, students have increasingly taken schools to court for violating their civil rights. The *Washington Post* reports that one new lawsuit is filed every week by a student who was expelled for the alleged commission of a sexual assault notwithstanding evidence of innocence.¹¹ Students have prevailed in about half of the lawsuits that have reached a conclusion.

A number of courts have rendered decisions that favor students. For example, a student at George Mason University successfully challenged his expulsion after proving that: (1) the university failed to give him notice of the exact accusations upon which his expulsion would be based; (2) the decision-maker met privately and secretly with the accuser before deciding to expel the student; (3) the decision-maker prejudged the case before hearing any evidence from the accused student; (4) the decision-

maker assigned the student’s appeal of her decision to herself; and (5) the university failed to follow its own procedural rules.¹²

OCR Changes Its Policy

Perhaps in response to criticism by courts, legal scholars, and lawyers, the Department of Education did an “about face” in 2016 when it finally acknowledged that its 2011 Guidance Letter is not binding and does not have the force of law.¹³ The Department formally

rescinded the 2011 Guidance Letter in 2017, replacing it with an interim guidance document.¹⁴ The new document allows students to resolve their differences informally and provides that schools can use either a preponderance of the evidence or a clear and convincing evidence standard when determining a student’s guilt. It also requires schools to resolve complaints quickly but does not impose a time limit.

Will schools adopt more meaningful due process protections now that OCR is walking back its Guidance Letter?

OCR recently found that Buffalo State violated Title IX by failing to investigate an allegation of an off-campus sexual assault, despite the alleged victim’s failure to report the incident to the school.¹⁵ OCR took that action even though the police concluded that there was insufficient evidence to meet the minimal standard of probable cause that is required for an arrest. OCR’s actions suggest that OCR continues to enforce its own interpretation of Title IX aggressively.

Scott J. Limmer concentrates his practice on criminal defense and Title IX and college discipline defense. Scott is the cohost of “Reboot Your Law Practice,” a legal practice management podcast which can be found at www.lawreboot.com. Scott can be reached at scott@limmerlaw.com.

1. Russlynn Ali, *Dear Colleague Letter*, www.nccpsafety.org, (April 4, 2011), available at <https://www.nccpsafety.org/resources/library/dear-colleague-letter-2011>.
2. 20 USC § 1681.
3. *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992).
4. Taylor D. August, *Department of Education Office of Civil Right Decision on HISD Title IX Discrimination*, www.ACLU.Org, (7/14/12), available at <https://www.aclu.org/other/department-education-office-civil-right-decision-hisd-title-ix-discrimination?redirect=womens-rights/department-education-office-civil-right-decision-hisd-title-ix-discrimination>.
5. 20 USC § 1681.
6. *Dear Colleague Letter*, supra note 1.
7. *Davis, as next friend of LaShonda D. v. Monroe County Board of Education*, 526 U.S. 629 (1999).
8. *The Black Coalition, an unincorporated association v. Portland School District No. 1*, 484 F.2d 1040 (9th Cir. 1973).
9. Gregory F. Scholtz, *Letter to the Office of Civil Rights*, (June 27, 2011), available at <https://d28htnjz2elwuj.cloudfront.net/pdfs/7e-a041e49156306ba76cb62a4f8c6c65.pdf>.
10. U.S. Senate Subcommittee on Financial and Contracting Oversight, *Sexual Violence on Campus: How too many institutions of higher education are failing to protect students*, www.McCaskill.Senate.Gov, (July 9, 2014), available at <https://www.mccaskill.senate.gov/SurveyReportwithAppendix.pdf>.
11. KC Johnson and Stuart Taylor, *Campus Due Process in the Courts*, www.WashingtonPost.com, (Feb. 1, 2017), available at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/02/01/campus-due-process-in-the-courts/?noredirect=on&utm_term=.ffb555440896.
12. *Doe v. Rector and Visitors of George Mason University*, 149 F. Supp. 3d 602 (D.V.A. 2016).
13. Joe Cohn, *Education Department to Senate Committee: ‘Preponderance’ Mandate Is Not Law*, www.TheFire.Org, (Sep. 28, 2016), available at <https://www.thefire.org/education-department-to-senate-committee-preponderance-mandate-is-not-law/>.
14. U.S. Department of Education, *Q&A on Sexual Misconduct*, www.ed.gov, (Sep. 15, 2017), available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>.
15. Andrew Kreighbaum, *Title IX Failures*, www.INSIDEHIGHERED.COM, (Jan. 19, 2018), available at <https://www.insidehighered.com/news/2018/01/19/feds-find-buffalo-state-failed-investigate-alleged-sexual-assault-created-hostile>.

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HEA's strict anti-bankruptcy reorganization provision has negatively affected legitimate, financially struggling institutions and their students than it has prevented fraudulent use of Title IV funds. Neither Betty Owens School nor Lon Morris College were fly-by-night institutions. In fact, Lon Morris College had existed since 1854, and the bankruptcy court specifically noted that the institution was not "unscrupulous" or "dishonest" like the institutions Congress intended to target with the 1992 amendment to the HEA.¹³

Although there is no guarantee that these institutions would have been able to survive if they were permitted to file for reorganization under Chapter 11,

there may be no valid justification for preventing legitimate institutions like the ones mentioned above from doing so in an effort to solve their financial problems.

How Struggling Institutions Can Benefit From Bankruptcy

As noted, almost every business in America is able to seek bankruptcy protection. Some of these businesses, like Chrysler, Macy's and Texaco, are very well known and continue to operate years after filing for bankruptcy.¹⁴ Because colleges and universities face many of the same financial difficulties and economic pressures as any other business, allowing these institutions to file for bankruptcy could greatly benefit not just the institutions themselves, but their students and faculty as well.

One of the main benefits to filing for bankruptcy protection is the automatic

stay, which occurs upon the filing of a bankruptcy petition. The stay generally prevents creditors from asserting liens and obtaining judgments against a debtor's assets while the bankruptcy case is pending.¹⁵ This effectively gives a debtor time to remain in operation and devise a plan as to how it can restructure its obligations without the threat of litigation, lien executions, or bank levies.¹⁶ For higher education institutions, this time would allow a school to devise ways to increase enrollment, sell off non-critical real estate or other assets, merge or partner with other institutions, or otherwise find alternate methods of funding, all while allowing its students to continue taking classes and obtain their educations.

Another useful aspect of bankruptcy for higher education institutions is the ability to consolidate and re-organize

their debt obligations. Because colleges and universities provide a wide range of facilities and services, institutions in financial distress likely have many different contracts and creditors to which they owe money. Negotiating with these parties individually would be nearly impossible, and unlikely to produce a positive result for the institution. In a reorganization under the Bankruptcy Code, however, all creditors will generally have to abide by the terms of the reorganization plan that is ultimately approved by the bankruptcy court.¹⁷

In addition, in some circumstances, filing for bankruptcy would allow higher education institutions to sell expendable assets without any liens or encumbrances attached.¹⁸ This would enable institutions to exam-

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vant in such searches is whether the search was justified at its inception and reasonably related in scope to the justification. The Court said that the word "reasonable" can be defined in various ways, depending on the context of the search.¹⁷ The Court said that the first search was justified because of the suspicion of smoking, and the second search was justified because marijuana and other suspicious items were found with the cigarettes.

"Special Needs"

Just two years later, however, the U.S. Supreme Court, in deciding a criminal case entitled *Griffin v. Wisconsin*, held that "[a] State's operation of a probation system, like its operation of a school . . . presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements."¹⁸ In an anticipated move, the Court announced that school searches would not always need to be supported by individual suspicion. In *Vernonia School Dist. 47J v. Acton*, the Court applied the "special needs" doctrine to validate the school district's policy of conducting drug tests on student athletes through random, suspicion-less, drug searches.¹⁹ Sometime later, the Court expanded on that authority to permit such drug testing to be conducted on students participating in other school-sponsored activities, in *Earls*.²⁰

In *Earls*, the Court attempted to provide guidance to lower courts across the country by stating that "[i]n certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure individualized suspicion."²¹ This could provide the justification for requiring clear backpacks that so many students are skeptical of.²²

The Effectiveness of Clear Backpacks

Many are also skeptical as to whether the new security measures at Stoneman Douglas will be effective.²³ Students and parents point out that the Parkland gunman, Nikolas Cruz,

was not a student when the shooting occurred.²⁴ Even those who believe the clear bags make students safer admit that they impair productivity.²⁵ While providing a safe environment is a top priority for schools around the country, surveillance precautions have several implications on students' ability to learn. Studies show that students become resentful, and less willing to obey policies when they feel that their privacy rights are unfairly violated.²⁶ Proof of this phenomenon can be seen in the fact that many students at Stoneman Douglas protest the school-issued backpacks by filling them with tampons and tissue paper, attaching protest pins, or painting them with political statements.²⁷ These activities, reminiscent of *Tinker v. Des Moines Independent School District*,²⁸ raise concerns about balancing students' freedom of expression rights with the school's ability to successfully implement the safety precaution and maintain a productive learning environment.

