



The
Magistrate
The Courts Closest to the People

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The Magistrate

The Courts Closest to the People

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DEUTERONOMY, CHAPTER 1

And I charged your Judges at that time, Saying,
Hear the causes between your brethren,
and judge righteously between every man and his brother,
and the stranger that is with him.
Ye shall not respect persons in judgement;
but ye shall hear the small as well as the great;
ye shall not be afraid of the face of man;
for the judgement is God's: and the cause that is too hard for you,
bring it unto me, and I will hear it.

SELECTED CANONS FROM THE CODE OF JUDICIAL CONDUCT

Section 100.3 A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(12) It is not a violation of this Rule for a judge to make reasonable efforts to facilitate the ability of unrepresented litigants to have their matters fairly heard.



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PRESIDENT'S MESSAGE

BY THE HONORABLE SUSAN SULLIVAN-BISCEGLIA

**Hon.
SUSAN SULLIVAN-
BISCEGLIA**



Dear Colleagues:

I hope this greeting finds you well, and that you are all prospering in this new year and making your rainbows of justice in your courts and communities.

I am honored to travel across New York state, as your president of the New York State Magistrates Association. I continue to carry our banner and communicate the messages of the importance of *fair and impartial justice with compassion in our courts, the courts closest to the people, our role as problem solvers in our communities, serving with the utmost integrity and judicial ethics, while promoting civics in our youth.*

SEPTEMBER – ACCESS TO JUSTICE, COURT CLERKS INSTALLATION AND COUNTY MAGISTRATES

In September, I attended the second NYSMA meeting with Unified Court System's Permanent Commission on Access to Justice with Deputy Chief Administrative Judge for Courts Outside New York City, Hon. James Murphy, and other stakeholders, discussing summary proceeding matters.



President Susan at the Court Clerk's conference with conference Co-Chairs Lorraine Buchal (*T/Stillwater/Easton*) and Jennifer Miller (*T/Moreau*)

I traveled to Albany for the New York State Association of Magistrate Court Clerks Annual Gala and Installation

Dinner, where I had the honor of swearing in newly elected officers and addressing our court clerks. Congratulations to President Heather Blume and all elected officers and directors. It was particularly

special for me as I administered the Oath of Office to my court clerk, Cindy Paraggio, as 3rd Vice President. I also learned that our very own Judge Gary Graber, NYSMA Past-President, served as and has been the longest serving Master of Ceremonies (only since its inception) – great work Judge Graber in supporting our clerks! As we all work together in our courts with our clerks supporting their judges administratively with distinction, I was most appreciative of the opportunity to address the clerks with that message. We have a unique opportunity to showcase this as we plan for our joint conference in September 2026, where we have the most special honor of having our Chief Judge Hon. Rowan Wilson as our featured speaker and our Chief Deputy Administrative Judge for Court Outside of New York City, Judge James Murphy, as our welcome night speaker. Save the dates, September 27 - 29, 2026, and be on the lookout for reservation details coming out soon. I'm sure your clerks will.

I had the opportunity to address my home county, the Dutchess County Magistrates, as their Past-President and your NYSMA President, at their meetings in September and October in Pleasant Valley, New York, where the Director of Dutchess County Probation gave an informative presentation on programs and services to help with problem solving in our courts.

I attended the New York State Bar Association Judicial Section's Committee on Judicial Associations meeting where the Court Modernization Action Committee (CMAC) was discussed. CMAC is a working group comprising judicial, bar and community leaders, among others, formed to support and advise the court system in implementing technology initiatives to increase efficiency and enhance access to equal justice. CMAC is led by Hon. Craig Doran (Chair), Hon. Patria Frias-Colón (Co-Chair), and David J. Turitzin, Esq., Proskauer Rose, LLP.

Also on the agenda was a discussion regarding legislative bill S8418/A8883, an act to amend the judiciary law, in relation to judicial departments.

OCTOBER – NYSBA HOUSE OF DELEGATES, CRIMINAL JUSTICE AND CIVICS

In October, as a member of the House of Delegates of the New York State Bar Association, I attended their meeting in Albany, along with Hon. Karl Manne, our NYSMA Past President. On the agenda was a report and recommendations from the Task Force on Opioid Addiction. Many of us see the effects of opioid addiction in our courts and, to address this, the UCS has created drug treatment courts as one of its problem-solving courts. The Hon. Cheryl Chambers, Appellate Division Judge and Chair of the Bar Foundation, also provided her report to the House of Delegates on NYSBA Foundation matters.

I was honored to be appointed to the NYSBA Criminal Justice Section's Executive Committee, where I hope to further the interests of *fair and impartial justice and problem solving in our courts*. I was also honored to have been appointed to the Committee on Law Youth and Citizenship, where I look forward to continuing to support civics in our youth through Mock Trials, Moot Court, and opportunities to educate and instill the importance of civic engagement.

NOVEMBER - JUDICIAL WELLNESS, COUNTY MAGISTRATES, DRUG TREATMENT COURTS

The importance of judicial wellness is without question first and foremost, as we must take care of ourselves so we can help others through the administration of fair and impartial justice. We continued to help facilitate lunchtime webinars for judges – a time to learn techniques of wellness through simple and helpful daily activities such as mindfulness, gratitude, and the importance of breathing as methods to center ourselves and maintain balance. Invitations are sent to your inbox *via* our Constant Contact emails – no need to register - just grab your lunch and join – you will be glad you did!

We helped facilitate lunch hour judicial wellness webinars, with Daniel T. Lukasik, Esq., NYS Judicial Wellness Coordinator with Michelle Niehues, LMFT and Erika Ireland, Ed.D., entitled “Getting a Good Night’s Sleep: Strategies and Tips for Restorative Rest” and another one with Hon. Veronica Romero Guerrero, entitled “Mindful Moments: Practicing Mindfulness to Stay Grounded in the Present.”

I submitted NYSMA’s response as part of public comment regarding proposed changes to Part 17 of the Rules of the Chief Judge to improve the UCS program for judicial visitation to detention facilities.

I was also happy to be invited back to speak at the Columbia County Association Magistrates meeting. It was so great to see Judge Malcom “Butch” Smalley and Judge D. Carrie O’Hare. They always provide informative meetings and opportunities to meet with your district. This month’s meeting discussed Drug Treatment Courts – very important problem-solving courts. It was a special honor to have Hon. E. Danielle Jose-Decker, Supervising Judge of the Town and Village Courts for the 3rd Judicial District, Special Counsel Kevin O’Connell, Esq., and other stakeholders in attendance.

DECEMBER - NYSMA EXECUTIVE MEETING AND MOCK TRIAL

We had the special savory delight to have our December NYSBA Executive Committee meeting at the Inn at Bellefield, Hyde Park, New York, a new and beautiful venue across the street from the Culinary Institute of America – so of course, in addition to our business meeting, where we discussed important initiatives as legislative agendas, fiscal matters, education and training, ethics, and access to justice matters, we had the opportunity for a tour and fine tastings.

We helped facilitate a lunch hour judicial wellness webinar with Daniel T. Lukasik, Esq., NYS Judicial Wellness Coordinator with Nicole Zeyes, LCSW entitled “Mindful Moments: Practicing Mindfulness to Stay Grounded in the Present.”

I attended the New York State Bar Association Judicial Section’s Committee on Judicial Associations meeting where guest speakers were Chief Administrative Judge Hon. Joseph A. Zayas and NYSBA President Kathleen Sweet.

I submitted NYSMA’s response as part of public comment regarding a proposal to add a new Part 161 to the Rules of the Chief Administrator of the Courts about the use of generative artificial intelligence in preparing court documents.

Continued on page 4



December is also that time of year where I have the pleasure of hosting our local high school to conduct a mock trial as part of their seal of civic readiness. The students are always so excited and well prepared – eager to embark in the field of justice. Well done our future legal leaders – well done! I encourage you to invite your local students to your courtrooms to provide this important opportunity for our youth. It is invaluable!

JANUARY

NEW YEAR’S WEDDING, COMMUNITY SERVICE, RADIO INTERVIEW, NYSBA HOD, CRIMINAL JUSTICE EX. COMMITTEE, GALA AND JUDICIAL SECTION LUNCHEON, JUDICIAL VISIT SUBCOMMITTEE, WELLNESS, COURT CLERKS, OCA FRIDAY CORE SERIES TRAININGS – ETHICS AND JUDICIAL DEMEANOR



Can you think of a better way to start the New Year than with a wedding? I had the special occasion to officiate a New Year’s wedding to a most happy couple. Yes, it was outside, in the snow, with chilly temperatures as you might expect January to be, but the excitement and energy kept us all warm. For me, officiating at a wedding is one of those moments as a judge I truly treasure.

