



# THE SUFFOLK LAWYER

THE OFFICIAL PUBLICATION OF THE SUFFOLK COUNTY BAR ASSOCIATION

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## Hon. Hector LaSalle... We Admire and Respect

I hope this message finds you enjoying our mild winter weather, and that you and your families are in good health. I often hear from our members as well as the other people I encounter in my life that they have stopped reading the newspaper or online news or watching television news because it depresses them; it leaves them with the impression that nothing but horrible things are happening in our world. It's easy to understand why people arrive at this conclusion, even more so when we are faced with difficult situations in our own personal and professional lives in which we believe we are being treated unfairly. Our feelings are amplified when these types of events play out in a public forum.

It has been said that we can't control what others say or do, we can only control our response. Unfortunately, in today's world, there do not seem to be many positive examples of how to respond when we are treated unjustly. However, every so often, someone provides us with just such an example; someone who is the embodiment of who we all aspire to be when we suffer injustice.



**President  
Vincent J. Messina, Jr.**

The legal profession, and in fact the entire State of New York, recently was witness to someone who modeled perfectly the type of behavior we all wish to demonstrate when we believe we are being wronged. I am speaking, of course, of the Hon. Hector LaSalle, the Presiding Justice of the Appellate Division, Second Department.

Ernest Hemmingway said that grace under pressure". Justice conducted himself in a manner mizes dignity and courage. In full and under the most intense scrudemonstrated these virtues in ever can or do.

Justice LaSalle and I are hardly ical kindred spirits. Our views magent on several important issues be in complete agreement on oth inconsequential in the context of sis.

What is of consequence is th Justice LaSalle set for all of us. T are not words sufficient to desc miration and respect for how he himself in the most difficult of circ

More important, I am privileg lically let Justice LaSalle know that admiration, respect, and support folk County Bar Association as entirety of the Suffolk County leg nity. Justice LaSalle, you have ma very proud of how you have repr and we thank you for the examp set for us. 🙏



**Hon. Hector LaSalle**  
Presiding Justice of the Appellate  
Division, Second Department  
Photo by Barry Smolowitz



### INSIDE SCOOP

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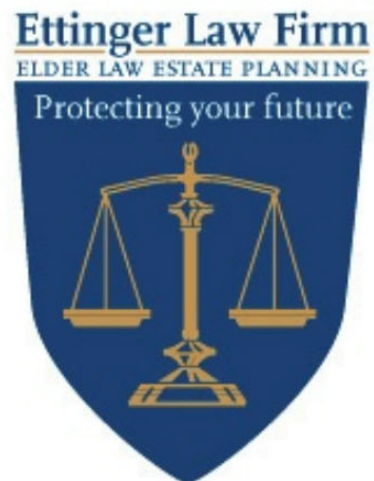
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Did you ever wonder how you could get involved in your bar association’s monthly newspaper? Do you have a great idea for an article or believe your colleagues would benefit from information you’ve recently learned? Or do you just enjoy writing? You too can write for The Suffolk Lawyer. Writing for the paper is open to all members and doing so is encouraged. The Suffolk Lawyer is a reflection of the fine members that belong to the Suffolk County Bar Association.

Why not get involved? For additional information please contact Jane LaCova at [jane@scba.org](mailto:jane@scba.org), 631-234-5511 ext.231.

**Thank You Special Editors!**

Thank you to our Special Editors:  
**Francesco Tini, Esq.**  
**Francine Moss, Esq.**

Your efforts were unsurpassed and made this edition possible.



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# AMONG US



By: Sarah Jane LaCova,  
Executive Director  
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**York First-Tier Rankings, U.S. News & World Report.** A great achievement and well deserved by our attorneys!

**ON THE MOVE...**

**Robin Burner Daleo** reports the relocation of the Mount Sinai at 655 Rt. 25a, Mt. Sinai, NY 11790. Please note: **The Suffolk Lawyer** and **the Long Islander** magazine welcomes submissions to the Among Us magazine announcing news, awards, recent accomplishments, sent in a word document to [jane@scba.org](mailto:jane@scba.org)

**A SPECIAL THANK YOU**

To **Saul R. Fenchel, Esq.**, (the late Judge Barbara Kahn's husband) who made a generous donation to the Lawyer Assistance Foundation in honor of his dear friend **Bill Keahon, Esq.**

**William A. Gartland** of East Islip recently joined the law firm **Bond, Schoeneck & King** when that firm combined with Lazer Aptheker in Melville. Gartland, who works out of what is now a Bond office in Melville, was appointed Deputy Chair of the 285 attorney firm's Mergers and Acquisitions practice.

**Margaret Ling**, a frequent lecturer at our Academy of Law, Margaret currently serves as the Co-Chairperson of the Real Estate Committee of the Asian American Bar Association of New York ("AABANY"); Former Business Director and Board of Director of AABANY; Board of Director and Co-Chairman of the Real Property Section and Asian Practice Committee of the New York County Lawyers Association; Vice President of the New York State Network of Bar Leaders; Member of the Steering Committee of the Collaborative Bar Leadership Academy of the American Bar Association; Member of the Diversity and Inclusion Committee and Women in Law Committee of the New York State Bar Association;

**Karen Tenenbaum** was in the LIBN's 'Book of Long Island in Business Influencers' as one of the most



**CALENDAR OF EVENTS**

- March 6th** – Matrimonial Mondays – Annual Matrimonial Update
- March 8** – Fireside Chat with Hon. Anthony Cannata
- March 13th** – Contempt Applications
- March 16** – Cohalan Cares For Kids
- March 20th** – Child Custody Alienation Trial
- May 1st** – SCBA's Annual Meeting at 6 pm, Great Hall
- June 9** – Installation of President Elect **Cornell V. I...** Officers & Directors, Cold Spring Country Club, Huntington

*Condolences*

- Jane LaCova, ED

It is with profound sorrow that the Board of Directors announced the passing of **Ronald C. Davies, Esq.** or Ron Davies, who wanted to be called. Ron was an Honorary Member of the SCBA, joining our bar association in 1964. He was an integral member of the SCBA; always played golf in our Assistance Golf outings. He was an accomplished athlete who excelled in soccer, basketball, squash and baseball. He was also a great baseball coach. He was inducted into the Academy of Fame in 1999, and the clubhouse coaches' office was named in his honor.

ness influencers as one of the most powerful women on Long Island. Karen was joined by a panel of professionals interested in financial literacy on Bonnie Graham's Technology Revolution: The Future of Now: "The Future of Financial Literacy: Can We Raise Kids' Money IQ? – Part 2. For the Suffolk County Bar Association's Tax Law Committee, Karen moderated "NY Sales and Use Tax What Every Lawyer Needs to Know About Sales Tax" by Jennifer Koo, Esq. & Mark Stone, CPA. For the Suffolk Bar Association's Academy of Law, Karen oversaw Jay Ruane's seminar on how a "Systemized Firm is an Ethical Firm." Karen and her team presented for the Suffolk County Women's Business Enterprise Coalition (SCWBEC) group on "Best Practices for a Successful Business." Marisa Friedrich of the firm spoke to financial planners at Procyon on "NYS Residency and Domicile." **The Melville-based firm, Tenenbaum Law, P.C.**, represents taxpayers in IRS and NYS tax matters.



Karen Tenenbaum, Esq.

**RGLZ (Rappaport, Glass, Levine & Zullo, LLP)** was honored to be recognized in **Best Law Firms in New**

after him. Ron was truly a legend, an iconic figure with history in the Adelphi baseball program. He shared his love with his son Timothy and is also survived by his wife, daughters Laurie, Nancy, and Carol. Because of his intermanitarian endeavors, his loss will be deeply felt by his clients, and friends.

We were saddened to learn of the recent passing of **Raimondi**, wife of Family Court Support Magistrate **Jaimondi**. Monica fought a courageous battle with pancreatic cancer. We extend our deepest sympathy to John and their three children.

We were saddened to learn of the passing of **Ron Travis**. Ron had a distinguished career as a district attorney in Nassau and Suffolk Counties. Assistant NYS Attorney General, Assistant Babylon Town Attorney and Principal Law Clerk to Antonio I. Brandveen.

**"Every person regardless of their standing has the right to be treated with dignity and respect"**  
 ~ Latinos for LaSalle

We are proud of you, Second Department President Justice Hector LaSalle. Thank you.  
 ~ Latinos for LaSalle

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# BLACK HISTORY MONTH

# John S. Rock

John Stewart Rock (October 13, 1825 – December 3, 1866)

The Courts First Black Lawyer  
 – A long ago hero to be remembered today

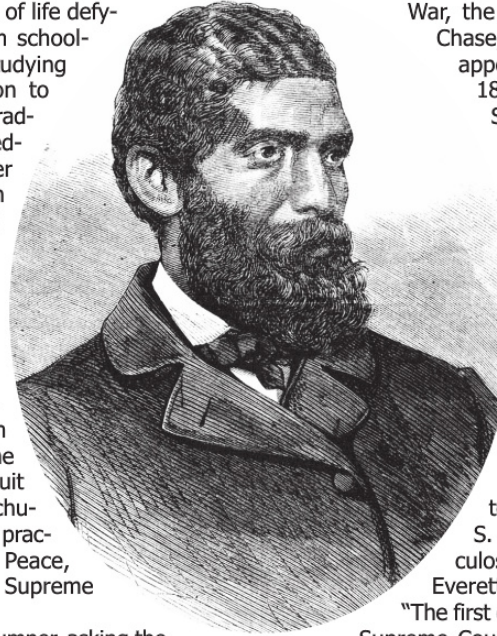
by Sarah Jane LaCova, ED

Who exactly was John S. Rock – he was a man of many caps – even though he knew the road would be “rocky” because

**W**riters, teacher, a doctor, a dentist, a successful orator and abolitionist. He was born in the free state of New Jersey and spent his forty one years of life defying all odds. He studied in a one room school-house, became a teacher at 19 while studying medicine. After being refused admission to medical school, he married, and in 1852 graduated from the newly opened Eclectic Medical College in Pennsylvania. After becoming a doctor, he moved to Beacon Hill in Boston, Mass offering free service to fugitive slaves and became a very active abolitionist speaker, all while practicing medicine and dentistry.

In 1858, following some health issues, Rock decided to change his career and become a lawyer and in 1861 was admitted to practice law in Massachusetts, making him one of a handful of African American lawyers in the country. When the Civil War broke out, Rock helped to recruit volunteers for the 54th and 55th Massachusetts Infantry Regiments and continued to practice law and serve as a Justice of the Peace, never giving up his dream to become a Supreme Court lawyer.

In 1864, he wrote to Senator Charles Sumner, asking the Senator to support his motion to become a Supreme Court lawyer,



Dred Scott ruling.

Following the gigantic struggle of the American War, the Court had a new Chief Justice Chase, a champion of the anti-slavery movement appointed by Abraham Lincoln. On February 3, 1865, John S. Rock's sponsor, Senator Charles Sumner, made his motion; the Court assented, and John Rock secured the honor. The same day that President Abraham Lincoln signed a joint congressional act abolishing slavery to the states for the first time – another historic moment to the Old Supreme Court Chamber in the Nation's Capital - John S. Rock became the first African American Supreme Court lawyer.

He continued his pursuit of justice until December 1866, before the Court could ratify the Fourteenth Amendment in 1868, and without ever having had the opportunity to argue before the U.S. Supreme Court. S. Rock died at the age of forty-one from tuberculosis. His tombstone, in Woodlawn Cemetery, Everett, Middlesex County, Massachusetts, reads: "The first colored lawyer admitted to the Bar of the Supreme Court at Washington on Motion made by Charles Sumner February 1, 1865." 🇺🇸

### Addendum

While I was writing about John S. Rock, my dear friend Hon. Victoria Gumbs Moore, told me about another first African American Attorney - Macon Bolling Allen, who, in 1845, became the first African American admitted to the bar in Massachusetts.

In the May 9, 1845, issue of William Lloyd Garrison's *The Liberator*, made note of Allen's new standing in the Massachusetts legal world. Story be told, a year earlier in 1844 Allen was admitted to the bar in the state of Maine, but he never practiced there.

