



December 31, 2013

[www.nrbar.org](http://www.nrbar.org)

**PRESIDENT'S MESSAGE:**



Richard A. Sosis

Dear Colleagues:

First let me wish all of us a wonderful, healthy, happy, prosperous and peaceful New Year.

When a child is born there is a common wish offered that the child live in interesting times. I think it fair to say that our times have been quite interesting of late. We are living at a time in our nation's history when the vast tide of public opinion is changing to favor equal rights for same sex couples to marry and raise a family. It is a time when a single individual, using extraordinary technology, can steal and publish the deepest secrets of our government thereby promoting a vigorous public dialogue about privacy and the role of government. It is a time of changing attitudes towards the use and consumption of certain substances and the de-criminalization of such use. As lawyers and social thinkers, we do indeed live in interesting times.

Our year, which began in September, has gone well. We have offered at least one CLE program each month and the programs have been hits. In the coming months, your Bar has a full slate of programs to offer. In January our dinner guest will be the Hon. Anthony Scarpino, who will be speaking to us as the supervising Justice of the Matrimonial Part of Westchester Supreme Court and as our Surrogate. In the spring we will be offering two Ethics CLE's as well as CLE's each month on a diverse range of relevant and interesting topics. In April we will be holding our annual Court of Appeals dinner with Judge Robert S. Smith as our speaker. And finally, we cap off our year of activity on June 12, 2014 with our annual picnic.

So, please watch your e-mails for notices of all of these events.

While we have much to be pleased with our Bar's services, all is not rosy with our Bar. We have had problems with our website, and resolving those problems has taken far longer than we anticipated. Hopefully, this will be resolved shortly and will not affect the services our Bar provides to you, our valued members. Recently we have noted a decline in attendance at our dinner meetings. While we realize these are not always prosperous times for our nation and some of our members, the Board tries to arrange these dinner meetings to be informational, enjoyable, as well as affordable. We would especially like to encourage members who attend our free CLEs on a regular basis also to support our social programs. You will find that the food is excellent and the company is even better. Perhaps I might encourage each of you to make a New Year's Resolution.....RESOLVED: THAT I WILL MAKE AN EXTRA SPECIAL EFFORT TO ATTEND NRBA DINNER MEETINGS.

Again, all the best for the coming year.

Collegially yours,  
Richard A. Sosis



## AS OUR CLE YEAR CONTINUES

Your NRBA continues its policy of offering quality CLEs monthly free to our members in good standing. Our October submission, held on Tuesday, October 15, 2013, was entitled *Practicing in The Age of Social Media: Avoiding Legal Pitfalls When Advising Clients* with guest speakers Edward V. Jeffrey, Esq., and Michael J. Passarella, Esq. of Jackson Lewis, LLP which also graciously sponsored this CLE. Jackson Lewis, LLP represents management exclusively in workplace law and related litigation. Introductory remarks were given by **Paula Johnson Kelly, Esq.**, who also practices labor and employment law. Held in our regular location at Monroe College, 145 Huguenot Street, New Rochelle, NY, the lively two credit CLE also offered a lite dinner to the full house of member attendees.



Edward Jeffrey, Paula Kelly, Michael Passarella and Jeffrey Levin, Esqs.

Our November CLE, entitled *Estate and Elder Law Planning Post-DOMA and related Topics in Guardianship*, with speakers **Patricia A. Bave, Esq.**, **Edward Loughman III, Esq.** and Christine Persampieri, Esq., was held on Tuesday, November 19, 2013 in our regular location at Monroe College, 145 Huguenot Street, New Rochelle, NY. The two credit CLE offered a lite dinner to the full house of member attendees.

Our thanks to our colleagues at Kommer Bave & Ollman, LLP., who sponsored this event.

A snow storm on Tuesday, December 17, 2013, may have delayed, but did not deter members from attending and our guest speaker Matthew T. Worner, Esq. from appearing for the last monthly CLE of this calendar year, entitled *New York State Mechanic's Lien Law*.



