

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

**Monday, April 15** | Convene | NYC

**Wednesday, April 17** | NYSBA | Albany & Webcast

**Thursday, April 18** | RIT Inn & Conference Center | Rochester

**Thursday, May 2** | Melville Marriott | Long Island

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

**NYSBACLE**

Live Program & Webcast



**INCLUDES**  
1.0 Ethics



[www.nysba.org/ToughIssuesCLE](http://www.nysba.org/ToughIssuesCLE)

## Program Description

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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

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### Overall Program Chair

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

### Program Chairs:

Overall Planning Chair: Patrick J. Higgins, Esq., The Law Offices of Patrick J. Higgins, PLLC, Albany  
J. Michael Hayes, Esq., J. Michael Hayes Personal Injury Attorneys, Buffalo  
W. Russell Corker, Esq., Law Office of W. Russell Corker, P.C., Long Island  
David Paul Horowitz, Esq., McNamara & Horowitz LLP, NYC  
Robert L. Brenna, Jr., Esq., Brenna Boyce, Rochester

### Faculty:

#### Albany:

Scott W. Bush, Esq., Corrigan, McCoy & Bush, PLLC, Albany  
Eileen Fitzpatrick Fazzone, Esq., New York State Court of Claims, Albany  
John Fisher, Esq., John H. Fisher, P.C., Kingston  
Carolyn B. George, Esq., Friedman, Hirschen & Miller, LLP, Albany  
Paul Kenneth Isaac, Esq., Precision Lien Resolution LLC, Buffalo  
Paul A. Levine, Esq., Lemery Greisler LLC, Albany  
Hon. Stacy L. Pettit, Albany Surrogate's Court, Albany

#### Buffalo:

Arthur G. Baumeister, Jr., Esq., Baumeister Denz LLP, Buffalo  
Patrick J. Higgins, Esq., The Law Offices of Patrick J. Higgins, PLLC, Albany  
Hon. Michael E. Hudson, New York State Court of Claims, Buffalo  
Paul Kenneth Isaac, Esq., Precision Lien Resolution LLC, Buffalo  
Hon. Joseph A. Shifflett, Erie County Surrogate's Court, Buffalo  
Robert L. Voltz, Esq., Cellino & Barnes, Rochester

#### Long Island:

Jonathan Dachs, Esq., Shayne, Dachs, Sauer & Dachs, Mineola  
John Fisher, Esq., John H. Fisher, P.C., Kingston  
Paul Kenneth Isaac, Esq., Precision Lien Resolution LLC, Buffalo  
Chris McDonough, Esq., Foley Griffin LLP, Garden City  
Joan Lensky Robert, Esq., Kassoff, Robert & Lerner LLP, Rockville Centre  
Troy G. Rosasco, Esq., Turley, Redmond & Rosasco, LLP, Ronkonkoma  
David A. Smith, Esq., Law Office of David A. Smith, PLLC, Garden City  
Harold M. Somer, Esq., Law Office of Harold M. Somer, P.C., Westbury

#### New York City:

Carl Copps, Albany  
David J. Doyaga, Sr., David J. Doyaga, Attorneys at Law, New York City  
John Fisher, Esq., John H. Fisher, P.C., Kingston  
Hon. John Higgitt, Supreme Court, Bronx County  
Clifford Robert, Esq., Robert & Robert, PLLC, New York City  
Joan Lensky Robert, Esq., Kassoff, Robert & Lerner LLP, Rockville Centre  
Charles Scott, Greenfield, Stein & Senior, LLP, New York City  
John M. Tomskey, Esq., Sullivan Papain Block McGrath & Cannavo, P.C., NYC

#### Rochester:

Deborah M. Field, Esq., Morris & Morris Attorneys, Rochester  
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

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- 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

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

**Wednesday, April 17** | New York State Bar Association | 1 Elk Street | Albany, NY 12207

**Thursday, April 18** | RIT Inn & Conference Center | 5257 West Henrietta Road | Henrietta, NY 14467

**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

## Pricing

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

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**Phone:** 1.800.582.2452 (U.S. and Canada) or 518.463.3724 in Albany & surrounding area

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## 7.0 MCLE Credits

This course is approved for MCLE credit in New York for all attorneys, including those newly admitted.

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**California and Pennsylvania:** 5.0 Substantive Law, 1.0 Ethics

**New Jersey:** 7.0 Total Credits: 1.0 Ethics/Professionalism, 0.0 towards certification in civil trial law, criminal trial law, workers compensation law and/or matrimonial law

Uniform Certificates of Attendance can be issued for use in other jurisdictions.

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