Negative Implications Due to New Safety Measures

Many students feel that the school's security measures have deprived them of a sense of normalcy and individualism in an educational environment.²⁹ Since the policy has been implemented, there have been floods of social media posts from students who feel their rights have been violated, without an increased feeling of safety.³⁰

In addition to the backpack requirement, the increased police presence at Stoneman Douglas has also had negative implications for students' expectation of privacy. Students compare the school's new environment to that of a jail.³¹ In particular, black students have voiced their concerns about racial profiling at Stoneman Douglas. One student stated that "every day, students lose more and more freedoms at MSD. Students of color have become targets and white students have become suspects."³² Black students at Stoneman Douglas fear that they were not taken into consideration when the school heightened its police staffing.³³

A Work in Progress

Ty Thompson, School Principal of Stoneman Douglas, agrees that the precaution makes it difficult to balance students' convenience and privacy with their safety and security.³⁴ He asks families to be patient while the

school fine-tunes the security procedures.³⁵ According to Superintendent, Robert Runcie, the clear backpacks are not a permanent measure.³⁶ However, district officials say that Stoneman Douglas' security protocols may be implemented district-wide.³⁷

Despite the criticism, schools around the country have implemented policies similar to Stoneman Douglas's, in the wake of its shooting. A Nassau County middle and high school, for example, recently mandated that students use clear backpacks.³⁸ These students have voiced similar apprehensions about the policy, namely their concerns about privacy and free expression.³⁹

It is questionable whether clear backpack policies are the most effective method of ensuring students' safety. For many, the potential privacy infringements are a small price to pay to avoid another school shooting. However, as surveillance in schools continues to grow, it becomes difficult to discern when the procedures become counterproductive to a conducive and comfortable learning environment.

Cynthia A. Augello is a Partner with Cullen and Dykman LLP specializing in education, employment and commercial litigation. Thank you to Adriana Gionis, a Summer Associate with Cullen and Dykman LLP, for her assistance with this article.

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Education Law/Constitutional Law

REFORM ...

Continued From Page 10

ine what assets they could dispose of and still remain in operation, all the while getting the most value in return. Considering the large number of assets held by colleges and universities, this could be an immensely helpful tool in helping institutions generate capital.

These useful tools, however, are generally only available to debtors through bankruptcy and thus depriving colleges and universities from taking advantage of them severely limits their options when faced with financial hardship.

Removing the Anti-Bankruptcy Provision from the Higher Education Act

Because of the clear benefits to higher education institutions, the HEA could be amended to remove the outright prohibition against filing for bankruptcy. This amendment would not require complicated changes to the HEA, but could be accomplished through simple amendments to the HEA that address Congress' original concerns about institutions abusing the bankruptcy system.

One possible way to prevent potential abuses is to create a process by which the United States Department of Education would be closely involved throughout a higher education institution's bankruptcy proceeding. The Department already has the ability to appear in the bankruptcy case as

a "party of interest" as a creditor of the filing institution. By appearing as an interested party in the case, the Department could monitor the filing institution's activities.¹⁹

To ensure proper oversight the Department could assign a specific person to track the case throughout the proceedings. If the Department begins to suspect that the institution is committing some type of fraud in the bankruptcy, the Department could step in and place restrictions on the institution's access to Title IV funds and otherwise notify the court. This is not to suggest that anything about the bankruptcy process itself needs to be changed when a higher education institution is involved. The Department of Education's involvement would only serve as an extra layer of protection and oversight to help quell Congress' concerns.

At a minimum, Congress could add a provision to the HEA that allows the Department to examine the individual situation of an institution and determine if it should be allowed to file for bankruptcy without losing its Title IV funding. The Department could come up with a list of criteria that an institution must meet in order to be exempt from the effective prohibition against bankruptcy to ensure that the institution's bankruptcy filing is not fraudulent. Adding this type of exception would allow higher education institutions that would legitimately benefit from bankruptcy to keep their Title IV funding while still preventing other institutions from abusing the system.

Above all, any amendments to the HEA should be aimed at protecting the interests of students. By not being able to file for bankruptcy, struggling higher education intuitions are often forced to abruptly close their doors which greatly disrupts their students' educations.

For example, this past April, Mount Ida College, a small liberal arts school in Massachusetts, announced it would be closing at the conclusion of the spring semester following numerous failed attempts at correcting its financial difficulties.²⁰ The news came as a shock to both current and incoming students leaving many to wonder how they would be able to continue their educations going forward.²¹ Although the Mount Ida campus was acquired by the University of Massachusetts, many of the majors offered by Mount Ida will no longer be available, leaving students with limited viable options to continue their educations.

Students should be allowed to continue to work towards their degrees while their college or university attempts to resolve their financial issues through bankruptcy. Given the financial state of many higher education institutions around the country, Congress could act on this issue quickly before other long standing institutions are forced to shut down for good.

James G. Ryan is chair of the Commercial Litigation practice and a partner at Cullen and Dykman LLP. His practice includes representation of colleges and universities in a full array of legal matters that confront every major institution. He can be reached at JRyan@cullenanddykman.com.

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Education Law/Constitutional Law

LIMIT ...

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light of the special characteristics of the school environment.” A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school.”

Speech Promoting Illegal Drug Use

School administrators may restrict student speech that promotes illegal drug use.¹⁰ In *Morse v. Fredrick*, the district was permitted to discipline students who displayed a banner that read “Bong Hits 4 Jesus” across the street from an event that was sanctioned and supervised by the school. The U.S. Supreme Court held that schools may limit such speech due to the special characteristics of the school environment and the compelling government interest in stopping drug abuse.

State Laws

On the State level, the New York State Dignity for All Students Act (“DASA”) prohibits harassment and bullying in the school context.¹¹ DASA defines such terms as “the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying, that:

- Has or would have the effect of unreasonably and substantially interfering with a student’s educational performance, opportunities or benefits, or mental, emotional or physical well-being; or
- Reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or
- Reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or
- Occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.”¹²

As mentioned above, even *off-campus* speech can be limited when it is “reasonably foreseeable” that the

misconduct will “create a risk of a material and substantial disruption” in the school setting.¹³

Local Regulation

Various school district policies also regulate speech-related activities in public schools. Student protest activities that violate a school district’s code of conduct are not protected and, as such, carry disciplinary consequences.

For example, the New York State Commissioner of Education (Commissioner) has upheld the five-day suspension of a student who admittedly left the classroom, joined students in a walkout, and failed to return to the classroom.¹⁴ In *Appeal of Durkee*, the Commissioner explained that “faculty and staff had been advised in advance of the walkout and the consequences of student participation,” and explained that the student “could have avoided suspension had he returned to his classroom instead of leaving school grounds.”¹⁵ That case highlights the school district’s authority to implement its code of conduct regardless of whether the violation relates to a speech-related activity.¹⁶

Finally, when dealing with speech-related activities, districts should apply their codes, policies and regulations in a neutral manner, and may not engage in viewpoint discrimination.¹⁷ Any actions taken with regard to student speech must be viewpoint neutral. Districts should not take any action that appears to either endorse or oppose a particular viewpoint, no matter how popular – or unpopular – it may appear to be at the time.

Student “Walkouts” and Other Mass Protests

Generally, school districts may discipline students for planning, participating in or encouraging other students to plan or participate in “en masse” protests as long as the *Tinker* standard is met (i.e., the district reasonably believes that the protest-related activity is likely to result in substantial disruption). A student walkout that involves a large number of students who are planning to walk out of a school building, or even just their class, would likely constitute a material and substantial disruption

Districts should not take any action that appears to either endorse or oppose a particular viewpoint, no matter how popular – or unpopular – it may appear to be at the time.

to the extent that the educational process is being disrupted.

Notwithstanding this clear right to regulate student protests, the issue is almost never that simple. The message behind student protests can often seem so universally laudable that the school community wishes to support the protest in good faith. In fact, it is fairly common for teachers, principal and school employees to sympathize with students and their desire to protest.

Nonetheless, school employees should think twice before taking any active role in any student protest. While it is true that public employees do maintain the right to engage in speech on matters of public concern, those rights do not apply in the same manner when they are acting in the scope of their employment.

For example, the Commissioner has held that one teacher’s conduct in “absenting himself from his assigned duties and leading students away from their classes” in a mass walkout protesting alleged police brutality was not protected by the First Amendment.¹⁸ The Commissioner explained that the content of the teacher’s expressions about the particular student protest was not in issue; rather, it was “his action in leading the walkout which clearly disrupted the educational process at Morris High School.”¹⁹

There is no question that a walkout during school hours would clearly undermine a teacher’s ability to complete his or her regularly scheduled lesson plan or assignment. In addition, encouraging such a disruption would clearly undermine the educational process. Moreover, districts should

avoid setting a precedent that could compromise the district’s position in future protests that the school board or administration may find itself unable to support.

Finally, it has been argued that students who leave their classrooms to participate in a mass protest are learning another – and perhaps equally important – lesson regarding civil disobedience. Most school districts and school attorneys alike acknowledge that there is real value in the exercise and the firsthand civics lesson. Of course, it makes sense that a full lesson in civil disobedience would require the implementation of civil consequences that would naturally flow from such “disobedience.”

No matter where a school board member, teacher or parent falls on the political spectrum, it is almost universally accepted that schools should be safe places for children to learn, play and speak. *Would it were so for all places everywhere...*

Christie R. Jacobson, Esq., is a Partner at Frazer & Feldman, LLP, in Garden City, where she practices Education Law. She also serves as the Chair of the NCBA Women in the Law Committee. Christie can be reached at cjacobson@ffedlaw.com or (516)742-7777.

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HARASSMENT ...