Matthew T. Worner, Esq.

As always, a lite dinner was offered to the member attendees at the two credit CLE held at Monroe College, 145 Huguenot Street, New Rochelle, NY.

Thank to our friends at Judicial Title Insurance Agency and Silverson's Realty LLC. for sponsoring this event.

## CALENDAR OF UPCOMING CLEs:

Next season, the NRBA will offer the following CLE topic programs:

1. *Mediation*, on Tuesday, January 21, 2014;
2. *Family Law*, on Tuesday, February 18, 2014; and
3. *Ethics*, on Tuesday, March 17, 2014.

Expect to receive advance notices with particulars by e-mail of these and future CLEs.

### UPCOMING CLES:

For information on and reservations for our CLEs please contact **Jeffrey L. Levin, Esq.** at [jeffrey.levin.law@gmail.com](mailto:jeffrey.levin.law@gmail.com)



## A YEAR END HOLIDAY CELEBRATION TO REMEMBER

After one year off, the New Rochelle Bar Association renewed its tradition by holding its annual Holiday Party on December 5, 2013 at the Avalon on the Sound (formerly "Top of the Roc"), 40<sup>th</sup> floor Ballroom, New Rochelle, NY. This may be our last Bar event to be held in this fabulous location as the building has been sold. But on this night distinguished members of the judiciary, honored guests, members with their families and friends mingled over cocktails and hors d'oeuvres while enjoying the spectacular views through the panoramic windows overlooking the New York City skyline, the Long Island Sound and Westchester County while hearing music provided by New Rochelle's own David Patterson Productions. After sitting down to family style cold and hot antipasto, members and guests watched Board President Richard Sosis present a plaque to David Faust, Esq. for his assistance in helping the NRBA finally obtain 501(c)(3) status. A delicious hot buffet dinner, provided by Posto 22 of New Rochelle, was followed by musical entertainment provided by David Patterson and dancing. All in all, the evening was once again a huge success.

This special evening would not have been possible without the generous support from our sponsor, Ralph Berardi and Residential Home Funding Corp., and we are truly grateful for the support.











And to all a Good Night....



## SAVE THESE DATES

(1)

NEW ROCHELLE BAR ASSOCIATION  
SURROGATE'S DINNER

WITH

HON. ANTHONY A. SCARPINO, JR.

JANUARY 16, 2014

AT

ALVIN'S & FRIENDS

NEW ROCHELLE, NY

(2)

NEW ROCHELLE BAR ASSOCIATION  
COURT OF APPEALS DINNER

APRIL 10, 2014

AT

THE RADISSON

NEW ROCHELLE, NY



**The New NYC  
PREGNANT WORKERS FAIRNESS ACT  
provides for Reasonable Accommodations**

*Signed-October 2, 2013*

*Effective-February 2014*

Leading the State, once again, New York City recently enacted another needed anti-discrimination law, this time it is one that will advance the prohibition against discrimination of pregnant workers. Currently the applicable federal and state laws do not require an employer to provide pregnant employees with reasonable accommodations that it permits for non-pregnant employees with similar restrictions. The Pregnant Workers Fairness Act amends the NYC Human Rights Law to require NYC employers with four or more employees to provide reasonable accommodations necessary because of pregnancy, childbirth or a related medical condition. This new law requires NYC employers to give pregnant workers accommodations that include frequent bathroom breaks, breaks to facilitate increased water intake, periodic rest or a chair for those workers who stand for long periods of time, assistance with manual labor and a period of recovery from childbirth.

If an employer fails to provide a pregnant worker with a needed accommodation, the worker may sue the employer for damages. In that situation, to escape liability, the employer will have to prove that the requested accommodation would pose an undue hardship (e.g. it would cost too much money or disrupt workplace operations), or that the pregnant worker, even with the requested accommodation, still could not perform the essential function of her job. Given that the kind of workplace modifications that pregnant workers generally require are usually fairly minor and inexpensive, it is doubtful that employers will be successful in proving that the accommodation requested would pose an undue hardship.

