

Central Brooklyn Independent Democrats Judicial Candidate Questionnaire

Please return to richbennett12@gmail.com by February 8
Feel free to call (7183441434) or email with any questions

A1. Candidate Name	Rena Malik
A2. Campaign Manager name/Campaign treasurer name	John Wasserman
A3. Campaign Contact Information: Address, Telephone, Fax, Email, Website	130 Saint Edwards Street Brooklyn, New York 11201 +1-347-491-3843 Info@renamalik4judge.com www.renamalik4judge.com
A4. Office for which the endorsement is requested / Jurisdiction	New York City Civil Court, 1 st Municipal Court District
A5. Are you the incumbent?	No.
A6. Have you been endorsed by CBID before? If so, in what year(s) and for what office(s)?	No. Not applicable.
A7. As of now what funds have you raised to support your efforts? (b) What do you expect to spend in support of your candidacy?	Aside from my personal contributions, funds have been raised through fundraisers organized by family and friends, as I am ethically prohibited from soliciting donations myself. b) \$150,000.00
A8. What endorsements from community leaders, elected officials, political organizations or newspapers have you received thus far?	Assembly Member JoAnne Simon District Leader Shaquana Boykin Former Assembly Member Joan Millman Former President of Lambda Independent Democrats Michael Czaczkes Monique Cumberbatch, Community Board 2
A9. Is your candidacy receiving any support from the Kings County Democratic Party? If so, what type?	No. Not applicable.

<p>A10. What sitting Supreme Court Justice of the US do you most admire and why?</p>	<p>Associate Justice Sonia Sotomayor. She is compassionate and inspiring. Justice Sotomayor does not forget where she came from and pays it forward. I'm grateful to be part of and have served on the Board of Directors for The Sonia & Celina Judicial Internship Program, Inc. (named in her and her late mother's honor). The program seeks to give students from underserved and marginalized communities an opportunity to intern with a judge in state or federal court.</p>
<p>A11. If you were President Biden who would you nominate to the US supreme Court to fill the current vacancy and why?</p>	<p>There are no current vacancies on the U.S. Supreme Court. Also, as a judicial candidate, I am ethically prohibited from endorsing another candidate for judicial office and therefore cannot provide a specific name.</p>

<p>B1. Please include as a link or attachment the following documents:</p> <p>a). Citations for your three most significant decisions (if a judge).</p> <p>b). Resume</p> <p>c). Any published articles pertinent to the office you seek.</p> <p>d). Any application filled out for other organizations</p>	<p>(a) Although I am not a sitting judge, I have principally authored many significant decisions. I would find it difficult to rank them into a top three because every decision can be significant in different ways. For your consideration, please find some decisions may be considered as significant because of press attention. (Decisions selected for official publication are listed below, which have somewhat different criteria [e.g., novel issue of law]):</p> <p><u>M.H. v. Rockefeller University</u> Index no.: 950206/2020</p> <p><u>Synopsis:</u> Defendant Rockefeller University moved to dismiss the complaint arguing that it cannot be held liable for negligence because it did not have a relationship with the plaintiff, who alleges they were sexually abused by Dr. Archibald, an employee of defendant, and therefore owes no duty of care to plaintiff; that the abuse did not occur on the defendant's premises nor with its chattels; and there is no nexus between the abuse and the abuser's employment. The Court denied the motion to dismiss noting that New York law does not require that the</p>
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abuse occur on an employer's premises or with its chattels (clarifying decisional law for the first time that New York has not adopted Restatement of Torts (2d) § 319). Rather, the legal issue is whether the employer had sufficient control over the employee and the abuse had a nexus to the employment relationship, which the Court found was sufficiently pled.

The decision was recently published in the "Decisions of Interest" section of the New York Law Journal
<https://www.law.com/newyorklawjournal/almID/1674742241NY950206202/>

R.C. v City of New York
[Index no.: 153739/2018](#)

Synopsis: Plaintiffs R.C., A.G., and J.J. commenced a putative class action on behalf of themselves and others similarly situated against defendants the City of New York and James P. O'Neill challenging the New York City Police Department's (NYPD) policy and practice of maintaining, using, and disclosing sealed arrest records in violation of Criminal Procedure Law §§ 160.50 and 160.55 (the sealing statutes) and their due process rights under the New York State Constitution. Plaintiffs' complaint alleges, inter alia, that the NYPD maintains numerous databases containing information that is sealed under the statutes, but that such information is routinely accessed for investigative and various other purposes without court permission in violation of the statutes.