In my hometown of the Town of LaGrange, I had the honor of being a part of the swearing in ceremony of newly elected officials, Town Supervisor Anthony Marinaro, Town Council Members Franco Giangrasso and Susan Condon, and Superintendent of Highways John Wisseman as well as Dutchess County Legislator District 3, Michael Polasek.

I was also invited to be a guest on “At Your Service,” a radio show hosted by local Rotarians. As your President, and as a member of the LaGrange Sunrise Rotary, it was an honor to talk about our interests in serving our communities with fair and impartial justice with integrity, fairness and compassion.



I was especially honored to attend the NYSBA’s 150th Anniversary House of Delegates Meeting at the Hilton in New York City, with our Chief Judge Rowan Wilson addressing our members with most important messages and inspirational words for our courts. Specifically, he spoke of the importance of access to justice.

A night to remember – attendance at the NYSBA’s 150th Anniversary Gala at the Plaza, New York City – a most elegant event attended by our most esteemed leaders and honored guests, including Governor Kathy Hochul, Chief Judge Rowan Wilson, Chief Administrative Judge Joseph Zias, Deputy Chief Administrative Judge for Courts Outside of New York City Judge Murphy and other officials. I was most proud to represent the New York State Magistrates Association as your President.



I also had the distinct pleasure of speaking with our Chief Administrative Judge for Courts Outside of New York, Judge James Murphy, while in attendance at the NYSBA Judicial Section Awards Luncheon, also at the Hilton, where Chief Judge Wilson also addressed the judiciary.

I attended the Subcommittee on Judicial Visits meeting where I discussed our comments on the proposal to increase judicial visits to incarcerated individuals.

We helped facilitate a lunch hour judicial wellness webinar with Daniel T. Lukasik, Esq., NYS Judicial Wellness Coordinator with Nicole Zeyes, LCSW, entitled “Mindful Moments: Practicing Wise Speech to Stay Grounded in Present.”

I continued our collaboration with our court clerks regarding our upcoming joint conference in September and other important matters at their NYSAMMC board meeting in Albany.

I just love Fridays in January, as the Office of Justice Court Support provides us with such great and informative trainings from the comfort of your court, office, etc. *via* Teams. They provided great discussion and mock proceedings, which were well done, entertaining and provided CJE/CLE credit. Thank you to Michele Conley, Diane Touro and the team at the OJCS! Looking forward to their live training at the Association of Towns in NYC as well!

**FEBRUARY – WELLNESS, ETHICS -
AOT PRESENTATION AND OCA TRAINING,
MAGISTRATES, DECISION WRITING,
MOOT COURT, MENTAL HEALTH PROBLEM
SOLVING COURTS**

We helped facilitate a lunch hour judicial wellness webinar with Daniel T. Lukasik, Esq., NYS Judicial Wellness Coordinator and Carolyn Cole, MA, LCPC.

As our magazine went to press, I am preparing to present a class at the Association of Towns Annual Conference in New York City, along with Past-President, Hon. Robert Bogle, on Town and Village Courts and their impact on municipal boards - the separate but equal branches of government and the strong ethical concerns when one branch exercises improper control over the other.

I am also looking forward to attending OCA’s in person core training at the Association of Towns Conference in NYC as well. It is chock full of information on matters such as judicial ethics, impaired driving, summary proceedings, domestic violence, warrants, and others. This is a unique opportunity to network with your colleagues and

meet the presenters as well as the people who make this all happen at the Office of Justice Court Support – Director, Michele Conley, Supervising Attorney, Diane Touro and their excellent team. I know I have them on my speed dial – I hope you do too!

We are most grateful to OJCS and Judge James Murphy, our Deputy Chief Administrative Judge for Courts Outside of New York City, for his insight and support of our town and village courts including – but not limited to - bringing in person training to us. I look forward to working together in furthering important initiatives for our courts.

I have been invited to attend the Columbia County Magistrates Association meeting at the Stuyvesant Town Court, where the important subject of “Judicial Decision Writing” will be presented and I understand that those in attendance will receive both CLE and CJE credit.

I have also been invited to Judge the NELMCC 2026, Pace / Haub Environmental Law Moot Court competition, at Pace University’s Elisabeth Haub School of Law, White Plains, New York. I look forward to presiding and encouraging our youth, as they are our future leaders! I encourage all of you to seek opportunities and say “yes” when asked to judge a moot court or mock trial competition. These are such important life-changing opportunities for our youth and instill the importance of fair and impartial justice and civility in our communities and beyond. This is also an opportunity to provide great examples of setting the stage with good judicial demeanor and compassion, which further instills these philosophies.

I am even more filled with optimism and the possibilities of what we can do together to bring fair and impartial justice – with compassion. As judges in the courts closest to the people, we have the responsibility to recognize the opportunities we have every day to problem solve and change lives for the better. We do this utilizing the common thread among us - community service – serving our communities in the best way possible, together, while serving as an example and providing encouragement for civic engagement – especially in our youth – our future legal leaders.

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OTHER INITIATIVES

Finally, please let me know if there are any special initiatives or ideas that you may have that I can help further in our courts. You can reach me at: SmSullivan@nycourts.gov. I would be happy to help in any way that I can. *I am your president, here for you and your courts!*

REMINDER–

**CHIEF JUDGE, ROWAN WILSON,
KEYNOTE SPEAKER AND DEPUTY CHIEF
ADMINISTRATIVE JUDGE FOR
COURTS OUTSIDE NEW YORK CITY,
JAMES MURPHY, WELCOME NIGHT SPEAKER
AT: NYSMA 2026 CONFERENCE,
SEPTEMBER 27 – 29, 2026!!**

Be sure to mark your calendars now so we can all welcome our Chief Judge and Deputy Chief Administrative Judge for Courts Outside New York City, attend judicial training and mingle while putting our best judicial foot forward!

I am excited to continue to travel across our beautiful New York State to meet with you in your communities, update you on my experiences, and to see you for our annual conference.

In the meantime, let's keep building rainbows of justice together!

With much gratitude and respect,

Your president,

Hon. Susan Sullivan-Bisceglia



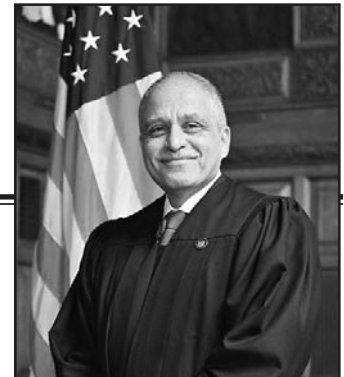
Chief Judge Wilson to Speak at Magistrates/Clerks Conference

The Hon. Rowan Wilson, Chief Judge of the State of New York, will be the guest of honor and keynote speaker at the joint conference of the New York State Magistrates Association and the New York State Association of Magistrates Court Clerks, Inc., at the Crowne Plaza Desmond Hotel in Albany on Tuesday, September 29, 2026.

Judge Wilson's address to the judges and clerks will be the capstone of a four day educational conference where court staff will learn of important changes in law and procedure.

The Honorable Rowan D. Wilson, Chief Judge of the State of New York and the New York Court of Appeals, was born in Pomona, California, and grew up in Berkeley, California. He received his A.B. degree from Harvard College in 1981 and his J.D. degree from Harvard Law School in 1984. He was admitted to the bar of the State of California in 1985, and the bar of the State of New York in 1987. From 1984 to 1986, he served as a law clerk to the Honorable James R. Browning, Chief Judge of the United States Court of Appeals for the Ninth Circuit, based in

San Francisco, California. In 1986, he joined the firm of Cravath, Swaine & Moore in New York City as an associate, and was elected to partnership there in 1991, in which position he continued until February 2017. His practice encompassed a wide variety of matters, including antitrust, intellectual property, securities and common-law fraud, contract, labor and employment, civil rights and first amendment issues. On January 15, 2017, Governor Andrew M. Cuomo nominated Judge Wilson to serve as an Associate Judge of the Court of Appeals, and the New York State Senate confirmed his nomination on February 6, 2017. On April 10, 2023, Governor Kathy Hochul nominated Judge Wilson to serve as Chief Judge of the Court of Appeals and the State of New York. The New York State Senate confirmed his nomination on April 18, 2023. While in private practice, Judge Wilson served on the boards of several charitable and not-for-profit organizations and handled numerous *pro bono* matters.