The NYC law is very important because, currently, both federal and NY State anti-discrimination laws do not require employers to make reasonable accommodations for pregnant workers. As a result,

many pregnant employees, deprived of simple job modifications that would allow them to continue to work through their pregnancies, have been required to take unpaid leave or have lost their jobs. Other pregnant employees have endangered their health by continuing to work while pregnant without some form of accommodation to their work schedule or job duties. This is especially true for low-income employees, like in retail or food services, such as sales women, waitresses or cashiers, who have to stand on their feet for long periods, or employees who have to lift objects as part of their job. The NYC Pregnant Workers Fairness Act assures that pregnant working women do not have to choose between their health and their jobs.

The trend toward enacting this equal protection is now being seen in other states. In addition to New York City's Pregnant Workers Fairness Act, seven states, most recently Maryland on October 1, 2013, have laws that require employers to provide reasonable accommodations to pregnant women. Unfortunately, states must enact their own legislation since the federal anti-discrimination law, Title VII, as amended by the Pregnancy Discrimination Act of 1978, which prohibits discrimination because of pregnancy or a related medical condition, does not require employers to provide reasonable accommodations to pregnant workers. The U.S. Congress has left dead in the water a federal Pregnant Workers Fairness Act, introduced in both Houses on May 12, 2013, which would obligate employers to accommodate pregnant employees. The last time the bill was introduced neither the House nor the Senate even held a hearing to consider its merits. When Congress fails to do its duty to protect workers from discrimination, municipal and state governments, like in NYC, have to step in. Congratulations to NYC for stepping up to the plate and hitting a home run.



**Big Changes in  
NYS UNEMPLOYMENT INSURANCE LAW**  
*Effective- October 2013 & January 2014*

As a consequence of the recent recession, employer contributions to the New York State Unemployment Insurance Fund have been insufficient to cover the benefits being paid out to individuals. As a result, New York State was required to borrow \$3.5 billion from the federal government. In order to repay this loan, New York State enacted a number of “reforms” to the New York State Unemployment Insurance Law. The first two changes went into effect on October 1, 2013. The first penalizes employers who are tardy in responding to the DOL’s requests for information by no longer crediting overpayments or non-entitled monies back to the employer’s account. This change is required under the new federal guidelines to state unemployment insurance funds. The second primarily concerns individuals who now have 12 months to pay back any improperly awarded or overpaid benefits before the imposition of a 15% monthly penalty on the overpayment or \$100, whichever is higher, and the forfeiture of 4 days of future unemployment benefits for every week that she/he was overpaid.

The two changes becoming effective on January 1, 2014 concern the employer’s FUTA tax and the effects of an individual collecting a severance pay. All New York State employers pay a Federal Unemployment Tax Act (FUTA) tax based upon the number of individuals it employees within the state. Starting January 1, 2014, the “experience rating” will be assessed on the first \$10,300 of each employee’s earnings, up from the prior \$8,500 of each employee’s earnings. This earnings figure will gradually rise each year.

The fourth significant change concerns whether and when an ex-employee received a severance pay from his/her prior employer. In the past, whether an employee received severance pay usually did not affect the receipt of unemployment insurance (UI) benefits. The prior rationale was that severance, since it was usually granted either in recognition of

years of service or as consideration for signing a release, was unlike UI since it was not to replace lost wages and/or to tide an employee over while looking for a new job. However, severance under specific terms will now be an offset against UI benefits. Starting January 1, 2014, if the DOL determines that an ex-employee is receiving severance (1) within 30 days after the end of the employment relationship and (2) the amount is greater than the maximum benefit rate, the individual will not be able to collect unemployment benefits until the amount of the severance pay is exhausted. The UI calculation is based upon the individual’s weekly benefit rate, meaning the severance pay is divided by the weekly benefit rate and the result is the number of weeks the individual is not eligible to receive UI benefits.