In 1873 Macon Bolling Allen was appointed a judge of the Inferior Court by the North Carolina legislature, and in 1874 he served on the probate court and served the public. Following that stint, he returned to practice in Charleston. - Sarah J

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**SPECIAL SECTION: FAMILY AND MATRIMONIAL**

**How Divorce Mediation Has Changed Since**

**COVID**



By Alan L. Finkel, Esq.



It's easy to remember the world before Covid. We booked appointments and saw clients face to face. In the world of divorce, all paperwork was printed in quadruplicate, signed and notarized in the office, and submitted to the Court via the U. S. Mail. There was no electronic filing in Matrimonial cases. The couple and the attorney/mediator would sit in a room together, around a small round table, in an effort to ease the tension that accompanies any divorce.

Meeting a couple in person allows the mediator the opportunity to interact and pick up many cues that portray the dynamics of the couple. Just coming to a lawyer's office can be a bit nerve racking for the couple. This was the norm for me for 32 years. Then with little warning, on March 16, 2020, the world shut down.

The months of March, April and May of 2020 were very slow. People were frightened. The whole issue of housing presented unique problems that were unthought of pre pandemic.

I immediately became a \$15 monthly subscriber to Zoom Video, and converted our business to a virtual platform. The difference was striking. Couples seemed far more relaxed and at ease; far less anxious. About half of the couples logged in on separate devices, quite often with one party logging in on an iphone from a car parked in their driveway, and the other inside the house, sharing their Wi-Fi. The other half logged on together on one device. The balance now tipped to more daytime appointments as ob-

taining a baby sitter became a great challenge in 2020 and 2021, and many couples were able to work remotely. At the onset, there was no choice but to meet virtually. When the world began to open up, some couples told us they wanted to meet face to face, but after that first video session, most realized the advantage of meeting remotely, and continued the process.

Using the Zoom platform, it is much easier to keep the couples at ease, which is a very important requirement for a successful mediation. In most couple's relationships, one party has more 'power' than the other, possibly in different spheres of influence. The Husband might control the finances and the Wife might control the parenting issues. Of course, the genders can easily be reversed, but the example given here is more of a typical family's dynamics in Suffolk County.

I noticed that the reactions of each spouse were far milder on video than they were when meeting in the office. I also noticed that I was far more relaxed mediating virtually. On occasion when one spouse started yelling or name calling, that mute button came in handy, something unavailable in a face to face setting.

Running any business is challenging. The Divorce Mediation business is very different from practicing law. We all know the frustration in dealing with last minute cancellations, or clients who fail to show up. Working remotely minimizes that angst greatly. With all the communicable strains of virus out there, meeting virtually keeps me (and the clients)

safe from contracting the next corona Virus.

The subject matter of children hasn't changed one iota, just the technology. The world was well equipped logically to adapt to the tidal change, it took a global pandemic to address the issue. On May 31, 2020, the various parts of the NYS Court system at NYSCEF system to accommodate tested submissions, and the result. Now, all documents are readily available instantly, and the communication Court system is easy.

And for all you environmentalists saving lots of trees. Who would have conceived that this would have been 3 short years ago? 🌳



**Alan L. Finkel, Esq.**

Alan L. Finkel is a proud graduate of Suffolk County School's first evening class. He has been practicing law since 1983, and has handled hundreds of divorces in the same Commack location. He likes playing and listening to music, watching movies and going to the beach. His greatest joy comes from his family. A devoted father since 1983, married to Michelle, he has four married children and seven grandchildren.

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MA

**SPECIAL SECTION: FAMILY AND MATRIMONIAL LAW**

**The Future of FORENSIC CUSTODY EVALUATION**

by Arza Rayches Feldman, ESQ.

**A** bill introduced in the New York Senate on February 3, 2023 (S 4149) seeks to amend the Domestic Relations Law and the Family Court Act to prohibit a court from ordering or allowing into evidence a forensic report in the context of a custody or visitation proceeding.

This bill comes on the heels of the December 2021 Blue Ribbon Commission on Forensic Custody Evaluations<sup>1</sup> where, by an 11-9 margin, a majority of the Commission members favored eliminating forensic evaluations entirely due to their view that such reports were biased, harmful to children, potentially dangerous and lacking in both scientific and legal value. Other commission members favored continuing such evaluations, but agreed that current practices should be reformed. All members agreed that such evaluations were ordered too frequently and are unduly relied upon.

In light of these concerns, the Commission, noting the lack of consistent guidelines regarding who may act as a forensic evaluator and how such evaluations are conducted, made the following robust recommendations:

1. Limiting the use and scope of the evaluations to cases where a parent's mental health is at issue and utilizing specialized experts as opposed to general forensic evaluators in certain instances; Requiring judges to issue written orders explaining the need for the use of a forensic expert and the factors used in making that determination; Having forensic evaluators explain why certain psychological testing was needed and prohibiting them from opining on questions of fact.

2. Ensuring equal access to forensic evaluations, when necessary, without regard to the parties' ability to pay.

3. Establishing a statewide Forensic Evaluator Certification Committee to review and approve or deny applications of mental health professionals seeking to conduct forensic evaluations.

4. Not less than 36 hours of mandated basic training and continuing education thereafter for evaluators.

5. Expanding the availability of pretrial disclosure in custody cases including having CPLR Article 31 be applicable to child custody proceedings with certain specified exceptions, especially in cases of domestic violence. It was recommended that discovery in custody be done under court oversight and that additional financial resources be granted to assigned counsel to engage in such discovery.

6. The disclosure of potential conflicts of interest of a forensic evaluator such as (a) past or current referrals by attorneys and judges, (b) outside relationships, and (c) campaign donations and providing litigants with pertinent information about the conduct and scope of the evaluation and the process for making any complaint against the evaluator.

<sup>1</sup>The 18 page report is available on line. <https://opdv.ny.gov/blue-ribbon-commission-forensic-custody-evaluations>

7. Legislation regarding the scope of access to forensic evaluations by litigants and their attorneys.

8. Legislation explicitly requiring the Office of Professional Regulation of the State Department of Education to investigate complaints about forensic evaluations and evaluators and to advise litigants of the complaint process.

9. Establishing a process to assess protocols for the use of technology in the context of a forensic evaluation.

10. Reclassifying/ retitling forensic evaluators as Qual Health Evaluators to more clearly identify their role in the context of the legal proceedings.

11. Increasing resources for the Family Courts where custody proceedings take place.

The role of forensic evaluations in custody cases remains controversial. While legislative action may ultimately determine the outcome, thoughtful consideration to the Commission's recommendations when requesting, ordering and reviewing such evaluations is essential.



### Arza Rayches Feldman

Partner, Feldman & Feldman

Arza Rayches Feldman, Esq., B.S. City University of New York, J.D. Boston University School of Law. She practices in the areas of matrimonial law, surrogate's court and appellate law. Ms. Feldman is a member of the Judicial Branch Committee and the Family Court Law Section of the Bar Association and is active with the Charity Foundation of the Suffolk County Bar Association Child Welfare Court Project in the Family Court.



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**SPECIAL SECTION: FAMILY AND MATRIMONIAL LAW**



# Paternity Proceedings...



in Family  
and  
Supreme  
Court

by John E. Raimondo

**F**amily Court Act Section 511 states as to Jurisdiction in Paternity matters "Except as otherwise provided, the family court has exclusive jurisdiction in proceedings to establish paternity and, in any such proceedings in which it makes a finding of paternity, to order support and to make orders of custody or of visitation, as set forth in this article. On its own motion, the court may at any time in the proceedings also direct the filing of a neglect petition in accord with the provisions of article ten of this act. In accordance with the provisions of section one hundred eleven-b of the domestic relations law, the surrogate's court has original jurisdiction concurrent with the family court to determine the issues relating to the establishment of paternity."

Section 517 of the Family Court Act states "Proceedings to establish the paternity of a child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the child reaches the age of twenty-one years, unless paternity has been acknowledged by the father in writing or by furnishing support." Sec-

tion 518 of the Family Court Act states "If, at any time before or after a petition is filed, the mother dies or becomes mentally ill or cannot be found within the state, neither the proceeding nor the right to commence the proceeding shall abate but may be commenced or continued by any of the persons authorized by this article to commence a paternity proceeding." Section 519 of the Family Court Act states "If, at any time before or after a petition is filed, the putative father dies, or becomes mentally ill or cannot be found within the state, neither the proceeding nor the right to commence the proceeding shall necessarily abate but may be commenced or continued by any of the persons authorized by this article to commence a paternity proceeding where: (a) the putative father was the petitioner in the paternity proceeding where; or, (b) the putative father acknowledged paternity of the child in open court; or, (c) a genetic marker or DNA test has been administered to the putative father prior to his death; or, (d) the putative father has openly and notoriously acknowledged the child as his own,"

Section 522 of the Family Court Act states "Proceedings to establish paternity of a child and to compel support under article 10 may be commenced by the mother or a minor or not, by a person other than the father, whether a minor or child or child's guardian or other person standing in a parental relationship next of kin of the child, or by any representative of an incorporated corporation doing charitable or philanthropic work if the mother or child is or is likely to be a public charge on a county, city or town or a public welfare official of the county or town where the mother resides is found. If a proceeding is originally commenced by a public welfare official and there is no other party drawn or dismissed without consideration of the merits, such withdrawal or discontinuance shall be without prejudice to other persons." Section 523 of the Family Court Act states "Proceedings to establish paternity of a child and to compel support under article 10 may be commenced by the mother or a minor or not, by a person other than the father, whether a minor or child or child's guardian or other person standing in a parental relationship next of kin of the child, or by any representative of an incorporated corporation doing charitable or philanthropic work if the mother or child is or is likely to be a public charge on a county, city or town or a public welfare official of the county or town where the mother resides is found. If a proceeding is originally commenced by a public welfare official and there is no other party drawn or dismissed without consideration of the merits, such withdrawal or discontinuance shall be without prejudice to other persons."

The issue of equitable estoppel arises in Paternity matters. An issue regarding equitable estoppel was addressed in the case *Lorie F. v. Raymond F.*, 239 A.D.2d 657 (N.Y.S.2d 235). In *Lorie F.*, the Appellate Division Third Department held "



## SPECIAL SECTION: FAMILY AND MATRIMONIAL

law that the doctrine of equitable estoppel may be raised as a defense to preclude a party from being compelled to submit to a blood grouping test (see, *David L. v. Cindy Pearl L.*, 208 A.D.2d 502, 503; see also, *Matter of Sharon. GG. v. Duane HH.*, 95 AD.2d 466, aff'd 63 N.Y.2d 859). "It is well established that equitable estoppel applies to prevent the enforcement of rights which would work a fraud or injustice upon the person against whom enforcement is sought and who, in reliance upon the opposing party's words or conduct, has been misled into acting upon the belief that enforcement of any purported rights would not be sought" *Matter of James BB. v. Debora AA.*, 202 A.D.2d 852, 853. Furthermore, courts are more inclined to impose equitable estoppel to protect the status of a child in an already recognized and operative parent-child relationship (see, *Matter of Baby Boy. C.*, 84 N.Y.2d 91, 102, n). Here, petitioner for almost eight years not only represented that respondent was the father of her child but also created an opportunity for and effectively encouraged development of the parent-child relationship between respondent and the child. Additionally, she had the opportunity in both the prior custody proceedings and in the divorce action to allege and prove that respondent was not the biological father of the child and she failed to do so. Respondent, in enthusiastically maintaining custody of the child, can be said to have relied upon petitioner's representation that he was the father of the child and injustice will result if petitioner is permitted to compel respondent to undergo a blood-grouping test and definitively establish that the only father the child has known throughout her entire life is not in fact her father. Accordingly, we conclude that Family Court correctly applied the doctrine of equitable estoppel against petitioner. In our view, any other determination would not have served the child's best interest (see, *Glenn T. v. Donna U.*, 226 A.D.2d 803; *Mancinelli v. Mancinelli*, 203 A.D.2d 634, 635). Based upon the foregoing analysis we also conclude that Family Court's dismissal of petitioner's paternity proceeding was proper."

