

Nassau Lawyer

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April 2021

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NCBA COMMITTEE

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LAW DAY

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Thursday, April 29, 2021
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OF NOTE

NCBA Member Benefit—I.D. Card Photo
Obtain your photo for Secure Pass Court ID cards
Only For New Applicants
Cost \$10

UPCOMING PUBLICATIONS COMMITTEE MEETINGS

Thursday, May 6, 2021 at 12:45 PM
Thursday, June 3, 2021 at 12:45 PM

What it Means to Be an NCBA Member



Special Offer for New Members: Join This Spring and Receive up to Three Months Free

When Members are asked what they feel are the most valuable benefits of NCBA membership, their answers are almost always the same. The consensus is the feeling of connection and camaraderie they get from their time at the NCBA. According to Chair of the Association Membership Committee, Michael DiFalco, “I have never been one to join a club, but after just a year or two of practice, I began regularly attending NCBA meetings, in particular the Young Lawyers Committee and Matrimonial Committee. I realized very quickly how valuable it is to simply connect with and spend meaningful time with other attorneys to build a practice. Now, some of my good friends are people I met at Domus. I look forward to a time soon where we can gather again under one roof. The personal connection and regular contact through committee meetings is incredibly beneficial professionally and personally.”

Keep Ahead of the Curve with CLE On-Demand

The Nassau Academy of Law offers 150+ engaging and relevant live programs each year, with guest speakers, ranging from fellow Members to notable experts in the legal field thanks to CLE Director Jennifer Groh and Executive Assistant Patti Anderson.

NCBA membership includes **FREE** CLE with dues payment, which means **FREE** unlimited live CLE, **FREE**

Bridge-the-Gap weekend, **FREE** Committee CLE, and **FREE** 12 credits of CD/DVD/CLE On-Demand provided by the Nassau Academy of Law, the educational arm of the NCBA. CLE On-Demand offers an online library of previously recorded CLE programs for Members to watch at their own pace, at their convenience, from the safety and comfort of their own home or office.

Currently, all CLE programs are offered via Zoom. If a Member is unable to attend a live virtual CLE program, they can find it in the CLE On-Demand catalogue on the NCBA website at www.nassaubar.org. Twelve credits of CLE On-Demand are **FREE** to NCBA members in addition to the other free CLE opportunities previously mentioned.

The Nassau Academy of Law will continue to offer a multitude of programs, both via Zoom and live format for the coming membership year to help members easily fulfill their CLE requirements. If you are not a Member contact Stephanie Pagano at (516) 747-4070, ext. 1230 or Donna Gerdik ext. 1206 in the NCBA Membership office to take advantage of this opportunity. Join now and receive up to three months free.

Elevate Your Career

In addition to FREE CLE, more than 50 substantive and working committees are available to join so that Members can cultivate close relationships and referrals,

keep up to date on the newest changes in practice areas, meet with professionals in the legal field, or assist the Bar.

Members can also showcase their expertise by contributing legal articles to the official publication of the NCBA, *Nassau Lawyer*, which is distributed monthly to all Members and twice a year to all OCA-registered attorneys in Nassau County. Members are encouraged to write articles to be published in *Nassau Lawyer* that offer valuable insight into their area of practice or speak at one of many Academy and Committee seminars.

Looking to elevate your career? Members can access new job openings

See SPECIAL OFFER, Page 16

**For NCBA Members
Notice of
Nassau County Bar Association
Annual Meeting
May 11, 2021 • 6:00 p.m.
Domus
15th & West Streets Mineola
NY 11501**

Proxy statement will be sent by electronic means to the email address provided by the Member and posted on the Association's website. The Annual meeting will confirm the election of NCBA Officers, Directors, Nominating Committee members, and Nassau Academy of Law Officers.

Daniel W. Russo
Secretary

CONFIDENTIAL HELP IS AVAILABLE TO LAWYERS AND JUDGES

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FOCUS:
THE COURTS

David Barry and Melissa Manna

Continuing the companion article in this issue addressing the recent amendments to the Uniform Rules for the Supreme and County Courts, this article highlights the new Rules applicable to papers, motions in general, motions for summary judgment and pretrial procedure.

