



2024 Annual Conference

Niagara Falls, New York

Mock Trial

Penal Law Section 120.09

Assault on a Judge/PL 120.09-a

Aggravated Assault of a Judge

Date: Monday, September 23, 2024

Instructors:

Hon. Ronald Meister

Hon. Tom Dias

Hon. Jonah Triebwasser

Hon. Susan Sullivan-Bisceglia

Hon. Barbara Seelbach

Hon. David Kozyra

Hon. David Brockway

MCLE: 1.0 Professional Practice

This program has been approved for credit in
New York State for all attorneys
including those who are Newly Admitted
(less than 24 months) and administered by
the Onondaga County Bar Association



Hon. Susan Sullivan-Bisceglia
Town Justice, LaGrange

Previous City of Poughkeepsie, Towns of Union Vale, Patterson and Pawling Acting Justice, and Associate Village Justice, Wappingers Falls

Judge Susan Sullivan-Bisceglia, 1st Woman Judge in her hometown, of LaGrange, provides justice in the Hudson Valley with the highest of integrity and fairness. Having previously served as Acting City of Poughkeepsie, Town of Union Vale, Pawling and Patterson Justice, as well as Associate Justice of the Village of Wappingers Falls, Judge Sullivan-Bisceglia brings over 7 years of experience as a Judge. Elected as 1st Vice President of the New York State Magistrates Association, and President of the Dutchess County Magistrates Association, Judge Sullivan-Bisceglia is the “Judge Who Teaches the Judges”, traveling across New York State providing education to the judiciary. Having a commitment to civic mindedness, Judge Sullivan-Bisceglia frequently welcomes students to her court to participate in mock trials providing them an opportunity to learn about the courts and the administration of justice to the community. She received her Juris Doctorate from New York Law School and is a licensed attorney admitted to practice in NY and CT, the United States Supreme Court, as well as the U.S. District Courts for the Southern and Eastern Districts of New York and maintains her law office at the Hudson Valley Regional Airport. Judge Sullivan-Bisceglia has well over 25 years of combined experience obtained in the courts, major law firms, Fortune 500 companies and the State of New York. Inspired by her family of U.S. Air Force fighter pilots, she is a licensed Commercial Pilot with Instrument and Multi-Engine Ratings and prior Federal Aviation Administration Aviation Safety Counselor. Judge Sullivan-Bisceglia maintains her hometown residence in the beautiful Hudson Valley with her husband Paul and two children Brianna and Brendan.

Hon. David M. Brockway

Village Justice, Horseheads

Hon. David M. Brockway is a cum laude honors graduate of Colgate University (1972) and of the Albany Law School of Union University (1975). A former assistant public defender for Chemung County (1975-1980) and practicing attorney, he currently presides as Village Justice in Horseheads (2014-present; 1980 to 2000). He retired in 2014 as a Family Court Judge (2000-2014) and as an Acting County and Supreme Court Justice. He also served as a Supervising Judge of the Town and Village Courts in the 6th District. From 2003-2007 he was an adjunct lecturer in paralegal studies at SUNY-Corning Community College. He has served the New York State Magistrates Association in numerous capacities, including as Editor of *The Magistrate*, Vice-President, and Director. A former "Magistrate of the Year" (1988), he has also been a frequent presenter over many years, including at NYSMA state conferences and the Southern Tier Central (SUNY-Corning) and Southern Tier West (Houghton College) Regional Leadership Conferences. He has two grown children and five grandchildren and was married for 42 years to the late Barbara Brockway.

George Gabby Hayes

American character actor George "Gabby" was the most famous of the Western-movie sidekicks of the 1930s and 1940s. He was born in the Hayes Hotel (owned by his father) in the tiny hamlet of Stannards, New York, on the outskirts of Wellsville, New York. Hayes was the son of hotelier and oil-production manager Clark Hayes, and grew up in Stannards. As a young man, George Hayes worked in a circus and played semi-pro baseball while a teenager. He ran away from home at 17, and joined a touring stock company.