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few months, it behooves institutions to, once again, review their existing policies and procedures in order to confirm that they are in compliance with the current law and guidance and/or make any necessary changes as soon as practical. Institutions should also provide training to students, employees, and all members of the community as to how to properly recognize, prevent, and respond to allegations of sexual misconduct. Institutions are advised to pay close attention to this area of the law, as it has the potential to have significant practical as well as legal implications.

Hayley Dryer is an Associate in the Commercial Litigation Department at Cullen and Dykman LLP. She can be reached at Hdryer@cullenanddykman.com

Thank you to Victoria Jaus, a law clerk with Cullen and Dykman LLP, for her assistance with this article.

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New York State Bar Association House of Delegates Report

By Peter H. Levy

At 9:00 a.m. on June 16, the NYSBA House of Delegates was called to order in Cooperstown by President Elect and Chair of the House, Mr. Henry M. "Hank" Greenberg. A fitting name, for a fitting leader, for a fitting association in a fitting setting. It was the annual summer meeting of the House and our delegates from Nassau and Suffolk made the trek over the mountains to attend.

The first order of business was the quarterly Treasurer's Report delivered by Suffolk's own Scott Karson. The financial picture of the State Bar is getting better by the day. Income from non-dues sources is increasing. The CLE Department at NYSBA is reworking its price structure and will be presenting an all-inclusive rate schedule in the near future.

President Michael Miller of New York County was sworn in as President of the Association. The oath of office was administered by the Hon. Sherry Klein Heitler. Michael has been a good friend to many of us on Long Island and has attended numerous events in both our counties. Michael outlined his aggressive agenda for his upcoming year in office. On his first day in office he formed a number of Task Forces. These are:

- Rapid Response Advisory Group to aid NYSBA in responding more

quickly and effectively against attacks on our Judicial Systems.

- Task Force of the Evaluation of Candidates for Election to Judicial Office. It is the policy of NYSBA to support judicial selection by appointment rather than election, but as long as the law of NYS is the election of the judiciary, this task force is charged to evaluate the processes that are in place to evaluate Judges.
 - Task Force on Wrongful Convictions. This group will update the 2009 NYSBA report on this topic.
 - Task Force on Incarceration Release, Planning and Programs. They will recommend changes to better prepare those who are released from prison.
 - Task Force on Mass Shooting and Assault Weapons. This group will make recommendations on these issues of grave importance.
 - Task Force on the Role of Paralegals. NYSBA issued a report in 1997 on paralegals. This task force will revisit these issues.
 - Working Group on Puerto Rico. This group will look at ways to assist our fellow Americans who continue to suffer in Puerto Rico.
- The House of Delegates took positions on three issues. A report from



the Criminal Justice Section and the Committee on Mandated Representation discussed an issue that concerns many Nassau and Suffolk members. The Report, which was approved by the House, recommends an increase in the rates paid to attorneys assigned to litigants pursuant to Article 18-B. The rates were last adjusted in 2004. The current rates of \$60/\$75 per hour are wholly inadequate for attorneys who provide these vital services. The recommendation additionally covers those attorneys assigned under Family Court, Surrogate's Court and any litigant otherwise entitled to counsel.

The House approved a proposal to convert the Committee on Women in the Law to a Section of NYSBA. NYSBA committees are limited in size and scope. Sections, on the other hand, have no limit on the number of members. Women in the Law has done vital work over the years and now will be able to continue and expand.

The New York City Bar Association submitted a report that recommended legislation that would exempt Puerto Rico from the provisions of the Jones Act. This law requires that cargo shipped between two ports in the United States must be transported on ships that meet certain registration requirements. The application of this law to

Puerto Rico results in increased costs. There presently are exemptions for other United States territories, but not for Puerto Rico. The House approved this recommendation.

In other matters, Mr. James O'Neal was presented with the Root Stimson award for his founding and leading a group known as Legal Outreach, which for over 35 years has provided academic and skills training to youth in Long Island City. Lesley Rosenthal gave a report concerning the work of the New York Bar Foundation.

A new tradition was begun at this meeting. At each gathering of the House, one of the Presiding Justices of the four Appellate Divisions will speak. The initial presentation was made by the Honorable Alan Scheinkman of the Second Department.

Lastly, Past President David Miranda, via video presentation, gave a report on the Nominating Committee that no one will ever forget. I urge you to find it on You Tube, Twitter or elsewhere. It was the most humorous 10 minutes I have spent in my 19 years as a member of the House of Delegates.

The next meeting of the House of Delegates will be November 3 in Albany. Thanks for taking the time to read these words and as always feel free to reach out to me with any concerns or questions regarding the NYSBA (phlatty.1@juno.com or 516 822-5800)

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PROGRAM CALENDAR

SUMMER 2018

July 16, 2018

Dean's Hour: Is There A Draft in Here?

Sign-in and Networking 12:30; Program 1:00-2:00 P.M.

1 credit in professional practice or skills

James R. Klein, Esq., Floral Park; Nassau Academy of Law Advisory Board

August 8, 2018

Dean's Hour: Proper Drafting of Written Reports of Court Evaluators in MHL 81 Proceedings

Sign-in 12:30 P.M.; Program 1:00 P.M.—2:00 P.M.

1 credit in professional practice or skills

Lisa M. Petrocelli, Esq., Managing Attorney and Project Director, Center for Children, Families and the Law; Hofstra University Maurice A. Deane School of Law

SEPTEMBER 2018

September 13, 2018

Dean's Hour: Flying South for the Winter: New York/Florida Snowbirds - Estate Planning and Elder Law Considerations

Sign-in and Networking 12:30 P.M.; Program 1:00-2:00 P.M.

1 credit in professional practice or skills

Howard S. Krooks, JD, CELA, CAP, Boca Raton, FL

New Academy Dean Da Innovative Non-Legal D



Daniel W. Russo has been elected the 25th Dean of the Nassau County Bar Association. Russo is a partner at Foley Griffin, criminal defense and professional and scholastic disciplinary matters.

Dan Russo is a very active member of the Nassau County Bar Association. He also currently chairs the Criminal Court Law and Procedure Committee, which is held every June. Russo is also a past Editor-in-Chief of the *Nassau Lawyer*.

Dan began his legal career as an Assistant District Attorney in the Nassau County Attorney's Office, Dan was an associate at a law firm where he conducted a number of cases to verdict including assaults, DWI's, drug sales, grand larceny, and real estate matters. Prior to joining Foley Griffin, Dan was also an associate at a law firm where he conducted real estate matters.

In addition, the following attorneys were elected to Nassau County Bar Association: Jaime D. Ezratty of Ezratty, Ezratty & Levine, Mineola; Assistant Dean Mary P. Giordano of Giordano Law, Garden City; and Terrence L. Taormina of Taormina & Associates, Rockville Centre; Secretary Christine T. Quigley, Rockville Centre; Treasurer Susan K. Quigley, Rockville Centre; Court Law Department; and Counsel Michael E. Ratner of Abrams, Finkelstein & Pines, Rockville Centre.

Innovative Ag

The Academy is known for its timely and engaging CLE programs. In the current academic year, the Academy wants to also be known for its new non-traditional programs.

"Every program that we hold here at the Bar does not have to be about the law, de-stress, and to learn something new. We want to provide a place where members can relax and to enjoy their time here. It's not always about paper and pen, but it can be a great stress reliever, and is also a great way to connect with other members."

The first Dean's Discussion will be held on October 29 here at the Academy. Professor Schneider of the University of Arizona will be speaking on "Unveiling the Dark Side of the Law." A cocktail hour will precede the 90 minute lecture. Members are encouraged to attend. Pricing: \$30 (NCBA Members/Non-Attorneys); \$15 for children.

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Sign-up early. Space is limited.

Dan Russo Creates Discussion Series



...the Nassau Academy of Law, the educational arm of the ... LLP in Garden City, where he practices in the areas of ...
 ... County Bar Association. In addition to his role as Dean, he ... as well as the annual golf outing – the Domus Open ... Lawyer, NCBA's monthly newspaper.
 ... Kings County, New York where he prosecuted ...
 ... his years in the Brooklyn DA's Office, Dan tried a ... and larceny and attempted murder. After the District ...
 ... ducted insurance fraud investigations on behalf of insurance ...
 ... Mineola law firm where he practiced criminal defense and ...
 ... Nassau Academy leadership positions: Associate Dean ...
 ... ans Anthony Michael Sabino of Sabino & Sabino, Mineola; ...
 ... rver, Tarver Law Firm, Garden City. Also elected were ...
 ... atz Richman, Attorney-in-Chief, Nassau County District ...
 ... Fensterman et al, Lake Success.

enda
 ...ams that are offered morning, noon and night. This ...
 ...-legal, non-CLE discussion series, "Dean's Discussions."

...ave to be law related. It's nice to take a break ...
 ...We want members to come to the Bar Association, ...
 ...erwork and CLE credits. Learning something new ...
 ...o catch up with colleagues."

— Dan Russo, *Dean*

...the Bar Association from 5:30-8:00 P.M. Dr. Glenn ...
 ...g the Universe with the Hubble Space Telescope." A ...
 ...uraged to attend, and bring their families. Pre-registration ...
 ...ildren under 15.