Another interesting paternity and estoppel matter was *Matter of James T.H. v. Danielle M. K-R.*, 48 A.D. 3d 683, 850 N.Y.S.2d 919. In *James T.H.*, the Appellate Division Second Department held "Contrary to the Family Court's determination, a prior acknowledgment of paternity made in accordance with Family Court Act Section 516-a does not serve as an insuperable bar to a claim of paternity by one who is a stranger to the acknowledgment (see *Matter of Tyrone G. v.*

signatory of the acknowledgment dies prior to the commencement of the paternity proceeding (cf. Family Court Act Section 516-a [b] [ii.] [where signatory of acknowledgment dies, a proceeding to challenge the acknowledgment may still be commenced "by any of the persons authorized by Family Act art 5) to commence a paternity proceeding"] [added L 2007, ch 462 Section J, eff Oct 30, 2007]). Thus, it was error for the Family Court to dismiss the petition summarily for lack of standing. Accordingly, we reinstate the petition and remit the matter to the Family Court, Nassau County, for a hearing."

In *Melissa S. v. Frederick T.*, 8 A.D.3d 738, 777 N.Y.S.2d 744, the Appellate Division Third Department held "Respondent was collaterally estopped from contesting paternity. A finding of paternity, while perhaps not expressly made, was necessary before the courts could have made prior orders of support, as only a parent may be ordered to support a child (see Domestic Relations Law Section 240; Family Court Act Section 413; *Jeanne M. v. Richard G.*, 96 A.D.2d 549, 550, 465 N.Y.S.2d 60 [1983], appeals dismissed 60 N.Y.2d 858, 458 N.E.2d 383, 470 N.Y.S.2d 142 [1983], 61 N.Y.2d 637, 459 N.E.2d 1288, 471 N.Y.S.2d 851 [1983]; *Matter of Sandra I. v. Harold I.*, 54 A.D.2d 1040, 1042, 388 N.Y.S.2d 376 [1976]; see also *Matter of Nacey v. Nacey*, 116 A.D.2d 933, 934, 498 N.Y.S.2d 231 [1986]). Here, courts issued three or four prior decrees or orders of support regarding this child and these parties. The Support Magistrate noted that on a prior support petition, respondent raised a paternity defense which he withdrew when informed of the cost for genetic testing. By withdrawing his defense at that time, respondent relinquished his full and fair opportunity to litigate that matter, which was necessarily decided and which he now contests. Thus, he is collaterally estopped from raising paternity as a defense at this point (see *Matter of Sandra I. v. Harold I.*, supra at 1041). Although the estoppel issue should have been resolved prior to genetic testing being ordered, the fact that such testing occurred did not bar the court from deciding the estoppel issue thereafter (see *Matter of Richard W. v. Roberta Y.*, 240 A.D.2d 812, 814, 658 N.Y.S.2d 506 [1997], denied 90 N.Y.2d 809, 686 N.E.2d 1366 Iv, 664 N.Y.S.2d 271 [1997])."

The Bronx County Family Court addressed the issue of mistake of fact, fraud and duress in a 2020 Paternity matter in the case of *Matter of C.R. v. Y.P.*, 67 Misc.3d 1221 (A), 127 N.Y.S.3d 702. Here, the Bronx County Family Court stated "Courts have declined to find material mistake of fact in cases where

time period and signed the acknowledgment anyway. It is clear from the test Mr. E knew at the time he signed the acknowledgment of paternity that I have been the father. All three testified that there were conversational relations with Mr. R around the time I conceived and there was an agreement a DNA test would be taken after the child was born. Ms. P testified that when pregnant, Mr. R texted Mr. E to that there was a possibility that of them could be the father. Ms. P testified that she told Mr. E that he had to sign the acknowledgment "I feel" the child was his. Mr. R testified that he messaged Mr. E, prior to the child's birth, informing him that the baby could be either of theirs. Moreover, Mr. E testified during the time of Ms. P's pregnancy, and agreed to have a DNA test. I learned from Ms. P that she was involved with another man during the time period. However, Mr. E still signed the acknowledgment of paternity believing the odds were significantly in favor of R to be the father. With the knowledge it could have been another man signing the acknowledgment and choosing to do so, there is not fraud or material mistake of fact. See *Miskiewicz v. Griffin*, 41 A.D.3d 180 (2nd Dept. 2007); *v. Karen J.O.*, 126 A.D.3d 445, 51 (1st Dept. 2015); *Matter of Andrejela N.S.*, 165 A.D.3d 658, 85 N (2nd Dept. 2018). In 2015, the parties did not pursue the petitions filed to vacate the acknowledgment of paternity at that time, pursuant to Family Court Act Section 516-a(b)(i), the acknowledgment of paternity could have been vacated if there was a need to prove fraud, duress, or material mistake of fact." ❌



**John E. Raimondi, J**

Support Magistrate, Suffolk County Fair

John was previously employed with County Legal Aid Society and was a partner in Raimondi & Raimondi, P.C. He received his degree from John Carroll University, Juris Doctor from Creighton University School of Law with Summa Cum Laude from Touro Law School and is an Officer at the Suffolk Academy of Law.



Fifi N., 189 A.D.2d 8, 14, 594 N.Y.S.2d 224 the signatory knew that the mother had an- other sexual partner during the relevant [1993], particularly where, as here, the male other sexual partner during the relevant

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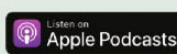
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## SPECIAL SECTION: FAMILY AND MATRIMONIAL

# Orders of Protection in Custody Pursuant to Article Six of the Family Court Act

By George J. Pammer, Esq.

**A**rarely used section of the Family Court Act ("FCA") provides for an Order of Protection in custody and visitation matters without having to file a separate Article 8 family offense petition. Article 6 of the Family Court Act is titled —Permanent Termination of Parental Rights, Adoption, Guardianship, and Custody. This can become a useful tool to parents and practitioners alike while preventing having to file multiple applications before a court.

The FCA §§655 and 656 are the sections that permit a court to issue orders of protection in connection with or upon the filing of a petition or counter-claim petition for custody and/or visitation. Adoption as being contained within the title of Article 6, renders it appurtenant to Family Court Act §§655 and 656. This would further extend to issues of Post Adoption Contact Agreements. These types of agreements, becoming more commonly used in neglect and abuse matters as opposed to Termination of Parental Rights, generally provide the biological parent the opportunity to bring a petition if the elements provided for in the agreement are not met, such as scheduled updates of the child and visitation; however, there is no provision for an adoptive parent to seek to terminate the agreement, no

§§655, 656. Courts have held in matters of a Post Adoption Agreement involving the right of a biological parent to visit with a child that Article 6 is applicable. *Kristian J.P. v. I.C.*, 87 A.D.3d 1337, 11 N.Y.S.2d 704, 706 (4th Dep. Div. 2011). In *Kristian J.P. v. Jeannette I.C.*, petitioners appealed from the Family Court's denial of their petitions to modify a visitation provision in the Post Adoption Agreement. The court held that two of their biological children who the respondents had adopted. *Id.* In *Kristian J.P. v. I.C.*, petitioners filed their petition pursuant to Domestic Relations Law § 112-b. However, this did not prevent them from seeking an Order of Protection in accordance with Family Court Act § 655. As the Court held,

Although the petitions were filed pursuant to Domestic Relations Law § 112-b, the nature of the proceeding is the determination of visitation rights. We, therefore, find that the court has the authority to issue an Order of Protection to enforce forth reasonable conditions of

(Continued on



matter the circumstance. The key element of using Family Court Act §§655 and 656, especially in Post Contact Adoption Agreements, is that there is no time limitation on the length of the Order of Protection, and such may remain in place until the child's eighteenth (18th) birthday.

Post Adoption Contact Agreements are a creature of the legislature and may not be amended by the judiciary. Therefore, an adoptive parent may have no recourse other than to seek an Order of Protection pursuant to FCA



**George J. Pammer,**

George J. Pammer is a partner at Montmer Attorneys at Law, located in Haverhill, Massachusetts, which primarily concentrates on Elder Law and Family Law matters. George is also a member of the SCBA student committee and a volunteer for the Veteran's Pro Bono Clinic. He represents clients with pro bono representation in matrimonial and family court matters.

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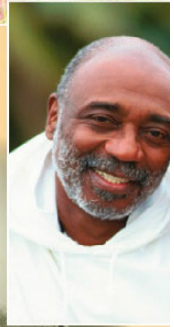
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## SPECIAL SECTION: FAMILY AND MATRIMONIAL

# Text Message Admissibility

by Harry Tilis, Esq.

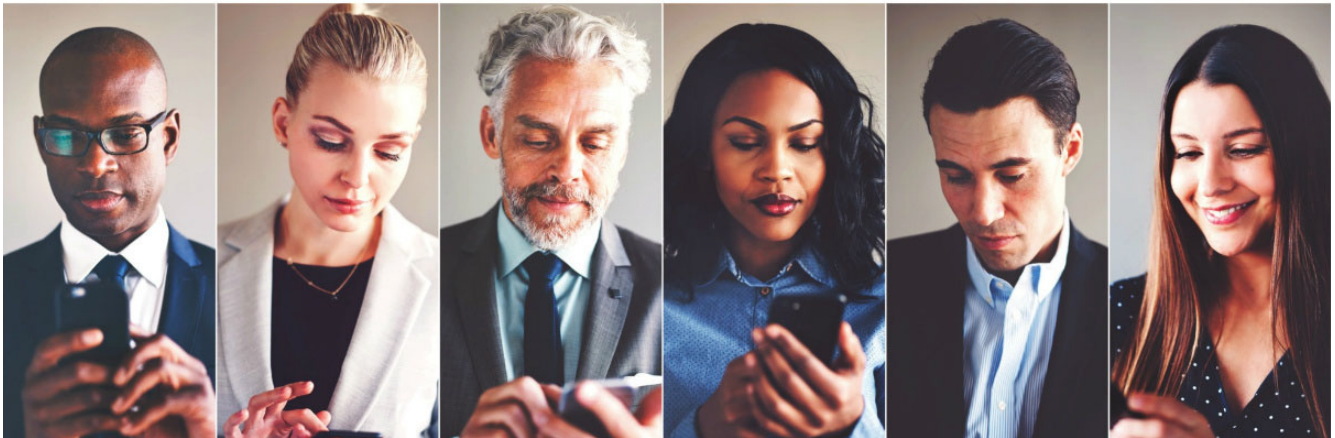
**A**ncient and recent developments in technology make admitting those messages into evidence a new challenge. Apple now allows post-sending deletion and editing of texts. In court, a party offers the message screen printed from one of the parent's phones.

Price and its progeny about social media images require two elements for admissibility: (1) true copy from the computer--"Does this exhibit accurately portray what you saw

relevant times, text messages to the victim were sent from that number. Often in family law cases, the association between the sending telephone number and the other parent is sought to be established by testimony like, "I was part of the conversation; the screenshot accurately portrays the conversation. The other phone number is that of the co-parent. I and our child regularly communicate with the co-parent at that number." The Second Department has indicated that the

were sent. By the same token client's phone should also be a prove the entire conversation.

The danger of the sending co-ing deleted the text message and fact-finder a phone without the "gun" text message is absent if the sending co-parent's cell phone company's business records that show the co-parent's phone was used to message at the relevant time A



on [describe source] on [date]?" and (2) accurate portrayal of something real. On these precedents, in 2022, the Court of Appeals

context of the communications may establish sufficient control over the sending telephone number to attribute the messages to the co-

ceiving co-parent's cell phone business records that show that phone received a sent message. I




precedent, in 2022 the Court of Appeals addressed admissibility of text messages. In Rodriguez, an adult-aged coach sent sexually explicit text messages to a 15-year-old victim whose 16-year-old boyfriend took screenshots. The victim later deleted the messages. The boyfriend testified that the screenshots accurately portrayed what was on the victim's phone (element 1). Relying on cellular phone company records, the prosecutor proved that the sending phone number and the victim's cell number had texted back and forth over 200 times. The victim, "a participant in and witness to the conversations with defendant" testified that the screenshots accurately portrayed what the victim's phone received (element 2).