Executive Committee Highlights

BY THE HONORABLE TANJA SIRAGO,
EXECUTIVE DIRECTOR (*T/Cairo*)

The Executive Committee meeting of the New York State Magistrates Association was held on Saturday, December 6, 2026, at 8:30 A.M., at The Bellefield Inn, Hyde Park, New York, with the President, Hon. Susan Sullivan-Bisceglia, in the chair and the Executive Director, Hon. Tanja Sirago, present.

President Sullivan-Bisceglia opened the meeting with her president's report. She noted her travels around the state as president as well as her future travels.

Hon. David O. Fuller moved to accept the minutes from the September 14th Executive Committee meeting, the September 15th annual business meeting, and the September 17th Executive Committee Meeting. Carried. Hon. Jonah Triebwasser moved to accept the treasurer's report. Carried.

Discussion was held to upgrade the office software to be more aligned with the external auditor's recommendations. The Executive Committee would like to see more transparency on the NYSMA financial records. Hon. Thomas J. Sheeran moved to authorize the Finance Committee to create a policy. Carried. Hon. Dennis Young moved to authorize Hon. Barbara Seelbach to explore the costs of auditors to help with NYSMA's transition to GAAP accounting, iCloud storage and IT. Carried.

The Executive Committee discussed creating an office manual like a bench book with all the information required to run the NYSMA office efficiently in the absence of the executive director or staff. Hon. Kenneth Ohi Johnsen moved to authorize the Office Committee to create such documents. Carried.

Discussion was held regarding converting NYSMA from the tax exemption status of 501 c6 to 501 c3. It was recommended to write to the Advisory Committee on Judicial Ethics regarding "charitable activities." Hon. Susan Sullivan-Bisceglia moved to get a formal opinion; discussion was held. Hon. Kenneth Ohi Johnsen called the question. A vote was taken, 18 yeas, 10 nays, the motion was carried. President Sullivan-Bisceglia will submit the letter.

Hon. Gary A. Graber introduced a new item to add

to our current legislative agenda: Hon. Dr. Carrie O'Hare submitted a request to include a modification to CPL §510.10(4)(v). Legislative Purpose: This legislation is intended to protect communities and victims, particularly survivors of domestic violence, by allowing courts to impose bail when defendants with a demonstrated history of repeated or violent criminal conduct are charged with new violent or person-directed offenses. By restoring limited judicial discretion in these high-risk cases, the bill enhances community safety and ensures greater protection for those most vulnerable to repeated harm. New Section CPL § 510.10(4)(v) Having five or more criminal convictions on different days, or one or more violent felony convictions, and the principal stands charged with a violent felony offense, or a class "A" misdemeanor under the Penal Law that alleges harm or threat of harm to an identifiable person. Hon. Robert G. Bogle moved to include this in our current legislative agenda. Carried.

Discussion was held regarding civil claims and small claims. Hon. Karl Manne moved to support an increase up to \$10,000.00 for filing in small claims, increase city court claims up to \$20,000.00, to include increase in fees. Hon. Peter Barlet made a friendly amendment to also recommend a fee increase for jury trials. Discussion was held. It was agreed that the Legislative Committee would draft a proposal. Carried.

Hon. Dennis Young moved to enter executive session.

After exiting the executive session, the proposed budget for 2026 was reviewed. Hon. Karl Manne moved to accept the 2026 budget with the necessary changes and adjustments as discussed during the executive session.

The term of the treasurer was discussed. The amount of time it takes to learn the required duties of the job would require a longer term than one year. Hon. Michael Petucci moved to expedite the change within the bylaws to a 3-year term. Carried. Referred to the Bylaws Committee.

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Discussion was held on the new trademark and recommendation of the law firm to apply it on NYSMA products. Hon. Timothy Cox moved to reach out to an attorney for further advice on which products would need it.

President Sullivan-Bisceglia welcomed guests; President of the NYSAMCC, Inc., Heather Blume, and Second VP of NYSAMCC, Inc., Barbara Lloyd, to the meeting. Discussion was held on the upcoming joint conference in Albany. Registration will be online only and we hope to be up and running by May 1st.

New Business: Hon. Dawn Fiorillo shared information regarding setting nominal bail outside of your county. She is working on creating a contact list for all correctional facilities with fax and/or email information.

Hon. Timothy Cox moved to adjourn the meeting at 2:54pm. Carried.

The next Executive Committee meeting will be held on March 14, 2026, at the Harbor Hotel 1000 Islands in Clayton, NY.



Governor Makes Criminal Justice Proposals in State of the State Address

New York Governor Kathy Hochul made several legislative proposals in the area of criminal justice that may be of interest to the justice courts system. Among them are:

- requiring courts to automatically extend an order of protection when a defendant does not return to court. Judges will also be required to clearly notify defendants in advance that the order will remain in effect if they fail to appear;
- legislation that will require that 3D printers sold in New York be equipped with basic technology that prevents the 3D printing of unlicensed, illegal firearms and firearm parts;
- requiring that all pistols sold in New York to private citizens be designed in a way that ensures they cannot quickly and easily be turned into rapid fire machine guns;
- legislation to establish a 25 foot buffer zones around houses of worship and healthcare facilities (from their property line) to forestall what the Governor describes

as “venomous and hate-fueled demonstrations”;

- legislation to expand automated speed enforcement to additional roadways and modernizing driver education to reinforce safe behavior in active work zones. The State will also deploy new technologies that immediately warn workers when vehicles enter closed areas;
- requiring all new or first-time motorcycle license applicants to complete an approved rider training course before becoming licensed; and
- invest in modernizing the State’s crime labs to reduce backlogs, speed up case processing, and improve the quality and consistency of forensic evidence. This initiative will support upgrades to DNA and drug analysis technology, expand forensic staffing, and strengthen statewide standards through accreditation and proficiency testing;

NYSMA will be looking at these and other proposals as the year progresses.



Governor Vetoes Translator Bill

Governor Kathy Hochul has vetoed a bill supported by NYSMA to raise county reimbursement rates for translation services in the town and village courts from \$25.00 per case to \$110.00.

In her veto message, Governor Hochul objected to “shifting the cost of providing services from one unit of local government (town and villages) to the other (the counties). Issues regarding



cost sharing among local governments should be addressed in the State Budget process where aid to localities can be considered. Therefore, I am constrained to veto this legislation.”

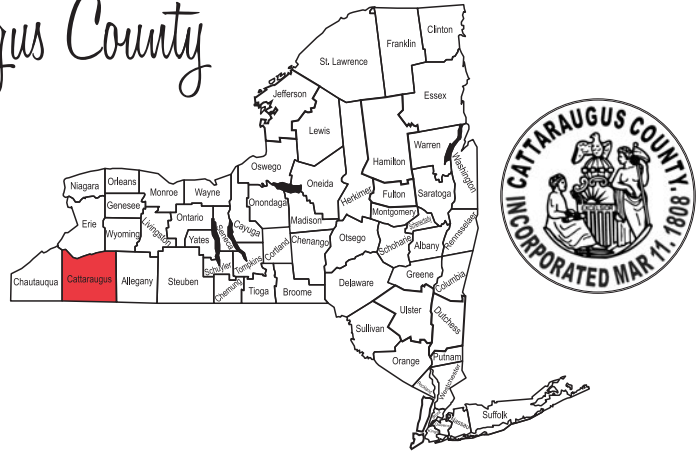
The NYSMA Legislative agenda calls for raising the statutory reimbursement rate for translation services (foreign language and sign language for the deaf) from \$25.00 per day to \$300.00 per day.



About My County

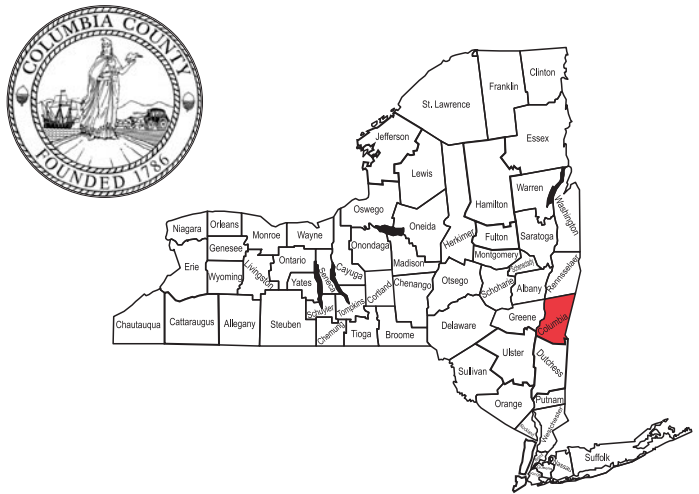


Cattaraugus County



Hon. Francis Lounsbury has retired after more than 40 years of service as Machias Town Justice. Judge Lounsbury (left) is shown with State Senator George Borrello who presented His Honor with a Senate proclamation in recognition of his time on the bench.