As Chief Administrative Judge Marks noted,¹ the COVID-19 pandemic has presented a unique opportunity for permanent court reform. The adoption of certain Commercial Division Rules to the other courts of civil jurisdiction represents the Office of Court Administration's response to said opportunity, clearly demonstrating a desire to both maintain the technological advances that have assisted the bar and bench alike during the pandemic, as well as utilizing

Taking Advantage of New Uniform Rules: Papers and Pre-Trial Proceedings

certain methods that have proven to streamline practice in the Commercial Division. As the amendments have been effective since February 1, 2021, it is critical for Supreme and County Court practitioners to familiarize themselves and fully embrace this new litigation landscape.

Papers

Uniform Rule 202.5-a reduces the importance of the law office fax machine by prohibiting the filing of papers by fax without advance approval of the assigned justice. Further, correspondence by fax should not be followed by a hard copy unless specifically requested. Papers and correspondence by fax must still comply with Uniform Rule 202.5.

While email and e-filing have replaced most of the major functions of the beloved fax machine, it still remains a useful tool for the modern-day law office (e.g., ordering medical records, correspondence with insurance companies, etc.). However, the days of filing papers by fax are over. Prior to sending any correspondence to the court via fax, counsel should check the assigned justice's part rules, as some prohibit or have limitations on the same.

Uniform Rule 202.5(a) now

requires electronically submitted memoranda of law, affidavits and affirmations exceeding 4500 words to include bookmarks listing the document's content so that a reader may more easily navigate the same. Papers filed with the court must be on 8½ x 11-inch paper, margins no smaller than 1 inch and print must be no smaller than 12-point (10-point minimum for footnotes).

Motions

Motion practice has been significantly impacted by the new Rules, with the most significant impact to summary judgment motions, as discussed in more detail below. The other item of importance with regard to motion practice is the word count limit and the certification requirement of same.

Uniform Rule 202.8-a sets several new rules to govern all motion papers.

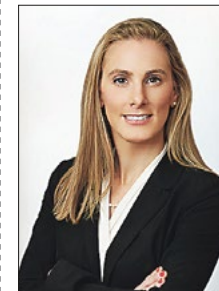
Subpart (a) requires that the movant specify in the notice of motion, order to show cause and in concluding section of a memorandum of law, the exact relief sought. While this has long been the practice of both plaintiffs' and defendants' counsel, the rule makes it mandatory. Furthermore, regardless of whether the motion

papers are e-filed or sent as hard copies, counsel must submit copies of all documents and pleadings as required by CPLR and as necessary for an informed decision on the motion. If any voluminous document is attached to an affirmation or affidavit and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Additionally, whenever papers rely

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David J. Barry is a partner at the Mineola law firm of Collins Gann McCloskey & Barry PLLC, where he focuses on plaintiff's personal injury and criminal defense litigation. David also serves on the NCBA Board of Directors and as the Vice-Chair of the Plaintiff's Personal Injury Committee.



Melissa Manna is a partner with Cullen Dykman in Garden City, in the firm's General, Tort and Insurance Litigation department. She is also the Vice-Chair of the NCBA Defendant's Personal Injury Committee. Ms. Manna can be reached at (516) 357-3753.



COVID-19 Updates Can Be Found:

ON OUR WEBSITE
WWW.NASSAUBAR.ORG

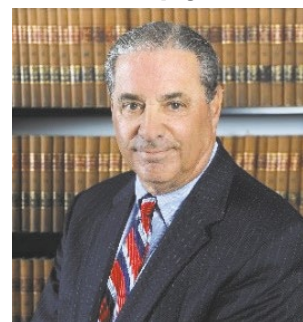
ON OUR FACEBOOK PAGE
@NASSAU COUNTY BAR ASSOCIATION

At this difficult time, the Nassau County Bar Association wants you to know we will do what we can to help our members with their legal and business responsibilities.

All NCBA, Court, and Nassau County updates regarding COVID-19 can be found on our website at www.nassaubar.org and our Facebook page. We are here if you need us.