I principally authored the decision denying defendants' motion to dismiss, which was selected for publication by the official reporter (64 Misc 3d 368 [2019]). The Court held that plaintiffs' complaint adequately stated violations of CPL Sections 160.50 and 160.55 based on the allegations that the New York City Police Department routinely and unlawfully maintains, accesses, and/or uses sealed arrest information without first obtaining a court order pursuant to the statutes' provisions. The Court rejected defendants' statutory interpretation argument that the sealing statutes permit defendants to maintain, access, and/or use sealed arrest information held within its own

possession for investigatory or other purposes. The Court dismissed plaintiffs' due process claim as statutory violations of CPL 160.50 and 160.55 do not implicate constitutional rights.

State ex rel. Banerjee v Moody's Corp.

[Index no.: 103997/2012](#)

Synopsis: Plaintiff-relator Anirudda Banerjee (relator) filed an action on behalf of the State of New York (State) and City of New York (City) pursuant to the New York State False Claims Act (State Fin. L. §§ 187--94)2 claiming that the defendants knowingly and unlawfully took advantage of certain tax benefits primarily relating to one of Moody's subsidiaries, MAC, a licensed captive insurance company, and abused its tax-advantageous structure, thereby avoiding certain tax liabilities that are owed to the State and City. Specifically, relator claims that the insurance policies MAC holds to insure its parent and related affiliates are all "shams" and provides numerous examples of its alleged sham nature, including the inability to actually pay out any claims; and that the defendants arbitrarily valued intellectual property held by MAC. Additionally, since the New York State Tax Law was amended in 2009 to prevent captive insurance companies from abusing the privilege of favorable tax rates, relator claims that the insurance premiums are not "bona fide" under the law and are thus not entitled to be taxed at such favorable rates but, rather, should be included as income on MAC's parent's returns to be taxed at the parent's corporate rate. Relator also alleges a retaliation claim for "blowing the whistle" on the alleged "sham" set up of MAC to his Moody's supervisors and the New York State Attorney General's Office.

I principally authored the decision on a motion to unseal the matter, which was selected for publication by the official reporter as legally significant (54 Misc 3d 705 [2016]). The Court found that the parties failed to demonstrate compelling circumstances to justify the continued seal and restriction of public access of this *qui tam* action brought under the New York State False Claims Act. The Court further found that plaintiff-relator failed to demonstrate a compelling reason to justify proceeding anonymously.

I principally authored the decision resolving defendants' motion to dismiss, which was affirmed in its entirety by the Appellate Division, First Department (165 AD3d 19 [1st Dept 2018], affirming 54 Misc 3d 1201 [A], 2016 NY Slip Op 51771 [U] [2016]). The Court found that plaintiff-relator's allegations that, inter alia, defendants' captive insurance company failed to pay the appropriate amount of State and City taxes because it does not provide bona fide insurance and is otherwise illegitimate in nature, sufficiently alleged a reverse false claim under the FCA. Additionally, plaintiff-relator's internal complaints about the captive's fraudulent nature sufficiently alleged a "whistle-blower" retaliation claim under the same Act.

[Law360](#) reported on the matter.

West 58th Street Coalition, Inc. v City of New York

[Index no.: 156196/2018](#)

Synopsis: Petitioners, a coalition of neighbors, commenced an Article 78 proceeding challenging the City's decision to open a homeless shelter in their neighborhood.

I principally authored the [decision](#) finding that the City had a rational basis to find that the building was an "R-2" type classification and therefore the issuance of a temporary certificate of occupancy demonstrated that the building was safe to be inhabited (2021 NY Slip Op 31159 [U], 2021 WL 1901379).

The [New York Post](#) reported on the trial court's decision.

On appeal, the [Appellate Division](#), First Department agreed that there was a rational basis for the R-2 classification but modified the order by remitting to the Supreme Court "to direct a hearing on whether the Building's use is consistent with general safety and welfare standards."