Columbia County



The Columbia County Magistrates Association (CCMA) hosted a Columbia County Criminal Justice Community “How Are We Doing?” event that reviewed processes and communication among the critical criminal justice agencies. The 30 attendees focused on what is working and what can be done better in 2026. Key speakers included the following:

Back row: Special Counsel to the 3rd Judicial District Kevin (KC) O’Connell, Esq.; Supervising Judge of the Town and Village Courts – 3rd JD, Hon. E. Danielle Jose-Decker; President NYSMA, Hon. Susan Sullivan-Bisceglia (*T/LaGrange*); Columbia County District Attorney Chris Liberati-Conant, Esq, CCMA President Hon. Malcom “Butch” Smalley (*T/Stockport*); and New York State Police Sgt. Mark Sypek.

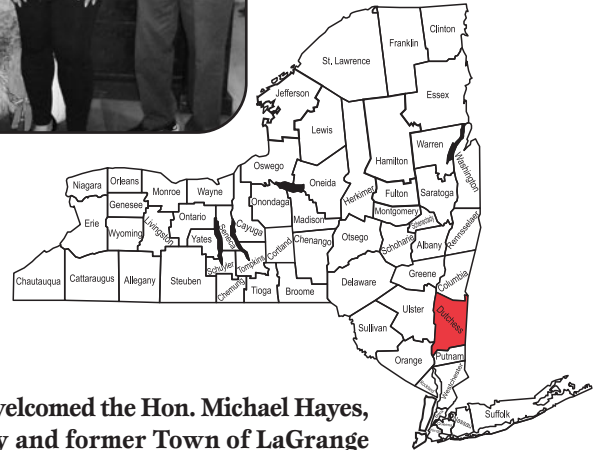
Front Row: Columbia County Public Defender Shane Zoni, Esq.; Columbia and Schoharie County IDV 3rd Judicial District Resource Coordinator, Taylor Catlin; CCMA Program Coordinator and Past President Hon. Dr. Carrie O’Hare (*T/Stuyvesant*); NYSP Investigator William T. DuFresne; and Hon. Harold (“Sonny”) Weaver (*T/Livingston*), who is starting his 49th year on the bench in January 2026. (Missing from the photo is the first speaker who had to leave early, Columbia County Sheriff-Elect and the current Undersheriff Jacqueline “Jackie” Salvatore.)

Dutchess County

Members of the Dutchess County Magistrates Association heard an update on probation policies and procedure from Dutchess County Probation from Kathy McQuade, Probation Director.



Shown left to right are: DCMA Treasurer Hon. Thomas Jones (T/Milan), NYSMA Vice President Hon. Barbara Seelbach (T/Clinton), DCMA President Hon. Brian Rudner (T/East Fishkill), Kathy McQuade, NYSMA President Hon Susan Sullivan-Bisceglia (T/LaGrange) and DCMA Treasurer Hon. John Kane (V/Rhinebeck).



The Red Hook Rotary Club recently welcomed the Hon. Michael Hayes, Surrogate Judge of Dutchess County and former Town of LaGrange Justice, and the Surrogate Court's Chief Clerk, Erica DeTraglia, Esq. They spoke about the services offered by the Surrogate's Court and the importance of having a will.

Left to right are Hon. Michael Hayes, Red Hook Rotary President and NYSMA Past President Hon. Jonah Triebwasser (V/Red Hook) and Erica DeTraglia, Esq.



Hon. Lisa Loughran (T/Red Hook) is the proud mom of Eagle Scout Roger Loughran, III. Roger's Eagle Scout project was an accessibility ramp for St. Christopher's School auditorium in Red Hook.



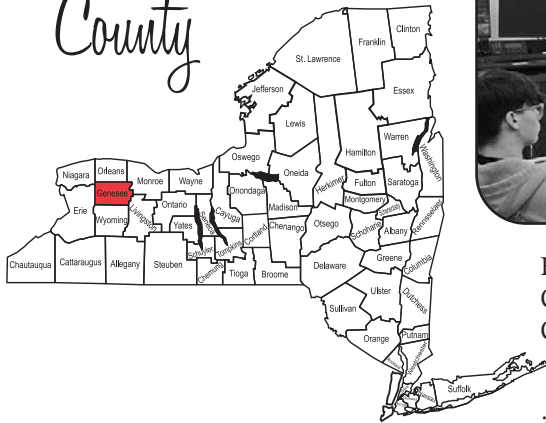
Shown at Roger's Eagle Court of Honor are NYSMA Past President Hon. Jonah Triebwasser (V/Red Hook), Eagle Scout Roger Loughran and Hon. Lisa Loughran (T/Red Hook.)

Bard College provided two interns to the Village of Red Hook Court during the recent winter intersession. Left to right are intern Zioni Moore, Red Hook Village Justice and NYSMA Past President Hon. Jonah Triebwasser, intern Emerson Embrey and Deputy Court Clerk Madison Hart. Zioni, Emerson and Madison are thinking about law school after college.



Continued on page 12

Genesee County



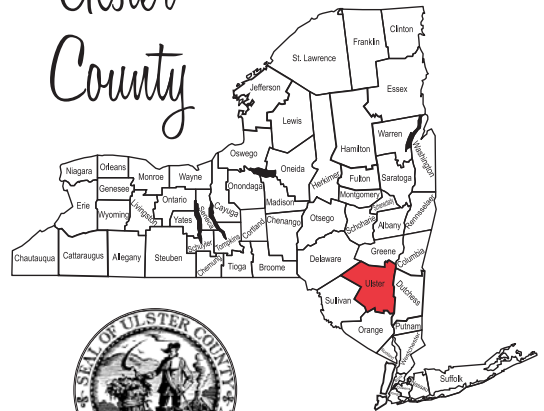
Hon. Gary Graber (*T/Dairen, Ret.*) spoke to the Criminal Justice Club at Genesee Community College where he serves as a trustee.

Gary presented a positive perception on how our judicial system works as well as a reminder that we are the “Courts Closest to the People.”

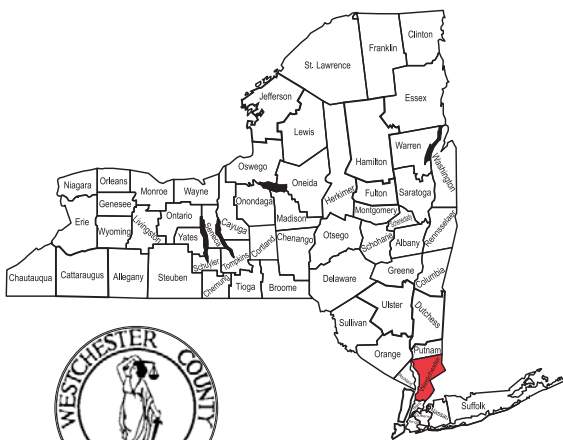


Hon. Terry Elia retired from the Town of Lloyd court after 27 years on the bench. Judge Elia (seated in the center) was honored by the Highland Rotary Club of which he is a member.

Ulster County



Westchester County



The Board of Directors of the Westchester County Magistrates Association welcomed their new president at their recent dinner. Shown left to right are: Hon. Janet Calano (*T/Eastchester*) outgoing WCMA president; Hon. Daniel Angiolillo (*T/Harrison*) incoming WCMA president; NYSMA Vice-President Hon. Ronald Meister (*T/Mamaroneck*) Past WCMA President; 9th Judicial District Administrative Judge Hon. Anne Minihan; and Hon. John Gardner (*T/Pelham*) outgoing Vice President.



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Departed Members

W

hereas again Almighty God has called from our midst a number of treasured associates, and bowing in humble obedience to his will, we pause to remember the following magistrates who have passed away.



We remember them as fond friends, loyal servants, and staunch proponents of democracy and our judicial system. We enjoyed their friendship and helpful contributions in our work as Magistrates, in business, and in social hours. Their memory is revered and their virtues are recalled.

Now, be it resolved, that a copy of this resolution be included in the minutes and records of this association; that copies be available to survivors; that a copy be spread in the publication of this association; that the sincere sympathy of the officers and members of the New York State Magistrates Association be expressed.