The other major change involves employer-contributed pensions. If an ex-employee is receiving a pension from his/her last job from which he/she is applying for UI, and the employer contributed to that pension, the UI will be reduced by the amount of the pension being received. For pension plans where both the employer and the employee contributed, the DOL will decide on how much the UI will be reduced by the pension payments. This deduction only applies for the job the individual held at the time he/she applied for benefits, not any plan from a prior employer.

Provisions passed in April 2013, as part of Gov. Cuomo’s annual budget, also include a long awaited and much disputed increase in weekly UI benefits, up by \$5 a week in 2014, up by \$45 by 2018 to \$450.00 weekly maximum. As of 2019 the yearly increase will be based upon a percentage of the average weekly paycheck in the state.

As a result of these changes, employers should expect their costs to increase, and certain ex-employees may find their benefits decreased.





### DECISIONS of INTEREST -FROM OUR JUDICIARY

*People v. Zouppas*, 37 Misc.3d 1291(A), 949 N.Y.S.2d 882 (City Court of N.R. March 23, 2012), decided by **Hon. Susan I. Kettner**, was published in the *New York Law Journal* along with an article by *NYLJ* feature writer, Andrew Keshner regarding the decision. Also cited in CJS Criminal Law s 1265, N.Y.Jur.2d Criminal Law: Procedure s 573 and 29 NO.19 West's Criminal Law News 10, this decision deals with an issue of first impression - the adequacy of a truncated *Miranda* warning. Here the issue dealt with that prong of the warning advising the defendant fully of the consequences of foregoing the right to remain silent. The court found that by the detective deleting the two words, "against you" defendant was deprived of the protections mandated by *Miranda* and its progeny. "[T]he truncated warning [was] incomplete and defective because the defendant was neither adequately warned that his statement would be used *against him* in court nor was he put on adequate notice of the adversarial nature of the questioning".

### MEMBER NEWS AND ANNOUNCEMENTS

#### CONGRATULATIONS!

Congratulations to **John Giacobbe** on his recent marriage to Marissa. Great Christmas Card announcement!

Happy Birthday to **Paula Johnson Kelly**, who celebrates her birthday on December 18th.

Director **Marc Rowin**, has been chosen as a 2013 "Super Lawyer" for excellence in practice. Mr. Rowin's firm also moved its offices to 30 Vesey Street, 8<sup>th</sup> floor, New York, NY 10007-4202.

### WELCOME NEW MEMBERS:

**Erica Aisner, Esq.**  
White Plains, NY

**Alicia Ruiz**, law student  
Bronx, NY

### OUR WEBSITE: [www.nrbar.org](http://www.nrbar.org)

With our website members can obtain information concerning our Bar, its activities, and general legal and community news. We welcome feedback. This Newsletter can be downloaded from our website. Thanks for helping keep NRBA green.

### Getting Published

We welcome your submissions! All submissions should be sent to Paula Johnson Kelly, Editor, at [PJKelly\\_esq@hotmail.com](mailto:PJKelly_esq@hotmail.com). Please mark the subject as NRBA news. Photographs and articles, up to 500 words, should be sent as jpeg attachments. Authors should include a short biographical statement with their articles, which must be spell checked, cite checked and in blue book form. Opinions expressed in any article printed in the NRBA newsletter are solely those of the author(s) and are not positions taken by the NRBA. Materials submitted allow NRBA limited copyright and full permission to reprint the article in the NRBA newsletter without additional consent.

### UPCOMING EVENTS:

For an up-to-date listing of scheduled events, including CLEs and dinner meetings, kindly view existing event postings on our website: [www.nrbar.org](http://www.nrbar.org).

For reservations for any of our upcoming programs or events please contact Treasurer Frank DiMarco, Esq., 20 Cedar St., New Rochelle, NY 10801, (914) 633-5330.