The [Court of Appeals](#) modified the Appellate Division's order, finding it was improper to direct a hearing "to find additional facts or consider evidence not before

	<p>the agency when it made its determination” and sustained the trial court decision.</p> <p>b) Resume is available at this link.</p> <p>c) Published articles (attached in email):</p> <p>Rena Malik, Interview with Hon. Randall T. Eng, Recipient of the 2017 Norman Lau Kee Trailblazer Award, AABANY ADVOCATE NEWSLETTER, Fall 2017</p> <p>Rena Malik & Robert M. Rosh, <i>Are You Covered? Insurance Considerations for Hedge Fund Managers and Directors</i>, 26 J. OF TAX’N & REG. OF FIN. INSTITUTIONS 29 (Nov./Dec. 2012)</p> <p>Joan M. Gilbride, Laura B. Juffa, & Rena Malik, <i>Supreme Court Strengthens Individual Arbitration Process</i>, KBR Client Advisory (Apr. 29, 2011) available at http://kbrlaw.com/home/pages/publications</p> <p>d) My applications to screening committees are subject to confidentiality agreements.</p>
<p>B2. How many trials have you participated in within the last ten years? Please include citations</p>	<p>Given the number of trials that I have been involved in while employed in the court system, it would be difficult to provide the exact number over the last 10 years. However, in my role with Justice Tisch over the last five years, we have been assigned numerous jury trials – many of which were successfully settled pre-trial. Approximately thirteen (13) were taken to verdict and for those, I conducted the pre-trial conference, charge conference, prepared jury charges and verdict sheets, and provided my recommendations to the Judge on motions in limine and evidentiary rulings that came up during the trial.</p> <p>Citations available upon request.</p>
<p>B3. How many written motions have you made citing legal authority in last 5 years? Please provide copies of 3 most recent</p>	<p>None due to the nature of my employment as a law clerk.</p>

motions and/or memoranda	
B4. Have you had any court sanctions or disciplinary sanctions in your career? If so, please provide an explanation.	No.
B5. If you are currently serving as a Judge please list the names of the lawyers involved in the last three written opinions that you have issued.	<p>While I am not a sitting judge, for your consideration, please find the requested information for the last three decisions I principally authored (the link is to case details on NYSCEF where attorneys' names are listed). Also, if you would like the names of attorneys that have appeared directly before me for conferences (as opposed to written decisions where the Court has not interacted with the attorneys), I can provide that information upon request.</p> <p>1) Winecoff v Friends Seminary #950138/2019</p> <p>2) SHC-MG-25 Doe v Archdiocese of New York #950743/2020</p> <p>3) Fusco v Archdiocese of New York #950032/2020</p>
B6. Provide citations to your last 5 published opinions. If you have less than 5, please provide copies of enough unpublished opinions to bring the total to 5. All published decision first, then fill in the balance with the most recent unpublished decisions.	<p>1) <i>Brooks v Schectman</i>, 76 Misc 3d 1118 (Sup Ct, New York County 2022)</p> <p><u>Synopsis</u>: Plaintiff, the Estate of David Brooks, commenced an action for legal malpractice against former attorneys in a federal criminal proceeding. The Court granted the defendants' motion to dismiss because a civil action for legal malpractice may not be maintained upon an abatement of a criminal conviction solely from the death of the criminal defendant, as the abatement of the conviction itself does not equate to "a colorable claim of innocence," an element required for a legal malpractice action arising from a criminal proceeding.</p> <p>2) <i>Nelson v RXR 196 Willoughby Owner LLC</i>, 72 Misc 3d 819 (2021)</p> <p><u>Synopsis</u>: During a discovery conference, plaintiff objected to providing defendant with <i>Arons v Jutkowitz</i> (9 NY3d 393 [2007]) authorizations on the grounds that plaintiff intends to call some of the</p>

treating physicians as experts, and argued that there is generally no expert discovery pursuant to CPLR 3101 (d) (1). The Court found that, even though some cases (in the First, Second, and Fourth Departments) have permitted plaintiffs to forego compliance with CPLR 3101 (d) at trial for a treating physician, it does not mean that plaintiff should not comply with the rule. Further, CPLR 3101 (d) (1) should not act as a bar prohibiting informal discovery as permitted and encouraged by the *Arons* court.

3) *R.C. v City of New York*, 64 Misc 3d 368 (2019)

Synopsis: Plaintiffs' complaint adequately stated violations of CPL Sections 160.50 and 160.55 based on the allegations that the New York City Police Department routinely and unlawfully maintains, accesses, and/or uses sealed arrest information without first obtaining a court order pursuant to the statutes' provisions. The Court rejected defendants' statutory interpretation argument that the sealing statutes permit defendants to maintain, access, and/or use sealed arrest information held within its own possession for investigatory or other purposes. The Court dismissed plaintiffs' due process claim as statutory violations of CPL 160.50 and 160.55 do not implicate constitutional rights.