<u>Name</u>	<u>Title & Location</u>	<u>County</u>
VINCENT ALTIERI (Active)	AVJ/SPRING VALLEY VJ/ SUFFERN	Rockland County
SUZANNE R. BELLINGER (Active)	T&VJ/VERNON	Oneida County
THOMAS F. BUCZKOWSKI (Retired)	VJ/SILVER CREEK	Chautauqua County
PAUL G. CAREY (Retired)	TJ/SALINA	Onondaga County
RICHARD J. CATANISE (Retired)	TJ/FAYETTE	Seneca County
BRIAN T. CONNORS (Retired)	TJ/DELAWARE	Sullivan County
ANTHONY DESMOND (Active)	TJ/SHARON	Schoharie County
J. CRAIG KERR (Active)	TJ/ONONDAGA	Onondaga County

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(Members of families of recently deceased members can have a bronze plaque at no charge to mount on a headstone.)

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601-700 = \$200.00

701-800 = \$225.00

A travel reimbursement form will be provided at the end of the NYSMA annual business meeting. You must sign in at the meeting and stay for the entire time.

Criminal Procedure Update (Part 2) BY NY SMA PAST-PRESIDENT HONORABLE ROBERT BOGLE

PRE-TRIAL HEARINGS

In *People v. Lawson*, 43 NY3d 939, ___NYS3d ___(2024), the Court of Appeals held that the People were not entitled to re-open a suppression hearing in a prosecution for driving while intoxicated to reargue the legality of the traffic stop. The Trial Court initially granted the defendant's motion for suppression because the People failed to demonstrate that the defendant's u-turns were illegal and, therefore, that stop was lawful. The People did not request a recess or an adjournment to determine the statutory basis for the stop, nor did they request permission to furnish a post-hearing submission to identify any relevant provision of law, but instead returned one month later offering a different legal theory that they had not raised at the original suppression hearing. The Court ruled that since the People have had a full and fair opportunity to litigate the suppression motion, and the suppression court had issued a ruling on merits, the People may not have an additional opportunity to shore up their evidentiary or legal position.

In *People v. Lively*, 42 NY3d 178, 217 NYS3d 883, (2024), the Court of Appeals held that the People failed to demonstrate that a parole officer's search of defendant's pockets was rationally and reasonably related to their duties under the particular circumstances presented, thus warranting suppression of heroin found in an ear-bud case discovered during a pat-down search. The defendant was on parole, and the officers went to the defendant's residence to search for a parole absconder who was not the defendant. The People failed to elicit evidence during the suppression hearing regarding the defendant's relationship, if any, with the unnamed absconder, or that the defendant was unaware that this person was on parole or had absconded, or that the defendant was suspected of harboring the absconder or was otherwise violating the terms and conditions of his own parole.

In *People v. Spirito*, 42 NY3d 934, 217 NYS3d 888, 2024 WL 2278128 (2024), the Court of Appeals held that the search of defendant's residence by his parole officer, with the assistance of other officers, was rationally and reasonably related to the performance

of the parole officer's duty. Shortly after the defendant's release to parole, his parole officer received information from his supervisor that the defendant's mother contacted the parole office to inform them that she saw a photograph of the defendant with a firearm, and gave the parole officers permission to search the residence that she shared with the defendant.

In *People v. Cleveland*, ___NY3d___, ___NYS3d___, 2025 WL1105832, the defendant was arrested after abandoning a plastic bag containing crack cocaine while being pursued by police. Before trial, the defendant moved to suppress this evidence on the ground that the pursuit was unlawful. At the suppression hearing, Officer A of the Rochester Police Department testified that, on the night of the arrest, he was in uniform in an unmarked patrol vehicle with his partner, Officer B. The two were driving behind a sedan when a woman on the sidewalk threw a glass bottle at the sedan, which then came to a stop in the middle of the street. The defendant exited the driver's door of the sedan and "in a very aggressive manner" began yelling at the woman and approached her with clenched fists. According to Offer A, "[i]t appeared [that defendant] was ... about to attack" the woman. Officers A and B exited their patrol car and told the defendant to stop, and the defendant "stopped and looked in [their] direction." The uniformed officers were about 25 feet away from the defendant without their guns drawn. The defendant "began to back away, and then quickly turned and began digging in the front of his waistband and running" away from the officers, leaving his car in the middle of the street with the driver's door open. The officers followed in pursuit.

About 50 feet into the chase, the defendant "discarded what looked like a plastic bag with some type of ... white substance, onto the ground" in a vacant lot and then continued running. Officer A believed that the plastic bag may have contained drugs. Officers A and B continued the chase into another vacant lot when the defendant stopped, and the officers ordered the defendant to the ground and arrested him. Officer B returned to the scene of the drop, and found the bag which contained crack cocaine.

The Court of Appeals held that it was reasonable for the police officers to believe the defendant might menace, assault or commit another crime against the woman who had thrown the glass bottle at his car, and thus the officers had reasonable suspicion to pursue him, under a Level 3 encounter under *People v. DeBour*, 40 NY2d 210, 386 NYS2d 375 (1976), even though he stopped approaching the woman in response to the officers' instruction, where defendant had stopped his car in the middle of the street, exited the driver's door, and in a very aggressive manner began yelling at the woman and approached her with clenched fists.

In *People v. Brown*, 42 NY3d270, 219 NYS3d 218, (2024), the Court of Appeals restated and clarified the "Community Caretaking" standard. The Court noted that the police may stop an automobile in exercise of their community caretaking function if two criteria exist: first, the officers must point to specific, objective and articulable facts that would lead a reasonable officer to conclude that an occupant of the vehicle is in need of assistance, and second, the police intrusion must be narrowly tailored to address the perceived need for assistance. Once assistance has been provided and the peril mitigated, or the perceived need for assistance has been dispelled, any further police action must be justified under the Fourth Amendment and State Constitution provision governing searches and seizures.

The Court concluded that the police officer who stopped defendant's vehicle after observing the passenger side door open and close while the vehicle was in motion failed to articulate specific and objective circumstances that would suggest to a reasonable officer that an occupant of the vehicle needed aid, and thus, the stop was not justified pursuant to the community caretaking doctrine. The officer testified during the suppression hearing that he did not see or hear anything else that indicated someone was in distress, the door did not remain open for an extended period of time as might suggested a safety or equipment problem, and there were many innocuous reasons for why the door could have opened and closed while the vehicle was moving.

In *People v. Rufus*, ___NY3d___, ___NYS3d___ (2024) 2024 WL5159817, the Court of Appeals held that the state troopers had probable cause to stop a defendant's vehicle for failure to maintain lane after observing the vehicle swerving over the fog line three times

within a tenth of a mile. (See, Vehicle and Traffic Law § 1128[a]).

The court further held that there was sufficient evidence to support the defendant's conviction for driving while intoxicated, in light of the state trooper's testimony that he observed the defendant bearing telltale physical signs of intoxication: bloodshot and glassy eyes, slurred and illogical speech and conduct incongruous with that of a sober driver, such as providing plastic air freshener wrapper instead of the vehicle registration card, defendant's failure of the field sobriety tests, and defendant's admission that he had been drinking. Vehicle and Traffic Law § 1192(3).

In *People v. Hayward*, 42 NY3d 753, 288 NYS3d 424 (2024), the Court of Appeals held that the defense counsel's failure to move to suppress physical evidence recovered by police during the execution of a search warrant on the ground that police allegedly violated the knock-and-announce rule when executing the warrant was not deficient performance and, thus, did not amount to ineffective assistance of counsel. The Court added that the issue was not clear-cut and was in fact novel, and that a reasonable defense attorney could have chosen not to assert it.

In *People v. Fredericks*, ___NY3d___, ___NYS3d___ (2025) 2025 WL 554453, the Court of Appeals held that the defendant's complaints about the appointed counsel were insufficiently factually specific and serious to require the trial court to engage in a minimal inquiry as to the nature of the disagreement or its potential for resolution. In a prosecution for second-degree murder, assertions that counsel was not working in defendant's best interest, was prolonging proceedings, and was advising him to take a plea were general and conclusory, and the assertion that counsel failed to visit defendant was undermined by the complaints themselves, which clearly indicated that counsel was communicating with defendant. Also, the defendant failed to explain how counsel allegedly disrespected his wife, and there were simply no facts that would have signaled that serious conflict emerged between defendant and counsel.

The Court of Appeals added that even if the defendant's complaints about his assigned counsel required the trial court to make minimal inquiry into the nature

Continued on page 18

of the disagreement or its potential for resolution, the court satisfied the requirement to make a minimal inquiry, after receiving the defendant’s letter containing complaints about counsel. The Court inquired further into purported issues between the defendant and counsel and considered the defendant’s letter and counsel’s in-court explanation together, which provided the court with sufficient information to understand the nature of the disagreement.