Unlike a voice-audible conversation where the conversation's participant identifies the other party (or more) to the conversation, in text cases, proof of the authenticity of the sent message comes from linking the phone number to the purported sender. In Rodriguez, the cell company records established that the telephone number was associated with defendant AND that at the

number to attribute the messages to the co-parent. In preparing stipulations or orders, counsel strengthens the control element by requiring the parents to use specific cell phone numbers to communicate with one another and includes an agreement that anything sent from the relevant number is admissible into evidence with a provision allowing a change by paper, not electronic, record. In essence, this term renders each of the co-parents bound by messages sent from the co-parent's number.

Rodriguez dismissed defendant's best evidence argument, which requires an original writing to be produced when its contents are disputed, probably because the original was missing. One missing original circumstance that excuses best evidence compliance is when the sending co-parent has control over the original (obvious) and "fails to produce it by pleadings or otherwise that the original will be a subject of proof." Counsel enhances the likelihood of admissibility by expressly setting forth the key text messages in the pleading AND by notifying the co-parent to produce the phone from which the messages

phone received a sent message. It does only one side rely on text messages; these records exist; also co-parent may save cost and time by stipulate text messages.

Anticipating evidentiary issues, the collective time and experience understanding that screenshots are available allows counsel to draft petitions and to prepare more efficient trials and hearings by planning primary authentication when the co-reaching their agreement, when writing pleadings, and when they are going for trial. 

### Harry Tilis, Esq.

HARRY TILIS, ESQ. is a 1989 magna cum laude of the Cornell Law School who is principal law clerk to Hon. Paul M. Hen Court Judge who serves as an acting State Justice. The views set forth herein are the author and do not necessarily reflect of the courts or anyone else.

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**\$1.8 million** - Malpractice against doctor who prescribed the wrong pain medication to our client resulting in kidney failure.

**\$1.3 million** - For our client who was riding a motorcycle and suffered serious injuries caused by the at fault driver of a vehicle that crashed into them.

**\$1 million** - Our client sustained very serious injuries while riding as a passenger in an automobile where the driver was at fault for the accident.

## MASS TORT REPORT

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## SPECIAL SECTION: FAMILY AND MATRIMONIAL

# The Road to Child Support Determinations in Shared Custody Cases is Paved with Good Intention

by Louis Sternberg, Esq.

**F**or better or worse, shared custody arrangements are growing more common. While such custodial arrangements, wherein the children spend 50% of their time with each parent, may be in the best interests of the children, subsequently fleshing out the support aspect of the case can be maddening and recent case law has done nothing to simplify matters.

Twenty-five years ago, in *Bast v. Rossoff* (91 N.Y.2d 723 [1998]) the Court of Appeals was confronted with the issue of determining parental entitlement to child support in shared custody arrangements. The Court held that "[s]hared custody arrangements do

Since *Bast*, the courts have continued to grapple with the best way to fashion rules that are both equitable and allow for a consistent, predictable application in shared custody situations. In this regard, it has been held that the parent with the greater income shall be deemed the non-custodial parent for purposes of calculating child support when the parties enjoy a truly equal shared custody arrangement. *Cazar v. Browder*, 191 A.D.3d 837 (2d Dept. 2021); *Baraby v. Baraby*, 250 A.D.2d (3d Dept. 1998).

Most recently, in *Smisek v. Desantis*, the Nassau County Family Court was confronted with a support application filed by the

gested that "a flexible approach likely to promote the objective of the CSSA," specifically, "to increase child support awards so that children do not 'bear the economic burden of [parental] support (internal citations omitted)."

Rejection of a "strict counting of overnights" is likely to serve only to confuse and will undoubtedly yield inconsistent results. "What are the bounds of this 'flexible' approach," especially, when cases that a counting of "waking hours" is an inappropriate method of determining child support as custodial parent?



not alter the scope and methodology of the [Child Support Standards Act]." Id. at 732. Thus, in shared custody matters, the three-step formula of CSSA, as set forth in Cassano v. Cassano (85 N.Y.2d 649 [1995]), must be utilized (calculating combined parental income, multiplying that combined income by the applicable percentage and, where that combined income exceeds the statutory cap, calculating the appropriate amount of support in consideration of the Family Court Act § 413(1)(f) factors).

In doing so, the Bast Court explicitly rejected a proportional offset approach utilized in some states, wherein a non-custodial parent would be entitled to offset his support obligation based on the amount of time spent with the children.

The operative phrase from Bast is that "the reality of the situation governs" when identifying a custodial parent for support purposes in shared custodial arrangements. Thus, when determining parental entitlement to support, a trial court is not bound by custodial titles set forth in custody orders or agreements.

mother. The father moved to dismiss, alleging he had the children for a greater number of overnights than the mother and that he was previously awarded "residential custody" "solely for the purpose of determining the children's school district." The trial court applied the First Department rule set forth in Rubin v. Della Salla, 107 A.D.3d 60 (1st Dept. 2013), and held that the father could not be liable for child support because he was the custodial parent (for support purposes) by virtue of enjoying a greater number of overnights with the children. The trial court granted the motion to dismiss and the mother appealed.

On appeal, the Second Department explicitly rejected the argument that a "strict counting of custodial overnights" is dispositive in determining parental entitlement to child support. *Smisek v. Desantis*, 209 A.O. 3d 142, 149 (2d Dept. 2022). The Court acknowledged that "a strict counting of overnights might have the advantage of ease of application," but opined that "such a method does not always reflect the reality of the situation." Id. at 150. The Court sug-

gested that creative lawyering and expedition will now be required in circuits that would have previously given actively simple and clear-cut clients on the likelihood of obtaining support, being liable for support, exponentially more difficult now with no guidance as to precisely how to meet the amorphous standard of "the real situation." ❌



**Louis Sternberg, Esq.**

Louis L. Sternberg specializes in divorce law. He is a member of the New York State Bar Association, the Suffolk County Bar Association, the Nassau County Bar Association.

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By: Michael A. Markowitz, Esq.

The Executive Committee and House of Delegates of the New York State Bar Association (NYSBA) met in New York City for its annual meeting held on January 19th and 20th, 2023. The following are highlights from its meeting.

**CPLR Amendments**

The NYSBA Executive Committee approved a report by the Committee on Civil Practice Law and Rules (CPLR Committee) to propose changes to several laws and rules concerning civil judicial proceedings. The first proposed amendment is for the use of remote audio-visual technological means at a hearing or trial.

Presently, CPLR 4013 states, "Upon stipulation of the parties, the judge who is to preside at the trial of an issue may direct trial in whole or in part at a specified place other than the courthouse." The proposed amendment would add the following language:

(b) Trial or evidentiary hearing by audio-visual means. Upon stipulation of the court made direct that a trial or evidentiary held in whole or in part using remote audio-visual technological means.

(c) Use of audio-visual technological means over the party's objection. If a party withholds consent of remote audio-visual technological means of an issue, the court, upon the request of the court, may exercise discretion to direct that a jury trial in whole or in part, or a non-jury trial or evidentiary hearing in whole or in part, with the use of remote audio-visual technological means over the party's objection that:

(i) circumstances prevent all or part of the evidentiary hearing from being timely conducted, and the witness is unable to attend at the hearing because of difficulty related to signing



tance from the place of trial, age, sickness, infirmity, or imprisonment, and

(ii) either consent is withheld unreasonably by the party, or there would be undue prejudice or hardship to another party or witness.

(d) Conduct of trial or evidentiary hearing by remote audio-visual means:

(i) A trial or evidentiary hearing held in whole or in part by remote audio-visual technological means must be conducted so as to permit the participants to see and hear each other and to assure public access to the proceedings in compliance with section 4 of the Judiciary Law. The court may, in its discretion, exclude prospective witnesses who are

writing, object, or other material required to be produced.

Of note is proposed language concerning use of privileged communication to refresh witness recollection. Subdivision (b) will include the following language, "the privileged or protected nature of the material sought to be produced shall not bar production, but the court may consider any applicable privilege or protection as a factor in that determination."

Finally, the Executive Committee approved the CPLR Committee's recommendation to amend Uniform Rule 202.12 (Preliminary Conference) to require attorneys to (i) exchange information and confer

an election or approval by the Legislature.

The NYSBA House of Delegates recommended amending the State Constitution. Upon vacancy of Lieutenant-Governor, the Governor would have 60 days to nominate. The Legislature would then have 60 days to confirm the appointment. If the Governor fails to nominate within 60 days, the Lieutenant-Governor's vacancy is filled by the Legislature.

If the Legislature fails to vote within 60 days, the Governor's nomination of the Lieutenant-Governor. If the Governor's nomination is confirmed, the Governor has 30 days to submit a new



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tion, exclude prospective witnesses who are not parties from the courtroom and from access to the proceedings by remote audio visual technological means.

(ii) An oath or affirmation may be administered to a witness using remote audio-visual technological means by a person authorized by subdivision (a) of section 2309 of this act, and the oath or affirmation shall be deemed to be taken, and the testimony shall be deemed to be given, in the place where the action is pending.

(iii) the chief administrator of the courts may adopt rules further regulating the conduct of the trial or evidentiary hearing by remote audio-visual technological means. The court may provide additional directions in a particular trial consistent with the rules of the chief administrator.

The CPLR committee explained that the proposed amendment is an exception to the general rule that trials be held in person. The proposed CPLR revision contemplates that whenever the court uses its newfound authority to direct a remote proceeding over a party's objection, it must set forth its reasons on the record or in a written order, a provision included to facilitate an informed appellate review.

The Executive Committee also approved the CPLR Committee's recommendation for a new law concerning when writings, objects, or other materials used to refresh the witness' recollection while testifying or before testifying must be produced to an adverse party.

The proposed statute (CPLR 4551) will have three subsections. Subdivision (a) will restate current New York law that an adverse party is entitled to inspect the writing, object, or other material used to refresh the witnesses' recollection while testifying. Subsection (b) will set forth the factors that the court shall consider in determining whether an adverse party is entitled to inspect the writing, object, or other materials used to refresh the witnesses' recollection before the witness testifies. Subdivision (c) will set forth the terms of the production and use of the

neys to (i) exchange information and confer with each other about organizing the case before the preliminary conference with the Court, (ii) encouraging early and active judicial intervention to assist litigants to focus on the principal factual and legal issues in dispute, and (iii) to consider alternative dispute resolution.

The proposed rule will have language requiring use of email, necessitating attorneys to meet and confer before the conference, directing a virtual conference if the attorneys are unable to sign and return a preliminary conference stipulation, and allowing any party to request additional conferences as are deemed appropriate.

### LGBTQ+ Bench Cards

The NYSBA House of Delegates approved a resolution by the LGBTQ+ Committee to approve New York's Unified Court System's Bench Card to help judges use LGBTQ+ inclusive language and pronouns. The bench card explains how a judge is to use gender neutral pronouns, defines terms such as LGBTQ+ and Transgender, gives examples of inclusive language to use in court and words to avoid such as hermaphrodite, transvestite, and tranny.

### Constitutional Amendments

In April 2022, the NYSBA committee on the New York State Constitution reviewed and made recommendations concerning the procedure by which a lieutenant governor could be appointed or otherwise selected upon a vacancy of the position.

A constitutional issue arose when Kathy Hochul became Governor upon Andrew Cuomo's resignation. To fill the vacancy, Governor Hochul unilaterally appointed Brian Benjamin as the new Lieutenant-Governor. Upon being indicted for a crime, Brian Benjamin resigned eight months after his appointment. Governor Hochul then appointed Anthony Delgado who became the Lieutenant-Governor. From the fiasco, the NYSBA recognized that a lieutenant-governor may ascend to the governorship without

have 30 days to submit a new bill. It must be approved by the Legislature.

### Racism, Social Equity, and the Law

The NYSBA House of Delegates approved an extensive series of recommendations submitted by the Task Force on Racism, Social Equity, and the Law. Recommendations included changing the rules for jury selection that would increase the number of people of color, having the Department of Health require multifamily buildings to annually test drinking water for lead, and the NYS Department of State to increase job and training opportunities for diverse workers based on the racial composition of each neighborhood.

### Future Reports and Recommendations

The House of Delegates received information concerning various task force reports and recommendations. Reports and information include recommendations given by the task force on Health and Trauma Informed Response and the task force on Emergency Management and Currency.

