

Handling Tough Issues in a Plaintiff's Personal Injury Action 2019

Monday, April 15 | Convene | NYC

Thursday, May 2 | Melville Marriott | Long Island

Friday, May 3 | Hyatt Place Buffalo/Amherst | Buffalo

Friday, June 21 | RIT Inn & Conference Center | Rochester

Thursday, June 27 | NYSBA | Albany & Webcast

NYSBACLE

Live Program & Webcast



INCLUDES
1.0 Ethics



www.nysba.org/ToughIssuesCLE

Program Description

Attorneys hope that their cases will proceed smoothly to verdict or settlement without detours. Unfortunately, in real world practice, this may be the exception, especially in personal injury litigation. Bankruptcy of a party, death of a plaintiff or defendant, or the presence of an infant party all make personal injury cases more complex and difficult to resolve. Plaintiff's counsel must also deal with aggressive enforcement of liens asserted by governmental entities, such as Social Services and Medicare, and private entities, such as health insurance companies, ERISA entities, and workers' compensation carriers. No-fault and SUM issues arise in many car wreck cases. Plaintiff's counsel must also represent clients before the Court of Claims.

This seminar will provide the current substantive law and practical strategies required to successfully litigate personal injury cases in the face of the above obstacles. The seminar will discuss real life ethical issues faced in personal injury practice, and the implementing and maximizing of law office systems to best represent personal injury plaintiffs.

Program Faculty



Overall Program Chair

Patrick J. Higgins, Esq.
The Law Offices of Patrick J. Higgins, PLLC | Albany

Program Chairs:

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Faculty:

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John Fisher, Esq., John H. Fisher, P.C., Kingston
Paul Kenneth Isaac, Esq., Precision Lien Resolution LLC, Buffalo
David D. MacKnight, Esq., Lacy Katzen, LLP, Rochester
Peter T. Rodgers, Esq., Lacy Katzen Ryen LLP, Rochester
Daniel E. Zea, Esq., Zea Proukou PLLC, Rochester

Program Agenda

- 8:30 – 9:00 a.m.** Registration (outside of the meeting room)
- 9:00 – 9:10 a.m.** Welcome and Introduction
- 9:10 – 10:00 a.m.**
- I. Staying Off the Third Rail and Keeping Clients Happy — Ethical and Practical Considerations in Representing Clients in Personal Injury Litigation**
- A. Update on recent Ethics decisions
 - B. The critical items to communicate to a client and when, how, and why they must be communicated
 - C. The referring attorney relationship in the personal injury field – law and practice
 - D. How to represent the client when competency and conflicts of interest arise and how to withdraw
 - E. Representing two or more clients in the same action or with limited coverage
 - F. Potential clients and potential client contacts
 - G. Handling the problem client or the client with unrealistic expectations
- 1.0 Credit in Ethics*
- 10:00 – 10:50 a.m.**
- II. Representing the Infant, Decedent, and Incompetent in the Supreme and Surrogate’s Court**
- A. Update on the infant settlement process and options available
 - B. The View from Surrogate’s Court—Letters of Administration, Probate and Choice of Administrator
 - C. Appointment of a Guardian to protect property or the person
 - 1. Guardian *ad litem*
 - 2. Article 81 of the Mental Hygiene Law
 - 3. Guardians under CPLR 1206-1210
 - D. Update on compromising the wrongful death action
 - 1. Adequacy, allocation and distribution
 - 2. Approval of attorneys’ fees and liens
 - E. The death of a party in litigation
- 1.0 Credit in Areas of Professional Practice*
- 10:50 – 11:05 a.m.** Coffee Break
- 11:05 – 11:55 a.m.**
- III. Bankruptcy of a Party**
- A. Current issues in bankruptcy impacting personal injury actions
 - B. The role of the Trustee in the personal injury litigation
 - C. Getting appointed as Special Counsel and what is expected
 - D. Litigating, settling and trying the personal injury action for a plaintiff in bankruptcy
- 1.0 Credit in Areas of Professional Practice*
- 11:55 a.m. – 12:45 p.m.**
- IV. Government and Private Party Liens and Rights of Subrogation**
- A. New York’s health insurance anti-subrogation statute GOL § 5-335 and intervention
 - B. Medicare, Medicare Assistance Plans, MSAs, and conditional/final payment letters – dancing with the elephant in the middle of the room; Medicaid and government liens.
 - C. ERISA plan litigation and practice – looking for daylight for a plaintiff threatened with loss of recovery from an ERISA plan
 - D. Putting it all together – steering the client through the lien/right of reimbursement morass and keeping settlements and recoveries on track
- 1.0 Credit in Areas of Professional Practice*
- 12:45 – 1:45 p.m.** Lunch (on your own)

1:45 – 2:35 p.m.

V. Workers' Compensation Liens

- A. 2019 Update on workers' compensations decisions impacting personal injury actions
- B. A report on Burns partial future net credit and its effect on third party settlements
- C. The Section 32 Agreement and its impact on the personal injury case
- D. Best strategies for managing and negotiating the workers' compensation lien in a personal injury case

1.0 Credit in Areas of Professional Practice

2:35 – 2:50 p.m.

Break

2:50 – 3:40 p.m.

VI. SUM (Supplemental Uninsured/Underinsured) and No fault

- A. Update and practical strategies for handling SUM claims, including SUM notice issues
- B. APIP and OBEL coverage and APIP subrogation

VII. Litigating in the Court of Claims

- A. 2019 substantive and procedural update
- B. Successfully managing obstacles in the Court of Claims for the personal injury action

1.0 Credit in Areas of Professional Practice

3:40 – 4:30 p.m.

VIII. Building Law Office Systems to Maximize the Plaintiff's Personal Injury Practice

- A. How and why to implement a systemic approach to a plaintiff's personal injury practice
- B. Intake, discovery and trial preparation
- C. The metrics and benchmarks needed to move cases and manage a personal injury practice
- D. Training employees to adopt a systemic approach in a plaintiff's personal injury practice

1.0 Credit in Areas of Professional Practice

4:30 p.m.

Adjournment

Program Locations

Monday, April 15 | Convene | 810 Seventh Avenue (Between 52nd & 53rd Streets) | NYC

Thursday, May 2 | Melville Marriott | 1350 Walt Whitman Road | Melville, L.I., NY 11747

Friday, May 3 | Hyatt Place Buffalo/Amherst | 5020 Main Street | Amherst, NY 14226

Friday, June 21 | RIT Inn & Conference Center | 5257 West Henrietta Road | Henrietta, NY 14467

Thursday, June 27 | New York State Bar Association | 1 Elk Street | Albany, NY 12207

Pricing

Member \$175 | Non-member \$275 | **Co-Sponsoring Section Member: \$150**

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Member \$175 | Non-member \$275
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