4) *State ex rel. Banerjee v Moody's Corp.*, 54 Misc 3d 705 (2016)

Synopsis: The Court found that the parties failed to demonstrate compelling circumstances to justify the continued seal and restriction of public access of this qui tam action brought under the New York State False Claims Act. The Court further found that plaintiff-relator failed to demonstrate a compelling reason to justify proceeding anonymously.

5) *Padilla v Estate of James Clayton*, 2022 NY Slip Op 31601(U), 2022 WL 1540190, index no. 158905/2021 (May 13, 2022)

Synopsis: In an action to recover against an estate for the decedent's failure to change his will, the Court denied that branch of the motion to dismiss for failing to state a claim, as the writings upon which plaintiff relied (two "will questionnaires") were not conclusive

as to the decedent's clear and unambiguous manifestation of the testator's intention to renounce the future power of testamentary disposition. Additionally, although plaintiff was entitled to commence the action in Supreme Court pursuant to SCPA § 1810, plaintiff requested an accounting of the estate and a determination that plaintiff was entitled to one-third of the estate. Accordingly, the Court found that the matter is better suited to be litigated in the Surrogate's Court and granted that branch of the motion seeking removal to that court.

- 6) *Ermenegildo Zegna Corp. v L&M 825 LLC*, index no. 655204/2016 (February 17, 2022)

Synopsis: Plaintiff-commercial tenant sought to rescind a lease on the grounds of mutual mistake and asserted claims for breach of lease in failing to deliver the premises, failure to cooperate, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. Defendant counterclaimed for the nonpayment of rent. After a bench trial, the Court granted judgment in favor of the defendant, dismissing the complaint and granted defendant's counterclaim. The Court rejected plaintiff's requests in the post-trial brief to consider defenses including constructive eviction, impossibility of performance, and frustration of purpose.

- 7) *Iacovacci v Brevet Holdings, LLC*, 2019 NY Slip Op 31284 (U), 2019 WL 2027600, index no. 158735/2016 (May 6, 2019), *affd* – AD3d --, 2021 NY Slip Op 05814 (1st Dept 2021)

Synopsis: The Court stayed a proceeding commenced by defendants in Connecticut to obtain information about a computer related to the state court action sub judice and two related federal actions. While staying proceedings in a foreign jurisdiction is only permitted in rare and extraordinary cases, the Court found that the proceeding in Connecticut was brought without merit and sought to circumvent discovery orders in the state court.

8) *Kelly v NYU Langone Health System*, 2019 NY Slip Op 31544 (U), 2019 WL 2341361, index no. 156158/2017 (May 29, 2019)

Synopsis: While plaintiff met his initial burden to demonstrate entitlement to summary judgment under Labor Law § 240(1), defendants' evidence in opposition that plaintiff said he "slipped" off the scaffold was sufficient to demonstrate an issue of fact as to how the accident happened and, consequently, whether it was a violation of the Labor Law, i.e., a failure to provide an adequate safety device. The Court also denied the Labor Law § 241 (6) claims as some of the regulations were not applicable or otherwise fail to eliminate issues of fact for the same reasons as under Labor Law § 240 (1). Finally, the Court granted the common law and Labor Law § 200 claims against the owner, but not against the general contractor, where the deposition testimony established that the general contractor may have exercised supervisory control over the manner in which plaintiff performed the work and access to safety devices.

9) *Servider v City of New York*, index no. 160683/2014 (May 24, 2021), *aff'd* — AD3d —, 2023 NY Slip Op 00174 (1st Dept January 12, 2023)

Synopsis: Pro se plaintiff moved to set aside a stipulation of settlement entered into between his former attorney and Corporation Counsel on behalf of the City of New York during a "Last-Clear Chance" settlement conference. The Court found that the former attorney had actual or apparent authority to enter into the settlement and that plaintiff's arguments for rescission were unavailing. For example, the alleged mutual mistake as to the amount of a Medicare lien was not a sufficient basis to invalidate the stipulation of settlement.