The next House of Delegates is scheduled for April 1, 2023 to be held in Albany, New York. 📍



**Michael A. Markowitz**

Michael A. Markowitz is a Vice President of the New York State Bar Association representing the 10th Judicial District covering Nassau and Suffolk Counties.

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MA

INFORMATION FROM COUNTY CLERK VINCENT P...



County Clerk's Office





Vincent Puleo

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**A**s I embark on the first months as your newly elected Suffolk County Clerk, I welcome the opportunity to work hand in hand with the Suffolk County Bar Association and the attorneys that interact with the County Clerk's Office.

Having been a small business owner for over 30 years and most recently serving as the Smithtown Town Clerk for the last 16 years, I'm keenly aware of how government organizations need to operate in an efficient and cost-effective manner to best serve the residents and

stakeholders in Suffolk County. I have served as Chamber of Commerce president, an elected fire commissioner in the Nesconset Fire district for 30 years, and continue to be active in numerous businesses, social and community-based organizations that will assist me in understanding the needs of the residents as well as the unique users of the County Clerk's Office.

My goals are to build upon those programs that have been successful over the years and use my unique background and experience to strengthen those that

require improvement. I am fortunate to have a hardworking staff that will continue to provide outstanding service. I will continue to work alongside me as well as upon many of the functions of the office through the use of technology and municipal collaboration.

I look forward to working with the members of the Suffolk County Bar Association and truly appreciate the input I've received. My staff will be working diligently to make the County Clerk's Office the best in the State. 🇺🇸

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# CROSSWORDS

## Domestic Relations Law

by Cheryl F. Mintz



### Cheryl F. Mintz, Esq.

Cheryl F. Mintz, Esq. is the managing in the general practice law firm of R & Mintz, LLP located in Hauppau York where she concentrates in the commercial litigation, real estate trar and litigation, business transactions . eral litigation.



**Solution on page 26**

### Across

- [1] The legal union of a couple as spouses.  
 [4] Tribunal in New York State that has the jurisdiction to hear cases involving child support, custody, visitation, spousal support and family offenses.  
 [5] Payment for housing, food, clothing, and related living expenses.  
 [8] The responsibility for the child's care and how the child is brought up to one or both of the child's parents or to someone else.  
 [10] An attorney appointed by the court to represent a child in contested custody matters.  
 [12] The legal ending of the marriage between a husband and wife so that each is free to marry again.  
 [14] The legal process where one or two people become the parent of a child and take the child to be their own.  
 [15] A person or an agency to whom the court gives authority to take responsibility for the care of a child.  
 [16] Support paid by one party to the marriage for the support of the other party to the marriage pursuant to a final Judgment of Divorce.  
 [17] The right of a non-custodial parent to be with a child.

### Down

- [2] A court declaration that states that a marriage was never legally valid. an annulment, the parties are free to remarry.  
 [3] Money paid by one parent to another for a child's expenses after separ and/or divorce.  
 [6] Property considered by the courts to belong only to one spouse or the  
 [7] The performance of a formal marriage ceremony before witnesses.  
 [9] A person acting on behalf of another or a substitute.  
 [11] One spouse's absence from the marital household prior to divorce.  
 [13] When one party has left the other for a continuous period of one year more, without the party's consent, and without justification (good cause).



## The Practice Page

# STANDING: WHEN IS THE DEFENSE WAIVED?

By Hon. Mark C. Dillon

**C**PLR 3211(a) lists a number of defenses that are waived unless the defending party raises them in either a responsive pleading or in a motion to dismiss (CPLR 3211[e]). Those defenses are arbitration and award, lack of capacity, a prior action pending between the same parties for the same cause of action, collateral estoppel, res judicata, bankruptcy, infancy or other disability, payment, release, the statute of limitations, the statute of frauds, an improper counterclaim, and lack of personal jurisdiction. A close reading of the statute reveals that the “lack of standing” is not specifically mentioned in CPLR 3211, nor for that matter is standing included in the illustrative list of affirmative defenses listed in CPLR 3218(b).

Must standing be raised early? Is the defense waived if not raised? The answer, as is often seen in the law, is that “it depends.” As a general rule, a plaintiff’s lack of standing must be raised as an affirmative defense in an answer or in a pre-answer motion to dismiss, and if not, is waived (*Fossella v Dinkins*, 66 NY2d 162, 167 [1985]; *Castaldi v Syosett Central School Dist.*, 203 AD3d 690 [2nd Dep’t. 2022]). The same is true when a plaintiff replies to a counterclaim (*CUCS HDFC v Aymes*, 191 AD3d 522 [1st Dep’t. 2021]). This is true even though CPLR 3211 and 3018 make no actual reference to standing. Standing, which is not mentioned as being statutorily waived, and “capacity,” which is mentioned, are treated by the case law as “twins” (*Nicke v Schwartzapfel Partners, P.C.*, 148 AD3d 1168, 1174 [2nd Dep’t. 2017] [citing *Siegel*, N.Y. Prac. sec. 136 [5th ed.]]. Capacity, of course, refers to the ability of a party to bring an action, whereas standing regards the party’s right to do so.

Nevertheless, the two similar but distinct concepts are treated the same by case law for purposes of waiver. Practitioners should therefore include the defense in pre-answer motions to dismiss, or assert it as an affirmative defense in responsive pleadings, to preserve the issue.

While the foregoing is a general rule, there are a couple of exceptions which break it. One applies to actions involving residential mortgage foreclosures. RPAPL 1302-a provides that notwithstanding any contrary provisions of CPLR 3211(e), an objection or defense based upon the lack of standing is not waived and may be raised at any time until the foreclosure sale, and after if the judgment and sale is rendered on default. The statute applies by its terms only to foreclosure actions involving “home loans” as defined in RPAPL 1304(6)(a), but not to other foreclosure actions.

Home loans are defined as those involving natural persons in residential dwellings and condominiums within New York, occupied or intended to be occupied as a personal residence, including reverse mortgages. By statutory construction, the defense survives even if the defendant makes an unsuccessful pre-answer dismissal motion



waiver of standing depends on whether the action is a mortgage foreclosure within the scope of RPAPL 1302-a (or is any other action subject to CPLR 3211(e) (waived)

The second exception, for attorneys caught in the bin not raised a waivable defense, is to seek to correct the error under CPLR 3025(b) to amend the responsive pleading. While such motions are to be freely given, they may be denied in the court’s discretion if the “late” assertion of an affirmative defense is palpably insufficient or patently without merit, or would cause undue prejudice or surprise to the party (*Petry v Gillon*, 199 AD3d 1277 [3rd Dep’t. 2022]; *Bright Light Home Care Services, Inc. v Jeffries-El*, 199 AD3d 1277 [2nd Dep’t. 2021]). As a general matter, the earlier any such amendment is made to amend the pleading, the better, as an early amendment may be less likely to cause prejudice to another party.

The bottom line for standing waivers is to treat the issue as if it were a Red Sea, with residential mortgage foreclosures on one side governed by the unique provisions of RPAPL 1302-a and all other litigation on the other side of the sea governed by the general procedural rules of CPLR 3211(e) and its interpretative case law.



*Hon. Mark C. Dillon*



the defendant makes an unsuccessful pre-answer dismissal motion on other grounds, because it is "notwithstanding" the provisions of CPLR 3211(e). The statute became effective on December 23, 2019 (L.2019, ch. 739, sec. 1), meaning that from then forward, the


Mark C. Dillon is a Justice of the Appellate Division, 2nd Dept., an Professor of New York Practice at Fordham Law School, and a cont author of CPLR Practice Commentaries in McKinney's.

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**(Orders of Protection...** continued from page 15)

to be observed for a specific time by any petitioner" Family Court Act § 656. Inasmuch as the court's or "plainly state the date that [the stay-away provision] expires" (Ct. Act § 154-c[1] ), we modify the order by directing that the stay-away provision is in effect until the 18th birthday of the youngest subject child (see generally Matter of Thomas 51 A.D.3d 1064, 1068-1069, 857 N.Y.S.2d 323; Matter Brown, 298 A.D.2d 656, 657, 748 N.Y.S.2d 820). Id.

Furthermore, a full and fair hearing is not needed where the court determines that it is not in the child's best interest. As in Matter of In re Adoption of Sapphire W., held "The court's determination that it is not in the best interests of the child to remove the child from the petitioner is entitled to great deference and, if it is supported by a sound and substantial basis in the facts, the court will not disturb it." Matter of In re Adoption of Sapphire W., 1585 (4th Dep't 2014).

In addition to the use of an Order of Protection pursuant to Family Court Act § 654, the New York Legislature is seeking to create Family Court Act § 654 which has come to be known as Kyra's Law (S7425A; Assembly bill A5398A). This bill, if passed, will amend the Domestic Relations Law ("DRL"), including, in part, Article 15, § 70 of the DRL. It appears that the new law will not necessarily require a family offense petition to be filed, but rather, where there are allegations of child abuse or domestic violence or visitation petitions, a court, possibly sua sponte, could issue a "Temporary Emergency Order" on the child's behalf pursuant to amended sections of the DRL or FCA § 654.

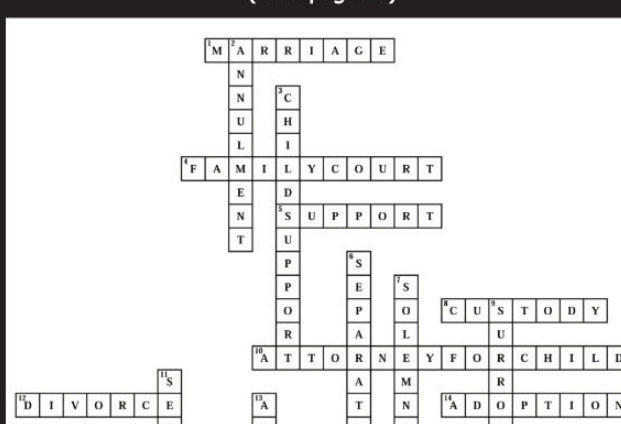
The bill provides for a temporary emergency order in visitation matters where it is alleged that the other party "has committed, threatened to commit or is likely to commit" an act of abuse or domestic violence. Although no specific details have been provided to date, it is assumed the temporary emergency order would function similar to an order of protection. The court must conduct an "assessment of the best interests of the child," which will include, but are not limited to: allegations of domestic violence, child abuse, child sexual abuse or incidents involving harm to the child, prior reports of violence, access to the child, valid or prior orders of protection, threats to harm or kill the child, etc.

Other elements for an assessment are to be developed by the Office of Domestic Violence and shall include "a part of the assessment about future assaults from the other party." Moreover, the bill provides that a final order of sole or joint custody shall not be issued under the temporary emergency order and the temporary emergency order shall terminate under a final order of the court.

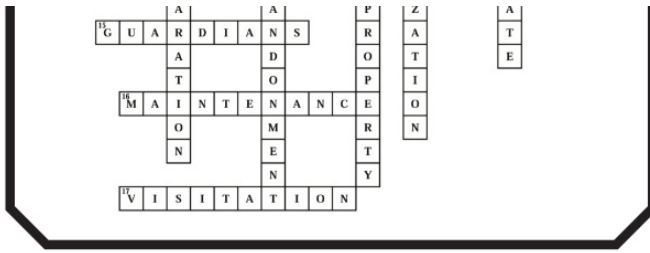
The bill would further require that if a party is found to be an offending party, then they shall be responsible for any and all costs and expert fees (including forensics). The opportunity to appeal with the Appellate Division is limited to five (5) days from the receipt of the order. Buried further down in the bill, an important amendment to DRL § 240-e would include a definition of Parental Alienation as claims that become estranged from a parent or legal guardian...

## CROSSWORDS SOLUTION


(from page 24)







become estranged from a parent or legal guardian as psychological manipulation by the other parent or leg Although this falls far short of defining or codifying Par ation Syndrome, it is a major step forward for the New lature.

One thing can be assured, with passage in the New 1 ture, it is very possible this may be the law of the land sh will drastically alter the landscape and litigation of cust itation matters. 

## REAL ESTATE DEVELOPMENT

By Jason A. Stern, Esq.