In *People v. Blue*, 42 NY3d 584, 225 NYS3d 622 (2024), the Court of Appeals denied a motion to dismiss under speedy trial CPL 30.30, where it was the co-defendant who requested the time. In *Blue*, the defendant was “joined for trial” with co-defendant, within the meaning of the speedy trial statute allowing exclusion of a reasonable period of delay when a defendant is “joined for trial” with a co-defendant as to whom the time for trial had not run and good cause was not shown for granting a severance. They were jointly charged in a single indictment with every offense alleged therein, and “joined for trial” status was not limited until after defendant had been arraigned, (which defendant Blue had not yet been) pursuant to statute governing joinder of defendants, and thus the 57 days between co-defendant’s request for adjournment for motion practice and the defendant’s arraignment were chargeable to the defendant, even though he had not yet been arraigned. (See, CPL § 30.30[4][d], 200.40[1][a]).

(Continued in our next issue.)



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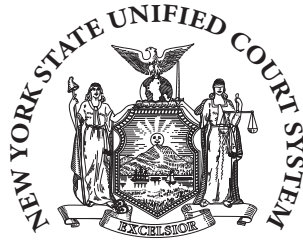
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Advisory Committee on Judicial Ethics

The Advisory Committee on Judicial Ethics responds to written inquiries from New York State's approximately 3,600 judges and justices, as well as hundreds of judicial hearing officers, support magistrates, court attorney-referees, and judicial candidates (both judges and non-judges seeking election to judicial office). The committee interprets the Rules Governing Judicial Conduct (22 NYCRR Part 100) and, to the extent applicable, the Code of Judicial Conduct. The committee consists of 27 current and retired judges, and is co-chaired by the Honorable Debra Givens, a Justice of the Supreme Court in Erie County, and the Honorable Lillian Wan, a Justice of the Appellate Division, Second Department. Four New York State Magistrates serve on the committees as faculty: Hon. Thomas Sheeran, Hon. Ronald Meister, Hon. D. Christian Fisher and Hon. Christopher Martin.

Because of the high volume of recent opinions, we are printing summaries below. To read the entire opinion, go to: <https://ethicssearch.nycourts.gov>

Opinion 25-99

Digest: Although a judge ordinarily may write a monthly educational column for a local lifestyle magazine, the judge may not do so if the column is sponsored by a business.

Opinion 25-115

Digest: A county court judge who is disqualified from presiding over a matter is also disqualified from reassigning the matter from one local justice court to another.

Opinion 25-116

Digest: A judge may not host a party for two attorneys who appear before him/her and are expectant parents.

Continued on page 20

Opinion 25-118

Digest: A judge may write a letter on behalf of their child for inclusion in a mitigation packet to be reviewed by another judge, a probation department, and a district attorney in connection with the child's pending criminal cases, where the letter (a) will reflect only a parent's views of the child's history, rehabilitation, and family support, and (b) will contain no reference whatsoever to the judge's judicial title or status.

Opinion 25-122

Digest: A full-time judge may participate in a low-stakes online fantasy football league composed of attorneys who seldom appear in the judge's court and are former colleagues or acquaintances of the judge. Should an attorney acquaintance appear in a proceeding before the judge, neither disqualification nor disclosure is required merely because they are members of the same league, provided the judge can be fair and impartial.

Opinion 25-143

Digest: A town or village justice who would like a video-only camera in the courtroom for security purposes must obtain approval from the Chief Administrator of the Courts or his/her designee under Part 29. A judge need not go through the empty formality of registering an "objection" to a security camera while seeking such administrative permission.

Opinion 25-144

Digest: A judge may not issue an order directing a criminal defendant to make a monetary donation to a not-for-profit agency in lieu of his/her community service obligation, even if such request is made by defense counsel with the consent of the prosecution.

Opinion 25-155

Digest: When a judge learns that his/her co-judge declined to consider an improper *ex parte* communication about a traffic ticket and instead simply asked the court clerk to re-assign it without attempting to influence him/her, the judge need not take any disciplinary action and need not recuse. The judge should instead adjudicate the matter in the normal course of business

Opinion 170

Digest: A judge may not use campaign funds to purchase fleece jackets for chambers' staff, even if intended to dispose of *de minimis* unexpended campaign funds at the conclusion of the judge's window period.

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Decision & Order

BY THE HONORABLE THOMAS J. DeSALVO (*T/Webster*)

State of New York: **County of Monroe**

Village Court: **Village of Webster**

LUANNE WOLOSYN,

Petitioner

CASE #: 25070155

DECISION AND ORDER

-vs-

CDS MSL HARD ROAD 2 HOUSING

DEVELOPMENT FUND CP., INC. Respondent.

Appearances:

Empire Justice Center,
(A.J. Durwin, Esq., of Counsel), for petitioner
Woods Oviatt Gilman LLP
(Robert J. Marks, Esq., of Counsel), for respondent.

History of the Case.

Thomas J. DiSalvo, J. A Notice of Petition and Petition pursuant to RPAPL Article 7-D was filed with this court. Said matter was returnable on August 12, 2025, at 8:30 A.M. The matter did in fact come on to be heard on that date and time. Appearing for the petitioner was A.J. Durwin, Esq. Filed with the court was an “Affidavit of Service Through the Secretary of State.” Said affidavit attested to the fact that the respondent was served by delivering a copy of the Notice of Petition and Petition on the NYS Secretary of State on July 29, 2025, pursuant to Section 306 of the Not for Profit Corporation Law, which states in pertinent part “[t]he secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such corporation, at the post office address on file in the department of state, specified for the purpose.”¹ Neither the respondent nor an attorney appeared on the said return date of the motion. Nor was the court made aware that Woods Oviatt Gillman LLP was counsel to the respondent and that it had been in

active communication with Empire Justice Center for some months prior to the said petition being filed with the court. Furthermore, respondent’s attorney advises in his affirmation that his office was not provided with a courtesy copy of the pleadings at the time the originals were filed with the Secretary of State. Although not required, that would have put respondent’s attorney on notice of the upcoming court date in time for a response to the petition to be prepared and filed with the court.

In any event, since the respondent failed to appear and a valid affidavit of service was filed with the court, petitioner’s attorney’s oral motion for a default judgment was granted. Counsel for the respondent was directed to prepare a proposed Default Order, which the court executed on August 13, 2025. On or about September 5, 2025, a Notice of Motion to Vacate Default Judgment with supporting affirmations and a memorandum of law were filed with this court by the respondent’s attorney. Petitioner’s attorney filed an Affirmation in Opposition to Respondent’s Motion to Vacate and a Memorandum of Law in Opposition to Respondent’s Motion to Vacate. The said motion to vacate the default judgment was returnable on October 15, 2025. At that time the matter was adjourned by the parties for a hearing on the issue of a meritorious defense to the said default.

¹ (Section 306 of the NYS Not-For-Profit Corporation Law also states “Electronically submitting a copy of the process to the department of state together with the statutory fee, which fee shall be a taxable disbursement, through an electronic system operated by the department of state, provided the domestic or authorized foreign corporation has an email address on file in the department of state to which the secretary of state shall email a notice of the fact that process has been served electronically on the secretary of state.” However, the pleadings herein were not electronically served on the Secretary of State.)

Facts of the Case.

The court makes the following pertinent Findings of Fact relative to the time line herein.

July 25, 2025 - Petitioner filed an Affirmation to Proceed *In Forma Pauperis*.

July 28, 2025 - The court signed an Order permitting the petitioner to proceed *In Forma Pauperis*.

On or about July 28, 2025 - The petitioner filed with the court a Notice of Petition, dated July 25, 2025, under the Real Property Actions and Proceedings Law Article 7-D, accompanied by a Verified Petition executed by the petitioner. Said proceeding was returnable before this court on August 12, 2025, at 8:30 A.M.

July 29, 2025 - A hard copy of the Notice of Petition and Verified Petition with Supporting Papers is served on the Office of the New York State Secretary of State, pursuant to NYS Not-For Profit Corporation Law § 306.

August 5, 2025 - The NYS Department of State sent a copy of said Notice of Petition and Verified Petition to the respondent by certified mail, return receipt requested to the legal address of the respondent.

August 11, 2025 - The Notice of Petition and Verified Petition was delivered to the front desk of the respondent in Webster, New York, by the United States Postal Service at 10:32 A.M. There is no record of who actually received said certified mail on behalf of the respondent.²

August 12, 2025 - Petitioner and her attorney appeared in this court in furtherance of said proceeding. There is no appearance by or on behalf of the respondent. The court granted petitioner's motion for a default judgment. The matter was originally set down for an inquest hearing on September 9, 2025.