10) *Graphnet, Inc. v 30 Broad Street Venture, LLC*, 2021 WL 3703930, index no. 151622/2021 (August 19, 2021)

Synopsis: Defendant-landlord argued that plaintiff-tenant was not entitled to a Yellowstone injunction because it could not demonstrate it was willing and ready to cure by, e.g., occupying the premises and

	<p>paying rent. Plaintiff admitted that it was not ready to occupy the premises due to the COVID concerns of its employees and officers. The Court granted the Yellowstone injunction noting that, pursuant to the lease, there would be no default for failing to occupy the space if plaintiff paid rent; therefore, the Court ordered that rent be placed in escrow and directed plaintiff to continue to do so pendent lite.</p>
<p>C1. Are you a member of a political club? If yes, what is the name of the club? And what positions have you held? Please include dates.</p>	<p>Yes. I have not held office in any of the clubs of which I am or have been a member.</p> <p>Independent Neighborhood Democrats, 2016-present</p> <p>Progressive Association for Political Action, 2018-2021</p> <p>Central Brooklyn Independent Democrats, 2021-present</p> <p>Lambda Independent Democrats of Brooklyn, 2021-present</p> <p>New King Democrats 2023</p>
<p>C2. Have you been elected to any public office or political party position? If so, please describe the office or position.</p>	<p>No.</p>
<p>C3. Have you performed any pro bono work in the past three years? Please describe the type of pro bono work you have performed.</p>	<p>No, as a law clerk I am not permitted to engage in the practice of law outside the court system</p>
<p>C4. What Civic Organizations do you belong to? Please describe that the organization does, and what role you play within the organization.</p>	<p>I have been a member of the Community Affairs Committee of my cooperative board (Kingsview Homes, Inc.) for the last five years. In this position, I help keep our fellow shareholders apprised of things happening in our community, organize meetings and distribute information as necessary, plan meetings with local leaders and property owners/developers to engage in community-based dialogues about issues that affect our homes.</p> <p>I have also served on the steering committee of the Friends of Fort Greene Park since 2018, which is an</p>

	<p>organization committed to keeping the “green” in Fort Greene Park and raise awareness of the City’s plans to renovate the park. In this role, I help organize events and meetings, collect petition signatures, and distribute information through, inter alia, canvassing the Park and talking with its users.</p>
<p>C5. For each Civic Organization, provide contact information for the Executive Director, CEO or organization head. If you are the executive Director or organization leader, please provide the contact information for at least one Board Member.</p>	<p>Kingsview Homes, Inc. Cooperative Board, Community Affairs Committee Chair Monique Cumberbatch contactmonique@aol.com</p> <p>Friends of Fort Greene Park, President Ling Hsu fortgreenedesign@gmail.com</p>
<p>D1. What bar associations do you belong to? What sections or committees do you belong to? What is your role with the section or committee?</p>	<p>Asian American Bar Association of New York (AABANY), Judiciary Committee</p> <ul style="list-style-type: none"> • Judiciary Committee Co-Chair (April 2019-present) • Led AABANY’s Subcommittee to screen Court of Appeals candidates for Hon. Eugene Fahey’s vacancy in collaboration with the New York State Trial Academy of Lawyers and other bar associations (October-November 2021) • AABANY Mentoring Committee, Mentor (2021-2022) • Served on AABANY Task Force on addressing racial inequality in the state court system by providing recommendations to Secretary Jeh Johnson (Summer of 2020) • Executive Secretary (2016-2019) • Pipeline Development Co-Chair (2017-2019) • Fall Conference Program Chairperson (2018) <p>The Sonia & Celina Sotomayor Judicial Internship Program, Inc. (SCS JIP)</p> <ul style="list-style-type: none"> • Director (2016-2020) • Secretary (2017-2020) • Participating chambers (2015-present) • Interview & Applications Committee Member Volunteer (2015-2016; 2021-2022)¹

¹ Previously operating under the Joint Minority Bar Judicial Internship Program before merging as a formal branch of SCS JIP.

	<p>South Asian Bar Association of New York (SABANY)</p> <ul style="list-style-type: none">• Member (2009-present)• Mentor for Mentoring Program, 2022• Vice President of Sponsorship (2015)• Leadership Awards Gala Committee Member (2009-2015) <p>Brooklyn Women’s Bar Association (BWBA) Member (2018-present)</p>
<p>D2. List any CLE’s that you have taught within the last three years, if any. Please provide a syllabus if one is available.</p>	<p><i>Conferencing Disclosure Conferences</i>, CLE Presenter, Special Masters Training 2022, New York State Office of Court Administration, Franklin H. Williams Judicial Commission, and the New York County Lawyers Association, January 19, 2022, 4:00 pm via Microsoft Teams</p>