He played scores of roles in Westerns and non-Westerns alike, finally in the mid-1930s settling into an almost exclusively Western career. He gained fame as Hopalong Cassidy's sidekick in many films between 1936-39. One of the few sidekicks to land on the annual list of Top Ten Western Boxoffice Stars, he did so repeatedly. He worked almost exclusively as a Western sidekick to stars such as [John Wayne](#), [Roy Rogers](#), and [Randolph Scott](#). After his last film, in 1950, he starred as the host of a network television show devoted to stories of the Old West for children, [The Gabby Hayes Show \(1950\)](#). Offstage an elegant and well-appointed connoisseur and man-about-town, Hayes devoted his years of his life to managing his investments.

Hon. David W. Kozyra

David Kozyra has served as Town Justice in Marcy, NY since January 2008. He graduated from Syracuse University from which he received his Bachelor of Science degree in 1987.

He was nominated as a Director of the New York State Magistrates Association in September 2012. He was re-elected in 2016 and 2021. He was elected as 3rd Vice President in 2022. He currently serves as 2nd Vice President; elected to this position in 2023. He was a regular lecturer for first time conference attendees. He served on the following committees: County Association/ Outreach, Finance, Consolidation and Court reform Issues, Media and Public Relations, Conference/ Judicial Training and Education, Bylaws, and the Audit committees. He was nominated as President and Vice President of the Oneida County Magistrates Association. He currently serves on the OCMA as Education Coordinator. David serves as a mentor to newly elected town and village justices.

David was employed by the New York State Department of Transportation as a Civil Engineer 1. He retired in 2021 after 34 years of employment. He volunteers as a firefighter for the Maynard Volunteer Fire Department. He serves as a Lieutenant on an Engine Company.

David married his wife Christie in 1997. They have one daughter Madison who attends LeMoyne College.

Hon. Ronald Meister

Ron Meister is a Town Justice in the Town of Mamaroneck, a former President of the Westchester County Magistrates Association, and a Director of NYSMA. He is a graduate of Yale College and Yale Law School, and a member of the bars of New York State and the District of Columbia, as well as multiple Article I and Article III federal trial and appellate courts. He is Senior Counsel to the New York City law firm Cowan, Liebowitz & Latman, and a member of the New York State Advisory Committee on Judicial Ethics and the New York State Bar Association Committee on Procedures for Judicial Discipline. Ron is a U.S. Navy veteran, having served on active duty in the Judge Advocate General's Corps as a trial and defense counsel and as a military judge. He is Chair of the Board of the National Institute of Military Justice and a Life Member of the American Law Institute. His published articles on law and justice include *The Day The Common Law Stopped*, *Justice Tempered With Murphy*, *An Ensign for the Coffin*, and *The Day I Cross-Examined Santa Claus*. Ron is an amateur actor of limited talent, having appeared in staged readings as Juror Number 8 in *Twelve Angry Men* and Matthew Harrison Brady in *Inherit the Wind*, as well as in recurring roles with the Mighty NYSMA Art Players.

HON. BARBARA SEELBACH

Justice Barbara Seelbach has spent the majority of her career working in the field of personal injury as a claims negotiator for insurance carriers and for major law firms where she successfully settled personal injury cases at mediation and arbitration proceedings. In 2004, she began her public service career as a member of the Clinton Town Board where, in addition to her legislative duties, she was appointed liaison to the planning board and zoning board. In 2006, she decided to run for Town Justice, and she has been on the bench ever since. She is currently employed as the Confidential Secretary to former Pine Plains Justice and current Dutchess County Supreme Court Justice Christi J. Acker. During her tenure as town justice, she was elected Secretary, Vice President and President of the Dutchess County Magistrates Association. In September of 2015, she joined the ranks of the NYSMA as a Director and she is currently serving as 3rd Vice President. Her prior teaching experience for the association includes classes on the topics of small claims, summary proceedings and marriage and oaths. Justice Seelbach is a graduate of the University of Arizona, Tucson.