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Date	Seminar Name	P	E	D	S	TOTAL Credits	Member	Non-Member	18B
July 16	DH: Is There a Draft in Here?	1.0			√	1	\$0	\$35	N/A
Aug 8	DH: Proper Drafting of Written Reports	1.0			√	1	\$0	\$35	N/A
Sept 13	DH: Flying South for the Winter	1.0			√	1	\$0	\$35	N/A
	√ DIVERSITY CREDIT AVAILABLE								
	√ SKILLS CREDIT AVAILABLE								
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Area of Law	Seminar Name	P	E	D	S	TOTAL Credits	CD/DVD Member	N/M	Seminar Code
Criminal	Defending Against DNA Evidence	2.0				2	70/75	95/100	8DNA0606
Law Firm	DH: Art of Closing the Deal w/Potential Clients	1.0				1	35/40	70/80	DH062018 DH062218
Ethics	DH: Existentialist and Personalist Philosophy				1.0	1	70/75	95/100	DH061418
Diversity	DH: Transgender Name and Gender Change	1.0		√		1	35/40	70/80	8NEURO0424
ADR	Neuroscience in Mediation and Negotiation	2.5				2.5	70/75	95/100	8CHANGE0521
T&E	Changing the Unchangeable: Irrevocable Trust	2.0				2	70/75	95/100	8FEDERAL0516
Federal	Federal Courts Update	2.0				2	70/75	95/100	8ONE0531
Labor	1 v. 100: Employment Law Game Show Special	2.0		√		2	70/75	95/100	
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Harold L. Deiters III is the partner-in-charge of the litigation and valuation consulting team in the New York regional offices of Baker Tilly Virchow Krause, LLP. Baker Tilly's business valuation and litigation specialists provide services related to matrimonial settlements, shareholder/partner disputes, commercial litigation and trust and estate matters. With experience that includes valuations related to goodwill impairment, purchase price allocations and intangible assets, and specialization in identifying forensic accounting issues for clients, they have been called upon to provide expert testimony in both federal and state matters. The team's highly talented and experienced professionals give Baker Tilly the ability to share valuable insights into their clients' businesses, to understand their goals and issues, and to help them attain the vision they have for their company.



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Brisbane Consulting Group specializes in the valuation of closely held businesses, litigation support and forensic accounting. Our team of professionals has attained the most prestigious valuation and forensic designations in the industry. We are highly qualified to assist attorneys with detecting unreported income, overstated expenses and hidden assets. Trial services include assisting with case strategy, discovery, preparing questions for use at depositions and trial, and providing expert testimony. We have been qualified in court and have rendered expert testimony across several counties of the New York State Supreme Court and Federal Court. Our expertise as CPAs allows us to structure the terms of settlements and financial transactions to avoid unwanted tax consequences. Practice areas include Mergers and Acquisitions, Embezzlement, Bankruptcy, Dissenting Shareholder Actions, Personal Injury and Matrimonial Consulting.



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Michael J. Raymond
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Michael J. Raymond is the Managing Partner of the Valuation, Forensic Accounting and Litigation Support Group of the firm BST & Co. CPAs, LLP. Raymond has over 25 years experience in public accounting, more than 20 of which have been dedicated to business valuation and forensic accounting, predominantly in connection with litigation matters. His business valuation experience encompasses a wide range of industries and includes complex interests and securities in corporations, private equity and hedge funds, as well as closely held and family operated businesses of all sizes in the United States and abroad.



BST is a multidisciplinary accounting and financial consulting firm of over 100 people with offices in New York and Albany. That, coupled with its McGladrey network membership, provides Raymond and BST with unparalleled depth in industry, tax and financial expertise, allowing them to perform effectively and efficiently in the largest and most complex cases.

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Klein Liebman & Gresen, LLC specializes in business valuations, forensic accounting and litigation support. Our services are used in matters including: matrimonial, shareholder and partnership disputes; estate and gift tax planning, estate litigation, buy-sell agreements and transactions.

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NCBA Speakers Bureau Inspiring Respect for the Law

Each year the Nassau County Bar Association receives dozens of requests from the community for attorneys to speak about the law. Through NCBA's free Speakers Bureau, the following members generously volunteered their time during this past year to fill these requests, going out to speak on a variety of legal issues to a diverse group of audiences: high school classes, libraries, senior centers, business associations, community organizations

and at community fairs. In addition, many served as panelists in NCBA public education seminars offered at Domus. We thank them all for helping the Nassau County Bar Association educate Nassau residents about the law, joining our effort to fulfill our mission of serving the public as well as the profession.

To join NCBA's Speakers Bureau, please contact Manager Caryle Katz, (516)747-4070, ckatz@nassaubar.org.

2017-2018 Speakers Bureau Volunteers

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WE CARE Rebuilding Together



(Photo by Hector Herrera)

By **Jamie A. Rosen**

On June 12 members of the NCBA's WE CARE Advisory Board and New Lawyers Committee joined forces with volunteers from Rebuilding Together Long Island, Inc. (RTLTI) to perform a community service project. For the last decade, WE CARE has been a proud sponsor of RTLTI, a charitable organization that repairs and rehabilitates the homes of individuals in need on Long Island, including poor, elderly, and disabled residents of Nassau

County. Members of the New Lawyers Committee have consistently participated in the group's outreach efforts.

As part of this year's project, NCBA volunteers constructed an exterior wheelchair ramp at a home in Glen Cove to make the home handicap-accessible for its residents. On hand for the project were WE CARE Advisory Board members Jeffrey Catterson, Florence Fass, Joshua Gruner, and Adrienne Hausch. The New Lawyers Committee was represented by Matthew Morris, Jamie Rosen, Adam Solomon, and Ian Steinberg.

TUNNEL 2 TOWER 5K RUN/WALK



This is the most amazing 9/11 remembrance in New York. Join WE CARE and NCBA in what is an extraordinary annual event. Warriors for a Cause makes it convenient for all Long Islanders. Sign up now!

Sunday, September 30th

Registration Cost: \$100 for adults (\$50 for children 14 and under)

Registration includes: Stephen Siller Tunnel to Towers Foundation Run/Walk, Event T-Shirt, Team T-Shirt, Light Breakfast, Bus Transportation (to and from) and lunch.

Buses leaving from Chaminade High School – 340 Jackson Ave, Mineola, NY 11501

Check-in: is between 6:00 - 6:45 a.m. – Group Photo is at 6:45 a.m. – All buses

will be leaving at 7:00 a.m. SHARP!

To Register simply go to <https://warriorsforacause.org/warrior-events>, then email warriorsforacause@gmail.com and put "WE CARE / Bar Association" in the subject line, and include your name in the email so they can make every effort to put everyone together on the same bus.

Or pay by Mail / Check: Make checks payable to: Warriors For A Cause. Mail to: Warriors For A Cause C/O 2018 T2T Run/Walk PO Box 7126 Wantagh, NY 11793. Please include a note with your check that you are with "WE CARE" and provide your email and cell phone number.

Any questions please email: WarriorsForACause@gmail.com or contact Adrienne Hausch at (516)741-2000 or Rick Collins at (516)294-0300.

WE CARE



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

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Gale D. Berg, The Nassau County Women's Bar Association Virginia Duncombe Award Recipient

Lois Carter Schlissel, on her recognition by The Labor & Employment Law Committee
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James P. Joseph, Recipient of the 2018 NCBA Director's Award

Andrew G. Groh, son of W. Matthew & Jennifer Groh, on achieving the rank of Eagle Scout

Ali Genoa, daughter of Marilyn K. Genoa, on her graduation from Georgetown Law School and being the Commencement Day Speaker

Jennifer L. Schenker, installed as President of The Huntington Lawyers' Club

Hon. Timothy S. Driscoll, awarded "Judge of the Year" by Long Beach Lawyers' Association

Gale D. Berg, The Nassau County Women's Bar Association Virginia Duncombe Award Recipient

Lois Carter Schlissel, on her recognition by The Labor & Employment Law Committee

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NCBA President Elena Karabatos and President-Elect Rick Collins in front of the Smart Home in Melville. (Photo by Roy DiMarco)

Smart Home Presentation for War Veteran Cpl. Chris Levi

By Rick Collins

The Nassau County Bar Association was proud to be invited to attend the Smart Home presentation to Corporal Chris Levi by the Stephen Siller Foundation. President Elena Karabatos and President-Elect Rick Collins were among over 200 attendees on the morning of July 3.

Cpl. Levi, a double amputee and Purple Heart recipient, suffered severe injuries while serving in Iraq in 2008. The Smart Home in Melville was designed to accommodate his capabilities, and is part of the Stephen Siller Foundation's program to construct Smart Homes for military veterans and first responders who have been injured in service. The Foundation was formed in memory of Stephen Siller, a New York City firefighter who lost his life saving lives on September 11.

Tunnel to Towers

NCBA was invited to attend the pre-

sentation by Warriors for a Cause, a charitable organization that each September organizes a Long Island contingent to participate in the Stephen Siller Foundation Tunnel to Towers (T2T) 5K Run/Walk. The 5K event starts in Brooklyn and ends at the Freedom Tower, tracing the steps of Stephen Siller on his mission to save lives on 9/11. Each year, NCBA/WE CARE provides one of the largest groups to be part of the Warriors for a Cause contingent, which last year totaled 400 participants.

NCBA/WE CARE members are urged to calendar this year's Tunnel to Towers event, which is set for Sunday, September 30. The event is an emotionally rewarding experience for all New Yorkers, and Warriors for a Cause makes the logistics convenient for Long Islanders. NCBA/WE CARE members can sign up online at <https://warriorsforacause.org/warrior-events>. Those with additional questions can contact Rick Collins at (516)294-0300 or Adrienne Hausch at (516)741-2003.