### RECENT DECISIONS HIGHLIGHT CHALLENGES UNDER STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA")

In 1975, New York State adopted the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law ("SEQRA"), for the purpose of incorporating environmental considerations into the early stages of government agency review for most real estate-related projects. There has been a great deal of litigation over the years involving the substantive and procedural SEQRA requirements and one of the most common challenges involves, whether a given project requires the preparation of an environmental impact statement ("EIS") -- a comprehensive, but often time-consuming review process. To determine whether an EIS is required, a project goes through several preliminary levels of SEQRA review, including "classification" of the project as either "Type I" (adverse impacts likely), "Unlisted" (adverse impacts possible), or "Type II" (no adverse impacts; and no additional SEQRA review required). If a Type I or Unlisted project is determined to present no significant adverse environmental impacts, a "negative declaration" will be issued and no additional SEQRA review is required. However, if a Type I or Unlisted project is found to present such potentially significant adverse impacts, a "positive declaration" will be issued and an EIS will be required. The following recent SEQRA decisions highlight some of the common challenges within this framework and the nature of the "injuries" covered by SEQRA:

#### IMPROPER "CLASSIFICATION" NOT FATAL TO SEQRA REVIEW

In *Williamsville Residents v. Village of*

Supreme Court, Erie County, denied and dismissed the proceeding; and on appeal, the Appellate Division, Fourth Department affirmed. The Appellate Division held that although "strict compliance" with SEQRA's procedural mechanisms is generally required, a "misclassification" of a Type I action "does not always lead to the annulment of a negative declaration" if the agency "conducts the equivalent" of a Type I review under SEQRA, despite the "misclassification." In this case, the Appellate Division found the Planning Board had conducted a comprehensive environmental review of the Project sufficient to justify a negative declaration "even upon" a Type I classification and evaluation, and, therefore, SEQRA was satisfied.

#### PURE "ECONOMIC INJURY" BEYOND SCOPE OF SEQRA PROTECTIONS

In *1160 Mamaroneck Avenue Corp. v. City of White Plains*, 2022 WL 17480752 (2d Dep't 2022), petitioner ("Petitioner") was the owner/operator of a garden nursery that processes, grinds, and composts raw materials such as topsoil, wood chips, and mulch, which was a nonconforming use within a residential district in the City of White Plains ("City"). The City subsequently determined that such processing activities had harmful impacts on the residential district and the City's Common Council ("Common Council") adopted an amendment to the City's zoning ordinance banning such processing activities ("Amendment") and approved a SEQRA "negative declaration" in connection with same. Petitioner commenced a hybrid Article 78 proceeding in the Supreme Court, Westchester County, essentially challengin

g accordingly, the Appellate Division proceeding was properly dismissed.

#### SEQRA CLAIM REQUIRES INTINCT FROM "PUBLIC AT LARGE"

In *Beckerman v. Liguori*, 209 F (2d Dep't 2022), petitioner ("Petitioner") resident of the Village of Muttorage", commenced an Article 78 in the Supreme Court, Nass against the Village Board of ("Board") challenging a resolution approving the transfer of V that had been held for "acquisit land" into a general capital ir fund. The essence of Petitioner's was that the Village failed to c SEQRA in adopting the Resol Supreme Court (Hon. Diccia T. wan, J.) denied and dismissed th ing; and on appeal, the Appella Second Department affirmed. Th Division held that to establish sta SEQRA, a petitioner must show would suffer injury "different fro fered by the public at large" an injury falls "within the zone o sought to be protected by SEQ case, the Appellate Division four tioner failed to demonstrate th lution caused any injury to he different from that suffered by th large." The Appellate Division als tioner's concerns were "solely e nature." Accordingly, the Petiti standing and the Appellate Div the proceeding was properly dis



Williamsville, 208 A.D.3d 169 (4th Dep't 2022), petitioner civic association commenced an Article 78 proceeding against the Village of Williamsville (Erie County) Planning and Architectural Review Board ("Planning Board") challenging the Planning Board's site plan approval of a planned expansion of a 57-unit residential building to an 87-unit building ("Project"). The essence of the challenge was that the Planning Board violated SEQRA by improperly classifying the Project as "Unlisted" instead of "Type I," and, therefore, the Planning Board's "negative declaration" and associated site plan approval should be annulled and vacated. The

the Amendment as violative of SEQRA because of the economic injury the Amendment would cause Petitioner. The Supreme Court denied and dismissed the proceeding; and on appeal, the Appellate Division, Second Department affirmed. The Appellate Division held that Petitioner lacked standing under SEQRA because SEQRA challenges require a showing of injury "within the zone of interests sought to be protected" by SEQRA and thus, a party must demonstrate an "environmental" injury that is not "solely economic in nature." In this case, the essence of Petitioner's challenge is it will suffer only "economic harm" from the Amendment. Ac-



**Jason A. Stern, Esq.**

Partner and Director of Litigation, Weber La

Jason A. Stern is a partner and Director at Weber Law Group, LLP, which focuses on Real Estate, Land Use, Zoning, Government, Environmental Law and Complex Litigation. Stern can be reached at 631-535-1234 or [jsstern@weberlawgroup.com](mailto:jsstern@weberlawgroup.com)

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## DEAN'S LIST

By Jarrett M. Behar, Esq.

### How Do You Want to Learn

**A**t the Suffolk Academy of Law, we pride ourselves on the variety of our programs. Its not just the legal subject matters that come in different varieties, but also the method of presentation. Some of our most creative programs are also some of our most successful ones. Our recent Ethics Game Night – a long running tradition at SAL – is a perfect example of this (and I'm not just saying that because my team won). Set up by our wonderful Ethics Committee as a Jeopardy! format game, it truly was a fun and informative program with a distinguished panel of judges and leading ethics practitioners. Many people prefer the interactive nature of programs like this, which also provide the opportunity to network and catch up with other members of the SCBA. These types of programs, which also include Ethics Night at the Movies in the summer, are perfect for learners that aren't shy and love to laugh while learning.

We also have programs that have interesting historical perspectives. In December 2022, we hosted a program – The Saga of Curt Flood – that focused on St. Louis Cardinals outfielder Curt Flood and his legal struggle to fight the reserve system used by Major League Baseball teams prior to the 1970s. It tracked his related court case and the resulting changes in baseball contracts. This ex-

perience is something that we hope you will find interesting. If you like your CLE steeped in history, these are the programs for you.

Moving forward, the Suffolk Academy of Law is always looking for new ideas and methods of presenting legal programs. Practical programs and demonstrations of attorney skills presented in the past and are always under consideration for future programming, live training such as our mediation and various court-appointed training programs are more examples of SAL's diverse course offerings. At our next meeting of officers and volunteers, we will be presenting a program that was based on improvisational skills in a small-courthouse setting. This program was even proposed and will likely be implemented.

Ultimately, the Suffolk Academy of Law is committed to not just providing quality legal education, but also to providing the finest legal education available, but also to providing that information in a creative, fun and engaging manner. We attempt to provide legal education courses that you will look forward to attending. As you know, our officers and volunteers are always looking for new creative types of programming and there is anything that you can bring to the table. If you are a member of the Suffolk Academy of Law, please reach out to me or Cynthia Doer



when registering, to add a contribution to your tuition payment.

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- Materials for all Academy programs will be emailed to you usually one day prior to the program. Register on-line at [www.scba.org](http://www.scba.org). To receive the member discount please log on the website with your member number.

**PLEASE CHECK THE CALENDAR FOR INFORMATION ABOUT WEBINARS OR LIVE PROGRAMS**

cellent program – presented by Rudy Carmenaty, Esq., the Deputy Commissioner of the Nassau County Department of Social Services – is available on demand by clicking on the MCLE tab at [SCBA.org](http://SCBA.org). In addition, Mr. Carmenaty has agreed to present several other historical-based programs in the coming months, including: The Contract that Changed Baseball: Branch Rickey, Jackie Robinson, Brooklyn and America; A Supreme Stud in Scandal: The Rise and Fall of Abe Fortas; and The Curious Case of Dr. Sam Sheppard: The Perils of Prosecution by the Press.

ecutive Director. Better yet, cc monthly meetings on the first Friday of every month (general) and the second of every month (Curriculum Committee) around some innovative new programs with us. We hope to see you



**Jarrett M. B.**  
Partner, Certified  
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Effective March 11, 2020 through June 30, 2023, the New York State Board permits newly admitted attorneys to participate in Skills CLE by either individual (self-study) or group participation, in the following nontraditional formats, where questions are allowed during the program:

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# SUFFOLK ACADEMY OF LAW

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## 2023 CLE COURSES

**JUDICIAL DIVERSION PROGRAM  
WEDNESDAY, MARCH 1, 2023  
5:30 P.M. – 8:30 P.M.**

**HYBRID - IN PERSON AND  
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The Judicial Diversion Program (JDP) (CPL Article 216) takes place in courtrooms of the Suffolk County Court. JDP is a program for felony offenders who face non-violent charges, and who also abuse alcohol and/or drugs. Instead of jail or probation, JDP will help you enter and stay in a drug or alcohol treatment program. The JDP includes ongoing court appearances and supervision by the judge.

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**Rachel A. Camillery, Esq.**  
**Principal Law Clerk to the Honorable Philip Goglas**  
**Harold Bush, Resource Coordinator, Judicial Diversion Program**  
**Christine Larkin, Sr. Probation Officer**  
**Saam Jalayer, Esq., Senior Assistant District Attorney, Narcotics Bureau**  
**Susan Ambro, Esq., Staff Attorney, Suffolk County Legal Aid Society**

**ANNUAL MATRIMONIAL UPDATE**

**ADVANCED CYBERSECURITY  
PART 1 OF 2  
TUESDAY, MARCH 7, 2023  
5:30 P.M. – 8:00 P.M.**

**HYBRID – LIVE IN THE GREAT HALL  
AND VIRTUAL WEBINAR**

This program will discuss the how and why and case studies as to what was done to hack a system. We will talk about what you can do to protect your systems. A discussion will review an attorney's ethical obligations as it relates to client's confidentiality. Part II will cover what IT companies can do to help you secure your systems, including performing a cyber security site survey, how to address the results and what IT professionals and products are available and affordable. This will be both an informative and hands-on approach to help you uncover weaknesses in your systems. It will include an attorney's ethical obligations to vet various Cloud services as it relates to file storage and file sharing.

**Faculty:**

**Peter Keenan**  
**Chief Information Security Officer for Lazard**  
**Barry M. Smolowitz, Esq.**  
**SCBA Director of Technology**  
**Past Chair, Grievance Committee for the 10th Judicial District**

**ADVANCED CYBERSECURITY  
PART 2 OF 2  
THURSDAY, MARCH 16, 2023  
1:00 P.M. – 1:50 P.M.**

**VIRTUAL WEBINAR**

This session will cover what IT can do to help you secure your systems including performing a cyber security survey, how to address the results and what IT professionals and products are available and affordable. This will be both an informative and hands-on approach to help you uncover weaknesses in your systems. It will include an attorney's ethical obligations to vet various Cloud services as it relates to file storage and file sharing.

**Faculty:**

**Brian Vaccariello**  
**Principal Consultant, Avanti Consultant, Miller Pla**  
**Barry M. Smolowitz, Esq.**  
**SCBA Director of Technology**  
**Past Chair, Grievance Committee for the 10th Judicial District**

**MATRIMONIAL MONDAY, MARCH 13, 2023  
6:00 P.M. – 9:00 P.M.**  
**HYBRID - LIVE AND ZOOM W/ COUNSEL FEE MOTIONS AND CONTENT MOTIONS.**



**ANNUAL MATRIMONIAL UPDATE  
MONDAY, MARCH 6, 2023  
6:00 P.M. – 8:00 P.M.  
HYBRID - IN PERSON AND  
VIRTUAL WEBINAR**

The program will include an extensive review and update on many of the groundbreaking cases decided in the matrimonial parts since last year's matrimonial update. The summary of the new cases provided during the lecture will be an important addition to your legal research library.

**FACULTY: Stephen J. Gassman, Esq.** is the senior partner in the firm of **Gassman Baiamonte Gruner, P.C., Garden City, N.Y.** which limits its practice to matrimonial and family law.