Contact information: bseelbach@nycourts.gov

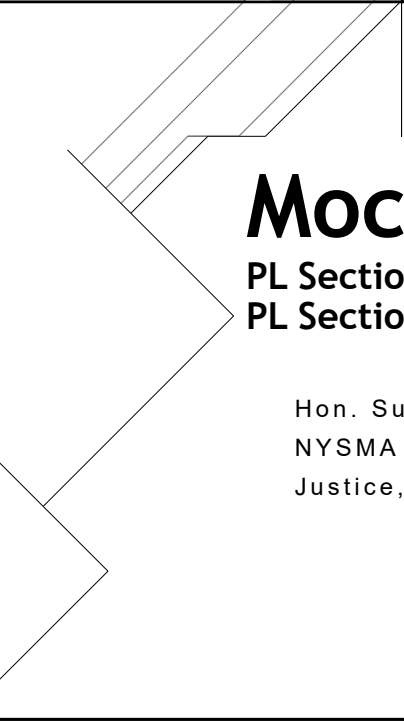
HON. JONAH TRIEBWASSER

Justice Jonah Triebwasser brings over 50 years of experience to the bench as a police officer, investigator, attorney, prosecutor and judge. He is a graduate of the John Jay College of Criminal Justice (A.A., 1971; B.S. 1972) New York Law School (J.D. 1979) and the National Judicial College where he is a member of the faculty and a Judicial Ambassador. He is a member of: Dutchess County Bar Association (Past-President); Dutchess County Magistrates Association (Past-President); New York State Bar Association (Member, House of Delegates); and New York State Magistrates Association (Past-President). He has lectured extensively on legal topics throughout the state and is the author of West Publishing's *Criminal Law Handbook* (5th, 6th and 7th editions) as well as *Magill's Handbooks for Justice Courts*. He has served as Town and Village Justice in Red Hook since 2007. Contact information: jtriebwasser@nycourts.gov

BIO FOR HON: THOMAS R. DIAS

I was elected to the bench in 1993 by the Town of Ancram NY. The following year I attended my first N.Y.S.M.A. conference in Lake Placid NY.

It was at that conference I learned I could run for a 3 year Directors position. The following year I submitted my name and was successfully nominated to be a candidate for presentation to the members by the NYSMA board and was successfully elected to be a Director by the members at the conference. I was successful at the end of my term as a Director to submit my name for the position of third V.P. I then proceed through the process becoming NYSMA President in 2006. I Stepped down from my Ancram Town Judge position in 2007, to run for Ancram Town Supervisor. Which I held for one term. Thankfully I am able to remain on the board of NYSMA, and find the assistance and guidance I can give rewarding.



Mock Trial

PL Section 120.09 - Assault on a Judge
PL Section 120.09-a - Aggravated Assault on a Judge

Hon. Susan Sullivan Bisceglia,
NYSMA 1st Vice President
Justice, Town of La Grange

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And the mighty NYSMA players . . .

- Hon. Susan Sullivan Bisceglia as the judge
- Hon. Thomas Dias as the court clerk
- Hon. David Kozyra as the defendant Sid Slick
- Hon. Barbara Seelbach as Judge Due Process
- Hon. Jonah Triebwasser as witness Gabby Hayes

And specials guest appearances by:

Hon. Ron Meister, Esq, Assistant District Attorney
Hon. Dave Brockway, Esq., Assistant Public Defender



2

2

The United States Constitution says:

- “Trial of all crimes... shall be by jury.”
 - Article III, Section 2
- “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.”
 - Amendment V
- “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.”
 - Amendment VII

3

What is the Jury Trial Procedure?

A jury?

- An impartial
- Six or 12 person body
- Made up of defendant's peers
- Which is the trier of fact

A jury member?

- A citizen of the United States,
- Who is also a resident of the jurisdiction,
- Is at least 18 years old,
- And able to communicate in English

4

How and when do jurors serve?

- Court requests jury from Commissioner of Jurors by filling out form on NYSUCS website Justice Court Juror Request Site On-Line accessible via the Office of Justice Court Support:
 - (<https://nycourts.sharepoint.com/sites/JurorReq/SitePages/Home.aspx>)
- Potential jurors receive a summons from the Commissioner of Jurors and are entered into the jury pool.
- Selected jurors are then empanelled to hear a case.

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Can Jurors be excused?

- YES.
 - Jurors may be excused if:
 - Serving on jury duty poses an unusual hardship.
 - An illness prevents them from doing a good job.
 - A disability which the court cannot accommodate prevents them from serving

6

What is the jury's job?

- Hear/See testimony and evidence in a trial, deliberate and render a verdict.
- TODAY YOU WILL BE THE JURY

7

What is the Judge's job?