August 13, 2025 - The court signed the Default Judgment Order.

August 22, 2025 - The NYS Department of State mailed copies of a Notice of Entry of the Default Judgment Order and the Default Judgment Order with a cover letter dated August 22, 2025.

August 29, 2025 - Respondent received the Notice of Entry of the Default Judgment Order and the Default Judgment Order with a cover letter dated August 22, 2025, via the U.S. Mail.

September 5, 2025 - Respondent's attorney filed a motion to vacate the default judgment which was returnable on October 15, 2025.

Legal Analysis

Reasonable Excuse for Non-Appearance and Meritorious Defense. The respondent did not become aware of the proceeding until it received certified mail from the NYS Secretary of State on August 11, 2025, at approximately 10:32 A.M. Said mail contained the Notice of Petition and Petition in this matter. Thus, the said certified email was received by the respondent less than 24 hours before the scheduled court date. Two provisions of the CPLR are relevant. CPLR § 5015 (a) (1) states as follows:

“The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of: excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry”

It is noted that there is no requirement in said rule that the party against whom the default is taken [has] need to demonstrate that said party has a meritorious defense.

Continued on page 24

² (This was confirmed by the USPS tracking confirmation form which indicated it was “delivered to the front desk, reception area, or mail room at 10:32 on August 11, 2025, in WEBSTER, NY 14580.)

CPLR § 317 states as follows:

“A person served with a summons **other than by personal delivery to him or to his agent for service** [*emphasis added*] designated under rule 318, within or without the state, who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment, but in no event more than five years after such entry, upon a finding of the court that he did not personally receive notice of the summons in time to defend **and has a meritorious defense** [*emphasis added*]. If the defense is successful, the court may direct and enforce restitution in the same manner and subject to the same conditions as where a judgment is reversed or modified on appeal. This section does not apply to an action for divorce, annulment or partition.”

This section requires the defaulting party, [who] was not served personally directly or through its agent, to show that “he did not personally receive notice of the summons in time to defend and has a meritorious defense”.³

“The premise of CPLR 317 is that the court acquired jurisdiction. By hypothesis, plaintiff had a proper basis of jurisdiction over defendant and satisfied the statutory requirements for service of process. If service was jurisdictionally defective for any reason (lack of jurisdictional basis, improper service, formal defect in the summons), the default judgment would be void. Defendant’s remedy would be *vacatur* of the default (CPLR 5015(a)(4)) and dismissal of the action. A jurisdictional defect, in other words, is sufficient ground by itself to vacate the default, and the defendant cannot be required to make the two part showing required by CPLR 317. *See, e.g., Steele v. Hempstead Pub Taxi*, 2003, 305 A.D.2d 401, 760 N.Y.S.2d 188 (2d Dep’t). Indeed, the United States Supreme Court has held that it is unconstitutional to require a defendant to proffer a defense on the merits as a condition to vacating a judgment

for lack of jurisdiction. *Peralta v. Heights Medical Center, Inc.*, 1988, 485 U.S. 80, 108 S.Ct. 896, 99 L.Ed.2d 75. There is inherent harm in the entry of a judgment in such cases, said the Court, regardless of whether the defendant has a defense on the merits. As a practical matter, for example, the defendant might have been able to negotiate a settlement, pay the debt, or sell its assets for a good price at a private sale rather than suffer the relatively low price generated at a judgment sale.” (Alexander, Practice Commentaries, McKinney’s, Cons Laws of NY, CPLR § C317:1)

In this case the defendant was personally served by way of its agent, the NYS Secretary of State. As a result, the requirement that the defaulting party present a meritorious defense does not apply to the facts of this case. Instead, the court must rely on CPLR § 5015 (a) (1) in making its decision relative to vacating the default judgment. The case of *Benadon v. Antonio*, 10 A.D.2d 40, 197 N.Y.S 2d 1 [1960] is cited as authority for the meritorious defense requirement. Reliance on that case relative to that issue is misplaced. The court in *Benadon* stated “A corollary rule, however, is that before a default judgment will be opened, the defendant **may** [*emphasis added*] be required to make full and complete disclosure of a meritorious defense. That language implies that the need for the defaulting party to provide a meritorious defense is optional, i.e. that it is left up to the sound discretion of the court to demand proof of a meritorious defense.”⁴ In a more recent case, the Court stated “In contrast to a motion pursuant to CPLR 317, on a motion pursuant to CPLR 5015(a)(1), the movant is required to establish a reasonable excuse for his or her default.” (*Dwyer Agency of Mahopac, LLC v. Dring Holding Corp.*, 164 A.D. 3d 1214,1216, 82 N.Y.S.3d 118,120 [2d Dept 2018}). That case reaffirms the rule that a motion pursuant CPLR § 5015 (a) (1) does not require the additional necessity of establishing a meritorious defense. Furthermore, “The courts are liberal in vacating default judgments. They want disputes resolved on the merits and are therefore inclined, practically speaking, to accept a generous range of excuses, sometimes even vacating deliberate defaults.”(Siegel, New York Prac § 427 [6th ed])

³ (Id.)

⁴ (Furthermore this case, decided in February of 1960, was not interpreting a provision of the Civil Practice Laws and Rules. “The CPLR became effective on September 1, 1963....” (Siegel, New York Prac § 2, at 2 [4th ed])

Conclusion.

The facts of this case, wherein the respondent did not receive notice that the present action was filed with the court until the morning before the return date, demonstrate a situation that would make it very difficult, if not impossible, for respondent to formally respond to the pleadings. That is the very definition of an excusable default. In addition, had the attorney for the respondent appeared on the return date of August 12, 2025, he in all probability would have requested an adjournment to respond in writing to the pleadings his client received the day before. That is evidenced by the pleadings attached to his motion herein. Under the facts of this case a refusal to grant such an adjournment would be an abuse of the court’s judicial discretion. In the event of an adjournment, the date for the petitioner to be heard on her petition would then be postponed to a subsequent date.

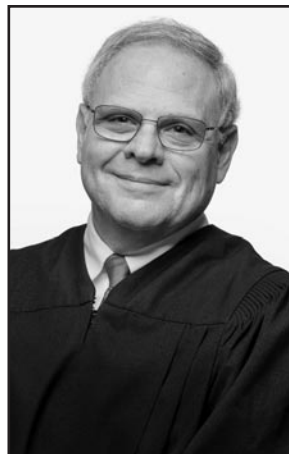
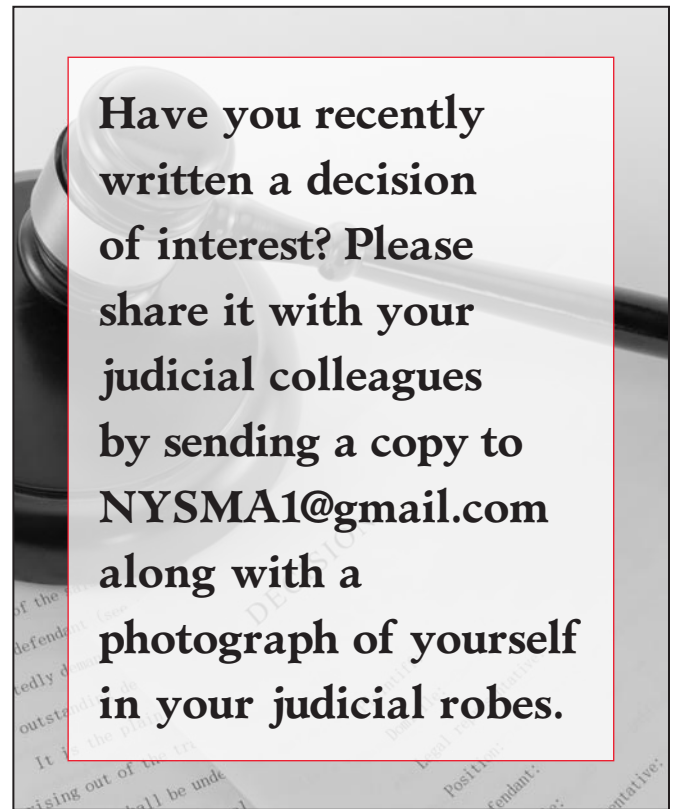
RPAPL § 797-h states

“At or prior to the time the petition is to be heard the respondent may answer orally or in writing. If the answer is oral the substance thereof shall be recorded by the clerk or, if a particular court has no clerk, by the presiding judge or justice of such court, and maintained in the case record. The answer may contain any legal or equitable defense.”