2018 DOMUS OPEN GOLF AND BBQ



On June 18, golfers at the 2018 Domus Open enjoyed a beautiful afternoon of golf at Eisenhower Park's Red Course. Domus Open Chair Robert F. Schalk welcomed golfers and guests to the evening BBQ on The Carlton outdoor patio. Prizes were raffled off, and NCBA President Elena Karabatos presented the President's Cup to the winning foursome (l-r): Mike DeGennaro, Howard Greenberg, Russell Marnell and Michael Marnell. Thank you to the golfers and BBQ guests for supporting this great day of golf and fun.

A special thank you to the Domus Open BBQ Sponsors Findlaw and Marcum and the Snack Bar Sponsors SmartAdvocate and Tradition Title Agency, Inc.

(Photo by Hector Herrera)



VOLUNTEERS NEEDED

HAVE 3 HOURS A MONTH
TO LEND A LEGAL HAND?

The Nassau County Bar Association is seeking volunteer attorneys for its Pro Bono Mortgage Foreclosure Project.

Volunteers can represent Nassau County homeowners at mandatory mortgage foreclosure settlement conferences or at twice-monthly clinics.

If interested, please contact Gale D. Berg, Director of Pro Bono Activities; or Nicole Lubell, Settlement Conference Coordinator, at (516) 747-4070



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the

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6-10 PM

COCKTAIL HOUR • SCRUMPTIOUS BUFFET
SILENT AUCTION • RAFFLES

OCTOBER 24, 2018

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PRO BONO ATTORNEY OF THE MONTH



By Gail Broder Katz

Deborah A. Kelly

The Safe Center LI is pleased to present Deborah Kelly as the Pro Bono Attorney of the Month for July and August. Her representation of a victim of abuse in a very difficult divorce was so incredible that she deserves to be honored for two months!

Mr. and Ms. X were married in a foreign country through an arranged marriage when she was a teenager and he was over 50 years old. She obtained a green card through marriage and they had several children and lived in the United States. Her husband took her and the children to her country of origin for a visit, divorced her there without any notice to her (it was subsequently found to be invalid), took the children and all of her identification (including Ms. X's passport) back to the U.S. Mr. X did not expect her to return and in fact, he told their neighbors in the U.S. that she was dead.

Through her perseverance Ms. X was able to return to the U.S. and contacted The Safe Center seeking the return of her children and a divorce. She was left destitute and Mr. X claimed he "had no money." A Staff Attorney was assigned to represent her and managed to trace the over four million dollars that he had transferred to a foreign country. Because The Safe Center does not have the resources to conduct the protracted discovery, forensic evaluations and litigation that were necessary in this case we realized specialized assistance was needed. Due to all the intricacies of the matter and a lack of funds, The Safe Center sought a highly experienced pro bono attorney who could work with the its attorney and go after Mr. X to ensure that Ms. X would receive that to which she was entitled. The Pro Bono Project Coordinator contacted Mr. Steve Gassman of Gassman Baiamonte & Gruner, who readily agreed to have his firm take on the case.

Fortunately for Ms. X, the case was assigned to Deborah Kelly, one of the firm's top attorneys. From the moment she got the case, Ms. Kelly worked it with her eagle eye. Nothing got past her. Mr. X was constantly pulling shenanigans; he went through many attorneys and even got the

court to assign him one by claiming poverty. Ms. Kelly saw through it all and went after his assets. She conducted a thorough discovery and enlisted the assistance, pro bono, of Harold L. Deiters III, a partner at Baker Tilly, to do the forensic accounting. She made and answered motion after motion, conducted depositions (transcriptions provided pro bono by Realtime Reporting) and made many court appearances. She then went through a full blown lengthy trial, assisted by Joshua Gruner, Esq., by which time Mr. X was again pro se.

Ms. Kelly never gave up, spending approximately 280 hours on the case, over 200 in 2017 alone. She worked tirelessly for Ms. X and was very successful in her representation, ultimately prevailing and obtaining an excellent disposition. Ms. X was awarded child support, maintenance and the marital home, even though it was purchased by Mr. X many years before the marriage. After getting custody of her children, the most important thing to the client was that she be able to keep the family residence. Because Mr. X had transferred all or most of his assets out of the country, the only asset obtainable in the U.S. was the house. Ms. X is currently working at a fast-food establishment making barely minimum wage and making it nearly impossible to support herself and her children. When she sells the house, she will have the funds to help support her children and herself, and possibly attend school so that she can obtain a better job.

Mr. X's conduct was so egregious, and Ms. Kelly's advocacy so fantastic, that the judge awarded her substantial attorneys fees as well as a substantial award of expert fees for Mr. Dieters. While they both took on this case on a pro bono basis (and will more likely than not be unable to collect said fees), it is good to know that the court acknowledged all of their hard work.

When questioned as to what Ms. Kelly gained from representing Ms. X, she said, "For me there was a great feeling satisfaction because first and foremost we were able to get the client that which

she most desperately wanted: the return and custody of her children. While I always give a 110% to all my clients, I was most passionate about this case, because, but for our assistance, the case could have gone a very different way. And Ms. X might never have been able to see her children again."

Deborah Kelly graduated with honors from the College of New Rochelle with a Bachelor of Arts in 1987. In 1993 she received her J.D. from Quinnipiac University School of Law, earning an award for excellence in legal writing. While in law school she was a member of the Family Law Clinic, providing pro bono services to those in need in the community. Ms. Kelly was admitted to the Connecticut bar in December 1993 and the New York Bar in December 1996. Ms. Kelly is also admitted to practice law in the Federal courts of the Eastern and Southern Districts of New York.

She began her career as a litigator specializing in medical malpractice and insurance defense. While with the firm of Rosenblum & Filan, LLC she was a contributor to the 1996 cumulative supplement to Handling Cardiology and Cardiovascular Surgery Cases.

Ms. Kelly later switched gears moving to Potruch & Daab, LLC and began practicing in the field of matrimonial law. She subsequently joined the firm of Gassman Baiamonte Gruner, P.C. where she continues to exclusively practice in the areas of matrimonial and family law, including appellate practice. She has assisted in the preparation and trial of complex equitable distribution, support, and child custody issues and has appellate advocacy experience involving issues of support, custody and equitable distribution. In addition, she has conducted hearings related to custody and family offense petitions. Ms. Kelly is a member of the Family Law Section of the New York State Bar Association and the Matrimonial and Family Law Committee of the Nassau County Bar Association. Ms. Kelly has been performing pro bono service since law school and we expect that she will continue to do so. Please join The Safe Center in congratulating Deborah Kelly as the July and August Pro Bono Attorney of the Month(s).

Thanks to Ms. Kelly's perseverance, Ms. X and her children will be able to move forward with their lives and hopefully live in peace. Without the hard work of Ms. Kelly this would not be possible.

Some of the facts of the case discussed in this article have been modified or changed to protect the identities of the parties involved.

Gail Broder Katz, Esq. is the Pro Bono Project Coordinator for The Safe Center LI (formerly Nassau County Coalition Against Domestic Violence.) She can be contacted at GBroderKatz@tscli.org or 516-465-4700 for information about the Project and how you can help.

NEW LAWYER OF THE MONTH

Matthew K. Morris

By Jamie A. Rosen

The New Lawyers Committee is proud to honor Matthew K. Morris as the New Lawyer of the month.

Mr. Morris is an associate attorney at the Law Offices of Jennifer L. Coden, PLLC, where he interned for two years while attending law school full-time at the Maurice A. Deane School of Law at Hofstra University. After graduation he immediately began working as an associate, and since that time has practiced in the fields of matrimonial and family law. Mr. Morris is also at the forefront of the firm's recent expansion into the field of wills, trusts and estates law.

Mr. Morris graduated with a Bachelor of Arts in Political Science, a minor in History, and a Pre-Law Certificate from Siena College in 2014.



While at Siena College he was a member of the school's Pre-Law Society.

In 2017 Mr. Morris graduated and received his Juris Doctorate degree. He served as the Director of Technology for the Business Law Society and was a member of the school's Family Law Society. During law school Mr. Morris

also interned for Nassau County Supreme Court Justice Jeffrey A. Goodstein.

Mr. Morris is a very active member of the New Lawyers Committee of the Nassau County Bar Association. For the past two years, he has volunteered for the Rebuilding Together Long Island,

Inc. project, performing a community service project for individuals in need on Long Island. He has truly taken advantage of the networking opportunities offered by the Nassau County Bar Association, having recently attended the Annual Dinner Dance in May 2018 and having played golf at the Domus Open Golf Outing in June 2018, to name a few. Mr. Morris is also a very active member of his local community, as a volunteer firefighter for the Mineola Fire Department for the past ten years.

The New Lawyers Committee congratulates Mr. Morris on his accomplishments and contributions to the community and wishes him continued success in his endeavors.

Jamie A. Rosen is the Co-Chair of the New Lawyers Committee and a member of the NCBA Board of Directors.

ASSOCIATION NEWS

New Courthouse Dedication



On May 16, the Village of Valley Stream opened its newly constructed courthouse serving the 40,000 residents of Valley Stream. The multimillion-dollar project was partially funded by JCAP grants from the Unified Court System, and the courtroom and court complex was named after Acting Supreme Court Justice Robert G. Bogle, who served as Village Justice for 30 years and is currently the Nassau County's Supervising Judge of the Village Courts. (l-r) Acting Supreme Court Justice Robert G. Bogle; Court of Appeals Associate Justice Michael J. Garcia, Nassau County Administrative Judge Thomas A. Adams; and, Town Justice David S. Gideon, President of the New York State Magistrates Association.