- Be the gate keeper for evidence; only allow in what is proper.
- Make sure that the trial is conducted legally, professionally and fairly.
- Explain the law to the jurors

8

8

✓	
Charge: PL Section 120.09 - Assault on a Judge - C Felony	
Elements of Crime	

- Under our law, a person is guilty of Assault on a Judge when,
- With Intent to
 - Prevent a Judge from Performing Official Duties,
- Causes Serious Physical Injury to Such Judge

9

✓	
Charge: PL 120.09 Assault on Judge - C Felony	
Elements of Crime	

- JUDGE
 - Judge of a court of record or a justice court.
- INTENT
 - Conscious Objective or Purpose.
 - Thus, a person acts with Intent to Prevent a Judge from Performing Official Judicial Duties when:
 - That person's Conscious Objective or Purpose is:
 - To Prevent Such Judge from Performing Official Judicial Duties.

10

✓
**Charge: PL Section 120.09 -a Aggravated Assault on a Judge
 - B Felony**

Elements of Crime

- Under our law, a person is guilty of Aggravated Assault on a Judge when,
- With Intent to
 - Cause Serious Physical Injury and
 - Prevent a Judge from Performing Official Duties,
- Causes Serious Physical Injury to Such Judge

11

✓
**Charge: PL 120.09-a Aggravated Assault on Judge - B Felony
 Elements of Crime**

- JUDGE
 - Judge of a court of record or a justice court.
- INTENT
 - Conscious Objective or Purpose.
 - Thus, a person acts with Intent to Cause Serious Physical Injury and Prevent a Judge from Performing Official Judicial Duties when:
 - That person's Conscious Objective or Purpose is:
 - To Cause Serious Physical Injury to such Judge; and
 - Prevent Such Judge from Performing Official Judicial Duties.

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<p>✓ Charge: PL Section 120.09 – Assault on a Judge – C Felony PL 120.09-a - Aggravated Assault on a Judge – B Felony</p>	<p>Charge: PL Section 120.09 – Assault on a Judge – C Felony PL 120.09-a - Aggravated Assault on a Judge – B Felony</p>
<p>Elements of Crime</p> <p>OFFICIAL JUDICIAL DUTIES – not defined and will need to be determined by the facts presented.</p> <p>SERIOUS PHYSICAL INJURY - Impairment of a person’s physical condition Which creates a substantial risk of death, or Which causes death, or Serious and protracted disfigurement, or protracted impairment of health or protracted loss or impairment of the function of any bodily organ.</p>	
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<p>✓ Charge: PL Section 120.09 - Assault on a Judge - C Felony PL Section 120.09-a - Aggravated Assault on a Judge - B Felony</p>	<p>Charge: PL Section 120.09 - Assault on a Judge - C Felony PL Section 120.09-a - Aggravated Assault on a Judge - B Felony</p>
<p>Elements of Crime</p> <ul style="list-style-type: none"> • In order for you to find the Defendant Guilty of the respective crimes, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following Elements, respectively: • 1. That on or about (date of alleged crime), Judge Due Process was a Judge; (PL 120.09 & PL 120.09-a) • 2. That on or about that date in the County of FAIRNESS, Defendant, caused serious physical injury to Judge Due Process; (PL 120.09 & PL 120.09-a) • 3. <u>For PL 120.09 That he did so with Intent to Prevent Judge Due Process from Performing Official Judicial Duties</u> • 3. <u>For PL 120.09-a - That he did so with Intent to Cause Serious Physical Injury and to Prevent Judge Due Process from Performing Official Judicial Duties</u> 	
14	

14

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Charge: PL Section 120.09 - Assault on a Judge - C Felony PL Section 120.09-a - Aggravated Assault on a Judge - B Felony Elements of Crime	
<p>IF YOU FIND,</p> <p>The People HAVE PROVEN BEYOND A REASONABLE DOUBT each of those Elements of the respective crimes, you MUST FIND the Defendant GUILTY (PL 120.09 or PL 120.09 –a)</p> <p>The People HAVE NOT PROVEN BEYOND A REASONABLE DOUBT Any One or More of those Elements, you MUST FIND THE Defendant NOT GUILTY of this crime.</p>	
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Criminal TRIAL PROCEDURE	
<p>Guide to Conducting Criminal Jury Trial – NYSUCS Website: https://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/pdfs/guide-to-conducting-a-criminal-jury-trial-in-justice-court-2024.pdf</p> <p style="text-align: center;">The Checklist:</p> <p>Summon the Jurors Juror Questionnaire Juror Excusals Swear in Remaining Prospective Jurors Juror Orientation Movie</p>	
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Criminal TRIAL PROCEDURE