Thus the Default Judgment Order issued by this court on August 13, 2025, is hereby vacated. The need for the respondent to provide *prime facie* proof of a meritorious defense is hereby obviated for the reasons previously set forth in this decision. This constitutes the decision and order of this court.

Dated: December 9, 2025
Webster, New York

Hon. Thomas J. DiSalvo
Webster Town Justice

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THEME
WHO ARE WE?

HINTS
THE
COURTS
CLOSEST
TO
THE
PEOPLE

SPANOGRAM
JUSTICE COURTS

T	H	S	T	R	T	O	E
O	C	E	O	U	T	H	L
U	S	T	C	E	C	E	P
R	E	S	O	I	T	P	O
T	S	C	L	S	U	J	E

Answers to the Puzzle on the page 28

Decision & Order

BY THE HONORABLE DAVID OTIS FULLER (*V/Tuckahoe*)

State of New York: **County of Westchester**
 Village Court: **Village of Tuckahoe**

THE PEOPLE OF THE STATE OF NEW YORK,
-against-

YOSMAR GRANDILLO ASUAJE and
 JOSE A. MORALES Defendants.

REVISED
DECISION AND ORDER

DOCKET No. 2310035

Appearances of Counsel

Miriam E. Rocah, District Attorney
 (Erin Gisolfi, Assistant District Attorney,
 of Counsel), for Plaintiff

Mathew Perrone and Joseph Goubeaud, Attorneys
 for Defendants

Here, a switch in prosecutors hid a step in procedure. The defendants were arraigned on reduced charges of petit larceny (PL 155.25) and criminal possession of stolen property in the fifth degree (PL 165.40) on March 19, 2024. The first prosecutor duly served electronically a CPL 710.30 notice on defense counsel on April 2, 2024.

Defense counsel filed a motion to preclude defendants' statements on October 15, 2024. A second prosecutor conceded on November 26, 2024 that the CPL 710.30 notice had not been given. The court, whose court files on defendants did not include the electronically-filed notice, ordered on December 16, 2024 that the statements be precluded.

On October 20, 2025, the second prosecutor moved for reargument under CPLR 2221(d) to have the statements allowed after she found that the notice had indeed been properly given to defense counsel, and requested that the court vacate its order precluding the defendants' statements.

Defense counsel oppose the motion on the grounds of untimeliness and of being substantively improper stating that the People seek "to correct the prosecution's own failure to file rather than any error

by the court" Def. aff., p. 1. The record shows that the people did not fail to file, but rather that the second prosecutor had not known that the first prosecutor had, in fact, filed.

The motion must be denied because the motion was filed over thirty days after service of the prior order. CPLR 2221 (d)(3). However, the trial court has the authority to correct its own mistakes, including the authority to vacate a prior order. *See People v. Copeman*, 53 AD3d 854, 857 [2008]; *Van Leer-Greenberg ex rel Morris v. Massaro*, 87 NY2d 996,998 [1996]). Because the CPL 710.30 notice was not in the court files on defendants, the court was mistaken in thinking that the CPL 710.30 notice had not been served. That mistake should be corrected by vacating the December 16, 2024 order and permitting the People to use the defendants' statements because the People had, in fact, served the CPL 710.30 notice.

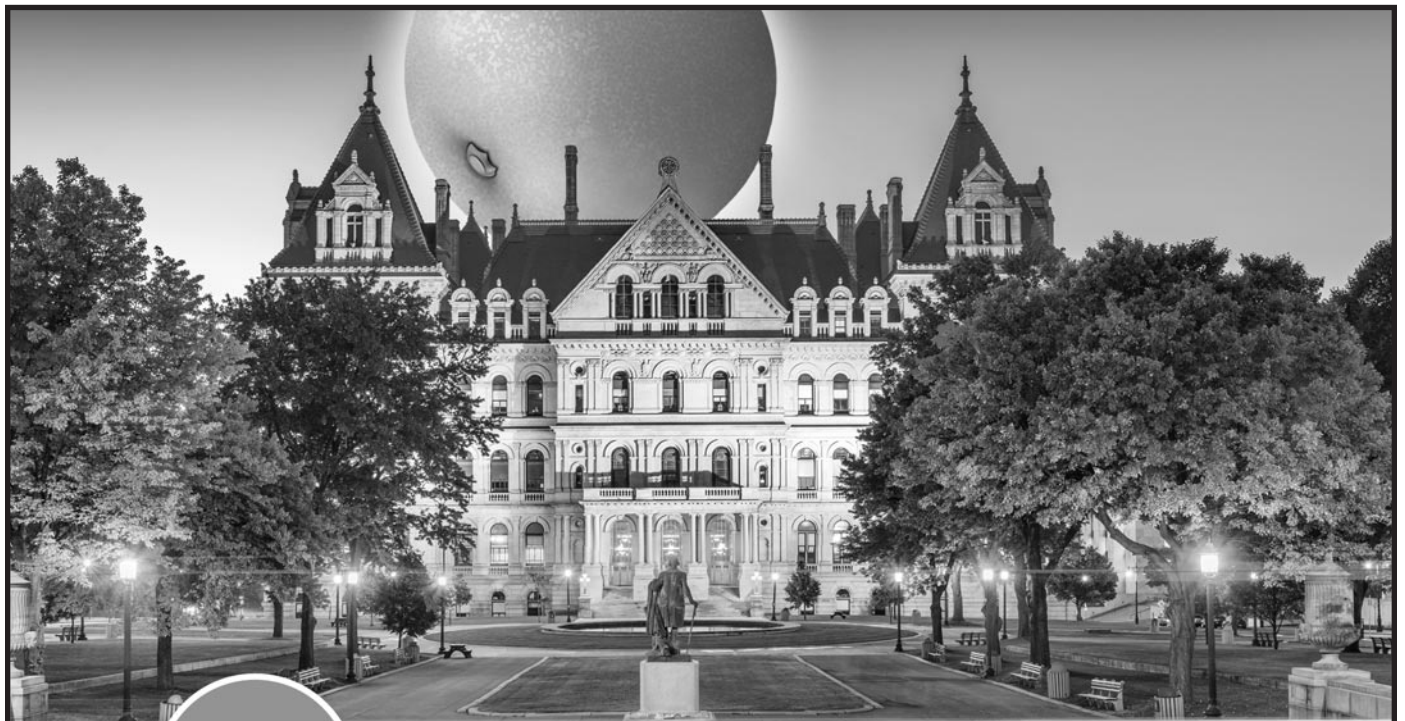
Accordingly, the People's motion to reargue is denied, but the court's order of December 16, 2024 is vacated, defendants' motion to preclude is denied, and the defendants' statements are allowed.

It is so ordered.

Dated: January 6, 2026



Hon. David Otis Fuller, Jr.
 Tuckahoe Village Justice



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Spangram

By THE HONORABLE KENNETH OHI JOHNSEN

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- The spangram describes the puzzle's theme and touches two opposite sides of the board. It may be two words.
- An example spangram with corresponding theme words: PEAR, **FRUIT**, BANANA, APPLE etc.
- Find theme words to fill the board.
- Theme words fill the board entirely. No theme words overlap.



THEME

WHO ARE WE

T	H	S	T	R	T	O	E
O	C	E	O	U	T	H	L
U	S	T	C	E	C	E	P
R	E	S	O	I	T	P	O
T	S	C	L	S	U	J	E

Answer to Puzzle is on Page 25

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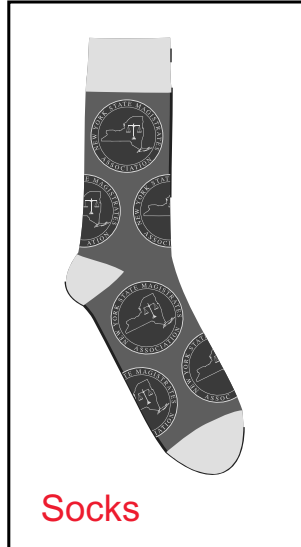
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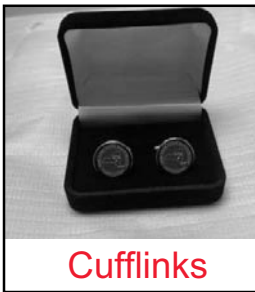
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Socks



Gavels



Cufflinks



License Plate Frames



Polos



Onesies



Caps



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Fleece Blanket



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Additional items such as robes, badges, lanyards and more to be added, so check back often!

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Effective Date 19 JULY
2024

Purpose Protect judges and their families by restricting public access to their personal information.

Legal Reference Full text available in Article 22-C of the NYS Judicial Security Act.

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