Happy 25th Anniversary Catholics Lawyers Guild!



On June 1 the Catholic Lawyers' Guild hosted the 25th anniversary of their First Friday Mass program at Domus, where the monthly Masses are regularly held. The conference room was filled to capacity for the Mass itself, and a luncheon was held immediately afterward in the main dining room. Our judiciary was represented by the Honorable Terence Murphy, Vito DeStefano, Timothy Driscoll, Stephen Bucaria and Kevin McDonough. NCBA was represented by Vice President Dorian Glover and Past Presidents Emily Franchina, John McEntee, Kate Meng, Andrew Simons and A. Thomas Levin. Messrs. Simons and Levin were responsible for the approval of the program in 1993. Of that approval, Mr. Levin simply remarked at the luncheon, "we just did the right thing, and I hope to be able to attend the 50th anniversary!"



(photos by Hector Herrera)

Columbian Lawyers



On May 31, Columbian Lawyers held a seminar on New York Lemon Law and Automobile Fraud at Westbury Manor. Columbian Lawyers President Rina M. Capicotto, presented speaker Anthony T. Ballato with a plaque of appreciation.

Nassau County Women's Bar Association Installation



ABOVE: On June 11, the Nassau County Women's Bar Association (NCWBA) held its installation dinner at Jericho Terrace. Elaine Colavito (l), Partner at Sahn Ward Coschignano, PLLC, was sworn in as President by The Honorable Andrea Phoenix (r), Past President, NCWBA.

LEFT: At the NCWBA installation, Kathy Driscoll (l) presented Gale D. Berg (r) with the Virginia C. Duncombe, Esq. Scholarship Award, given annually to a member demonstrating a desire to foster and enhance legal education. (Photos by Hector Herrera)



Matrimonial Law Committee



On June 13, at Domus, NCBA President, Elena Karabatos (l) and NCBA Matrimonial Law Committee Chair, Jennifer Rosenkrantz (r), presented Patricia Miller Latzman with the Committee's Richard J. Keidel Memorial Award in recognition of her contributions as a skilled advocate, leader and paragon of integrity, civility and professionalism within the practice of Matrimonial Law. (Photo by Hector Herrera)

2018-19 NCBA Committees and Chairs

Access To Justice— Develops innovative programs to provide free or reduced fee access to legal counsel, advice and information.

Co-Chairs: Joseph Harbeson & Dorian Glover

Adoption Law — Discusses issues relating to all aspects of the adoption process, including laws and legislation.

Co-Chairs: Martha Krisel & Faith Getz Rousso

Alternative Dispute Resolution — Reviews innovative trends and strategies regarding alternative dispute resolution, including NCBA's Arbitration and Mediation program.

Co-Chairs: Marilyn Genoa & Jess Bunshaft

Animal Law — Focuses on animal law-related issues and their interrelationship with other areas of the law.

Chair: Matthew Miller

Appellate Practice — Addresses effective brief writing and oral arguments on appeal as well as developments in the law or court rules that may impact appellate practice.

Chair: Barry J. Fisher

Association Membership — Develops strategies to increase and retain membership as well as expand member services and benefits.

Chair: Adam D'Antonio

Attorneys/Accountants — Promotes the exchange of information between attorneys and accountants to improve service to clients, the business community and the public, and establishes a referral network between the professions.

Co-Chairs: Jennifer Koo & Edith Reinhardt

Bankruptcy Law — Reviews recent decisions on bankruptcy law and their implications for attorneys who represent debtors or creditors.

Chair: Matthew V. Spero

By-Laws — Periodically reviews and suggests appropriate changes in the current by-laws of NCBA, NCBA Fund, Assigned Counsel Defender Plan and Academy of Law.

Chair: Rosalia Baiamonte

Civil Rights Law — Explores issues related to the protection of the rights of minorities and the various civil rights legislation.

Chair: Robert L. Schonfeld

Commercial Litigation — Provides a forum for attorneys practicing commercial litigation, including interaction with Justices and support staff of Nassau County's Commercial Part. Works with other related committees and the NCBA Officers and Directors on issues of corporate law affecting both litigated and non-litigated matters.

Chair: John P. McEntee

Community Relations & Public Education — Provides speakers to schools, libraries and community organizations; conducts mock trial competition for high school students and promotes Law Day; and plans public education seminars on current topics.

Chair: Moriah Adamo

Conciliation — Provides an alternative voluntary process through which fee

disputes between clients and attorneys are arbitrated.

Chair: M. Kathryn Meng

Condemnation Law & Tax Certiorari — Focuses on issues related to real property valuation and litigation.

Co-Chairs: Douglas W. Atkins & Richard P. Cronin

Construction Law — Provides a forum for discussion on topics related to construction law.

Chair: Michael Ganz

Corporation, Banking & Securities Law — Addresses emerging issues in corporate law, banking law and securities regulation and litigation including statutory developments, court decisions, regulatory bodies and ADR agencies; and provides an interdisciplinary forum for business attorneys.

Chair: Chandra Ortiz

Criminal Court Law & Procedure — Reviews legislation related to the field of criminal law and procedure, and discusses problems, questions and issues pertinent to attorneys practicing in this field.

Chair: Daniel W. Russo

Defendant's Personal Injury — Discusses new developments and changes in the law that affect defendants' lawyers and their clients.

Chair: George K. DeHaven

District Court — Discusses issues arising from practice in District Court, and promotes dialogue between the bench and the bar with respect to issues of common concern.

Chair: Jaime D. Ezratty

Diversity and Inclusion — Encourages more diverse membership participation at the Bar and promotes discussion of issues related to diversity in the practice of law.

Chair: Linda K. Mejias

Domus House — Oversees repairs and refurbishing of the NCBA headquarters.

Chair: Maureen Dougherty

Domus Open — Oversees the annual NCBA golf tournament and BBQ.

Chair: Robert F. Schalk

Education Law — Discusses topics related to the legal aspects of school systems.

Chair: Candace J. Gomez

Elder Law, Social Services & Health Advocacy — Addresses legal issues related to health, mental hygiene and social services for the public and special population groups, including the poor, the aged and the disabled. Co-Chairs: Kathleen Wright & Danielle Visvader

Environmental Law — Establishes a forum for the exchange of information regarding substantive and procedural law in the burgeoning field of environmental matters.

Chair: Jeffrey A. Sunshine

Ethics — Responds to member inquiries relating to ethics and propriety of all facets of practicing law, including advertising, conflict of interest and confidential relationships.

Chair: Alfred C. Constants III

Family Court Law & Procedure — Addresses issues that relate to the practice of law in Family Court.

Chair: Ellen Pollack

Federal Courts — Monitors developments in Federal practice and interfaces with Federal judges and court personnel.

Chair: Ellen B. Tobin

General/Solo/Small Firm Practice Management — Provides networking opportunities for general, solo and small-firm practitioners, and explores ways to maximize efficient law practice management with limited resources. Encompasses a variety of areas of practice.

Chair: Deborah E. Kaminetzky

Hospital & Health Law — Considers legal issues impacting health care, hospitals, nursing homes, physicians, other providers and consumers.

Chair: Douglas M. Nadjari

Immigration Law — Discusses problem areas in immigration law.

Chair: Rebecca Medina

In House Counsel - Shares information and support to assist in house counsel and new subject matter skills.

Chair: Tagiana Souza-Tortorella

Insurance Law — Reviews insurance claim procedures, insurance policies, substantive insurance law and related issues. Co-Chairs: Frank Misiti & Michael C. Cannata

Intellectual Property Law — Provides a source of information to practicing attorneys whose interests relate to patents, trademarks, copyright and other intellectual property matters.

Chair: Andrea N. Grossman

Labor & Employment Law — Analyzes proposed Federal and state legislation, administrative regulations, and current judicial decisions relating to employer-employee relations, pension, health and other employee benefit plans, Social Security and other matters in the field of labor and employment law.

Chair: Paul F. Millus

***Lawyer Assistance Program—** Provides confidential assistance to attorneys struggling with alcohol, drug, gambling and other addictions & mental health issues that affect one's professional conduct. **Application & Presidential approval required*

Chair: Henry E. Kruman

Lawyer Referral — Advises the NCBA Lawyer Referral Service; addresses policy questions regarding fees, law categories and membership.

Chair: Peter H. Levy

LGBTQ - Addresses equality in the law and the legal concerns of the LGBTQ community.

Co-Chairs: Joseph G. Milizio & Barrie Bazarsky

Matrimonial Law — Promotes the standards and improves the practice of matrimonial law.

Chair: Jennifer Rosenkrantz

Medical Legal — Reviews issues relating to medical malpractice litigation for plaintiffs and defendants.

Chair: Mary Anne Walling

Mental Health Law - Provides programs on legal issues concerning mental illness and developmental disabilities, including but not limited to capacity, civil rights, access to treatment and dual diagnosis, as well as discusses relevant statutes, case law and legislation.

Co-Chairs: David Z. Carl & Jamie A. Rosen

Municipal Law — Reviews trends and developments concerning zoning and planning, elections, employee relations, open meetings law, and preparation and enforcement of ordinances and local laws.

Chair: John C. Farrell

New Lawyers — Structured events and activities of benefit and interest to the newer attorney (within ten years of admission) and law students, including social and professional activities. Establishes support network for new lawyers.