The Checklist (continued):

Judge's Preliminary Charge to Prospective Jurors in the box
 District Attorney MUST voir dire panel in the box
 Defense Counsel MAY voir dire panel in the box
 Challenges for Cause
 Preemptory Challenges
 Swear in Remaining Jurors in the box as regular jurors for trial
 Trial Begins immediately...jurors remain
 Trial Begins another day/time, jurors are excused with admonitions
 Fill the box and begin again until 6 sworn jurors are selected
 Alternate Jurors
 Trial Begins

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Criminal TRIAL PROCEDURE

The Checklist (continued):

Judge's Preliminary Charge to Jurors in the box
 District Attorney MUST give Opening Statement
 Defense Counsel MAY give Opening Statement
 People's Case
 People Rest
 Defense Motions
 Defense Case
 Defense Rests
 Review with parties and finalize Charge to the jury (Pre-Charge Conference)
 Judge's Pre-Summation Charge to the Jury

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Criminal TRIAL PROCEDURE - Checklist (continued)

- Defense Closing Statement
- People's Closing Statement
- Charge to the Jury
- Verdict Sheet
- Deliberations
- Note(s) from deliberating Jury
- Hung Jury
- Sending Jury Home in Middle of Deliberations
- Taking the Verdict
- Polling the Jury
- Excusing & Thanking the Jury
- GUILTY – Schedule Sentencing Date & Review Bail
- NOT GUILTY – Defendant is Released

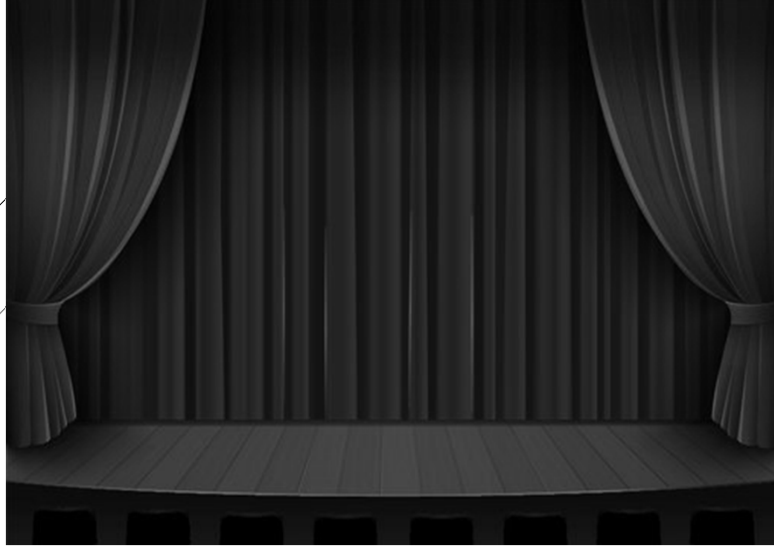
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19



20

And now - on with the show!



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Q&A



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* § PL 120.09 Assault on a judge.

A person is guilty of assault on a judge when, with intent to cause serious physical injury and prevent a judge from performing official judicial duties, he or she causes serious physical injury to such judge. For the purposes of this section, the term judge shall mean a judge of a court of record or a justice court.

Assault on a judge is a class C felony.

* NB Effective until July 19, 2024

* § PL 120.09 Assault on a judge.

A person is guilty of assault on a judge when, with intent to prevent a judge from performing official judicial duties, such person causes serious physical injury to such judge. For the purposes of this section, the term judge shall mean a judge of a court of record or a justice court.

Assault on a judge is a class C felony.

* NB Effective July 19, 2024

* § PL 120.09-a Aggravated assault on a judge.

A person is guilty of aggravated assault on a judge when, with intent to cause serious physical injury and prevent a judge from performing official judicial duties, such person causes serious physical injury to such judge. For the purposes of this section, the term judge shall mean a judge of a court of record or a justice court.

Aggravated assault on a judge is a class B felony.

* NB Effective July 19, 2024