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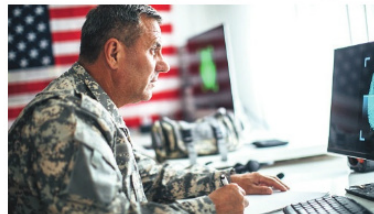
**the 10th Judicial District**

**THE SURVIVOR BENEFIT PLAN  
AND THE ROLE IN FAMILY LAW  
WEDNESDAY, MARCH 8, 2023  
1:00 P.M. – 1:50 P.M.  
VIRTUAL WEBINAR**

The Survivor Benefit Plan is an annuity for retired service members and dependents. This is a small area that can have a major impact on the financial future of the family. This plan is also expected to be known by attorneys such as making a deemed election not just in a divorcee decree but also through the Defense Finance Accounting Service (DFAS) with the Department of Defense.

**Faculty:**

**Chad H. Lennon, Esq.,**  
Senior Associate, Tully Rinckey, PLLC



**CONTEMPT MOTIONS:  
WHAT THE COURT WANTS**

Many times, a client will want other party for attorney fees. This discuss how to compose attorn tions and how to proceed at fe You will also learn about contem withdrawal motions and how to fline and online criticism.

**Faculty:**

**Hon. Cheryl A. Joseph, A.J.S.**  
Supervising Judge, Matrimo  
NYS Court of Claims Judge,  
Acting Justice of the Suprem  
**Jill Weinberg-Daly, Esq.,**  
Law Clerk, **Hon. Cheryl A. Jo**  
**Jeffrey S. Horn, Esq.**  
**Jennifer Rosenkrantz, Esq.**  
**Debra Rubin, Esq.,**  
**Rubin & Rosenblum, PLLC**



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# SUFFOLK ACADEMY OF LAW

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## 2023 CLE COURSES

**MATRIMONIAL MONDAYS  
MONDAY, MARCH 20, 2023**

**6:00 P.M. – 9:00 P.M.**

**LIVE ONLY**

**CHILD CUSTODY ALIENATION TRIAL**

New York law states that unless proven otherwise, it is best for the child/children to have a relationship with both parents. Unfortunately, this does not always happen. This CLE course will help you prepare for a custody trial beginning with preparation for the case, tools for an effective negotiation, strategies and practical examples for effective resolution or mediation of the case.

**Faculty:**

**Hon. Debra Poulos,**  
J.S.C., Supreme Court, Suffolk County  
**Hon. Michael A. Gajdos, Jr.,**  
J.S.C., Supreme Court, Suffolk County  
**Dr. Robert I. Goldman**  
**Kristi Gomez, Esq.**  
**Robert A. Cohen, Esq.,**  
**Tabat, Cohen, Blum, Yovino & Diesa, PC**  
**Theresa A. Mari, Esq..**

**SCHOOL LAW CONFERENCE  
FRIDAY, MARCH 24, 2023**

**SIGN-IN BEGINS: 8:00AM**

**PROGRAM BEGINS**

**PROMPTLY AT: 9:00AM**

**LOCATION: Touro Law Center,**

**225 Eastview Drive, Central Islip, NY**

**REGISTER AT: SCBA.ORG**

**(631) 234-5588**

2 credits in professional practice  
1 credit in diversity; 1 credit law  
practice management

**Communicating What Matters Now!**

**First Amendment Rights in School**

**Faculty: Sharon Berlin, John Gross,**  
**Christie Jacobson, Howard Miller**

**Who's Looking When You're Not:**

**Cybersecurity and Data Protection**

**Faculty: Alyson Matthews, Matthew**  
**Mehnert, Lindsay Townsend Crocker,**  
**Michael Vigliotta**

**Everybody Hurts: Mental Health –**

**Post COVID**

**Faculty: David Arntsen, Lisa Hutchin-**

**RETHINKING SUMMARY JUD  
MOTION PRACTICE  
TUESDAY, MARCH 21, 2023**

**1:00 P.M. – 1:50 P.M.**

**VIRTUAL WEBINAR**

This CLE will review the laws an erning summary judgment moti in light of recent amendments a checklists for optimizing each co our motion papers, opposing p replies.

**Faculty:**

**Christopher J. DelliCarpini, E**  
**Sullivan Papain Block McGra**  
**Coffinas & Cannavo, P.C.**

**LANDLORD-TENANT UPDATE  
TUESDAY, MARCH 28, 2023**

**6:00 P.M. – 9:00 P.M.**

**HYBRID - LIVE AND VIRTUA  
WEBINAR**

The Annual Landlord Tenant Upd This course will provide updated on the current state of Landlord T



**Law Office of Theresa A. Mari  
Karen D. McGuire, Esq.,  
McGuire Condon Mangan, P.C.  
Robert Montefusco, Esq.,  
Montefusco Pammer Attorneys At Law**

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**son, Cheryl Monticciolo  
R-E-S-P-E-C-T!: The Legal Rights of  
LGBTQ+ Students  
Faculty: Candace Gomez, Rebecca  
Sassouni, Lauren Schnitzer,  
Sophia Terrassi  
Ch-Ch-Ch-Ch- Changes!  
Special Education Update  
Faculty: Robert Cohen, Jack Feldman,  
Susan Gibson, Douglas Spencer  
Bridge over Troubled Water:  
Student Discipline and Investigations  
Faculty: Scott Limmer,  
Christopher Mestecky,  
Dennis O'Brien, Tyleana Venable**



You'll hear about recent case law discussion about the procedures for handling eviction proceedings, and help you develop when advising clients. The panel has more than 100 years of Tenant Law experience.

**Faculty:**  
**Hon. Stephen L. Ukeiley, Suffolk County District Court Acting County Court Judge (Guardianship Proceedings), Coordinating Judge for Landlord-Tenant Matters, Chair, Access to Justice Sub on Eviction Proceedings Patrick McCormick, Esq., SCBA First Vice Preside Campolo Middleton & McCor Warren M. Berger, Esq., P.C. and Marissa Luchs Kindler, E Nassau Suffolk Law Services**



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**MA**

# SUFFOLK ACADEMY OF LAW

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## Scholars Club

by Cynthia L. Doerler

In today's unpredictable economy, the attorney who is well-equipped to handle a variety of legal matters is in a better position to survive and prosper. Forward looking lawyers use continuing legal education to expand the scope of their practices, network with colleagues who may refer a client, and to augment their existing skills.

Through the Academy's Scholars Club program, SCBA members have an opportunity to participate in an unlimited amount of

would be wise to seek a further discount with the Academy's Scholars Club benefit. With a few exceptions i.e., programs held jointly with the Nassau Academy of Law and programs with a paid celebrity speaker, most programs fall under the Scholars Club program.

The first series of 2023 to be included in Scholars Club, will be the Matrimonial Monday series. Stephen Gassman kicks off the series with his Annual Matrimonial Update on

fee motions and how to proceed with motions, withdrawal motions and how to handle online and offline criticism. Mon 20th you will be treated to a **CUSTODY ALIENATION TRIAL LIVE** only program. This CLE will help you prepare for the case with preparation for the case with an effective negotiation, strategic examples for effective resolution.



continuing legal education programs at a substantial discount rate. Only SCBA members can purchase the Scholars Club and reap its benefits.

Though our current tuition rate, an average of \$30 per CLE credit for Association members, remains a bargain as compared with the fees charged by many other CLE providers, the practitioner wishing to attend a number of programs or program series

March 6th at 6 pm.

The program will include an extensive review and update on many of the groundbreaking cases decided in the matrimonial parts since last year's matrimonial update. The summary of the new cases provided during the lecture will be an important addition to your legal research library.

On Monday, March 13th our distinguished panel will discuss how to compose attorney-

diation of the case.

Cynthia L. Doerler is the Executor for the Suffolk Academy of Law, the educational arm of the Suffolk County Bar Association. The Academy hosts a year-round virtual and in person program in Hauppauge. For additional information on courses coming up, visit [www.scba.org](http://www.scba.org).

### Want to learn about upcoming programs?

If you're missing Academy programs, perhaps it's because you're not receiving our email blasts! The Academy has "gone green," and is no longer sending out flyers for our programs. Instead, you can find information on upcoming Academy programs by reading the Suffolk Lawyer, by looking at our Academy calendar at [scba.org](http://scba.org), or by receiving our email blasts. Blasts are usually sent daily and include links to view the electronic flyers and to register for our programs. If you're not receiving our email blasts, please email [cynthia@scba.org](mailto:cynthia@scba.org) and let us know you want to be added to our Academy email list.

### The Academy of Law is on Facebook, LinkedIn, Twitter and Instagram!

In addition to the Suffolk County Bar Association website you can find information about upcoming Academy programs and other information that may prove useful to your practice over to the Academy's social media. Connect with us!



## Suffolk Academy of Law Financial Aid Policy

The Suffolk Academy of Law, the educational arm of the Suffolk County Bar Association, is a non-profit 501 c 3 corporation chartered by the state of New York Board of Regents. The Academy is accredited by the Office of Court Administration to provide educational courses that satisfy Mandatory Continuing Legal Education requirements in New York. The Academy's standard policy is to make continuing legal education courses accessible to all who need them and toward that end maintains a reasonable tuition schedule that considers the financial exigencies of the surrounding legal community, accepts charge cards, provides interest-free extended payment plans, and grants full or partial tuition scholarships under appropriate circumstances. Every

attempt will be made to keep the names of the individual seeking hardship assistance and the information disclosed confidential. After completion of the Financial Aid application, only attorneys are eligible to receive a full scholarship. For those with annual incomes of \$50,000 or less the following schedule will be applied:

<b>Income up to \$35,000</b>	<b>75% discount</b>
<b>Income \$35,000 to \$50,000</b>	<b>50% discount</b>
<b>Income above \$50,000</b>	<b>no discount</b>

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# THERE'S A WHOLE NEW WAY TO OBTAIN YOUR CLE CERTIFICATE!

## Follow these instructions to obtain your CLE certificate

- 1) Go to SCBA.org
- 2) Member Log In (upper right corner)
- 3) If you do not know your username or password, click the area below and enter your email that is on file with SCBA. Follow the prompts to reset your username and password.
- 4) After you log in, hover over your name and you will see "Quick Links". Below that you will see:
  - a. My SCBA
  - b. My CLE History
  - c. Update My Information
  - d. Update My Committees
  - 5) Click on My CLE History, you will see the courses you attended. Off to the right side you will see the Icon for certificate. You are now able to download the certificate, print it or You may go to your history and review the courses you taken in any given year!
  - 6) CLE certificates will no longer be mailed or emailed. Certificates will be available within 10 days after the course is completed.

# GET UP FOR SUCCESS!



## SET UP FOR SUCCESS:

Our new membership campaign—Set Up for Success—is designed to engage and excite new and existing members by making the work of the SCBA more visible and highlighting the value and of networking and collegiality in the Suffolk legal community.

### REFER A COLLEAGUE AND EARN A SPECIAL GIFT!

Earn a gift when you refer a colleague to become a member of the SCBA. All new members are entitled member benefits immediately upon joining. To qualify for your gift, just have the new member specify your name as the referring member.

### MEMBERS RECEIVE:

- \$50 toward any CLE course
- Personalized CLE tracking
- Access to the monthly E-Newsletter
- Access to the online member directory
- Copy of the Legal Brief
- An invitation to join the SCBA Lawyer Referral & Information Service to help increase your client base
- Updates on the latest Court news
- Networking with Suffolk County’s most esteemed Judiciary
- An invitation to become involved and join more than 45 open SCBA committees
- Networking with SCBA leadership
- Invitation to SCBA member only events

Call Tina at (631) 234-5511 x 222 or email [tina@scba.org](mailto:tina@scba.org) for details today and Set Up For Success!

## ENJOY OUR PROGRAMS? CONNECT WITH THE SCBA ON FACEBOOK, TWITTER, INSTAGRAM, AND LINKEDIN TO SEE AND HEAR MORE ABOUT OUR PROGRAMS AND ACTIVITIES!