Co-Chairs: John C. Stellakis & Jamie A. Rosen

Plaintiff's Personal Injury — Discusses new developments and changes in the law that affect plaintiff's lawyers and their clients.

Chair: John Coco

Publications — Solicits and/or develops articles for the monthly *Nassau Lawyer* publication; advises and supports efforts of the *Nassau Lawyer* editor.

Co-Chairs: Rhoda Y. Andors & Anthony Fasano

Real Property Law — Considers current developments relating to the practice of real estate law. Co-Chairs: Mark S. Borten, Anthony W. Russo, & Bonnie Link

Senior Attorneys — Members approximately 65 and older meet to discuss pertinent issues in their personal and professional lives.

Co-Chairs: George P. Frooms & Joan Lensky Robert

Sports, Entertainment & Media Law — Considers topics and factors specifically related to practice in the field of sports, entertainment and media law.

Chair: Richard Liebowitz

Supreme Court — Provides a forum for dialogue among bar members and the Judiciary on topics related to Supreme Court practice.

Chair: Michael A. Santo

Surrogate's Court Estates and Trusts — Deals with estate planning, administration and litigation; reviews pending relevant New York State legislation; maintains an interchange of ideas with the Nassau County Surrogate and staff on matters of mutual interest.

Co-Chairs: Lawrence N. Berwitz & Jennifer Hillman

Tax Law — Conducts meetings and programs relating to tax law.

Co-Chairs: Brad Polizzano & Michelle E. Espey

Veterans & Military Law — Reviews legislation and regulations associated with military law and veterans' affairs, in particular, the needs of Reservists and National Guard called to active duty.

Chair: Gary Port

Women in the Law — Examines current trends regarding women in the court system, and seeks to protect their rights to equal treatment.

Chair: Christie R. Jacobson

Worker's Compensation — Discusses current legislation related to Worker's Compensation regulations and benefits.

Chair: Les D. Jarmol

Federal Reserve's Legal Role Explained



On June 27, members of the NCBA Corporation, Banking and Securities Law Committee had the rare opportunity to learn about the functions of the Federal Reserve Bank of New York's legal group from Lisa Kraidin (l), a Bank officer and counsel in the Supervision and Markets Division. She was invited by Committee Chair Chandra Ortiz (r).

(Photo by Hector Herrera)

A Nassau County Mental Health Court Program



On June 28, the NCBA Mental Health Law Committee and Community Relations and Public Education Committee co-hosted at Domus a seminar, "The Nassau County Mental Health Court: A Decade of Making a Difference." This program featured the Honorable Andrea Phoenix, Presiding Judge of Nassau County Mental Health Court, as well as members of the legal and clinical team that work within the Mental Health Court system. Panelists discussed the criteria for participation in Mental Health Court, court procedures and requirements to complete the program. (l-r) Maura Gordon, LCSW-R/MPA, Director of Forensic Behavioral Services; Perette Comond, Senior Care Coordinator; Timothy Naples, Esq., Nassau County Legal Aid Society; Hon. Andrea Phoenix; Jamie Rosen and David Carl, Co-Chairs, NCBA Mental Health Law Committee; Jacqueline Rosenblum, Esq., Nassau County Assistant District Attorney; Dionne Gaines, Senior Care Coordinator.

(Photo by Hector Herrera)

FUTURE ...

Continued From Page 1

you have the added benefit of being welcomed at the Bar Association and meeting face-to-face with peers to develop valuable relationships, whether for business reasons or as personal

friends. This is especially important for solo practitioners or those from smaller firms." He added, "It's the best place to go for social interaction, and the exchange of ideas is incredibly important. Our Committee Chairs are some of the most important leaders at the Bar. It is through their commitment that our members can gain value to help them in

the practice of law. We want to encourage more members to join committees and attend meetings, to fully take advantage of this opportunity, provided only to NCBA members."

To find the 2018-19 NCBA committees that are right for you, see the full list on page 22. The Committee meeting schedule appears monthly in the *Nassau Lawyer*, see below.

NCBA Committee Meeting Calendar • July 26 - Sept. 21, 2018

Questions? Contact Stephanie Pagano (516) 747-4070 spagano@nassaubar.org

Please Note: Committee Meetings are for NCBA Members. Dates and times are subject to change.

Check website for updated information: www.nassaubar.org

LGBTQ

Thursday, July 26

8:30 a.m.

Joseph G. Milizio/Barrie E. Bazarsky

GRIEVANCE

Wednesday, September 5

12:30 p.m.

Warren S. Hoffman

ACCESS TO JUSTICE

Wednesday, September 12

12:30 p.m.

Joseph R. Harbeson/Dorian R. Glover

INTELLECTUAL PROPERTY

Monday, September 17

12:30 p.m.

Andrea Grossman

PUBLICATIONS

Thursday, August 2

12:45 p.m.

Anthony J. Fasano/Rhoda Y. Andors

SURROGATES COURT ESTATES & TRUSTS

Wednesday, September 5

5:30 p.m.

Lawrence N. Berwitz/Jennifer Hillman

CRIMINAL COURT LAW & PROCEDURE

Wednesday, September 12

12:30 p.m.

Daniel W. Russo

VETERANS & MILITARY LAW

Tuesday, September 18

12:30 p.m.

Gary Port

COMMUNITY RELATIONS & PUBLIC EDUCATION

Thursday, August 2

12:45 p.m.

Moriah Adamo

HOSPITAL & HEALTH LAW

Thursday, September 6

8:30 a.m.

Douglas M. Nadjari

ASSOCIATION MEMBERSHIP

Wednesday, September 12

12:45 p.m.

Adam D'Antonio

CIVIL RIGHTS

Thursday, September 20

12:30 p.m.

Robert Schonfeld

ASSOCIATION MEMBERSHIP

Wednesday, August 8

12:45 p.m.

Adam D'Antonio

MEDICAL-LEGAL

Thursday, September 6

12:30 p.m.

Mary Anne Walling

MATRIMONIAL LAW

Wednesday, September 12

5:30 p.m.

Jennifer Rosenkrantz

ATTORNEY/ACCOUNTANTS & REAL PROPERTY LAW JOINT MEETING

Thursday, September 20

6:00 p.m.

Jennifer Koo/Edith Reinhardt - Attorney/Accountants
Mark S. Borten/Anthony W. Russo/Bonnie Link-Real Property

DIVERSITY & INCLUSION

Monday, August 13

6:00 p.m.

Hon. Linda Mejias

COMMUNITY RELATIONS & PUBLIC EDUCATION

Thursday, September 6

12:45 p.m.

Moriah Adamo

FAMILY COURT LAW & PROCEDURE

Thursday, September 13

5:30 p.m.

Ellen Pollack

EDUCATION LAW

Wednesday, September 5

12:30 p.m.

Candace J. Gomez

PUBLICATIONS

Thursday, September 6

12:45 p.m.

Anthony J. Fasano/Rhoda Y. Andors

GENERAL, SOLO AND SMALL LAW PRACTICE MANAGEMENT

Monday, September 17

12:30 p.m.

Deborah Kaminetzky

CONSTRUCTION LAW

Friday, September 21

12:30 p.m.

Michael Ganz

IN BRIEF

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

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

Forchelli Deegan Terrana LLP announced that the *New York Real Estate Journal* recognized **John Terrana** as a Real Estate One to Watch and published **Gerard Luckman's** article, "Tenant Beware: Regarding Landlords Filing for Bankruptcy." **Daniel Deegan** was honored by *Long Island Business News* as an Executive Circle Awards recipient and **Jason Rothman** was spotlighted by *LIBN* in Law: Ones to Watch. **Russell Tisman** and **Michael Ciaffa** were speakers on the "Collateral Consequences of Criminal Convictions" panel at the Theodore Roosevelt American Inn of Court. **Robert Renda** was honored by the Huntington Township Chamber of Commerce at the Celebrate Young Professionals event. **Judy Simoncic** was honored by the *Long Island Press* with the Long Island Power Women in Business award. NCBA Treasurer **Gregory Lisi** presented, "Sexual Harassment Law Overview," to the Long Island Gasoline Retailers Association while **Mary Mongioi** and

Daniel Dornfeld presented, "Preparing Your Animal Hospital for Sale," to Bank of America, an affinity provider with the American Animal Hospital Association and **Kathleen Deegan Dickson** was a speaker at The Energiea Partnership's Land Use workshop. **Peter Skelos** spoke at the Huntington Lawyers Club on Motion Practice in the Appellate Division.

L'Abbate Balkan Colavita & Contini, LLP welcomes two new associates **Nicole Duggan**, who has joined the firm's Attorney Professional Liability practice group; and **Kristy Zuccarini**, who joined the Design Professionals practice group

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP announces that **Alex Leibson**, a member of the Litigation Practice Group with particular concentration in the commercial arena, has been promoted to Partner. In addition to commercial litigation, Mr. Leibson provides counsel and guidance to entertainers, musicians and record labels.

Marc Hamroff, managing partner of the law firm of Moritt Hock & Hamroff with offices on Long Island and in New York City, has announced that



Marian C. Rice

Keith J. Frank and **Jill T. Braunstein** have joined the firm. Mr. Frank has joined the firm as a partner in its Employment practice group and Ms. Braunstein has joined the firm as counsel in its Corporate & Securities practice group. Both reside in the firm's Garden City office.