Attorney Grievance & Disciplinary Defense

An allegation of professional misconduct can tarnish your reputation and place your law license in jeopardy. Let the experienced team of David H. Besso and Michelle Aulivola help you achieve a favorable result.



David H. Besso, past Chairman of the Grievance Committee for the 10th Judicial District and past President of the Suffolk County Bar Association, has been representing attorneys for more than twenty years.



Michelle Aulivola has defended attorneys involved in attorney disciplinary matters and grievance investigations for the past fifteen years.

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Papers...

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on a decision or other authority not readily available to the court, a copy of the case or pertinent portions of the authority shall be submitted with the motion papers.

Subpart (b) requires that a proposed order should be submitted with motions, except on a dispositive motion.

Subpart (c) succinctly states that unless the court orders otherwise, no motion may be adjourned more than three times or for a cumulative total of more than 60 days.

Uniform Rule 202.8-b promulgates a significant change, imposing word count limits on motions and requiring that counsel provide a certification as to the word count of the particular document.

Subpart (a) states, in part, that unless otherwise permitted by the court:

(i) affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each; (ii) reply affidavits, affirmations, and memoranda shall be no more than 4,200 words and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief.

Subpart (b) provides for exclusions from the word count, including the caption, table of contents, table of authorities, and signature block.

Subpart (c) specifies the certification requirement for the word count and provides that counsel may rely on the count of the word-processing system used to prepare the document.

Subpart (d) allows for a party to exceed word limits only upon oral or letter application on notice to all other parties,

and the court must grant such application.

Uniform Rule 202.8-c makes clear that, absent express permission in advance, sur-reply papers are not permitted.

Uniform Rule 202.8-d makes clear that orders to show cause are to be made in circumstances only where there is genuine urgency. Additionally, reply affirmations are not permitted without court permission.

Summary Judgment

Uniform Rule 202.8-g requires the moving party to annex to the notice of motion a statement of material facts—a separate, concise statement in numbered paragraphs of the material facts for which it is alleged there is no genuine issue to be tried. Opposing counsel in their papers must include a correspondingly numbered statement responding to each paragraph of the moving party, and may also include their own statement of material facts. Importantly, each paragraph in a statement of material facts will be deemed admitted unless specifically controverted by opposing counsel. Further, each paragraph in a statement of material fact or statement controverting the same must be supported by a citation of evidence submitted in support of or in opposition to the motion.

Now more than ever, it is essential for counsel to ensure that each and every factual allegation in their papers be supported by direct citation to evidence in the case, whether in the form of affidavit, EBT testimony, business records or otherwise. Accordingly, building a solid foundation of admissible evidence from pre-litigation investigation through disclosure will pay major

dividends when drafting moving or opposition papers, including statements of material facts.

Note that the new rules on statements of material facts do not apply to motions for summary judgment in lieu of complaint under CPLR 3213.

Uniform Rule 202.8-f requires that each court adopt its own procedure governing the request for oral argument of a motion—whether oral argument is mandatory on all motions or granted on a case-by-case basis and how to request oral argument and when counsel must appear. If the court does not adopt a procedure, as a default rule, a party may request oral argument by letter accompanying the motion papers, and the court shall, if practicable, select a date for arguments at least 14 days in advance. Conveniently for counsel, oral arguments may be conducted by the court virtually.

As always, it is important for counsel to be mindful of the court's individual rules, and whether oral argument must be requested in a manner other than the default described in subdivision (b). Especially in novel or extremely nuanced cases, it would be good practice to have a form letter request for oral argument ready to customize and e-file along with the motion papers.

Pre-Trial Proceedings

Generally, the new Rules regarding pre-trial proceedings require the parties to work together in good faith to resolve issues and engage in meaningful settlement negotiations pre-trial.

Uniform Rule 202.26 describes new procedures for settlement and pre-trial conferences.

Subpart (a) Settlement Conference: At the time of certification of the case as

ready for trial, the court may schedule a settlement conference which shall be attended by counsel and the parties, who are expected to be fully prepared to discuss settlement.