Facebook <https://www.facebook.com/SuffolkCountyBarAssociation/>

Twitter <https://twitter.com/SuffolkBarAssoc>

LinkedIn <https://www.linkedin.com/company/suffolk-county-bar-association/>

# SUFFOLK ACADEMY OF LAW

## OF THE SUFFOLK COUNTY BAR ASSOCIATION

**Suffolk Academy of Law Officers 2022-2023**

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**Jarrett M. Behar**

**EXECUTIVE DIRECTOR**

**Cynthia J. Decker**

**The Academy of Law would like to thank the following sponsor for their generous support**

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**Thank you to our Annual Sponsors:**

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**HAVE AN IDEA FOR A CLE PROGRAM?**

The Academy encourages concepts for new program by the membership. A core goal of Academy programs is actionable information and solutions the attendees can stand and implement after the program. Checklists, form usable templates are encouraged.

Programs are approved at a meeting of Academy C are subject to approval of the Board of Trustees. Man will go through the Curriculum Committee for further refinement before being sent to the Academy officers for a your ideas to [cynthia@scba.org](mailto:cynthia@scba.org). And don't forget - m welcome to join us at the Academy meetings each m member? Email [jane@scba.org](mailto:jane@scba.org)

**ENJOY OUR PROGRAMS?**

Connect with the Academy on Facebook, Twitter and LinkedIn to more about our programs and activities!  
**Facebook** <https://www.facebook.com/TheSuffolkAcademy>  
**Twitter** <https://twitter.com/SuffolkAcademy>  
**LinkedIn** <https://www.linkedin.com/company/406535>

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**CLE PROGRAMS AVAILABLE ON DEMAND AND DVD** **ON**





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 go to the store and place your order.  
 Or email [lauren@scba.org](mailto:lauren@scba.org)

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NOW!**

## MISSED A CLE COURSE? SEE IT WITH ON-DEMAND

### **FORECLOSURE ABUSE PREVENTION ACT**

Are you representing a client or involved with a foreclosure action? If so, you don't want to miss this program about the newly enacted Foreclosure Abuse Prevention Act. The Foreclosure Abuse Prevention Act concerns the rights of the parties involved in foreclosure actions and offers additional details regarding the commencement and termination of actions linked to real property. You will learn about:

- The background case law
- Text of the law
- Bill jacket
- Issues to be litigated

#### **FACULTY:**

**Glenn P. Warmuth, Esq.,  
 Stim & Warmuth PC  
 Charles Wallshein, Esq.  
 Cory H. Morris, Esq.**

### **ELDER LAW UPDATE 2023**

In Memory of Kenneth F. Grabie, Esq.  
 \*anyone who attends in person will receive a special Valentines Day treat! For the general and elder law practitioner this is a round-up of important recent law, cases, administrative rulings and other matters in elder law and estate planning.

#### **FACULTY:**

**Justin M. Block, Esq., Messina,  
 Perillo & Hill LLP  
 Mitchell T. Borkowsky, Esq.,  
 Law Office of Mitchell T. Borkowsky  
 Robert M. Harper, Esq.,  
 Farrell Fritz, P.C.  
 William P. LaPiana, Dean of Faculty  
 at New York Law School  
 David R. Okrent, Esq., CPA,  
 Law Offices of David R. Okrent  
 Rochelle Verron, Esq.,  
 Verron Law Group  
 OPWDD speaker – TBD  
 Moderator: George Roach, Esq.**

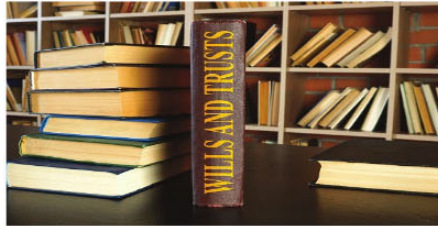
### **AN EXAMINATION OF IN TERROREM CLAUSES IN WILLS AND INTER VIVOS TRUSTS**

This program will help you effectively use In Terrorem clauses in estate planning and avoiding forfeiture. You will learn:

- When and to what extent a beneficiary's conduct will trigger the clause, with specific attention given to the safe harbor provisions of EPTL 3-3.5
- Public policy limitations on enforcement
- Recent decisions addressed to the enforcement of In Terrorem clauses in Inter Vivos Trusts

#### **FACULTY:**

**Ilene Sheryn Cooper, Esq.,  
 Partner, Farrell Fritz, P.C.**



### **BASICS OF BUSINESS VALUATION VIRTUAL WEBINAR**

Some of the largest cases that attorneys handle, especially in the matrimonial area, involve valuing an entire business. Some attorneys may even view appraising a business and appraising a piece of real estate to be similar. In this course you will learn about the fundamentals of business valuation, the methods for valuing a company's value, including an analysis of the company's management, its capital structure, its future earnings prospects, or the market value of its assets.

#### **FACULTY:**

**Harold L. Deiters, III  
 CPA/ABV/CFF/CGMA, CFE, MAFF/CVA  
 Empire Valuation Consultants**

### **ZONING AND LAND USE ISSUES IN COMMERCIAL REAL ESTATE Virtual Webinar**

Zoning laws are one of the most factors when considering a commercial estate purchase or lease. It is critical to understand the pertinent zoning and regulations to be sure that your proposed operations will be in compliance with applicable municipal zoning regulations. In this course you will learn:

- Zoning and land use basics
- Common zoning and land use in commercial real estate
- A run through of fictitious scenarios

#### **FACULTY:**

**Philip J. Siegel, Esq.,  
 Siegel & Sitler, PLLC  
 Janice Whelan, Esq.,  
 Janice Whelan, PLLC**





## OF THE SUFFOLK COUNTY BAR ASSOCIATION



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go to the store and place your order.

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## MISSED A CLE COURSE? SEE IT WITH ON-DEMAND

### THE CRIMINAL PRACTITIONER IN FAMILY COURT

#### SESSION 1 & SESSION 2

This two-part course is an interactive program intended for the criminal attorney who appears in Family Court and a refresher for Family Court attorneys or new attorneys. Participants will be provided an extensive fact pattern in advance of the course\* for discussion. Topics will include:

**Session 1 – Custody:** Analysis of best interests of the child standard and burdens of proof in all areas including joint legal custody, custody, modifications of prior orders, grandparent visitation

**Support:** Standards for original support, modifications of prior orders and violations  
Family Offense Petitions: Filing petitions, legal standards

**Session 2: - Neglect Proceedings:** Overview from filing to disposition, permanency hearings, role of the County Attorney, CPS, and Attorney for the Child

Please familiarize yourself with the fact pattern before the program.

#### FACULTY:

**Hon. Caren Loguercio,**  
Supervising Judge of Family Court  
**Hon. Darlene Jorif Mangane,**  
Support Magistrate  
**Hon. Jennifer A. Mendelsohn,**  
Support Magistrate  
**Glenn Gucciardo, Esq.,**  
Anthony Ioveno,  
Advocacy Manager, Long Island  
Against Domestic Violence  
**LaToya James, Esq.,**  
The James Firm  
**Hon. Catherine E. Miller,**  
Court Attorney Referee  
**Hon. Jennifer Mitek,**  
Court Attorney Referee  
**Danielle Razzouk, Esq.,**  
Assistant County Attorney

### OCA CERTIFICATIONS

#### WHAT YOU NEED TO KNOW TO BE CERTIFIED AS GUARDIAN AD LITEM

3 Professional Practice; .5 Ethics  
Guardians Ad Litem are appointed by courts in various proceedings to represent the rights and interests of infants, incompetents and or persons under a disability. This course is designed to provide the information necessary to allow a participating attorney to qualify as a Guardian Ad Litem During this program you will learn:

- The substantive rules and law of Part 36 of the Rules of Chief Judge (22 NYCRR Part 36) governing court appointment of a GAL
- Ethical considerations of appointments and serving as a fiduciary
- Procedural aspects of serving as a GAL
- Substantive role of a GAL in various proceedings

In addition, you will learn how to enroll on the Part 36 list to be eligible for appointment by the court as a Guardian Ad Litem, and about the Part 36 appointment process.

#### Faculty:

**Hon. Theresa Whelan, Surrogate,**  
Suffolk County Surrogate's Court,  
**Kathleen Anderson, Esq.,**  
Associate Court Clerk, Supreme Court  
**Brette Haefeli, Esq.,**  
Court Attorney Referee  
**Amy H. Hsu, Esq.,**  
Principal Law Clerk to Surrogate  
**Hon. Theresa Whelan**  
**Meredith R. Jones, Esq.,**  
Special Counsel for Surrogate  
and Fiduciary Matters  
**Scott P. McBride, Esq.,**  
Court Attorney Referee  
**Frank M. Volz, Esq.,**  
Court Attorney Referee,  
Acting Supervising Attorney,  
Suffolk County Surrogate's Court

### SUPPLEMENTAL NEEDS TRUST PART 36 CERTIFIED TRAINING

A Supplemental Needs Trustee (SNT) has the duties of any trustee, plus special responsibilities due to the special needs of the beneficiary. This training is a guide you through the practical aspects of serving as court-appointed trustee of a supplemental needs trust. In this training you will learn:

- The complex role and purpose of the Supplemental Needs Trust
- New York State regulations
- Applicable Law • Annual Accounting

#### FACULTY:

**Christina Farrell, Esq., Assistant Attorney General, Family Law Bureau, County Department of Law,**  
**R. Jones, Esq., Special Counsel for Surrogate and Fiduciary Matters, Office – Office of Court Administration**  
**Kim Smith, Esq., Kim Smith Law PLLC,**  
**Ashley M. Valla, Esq., Weinblatt & Calcagni, LLP,**  
**Frank M. Volz, Esq., Haley, Weinblatt, Esq., Haley, Weinblatt & Calcagni, LLP**



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## MISSED A CLE COURSE? SEE IT WITH ON-DEMAND

### RECEIVERSHIP IN NEW YORK: PART 36 RECEIVER TRAINING

2.5 Professional Practice; .5 Ethics

This seminar is important for individuals interested in receiving training to serve as court-appointed receivers. This program will fulfill the OCA training requirements to qualify as a Part 36 Receiver and will provide an update for those already qualified. You will learn the procedural and substantive aspects of receivership, including a review of Part 36 of the Rules of the Chief Judge, the appointment process, procedural issues, termination of receivership, commissions, disbursements, secondary appointments and issues involving insurance, liability and more. This program is certified by the Office of Court Administration and qualifies the participants to apply for enrollment on the fiduciary list, pursuant to Part 36 of the Rules of the Chief Judge as Receivers.

#### Faculty:

**Hon. Elizabeth Hazlitt Emerson,**  
Suffolk County Supreme Court  
Appellate Term, Second Department  
**Hon. Thomas Whelan,**  
Suffolk County, Supreme Court  
**Harvey B. Besunder, Esq.,**  
MargolinBesunder LLP  
**Harold Deiters III,**  
CPA/ABV/CFF/CGMA, CFE,  
MAFF, Empire Valuation Consultants  
**Brian T. Egan, Esq.,**  
Egan & Golden, LLP  
**Meredith Jones, Esq.,**  
Office of Court Administration  
**Moderator:**  
**Hon. John J. Leo,**  
Suffolk County Supreme Court

### ARTICLE 81 GUARDIANSHIP TRAINING

Training for certification for Guardians, Court Evaluators and Counsel for the Alleged Incapacitated Person. This program provides 7 Hours of MCLE credit – 6 Professional Practice; 1 Ethics// Transitional and Non-Transitional (through the Academy of Law, a New York State accredited provider of mandatory continuing legal education also). Guardians and Court Evaluators who are not attorneys may also be certified. In addition, law students who will be admitted within two years of the program date may be certified as Attorney for the Alleged Incapacitated Person, upon their admission.

Topics include:

#### **The Role of Judges in Capacity Determinations**

**Honorable Marian R. Tinari**

**Role of the Court Evaluator**  
**Sheryl L. Randazzo, Esq.**

**Role of Counsel for Alleged Incapacitated Person**

**Vincent J. Messina, Jr., Esq.**

**Role and Responsibility of the Guardian**

**Robin Burner Daleo, Esq.**

**Office of Court Administration,  
Special Counsel for Surrogate and Fiduciary Matters**

**Part 36 Rules**

**Michele Gartner, Esq.**

**Medical Issues in Guardianship Proceedings**

**Deborah Verzyer, RN**

**Guardianship Proceedings in a Pandemic World**

**Jeffrey Grabowski, Esq.,  
Attorney Court Referee**