Evan H. Krinick, Managing Partner of Rivkin Radler LLP, has announced that **Jason Kurland** has joined the firm's Real Estate, Zoning and Land Use Practice Group as a Partner; **Keegan Saap** has joined the firm's Employment & Labor Practice Group as an Associate; and **Noah Becker** has joined the firm's Medical Malpractice Practice Group as an Associate.

Blodnick Fazio & Associates PC partners **Edward K. Blodnick** and **Thomas R. Fazio** and **James E. Clark** of Clark's Laws, PC, have announced that their firms have merged to form Blodnick Fazio & Clark, PC. The partners of the merged firm will stay at their current locations. Blodnick Fazio & Associates PC is located at 1325 Franklin Avenue, Suite 555, Garden City, New York, (516)280-7105. Clark's Laws, PC is located at 57 West Main Street, Suite 220, in Babylon, (631)669-6300.

Ronald Fatoullah of Ronald Fatoullah & Associates lectured for the clinicians at Heritage New York Medical PC regarding obtaining Medicaid home care services for patients returning home from the hospital and rehabilitation and at an educational elder care seminar at the Boulevard Assisted Living. **Elizabeth Forspan**, the managing attorney of the firm, lectured for the National Business Institute regarding the tax implications of elder law planning and the importance of a power of attorney and for the Arthritis Foundation's "Ask the Expert" series regarding estate and elder care planning.

Tenenbaum Law, P.C. attorneys **Karen Tenenbaum**, **Lance E. Rothenberg**, and **Hana Boruchov** will be speaking at the Accounting and Finance Show at the Javits Center on IRS/NYS tax collections and NYS residency audits. Ms. Tenenbaum recently spoke at the Annual NYU Tax Controversy Forum on NYS Residency Audits and was interviewed by Super Lawyers on what the average person needs to know about navigating taxes in the gig economy.

Great Neck attorney **Deborah G. Rosenthal** was recently installed as

CONTINUED, Page 25

LAW YOU SHOULD KNOW

LAW YOU SHOULD KNOW

on 90.3 FM WHPC

Celebrating 25 Years!

Hosted by: **Kenneth J. Landau, Esq.**
Shayne, Dachs, Sauer & Dachs, LLP • Mineola

How to Collect A Debt

Wed, Aug 1, 2018 • 3 p.m.
or Sun, Aug 5, 2018 • 7 a.m.

College Disciplinary Hearings

Wed, Aug 8, 2018 • 3 p.m.
or Sun, Aug 12, 2018 • 7 a.m.

Preparing for the LSAT or GRE

Wed, Aug 15, 2018 • 3 p.m.
or Sun, Aug 19, 2018 • 7 a.m.

Latin Legal Terms You Should Know*

Wed, Aug 22, 2018 • 3 p.m.
or Sun, Aug 26, 2018 • 7 a.m.

More Latin Legal Terms You Should Know*

Wed, Aug 29, 2018 • 3 p.m.
or Sun, Sept 2, 2018 • 7 a.m.

Owning a (Tutoring) Franchise

Wed, Sept 5, 2018 • 3 p.m.
or Sun, Sept 9, 2018 • 7 a.m.

*You can earn CLE by listening to broadcast, podcast, or Cds of these shows. Check with the Nassau Academy of Law for details (516)747-4464 or www.nassaubar.org

On 90.3 FM radio or voicestream over the internet

at www.ncc.edu/whpc

or search "WHPC" on iTunes for Podcast



MINDFUL YOGA

Mindfulness Yoga Workshop

Would you like to feel less stressed and more relaxed? Mindfulness yoga helps to quell anxiety, reduce stress, aid relaxation and facilitate health and well-being. You will learn ways to bring this practice into your daily life.

The NCBA's Lawyer Assistance Program is pleased to invite members to participate in this eight (8) Week Mindfulness Yoga Workshop.

Summer Session II 2018

July 5
August 1, 8, 15, 22, 29
September 1, 12

Fall Session 2018

September 26
October 3, 10, 17, 24, 31
November 7, 14

All classes meet on Wednesdays, 5:30-6:45 p.m.
\$120 workshop fee per session

Instruction will be provided by Edith Jason, a Kripalu Certified Yoga Teacher. Edith has been teaching Yoga for 30 years.



BREATHE

ENROLLMENT IS LIMITED - ACT NOW!

Classes held in the lower level President's Room at the Nassau County Bar Association. Please contact Beth Eckhardt at eckhardt@nassaubar.org or (516)747-4070

the Treasurer of the Women's Bar Association of the State of New York.

Jennifer Ann Wynne of Wynne Law, P.C. will be a speaker at the Accounting and Finance Show held at the Javits Center in New York City where she will discuss IRS Collections issues. Miss Wynne and **Peter Alizio** presented a joint program on "Things Employers & Tax Professionals Need To Know" to the LIU Post School of Professional Accountancy – Tax and Accounting Institute.

Russell I. Marnell, the lead attorney of Law Offices of Russell I. Marnell, P.C., in practice for over 32 years and serving clients in Nassau and Suffolk Counties, as well as all five boroughs of New York City, in all areas of Divorce & Family Law, was sworn in as a member of the NCBA Board of Directors.

Rene P. Fiechter, an Assistant District Attorney and Director of Community Affairs for Nassau County District Attorney Madeline Singas, was awarded the Outstanding Public Service Award from PRONTO of Long Island for organizing the salvage and distribution of counterfeit jackets for over a hundred charities serving the poor and needy and utilizing handicapped and autistic workers in the campaign. Pronto of Long Island is a major social service agency providing food, clothing, shelter and assistance to the homeless and families in need.

Frederick Pomerantz announces the opening of his solo practice, Insurance Legal & Regulatory Consulting, PLLC, concentrating in mergers and acquisitions, buy and sell agreement, service agreements, and applications to state regulators in all fifty states, hearings before state regulators, formation and licensing of new entities, primarily in the insurance industry. The firm is located at 35 Fairview Avenue in Great Neck, (516)297-3101, pomerantz35@gmail.com.

Michael A. Santo announces that his solo practice, Michael A. Santo, P.C., has recently joined the firm, Silberstein Awad & Miklos, P.C., of Garden City, in an "Of Counsel" relationship concentrating in Medical Malpractice, Personal Injury and Nursing Home claims on behalf of injured parties. In addition, Mr. Santo recently presented at John Jay College for Criminal Justice, New York City, on behalf of Rising Phoenix Center for Law & Politics about current events and issues in law and politics and has also been named to the Advisory Board of Longgarde Technologies, LLC, a start-up corporation dealing with sales and distribution of anti-microbial fiber products in the medical and environmental fields.

Gregory L. Matalon, a partner in the Estate Planning & Estate Administration practice areas of Capell Barnett Matalon & Schoenfeld LLP,

presented the first "Howard J. Capell Award for Exceptional Service" recently at the Quality Services for the Autism Community (QSAC) 40th Anniversary Gala. This award honors the memory of CBM&S founding partner Howard J. Capell, who had served on the QSAC Board of Directors. **Robert S. Barnett**, a partner in the firm's Taxation, Tax Controversy, Corporate and Estate Planning practice areas, recently presented at the National Conference of CPA Practitioners on the topic "Client Buy/Sell Shareholder Agreements". **Yvonne R. Cort**, a partner in the firm's Tax Controversy practice area, recently was a featured speaker at the NYU 10th Annual Tax Controversy Forum. Yvonne participated on a panel titled "New York State Tax Enforcement Updates - Residency Audits, Driver's License Suspension and the Search for Ghost Preparers," discussing NYS programs that are likely to become the model for other states' tax administrators. The United States Junior Chamber (Jaycees), Long Island Chapter, has appointed **Christopher C. Haner**, an associate in the firm's Estate Planning and Estate Administration practice areas, to the position of Director of Community Engagement. In this leadership role, his responsibilities include spearheading community service for the organization.

Ellen G. Makofsky, founding member of Makofsky & Associates, P.C.

located in Garden City, NY and a Certified Elder Law Attorney was elected to join The New York Bar Foundation Board of Directors for a 3 year term. Ms. Makofsky is serving as Vice-Chair of The Foundation's Finance and Investments Committee and is a member to The Foundation's Grants Committee. Through its grant program, The Foundation supports the law-related programs of local legal services agencies, nonprofits, bar associations and other organizations throughout New York State.

PLEASE E-MAIL YOUR SUBMISSIONS TO: nassaulawyer@nassaubar.org with subject line: **IN BRIEF**

The In Brief column is compiled by **Marian C. Rice**, a partner at the Garden City law firm **L'Abbate Balkan Colavita & Contini, LLP** where she chairs the Attorney Professional Liability Practice Group. In addition to representing attorneys for nearly 35 years, Ms. Rice is a Past President of NCBA.

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ASSOCIATION NEWS

Courtroom Dedication



Mayor Ed Lieberman (l) and the Sea Cliff Village Board issued a proclamation declaring Room A, the Court room in the Sea Cliff Village Hall, "The John P. Reali Courtroom" in recognition of Judge Reali's 38-year service to the Village of Sea Cliff. Judge John Reali (r) served as a Village Trustee from 1980 to 1990 and was elected Village Justice from 1990 to 2018. On June 11, the plaque was unveiled at the Village Board Meeting.

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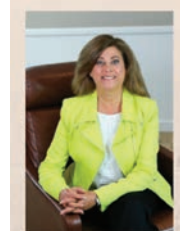
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