Subpart (b) Pre-Trial Conference: The rule requires that counsel confer in good faith prior to trial to resolve disputed questions without court intervention and to further discuss settlement. The court may also direct that parties prepare a written stipulation of undisputed facts prior to the commencement of trial.

Subpart (c) Consultation Regarding Expert Testimony: The court may direct that prior to or during trial, counsel consult in good faith to identify those aspects of their respective experts' anticipated testimony that are not in dispute.

Uniform Rule 202.20-h sets forth new requirements for pre-trial memoranda, exhibit books, and requests for jury instructions.

The Rule in subparts (a), (b) and (c), requires that counsel for both sides submit pre-trial memoranda, no longer than 25 pages, at the pre-trial conference. On the first day of trial, counsel shall submit an indexed binder or notebook or the electronic equivalent, of trial exhibits for the court's use. A copy for each attorney on trial and the originals in a similar binder or notebook for the witnesses shall be prepared and submitted. If there is a jury trial, counsel shall, on the first day of the trial, provide the court with case-specific requests to charge and proposed jury interrogatories.

The new Rules seeks to create efficiency in trials which benefits the bench, jurors, litigants and counsel alike.

1. AO 270/20 (Dec. 29, 2020), available at <https://bit.ly/3kz5IYK>.

COVID Help...

Continued From Page 8

(Spring 2021), introducing 10 new law students. This semester, mentors were selected to address the most pressing set of inquires that have come in, including landlord-tenant and labor and employment related questions.

Insights from Contributing Mentors

NCBA Member Volunteer Mentors Jaime Ezratty and Mindy Roman, experienced practitioners in Landlord/Tenant law who began mentoring during the first round that took place during Summer 2020, report that working with the mentees is extremely rewarding, especially because landlord/tenant law has evolved and continues to evolve rapidly, responsive to Governor Cuomo's Executive Orders on eviction and foreclosure. "With a bright law student as a resource, I am able to understand current information on the latest developments in time to respond to the covidhelp@nassaubar.org inquiry. I include my law student mentee in consultations with the individual seeking consultative advice, which allows the law student to

gain experience in interviewing and counseling," reports Ezratty.

The law student initiative includes regular check-in sessions via Zoom, which allow the law students to "meet" each other, and which include a featured NCBA Member Volunteer presenter who addresses a COVID-specific practice area. Mentee hours are carefully tracked and both mentors and mentees sign a Memorandum of Understanding that solidifies the commitment.

A Rewarding Experience

The NCBA is grateful for its Members who have worked so hard to bring this program to life, and to the law students who have joined us in our initiative to help the community during this unprecedented time. One of the greatest parts about being an NCBA Member is the countless volunteer opportunities that it provides. Current NCBA Members are invited to join this initiative, which is an incredibly rewarding way to give back to the community and understand COVID's legal challenges. Particularly, the NCBA is grateful that this initiative has attracted long-standing members who have not previously been involved in

hands-on programs of this nature.

As the program continues to grow, NCBA Members who are interested in the mentor program for next semester can contact NCBA Communications Manager Ann Burkowsky at

aburkowsky@nassaubar.org for more information. The commitment is specifically to mentor law students through collaboratively responding to inquiries submitted via covidhelp@nassaubar.org and via Touro's hotline.

"At age 86, I graduated from Brooklyn Law School 64 years ago, and I am still being educated about the law, thanks to the Continuing Legal Education programs of the Nassau County Bar Association. So you see, one is never too old to learn. CLE is FREE because it is included in the annual bar association dues, thereby saving bar association members hundreds of dollars in order to comply with the CLE requirements of the Office of Court Administration. The quality of the presentations is superb, and the topics cover a wide range of practical and substantive legal issues. Currently, especially during the COVID-19 pandemic, the easy connection to the zoom sessions makes it safe and most convenient to get updated on the changing statutes, case law and technology, even from sunny Florida. I hope to continue as a member of the Nassau County Bar Association for the next 120 years."

—Justice Ira Raab (Ret.)